

Balanced Justice

Admissibility of findings of guilt

Young people test the boundaries

Young people's offending behaviour must be considered in the context of child and youth development; early adolescence through to early adulthood is a peak period for brain development and consequently a period of increased risk.¹

Minor offending by young people may result from testing the boundaries of acceptable behaviour as they adjust to their emerging responsibilities and changing position in society, or perhaps the culmination of a history of deprivation and disadvantage.² Whatever the reason, it is important to recognise that young people make mistakes while they are growing up, and they should be subject to a system of criminal justice that recognises their inexperience and immaturity.³

Young people's offending is episodic

Most juvenile crime is episodic and transitory, with young people predominantly 'growing out' of offending behaviour over time through a maturation process.⁴ Most young people who come into contact with the police before 18 will not go on to be "career criminals" – their contact will be shortly lived and relatively minor and they will "grow out" of offending from late adolescence.⁵ The majority of these young people have one or two contacts with the criminal justice system and do not reoffend.⁶

Many will never come to court, their offending being addressed by a police caution.⁷ A significant proportion of those brought to court will appear once, maybe twice.⁸

Children's Courts focus on rehabilitation

In Queensland, less than 6 per cent of young people appearing before the Childrens Court are convicted. Childrens Court judges understand that recording a conviction will have a serious impact on the young person's future, affecting their employment prospects, chances of reoffending, and any future sentencing considerations if they do come back into the justice system.

It is the sentencing Childrens Court judge that is best placed to make this judgement, with all of the relevant, contemporary information in front of them. To allow judges to use a small part of this information (the sentencing outcome) in the future is unfair and dangerous.

The 'juvenile penalty'

A 2004 study showed that sentencing of juveniles transferred to adult courts in Pennsylvania have been found to be more severe, a result of a considerable 'juvenile penalty'.⁹ The same report suggests that a person's juvenile record overshadows other traditional sentencing considerations, like the severity of the offence and history in adult courts. This study also suggests that juveniles transferred to adult courts are intended to be punished the same way as adults, but actually receive more severe treatment than comparable adult offenders. This evidence shows that juveniles in adult courts are disproportionately punished, despite the historical acceptance that young people 'are still developing and warrant different treatment'.¹⁰

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Past behaviour doesn't prove anything today

There are a number of laws across Australia that limit the use of a person's past history in court cases, to ensure that a person is judged on the facts of the specific incident that led to their charges. Evidence shows that both magistrates and juries are more likely to convict in cases where the previous convictions are similar in nature to the current offence,¹¹ suggesting that past actions may have a negative impact on the way that people are treated in courts.

Limiting use of Children's Court findings in adult courts

All Australian jurisdictions limit the use of orders made in Children's courts.¹² Our justice system recognises that adults should not be punished for minor offences that occurred while they were young, especially when they received a relatively minor sentence such as a fine, without a conviction. Children's court judged are best placed to identify the issues relevant to the young person before them, including the punishment that the young person receives and the support that is available to help them rehabilitate themselves and prevent future offending.

Balanced Justice view

The point of a youth justice system is to acknowledge that young people are developing and make mistakes; to focus on rehabilitation and reducing future contact with the justice system; and to make sure that young people aren't caught up in a cycle of offending and punishment.

Allowing adult courts access to young people's records with the Children's Court, without all of the information that was available to the Court at that time, will likely lead to harsh and unfair punishments and undermine the rehabilitative strategies put in place by the Children's Court.

Adult courts should not consider the findings of guilt of young people in the youth justice system, but should consider the facts before the court and the actions of adults in determining guilt and sentencing offenders.

References

- ¹ AIHW *Young Australians: their health and wellbeing* 2011 Chapter 25, Young people and crime (AIHW 2011)
- ² *Australian Law Reform Commission*, 'Seen and heard: priority for children in the legal process (1997) Report 84 at 251 <<http://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC84.pdf>> (15 April 2013)
- ³ Richards, K, Trends in Juvenile Detention in Australia' (May 2011) *Australian Institute of Criminology: Trends and Issues in Crime and Criminal Justice* (No. 416) at 1 <<http://www.aic.gov.au/documents/D/6/D/%7bD6D891BB-1D5B-45E2-A5BA-A80322537752%7dtandi416.pdf>> (15 April 2013); Richards, K 'What makes juvenile offenders different from adult offenders?' (2011) *Australian Institute of Criminology: Trends & Issues in Crime and Criminal Justice* (No. 409) at 1 <<http://www.aic.gov.au/documents/D/6/D/%7bD6D891BB-1D5B-45E2-A5BAA80322537752%7dtandi416.pdf>> (15 April 2013) Australian Institute of Criminology.
- ⁴ Cunneen and White 2002; Mukherjee 1983; Richards 2011.
- ⁵ Commission for Children and Young People *Snapshot 2011: Children and Young People in Queensland* Chapter 7, Criminal Justice System (CCYPCG 2011) and AIHW 2011
- ⁶ Rose 2006; Weatherburn 2004
- ⁷ 12,238 cautions were administered in 2011-12
- ⁸ AIC (2011) *What makes juvenile offenders different from adult offenders* Trends and Issues in crime and criminal justice No 409 (AIC (2011))
- ⁹ MC Kurlychek and BD Johnson, 'The juvenile penalty: A comparison of juvenile and young adult sentencing outcomes in criminal court' (2004) 42(2) *Criminology* 485.
- ¹⁰ MC Kurlychek and BD Johnson, 'The juvenile penalty: A comparison of juvenile and young adult sentencing outcomes in criminal court' (2004) 42(2) *Criminology* 485, 507.
- ¹¹ S. Lloyd-Bostock, 'The Effects on Jurors of Hearing about the Defendant's Previous Convictions: a Simulation Stud' [2000] *Criminal Law Review* 734.
- ¹² Youth Justice Act 1992 (Qld) s 148; Children (Criminal Proceedings) Act 1987 (NSW) s 15; Youth Offenders Act 1997 (NSW) s 68; Youth Justice Act 2005 (NT) s 136; Young Offenders Act 1993 (SA) s 58; Annulled Convictions Act 2003 (Tas) ss 6 and 9; Youth Offenders Act 1994 (WA) ss 189-90.

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