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"Court in the Act"

A newsletter co-ordinated by the Principal Youth Court Judge for the Youth Justice Community

Court of Appeal: Reparation orders against parents – fault and causation not preconditions

In this issue...

A recent Court of Appeal decision* settled the issues surrounding the imposition of reparation orders against parents of young offenders.

Section 283(f) of the CYPFA .

Where the Court is satisfied that any person (other than the young person) suffered-

(i) Any emotional harm; or

(ii) Any loss of or damage to property-

Through or by means of the offence, order the young person or, in the case of a young person who is under the age of 16 years, any parent or guardian of the young person, to pay to the person who suffered the emotional harm or the loss of or damage to property such sum as it thinks fit by way of reparation

Issues:

1. Are parental fault, and a causative link between parental fault and the young person's offending, preconditions for making a reparation order against parents?

2. Should the original High Court dismissal of the Youth Court reparation order of $10,000 still stand?

Background Facts

The case involved the parents of J (a young person). J was a persistent offender, responsible for damages and losses to victims in excess of $100,000. J committed a number of burglaries while on bail and living at his parents' house in 2005. J was sentenced to supervision with residence, and the Youth Court subsequently granted an application by a victim of the burglaries for reparation against the parents. The Youth Court Judge said that J's father should have been more proactive in telling Police when he knew J was in breach of his bail by being out with friends, and being in possession of stolen firearms.

The High Court overturned the reparation order after the parents appealed. It was held that parents could only be liable for reparation if they were at fault, and if there was a causative link between that fault and the offending of their child.

The Court of Appeal held that, while fault will always be a relevant consideration in deciding whether or not to make a parental reparation order, the purpose of a reparation order is compensation, not punishment. The Court concluded that there can be no necessary link between parental fault and a reparation order against parents, if the purpose of reparations is compensation and not punishment. The Court further held that the Bail Act does not impose such a high standard of responsibility on parents, and the statutory scheme of Children, Young Persons and Their Families Act 1989 (CYPFA) does not make parental fault a precondition for a reparation order.

In response to submissions from counsel for the parents, the Court said there was still nothing hindering the ability of the Youth Court to sanction reparation orders against parents where parents have consented to those orders.

Decision: - Parental fault, and a causative link between that fault and a young person's offending are not necessary preconditions for the making of a reparation order against parents under s283(f) of the CYPFA.
However the quashing of original order in the High Court was untouched, as the reasoning was based on an assessment of the total circumstances of the case, not simply the issues of causation and fault. The judge in the original YC case put too much emphasis on the fault of the parents, as they had no obligation to proactively contact Police.

**The Police v Z, X*, 26 February 2008, Court of Appeal, CA 400/07 CA504/07, O'Regan, Robertson and Ellen France JJ

Judge seriously concerned at lack of suitable facilities for intellectually disabled young offenders: *Five years after the enactment of the Criminal Procedure (Mentally Impaired Persons) Act 2003*

A District Court Judge (who is also a Youth Court Judge) resisted sentencing an intellectually disabled young offender to prison, and insisted that CYFS and Corrections and Health work to find an alternative.
This case involved the sentencing of JW (14) in the District Court, on three charges of arson, a 'purely indictable' offence. JW had set fire to 3 schools in October 2007.

At depositions it was found there was a case to answer. Youth Court jurisdiction was not offered under s275 as JW was 14 at the time of the offending (a conviction and transfer to the DC under s238(o) being available **only** to young people 15 years and over). He was then dealt with by a jury warranted District Court Judge (the original Youth Court Judge) after pleading guilty.

1. The following are summarised notes from JW's first appearance for sentence on 5 March 2008: (emphasis added)-

- A psychological report, dated 30 January 2008, described JW as having limited intellectual function, having consumed alcohol and butane before lighting the fire, and as having had a complex and difficult childhood.
- The psychological report also recorded that JW had displayed genuine empathy for the victims of his offending and remorse for his actions.
- The report recorded that JW is vulnerable to the influence of others due to his low level of intellectual functioning.
- JW has a mild intellectual disability and so he is at least a candidate for a Compulsion Order, under the Criminal Procedure (Mentally Impaired Persons) Act 2003.
- While it was agreed that an intensive supportive wrap-around programme for JW was required, because of his age (14) there was nowhere for him to go which would deliver the level of control and intervention required (he would have to be placed with adult men who suffer from intellectual disability).
- **"Clearly, what is missing is a facility to provide care and assistance to young people. He cannot be the only young person in New Zealand who needs this level of support."**
- **"Ordinary members of the community would be astonished to hear the story that is portrayed in the reports that I have. A person from whom the public need protection, at age 14, who cannot be offered any facility, other than jail, to protect the community… and a sentence of imprisonment for a 14 year old with an intellectual disability would be an inhumane response for any criminal justice system.**"

The Judge requested an interagency meeting to be convened to search for an alternative to imprisonment.

2. Notes from 20 March 2008, when the Judge was advised that no alternative could be found:

- Judge Walker made clear he would resist being placed in the position where prison was the only option when 'Health, Community Correction' and 'Child, Youth and Family', CYFS have failed to make provision for the containment of a young offender with intellectual disability. Each conveyed the impression that the responsibility lay with another department.
- The Judge intended to impose a sentence of electronic monitoring, and intensive supervision at a residential programme or other condition of detention to ensure the delivery of effective intervention consonant with the protection of the public.
- The only available address was a residential programme, which would need to be urgently assessed and consent would have to be obtained from its providers (which would be subject to funding).
- CYFS and Corrections and Health need to recognise that they each have a responsibility, and that they need to **'depart from the "silo" approach to funding that too often obstructs appropriate responses by the Court.'**
- The Judge expected to be provided with a suitable alternative on 31 March at sentencing

3. Final appearance: 11 April 2008:
An alternative community-based sentencing was proposed. This would entail intensive supervision and community detention at a residential programme, which would provide a 24-hour secure environment with a one-on-one tracker at all times.

His Honour, Judge Walker commented that the Criminal Procedure (Mentally Impaired Persons) Act 2003 has been in place for 5 years and the failure by the State to provide services for intellectually disabled young persons is discriminatory to those young people.
The Judge also commented that the Ministry of Health had made no contribution to the proposed sentence and that ***'provision of assistance to the intellectually disabled must surely fall to that Ministry.'***

Decision:

The only relevant purposes of sentencing are the protection and rehabilitation of JW.
The Judge took into account the guilty plea and that JW had spent 6 months in custody.
The considerations in relation to ss54(c) and 69(c) of the Sentencing Act 2002 were satisfied in this case.
JW was sentenced to 2 years intensive supervision on the following special conditions:

- To attend any programme or course as directed by the Probation Officer, including Community Mental Health or other health provider.
- To attend counselling or treatment programmes as directed by the Supervising Probation Officer.
- To reside at an address approved by the Probation Officer.

In addition JW was sentenced to serve 6 months community detention at the residential programme with a curfew from 10pm to 5:30am each day of the week, starting 16 April 2008.
The Judge recorded his admiration for the cooperative work of counsel and Corrections and CYFS in this case, which demonstrated the value of a cross-agency problem solving approach.

Application for name suppression granted.

REDUCING THE NZ PRISON POPULATION

Source: Summarised from an article 'How to Reduce the NZ Prison Population' by John D Whitty, National Director of NZPARS in the newsletter Movement for Alternatives to Prison, December 2007 email: info@sharingthecaring.org.nz

**Current statistics are in bold and have been sourced from Report of Mel Smith, Ombudsman, Following a reference by the Prime Minister under s13(5) of the Ombudsman Act 1975 for an investigation into issues involving the Criminal Justice Sector, and the Department of Corrections website www.corrections.govt.nz*

High imprisonment rates in NZ

Serious violent and sexual offenders make up approximately 40% of the prison population in New Zealand. The increase in sentences for these offences accounts for the increase in the prison population.

As at 1 November 2007, the NZ imprisonment rate was *190* per *100,000* of population, * which is more than double the 1980 rate.

Compared with Australia (**129**), Canada (**107***),* England and Wales ***(148***) this rate is high. The USA is an exception and has always had a high incarceration rate (**760 prisoners per 100,000 population in 2006**).

Between 1997 and *2007* the prison population in New increased from **4988 to *8056***.*

Costs of imprisonment

In its Ministerial Briefing (31 October 2007) the Department of Corrections estimated the cost per prisoner at ***$76,639*** per year. Since 2000/1 the expenditure on new prisons and the expansion of existing prisons amounts to over $378 million.

Given that the re imprisonment rates stand at around 29% after 12 months and 37% after 24 months, Whitty asks "are we getting value for money?"

According to Corrections Department figures the re-imprisonment rate may be even higher. Across an entire sample (of 5000 offenders) released from NZ prisons in **2002/2003 49%** were convicted of a new offence and returned to prison at least once during the 48-months follow-up period.

See report at: http://www.corrections.govt.nz/public/pdf/research/Recidivism_Report2008.pdf

How to reduce the prison population

Whitty refers to the Department of Corrections Report "*About time – turning people away from a life of crime and reducing re-offending*", (May 2001) for some possible solutions and strategies:

- Provide support for high-risk new mothers and their families.
- Deal with **conduct disorder** at school entry.
- Identify and **manage high-risk new mothers** and early youth offenders.
- **Day reporting centres** for teenagers who have received a first adult conviction.
- Use **restorative justice** measures such as the family group conference as a means by which offenders and victims can engage in dialogue under controlled conditions.
- Provide **bail hostels**. These are common in England and Wales and are places where people who would otherwise be in prison can be accommodated.
- **Electronic monitoring** as an alternative to remand in custody or a bail hostel.
- **Home detention**, similar to electronic monitoring, with the exception that the accommodation may be at a specified address which may not be at the person's home.
- **Expansion of the use of home detention**. There has been progress on this point. The Sentencing Amendment Act 2007 has introduced home detention as a sentence in its own right; Judges no longer have to grant leave to apply to the parole board to substitute time in prison to Home Detention. Home detention is available to offenders who would otherwise be sentenced to less than two years imprisonment.*
- **Non-residential programmes for serious young offenders** aged 14-17. These could be combined with a curfew and electronic monitoring. The young person would be kept out of prison and directed towards re education, work and resocialisation.
- Increase the use of **residential programmes** such as the Te Hurihanga programme in Hamilton for serious offenders aged 14-17 years. If possible, residential programmes should be offered within the young offender's community, so that the young person can maintain their family contacts and build positive influences into the young people's lives.
- **Residential programmes for serious violent sexual offenders**.
- **Work schemes**.
- **Part-time imprisonment**. It is proposed that offenders are sentenced to spend their nights and weekends in a centre gazetted as a prison. Alternatively part-time prisoners might serve a sentence in the daytime and return home at night.
- **Drug treatment centres.**
- **Alcohol treatment centres** for drink drivers.
- Residential support for at-risk homeless
- **Prison programmes**. There is evidence that treatment programmes can reduce recidivism by 8-15%.
- Better use of **reintegration** measures. It is suggested that all serious offenders coming to the end of their sentence be released on home detention or to a halfway house. This would reduce the numbers in prison and re offending rates.

Whitty cautions against an escalation in prison numbers and believes it is important that we do not allow the **'get tough on crime'** lobby to dominate the debate. Once alternatives to imprisonment are in place, the money spent on housing the increasing prison population could otherwise be better spent on health, education and other constructive alternatives.

Manawatu Youth Driver Programme

On the 15th and 16th of March 2008 the Police Youth Aid and numerous other agencies ran a Youth Driver programme at the Linton army camp. Sergeant Peter Knight and Youth Aid Constabels, Helen Thurston and Vili Kalivati and others organised this community based effort.

Attendees included young people from the army and others referred as part of their 'intention to charge' family group conference plan. Most of the latter involved offences of dangerous driving/excess breath alcohol charges.

The day commenced at 8am at the Palmerston North Police Station with a reminder to the young people attending that there would be a quiz regarding what had been discussed at the end of the day.

After a trip to the undertakers, a mock crash was staged at the Linton Army Camp. This included 90 minutes of rescuing youth from a crashed vehicle.

Talks included those from fire/ambulance and Police representatives as well and an undertaker describing the impact of the death on families of victims and a description of what happens in terms of the body after an accident.

An afternoon speaker was the driver of a farm utility which collided (on a blind corner) with a small farm bike, killing his two infant sons. This man now conducts the actual driving part of the programme.

The schedule also included the showing of a carnage video, and a video on drink-driving penalties.

The first day ended with a discussion on what the young people had learnt, followed by a quiz.

On the second day of the programme, the youth were put into groups.
Group 1 was a drug and alcohol workshop, group 2 was a defensive driving course and group 3 was licence tests.

Certificates were handed out to the participants at the end of the second day.

Fetal Alcohol Spectrum Disorder (FASD): - a mitigating factor in NZ?

Source: Reported in ***News & Views, The Newsletter of Alcohol Healthwatch***
Issue 4, December 2007

Judge Anthony Wartnik and Kathryn Kelly from Washington recently completed a presentation circuit in New Zealand and Australia. Their central aim was to raise awareness of FASD and its implications in terms of youth justice. They would like those involved in youth justice sectors to be trained to understand the needs of these individuals and to understand what strategies work to improve outcomes and reduce offending.

> *" FASD may be a key causative factor of offending that is being overlooked"*
>
> Judge Becroft

FASD is a result of exposure to alcohol prior to birth. This exposure can cause brain damage, which affects the way an individual thinks and functions throughout life. A FASD affected person may have difficulty understanding abstract concepts, generalising one rule to another, planning and predicting outcomes and understanding social norms. These individuals may be impulsive and may lack judgment, struggle in society and often engage in anti-social behaviour. (For more information see Court in the Act issues 31, 27. http://www.justice.govt.nz/youth/court-in-the-act/issue-31.html#6)

One study of 400 FASD affected individuals in the USA found that 60% had been in trouble with the law and a Canadian study of young offenders found that 23% assessed over a one year period met the diagnosis for FASD. In the USA, the courts are now accepting FASD as a non-statutory mitigating factor and are beginning to hold lawyers accountable for not raising FASD, where it is known or suspected.

Judge Becroft said that based on these American figures the New Zealand courts could be seeing 70 youth affected by FASD per year. This is a cause for concern -FASD may be a key causative factor of offending that is being overlooked.

Problems with 'Anti-Social Behaviour Orders' in England and Wales

Summarised from an article "The Use of ASBOs against young people in England and Wales: lessons from Scotland" by Stuart Macdonald and Mark Telford in Legal Studies, Vol 27, No4, December 2007, pp604-629

The Anti-Social Behaviour Order, ASBO was introduced in England and Wales in 1999 as a measure to tackle anti-social behaviour.

The ASBO was actually designed for use against adults, but up to the end of 2005, over 40% of all ASBOs issued in England and Wales were against 10-17 year olds. An ASBO may be imposed on any individual who has acted in an anti-social manner and the prohibitions imposed by an ASBO must be necessary to protect people from the defendant and may cover any defined area within England, Wales or Scotland.

'The 'devils' and 'angels' dichotomy is 'impossible to sustain' as offenders and victims are often the same people'

Stuart Macdonald and Mark Telford

In England and Wales the order is available against those aged 10-15 in contrast to Scotland where the ASBO has only recently been made available against 12-15 year olds.

Macdonald and Telford outline several concerns about the use of the ASBO against young people in England and Wales. They examine the key principles at the heart of the Scottish children's hearing system; participation, liberalism and welfarism, and in the light of those principles compare the ASBO regime in Scotland to that in England and Wales.

Five Areas of Concern

1. The readiness to resort to ASBOs

Children in England and Wales often receive the order even though there are other less formal, more constructive forms of intervention. In England and Wales there is an existing criminal offending framework which triggers the intervention of the local Youth Offending Team (YOT), after a young person is issued with a warning. The YOT then assesses the child's needs and identifies programmes which may be employed to address those needs in order to prevent further offending. This framework exists to divert children away from the criminal justice process. Because the ASBO is a civil order it falls outside the above system and it is possible to obtain an ASBO without first consulting the local YOT. A Youth Justice Board inquiry found that YOTs were not consulted in one-third of cases. This led to a memorandum from the Home Office recommending that YOTs be consulted by those taking out an ASBO to ensure that other measures are also taken, if appropriate. Even when consulted many YOTs were dissatisfied at their involvement in the decision-making process and the lack of weight given to their contributions. Many YOT practitioners believed that the ASBO is used prematurely and that the order may be seen by some enforcement agencies as a way of fast-tracking problem children into custody.

2. The forum for ASBO applications

The Scottish system uses a non-court system for children's hearings. In England and Wales children charged with a criminal offence appear before the Youth Court. However, since ASBOs are civil orders, applications for stand-alone orders are heard in the adult Magistrates Court, where the proceedings are open and there are no automatic restrictions on press access or publication of the young person's identity.
In Scotland ASBO hearings are conducted in the Sheriff Court. This Court is presided over by a single, senior Judge, which significantly diminishes lay involvement in the ASBO process.
The choice of forum for ASBO applications against young people fails to make 'adequate concessions for their youthfulness.' In England and Wales this could be remedied by reclassifying the ASBO as a criminal order.

3. The terms of the ASBO

Concerns have been raised about the prohibitions imposed by ASBOs; first, as to preventative prohibitions and secondly as to the negative nature of the prohibitions imposed.
Preventative prohibitions such as curfews, non-association conditions are difficult to reconcile with the principle of welfarism which is central to the children's hearing system.
Preventative prohibitions may also breach children's rights under the European Convention for the protection of Human Rights and Fundamental Freedoms, ECHR, for example they may ban

ASBOs continued

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the conduct necessarily prior (assembling prior prohibited act) to the repetition of the anti-social behaviour. To this extent, orders possibly violate the ECHR.
In addition in England and Wales, the ASBOs must last for at least 2 years, - a long time in the life of an adolescent.

Secondly, there is concern that the ASBO order must be negative and cannot place positive requirements on an individual and so can do little to address the underlying causes of behaviour.

4. Publicising the details of the ASBO
As the ASBO is a civil order, in England and Wales the presumption in favour of anonymity is reversed in favour of disclosure. In Scotland there is a strict ban in the children's hearing system on any publicity which may identify a child. In Manchester, the so-called 'ASBO capital', the Council there has adopted an uncompromising 'name and shame' approach. This public naming and use of colourful language such as 'Ban on Devil Kid, 10' is 'emotive, sensationalist and stigmatising', and goes further than allowing dissemination of information needed by the community to assist with policing an order.

5. Custodial net-widening
In England and Wales persistent young offenders breaching an ASBO may receive a custodial sentence, while Scotland has expressly provided that custodial sentences cannot be imposed on under-16 year olds who have breached an ASBO.
In 2005 there was concern that a surge in numbers of young people in custody in England and Wales was due to the popularity of the ASBO.
Given the readiness to resort to the ASBO in England and Wales is it possible that the ASBO could widen the custodial net for young people.
The lack of integration with the normal juvenile justice system means that the ASBO regime in England and Wales has few restrictions against custodial sentence net-widening. In contrast Scotland has a number of protections against escalations in sentencing, firstly the breach process is conducted in the children's hearing system and secondly the reality that the number of places in secure accommodation are limited.
Conclusion
Since the murder of James Bugler, public and political attitudes to young offenders have hardened and young offenders are seen as 'devils'.
The ASBO regime reflects this perspective as its use has been encouraged against young people.
The authors argue that the 'devils' and 'angels' dichotomy is 'impossible to sustain' as offenders and victims are often the same people. Children who offend might easily have come to the attention of officials due their care and protection needs. A welfare approach is most appropriate, despite the fact that the statutory criterion for the imposition of an ASBO does not include welfare considerations.
The ASBO disregards liberalism and the view that criminal justice interventions often do not decrease offending, but instead often backfire and risk unnecessarily stigmatising young people and exacerbating the bad behaviour. Most young people will age-out of offending and anti-social behaviour, and yet the ASBO regime sits alongside diversionary schemes, marginalising the YOTs and allowing the order to be resorted to easily.
By hearing an ASBO application in the adult court, the principle of participation is undermined as little is done to help the young person understand or participate in the proceedings.
Macdonald and Telford consider that greater weight could be given to the principles of welfarism, participation and liberalism by making three changes to the ASBO regime in England and Wales.

1. Reclassify the order as criminal. The scheme of reprimands and warnings would then apply and the young person would only be eligible for an ASBO if he/she had received a warning.
2. An independent agency should be established to oversee the prosecutorial functions in relation to youthful criminal anti-social behaviour. The prosecutorial official would have a wide discretion to determine whether formal measures might be required.
3. Orders should only be imposed by 'youth panels'. The youth panel would adopt an informal approach, victims would attend, but the primary consideration would be the young person's welfare.

Crimes committed by young offenders during school day!

The Canadian Research Institute for Law and the Family (CRILF) profiles youth offenders.
(Source: Summarised from ' A profile of youth offenders in Calgary: An Interim report: Executive Summary')

Report may be accessed at http://www.ucalgarly.ca/~crilf/sub/research.html

The Canadian Research Institute for Law and Family has produced an interim report, *A profile of youth offenders in Calgary: An Interim Report,* after a three-year study of 123 youth. The study's aims included the development a model for predicting why some Calgary youth become serious habitual offenders (SHOs) while others did not. This aim was the subject of the first year of the report. Three questions directed this research:

1. What are the contemporary trends of youth crime in Calgary?
2. How do the criminal histories differ between the four groups (see below) of offenders?
3. What characteristics (i.e. demographic, familial, educational, community, interpersonal) and experiences (delinquency, substance abuse, gang involvement) differentiate youth in Calgary with various levels of involvement with the law?

Method

Interviews, probation file reviews and reviews of Justice Online Information Network (JOIN) records were conducted with youth belonging to four groups:

- **Serious Habitual Offenders** (SHOs)
- **Chronic offenders**: Youth with five or more substantive criminal incidents for which they have been found guilty.
- **One-time offenders**: Youth who have one substantive criminal incident for which they have been found guilty.
- **Gateway participants**: Youth who have been diverted pre-charge to Gateway, an extrajudicial measures (EJM) programme.

Summary of findings

Crime/delinquency in Calgary's youth offenders

Offending generally matched commonly reported patterns regarding youth offenders:

- Most offenders were males around 16 years of age.
- Property offending was the most common offence type.
- Males were more likely to have committed crimes against the person.
- More males than females were charged with offences.
- Most of the females were in the Gateway group.
- The SHO group commit the most serious crimes, and while this group represents a small percentage of youth offenders, they are responsible for a disproportionately high proportion of youth crime.

The study also found that criminal involvement escalates at an early age for the SHO group and peaks at 14 which is earlier than the non-SHO groups (peaking at 16). More official measures were taken in respect of the SHO group, although the age for first contact with police was about the same for most groups. Possible explanations offered for this was that the SHOs group might have been involved in more frequent or serious behaviour or that they were found to be in high risk situations.

In addition, for the SHO group there was a tendency to charge the young offender early. The report findings suggested that this was not due to less use of EJMs. In fact SHOs were more likely than non-SHOs to be the recipients of EJMs. Clearly EJMs are used across all groups, but the effects are short-lived for some youth.

Early escalation in offending appears to be accompanied by escalation in seriousness of offence. The SHO group was more likely to be involved in crimes against the person and crimes involving threats and the use of weapons. The Gateway group was more likely to commit minor theft and harassment offences.

Self-reported data (not charge data) indicate that drug-related offending is common. The majority of groups reported the use of illegal drugs (half of the Gateway group, and all of the SHO and chronic group). The more criminally involved young offenders reported the use of harder drugs such as crack and cocaine.

Many youth self-reported carrying weapons to school and in the community, although the use of weapons by young offenders is not common in official records.

The significance of social factors

Family circumstances

One factor advanced for determining whether a young person will become involved in offending or not is their particular family circumstances.
The more seriously involved offenders were more likely to have come from less stable, often single-parent families, to have experienced family violence and been in foster care and to have had involvement with child welfare services. Most had run away from home. In

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Crimes committed by young offenders during school day!...continued

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contrast the Gateway group came from families where the parents were still married, with all of them living with at least one parent.

Negative peers

The young offenders from the SHO and chronic groups were more likely than the Gateway group to associate with older people who were considered 'negative peers' (often met in jail or on the street). This 'negative peer' association included gang involvement for over half of the SHO and chronic offender groups.

Lack of positive adult role models: lack of participation in sports and other activities

The absence of positive adult role models for all groups, apart from the Gateway group, was evidenced by the lack of involvement in sporting or positive leisure activities by the young offenders.

School

Investment in the school decreased with greater criminal involvement. Nearly all of the young offenders (apart from the Gateway group) had been suspended from school in the past.

Timing of offending.

This aspect of the report has been receiving the most attention since its release on 11 March 2008. The report has highlighted that most offending occurs during the first half of the year (which coincides with the second half of the school year in Canada). The explanation offered is that as the year progresses, youth may be less invested in school and may be therefore become susceptible to more negative influences. They then skip school towards the end of the year, or drop out altogether. The conclusion that crimes are committed when young people should be in school was reinforced by data that demonstrate that more youth offending occurs during the week, not the weekend, and during the day, not the evening. Crimes are therefore being committed when supervision is minimal.

Responses to youth offenders

One-time offenders receive mainly community-based sentences and these are followed by few breaches of community-sentence charges, possibly explained by the more stable home environments of these young people. In contrast the SHO and chronic groups received community-based sentences also, but they also received a large number of sentences for breach or failure to comply with those community-based sentences. This may be a result of the difficulty in fulfilling the conditions of these sentences, lack of community stability and an increasing investment in a criminal lifestyle. In turn these breaches of community-based sentences eventually lead to an increased likelihood of a custodial sentence being imposed.

Clearly youth offenders need support and while access to psychological and counselling services is available, it is also clear that '**intensive adult support and positive association'** are lacking for serious young offenders.

Note: Similar research is desperately needed in New Zealand. That said, everything we think we know about youth offending is generally consistent with the findings of this study, except the conclusions about the timing of offences about which we have no information.

Poem by a youth justice facility resident

The author of this is a young offender. She wrote this while in a youth justice residence. It is reproduced with her permission.

God send me an angel to help me please
I'm down on the ground beggin' on my knees
Help me to survive this shit I'm go through
Because there's nothing left that I can do
Fuck it how many times do I have to pray
But god you don't do fuck all
You just watch me as I fall
All you do is watch as I hurt I fall I cry
You don't know how it feels wantin' to die
Your life is so perfect 'coz ur not real
No wonder I can't seem to fuckin' heal
Because I'm prayin' to someone that's not true

And it's all I seem to be able to fuckin' do
I think I'm going crazy must be going insane
But that's what you feel with this intense pain
So this is the only time I'll say this my very, very last
Because all the times I cried you walked straight past
This hurt has taken over my heart
There's no time for a new start
I'm not scared to want to die
And I'm not about to fuckin' lie

Does a Child in Sport Stay out of Court?

Article written by **Constable Russell Smith, Blenheim Community Constable.**

It is difficult to prove the theory that youths actively involved in sport are less likely to be involved in criminal activity. To my knowledge, there is no NZ based study or research to support this idea.

Having said this, having been a policeman for more than 20 years, I have had a good many experiences in dealing with youth crime and can pass on some of the information that relates to it.

Not a young offender. (used with permission).

The vast majority of youths referred to the Police Youth Aid Section do not participate in any form of organised sport. There are always a number of youths who shoplift or do some minor criminal thing no matter what their family background, but they are usually a once only offender. They often get involved in minor crime through peer pressure. It is my firm opinion that youths who repeatedly commit crime do so for several main reasons:

They often come from a dysfunctional family, where parenting skills are poor or completely lacking, leading to low self esteem in the young person.

- Because of the family situation there are no firm boundaries or consequences if they break the rules.
- Because of the family situation life for them is often made more bearable on the street or somewhere other than the family home.
- Because they spend lots of time away from home , they have lots of time to get into mischief and often do because they have no good role models.
- The lack of good parenting means there is no-one to encourage them into anything constructive like playing sport.

This is a bit of a vicious cycle, because without good guidance, these criminally inclined youths will keep on getting into trouble as they don't know any other way of life. Often they don't cope at school, or exhibit bully-type behaviour as a reflection of their home life. This can also lead to more serious criminal behaviour.

Youths who come from a more positive parenting background will often have one or both parents encouraging them to take up sports, skills or hobbies in which they show some promise. The parents concerned will often go to great lengths to ensure that their child attend the training on time, has the right gear, gets transported when necessary to a venue and some of these parents will become involved in administering or coaching their child's sport. Generally speaking, such children are far less likely to become involved in crime.

I believe this is because:

They already come from a supporting (& probably loving) family background (otherwise their parents wouldn't be sacrificing the child's sport etc), so there is generally good self-esteem in the child, meaning they probably have the confidence to have a go and succeed at things they attempt.

Sports and hobbies take up time. An individual is generally supervised and is unlikely to resort to unlawful acts out of boredom or frustration.

Sports encourage the development of agility skills, determination, self-confidence, self-esteem, pride, a feeling of belonging, teamwork and leadership skills. These are all things that are generally missing in individuals who commit crime.

'Jobs for youth' — Poor labour market outlook for some

From – "Jobs for Youth—New Zealand" - ISBN-978-92-64-04185 © OECD, "Summary and main recommendations." http://www.msd.govt.nz/work-areas/children-and-young-people/jobs-for-youth.html

Full copies of the report can be accessed at: http://www.oecdbookshop.org/oecd/display.asp?sf1=identifiers&st1=9789264041868

In 2005 New Zealand agreed to participate in an Organisation for Economic Co-operation and Development (OECD) Thematic Review of Policies to Facilitate School to Work Transitions and Improve Youth Employment. Sixteen countries took part in the review and the OECD review reported to each participating country on their youth transitioning policies and career prospects of youth.

The Ministry of Social Development, Ministry of Youth Development and the Department of Labour co-funded participation in this study. The Ministry of Youth Development led the co-ordination with the OECD.

The labour market performance of young people in New Zealand.

While the youth labour market in New Zealand is very good compared with many other OECD countries, the

Youth Employment continued...

current economic slowdown may reveal some weaknesses that need to be attended to.

There is a group of youth at high-risk of poor labour market outcomes. This includes the 11% of youth aged 15-24 who are neither in employment nor education or training. While this is consistent with the OECD average, it is well behind the best-performing countries such as Denmark, Iceland and the Netherlands. Among this group, Mäori and Pasifika youth are more than twice as likely not to be in training, employment or education as Päkehä youth.

One recommendation in terms of education is to make reducing early school-leaving a priority. The report continues that a number of practices in secondary schools have contributed to low retention rates and disengagement from education.

- The granting of exemptions to some young people from attending their last year of school.
- Suspensions of difficult young people, or relocation of them to alternative schools.
- Lack of "vocational route" in secondary schools

<u>Suggested measures to improve retention rates in secondary education and ensure that young people have the basic skills required for the labour market include:</u>

- Increasing regular participation in quality early childhood education and care and ensuring sustained intervention
- Abolishing of early leaving interventions
- Consider raising the school leaving age
- Extension of suspension reduction initiative to more schools. Secondary schools have used suspensions as a tool to exclude difficult students, which in turn then contributes to early school drop-out rates in New Zealand.
- Improvement in the educational content of alternative schools. Some provide limited educational content and employ social workers, rather than teachers and do not always provide the basic skills required for the labour market.
- Ensuring that the 'Gateway' programme across schools is consistently monitored, evaluated and additional funding is provided for it. This programme helps secondary students experience the workplace, but as the organisation of the programme is left up to the decision of individual schools, there is unequal provision across the New Zealand.

The report also discusses improving the scope of vocational education at the tertiary education level.

<u>Potential barriers to youth employment</u>.

While there are currently few barriers to hiring youth given the buoyant labour market, the report considers the possible impact of the abolition of the sub-minimum wage for 16-17 year olds. It is suggested that as this coincides with a slowing economy, such a move may negatively affect the employment prospects of low-skilled youth.

Finding the 'Lost Tribe' - Non-enrolled children

Late last year, the Ministry of education released figures revealing that over 5000 children are currently not enrolled at schools. Children under 15 years must legally be at school. This information had become available following the implementation of the new computerised enrolment monitoring system 'ENROL' which is administered by the Ministry of Education. This group of non-enrolled students has been dubbed by media commentators as the "Lost tribe."

"Non –enrolled children 'unexploded human time bombs'"

Judge Becroft

A primary concern is that truancy and non-enrolment may be the first step on the road to offending. Documents released to the Sunday Star-Times show that the number of "lost tribe' children is increasing at a rate of 8% each year. Principal Youth Court Judge, Andrew Becroft says "they are completely lost off the hook" and has called for action on these lost children, who make up 80% of the serious offending cases in the Youth Court (*reported on 17 February 2008, Sunday Star Times*). Judge Becroft said that failing to address this problem puts the community at risk, as these children are more likely to drift into crime. 'We are talking here about unexploded human time bombs...aggressive, lacking victim empathy...If there was a king-hit to reduce youth crime (there isn't) – the first step would be to keep every young person in New Zealand involved in education or alternative education or a job, until at least the age of 16.' (*source: Human Time Bombs, Sunday Star Times, 17 February 2008*)

For the Ministry of Education's response, see page 11.

Non-enrolled Students: Ministry of Education Response

*The "**Court in the Act**' Editors asked for the Ministry of Education's response to this issue*

We are grateful to the Ministry of Education for providing us with the following information:

Fact Sheet:

Non-enrolled students and ENROL

Background

For a long time, schools used a paper-based system to transfer student enrolments from one school to another. It became increasingly clear that the system was inefficient and slow to show up problems.

As a result, schools and truancy services were often not alerted for quite some time, if at all, when a student transferring between schools did not enrol at their destination school.

To improve this situation, the Ministry of Education introduced ENROL, an electronic enrolment tracking system, in 2006.

About ENROL

ENROL was introduced into all secondary and intermediate schools from 2006 and all other schools from this year. All remaining schools including primary, special, composite/area, wharekura and kura kaupapa schools received training in Term 3 2007 and are now using ENROL. By October 2007, ENROL was in place in all schools in New Zealand, including private schools.

ENROL works like this: if a student under 16 leaves a school to go to another New Zealand school, ENROL tracks the student's enrolment record for 20 days. If after 20 days the student has not been enrolled in another school, ENROL automatically informs the Non-Enrolment Truancy Service (NETS), who begin trying to find the student.

About the missing students

The number of students recorded in ENROL as not enrolled changes daily. Of the 750,000 students in New Zealand schools there are always some who are changing school either because their family has moved house, they have gone to live with a different caregiver or they have been excluded from a school.

Because ENROL is new, schools are still getting used to the time constraints involved in enrolling a student within 20 days. As a result about half the number of students listed as not enrolled on any given day are actually at school but have not been entered into ENROL. Another 25 percent have left New Zealand.

Each day, hundreds of cases are resolved, either by finding the student and placing them in a school, or by confirming the student is already at school. Each day, new cases come in. So it's important to realise that the number of non-enrolled students given is a snap-shot of one day, and does not necessarily mean that those students have been out of school long-term. The most you can say is that they have not been enrolled by a school in the past 20 days.

During 2008 (week ending 19 April) the Ministry and its contracted provider have been working to locate students and have been able to identify 5,346 students as already enrolled in school, and 4,087 students as confirmed overseas.

How many students are currently showing up as non-enrolled?

The figure for December 11, 2007, was 6334. Of this about 50 percent are likely to be at a school which has not entered that fact into ENROL yet. Another 25 percent are likely to be out of New Zealand. This left about 1600 students not in school as of December 11. Again, this figure does not represent long-term non-enrolment – these students may have been out of school as little as three weeks.

What break-downs can you give in terms of regional data or the ethnicity or gender of these students?

None. As previously stated, the students who make the up the non-enrolled figure changes daily. Once they are identified by NETS they are generally placed in a school, taking them out of the pool of non-enrolled children.

What are the trends for non enrolled students?

As it is only approximately six months since all schools have been using the ENROL system it is too early to determine the trends for students that are non enrolled.

Improving use of the ENROL system by schools and the Ministry help to identify more quickly and accurately those students that are not enrolled in school. The Ministry is continuously notified through the ENROL system of students that may not be enrolled in school.

(Continued on page 12)

Non-enrolled Students: Ministry of Education Response

(Continued from page 11)

The Ministry will continue to monitor and analyse notification levels over the next two years, as ENROL beds in, to determine national enrolment patterns, and respond with appropriate support for students confirmed as not being enrolled in school.

How many children were identified as non-enrolled at the end of 2007?

The Ministry estimates that over a three month period there are 500-600 students that are non enrolled, and require assistance to return to education. This is a continuous number also as new students are identified, and other students are assisted. The numbers of students may peak towards the end of the year as confirming new school placements close to the end of the school year can make enrolment more difficult. At the end of last year the Ministry estimated 650-700 students were non enrolled and required assistance.

What happens to ensure students are enrolled in school?

Ministry staff and the Ministry's contracted provider's staff are responsible for locating students and where necessary assisting a return to education. Staff work alongside students, their families, schools, and other agencies to discuss and facilitate a return to school.

What is the Ministry doing about non-enrolled children and long-term truancy?

We have a number of initiatives in place to try to reduce the number of children out of school long-term. ENROL will, when part of business-as-usual at all schools, make it much easier to prevent non-enrolment by alerting truancy services faster and provided better contact information on students. Already, despite the large number of 'false positives' shown by ENROL, truancy services are seeing a reduced time to identify and place non-enrolled children.

We have 85 district truancy services working around New Zealand to bring truant children back to school and stop them joining the non-enrolled list.

We have also run a number of prosecution pilots, where schools are supported to prosecute the parents of long-term or frequent truants and non-enrolled students.

Schools taking part report a positive result from prosecutions, with many cases resolved before they reach court. About 30 parents have been prosecuted in the past two years.

Prosecutions are taken by the school under the Education Act 1989.

As well as dealing with truant and non-enrolled children, the Ministry of Education is working with schools on issues of student engagement and transition between phases of schooling to identify and mitigate risk factors which can lead to long-term truancy and non-enrolment.

Links Between Diet and Behaviour – The influences of nutrition on mental health

Source: Report of an inquiry held by the Associate Parliamentary Food and Health Forum "The Links Between Diet and Behaviour– the influences of nutrition on mental health" , www.fhf.org.uk. Members of the inquiry team were Lord Rea, Chairman of the Food and Health Forum; his fellow Officers, Earl Baldwin of Bewdley, Dr Ian Gibson MP, Baroness Gibson of Market Rasen and Baroness Miller of Chilthorne Domer, and the Countess of Mar.

January 2008

This report from the UK contains the results of an inquiry held by the Associate Parliamentary Food and Health Forum (the Forum), an "Associate Parliamentary Group". The Forum has parliamentary and non-parliamentary members, including consumer groups and the food and drink industry. It exists to facilitate discussion between Parliamentarians and non-parliamentarians on food and health issues.

The primary focus of the report is the influence of essential fatty acids, (EFAs) on mental health and behaviour. The Forum called for evidence on the effect of the consumption of EFAs on mental health and behaviour. In particular evidence on which aspects of brain function were influenced by EFAs (eg. mood, memory, impulsivity, aggression), the optimal daily intake and the ideal balance of omega-3 and omega-6.

The report discusses eight studies involving research on violent offenders. Research in the USA since 1995 demonstrated a 50% reduction in violence amongst substance abusers given omega-3. Increased linoleic acid (omega-6) consumption correlated with increased homicide in various countries including the UK, Australia, Canada, Argentina and the USA.
A trial conducted in 1996-7 in Aylesbury tested the hypothesis that a change in diet could reduce the incidence of recorded offences by young offenders in prison. The results showed that those supplied with nutrients had a 26% reduction in the rate of disciplinary incidents and 37% decrease in the rate of more severe offending. This nutritional approach offers a cost effective way to tackle anti-social and criminal behaviour. A similar trial was commissioned in Holland. In that trial, while total numbers of reports dropped for those receiving supplements, other subjective measuring of aggression and psychological functioning showed no significant change.
The Home Office has decided to follow the studies in Aylesbury and will conduct larger trials in 3 institutions holding juvenile offenders.

It is now established that certain EFAs form an important part of the cellular structure of the brain and in maintaining its normal functions. Deficiency of omega-3 EFA is associated with certain mental and behaviour disorders, such as ADHD, dementia, dyspraxia, greater impulsivity and aggressive behaviour.

Recommendations relating to young offenders

The report makes several relating to young offenders:

- There should be further publicly funded research into the evidence regarding the links between nutritional status and childhood disorders, depression, aggressive and anti-social behaviour.

- Consideration of the outcome of the next trial of nutritional supplements in Young Offender Institutes should be a priority for the National Offender Management Service (NOMS) given the continuing concern about the mental health of prisoners, particularly young offenders at risk of self-harm and suicide.

- Any dietary intervention that could be used to improve the behaviour and mental well-being of offenders held in custody should be given serious consideration by the NOMS.

- NOMS should look positively at the case for introducing nutrient-based standards for meals in prisons, similar to those introduced for schools, but based on recommended daily intakes for adults.

- Effective measures should be taken in all prisons to inform prisoners about the benefits of a good diet and to enable them to make healthy choices both while they are in custody and after their release.

- In all women's prisons national nutritional standards should be introduced to ensure that the basic dietary needs of pregnant women prisoners are achieved.

Australia: Substance Abuse and Delinquency in Female Adolescents

Summarised from "Substance abuse and Female Delinquency "By Christopher J. Lennings and Dianne T. Kenny John Howard and Anthony Arcuri
Liz Mackdacy. PSYCHIATRY, PSYCHOLOGY AND LAW Volume 14 NUMBER 1 2007 pp100-110

Why has the rate of drug offending for girls increased compared to boys over the last 2 decades?
This article reviews studies on gender differences in drug use and crime related behaviour of girls in Australia.
Specific questions:

1. Do girls report higher levels of substance abuse than boys?
2. Do girls suffer higher levels of family dysfunction and abuse than boys?
3. Do girls report higher levels of mental illness than boys?
4. Is there a relationship between substance abuse, gender and crime?

Although the results of studies may be unreliable due to the small study size, there is no clear consensus as to whether girls use drugs at higher rates than boys.

Both girls and boys report their most frequently used drugs are alcohol and marijuana. Some data suggested that girls *may* have a more 'problematic' use of 'heavy' drugs such as amphetamines and heroin.

Girls have higher levels of child abuse in their families than boys and higher levels of psychopathology and drug use. There is an association between substance abuse and mental illness in girls.

For girls, residential treatment does appear to rapidly improve the symptoms of mental health disorder and crime, suggesting that mental health treatment should form a focus for gender-specific youth drug programmes.
Potential policy direction:

- Earlier intensive intervention with families, as 'reducing opportunities for child abuse and strengthening family systems will reduce later dysfunctional behaviour in children.'
- Gender specific treatments seem appropriate, given the likelihood that more sustained benefits might be obtained with gender-specific treatments.

The case for legislative reform of section 283(o) of the CYPFA

D v Youth Court at Tauranga & The Attorney General, 3 October 2007, High Court, Tauranga, CRI 2007-470-767, Baragwanath J.

This High Court decision confirms that the 15 year old age limitation on conviction and transfer to the District Court is the age at the time of the offence, rather than the age at the time of the 'conviction and transfer' under s283(o) of the CYPFA.

The applicant, D (a young offender) challenged a Youth Court decision not to offer Youth Court jurisdiction under s275 of the CYPFA.

Background

D was aged 14 at the time of the offence, but had turned 15 by the time of the Youth Court hearing. He was charged with 5 purely indictable offences, including attempted murder of a Police officer. After depositions in Youth Court, parties agreed there was a case to answer.

The Youth Court Judge declined to offer Youth Court jurisdiction, because in his view the circumstances surrounding the alleged offending were so serious that a long-term prison sentence was likely. If Youth Court jurisdiction was offered, there was a "jurisdictional bar", to the young person being later convicted and transferred to the District Court under s283(o) because the young person was 14 at the time of the offending. Therefore, if Youth Court jurisdiction was offered, imprisonment could never be imposed due to the offender's age.

The High Court noted the existence of competing authorities in the Youth Court as to whether the "15 or over" age restriction applied at the time of the offence or at the time of eventual disposition. The Youth Court Judge declined to follow *Police v H* [2004] DCR 97, which held that an offender 14 years of age at the time of the offence, but aged 15 or older at the time of disposition, might then be transferred to the District Court for sentence under s283(o).

As the Youth Court Judge held that there would be no opportunity to convict and transfer D to the District Court for sentence, D was therefore sent to the High Court for trial.

On appeal, D argued that s 283(o) could have applied if Youth Court jurisdiction was offered, as he was 15 at the time of the proceedings. The A-G argued that s 283(o) should be read in the light of s 2(2) which states that "age" means age "at the date of the alleged offence" for the purposes of jurisdiction and proceedings taken.

The combination of these two provisions means that

(Continued on page 15)

The case for legislative reform of section 283(o) of the CYPFA ...continued

(Continued from page 14)
14 year olds charged with the most serious offences must often be tried and sentenced in the High Court, (or if middle-banded, to the District Court), where they are subject to adult sentencing rules, whereas 15 year olds in the same circumstances can be offered Youth Court jurisdiction and then be convicted and transferred to the District Court where sentences of imprisonment are available, although limited to five years.

Baragwanath J compared the age limit under the CYPFA (16 years old) for making parents and guardians liable for reparation and other costs with the age limit for conviction and transfer, and held that standard principles of statutory interpretation mean both should be interpreted in the same way. He noted the age limit as applied to parental reparation is illogical, but needs to be strictly interpreted so as not to make s2(2) meaningless. He described the "fit" between s2 (2) and s283(o) as "uncomfortable", but unavoidable, given that the High Court has no power to fix inconsistencies in legislation, in the same way as it does in respect of a contract.

The Court upheld the Youth Court Judge's reasoning declining to offer Youth Court jurisdiction, based on the seriousness of the offences requiring close to the maximum penalty, which would be unavailable in the Youth Court and the District Court (given the jurisdictional bar to convicting and transferring 14 year olds to the District Court).

Decision:
Application dismissed.

"Court in the Act" Editors' note:
This case highlights the difficulty with the age restriction in s283(o). Paradoxically, the youngest of the youth offenders facing serious purely indictable charges are often not offered Youth Court jurisdiction, because, if they are 14 at the time of offence, the subsequent option of convicting and transferring them to the District Court, if the Youth Court considers that would be necessary, is not available to them. Fourteen year olds are therefore treated more harshly by the Youth Court than 15 and 16 year olds. This cannot have been the intention of the CYPFA but it is an unavoidable consequence of the way s283(o) is drafted.

A similar conclusion was reached in the case of *Police v RTP* (Dargaville Youth Court, CRI-2007-288-000073, CRI 2007-211-000009, 15 August 2007, Judge Becroft) where the issue was whether or not to offer a 14 year old young offender Youth Court jurisdiction under s276 of the CYPFA. The young person faced a serious purely indictable charge of wounding with intent to cause grievous bodily harm. The decision regarding whether to offer Youth Court jurisdiction was adjourned and a family group conference was ordered to formulate a plan based on a psychological report.
Judge Becroft commented that in his view, thought needed to be given to amending the law.
"The option under s283(o), to convict and transfer a young person only if they are 15 years or over, can cause an injustice for the serious 14 year old offender...[19]
...I would have granted R Youth Court jurisdiction if he was 15, because the option would have been available to convict and transfer him to the District Court later... Because he is 14, that option is not available. Ironically a 14 year old is being treated more harshly than a 15-year old, and that cannot be right. [20]"

Children, Young Persons, and Their Families Amendment Bill (No.6) (2007 No 183-1)

One proposed amendment of this bill will enable young persons under the age of 15, who have committed a purely indictable offence, to be transferred to the District Court for sentencing.

This amendment is little understood—and in fact some critics see it as a retrograde step, which is detrimental to 14 year olds. In fact it is limited to **purely** indictable charges and is designed to remove the unintended consequences for 14 year olds.

Under s35(3) of the Bill 'Orders of the Court', it is proposed that s283(o), would read:

" In the case of a young person who is of or over the age of 15 years, ***or in the case of a young person who is of or over the age of 14 years and against whom the charge proved is a purely indictable offence****, enter a conviction and order that the young person be brought before a District Court for sentence or decision, and in any such case the provisions of [the Sentencing Act 2002] shall apply accordingly."*

(Proposed amendment in bold)

Youth Parliament Submission: "How can we prevent young people from joining gangs and reduce violent offending?"

By Ross Davis, a respected youth worker and the leader of the Boys/Girls Institute in Wellington

Introduction

1. Te mihi tuatahi, kia whakakaroriatia ki tō mātou Matua i te rangi me te whenua.

2. Tuarua, Nga mihi ki te Whare e tu nei, nga mihi ki papatuanuku, nga mihi ki moana o raukawa ki Wanganui a tara, Nga mihi ki te mana whenua ki te tangata whenua Tena koutou

   Ko Frank Davis raua ko Fay oku matua
   Ko Anna Davis tōku wahine rangitira.
   Ko Andrew, ko Eve raua Ko Claire a matou tamariki.
   No Tamaki Makaurau ahau engari Ko Ngati Rangi me Ko Ngati Kahungunu nga iwi o o matou whanua.

   Ko au te kaiwhakahaere o BGI (Wellington Boys' and Girls' Institute).
   Ko Ross Francis Davis ahau.
   Arohanui ki a koutou

   Ainaianei , ki tenei kaupapa ki tenei whare I tenei ra

I am not an expert on youth gangs, but I hope my experience as a youth worker and director of a youth work organisation may shed some light on your question "why young people join gangs".

The Boys' and Girls' Institute (BGI), which I work for as Director of Youth and Community Projects, was founded by a group of young people who were inspired to help others through their membership of one of the traditional churches. BGI, works with and enjoys close and supportive relationships with tangata whenua on many levels. As you will see this submission draws significantly on my experience within iwi and church contexts.

I wrote the following not so much from my experience with gangs, but from my experience of youth work as I see the effect that an ever more dominant western cultural world view has had on the young people I work with. It seems to me that embedded in this western culture young people 'breath' is an increased individualism, along with a sense of meaninglessness where we are alone in the task of not only 'getting a life', but are also burdened with the task of creating a meaning for that life. These days we are less often described as persons and more often as consumers. Consumers need rightly to 'me focus' and all this undermines traditional structures and places of belonging and can leave us feeling alone. I believe that one of the natural responses to this for some young people is to join gangs. This mixture of factors as well as the view that the community does not seem to care about young people could well be some of the raw ingredients to destructive behaviour. I will explain....

A Mob Leaders View

While I was writing this I asked one of our youth workers, David Clegg who knows Edge, the co-ordinator of a notorious chapter of the Mongrel Mob Club to ask what Edge thought. Edge said I could quote him.
Why do youth join clubs like the Mongrel Mob?
Edge texted his reply to me:

1. to create own identity with youths their own age,
2. to find an alternative to their birth family, especially if from a single parent family as gangs provide a male role model.
3. peer pressure

Edge confirmed and simplified some of what I had been writing (detailed below). I noticed that Edge's surname, like that of so many young people, was invisible in this text communication – so I asked for his surname – 'just Edge' was the response.
We are often happy to allow people to exist as "Edge" no surname, no family name, no known connections other than the mob. Even the way I have quoted "Edge" above has confirmed that his mana is with his leadership role in the mob and not with his tipuna as it should be. This is covered in more depth below.

My thoughts for your consideration are:

Belonging

Youth gangs give young people a place to belong. They provide a way to participate in something bigger than oneself; build connections; have the members' strengths acknowledged; and give a place where there are clear boundaries and consequences. A place where there is mana, friendship, and a sense of family and working together for a 'greater good' in the sense that membership encourages members to think not just of themselves but of the good of the club/gang.

We can help prevent youth joining gangs by providing meaningful and more caring alternative ropu rangatahi, and youth groups which have friendship, excitement, adventure that brings natural highs and support that matches or betters that of the gang. Enhancing what is already happening at churches -to be more open and accepting- and enhancing sports clubs to be more inspired by the benefits a youth development approach could bring to society. Strengthening whanau, hapu, iwi, churches, and sports clubs is crucial but these alternatives may become ineffective when these places become individualistic, embroiled in violence and petty politics, and use funds to build monuments to their leaders rather than to serve young people.

Some ways in which we can help prevent youth joining gangs include:

- Families being truly part of something bigger that has a lifelong real sense of belonging and connection

Youth Parliament Submission*: ...continued from page 16*

- Strengthening these groups that do not simply exist to be a "youth agency" but are there for a larger purpose (whanau, hapu, an iwi, churches, sports clubs) - that provide this sense of belonging and meaning
- Providing more support and encouragement for parents to work on staying together where at all possible.

Other things that I believe will help minimize youth gang formations are:

1. ***Reducing the negative youth stereotypes***, especially reducing the wider cultural fear and suspicion of "groups" of youth particularly Maori and Island youth who may be simply be good friends walking into town to do some positive stuff.

2. Minimizing the influence of imported western culture, which breeds isolation from individualism followed by a sense of nihilism and deep worthlessness. This applies to young people from a range of cultures but for Maori particularly this adopted culture opens up gangs as one of the solutions to this isolation.

3. Acknowledging whakapapa and surnames. Creating a new identity within a group, as Edge said above, is something the gang provide. Rather than finding out what one's identity is from your ancestry, it is about 'me' ....but "who am I?" young people then ask. One way this 'sickness' shows up in our western culture can be illustrated linguistically. Contrast the Western culturally influenced question "what is your name?" where your name is somewhat disconnected from the person with the Maori equivalent ko wai koe "who is your name?" where your name defines who you are so there is no need to ask the 'who am I' questions or for the intensive study of identity . One's surname tells a lot about one's identity. Knowledge of what one's surname 'represents' ...if I have understood correctly the way young people use the word these days.

4. Reducing the "ME" focus.
Part of this 'me culture' is inadvertently promoted through our society and school systems. We should have more freedom to examine and critique what I believe are some false and individualistic messages of who we are as human beings. This 'me as the centre of my world' message starts day one year 1 at primary school and the topic is appropriately named "me". Day one year 2 the topic is also "me" and so on until year 9 where I think it is more sophisticatedly called "identity"...

We now joke that it is "all about me"! In a sense that joke recognises that this thinking is destructive of society. This is evident in many ways, not just in the destructive ways gangs act at times. In business circles too there is a growing justification of selfishness and covetousness as positive attributes. Conversely, those who give selflessly to the community are often being negatively portrayed as "martyrs".

5. Acknowledging the place of Christian names. While our surnames connect us with a whakapapa, our "Christian" names in the biblical tradition represent connections with a wider family; a bigger story - by having a name from the Bible. This practice is evident in other cultures and religions also -Mohammed is a common name for example. This big picture view can give a sense of belonging to both an earthly family and spiritual family – being part of a story that is going somewhere. "First" names can be more limited in secular western tradition. They can have family connections or a reference to something that happened at your birth but particularly when used without surnames ('just Edge' for example as referred to earlier) lack a link to being part of a wider whanau and a bigger story that is necessary for a healthy society.

6. Make the justice system about true justice, not about retribution. We should minimize the incentive to use legal tricks to gain convictions. Police need to counter the impression many youth have that they are in court to get a conviction rather than be about justice for young people. Too many wrongful convictions and a sense of injustice and powerlessness in the court system could encourage gangs to further lose confidence in the system and take the law into their own hands - unfairly labeling the police as 'pigs'.

7. To help reduce youth offending the ***Youth Development Strategy Aotearoa (YDSA),needs to be recognised*** within the police and the justice system. I have outlined ways in which the YDSA can help below. The YDSA starts with the big picture. This gives us the opportunity to take into account Maori religious beliefs and worldviews. The YDSA inclusion of spirituality as part of holistic development means government youth agencies need not be restricted to only secular youth development. Youth agencies need not fear and exclude the churches which have been a positive force in youth development and which were instrumental in seeking justice for Maori by helping establishing the Treaty of Waitangi which forms part of the YDSA 'big picture'.

8. Society somehow needs to ***make young people who are considering joining gangs feel they can really participate*** and make a difference rather than feel excluded from public processes and opt out into gang subculture.

9. ***Build up the volunteer sector*** and be aware that it in this country the spirit of volunteerism and doing things for others has been significantly underpinned by the teachings of the churches who acknowledge the Trinity of te Matua, te Tamaiti me te Wairua Tapu (the Holy Spirit). While the 'kiwi spirit' helps we cannot fully rely on an innate sense of altruism to solve all our problems because it seems to me even our best efforts can be spoiled by our own selfishness and greed. These volunteer groups have been foundational and relational institutions. These institutions traditionally include churches and marae groups. Government departments cannot effectively replace them. Sports clubs are a big help to youth and families, but should seek to build up whanau, churches and marae groups and not undermine them or compete excessively with filling up all the weekends. For example Aotearoa society used to reserve Sundays from trading. This is because some space needs to be created for potential "whanau times" or worship times and to allow for

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(Continued from page 17)
a wide range of volunteer participation and activities that give back to the community.

10. Wider use of the YDSA within NGO's and government departments dealing with youth will help stop youth joining gangs and help reduce violent offending.

Among the key findings of the Youth Development Strategy Aotearoa (YDSA), and research into youth outcomes more generally is the recognition that the best solutions to a range of negative outcomes for young people are those that involve early intervention and involve young people in meaningful relationships with their key environments: at home, at school, and in the community with their peers. Youth workers say that initiatives which identify at-risk youth before they offend (or register as unemployed) as 'bright spots' in their work.

However, these YDSA principles need to be more widely recognized,, understood and implemented by organisations whose work affects young people. Knowledge of the YDSA among those who work with youth, and those whose work affects youth, is at varying points along a continuum ranging from awareness of its existence through to, reading it, understanding it, recognising it as valuable and then making it real.

Institutions and government organisations that work with young people, including schools, training institutions, and government Ministries such as Justice, Social Development, Education, Health and Economic Development are frequently not structured in a way that makes it easy for them to work according to YDSA principles.

Youth workers, and non-governmental youth organisations, though freer to take on board new thinking, are often hampered by lack of resources, time and support in making youth development principles 'real'. A recent research report by the National Youth Workers' Association, Real Work: On the State of Youth Work in Aotearoa, presents a snapshot of youth work as a profession challenged by a lack of best-practice information, training opportunities and funding support.

11. Strengthening youth work as a valid and well-paid caring profession will go a long way to stopping youth offending and joining gangs, as they are helped to discover a society that gives them some respect, participation, belonging and mana.

12. ***How the Government can help?***

Have a government that is open to:

- honest critiques of the school system,
- questioning of western cultural beliefs in individualism rather than in the community wellbeing,
- taking risks to get to the depths of a problem like youth gangs - even if the solutions challenge the western individualistic world view,
- being less interested in playing-it-safe and self preservation.

13. Governments and Government departments working with youth need to ***develop different communication and engagement mechanisms***, as some are beginning to do.

Young people's stories need to be validated. Rather than just relying on written research and oral recording, video footage should also be used to convey a message to politicians. . The allowable language needs to be expanded.

I'll conclude with a story to illustrate this point. Some time ago I was involved in an extensive youth consultation in Aotearoa. It was a great experience and I met many great people involved in youth work, but I struggled to get much of what I found out in a written government style report. I wrote the following in my draft which I was advised to delete from the final government document as it "contained too much of my voice". In fact what I sought to include was the warmth and raw honesty of the voice of young people and youth workers. Thank you for the chance to make these excluded voice's heard today. Below is an example of the excluded excerpt from that document.

"It is hard to capture the warmth and passion that the people I met during this consultation had for young people, in a written report. One unexpected consultation was with two 17 year old guys that I picked up hitching out of Shannon, who (it was later discovered) "were not where they were meant to be" (they were in what is often called an 'at risk' category). They provided useful input defining one of the main problems as 'little fellas who think only of themselves trying to set up their own crews'. It is helpful to be aware that the language and assumptions evident in such meetings as this are not readily translated into report form.

It almost feels as if some words should get changed or deleted. Words such as 'aahua' 'Atua' 'wairua' and 'God' do not fit easily within a secular context. However these are very much part of youth work. In report form 'Love' becomes respect; 'camp-mother' becomes case manager; 'bright spots' measurable outcomes; 'church' becomes faith based; and 'little fellas who think only of themselves trying to set up their own crews' becomes youth gangs. These editing changes may help to avoid offense, but risk losing some of the fundamental warmth of youth development.

There is a sense in which many of those consulted, struggle to define 'youth issues' in the same terms as are utilized in this report. They also struggle to define good youth development, but sent me off to 'the camp mother' who they recognise as doing the mahi, whether she is getting her help from the tipuna or from above. This story is related in order to emphasize that a report such as this does not address the full range of resources that are available for youth development, nor does it speak the language of youth and youth workers themselves. The wider range of resources are clearly in evidence in the youth work of churches, in compassion and love shown in secular agencies personal dealings with youth, in the warmth of long term relationships at marae and in Ethnic and Pacific communities and so on."

Thank you for participating in the youth parliament and I hope this submission has been helpful

Why do young adolescents belong to gangs?

Summarised from Article 8 in Criminological Highlights, Volume 9, Number 3, February 2008, 11 *"Why do young adolescents belong to gangs?" © Centre of Criminology, University of Toronto, Toronto, Ontario, Canada.*

'The reasons for gang membership amongst early adolescents vary with the race or ethnicity of the youth. Interventions aimed at reducing gang membership should, therefore take into account why young people are in those gangs.'

Data from a number of studies suggest that minority group youths are more likely to be involved in gang activity than others. The article cites a U.S study of 4,997 Grade 8 youths who had been in schools where a gang-resistance programme had taken place in the previous year. The gang-resistance programme was conducted in 11 diverse sites across the U.S.(p.607). In this study 4.8% of whites, 8.7% of African- Americans and 10.5% of Hispanics reported being in gangs.

One possible reason for gang membership by minority group youths is that it is a response to marginalisation, in particular that social and economic conditions disrupt social control institutions, leaving a void which is filled by 'street socialisation' and in some cases gang membership (p604).

The findings reported only relate to whether the youth was in a gang at the time the data were collected, and the classification of 'gang' was restricted to one where the gang was involved in illegal activities.

<u>Predictors of gang membership:</u>
<u>1. General predictors</u>

- Being male
- Being African-American
- Living in a single parent family

<u>2. Group-specific predictors</u>

(i) Whites

- Having parents with relatively low levels of education
- Indicating that they felt lonely at school or with their family or friends
- Indicating that they did not feel it was important to obey the law, - "It is okay to steal something if that's the only way you could ever get it" (p610).

(ii) African-Americans and Hispanics (for youths aged 13-15)

- Feelings of alienation from school
- Thoughts that the police were unfair, dishonest and/or prejudiced
- Indicating that they did not think it important to obey the law
- Hanging out in locations where drugs and alcohol were available

<u>Conclusion</u>

Clearly feelings of marginalisation were important predictors of gang membership for 13-15 year olds. However, another important predictor is the race/ethnic background of the youth, therefore it is important to consider this when developing programmes that are aimed at reducing youth involvement in gangs.

Reference: Freng, Adrienne and Finn-Aage Esbensen (2007). Race and Gang Affiliation: An Examination of Multiple Marginality. *Justice Quartlery*, 24(2), 600-628.f

"Court in the Act" Editors' note: This research surely has important implications for the current Gang Interventions programme in South Auckland.

DYSLEXIA ACTION NEEDED

Source: Dominion post, Friday, January 11, 2008 'NZ 'NZ -'Failing kids who struggle to learn'

Professor David Reynolds, a British education expert, has criticised New Zealand's education system for its belated recognition and management of learning disabilities such as dyslexia. The Ministry of Education only officially recognised dyslexia last year.

Professor Reynolds said that New Zealand had insufficient screening systems and a lack of resources in schools to address the needs of children with learning disabilities. He suggested that parents need to do more in the way of lobbying decision makers and said that many developed countries were way ahead of New Zealand in their research and resourcing of children with learning disabilities.

Jenny Tebbut, president of Speld (an organisation that supports children with learning disabilities) said that children with learning problems struggle at school, and when their problems are not identified they become frustrated - "In the past they haven't been diagnosed easily."

The Ministry of Education are investigating assessment tools to identify reading and writing skills at a young age, reviewing literacy policies and improving the help given to children struggling with literacy.

Court in the Act asked Guy Pope–Mayell, Trustee for the Dyslexia Foundation of New Zealand, for his comments in relation to the current situation regarding progress on this issue:

> *" As we move towards Dyslexia Awareness Week in June we hope that our efforts will be reflected in further progress with the Government and Ministry of Education– progress that will actually start to positively impact the situation in the classroom. What's needed right now, is targeted funding for teacher professional development and classroom interventions."*

Mr Pope-Mayell considers that there has been progress since the official recognition of dyslexia a year ago. The official position is outlined on the Dyslexia Foundation website and can be found at: http://www.dyslexiafoundation.org.nz/news_dec.html.
Specific progress includes:

- the publication of a pamphlet : *Dyslexia: breaking down barriers*, which is aimed at parents and schools. All teachers have received a copy of this.
- the publication of a set of *Literacy Learning Progressions* that show parents and teachers what literacy progress looks like at specific stages from Entry to Year 10.
- considerable communication and consideration with the Ministry of Education Literacy Professional Network about dyslexia and the approach being taken, e.g. communication strategies, professional development, and dialogue around how special education might support dyslexic students more fully.

"E-flashes" available on web:

http://www.justice.govt.nz/youth-justice/yot-e-flashes.html

E-flashes are a source of useful information, about best practice, new policy initiatives, and Youth Offending Team (YOT), operational matters — They are produced by the Ministry of Justice's Youth Offending Team primarily as a means of communication to the 31 YOTs throughout the country. There have been 25 "E-flashes" so far that contain a mine of information regarding many aspects of working with young offenders. You should look at them if you have a moment!

Court In The Act

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