

Minimum Age of Criminal Responsibility (MACR) – Comparative Analysis International Profile – New Zealand

Yanna Papadodimitraki, CYCJ

This international profile presents information and evidence on the minimum age of criminal responsibility in New Zealand. It specifically focuses on policies and practices about investigating offences committed by children/young people.

Key Findings:

- MACR is 10
- Age is a mitigating factor
- Restorative justice principles run throughout the youth justice system
- The views, welfare and best interests of the child are fundamental principles of youth justice
- Focus on including the family of the child in all processes and decisions
- Corrections and probation officers are trained according to the principles of the Convention on the Rights of the Child (CRC)
- Developing new core competencies training for everyone working with children

Background

The New Zealand system stresses diversion from custody. It promotes structures that support the rehabilitation and reintegration of young people and the participation of their families in all processes, while at the same time holds them accountable and considers the needs of the victims and the public interest. Every decision has a clear focus on strengthening family bonds, helping the family deal with the offending behaviour and supporting the child, and promoting the child's development while keeping it in the community.

Even though there has been progress in aligning the definition of a child to the demands of CRC, several definitions exist in New Zealand legislation to satisfy different policy considerations. According to Children, Young Persons and Their Families Act 1989, everyone under 14 is considered to be a child and everyone between 14 and 17 is considered to be a young person; for both groups special protection applies which can be extended to 20. However, according to Part 1 of the Vulnerable Children Act 2014, everyone under 18 is considered to be a child.

The minimum age of criminal responsibility in New Zealand is 10. Any child under 10 cannot be prosecuted and any child 11 or 12 can only be prosecuted for murder or manslaughter. Any child 12 or 13 can be prosecuted for certain serious offences, if they have previously committed an offence punishable by 10 or more years (as applicable to adults) or have been previously declared in need due to offending behaviour, and have now committed an offence for which the maximum penalty includes imprisonment of 10 or more years (however, children 10-13 cannot be held responsible for an offence unless it is proven they knew the act committed was wrongful).

Any person above 17 is treated as an adult and his/her case is tried at the District or High Court, depending on the offence, unless the crime was committed when he/she was 16 or younger (however, the Minister of Justice has requested officials to provide evidence about whether directing young people aged 17 to the Youth Court will lower re-offending rates and provide a long-term solution). The Police may have any child sent back to them by the Youth Court, if charged according to the above, to consider whether there are other more appropriate methods of handling the case. Most of the cases are dealt with alternatives to custody which are under the control of the Police.

Most cases involving children are dealt in Family Court and Youth Court. Guided by the Youth Courts Jurisdiction and Orders Amendment Act 2010, the Police can start proceedings in the Family or Youth Court (where welfare is emphasized), rather than Criminal Court (where accountability is emphasized). Of all the children and young people going through the courts, children 10-13 are less than 1% until 2014-2015 when there was an increase:

Outcome	Total Outcomes (ages 12-16)	Total Outcomes (ages 12-13)
Fiscal Year		
2010/11	3657	6
2011/12	3345	15
2012/13	2739	21
2013/14	2253	15
2014/15	1959	24

Alternatives to criminal justice and not criminal processes are not used for the child's welfare, unless the public interest demands otherwise. Youth Court will refer matters to a Family Group Conference (FGC) before making a decision on a case. FGC ensures accountability and repairs harm by allowing those involved in the life of the young person as well as the victim(s) to participate in decisions regarding the young person. Both Police and the courts have a proactive approach to youth offending.

Findings

Police are to adopt low key responses to young people who offend, unless more severe measures are required for public protection. Young people cannot be arrested unless certain conditions are met, most important being it is necessary for the young person to appear in court, to prevent further offending, or to prevent the loss/destruction of evidence or interference with witnesses.

If a young person commits an offence, the Police can issue a warning not to reoffend, arrange informal diversionary measures after consulting victims, families and the young person, make referral to Child, Youth and Family Services for a FGC (if there is the intention to charge), or arrest and charge.

Young people are usually bailed or held in Police custody until they appear in court. Young people up to 16 must be kept separate from older people. They should not be held for more than 24 hours; this can happen only in specific situations and the Commissioner of Police must be informed in writing.

Minor and first offenders are to be diverted from prosecution by an immediate warning on the street. If further action is necessary, the Police can refer young people to the Police Youth Aid (specialist unit) for a follow-up or require an additional sanction.

There are certain legal rights the Police should abide by when arresting, detaining or charging a person. When dealing with young people over the age of criminal responsibility, there are additional rights the Police must abide by. They reflect the young people's vulnerabilities and must be explained in an appropriate way according to their age and level of understanding.

The Police can stop a young person, if they believe he/she has offended or is at risk. The Police will arrest the young person as a last resort, but if they do, the young

person should give his/her name, address and date of birth. In the case of a young person at risk, he/she has no legal obligation to provide the Police with personal information.

A child over the age of criminal responsibility can be arrested without a warrant if: the Police believe the arrest to be necessary, to ensure the child attends court, to prevent further offending, to prevent evidence being lost /destroyed or interfering with witnesses, the offence is of a very serious nature, the Police believe it is for the public interest, or it is a drink-driving or immigration offence. Every Police officer arresting a child without warrant must write a report about the arrest in three days and explain the reasons.

The rights the Police must explain to a child over the age of criminal responsibility are: the child can be arrested without warrant if he/she cannot be served a summons when refusing to state name and address (does not apply if already arrested), the child does not have to go for questioning, but he/she can leave at any time if he/she chooses to do so (does not apply if already arrested), the child does not have to give a statement, but if he/she chooses to do so can change his/her mind at any time, any statement the child makes can be used against him/her and the child can consult with a parent/guardian/lawyer.

These rights must be explained: before the Police question a child suspected of offending or with the intention to admit an offence, if they decide to charge a child who they have been questioning but is not under arrest, if they arrest the child and if the child asks about his/her rights before or during the questioning. If the Police question a child and obtain information that would lead them to suspect him/her of offending, the Police must stop questioning and explain to the child his/her rights. Any person arrested can get free legal advice while under arrest, detention or interviewing by the Police, through the Police Detention Legal Assistance Scheme.

If a child over the age of criminal responsibility is at the Police station for questioning, the Police must inform the parents/guardians that the child is there. Any person required to be informed by the Police can visit the child and have his/her rights explained to them in an appropriate language and consult with the child. However, if the child has been arrested, the parent/guardian cannot consult with the child without a Police officer guarding him/her; the consultation will be subject to reasonable conditions that may be necessary for his//her safety. Evidence of any communication between a child at the Police station and a parent/guardian is not admissible as evidence against the child.

For a child's statement to be admissible as evidence against him/her, the child must have his/her rights explained to them by a Police officer in language he/she understands before the statement is made. Before or during a statement the Police must give the child the opportunity to consult with a parent/guardian/lawyer if he/she chooses to do so, and any statement must be made in front of the parent/guardian/lawyer. Nevertheless, if a child makes an impulsive (oral) statement in the presence of a Police officer who could not comply with the above mentioned requirements, the statement may still be admissible.

Any child arrested and charged with an offence should be released, released on bail, placed in the custody of a parent/guardian with his/her agreement, placed in the custody of any social services or person approved by the Police. However, the Police can place a child in the custody of Child, Youth and Family if they believe the child: is not likely to appear before the court, may offend further, cause evidence to be

lost/destroyed or interfere with the witnesses. The Police must make the placement as soon as possible, and no later than 24 hours, after the arrest. However, the Police can hold a child longer than 24 hours if the Police and a senior social worker believe the child is likely to run away or be violent, and there are no suitable Child, Youth and Family facilities. If this happens, the child will remain in a Police cell until appearing before the court (any child must appear before the court in a closed hearing as soon as possible). The Police and the said senior social worker should provide the Commissioner of Police a report on the decision to detain the child within five days.

The Privacy Act 1993 regulates what can be done with information about individuals, including both adults and children. The New Privacy Act 2014 creates stronger incentives for agencies to address privacy risks and gives the Privacy Commissioner enhanced powers. Key recommendations relating to children and young people either have been accepted for inclusion in the new Privacy Act or have been progressed in the Harmful Digital Communications Bill.

Evidence

The information presented is based on data collected and collated through policy, evaluation and academic sources on the criminal justice system, human rights and rights of the child in New Zealand. Limited information were received by further contacts (New Zealand Ministry of Justice).

As a final note, given the limited time to collect the data, the limited sources available as well as the length of the expected output, we should be aware of the restricted outcome of the fieldwork and the data collected. Triangulation of the collected data took place where possible; where not possible, the most recent publication was taken into consideration.

Bibliography

Community Law (2015), *Young people and the Police* [online]. Wellington: Community Law. Available from: <http://communitylaw.org.nz/community-law-manual/chapter-10-youth-justice/young-people-and-the-police-chapter-10/> [Accessed 02/12/2015]

Office of the United Nations High Commissioner for Human Rights (2015) *Consideration of reports submitted by States parties under article 44 of the Convention: Fifth periodic report of States parties due in 2015 – New Zealand*. Geneva: Office of the High Commissioner for Human Rights

New Zealand Ministry of Justice (2016), *Age of criminal responsibility – Information Request*. Wellington: Ministry of Justice

New Zealand Ministry of Justice, *Age of criminal responsibility* [online]. Wellington: Ministry of Justice. Available from: <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/international-human-rights-instruments/international-human-rights-instruments-1/convention-against-torture/united-nations-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment-new-zealand-periodic-report-6/article-11/20-age-of-criminal-responsibility> [Accessed 01/12/2015]

New Zealand Ministry of Justice, *Information for children and young people: You and the Youth Court* [online]. Wellington: Ministry of Justice. Available from: <http://www.justice.govt.nz/courts/youth/information-for-young-people> [Accessed 01/12/2015]

New Zealand Ministry of Justice, *Overview of youth justice principles and processes* [online]. Wellington: Ministry of Justice. Available from: <http://www.justice.govt.nz/courts/youth/about-the-youth-court/overview-of-principles-and-process> [Accessed 01/12/2015]

Tonry, M. & Chambers, C. (2011) Juvenile justice cross-nationally considered in Bishop, D. M. & Feld, B.C. (eds) *The Oxford Handbook of Juvenile Crime and Juvenile Justice*, New York: Oxford University Press