

# Legal Studies

## Young Offenders – Lesson 2

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### Syllabus Dot Points:

- Penalties for children
- Alternatives to court

# Learn about/learn to:

## Learn about:

- penalties for children
- alternatives to court

## Learn to:

- **Explain** why young offenders are treated differently in the criminal justice system
- **Assess** the effectiveness of the criminal justice system when dealing with young offenders

## Relevant Themes and Challenges

- discretion, compliance, moral and ethics, law reform, balancing rights and effectiveness

# Penalties for Children

- Primary sentencing 'purpose' for children = **rehabilitation**
- Influence of **UN Conventions of the Rights of the Child** obligations = children/young people best chance of any offenders of rehabilitation and community reintegration
- *Children (Criminal Proceedings) Act 1987 (NSW)* outlines **relevant sentencing principles** which court must apply when dealing with children/young people:
  - children's rights and freedoms are equal to those of adults e.g. rights to be heard, to participate in the processes that lead to decisions that affect them
  - children who commit offences bear responsibility for their actions but, because of their state of dependency and immaturity, require guidance and assistance
  - it is desirable to allow the education or employment of a child to proceed without interruption
  - it is desirable to allow a child to reside in his or her own home
  - the penalty imposed on a child for an offence should be no greater than that imposed on an adult who commits the same offence
  - it is desirable that children who commit offences be assisted with their reintegration into the community so as to sustain family and community ties
  - it is desirable that children who commit offences accept responsibility for their actions and, wherever possible, make reparations for their actions
  - Subject to the other principles described above, consideration should be given to the effect of any crime on the victim.

# Case Study - Exceptions



Source: <http://www.smh.com.au/nsw/matthew-milat-loses-bid-to-appeal-against-record-sentence-for-murdering-friend-in-belanglo-forest-20140911-10fuex.html>

- If '*grave adult behaviour*' is involved (offence pre-meditated like adult would commit), courts will impose harsher penalties as other sentencing purposes (incapacitation) will outweigh the focus on rehabilitation
- Case - *R v Milat & Klein NSWSC (2012)* e.g. 17 year old Milat used an axe to torture then murder victim in Belanglo State Forest; Klein watched and filmed the event. Both plead guilty to murder; Milat sentenced to maximum 43 years imprisonment, non-parole period of 30 years. Milat appealed on basis sentence was '*manifestly excessive*'; appeal failed
- One appeal judge stated '*it was an adult crime, the gravity of which was difficult to overstate. If Milat was only a few weeks older it would have attracted a mandatory life sentence.*'

# Types of Penalties

S 33 of the *Children's (Criminal Proceedings) Act 1987 (NSW)* lists the penalties that can be applied to children:

- **Dismissal** – without conviction or punishment, may be issued with a caution
- **Conviction** – under 16, no conviction can be recorded
- **Adjournment** – deferral of sentencing for up to 12 months so can later consider child's prospects of rehabilitation
- **Bond** – good behaviour bond of max 2 years, can be with conditions/fine
- **Youth justice conference** – outcome plan developed
- **Fine** – up to 10 penalty units (\$1700)
- **Probation** – up to 2 years, overseen by NSW Juvenile Justice
- **Community service order** – severe penalty, up to 100 hours if under 16, 250 hours if 16 and over
- **Suspended control order** – similar to suspended sentence, up to 2 years, subject to good behaviour
- **Control order** – detention in a Juvenile Justice Centre (the most severe penalty – max 2 years)

# Case Study - R v GDP (1991)

- 14 year old offender appealed to NSW Court of /Criminal Appeal against a 12 month custodial sentence for serious criminal damage to property totaling \$550,000
- Appeal allowed because it was '*manifestly excessive*'; resentenced to a 2 month probation order
- Appeal Court said
  - sentencing principles for children are not the same as for adults
  - general deterrence and retribution are not as important for children as they are with adults
  - rehabilitation is primary focus

# Fact check

The Children's Court decides that a 15-year-old should be sent to a juvenile justice centre for twelve months.

What is this an example of?

- A. Probation
- B. A control order
- C. A suspended sentence
- D. A diversionary program

# Alternatives to Court

- **Diversions schemes** (alternatives to court) have been established Australia wide for young offenders
- Law relating to young offenders reformed in 1997 = *Young Offenders Act (1997) NSW*; responded to **community concerns** about importance of **diverting** the majority of young offenders **away from formal court processes/** life of crime
- Introduced sliding **scale** of **diversions** for young offenders:
  - a. police warnings
  - b. formal cautions
  - c. Youth Justice Conferences
- Under the Act, offenders have the right to be dealt with in the **least restrictive and most appropriate way** – criminal proceedings should not be started if there is an **alternative**
- The only offences which **must go to court** = homicide, sexual assault, serious drug offences
- Police use their **discretion** to decide what penalty is appropriate



# a. Warnings

- Least serious option for an offence
- Quick and informal = issued on the spot
- No admission of offence required
- Used by police for summary offences where violence not involved
- Can't attach any conditions or impose a sanction
- No penalty or criminal record but name and details are recorded in event of reoffending

## b. Formal Cautions

- If police decide a warning is inappropriate, a **formal caution** might be issued
- Applies to **more serious offences**
- Can be given by police and courts if young offender:
  - **admits** the offence
  - **consents** to caution being given = can refuse and have the matter heard by a court
- **Can't have more than 3 cautions** but a single caution can be given for more than 1 offence
- **Don't get a criminal record** but police retain on record full details of caution; used if re-offend
- Only condition which can be imposed = offender **can be asked to write an apology** to any victim
- ALRC Report 'Seen and heard: priority for children in the legal process' 1997:
  - *'Avoids the stigma associated with prosecution and conviction and contaminating a first minor offender through contact with serious or recidivist offenders'*
  - *'In determining whether it is appropriate to deal with a matter by caution an investigating officer must consider a number of factors including the degree of violence involved in the offence and the harm caused to the victim'*

## c. Youth Justice Conferences (YJC)

- If young offender **admits an offence** to which the *Young Offenders Act 1997 (NSW)* applies and a caution is not issued, can be **referred by either a specialist** police youth officer or a court to a Youth Justice Conference
- Magistrate will be involved in the YJC
- **Progressive** = recognises the rights of young offenders, victims, families and society to decide what to do about the harm caused by offending
- Can go ahead without victim being present
- Based on **restorative justice** principles = a means for the offender to accept responsibility and make amends to the victim



Source: <http://www.fcgov.com/restorativejustice/overview.php>

# Youth Justice Conferencing Aims

## 4 key aims

- Provide an opportunity for victim and offender to talk about impact of offending behaviour
  - Young offender to accept responsibility for their crime
  - Identify ways to rectify damage/harm caused
  - Involvement of victim, offender and families in process of determining a sentence/punishment
- At any time, the young person can decide not to proceed with the YJC and elect to go to court
  - Aim of YJC is to reach an agreement on an outcome plan that the young person can complete:
    - oral or written apology, reparation to the victim, participation by the child in a program or action towards integration of the child into the community;
    - must be realistic, appropriate and sanctions can't be more severe than those the court would impose
    - timeframe for implementation must be set

# Youth Justice Conferencing - Benefits

ALRC Report 'Seen and heard: priority for children in the legal process' 1997:

- *The child usually avoids a formal conviction and is given a 'second chance'. The formality of the court system may be particularly alienating to children whereas diversionary programs tend to be informal and therefore less intimidating. The schemes advance the rehabilitative aspect of juvenile justice, encouraging children to take responsibility for their actions and learn from their mistakes. One great advantage is the capacity for the child to participate meaningfully in the proceedings in keeping with article 12 of CROC.*
- *YJC's are a just, effective and cost efficient means of diverting young offenders from the formal juvenile justice system*

# BOSCAR Survey – Youth Justice Conferencing



Source: <https://www.gov.uk/government/news/victims-of-youth-crime-get-greater-access-to-restorative-justice>

- **Aim** - to evaluate offender and victim satisfaction with NSW YJC
- **Result** - > 85% offenders and victims satisfied/very satisfied with most aspects of YJC.
- YJC are a resource efficient and effective means of achieving justice

# Youth on Track

- Introduced by NSW government **early 2013** as an **early intervention program** targeting young people who are at risk of long term involvement in criminal behaviour
- **Multi-agency support** and will address the **underlying causes of offending** through targeted interventions, intense counselling and one-on-one case management
- **Key principles** include:
  - Intervening earlier to divert young people from crime
  - One-on-one case management to manage and support juvenile offenders and those at risk of offending
  - Separating treatment from punishment
  - Responding to risk and need rather than simply to crime
  - Responding promptly to an immediate problem

# Effectiveness of Young Offenders Act



Source: <http://www.creativespirits.info/aboriginalculture/law/mandatory-sentencing#axzz3j30fKC1H>

- Since 1998, a significant portion of young offenders dealt with by warning, caution or YJC rather than proceeding through the traditional court system
- Prior to Act:
  - 68% of young people appearing in Children's Court reappeared within 5 years
- After Act
  - 42% of those cautioned and 58% of YJC reoffended within 5 years.

Source: BOSCAR Report 2013: 'The impact of the NSW Young Offenders Act (1997) on likelihood of custodial order'



# Fact check

Kim and Ashley, both 14 years of age, buy spray paint cans from the local hardware store. While on the train home they take the spray paint cans out of their bags. They are spotted by two police officers who approach and question them. They take the spray paint cans from them. Kim and Ashley go voluntarily with the officers to the police station.

Which of the following actions by the police would NOT be permitted by law?

- A. Approaching Kim and Ashley on the train
- B. Seizing the spray paint cans from Kim and Ashley
- C. Insisting Kim and Ashley go to the police station
- D. Asking Kim and Ashley a series of questions on the train

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What is the first duty of the police once Kim and Ashley arrive at the police station?

- A. To take a record of interview
- B. To photograph and fingerprint them
- C. To contact their parents or guardians
- D. To formally charge them with an offence

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Why could Kim and Ashley be charged with a strict liability offence?

- A. They had purchased the spray paint cans
- B. They had the intention to use the spray paint cans
- C. They had no proof of purchase for the spray paint cans
- D. They had possession of the spray paint cans on the train



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