Issue 30

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www.justice.govt.nz/youth

"Court in the Act"

SPECIAL EDITION

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

In this issue...

This is the second ever special edition of Court in the Act. It focuses on the Supervision with Activity orders. This order was one of the flagships of the 1989 Act emphasising community-based accountability and rehabilitation. It's decline is too important to ignore. I hope this newsletter will lead us to "rediscover" Supervision with Activity.

Judge Becroft

Rediscovering supervision with activity

A growing chorus of Youth Justice professionals is calling for greater use to be made of supervision with activity (SWA) - an order made under sections 283(m) and 307 of the Children, Young Persons and their Families Act 1989.

A recent report prepared for the Ministry of Social Development by Tony Saxon concludes that there has been a "significant decline" in numbers of SWA orders since 1998. In that year, according to data from Child Youth and Family, 170 SWA orders were made. This figure dropped to 75 in 2002, but rose again to 99 in 2005.

The Saxon report points to a lack of community providers, the complex nature of plans for individual offenders sentenced to SWA, and the competition for limited finances, which makes the cheaper sentence of supervision with residence (SWR) a more attractive option.

The Saxon report labels SWR as the "high tariff sentence of choice" for the most serious Youth Court offenders.

Principal Youth Court Judge Andrew Becroft says he is concerned that the numbers of SWA orders are declining to the point where the order is "virtually extinct" in some metropolitan areas.

Judge Becroft says the New Zealand youth justice community needs to be challenged to resurrect SWA as a "cornerstone" of youth justice sentencing options.

In response to these concerns, the Ministry of Justice, the Ministry of Social Development (MSD), and Child Youth and Family wish to make it known that there is currently work in progress to build and facilitate the use of SWA.

This work includes the programme called Young People in Police Cells; the CYF Youth Justice Capability review; the review of sentencing options in the Youth Court and associated "gaps analysis" of programmes to support Youth Court orders by MSD; $1.4 million of extra funding to MSD from this year's Budget for intensive intervention programmes; and work by MSD and CYF to build the youth justice sector's capacity and capability to deliver youth offending related programmes.

CYF are also taking steps to clarify and reissue guidelines relating to the use of SWA. These will be provided through staff training, and a rewrite of the all important Youth Justice

Broken hearts and broken souls Dr Cindy Kiro

Children's Commissioner Dr Cindy Kiro has expressed her concern about the apparent rise in the numbers of supervision with residence (SWR) orders coming from the Youth Court, and the decrease in the numbers of orders for supervision with activity (SWA).

Dr Kiro and Office of the Children's Commissioner General Manager Gordon McFadyen told *Court in the Act* that the Children's Commissioner promotes policies of early intervention to keep young people away from the justice system for as long as possible, and a rise in SWR orders means this opportunity for early intervention is lost. McFadyen said youth justice residences were places where young people mix with others who have histo-

Continued

Children, Young Persons, and their and Their Families Act 1989

s 283 Orders of the Court

Where a charge against a young person is proved before a Youth Court, the Court may, subject to sections 284 to 290 of this Act, do one or more of the following: … (m) Make a supervision with activity order under section 307 of this Act:

s 307 Supervision with activity order

(1) Where a charge against a young person is proved before a Youth Court, the Court may, with the consent of the young person, make an order placing the young person under the supervision of the **[**chief executive**]** or such person or organisation as may be specified in the order for a period not exceeding 3 months, and imposing either or both of the following conditions:

(a) That the young person attend and remain at, for such weekday, evening, and weekend hours each week and for such number of months as the Court thinks fit, any specified centre that is approved by the Department, and take part in such activity as may be required by the person in charge of the centre:

(b) That the young person undertake any specified programme or activity.

(2) Where the Court makes an order under subsection (1) of this section in respect of a young person, it may at the same time make an order under section 283(k) of this Act placing that young person under the supervision of the **[**chief executive**]** or such person or organisation as is specified in the order for such period (not exceeding 3 months) as the Court may specify, and any order so made under that section shall come into force on the expiry of the order made under subsection (1) of this section.

Dr Cindy Kiro

ries of criminal offending, which results in negative peer pressure. Once young offenders start influencing each other to offend more, the opportunity for early intervention is lost".

According to Cindy Kiro and Gordon McFadyen, activity programmes for young offenders need to be made *in* their communities, not outside their communities in a residential setting. Individual plans need to provide for a seamless transition between the programme and the community, and young people need to be 'normalised' within their communities, not stigmatised by being labelled as offenders. If young people are sent to residential programmes then dumped back into a community where nothing has changed, the transition is too tough.

Kiro and McFadyen accept that

> *Individualised activity plans for young offenders in their own communities are not easy or cheap to develop, but with co-operation and creative thinking from all agencies, the long term benefits for the young person, and their community will far outweigh the costs.*
>
> Dr Cindy Kiro

individualised activity plans for young offenders in their own communities are not easy or cheap to develop, but with co-operation and creative thinking from all agencies, the long term benefits for the young person, and their community will far outweigh the costs.

Court in the Act asked Cindy Kiro and Gordon McFadyen about the decline in the use of SWA. They identified a number of reasons for the decline: a suspicion that Child Youth and Family and the Youth Court have become risk averse because of public outcry over young offenders being allowed to remain in the community, which makes SWR appear to be a safer option; a lack of available community programmes; and more effort being put into building residential facilities than developing SWA programmes in the community.

Providers of community programmes had also lacked capacity. Families and victims participate less in the FGC process. In these times of almost full employment, community programme providers are facing an ageing volunteer workforce, and are struggling to retain good volunteers and remunerate them as well as mainstream workplaces.

According to Cindy Kiro, youth justice agencies have "dropped the ball" over SWA. The intent of the CYPF Act was always to develop individually targeted programmes for young offenders, with more involvement of families, and where families were held accountable and paid to monitor their young person's progress. Dr Kiro hopes that the new CYF funding for youth justice will boost the involvement of families and victims.

Kiro and McFadyen are "thrilled" about the new CYF funding for Youth Justice. They hope CYF can build on existing "pockets of good practice" with more capacity, capability, and expertise in youth justice operations.

Cindy Kiro told *Court in the Act* that CYF needs quality youth justice social workers who have good skills, commitment, sympathy, knowledge and experience. She said youth justice social workers should not be poor cousins within the Department. Young offenders need the community's sympathy, "they might not have broken bones, but they have broken hearts and broken souls" she said.

Supervision with Activity orders

Source: Ministry of Justice

Note: figures represent numbers of orders, not individuals.

Note: Courts are listed in order of 2004-2006 Totals. Not all Courts are listed.

Youth Court	2004	2005	2006	Total 2004—2006	% of All Courts
Christchurch	19	10	5	34	9.19
Manukau	7	9	14	30	8.11
Hastings	13	6	11	30	8.11
Napier	7	7	12	26	7.03
Waitakere	9	3	13	25	6.76
Rotorua	13	7	4	24	6.49
Tauranga	4	8	11	23	6.22
Hamilton	6	12	2	20	5.41
Whangarei	3	6	10	19	5.14
Dunedin	9	5	2	16	4.32
Auckland	6	3	3	12	3.24
Hawera	4	7	1	12	3.27
Whakatane	4	4	3	11	2.97
New Plymouth	4	2	5	11	2.97
Taupo	5	2	2	9	2.43
Tokoroa	3	5	0	8	2.16
P. North	4	3	0	7	1.89
Lower Hutt	0	1	6	7	1.89
Morrinsville	3	1	2	6	1.62
Porirua	3	1	1	5	1.35
Wellington	1	1	2	4	1.08
Kaikohe	0	0	3	3	0.81
Pukekohe	1	2	0	3	0.81
Nelson	0	2	1	3	0.81
Greymouth	1	1	1	3	0.81
Invercargill	1	2	0	3	0.81
Papakura	0	0	2	2	0.54
Westport	0	0	2	2	0.54
Timaru	2	0	0	1	0.54
North Shore	0	1	0	1	0.27
Thames	0	1	0	1	0.27
Huntly	1	0	0	1	0.27
Gisborne	0	0	1	1	0.27
Wairoa	0	1	0	1	0.27
Wanganui	0	1	0	1	0.27
Waipukurau	0	0	1	1	0.27
Levin	0	0	1	1	0.27
Ashburton	1	0	0	1	0.27
Oamaru	0	0	1	1	0.27
Total for All Courts	134	114	122	370	

New Research

Deviant peers devalue residential programmes

A recent book by researchers in the United States casts serious shadows on youth justice solutions that see young offenders removed from society and placed together in residential programmes.

In *Deviant Peer Influences in Programs for Youth* (Ed. Kenneth A Dodge, Thomas J Dishion, Jennifer E Lansford, Guilford Press 2006), the writers apply knowledge about the negative effects of programmes, laws, and policies that, first, **segregate** young offenders from the community, and secondly, **aggregate** them together.

Dodge, Lansford, and Dishion begin by stating the common understanding that placing a young person involved in crime and drug use amongst a group of other anti-social youths is not likely to be beneficial for the young person, and increases the likelihood that they will re-offend. The authors and their contributors take that simple home truth and apply it to programmes and policies promoted by a wide range of "well-meaning government agencies". These agencies are tempted to segregate and then aggregate young offenders because "[s]uch practices make meeting the needs of deviant youth more financially and logistically feasible, and serve the potential function of protecting non-delinquent youth from harm or negative influence."

Focussing specifically on youth justice programmes, Dodge, Lansford, and Dishion cite American studies that show 'Scared Straight' programmes that bring groups of first time offenders into contact with adult prison inmates are "not effective and may actually exacerbate criminal offending". They also point to studies that show that boot camps, vocational training, wilderness challenge programmes, and drug abstinence programmes for young offenders are, at best, ineffective, and at worst, harmful.

The authors comment that "the only prevention programmes with clearly positive results were those that treated youth individually". Effective programmes were ones that, for example, involved training in social skills, and anger management.

In a later chapter on peer effects in Youth Justice, contributors Osgood and Briddell conclude that "there appears to be considerable potential for deviant peer contagion in the many juvenile justice programs that bring together deviant youth".

Osgood and Briddell point to studies of multi-systemic and multi-dimensional programmes that are non-residential and concentrate on developing connections between young offenders and key adults in their family and community. The authors quote a study that showed reductions in official and self-reported delinquency were partly due to the fact that the opportunities for negative peer influence were reduced. The particular 'multi-dimensional treatment foster care' programme in question also succeeded in improving youth-adult relationships, increasing discipline, and enhancing supervision.

In the chapter entitled 'Solutions and Recommendations' Peter Greenwood concludes that the contagious effects of placing young offenders together in group programmes will tend to cancel out any positive influences of that programme. Greenwood also ar-

Continued

Supervision with Residence Orders

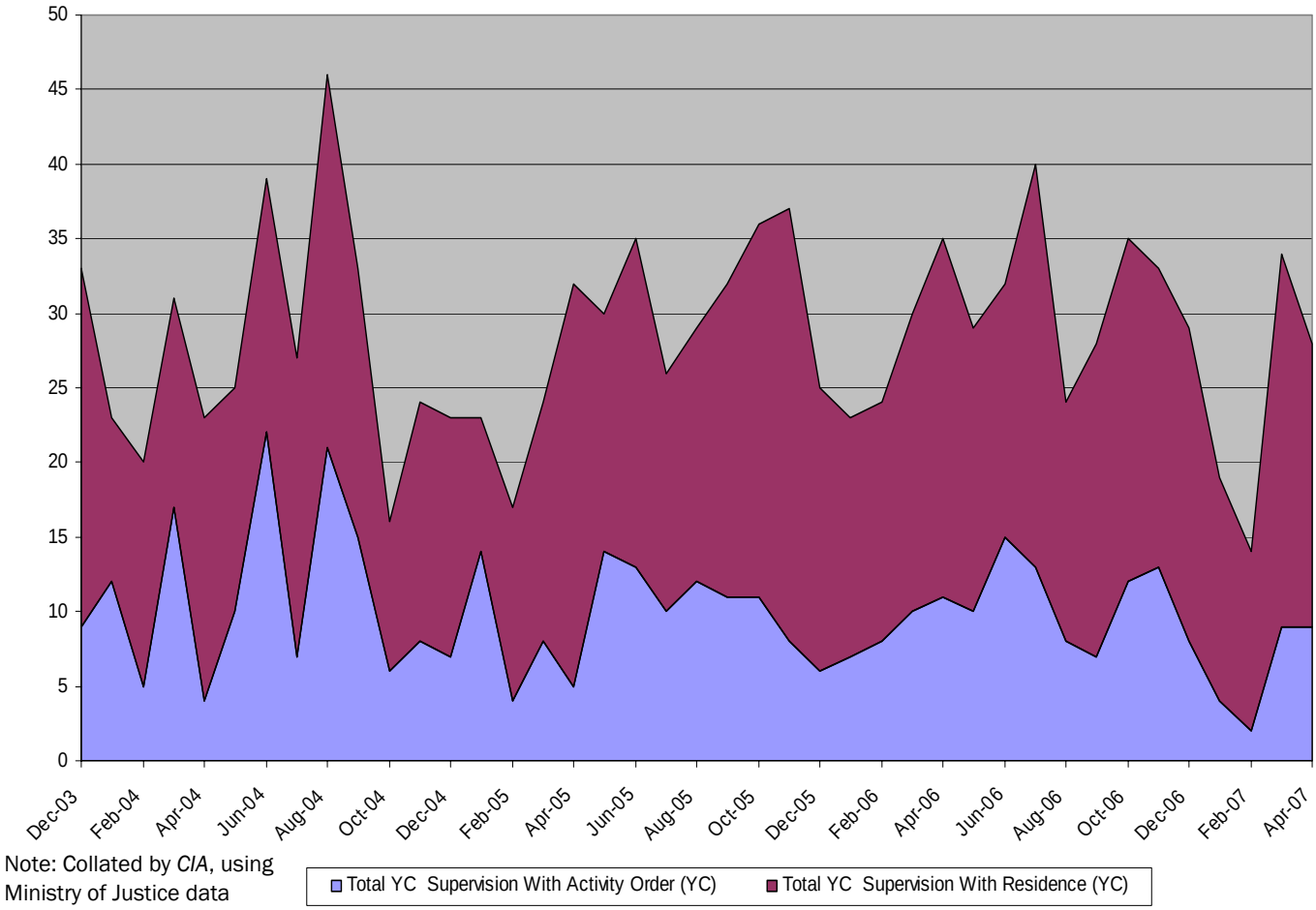
Source: Ministry of Justice

Note: figures represent numbers of orders, not individuals.

Note: Courts are listed in order of 2004-2006 Totals. Not all Courts are listed.

Youth Court	2004	2005	2006	Total 2004—2006	% of All Courts
Christchurch	26	55	60	141	21.17
Hamilton	27	18	10	55	8.26
Manukau	14	20	10	44	6.61
Waitakere	15	8	12	35	5.26
Napier	11	15	8	34	5.11
Auckland	9	15	9	33	4.95
Hastings	6	9	16	31	4.65
Invercargill	5	10	9	24	3.60
Rotorua	8	6	8	22	3.30
Palmerston North	10	3	6	19	2.85
Lower Hutt	4	3	11	18	2.70
Timaru	9	5	4	18	
Dunedin	3	6	7	16	2.40
Whangarei	3	6	6	15	2.25
Tauranga	1	3	9	13	1.95
Porirua	3	6	4	13	
North Shore	5	3	4	12	1.80
New Plymouth	4	5	3	12	
Nelson	2	7	3	12	
Blenheim	4	3	5	12	
Whakatane	2	4	4	10	1.50
Wellington	6	2	2	10	
Kaikohe	1	1	7	9	1.35
Taupo	2	2	3	7	1.05
Pukekohe	1	1	4	6	0.90
Papakura	4	0	0	4	.060
Tokoroa	1	2	1	4	
Gisborne	2	1	1	4	
Ashburton	1	2	1	4	
Gore	1	0	3	4	
Total for All Courts	196	230	240	666	

Comparing numbers of SWR and SWA orders Dec 2003 - Apr 2007



Note: Collated by *CIA*, using Ministry of Justice data

Deviant Peers

gues against group placement because young offenders will be negatively labelled, both internally, and externally as a result of their segregation. They will also find it harder to develop and practice social and relationship skills outside the residential environment, and "the most important reason for avoiding group placements is the clear evidence that all types of preventative programming produce better results in community settings rather than institutions".

In the last chapter of the book Dishion, Dodge, and Lansford conclude that group programmes most at risk of encouraging negative peer influences are those that are not well supervised, lack structure, and provide young offenders with multiple opportunities to interact. In contrast, programmes that support the involvement of adults in the lives of their young offenders by increasing "adult motivation, persistence, effective behaviour management practices, and positive relationships with children are likely to be effective for both prevention and treatment programmes designed to benefit youth.

But the authors argue that such programmes should be part of long-term strategies, and are not well suited to policies that expect youth offending to be 'cured' overnight. They also highlight the fact that, even though residential group placements might be more cost-effective in the short term, "[t]he cost-benefit ratio for the individual deviant youth must be weighed against the costs and benefits to the rest of the community".

CYPFA 1989 Section 5

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

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

(b) The principle that, wherever possible, the relationship between a child or young person and his or her family, whanau, hapu, iwi, and family group should be maintained and strengthened: …

(e) The principle that endeavours should be made to obtain the support of-
(i) the parents of guardians or other persons having the care of a child or young person: and
(ii) the child or young person himself or herself-
to the exercise or proposed exercise, in relation to that child or young person, of any power conferred by or under this Act:

Section 208

Principles

Subject to section 5 of this Act, any Court which, or person who, exercises any powers conferred by or under this Part … shall be guided by the following principles:

(d) The principle that a child or young person who commits an offence should be kept in the community so far as that is practicable and consonant with the need to ensure the safety of the public:

(f) The principle that any sanctions imposed on a child or young person who commits an offence should-

(i) Take the form most likely to maintain and promote the development of the child or young person within his family, whanau, hapu, and family group; and
(ii) Take the least restrictive form that is appropriate in the circumstances

Youth Justice Managers appointed so far:

Counties Manakau

Anahila Fuifuiki (Otahuhu)

Anahila.Suisuiki002@cyf.govt.nz

Carole Bennenbroek (Otara)

carole.bennenbroek001@cyf.govt.nz

Joanne Hempleman (Papakura)

joanne.hempleman001@cyf.govt.nz

VACANCY (Manurewa)

Tai Tokerau

Mark Darling (North Harbour)

mark.darling001@cyf.govt.nz

Lee Andrewes (Northland)

lee.andrewes005@cyf.govt.nz

Waitemata

Kristina Sofele (Auckland City)

kristina.sofele002@cyf.govt.nz

Peter Alexander (Waitakere City)

peter.alexander001@cyf.govt.nz

Bay of Plenty

VACANCY (Rotorua)

Trevor Wi-Kaitaia (Tauranga)

trevor.wi-kaitaia001@cyf.govt.nz

Waikato

Isobel Suter (Waikato East)

isobel.suter001@cyf.govt.nz

Jocelyn Wara (Waikato)

jocelyn.wara001@cyf.govt.nz

Eastern

VACANCY (Tairawhiti)

Neil Cleaver (Hawkes Bay)

neil.cleaver001@cyf.govt.nz

CYF's new Youth Justice Managers - the last hope

This year, Child Youth and Family (CYF) is implementing a new youth justice strategy, and supporting it with a new structure.

There will be 25 new Youth Justice Teams aligned to Youth Courts around the country. CYF hope that these teams will be able to work with discrete communities of interest to "build knowledge of community resources, networks and opportunities that can contribute to an alternative, offending-free future for young offenders".

In a speech to the recently appointed Youth Justice Managers who will head these teams, Principal Youth Court Judge Andrew Becroft told them that expectations were enormous and that they represented "the last chance for CYFS to give proper priority to Youth Justice".

> *The Youth Justice arm of CYFS has "dropped the ball" in developing good relationships with the community and building and sustaining community programmes. A lot of time and effort needs to be invested to retrieve the situation.*
>
> Judge Andrew Becroft

Judge Becroft warned the audience that "If Youth Justice within CYFS was a cat, it has already had nine lives! If the new structure, led by Youth Justice Managers, does not work, then, frankly, there is no hope for Youth Justice within CYFS."

Judge Becroft pointed to the *Baseline Review* of CYF completed by Treasury in 2003, and the subsequent Youth Justice *Capability Review* by CYF completed last year. He said "The *Capability Review* is the most important youth justice document produced by CYFS in the last seventeen years since the Act came into force. Adherence to the *Capability Review* standards is now non-negotiable and is absolutely essential. There must be no retreat or compromise."

According to Judge Becroft, CYF have "dropped the ball" when it comes to knowledge of, and building links between, youth justice workers and local community programmes for young offenders. One consequence is that supervision with activity is suffering from a significant local decline. The judge encouraged the new youth justice managers to take the lead in developing new supervision with activity programmes, and, in particular, participate in, and support the local Youth Offending Teams.

There are 32 Regional Youth Offending Teams. Each team is made up of a minimum of 2 representatives each from CYF, Police, the Ministry of Education, and the Ministry of Health. He said they should also include representatives from local iwi, community groups, and Youth Advocates.

Judge Becroft noted that Youth Offending Teams should be the 'touchstone' for all youth justice initiatives within their local areas.

As a final comment, Judge Becroft challenged the new CYF managers to right the Youth Justice situation within CYF, or there will be "significant external pressure to remove Youth Justice from CYFS once and for all and to house it in a separate standalone agency". This, he said, was not a "desirable option".

Youth Justice Managers appointed so far:

Lower North Island

Donna McNicol (Masterton/Manawatu)

donna.macnicol001@cyf.govt.nz

Greater Wellington

Lo'i Vole (Hutt Valley)

lo'i.vole001@cyf.govt.nz

Rees Fox (Capital and Coast)

rees.fox011@cyf.govt.nz

Western

Sharon Johnson (Taranaki)

sharon.johnson005@cyf.govt.nz

Ray Wiley (Whanganui)

ray.wiley001@cyf.govt.nz

Canterbury

Chris Rewha (Christchurch)

chris.rewha001@cyf.govt.nz

Kendra Beri (Sydenham)

kendra.beri001@cyf.govt.nz

Simon Coventry (South Canterbury)

simon.coventry001@cyf.govt.nz

Upper South

Tony Saxon (Greymouth/Nelson/ Marlborough)

tony.saxon003@cyf.govt.nz

Otago/Southland

Marion Ellis (Dunedin)

marion.ellis901@cyf.govt.nz

Dawn Lloyd (Invercargill)

dawn.lloyd001@cyf.govt.nz


Andrew, Youth Justice Co-ordinator

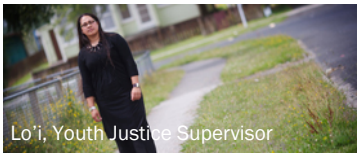
CYF has a new Youth Justice website

Below are excerpts and photos from www.youthjustice.cyf.govt.nz

"From February 2007, Child, Youth and Family is implementing a new approach to Youth Justice, supported by a new structure. These changes will contribute to the goal of reducing the rate and severity of re-offending, by building more responsive services that deliver better outcomes for young offenders."

"Within the new youth justice teams we will establish small delivery teams focussed around discrete communities of interest. These teams will be responsible for developing an intimate knowledge of the community resources, networks and opportunities which can create an alternative, offending free future for the young people. They will work alongside providers (such as social service providers, youth aid, local councils) to develop an in-depth understanding of local issues and bring together the necessary support systems to prevent reoffending."

"The Youth Justice teams will become involved with a young person when Police advise that they intend to charge that person with an offence. If Police do not intend to charge a young person but believe they are at risk of offending, Youth Justice staff will facilitate access to an appropriate service with the aim of preventing offending. Youth Justice teams will also address the Care and Protection needs of a young offender and will, where necessary, work across both Youth and Family Court jurisdictions."


Lo'i, Youth Justice Supervisor

CYF's view of Supervision with Activity

Allan MacRae, National Manager Family Group Conferences
Child Youth and Family

CIA Does CYF support, in principle, the call for the greater use of SWA orders in the Youth Court?

AM The use of Supervision with Actiivity has a far greater potential of linking the Young Person with positive role models within his community. It also keeps him/her at a time when they need to be developing skills to live successfully within a community. This is well documented in human development literature. Supervision with Activity is an Order that promotes an individual plan that does not link or cause the youth to build a relationship with other offenders, a well known problem with group programmes that bring offenders together.

A good Supervision with Activity plan should promote the opportunity for the young person to establish lasting supports and relationships within their community, and provide a number of opportunities for them to find an appropriate role model. A good plan also provides opportunities for both education and/or employment advancement that can be sustained at the end of the Order.

Young People do often build a rapport with residential staff, but it is hard for them to put that to effective use once the young person is discharged. Young people in a residence are not only removed from their community, but are in residence with others from different communities, that makes it very hard to build a durable intervention for each young person using the resources within their community that will be established and effective after discharge.

CIA What changes is CYF making (funding, staffing, organisational etc) in this area?

AM Approximately ten million dollars extra funding has been put into Youth Justice this year by the Ministry of Social Development. This money has allowed more staff to be employed to give better effect to the Act. It has allowed youth justice co-ordinators, social workers, and their admin staff to receive greater support, to move to a position where they will be able to work closer with communities, and work in partnership with those communities to develop more effective responses in partnership. This has been proven to enhance the effectiveness of each other efforts to support a positive change for and within young people. An example is the Hornby experience where a co-ordinator, social worker and an admin person worked out of, and in partnership with Government and non government agencies that interacted with the Heartlands Centre in Hornby. Within twelve months 95% of plans were completed. 86% of plans were completed without the need of a Court order and a social worker only need to be involved in 57% of the cases.

CIA In your view, is it fair to see SWA as a 'softer' option than SWR?

AM Young People view Supervision with Activity as a harder option. They often view time in a residence as a relief, because all pressure to get themselves to school, to try and avoid getting into trouble with their peer group, and to meet obligations to their family or others is removed. Supervision with Activity requires achievement, whereas Supervision with Residence only requires them to accept containment and avoid trouble for the two to three months.

IAG asks for urgent research

On 14 June this year, the Youth Justice Independent Advisory Group (IAG) met with the Ministers of Education, Police, and Health, The IAG is led by the Minister of Justice and the Associate Minister of Social Development, neither of whom were at the meeting.

In particular, the IAG repeated their recommendation from October 2006 that:

"...urgent, specific, qualitative research be carried out as to the success of the following Youth Court orders: Supervision with Residence, Supervision with Activity, Supervision and Community Work, measured by reduction in offending over six months, one year, and two years after sentence..."

The Ministry of Social Development replied:

"One of the key priorities for MSD is to reduce youth re-offending rates. We are undertaking initial analysis on re-offending rates and we have also begun analysing a four year cohort of young offenders discharged from Supervision with Residence to assess their offending behaviour after discharge. This analysis will be used to inform policy work on new Youth Court orders, as well as inform the Law and Order Serious Crimes Bill Select Committee consideration of the Young Offenders (Serious Crimes) Bill. The IAG's proposal will be ***considered*** *[emphasis added] for inclusion in the 2007/08 research programme."*

Ministers have asked MSD to provide further information on this request for the next meeting on 11 October. This coincides with work underway to measure whether CYF are meeting the key outcome of reducing youth offending rates over the next three years.

Supervision with activity - as it was first envisaged

Mike Doolan, Adjunct Senior Fellow, University of Canterbury, NZ, and former Chief Social Worker, CYFS)

Dear Court in the Act

Thank you for the opportunity to comment on the origins of this order. I share Judge Becroft's concern that this order has been largely ineffective and I think there are some reasons why that has been so.

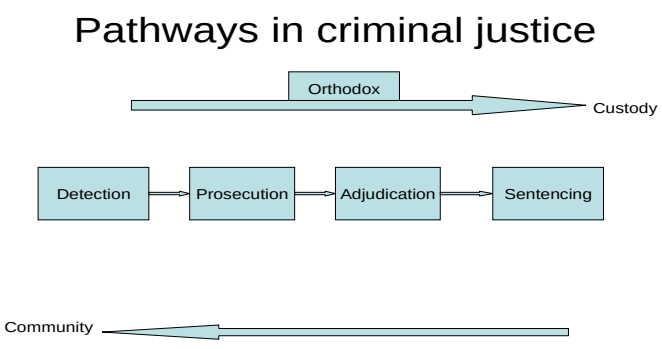
It is probably best to start with some overview of what we were trying to achieve in reform of the youth justice system. The original law was based on up-to-date research knowledge of the day on such matters as (inter alia):

- The negative effects of involvement with the criminal justice system (leading to the Act's emphasis on diversion, and short, focused sanctions when this is not possible);
- The benefits – for young people and the community overall and over time - of community based provisions over provisions involving custody (leading to sanctions such as Supervision with Activity as an alternative to custody);
- The dangers of congregating young people who offend in programmes with one another (leading to the emphasis on individual plans in which families are centrally engaged);
- The benefits of maintaining a child or young person in the context of their family system, rather than in the context of their peer systems (leading to the FGC decision-making and planning model essential to achieving family ownership of the issues);
- The harmfulness of professional discretion (leading to rules around detaining and questioning young people, restrictions on the use of the more severe sanctions and the now criticised procedural clarity of the Act).

I am not aware of contemporary research that challenges any of these notions (although that is not to say it does not exist!).

Orthodox approaches to criminal justice pushed young people towards custody and distanced them from the community. Repeat involvements with the system, even if offending was not escalating markedly, tended to catapult young people towards custody in ways that were unlikely to have happened had they been adults (the former system enabled young persons to be committed to care for reasons of their offending behaviour, resulting in sharply disproportionate consequences for them that could not have occurred had they been a year or two older).

The orthodox system is shown in the following figure below:



Number of people appearing in the Youth Court by court location

Source: Ministry of Justice

Note: The table does not denote individuals—the same person can appear in different locations as well as in different years.

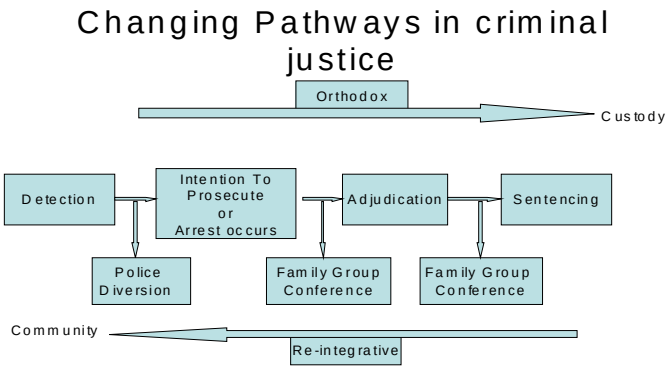
Note: Courts are listed in order of 2004-2006 Totals. Not all Courts are listed.

Youth Court	2004	2005	2006	Total 2004—2006	% of All Courts
Christchurch	523	541	563	1,627	9.64
Manukau	439	459	500	1,398	8.28
Auckland	339	464	436	1,239	7.34
Waitakere	392	364	375	1,131	6.70
Hamilton	267	251	240	758	4.49
North Shore	240	230	225	695	4.12
Rotorua	231	209	199	639	3.79
Tauranga	167	204	196	567	3.34
Invercargill	156	175	163	494	2.93
Dunedin	137	185	155	477	2.83
Whangarei	137	139	134	410	2.43
Hastings	125	125	159	409	2.42
Wellington	132	157	119	408	2.42
Papakura	93	128	134	355	2.10
Porirua	109	122	115	346	2.05
Lower Hutt	117	132	93	342	2.03
Napier	108	120	112	340	2.01
Whakatane	109	116	84	309	1.83
New Plymouth	98	93	104	295	1.75
Palmerston North	89	91	92	272	1.61

What we sought to do was to interrupt this path with systemic interventions that would limit the options for, or resort to, custody and promote family and community based solutions to offending behaviour by young people. By seeking to empower family and community influences in the Act's formal processes, we were also focused on addressing the disproportional responses to young persons who were Maori or otherwise persons of colour and the resulting over-representation of such young persons in the youth criminal justice system.

Continued

Mike Doolan



What resulted is portrayed in the figure above:

The Supervision-with-Activity order was envisaged as giving FGC's and Courts a real alternative to custody. It was recognized that at this point in the system, custody would be a significant risk and that unless there was a genuine alternative that would give the Court some sense of confidence that the young person would be managed effectively in the community, the resort to custody would be more or less inevitable. The conditions which bound courts in arriving at a sanction of Supervision-with-Residence (with the exception that the latter does not require the young person's consent) positioned Supervision-with-Activity as a clear alternative to custody, not a step in the tariff of sanctions.

The order needed to ensure intensive supervision and management of the young person in the community by providing opportunities for the young person to engage in meaningful activity (community organisation involvement, sporting activities, cultural and language education, family based activities, and any other activity thought desirable by a FGC, including rectifying matters with the victim(s) of the offences). At the very minimum, the plan needed to be sufficiently structured to give the court confidence that:

- The opportunities for further offending would be significantly reduced (recognizing that offending can also continue while under the sanction of Supervision-with Residence, so that courts would be balancing risks here); and
- The interests of the community would be sufficiently protected.

Reasons why this order has not succeeded

1. The period leading up to the implementation of the CYP&F Act on 1 November 1989 was one of intense activity. I think it entirely possible that insufficient attention was given to establishing the components of new orders like Supervision-with-Activity, and in particular in distinguishing it from the lower tariff order of Supervision;
2. Allied with the above was the disconnect that can occur when policy initiatives are implemented and responsibility for leadership of them moves to operational management. I think there is a distinct possibility that the vision of promoting alternatives to custody did not translate to operations (including not only the Department but the Youth Court as well) with the same passion with which it was developed;
3. There was, perhaps, too much early optimism that family groups could be instrumental in providing the core components of a Supervision-with-Activity programme;
4. There is no doubt in my mind that the economic reforms of the early 1990's and the slimming of State resources had a significant impact on the capacity of social workers to construct activity programmes of worth, and this in turn led to an over reliance on family options. Resources to provide for Supervision-with-Residence were 'locked in', while those for Supervision-with-Activity dissipated over time;

Continued

Number of purely indictable charges in the Youth Court by court location

Source: Ministry of Justice

Note: Courts are listed in order of 2004-2006 Totals. Not all Courts are listed.

Youth Court	2004	2005	2006	Total 2004—2006	% of All Courts
Auckland	61	157	175	393	13.57
Manukau	90	100	150	340	11.74
Christchurch	93	101	123	317	10.94
Waitakere	33	53	61	147	5.07
Wellington	27	60	33	120	4.14
Hamilton	28	42	41	111	3.83
North Shore	33	31	46	110	3.80
Papakura	32	19	48	99	3.42
Hastings	16	23	56	95	3.28
Tauranga	21	43	21	85	2.93
Napier	34	13	29	76	2.62
Porirua	18	28	29	75	2.59
Whangarei	14	24	37	75	
Lower Hutt	17	28	29	74	2.55
Palmerston North	12	25	24	61	2.11
Dunedin	9	30	18	57	1.97
Rotorua	18	12	25	55	1.90
Invercargill	17	28	6	51	1.76
Whakatane	16	17	10	43	1.48
Wanganui	26	9	4	39	1.35
Upper Hutt	6	5	27	38	1.31
Total for All Courts	735	997	1165	2897	

Mike Doolan

5. In order to be creative, social workers needed to be able to negotiate 'wrap around' programmes with family groups and the resources to do so needed to be provided in flexible ways to enable this to happen. We have never really developed the skills in New Zealand to work in this way. In the late 1990's, another attempt was made, under the auspices of the Youth Services Programme, to provide social workers with funding ring fenced for developing programmes specific to individuals (up to $10,000 per case), but this also foundered when a decision was taken to devolve this funding to local offices and it became absorbed by financial pressures in other areas of operations;

6. I think we arguably failed our staff in the quality and intensiveness of training around both the philosophical and evidential drivers relating to the avoidance of custody and in practical and workable ways they could contribute to that goal.

Closing comment

Youth Justice reform in New Zealand is a work in progress. Research indicates that the system has become more restorative and less punitive over time, and New Zealand has one of the lowest, if not the lowest, incarceration rate for young people under 17 anywhere in the English-speaking world. Our focus should be on working to ensure the provisions of the Act are implemented as fully as they were envisaged.

I am concerned at current (largely practitioner-driven) suggestions for law reform, particularly those around extending periods of orders, and especially the length of the custody order Supervision-with-Residence, for what I regard as entirely specious reasons (such as the need for residential staff to have young people longer in order to achieve behaviour change or otherwise challenge lifestyles featuring alcohol and drug use, and the like). These seem quite arbitrary changes, without any evidence that existing timeframes are inadequate (as sanctions) or that longer timeframes would be more adequate. It was never intended or conceived that the provision of treatment for conditions such as drug abuse or sexual offending, or indeed any other conduct or mental health condition, would be addressed by the criminal justice system. A principle of the Youth Justice legislative scheme – referenced in the Ministry of Social Development discussion paper on legislative reform – is that criminal justice proceedings should not be initiated to achieve welfare outcomes. There is a clear and significant danger that if the youth justice system extends to the provision of such services, or are structured in such a way to allow these to be provided, then entry to that system will be made more attractive in the minds of judges, police and other professionals. Where a young person who offends is in need of *compulsory* services to address disorder or mental health issues, then the appropriate provision for securing these is in the civil, not the criminal, provisions of the Act.

To advocate for more custody in the light of evidence about its harmfulness in the long term, and in the light of our country's lack of capability historically to run residential treatment programmes effectively, is a dangerous thing to do. It is particularly so when the advocacy is based on practitioner-driven attempts to extend their influence in the lives of children, young persons and their families in the absence of any evidence that this is necessary or likely to improve young people's situations or benefit the community generally.

Mike Doolan, ONZM; MSW (Dist.); BA; Dip Soc. Sci.; MANZASW
Adjunct Senior Fellow, University of Canterbury, Christchurch, NZ.

Number of 14-16 year olds convicted or discharged without conviction in the District or High Court, excluding non-imprisonable traffic offences by court location

Source: Ministry of Justice

Note: The table does not denote individuals—the same person can appear in different locations as well as in different years.

Note: Courts are listed in order of 2004-2006 Totals. Not all Courts are listed.

Youth Court	2004	2005	2006	Total 2004—2006	% of All Courts
Auckland	13	6	10	29	9.76
Manukau	9	7	9	25	8.42
Tauranga	7	6	5	18	6.06
Hamilton	4	5	6	15	5.05
Christchurch	8	2	5	15	5.05
Rotorua	8	4	3	15	5.05
Waitakere	4	7	3	14	4.71
Napier	3	6	5	14	4.71
Hastings	2	5	6	13	4.38
Dunedin	2	9	2	13	4.38
Gisborne	7	1	1	9	3.03
Wellington	2	3	4	9	3.03
North Shore	2	3	2	7	2.36
Whakatane	1	5	1	7	2.36
Invercargill	4	2	1	7	2.36
Taupo	4	1	1	6	2.02
Lower Hutt	2	2	2	6	2.02
New Plymouth	2	2	2	6	2.02
Blenheim	2	1	2	5	1.68
Palmerston North	0	3	2	5	1.68
Waihi	3	1	1	5	1.68

What is the dream that can be found?

Interview with Judge David Carruthers

Supervision with Activity is all about accessing the strengths of the community to help a young offender stay out of trouble, according to ex-Principal Youth Court Judge David Carruthers, now Chairperson of the New Zealand Parole Board. Judge Carruthers told *Court in the Act* that SWA was designed to get key people in the young person's community to act as bridges between young offenders and the Courts.

When asked about the original purpose of SWA, Judge Carruthers said the Children Young Person's and their Families Act 1989 was passed at a time when there were too many young people in custody in New Zealand. Judge Mick Brown, who became the first Principal Youth Court Judge, and had an ability to move and communicate effectively in both Mäori and Pakeha worlds, saw the need for more community involvement in the lives of young offenders. At that time Judge Carruthers had also been trialling a pilot community youth court in Porirua where whanau groups were encouraged to be part of the Children's Court proceedings.

By the time Judger Carruthers took over as Principal Youth Court Judge in 1995, the balance between community solutions and residential youth justice facilities had shifted to the other extreme. There were now not enough residences, and there had been a drop in the professional standards of those running the community-based programmes. According to Judge Carruthers, this situation was made worse by the Department of Child Youth and Family, which he described as "dysfunctional", at this time.

Looking to the reasons for the decline in use of the SWA order, Judge Carruthers pointed to a number of factors:

- The amount of funding available for Family Group Conferences and Community Programmes, which was initially large, became whittled down over time;
- As the funding dropped, CYF began to put more and more junior staff in charge of Family Group Conferences, which meant a lowering of professional standards;
- Funding was withdrawn from SWA programmes; and
- The funding that was available required too much paperwork, and took too long to be approved.

> *I am cynical about the usefulness of 2 months of babysitting and chaos in a residence.*
>
> Judge David Carruthers

Judge Carruthers summed up the decline of SWA by saying that "the system conspired to crush initiatives that were exactly within the vision [of the Act]". This, he said, led to a lack of credibility in the minds of the judges as to the sentence of SWA, and how it was to be carried out.

As to what makes a good SWA plan, Judge Carruthers said:

- the 'activity' needs to be meaningful, educational, and strenuous;
- the family and other role models need to be involved; and
- plans need to be individually tailored, not based around a larger centre.

Despite the recent decline in it's use, Judge Carruthers sees a positive future for SWA. "It's a

Continued

Community Work Orders

Source: Ministry of Justice

Note: Orders do not denote individuals - multiple orders may pertain to one individual

Note: Courts are listed in order of 2004-2006 Totals. Not all Courts are listed.

Youth Court	2004	2005	2006	Total 2004—2006	% of All Courts
Christchurch	31	37	42	110	16.77
Manukau	26	24	13	63	9.60
Auckland	18	16	20	54	8.23
Waitakere	14	15	22	51	7.77
Tauranga	5	20	14	39	5.95
Invercargill	7	7	19	33	5.03
Hamilton	11	5	15	31	4.73
Dunedin	9	11	3	23	3.51
New Plymouth	9	10	3	22	3.35
Whakatane	3	6	11	20	30.5
Timaru	6	9	4	19	2.90
Porirua	7	4	5	16	2.44
Pukekohe	7	2	3	12	1.83
Rotorua	4	1	7	12	1.83
Nelson	0	10	1	11	1.68
Gisborne	3	2	5	10	1.52
Wellington	4	3	3	10	1.52
Ashburton	3	3	4	10	1.52
North Shore	3	4	2	9	1.37
Hastings	3	3	3	9	1.37
Lower Hutt	5	2	2	9	1.37
Whangarei	2	4	2	8	1.22
Upper Hutt	0	6	2	8	1.22
Napier	2	5	0	7	1.07
Hawera	2	2	2	6	0.91
Levin	3	1	2	6	0.91
Taupo	2	2	1	5	0.76
Blenheim	3	1	1	5	0.76
Gore	2	0	3	5	0.76
Total for All Courts	205	222	229	656	

Judge Carruthers

New Zealand solution to a New Zealand problem" he says. He says New Zealand has some distinct advantages over other countries when it comes to making a success of this type of court order:

- We have a small, well educated and wealthy population;
- Our young people are still well connected to their families and communities;
- There is still enormous community generosity towards kids in New Zealand.

Judge Carruthers believes there is still hope for SWA, and believes the question for all those involved should be "What is the dream that can be found?".

I remember one Supervision with Activity plan run by Tuhoi in Whakatane. The supervisors took the kids into the bush and taught them back-country and other life skills. Family were involved, and it made a difference to the kids' lives.

Judge David Carruthers
Former Principal Youth Court Judge 1995—2001

Whatever happened to section 283(m)? Four years on.

Bobby Bryan, Consultant, bobby@navigate.co.nz

For four years I worked in a Child, Youth and Family Residence. I worked with six murderers, more sexual offenders than I can remember and an assortment of other violent offenders. I also worked with the odd young person who had engaged in non-violent offending, such as theft and burglary (but these guys were rare and they tended to have long lists of offences).

During this time I got to know the Youth Justice system quite well and I also got to know the residential system well. The experience of working there shaped my passion for the Youth Justice System, and restorative justice. This experience also left me firmly with the belief that incarceration whether it is in a residence or in a prison, and today the difference is minimal, is often the worst thing we can do, as we try to help offenders change their behaviour.

The problem is not a simple one, but it can be explained in simple terms. If a young person is offending at the age of 16, then they have a long life of offending ahead of them, unless they are "fixed". Therefore we as a society will have to cope with the victims of this young person, and with the cost of imprisonment for them when they are eventually caught.

If we want to avoid this social and monetary cost, then we have no choice but to fix the problem. In youth justice the problem sits with the offender, and their behaviour.

I believe in the youth justice provisions of the Child, Young Persons and their Families Act 1989. I also believe that with this piece of legislation we have a fantastic tool that can be used to help fix the problem. But the question is, are we using this tool properly?

Continued

Supervision Orders

Source: Ministry of Justice

Orders do not denote individuals - multiple orders may pertain to one individual

Note: Courts are listed in order of 2004-2006 Totals. Not all Courts are listed.

Youth Court	2004	2005	2006	Total 2004—2006	% of All Courts
Christchurch	80	105	116	301	14.56
Manukau	64	67	83	214	10.35
Hamilton	70	43	45	158	7.64
Auckland	45	55	45	145	7.01
Waitakere	31	37	45	113	5.46
Hastings	36	25	46	97	4.69
Napier	30	29	28	87	3.21
Tauranga	16	22	34	72	3.48
Invercargill	19	21	31	71	3.43
Rotorua	26	21	22	69	3.34
Whangarei	10	18	21	49	2.37
Pukekohe	19	10	12	41	1.98
Whakatane	14	13	14	41	1.98
New Plymouth	12	19	10	41	1.98
Dunedin	12	18	11	41	1.98
North Shore	18	11	11	40	1.93
Palmerston North	16	11	13	40	1.93
Timaru	17	11	9	37	1.79
Lower Hutt	6	9	20	35	1.69
Porirua	11	10	8	29	1.40
Hawera	10	12	4	26	1.26
Taupo	9	6	10	25	1.21
Nelson	4	14	6	24	1.16
Papakura	14	3	6	23	1.11
Tokoroa	7	10	6	23	1.11
Total for All Courts	666	657	745	2068	

Bobby Bryan

Well I want to suggest that we are not using a part of the legislation as well as we can, and therefore we are not using this great tool to its potential.

Section 283, of the Children, Young Persons and their Families Act 1989, outlines the orders available to the Youth Court when dealing with young offenders. The orders start at 283(a), which allow the Judge to discharge the young person from the proceedings without further order or penalty. They go through to 283(o), which transfers a young person to District Court for sentencing (usually indicating a prison sentence).

Hidden away between 283(l), a community work order, and 283(n), a supervision order (2-3 months in a residence), you will find 283(m), a supervision with activity order.

283(m) is in my opinion under utilized, and it hides between these other two orders, which in my opinion, are over utilized.

Supervision with activity is a great concept. It is a three-month sentence where the young person exists under a strict plan, which runs for 24 hours a day, 7 days a week.

These plans are very detailed and are tailored to fit the individual needs of the young person. It is about constructing solutions around the problems that the young person displays. It is about providing the optimum environment for a young person to "fix" their behaviour. It is about taking some thing that society would happily discard and turning it into something society is happy to share space with. It is about healing.

In 1991 when I first started my life as a social worker in the residence, the Act was still fresh and there were many programmes available for young people. We used to ship young people away on boats, send them out into the bush, place them on courses and wrap providers around them. They would learn anger management, receive counselling and learn new skills. But most of all, a successful supervision with activity would leave a young person with more self-belief and a higher self-esteem. They would challenge themselves and learn about who they truly are.

Watch a young person who knows how to rig a sail, set up a proper campsite, put down a hangi, do a haka or even saddle a horse. Watch them carefully and you will see a young person who knows what they are doing; keep watching and when they have finished you will see a puffed chest and a sense of pride, which sadly young people today very seldom feel.

In 1995 my time in the residence was coming to an end. Within four years I had witnessed the demise of supervision with activity. The resources had dried up, and supervision with activity plans was expensive. Funding of programmes was tightened, and providers, who were good at doing, but not good at filling in forms, gave up. More and more young people were doing supervision with residence, spending three months cooped up in a confined space, where programmes were attempted, but aren't as successful. Young people even came back to the residence to complete a second, third and even a fourth supervision with residence sentence. I could never understand this; logic suggests that if the first one failed to address their offending, how was a second one going to help. When you asked other people involved in the case why they were coming back, they would calmly say, "there is nothing else available for them". Our residences had become holding pens.

Now statistics for April 2006 to April 2007 show that 745 Supervision orders were made and 122 Supervision with Activity orders were made. This makes sense one would hope, that as you went up the tariff of outcomes, the number would drop. So then, one has to ask. Why have we also seen 240 Supervision with Residence orders in the same period?

If there are nearly twice as many 283(n) orders as 283(m), this shows that something is wrong and surely, somehow, we have to try and find out why and do something about it. Because 283(m) is a gem we can't afford to lose. It needs to be rediscovered.

Editorial

What's left for supervision with residence?

A senior CYF social worker told *Court in the Act* recently that the reason supervision with activity is in decline as an order is that it is poorly understood. One reason for this may be that the Children, Young Persons, and their Families Act 1989 (CYPFA) does not give a clear enough message to social workers, The Police, the Youth Court, or the lawyers about the meaning of the order, or its place in the wider scheme of the Act. The question is, can the Act be easily interpreted to support the view that supervision with activity is a true alternative to its residential cousin in most situations, and if so, what's left for supervision with residence?

CYPFA 1989 Section 289

Restriction on imposition of supervision with activity order

The Court shall not make an order under paragraph (m) of section 283 of this Act unless the nature and circumstances of the offence are such that, but for the availability of that order, the Court would have considered making an order under paragraph (n) of that section.

Supervision with activity (SWA) is a Youth Court order provided for in s283(m) CYPFA and described in s307 CYPFA. Section 283 is a list of Youth Court orders arranged in what appears to be an ascending order of severity. In any such list, it would be expected that, as the sentences available to the Court became more severe, each successive order would be used less than the one before. As the figures published in this newsletter show, this is not the case.

A true alternative?

Section 289 CYPFA (see page 1) gives a clear indication that SWA is a true alternative to supervision with residence (SWR). This section allows the Court to make a SWA order only in circumstances where it would otherwise have considered making a SWR order. By this provision, SWA can only be applied to offences, the "nature and circumstances" of which, make them at least as serious as those that could inspire a Court to order SWR. If the nature and circumstances of an offence are not serious enough to warrant SWR, then they are not serious enough to warrant SWA. Section 289 ties SWA inextricably to SWR which, if the hierarchy of orders in s283 is to be taken seriously, is the last substantive or-

Continued

Editorial

der available to the Youth Court before the offender is sent to the adult Court for sentencing.

SWA and SWR are arguably therefore alternatives in a situation where the nature and circumstances of the offence are such that a non-custodial sentence would be clearly adequate. Where the special circumstances of the offence or the offender are so serious that the only course of action for the Court is to impose a SWR order, or convict and transfer the offender to the District Court. Section 290(1)(c) allows the Court to order SWR where a non-custodial sentence would be "clearly inadequate".

Sections 289 and 290(1)(c) combine to throw a spotlight past the standard "nature and circumstances of the offence" to any "special circumstances of the offence or the offender". For a judge to go beyond merely considering an SWR order to actually imposing one, something so out of the ordinary must be present that would make a SWA order obviously the wrong choice. The Act is giving the message that, in the ordinary run of cases in which a SWR order would be considered, the Court should order a SWA order instead. Only where there are "special circumstances", which relate directly to the inadequacy of a non-custodial sentence, should the Court exercise their discretion to lock up the offender.

CYPFA 1989 Section 290

Restrictions on imposition of supervision with residence or transfer to District Court for sentence

(1) No order shall be made under paragraph (n) or paragraph (o) of section 283 of this Act in respect of a young person unless–

(a) The offence is a purely indictable offence; or

(b) The nature or circumstances of the offence are such that if the young person were an adult and had been convicted of the offence in a Court other than the Youth Court, a [sentence of imprisonment (within the meaning of section 4(1) of he Sentencing Act 2002)] would be required to be imposed on the young person; or

(c) The Court is satisfied that, because of the special circumstances of the offence or of the offender, any order of a non-custodial nature would be clearly inadequate.

This interpretation fits well with the objects and purposes of the Act. Section 4(f) explains that the Act is designed to promote the well being of young people who commit offences by ensuring that they are dealt with "in a way that acknowledges their needs and that will give them the opportunity to develop in responsible, beneficial, and socially acceptable ways". Section 5(b) says that any one exercising powers under the Act should be guided by the principle that, "wherever possible, the relationship between a child or young person and his family, whanau, hapu, iwi, and family group should be maintained and strengthened".

While the Act contemplates a set of special circumstances where SWA is "clearly inadequate", the challenge for youth justice professionals is to reduce the size of that set and improve the adequacy of activity programmes for a wider range of young people.

It is also worth noting that there are two further situations which constrain a Court to making a SWR order only in the most serious circumstances. These are: where the young person has been charged with a purely indictable offence (s290(1)(a)); or, where the offence would have attracted a prison sentence, had it been successfully prosecuted in an adult court (s290(1)(b)).

There is a growing body of research into 'negative peer contagion' and a widespread understanding amongst youth justice practitioners that locking up young offenders in residences with minimal adult supervision is, at best, non-therapeutic. If this is correct, then SWR must be seen as the Youth Court sentence of last resort, and SWA must be turned to first, to properly fulfil the purposes of the Act, and give young people all the benefits of the law by which their lives have become subject.

What is an activity?

Case law has recognised the potential for creativity when designing effective individual activity programmes.

In *Police v K* [1992] DCR 100 Judge Callander pointed out that the Act uses the term activity in contradistinction to the word work. The judge commented that "The meaning to be ascribed to "activity" in s307 is clearly intended to include purposeful human action other than work. The "activity" may be either physical, mental, or a combination of both — and thus would include recreational, sporting, or educational pursuits."

Conclusion

SWA orders will be at their most effective when they are tailored to fit the offender and the offence. Each order of this sort will undoubtedly take more time and money to implement, but if the kaupapa of youth justice in New Zealand is to be taken seriously, then SWA should be the most common sentence for most top-end Youth Court offenders.

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Tracey Cormack and Timothy Hall
Research Counsel to the Principal Youth Court Judge.

Court In The Act welcomes contributions or comments from anyone involved in youth justice in New Zealand or overseas.

Phone 0064 4 914 3465 (Tracey)
0064 4 914 3452 (Tim)
Email courtintheact@justice.govt.nz