

Department of Corrections revises guidelines on implications for visitors possessing drugs

Legislation	Ombudsmen Act 1975
Ombudsman	Anand Satyanand
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Prison banned inmate's family members from visiting for 12-months after small amount of cannabis found in their possession—the inmate complained that the duration of ban was unreasonable but the Department of Corrections noted it had zero tolerance policy for drugs with an automatic 12-month prohibition order to be placed on anyone found with them on prison property—Ombudsman concluded blanket ban unreasonable and the Department agreed each case to be considered on merits and prepared guidelines for prisons—Ombudsman advised inmate to apply for a review of prohibition order under the new guidelines

A prison inmate's son and daughter were both prohibited from visiting their father for 12-months after prison staff discovered they both had a small amount of cannabis in their possession during one of their visits.

The prison inmate was unhappy about the length of the prohibition orders and asked the Department of Corrections to review the decision. It did so but later upheld the original decision maintaining the 12-month prohibition order.

The inmate then requested that the Ombudsman investigate this matter. The inmate said the quantities of cannabis found were small, the Police had not been involved and staff had acknowledged that the cannabis was not in a form which would suggest that it was intended to be smuggled in during the visit. Therefore, the inmate believed a prohibition for the maximum period of 12-months was unreasonable, particularly as it did not differentiate from those caught with larger amounts in a form that was likely to be smuggled into the prison.

The Ombudsman notified the Department of his intention to investigate whether the duration of the visitor prohibition orders was unreasonably lengthy. He requested a report detailing the reasons why the prison believed such a term was appropriate in the circumstances.

The Department responded by advising that the prison has a zero tolerance policy for drugs and a 12-month prohibition order is automatically placed on any visitor bringing illegal drugs into the institution, regardless of the quantity. It said this policy has been in force for a number of years. The Department said it had already reviewed this matter after an appeal was lodged with the Inspectorate, the outcome of which was that the Prison Inspector found the ban and length of time imposed was appropriate given the inmate's history involving drugs and the Department's focus to reduce re-offending and assist reintegration.

The Ombudsman then arranged a meeting with the relevant officials to further discuss the prison policy.

The Ombudsman accepted that, in this case concerning the particular inmate, there may have been justifiable grounds for the lengthy prohibition orders. He also recognised the need for a rigorous drug policy in prisons and that the application of prohibition orders preventing future visits may be required as a means of deterring visitors from attempting to smuggle drugs into prisons.

However, the Ombudsman was also of the view that a blanket 12-month ban regardless of the circumstances could lead to unfairness in certain cases as it did not distinguish between small amounts obviously not intended for inmates and larger quantities which likely were. It also did not appear to cover the situation where a visitor was genuinely unaware of such a substance being in their car for example. The fact that the existing practice at the prison had been operating for a number of years did not, in the Ombudsman's view, justify it.

The Department agreed that a 'blanket' ban may have been unreasonable. As a result, all prison superintendents were advised that each ban should be looked at on its own merits. The Department also prepared a set of guidelines reflecting varying degrees of transgression which were distributed to each prison to use when determining the duration of prohibition orders. The Ombudsman noted that these were only guidelines and other matters could be considered when deciding upon the duration of the ban, such as a visitor's conduct at the time.

In these circumstances, the Ombudsman suggested that if the inmate still considered the bans imposed on his son and daughter were unreasonable he may wish to reapply to have the length of the prohibition order reviewed. While it would still be up to the prison to make a decision on it, the review would have to take into account the recently introduced guidelines.

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