



Comparisons between Australian and international youth justice systems: 2011–12

This fact sheet examines Australian and international approaches to youth justice.

International agreements, standards and guidelines

Over the last couple of decades, many countries have developed or revised their youth justice policies and practices. A major influencing factor has been the introduction of international agreements and guidelines by the United Nations (UN). For example, under the UN's 1989 Convention on the Rights of the Child (CRC), member states regularly report to the UN Committee on the Rights of the Child. This has influenced youth justice systems in many countries, including the principles underpinning each system and the conduct of decision-making processes.

Three additional influential UN agreements that relate specifically to youth justice are:

- Standard Minimum Rules for the Administration of Juvenile Justice 1985 (also known as the Beijing Rules)
- Guidelines for the Prevention of Juvenile Delinquency 1990 (also known as the Riyadh Guidelines)
- Rules for the Protection of Juveniles Deprived of their Liberty 1990 (also known as the Havana Rules).

Within the broad framework of these international agreements, the philosophies, systems and processes for dealing with young people involved in criminal behaviour vary substantially among countries. In addition, the United States of America (USA) has not ratified the CRC and, as such, their youth justice policies and practices are not bound by the convention's principles.

Age for treatment as a young person

Article 40(3) of the CRC (UN 1989) encourages member states to establish a minimum age of criminal responsibility but does not specify a particular age. More recently, the UN Committee on the Rights of the Child (2007) concluded in paragraph 32 of *General comment no. 10: children's rights in juvenile justice* that 'a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable'.

In practice, however, the age of criminal responsibility varies considerably across countries. An investigation of 90 countries found the minimum age of criminal responsibility ranged from 6 to 18 years and the median age was 13.5 (Hazel 2008).

In Australia, along with England, Wales and the USA, young people are deemed to have criminal responsibility if they are aged 10 or older (Table 1). The minimum age of criminal responsibility in other countries includes: 12 years in Canada; 13 in France; 14 in Germany, Italy and New Zealand (except for murder and manslaughter); and 15 in most Scandinavian countries (Table 1) (Noetic Solutions 2010; Urbas 2000).

Table 1: Minimum age of criminal responsibility, selected countries

Age (years)	Country
10	Australia, England and Wales, United States of America
12	Canada, Greece, Netherlands, Scotland
13	France, Israel
14	Austria, Denmark, Germany, Italy, New Zealand (except murder and manslaughter)
15	Finland, Iceland, Norway, Sweden
16	Japan, Portugal, Spain
18	Belgium, Luxembourg

Sources: Noetic Solutions 2010; Urbas 2000.

Almost all countries have separate criminal justice systems for young people and adults, each with their own legislation. The age at which individuals are processed as adults in the justice system is referred to as 'criminal majority'. In Australia, the age of criminal majority is 18 in all jurisdictions except Queensland (where it is 17). This is consistent with the typical age of criminal majority internationally (18), although this varies between countries. Countries with a higher minimum age of criminal responsibility tend to have a higher age of criminal majority (Hazel 2008).

Principles, services and outcomes

Key principles established in United Nations agreements and guidelines include the ability to divert young people away from further involvement with the youth justice system where appropriate, and the notion that young people should only be detained as a last resort, and for the shortest appropriate period of time (UN 1985, 1989).

Diversion is a key principle of the youth justice systems in all jurisdictions in Australia. This takes a number of forms, including complete diversion from the system (such as an informal warning by police), referral to services outside the system (such as drug and alcohol treatment programs), and diversion from continued contact with the system by the police or courts (such as conferencing).

Again, there are wide variations between countries and a variety of diversionary approaches have emerged since the 1960s (Hazel 2008). The police often play a key role in diversionary action, as they are generally the first point of contact a young person has with the justice system (Hazel 2008). In a 1998 United Nations survey, 19 out of 51 countries allowed diversion to be instituted by the police (United Nations 1998, in Hazel 2008).

The types of outcomes and sentences available for young offenders vary among countries. For example, young people in custody in the Netherlands can be released to take part in training courses or treatment during their sentences. Other outcomes include the use of intermittent custody (such as night or weekend detention) and the integration of training in various forms, such as in Austria where trainees receive a wage throughout their vocational training (Hazel 2008). Information about the outcomes available in Australia is available on the Australian Institute of Health and Welfare website at <<http://www.aihw.gov.au/youth-justice/services-and-outcomes/>>.

Rates of young people in detention generally reflect the principles and operation of the youth justice systems. High rates are commonly seen in countries that operate under what is often described as a 'justice model', which emphasises accountability and punishment, whereas lower rates are seen in countries that operate according to a 'welfare model', which focus on rehabilitation and addressing the needs of the young person (Noetic Solutions 2010). Although, traditionally, English-speaking countries tend to employ a system based on the justice model, while European and other countries employ a system based on the welfare model, aspects of both approaches are increasingly used in many countries. It can be argued that Australia predominantly employs a welfare model, although aspects of the justice model are also incorporated, and have become increasingly common since the 1990s (Alder & Wundersitz 1994). Countries with lower rates of young people in detention tend to adopt the principle of custody as a last resort (Hazel 2008).

Although there is limited information available on the numbers of young people involved in the broader youth justice systems, some data are available on the numbers and rates of young people in detention in selected countries. On an average day, the rate of young people aged 10–17 in youth detention in England and Wales was similar to the rate in Australia (both almost 4 per 10,000) (Table 2). Young people in Canada were about twice as likely as those in Australia to be in detention (8 per 10,000), while those in the USA were about 5 times as likely (19 per 10,000).

Table 2: Young people aged 10–17 years in detention on an average day, selected countries

	Australia ^(a)	England and Wales	Canada ^(b)	United States
Number	1,005	1,963 ^(c)	1,505	60,861 ^(d)
Number per 10,000	3.6	3.7	8	18.6

(a) Data for 2011–12, including estimates for Western Australia and the Northern Territory.

(b) Data for young people aged 12–17 in detention on an average day during 2010–11.

(c) Average daily number in youth detention between April 2011 and March 2012.

(d) Number in youth detention on 24 February 2010.

Sources: Tables S69 and S72; Office for National Statistics 2012; Sickmund et al. 2011; Munch 2012; US Department of Health and Human Services CDC and National Center for Health Statistics 2012; Youth Justice Board & Ministry of Justice 2013.

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Box 1: Youth justice supervision fact sheets

This is one of a series of fact sheets on youth justice supervision in 2011–12 published by the Australian Institute of Health and Welfare (AIHW). These fact sheets can be downloaded for free from the AIHW website at <<http://www.aihw.gov.au/publications/youth-justice/>>.

The supplementary data tables (those with a prefix of S) referred to in this fact sheet accompany the bulletin *Youth justice in Australia 2011–12: an overview*, and can be downloaded from <<http://www.aihw.gov.au/publication-detail?id=60129543149&tab=3>>.

Technical and data quality information, including definitions of key terms used in this fact sheet, is available from <<http://www.aihw.gov.au/youth-justice/data-quality/>>.

For more information about young people under youth justice supervision, see <<http://www.aihw.gov.au/youth-justice/>>.

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