"Court in the Act"

A regular newsletter for the entire youth justice community

THE YOUTH COURT OF NEW ZEALAND | TE KŌTI TAIOHI O AOTEAROA

Contents

Editorial: Opportunity Keeps Knocking!

In the last edition of Court in the Act, we reported on the widespread array of exciting work either directly related to, or indirectly affecting, the youth justice sector at present.

In the past month, two particularly important pieces of work have emerged which affect the youth justice sector.

Firstly, the White Paper for Vulnerable Children was released on 11 October 2012. This followed on from the Green Paper, which invited the public to submit ideas on what changes were needed to help vulnerable children. Vulnerable children were defined to mean "children who are at significant risk of harm to their wellbeing now and into the future as a consequence of the environment in which they are being raised and, in some cases, due to their own complex needs." The Paper sets out a "Children's Action Plan" which details what actions the Government will take, and timeframes for this.

To give a few examples, the Plan includes measures to improve systems in place for reporting child abuse and neglect, to improve information sharing between government agencies and NGOs, to promote mentoring of children and young people and to commission an independent review Child, Youth and Family Complaints Processes.

Following this, the *Joint Thematic Review of Young Persons in Police Detention*, conducted by the Independent Police Conduct Authority (IPCA), the Office of the Children's Commissioner and the Human Rights Commission, was released on 23 October. The review was conducted as part of each agency's mandate under the Optional Protocol to the Convention Against Torture.

Last year 213 young people were detained in Police cells for over 24 hours, with an average detention period of 1.9 days. This is an increase from 76 in 2009, though a decrease from the very high numbers of the past (for example, 446 young people were detained for over 24 hours in Police cells for an average of 1.9 days in 2007).

The review considers the problems linked to detaining young people in police cells (and quotes young people who have been in police cells, as well as adult professionals). It makes 24 recommendations including that Police improve conditions of detention and the treatment of young people, improve information provided, Police training and reporting practices, review options for transport arrangements and continue to work with the IPCA, and Child, Youth and Family on reviewing practices.

It is, and continues to be, a hugely important time for youth justice!

Left to Right: Children's Commissioner Dr Russell Wills, Judge Sir David Carruthers (chair of the IPCA and former Principal Youth Court Judge) and David Rutherford (Chief Human Rights Commissioner) at the launch of the Joint Thematic Review of Young Persons in Police Detention.

Schools and the Youth Justice Sector

Christine O'Brien

Christine O'Brien

Christine O'Brien is the principal of St Thomas of Canterbury—a "restorative justice school". In this article, she speaks about restorative justice in education, as well as broader community restorative justice initiatives in which she and her school have been involved.

As a secondary school principal I have often thought how closely aligned our work is to those working in youth justice, particularly in relation to our most marginalised and disengaged youth. Much still needs to change in the education sector to support Judge Andrew Becroft's view that young people need the four legs of a chair to have a safe passage into adulthood and where one or more legs is removed our young people are in trouble.

St Thomas of Canterbury College, a boy's secondary school, has over the last six years become a fully immersed and sustainable restorative justice school with a reduction in stand-downs (60 in 2002) and suspensions (18 in 2002) to zero in 2010 and a whole school culture shift. We are committed to the restorative philosophy both in schools and wider society, particularly in relation to addressing issues around our most marginalised youth. Once excluded beyond the school gate a young person is often on the fast track to the youth justice system.

As a result of our school experience in restorative justice, we have become involved in wider community engagement in multi-agency projects and initiatives

- **Te Kaupapa Whakaora** – a project providing restorative conferencing post-sentence to offenders and their victims in prison. The project is involved in high end intensive conferencing for example murder, rape, manslaughter by drunk driving. The project was launched by Judge David Carruthers, Chief Parole Court Judge.
- **Community Justice Panel (CJP)**– I sit as a principal on the steering committee of this initiative between the Christchurch Police, Community Law Canterbury, Ngai Tahu, Maata Waka, and community leaders. The panel, drawn from the community, sits at the Nga Hau e Wha marae weekly. The purpose of this project is to involve the community in seeking solutions to criminal offending, to base those solutions on restorative principles, and to address drivers of crime. A high proportion of offenders referred to these panels rather than court are adult youth offenders, often marginalised and with problems including school failure or disengagement, fractured families, drug and alcohol addiction, low employability, histories involving sexual or violent abuse. To date 200 cases have been heard with a 27% better outcome than matched with court recidivism data.
- **Edmund Rice Justice Aotearoa** has established a mentoring partnership programme with Pillars (provides support and mentoring to children of prisoners) at St Peter's College Auckland, one of our network of Christian Brother schools (refer *Invisible Children 2009,* the first year research report on a study of the children of prisoners).
- We are also part of the MOE He Kakano strategy and the MOE Pasifika achievement strategy – Maori and Pasifika males in particular are over-represented in New Zealand's stand-down, suspension, exclusion and expulsion statistics, which are a shameful indictment on both our society and our education system. In our experience, restorative justice is a highly effective and culturally appropriate avenue for engaging and retaining these young men in our education system.

St Thomas of Canterbury College students

Continued

Special Report

Current New Zealand research around restorative justice in education

Both Elizabeth Gordon and Mark Corrigan have recently produced research work for the Ministry of Education around restorative justice in New Zealand schools at present.

As a school used in both bodies of research our evidence is very similar to others in the studies. Elizabeth does note that schools who adopt a whole school approach underpinned by a philosophical commitment achieve the most sustainable and wide reaching results. While the statistics in both studies show a correlation between the implementation of restorative justice and the reduction of stand–downs and suspensions and reduction of disparity in these figures for Maori, they also exhibit a tentative link between restorative justice implementation and NCEA achievement rates, which warrants further research. Take the evidence for Maori males -3.4 times more likely to be suspended than non-Maori in NZ.
For our school, the implementation of a full restorative culture has shown us:

- pre RJ the Maori suspension rate was 40%, European 7%
- post RJ the Maori suspension rate is 4%, European 2.6%
- a Maori suspension disparity rate reduction from 5.8% to 1.5%
- a 78% reduction in suspensions in the baseline period, reductions overall in NZ 0%
- an average zero to 1 stand-down or suspensions per year
- a pre RJ NCEA L2 average achievement rate of 61%
- a post RJ NCEA L2 average achievement rate of 72%, an increase of 17.9%.

We are a secondary school with a 15% Maori roll and 12% Pasifika roll, sadly the most overrepresented groups in our justice system.

Professor Angus McFarlane also has a body of research on hui whakatika as part of a commentary on diversity and challenging students. He explores the restorative hui as a culturally specific response for at risk Maori students, drawing as it does on traditional and contemporary Maori process. He comments on the alignment of traditional Maori disciplinary concepts (consensus involving the whole community, reconciliation, examination of wider reasons for the offence and restoration of harmony) with the restorative justice approach.

The hui is a protocol laden and structured process. It opens and closes in a certain fashion; there is an order as to who should speak and when. There is a place for talk and debate, laughter and tears, food and song. There is also a wairua, a spirituality, which exudes mana and mana can move people! The voices of te reo maori, the whaikorero of the kaumatua, the presence of whanaungatanga, and the intensity of the take (argument) are the taonga tuku iho, the treasures of history and mythology.

Professor Angus McFarlane

The disparity reduction indicators for Maori students in restorative justice schools in the MOE research support Angus' argument.
As a secondary principal on sabbatical leave, I had the privilege of observing the use of restorative justice in Northern Ireland in the ongoing transition from a post-conflict society to a healed community. Brendan McAllister, Commissioner for Victims and Survivors in Northern Ireland states:

Human rights are the foundation of justice..... against this background it seems to me that Restorative Justice is a concept which returns more faithfully to the original meaning of peace and justice because in the restorative paradigm the victim and offender are not merely viewed as two individuals but, rather as members of community or society: one to be given support by the community and the other to be held to account by the community and both empowered by the community in the task of restoration. And when justice is restorative the impact of the crime is measured by its effect on relationships rather than simply on contravention of the law.

The education sector has a powerful role to play in both transforming the experience our young people have as a response to offending and high risk behaviour, as well as having a formative influence on the thinking of future citizens on justice issues and policy. It seems to me principals, as leaders in schools, should be at the heart of this potential transformation. Our schools need to remove the gates and fences that allow some schools to see themselves as a small isolated community instead of part of the larger world. Schools have a role to play in the actions of our young beyond the so called school gates.

What Do You Do?

In this edition, we talk to Ian Lambie, Associate Professor in Clinical Psychology at the University of Auckland. Ian has worked with young offenders for the past 20 years, and is a member of the Youth Justice Independent Advisory Group. He is coordinating the upcoming free practice forums on youth justice (see page 13)

Right: Ian Lambie. Source: University of Auckland

1. Where do you work?

Well that's a difficult question to answer! I work across many places but primarily at the University of Auckland where I teach clinical and forensic psychology. I spend a lot of my time in the community there I see kids in their homes, in residences, etc. I also provide supervision and consultancy to a number of agencies. So I work in many places and have the luxury of a virtual office.

2. Describe an average day on the job for you? (if that's even possible!!)

Theres no average day really. But normally it begins at 5.30am – several times per week I head to a cycling class at the gym, the other days I run in Cornwall Park. And on the other days I do my emails. Then I often see kids early in the morning or supervise someone, then its off for a coffee, revise a research paper and work on a research project. I get bored easily so don't do sitting at a desk in my office for long periods that well (don't ask me what I was like at school as this is a 'family show'!). I enjoy teaching and sharing my knowledge and what I have learnt along my journey. Then I like to be home early so I can spend time with my kids and there are meetings at nights which take me away. But I always like to be home on a Monday night to watch Homeland!

3. Do you work with other agencies in your role? Who?

Yea that's what I love. I work with the Police – mainly out south, the Fire Service, Ministry of Education Psychologists, Dept. of Corrections, CYF and the SAFE Programme. I supervise clinicians who work with young people and have research going on in a number of these places.

4. What do you love about your role/what's the highlight?

That each day is different, that the kids keep me honest (and my own kids as well) – they remind me of the core realities of where these kids come and what I don't know. I love the kids I work with as it's so down to earth and no bullsh#t. It feeds my soul really to be honest.

5. What are the most challenging aspects of your role?

It's the kids who come to see me with the most backgrounds of abuse and neglect and who are really angry and have little interest in changing. Those are the kids who I have to say to myself"My goal is to get them to come back for a second time."

6. From your perspective, what are the biggest challenges facing the youth justice sector? Are there any solutions you would propose?

Having a highly skilled and well trained workforce, having programmes that have a strong evidenced base to them but also culturally fit for the young people and their families, that all people working in the sector value the enormous contribution that each other makes – theres no room for professional snobbery nor notoriety – lets just cut the crap and get to the heart of the matter; addressing the social ills of poverty, the big social problem of alcohol, inequality, poor parenting and family violence – all these things I believe are key drivers of youth offending.

Yes the solutions are – improve training for people who work in the sector, invest more in programmes that have been shown to work, evaluate those programmes, and also let us not forget the creative arts which for many of these kids is the way to hook them in, and getting the kids into sports and jobs.

7. What in the youth justice system can we be particularly proud of?

That we don't lock young people up in prisons like the USA does – that's a biggie we can be proud of. That we really value different cultures and know that they are an important piece in the jigsaw of change. And that we have folks across the sector who are committed to making a real difference to young people's lives.

8. Any other comments?

Don't give up hope of the potential that a young person has in their ability to change. If YOU can, they can also. Hang in there with em and sometimes a long term perspective is needed.
Acknowledge how challenging it is, how easier it is to say "it's too hard" and just leave it...how much of a up hill battle but actually it IS worth it....Investing NOW with our young people and families leads to.....

Rurea, taitea, Kia toitu, Ko taikaka anake
Strip away the bark, Expose the heartwood, get to the heart of the matter.

Legal Update

Supply of Alcohol to Young People

We all know that alcohol plays a key role in the vast majority of cases that appear in our Youth Court. We also know that provisions surrounding alcohol could very well be up for change, with the introduction of the Alcohol Reform Bill. As young people in the Youth Court clearly, at some point, are supplied with alcohol, this month's legal update looks at a question of great importance, namely what are the rules surrounding the supply of alcohol to young people? Who can give young people alcohol? When is it an offence to do so? We look first at what the law currently says. Secondly we analyse likely changes if the Alcohol Reform Bill is passed.

1. Current Law : Sale of Liquor Act 1989

It is currently illegal for adults to supply liquor from licensed premises to any person under the age of 18 years, unless they are the young person's parent or guardian, or they are supplying alcohol to a young person who is attending a "private social gathering". S 160 is the relevant section:

> ***160 Purchasing liquor for minors***
>
> (1) Every person commits an offence and is liable to a fine not exceeding $2,000 who purchases or acquires any liquor on or from any licensed premises with the intention of supplying the liquor, or any of it, to any person who is under the age of 18 years.
>
> (2) Subsection (1) applies irrespective of any liability that may attach to the licensee or any manager or other person in respect of the sale or supply of the liquor.
>
> (3) Subsection (1) does not apply to a person who purchases or acquires any liquor with the intention of supplying it to—
>
> (a) [Repealed]
> (b) any child of whom that person is a parent or guardian; or
> (c) [Repealed]
> (d) any other person who is attending a private social gathering.
> (4) No person shall be guilty of an offence against subsection (1) by purchasing or acquiring any liquor for any other person who then supplies it to a third person who is under the age of 18 years, unless it is proved that the defendant knew or had reasonable grounds to believe that the liquor was intended for that other person.

The extent of what a "private social gathering" could be is unclear, and there is very minimal case law on this specific section. For example, "social gathering" (albeit in the context of another section of the Sale of Liquor Act) has been defined to mean "gatherings for the purpose of social intercourse in the course of which the persons concerned actively participate in a common interest of an occupational, educational, technical, sporting or recreational nature." An earlier case concerning the Licensing Act found it difficult to attach any precise meaning to "social gathering."

Some commentary has suggested, however, that that the definition could be viewed as being fairly narrow. It has been noted that "the use of the word "private" is obviously used to limit the meaning of "social gathering" to a narrow group, possibly even narrower than "guests specially invited thereto", which was the expression used in s 216(3)(b) Sale of Liquor Act 1962."

Alcohol Healthwatch has previously written that "Section 160(3)(d) of the Sale of Liquor Act allows minors to be supplied with alcohol at a private social function by someone other than their parents or guardians. This exemption creates considerable confusion for the public, especially parents, and makes prosecution for irresponsible supply difficult."

2. Proposed Law

The Alcohol Reform Bill passed its Second Reading on 13 September 2011. It began the Committee of the Whole House stage on 30 August 2012 with the House voting to retain the current alcohol purchase age of 18 years. The Committee stage is continuing and Part 3 (which contains the new offence relating to the supply of alcohol to minors, clause 224) has been voted on. This means that it is highly unlikely that further changes would be made to this clause.

Continued

Legal Update

Clause 224 of the Bill, as amended by Government Supplementary Order Paper 132, makes it an offence to supply alcohol to a young person under the age 18 years. It is a defence if:

- the alcohol is supplied responsibly (see below), AND:
- the person supplying the alcohol is the parent or guardian of the minor; OR
- the person supplying the alcohol has express consent from the parent or guardian of the minor; OR
- the young person is married, in a civil union or is living with a de facto partner (these young people are not defined as 'minors' under the Bill but are defined as being under the 'purchase age').

The penalty upon conviction can be a fine of up to $2,000.

The requirement for responsible supply applies regardless of the young person's personal circumstances (ie, regardless of whether the young person has a parent, guardian, is married, in a civil union or living with a de facto partner). Clause 224(4) contains a list of criteria that the Court may look to when determining whether the alcohol was supplied in a "responsible manner":

- the steps taken by the supplier to supervise the consumption of alcohol:
- whether food was provided with the alcohol:
- whether a choice of low-alcohol or non-alcoholic beverages, or both, was offered:
- the nature of the occasion:
- any arrangements for, or provision of, safe transport:
- the period over which the alcohol was supplied:
- the quantity of strength and volume of the alcohol supplied:
- the age of the minor:
- any other matter it thinks relevant in the particular circumstances.

RTDs cheaper than water purchased

Summary

Current law: illegal for adults to supply liquor purchased from licensed premises to any under 18 year old, unless they are the young person's parent or guardian, or they are supplying alcohol to the young person who is attending a "private social gathering": s 160, Sale of Liquor Act 1989.

Proposed law: illegal for adults to supply alcohol to under 18s unless the alcohol is supplied responsibly and the person supplying the alcohol is the parent or guardian of the young person under 18, or the young person has the express consent of his/her parent/guardian, (or the young person is married/in a civil union/living with de facto partner).

Ideas Sought!!

Got an idea for an update (legal or otherwise) that the youth justice community should know? Don't hesitate to email Emily (Emily.bruce@justice.govt.nz) with your idea).

Photos: Dave Hookway

"Supreme Court Cites Science in Limiting Punishments for Juveniles"

In this edition, we republish an article by Greg Miller from www.sciencemag.org, available at http://www.temple.edu/psychology/documents/SteinberginterviewinScience.pdf. The article is an interview with Laurence Steinberg, a child psychologist was the chief scientific consultant on amicus curiae briefs submitted to the court in all three of the landmark cases in the United States involving the treatment of young people before the higher Courts.

Laurence Steinberg

Last week. the Supreme Court ruled that mandatory life sentenccs without the possibility of parole violate the Eighth Amendment ban on cruel and unusual punishment when applied to juvenile offenders. The ruling builds on two other recent decisions, *Roper* v. *Simmons* (2005), which eliminated the death penalty for offenders younger than 18, and *Graham* v. *Florida* (2010), which ruled that juveniles convicted of crimes other than homicide cannot be sentenced to life without parole. In all three cases, the court ruled that the sentencing of adolescents should be different from that for adults, in part due to growing research evidence that the adolescent brain is not yet fully developed.

Laurence Steinberg. a child psychologist at Temple University in Philadelphia, Pennsylvania,
was the chief scientific consultant on amicus curiae briefs submitted to the court by the American Psychological Association in the *Roper* and *Graham* cases. He played the same role in *Jackson* v. *Hobbs* and *Miller v. Alabama,* two recent cases involving 14-year-old boys. In one case, Kuntrell Jackson participated in an attempted video store robbery in which another boy shot and killed a clerk. In the other, Evan Miller, along with an older boy, beat Miller's neighbour with a baseball bat and set his mobile home on fire. The man died. Both Jackson and Miller initially received mandatory life sentences, and legal appeals eventually brought their cases to the Supreme Court, which combined them for its ruling last week.

Steinberg discussed the decisions in an interview with *Science.* His comments have been
edited for brevity. -GREG MILLER

Q: **Does this new decision represent a big step?**
LS.: I don't think it reflects any huge change in the court's thinking But it's big in the sense that many more individuals will be affected. With *Roper,* there are actually very few juveniles sentenced to capital punishment. With *Graham,* the number of individuals serving life sentences for nonhomicide crimes committed as juveniles is very, very small Now, we're reallytalking about several thousand individuals currently [serving mandatory life sentences] and all of the ones going forward from here.

Q: **What have psychology and neuroscience taught us about adolescents that's relevant to the justice system?**
LS.: Adolescents are significantly different from adults in ways that mitigate criminal responsibility. They're more impulsive and less able to anticipate the consequences of their actions. They're more drawn to the immediate rewards of a decision, and they're more susceptible to peer influence.

Q: **That all sounds like stuff that any parent could tell you. Does the neuroscience research actually add anything to the argument?**
LS.: Where I think it's helpful and appropriate is in providing concurrent validation of the behavioral science and helping us understand the neural underpinnings. It's not simply that there are structural and functional
changes in the brain during this time period, it's that those changes map onto what we know about behavioral changes.

Q: **Is the research being used in other way! in other courts?**
LS.: The kinds of cases I've been getting called about recently are cases of individuals that are slightly older than 18. A lot of defense attorneys are saying, "Well, if we're going to go by the brain science, the science says the brain is still maturing into their 20s." I don't actually see that going anywhere constitutionally.

Q: **The *Miller* case involved a particularly brutal crime. What about accountability?**
LS.: No one has ever said adolescents should be ...

Continued

... excused from responsibility. All we've argued is that their developmental immaturity should be taken into account for two reasons. One is that it makes them less responsible for their behavior. The second important factor,which hasn't gotten as much coverage, is that they're also in a period of life when they're changing a lot. Most people would look at Miller and say that's just a bad kid. But the research says that even when kids do very violent things at this age, it's still very hard to say with certainty that they're going to continue to be violent

Q: **Do you think the science will ever get to the point where we can predict which individuals are most likely to be violent again?**
LS.: I'd say we're still very far away from that. We did a longitudinal study of 1350 serious juvenile offenders with mostly felony convictions. In our sample, as has been shown in many studies, only about 10% were still repetitive offenders in their early and mid-20s. But if we were to go back and look at the data we collected at baseline, and that was a 4-hour assessment [of many psychological and social factors], we wouldn't be able to predict which ones would be in that 10%. We had so much more information than any court could possibly hope to have, and we couldn't do it. I think: the reason is that so many of the factors that lead kids to reoffend are in the environment, not in the kid.

Q: You must be pleased to see your work cited in a Supreme Court decision.

LS.: It's not just my research-it's a lot of people's. As scientists, we should always be happy when good science plays a role in helping to formulate sensible social and legal policies. It doesn't happen all that often.

Image: ©iStockphoto.com/CraigRJD

The Eighth Amendment (violated in all 3 cases)
"Excessive bail shall not be required, nor excessive fines imposed, **nor cruel and unusual punishments inflicted"** - (emphasis added).

The Cases (and the brain science)

Roper v. Simmons **543 U.S. 551 (2005):** Christopher Simmons was 17 when he was sentenced to death for murder. The Supreme Court on appeal held that capital punishment for young people (under 18) constitutes cruel and unusual punishment prohibited by the Eighth Amendment. Brain science research was cited (e.g. Justice Kennedy at 569: "First, as any parent knows and as the scientific and sociological studies respondent and his *amici* cite tend to confirm, "[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill -considered actions and decisions."

Graham v Florida **560 U.S. (2010):** Terrence Graham was involved in armed robberies when he was aged 16 and 17. He was 22 when this case was heard, in which the majority (in a 5-4 vote)* held that sentences of life without parole for young people (under 18) for nonhomicide crimes was a violation of the Eight Amendment. As to brain science, the Court noted "..developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. ... Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of irretrievably depraved character than are the actions of adults. "

* The vote was in fact 6-3, but Chief Justice John G. Roberts Jr. voted with the majority only in saying that in this particular case the sentence violated the Eighth Amendment—but felt this should be decided on a case by case basis.

Jackson v Hobbs/Miller v Alabama **567 U.S. (2012):** Kuntrell Jackson and Evan Miller were both 14 when convicted of their homicide offences. The majority (in a five-to-four vote) held that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without parole for young offenders who commit homicide offences. Brain science research was again relevant, with the Court stating, for example (at 8) that juvenile offenders have "diminished culpability and greater prospects for reform".

"Youth Justice Practice Issues—An Update" Webinar

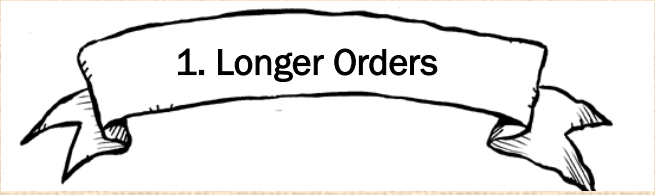
New Zealand Law Society Continuing Legal Education Limited

17 October 2012

Earlier this month, youth justice practitioners from all around the country engaged in a webinar to discuss youth justice practice following the 2010 Fresh Start amendments. The webinar was facilitated by the New Zealand Law Society Continuing Legal Education Limited, with presenters Principal Youth Court Judge Becroft, Aaron Lloydd (Senior Solicitor, Ministry of Social Development) and Fergus More (senior Youth Advocate, Invercargill). There were 47 live participants, and about 80 signed up to the webinar (almost all youth advocates).

The webinar covered the longer orders and new orders introduced by FreshStart, the law concerning child offenders, breaches of court orders and judicial monitoring, lay advocates and the Youth and Family Court Information Sharing Protocol.

The following is a summary of some of the information that was presented, and the responses to some of the polling questions that all live participants were asked.



(Fergus More)

What are the longer orders?

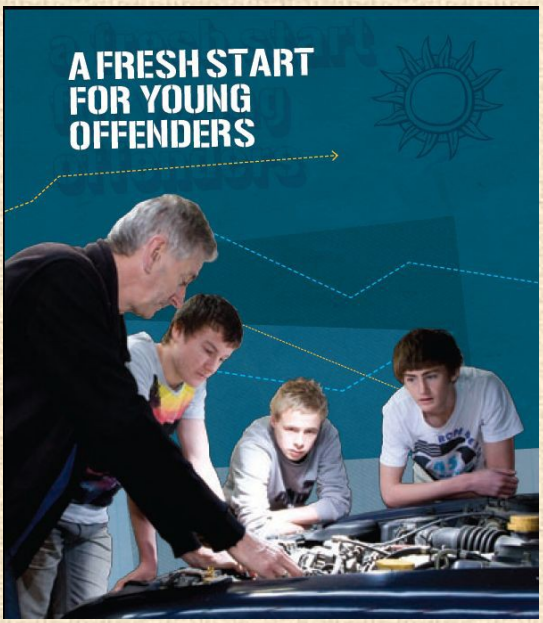
- **Supervision with activity** can now be ordered for up to six months (formerly for up to three months). Supervision with activity may be followed by a period of supervision for up to six months (formerly up to three months) (s 307, CYPFA).
- **Supervision with residence** is now available for a period of not less than three months and up to six months (formerly a mandatory three months). Supervision with residence must be followed by a period of supervision for not less than six months and up to 12 months (formerly up to six months) (s 311, CYPFA).

What do the longer orders mean?

Fergus More emphasised that the availability of longer orders has meant a decrease in convict and transfer increase in supervision with activity and residence orders. 52% of supervision with residence orders are making use of the longer available period for orders.

Fergus also traversed the following case law:

- The "least restrictive outcome" principle in s 289 *R v CT* (Youth Court, Waitakere, 16 August 2011, CRI-2011-090-004429, Judge Taumaunu)
- Supervision with activity cases (analysing factors used to determine whether supervision with activity was suitable)
- Supervision with residence cases: in particular, split sentencing and early release cases
- Cases where the imposition of Youth Court orders were weighed against transfer to the District Court
- Cases focusing on jurisdiction issues (with particular reference to sexual offending).



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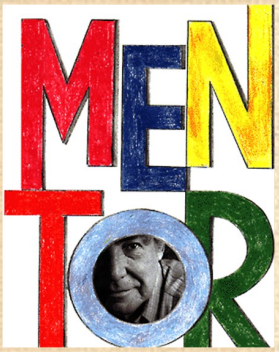
2. New Orders

Judge Becroft

What are the New Orders?

- Parenting education programme order: An order requiring the young person (if he or she is, or is soon to be, a parent or guardian or other person having the care of a child), or a parent/ guardian/ other person having the care of the young person, or both, to attend, a parenting education programme of up to 6 months *(s 283 (ja))*
- Mentoring programme order: an order requiring the young person to attend a mentoring programme for up to 12 months *(s 283(jb))*



- Alcohol/drug rehabilitation programme order: an order requiring the young person to attend an alcohol or drug rehabilitation programme for up to 12 months *(s 283(jc))*

What has happened with the new orders?

Judge Becroft raised the very low uptake of parenting, mentoring and drug and alcohol orders (especially parenting), but compared this with the number of parenting, mentoring and drug and alcohol programmes that have otherwise been accessed through FGCs. The statistics shown were:

Child, Youth and Family Statistics, 2011-2012 fiscal year:

Parenting Education Orders (s 283 (ja))

- Uptake of orders: 29
- Number of programmes otherwise accessed: 495

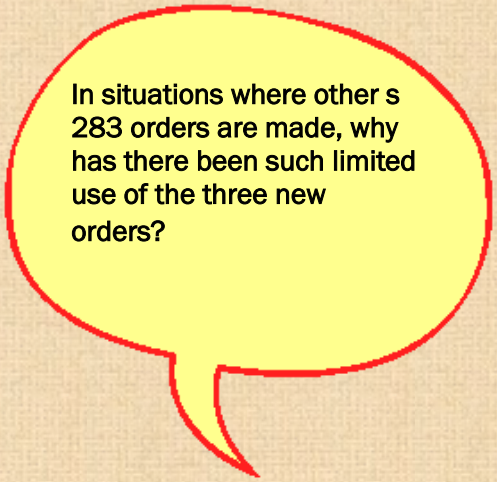
Mentoring Orders (s 283 (jb))

- Uptake of orders: 77
- Number of programmes otherwise accessed: 621

Alcohol/Drug Orders (s 283 (jc))

- Uptake of orders: 7
- Number of programmes otherwise accessed: 653

Judge Becroft polled the group with the following



Answers

1.Everyone forgets to consider them (10%)

2. Philosophical opposition to use (especially parenting orders) (10%)

3. They are already part of other orders – or accessed through FGC Plans. (73%)

4. Insufficient local resources to support the orders. (7%)

3. Child Offenders

Aaron Lloydd

What has changed for child offenders?

Since 1 October 2010, children aged 12-13 (who previously were not able to be prosecuted in the Youth Court) can be prosecuted in three circumstances (s 275, CYPFA):

- If the offence is murder or manslaughter
- If the child is aged 12 or 13 years old, and the offence carries a maximum penalty of at least 14 years, or life imprisonment
- If the child is 12 or 13 years old and is a previous offender, and the offence carries a maximum

Continued

However, it is worth noting that the Youth Court may request that the Police reconsider this decision and refer the case back for Care and Protection consideration (s 280A, CYPFA).

What has this meant?

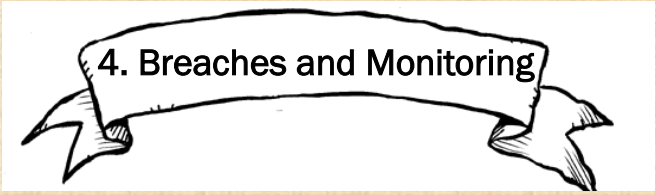
Aaron cited Ministry of Social Development statistics. At the time of the webinar (October 2012) he was able to report that, since October 2010:

- 28 children have been charged in the Youth Court pursuant to the 2010 amendments
- Of those, 8 received a discharge (under ss 283 or 283(a), 8 were referred back to the Family Court under s 280A, and a further 12 matters remain open).

He also noted that the Police originally estimated that 80 children would come before the Youth Court under these provisions each year.

Select Committee Inquiry into Child Offenders

Aaron also summarised key changes from the Select Committee's Report into Child Offenders which may have particular relevance to youth advocates, and where the Government's response differed from the Select Committee's recommendations (namely, recommendations 10, 16, 26, 28, 29, and 31- which each concern the legislation governing child offenders, the powers that the Family Court should have, and the possibility of transfer from the Family Court to the Youth Court if the child becomes old enough/commits subsequent offences).



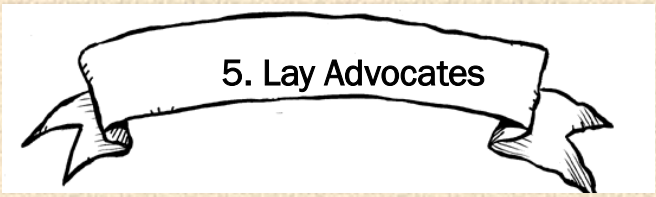
Fergus More

How has the law regarding breaches and judicial monitoring changed?

The new s 296B sets out a procedure for breaches of orders. The Court has the ability to make a declaration that the young person has not complied with an order, and it can be cancelled, substituted or varied as the Court sees fit. The Court can also direct under s 308A that one or more conditions of a young person's order be monitored (in certain circumstances where the young person has breached an order or previously been the subject of an order). The Court also has the ultimate sanction of imposing intensive supervision as a response to the young person's non-compliance with a judicially monitored condition of supervision or Supervision with Activity Order (s 296G).

How does this work in practice?

Fergus analysed post-2010 case law demonstrating how courts have dealt with breaches and monitoring (noting in the case of monitoring that Courts may see the need to ensure strict compliance with all facets of the supervision plan (rather than merely the term that was breached), citing *Police v JG* (30 March 2011, Youth Court, Invercargill, CRI-2011-225-0000017, Judge Phillips). He also analysed an example of the use of intensive supervision (*Department of Corrections v SNB*, 8 March 2012, Youth Court, Invercargill, CRI-2010-225-000138, Judge Turner). Fergus noted that in all cases of breach, monitoring and intensive supervision, the least restrictive outcome principle in s 289 must apply.



Judge Becroft

Who are lay advocates?

Lay advocates are non-legal advocates who can be appointed, free of charge to represent the interests of the child's or young person's whanau, hapu, and iwi, and to ensure that the court is made aware of all cultural matters relevant to the proceedings (see s 327, CYPFA).

How is lay advocacy operating in our Youth Courts?

Judge Becroft noted that till recently, lay advocacy as an idea has lain "fallow". He set out the role of lay advocates, and emphasised that lay advocates should be available in all Youth Courts, setting out a challenge of "a panel of lay advocates available for ... *Continued*

..appointment for every Youth Court in NZ, in place by the end of the year.

He posed two questions to the audience:

1. Have you worked with a lay advocate in your Youth Court?

2. If so, how would you rate the lay advocate's contribution?

Answers

1. Yes—35%, No—65%
2. (on a scale of 1-5: 1 being of no value, 5 being extremely helpful) :

   1—0%, 2—17%, 3—33%, 4—50%, 5—0%

6. Information Sharing Protocol

Judge Becroft

What is the Information Sharing Protocol?

The Youth Court-Family Court Information Sharing Protocol enables a Youth Court Judge, subject to the discretion of the Family Court, to obtain information on previous care and protection proceedings relating to the young person in the Youth Court, along with professional reports and plans obtained in the course of those proceedings. Subject to sections 191-192 of the Children, Young Persons and their Families Act, this information can be shared with counsel representing the young person, and any other person who the Court considers has a proper interest in proceedings.

Judge Becroft posed one question:

1. As a youth advocate, have you ever been provided with relevant parts of a young offender's care and protection file, pursuant to the Protocol?

Answer

1. Yes—39%, No—61%

A Challenge for the Information Sharing Protocol

Judge Becroft outlined the vital nature of the Protocol. He noted that, in general, if information is asked for under the Protocol, it should be received (subject to the Family Court's discretion). He posed a challenge: "Would a youth advocate be derelict in his/her duty by failing to ask whether a young person in the Youth Court had past or present proceedings in the Family Court and neglecting to obtain all relevant information under the Protocol?

6. Accessing the Webinar

If you would like to view the webinar, you can access it in its archived form You can register to access the webinar in its archived form. To do so, you need to email lucy.franklin@lawyerseducation.co.nz and she will organise this for you. The cost is $91 – NZLS members and NZLS Associate members and $121 – Non-members. If you choose this option, you will also be mailed a copy of the book of papers that accompanied the webinar. Once registered, the Law Society gives the following instructions:

Log in on the left hand side of the home screen, then scroll down and click on My Webinars.

The username is the 6 digit number on the practicing certificate and a randomised password you can change at any time. If you are unsure of your password, Annabelle Baker can help you: 04 472 7837/ annabelle.baker@lawyerseducation.co.nz.

Upcoming

FREE YOUTH JUSTICE PRACTICE FORUMS

An opportunity to bring colleagues together to discuss and share ideas
Friday 23rd November, 1:00pm - 4:00pm
Building 730; Room 220
(Population Health Function Room)
University of Auckland, Tamaki Campus:
http://www.tamaki.auckland.ac.nz/uoa/tamaki-innovation-campus-map

Speakers:

Mike Fulcher *NZ Police*
Mike will talk about some of the challenges and successes in Police youth work.
Mike has been in the Police for 21 years, mostly in the Youth and Management areas. He currently oversees, from a Police perspective, the Counties Manukau Youth Courts in Manukau, Papakura and Pukekohe. He also oversees Youth Aid, Youth Education and Youth Development Programmes in the Counties Manukau Police District.

Lyle Galloway *CYF*
Lyle will do a presentation on the Youth Court project that is currently being undertaken. He will have some interesting information on trends/what they are seeing and some of the initiatives currently underway. Lyle has long experience working for CYF in a range of roles- he has latterly been an acting YJ Manager in Auckland City YJ, and he has spent several years prior to that as the Youth Court supervisor for that team. He has great experience in terms of building relationships with key people in the court system.

Dr Linda Hand and Sally Kedge *University of Auckland*
"Talking trouble: The language skills of children and young people involved in the legal system."
Linda and Sally will outline on the problem. They will touch on the international research into language and communication in children and young people involved with the legal system, including those in the criminal justice system, those who are vulnerable witnesses and those involved in care and protection.

Peter Wilding *New Zealand Fire Service*
With 75% of all deliberate fires in New Zealand set by young people, the Fire Service has a programme were especially trained firefighters work with fire setting children which enjoys great success in changing their behaviour, but there's a dark side. Many change their behaviour simply turning to other types of crime, often escalating in levels of seriousness. He will discuss the success of programme and the potential for greater cross agency involvement in curbing emerging criminal behaviours.

Danielle Kelly *Faculty of Law*
Danielle is a lecturer in the Faculty of Law, teaching Law and Society and South Pacific Legal Studies. Danielle is a member of the steering group *JustSpeak* in Auckland.
JustSpeak is an organisation of young people committed to engaging with criminal justice issues in NZ. They seek to draw on the imagination, optimism, and impatience of young people to help create positive change in NZ's criminal justice system. Danielle will introduce the organisation, and outline some of the key activities they are involved in.

Afternoon tea will be provided
Please RSVP Sheryl Robertson for catering purposes
s.robertson@auckland.ac.nz
Free parking and no cost for attendance
Youth Justice Practice Forums are co-ordinated by Assoc. Professor Ian Lambie, Clinical Psychology,

Stop Press

Latest Research and Developments

Source: www.teara.govt.nz

New Zealand

Independent Police Conduct Authority, Office of the Children's Commissioner and Human Rights Commission "Joint Thematic Review of Young Persons in Police Detention" (released 23 October 2012) <http://www.ipca.govt.nz/Site/media/2012/2012-October-23-Joint-Thematic-Review.aspx>

White Paper for Vulnerable Children: <http://www.childrensactionplan.govt.nz/> (released 11 October 2012)

International

Leanne Fiftal Alarid et al "The Effect of Parental Support on Juvenile Drug Court Completion and Postprogram Recidivism" (2012) 10 (4) Youth Violence and Juvenile Justice 354.

Charles M Borduin and Scott T Ronis "Research Note: Individual, Family, Peer and Academic Characteristics of Female Serious Juvenile Offenders" (2012) 10 (4) Youth Violence and Juvenile Justice

Meda Chesney-Lind and Lisa Pasko (eds) *The Female Offender: Girls, Women and Crime* (3rd ed) (Los Angeles, SAGE, 2012).

David Day et al "Long-Term Follow Up of Criminal Activity with Adjudicated Youth in Ontario: Identifying Offence Trajectories and Predictors/Correlates of Trajectory Group Membership" (2012) 54 (4) Canadian Journal of Criminology and Criminal Justice 377.

Charles L Johnson et al "Transitions of Truants: Community Truancy Board as a Turning Point in the Lives of Adolescents" (2012) 1 (2) Journal of Juvenile Justice 34 <http://www.journalofjuvjustice.org/JOJJ0102/epub.htm>.
>
Friedrich Loesel, Anthony Bottoms and David Farrington (eds) *Young Adult Offenders: Lost in Translation?* (Cambridge Criminal Justice Series) (New York, Routledge, 2012).

Liz Watson and Peter Edelman "Improving the Juvenile Justice System for Girls: Lessons from the States" (Georgetown Center on Poverty, Inequality and Public Policy, October 2012) <http://www.law.georgetown.edu/academics/centers-institutes/poverty-inequality/upload/JDS_V1R4_Web_Singles.pdf>.

Please note that if you know of recent research (be it articles, papers or books) that you think may be of interest to the youth justice sector, we would love to hear from you.

If you are interested in any of the articles and would like more information on them, please feel free to get in touch. We would also love to hear from you about research we should know about for upcoming editions of Court in the Act.

Remember, the Youth Justice Learning Centre lists all the youth justice training opportunities available in New Zealand, as well as a host of youth justice information, resources and links.