Young Offenders

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5:27 pm

INTRO:

Effective -

+ Law recognises children/young people are different to adults & need to be considered separately in the justice system because of their vulnerability

+ Noetic Review 2010 - Children/young people who show more persistent & habitual offending behaviour generally have histories of neglect, low levels of education attainment, histories of substance abuse & a tendency towards acts of physical aggression

+ However, Noetic Review believes children/young people must be held accountable for their actions - & still need to take responsibility & confront the issues

Justice Issues -

* Young people from disadvantaged backgrounds are overrepresented in the juvenile justice system
* 2 approaches taken in regard to young people:
  + Welfare model: focuses on need to protect children from causes of crime & assist with rehabilitation
  + Justice model: promotes a 0 tolerance approach & emphasises incapacitation over rehabilitation
* System should be more about rehabilitation & restorative justice
* Should be treated differently as vulnerable
* Aboriginal youth detention rates are high June 2015 news

* BOCSAR - b/w 15-19 commit 4 times more offences than anyone else - thefts - Teenagers are Australia's most arrested people April 2015 News
* Found truancy, influence of peers, performance at school & poverty could all be factors in crime - prone individuals

* School drug offences skyrocketed, Herald 2015, 75% offences = cannabis related, where possible dealt with under young offenders act

**Age of Criminal Responsibility**

In NSW, Age of Criminal Responsibility is defined by statute law Children (Criminal Proceedings) Act 1987 (NSW) & it is 10 years of age

* In line with our commitment to the Convention on the Rights of the Child (CROC). A child in NSW under 10 under common law, is considered to be DOLI INCAPAX meaning they don’t understand that what they did was seriously wrong, or a child is too young to form criminal intent (no mens rea)
* In NSW, 0-9 years, common law presumption of DOLI INCAPAX - ("incapable of wrong") applies
* 10-13 years of age, presumed you are incapable of forming the relevant intent to commit a crime, doli incapax still applies. However, if prosecution can prove that they child knew what they were doing was seriously wrong & not merely naughty - overwhelming evidence - this presumption (ie. Doli Incapax) is rebuttable
* 14-18 - No D.I. but still juvenile until 18
* 18 - fully responsible

**Rights of Children when Q/Arrested**

* Children have same rights as adults when arrested & Q but also have special protections due to their vulnerability
* Law Enforcement (Powers & Responsibilities) Act 2002 (NSW) sets out police powers in relation to children which includes:
  + Right to ask youth/child for name & address
  + However, child does not have to answer unless driving, drinking alcohol in public places or suspected of committing a serious indictable offence
  + P = right to ask Q's --> Youth = right to silence
  + Must receive caution
  + Y = right to have responsible adult present when Q --> anything said without ^ will be inadmissable in court e.g. Johnny Phung
  + P can search, no strip search under 10 & must have responsible adult present if child aged 10-18
  + P can arrest if:
    - Suspect Y has just, is in the middle of or is about to commit a crime
    - Warrant
  + P can Q for 6 hours - extension must be granted by a Magistrate however, recommended Y be Q for 2 hours due to their vulnerability
  + P must inform Y they have access to legal aid & given opportunity to ring it
  + < 14, fingerprints & photos only taken with Children's Court order
  + < 18, DNA sample only taken with Children's Court order

**Children's Court**

Children's Court Act 1987 (NSW) - established the Childrens Court

Jurisdiction:

Is a specialist court

* To deal with criminal cases
* Applications for apprehended violence orders
* Applications for compulsory schooling orders and
* Cases involving the care and protection of children

What makes the Children's Court unique?

Effective:

* Deals with juveniles 10-17 years old but under 21 e.g. if you commit a crime when you are 17, but don’t get caught until your 18, it still goes to the Children's Court. If you are caught when you are 22, it will go to an adult court
* Closed court, no public, media yes, but cannot reveal identities
* Summary jurisdiction: it is the same level as local court…no jury, magistrate, however, serious crimes committed by young people Milat, Corey Davis case heard in Supreme Court (start in childrens court - committal process), however, when it comes to traffic matters - child has a license goes to the LOCAL COURT - treated like an adult
* The court is more flexible and aim for rehabilitation as per R v GDP 1991
* Court procedure less formal, young people more able to participate and ask questions, closed court, children identity protected
* Children's Court you are automatically entitled to Legal Aid representation

In addition to the Children's Court, - NSW's first Koori Youth Court established Jan 2015 in Parramatta to reduce number of Indigenous young people sent to prison - they represent 60% of inmates in NSW juvenile justice system

* Process involves magistrates, elders (no input but will advise on cultural issues), sitting at a table face to face with young offenders

**Penalties for Children - Purpose of punishment is Rehabilitation**

A magistrate in the Children's Court can issue the following penalties for children - under the CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987 (NSW)

Effective:

* Can be the same as an adult but not as HARSH
* Assisted with reintegration into community to sustain ties with family and community
* Consideration should be make to the effect of the victim

Examples of PENALTIES that can be issued under the CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987 (NSW)

**Dismissal -** May decide to caution

**Conviction -** Under 16 no conviction can be recorded

**Bond -**  Good behaviour - Max 2 years

**Youth Justice Conference -** Outcome plan - this also can be issued by police under the Young Offenders Act

**Fines** can be imposed by only to a max of $1100

**Community Service** can be ordered but only for a max of 100 hours for under 16s and 250 hours for 16/17 year olds (500 adults)

**Suspended Control order -** Suspend control order for 2 years subject to good behaviour bond

**Control order -** Most severe penalty - detention in a Juvenile Justice Centre

Primary purpose of sentencing children is REHABILITATION as established in R v GDP 1991 - *However, Children who commit grave adult behaviour e.g. R v Milat & Klein, R v Pham & Ly (1991) the purpose of their sentence will be incapacitation, retribution and deterrence to protect the community from the offender*

Changes to the Bail Act 1978 NSW since 2007 made it more difficult for young offenders to get bail. The justification was that it provided greater protection to the community. A BOSCAR study found the between 2004/5 and 2008/9 the juvenile remand population increased by 82%. The current Bail Act allows young offenders to make a second bail application which may reduce the number of young people on remand.

**Alternatives to Court ----- This is an EFFECTIVE mean of achieving justice for young offenders**

* About 50% of young offenders get diverted from formal prosecution (COURT) according to AUS Institute of Criminology
* The YOUNG OFFENDERS ACT, 1997 provides the option of warnings, cautions and conferences for young people whom the police suspect have committed an offence. These are called 'diversionary options' which means that young people who can be dealt with under the *Young Offenders Act 1997,* generally **do not have to go to court of have a conviction recorded against them**
* Four options exist for police dealing with young offenders. The choice depends on the seriousness of the offence, the degree of violence involved, the harm caused to the victim, the attitude of the young people to the offence and whether the young person admits to the offence

**Options**

1. WARNINGSrecorded without the offender details
   1. Minor summary offences with no violence or related issues, e.g. swearing in public.
   2. Can be given on the spot
   3. Police record the giving of a warning but not the young persons name

1. CAUTIONS formal, recorded
   1. More serious offences, e.g. stealing or damaging property
   2. A young person can only be cautioned if he or she admits the offence after being given the opportunity to receive legal aid and agrees to be cautioned
   3. A police officer or respected community member gives the caution to the young person
   4. A caution is a serious matter. It can be done at a police station or other suitable venue
   5. School drug offences skyrocket, Herald 2015, 75% offences cannabis-related, where possible dealt with under the Young Offenders Act

1. YOUTH JUSTICE CONFERENCE any offence that warrants a caution or is more serious, e.g. stealing, damage to property, assault and where a victim has suffered harm
   1. Note: previous cautions or conferences may affect whether an offender can be warned, cautioned or sent to a youth justice conference for future occurrences. The decision to have a conference can be made by the DPP, court of NSW Police Specialist Youth Officer
   2. A conference can only be held if the young person admits the offence after being given the opportunity to receive legal advice and agrees to attend a conference
   3. EFFECTIVE in terms of achieving a balance: The offender & victim must agree to an outcome plan, e.g. apology, repayment, repair of damage or community work
   4. **RESTORATIVE JUSTICE**
   5. The young person & the victim must then agree to an outcome plan to make up for the harm suffered by the victim and the community
   6. **More about rehabilitation and restorative justice rather than punishing offender**
   7. The conference cannot impose a more severe outcome plan than a court would do

1. COURT an adult court must deal with murder, manslaughter, sexual offences, domestic violence, drug trafficking and any offences that result in the death of a person. This includes motor vehicle offences where the young person is old enough to hold a license or permit under the Motor Traffic Act 1909. (local Court) The court can impose such penalties as detention, intensive community supervision, community service orders or fines.
   1. The Director of Public Prosecutions can refer back to Police for a caution. The Children's Court can give a formal caution

*Assess Effectiveness:*

There are two methods a young offender can receive the PENALTY of a YOUTH JUSTICE CONFERENCE

Police can use their discretion to issue one or a magistrate in a Children's Court

According to the Noetic Review 2010, Police UNDERUTILISE youth justice conferences and send the offender to the Children's Court

INEFFECTIVE: Youth Justice Conference is underused 5% of all youth offenders low and it is a high success rate 15-20% decrease of reoffending…should be used more especially by police. Police are not using their DISCRETION enough to issue more youth justice conferences

They are EFFECTIVE:

1. Time: if Police refer a young person to YJC their case is over much more quickly
2. Money: YJC is more cost effective than CC
3. VICTIM satisfaction: 88% of victims said they would recommend YJC to other victims
4. PUBLIC SUPPORT: 87% of people agreed that the victim should have this chance to talk to the offender about how the crime affected their life

As part of the Young Offenders Act 1997 (NSW) a youth justice conference is effective as highlighted in the media 2014 **Racist rant means teenager must learn about the Jewish experience** where young offender who made vile anti-Semitic threats against a busload of schoolchildren was ordered to tour the Jewish Museum and undergo a school "harmony program" as part of his outcome plan. Restorative justice was accomplished as the offender was made to explain his actions to his young victim and face questions from the panel

Another alternative to COURT **WAS** the

**Youth and Drug Alcohol Court,** HOWEVER, this was axed **in 2012 - due to lack of funding. It was effective for 10 years as it provided counselling and rehabilitation programs -** Considering 50% of young offenders are dependant on drugs & alcohol this alternative to court addressed the effectiveness of a social crime prevention strategy.

**Despite this,** the NSW Gov has introduced:

**The Youth on Track Program** = early intervention program "*Starving off a life of crime" 2013*

Recent alternative = **The Youth on Track program is an early intervention program**

**Police and later schools refer young people 10-14 who they believe are at risk of committing crimes will be referred to *literacy, substance abuse and mental illness services.***

This is an effective program as it is an example of Social Crime Prevention as illustrated in the media, *"Starving off a life of crime"* 2013. **However accessibility** to this program is limited to Blacktown, Kempsey and Newcastle and as a result the program only aided 35 young people in its first year, despite its aim of helping 300 in 2013. Furthermore, 6 months after implementation Sydney Morning Herald stated, "Youth program off track" 2013, ***therefore*** questions the programs responsiveness in meeting society's needs