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JUVENILE JUSTICE

1 Introduction

In criminal law, juvenile offenders are treated differently than adult offenders because of:

- their age;
- society's belief that juvenile offenders can be more easily rehabilitated; and
- the idea that children and young people should be given a second chance at being productive members of society.

The difference between juvenile offenders and adult offenders should be reflected in the way juvenile offenders are treated by the Courts.

The Court **must** consider what is best for a juvenile offender, during the course of the trial and during sentencing. The "best interests" of adult offenders are never a consideration for the Court, except perhaps in sentencing.

2 Definitions

These are words commonly used in relation to proceedings involving children and young persons (*s2 Juvenile Act (JA)*):

- "child" means a person who has not attained the age of 14 years;
- "juvenile" means a person who has not attained the age of 17 years; and includes a child and a young person; and
- "young person" means a person who has attained the age of 14 years but who has not attained the age of 17 years.

3 Criminal Responsibility of Juveniles

Section 29 JA and *s14 Penal Code* state:

- no child under the age of 10 years can be guilty of any offence;
- a child under 12 years of age is not criminally responsible for an offence, unless it is proved that he or she had capacity to know that he or she ought not to do the act or make the omission, at the time of the act or omission;
- a male person under the age of 12 years is presumed to be incapable of carnal knowledge.

Evidence of age

In cases where the defence of “immature age” is raised, evidence as to the child’s age should be given.

The defendant should be able to point to some kind of evidence as to age, although the onus of proof is on the prosecution to show that such evidence ought to be excluded. See *R v Rakaimua* [1996] Criminal Case No. 24 of 1995.

Capacity to know and understand for children between 10 and 12 years

From *R v Sheldon* [1996] 2 CrAppR 50.

It is for the prosecution to prove beyond reasonable doubt that, when committing the offence, the child knew that his or her act was seriously wrong. This is distinct from an act of mere naughtiness or childish mischief.

Clear positive evidence as to the child’s capacity is required, not just evidence as to the offence itself.

The surrounding circumstances are relevant and what the defendant child said or did both before and after the act may go towards proving guilty knowledge. However, sometimes this behaviour may be consistent with naughtiness or mischief rather than wrongdoing.

Proof that the defendant was a normal child for his or her age will not necessarily prove that he or she knew his action was seriously wrong.

Capacity or understanding may be proven by:

- calling any person who knows the child and is able to show that the child did know that he or she ought not to commit the offence:
 - ⇒ this can include teachers, parents, relatives;
- the investigating officer asking the following questions:
 - ⇒ Did you know that what you did was seriously wrong?
 - ⇒ Why did you know it was seriously wrong?
 - ⇒ Would you have done what you did if a Police officer, your parents, teachers, village elders or your pastor could see you?

4 A Separate Court

So far as practicable, when hearing charges against juveniles, unless they are jointly charged with adults:

- carry out the proceedings in a room or building separate from where proceedings are normally held and exclude the public; or
- carry out proceedings on a different day or at a different time than ordinary proceedings, and exclude the public.

These proceedings will be referred to as the Juvenile Court: *s17 JA*.

All people not directly connected with the case must vacate the Courtroom, unless they have special leave of the Court. The only people who should be left are:

- Court officers;
- parties to the case and their advocates; and
- any other person directly concerned with the case: *s17(2) JA*.

4.1 The Media

Accredited news reporters are entitled to be present but require leave to publish any report of the case. It may be advisable for you to specify what should not be published, i.e:

- the name of the young person or child;
- the identity of his or her parents;
- his or her school; and
- his or her photograph: *s12 Juveniles Act*.

Bona fide representatives of any news agency or information service shall not be excluded from the Juvenile Court, except by special order of the Court.

Usually the media will be allowed to report on a case before the Juvenile Court, provided that they do not publish any of the items set out above.

Any person who acts in contravention of the above provision is guilty of an offence and liable on conviction to a fine not exceeding \$100 in respect of each offence of publishing or broadcasting: *s12(2) JA*.

5 Procedure in Juvenile Courts

When a case is ready to proceed, begin by:

- identifying the defendant; and
- confirming the defendant's personal details: age, name and address.

When a juvenile is brought before the Court for any offence, it is your duty to explain to the person, as soon as possible and in simple language, the substance of the alleged offence: *s21(2) JA*.

In every case, you must be satisfied that:

- the defendant understands what has been read; and
- he or she knows what is meant by guilty or not guilty. Although the facts may be true, the law may give a defence. Explain this to avoid any misunderstanding.

Never take for granted that the juvenile understands the charge. Unless he or she clearly understands the nature of the offence, he or she will not be able to work out if there is a defence and what to plead.

Check whether parents or guardians are available to be in support of the juvenile and to provide surety for him or her: *s7(1) JA*.

In many cases, it is a good idea to have the parents or guardians present because:

- parents can give useful advice to juveniles; and
- parents usually have valuable information on the juvenile's position.

If parents or guardians are not available, then ensure that an officer from the Social Welfare Department is present as "guardian ad litem".

It would be helpful for a child or young person to see a lawyer prior to giving their plea, particularly if the charge is serious. A lawyer can explain the charge and give advice as to a plea.

If a lawyer is not available, it may be helpful for a juvenile to talk with someone such as a parent, other relative, social worker or some other official to discuss their situation and their options.

5.1 Accepting a Plea

If you are satisfied that the juvenile understands the nature of the alleged offence, unless the offence is homicide, ask the juvenile whether he or she admits the offence: *s21(2) JA*.

Even if you are satisfied that the juvenile understands the nature of the alleged offence, you may still hear the evidence of the witnesses in support of the complaint or information: *s21(3) JA*.

Once the evidence in chief has been given, ask the juvenile, or the person speaking on his or her behalf, whether he or she wishes to ask the witnesses any questions: *s21(4) JA*.

Guilty plea

If the juvenile admits the offence, ask if he or she wishes to say anything that might mitigate his or her sentence or provide for anything that explains the circumstances of the offence.

Not guilty plea

Go to a defended hearing.

5.2 Bail

Bail must be granted to a defendant **under the age of 18 years** unless:

- he or she has a previous conviction;
- he or she has previously breached bail; or
- the offence in question is a serious offence.

A “serious offence” is any offence for which the maximum penalty includes imprisonment for 5 years or more: *s2 Bail Act 2002*.

As a rule of practice, bail pending appeal is only granted in exceptional circumstances (*Apisai Vuniyayawa Tora & Ors v Reginan* 24 FLR 28 applied). These circumstances include the likelihood of the appeal succeeding and whether bail would be rendered nugatory by delays in determination of the appeal: *Nilesh Prakash v State* High Court Fiji, 13 April 2000.

5.3 Defended Hearing

See *ss21, 22, 23* and *24 JA*.

If the juvenile does not admit the offence, evidence will be given in support of the complaint or information.

You should ensure that everyone in the Courtroom uses simple language so that the juvenile will understand what is going on.

6 Sentencing of Juvenile Offenders

6.1 Pre-sentencing Matters

Before deciding how to deal with the convicted juvenile, you should obtain any information related to the juvenile's:

- general conduct;
- home surroundings;
- school record; and/or
- medical history.

This information will help you deal with the case in the best interests of the juvenile.

You may direct a probation officer to prepare and submit the report. Order a report from the Social Welfare Department as early as possible. This will assist in considering sentencing options for the young offender.

Once the report is submitted, you may ask the juvenile any questions regarding the report.

You Court may also remand the juvenile or place him or her in detention in order to:

- obtain information for the report;
- obtain a special medical examination or observation; or
- consider how to deal with the case in the best interests of the juvenile.

Note that the statutory provisions have abolished the use of the terms “conviction” and “sentence” in relation to juveniles, and instead there is a finding of guilt and an order made on such finding: *s20 JA*.

6.2 Sentencing Options

Once you are satisfied that a juvenile is guilty, you may do one or more of the following:

- discharge the juvenile offender under *s44 Penal Code*;
- order the juvenile offender to pay a fine, compensation or costs;
- order the parent or guardian of the juvenile offender to pay a fine, compensation or costs;
- order the parent or guardian of the juvenile offender to give security for the good behaviour of the juvenile offender;
- make a care order in respect of the juvenile offender;

- make a probation order in respect of the juvenile offender;
- where the juvenile offender is a young person, make an order for imprisonment; and/or
- deal with the case in any other lawful manner: *s32(1) JA*.

6.3 Mental Treatment

The Court may, on the evidence of a medical practitioner, order that as a condition of probation, the offender undergo treatment for a period not exceeding 12 months and subject to review by the Court at any time: *s33 JA*.

6.4 Fines

An order against a juvenile offender for payment of a fine, compensation or costs may, and in any case shall if the offender is a child, be an order against the juvenile offender's parent or guardian for payment of the same. However, the parent or guardian has the right to be heard before such orders are made against him or her: *s34 JA*.

6.5 Restorative Justice

Restorative justice is a response to crime that emphasises healing the wounds of victims, offenders and the community. It allows you to involve both the juvenile offender and the victim in the sentencing process.

By involving the victim and juvenile offender in the sentencing process, you provide:

- the victim with a chance to explain how the juvenile has harmed them; and
- the juvenile with a chance to:
 - ≡ hear and see the damage and pain they have caused to the victim; and
 - ≡ take responsibility for their actions by having a say in their sentencing; and
 - ≡ change their behaviour without the stigma of being a criminal for the rest of their life;
- the possibility of reconciliation between the victim and the juvenile.

Before applying a restorative justice approach to sentencing a juvenile offender, you should consider:

- the nature of the crime;
- how serious the crime is;
- whether the juvenile and victim are open to this approach; and
- whether the prosecution is in favour of this approach.

6.6 Special Considerations Regarding Detention of Juveniles

Take note that:

- a child shall not be ordered to be imprisoned for any offence: *s30(1) JA*; and
- a young person shall not be imprisoned for more than 2 years for any offence: *s30(3) JA*.

Where a juvenile is found guilty of a grave crime (murder, attempted murder or wounding), the Court may order that he or she be detained for a specified period and at such place and on such conditions as the Minister may direct: *s31(1) JA*.

A juvenile offender in detention for a grave crime may at any time be discharged by the Minister, on his or her discretion, or by license: *s31(3) JA*.

6.7 Selecting a Place of Detention

In selecting a place of detention for a juvenile, when there is more than one choice, you must consider:

- whether the place is suitable for the reception of convicted or unconvicted persons; and
- whether the place is suitable for a juvenile charged with a serious or minor offence; and
- the religious persuasion of the juvenile; and
- whether the juvenile is female or male; and
- that the person in charge of the place of detention has sufficient authority to be charge of such a place.

The juvenile who is committed to custody in a place of detention shall be delivered to the person in charge of the place of detention.

Places of detention that are required for the purposes of the *Juvenile Act* shall be provided or appointed by the Minister.

7 Rights of the Juvenile Defendant

In addition to rights provided under the Constitution, juveniles charged with offences have further rights and protection under International Conventions.

These rights and protections include:

- the right to be presumed innocent until proven guilty according to law: *Art 40(i) CRC*;
- the right not to be compelled to give evidence or to confess to guilt: *Art 40(iv) CRC*;
- right to bail absolutely unless any of the adverse qualifications apply: *s3(5) Bail Act*;
- the right not to be subjected to torture or other cruel, inhumane or degrading treatment or punishment: *Art 37(a) CRC*;
- the right to have his or her privacy fully respected at all stages of the proceedings in order to avoid harm being caused to him or her by undue publicity or by process of labelling: *Art 8 Beijing Rules*;
- the right not to be deprived of his or her liberty unlawfully or arbitrarily: *Art 37(b) CRC*;
- the right not to be detained or deprived of personal liberty except with the consent of his or her parents or guardians, or upon an order made by the Court: *Principle 16(3) Protection of All Persons under any form of Detention 1988*;
- right not to have capital punishment or life imprisonment imposed on children/juveniles without possibility of release for offences committed by them: *Art 37(a) CRC*;
- the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time: *Art 37(b) CRC*;
- every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so: *Art 37(c) CRC*;
- every child deprived of his/her liberty shall have the right to prompt access to legal and other assistance: *Art 37(d) CRC*;
- when making decisions concerning children, the best interest of the child shall be a primary consideration: *Art 3(1) CRC*;
- whenever appropriate and desirable, other measures will be taken for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected: *Art 40(b) CRC*;
- where juvenile offenders are concerned, the procedure shall be such so as to take account of their age and the desirability of promoting their rehabilitation: *Art 14(4) ICCPR*; and
- a variety of dispositions, such as care, guidance and supervision orders; counselling; probation foster care; education and vocational training programs; community work and other alternatives to institutional care should be considered by the Courts to ensure that children are dealt with in a manner appropriate to their well being and proportionate both to their circumstances and the offence: *Art 40(4) CRC*.

References:

CRC- UN Convention on the Rights of the Child

Beijing Rules – UN Standard Minimum Rules for the Administration of Juvenile Justice

ICCPR – International Covenant on Civil and Political Rights