

“Court in the Act”

***The Youth Court; The Children, Young Persons, and their Families Act 1989;
And topical issues arising for NZ Youth Justice practitioners***

A newsletter co-ordinated by the Principal Youth Court Judge to those involved in the Youth Justice community. Contributions, feedback, letters to the Editor, are not only acceptable, but encouraged

No. 5, December 2002

“Beaten paths are for beaten men (or women)”

(Poster on the wall of “The Whare”, CYFS Community Home, in Will Street, Dunedin)

STATISTICS: STOP PRESS

The recent series of very violent offences, and the resulting murder and manslaughter convictions, are deeply troubling, and have rightly shocked the nation. As a result I am often asked, “is youth offending skyrocketing out of control?”

In fact, the most recent statistics show a quite different picture. (You will have seen a summary of youth offending statistics that I produced earlier in the year, available from this office). In short, while there have been very significant increases in youth offending since 1990, there has been relative stability in the last 5 years. The latest police apprehension statistics for the calendar year to 31 December 2001 show a drop in police apprehensions for 10-16 year olds from 43,732 to 41,916. The number of charges processed in the Youth Court has also dropped from 14,253 to 14,060. Similarly, the 2001 figure for the number of young offenders convicted in the District or High Court is 234, as compared to the 2000 figure of 253.

In no way should this alleviate our concern for the recent very violent offending, but these recent figures will

come as a surprise to most of New Zealand!

One thing that the figures simply cannot show is whether violent offending is commencing at an earlier age and if the violence is more serious. This is certainly the view of frontline police youth aid officers. I would not necessarily want to disagree.

All of this simply highlights the need for one, centrally collated, set of statistics which could be easily analysed and quickly made available to the public. This was one of the recommendations of the Ministerial Task Force on youth offending.

POLICE CELL REMANDS

The Children, Young Persons and their Families Act has always envisaged that sometimes there will be a need to remand young offenders in police cells. This need arises when there is not room at a CYFS secure residence, and, when a Youth Court is satisfied that the young person would be likely to abscond or be violent. (See s238 (1)(e) and s239 (2) of the Children, Young Persons and their Families Act 1989).

Regrettably, this year there has been a crisis in the number of police cell remands, caused by the on-going shortage of "beds" in CYFS residences.

To the end of November this year, 410 young persons had been remanded in police cells for a total of 1037 nights. Maori are disproportionately represented.

There is no possibility of further secure residential beds being available until October 2003, when the new residence in South Auckland opens.

The CYFS Residential Management Team are working overtime to manage the limited number of beds. There is a very good process now in place to give accurate daily information about the number of beds available and future bed availability. Ross Barber at CYFS National Office, phone (04) 913.3699 or 029.2008.526 can be contacted about any particular problem.

The simple fact is that the 75 secure youth justice beds available throughout the country are insufficient. About 75% of those beds are taken up with young people serving Supervision with Residence orders. Only the remaining 15-20 beds are available for remand use, and they are almost always full.

Some of the police cell remands are for 5-10 days. The longest has been 17 days. Police cells are not purpose built to hold young people for long periods of time. We all have grave fears for the psychological safety of young people, held in these conditions.

EFFECTIVENESS REPORTS

As you may know, whenever a Youth Court makes a:

- Supervision Order,

- a Community Work Order,
- a Supervision with Activity Order,
- or a Supervision with Residence Order,

CYFS is required to provide a written report as to the effectiveness of the order and the young person's response to it.

Copies of the "Effectiveness" Report must be sent to the Youth Justice Coordinator, the young person to whom the order relates, the youth advocate or lawyer representing the young person, and the appropriate Court.

A new template for Effectiveness Reports is now in use. I **attach** a copy.

These reports are very useful in assessing the effectiveness of a particular order ("sentence") and identifying problems in resourcing or program delivery within different areas. Judges will usually write to the relevant social worker upon receipt of report, and some will even write to the young person, where that is appropriate, congratulating him/her on positive progress that may have been made.

PURELY INDICTABLE CHARGES

There is still enormous confusion around the country as to what is the procedure when a "purely" indictable charge is laid. In fact, there is even confusion as to what is a purely indictable offence.

"Purely indictable" offences are defined in the definition section (s2) of the Children, Young Persons and their Families Act. In short they are offences that can only be dealt with indictably, that is, by a depositions hearing followed by a jury trial unless the matter is earlier resolved.

In an effort to reduce the confusion I **attach** a list of those offences which must be laid indictably, ie those which are "purely indictable". Sometimes, informations for purely indictable offences are being laid summarily, in error.

I also **attach** a memorandum as to the appropriate procedure to be followed when the complicated provisions sections 274, 275 and 276 of the Act, are being used.

Finally I **attach** a decision by Judge Harding which makes the proper procedures clear

If you have any questions or queries please don't hesitate to contact me.

FROM OUR FIJI CORRESPONDENT

As many of you will know, Judge Peter Boshier of Auckland has been seconded for a year to the Pacific Judicial Education Program attached to The University of the South Pacific, Fiji.

At my request, he has provided the following report:

"I have just finishing reading, here in Suva, Justice Randerson's decision on just how much can be reported from a Family Group Conference, when there is only partial agreement. Staying in touch with developments in New Zealand is not only important, but reminds me just how advanced our youth legislation is, compared to some.

In the Pacific, few countries have juvenile legislation at all. Certainly none have a specialist juvenile court, and no one is specially warranted as judicial officers doing juvenile work.

Countries are aware that this sits a little uneasily with their ratification of the UN treaty on the rights of children. The treaty really requires states to do something to give children rights, including representation.

However the theory is very different to the reality. In the Pacific, the vast majority of judicial officers are unqualified, and at magistrates level, where obviously most juveniles appear, they will mostly do so before lay members of the bench.

There is much interest in family group conferencing here, because it does sit so easily with pacific culture. However the British heritage appears still firmly embedded in many places, and introducing statutory change is more difficult than it might appear.

The challenge for me, while I am here, is to assist in "capacity building", in helping those countries who want to develop a juvenile offending strategy, to do so. Some countries have embraced this warmly, and I think will make huge progress."

ACCESS TO ODYSSEY HOUSE

Many of you will know of the work of Odyssey House with young drug abusers. There seems to be some misunderstanding as to eligibility. I **enclose** the following information recently received from Karen MacLaughlan, the Odyssey House Director, as to funding/administration.

From: Karen McLaughlan
Director
Odyssey House

Telephone: (09) 6231447
"Odyssey House has a national contract with Child, Youth & Family to provide a certain number of bednights

for the contractual period. Young people are eligible for this funding if they have a legal status with Child, Youth & Family. This can be either from a Care and Protection or Youth Justice perspective. The Social Worker making the referral to us will make an application to the National Bednight Co-ordinator seeking approval to access the contract. The Bednight Co-ordinator will give the approval and follow this up in writing, which is then forwarded to us. There is a charge back fee to local CYFS site office for each bednight used from the National Office.

For young people who have no status with CYFS, we have an additional contract called the Community Bednight contract, which we use at our own discretion, and there is no charge back fee to the local CYF site office. This contract can only be used for a total of 56 days per client at any one time. Young people over the age of 16 do not need a legal status with Child, Youth and Family and are eligible for Health funding. We will also consider taking young people who have no access or eligibility for funding. We currently have vacancies in both our residential programmes. Youth Court Judges, Youth Advocates, Social Workers, and Police Youth Aid Officers can contact me directly if they want to check out vacancies, funding options or discuss difficulties."

YOUTH OFFENDING TEAM REPORT

Youth Offending Teams have been set up around the country, with representatives from Police, Child Youth & Family, and Health and Education agencies. Facilitated by the Ministry of Justice, the teams co-ordinate the work of local Youth Justice Agencies. Please find **attached** a newsletter, "Youth

Offending Team News", which provides an update on this new initiative.

CHRISTMAS/NEW YEAR GREETINGS

And so ends another challenging, demanding and often rewarding year. Can I take this opportunity to thank all of those within the Youth Justice sector for their enthusiastic and faithful service. Christmas is the perfect time to remember that children and young people are a gift from God, to be nurtured, loved, mentored, and guided. I hope all of you enjoy a meaningful and peaceful Christmas.



