



CRIMINAL JUSTICE

**A New Zealand
Introduction**

Edited by Jarrod Gilbert
and Greg Newbold

In this major new textbook, leading scholars from criminology, history, journalism, law, psychology, sociology and other fields take students and general readers inside New Zealand's criminal justice system.

The authors begin with an introduction to the history and current state of crime, policing and prisons in New Zealand; they then explain the workings of criminal procedure, from evidence to sentencing; and finally they address key current issues such as Māori and the justice system, youth and gangs, psychology and the media.

This book tackles the big questions: How can crime be explained? Is crime rising or falling and if so, why? How do the police operate? How do the courts work? What is the meaning of a 'life' sentence? What is the link between crime and mental instability? Why are Māori over-represented in the criminal justice system? How do we deal with youth offenders? How do judicial miscarriages arise? Do the stories we read about crime in the media reflect reality? And how does justice operate in the criminal underworld?

This book is an important new introduction to New Zealand's criminal justice system.

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Youth Justice

ANDREW BECROFT AND SACHA NORRIE

Introduction

The youth justice system in Aotearoa New Zealand has been described as ‘revolutionary’ and ‘an international trendsetter’ (Wundersitz, 2000: 110). In an attempt to understand why, this chapter will pose and answer a number of questions about the youth justice system in Aotearoa. First, the chapter will discuss why we treat youth offenders differently to adult offenders and who our young offenders are. Second, the chapter will outline how the youth justice system in Aotearoa treats young offenders differently, principally through the twin pillars of diversion and Family Group Conferences. Finally, some of the strengths of the Youth Court will be outlined, as well as some of the challenges that face our top-end youth offenders.

Who Are Our Youth Offenders and Why Do We Treat Them Differently?

Science and the Developing Teenage Brain

Although it seems common sense that most teenagers ‘act up’ to some degree before maturing into adulthood, neurological science about the developing teenage brain explains why this is the case. The science also forms the principled basis for why it is so important to treat young offenders differently.

The development of the teenage brain is vastly different to that of an adult. The prefrontal cortex, responsible for executive function (including coordination of thoughts and behaviour, response inhibition, the ability to foresee consequences of one’s actions and impulse control), is still developing during adolescence and does not mature until well into a person’s twenties. During puberty the brain’s social and incentive processing develops at a faster rate. This means that adolescents are drawn to sensation-seeking and risky behaviour without the necessary self-control or maturity to ensure their behaviour is not harmful (Lambie, Ione and Best, 2014). Unsurprisingly, adolescents are often characterised as impulsive, temperamental, immature and as unable to consider the feelings of others or the consequences of their actions. In fact, often they are neurologically much less capable of doing so than adults.

Peer influence also has a significant effect on the adolescent brain. Unlike adults, peer influence leads to activation of areas of the teenage brain associated with reward-processing, increasing both the sensitivity to potential immediate rewards of risky choices and the likelihood of engaging in risky behaviour. As is now well recognised in the criminal justice system, the likelihood of adolescents engaging in risky behaviour actually *increases* when they think that the result of that behaviour will be harmful (*Churchwood v R* [2011] NZCA 531).

This critical phase of adolescent development is described as the ‘white water rafting years’ – a time when young people face a number of risks and challenges that require careful navigation to escape without harm or injury. For ‘adolescent-limited offenders’ some common factors that heighten the risk of offending include mixing with antisocial peers, substance abuse, family problems such as poor parental monitoring and negative parent–child relationships, poor performance and attendance at school, and negative feelings about school (Cleland and Quince, 2014).

Not All Youth Offenders Are the Same

Desisters

In Aotearoa, the law treats young offenders differently to those in the adult criminal justice system. And for good reason. Around 75 per cent of young people in Aotearoa will never commit a crime. Of the 25 per cent that do, the vast majority (roughly 80 per cent) will offend only once or twice and this offending behaviour generally peaks at the age of 17 (Ministry of Youth Justice, 2000). These

youth offenders are referred to as ‘adolescent limited offenders’ or ‘Desisters’, meaning the offending is limited to the adolescent stage of life and stops before adulthood. Desisters usually start offending after 13 years of age and tend to stop or ‘age out’ of offending by age 24 to 28 (Moffit, 1993).

Given that most Desisters will grow out of their offending and go on to be engaged members of society, it is of critical importance that the justice system responds to them appropriately. Labelling theory suggests that the stigmatising label of introducing a young person to criminal proceedings during this key developmental stage can foster further criminal behaviour (Cleland and Quince, 2014). Labelling theory is based on the idea that the way that young people are labelled by the community creates a self-fulfilling prophecy. Because young people are less experienced and more impressionable than older people, they are more likely to respond to a given label (White and Haines, 2004). Inevitably, the response of the justice system and its officials towards a young person will affect that young person’s perceptions of, and willingness to engage in, criminal behaviour. Counterproductively, labelling a young person an ‘offender’ may actually increase their engagement with the criminal justice system.

The vast majority of the literature suggests that the less contact young people have with the formal justice system during their teenage years, the better the likelihood of a successful outcome. Furthermore, those young people who are dealt with less severely after having come into contact with the justice system are less likely to reoffend (Ministry of Social Development, 2004). If we accept that contact with the criminal justice system can propel a young person along the trajectory towards becoming a ‘career criminal’, it follows that effective and prompt diversion away from the formal system can minimise that risk and help ensure that the young person ages out of their offending.

Persisters

The second group of youth offenders are ‘Persisters’, also known as ‘early onset’ or ‘life course’ offenders. This small, hard-core group may make up only roughly 5–15 per cent of young offenders but account for more than half of all youth offending. Unlike Desisters, who will grow out of offending behaviours, Persisters will start exhibiting antisocial behaviours from a young age, will usually start offending around 10 years of age and continue to offend into adulthood.

Statistics provided by the New Zealand Ministry of Justice and the New Zealand Police, and presented in Becroft (2015: 2), suggest that there are a number of characteristics commonly associated with Persisters:

- 81 per cent are male. However, the number of young women who offend, especially violently, is increasing.
- Many, estimated up to 70–80 per cent, have a drug and/or alcohol problem.
- Most, estimated up to 70 per cent, are not engaged with school or even enrolled at a secondary school. Non-enrolment, rather than truancy, is the problem.
- Most experience family dysfunction and disadvantage, and lack positive male role models.
- Many, up to 76 per cent, have some history of abuse and neglect, and previous involvement with Child, Youth and Family.
- Many have some form of psychological disorder, especially conduct disorder, and display little remorse, let alone any victim empathy.
- Many will also have a neurodevelopmental disorder such as prior traumatic brain injury, foetal alcohol spectrum disorder, autism, attention deficit disorder, speech and communication disorders, a specific learning disability (e.g., dyslexia), or a combination of these. This will impact their ability to engage in any justice process.
- Māori are disproportionately represented at every stage of the youth justice process:
 - 24 per cent of the 10–16-year-old population is Māori.
 - Māori make up 58 per cent of apprehensions of 14–16 year olds and 64 per cent of Youth Court appearances.
 - Māori made up 100 per cent of all appearances in four small Youth Courts in 2014. In a further 20 Youth Courts, young Māori constituted over 70 per cent of all appearances.
 - Māori are given 65 per cent of supervision with residence orders (youth prison), which is the highest custodial Youth Court order before conviction and transfer to the District Court.
 - The disproportion of Māori representation in the Youth Court is getting *worse* not better (an increase from 44 per cent in 2005 to 61 per cent in 2014).

For this group of offenders, Aotearoa’s specialist youth justice system offers a small window of opportunity to effectively engage with some of our most complex and challenging young people. Often it is the ‘last best shot’ to steer these youth offenders away from a future of escalating violence, crime and imprisonment.

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