

COURT IN THE ACT

TE KŌTI TAIOHI O AOTEAROA • THE YOUTH COURT OF NEW ZEALAND

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ABOUT THIS NEWSLETTER

Court in the Act is a national newsletter dealing with Youth Justice issues. It is coordinated by Research Counsel attached to the office of the Principal Youth Court Judge.

We welcome your suggestions, feedback and contributions. Please email:
courtintheact@justice.govt.nz

EDITORIAL: REFLECTIONS

ARISING FROM YOUTH JUSTICE VISITS

Principal Youth Court Judge Becroft

One of the great privileges and also responsibilities of my role as Principal Youth Court Judge is to be part of youth justice functions including awards ceremonies, conferences and special meetings. Two recent experiences provided much cause for reflection.

On the 8th of December 2015 I attended the Vodafone World of Difference Awards. Vodafone World of Difference was launched in 2002 by the Vodafone NZ Foundation, in order to award passionate people who want to make a difference for young people in the community. Up to six awards a year are made with up to \$100,000 allocated to each awardee towards salary expenses and project costs as agreed by the recipient. The Vodafone NZ Foundation provides leadership development training, networking and collaboration opportunities and offers mentoring, advocacy and other support.



Judge Becroft, centre, with Vodafone World of Difference Award winners.

Over the years there have been over fifty awardees and many millions of dollars provided by the Foundation. What is really encouraging is to see how many of the awardees are actively involved in various parts of the youth justice community. This year's awardees were no different, including a special fellowship award to Mark Stevenson to undertake research regarding communication difficulties for young people in the youth justice system. He plans to develop a screening tool to identify young people within the youth justice system who have oral language difficulties accompanied by an effective "oral practice toolkit" to assist those who work with young people in this environment.

At the Awards ceremony I was struck by the breadth of our youth justice community in New Zealand and how blessed we are with such a range of passionate, dedicated and committed individuals and organisations who work with young people at risk including serious young offenders. This year's ceremony was a reminder also of the huge support that many youth justice

organisations receive from various corporate organisations of which Vodafone is one. Vodafone has certainly made a magnificent contribution to youth justice, in both time and resources, but there are other organisations that would deserve similar credit. I note that applications for the 2017 recipients are being called for and the process can be found at the Vodafone World of Difference website.

On Wednesday 6 April I attended the Autism Awareness Day Breakfast at Parliament. It was a potent reminder of the incidence of this neuro-developmental disability, and the probability that we underestimate its prevalence amongst our youth offenders in New Zealand. Of course autism is just one of the eight or so recognised neuro-developmental disabilities that were recently featured in Court in the Act and carefully analysed in the 2012 report by the Commissioner of Children for England and Wales entitled "Nobody Made The Connection" (see www.childrenscommissioner.gov.uk for a copy of the report). This particular issue of Court in the Act highlights work being done with young people who have communication disorders: in particular, the work of Talking Trouble and of Ivita Health Services.

A collaborative, cross-sector approach is necessary if we are to understand the complexities of the issues facing many of those appearing in the youth justice system.

I continue to reflect on, and be grateful for, the breadth of our youth justice workforce and in particular, the number of community organisations that are available to help us in our work in the Youth Court. May 2016 be an effective and successful for us all in working with the most troubled young people in New Zealand.

Judge Andrew Becroft

**Principal Youth Court Judge
Te Kaiwhakawā Matua o Te Kōti Taiohi**

Farewell to Sacha Norrie

At the end of December 2015 Sacha Norrie, the Principal Youth Court Judges Research Counsel in 2014 and 2015, was farewelled as she began her new job as a Crown Prosecutor with Manukau Crown Prosecutors' Office Kayes Fletcher Walker. During her two-year term, Sacha, as with all of the Research Counsel we have been lucky enough to employ, made an absolutely outstanding contribution. Sacha got to know many of you and was a huge enthusiast for the youth justice system and in particular the need for the youth justice system to work better for and with Māori young offenders and their whānau, hapū and iwi. We will greatly miss her. She has left a real legacy in terms of raising the profile and quality of our work with Māori young offenders. We wish her well in her new job.

She has been replaced by Kate Peirse-O'Byrne from Auckland University, who is passionate about youth justice issues and has conducted research on how the Youth Court can better respond to neurodevelopmental disabilities in young offenders. Please feel free to email Kate about any issue or item you would like to include in Court In The Act at: courtintheact@justice.govt.nz.

STOP PRESS: MSD OVERHAUL

Implications for the youth justice sector

Principal Youth Court Judge Andrew Becroft

At 10 am on 7 April 2016, Minister Tolley released the 298-page Expert Advisory Panel report investigating New Zealand's children and their families. Important points from a youth justice perspective include the following recommendations:

- To **include 17 year-olds** in the youth justice system (still requiring Cabinet confirmation).
- To provide for the adult criminal justice system to **transfer cases involving 18/19 year olds** to the Youth Court, taking into account their vulnerability and the nature of any previous offending (still requiring Cabinet confirmation).
- To **increase the minimum age** of Youth Court jurisdiction from 10 to 12 (still requiring Cabinet confirmation).
- To **strengthen the youth justice legislative framework** as to jurisdiction, and increased sentencing options, better inter-agency co-ordination and support for top-end offenders, and new community based options as an alternative to remand in custody.

There is a clear link drawn between care and protection and youth offending, and many recom-

mendations have, as one of their aims, the reduction of youth offending. Recommendations that relate both to care and protection and youth justice include:

- The establishment of a new government agency, department or ministry to co-ordinate care and protection and youth justice (still to be developed and finalised by the State Services Commission).
- Provision of direct funding services for vulnerable children, including youth offenders, which will follow the child / young person. This reflects the new imperative on enforced inter-departmental co-operation and collaboration, and will result in direct purchasing of vital services.
- A focus on trauma informed practice and on a child-centred approach to CYFS work.

The Government's response to youth justice aspects of the Report has not yet been completely worked through, and the radical changes announced relate primarily to child care and protection. However, the Government has indicated a real commitment to implementing the EAP's youth justice recommendations.

Government responses can be found on the MSD website, and the EAP report itself is available at: <http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/investing-in-children/index.html>

"There is a clear link drawn between care and protection and youth offending"

YOUTH JUSTICE NEWS

Youth Court Numbers at Record Low

22 Mar 2016

Press Release: New Zealand Government

The number of young people aged 10 to 16 appearing before the courts has fallen to a 20 year low, Justice and Courts Minister Amy Adams says.

In addition, the total number of adults charged and convicted in New Zealand courts has also fallen to its lowest level since 1980, reflecting the government's focus on reducing crime and reoffending rates.

Adult Conviction and Sentencing Statistics and Child and Youth Prosecution Statistics released today [22 March] show that since 2010, 36% fewer adults and 52% fewer children and young people appeared in court last year.

Ms Adams says it is promising to see the government's efforts to curb crime rates reflected in these statistics.

"Court statistics for the year ending December 2015 show there were 5,400 fewer adults charged compared to 2014, and 200 fewer young people appeared in court," says Ms Adams.

"The decreasing trend of youth appearances in court can be attributed to support from various bodies like Youth Aid officers, Family Group Conferences and others, who work with our young people and their family and whānau. It's vital we continue to support our young people through measures to avoid further offending.

"While the number of youth and adults appearing in New Zealand courts has once again decreased, the Government remains committed to ensuring this trend continues, supporting victims, and keeping New Zealanders safe in their homes and communities."

Court of Appeal sets precedents for sentencing of young people

Traumatic Brain Injury (TBI) and Minimum Periods of Imprisonment (MPI)

In June 2014, a 13 year old boy (P) fatally stabbed West Auckland dairy owner Mr Arun Kumar. The tragic case resulted in P being charged with manslaughter. At the High Court, P received a sentence of six years, with an MPI of three years and three months.

On 15 April, that sentence was set aside by the Court of Appeal and substituted with a sentence of four years and six months imprisonment, with no MPI. The Court of Appeal judgment (*P v R* [2016] NZCA 128), delivered by Wild, Miller and Winkelmann JJ, set out the Court's reasoning for overturning the High Court judgment. The Court first considered the starting point of seven and a half years imprisonment, and concluded that this was

within the available range. However, the Court considered the discount of 20 percent (18 months), for P's age and his TBI, to be too low. The High Court Judge had considered that limited weight should be placed on the TBI for sentencing purposes, as it had already been taken into account in finding P guilty of manslaughter and not murder. The Court found this approach to be erroneous; the TBI was separately and independently relevant to sentencing. Properly taking both P's age and P's TBI into account, the Court found a 40% discount to be appropriate in the circumstances. Additionally, the Court removed the MPI. The High Court Judge had considered an MPI necessary for the purposes of protecting the community, but the Court of Appeal considered this purpose best achieved by imposing a sentence that best promoted P's rehabilitation. See *P v R* [2016] NZCA 128 for the full reasoning of the Court.

Police Officer's Youth Work Commended



Sergeant Karl (Charlie) Parfitt

Sergeant Karl (Charlie) Parfitt was recently awarded a Police Commissioner's Commendation for his work in youth services. Charlie was particularly commended for his professionalism and commitment to youth in the Nelson Bays / Tasman area. Principal Youth Court Judge has described the Commendation as a fitting tribute to Charlie's ongoing passion for helping youth who are at risk and who have broken the law.

Learn Your Way at Te Kura

Nikki Douglas

Te Kura (formerly The Correspondence School) offers free, personalised learning programmes to 16–19 year olds who are not in education, employment or training.

Te Kura Chief Executive Mike Hollings explains that students at Te Kura learn "in their own time, at their own pace", but are supported through the process with access to one-on-one support from teachers – including face-to-face support at advisories or tutorials. In addition, students are offered a range of opportunities for hands-on learning through Te Kura's partnerships with education and training providers across New Zealand.

Young adults aged 16 to 19 can enrol with Te Kura at **no cost**. They can enrol in entire courses, or for specific standards.



Te Kura has developed a series of short videos featuring some of its students talking about what it's like to be a student with Te Kura and the benefits it can offer. To watch the videos or find out more, go to www.learnyourway.org.nz, or follow Te Kura on Facebook or Instagram.

YOUTH JUSTICE NEWS

RANGATAHI COURT SUCCESSSES

Taupō's New Rangatahi Court

Saturday, 5 December 2015, 12:11 pm

Press Release: New Zealand Government

Justice and Courts Minister Amy Adams welcomed the launch of New Zealand's fourteenth Rangatahi Court at Rauhoto Marae, Taupō. Ms Adams says the Rangatahi Courts are focused on addressing offending by young Māori by involving communities in the youth justice process and encouraging strong cultural links.

"I welcome the ongoing expansion of the Rangatahi Courts, which attempt to create a different environment for young offenders," Ms Adams says.

"The courts do this by taking the cases away from the adversarial environment of the traditional court setting, and creates one where, with the support of whānau, kuia and kaumātua, a young person can take ownership of their offending."

Ms Adams says that while the setting is different, the same legal rules of the Youth Court apply.

"Requiring young people to stand up on their marae, in front of their family and their elders, and account for what they have done and how they are putting it right is a powerful, daunting and hopefully life-changing experience."

Judge Alayne Wills presided at the launch, which was attended by Chief District Court Judge Jan-Marie Doogue, Principal Youth Court Judge Andrew Becroft, and Paramount Chief of Ngāti Tūwharetoa, Sir Tumu Te Heuheu Tukino VIII.

The first Rangatahi Court was established in Gisborne in 2008 by Youth Court Judge Hemi Taumaunu. The Rangatahi Courts are a judicial initiative that works within the existing Youth Court framework but use a marae-based, Māori-specific environment to try to help young Māori and their whānau engage with the justice system in ways that make sense to them.



Visitors being welcomed onto Rauhoto Marae at Taupō for the launch.

TIMELINE

05 December 2015

The **Official Launch** of te Kōti Rangatahi ki Tūwharetoa takes place at Rauhoto marae (Nukahau).

January 2016

Te Kōti Rangatahi **Stakeholder Hui** takes place at Waipahihi marae. Whakawhanaunga and the trial run of the Kōti are the main focus.

15 February 2016

Judge Alayne Wills presides over the **first Kōti Rangatahi ki Tūwharetoa** at Waipahihi marae.

Rangatahi Courts cited in Minister Adams' address to United Nations

In her keynote address of 14th March 2016 to the UN Human Rights Council in Geneva, Justice Minister Amy Adams cited the Rangatahi Courts as an example of New Zealand addressing Māori overrepresentation in the criminal justice system. See the excerpt below.

"Māori make up 15 percent of the general population but are half of the prison population. For these reasons, we have developed programmes specifically tailored to address this issue.



[New Zealand has] special courts, called Rangatahi Courts, which operate under the same laws as other courts but are informed by Māori values. For example, proceedings are held on a Marae, which is a Māori community hub, and Marae elders are involved in follow-up activities where appropriate.

The aim is to reduce reoffending by young Māori by making justice processes more meaningful for the individual and their families. Analysis conducted in December 2015 suggests that young people who appeared in a Rangatahi Court from 2011 to 2013 had a 6 percent lower rate of reoffending than comparable young people that appeared in mainstream youth courts."

For a detailed account of the launch of the Kōti Rangatahi ki Tūwharetoa, see the Rangatahi Court Newsletter Issue 7 at:

<http://www.justice.govt.nz/courts/youth/publications-and-media/principal-youth-court-newsletter/rangatahi-courts-newsletter-issue-07/view>

YOUTH JUSTICE NEWS

Rangatahi / Pasifika Courts win AIJA Award

Rangatahi and Pasifika Courts were recently announced as the winner of the 2015 AIJA Award for Excellence in Judicial Administration.

The award celebrates initiatives that improve access to justice, show innovation, and deliver real benefits

This Australian award celebrates new initiatives in criminal justice that improve access to justice, demonstrate innovation, and deliver real benefits.

Principal Youth Court Judge Andrew Becroft has stated that the Award recognises the pioneering efforts of Māori and Pasifika Youth Court Judges and their partnerships with whānau, hapū and iwi, and that it is very encouraging that the AIJA saw fit to recognise this work.

The award presentation will be held at Ōrākei Marae (the home of te Kōti Rangatahi ki Ōrākei) beginning at 4 pm on Monday 30 May 2016.

AIJA stands for the Australasian Institute of Judicial Administration. It is a research and educational institute that has published widely in the field of judicial administration.



South Island's First Rangatahi Court celebrated

On 17 August 2015, the Ministry of Justice held its annual Chief Executive's Awards for Excellence dinner in Wellington to celebrate the 2014/15 winners and runners-up of the Excellence Awards.

Phil Gane, Court Services Manager at the Christchurch District Court, was awarded the annual Minister's Award for Excellence, for his work to set up and implement the first Rangatahi Court in the South Island, which was launched in March 2014. Phil also won the Chief Executive's Annual Excellence Award for collaboration.



Justice Minister Amy Adams presents Court Services Manager Phil Gane with his Award.

Phil spent many hours working with people from across the ministry, including District Courts, National Office and the Judiciary, as well as getting specific youth and law advocates, kaumātua and kuia on board to get the Rangatahi Court operational within a short time. The Court has been recognised not only by the judiciary but also by both police and CYFS for delivering successful outcomes for rangatahi (youth) in Christchurch.

Minister Amy Adams also expressed her support for the winners: "We can all be tremendously proud of this year's winners and the teams they represent".

The Case Brief Database

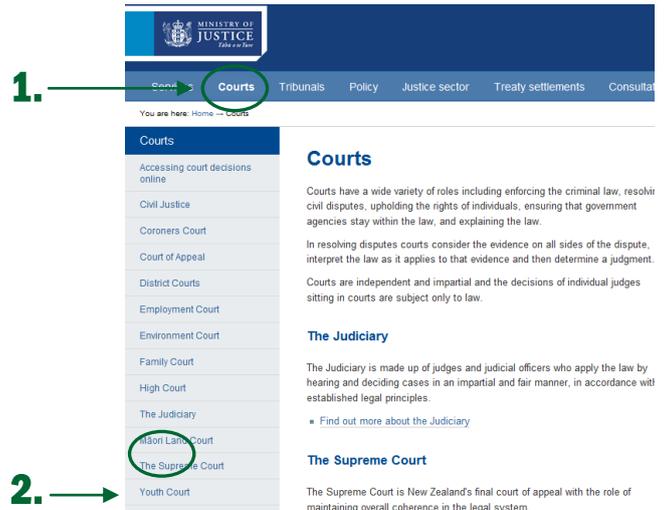
We are proud to say that the Youth Court case brief database of New Zealand is now up-to-date. This means that a brief of every decision of value since 1998 that has passed through our Office should now be available in the online case database. This amounts to over 800 case briefs: an important body of public-facing jurisprudence.

The database is available on the Youth Court website (currently hosted by the Ministry of Justice at: <http://www.justice.govt.nz/courts/youth>). Particular thanks are due to Matt Crooymans, former Judgment Publications Assistant to the Family and Youth Court Judges, who led the work on updating the database.

HOW DO I USE IT?

The Youth Court website can be accessed from the **Courts tab** on the Ministry of Justice website, or directly using the following URL:

<http://www.justice.govt.nz/courts/youth>



On the homepage, click **Legislation and decisions**.



YOUTH JUSTICE NEWS

You will now see that you have the option of searching by date, by CYPFA section, or by Key Title. Click on **Key Title**, which means topic.

4.

You will now see the Key Title index, or topic index, listed in alphabetical order. Click on a topic.

5.

You will see a list of decisions, which are categorised as **Priority 1, 2, or 3**. This is based on our assessment of their legal importance, with Priority 1 being the most important (mainly consisting of High Court and Court of Appeal judgments). Click on a case to read its brief.

6.

To return to the list of cases, press the **back** button.

7.



If you now decide to search by date, click on date in the left hand column.

8.

You will see a list of years. Click on a year to see the list of cases for that year.

9.

You will now see a list of cases. Please note that post-2008, most years list Appellate Court summaries separately.

10.

The same process can be followed to search by CYPFA section number.

HOW DO I ACCESS THE FULL DECISION?

We do not currently publish full-text decisions on the Youth Court sub-site, but intend to change this in the near future.

Many of the decisions are available on Westlaw, Lexisnexis and through other commercial publishers.

Where they are not available through the commercial publishers, please make a request to the Office of the Principal Youth Court Judge by emailing:

Kate.Peirse-O'Byrne@justice.govt.nz

We will send you the decision in anonymised form at the earliest convenience.

Ngā manaakitanga
The Office of the Principal Youth Court Judge

YOUTH JUSTICE NEWS

Youth Court Judges' Orientation

Kate Peirse-O'Byrne—Research Counsel to Judge Becroft

On the 3rd of February this year, seven Judges—most being recently-appointed Youth Court Judges—travelled to Wellington from across the country to attend an intensive three-day Youth Court Orientation Programme, led by Principal Youth Court Judge Andrew Becroft, and Judge Ida Malosi. During this time, the Judges were introduced to the unique challenges and rewards of working in the Youth Court jurisdiction. The atmosphere was one of hard work, collegiality, determination and passion.

Judges Becroft and Malosi emphasised the specialist nature of the Youth Court jurisdiction, and shared their expert knowledge of both youth justice theory and practice. Their Honours provided a thorough examination and analysis of Part IV of the Children, Young Persons and Their Families Act 1989, addressing such issues as the meaning of “not denied”, the crossover between youth justice and care and protection, and the practical implications of s 238 bail orders. Attendees also heard from Darryl Gardiner, an experienced Youth Worker who spoke about communicating with young people, and from Craig Smith, an experienced Youth Advocate from Porirua.

This year, the Programme was attended by newly appointed Youth Court Judges Farnan (Invercargill), Barkle (New Plymouth), Large (Palmerston North), Harrison (New Plymouth), and Kelly (Porirua), and newly appointed District Court Judge Cathcart (Gisborne). It was also attended by Judge Courtenay, an experienced Youth Court Judge.

The Orientation Programme is one of the few training opportunities available to Youth Court Judges that exclusively addresses the Youth Court jurisdiction. Existing Youth Court Judges are encouraged to consider re-attending an Orientation Programme in future as a helpful “refresher”.

Prato Conference

Judge Fitzgerald

In September 2015, an international conference on vulnerable young people was held at Monash University's beautiful centre in Prato, Tuscany. I was privileged to be there, having been funded to attend by the organisers.

Themes addressed at the conference included the connection between mental health concerns and youth offending; and providing better access to justice for disadvantaged groups—in particular, indigenous young people and those with disabilities.

It was a timely opportunity for legal and clinical practitioners to come together to discuss the approaches we



Monash University at Prato Centre in Tuscany.

are each taking to these challenging issues; timely because right around the world there is recent but rapidly growing awareness of these issues, the importance of recognising the ways in which our professional paths intersect, and the advantages of better co-ordinating what coordinating what we do. Other key professions were also represented, including those from the educational and social service sectors. Multi-agency collaboration was acknowledged as being essential to improve outcomes for at-risk youth.

One thing that was clear from the presentations was the extent to which the law and legal processes have been lagging behind

[T]he law and legal processes have been lagging behind science

science, particularly in relation to the connection between neuro-disabilities and offending. For some time the scientific community has recognised that brain damage affects behaviour in a way that predisposes those with an impairment to enter the youth justice system and, once there, to be especially vulnerable to becoming deeply entrenched in it. Having said that, it was encouraging to learn about the depth and breadth of scientific knowledge that we can now draw on - ideally to prevent offending in the first place and, failing that, to reduce the risk of it recurring. A lot of good research has been, and is now being done in this area, both here and overseas, which should help inform the approaches we need to take to these issues in future.

[O]ther countries look to the New Zealand youth justice system for guidance

It was also clear that other countries look to the New Zealand youth justice system for guidance. Of particular interest to

everyone at the conference were the Rangatahi and Pasifika Courts. There was a strong recognition of the need to greatly improve how youth justice systems respond to offending by indigenous youth, and those from minority cultures, and tremendous admiration from overseas for the work being done here in that regard.

Although the themes of the conference were challenging and concerning there was a resoundingly positive mood to it. There was also a strong commitment, both between countries and also between professionals and agencies within countries, to continue to collaborate on these issues.

SPECIAL REPORT: Enabling families to leave the youth justice system, and to stay out

Anita Balhorn: Ivita Health Services

An innovative Youth Crime Action Plan (YCAP) 6-month pilot programme was recently completed via a partnership between two organisations: the publicly funded South Auckland and Counties West YCAP group, and the private health provider Ivita Health Services.

The goal of the programme was to enable sustainable exit from the youth justice system for a vulnerable family with multiple needs.

Costs were shared between CYF, Police and Ivita Health Services, with Ivita's contribution being measured in hours. Anita Balhorn of Ivita Health Services shares the process and outcomes of this highly successful initiative.

CYF and Police agreed to fund us because both organisations were frustrated at the lack of impact current interventions were having with 'high crime families'. They understood firsthand that the status quo wasn't working.

Our point of difference was that we would use a multidisciplinary team

Ivita Health Services' 'point of difference' was that we would use a multidisciplinary team to meet the family's unique needs. We were

also prepared to accommodate the project within our existing service load, within a short timeframe, and with no guarantee of further funding.

The first stage of this process was finding a suitable family. CYF and police selected a 'high crime family' with complex and inter-generational needs, which included domestic violence, abuse, trauma, behavioural disorders, mental health problems, and alcohol and drug (AOD) dependency. Three of the eight children had been involved in the youth justice system; it was considered likely that this pattern would continue with the younger children.

Efforts were coordinated and led by the family, rather than by agencies

The pilot took a positive youth development approach, which means it aimed to have efforts coordinated and led by the family, rather than by agencies and service providers. To achieve this, the pilot provided a dedicated service coordinator/whānau liaison person. In addition, a multidisciplinary team was established. For the family in question, the team was composed of a Youth Health Nurse Specialist, an AOD practitioner, and a Speech Language Therapist.

The first step was to carry out a health and wellbeing as-

essment on the whole family. To do so, Ivita created a timeline that showed that the solo mother and her children had been dealing with up to 15 different practitioners in any given year over many years.

The family had been dealing with up to 15 different practitioners in any given year

The next step was to focus on the strengths of the family by working with them to build a vision of what a sustainable, positive family might look like for them. A vision developed of a family that was Happy, Healthy, Productive, Independent and Successful. Ivita devised a poster representing these ideas, and then created a Family Life Plan to support the family's vision, which was tailored to their particular needs. Throughout this process, Ivita Health focused on the family's wish to deal with fewer services and to rebuild relationships with practitioners on foundations of trust and respect.

[O]ver all the years of intervention, no one had ever asked the mother what she wanted from her life

The family discovered that over all the years of state intervention, no one had ever asked the mother what she wanted from her life. The pilot programme was the first intervention to take this step.

By all accounts, it was a resounding success. To our knowledge, the family members have not since reoffended. They report having developed stable family relationships. All members are engaged with education or employment, and they are more financially stable than before. The family also has better housing and report a feeling of 'hopefulness rather than helplessness'. Further good news is that the mother contacted Ivita this year to let us know that their 2015 Christmas was their best Christmas ever.

The family report a feeling of 'hopefulness rather than helplessness'

The primary recommendation of the pilot is that society needs to shift its thinking away from 'fixing' young people and families. Instead, we should focus on building relationships and partnerships with these families, thereby empowering families to achieve their own wellbeing and foster a sense of hope for their future.

Ivita Health Services is very interested in working with more High Crime / Family Violence whānau / family. Referrals are flooding in from Otahuhu, Mangere and Papakura. If you are interested in partnering with Ivita, in providing funding support, or in simply knowing more, you can contact Ivita at:

contact@ivitahealthservices.com

Tel 027 5233565

Toll Free 0800 484824



Anita Balhorn, Ivita Health Services

SPECIAL REPORT:

Meeting speech, language and communication needs

Sally Kedge and Clare McCann: Speech-language therapists

Talking Trouble Aotearoa NZ & The University of Auckland
 talkingtroublenz@gmail.com



In Issue 66 of Court in the Act, the speech-language therapists at Talking Trouble addressed the question:

What are some of the issues faced by young offenders with speech, language and communication issues?

In that article, the young offender, called Tama (*not his real name*), could not follow what was happening at the Family Group Conference. He did not understand his FGC plan, or his bail conditions, and -- what is more-- did not understand that he had missed anything. He was not able to explain his role in the offending, or express his perspective or emotions. Without an assessment, Tama's communication needs could be mistaken for laziness, apathy, or deliberate misbehaviour.

This article, by Sally Kedge and Clare McCann, addresses the follow-up questions:

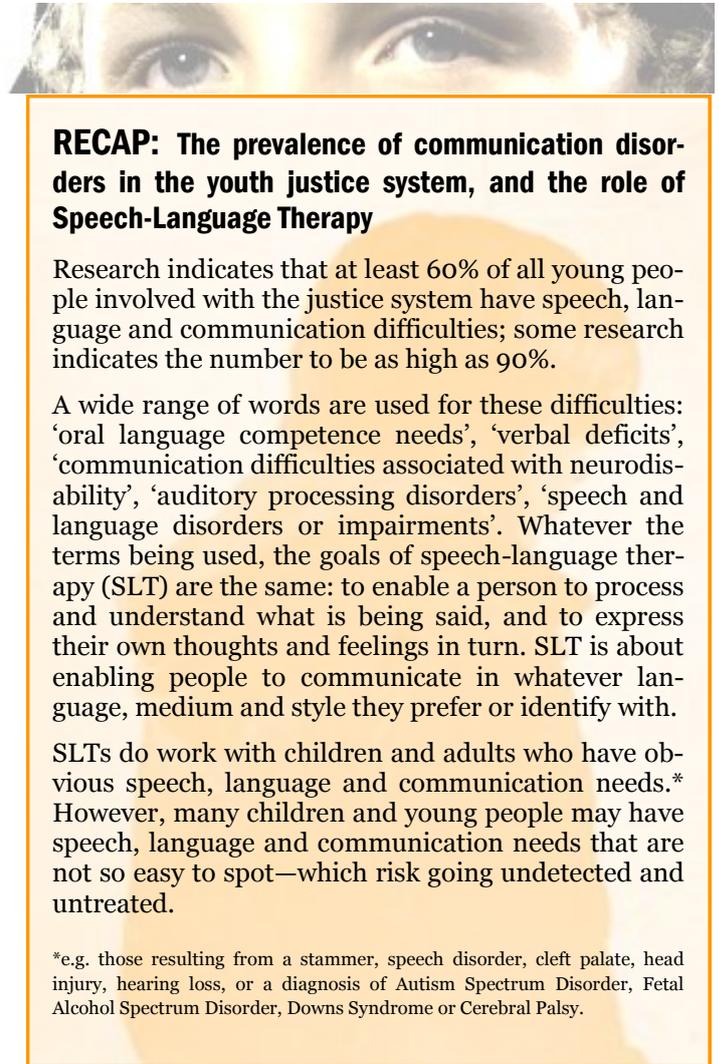
What would it look like if Tama's communication needs were addressed properly? How could this impact on his interaction with youth justice interventions?

#1 At the Family Group Conference

Talking in a Family Group Conference (FGC) is very challenging and stressful for Tama. Preparing something in advance allows Tama to express him or herself better, and alleviates some of his stress. In addition, a Speech-Language Therapist is used as a communication assistant to ensure the following guidelines are followed:

a) Keep the talking at the level Tama needs: this means using short sentences, with no jargon or complicated words. The SLT notes any words that might be difficult for Tama to understand, but which are much easier to follow when depicted in a diagram.

b) Have regular breaks: For many young people, it is difficult to listen for longer than 20 minutes. It is important that adults spot when Tama's concentration is wa-



RECAP: The prevalence of communication disorders in the youth justice system, and the role of Speech-Language Therapy

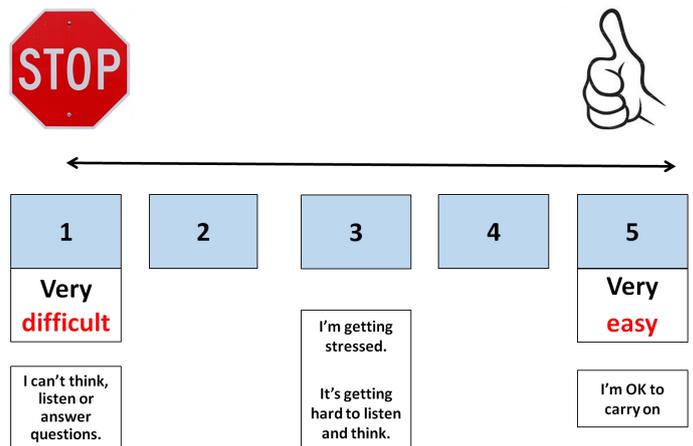
Research indicates that at least 60% of all young people involved with the justice system have speech, language and communication difficulties; some research indicates the number to be as high as 90%.

A wide range of words are used for these difficulties: 'oral language competence needs', 'verbal deficits', 'communication difficulties associated with neurodisability', 'auditory processing disorders', 'speech and language disorders or impairments'. Whatever the terms being used, the goals of speech-language therapy (SLT) are the same: to enable a person to process and understand what is being said, and to express their own thoughts and feelings in turn. SLT is about enabling people to communicate in whatever language, medium and style they prefer or identify with.

SLTs do work with children and adults who have obvious speech, language and communication needs.* However, many children and young people may have speech, language and communication needs that are not so easy to spot—which risk going undetected and untreated.

*e.g. those resulting from a stammer, speech disorder, cleft palate, head injury, hearing loss, or a diagnosis of Autism Spectrum Disorder, Fetal Alcohol Spectrum Disorder, Downs Syndrome or Cerebral Palsy.

-vering. Fidgeting, looking around, yawning or stretching are signs that he is probably not listening. Tama uses a 'listening thermometer' or rating scale to indicate how easy he is finding it to concentrate or listen:



c) Signal topics throughout: The SLT uses a white board (or a projected computer screen) to visually demonstrate what is being discussed e.g. 'this is about where you are going to live'. The key points are written down in short simple sentences for Tama. It helps Tama to have something to look at when he is listening; the key words keep him focused.



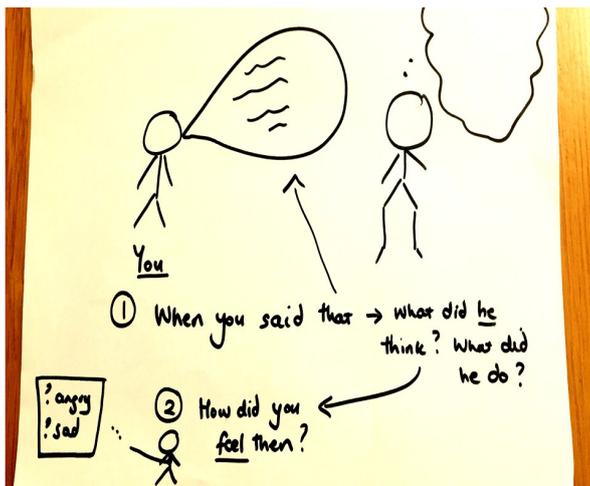
d) Provide verbal summaries: The SLT summarises what has been said, and asks others to summarise topics, before moving on; for example: “So, we talked about where you are going to live. The three things that are going to happen next are...” and “We’ve finished talking about where you are going to live. We are now going to talk about school. So, school...”

e) Tailor the paperwork to Tama’s needs: The SLT assists professionals to ensure that all the paperwork is tailored for Tama’s communication needs. Tama needs an FGC plan that is written in short simple sentences supported with pictures and symbols. Having a social story that explains exactly what is happening with changes to care arrangements or visits to whānau helps to alleviate Tama’s anxiety as he can refer to it again if he forgets or gets confused.

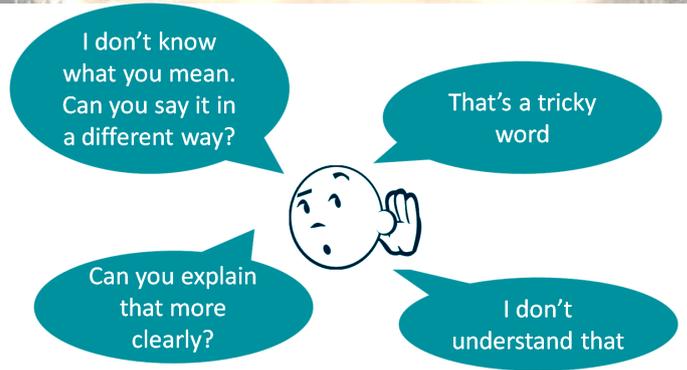
“Tama needs an FGC plan that is written in short, simple sentences, supported with pictures and symbols”

#2: Communicating with police or lawyers

Police officers and Tama’s Youth Advocate need Tama to give his own account of events. However, organising a clear sequence of events and giving detailed descriptions of people, places or events is challenging for Tama. The SLT assists the professionals with wording their questions in a way that is not confusing for him. The SLT also helps Tama to create a story board (a visual timeline) of the event. This keeps him focused and clear about the order things occurred.



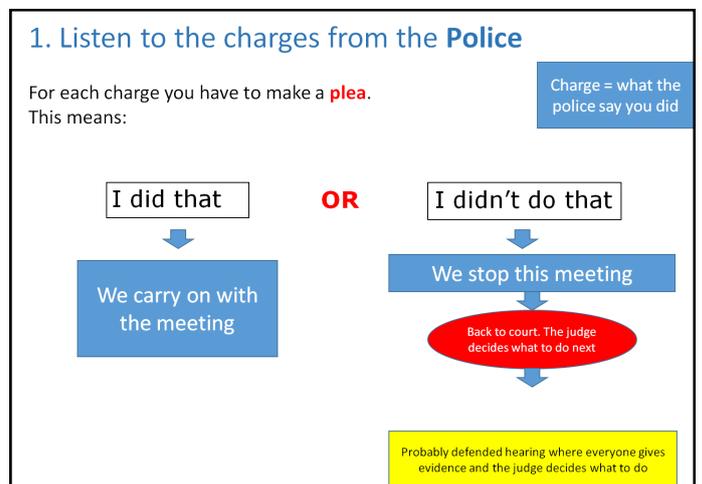
It is important to establish a culture of “it’s good to ask”. Tama needs to be positively encouraged to communicate when he is stuck or confused. He also needs clear ideas for exactly what to say e.g. ‘I’m not sure what to do’, ‘I need you to write it down’, ‘I don’t what that word means’, ‘I couldn’t remember all that’.



#3 At the Court Hearing

At Tama’s court hearing, he needs assistance to understand what is being said and to express himself in the court and to counsel. A neutral, non-partial court appointed communication assistant is appointed to assist Tama with these goals, and in turn, to assist both defence and prosecution to communicate effectively with Tama.

For example, Tama needs clear information regarding exactly what is going to happen and what he is expected to do, for example: “We might be there for 20 minutes,” “Take your beanie off,” “Take your hands out of your pockets,” “Look at the judge when he or she is talking to you,” and “You need to introduce who you bring with you, so make sure you know their names or have them written down to help you remember..”



Tama also needs a communication - friendly version of bail conditions and other court documents so that he is clear about exactly what he needs to do to prevent breaches. He also needs words like ‘bail’ and ‘breach’ explained clearly to him, along with other complex legal words; for example: restoration, reparation, remorse, accountable, victim, defendant, associate with etc.

As well as empowering Tama in FGCs, in communicating with youth justice professionals, and in the court room setting, he needs some on-



BAIL = rules for where and who

HOME = you have to be at 65 Red St

COURSE = straight there and straight home.

You have to be with Mum, Auntie Ana or your social worker, Andy.

	Mon	Tue	Wed	Thurs	Fri	Sat	Sun
Morning from 7 o'clock (7am)	HOME OR COURSE	HOME	HOME				
Afternoon after 12 o'clock	HOME OR COURSE	HOME	HOME				
Evening/Night from 7 o'clock (7pm)	HOME	HOME	HOME	HOME	HOME	HOME	HOME

You HAVE to be in the right place at the right time. If you go somewhere else you are breaking the rules = BREACHING BAIL

going tools that will help him to navigate the world. Two such tools are the communication passport and visual timetables.

#4: Tama's Communication Passport

One way of empowering Tama is to create a Communication Passport. The Communication Passport is a personalised tool Tama can take to any situation to show his communication needs and what adults can do to make communication easier for him. This simple one page summary of Tama's strengths and needs for communicating and understanding is created by the SLT in partnership with Tama. It summarises what helps him to communicate, such as:

- giving him time to process what is being said (adults can make sure they don't speak quickly, and to wait before asking the next question), and
- explanations of complicated words, jargon or concepts using key written words, diagrams, flow charts and pictures, to avoid metaphorical and abstract language as much as possible.

The Communication Passport can help adults to recognise when Tama's behaviour, which might come across as bored, disengaged or stopy, could be masking his embarrassment and confusion at not keeping up with what is being talked about or knowing what to say. It can be introduced to Tama's whānau and the professionals in his team to ensure that everyone understands his needs. Each person could then be assisted to develop specific strategies and resources to ensure their own work with him addresses his talking / understanding needs.

#5 Visual timetables

Like many children and young people with language difficulties, Tama finds concepts to do with time very confusing. He does not have a well-developed vocabulary for

time so is confused by expressions like 'fortnight', 'the day before yesterday'. He is muddled about the seasons and is not completely clear on the order of the months. Tama does not really understand what someone means if they say that he will need to attend an appointment in a 'couple of weeks' or that he is only going to be in a care placement for 'about a term'. Tama does not fully understand concepts like 24/7, or what sunset or noon mean. He needs concrete representations of time: clear visual representations of exactly what is being talked about. He needs visual timetables indicating exactly where he needs to be, and when. Just telling Tama the information is unlikely to make much sense to him—so he is unlikely to remember it or to act on it.

Matt's plan				April 2016		
21 Monday	22 Tuesday	23 Wednesday	24 Thursday	25 Friday	26 Saturday	27 Sunday
Whitianga visit	Matt and Moana drive back to Auckland	Time to say goodbye to Sally		Time to say goodbye to Moana's daughters	Move to Whitianga to live at Auntie's house	Whitianga is Matt's new home with Auntie
Sleeping in Whitianga	Sleeping at Moana's house	Sleeping at Moana's house	Sleeping at Moana's house	Sleeping at Moana's house	Sleeping in Whitianga	Sleeping in Whitianga

Outside of the youth justice—specific forums, Tama needs help with communicating in some key areas: with his social worker, who wants to know Tama's opinions and plans; with his family; and at his new education course.

#6 Social worker: Tama's social worker uses an ipad (or art materials) to create an audio, video or visual project that enables him to express his own views about how things are at home and to articulate his hopes and dreams. The SLT assists with this process. The concept



The concept of ‘hopes and dreams’ is confusing and abstract for Tama

of ‘hopes and dreams’ is confusing and abstract for Tama, who has difficulties using language to imagine the future.

Bringing these concepts into the ‘here and now’ by creating visuals with Tama helps him to articulate these challenging ideas. These could be as simple as a stick figure with a thought bubble to show ‘how I want things to be at home when I am older’, but for Tama they involve complex graffiti images (as that is more interesting to him).

#7: Preparation for school

At his new education course, Tama needs to receive information in a manner he can easily understand (verbal explanations supported with simple written and pictorial information) about the expectations required of him; from where he has to go each day and what equipment he needs through to expectations regarding behaviour and what to do if he experiences any difficulties. The new teacher and mentor are supported by the SLT to develop resources and strategies to build Tama’s vocabulary for accessing the topics being taught within the curriculum (e.g. ensuring that he is ‘pre-taught’ vocabulary so he enters lessons with some prior knowledge of the topic) and to help him acquire the language skills he needs for building and repairing friendships e.g. the language needed for giving or accepting compliments, for having an disagreement or for expressing anger or distress.

#8: Family therapy

A family therapist is assisted to deliver therapy using concrete, visual materials and to modify questions that might be confusing for Tama. This enables him to participate in identifying and discussing triggers and setting goals. In turn, these strategies make Tama feel more motivated by the therapy he is being offered. Previously, Tama was thought to be pretty apathetic and lazy, but in reality, Tama was finding it difficult to follow the discus-

sion. He wasn’t sure how to answer the questions without looking dumb.

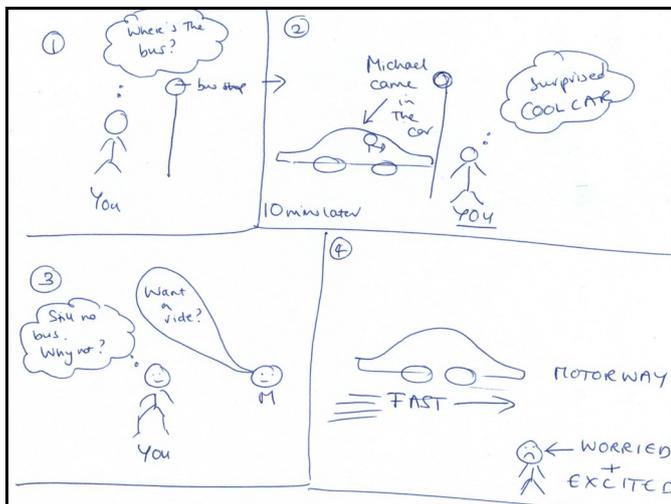
The SLT teaches Tama some language required for expressing difficult emotions and for resolving family conflicts. To do this, the SLT uses topics of interest to Tama, and creates photos he can take on his own phone. These visuals are highly relevant to Tama, as they are personalised to his own situation. Similar strategies are used to help him engage with an alcohol-related intervention.

#10: Respect, reassurance and empowerment

We all benefit from clear communication. Communicating in a way that allows others to understand and express themselves easily does not need to be childish or belittling. However, monitoring our own language skills and being able to switch to a communication friendly style can be challenging. So many of us are highly competent users of language and we tend to assume that everyone else we communicate with has a similar level of competence. Great care needs to be taken to develop ways of supporting Tama that are not patronising or embarrassing for him but instead are respectful, reassuring and empowering.

[W]e tend to assume that everyone else has similar levels of communication competence

Addressing Tama’s speech, language and communication needs will take creativity and effort on the part of everyone, including Tama himself. However, as nearly everything in Tama’s life involves talking, ignoring his oral language needs will jeopardise the success of the interventions he needs to get back on track and develop into positive and successful adulthood. He needs assistance to build his own oral language skills and to find ways to make easier the talking involved in everything he needs to do. Speech-language therapy assistance would be of benefit to Tama and many like him who are involved with care and protection and youth justice processes.



WANT TO LEARN MORE?

Talking Trouble runs communication workshops aimed at professionals who work with vulnerable children.

Please contact Talking Trouble at: talkingtroublenz@gmail.com if you are interested in attending a workshop, or visit talkingtroublenz.org to find out more.



SPECIAL REPORT: New Zealand Defence Force helping our young people

Kathy Ombler

An edited version of the following article first appeared in *Rāngai Tūmatanui* Volume 39: 1 (April 2016). It is reproduced with permission from The Institute of Public Administration New Zealand (IPANZ) and NZDF.

Five youth development programmes, supported or run by the New Zealand Defence Force (NZDF) in partnership with other government departments, have collectively helped turn around the lives of hundreds of at risk, unemployed and offending young people, leading them instead to NCEA qualifications, jobs and, critically for many of them, a new sense of self-worth.

This isn't core Defence Force business, however it is a valuable contribution to 'New Zealand Inc', says Brigadier Broadley, Director General of Reserve Forces and Youth Development.

"Overall this is a great story about how some government departments and community organisations can work together to help develop the great youth in this county. These programmes provide a number of avenues for potential at-risk youth to be great New Zealanders."

"[D]on't call them boot camps! That's not what they are about"

But don't call them boot camps! That's not what they are about, Broadley adds. "The keys are the values we instil in each

of the trainees. Generally speaking, the base training is focused on understanding what is right and what is wrong. In the courses and camps everyone does the same, so there is a team-based culture. The students start self-policing, looking after each other. They're eating well and sleeping well and it becomes transforming for a lot of those young adults."

What is being achieved with these courses has seriously impressed Principal Youth Court Judge, Andrew Becroft. At first he was concerned, in particular about the proposed Military-style Activity Camps for serious young offenders, when they were initially described as 'Boot Camps'.

"Internationally the so-called boot camp is a military-styled, marching, hard labour regime, a form of punishment. The research is absolutely clear, they do not work. They fail to address the underlying causes of offending and anyone involved in youth justice would be concerned that such a failed model would be introduced here."

As it turns out, Judge Becroft says it was a 'phony' debate, a misnomer. "The New Zealand model does have some military focus and is highly challenging but the substance is much wider. They have a holistic life approach, they are about team building, problem solving, facing the stresses of life and they can be a good environment to think about moral and spiritual issues. We're talking about our top end young offenders, they are tough and demanding and the camps have built a platform for significant changes in their lives."

Judge Becroft has also been a patron for a Limited Service Volunteers course, which he lauds as a productive, well thought out and organised programme to help struggling young people build discipline and life skills and prepare them for employment.

"In substance these programmes are holistic and positive interventions, led by NZDF instructors who are outstanding role models. It is highly encouraging and of great strategic importance to see the NZDF using its special skills and experts to help young people, whether youth offenders in a secure residence or young adults who need help to find the right direction in life."

"[T]hese programmes are holistic and positive interventions, led by NZDF instructors who are outstanding role models"

However the challenge, he warns, is about following up.

"So much positive groundwork has been achieved. The transition and continuity of care back in the community, in that environment where they were in the first place, is the challenge. I would hate to see the Military-style Activity Camp, for example, held unfairly to account for failing to achieve success in areas where it has no control."



Young people on "the longest day" at a MAC Camp.

The courses:

Military-style Activity Camps (MAC) – nine week camps run with Child Youth and Family (CYF) for young offenders convicted of quite serious offences, held in a secure CYF facility. The camps aim to turn these offenders around through physical exercise, discipline, education, adventure, team building - learning musical instruments, even.

It's all developmental, says Broadley. "A lot of these youths come from very dysfunctional homes, they've



been given up on. They sleep all day, go out at night and get into drugs and crime. We're trying to break that cycle and we have seen promising results. It's early days yet but statistics show for the first 42 graduates, 35 reduced the frequency of their offending and 32 reduced the seriousness of their offending."

(My son) Eddie* had been on a journey of making bad decisions and mixing with the wrong people. It wasn't until he went inside and did the MAC program that things changed. The boy who went in to the program wasn't the boy who returned. I cried at the graduation. It gave me new hope. I think (now) he is better able make good decisions and isn't such a follower.'

- a MAC graduate's mother

Service Academies — run by the NZDF for the Ministry of Education. They target mainly year 12 and 13 students, in particular Māori and Pasifika who are "starting to drift", says Broadley. The twelve month (part time) programme encompasses leadership skills, outdoor activities and mini basic training and culminates in a challenging team adventure.

In 2014, 462 students from 28 schools attended. "At the start of the year 57 percent had achieved NCEA Level 1 or more, by the year end 80 percent had achieved this. Most importantly, at least half the students returned to school the following year. A lot said they wanted to join the police or defence force and realised they needed an education to do so. The course became the motivator."

Limited Service Volunteers — a six week developmental course for long term unemployed youth (aged 18 to 25), funded by the Ministry of Social Development's Work & Income Department. This encapsulates what we do, says Broadley. "They are selected by MSD, often on the recommendation of former graduates. Initially it's about getting some of them off drug and alcohol addictions — it's uniforms, short or tied back hair and no phones — then we get into it; team building and 'the longest day' physical challenge, counselling, budgeting, grooming and manners. We bring in police mentors, social workers and civilian psychologists.

"In week four prospective employers come to showcase their companies and talk with the students. In some cases students get the opportunity to go straight into employment from our course. We're getting more requests from employers to be involved, because we are producing kids who have learned skills, are reliable, respectful and punctual and they will represent their employer company well.

"Course patrons, prominent New Zealanders the students can look up to, play an important role. We have a full graduation, in which each platoon, or team, makes a presentation. On average several whanau turn up for each student, it's really moving and special."

Run since 1984, in its peak year 2000 attended the courses. On average 70 to 80 percent graduate into jobs or tertiary education.

Cadet Forces — a voluntary, uniformed youth leadership programme for boys and girls aged 13 to 18, now in its 150th year. Community sponsored and NZDF supported (including uniform supply and firearms training), the cadets learn about respect, integrity, leadership, self-management and discipline. Currently there are some 3500 cadets in 99 units throughout New Zealand.

"Many cadets are high performers and go on to develop good leadership skills. Our numbers are increasing some ten percent each year, as parents see the benefits," says Broadley.

Blue Light — a community policing scheme run by the Blue Light Trust. The NZDF help run camps for the trust that are both fun and physically demanding, says Broadley. "The camps are standards-based, everyone does the same thing, it's a team-based culture, about understanding what's right and wrong and helping develop individual self-esteem."



"[Blue Light] was an experience I can never forget. I am proud to say that going on the camps has helped me find the person I can be, especially coming from an environment that is filled with stereotypes and personal obstacles." Susan*

"I left camp more respectful and more compassionate for others. I also had more self-confidence. I went and got my license and also got a building apprenticeship at a local company. I knew that if I could do the camp then I could do anything! Camp was the hardest thing I've ever had to do but I am glad I did it!" Johnny*

*Not their real names

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courtintheact@justice.govt.nz



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LABELLING THEORY: RECAP

The Office of the Principal Youth Court Judge has received a number of requests for information relating to labelling theory. This resource was compiled by Kate Peirse-O'Byrne in response to those requests.



Labelling theory is a sociological theory that regards crime as a social process. The theory focuses on individuals' perceptions of themselves and posits that the way a persona is labelled by society creates a self-fulfilling prophecy (Cleland and Quince). Labelling theories have been influential in youth justice, since it is argued that those who are less experienced and more impressionable are more likely to respond to a given label (White and Haines).

Matza argues that the actions of a youth justice system and young people's perception of how officials act and how sanctions are applied will affect their will to engage in criminal behavior. For example, it is counterproductive to impose the stigma of conviction on young people, as calling someone an offender increases their engagement with the criminal justice system. If it is accepted that contact with the criminal justice system will produce career criminals, then the solution is diversion (Cleland and Quince).

'Labelling theory' is part of the orthodoxy. The Riyadh Guidelines state that one of their fundamental principles is "The need for and importance of progressive delinquency prevention policies", and that such policies should include "Awareness that, in the predominant opinion of experts, labelling a young person as "deviant", "delinquent" or "predelinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons." Cleland and Quince state that labelling theory underpins the principle of diversion, as set out at s 208(a) of the CYPF Act.

The argument is bolstered by empirical evidence. A Ministry of Social Development analysis from 2004 showed that young people are half as likely again to

reoffend if they have been to the Youth Court (Maxwell et al). This relationship is even stronger when the most serious offending is excluded from the analysis. A plausible explanation is that the court processes themselves make reoffending more likely because of their impact in labelling the young person as criminal and the public nature of the denunciation of them as an offender. Research in New South Wales also supports the interpretation that a diversionary family group conference will be more successful than the use of court proceedings (Luke and Lind). Luke and Lind found a reduction of 15% to 20% in reoffending for young people who had attended a conference compared to young people who attended court. This difference occurred across offence types and regardless of gender, criminal history, age and ethnicity.

[Y]oung people are half as likely to reoffend if they have been to the Youth Court

As well as the damage "labelling" may cause to the way young people view themselves, formal punishment runs the risk of exposing young people to "deviant" peers, who can also shape their future behaviour. Furthermore, it gives young people a criminal record, which can affect their future prospects. The dangers of over-criminalizing young people are manifold.

Alison Cleland and Khylee Quince Youth Justice in Aotearoa New Zealand (LexisNexis, Wellington, 2014)

G Luke and B Lind (2002) "Reducing juvenile crime: Conferencing versus court" Crime and Justice Bulletin, 69

David Matza, Delinquency and Drift (Wiley, New York, 1964)

Gabrielle Maxwell et al, Achieving Effective Outcomes in Youth Justice: Final report (Ministry of Social Development, 2004)

Rob White and Fiona Haines, Crime and Criminology (3rd ed, Oxford University Press, Melbourne, 2004)

United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), Adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990

THE PRIMACY OF WELLBEING

Kate Peirse-O'Byrne responds to a Youth Court Judge's recent enquiry about just how important a child or young person's "wellbeing" is to determining youth justice responses.

The overarching object of the CYPFA is to promote the wellbeing of children, young people and their families. Where young people commit offences, it is anticipated that this will be achieved by holding young people accountable, and by acknowledging their needs. While these dual practices may sometimes seem to be in conflict, it is important to bear in mind that they are posited as being a means to ensuring that *the overall*

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object of promoting wellbeing is achieved.

The primacy of wellbeing is reiterated in international law. Article 3 of the UNCROC states:

In all actions concerning children, whether undertaken by public or private social welfare institutions, ***courts of law***, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

Under the Beijing Rules, the aim of juvenile justice is construed as follows:

5.1 The juvenile justice system shall ***emphasize the well-being of the juvenile*** and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

Arguably the strongest statement of the importance of wellbeing is in General Comment No 10 of the Committee on the Rights of the Child, adopted in 2007. It makes it clear that when balancing the young person’s wellbeing and the need for public safety and sanctions, the scales should tip in favour of wellbeing:*

71. The Committee wishes to emphasize that the reaction to an offence should always be in proportion not only to the circumstances and the gravity of the offence, but also to the age, lesser culpability, circumstances and needs of the child, as well as to the various and particularly long-term needs of the society. A strictly punitive approach is not in accordance with the leading principles for juvenile justice spelled out in article 40 (1) of CRC (see paragraphs 5-14 above). [...] In cases of severe offences by children, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of the need of public safety and sanctions. ***In the case of children, such considerations must always be outweighed by the need to safeguard the well-being and the best interests of the child and to promote his/her reintegration.***

Accordingly, when the overall object of the CYPFA is read in light of international obligations, the child’s wellbeing should be a primary consideration, if not *the* primary consideration.

*The Committee on the Rights of the Child Children’s Rights in Juvenile Justice (CRC/C/GC/10, 25 April 2007)

Testing evidence at s 9 (CP) MIP hearings: can it be done?

Of late, the question has arisen as to what can be addressed during s 9 involvement hearings under the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CP(MIP)). Kate Peirse-O’Byrne responds.

Section 9 involvement hearings are a means of establishing a young person’s involvement in offending, to the standard of the balance of probabilities. Section 9 hearings are intended as a filter, to prevent young people who were not involved in offending from being subject to CP(MIP) proceedings.

9 Court must be satisfied of defendant’s involvement in offence

A court may not make a finding as to whether a defendant is unfit to stand trial unless the court is satisfied, on the balance of probabilities, that the evidence against the defendant is sufficient to establish that the defendant caused the act or omission that forms the basis of the offence with which the defendant is charged.

Some youth justice professionals have questioned whether it is appropriate for s 9 hearings to be operating as “miniature trials”: for example, by testing the admissibility of evidence used to establish involvement. By reference to recent case law, this memorandum clarifies that it is appropriate for s 9 hearings to involve robust enquiries into a young person’s participation in offending. Indeed, the Courts consider this to be important. CP(MIP) proceedings triggered by s 9 hearings can have a serious impact on a young person’s liberty. If “involvement” is established but the young person is found unfit to stand trial, they may be subject to “special patient” status under the Mental Health (Compulsory Assessment and Treatment) Act 1992, or to a Compulsory Care Order under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003. This can result in indeterminate detention. Case law set out below clarifies the need for a thorough examination of the question of involvement, before continuation of CP(MIP) proceedings.

New Zealand Police v TMW [2013] NZYC 298,

In *New Zealand Police v TMW* [2013] NZYC 298, Judge Fitzgerald determines that it is appropriate, in the context of a s 9 hearing, to make a determination as to the admissibility of evidence. His Honour’s reasoning is

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based on detailed submissions provided by Counsel. The Judgment clearly sets out the submissions made by Police and Counsel, and the Judge's findings, at [8] to [18], as outlined below.

The Police position was that the s 9 process is an evidentiary enquiry, and for the Court to make a ruling as to admissibility would turn that process into a hearing or trial (at [8]).

At [10]: Counsel appointed to assist the Court submitted the following main points:

- The CP(MIP) Act creates an explicit framework for the Youth Court to determine the issue of involvement. Issues relating to admissibility form part of that enquiry.

Section 9 hearings may well be the only chance that a young person has to challenge the evidence against them

- Section 9 hearings may well be the only chance that a young person has to challenge the evidence against them. Therefore, s 9 hearings should be conducted thoroughly and robustly.
- In *Ruka v R* [2011] NZCA 404, the Court of Appeal confirmed that whilst a s 9 hearing is not a trial as such, it shares many of the characteristics of a criminal trial. In order to determine the issue of involvement, the Court must bear in mind that the hearing may be the only chance an accused has to test the case against them and the fact that a loss of liberty can follow a determination therein. The Court must not only hear the evidence but must also determine issues of credibility and reliability.
- It is a small and logical extension to suggest that the Court should also be concerned with issues as to admissibility. By way of argument, it is difficult to believe that any Court would accept evidence at a s 9 hearing that had been obtained as a result of deception, violence or oppression.
- Furthermore, in the context of children or young people, s 208(h) of the Children, Young Persons and Their Families Act 1989 (CYPFA) provides that a child or young person is entitled to special protection during any investigation by virtue of his/her vulnerability.

Judge Fitzgerald accepted Counsel's submissions and added the following points:

- In *Ruka v R* [2011] NZCA 404, the Court of Appeal endorsed Professor Brookbanks' opinion that the Courts' approach to s 9 hearings is towards maximising, rather than minimising, the opportunities for the presentation and testing of evidence (at para [77]).
- The s 9 procedure therefore involves presenting and testing evidence. Where it is inadmissible, it cannot form part of the case to establish the young person's involvement.

The CYPF Act recognises the potential for unreliable statements to be made by children and young people

- The CYPFA recognises the potential for unreliable statements to be made by children and young people because of their vulnerability. Special safeguards are required as protection from that risk.
- The young person in the case at hand had neurodevelopmental issues. Particular care was needed to ensure he understood his rights and was able to exercise them so as to determine whether the statements made by him in an interview were reliable.

It is therefore clear that s 9 involvement hearings are not simply a procedural device. The Court of Appeal has confirmed that matters usually determined at a criminal trial, including the testing of evidence, can—and should—be addressed at s 9 hearings.

Additionally, Judge Fitzgerald's reasoning in the Youth Court highlights the particular importance of a thorough examination of evidence in the context of children and young people, by virtue of their vulnerability; and furthermore, in the context of neurodevelopmental disorders.

As youth justice personnel become more aware of "fitness" issues in our young people, CP(MIP) proceedings are likely to be an increasingly regular fixture in the Youth Court. The Court authorities indicate the need for a thorough, robust and cautious approach when engaging in these proceedings.





PĀNU INFORMATION SHEET

“Whānau, hapū and iwi” in the Youth Justice provisions of the Children, Young Persons and Their Families Act 1989

The Youth Court has only recently begun to engage fully with its **statutory obligation to involve hapū and iwi in youth justice processes and outcomes. This is long overdue and hugely important.**

Māori youth are disproportionately overrepresented in Youth Court statistics. By involving hapū and iwi in the youth justice process, hapū and iwi are empowered to provide their young people with support, and to help them to connect with their history and culture. This, in turn, can help to foster a stronger sense of identity and belonging in the young person, thus helping to redress New Zealand’s history of cultural alienation. This information sheet highlights where, in the youth justice provisions of the CYPFA, you can find reference to “whānau, hapū and iwi” or “whānau and hapū”.

Section 4 General Objects

The object of this Act is to promote the well-being of children, young persons, and their families and family groups by—

- [...] (b) assisting parents, families, **whanau, hapu, iwi**, and family groups to discharge their responsibilities to prevent their children and young persons suffering harm, ill-treatment, abuse, neglect, or deprivation:
- (c) assisting children and young persons and their parents, family, **whanau, hapu, iwi**, and family group where the relationship between a child or young person and his or her parents, family, **whanau, hapu, iwi**, or family group is disrupted:

Section 5 General Principles to be applied in exercise of powers conferred by this Act

Subject to section 6, any court which, or person who, exercises any power conferred by or under this Act shall be guided by the following principles:

- (a) the principle that, wherever possible, a child's or young person's family, **whanau, hapu, iwi**, and family group should participate in the making of decisions affecting that child or young person, and accordingly that, wherever possible, regard should be had to the views of that family, **whanau, hapu, iwi**, and family group:
- (b) the principle that, wherever possible, the relationship between a child or young person and his or her family, **whanau, hapu, iwi**, and family group should be maintained and strengthened:
- (c) the principle that consideration must always be given to how a decision affecting a child or young person will affect—
- [...] (ii) the stability of that child's or young person's family, **whanau, hapu, iwi**, and family group:

Section 208 Youth Justice Principles

Subject to section 5, any court which, or person who, exercises any powers conferred by or under this Part or Part 5 or sections 351 to 360 shall be guided by the following principles: [...]

- (c) the principle that any measures for dealing with offending by children or young persons should be designed—
- (i) to strengthen the family, **whanau, hapu, iwi**, and family group of the child or young person concerned; and
- (ii) to foster the ability of families, **whanau, hapu, iwi**, and family groups to develop their own means of dealing with offending by their children and young persons:
- (f) the principle that any sanctions imposed on a child or young person who commits an offence should—
- (i) take the form most likely to maintain and promote the development of the child or young person within his or her family, **whanau, hapu**, and family group; [...]

Section 327 Functions of Lay Advocate in the Youth Court

The principal functions of a lay advocate appointed under section 326 are as follows:

- (a) to ensure that the court is made aware of all cultural matters that are relevant to the proceedings:
- (b) to represent the interests of the child's or young person's **whanau, hapu, and iwi** (or their equivalents (if any) in the culture of the child or young person) to the extent that those interests are not otherwise represented in the proceedings.

STORIES FROM THE YOUTH JUSTICE SECTOR

Pasifika Court

A poem by Jim Boyack
For Ida, Helen and Sylvia

Balloons are floating
Red and blue
Blue and red
Tongan and
Samoan balloons
Where the end is the
Means, the means the
Only possible outcome.
It's
A matter of observation
And belief, a matter of
Faith, yes, watching it all,
In confetti-like abundance,
This dance of flowers all
Sweeping every wind-shift
Around the sky, around
This gentle court, all the
Blue and red,
Red and blue
Balloons in the sky
Filled with hope
A laughing gas
Smiles everywhere,
Even some tears,
Everyone in
On this new thing
In court, this
Pacific Ocean Court,
This place
Truth appears
Without fear,
Here, where we're
All together now.

14 May 2012

Jim Boyack, former Youth Advocate, has recently launched a compilation of poetry entitled Gracing The Wind.

At the Youth Court on 1 April

A story shared by Youth Advocate Fergus More

A client of mine had been in the Youth Court system for a few months, pending completion of a Family Group Conference plan.

The client faced an inordinate number of shoplifting charges and wilful trespass type offences. He was with a number of other young offenders and had minimum family support.

Initially his progress was problematic, and there were incidences of breach of bail.

However, once he had professional supports in place, and in particular a supported bail social worker, he knuckled down. As my youth client progressed through the plan, he began to have insight and it was looking as though he was going to achieve the ultimate aim of a section 282 discharge, presupposing he did not breach his good behaviour bond. He volunteered to undertake a number of hours working at a local restaurant which was giving him good experience within the industry.

Having received favourable reports, I wished to meet with him prior to his Court attendance to go over his progress reports.

As he came up the stairs, he informed me he had to tell me something. I asked him what it was about and he suggested that we wait until he sat down in my room. He had his social worker with him.

He then proceeded to tell me that the previous evening he had been out until 11 o'clock, which is in breach of his curfewed hours. I asked him why was he out and what was he doing. He admitted that he had been thieving with others.

I was gutted for him. I had thought that he had been making good progress through his plan.

He then looked at me and said two words that enlightened me in many respects:

“April fool.”

That comment brightened my day. I repeated the story to the Youth Court—who were all duped (and then delighted) as well.

My client received a Section 282 discharge.



YOUTH JUSTICE RESEARCH AND PUBLICATIONS

COMMENTARY

In this edition's selection of resources, we have the pleasure of introducing a number of particularly useful resources coming out of New Zealand. We highlight for your attention two articles featured in the *New Zealand Law Journal*: one relating to **s 333 psychiatric and psychological court reports**, and the other relating to **young female offenders**. We further draw your attention to Ziyad Hopkins' paper regarding the need for routine use of **Youth Advocates**.

This selection of resources also features two papers that argue for **the inclusion of 17 year olds in the youth jurisdiction**: one from a New Zealand perspective, by JustSpeak's Emily Tombs and one a detailed report commissioned by the Governor of New York State. These reports are timely, as the question of raising the age for accessing the youth jurisdiction is currently being considered by Cabinet.

NEW ZEALAND

What every judge and lawyer needs to know about s 333 psychiatric / psychological court reports

Authors: Charlotte Best, Dr Ian Lambie, Dr Julia Ioane, Judge Andrew Becroft and Chris Polaschek

Available: [2016] 1 NZLJ 24

Abstract: "This paper describes the purpose of s 333 reports along with the fundamental principles of a good s 333 report. In order to ensure the best outcomes for young offenders it is not enough for psychologists and social workers to understand their recommendations; those who use these reports—judges and lawyers—must also. This paper will outline some of the key criminogenic factors characteristic of the young offender population, demonstrating why a s 333 report is useful in addressing both the legal aspects of the young person's offending behaviour; and equally important, the rehabilitative needs of the young person. We will also provide an overview of how s 333 reports can be best utilised within New Zealand's youth justice system."

Who are young female offenders?

Authors: Charlotte Best, Dr Ian Lambie and Dr Julia Ioane

Available: [2016] 2 NZLJ 69

Abstract: "Offending by young females has become a topic of concern for the public and professionals alike over the past decade. Headlines such as "Schoolgirl violence a concern" (Cassandra Mason and Sandra Conchie

Bay of Plenty Times (8 July 2013)) and "Danger in ignoring violence in girls" (Lyn Humphreys <www.stuff.co.nz> (21 May 2012)) demonstrate an increasing awareness that young females are contributing to overall youth justice statistics in a way that is far from insignificant. The aim of this paper is to provide insight into the population of young female offenders, in order to better assist the professionals who encounter them within the youth justice system. While young female offenders may be a comparatively small offending population, this paper will demonstrate that it is essential that their specific needs are not overlooked within the New Zealand youth justice system."

Diverted from Counsel: Filling the Rights Gap in New Zealand's Youth Justice Model

Author: Ziyad Hopkins

Available: <http://www.fulbright.org.nz/publications/diverted-from-counsel-filling-the-rights-gap-in-new-zealands-youth-justice-model/>

Abstract: "Despite the well-earned positive international reputation of New Zealand's youth justice model, many young New Zealanders miss out on legal advice. Approximately 80% of youth charges are addressed informally, before court proceedings and the appointment of a lawyer. Drawing on interviews and observations from all phases of youth justice, the report argues that increasing young people's meaningful access to trained Youth Advocates can ensure their individual rights when faced with state intervention whilst also promoting youth development. The report recommends five specific actions that can align New Zealand's youth justice sector with principles expressed in CYPFA; the UN Convention on the Rights of Children; and positive youth development:

- Appoint a Youth Advocate to each child or young person within 24 hours of arrest
- Require the presence of a Youth Advocate for all police interviews with young people
- Provide a legal-advice scheme for young people offered alternatives to prosecution as well as independent oversight of the alternative action programme
- Invite Youth Advocates to each "intention to charge" family group conference
- Update and promulgate practice standards for Youth Advocates". (website)

JustSpeak: Extending the age of criminal majority

Author: JustSpeak

Available: <http://justspeak.org.nz/wp-content/uploads/2012/06/ExtendingthejurisdictionoftheYouthCourt.pdf>

Abstract: "When New Zealand's current model of youth justice was introduced by the passage of the Children, Young Persons and Their Families Act 1989 (CYPF), it was innovative, "world renowned" and, a "new paradigm shift". Through time, our resistance to raising the upper age to include 17 year olds within Youth Court jurisdiction has put New Zealand out of

YOUTH JUSTICE RESEARCH AND PUBLICATIONS

step with domestic legislation, international obligations and comparative international jurisdictions. To continue to promote a youth justice system based upon fairness, empirical evidence, decarceration, and community and economic wellbeing, New Zealand should extend the Youth Court jurisdiction's upper age to, at least, include 17 year olds. Children should not be treated as adults by the justice system. To become a world leader once more New Zealand should consider raising the age to 25, when young people's brains are fully developed."

Using Integrated Administrative Data to Identify Youth Who Are at Risk of Poor Outcomes as Adults

Authors: New Zealand Treasury

Available: <http://www.treasury.govt.nz/publications/research-policy/ap/2015/15-02/ap15-02.pdf>

Abstract: This paper summarises findings from an analysis of administrative data seeking to identify the characteristics of young people aged 15 to 24 who are most at risk of poor longterm outcomes. The research is part of a broader 'social investment approach' by government agencies seeking to target services more effectively towards those most at need and reflects the recognition that such an approach requires better evidence about who these at-risk groups are. The analysis identifies those characteristics in the administrative data that are most predictive of a range of future poor outcomes and how this changes over the course of a young person's entry into adulthood and identifies groups of young people at particular risk at different ages.

Hearing The Voices Of Our children

Author: Deborah Morris-Travers

Available: <https://www.youtube.com/watch?v=dxnKtVHEmWg>

Abstract: Deborah is National Advocacy Manager at UNICEF NZ. For 12 years she has been advocating for improvements in the wellbeing of children. Deborah's

talk, given at a TEDx event, addresses the place of children in our society and how we build communities that enable all children to thrive.

"We must be constant in our calls on the Government to meet its obligations to our children..."

AUSTRALIA

Fetal Alcohol Spectrum Disorders, Expert Evidence and the Unreliability of Admissions during Police Interviews

Author: Ian Freckleton

Available: (2016) 23(1) Psychiatry, Psychology and Law (in press)

Abstract: "It has been recognised for over a decade that Fetal Alcohol Spectrum Disorders (FASDs), if not identified, can result in miscarriages of justice by reason of profoundly reducing the culpability, and on occasion even the responsibility, of criminal offenders. The potential for such disorders to result in the unreliability of admissions and confessions to police (which may be vital pieces of evidence against accused persons) had also been recognised in principle. However, the decision of the Privy Council in *Pora v The Queen* [2015] UKPC 9 provides an authoritative legal precedent for recognition of the fact that questioning by police has the potential to yield unreliable and confabulated confessions from persons with FASDs. This highlights the need for all sectors of the criminal justice community to be alert to the presence of relevant impairments arising from pre-natal exposure of offenders to alcohol. The decision of the Privy Council also contains salutary warnings against preparedness of experts to go beyond the parameters of their expertise and to descend into detective work and advocacy."

Predictors and correlates of re-incarceration among Australian young people in custody

Authors: Devon Indig, Amie Frewen and Elizabeth Moore

Available: [2016] 2 NZLJ 69

Abstract: "The aim of this paper is to describe the predictors and correlates of previous incarceration and re-incarceration among a sample of 319 young offenders in New South Wales, Australia. At baseline, most (78%) participants had been previously incarcerated and after 18 months follow-up, 50% of participants were re-incarcerated in either adult or juvenile custody.

Significant correlates of any previous incarceration included heavy alcohol consumption, cannabis dependence, attention deficit hyperactivity disorder and possible borderline intellectual disability. Significant correlates of re-incarceration within 18 months included heavy drinking and using cannabis. Heavy alcohol consumption and cannabis use are important risk factors for recidivism among young offenders. More research is needed to determine the nature of this association. Evidence-based interventions that address alcohol and cannabis use among this high risk population are needed."



YouthLaw
Aotearoa

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YOUTH JUSTICE RESEARCH AND PUBLICATIONS

UNITED KINGDOM

Community-Based Recovery and Youth Justice

Author: Brian G. Sellers

Available: (2015) 42(1) Criminal Justice and Behaviour 58

Abstract: “Four well-known delinquency intervention and prevention programs remain both publicly and politically popular regardless of a large body of evidence-based research revealing their ineffectiveness in promoting a lasting desistance from youth violence and crime. Scared straight programs, Drug Abuse Resistance Education (D.A.R.E.), youth boot camps, and secure large-scale, custodial juvenile correctional facilities overemphasize offender “risk management and maintenance” as opposed to individual, group-based, and/or collective well-being. This article identifies the values that these youth justice initiatives reflect, and explains how these values further (or forestall) offender desistance. Evidence-based alternatives consistent with the value orientation of therapeutic and restorative programming are also evaluated.”

Reducing reoffending: furthering our understanding

Source: Youth Justice Board for England and Wales 2015.

Available: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479708/Reoffending_Furthering_Our_Understanding.pdf

Abstract: The Youth Justice Board (YJB) began a three-year Reoffending Programme in 2013/14 in order to:

- Help drive and support YOT efforts to reduce local reoffending rates
- Develop a better understanding of the nature of reoffending and the drivers behind it.

The YJB Reducing Reoffending Programme is now in its third year. This report provides an update on progress to date along with summaries of learning from national and local data, practice and research.

Re-imagining Justice for Girls: A New Agenda for Research

Author: Gilly Sharpe

Available: (2016) 16(1) Youth Justice 3

Abstract: “This article argues that justice for girls has been narrowly conceived as the delivery of gender-specific interventions within a correctional framework. Sharpe contends that the translation of feminist pathways research into gender-specific programming (GSP) has inherent logic flaws and that GSP makes unwarranted assumptions about girls’ routes into and out of offending. In addition, by translating girls’ victimisation histories into individualised intervenable risks/needs, state welfare (non-)responses to them are ignored. I argue that a new feminist research agenda is required which implies a more expansive conceptualisation of

investigates meso-level welfare institutional cultures and practices with troubled girls.”

The Resilience Motif: Implications for Youth Justice

Author: Anne Robinson

Available: (2016) 16(1) Youth Justice 18

Abstract: “Resilience has not impacted greatly in youth justice to date, yet holds great promise for practice. This article explores salient features of thinking around resilience, in particular Michael Ungar’s research on how young people search for power and identity using whatever resources they can access. This perspective reframes many behaviours conventionally viewed as deviant or risky, arguing that a young person ‘behaving badly’ may at the same time be drawing on strengths, skills and capacities. The opportunities and challenges for practice lie in collaborative work to enable young people to use these strengths, skills and capacities to create more positive futures.”

Expunging Juvenile Criminal Histories: Towards a ‘Clean Break’?

Author: Nigel Stone

Available: (2016) 16(1) Youth Justice 71

Abstract: “This article discusses whether and to what extent a young person’s juvenile criminal record can validly follow them into adulthood, whether in further criminal prosecution or for such purposes as employment, and how to manage any tension between the young person’s rehabilitation and the interests of public protection and legitimate safeguarding precautions.”

UNITED STATES

Final Report of the Governor’s Commission on Youth, Public Safety and Justice: Recommendations for Juvenile Justice Reform in New York State

Authors: Governor’s Commission on Youth, Public Safety and Justice

Available: <http://cfc.ncmhjj.com/final-report-of-the-governors-commission-on-youth-public-safety-and-justice/>

Abstract: Governor Cuomo instructed the Commission on Youth, Public Safety and Justice to develop a concrete plan to raise the age of juvenile jurisdiction in the most effective and prudent manner possible, and to make other specific recommendations as to how New York State’s juvenile and criminal justice systems could better serve youth, improve outcomes and protect communities. The final report is the result of a wide-ranging research effort. It canvasses the current system in New York State, best practices in adolescent justice, raising the age, arrest and diversion, re-entry into the community and collateral consequences of criminal records, among other topics.



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Children and Solitary Confinement: A Call to Action

Authors: Mikah Owen and Jeffrey Goldhagen

Available: (2016) 137 Pediatrics 5

Abstract: In 2011, the United Nations (UN) issued a report calling for the abolishment of solitary confinement for juveniles because it “can amount to torture or cruel, inhuman or degrading treatment.” Although there is no universal definition of solitary confinement, the report defines it as “the physical and social isolation of individuals who are confined to their cell for 22 to 24 hours a day. Despite the UN report, the United States continues to apply the use of juvenile solitary confinement and isolation. This article discusses the prevalence of this practice, and its potential effects on mental health. It provides a number of recommendations for agencies committed to child advocacy.

No Place for Youth: Girls in the Adult Justice System

Authors: Antoinette Davis, Andrea Gentile and Caroline Glesmann

Available: United States National Institute of Corrections library

Abstract: This report is useful for those working with or concerned about girls who are incarcerated in adult correctional facilities. It focuses on the population of girls under age 18 who are confined to adult facilities in the United States. It provides a summary of current research, incorporates the voices of practitioners, and offers recommendations for improving conditions and outcomes for girls who are sentenced to adult facilities.

Reducing Recidivism Interactive Checklists (2015)

Source: Council of State Governments (CSG) Justice Center.

Abstract: "These interactive checklists can help state and local officials to assess whether their juvenile justice system's policies and practices are aligned with research on "what works" to reduce recidivism and to identify opportunities for improvement." (website) There are three checklists each designed for a particular audience: Checklist for Juvenile Justice Agency Leaders and Managers; Ten Key Questions Judges Can Ask to Improve Outcomes for Youth in the Juvenile Justice System; and Three Key Steps Policymakers Can Take to Improve Outcomes for Youth in the Juvenile Justice System.

Reducing Recidivism and Improving Other Outcomes for Young Adults in the Juvenile and Adult Criminal Justice Systems

Source: Council of State Governments Justice Center.

Abstract: "This brief, from the CSG Justice Center, is designed to help state and local officials better support young adults in the justice system. It identifies these young adults' distinct needs, summaries the limited research available on what works to address these needs,

and provides recommendations for steps that policy-makers, juvenile and adult criminal justice agency leaders, researchers, and the field can take to improve outcomes." (website)

Maltreatment of Youth in U.S. Juvenile Corrections Facilities: An Update

Author: Richard A. Mendel

Source: Annie E. Casey Foundation (Baltimore, MD).

Abstract: "This report, released as a follow-up to No Place For Kids (2011), introduces new evidence on the widespread maltreatment of youth in state-funded juvenile corrections facilities. It tells of high rates of sexual victimization, the heavy-handed use of disciplinary isolation and a growing roster of states where confined youth have been subject to widespread abuse."

Selecting and Implementing Evidence-Based Practices: A Guide for Child and Family Servicing Systems

Authors: Cambria Walsh, Jennifer Rolls Reutz and Rhonda Williams

Available: www.cebc4cw.org (California Evidence-Based Clearinghouse for Child Welfare)

Abstract: The mission of the CEBC is "To advance the effective implementation of evidence-based practices for children and families involved with the child welfare system." This guide was designed specifically for child welfare administrators and social services providers to provide information and examples of implementation relevant to those working with children and families in the child welfare system.



Are you aware of research or publications that should be included in this collection?

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