"Court in the Act"
A regular newsletter for the entire youth justice community
THE YOUTH COURT OF NEW ZEALAND | TE KŌTI TAIOHI O AOTEAROA

50 Issues of Court In The Act — documenting perennial concerns and new challenges in NZ youth justice

"From its small beginnings, originally as an in-house newsletter to Youth Court Judges, "Court In The Act" has become, probably by default, the main clearing house for youth justice news and information."

Judge Andrew Becroft
Principal Youth Court Judge for New Zealand

This edition of Court In The Act marks the 50th publication since the newsletter was first distributed in June 2001. In that time, Court In The Act has covered many of the major issues in youth justice in New Zealand, including long remands, Youth Offending Teams, truancy, new legislation, Rangatahi and other specialist courts, and restorative justice.

"COURT In The Act" was originally designed as a newsletter for Youth Court Judges. However, it soon became obvious that the wider youth justice community in New Zealand was interested in much of the material that was being circulated. Also there is no regular national youth justice publication to update all those involved in youth justice as to current issues, relevant cases, and important overseas developments. This is still a …

Excerpt from the introductory paragraph to a Court In The Act issue from 2002.

Issue #1 was written by Principal Youth Court Judge Andrew Becroft when he had been in the role for only a few weeks.

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

A front page article from Court In The Act December 2002 shows that concern over these fundamental youth justice issues has not changed much in nine years.

In 2001, when Court In the Act began, it was initially distrib-

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uted only to other New Zealand Youth Court Judges. In 2010, the distribution list has grown to 1,637, including youth justice professionals, government agencies, and community groups throughout New Zealand, as well as in other Pacific nations, and Europe, America and Asia.

Judge Becroft comments that there is still no other regular publication for all those involved in the youth justice sector. He says the growth in Court In The Act's circulation, both nationally and internationally, is testament to the ongoing interest of all those in the sector, and the commitment of all the contributors and editors.

Judge Becroft would also like to remind Court In The Act readers that there is a continuing invitation for new email addresses to be added to the list of people and organisations receiving the newsletter. Court In The Act continues to welcome news of any person who might be interested in receiving the newsletter by email. New articles, reports and letters to the editor are also always welcome.

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15 longer supervision with residence orders in the first month of the new Act

In the first month since the length of top end Youth Court orders were increased, fifteen young people have been given supervision with residence orders of five months or more. The previous maximum length of the residence part of this order was 3 months.

Judge Becroft comments that all of those who are subject to these orders would have committed offences before the new Act came into force, and all have therefore consented to be dealt with under the new legislation. The likely reason for this is that, under the old rules, they would otherwise have been destined for the adult court and a likely prison sentence.

Judge Becroft suggests the number of longer residence orders shows that the new Act is having the positive effect of keeping young people out of the District Court, and probably adult prison.

Source: Ministry of Justice.

Young person	Age	Region	Length of residence order
SS	14	Taranaki	6 months
PJ	15	Waitakere	6 months
DM	15	Otago	6 months
SB	16	Otago	6 months
DB	14	Taranaki	5 months
TM	15	Taranaki	5 months
JR	15	Hutt	5 months
HB	16	Rotorua	6 months
BC	15	Christchurch	6 months
BH	17	Palmerston North	6 months
CW	17	Tokoroa	6 months
JD	16	Waiatakere	6 months
AW	15	Christchurch	6 months
EW	17	Nelson	6 months
LH	16	Auckland City	6 months

Maori offending—a provocative view

Maori Criminal Offending: A Critical Appraisal by Danette Marie, University of Aberdeen, UK, in the Australian and New Zealand Journal of Criminology, Volume 43 Number 2, 2010, 282—300.

In this article, Dr Marie criticises the Department of Corrections for adopting what she terms 'the wishing well approach' to Maori offending and rehabilitation. The wishing well approach is based on the assumption that Maori over-representation in prison and other justice statistics is directly related to the loss of cultural identity due to colonisation. Dr Marie also says that this assumption leads Corrections to assume that restoring Maori offenders' cultural identity will help their rehabilitation and reduce their reoffending. The problem with this approach, according to Dr Marie, is that it is not based on historical evidence, and has not reduced Maori offending rates.

"...it is still assumed that individuals who identify with the ethnic group Maori have some inherent property that predisposes group members to being more likely to offend."

Dr Marie also criticises assumptions about who is Maori and non-Maori, and whether the whole Maori population can be called unified enough to say there is one common cause for Maori offending, and one common solution to fix it.

The so-called 'Maori renaissance' and the development of ideas of biculturalism have done nothing to change the over-representation of Maori in the justice system, according to Dr Marie. Further, she argues that the criminal justice sector has been captured by 'the culture industry' and that the wishing well approach is actually harmful.

"The extent of the evidence overwhelmingly suggests that socioeconomic deprivation and other related factors are the main contributors to offending"

Dr Marie claims that individual Maori offenders would willingly agree that their offending was the result of a loss of cultural identity because:

- This sort of collective cultural identity allows them to shift focus from themselves to something external,
- It allows them to think of themselves as victims of history,
- It provides Maori in prison with a heightened sense of entitlement, as well as rewards for participating in 'identity retrieval programmes'.

Danette Marie suggests that the Department of Corrections' focus on ethnicity should be replaced by a focus on 'individual adversity'. She says there is overwhelming evidence that offending is connected to socioeconomic deprivation and other related factors. Dr Marie suggests that empirical facts rather than culturalist ideology should inform thinking about intervention programmes because otherwise, these programmes cannot be systematically evaluated.

Editor's note: It has been suggested that Dr Marie has over-simplified the New Zealand approach of programmes that are "by Maori for Maori". Far from being simply "a dose of culture", "by Maori for Maori" programmes for young Maori offenders are strongly committed to identifying criminogenic needs, and addressing drug and alcohol dependence, conduct disorder, educational disadvantage and mental health issues — in just the same way as similar programmes are directed towards non-Maori. Court In The Act welcomes other comment from readers on this article, and the important issues it raises.

Police & CYF— case management meetings in Hastings that really work

Before Hastings Youth Aid Sergeant Ross Stewart and Hawkes Bay Youth Justice Supervisor for Child Youth and Family Donna Carter were in their current positions, they used to see each other regularly, as friends and colleagues, and chat about work.

Years later, these chats developed into weekly meetings that now form the basis of youth offender case management in Hastings. Ross and Donna's meetings have also attracted attention and praise from Judges and others involved in youth justice.

Attendance at these meetings has now gone beyond Ross and Donna and their staff, to include local Ministry of Education workers, youth justice co-ordinators, and social workers from the tangata whenua.

Ross Stewart says the meetings usually focus on individual young people who might be facing specific charges or a family group conference. Even if charges have not been laid, young people can come to the attention of the meeting if their general behaviour looks like it may cause problems in the future.

Beyond individual cases, the meetings also discuss policy issues, staff movements and other operational stuff.

Ross Stewart believes that the relationship between police and social workers in youth justice often suffers from misunderstandings about each others' issues and points of view. Police and social workers may not always agree, he says, but when they enter court to deal with a particular young offender, they should be "holding hands" in the way envisaged by the Children, Young Persons and Their Families Act.

The differences between Police and social workers is not surprising, according to Stewart. Police are victim focussed, and social workers are offender focussed. The great benefit of these meetings is that the "negative undercurrents" have been removed, which has made for a better working environment, more information sharing, and even the occasional expression of praise for a particular job well done.

Sergeant Stewart rejects the contention that his case management meetings usurp the decision-making power of the family group conference (FGC). His meetings are simply for the airing of options amongst the professionals. Final decisions about specific plans for the young person are still in the hands of the FGC. Incidentally, the weekly case management meetings are also useful for dealing with existing FGC plans that are not being completed satisfactorily.

Commenting on suggestions that his weekly case management meetings are superseding the role of the local Youth Offending Team (YOT, see CIA #34), Ross Stewart says the two groups have significantly different roles. He says the case management meetings are about individual offender management, whereas the YOTs discuss "big picture stuff". "We deal with things we can change" he says.

Without looking towards his, or Donna Carter's retirement from youth justice work, Ross Stewart says he hopes that the kaupapa of the Hastings case management meetings is strong enough to survive any future changes in personnel. He also says there's no reason why regular meetings between Police and social workers could not work equally well in other areas of the country.

From Donna Carter's point of view, case management meetings are successful at plugging gaps that occur between agencies. The meet-

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ings bring together Police, social workers, youth justice workers, education staff and community agencies, and sort out "who needs to be doing what". In her opinion, the meetings "make a huge huge difference" to the services received by the young people, and they also help to make the FGC process run more smoothly, as particular agency roles are more defined as a result of prior discussions in the case management meetings.

Donna too thinks that the case management meeting model currently running in Hastings and Napier could work just as well in other places. All that is needed, she says, is people with the passion and commitment to make it work.

What Y J Coordinators think about FGCs

Second Chances: Youth Justice Co-ordinators' Perspectives on the Youth Justice Family Group Conference Process, a doctoral thesis by Christine Slater, University of Auckland 2009.

Christine Slater titled her recent thesis *Second Chances* in a reference to the part that family group conferences (FGCs) play in supporting young people who need a "positive and hopeful approach" when dealing with their offending. Her dissertation seeks to evaluate FGCs from the perspective of Youth Justice Co-ordinators (YJCs). YJCs are appointed by Child Youth and Family (CYF) to manage FGCs.

Youth justice FGCs are formal meetings for all stakeholders and professionals involved with a young offender. They are a forum for collective decision making about how a young person can be held accountable, take responsibility, and make amends for their actions. Christine Slater summarises earlier research on the role of the YJC, which is to ensure the young person and family are supported and empowered to play a major role in the process, whilst simultaneously attending to the victim's needs (MacRae & Zehr, 2004). Prominent features of the YJC's role include organisation, facilitation and negotiation, and the provision of information to encourage stakeholder participation so that all parties might exercise their right to decision-making at the conference. The YJC also has responsibility for arranging access to resources so that the young person or family might enact the agreed plan (Maxwell et al., 2004).

It is this editor's view that Christine Slater may be understating it when she says:

"the YJ Co-ordinator clearly plays a major role in YJ FGC service provision".

Findings

Slater found that YJCs believe the youth justice FGC process to be effective for the majority of people who encounter it. They considered it culturally appropriate, flexible and good for a wide range of offending, and most effective when delivered by trained and skilled youth justice practitioners.

On a cautionary note, YJCs thought that FGCs were not as effective when a young person's offending was at either end of the seriousness scale. On the one hand, they thought that, for some young people, Police Youth Aid diversion was more appropriate, as bringing that young person to a FGC would be unnecessary and could be stigmatising and actually increase that young person's chances of reoffending. On the other hand, YJCs expressed strong reservations about the effectiveness of FGCs for more serious re-

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cidivist young offenders, who have "multifarious personal and family factors" that add a layer of complexity to the process.

Best Practice

Aspects of best practice highlighted in Christine Slater's research included:

- All professionals involved in FGCs to be "singing from the same song sheet",
- Consultations between YJCs and Police Youth Aid to be robust enough to consider diversionary options for a young person,
- Good quality FGC preparation including accurate information, personal contact between the YJC and families and victims, finding a key guiding figure close to the young person, and incorporating the young person's strengths into the final plan,
- Ensuring a respectful, dignified and participatory process that leaves young people and victims feeling that the FGC has been a positive experience,
- Ensuring that the young person's progress through their FGC plan was monitored, preferably by a youth jusrice social worker.

Issues

Christine Slater's thesis reports a number of problems encountered by YJCs:

- Difficulty with inputs from other agencies mean it is sometimes hard to comply with statutory deadlines,
- Difficulties in consultation and relationships with Police result in high volumes of FGCs and extra personal and professional stress,
- Pressure on FGC preparation time means less time to work with families and less community liaison,
- Lack of engagement by the young person resulting in the victim leaving with a negative view of the process,
- Poor monitoring of FGC plans leading to low Police confidence, fewer supervision with activity options being found, and a greater risk of the young person not completing.

Christine Slater's thesis also focuses on two other areas of concern: the lack, in some areas, of interagency cooperation given the interdependency of all professional youth justice agents, and the longstanding perception of a lack of support for YJCs within Child Youth and Family.

Conclusions

Christine Slater finishes her report by making a number of recommendations for change based on her findings and the areas of concern for YJCs. She concludes by saying that the experience of writing the paper touched her in ways she did not anticipate, and the firm beliefs of the YJCs in the benefits of what se calls the "special resource that is New Zealand's youth justice FGC".

Oho Ake (To Awaken)

The following article and illustrations are reprinted courtesy of Joshua Kalan, Police Iwi Liaison Officer, and Sgt Tom Brooks Youth Services, Eastern Bay of Plenty

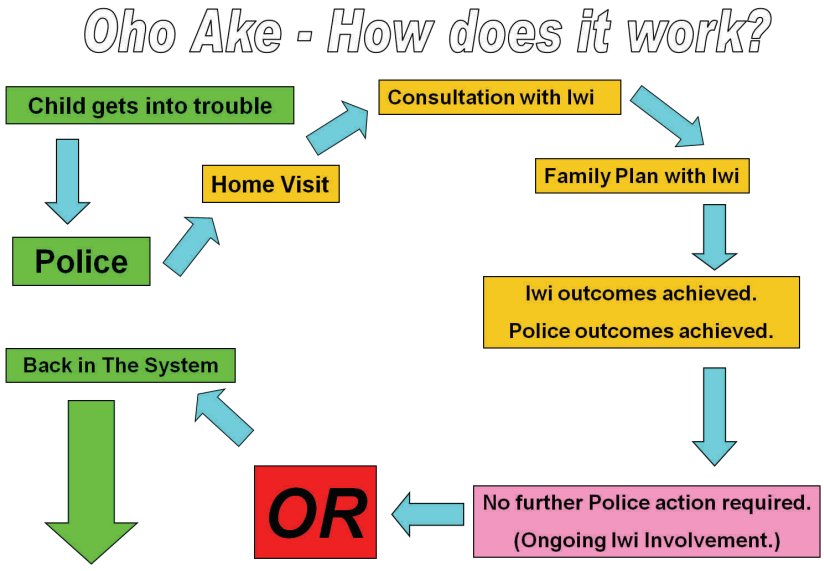
The Eastern Bay Police and Tuhoe Hauora - the social agency arm of Tuhoe, have formed a partnership to address youth offending. An agreement was signed on 25 June between the parties at a Hui in Whakatäne.

The Profile of the Child or Youth most likely to offend in the Bay Of Plenty District is:

- Male Maori
- Aged between **12 & 16** Years
- **Not** attending School
- Have Alcohol or Drug issues
- Have **No** Role Models or Clear Boundaries
- From a dysfunctional and/or Single Parent family (generally the mother)
- The Family income is more often than not, from some form of benefit
- They reside in rental accommodation in the lower socio-economic areas

Called Oho Ake, the initiative is aimed at Maori children and young people who fall into the justice process at all levels. It is not an alternative justice system, but a model that parallels current practice; in fact this model reverts back to the original intentions of the Children Young Persons & Their Families Act 1989 such as sections 4, 5, 13 and 208.

The intention of the Act when started was to involve whanau, hapu and iwi in a process to help their children and families in relation to offending, as well as care and protection issues. What this initiative sets out to achieve is that very concept.



The initiative is focused on using a tikanga based process to reconnect children and young people who offend with their identity and whakapapa, but also with their families, other children in the family and wider whanau.

It is a process which relies on a collaborative approach to undertake effective interventions for appropriate outcomes for children and young people and their family members.

Approach

Police in the Eastern Bay of Plenty will not change their current approach to dealing with child and youth offenders. That is, it will be business as usual. Where offences occur they are sent to Youth Aid and home visits made where an assessment using the Youth Offenders Risk Screening Tool (Yorst) is completed to establish what response is required. Initially police look at the alternative action stage. This would trigger an intervention point for Iwi to be brought in to undertake action accordingly.

At the alternative action level Iwi will decide the level of accountability and action upon receipt of the referral from police. They will under-

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take their own assessment as to what issues are further identified or what services are required to assist.

They in turn will report back the outcome of the accountability and action to police prior to the police youth case being closed. It is not for police to intrude into the family, but for Iwi to undertake appropriate interventions. Where required police will assist when asked.

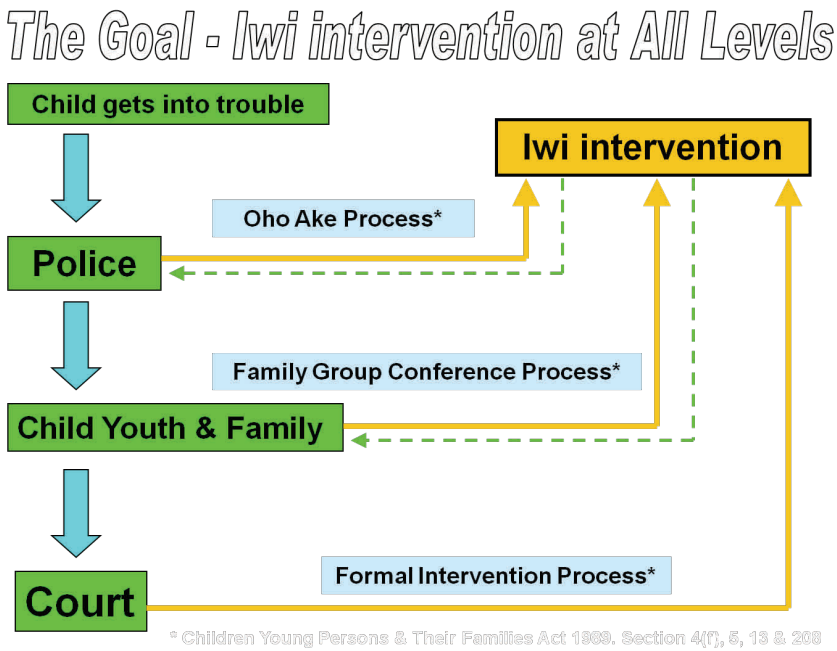
Victims will be part of the process as they will be consulted as per current legislation and practice.

Once police involvement is complete, this does not mean that Iwi will also step back. They will continue to assist the family to look at the underlying causes of the offending and how other intervention within existing contracts as Social service providers etc continue to assist the family. This fits with current practices and the recently announced Whanau Ora concept.

This initiative relies on all parties acting in good faith. It has the potential to make a significant impact on child and youth offending in the long term.

It has been acknowledged by both parties in the agreement there will be times no doubt when all parties will face challenges in relation to the initiative. With the agreement in place there is a clear expectation that both parties will act in good faith and discuss and resolve issues should they arise.

If other levels of intervention are required, such as children and young people who have been referred for a family group conference (FGC) or are to appear in the Family or Youth Court, the child or young person will still have access from Iwi, so that whatever court sanctions may be imposed, Iwi can still have input. Should the alternative action intervention process break down, the options of FGC etc can still be made.



Should a young person receive a custodial sentence such as prison or residence, or even various supervision orders, then iwi can still be involved and assist.

The concept is to have early intervention in place so that where children or young people (especially children) offend, appropriate responses and interventions are put in place to prevent future involvement with the youth justice system, not only for those that offend, but just as importantly, their siblings.

It is acknowledged that preventing children and young people from entering the Youth and Family Court system is preferable to dealing with them once they are there. It is hard, and some say too late, once this has happened.

Any Youth Court procedures will continue as is at present, but may in future possibly include Youth Court into a Tikanga type process, whether that is held on a Marae, such as in Gisborne or other venues. Youth Court Judges and the Ministry of Justice will have to be consulted and processes agreed should this path be included.

Doli incapax — a new lease of life for an old principle

The Children, Young Persons and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 came into force on 1 October this year. Amongst other things, it introduced a test of culpability for 12 and 13 year olds appearing in the Youth Court. Section 272A(1)(d) requires that, before finding a charge against a child 'proved', a Youth Court Judge must satisfy themselves that the child knew either:

(i) that the act or omission constituting the offence charged was wrong; or

(ii) that it was contrary to law.

This test is known by the latin label 'doli incapax'. This refers to the ancient common law presumption which it seeks to uphold. Doli incapax literally means 'incapable of evil'. It works, at least in New Zealand, to absolutely protect children under the age of 10 from criminal prosecution. For children aged 10 to 13, the doli incapax presumption requires the prosecution to prove that they were not 'doli incapax' at the time they committed the offence. For young people over the age of 13, and for adults, doli incapax does not apply.

Previously, the presumption has been required to be rebutted before any successful prosecution of a child in the High Court (charged with murder or manslaughter), or in the Family Court (if they were the subject of an application for a declaration that they were in need of care and protection on the grounds of their criminal behaviour).

With the advent of the amendments to the Children, Young Persons and Their Families Act 1989 (CYPFA), the test is now also to be considered by Youth Court Judges for that small group of 12 and 13 year olds appearing before the Court. This expansion of the application of the presumption is in contrast to the law in the UK, which removed the doli incapax test following the trial of 10-year olds Jon Venables and Robert Thompson for the murder of James Bulger.

An unpopular test

Up until the removal of the doli incapax presumption in the UK, it had been the subject of many criticisms. These included that it was:

- archaic,
- illogical,
- unnecessary in a modern society, and
- allowed children to avoid responsibility for their actions.

In her recent Masters thesis on the topic, ex Youth Court research counsel and ex Court In The Act editor Rhonda Thompson comments that the New Zealand legal system (save for some cases of murder and manslaughter in the High Court) resolutely ignores the presumption, and its continued usefulness is therefore questioned.

Rhonda Thompson argues that Courts and prosecutors have avoided dealing with the doli incapax test, not because of the criticisms mentioned above, but for reasons more particular to the New Zealand context. These include:

- Evidence of previous misbehaviour may be raised to show that the child knew that their actions were wrong,
- Our particular test for knowledge of wrongfulness is very low and therefore too easily proved,
- The presumption is only raised in the most serious cases, where "any question about knowledge of wrong seems futile".

Despite these questions, the challenge for Youth Court judges will be how to assess a child's knowledge of right and wrong. Assistance from New Zealand case law is slim, given the low numbers in the High Court, and the lack of willingness among Family Court judges to engage in the inquiry when a 'care and protection' matter is uncontested.

NZ case law

The most useful New Zealand case on what evidence is admissible by a prosecutor trying to prove that a child knew that their actions were wrong is *R v Rapira* (9 August 2002)

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HC Auckland, Fisher J. In this case, Justice Fisher considered possible evidence against Bailey Junior Kurariki, a 12 year charged with the murder of a pizza delivery worker in 2001.

The Court started from the basic principle that the Crown can call evidence as to any fact from which the jury might logically infer that on the occasion in question the child knew that what he was doing was wrong or contrary to law. This might include general evidence that the child had previously been told about matters of morality or unlawfulness, or had been corrected following misconduct that might be unrelated to the present circumstances. General misconduct will not be admissible, unless it can be shown that the child understood that their actions were wrong, and the evidence is also more probative than prejudicial. Justice Fisher comments that knowledge of general wrongfulness will be easy to demonstrate in a mature child. Expert testimony on general understandings of wrongfulness or unlawfulness amongst children is also permissible.

An expert witness, or a lay witness may be capable of giving evidence about a particular child's level of knowledge. The expert witness is likely to need specialised training, and the Court's discretion whether to allow such evidence will also be affected by the specialist's personal dealings with the child, and the availability of other evidence.

In this case, the Court did not allow evidence of previous instances of misconduct where the jury could not have inferred anything about Kurariki's knowledge that the conduct was wrong or unlawful. Police warnings following instances of assault and theft were admitted by Justice Fisher because both offences were also elements of the more serious charges that Kurariki was facing. On the other hand, evidence of solvent abuse, tagging and breaching a trespass order were not allowed as they had no relationship to the current charge.

Evidence of Kurariki's disciplinary problems at school were allowed, as was expert testimony from an experienced Police youth aid constable, and Kurariki's ex school principal, who had been a teacher for 41 years. Interestingly, opinions from these two men regarding the 'ultimate issue' of whether Kurariki had the requisite knowledge on the night of the killing was not allowed, because the Court said they would needed to have known "what he did on the night when placed in its full factual context". That question should instead be left to the jury.

A better test

In her thesis, Rhonda Thompson concludes that the doli incapax test for the criminal culpability of a child is too narrow. "It is probably fair to say that in the majority of child offending cases, the child was able to identify that their behaviour was wrong." She quotes Finlay J's dissent in *R v Brooks* [1945] NZLR 584 (CA), who said that the Court should "consider all a person's characteristics, idiosyncracies and strengths". Thompson also quotes Elizabeth Scott (2000), who says that punishing incompetent children undermines the principle of retribution and the integrity of the criminal law.

Copies of *Old Enough To Know Better: The Doli Incapax Presumption In New Zealand Law,* a Master of Laws dissertation submitted to Victoria University of Wellington, 2009 by Rhonda Elizabeth Thompson, can be obtained by contacting Rhonda (rhondat@clear.net.nz) or this office (COURTINTHEACT@justice.govt.nz).

Foster Care and Youth Offending

Mel Bleach & Dave Robertson, Foster Care & Youth Offending, A Review of the Evidence, Henwood Trust 2009. Report available from the Henwood Trust PO Box 10011 Wellington.

Foster Care and Youth Offending report authors Mel Bleach and Dave Robertson

In this report, the Henwood Trust recognises that "the progression of a subset of children from a care and protection to a youth justice system is a clearly demonstrated phenomenon". Children within the in care and protection system are vulnerable by definition. Many also have 'externalising behaviour problems' which could become entrenched if not treated.

Unfortunately, the authors had little New Zealand evidence to draw on, despite thousands of children being in care and protection and youth justice placements at any one time in this country.

The report goes on to review the literature on evaluations of the different branches of Treatment Foster Care programmes. It concludes that Multidimensional Treatment Foster Care (MTFC) is an effective youth justice intervention, and is useful for supervision with activity orders. The reports authors make the point that the proven value of models like MFTC is important in New Zealand because a high proportion of young people in youth justice placements (in 2008) were receiving group residential programmes using models that were not evaluated and not evidence based.

Links between foster care and youth offending

Foster children and young people have high rates of behavioural, emotional, mental health, social, educational and attachment problems. Because of these needs, the report's authors recommend that these children and young people need to be prioritised when it comes to screening, assessment and access to appropriate treatment services. Foster parents also need extensive training because the children and young people they are caring for are so clinically complex.

This clinical complexity also means that children in the welfare system are at a higher risk of offending as they get older. The report points out that many of these children are known to be at risk of offending before they formally enter the youth justice system.

Knowledge of behavioural problems in children before they enter foster care can also suggest a range of poor life outcomes, including teenage pregnancy, mental health problems, and substance misuse.

These poor life outcomes are also risks for children in foster care.

Multiple foster care placements, as well as moving in and out of foster care is a 'clear identifier' for children who are at risk of getting into trouble with the law, and of failing to stay in their foster placements.

This so-called 'placement failure' is most common in older children (aged 10—15), and foster children aged 16 and 17 are those who are most at risk of 'placement instability'. It is for this reason that the authors of this report label young people in this age range who are in the process of transitioning from foster care to independence as a "high needs group at risk of poor life outcomes".

The report's authors favour Treatment Foster Care (as opposed to regular foster care) for young people with antisocial behaviours. They say Treatment Foster Care is

- more cost-effective than group care or institutions,
- has resulted in improvements in difficult young people's behaviour,
- means those young people are less likely to restrictive placements, and
- Better at monitoring the young people while they are in care.

In particular, the researchers say that Treatment Foster Care is good for antisocial girls, who tend to be more disturbed than their male counterparts. It has also proven effective with preschoolers in care, who make up more than a third of all foster care placements.

Fetal Alcohol Spectrum Disorder in the Youth Court: Undiagnosed and Unrecognised

Article by Linda McIver, research counsel to Principal Youth Court Judge.

Judge Becroft, the Principal Youth Court Judge and Judge O'Driscoll, a District Court Judge with a Youth Court designation, are taking a particular interest in Fetal Alcohol Spectrum Disorder (FASD), and the extent to which it may affect young people appearing before the Youth Court. International research indicates that individuals affected by FASD may be appearing in the Youth Court at much higher rates than has been recognised. In this first part of a 2-part series in Court in the Act on FASD, we look at the manifestations of the condition, and why it is important that the Youth Court "up-skills" in this area. Part 2, in the next edition of Court in the Act will focus on recent developments in New Zealand on FASD and specific recommendations for dealing with young people affected by FASD in the Youth Court.

What is FASD?

A spectrum of conditions involving behavioural and other disabilities rooted in brain damage caused by prenatal exposure of the fetus to alcohol. (Judge A.Wartnik, 2007).

FASD is not in itself a clinical diagnosis, but includes the following diagnostic categories -fetal alcohol syndrome (FAS), partial fetal alcohol syndrome (PFAS), alcohol-related neurodevelopmental disorders (ARND), alcohol-related birth defects (ARBD).

Why is understanding FASD important in the Youth Court?

It is estimated that there may be 100-200 individuals with FASD appearing before the Youth Court every year. This is a conservative estimate based on the international prevalence rate of 1%, and on the findings that 60% of individuals with FASD diagnosis will offend. It recognises that most people with FASD will not have an actual diagnosis, but that those that do will often be more severely affected. It recognises that only 20% of youth offenders are prosecuted, but individuals with FASD may have higher rates of prosecution due to their particular

traits.

The following are typical adolescent FASD behaviours related to committing crimes – easily led by more sophisticated peers; engaging in frequent low-grade, impulsive and often nonsensical crime (such as stealing something of little or no value in situations with a high likelihood of being caught); making guileless confessions, sometimes to crimes not committed; waiving rights on arrest; showing no guilt or remorse; lacking appreciation of the magnitude of the crime (Alcohol Healthwatch 2010).

The nature of the organic brain deficits in FASD results in difficulty associating cause an effect, learning from experience, generalising to new situations, and internalising principles of behaviour. This results in inconsistent and erratic behaviour and affects an individual's ability to explain and justify their actions and to participate adequately in court proceedings (Alcohol Healthwatch 2010).

What does international research tell us about FASD?

There are four diagnostic features of FASD – growth deficiency, characteristic facial malformations, central nervous system abnormalities (IQ, speech language, memory, planning, monitoring, reasoning, etc), and prenatal alcohol exposure.

The following secondary disabilities (disabilities that develop during a person's lifetime and can be prevented or lessened by better understanding and appropriate interventions) are associated with a FASD diagnosis - men-

tal health problems (94%), disrupted school experience (43%), trouble with the law

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(60%), inappropriate sexual behaviour (45%, and 65% of adult males), alcohol or drug problems (30%), dependent living (80%), employment problems (80%) (Streissguth

1996).

FASD is described as being the leading cause of non-genetic intellectual disability in the Western world (British Medical Association Board of Science, 2007).

The international FASD incidence/prevalence rate set in the 1990s was 1 per 100 live births. Some studies show an incidence of 2 – 5 % in Western countries (Alcohol Healthwatch 2010).

Protective factors for FASD are - living in a stable home; being diagnosed before the age of 6 years; never having experienced violence; receiving developmental disability services; and being diagnosed with fetal alcohol syndrome rather than fetal alcohol effects (Streissguth 1996).

A Canadian study of 287 youths remanded for forensic psychiatric/psychological assessment found that 23% had a diagnosis of FAS or FAE (Fast & Conry 1999).

What research has been done on FASD in New Zealand?

The prevalence of FASD in New Zealand has not been studied.

If New Zealand were to accept the international rate of FASD as 1% of live births, we could expect more than 600 babies with FASD to be born each year based on our current birth rate, with a collective lifetime cost of over $1billion per annum (Alcohol Healthwatch 2010).

New Zealand's prevalence rates may be higher than the international standard due to relatively high rates of unplanned pregnancy and of drinking during pregnancy (Alcohol Healthwatch 2010).

A plea for information

If anyone has any information on FASD in New Zealand, particularly any initiatives to assist affected individuals, or any research in this area, the Judges would appreciate hearing from you. In the first instance, please contact Linda McIver, Research Counsel to the Principal Youth Court Judge (linda.mciver@justice.govt.nz).

References and Further Reading

Judge A.P. Wartnik 'Fetal Alcohol Spectrum Disorders: What Juvenile/Youth Court Professionals Need to Know' (2007) Presentation to the W*orkingTogether* Conference, Wellington 28 Nov 2007.

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http://www.ahw.org.nz/resources/Documents-other/2010/FASD%20Diagnostic%20Report%20Final%20Aug%202010.pdf

Letter from Constable L J 7660

This letter to the editor is reproduced with the kind permission of Police Constable Len Johnson. It was also recently submitted to a Police Association publication circulated to New Zealand Police staff. Len Johnson was born and raised in Otara (South Auckland) and had, until recently, worked there exclusively since 1982.

Every day we hear, see, read about or watch on TV the tragic consequences of everyday Kiwis who make bad choices and decisions; that tragically impact not only upon their own lives but upon the lives of their innocent victims; sometimes with fatal consequences. In 2010 has anything changed?

In 1997 as a Youth Aid cop in the second highest Youth crime Area in NZ we recognised that we (NZ Police) were in a position of influence to get young people to make better choices and decisions at the earliest age possible; so that as they matured they retained that simple and basic skill-set into adulthood. At the same time we needed to acknowledge and reinforce to the good decision makers; *"job well done, keep it up"* The key to Youth crime reductions is to first reduce crime committed by the two identified groups of young criminals who we knew about such as the serial recidivist criminal; ***DID THAT***.

The second phase was to then prevent the first time young criminal from committing their second criminal offence; ***DID THAT***. Over a one year trial period this phase saw a 94% reduction in crime committed by this identified group of young criminals. The third and simplest phase was to then solicit our Areas young people into making their own personal decision to ***NOT*** commit their ***FIRST*** criminal offence.

Addressing Youth crime in this order and manner is the only way to reduce Youth crime i.e. young people making their own decision to not commit crime. We need to stop blaming parents, peer pressure, their upbringing, complaining that it's a community problem and just stop making excuses period because young people make their own choices and decisions just as you or I do.

We as an organisation are in an influential position to ensure that everyday Kiwis of ***ANY*** age have the skill-set and confidence to make better choices and decisions not just in terms of criminal offending committed by them but whenever confronted by everyday life situations that confronts us all i.e. whether to assault someone, steal something, cheat on your partner, whether to get your 13 year old girlfriend pregnant; to drive home drunk or to speed or drive dangerously. ***"Choices and Consequences"*** is the strategy and message that is clearly missing from the psyche of those who react without having the skill-set to think about the consequences of their actions ***BEFORE*** they instinctively react.

Even intelligent people lack this fundamental skill-set including the odd Police Officer. The smart people get it; imagine the chaos if they didn't? In terms of criminal offending; less criminal offences committed equates to fewer victims; less work for support services and prisons and in some cases such as the Road Toll and Domestic Violence; less loss of life.

Is this not what we are in the business of? We as an organisation are very good at cleaning up the mess i.e. solving the crime, arresting the offender, dishing out tickets and being the ambulance *"reactive clean-up service"* at the bottom of the cliff; but surely we can Police smarter and more efficiently? Don't get me wrong I actually love my job and no I'm not having a go at anyone; so don't even go there.

There will be an upcoming informal forum in Auckland where such issues will be discussed and debated without prejudice i.e. your view; objections and input will be most welcome.

Drinking and driving essay

Essay handed to Judge Jocelyn Munro by a 16 year old young person on appearing in Youth Court for the first time.

My name is M[redacted]; I am sixteen years of age and spend most of my week-ends drinking with my mates. I usually drink Vodka because I know I can get a good buzz and I like the taste. Even though I am not old enough to buy alcohol, it's not too hard to find someone who can buy it. I don't drink to cause or look for trouble, but to have a good time with mates just hanging out and sussing out the rages, seeing what's happening and what people are up to.

It was one of these nights – I was drinking Vodka and hanging out with a couple of mates having a good time, we headed out to a rage out at the E-Side – and this is where things changed, myself, girlfriend and a mate headed back to my place, my girlfriend was still really upset about her handbag being taken.

I knew where my mum kept her car keys, so I decided that I would take her car and go back out to the E-Side, all good I got my learner license during my fifth year at high school, my dads given me a couple of lessons and my mums given me a lesson, I know people drink and drive, I'm not pissed, I'm off. And I did, my girlfriend and mate came along for a ride.

We were nearly there; I had gotten us from one side of town to the other side of town now, I think I drove pretty well.

I was pulled over by a police officer who saw me driving all over the road, and taken back to the station for questioning and alcohol test. I had never been in the police station before, I had never done what I had just done before and I was scared, and the only thing making me feel safe was crossing my arms and answering the questions truthfully.

It felt like hours before I saw my mum, I knew I would have to listen to her tell me off too, but I really wanted to see her. Both mum and dad talked to me about what I had done and all the things that could have happened.

Sergeant James Harvey at our family group meeting showed me a picture of a girl who had no face, she had been burnt because of a drunk driver, and I couldn't even really look at the pictures because they were sad and scary too.

Continued

The picture - and thinking of hurting my friends, my girlfriend, really made me think about my actions, my attitude and the decisions I made in that one night and in my nights to come.

I have not been to a rage since the night I choose to:
steal my mothers' car,
drive drunk,
on my Learners license
and without a full license driver and
driving after hours that the license allows.

I made the decision to jump behind the wheel of a deadly weapon knowing that I have a lack of experience driving and that I had been drinking. Why was I so dumb? Because I had lost control and let alcohol control me.

If I never got pulled up by the officer it would have been different 'what if' I burnt my girlfriends face off? I could have. I could have killed my mate, I could have smashed up my mothers' car, and I could have killed or injured a pedestrian, cyclist, or motorist, pet, myself the police officer, and I could have destroyed a cherished garden, or a hard earned and worked fence, a parked vehicle. I could have smashed into a power pole turning all the power to the homes down the street off, I could have done a lot of damage, caused a lot of pain and suffering, anger and hurt.

I told my mum sorry for stealing her car and for hurting her and dad. I told my girlfriend and mate sorry for putting their lives at risk.
I write this letter to let everyone know that I have done wrong and am sorry for risking lives and property of others.
I do feel dumb and stupid for what I have done, and am thankful I did not harm or kill anyone.

Teenage brain science articles and cases

Due to recent interest in the links between the science of teenage brain development and youth justice, Court In The Act has updated our list of relevant scientific articles. Thanks to Dr Ian Lambie for providing most of the articles on this list.

•Mayzer, Roni , Bradley, April R. , Rusinko, Holly and Ertelt, Troy W.(2009) 'Juvenile competency to stand trial in criminal court and brain function', Journal of Forensic Psychiatry & Psychology, 20: 6, 785 — 800, First published on: 25 August 2009 (iFirst)

•Adolescent brain development: Current themes and future directions. Introduction to the special issue, Brain and Cognition 72 (2010) 1–5, Monica Luciana Department of Psychology and Center for Neurobehavioral Development, University of Minnesota

•Is Jumping off the Roof Always a Bad Idea? A Rejoinder on Risk Taking and the Adolescent Brain, Mike A. Males 2010; 25; 48 Journal of Adolescent Research

•Nature and Nurture by Definition Means Both: A Response to Males, Journal of Adolescent Research 2010; 25; 24 originally published online Nov18, 2009

•Neuromaturation and Adolescent Risk Taking: Why Development Is Not Determinism Sara B. Johnson, May Sudhinaraset and Robert Wm. Blum, Journal of Adolescent Research 2010; 25; 4 originally published online Nov 11, 2009

•Sex differences in the adolescent brain, Rhoshel K. Lenroot, Jay N. Giedd, Brain and Cognition 72 (2010) 46–55

•Trauma and the adolescent brain, Linnea Karlsson, MD, PhD, Adolescent psychiatrist,Turku University, Central Hospital, Department of Child Psychiatry and National Institute for Health and Welfare, Finland Hasse Karlsson, Editor-in-Chief, Nordic Journal of Psychiatry

•Should the Science of Adolescent Brain, Development Inform Public Policy? Laurence Steinberg, Temple University November 2009 • American Psychologist, Vol. 64, No. 8, 737–750

•The neural basis of puberty and adolescence, Cheryl L Sisk1 & Douglas L Foster NATURE NEUROSCIENCE VOLUME 7 | NUMBER 10 | OCTOBER 2004

•Adolescent Brain Development and Executive Functions: A Prefrontal Framework For Developmental Psychopathologies, Michelle Poletti, Clinical Neuropsychiatry (2009) 6, 4, 155—165

•A behavioral scientist looks at the science of adolescent brain development, Laurence Steinberg, Brain and Cognition 72 (2010) 160–164

•Adolescence as a critical window for developing an alcohol use disorder: current findings in neuroscience, Kimberly Nixon and Justin A. McClain,Current Opinion in Psychiatry 2010, 23:227 –232

•The Adolescent Brain: A Work in Progress, Daniel R.Weinberger, M.D., Brita Elvevåg, Ph.D, Jay N. Giedd, M.D., The National Campaign to Prevent Teen Pregnancy, www.teenpregnancy.org

•The Gift and the Trap: Working the "Teen Brain" Into Our Concept of Youth, Howard Sercombe, Journal of Adolescent Research 2010; 25; 31

•The Relevance of Brain Research to Juvenile Defense, Robert E Shepherd Jr, 19 Crim. Just. 51

•Improving the transition: reducing social and psychological morbidity during adolescence, Interim report, 1 July 2010, Professor Sir Peter Gluckman, KNZM FRSNZ FMedSci FRS, Chief Science Advisor, Office of the Prime Minister's Science Advisory Committee, www.pmcsa.org.nz

•See also Court In The Act Issue 34, 5 for a discussion of *Roper v Simmons,* the US Supreme Court case on the legality of the death penalty for juveniles.

•See US Supreme Court decision *Graham v Florida* where the Court rules that life imprisonment for juveniles convicted of non homicide offences is also unconstitutional.

"***Court in the Act***" is published by the office of the Principal Youth Court Judge of New Zealand.

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We welcome contributions to the newsletter from anyone involved in youth justice in New Zealand or internationally.
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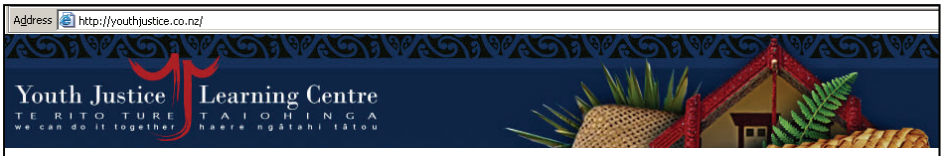

Remember, the Youth Justice Learning Centre lists all the youth justice training opportunities available in New Zealand.