



Young and Accountable? (1)

***Should New Zealand lower the age of
criminal prosecution?***

Prepared for UNICEF (United Nations Children's Fund) NZ

With thanks to participants in the UNICEF NZ Youth Week Forum, May 28 2008, which addressed this matter and informed this document.

John Hancock, Senior Lawyer, Youth Law, Auckland
Dr. Gabrielle Maxwell, Victoria University of Wellington
Kim Workman, Director, Prison Fellowship
Chester Burrows MP for Wanganui
and to **Jehan Cassinader** who chaired the Forum.

Thanks to **Judge Andrew Becroft**, Principal Youth Court Judge and staff who assisted with review of the document.

Notes compiled for UNICEF NZ by Sonia Reinig and edited by Barbara Lambourn, National Advocacy Manager, UNICEF NZ.

Copies can be downloaded from www.unicef.org.nz/page/64/Currentissues.html/
Hard copies on request from 2helpkids@unicef.org.nz

Full references and more detail are contained in the Background paper "Young and Accountable (2)" available online www.unicef.org.nz/page/64/Currentissues.html/

Overview

Some politicians, lobbyists and members of the public believe that measures to deal with young offenders, sometimes as young as 10 years old, are ineffective.

They assert that young/child offenders who commit serious crimes should be accountable in the same way as adult offenders. In short “adult punishment for adult crimes”.

Their case is that the current youth justice system fails to address the perceived increase in youth crime and there is often reference to a “youth crime epidemic”.

There are different views

Others, including those working with young people, justice issues, rights and ways to prevent youth offending believe that there is no case for lowering the age.

This information is designed to assist a considered view of the case for retaining the status quo. It is compiled from a range of authoritative sources (see appendix). Full references and more detail are contained in the Background paper “Young and Accountable (2) available online at www.unicef.org.nz/speaking-out/Microsoft_Word_-_Background_Paper.pdf or hard copy on request from 2helpkids@unicef.org.nz

Currently:

- **Children aged 10-13** can not be prosecuted except for murder or manslaughter. Where a child’s offending raises concern about their well-being, the offending is addressed under the care and protection jurisdiction of the Family Court, which can lead to a CYFS Family Group Conference (FGC) and, if unresolved or defended, a Family Court hearing.
- For other offences children are dealt with through a warning, contact with family or CYFS FGC which could lead to a Family Court hearing. This is on the assumption that the offending is related to care and protection matters.
- **Young people aged 14 -16** are dealt with through Police Youth Aid, diversion, an FGC or could appear before the Youth Court.
- **15 and 16 year olds** will first appear in the Youth Court but can be transferred to District (adult) Court for sentencing on serious charges.
- **Young people who offend as 17 year olds** are treated as an adult for the purposes of criminal law.
- Charges of **murder or manslaughter** are always finally dealt with in the adult criminal system.

Some Facts

1. There is no youth crime “epidemic”

- Youth offending has not increased but has remained stable over the 10 years 1997-2006 (22% of total offending).
- Youth property offending was the lowest recorded in the years 1995-2006.
- 10-13 year olds have the lowest rate of apprehension for all types of offences, other than property.
- Violent offences by 10-13 year olds reduced by 10.79% in the years 1997-2006 but there was an increase in violent offences for 14-16 year olds in recent years.
- The total youth apprehension rate over years 1995-2006 was the lowest recorded at 1,591 per 10,000 population.
- 80% of young offenders commit 20% of all offending. This group is likely to stop offending after apprehension and appropriate intervention.

“There is no evidence that offending by children and young people are on the rise.”

Kim Workman, Director Prison Fellowship

2. Changes in Violent Offences

- Violent offences in the overall population increased in the last 10 years by 22%.
- Violent offences by young people increased but remain a relatively small proportion (12% in 2006) of all offences by young people.
- There was a 39% increase in serious violent offences by young people in the last 10 years most often committed in the company of older offenders.

3. Recidivism

5-15% of the total number of youth offenders commits 40-60% of all offences. They are the group who are most at risk of becoming recidivist adult criminals.

Those who continue to offend have a number of distinguishing characteristics:

- 83% are male.
- 70% are not at school – most are not even enrolled at a secondary school.
- Most experience family dysfunction, disadvantage and lack of positive male role models.
- Many have some form of psychological disorder or specific learning disability, e.g. dyslexia.
- At least 50% are Maori. In some Youth Courts the Maori appearance rate is 90%.

- Together and within their families, they demonstrate a range of problems that includes substance abuse, criminal behaviour, accommodation difficulties, poverty, unemployment, poor educational achievement, mental health problems, violence, neglect and abuse of every type imaginable.

Some of these characteristics, such as being male or having grown up with difficulties in education, family background etc. cannot be changed. But the future for these young people can change, by enabling them to get back into education, develop work skills, support their family, provide mentors and arrange services to respond to health and behaviour problems.



4. Harsh approaches to youth offending do not work

A wealth of credible international and local research shows that severe punishment and detention do not deter young offenders.

There is good evidence that punishment does not reduce offending but appropriate assistance can.

Contrary to what proponents of harsher sentences for young people propose it is known that:

- “Getting tough” interventions (boot camps, scared straight, shock probation, paramilitary training) almost always fail. Punishment and detention are not effective forms of rehabilitation.
- The greatest change in expected re-offending rates for persistent offenders was not achieved through deterrent sentencing. Likelihood of re-offending increases 25% after a deterrent sentence.

Robert Ludbrook (Child Rights Lawyer) *points out that while the call for harsher penalties for young offenders and the proposal that children as young as 12 years be dealt with in the adult criminal system may attract some public support, these measures will not reduce youth offending and will take New Zealand in the opposite direction to that proposed by international and national human rights bodies.*

5. Punishment increases the likelihood of re-offending

When children come into contact with the adult criminal justice system, there are negative psychological and behavioural consequences for them:

- verbal, physical, sexual and emotional abuse is likely for young people in detention who are:
 - imprisoned for the first time
 - small
 - from a middle class background
 - effeminate in behaviour
 - lacking “streetwise” knowledge
- incarceration breaks the spirit. Long term rehabilitation prospects are made more difficult.
- being held up to public vilification is destructive, again inhibiting rehabilitation.
- juveniles in adult prisons are at greater risk of suicide.
- appearing in adult court demonstrably decreases the chances of rehabilitation.

“[This proposal will] divert investment in other areas such as education, health and welfare to law enforcement and the administration of the justice system and custodial facilities.”

John Hancock, Senior Lawyer, Youth Law

6. A rehabilitative, restorative approach is more effective

Solutions need to be adjusted to children’s reduced maturity. Children are often unable to comprehend the impact and consequences of their actions. They do not have the same developmental level of cognitive or psychological maturity or experience as adults and need different approaches to accountability. Child and youth crime is not usually premeditated; it is almost always spontaneous and impulse driven.

The greatest reduction in re-offending rates was achieved through:

- Preparation for employment (35% decrease)
- Behaviour contract (25% decrease)
- Behavioural and educational training (15%)
- Court/probation (10% decrease)
- Offender counselling (8% decrease)
- Family counselling (no change)

Fair treatment by youth justice personnel, along with meetings between victims and young offenders - sometimes including their families - appears to make a positive difference to the outcome.

Often, attention to the drivers of the behaviour is sufficient to stop the offending. Sentences that have services to address risk factors attached to them and that use the relationship between youth justice staff, young people, their families if appropriate, and communities to foster change are more effective.

*“Which kind of society do we want?
One where wild bulls rage, build fear, demand punishment and humiliation,
seek to subdue and control the weak?
or
One where policy seeks to create a caring and inclusive community that seeks
to get the best from everyone?”*

Dr Gabrielle Maxwell, Criminologist and Psychologist at
Victoria University of Wellington

7. The Youth Court does ensure accountability

New Zealand’s current youth justice system, in particular the Family Group Conference (FGC) process, is admired internationally. The FGC forum for resolving matters concerned with child offending has been adopted in several overseas jurisdictions, including Australia, the UK and parts of Canada.

Youth Courts are part of the District Court system and deal with 14-16 year olds. They are administered by judges with specialised training and their goal is to ensure accountability and responsibility for behaviour and to underline the importance that the matter is premised on criminal justice, not welfare principles. The young person is dealt with appropriately but avoids contact with the adult criminal system.

“We need to continue to hold young offenders to account for their offending while also providing effective rehabilitative programmes which will head them away from re-offending.”

Andrew Becroft, Principal Youth Court Judge

UNICEF New Zealand Position

At 10 years old, New Zealand's general official age of criminal responsibility is one of the lowest compared to other western countries.

Overseas Jurisdiction – Official Age of Criminal Responsibility

Age	Selected Country
7	Tasmania (OZ), Bangladesh, Ireland, Kuwait, Pakistan, Sudan, Zimbabwe
8	Scotland
10	Australia: most states, New Zealand , UK (except Scotland), some US-States
12	Canada
13	Chad, France, Poland
14	Austria, Bulgaria, China, Croatia, Germany, Hungary, Italy, Japan, Libya, Romania, Russia, Fed. Rwanda, Slovenia, Yemen, Yugoslavia
15	Czech Rep., Denmark, Egypt, Finland, Iceland, Norway, Sudan, Sweden
16	Argentina, Portugal, Spain
18	Belgium, Colombia, Guatemala, Mexico

Any reduction in the age of criminality would not only be a breach of children's rights, and contrary to our obligations under the United Nations Convention on the Rights of the Child, signed by New Zealand in 1993, but a backward step in New Zealand's response to young offenders. It will not reduce youth offending, since it does not deal with the source of the problem. Further it would take New Zealand in the opposite direction to that proposed by international and national experts on criminality and human rights bodies (refer to CYPF Act, UNCROC, Beijing Rules, the legal principle of *Doli incapax*).

Our responsibility as an enlightened society in the 21st century reaches further than just locking children away from the public. Such children would have little chance of becoming safe and responsible adults.

We do not reduce the problem of crime by reducing the age of criminality.

Short-term, punitive intervention is likely to have a greater negative impact on child and youth offenders and inhibit their ability to become productive citizens.

Preventing crime is the most effective way of reducing the prison population, in the long term. More attention to the environments that grow damaged children is likely to achieve better results. Children's rights to survival, protection, education and to be treated fairly are at the heart of preventing juvenile crime.

Dr Rob Allen (Centre for Crime and Justice Studies) *recommends that the minimum age of criminality in New Zealand be raised to 14, with civil child protection proceedings applying to children under that age.*

APPENDIX I

Youth Offending Apprehensions in 2006

30,451 total apprehension.

62% for property

13% for offences

against good order
(unlawful assembly,
offensive language,
disorderly behaviour,
trespass, etc)

**12% for violent
offences**

- This rate increased by 39% during years 1995 (9%) and 2006 (12%).
- Grievous assaults make up 41% of the 12% violent offences.

Apprehensions for violent offences 1995-2006

	1995	2006	Increase by
Total Violent Offences	28,065	34,753	
Adults	25,375	31,010	22%
Youth (under 17)	2,690	3,743	39%
Youth Offending Proportion	9.58%	10.77%	1.19%

Number of cases involving Youth Offending and average number of charges per case

Year	Number of cases	Percentage charged
1980	15,000	2%
1990	3,000	2%
2005	5,800	2.7%

- The introduction of the CYP & F Act (1989) led to a dramatic reduction in the numbers of young people dealt with in the court system (Youth, High, District Court).
- Corresponding with this reduction is the rise in the average number of charges per case as only serious offending reached court.

General Youth Offending Patterns

Youth Offenders

80% commit 20% of all offences

- Will age out of offending.
- Commit at least one crime.
- Tend to start later in adolescence, after 13.
- Stop offending by age 24 to 28.
- 75% dealt by the Police Youth Aid Section.
- 33% involved in FGC do not re-offend at all.
- 22% involved in FGC re-offend in a very minor way.

5-15% commit 60% of all offences

- Are at risk of becoming recidivist adult criminals.
- Start early - before age 14 and as early as 10.
- Offend at high rates.
- Only 30% commit crimes of violence.
- 83% are male.
- 70% are not at school – most not even enrolled at a secondary school.
- Most experience family dysfunction and disadvantage and lack positive male role models.
- Many have some form of psychological disorder or specific learning disability, e.g. dyslexia.
- At least 50% are Maori and in some Youth Courts the Maori appearance rate is 90%.
- Together with their families, show a range of problems that include substance abuse, criminal behaviour, accommodation difficulties, poverty, unemployment, mental health problems, violence, neglect and abuse of every type imaginable, poor education.

Both groups commit serious offences, but the latter tend to commit more of them, partly because they commit crimes at a high rate over a long period.

APPENDIX II

- BEAL, F. (2006): *Reading between the Lines. Representations and Constructions of Youth and Crime in Aotearoa/New Zealand*, Victoria University of Wellington.
Downloadable from <http://researchive.vuw.ac.nz/handle/10063/71>.
- BECROFT, A. (2006): *Alternative approaches to sentencing. Time to teach the old dog new tricks? What the adult Court can learn about sentencing and imprisonment from the Youth Court.*
Downloadable from
<http://www.justice.govt.nz/youth/media/speeches/alternative-approaches-to-sentencing-sept-2006.pdf>.
- BECROFT, A. (2008): *Child and Youth offending - the whole story*, in: *Children*, No. 64, pp. 7-10.
- BECROFT, A. (2008): *Youth Offending. Introductory Notes*, UNICEF Youth Week Forum "Young and accountable... or are young offenders getting off too easily?" 28 May 2008.
- BOSHIER, P., MOORE, J., HALE, S. (2002): *Child Offenders Manual. A practical guide to successful intervention with child offenders*, 3rd edition, Wellington.
- CHONG, J. (2007): *Youth Justice Statistics in New Zealand: 1992 to 2006*, published by the Ministry of Justice, Wellington.
- HANCOCK, J. (2006): *Submission of Youth Law Tino Rangatiratanga Taitamariki on Young Offenders (Serious Crimes) Bill*, online
http://www.youthlaw.co.nz/default.aspx?_z=187.
- HANCOCK, J. (2008): *The Age of Criminal Responsibility*, UNICEF Youth Week Forum "Young and accountable... or are young offenders getting off too easily?" 28 May 2008.
- LLOYDD, A. (2008): *New Zealand Law Society. Youth justice committee*, online
<http://www.nz-lawsoc.org.nz/lawtalk/665YJC.htm>.
- LUDBROOK, R. (2005): *Children's rights in youth justice*, in: *Children*, No. 53, pp. 11-12.
- MAXWELL, G. (1999): *Youth Offending: Putting the Headlines in Context*, from LawTalk, pp. 12-13, online <http://www.justice.govt.nz/youth/media/rates1099.html>.
- MAXWELL, G. ET AL (2004): *Achieving Effective Outcomes in Youth Justice*, final report, published by the Ministry of Social Development, Wellington.
Downloadable from:
<http://www.msd.govt.nz/documents/publications/csre/achieving-effective-outcomes-youth-justice-full-report.pdf>.

MAXWELL, G. (2008): *The Age of Criminal Prosecution*, UNICEF Youth Week Forum “Young and accountable... or are young offenders getting off too easily?” 28 May 2008.

MCLAREN, K. (2000): *Tough is not Enough – Getting Smart about Youth Crime. A review of research on what works to reduce offending by young people*, published by the Ministry of Youth Affairs, Wellington.

Downloadable from <http://www.myd.govt.nz/uploads/docs/0.7.4.1%20exec%20sum.pdf>.

MINISTRY OF JUSTICE/YOUTH COURT OF NEW ZEALAND (2008): www.justice.govt.nz/youth.

POLICE ASSOCIATION NEW ZEALAND (2008): *Towards a safer New Zealand. Police and Law & Order Policies for the Future*, published by New Zealand Police Association, Wellington.

Downloadable from: www.policeassn.org.nz.

STATISTICS NEW ZEALAND (2008): <http://www.stats.govt.nz/default.htm>.

UNICEF (UNITED NATIONS CHILDREN'S FUND) (1998): *Juvenile Justice*, Innocenti Digest 3, Florence.

Downloadable from <http://unicef-icdc.org/publications/pdf/digest3e.pdf>.

WORKMAN, K. (2008): *Should Children Face Responsibility at 12 Years Old?*, UNICEF Youth Week Forum “Young and accountable... or are young offenders getting off too easily?” 28 May 2008.