

Take action now on Crime - Treat Young Offenders with Dignity

Should we treat young offenders differently to adults?

In NSW, the juvenile justice system deals with offences committed by offenders under 18 years. From time to time politicians and commentators suggest that at least some under 18 year olds should be dealt with by the adult justice system, especially when the crime was a violent one.

Is this fair?

Most people would say that they want the justice system to provide an appropriate mix of deterrence, punishment and rehabilitation:

- **deterrence** to prevent crime occurring in the first place;
- **punishment** to fit the crime and the criminal; and
- **rehabilitation** when possible, especially for young people who are not “hardened criminals”.

YAPA believes that the justice system should treat minor offenders differently to serious offenders. It is also YAPA's contention that the justice system should address the causes of crime and the potential for rehabilitation.

The juvenile justice system achieves these aims, and achieves them better than the adult justice system can.

There are number of myths that often arise during election campaigns. These myths include:

- Young offenders get off lightly.
- Children's Courts are ineffective and don't prevent re-offending.
- Young people aren't being made to take responsibility for their crimes.

Fact 1: Harsh penalties are available for young offenders – Serious crimes are already sentenced in the adult courts

Currently when a young person under 18 is charged with a serious offence, such as murder, manslaughter, serious sexual assault, and serious robberies (eg. with a gun), they are dealt with in the District Court or the

Supreme Court. These offences are referred to as *serious children's indictable offences*. These higher courts have the full range of 'adult' penalties available to them.

The law states that if a child was sentenced with a serious children's indictable offence, they must serve their time in an adult jail once they turn 18. However, the court does have the discretion to order that the child serve their time in a juvenile detention centre if there are special circumstances.

The Children's Court also has the option with most categories of crime to send the young person to the District Court where the circumstances warrant it - for example, where the young person has a long criminal record.

Fact 2: Children's Courts deter young people from crime

70% of young people who appear in the NSW Children's Courts never reappear. Another 15% only appear once more. In other words, for 85% of young offenders appearing in the Children's Courts, the juvenile justice system is successful in diverting them away from further crime.

The Children's Court succeeds in deterring young people from further crime because the court is able to treat each crime and each young person in an age and developmentally appropriate manner, looking at the underlying issues that may be causing the criminal behaviour. Children's Court magistrates are able to distinguish between crime caused by immaturity, teenage “acting out”, anger problems, mental illness, drug abuse and other factors. Penalties are imposed which aim to address the particular issues in each case and therefore prevent further offending. The Children's Court is better able to take this case-by-case approach than the adult courts because it has specialist and extra resources, including:

- specialist training on youth issues for magistrates;
- children's solicitors and Juvenile Justice officers to inform the magistrate about each young person's circumstances; and
- court orders can include ongoing supervision by the Department of Juvenile Justice to provide community links for young people.

The range of penalties available to Children's Court magistrates is appropriate to the wide range of young people who appear, for example:

- A first time offender found guilty of shoplifting may receive a caution or youth justice conference.
- A repeat offender who has been charged with numerous break and enters and has breached previous orders of the court may receive a community service order of up to 250 hours.
- An offender found guilty of a robbery with an offensive weapon and has a previous malicious wounding on their record may receive a control order (detention) of up to two years.

Fact 3: Youth justice conferencing makes young people face their victim and take responsibility for their crime

Since the introduction of the *Young Offenders Act* in 1998 the juvenile justice system now has an alternative to court: youth justice conferencing. Police and magistrates can send a young offender (under 18) to a conference to face the victim of their crime. At the conference the young offender hears how their crime has affected the victim and other people in the community. The young offender must then "make it up to the victim" by agreeing to an Outcome Plan, which might include a written apology, voluntary work, and paying for damaged property.

If the victim is not satisfied with the Outcome Plan, or the young offender fails to carry out the plan, the case can still be sent to court.

Many young people report that facing their victim is harder than going to court. Many victims of crime report that they felt involved in the process and satisfied with the outcome.

Youth justice conferencing works because victims of crime get a say and feel heard; young offenders must face the consequences of their actions; and each conference takes into account the individual factors contributing to the offending behaviour.

The Bureau of Crime Statistics and Research did a study in 2002 comparing reoffending by young people who participated in a conference with reoffending by young people who attended court. Their results showed that:

Youth Action & Policy Association NSW (YAPA)
Suite 405, 410 Elizabeth St,
Surry Hills NSW 2010
Phone: 02 9281 2344
1800 627 323 (Outside Sydney)
Fax: 02 9211 2037
info@yapa.org.au www.yapa.org.au



"Conferencing produces a moderated reduction of up to 15 to 20 per cent in reoffending across different offence types and regardless of the gender, criminal history, age and Aboriginality of the offenders."

Fact 4: The United Nations Convention on the Rights of the Child clearly states that a child is any human being under the age of eighteen years (CROC Article 1)

There has been suggestion by the NSW Department of Public Prosecution and various political parties that the age for adult criminal responsibility should be reduced to seventeen. YAPA contends that such steps would be in contravention of international human rights standards.

If some under 18s were dealt with by the adult justice system, the likely consequences would include:

- less appropriate responses to individual crimes and offenders
- less appropriate rehabilitation
- less youth conferencing would mean less victim satisfaction.

YAPA recommends that the NSW Government:

1. Put an emphasis on rehabilitation, especially within juvenile detention centres;
2. Comply with international standards, which state that detention should be a last resort (CROC Article 37) and develop more alternatives to detention; and
3. Provide more specialist children's courts and solicitors outside metropolitan Sydney.

Take Action Now on Young Offenders Rights

- If you would like to support the campaign for *better outcomes for young offenders* write to your local State MP, relevant Ministers and Shadow Ministers outlining your concerns and case studies. See the Take Action Now – Contacts Sheet contained in this Campaign Kit.
- Meet with your local MP.
- Talk with the local media and/or write a letter to the editor.

The juvenile justice system serves the community better