

Whanganui Quakers - Raising the Age

JustSpeak is about speaking out and up, to the wider community and to decision-makers, about problems and possible solutions in the criminal justice sector; speaking out about how to make Aotearoa more just.

We are campaigning to raise the age to which NZ's youth justice system applies. This campaign is called Just17.

Why is there an age?

- The concept that punishment is only valid if a person knows what they did was wrong
- Knowing that what you did was wrong involves being taught/ inheriting an **ethical compass**; having the **mental capacity** to recognise this compass; being aware of the results of your actions; realising that an action might have a consequence that is wrong.
- The argument for diminished criminal capacity in youth is that a young person cannot be held **fully accountable** for their actions if they are not fully cognisant of the consequences of those actions.
- Therefore, while young people are deemed to know the difference between right and wrong (as distinct from children), they are deemed to be **less criminally culpable** than adults, who can take full responsibility over their actions.
- So the State sets an **arbitrary line** of criminal responsibility between youth and adults
- Right now that line is between the ages of 16 and 17. The moment a person turns 17, at midnight on the dawn of their 17th birthday, they are deemed responsible adults

Other jurisdictions are challenging where to set this arbitrary line. e.g. Governor of New York.

Current system

- Children aged **10-13** cannot be prosecuted except for murder or manslaughter.

For other offences children are dealt with through a warning, contact with family or Child, Youth and Family, or a Family Group Conference, which could lead to a Family Court hearing. This is on the assumption that the offending is related to care and protection matters.

- **14 to 16 year olds** are dealt with through Police Youth Aid, diversion, an FGC or could appear before the Youth Court.
- 15 & 16 year olds will first appear in the Youth Court but can be transferred to District (adult) Court for sentencing on serious charges.

Murder or manslaughter is always finally dealt with in the adult system.

- **17 year old** offenders are treated as adults under criminal law.

Since the introduction of the Child, Young Persons and their Families Act in the 1980s, NZ has possessed a world-leading youth justice system.

Youth justice system is better for youth than the adult criminal system

“The youth court works through the issues facing the offender whereas the adult court takes an average of 12 minutes to dispose of the offender.”

JS press release ‘Allowing 17 year olds in the youth court a great investment’

*(Judge Becroft) “goes on to point out that **section 4(f)(i) of the CYPF Act** directs the Courts and all involved in the youth justice system to ensure that young people are **held accountable** and are encouraged to **accept responsibility** for their behaviour.*

He also points out that under the proposed legislation 17 year olds will be able to be convicted and transferred to the District Court in response to any significant offending.”

Linda A Gow, “Submission”

(1) Factual evidence

UNICEF NZ ‘Young and Accountable’ Summary position paper 2008

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. 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 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.

3.a. 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 & emotional abuse is likely for many young people.
- 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.

3.b. 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 usually spontaneous and impulse driven.

The greatest reduction in re-offending rates were 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.

(2) The science of brain development

Too young to be fully culpable, as brains may not be fully developed until mid-20s.

Linda A. Gow, Clinical Psychologist, Auckland Regional Youth Forensic Service

*It is well documented in the literature that the brain is not fully developed until the **early 20's** and some believe that full cognitive maturity is not achieved until at least **age 25** years (Giedd et al 1999).*

*The **frontal lobes** which are responsible for controlling impulses, planning, prioritising, organising, abstract and consequential thinking or in other words reasoned judgment and impulse control are the last part of the brain to develop. The frontal lobes, where "executive" functions or higher level reasoning and most significantly restraint over impulsive behaviour takes place do not begin to mature until around 17 years of age (Beckman 2004)...*

*The frontal lobes when fully mature can **curb impulses** such as those that control aggression and impulsivity which are central to many aspects of criminal culpability.*

Linda A Gow, Submission on the CYPF Act (Youth Courts Jurisdiction and Orders) Amendment Bill, April 2009:

***4(1)** The youth justice provisions of the Convention on the Rights of the Child (Article 40) were framed on the understanding that children lacked the maturity and judgement to be held fully responsible for actions which brought them into conflict with the criminal law. They recognised that young people follow **impulses** without consideration of their results for themselves and others, and that they fail to appreciate fully the concepts of social responsibility and the rights of others. The provisions also recognised that children's immaturity gave authorities the **opportunity** for rehabilitation and re-education.*

***4(2)** **International research** into child development and youth offending since 1990 has confirmed that these assumptions are absolutely valid.*

(3) Domestic legal consistency

Conflicting ages of responsibility elsewhere (cars, army, house ownership, loans, tenancy etc).

Linda A Gow, "Submission"

*The reason for these **legal constraints** on the rights and privileges of children and young people are because it is recognised that these young people are still in the process of **developing the cognitive maturity** to make well-reasoned decisions and require adult guidance and protection.*

It follows therefore that they cannot be held fully accountable for their decisions to the same extent that a mature and fully developed adult can.

One must surely conclude therefore that young people cannot be dealt with in the Adult Court until they are 18.

(4) International law, and other jurisdictions

In response to New Zealand's Report to the UN Committee, in October 2003, the Committee raised a number of concerns:

- 1). New Zealand's youth justice laws apply only to young people under the age of 17 years. The Convention requires that **every person under 18** should have the benefit of the rights provided to young offenders.*
- 2). Children who are deprived of their liberty are not always **kept separate** from adult detainees and the conditions in which they are held at times do not take **full account of their needs** and their right to be treated with respect for their human dignity.*
- 3). Because of the **lack of sufficient youth facilities**, children are at times held in Police holding cells, which lack basic facilities and are quite unsuitable. Children can be locked up in Police cells for several days or weeks because Child, Youth and Family has no beds available for them.*

International law: UN Recommendations for bringing us in line with UNCROC

The United Nations Committee on the Rights of the Child has been critical of the fact that many New Zealand laws are inconsistent with the UNCROC definition of "child".

The Committee has recommended that:

- New Zealand bring its youth justice laws into line with UNCROC by extending to 17 year olds who have offended the same protections as are afforded to under 17s.

This non-compliance with UNCROC would be met if the CYPF Amendment Bill (No 6) introduced by the former Labour-led government was progressed by the new government.

Examples of youth justice principles being mis-applied

1. Mixing juveniles and adults in confinement

Children are held in adult cells for a week or more when youth justice facilities are at capacity.

The practice has been criticised by three Children's Commissioners and by several District Court and Youth Court Judges.

It has also been the subject of a recommendation by the UN Committee on the Rights of the Child and by our own Human Rights Commission.

The UNCROC states that under-18 prisoners should not mix with adults:

There are other places of detention in New Zealand where children and adults are routinely mixed and NZ still has not withdrawn its reservation to UNCROC (entered on the basis that it would take time to provide separate youth facilities in prisons).

The death of Liam Ashley at the hands of an adult prisoner while they were being transported together from Court to prison in a transport van is a chilling reminder of the risks to children of being mixed with adult criminals.

Robert Ludbrook, "Addressing the underlying causes of offending: New Zealand's obligations under International Law - What influence have they had on our youth system?" IPS Forum 2009.

2. Unnecessary Punishment

*"The boot camp approach to juvenile justice is patently **inconsistent** with international human rights standards of juvenile justice.*

*There has been no suggestion by any political party that boot camps should be set up for **adult offenders**. Instead of children and young people being treated in a manner that takes account of their age, inexperience and immaturity they are to be exposed to harsh and **dehumanising punishments** which would not be considered acceptable for adult offenders.*

Robert Ludbrook, "Addressing the underlying causes of offending" Feb 2009.

Most places in the democratic world recognise 18 year olds as adults and 17 year olds as youth. This is enshrined in the United Nations Declaration on the Rights of the Child (1989).

Of the few places that legally consider 16 or 17 year olds as adults upon sentencing, many have put effort into raising their age over the past decade.

Connecticut

In Connecticut a 5-year campaign worked with policy makers, young people and public education to raise the age. One of their most compelling advocates was a mother whose 17-year-old son had committed suicide within the confines and pressure of the adult prison system.

Campaign organisers got hundreds of 16 and 17 year olds to visit the offices of politicians and articulated their thoughts on why 17 year olds should be held as youth.

Politicians were surprised at their clarity and passion, having ironically presumed they would be childlike and incapable. After 5 years of implementation, the age was finally raised in 2012.

Illinois

Illinois followed with the Juvenile Justice Initiative, which aimed to raise the age in Illinois state. The initiative successfully passed a bill before the House in 2013 and raised the age of their juvenile court jurisdiction to 18. The bill was approved by a vote of 40 to 10.

New York

New York is now working towards the same goal. The photo here says New York is the only State other than North Carolina that prosecutes all youth as adults when they turn 16. It's implied that this is something deeply shameful. None of us wants to be as outdated as North Carolina.

This photo notes that young people in adult facilities are 36 times more likely to commit suicide than those in juvenile facilities.

1. Public Safety. The commission found that public safety had been enhanced by raising the age in Connecticut and Illinois. Again, they thought that raising the age in New York *"would eliminate between 1,500 and 2,400 crime victimizations every five years."*
2. Higher suicide rates, increased recidivism, and many other measures all suggest that *"both offenders and their communities are harmed by placing adolescents into adult jails and prisons."*
3. It is embarrassing to have such widely outdated laws when the State was previously a youth justice leader.
4. The impacts of putting all 16 and 17 year olds through the adult criminal justice system *"fall disproportionately on young men of color. Those impacts are felt not only by the young men themselves, but also by communities of color around the State."*
5. Scientific research into brain development has revealed just recently that portions of our brains, including those governing judgement and impulse control, develop far later than expected – as late as the mid-20s. It has also shown that *"adolescents respond more fruitfully to efforts to rehabilitate them and put them on the right track."*
6. Previous court judgements have recognised that young people are *"less culpable criminally and more susceptible to rehabilitation because of their still-developing brains."*
7. There has been a steady decrease in violent crime by young offenders since the 1990s.

Why, then, has there not been similar progress in New Zealand?

Raising the age of the youth court to 17 has the support of many organisations such as UNICEF, Family Works, Presbyterian Support, AMNESTY, PILLARS, PPTA, Youthline, Prison Fellowship, Anglican Church, Pathways Charitable Group, ACYA-Action for Children & Youth Aotearoa, and Key Assets.

(5) Policy and economics

The change would be cheap

“Documents released to JustSpeak today under the Official Information Act show that government agencies have costed raising the youth court age to 17 at a maximum of \$66.1m a year.”

“To put this amount in perspective, the Government spends \$753.3 million a year on running prisons”