HSC legal studies – young offenders

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### Aim

Legal studies develops students’ knowledge, understanding and critical thinking skills in relation to the legal system and its effectiveness in promoting a just and fair society, with a view to empowering students to participate effectively as responsible citizens at the local, national and international level.

## Principal focus

Through the use of a range of contemporary examples, students investigate criminal law, processes and institutions and the tension between community interests and individual rights and freedoms.

## Themes and challenges

* the role of discretion in the criminal justice system
* issues of compliance and non-compliance in regard to criminal law
* the extent to which law reflects moral and ethical standards
* the role of law reform in the criminal justice system
* the extent to which the law balances the rights of victims, offenders and society
* the effectiveness of legal and non-legal measures in achieving justice.

## Outcomes

A student:

* **H1** identifies and applies legal concepts and terminology
* **H2** describes and explains key features of and the relationship between Australian and international law
* **H3** analyses the operation of domestic and international legal systems
* **H4** evaluates the effectiveness of the legal system in addressing issues
* **H5** explains the role of law in encouraging cooperation and resolving conflict, as well as initiating and responding to change
* **H6** assesses the nature of the interrelationship between the legal system and society
* **H7** evaluates the effectiveness of the law in achieving justice
* **H8** locates, selects, organises, synthesises and analyses legal information from a variety of sources including legislation, cases, media, international instruments and documents
* **H9** communicates legal information using well-structured and logical arguments
* **H10** analyses differing perspectives and interpretations of legal information and issues.

Outcomes referred to in this document are from [Legal Studies Stage 6 Syllabus](https://educationstandards.nsw.edu.au/wps/portal/nesa/11-12/stage-6-learning-areas/hsie/legal-studies) © NSW Education Standards Authority (NESA) for and on behalf of the Crown in right of the State of New South Wales, 2009.

# Learning sequence 5 – young offenders

|  |  |
| --- | --- |
| Students learn about: | Students learn to: |
| * age of criminal responsibility * the rights of children when questioned or arrested * Children’s Court – procedures and operation * penalties for children * alternatives to court | * discuss the issues surrounding the age of criminal responsibility * explain why young offenders are treated differently in the criminal justice system * assess the effectiveness of the criminal justice system when dealing with young offenders |

### 

## Age of criminal responsibility

* Consider the quotes below and use these to hold a class discussion on the values that our society holds in relation to children and young people:
  + “A person's a person, no matter how small” (Dr. Seuss)
  + “There can be no keener revelation of a society’s soul than the way in which it treats its children” (Nelson Mandela, Former President of South Africa)
  + “Children are likely to live up to what you believe of them.” (Lady Bird Johnson, Former First Lady of the United States)
  + “It is easier to build strong children than to repair broken men.” (Frederick Douglass).
* Use the values discussion to explain to a partner why young offenders are treated differently by the criminal justice system.

## How well are society’s values and ethics reflected in the age of criminal responsibility?

* Use a [think-pair-share](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/645?clearCache=a2ffc43e-7ba1-d960-428-19de8b6acf67#.YEattqZqUI4.link) strategy to complete the activities about the staggered age of criminal responsibility below:
  + read the [Children (Criminal Proceedings) Act 1987 - Sect 5](http://classic.austlii.edu.au/au/legis/nsw/consol_act/cpa1987261/s5.html) to identify the age at which young people are considered incapable of committing a criminal offence (*Doli incapax*)
  + explain in 1-2 sentences how *Doli incapax* applies to children aged between 10 and 14 years old. In your response you should include what the prosecution must prove to find the young person guilty of an offence.
* In small groups, research the case of [*R v LMW* [1999] NSWSC 1342](https://www.caselaw.nsw.gov.au/decision/549f9f453004262463b29108) involving the trial of an offender for manslaughter conducted when he was 10 years old. Complete a [storyboard](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/559?clearCache=497bc125-14c6-ad0e-4417-e21a87a91e0#.YH0xMJyu2FQ.link) summarising the main facts of the case.
* Conduct a [circle of viewpoints](http://www.pz.harvard.edu/resources/circle-of-viewpoints) activity to consider different perspectives on the case outcome. Viewpoints could include, the victim’s parents, the offender’s parents, the police or society. For each viewpoint, complete the following and share with the group to make notes:
  + I am thinking of the acquittal of LMW from the point of view of
  + I think
  + a question I have from this viewpoint is (optional)
* Construct a class [Padlet](https://app.education.nsw.gov.au/digital-learning-selector/LearningTool/Card/592#.YE62iMmSNoY.link) to collate big ideas on commentary on the age of criminal responsibility using any of the articles below:
  + ABC News, [‘Raise the age of criminal responsibility](https://www.abc.net.au/news/2020-07-27/raise-the-age-of-child-criminal-responsibility-in-australia/12483178)’
  + ABC News, ‘[Australia urged by 31 countries at UN meeting to raise age of criminal responsibility’](https://www.abc.net.au/news/2021-01-21/un-australia-raise-the-age-of-criminal-responsibility/13078380)
  + Law Council of Australia, ‘[Commonwealth, states and territories must lift minimum age of criminal responsibility to 14 years, remove doli incapax](https://www.lawcouncil.asn.au/media/media-releases/commonwealth-states-and-territories-must-lift-minimum-age-of-criminal-responsibility-to-14-years-remove-doli-incapax).’
* Use the padlet, case analysis and the other activities to help complete a 1 to 2 paragraph response to the following question:

‘How well does the “age of criminal responsibility” reflect the values and ethics of society?’

## The rights of children when questioned or arrested

**Teacher note** – in the final activity, students have been instructed to walk around an area of the school to discuss the content with a partner. Organise this in a manner that ensures supervision at all times and complies with school processes.

* Research the special protections for young people provided by the [United Nations Convention on the Rights of the Child, Article 37 (b)](https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx).
* Use the Law Society, [‘Know your rights after arrest’](https://www.lawsociety.com.au/public/know-your-rights/being-under-arrest/after-arrest) to research the following protections for young people provided by the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW):
  + how long young people can be detained at the police station before they have to be formally charged or released
  + under what circumstances fingerprints and photos can be taken when a suspect is younger than 14
  + explain the requirement for the presence of a support person.
* Use the notes from the above activities to summarise the benefits and weaknesses of the justice system in protecting young people when questioned or arrested into a simple [T-Chart](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/599#.YC2g-vmIy-M.link).
* Use the T-Chart to construct palm cards responding to the following question: ‘How effectively does the process of arrest and questioning for young people balance the needs of the community with the protection of the individual?’
* With a partner, walk around the school oval or another outdoor space. Take turns explaining your response to the question until you can both do this with only limited reference to the palm cards.

## Children’s court

* Research and make notes on the jurisdiction of the Children’s court using [Children (Criminal Proceedings) Act 1987 No 55, s28](https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1987-055#sec.28).
* Use the resources below to create a [concept map](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/577#.YGKFYKpTrvk.link) summarising how the Children’s Court looks after the best interests of children and young people:

Resources:

* + main principles set out in the [Children (Criminal Proceedings) Act 1987 No 55, s6](https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1987-055#sec.6)
  + exclusion of general public from proceedings at [Children (Criminal Proceedings) Act 1987 No 55, s10](https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1987-055#sec.10)
  + publishing or broadcasting of names prohibited at [Children (Criminal Proceedings) Act 1987 No 55, s15A](https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1987-055#sec.15A)
  + recording of conviction at [Children (Criminal Proceedings) Act 1987 No 55, s14](https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1987-055#sec.14).
* Use the concept map and research notes to complete a one paragraph response to the following question: ‘To what extent does the operation of the Children’s Court reflect the moral and ethical standards of society?’

### Penalties for children

**Teacher note –** an important principle on youth penalties established in *R v GDP* (1991) 53 A Crim R 112 is that the need for rehabilitation should be given priority over general deterrence. Conversely, as stated in *Pham and Ly* (1991) 55 A Crim R 129, where a young person approaches the age of 18 and undertakes grave adult crime, deterrence and retribution can take greater priority.

* Use the resources to summarise the main sentencing principles that must be considered with young offenders:
  + [Children (Criminal Proceedings) Act 1987 s33](http://classic.austlii.edu.au/au/legis/nsw/consol_act/cpa1987261/s33.html)
  + [NSW Communities and justice: Orders and sentencing for criminal matters](https://www.facs.nsw.gov.au/families/legal/criminal-matters-in-the-childrens-court/orders-and-sentencing)
  + [Children (Criminal Proceedings) Act 1987 s6](http://classic.austlii.edu.au/au/legis/nsw/consol_act/cpa1987261/s6.html).
* Read the following scenario and determine what sentence you would apply to the offender: ‘Rodney was 14 when he and a group of other homeless youths broke into a 7-11 convenience store and assaulted the cashier with a baseball bat before escaping with $500 in cash. He has been charged with assault, battery and robbery.’
* Complete a one paragraph justification of your proposed penalty that includes:
  + a relevant purpose of punishment
  + aggravating and mitigating factors
  + perspectives of the community and the offender
  + a consideration of sentencing principles for young offenders.
* In small groups, read the articles below and then use an [explanation game](http://pz.harvard.edu/resources/the-explanation-game) strategy to discuss observations on the sentencing of indigenous young offenders.
  + [The Guardian ‘Australia’s anguish – the indigenous kids trapped behind bars](https://www.theguardian.com/australia-news/2021/jan/18/australias-anguish-the-indigenous-kids-trapped-behind-bars#:~:text=On%20an%20average%20night%20in,%2C%2080%25%20were%20Aboriginal%20children.)
  + [The Guardian ‘Indigenous young people 43 times more likely to go to jail than non-indigenous youth’](https://www.theguardian.com/australia-news/2020/jul/16/nts-indigenous-young-people-43-times-more-likely-to-go-to-jail-than-non-indigenous-youth).

## Alternatives to court

### The Young Offenders Act 1997 (NSW)

* Under the [*Young Offenders Act 1997 (NSW)*](https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1997-054), police are required to consider a warning, caution or youth justice conference before they consider formal charges and court. Use the resources below to complete a *Young Offenders Act* summary table:

|  |  |  |
| --- | --- | --- |
| Alternative to court | Circumstances when the sentence is applied | Benefits of the alternative sentence for young people and society |
| Warning |  |  |
| Caution |  |  |
| Youth Justice Conference |  |  |

Resources:

* + [‘Young crime is often a phase and locking kids up is counterproductive’](https://theconversation.com/young-crime-is-often-a-phase-and-locking-kids-up-is-counterproductive-120968)
  + [*Young Offenders Act 1997 (NSW)*](https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1997-054)
  + UNSW, [‘Locking up kids damages their mental health and leads to more disadvantage. Is this what we want?](https://newsroom.unsw.edu.au/news/social-affairs/locking-kids-damages-their-mental-health-and-leads-more-disadvantage-what-we)’

### Benefits of non-custodial sentences

* Complete a [See-Think-Wonder](http://www.pz.harvard.edu/resources/see-think-wonder) about the reoffending rates for custodial versus non-custodial sentences shown by [2020 BOCSAR reoffending statistics](https://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Re-offending.aspx).
* Use this research to summarise the benefits of courts referring young people for Youth Justice Conferencing or other non-custodial sentences where ever possible.

### Failure to divert young Indigenous offenders

* Use the resources below to add ideas to a whiteboard or class [Padlet](https://app.education.nsw.gov.au/digital-learning-selector/LearningTool/Card/592#.YFE1vwQVzRw.link) on the following question: ‘How do failures by NSW Police to divert young indigenous offenders away from the court system create injustice and weaken the effectiveness of the [*Young Offenders Act* 1997 (NSW)](https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1997-054/)?’
* Resources for this task:
  + The Guardian [‘NSW police pursue 80% of Indigenous people caught with cannabis through courts**’**](https://www.theguardian.com/australia-news/2020/jun/10/nsw-police-pursue-80-of-indigenous-people-caught-with-cannabis-through-courts)
  + The Guardian, [‘Australia's anguish: the Indigenous kids trapped behind bars](https://www.theguardian.com/australia-news/2021/jan/18/australias-anguish-the-indigenous-kids-trapped-behind-bars).’

#### Extended response – effectiveness of the criminal justice system when dealing with young offenders

* In small teams, summarise 2 big ideas that could be used to respond to the following question: ‘Evaluate the effectiveness of the criminal justice system when dealing with young offenders.’
* Complete a [+1 routine](https://pz.harvard.edu/node/773277) where each team passes their summary to the right for the next team to elaborates on the ideas or add a new point.
* When the notes return to the original group, hold a class discussion on the 5 best ideas to answer the question.
* Use the suggestions and class notes to write a complete essay for the question: ‘Evaluate the effectiveness of the criminal justice system when dealing with young offenders.’