

Neighbourhood Support New Zealand



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Neighbourhood Support Fact Sheet

The age of criminal responsibility

The age of criminal responsibility is often the topic of heated debate. It is easy to make get tough comments. It is harder to come up with constructive solutions to the problem of child offending. Most children who offend grow out of it. Only a few persist and not for lack of punishment. They usually have multiple problems in their backgrounds.

What does the law say?

Many people think the age of criminal responsibility in New Zealand is fourteen and the age should be reduced. Those people are confusing criminal responsibility and jurisdiction. The age of criminal responsibility in New Zealand is ten and has been in the Crimes Act since 1961 however the age for jurisdiction of the Youth Court is fourteen, except for murder or manslaughter. The preliminary hearing of a child who is of or over the age of 10 years charged with murder or manslaughter takes place before a Youth Court.

In New Zealand criminal law, a "child" means a boy or girl under the age of fourteen years. A "young person" is aged fourteen to sixteen years and an adult is seventeen years or older.

The Children, Young Persons, and Their Families Act 1989 contains provisions for intervening and dealing with a child of any age whose wellbeing or behaviour is of serious concern. The Act holds children accountable for their offending. At the same time it also aims to advance their wellbeing as members of families, whanau, hapu, iwi, and family groups, and to keep children out of the youth justice system if at all possible.

Although there is no provision to deal with child offenders less than ten years under criminal law or in a criminal court, their wellbeing can be considered by the Family Court under the provisions of the Children, Young Persons, and Their Families Act 1989, section 14(d) ... *if behaving, in a manner that:*

- i. *Is, or is likely to be, harmful to the physical or mental or emotional wellbeing of the child or young person or to others; and*
- ii. *The child's or young person's parents or guardians, or the persons having the care of the child or young person, are unable or unwilling to control.*

The Children, Young Persons, and Their Families Act 1989 requires children to be held accountable for criminal acts. **A child over ten years and under fourteen years, section 14(1)...** *is in need of care of protection ... if-*

(e) ... the child has committed an offence or offences the number, nature, or magnitude of which is such as to give serious concern for the wellbeing of the child;

Section 14(1)(e) proceedings against an offending child are brought in the Family Court by way of a declaration, which is like an affidavit setting out the nature of offending and the reason why the child is in need of care and protection. The process involves Police making a referral to a Youth Justice Co-ordinator if Police believe the grounds specified in section 14(1)(e) are met and other options such as a warning are not appropriate. The Youth Justice Co-ordinator is responsible for meeting with Police and for convening a Family Group Conference if there is no other suitable alternative.

If a Family Group Conference is convened, those participating will include but are not limited to:

- the child
- parents or caregivers of the child
- whanau
- a police officer
- a social worker
- a solicitor or Youth Advocate
- the victim

In a care and protection case the purpose of the Family Group Conference is to discuss and decide what needs to be done to make sure a child or young person is safe and well cared for.

In a youth justice Family Group Conference members of the family group, the young offender and the victim discuss and decide how the young offender can be held accountable and encouraged to take responsibility for their behaviour.

The Family Group Conference provides an opportunity to examine the circumstances of the child and for an intervention to occur that is likely to improve the future prospects of the child and family. For instance, the parents may be given some support or the child may be removed from parental custody and guardianship in to the custody of the Chief Executive of Social Welfare. The number of children who come to the attention of the Police for offending is relatively small. However a small number commit serious crimes and are responsible for a high number of offences. While Family Group Conferences work for some, they do not work for all. Many of these children come from disadvantaged family backgrounds. Turning around their behaviour may not be possible.

What can we do to help?

Children should be held accountable for their offending. Children need clear boundaries. Parents should know the whereabouts of their own children and know who they are associating with. People should also take an interest in the wellbeing of other children and let the child's parents know if there is a problem. It's not snitching, its caring and it could ultimately save a life.