

“Court in the Act”

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

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The Ministry's evaluation of Youth Offending Teams is a valuable reminder that positive youth justice initiatives that are responsive to local needs, and driven by a comprehensive and energetic national strategy do not happen by themselves. These groups of caring and well placed people need support and encouragement. YOTs can make a real difference.

Judge Andrew Becroft,
Principal Youth Court Judge
for New Zealand

Youth Offending Teams — the Report Card

Evaluation Report from the Ministry of Justice

<http://www.justice.govt.nz/pubs/reports/2007/youth-offending-teams/just-published.html>

The Ministry of Justice has produced a frank but optimistic evaluation report on Youth Offending Teams (YOTs), five years after they were formed.

Ministry researchers have identified examples of best practice, opportunities for development, and produce useful guidelines for improving YOT's efficiency and appropriateness. 45 past and present YOT members were interviewed, plus 199 respondents (42%) completed an electronic survey. A focus group discussion was also held with members of the Youth Justice Leadership Group (YJLG).

Purpose and collaboration

The evaluation found a worrying lack of shared understanding about fundamental aspects of the purpose and function of YOTs. This lack of collective vision was enhanced by the finding that YOTs operate at a low level of collaboration, despite 'inter-agency engagement' being identified as a significant function of these groups.

The breadth of collaboration was also shown to be limited. YOTs were found to be less effective at encouraging collaboration between core YOT members and local community groups.

However, there were some clear positive findings were noted: Holistic approaches to local youth offending issues are helped by the introduction of Health and Education into the usual mix of Police and CYF; respondents agreed that YOTs have encouraged communication and networking that would not have occurred otherwise; YOT meetings discuss different issues, despite membership being the same as at other inter-agency groups.

Membership

The survey found variation and confusion about the scope of YOT membership. Most respondents favoured extending the membership of their YOTs beyond the four core agencies to include community groups, or, at least, beyond their current membership.

The researchers found that consultation and involvement between YOTs and other groups was not uniform. YOTs consulted with, and involved central and local government groups best, while Maori were consulted and involved more than Pacific groups.

Projects are good but are they core business?

YOTs which undertook specific community projects reported an increased sense of team cohesiveness and success, which energised members and encouraged regular attendance.

Some YOTs did not see projects as part of their necessary function, and did not feel they had the personnel or the resources to undertake them.

Value in and value out

Each of the core agencies' representatives rated the value received by their YOT from the agency members, as well as the value received by the agencies themselves from their membership of the YOT. Police were rated highest in valued input, while Health was rated lowest. All agencies rated the value they got from membership of the YOT as lower than the value the YOT got from them.

Decision making

4 out of 10 respondents thought that there was insufficient decision making power within the four core YOT agencies. One

reason highlighted in the report could be the lack of agency representatives with enough seniority. Health and Education Ministry representatives on YOTs were seen as being less senior than those from Police and CYF.

Encouragingly, most YOT members felt they had the support of their managers for their YOT work, but fewer felt that that work was valued.

The position of chair was reported as critical for the success of the YOT, as was the reliance on motivated individuals, as opposed to group structure or process. The implication from this finding is that YOTs are particularly vulnerable to changes on personnel.

There is currently a lack of funding for YOTs, and this was highlighted by respondents as a important factor for success,

Continued

YOTs

Youth Offending Teams (YOTs) were created as part of the response to the Youth Offending Strategy in 2002.

The Youth Offending Strategy envisaged YOT members coming from the ministries of Health, Education, as well as CYF, and Police.

Since 2002, some YOTs have expanded their membership to include community groups.

YOTs are committees of managers and practitioners that meet at least once a month.

YOTs are meant to collaborate to improve youth justice services in their local area.

Some YOTs also carry out specific projects.

YOTs continued

and an indication of a lack of commitment from agency management.

Turning up to meetings

The report found that a lack of consistent attendance can impact the value of YOT meetings, and consistency of attendance is considered to be one of the key requirements for success. Of the two classes of YOT members (managers and practitioners), it was found that practitioners attended more meetings than managers. Various reasons for inconsistent attendance were reported.

A high turnover of YOT members was also seen as detrimental. Half of the respondents stated they had been involved with the YOT for less than two years, and a quarter had been involved for less than a year.

Perceptions of effectiveness

Only 8% of YOT members surveyed believed their group was “very effective”, and, in general, Police and Health were less positive about their YOT’s effectiveness than CYF and Education. Also, analysis of members response showed respondents thought that success in implementing projects, improving outcomes for young people, and serving the community were a truer measure of their group’s effectiveness than achieving better information sharing and collaboration.

Despite these findings, most respondents thought their YOT served a useful purpose.

Things to work on

This research highlights a number of success factors for YOTs. Success itself is seen as a success factor because it motivates members and increases attendance at meetings.

The need for greater support was also identified, especially from the core agencies, as well as the Ministry of Justice, and the YJLG. Other suggestions for increased success include a motivated ‘driver’, a set work programme and a paid co-ordinator, who would provide administrative

support, as well as research tasks, project co-ordination, and maintaining links with the community.

Bottom line

The most important conclusion from this research seems to be that YOTs are indeed managing to deliver on their stated purpose, which is to improve inter-agency engagement (in other words, ‘collaboration’), thereby better co-ordinating service delivery to young offenders at a local level. What they are not managing to do is to deliver on this stated purpose as well as they could. The report summary puts it this way:

“...YOTs are currently operating at the lower levels of communication and co-operation rather than at the higher levels of collaboration that they have the potential to operate at.”

The report ends with 9 recommendations:

1. The YJLG, core youth justice agencies, and YOT members need to develop strong relationships.
2. The YJLG needs to ensure that senior managers in the core agencies are more supportive of, and more involved in their YOTs.
3. YOT members need to better understand what their purpose is, who they should be trying to help, and what they are meant to achieve. This increased clarity needs to come from above.
4. YOTs need guidelines about structure, direction, management, and the role of the chair, so they can function better on a day to day basis.
5. YOTs need work programmes or action plans to give them clearer strategic focus.
6. Information and reporting flowing both ways between YOTs and the YJLG (via the Ministry) needs to be better.
7. The core agencies need to support YOTs better.
8. YOT funding needs to be sorted out. Perceptions of under-funding fuel the belief in an overall lack of commitment.
9. Everyone involved with YOTs needs to be more enthusiastic and more supportive. □

WRAP, and other ideas from the Whangarei Youth Offending Team

Wade Rowsell, immediate past chair of the Whangarei Youth Offending Team, recently told *Court in the Act* that he believes that more comprehensive alternative action plans can help turn around the apparent trend toward increasing numbers of young offenders in court.

The Whangarei YOT has been working on a concept called WRAP, which focuses on enhancing the rehabilitative aspects of Police alternative action programmes. Wade Rowsell heaps praise on his local Police Youth Aid team, but recognises that the pressures of work means it is often easier to get results on punitive and reparative fronts of alternative action plans than rehabilitative ones. Wade says it is easier for young people involved in alternative action to pay money, do community work, and write an apology letter, than it is to get them or their families to help with identifying and dealing with their criminogenic needs. Rehabilitation coupled with reparation can make a real impact on young people who are open to changing their attitudes, and makes alternative action programmes more robust and effective. Wade says that if the bottom 25% of young offenders (in terms of seriousness of offending) who appear in the Youth Court were targeted to complete comprehensive alternative action plans then we would make a real impact on re-offending as well as reduce the numbers of young people appearing in the Youth Court.

The Whangarei YOT’s WRAP concept would require 2 or 3 extra staff to support the work of the local Police Youth Aid officers. Currently, discussions about funding for these extra staff are underway between the YOT and the Youth Justice Leadership Group, and, unfortunately, progression of the idea has also been slowed by the transfer of the local Youth Aid constable representative on the YOT to other duties.

Responding to the issue of Maori youth offending, Wade Rowsell says that the key to reducing Maori youth offending is to provide good quality community or iwi services to Maori young people. Wade says these programmes need to be professional in nature, delivered by skilled staff, well funded, and focussed on positive outcomes. He also advocates for more policy to be developed at a national level on drug, alcohol, and anger management counselling programmes which will eventually lead to quality generic programmes addressing these needs wherever the young offender might live in the New Zealand.

Asked to comment on the recent Ministry of Justice report into YOTs, Wade Rowsell echoes the report’s optimism about the potential of YOTs to increase collaboration amongst the four core agencies. He agrees that YOTs are ‘personality driven’, and that they respond well to expressions of support from senior departmental management.

Wade says the Whangarei YOT has made good progress in the last 5 years, with professionals from the 4 core agencies co-operating and sharing information. He also praises the work and the commitment of the local Youth Court Judges. □

Wade Rowsell is a mental health practitioner with the Northland DHB, and is one of two health sector representatives on the Whangarei YOT.

YOT Report Update - The Ministry of Justice is working closely with the YJLG and YOTs to implement the recommendations from the evaluation. The first step in this process are three regional YOT workshops being organised in April in May to discuss how to improve YOT performance.

Community treatment for youth who sexually offend - a new report from Dr Ian Lambie

"Getting it right" was prepared for Child, Youth and Family,

"Getting it right", a recent report by a team of researchers headed by Auckland University's Dr Ian Lambie, has confirmed that community treatment programmes for adolescent sex offenders are working well.

The report found that only 2% of those young people who successfully completed community treatment programmes went on to re-offend sexually. This figure is at the lower end of international comparisons. The report's authors point out that this shows the "substantial treatment effect" on young people who successfully complete community treatment programmes, especially when compared to those who were referred for treatment, but did not begin it.

The treatment programmes studied were delivered by SAFE Network Auckland, WellStop in Wellington, and STOP in Christchurch.

The research involved three studies – evaluating process, outcome, and cost effectiveness.

The outcome evaluation aimed to determine the effectiveness of the programmes with specific regard to the occurrences of reoffending of a sexual nature. It involved data from 682 client files, followed subjects for an average of 4 years after receiving treatment, and was the largest international reoffending study ever undertaken with adolescents who sexually offend.

As well as finding that community treatment programmes for young sex offenders in New Zealand are effective, the research also concluded that these programmes are meeting the needs of clients and the community, and are cost effective.

Conclusions

Given the report's findings, the researchers conclude that "a solid argument can therefore be made to increase the breadth and complexity of treatment...". The authors remind us that specialised treatment and support

services in the community will be effective for most, if not all, young people, and that "North American models of incarceration for this population are inappropriate in the New Zealand context".

The need for more Maori and Pacific Island services to be developed was also clearly identified by the report. Counselling that was culturally appropriate proved to have a positive impact on treatment and lead to better outcomes for clients and families.

One perennial issue highlighted by this research is the problem of finding therapeutic foster care. The report says "It is clear that the current system of finding out-of-home placements for adolescent sexual offenders is not working and steps need to be taken to address this."

"Adolescents should not remain in the same home as their victim or be transferred into unsatisfactory living environments that may lead to the development and/or escalation of antisocial behaviour".

Two issues of prevention were also mentioned. The researchers point to anecdotal clinical evidence of a link between adolescent sex offending and computer pornography. The report recommends that government agencies work alongside treatment programmes to develop processes to limit and stop youths accessing objectionable material.

The other issue of prevention involves offenders who are children, and who may, without treatment, go on to sexually offend into adolescence. The report recommends raising awareness of the importance of early intervention for the youngest sex offenders.

The report points out that some regions such as Northland, South Auckland, Rotorua/Bay of Plenty and Gisborne, that report a general increase in youth crime do not have many treat-

ment programmes.

On a positive note, the report acknowledges the competence and professionalism of social workers in this field, and also the provision of long term funding and support provided to treatment programmes by Child, Youth and Family.

As a final comment, the report's authors reject suggestions that serious young offenders should be dealt with punitively, or with incarceration. "Sexual abuse by children exists across all groups and cultures in New Zealand. It is a community problem, and as such, the solution lies in the

community."

WellStop general manager Hamish Dixon welcomed the report and said that "this study shows that the overwhelming majority of youth can be safely and successfully treated in the community". Mr Dixon said he was particularly pleased by the positive feedback given by clients who had been treated using the Good Way model, developed by Leslie Ayland and Bill West at WellStop.

The Getting It Right report can be downloaded at <http://www.cyf.govt.nz/documents/gettingitright.pdf>.




**Blue Light Scholarship of Excellence 2008 /2009
Ambassadors Award
valued at \$5000**

<p>Aim: To take a young person who has shown outstanding potential and achievement in academic, sporting, the Arts and/or social fields and to support and encourage their further development and successes through the Blue Light scholarship of excellence.</p> <p>Criteria: Candidate must</p> <ul style="list-style-type: none"> - Have personal values consistent with those of Blue Light and the aim of this scholarship. - Have shown excellence in the fields of sport, academia, community service and / or the Arts. - Be a New Zealand citizen. - Currently be in year 11 or year 12. - Currently enrolled in an educational institute. - Scholarship is open to one person per year. <p>Method: The applicants will be required to apply using application form.</p> <p>Applications close 5pm on Friday the 18th of April 2008.</p> <p>The Scholarship: The scholarship to run from the 1st of May 2008 to 30th April 2009.</p>	<p>Attendance at an outward bound or similar leadership and personal development course to the value of \$1500.</p> <p>Purchase of sporting, Arts or educational equipment to the value of \$1500.</p> <p>Sporting, community orientated, Arts or educational fees to the value of \$1500.</p> <p>Travel expenses to the value of \$500.</p> <p>Obligations of Scholar: To maintain the aims of Blue Light and the scholarship as agreed in the scholarship acceptance contract.</p> <p>To be a youth ambassador for Blue Light and to attend a minimum of 5 Blue Light events including local and national events as agreed with the National Manager of Blue Light.</p> <p>To ensure all documentation in relation to the scholarship are forwarded or completed as requested by the National Manager.</p> <p>NOTE: MAY BE REQUIRED TO SPEAK AT 2008 CONFERENCE 9TH MAY.</p>
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Bart Hageman and the Christchurch Youth Drug Court

From a story by Nikki Waghorn at Child, Youth and Family nikki.waghorn003@cyf.govt.nz

An ordinary working day for Christchurch social worker, Bart Hageman, just wouldn't be complete without drugs and alcohol... finished off with a spot of criminal offending. Bart tends to the needs of young people with drug and alcohol dependencies, who are subsequently caught up in the youth justice system. As Child, Youth and Family's only Youth Drug Court (YDC) social worker, his job is a little bit like being on a roller coaster ride.

"We see it all – the positives, the negatives, the setbacks and successes. There are times when it feels like we're on a rollercoaster ride together" says Bart. "I see these young people virtually every week so I get to know them pretty well. To me, this is what social work is all about – engaging with people, really getting to know them, being able to understand their situation, the things that work for them and the things that don't."

"The Drug Court is basically an attempt at providing a therapeutic approach to dealing with youth offending. Typically, a court setting is punitive. The YDC is more incentive-based. The entire focus of the court is different – it looks to deal with the underlying [drug and alcohol] issues as being the primary reason for offending."

The YDC is task-focussed and built around teamwork. Bart says the multi-agency approach means there is real "ownership" of the court and its processes. The YDC utilises a variety of programmes and services to address young people's alcohol and drug problems, educational and vocational needs, accommodation and other support. Bart's contribution comes in the form of fortnightly reports on the young people's treatment plans. A typical week will see him attending Family Group Conferences, a "whole lot of face to face" with young people and their families, liaising with community agencies, alternative education providers and other specialist youth services.

The YDC is, by no means, the easy way out says Bart. "If people think it's the soft option, I can tell you, it's not. As well as having to comply with any Family Group

Conference outcomes, such as doing community service, attending drug and alcohol programmes and paying reparation to victims, these young people also have to front up to court every two weeks. They have to speak about their progress – or otherwise – and this is often the hardest thing in the world for them to do. If young people aren't ready to change or acknowledge their behaviour, if they refuse to address their alcohol and drug dependency issues or if they don't comply with the directions issued in the YDC, then they go straight back into the Youth Court process."

Relapse is a common occurrence and setbacks are all part of the process – "one, because they're young people and two, because of their drug and alcohol dependency." The YDC judge looks beyond their failings however, instead focussing on how they deal with setbacks. "Do they seek support, acknowledge it or do they make endless excuses for their behaviour? We put the onus back on to young people to take responsibility for their actions, we try to motivate them to step up and make the effort."

Bart acknowledges that in some cases, the young people simply aren't ready or resourced to change their behaviour or to want a different outcome for themselves. "We see all kinds of young people through the YDC, some start with a hiss and a roar and then they fall over, others you don't think are motivated at all to change, yet they gradually work their way out of the system. Young people have this amazing ability to be full of surprises – both good and bad! At the end of the day, if they're simply not willing to work with us, they go back to Youth Court."

"Young people are, understandably, often quite reluctant to engage with professionals. We make a real effort to be consistent, to persevere and not give up on them. For most of these young people, they've been let down by a whole lot of people in their lives, pretty much everyone on their way to reaching this point has given up on them. As professionals, we have

to convince them that we're going to stick around, that we'll be there for them. Very few of them have had that commitment from the adults in their life. They test you, they want to see if you'll stick with them or dump them like everyone else. And when they realise you're here to stay, once you get past that initial barrier, success, however small, tends to follow."

"There are days in drug court where I think we all think, 'what's the point?', when everyone's had setbacks and it just seems like we're not getting anywhere. And then there are those other days – when the young people just blow us away with their progress and their determination. They give us hope." □

The **Youth Drug Court** was initially set up as a pilot scheme in 2002 through interagency collaboration. Championed by Judge John Walker and driven by Youth Specialist Services' Shirley McKinney, the YDC was established to address the linkage between alcohol and drug dependency, and youth offending. Its success over the ensuing five years has resulted in the YDC becoming a permanent fixture of the Youth Court in Christchurch, now under the guidance of Judge Jane McMeeken. Young people are referred to the YDC following a comprehensive assessment of their drug and alcohol abuse. Once they enter the YDC, they must attend court every fortnight, where their progress (or otherwise!) is assessed and monitored by the Judge, Police, CYF, CDHB's Youth Specialist Services and community drug and alcohol rehabilitation programme providers, Odyssey House. Alcohol and drug abuse are often significant factors in youth offending and the aim of the YDC pilot was to facilitate better service delivery to young people with dependency issues, in order to reduce their offending. The YDC essentially provides an augmented Youth Court process – suspending the formal disposition of the case until the young person has successfully completed their programme or is discharged back to the Youth or District Court.

Tara (not her real name) came into the YDC accompanied by an attitude that saw her refuse to engage with the Court – its processes or people. "She saw us as the enemy" said Bart. It was an attitude that ensured her first stint at YDC was a failure – but she didn't care – she exited with a two-finger salute and carried on her alcohol-infused lifestyle until she found herself back in Court again. This time, the multi-agency court staff worked intensively with Tara, despite her protests, and in doing so, they gained a shared understanding of the factors influencing her behaviour.

"She was anti-everything. Anti the Police, anti-authority, she was anti-me. It was pretty much Tara against the world. But we persevered with her, we got under her skin and we engaged with her – that's been the key."

Tara is now a YDC poster girl. She graduated from the Odyssey House treatment programme in August last year, got herself a part-time job at McDonalds, and turned her back on her former life of crime.

"Getting a job is often the catalyst for change for young people. For Tara, it's been the making of her. She's now in an environment where she hangs out with young people who don't do crime or use drugs and alcohol. She tells us about having to serve Police through the drive-thru. Before, her reaction to that would have been a string of expletives, now she sees them simply as people doing a job. Her whole attitude has changed, she's created a whole different world for herself and that will mean a completely different future for her" said Bart. □

After a process evaluation of the first 18 months of the pilot, the YDC has now been made a permanent fixture of the Youth Court in Christchurch. The evaluation found that through a number of mechanisms – including interagency collaboration, the consistency of Judge and YDC team members and their availability to the young people and their families, the immediacy of getting young people into drug and alcohol programmes and regular monitoring of their behaviour – almost two-thirds of the sample group had reduced their offending and more than two-thirds had stopped or reduced their alcohol and drug use during their time at the YDC. □

See www.justice.govt.nz/pubs/reports for more information.

Teen brain development and criminality

Source: CNN.com 14 January 2008

Leading American experts are lining up to help reform their juvenile justice system in the face of research which distinguishes the workings of the teenage brain from that of its parents.

Professor of psychology at Temple University Laurence Steinberg says the brain of a teenager is like "a car with a good accelerator but a weak brake". "With powerful impulses under poor control, the likely result is a crash."

Professor Steinberg helped draft a brief of evidence for the American Psychological Association in the case of *Roper v Simmons*, in which the US Federal Supreme Court ruled that the death penalty could not be applied to anyone under 18 who committed a capital offence.

Dr David Fassler, a psychiatry professor at the University of Vermont College of Medicine says research into teenage brain development doesn't absolve teens but offers some explanation for their behaviour. He says "It doesn't mean adolescents can't make a rational decision or appreciate the difference between right and wrong. It does mean that, particularly when confronted with stressful or emotional decisions, they are more likely to act impulsively, on instinct, without fully understanding or analysing the consequences of their actions."

Emory University psychiatrist Peter Ash says violence towards others tends to peak in adolescent years. "People who haven't committed a violent crime by age 19 only rarely start doing it." "The good news is that a violent adolescent doesn't necessarily become a violent adult. Some two-thirds to three-quarters grow out of it."

Jay Giedd, from the National Institute of Mental Health, explains that the brain's frontal lobes are the areas that process what kind of priority to give to

messages coming in from other parts of the brain. The frontal lobes are responsible for making good decisions and controlling impulses. Brain scans have shown that the frontal lobes do not mature, and connections between the frontal lobes and other parts of the brain do not stop developing, until the age of 25.

Steinberg says that, at the age of 15 or 16, the parts of the brain which control impulses, long term thinking, resistance to peer pressure and planning are not fully developed. On the other hand, parts of the brain responsible for emotions, responses to peer pressure and rewards for action are "all set".

Jay Giedd points out that brain scans do not yet let scientists draw conclusions on an individual's personal level of responsibility, and he says it is up to the courts to decide how much weight should be legally given to research into teen brain development.

Steinberg says there is nothing particularly magic about the age of 18, which is the dividing line between juveniles and adults in the American system. "A dividing line of age 18 is better than 15 and not necessarily superior to 19 or 17, but it appears good enough to be justified scientifically". Steinberg says he thinks there are some 16 and 17 year olds who are repeat violent offenders, and should be treated as adults by the courts. For young offenders who are not in this category, Steinberg thinks that rehabilitation makes sense. He says sending young offenders to adult prisons can disrupt their development so severely that "they're never going to be able to be a productive member of society". □

Roper v Simmons 543 US 551 (2005)

A 5/4 decision of the US Supreme Court, 1 March 2005

In 1993, a 17 year old called Christopher Simmons planned and carried out a burglary and murder in Missouri. Simmons was convicted at trial, and the jury, despite considering all mitigating factors, including his age, recommended the death penalty, which the Court imposed.

The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.

US Supreme Court

Simmons appealed and was unsuccessful until he applied to the Missouri Supreme Court, which overturned the death penalty and substituted life imprisonment without parole. The Missouri Court applied a 2002 decision of the Federal Supreme Court (*Atkins v Virginia* 536 US 304 (2002)) that rejected the death penalty for "mentally retarded" offenders.

Previous US Supreme Court cases about the execution of young people include *Thompson v Oklahoma* in 1988, in which the Court decided that executing under 16 year olds was unconstitutional, and *Stanford v Kentucky*, in which the Court upheld the possibility of the death penalty for 16 and 17 year olds.

The majority on *Roper v Simmons* held that the US Constitution's ban on cruel and unusual punishments should be interpreted having regard to "the evolving standards of decency that mark the progress of a maturing society" to forbid imposing the death penalty on under 18s.

Other reasons given by the Supreme Court included:

- a majority of other states had now banned the death penalty for under 18s.
- it is not reliable to label under 18s as the worst offenders. Their

susceptibility to immature and irresponsible behaviour means "their irresponsible conduct is not as morally reprehensible as that of an adult".

- vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment.

- The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. □

The Wikipedia article on this case cites more research on teen brain development:

- Cauffman, Elizabeth and Laurence Steinberg. (2000). (Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults *Behavioral Sciences and the Law* 18, 741-760.
- Scott, Elizabeth S. and Thomas Grisso. (1997). Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform *Journal of Criminal Law and Criminology* 88(1), 137-189.
- Sowell, Elizabeth R., Paul M. Thompson, Keven D. Tessner, and Arthur W. Toga. (2001). [Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships during Post adolescent Brain Maturation](#) *The Journal of Neuroscience* 21(22), 8819-8829.
- National Institute of Mental Health. (2001). [Teenage Brain: A work in progress. A brief overview of research into brain development during adolescence.](#) NIH Publication No. 01-4929.

Correspondence

Electronically Monitored Bail for Young Offenders

Superintendent Graham Thomas and Principal Youth Court Judge Andrew Becroft discuss (in the following excerpts) the preconditions for making electronically monitored bail a success for young offenders.

Dear Judge Becroft
Your Honour is aware that Police have been engaging with youth justice partners, namely Child, Youth and Family, and the Ministry of Justice's Youth Justice Team, to investigate your interest in and proposals concerning the applicability of EM bail to young defendants.

In sum, the view adopted by CYF and MOJ is that:

- there is no legal impediment to applications for EM bail by young defendants or their advocates
- overseas experience indicates that EM bail for youth is less

likely to be effective without additional support measures - an intensive support service for young people on bail is already provided by CYF through the Supported Bail programme - Supported Bail operates from a philosophical base of trust in the young person, which is not seen as compatible with the monitored containment of EM bail - CYF's supportive resources are invested in the development of Supported Bail and no additional resources would be available to provide intensive support/wrap around services to accompany EM bail.

The implication of these views is that Police must still be prepared to process applications for EM bail from young people, taking into account what is known from international literature and best practice, but that the onus for proposing suitable supportive services to accompany EM bail will fall, as it already does in

the adult jurisdiction, on the applicant and/or their advocate. CYF, while unable to provide a supportive framework, will provide all available information known to them on the young person and the proposed EM bail access.

Yours faithfully
Superintendent Graham Thomas, National Manager, Police Prosecution Service

Dear Superintendent Thomas

Thank you for summarising the position so clearly. In our [the Administrative Youth Court Judges] view however, there is one significant flaw in the current position that is being adopted within the youth justice sector. The current position presupposes the availability of an intensive support service for young people by means of Supported Bail Programme. The

problem is there are only eight Supported Bail programmes in New Zealand and each have a very limited number of places available. If, and I stress if, there was a comprehensive nationwide Supported Bail programme, then we would happily agree with your letter. Self-evidently, this is not the case.

Youth Court judges will push for the use of electronically monitored bail for young offenders where Supported Bail Programmes are not available or where acceptance into the programme cannot be arranged.

I am glad that Police are still prepared to process application for EM bail. The real problem will be in the applications being made in the first place. Thank you for your support.

Yours faithfully

Andrew Becroft
Principal Youth Court Judge □

Guest editorial

Inspiring Ideas

John Key and Helen Clark do it, so this is my humble contribution from the heart.

The start of a new year is a good time to contemplate the 12 months ahead and resolve to make changes in our lives. One of my resolutions for the year is to take a stand against indifference. Someone said, 'All that is necessary for evil to prevail is that good men do nothing.' Parents, caregivers, teachers, youth workers - none of us can afford to be indifferent. We have young lives to shape and we need to do it with passion! Your children/charges need positive role models and parents can be that role model. Where better to learn how to live than in one's own home? How?

First, it takes sacrifice, commitment and honesty. Anyone who tells kids not to do drugs but smokes weed privately is a fake - and kids, like horses, can spot a fake a mile off!

Second, it needs time. Yours! And spending time with your kids needn't be expensive. Some suggestions for simple pleasures that cost little or nothing:

- identify and get to know the birds in your backyard. My kids, when they were young, set up our laundry as a hide and not only watched the birds but photographed them. You may be surprised how many species inhabit your neighbourhood.
- Grow veges in your backyard. If you haven't much space, grow them in pots, or get some old tyres and grow potatoes in them, stacking the tyres as the plants grow.
- Buy a board game such as Scrabble, jerk the plug on the idiot box once a week and have a family evening.
- Enrol your kids with a youth group and go to church yourselves. You'll meet other people being good role models.

We've all heard the maxim, 'Don't sweat the small stuff.' I've never considered that good advice, so was pleased to hear the Mayor of Manukau City ex-

horting parents in his neighbourhood to sweat the small stuff so the big stuff doesn't happen.

A recent article in the NZ Listener reports on a study begun in the early 70s, tracing the lives of around 1000 children from birth to the present day. Some of the findings may shock us into doing better with our kids:

- 'Lax and inconsistent discipline in childhood was linked with higher rates of mental illness at age 15.'
- By the age of 3, broad personality traits are established; 'under-controlled toddlers grow up to be impulsive, unreliable and antisocial; inhibited 3 year olds are more likely to become unassertive and depressed adults; well-adjusted 3 year olds tend to become well-adjusted adults.'
- 'A mentor in a child's life can make an enormous difference. And the more experiences a parent gives a child, the better, particularly when combined with language.'
- 'Children need affection, boundaries and affirmation; no children should be abused.'

It's not rocket science, and if anyone feels inspired to stop complaining about the state of the world and to do something about it, there's always room for you at Leg-Up. We are overworked and understaffed. We are tired of asking for help. You won't get paid but you'll find it rewarding if you come with the right attitude. Please get in touch! You won't change the world, but you might change one young person's life.

Ros Rowe, Leg Up Trust, Hastings □

The Leg Up Trust uses horses as therapists, and is run from a 13 acre farm, which was recently featured on TV One's Mucking In.

Turning his life around

A letter of recommendation from the owner of a car yard who was the victim of the young person who was sentenced to 60 hours community work at the yard.

To Whom It May Concern

December 2007

With regard to community service by AA as per the decision of the Family conference I attended to resolve offences committed by him and others.

At the family conference, AA was ordered to complete 60 hours community service at [my car yard] by Christmas.

AA has now completed his 60 hours community service at our premises and has in fact impressed me and our staff with his attitude and conduct whilst completing tasks he has been set.

I would like to take this opportunity to express to AA that he has earned my respect both for initially admitting that he has done wrong and that he has actively sought to make amends for his actions, he has demonstrated to myself and others an attitude that was far removed from when I first met AA at the family conference.

I believe that if he can maintain the attitude, self confidence and behaviour he has shown to me AA will go far in life and move forward from previous bad decisions.

Yours Sincerely

DMH, Director

The responsibility of children

Comment by Mark Telford in the Child and Family Law Quarterly Volume 19 Number 4 2007, on the case of *DPP v P* (UK), in which Smith LJ reminds British youth justice politicians that the doctrine of *doli incapax* is still alive.

In Volume 19 Number 4 of the Child and Family Law Quarterly, Mark Telford reviews the case of *DPP v P* [2007] EWHC 946 (Admin), [2007] All ER (D) 244 (Apr), which upset one of the cornerstones of UK New Labour government's desire to be seen to get-tough-on-youth-offenders.

After enacting the Crime and Disorder Act in 1998, it was assumed that the common law doctrine of *doli incapax*, which says that children are not criminally responsible, had been abolished. The doctrine operated in the UK to ban the conviction of children aged 10-13 unless it was established that, at the time of the offence, the child knew that what they were doing was 'seriously wrong, and not merely naughty or mischievous'. This meant that the effective age of full criminal responsibility was lowered from 14 to 10.

Doli Incapax in New Zealand

This doctrine operates in New Zealand through sections 21 and 22 of the Crimes Act 1961, and section 272 of the Children, Young Persons and Their Families Act 1989 (CYPFA).

Section 21 of the Crimes Act says children under 10 years old cannot be convicted of criminal offences.

Section 22 of the Crimes Act says that a child aged 10-13 cannot be convicted of an offence "unless he knew either that the act or omission was wrong or that it was contrary to law"

Section 272 of the CYPFA says the Summary Proceedings Act cannot be used to prosecute a child aged 10-13, unless the charge is murder or manslaughter. Other criminal offending by under 14 year olds is dealt with in the Family Court.

From the age of 14 until 16, the Youth Court takes over jurisdiction for criminal offending.

In *DPP v P* Lady Justice Smith held that it was only the *presumption of doli incapax* that had been abolished by the legislation, not the substantive defence itself. This was a major victory for critics of New Labour's new approach youth justice, who say that more young people, and more offences committed by young people, are being subjected to formal criminal processes. This trend has been most in evidence in the UK since 2003, and is referred to as 'net widening'.

There is also concern in the UK that young people apprehended by the police are much more likely to be dealt with by prosecutions in youth court than by formal or informal warnings at a police station.

DPP v P concerned a 13 year old boy with ADHD, and an IQ of 65, who was charged in the Youth Court with a number of offences. Smith LJ took a literal approach to the legislation which stated that the "rebuttable presumption" of *doli incapax* was abolished. Thus she reasoned that it was only the presumption of the defence that was abolished, and not the possibility that a defendant can employ the defence if they chose to. Lady Justice Smith also mentioned a contemporary statement from the Solicitor General which said "The possibility is not ruled out, where there is a child that has genuine learning difficulties and who is genuinely at sea on the question of right and wrong, of seeking to run that [*doli incapax*] as a specific defence".

Telford undertakes an analysis of Smith LJ's judgment and concludes that her literal approach to preserving the defence was sound, but relying on purposive and historical arguments would be risky, given the documented desire of politicians at the time to see the whole defence abolished.

Mark Telford also looks at the

role that the doctrine of *mens rea* might play in the prosecution of young people, and concludes that understanding a child's *mens rea* standard as being different from an adults does still not go so far as saying that a child may not be fundamentally criminally responsible.

While Telford seems largely supportive of the Lady Justice's move to resuscitate the doctrine of *doli incapax*, he does concede that its effect will probably be more symbolic than practical. He blames the UK Labour party's hardening of youth justice law and policy for contributing to a "culture of intolerance concerning young people" and urges policy makers to "resist the temptation to engage in populist punitive rhetoric and engage more rationally with the problems of contemporary youth justice".

Court In The Act

is published by the Chambers of the Principal Youth Court Judge
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Court In The Act

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Pushing the anti-P message

Since 1986 Napier Pilot City Trust has worked to study and implement positive alternatives to violence, and to develop communities not prisons.

Napier Pilot City Trust has recently been distributing information about the damaging effects of methamphetamine on users, families and communities. The information pack includes poems and letters from users, photo sets showing the devastating physical effects of long term use of P, and a checklist of warning signs for friends or families.

Lynette West, Young Peoples Trust manager from New Plymouth, responded to being sent the Pilot City information pack. Below is an excerpt from her email to the Napier Pilot City Trust:

“For young people we know who use P or their peers, this is graphic and informative, in particular it is real and users can see themselves in it and the way their bodies have been used and abused by the drug. It is also a powerful tool do users do not feel alone and connect who truly understands that addiction which is all too powerful.”

“For those who are completely unaware of the dangers of P and its warning signs and symptoms then this information is most useful, simple and easy to digest. While to some it may look like scare tactics the reality is that this is how it is. I believe we are at the stage where hard nose tactics may be the only way to get through to the naïve and those fully in the claws of this demon drug.”

“I am well aware of the two camps regarding — ‘should information be out there’ - does information and more talk cause desensitisation? I am of the opinion that we need to have this information out there, we need to expose the myths and realities”.

□

An Interview with Bailey

Auckland, aged 18 years old, published in the Napier Pilot Trust newsletter

How did you get hooked on P?

There are lots of little reasons I started. It was kind of the next step from smoking bongos every night and getting smashed every weekend (drunk), I was 18 years old and bullet proof so when my “best friend” offered it to me I thought there was no harm in trying it.

When people told me you could get addicted after trying it once or twice, I laughed at them thinking, how stupid do you think I am. Turns out they were right, within days I was smoking it again, within weeks I was relying on it to get to work the next

“Police Youth Aid Officers, Youth Advocates, and Social Workers seem unanimous that “P” is very seldom encountered amongst young people and offenders. If “P” were to be used on a widespread basis by young people, then I believe the community would face a social catastrophe.”

Andrew Becroft
Principal Youth Court Judge

day... and pretty much my life turned to shit, smoking crack was the only thing that made me happy, finding, smoking and selling P was my life.

How and when did you kick the stuff?

I have been clean for nearly three years. After being torn away from the drug scene by my parents, I ran away a few times and did some really stupid things. I was a complete bitch while I was coming down in between binges. My parents rang drug and alcohol counsellors for advice and never gave up on me. Talking to the counsellors

was great. They don’t judge you, they just listen and tell you what they know... There are so many services out there set up to help young people that have drug problems and they are not half as scary as you would think.

Was it easy to give up?

Kind of a silly question. Giving up this horrible drug was by far the hardest thing I have ever had to do. Not just the physical withdrawal, the emotional stuff for me was way harder to deal with. I felt like the scum of the earth after what I had done to myself and everyone around me. Even after three years there are a lot of damaged relationships. It takes so long to gain someone’s trust back after you have hurt them so badly. I still struggle not to smoke P — it will haunt me forever.

If you had read the P poem and seen the graphics before you became addicted, would you have thought twice about being a user?

Back then I would have thought you were over exaggerating and I would not have understood the truths a that are in the poem. Now when I read the poem I think back to when my life was a complete disaster. I am so thankful that I was one of the lucky ones. □

“P” Poem (author unknown)

I am meth
I destroy homes, I tear families apart,
I take your children, and that’s just the start.
I’m more costly than diamonds, more precious than gold,
The sorrow I bring is a sight to behold.
If you need me I am easily found,
I live all around you—in schools and in town.
I live with the rich, I live with the poor,
I live down the street, and maybe next door,
I’m made in the lab, but not like you think,
I can be made under the kitchen sink.
In your child’s closet, and even in the woods,
If this scares you to death, well it certainly should.
I have many names, but there’s one you know best,
I’m sure you’ve heard of me, my name is crystal meth.
My power is awesome, try me you’ll see.

But if you do, you may never break free.
Just try me once and I might let you go,
But try me twice, and I’ll own your soul.
When I possess you, you’ll steal and you’ll lie,
You do what you have to—just to get high.
The crimes you’ll commit from my narcotic charms
Will be worth the pleasure you’ll feel in your arms.
You’ll lie to your mother, you’ll steal from your dad,
When you see their tears, you should feel sad.
But you’ll forget your morals and how you were raised,
I’ll be your conscience, I’ll teach you my ways.
I’ll take kids from parents, and parents from kids,
I turn people from God and separate friends.

Continued

Continued

I'll take everything from you,
your looks and your pride,
I'll be with you always—right by
your side.

You'll give up everything—your
family, your home,
Your friends, your money, then
you'll be alone.

I'll take and take until you have
nothing more to give,
When I'm finished with you,
you'll be lucky to live.

If you try me be warned—this is
no game,

If given the chance, I'll drive you
insane.

I'll ravish your body, I'll control
your mind,

I'll own you completely, you soul
will be mine.

The nightmares I'll give you
while lying in bed,

The voices you'll hear, from in-
side your head.

The sweats, the shakes, the
visions you'll see,

I want you to know, these are all
gifts from me.

But then it's too late, and you'll
know in your heart, that you are
mine and we shall not part.

You'll regret that you tried me,
they always do, but you came to
me, not I to you.

You knew this would happen,
many times you were told,
But you challenged my power,
and chose to be bold.

You could have said no, and just
walked away,

If you could live that day over,
now what would you say?

I'll be your master, you be my
slave,

I'll even go with you, when you
go to your grave.

Now that you have met me,
what will you do?

Will you try me or not. It's all up
to you.

I can bring you more misery
than words can tell,

Come take my hand, let me lead
you to hell. □

Recent Case Law:

R v IM

High Court, Auckland,
5 February 2008
Justice Heath

IM (aged 14 years 7 months at the time of the offending) was removed from the Youth Court to the High Court for sentencing before Justice Heath on one charge of aggravated robbery, and one charge of robbery.

Facts: One day in May 2007, IM accompanied his brother (18) and his brother's partner (24), and was encouraged by them to push over a victim and steal her handbag. Also, later that day, to take part in a robbery of a superette, in which cigarettes were taken, and a shop assistant was hit over the head with a fence paling.

The brother and partner also gave IM methamphetamine before the robberies, and had been taking it themselves during that day.

Discussion: Heath J comments that age is a mitigating factor that can be given considerable weight by the High Court, despite not having access to the same youth justice principles as the Youth Court.

Justice Heath describes IM as impressionable and easily led. He remarks on IM's positive change in attitude during his time on remand, but reminds him that, if he were 18 years old, he would be facing a sentence of two years imprisonment.

Heath J says a sentencing court in this case must balance the need for denunciation and accountability, with giving the young offender the chance to rehabilitate themselves

Decision: 100 hours community service, with the option for 20% to be served as basic work and living skills training. Two years intensive supervision with special conditions. □

Youth Court Profile

Judge Robert Murfitt

From an interview with the Taranaki Daily News December 19, 2007. Reprinted with permission.

Judge Murfitt spends 50% of his time on the bench sitting in the Family and Youth Courts.

"When I look at the young people who are facing criminal charges, I try to look past what they have done at who they are and what they can be."

"And if there are opportunities for them to put their foolish, immature, unlawful behaviour to one side and carry on with a better path in society, then I'd like to create that opportunity for them."

Earlier in the year, the judge sent a young man who wanted to join the Army on a run. "He was guilty of a disorderly act and for him to get into the Army—a conviction would delay that." So the judge told him the Police would drop him out at Normanby (about 5km from Hawera) and if he ran back in less than an hour, he'd be discharged without conviction.

The teenager made it back in time. He has since joined the Army.

Judge Murfitt says it is hard for the general middle-class population to understand the backgrounds of many of the young people who come to court. They never had food in the fridge to graze on, they never had a story to read at night, they would typically have felt paralysis and fear when they saw their mother punched and knocked down by a drunken father. "And [they're] told they should never have been born, they are stupid and given none of the nurturing that many of us take for granted... it's little wonder that they themselves abuse drink or drugs and get into trouble".

"One of the devices that Judge Bidois and I created is what we call a remand contract. This is a deal which the young offender signs up to with the court."

The offender might get a job and keep it for three months, or go down to limited service volunteers at Burnham military camp for six weeks, pay reparation or do voluntary community work. The deal with the court will be that the punishment for the offence will be tailored to take into account how much improvement the offender can show.

"This is a very good technique to encourage them to make changes in their life because there is a consequence, maybe jail, if they don't."

Not surprisingly, the judge is keen on programmes like Start Taranaki, the Big Brothers Big Sisters Taranaki mentoring programme—of which he is a trustee—and the proposal to give boy racers space at Ferndene.

In Taranaki, because of the size of the community, there has been some amazingly good initiatives taken to address the needs of young people, says Judge Murfitt.

"One of them, the Start programme is a world leader in its effectiveness."

The Big Brothers Big Sisters programme has just started in Taranaki. "I am very proud of the good start it has made in Taranaki. Seven matches were created in the first month of the operation—an amazing start." "The background I described before of young people who have no social capital means they have no one available to take an interest in them to get good guidance from." He says mentors can make a huge difference if they can take an interest in the young person's life. □

Judge Murfitt (58) was made a judge in 2004 and sits in New Plymouth.