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

Editorial

It's been an exciting and eventful few months in the world of youth justice in Aotearoa. Those of us working in the Courts will have observed the advent of the Criminal Procedure Act 2011's changes, which came into effect on 1 July 2013. We report on what this means for the Youth Court in our legal update on page 3.

Lots of great conversation about youth justice was generated at the Australian Institute of Criminology and Australasian Juvenile Justice Administrators' first ever international youth justice conference on the theme "Changing Trajectories of Offending and Reoffending". In this edition, you can hear from those who attended what they learned and presented about, and, if anything generates your interest, you can watch keynote speakers and read presentations online.

Cyber bullying has been a topical issue earlier this year, and in this edition we report back on recommendations that emerged from the 2013 "Cyberbullying, Young People and the Law Symposium" in Melbourne.

We hope you enjoy your read, and don't forget you can send through contributions to emily.bruce@justice.govt.nz any time :)

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Letter to the Editor

Good morning,

Have just finished reading the latest Court in the Act and found your article "Nobody made the Connection" quite interesting. One of the biggest problems in alternative education is that the students arrive ahead of support or diagnostic services. It staggers me that health, CYF or education services have had this young person in their environment for such a long time yet no diagnostic information seems to have been carried out in the areas of health, learning, behaviour etc etc. It becomes available after the courts order it, after the students have got involved in crime, but this is always "after" the event. It also seems an ongoing battle with CYF who I feel still do not classify "education" as an important part of the young person's development skills. I still get "we are going to close the file" because they have not re-offended— education is your concern!! I actually naively think that it should be "everyone's" concern. The other critical factor that shows in your article is the fact that the issues facing the young person need to be recognised "early". The signs are generally always there and it makes common sense surely that when the "indicators" flash someone does something about it.

I always enjoy the newsletter, it is informative and gives us a real heads up about intervention work that is happening around the country.

-Anon

Stop Press

Changes to Bail Provisions in Children, Young Persons and their Families Act 1989

The Bail Amendment Bill was reported on in Issue 62 of Court in the Act, but since then we can report that this Bill has passed its third reading on 27 August 2013. The Bill awaits royal assent, and will take effect the day after it receives royal assent.

What is the amendment?

The key change to the Children, Young Persons and their Families Act contained in the Bill is the creation of an additional situation in which Police can arrest without warrant. The Bill inserts new s 214A into the Children, Young Persons and their Families Act, which provides that a constable may arrest a child or young person in breach of bail without a warrant if:

- they have been released on bail; AND
- the constable believes that person is breaching a condition of their bail; AND
- the person has previously breached a condition of that bail (whether or not it is the same condition) on two or more previous occasions.

Section 235 of the Children, Young Persons and their Families' Act to require a child or young person to be placed in the Chief Executive's care if they have been arrested under s 214A and are likely to continue to breach any condition of bail. This is subject to s 236, which enables a senior social worker and a senior sergeant or a constable of or above the level of position of inspector, to jointly certify in some situations that a the young person may, be detained in Police custody for a period exceeding 24 hours and until appearance before the court.

When does it come into force?

The Bill is due to come into force in its entirety the day after it receives the royal assent. It is not known when the Bill is due to receive the royal assent. We understand that this will be some time shortly after.

To check whether the Bill has received royal assent the day before and therefore is in force, some helpful places to look could be:

- The record of the Bill on the Parliament website: http://www.parliament.nz/en-nz/pb/legislation/bills/00DBHOH_BILL11370_1/bail-amendment-bill .
- http://www.legislation.govt.nz/
- Contacting Emily Bruce, research counsel to the Principal Youth Court Judge: Emily.bruce@justice.govt.nz or 04 914 3465.

What do you do?

In this edition we talk to Cath Green, Youth Justice Manager for Child, Youth and Family in the Hutt Valley.

Where do you work?

I'm Child, Youth and Family's Hutt Youth Justice Manager, so I'm in the Hutt site.

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

Every morning we have a team meeting to talk about what's on for the day. If there's anything tricky or hard going on we brainstorm solutions as a team. An example, recently we had a boy who has been in our system since July last year for minor offending and every placement set up for him has broken down for one reason or another. We wanted to support his social worker, in sourcing a stable placement. How can we help him? What do we do to shift him? What responsibility do his parents have?

After our meeting I'll check emails and attend to the urgent ones. I might supervise a co-ordinator or supervisor and I'll try and keep abreast of the high-risk kids on our caseload.

Today I'm preparing for a Youth Offenders Team meeting, which I chair – that's Police, Child, Youth and Family, Education, DHB and councils.

There are always things like writing letters, looking at contracts, and I'm always managing my team - on any given day we can have a crisis.

Do you work with other agencies in your role? If so, who?

Yes. Marae, local NGOs, Police, Education DHBs,

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

I like to think we're making a difference for disadvantaged young people in the Hutt Valley. I manage a really good team of social workers and co-ordinators who help these young people.
I love the diversity of my role.

What are the most challenging aspects of your role?

Navigating the bureaucracy.

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

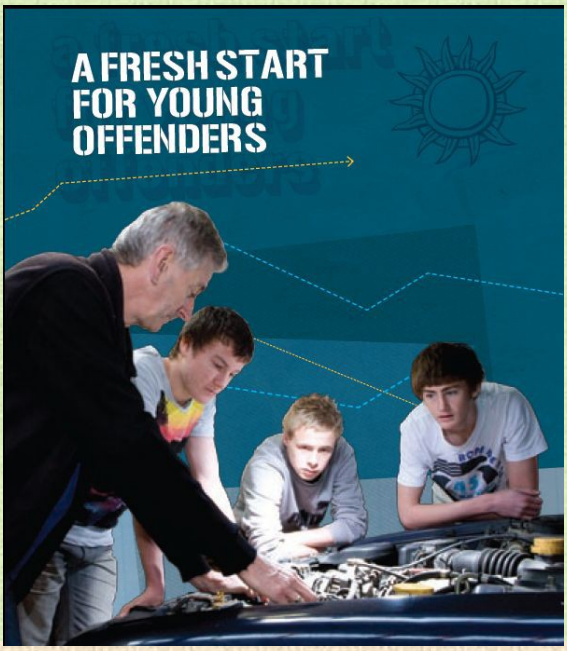
For us at the site it's finding stable placements for high-risk young people.

The solution is selecting the right people and training and supporting them so they continue to be caregivers within their community.

Cath Green

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

The whole way we work. The FGC process and the way it can restore. The way we work with the judiciary, police, youth advocates and key stakeholders and the way we keep young people at the centre of our work. Strengthening responses through Fresh Start has been a really good thing.



Do you know someone who works in the youth justice sector who could be profiled in this column?

If so, we'd love to hear from you.

Email Emily: emily.bruce@justice.govt.nz.

Special Report

Dannevirke Community Meeting

Judge Becroft reports on a recent visit to Dannevirke

One of the genuine privileges of my role is the opportunity to meet so many different New Zealanders who are involved up and down the country in youth justice. My recent trip to Dannevirke was no exception. There was real interest in the local community about the issues facing young people today and the challenges that the youth justice system has in dealing with them.

It was also hugely encouraging to meet those involved in dealing with our young people who break the law in the Tararua / Southern Hawkes Bay region. In particular, it was encouraging to meet Senior Constable Wayne Churchouse who obviously has enormous respect within his local community. Also, I enjoyed meeting a long-standing youth advocate, Geoff Rothwell, who after all his years of involvement (since 1989) still retains his passion and commitment for working with young people. I was delighted to meet the team and learn of the work of the Tararua Youth Community Services, a thriving and growing community based organisation which focus their work upon dealing with challenging young people in the Tararua area.

These people are so typical of all those who are involved in youth justice in New Zealand. It is when I meet these sorts of dedicated, principled and absolutely committed frontline workers that it becomes easier to understand why there is such a continuing and significant drop in youth offender apprehensions and Youth Court numbers. This is a chance for me to thank all those involved in the Southern Hawkes Bay / Tararua region for their committed and often unsung work in the youth justice field, and all those working in some of the more isolated and provincial areas around our country.

It is reassuring that every community in New Zealand is keen to discuss what are recurring issues facing New Zealand's young people, what are current trends and what are some of the ways that local communities can be involved in in responding to the needs of challenging young people. It was hugely encouraging to see the interest in Dannevirke and the willingness of community members of think through how they could be personally involved or how their community groups could be better involved so as to provide a "whole of community response". For your interest, these are, as briefly summarised, the ten issues that I raised, through the lens of the Youth Court, that challenge young people.

1. Family

Family disadvantage, dysfunction, violence and transience are usually of fundamental importance. Most serious offenders lack a positive, male role model, yet young people generally seek out role models like "heat-seeking missiles." Involvement in mentoring programmes, or receiving the support of mentors, can be a very positive influence for young offenders.

2. School Attendance and Participation

Not all young people who are truanting or are not enrolled in school are young people who offend, but the overwhelming majority of offenders are truants or not enrolled. Although this is a huge generalisation, it's fair to say that every young person kept at school, in alternative education/vocational training is one less potential career criminal. Many young people in the Youth Court also face neurodevelopmental disorders such as disabilities such as learning disabilities, conduct disorder, autism and foetal alcohol spectrum disorder.

3. Good "pro-social" friends

When asked in Court why they offend, many young people I speak to mention their friends ("my mates made me do it"). On the other hand, having a good group of friends who are a positive influence on a young person's life is a protective factor.

4. Need for community "connectedness"

Another strong protective factor for young people is involvement in sport or any positive community activity. It helps to build resilience in young people, introduce them to good role models and good discipline, and can give young people a sense of achievement and success. As the sign outside the Blenheim Airport somewhat tritely but truthfully challenges: "A kid in sport stays out of court."

These four factors raised above are often referred to in literature as the big four protective factors against offending for young people.

5. Income Inequality: Socioeconomic Disadvantage

The vast majority of young people in the Youth Court come from backgrounds of poverty and consequently, their wellbeing is affected. That is not to say that all young people from such backgrounds offend. Socioeconomic disadvantage does not inevitably result in offending. There is always free choice involved. However, environmental disadvantage is a significant risk factor.

6. Violence

Apprehensions by police of 14-16 year olds for violent offences rose steadily in the last decade until 2010 (which trend caused obvious concern), but have clearly begun to decline (rates were 18% lower in 2012 than in 2010).

The rise of violence by young females is an often discussed topic. Trends in New Zealand suggest that for young women overall (aged 10-20), offending in general is decreasing, but violent offending is on the increase. Last year in New Zealand, the rate of females aged 10-20 apprehended by the police for all offences was 12% lower than a decade before, but violent offending was 33% higher. It is important to note, however, that the case is slightly different for the 14- 16 year old age group. Both general and violent offending rates for 14-16 year old females have remained relatively stable (with the exception of a slight peak in both in 2009 and 2010) over the past decade. However, rates of 14-16 year old apprehensions for the offence category "acts intending to cause injury" increased around 2008, and though they are now on the decrease also, are still higher than for any of the years 1994-2007.

(NB: statistics were obtained through the use of New Zealand Police apprehensions, available at www.stats.govt.nz. Apprehensions statistics are not a **record of individual offenders but of alleged offences**—so young people can be counted more than once in these statistics).

7. Drugs and Alcohol

Many, estimated up to 70-80% of young people in the Youth Court, have a drug and/or alcohol problem. Cannabis use, and in recent times, use of the synthetic drug K2, are particularly prevalent in terms of drug-related offending.

8. Māori Overrepresentation in Youth Justice

In New Zealand, 23% of the 14 – 16 year old population is Māori.[23] It is important to note firstly that it is a small proportion (5%) of the total group of 14-16 year old Maori young people who appear in the Youth Court. The vast majority do not come into contact with the youth justice system.

However, those who do come into contact with the youth justice system are disproportionately represented at every stage of the process. The number of young Māori aged 14-16 who appear in the Youth

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Court is 5% of the total population of 14-16 year old Māori. However, Māori make up 52% of apprehensions of 14 – 16 year olds, and 55% of Youth Court appearances. Māori youth offenders are given 65% of Supervision with Residence orders (the highest Youth Court order before conviction and transfer to the District Court). In some Youth Courts the percentage of those Māori young offenders appearing in the Youth Court is over 90%. Even given problems with definition of "Māori" (including who determines ethnicity) and regional variations, these figures are plainly unacceptable in any civilised community. They have long-term implications and the figures tell their own quiet story of deep-seated disadvantage.

One thing that judges can do under New Zealand law is order that for individual young offenders, the next hearing of their case can be conducted at a place which is deemed convenient. A marae (centre of Māori living) satisfies the definition.

This forms the basis of New Zealand's ten Rangatahi Courts (our two Pasifika Courts also follow a similar model).

9. Gang Involvement

This complex issue is not easily summarised or addressed in a newsletter, suffice to say that for many of the young people who appear in the Youth Court, the strong pull of "the red" or "the blue" cannot be underestimated or avoided.

10. The Debate About Values: The need for a clear community consensus about the values which we wish to promote and emphasise amongst our young people.

From Tararua Community Youth Services

"Judge Becroft's recent visit to Dannevirke was a huge success with the venue "packed out". Myself and the Team at Tararua Community Youth Services were very lucky to be able to sit with him at dinner and discuss Youth and Youth Issues.

It is very rarely Dannevirke has a visit from a person such as Judge Becroft. He is a very inspiring speaker who tells things how they are (backing up with statistics and life stories) and never a dull moment. The team at Tararua Community Youth Services have the up-most respect for Judge Becroft, he understands the work we so strongly believe in and is interested in our passion for Young People.

We would like to have Judge Becroft come back to Dannevirke to talk to some of the Young People we work with here and were delighted when he informed us that he would. "

-Rosie Whaitiri and the team at Tararua Community Youth Services

Judge Becroft and the team at Tararua Community Youth Services

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Interview with Geoff Rothwell, Youth Advocate, Dannevirke

1. How long have you been a youth advocate for?

Since the introduction of the Children, Young Persons and their Families Act 1989. I have been practising in Dannevirke since 1991.

2. What are the advantages and disadvantages of being a sole charge youth advocate in a large rural area?

A disadvantage is that it can be a bit insular and you can feel quite cut off. You also won't necessarily have the collegiality that you will in bigger areas, where there is more than one lawyer. An advantage is that you get to know young people and their families, and you build good relationships with other people working in the court (such as police, social workers etc) - though that can also be a disadvantage if it means you do not challenge one another in court.

3. What do you enjoy about the role?

I enjoy it when I see young people who do not continue to come back to court. I like the concept in the youth justice system of being able to get a "clean slate" - meaning young people can still get into the police, army etc. I also like seeing success stories: for example when you see a young person who has made an improvement to his or her life while in residence. Doing this role requires you to be able to look at the bigger picture: the issues before you will not always be legal. You do need some specialised knowledge of the process, an awareness of the consequences of the process, and an affinity for young people.

4. What do you regard as one of the biggest challenges for the youth justice system?

One of the biggest challenges for the youth justice system is stopping young people from reoffending. Another is addressing the overrepresentation of Māori and Pacific young people in our youth justice system. Often the people I see in the youth justice system are vulnerable and lost.

Interview with Senior Constable Wayne Churchouse, Dannevirke

1. How long have you been a youth aid officer for?

About 5 years

2. What are the advantages and disadvantages of being a sole charge youth aid officer in a large rural area?

The advantages are that you get to see the results of your work - I have been in this community for coming up 20 years so I know families and communities well. The disadvantages are we can be short staffed and often get called away to do general duties work.

3. What do you enjoy about the role?

Helping young people and seeing them progress and make positive life choices and changes.

4. What do you regard as one of the biggest challenges for the youth justice system?

I think we need to be innovative with our use of discretion when coming up with interventions for young people. One size certainly does not fit all young people. .

Below: Judge Becroft with Geoff Rothwell (left) and Senior Constable Wayne Churchouse (right)

Special Report

Bullying, Young People and the Law

" From 18-19 July 2013, the first national Bullying, Young People and the Law Symposium (18-19 July) was held in Australia.

The symposium included a session titled "*Harmful Digital Communications: The Adequacy of the Current Sanctions and Remedies. The New Zealand Law Commission's Proposals for a New Civil Enforcement Regime*."

This session drew on the New Zealand Law Commission's ministerial briefing on harmful digital communications (http://www.lawcom.govt.nz/sites/default/files/publications/2012/08/ministerial_briefing_-_harmful_digital_communications.pdf) and featured keynote speakers Cate Brett (Senior Research and Policy Adviser, New Zealand Law Commission), Judge David Harvey (District Court Judge) and Martin Cocker (CEO Netsafe New Zealand) who engaged the audience in an interesting discussion about the approach the Law Commission had recommended for New Zealand and whether aspects of the Commission's proposed reforms could be usefully adopted in Australia. The Government has indicated it is likely to introduce legislation before Christmas implementing many of the Law Commission's reforms to help combat harmful digital communications.

Judge Becroft had the opportunity to chair this session, and provided the conference with a brief handout on cyberbullying through the lens of the New Zealand Youth Court, which is included below, along with the

Cyberbullying—a New Zealand Youth Court Perspective : Judge Becroft

Introduction

Cyber-bullying, a serious problem as the statistics which follow demonstrate, is already visible to Judges in the New Zealand Youth Court. One in five New Zealand high school students reported in a study to have experienced some form of cyber-bullying or harassment in 2007(1). Over 50% of children are affected at some point in their life(2). A survey of nine year olds in 35 countries show New Zealand has the world's second highest rates of cyber-bullying in the world(3).

Three Case Studies

Bullying through filming and sharing online

Two young women appeared before a Youth Court recently, having launched prolonged attacks on another young woman (including kicking, punching and stabbing). The young women filmed the attack on a cellphone, and downloaded it onto a laptop. Instances like this often then result in cyber-bullying through their publication online. The New Zealand Law Commission reported that a recent New Zealand clip posted in February 2012 of a brawl captured on a cell phone had been viewed more than 7,000 times when accessed by the Commission in June 2012(4).

Left: Netsafe New Zealand provides the website www.cyberbullying.org.nz which can be looked to for information on this issue.

Bullying through Facebook and other social networking sites

Increasingly in the Youth Court we see young people who have been the subject of hurtful, often disgraceful comments on social networking sites. The Law Commission has reported instances of students setting up "hate pages" on Facebook to publish malicious rumours and content about other students; and instances of highly defamatory allegations being disseminated via blog sites.

Bullying through the use of an overseas website such as "Ask.FM"

"Ask.FM" is a Latvian-based website which allows users to invite other users to ask them questions. Other users can ask these questions, and make comments, anonymously. The majority of its users seem to be young people. New Zealand Police have recently urged extreme caution with the use of the website and have provided the following two instances

of abuse of the site:

- A 15 year old reported on "Ask FM" that she had had an abortion. She was then bombarded with comments, publically labeled a "horrible, was used to make deeply hurtful comments about the young women and to suggest that she commit suicide. Although the victim was no longer on Ask.Fm herself, her friends reported what was being written on the site to her and in response she began to harm herself and make suicidal threats. Mental health services were involved and it was reported that all parties appear to now have ceased the bullying, with parents keeping a closer eye on computer use.
- A further young woman who had previously engaged in bullying other young people on the internet was victimised by other young people on the Ask.Fm site. Ask.FM was used to make deeply hurtful comments about the young women and to suggest that she commit suicide. Although the victim was no longer on Ask.Fm herself, her friends reported what was being written on the site to her and in response she began to harm herself and make suicidal threats. Mental health services were involved and it was reported that all parties appear to now have ceased the bullying, with parents keeping a closer eye on computer use.

Some Challenges for Youth Court Judges

- Cyber and telecommunications technology is in a state of constant and rapid change. Developments such as Facebook, Twitter, Ask.Fm and the "Snapchat" application for phones have swiftly replaced earlier social networking and communication devices. All of this has happened within the past decade; much of it within the past few years. It is a challenge to constantly keep up to date.
- The issue of cyber-bullying is beyond most judges' personal experience. It is probably fair to presume that most will not themselves have engaged in, or themselves been affected by, cyber-bullying.
- It becomes clearer and clearer that the anonymity of many social networking and communication tools enables and emboldens young people and adults to say things that they would not say to others face to face.
- Cyber-bullying for young people occurs at a time when they are the most developmentally vulnerable. A wealth of recent neurobiological data from studies of Western adolescents suggests that the brain's frontal lobes (which are responsible for "higher" functions such as planning, reasoning, judgement and impulse control) only fully mature well into the 20s (5) (some even suggest that they are not fully developed until halfway through the third decade of life)(6). This means that young people are more likely to be dominated by emotional responses to situations, have impaired impulse control and are less able to impose regulatory control over risky behavior when emotions are aroused or peers are present (7). In the context of cyber-bullying, this seems to suggest both that young people will be particularly susceptible to engaging in spontaneous and risky bullying behaviours online, but also that they could be at risk of unprecedented emotional and sometimes dangerous reactions to bullying.

Given all of this, education for several groups of people is vital. First, and most obviously, young people themselves. Secondly, parents of young people need to be made fully aware of the risks that internet, phones and other online tools present to their young people. Police officers have reported the despair that they sense when parents are not aware of, or do not have the skills to address, cyber-bullying issues. And thirdly, Judges (and other adults who work with young people) need constant education about the ways that and means in which cyber-bullying can take place, and its effects. An important and interesting question for this symposium is how this training could be delivered and what should be its content.

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1) New Zealand Law Commission "Harmful Digital Communications: The Adequacy of the Current Sanctions and Remedies" (ministerial briefing paper, August 2012), p 12
2) Websafety New Zealand "Cyberbullying in New Zealand 2012" (March 22, 2012) < www.websafety.co.nz/blog/cyberbullying-in-new-zealand-2012>.
3) Simon Collins and Vaimoana Tapaleao "Suicide Links i Cyber-bullying" (New Zealand Herald, May 7, 2012). <www.nzherald.co.nz/nz/news/article.cfm c_id=1&objectid=10803980>.
4) New Zealand Law Commission (at (1)), p 59.
5) Sir Peter Gluckman *Improving the Transition: Reducing Social and Psychological Morbidity During Adolescence* (Wellington, Office of the Prime Minister's Science Advisory Committee, 2011), p 24.
6) Sara Johnson, Robert Blum and Jay Giedd "Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy" (2009) 45 Journal of Adolescent Health 216, p 216.
7) Laurence Steinberg "Risk Taking in Adolescence: New Perspectives from Brain and Behavioral Science" (2007) 16 Current Directions in Psychological Science 55, p 56.

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Recommendations of the Bullying, Young People and the Law Symposium

The first national Bullying, Young People and the Law Symposium (18-19 July) has recommended the nation adopt a four-tier approach to addressing bullying, including cyberbullying.

The symposium, attended by preeminent legal, law enforcement and educational experts from throughout Australia and New Zealand, recommended that the approach involve:

a) Education

b) Appropriate responses by organisations to incidences of bullying and cyberbullying
c) The establishment of a national digital communication tribunal, and
d) An appropriate legal framework to address bullying and cyberbullying

The symposium recommended:

- All governments to consider the introduction of a specific, and readily understandable, criminal offence of bullying, including cyberbullying, involving a comparatively minor penalty to supplement existing laws which are designed to deal with more serious forms of conduct. In developing the above approaches, it is necessary to take into account:

i. *the voices of children and human rights*

ii. *summary offences that do not require proof of specific intent to cause harm*

iii. *appropriate penalties that in the case of children do not include incarceration*

- The Federal Government to establish a national digital communication tribunal with the power to act, speedily and in an informal manner, to direct the immediate removal of offensive material from the internet.
- The adoption of the recommendation of the Victorian Law Reform Committee Report on Sexting in all states and territories.
- The Federal Government be requested to support the convening of a young people and the law symposium in two years.

The symposium was a joint initiative between The Alannah and Madeline Foundation's National Centre Against Bullying (NCAB), the Australian Federal Police and the Sir Zelman Cowen Centre, part of the Victoria University.

(Text from http://www.amf.org.au/bullyingandthelaw/)

Cate Brett and Judge David Harvey during the panel discussion. Source: the Alannah and Madeline Foundation

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Conference Reports

"Changing Trajectories of Offending and Reoffending": Australasian Youth Justice Conference

In this section, several participants share with Court in the Act readers their experiences of the Australian Institute of Criminology and Australasian Juvenile Justice Administrators' first ever international youth justice conference. The conference was held in Canberra from 20-22 May, and centred around the theme of "Changing Trajectories of Offending and Reoffending".

Key themes explored included:

- Family and community-based interventions;
- Policing young people;
- Young offenders and the courts;
- Intervening within a corrections context;
- Therapeutic jurisprudence and restorative justice; and
- Policies and programs to assist Indigenous young people and their families.

Keynote speakers included Judge Becroft, Professor Kerry Carrington and Mr Juan Tauri (Queensland University of Technology), Dr Raymond R Corrado (Simon Fraser University), Professor Malk Halsey (Flinders University) and Dr Tracey Westerman (Indigenous Psychological Services).

Written copies of presentations from the conference can be accessed here: http://aic.gov.au/events/aic%20upcoming%20events/2013/youthjustice.html and you can watch keynote speeches here: http://www.youtube.com/playlist?list=PLWFrQ_uUvpi0236hueESzLa603qm-LmE–

Dr Julia Ioane,

Clinical Psychologist (Regional Youth Forensic Service and private practice)

In May 2013, the Australian Institute of Criminology and the Australasian Juvenile Justice Administrators hosted the inaugural Youth Justice Conference in Canberra, Australia. Keynote speakers included our very own Judge Andrew Becroft presenting on the Youth Justice system in New Zealand. Whilst there were a number of keynote speakers with very relevant presentations; a very relevant piece of research is emerging from Adelaide from a Professor Mark Halsey, Law school, Flinders University.

Professor Halsey presented on some key factors from his longitudinal study of a cohort of males aged 15 to 18 interviewed over the period 2003 to 2013. His research focussed on what factors interrupt or cease young men from ongoing offending behaviour. In a nutshell, Professor Halsey provided a thought provoking presentation that looked at the youth justice system and how we often under-estimate how difficult it is for some people to desist from crime.

In summary, I have provided the following key points from Professor Halsey's presentation for us to address in our work with young people with offending behaviour:

1. Find the HOOK that links our young people to desistance from further offending.
2. Look at current offending behaviour compared to previous offending behaviour. Is a Breach of Bail a really big deal compared to previous offences of Burglary?
3. Ensure services are implemented PRIOR to a young person's return to the community
4. Keep to the same practitioner or services. We need to look at building more seamless services for our young people.
5. We must be skilled, clinically and culturally in our work particularly with the over-representation of Māori in our youth justice population.

Following this, a few months later I took a trip to Sydney and decided to visit some of their Youth Justice .. the NSW.

Continued

services available in NSW. The people I met are to be applauded in their willingness to share information and allow me to "shadow" their daily working routine. On the first day, I met with Toni Anderson from the Youth Justice Mental Health who gave me insight into the way by which mental health in youth justice works in NSW. We then met with three Magistrates (yes, three!) where we discussed the youth justice system in Australia and New Zealand; and of course my very own topic of interest, Pacific Island youth offending. The next day I was then given the rare opportunity to observe the Children's Court (10-17 year old) and see how mental health assessments are carried out in the court. Following this I visited one of their youth justice facilities, Cobham, which is a remand centre that can house up to 80-120 youth offenders. I also visited with Juvenile Justice Officers in Court and in the community. NSW Youth Justice operates from a therapeutic perspective where the view is that therapy takes precedence to address the mental health concerns relating to the offending behaviour (non-indictable offences) of young people as opposed to a punitive outcome.

The Youth Justice facility that I visited had a very therapeutic vibe to it. These are some of the observations I made:

- Psychologists are employed by the Youth Justice facility and work onsite providing assessment and therapy to the young people.
- Teaching staff are employed directly by their Ministry of Education with Principal on site and individualised learning plans
- A medical team that includes nurse, doctor, dentist are employed onsite.
- Young people attend court via video link to reduce the amount of time a young person spends in court.
- Youth Workers are qualified with a Level 3 or Level 4 Youth Worker certificate followed by eight weeks on the job training.

There are many other points of interest following my trip to Sydney however one thing was clear from my visit. The Youth Justice system in NSW appears to have a more robust therapeutic element in their work with our young people. This is something that all of us working in the Youth Justice system need to address in the work that we do with our children, young people and their families.

Ken McIntosh, Principal, Central Regional Health School (CRHS)

(NB: CRHS is the school at Te Au Rere a Te Tonga Youth Justice Residence

The overall impression was thought provoking but not world changing for us as New Zealanders. The Australian approach to youth justice appears to be more in line with the way Lower North Youth Justice operated before the introduction of the new model, in that it appears to be reactive, more punitive and about containment. Education was rarely mentioned. I believe the current model at Te Au rere a te Tonga shows the use of restorative practice and respect for the young people involved, plus education and health input is valued as part of the overall process.

All students at Te Au rere a te Tonga have an FGC and CRHS is becoming increasingly involved in the process. In comparison Australia has fewer FGC – possibly this change is driven by the impact of tighter economic times.

Cultural disconnection is a feature in both NZ and Australia so many speakers discussed this. Whilst Maori remain over represented, I believe the way we work is more holistic and responsive to cultural and student needs. As an example, during a session about collaborative practice, where we were assigned various roles, it was interesting to see the focus was on safety from a violent sibling and housing; there was no apparent cultural consideration or intervention/ therapy for the complex mental health needs of the 16 year old indigenous girl. Perhaps this is a reflection of the Australian welfare/justice focus? This leads to health coming second and education a distant third.

In terms of benefit to CRHS and the students at Te Au rere a te Tonga?..... It was useful to hear an international perspective on youth justice, extend networks and increase understanding. It gave me the

Continued

opportunity to showcase the work of CRHS and share our experiences. We need to remember that the group of students we work with are a small percentage of the total involved in YJ, but are none-the-less very significant in terms of recidivism and resourcing. Every opportunity to remind people of the potential education has in reducing reoffending and increasing positive outcomes is worthwhile – especially with the support CRHS can give for transition out of residence when the students return to school.

Philip Spier, Senior Research Analyst, Knowledge and Insights Group, Ministry of Social Development

My overall impression of the conference was that it was very good. The vast majority of keynote addresses and papers were very interesting, with a good mix of presenters from government, community organisations and academia etc.

The issue of offending by young women was touched on in two of the presentations: highlighting the growth in female violence globally, and that the responds to female offending are under-developed.

Young women and crime (keynote address), **Professor Kerry Carrington,** Head, School of Justice, Faculty of Law, Queensland University of Technology

- Globally, there has been a large increase in the rate of female violence
- There is no single explanation eg feminism, recreation of the female identity, fantasy constructions (like Lara Croft)
- There has been a massive increase in videos of girls fighting on the Internet, with thousands of 'likes'
- Girls violence is usually against female peers, and if not often other females such as family members
- Need a feminist theory of violence.

Exploring Gender Differences in the Order Details and Risk Profiles of Young Offenders, **Jamie Young,** Deakin University

- Services and programmes for girls in youth justice are under-developed
- Lack of appropriate assessment tools validated for young women
- They have unmet gender-specific needs
- Current developmental and criminological theory fails to capture complexity of female offending.

Nessa Lynch, Victoria University School of Law

Summary of Dr Lynch's conference paper: ***The 2010 reforms of the New Zealand youth justice system: From progressive to punitive?***

In 2010, the New Zealand Government enacted significant reforms of the youth justice system, after an election campaign in which the perceived level of youth crime was a fundamental issue. The amending legislation is the first major reform of the iconic *Children, Young Persons and Their Families Act 1989* which has been highly influential internationally particularly on Australian jurisdictions. The reforms appeared to re-orientate the system towards punitiveness, particularly by extending and strengthening the sentencing powers of the Youth Court, by bringing certain 12 and 13 year old children into the criminal jurisdiction, and by introducing populist measures such as 'military style activity camps'. This paper considered the effect of the reforms after over two years of operation. 2 ½ years later, the child offender prosecution powers are rarely used, indicating that practitioners are still using the care and protection provisions.

Second, transfers to the District Court are down significantly indicating that the judiciary are more willing to keep young persons in the youth jurisdiction as accountability/public safety can be achieved through more extensive orders. Third, the actual implementation of the 'military style activity camp' is quite different to that portrayed during the 2008 election campaign. It is argued that many of the factors which allowed the system to remain immune from punitiveness in the two decades since 1989 continue In particular, it may be concluded that practitioners are acting to mitigate the punitive potential of the amending legislation.

[The material for this paper was published in "Playing catch-up? Recent reform of New Zealand's youth justice system." *Criminology and Criminal Justice* 12.5 (2012): 507-526 and will also appear in 'Contrasts in Tolerance in a Single Jurisdiction: the case of New Zealand (2013) (forthcoming in the *International Criminal Justice Review*)]

Other Thoughts

The main thing I got from the conference is how similar the issues facing the youth justice systems of the various Australian jurisdictions are to those faced by New Zealand. In particular, the over-representation of indigenous young persons, and the characteristics of serious and persistent young offenders.

Conference Reports

Chris Polaschek, General Manager, Youth Justice Support, Child, Youth and Family

The first Australasian Youth Justice Conference was held in Canberra, Australia in June 2013. The conference extended over three days and was fully subscribed. New Zealand had solid representation including Principal Youth Court Judge, Andrew Becroft who was a keynote speaker and a number of others who gave presentations and in some cases also contributed papers.

I was one presenter and put up a paper that reflected on the learning's gathered after two years of managing the Military-style Activity Camp (MAC) programme. The MAC was established in the Christchurch Youth Justice Residence Te Puna Wai o Tuhinapo in October 2010. The use of military influenced or based programmes was of topical interest at the conference as Queensland has established two of these and Northern Territory was also considering establishing a programme of that type.

My paper considered the practical learning's from the MAC experience and related these to gaps in the current "What Works for Young Offenders' science on which the programme was based. While the 'What Works' literature does not support the use of military approaches as effective interventions, the MAC itself is a residential programme fundamentally based around creating a learning environment, including both formal and informal learning, to which a military component has been added. Most importantly it is a comprehensive intervention aimed at addressing a range of criminogenic risk factors while also using a youth development approach to challenge participants and teach them life-skills, team work, and improve fitness. There are also cultural treatment and other programmes provided.

The key issues with the programme itself are twofold. The first is that any intensive psychological intervention such as a cognitive behavioural programme cannot be provided within the residential component of the MAC simply because the young people are not there long enough to provide the appropriate 'dosage'. The MAC is nine weeks in duration and the common wisdom is that there needs to be between six and nine months for a criminogenic programme to be effective. In addition there are other issues about maintaining programme fidelity within an environment where there are so many distinctive service providers, all of whom operate from different philosophical underpinnings and use different methodologies and practices.

Te Puna Wai o Tuhinap Residence.

Source: www.scoop.co.nz

The second significant issue is that despite the behavioural gains made during the residential phase of the MAC, and these are obvious to all who have attended a graduation, there is a considerable challenge in sustaining and supporting these gains when the young people return to their community. The young people move from a safe, very structured, reliable and certain environment, to the less structured reality of being out and making choices about their own lives. In residence they are fully occupied, well supported, in a cohesive group, and are free from many of the pressures and influences they experience in their normal lives. On return to the community, despite most having comprehensive reintegration plans, a number of young people lose motivation over time, some within a few weeks of leaving.

A number of initiatives have been tried to improve the effectiveness of transition and reintegration over the life of the MAC programme however there is plenty of room for development and performance improvement so it is a 'work in progress'. In particular there is a need for more understanding of the role of relationships in successful transitions (and effective case management for that matter) including that of the social worker, significant adults and cultural relationships.

The early results show significant reductions in both the frequency and seriousness of re-offending by participants, positive gains which 'stack-up' against other well performing programmes. However, there remains dissatisfaction among practitioners and service providers with results. The reason for this is that the young people appear to be so different and positive at the end of the MAC that those around them feel that they should be able to capture and build on that that to get even better results.

There are some other 'bigger picture' questions that have been highlighted by our evaluation of the effectiveness of the MAC. Across the justice sector there seems to be a lack of understanding about the "What Works' literature, which while it is not perfect, is the best science we currently have. There are inherent conflicts within the juvenile justice approach in that it always has an element of 'doing time' whereas behavioural changes always take 'time to do' and these two approaches do not necessarily align. At the very heart of this is the dichotomy faced in Youth Justice about whether the system should be a justice or welfare based approach.

Also pertinent in terms of the Justice approach is that while a sentence or order may compel a person to undertake a treatment programme that in itself does not mean that the person is ready or able at that time to participate in any meaningful way. This may be even more of an issue for adolescents who by virtue of their developmental stage are somewhere between the dependence of childhood and the self-responsibility of adulthood. So, motivation, ability and maturity are all factors in the young persons readiness and inclination to embrace change.

Transitions take place back to communities. The readiness, willingness and ability of communities to tolerate, let alone participate in supporting, the return of young people who offend into their local area varies considerably. It requires everyone, statutory agencies and community groups (schools, employers, programme providers, etc) to understand that most serious offenders desist from offending over time rather than cease immediately because they have attended a programme. There is risk when they return, there is no doubt about that, but it can be mitigated through teaming-up, providing opportunities and incentives to succeed rather than relying too heavily on the inherent threat of re-incarceration for failure.

The issues are just touched on above and were covered more deeply in the paper I presented which can be found on the Australasian Youth Justice Conference website. However of real interest to me, and others I have spoken with that attended the conference, was the commonality of the challenges in Youth Justice practice that Australia and New Zealand are currently facing. In a very real way this also meant that many of the initiatives occurring in Australia are the same as those we are dealing with here.

From a practice perspective this includes how to keep custodial remands down and keep young people safely in the community, how to improve the quality of casework, the need to build evidence based practice, and establishing the effectiveness of interventions and programmes.

In regard to the broader more global challenges for the Youth Justice system, Mark Collis, the Chair of the Australasian Juvenile Justice Association (which has representatives from all States and Territories and New Zealand), identified five critical questions for Youth Justice going forward. I think these effectively summarise the key issues for New Zealand as well.

1. What does the Youth Justice system stand for? This is about getting clarity around the 'needs' verses 'deeds' debate. It is about consensus of approach by the key agencies. It could also be considered that there is an additional debate about the place of therapeutic treatment verses a behavioural change approach.
2. How do we appropriately respond to trauma and abuse in young people who offend? The discussion here is about the difference in approaches that might need to occur when children with protection and/or care related issues move into offending behaviour or where in the course of managing offending behaviour there are significant trauma issues identified.
3. How do we evaluate effectiveness? The cost verses benefit discussion including the effective distribution of scarce resources, as well as the considerations around the effectiveness of particular programmes and intervention approaches.
4. How to enlist government and community in the solutions? This touches on how communities are engaged and take more ownership of their own young people but also creating more co-operation and joint management of cases across government agencies.
5. How to working more effectively with diversity? This not only picks up on being more responsive to ethic differences but also considers the diversity of communities.

Some of these questions have been around for a long time and certainly the introduction of the Children, Young Persons and Their Families Act attempted to deal with the first two. There is more work to be done. The next step for Youth Justice in New Zealand is the Youth Crime Action Plan. We can expect to see some initiatives to address the later questions so watch that space.

Legal Update

Criminal Procedure Act and the Youth Court

As those of you who are working in the Youth Court will no doubt be aware, 1 July 2013 marked the substantive commencement of the Criminal Procedure Act 2011. The following article outlines the key changes of this for the Youth Court. On the next page, we feature the questions that were asked by listeners at the New Zealand Law Society Continuing Legal Education Webinar "The Youth Court and the Impact of the Criminal Procedure Act 2011" and their answers. (NB: all section references in this article are to the new sections of the Children, Young Persons and their Famillies Act 1989, as amended by the Criminal Procedure Act.)

Key Changes

Jurisdiction of the Youth Court

Perhaps the most notable change for the Youth Court as a result of the Criminal Procedure Act is that most charges against young people (and charges relating to children which meet the threshold in s 272) from 1 July 2013 and onwards will now be heard and determined in the Youth Court, with the following exceptions:

- Murder and manslaughter charges (these remain in the High Court jurisdiction (see s 275))
- Non-imprisonable traffic offences, unless:
  i) the young person is charged with another offence for which they must be brought before the Youth Court; and
  Ii) both offences arise out of the same series of events; and
  Iii) the court considers it desirable or convenient for the charges to be heard together (see s 272
- Where the child or young person elects jury trial (see s 274)
- (In the case of a young person) when the Youth Court is satisfied that it is not in the interests of justice for the young person to remain in the Youth Court when a co-defendant is to have a jury trial (see s 277).

This greatly simplifies the often complicated existing process for determining whether or not Youth Court jurisdiction is offered. It could also mean that the Youth Court is presented with more complex and challenging cases than previously (when these case could be referred out of the Youth Court's jurisdiction).

Joint Charging

New section 277 has made the procedure when children and young people are jointly charged with adults (or with each other) clearer. As a general rule:

- Children stay in the Youth Court, unless a jury trial is elected
- Young people (as a default position) are always "dragged" up with other co-defendants (except a child) to a jury trial, unless the Court orders that it would be in the interests of justice for the young person to remain in the Youth Court
- Adults will have a jury trial if they elect it, or if any of their co-defendants elects it. If they do not elect it and none of the co-defendants elects it, the adult is tried in the Youth Court, unless the Youth Court rules otherwise in the interests of justice.

Further Changes

The new Act has recategorised many offences so that the old terms which were so important in terms of Youth Court jurisdiction will no longer apply. For example, the Youth Court was previously not allowed to discharge young people under s 282 for purely indictable offences. New s 282 allows young people to be discharged for category 1, 2 or 3 offences. A number of offences are classed as category 3 which were "purely indictable"- (e.g. aggravated robbery, wounding with intent to cause grievous bodily harm and kidnapping) young people may now receive a discharge on these charges.

For Judge-alone trials in the Youth Court there is the option to use the new case management procedure, and to give sentence indictations, but this is at the discretion of the Judge.

Legal Update

"The Youth Court and the Implementation of the Criminal Procedure Act 2011"

(New Zealand Law Society Continuing Legal Education Webinar—Questions and Answers

This webinar was held on 8 July 2013. Judge Becroft and Mark Lillico presented on the key changes for the Youth Court as a result of the Criminal Procedure Act. The following questions were asked by participants in the webinar (the majority of whom were youth advocates, but the Police and CYF were also presented). Answers from Judge Becroft and/or Mark are included below (NB: Judge Becroft did not comment on likely judicial actions in proceedings.

Q: CAN A YOUNG PERSON CONSENT TO BE SUBJECT TO THE CPA FOR OFFENCES LAID PRIOR TO 1 JULY?

No - the law does not prescribe for the abitlity to contract out.

Q: Do the changes to the Youth Court's jurisdiction mean there will be no further FGCs for jurisdiction?

As a general rule (with exceptions), Youth Court Judges will no longer have the discretion to determine whether or not the young person should be offered Youth Court jurisdiction. Jurisdictional issues could arise where there is joint charging, and the Youth Court wants to determine whether or not it is in the interests of justice for the young person to remain in the Youth Court. The provision which entitled jurisdictional FGCs to be held, s 281B, still exists. It provides a general authority to direct a holding of a Family Group Conference when the Court thinks it necessary. This provision could be used to determine jurisdiction where there has been joint charging. However, as a general rule, yes, FGCs to determine jurisdiction will not be required.

Q: Will a sentence indication come prior to an FGC direction?

S 61 of CPA provides that a sentence indication will be given "at the request of the defendant made before the trial." It seems likely that this would occur before a FGC, because a FGC requires an admission of the offending. It does not seem likely that a young person would seek a sentence indication after having "not denied" the offending at the first appearance, which is what happens in the vast majority of cases.

Q: what will be considered a "plea" - will the Court continue to to accept "not denied" as a "plea"

Not denied, coupled with proof by admission at a family group conference would amount to a plea. Subpart 1 of Part 3 of the CPA applies under Schedule 1 so that s 37of the CPA applies with necessary modifications (s 321). Section 37 allows a defendant

to enter a plea of guilty or not guilty, In the Youth Court that necessarily means denied, not denied and proof by admission.

Q: Maybe sentence indications may be given on transfer under s 283(o)?

This does not seem likely because s 61 provides that sentence indications will be requested and made "before the trial". Once a s 283(o) order has been made, the case has passed the trial stage.

Q: If a Youth Court Judge requires a plea, and deems a denial, surely it would then be fair to call for Case Management Memorandum and Case Review?

(Nb: when s 39 of the Criminal Procedure Act and rule 4.1 of the Criminal Procedure Rules are read together, the Court has a right to require a plea from a defendant if there has been initial disclosure by the Police and 10 working days have passed (in the case of a category 1 or 2 offence) or 15 days (in the case of a category 3 or 4 offence). Section 41 of the Criminal Procedure Act provides that if the person does not plead, a plea of not guilty, or for young people, not denied, can be deemed).

Whether or not to call for case management or case review will be a matter for individual Judges, but yes, this may be an appropriate instance where the benefits of case review and case management

memoranda could be utilised.

Q: Can a registrar exercise the judicial discretion to keep a matter in the Youth Court (if it is in the interests of justice)

No - there is nothing specific to suggest that Registrars could exercise the discretion and the section appears to contemplate Youth Court Judges exercising the responsibility. For example, s 277(8) provides "In any proceedings to which this section applies, the powers of any Youth Court Judge in respect of any defendant who is not a child or young person are limited to such powers as are exercisable by the Youth Court Judge as a District Court Judge elsewhere than in a Youth Court."

Q: How much weight is the YCJ likely to put on a "cost to taxpayer argument" as opposed to an "interests of Justice" argument in relation to a Youth advocate seeking to keep a young person in the Youth jurisdiction?

This is not a matter that we are able to definitively answer. Some of the factors that could be relevant to the decision whether or not to exercise the discretion in s 277 could be those factors which Judges took into account when making decisions under old s 277(2) of the Children, Young Persons and their Families Act (which gave Judges discretion to determine where the charge is heard) and old s 275 (which gave Judges' discretion to determine whether or not purely indictable offences were heard in the Youth Court).

Q: Can you explain again why the analog means that police will need to satisfy the s214 test more often?

(This question referred to the following explanation in the webinar regarding police arrest powers in light of the new categories of offences):

The extent of police powers to arrest without warrant is defined by the seriousness of the suspected offending. The current position is that if there is reasonable cause to suspect that the child or young person has committed a purely indictable offence, then arrest without warrant is allowed where a constable believes on reasonable grounds that the arrest of the child or young person is required in the public interest.

Under the amendments to the CYPFA the words "purely indictable offence" have been repealed and substituted with "Category 4 offence or Category 3 offence for which the maximum penalty available is or includes imprisonment for life or for at least 14 years".The effect of this is that the number of situations in which the police will need to be able to satisfy the more stringent test under s 214(1) has increased somewhat because "Category 4 offences or Category 3 offences for which the maximum penalty available is or includes imprisonment for life or for at least 14 years" is a subset of purely indictable cases. It does not for instance include wounding with reckless disregard or with intent to injure and so the police would not be able to arrest without warrant simply on public interest grounds if that offending was suspected.

Q: Will there be any change to the way CP MIP hearings are conducted in the Youth Court?

Not that we are aware of. Once fitness to stand trial has been raised the s 9 test is to be met.

Q: Which matters should the Crown be involved with in the Youth Court (ie, previously purely indictable matters)? Is there any reference to the offences in the schedule to the Crown Prosecution Regulations?

Section 4 of the Crown Prosecution Regulations provides that the following are Crown prosecutions:

- Category 4 offences
- Where defendant elects to be tried by jury
- Proceedings for offences listed in the Schedule (which includes, for example, corruption and bribery offences, sexual offences and failure to provide necessaries)
- Proceedings transferred to the High Court
- Any other proceedings if the Solicitor-General directs.

Q: Given there could be an increase in youths being tried in the adult court, will the specialist youth advocate role be extended to appearances in the District court?

This is not a question which we are able to answer, but it will be interesting to observe if that is a development which results.

Stop Press

In the News

From the US: Illinois Raises the Age of Juvenile Court Jurisdiction

From http://www.ojjdp.gov/enews/13juvjust/130722.html

July 22, 2013

On July 8, 2013, Illinois' Governor Pat Quinn signed legislation into law that raises the age of the state's juvenile court jurisdiction to include 17 year olds charged with felonies. This legislation will allow youth to be tried as juveniles and access more rehabilitative services in the juvenile justice system rather than receiving adult criminal convictions and records. The law does not change state laws that allow youth who commit certain serious crimes, such as first degree murder, to be automatically waived to adult criminal court. Illinois joins 38 states that currently prosecute 17 year olds charged with felonies in juvenile court.

Some History to the Change—From the Illinois Juvenile Justice Commission: http://ijjc.illinois.gov/rta

Legislation signed in 2009 (Public Act 095-1031) provided that 17-year-olds charged with misdemeanors would move from adult to juvenile court jurisdiction effective January 1, 2010. The legislation also mandated the state study the impact of the new law and make recommendations concerning raising the juvenile court age to 17 for felony charges. Subsequent legislation (Public Act 096-1199) directed the Illinois Juvenile Justice Commission to study and present findings to the legislature.

The above website contains links to:

- The resulting report, *Raising the Age of Juvenile Court Jurisdiction*
- The Fact Sheet for the report is
- The study's Executive Summary and Recommendations are available
- The Commission's Press Release on the report is available

Illinois State House: from http://jjie.org

NB: for reference sake, those countries that set the age of adult liability at 18 years old, and therefore comply with the United Nations Convention on the Rights of the Child are Great Britain, Canada, 38 US States (39 including Illinois), and all Australian states except Queensland (see Court in the Act, edition 59, p 5 for analysis and discussion of this: http://www.justice.govt.nz/courts/youth/publications-and-media/principal-youth-court-newsletter/Court%20in%20the%20Act%20Issue%2059.pdf .

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