



# COURT IN THE ACT

THE YOUTH COURT OF NEW ZEALAND

| TE KŌTI TAIOHI O AOTEAROA

ISSUE 81 JUNE 2018

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## EDITORIAL

### Judges and the Community

*Principal Youth Court Judge,  
John Walker*



A long-standing principle of policing notes:

*The police are the public and the public are the police; the police being members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.*

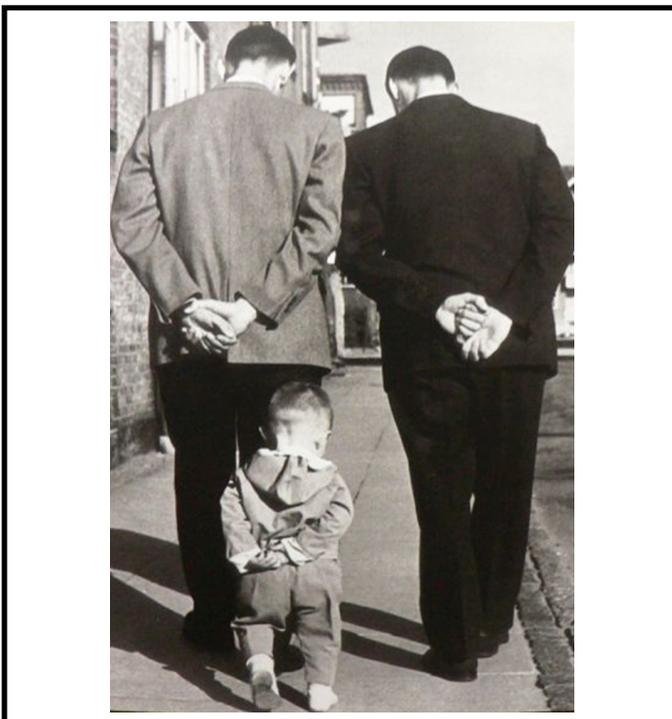
Judges too are part of the public. All of us involved in youth justice—police; social workers; youth advocates; Judges—we operate as part of the community. We play our different parts, but we share one goal—giving young people the best chance of realising their potential. It is important that we continue to have the best people out there, dealing with our young people as they come into conflict with the law. People who see possibilities for change, where others see hopelessness. Those who see minute improvement, where others would pass it off as inconsequential. I know that all of you engaged in the YJ community will leave a positive mark on the young people with whom you come into contact. After all, it is not (just) policies and strategies that effect change, it is people.

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The young people we work with are often very challenging for us. Their life history creates challenges for them. Those who make it to the Youth Court are often at high risk of reoffending and have high needs. Without addressing the needs side of the equation, the underlying causes of the behaviour, there is little hope of addressing the risk of reoffending. And even though in the Youth Court we are often playing “catch up”, dealing with long standing issues, it is not too late to gather our forces and effect change—to redirect their life trajectory.

Many of these young people, they have made poor decisions, at times very poor decisions with serious implications. We must address that, and help them take responsibility. But we must also recognise that to a greater or lesser extent, we are all products of our environment. We learn what we see, we copy what we see. Often, we will become what we see. For those of you connected with children, you will be well aware of how susceptible they are to imitating our behaviour. It is not just words that I refer to, but tone, how we deal with stress, acceptance or non-acceptance of how others may respond to us. We need to keep this in mind as we work with troubled youth.

Take this picture for example:



Most New Zealanders are born into an environment where they are exposed to what is accepted in society as positive behaviour. Respectful treatment of others; showing empathy and kindness; learning to co-exist at kindergarten and school in harmony with other children. These young people grow up accepting such behaviour as ‘normal’, adopting it as the standard to which they hold themselves and others accountable to in everyday life.

For some however, this is not the model of behaviour that they come to know as ‘normal’. Instead they may learn that violence is normal, that drug use is normal, that not getting a job is normal.

In April of this year, the Ministry of Justice released the *Youth Justice Indicators Summary Report 2018*. This presents a clearer picture of the areas in which youth justice is doing well, and areas which require further thought and action.

Of concern, the Report noted the proportion of children and young people referred for a youth justice family group conference (FGC) for whom Oranga Tamariki has recorded a prior s 15 report of concern about their care and protection. In the 10-13 year old age group, ‘almost all’ (93%) of the children had previously been the subject of such a report. In the 14-16 age group, this applied to ‘most’ (79%). This means that a flag had been raised for this child or their family, and these percentages are trending upwards, particularly for young females.

The findings reinforce the reality that youth justice workers see regularly. Witnessing violence, being the victim of it, or exposure to its effects even as an unborn baby undeniably impact a child’s well-being and development. If we know that a child or young person is being brought up in a home where family violence is the norm, this is a red flag. Interventions are required not just for the perpetrator and the direct victim but for the children in that home.

The YORST, or Youth Offending Risk Screening Tool, is one way in which Police seek to raise these red flags. Risks are identified at the point of first apprehension, and this information can then inform the Youth Justice FGC Coordinator and Judge at later decision-making stages. I want to encourage the use of YORST for **every single young person who is apprehended**. Is there evidence of FASD, drug use, exposure to family violence, gang influence, dislocation from school? We need to know who we are dealing with and put in the interventions earlier.

As well as intervening early, we need to consider how we can better support our young people at the other end of the system. When young people are leaving a Youth Justice Residence or other treatment programme, we must ensure they have support as they transition back into society. At a recent conference, I spoke of a bridge in a valley up the Whanganui River. The story resonated with me because I see it as being analogous to the plight many of our young people.

After the First World War returning soldiers were given blocks of land in this valley. The land was covered in bush and they went up with slashers and axes, fencing material and grass seed and canvas for shelters. They broke in the land, they were realising a dream. They had come through the horror of the war and they had a chance to make a better life.

The farms were uneconomic unless they had road access and a road through to Stratford and so it was decided that a bridge would be built. The young men toiled on the land while this bridge was built, but the Government then decided not to maintain the roads connecting the bridge to the townships. The men were told to leave the land, and the bridge went nowhere.

We build a bridge for a lot of our young people, yet it is a bridge to nowhere unless we also build a transition forward in a long term sustainable way. It was cruel what happened to the soldiers, and it is cruel to show a young person another way of life, show them their potential, but to fail to give them the means to realise this potential.

We need to recognise that work needs to be done to assist families, to improve the environment to which young people will inevitably return—to create pathways to sustainable change. These possibilities for change reinforce what I see in the Youth Court as an ever-present sense of hope. We believe that change is possible, we do see it happening, and we must continue to inspire our young people with that belief. Yet with that comes the obligation on all who take part, to deliver a sustainable pathway to a better life.

Only in this way are these lives truly reclaimed for the benefit of all.



CREDIT: VISIT WHANGANUI

## Residence Refresh Sparks Positive Change

Paul Easton, Media Specialist Oranga Tamariki



The communal area of one of the units (Te Ra) showing a feature wall representing Te Ra (the sun).

A transformation at the Oranga Tamariki youth justice residence Te Maioha o Parekarangi is far more than just skin deep. The \$1.6m refresh was officially unveiled at a moving celebration on Friday May 11. The Refresh includes new paint, glazing, murals, flooring, furniture, better bedrooms, creating a graffiti free environment, more natural light and better acoustics. Graffiti removal was a major component of the work, and included removing all visible writing and etching, repainting all surfaces, replacing tagged glass.

"It feels brand new," said a young person at the 30 bed youth justice residence near Rotorua. "I like it, it's refreshing, and it gives you a clean feeling when you walk into the unit, compared to what it was like before." Some features, for example blackboards in the rooms, were designed alongside young people at the residence. Bright backlit photographs of surfers, DJs and mountain bikers have replaced stark opaque privacy glass – a warm feature that has become a firm favourite with the young people.

"It's heartening to hear how much they enjoyed being part of the project," said Oranga Tamariki chief executive Gráinne Moss. "We are saying, what's in it for the kids, how do we enhance their growth, their learning, their potential?"



From left: Team Leader Operations Jean-Pierre Apikotoa, Minister for Children Tracey Martin and Oranga Tamariki Chief Executive Gráinne Moss cut the celebration cake.

The brand-new environment will be backed by a cultural shift that should see Te Maioha's walls stay graffiti free, and its glass remain pristine. "It's a whole end to end process," Gráinne (pictured above) said. "It's what the place looks like, and what it feels like. It is their home at the moment, so it's the same way that we would want to have some input into our home."

"It feels brand new ... I like it, it's refreshing, and it gives you a clean feeling when you walk into the unit, compared to what it was like before."

Young person in residence at Te Maioha o Parekarangi

Right: A view of the newly-renovated bedrooms. These include film-printed modesty panel windows; a feature wall; and a pin board and chalk board allowing rangatahi to display photos and posters as well as produce their own art.



## Residence Refresh sparks positive change—continued



*Before and after photos of common areas.*

Team Leader, Operations Aneta Mihinui said that in line with the refresh, staff have also become refocused on their roles in supporting the young people at Te Maioha. “Their passion has come through again. Then on the first day when the unit did reopen, just the reaction on the boys’ faces. They were really overwhelmed, they couldn’t believe how clean it was.”

Attendees at the evening celebration included Parekarangi Trust representatives, Rotorua police, Rotorua Lakes Council, Children’s Minister Tracey Martin and Oranga Tamariki Chief Executive Gráinne Moss. Guests were welcomed to Te Maioha o Parekarangi with a stirring haka from the rangatahi. Children’s Commissioner Judge Andrew Becroft also appeared via video message.



*Above: at the Opening Celebration: (L-R) Lakes District Counsellor, Merepeka Taite; Oranga Tamariki Chief Executive Gráinne Moss; Minister for Children, Tracey Martin; Te Maioha Residence Manager Christine Betchetti; Deputy Chief Exexutive for Youth Justice, Allan Boreham.*

The refresh at Te Maioha o Parekarangi is just the first step in a project that will see other Oranga Tamariki residences upgraded across the country. Next in line for an upgrade is Korowai Manaaki in South Auckland, followed by Christchurch’s Te Puna Wai in the spring. Below: graffiti art in the Admissions area.



### Young Female Offenders Meeting

The second inter-agency meeting regarding the issue of young female offending in New Zealand took place on Friday, 25 May 2018 at the Principal Youth Court Judge's Chambers. It was an opportunity for a number of stakeholders to come together and discuss the opportunities for future development. Attendees included representatives from the Ministries of Justice, Health, Education, Corrections and Ministry for Women, as well as Police, psychologists, academics and the judiciary.

In discussions, the cumulative expertise in the room drew upon knowledge of international trends and research, local experience (both inside and outside the courtroom), and trends in the adult population. It is acknowledged that further New Zealand-centric, quantitative, evidence-based studies would significantly advance understanding in this area. Targeted working groups will now commence, reporting back in December of this year with tangible proposals

### Judge Raumati to preside at Te Poho-o-Rāwiri

On Thursday, 31 May 2018, Judge Heemi Taumaunu formally passed the care for the Rangatahi Court at Te Poho-o-Rāwiri marae to Judge Hami Raumati.

In recognition of this, Judge Taumaunu presented Judge Raumati with a Manaia Taonga named "Taurima" after the mōteatea "Mā wai rā, e taurima". In this mōteatea 3 distinctive areas are mentioned; "Te Pono, Te Tika, Te Aroha", the truth, the right and the love. The manaia encapsulates the idea of Judge Raumati now being the person who will care for the Court.

### 10 year anniversary of Ngā Kōti Rangatahi

Preparations are well-underway for the 10 year anniversary of Ngā Kōti Rangatahi, the Rangatahi Courts, held at Te Poho-o-Rāwiri Marae, Tūranga nui a Kiwa 21-23 September 2018.

Guests will gather for three days at the marae, with official celebrations taking place on Saturday, 22 September 2018. The focus of the celebrations will be to reflect on the last decade of Ngā Kōti Rangatahi, and to heed the lessons learned as we move into the future.



The lyrics of the waiata "Mā wai rā" are as follows:

**Mā wai rā**

**E taurima**

**Te marae i waho nei**

**Mā te tika**

**Mā te pono**

**Me te aroha e**

Loosely translated, in English the lyrics are:

*Who will take care of the marae (now that you have departed)? It will be taken care of: by the right persons doing the right thing at the right time and guided by faith and love.*

# YOUTH ADVOCATES CONFERENCE—27 & 28 August 2018

Three years on from the last national Youth Advocates Conference, youth advocates are still grappling with what is an increasingly complex jurisdiction. This year's conference will further explore the impact of neurodisabilities, including drug addiction, on young people within the criminal justice system.

The use of communication assistants has grown since the last conference and how they are utilised has been refined and defined. 2018 is an opportune time to discuss what issues have arisen, now the changes to the legislation are bedded in.

Our national conference will be a great opportunity to hear about regional practices and exchange ideas on how best to represent our young clients. All youth advocates, experienced and new, should take this excellent opportunity to increase their knowledge base, and I look forward to seeing you there.

*Chair: Clare Bennett*

<u>DAY 1</u>	<u>DAY 2</u>
<ul style="list-style-type: none"><li>• Mihi Whakatau;</li><li>• Keynote Address - issues &amp; initiatives;</li><li>• Legislative Changes;</li><li>• Transfers to the District Court... Even Playing Field or Minefield?</li><li>• The Psychology of Youth Who Offend;</li><li>• Staying Well Within the Law;</li><li>• Does Unconscious Bias Exist?</li><li>• A View from the Bench;</li><li>• Special Presentation - Ngā Manu Kōrero.</li></ul>	<ul style="list-style-type: none"><li>• Practical Ideas for Using Te Reo &amp; Tikanga Māori in your Practice;</li><li>• Family Group Conferences: An opportunity to innovate &amp; consolidate;</li><li>• The "War on Gangs" is Over - We Lost;</li><li>• "I Can't Do Sentences" - Communication assistance &amp; justice;</li><li>• Neurodisabilities &amp; Related Issues: CP(MIP)/ Fitness to plead; FASD and youth offenders</li><li>• Brain &amp; Behaviour Changes Associated with Drug Addiction.</li></ul>

## **Learning Objectives:**

*By attending this Conference, it is anticipated that you will:*

- Gain further understanding of specific Youth Court and youth advocacy-related issues;
- Gain valuable support and encouragement from meeting and liaising with other youth advocates;
- Share your own and benefit from others' ideas for improving youth advocacy practice, especially Family Group Conferences;
- Increase your knowledge of and ability to use Te Reo and Tikanga Māori in your practice;
- Improve your understanding of neurodisability issues that may affect your clients.

*To learn more, view the brochure, or to register online, follow the link to: [NZLS CLE Website](#)*

*Earlybird prices apply before 31 July 2018.*

# YOUTH JUSTICE INDICATORS SUMMARY REPORT 2018: An Excerpt

This is an excerpt from the report published by the Ministry of Justice, based on data compiled by NZ Police, Oranga Tamariki and Ministry of Justice. It includes data until 30 June 2017, and can be accessed in full at:

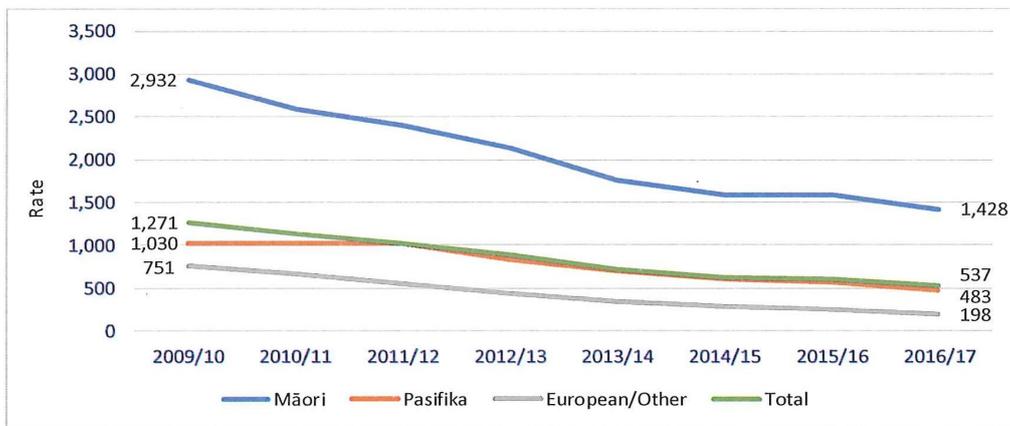
[Ministry of Justice](#)

## YJI 1.4 (14-16): Total number of proceedings for 14-16 year olds

This indicator provides insights into the population-adjusted volume of offending by young people, including how often young people who offend are dealt with by Police.

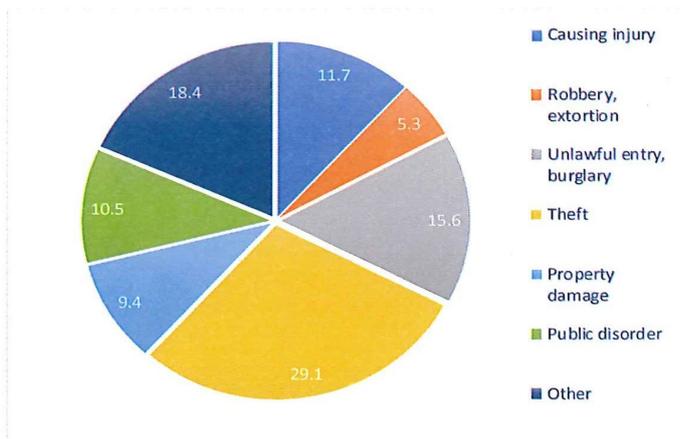
Police action includes warnings, Alternative Action, intention-to-charge FGCs, and prosecution.

The population-adjusted number of proceedings per 10,000 young people aged 14 to 16 declined between 2009/10 and 2016/17, from 1,271 to 537 - a decrease of 58%. Over that period, the reduction in the rate of proceedings for European/Other young people (74%) was much larger than that for both Māori (51%) and Pasifika (53%).



### In 2016/17:

#### Percent by offence division



#### Percent by gender



#### Proceedings rates per 10,000 population by Police District



Includes any 14-16 year olds proceeded against during the report period for offending, regardless of the outcome. Relevant age is age at time of the alleged offence. Note that a police system change during 2017 may have contributed to a drop in non-court proceedings for 2016/17

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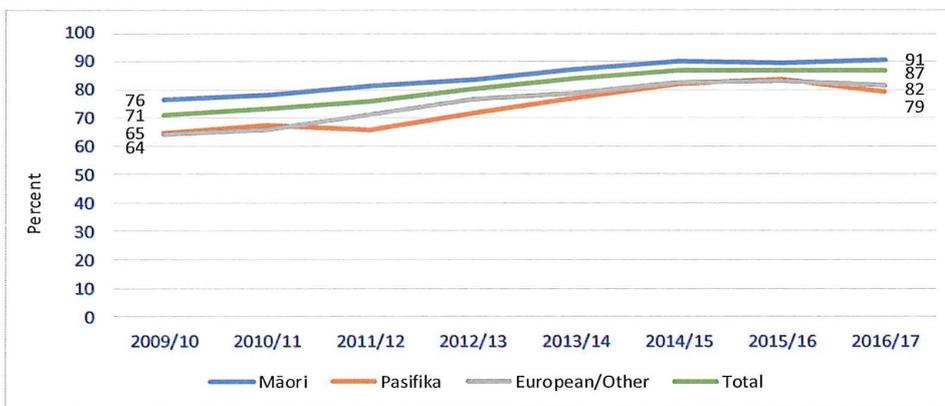
[Ministry of Justice](#)

## YJI 1.6 (14-16): Proportion of 14-16 year olds referred for a FGC who have previously been the subject of a report of concern to Oranga Tamariki relating to their care and protection

*This indicator provides information on how many young people who offended had negative childhood experiences.*

*It measures the proportion of children and young people referred for a youth justice Family Group Conference (FGC) who have previously been the subject of a report of concern to Oranga Tamariki relating to their care and protection.*

Most (79%) of the young people who were referred for a youth justice FGC in the period under examination had a previous report of concern to Oranga Tamariki relating to their care and protection. Although the proportion increased from 71% in 2009/10 to 87% in 2016/17, this does not necessarily mean that young people who offend are now more likely to have been abused. The change may be because there are fewer lower level offenders in the system, so proportionally more FGCs involve serious/persistent offenders who may be more likely to have welfare concerns.



### In 2016/17:

#### Percent by gender

**86%**  
of males referred for a youth justice FGC had previously been the subject of a report of concern to Oranga Tamariki about their care and protection



**92%**  
of females referred for a youth justice FGC had previously been the subject of a report of concern to Oranga Tamariki about their care and protection

#### Percent by Oranga Tamariki Operational Area



Youth justice FGCs include: child offender FGCs, intention-to-charge FGCs, and court-ordered FGCs. Relevant age is at the time of the child's FGC as offence date is not always recorded in Oranga Tamariki data. Section 15 reports of concern are over people's entire childhoods until the FGC, rather than just in the same 12 month period as the FGCs.



*Nadine Ward*

The entrance to the Naenae Boxing Academy is encircled with a ring of stones. The plaques commemorate famous boxers: athletes for the young people to aspire to. Inside, at 4.30pm on a Wednesday it is a hive of energy. High-intensity, focused and determined training is underway, with a group of young boys who want to be there, and want to work hard.

A culture is fostered here, which begins when the boys walk in the door shaking each other's hands in greeting. It is done genuinely; a sign of respect that reflects the underlying ethos of the Billy Graham Youth Foundation as a whole. The premises are a swear-free zone, and positive behaviour is modelled by all staff and trainers.

Sinead Ward, manager and part-time coach at the Naenae Academy has extensive involvement in youth work in her native Ireland and the Hutt Valley, as well as growing up around boxing. Her positivity is undeniable, echoed by the energy in the room.

When asked what is the key factor that keeps the kids returning, there is no hesitation. "It's the values being instilled. The sense of community.

These young people walk in the door and they know that it is their home too. As much theirs as anyone else in the room."

The sense of community is the result of a project that has grown from the ground up. Billy Graham, a former New Zealand and Australasian light welterweight boxing champion, was inspired to start up the Naenae Boxing Academy following his own experiences growing up in the area as a troubled youth, and the positive mentoring he received from his coach, Dick Dunn. He saw the importance of positive engagement and opportunities for young people in the area. Billy decided at age 11 that he was going to open a boxing academy: a dream that he and his wife Kerri would realise in 2006.



*Billy Graham (second from left) and some of the young athletes*

Billy's vision? "Vibrant, independent and responsible youth, contributing to their community." This mission is achieved by engaging young people in a fitness-based programme that empowers youth to be the best they can be. The model sits alongside the Foundation's Cornerstone Values: respect, responsibility, compassion, consideration, kindness, duty, obedience, honesty and truthfulness that all members strive for.



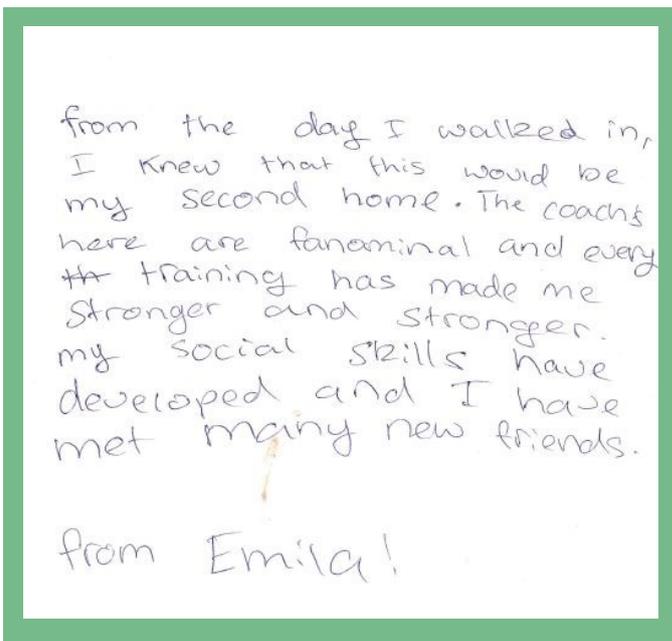
Today, the programme at Naenae Boxing Academy has expanded to include academies at Cannons Creek, Ashburton, Masterton and Tauranga. There is ground work taking place for a sixth new academy to open in 2019 (West Auckland) and a marae-based academy pilot is commencing in the Hutt Valley. As well as Naenae's scheduled membership classes, the programme extends to mainstream school, alternative education and youth justice facility groups who attend the Academy during the day on a weekly basis.

Each Academy is overseen by the Billy Graham Youth Foundation, based on the Naenae Boxing Academy model; with a Head Coach, Volunteer Support Coaches, Manager and funding/finance staff. The diagram of the BGYF National Structure, shows the young people at the very top, with academy staff, the local Board and national Billy Graham Youth Foundation below. The priorities of its structure are clear.

Classes are broken up into fundamentals, aged 9-10, junior boys 11-13, and senior boys for those over 14. Girls classes began in early 2017. At the Naenae Academy, there are 156 registered members, with a growing waitlist due to the demand and high retention rate. Despite this, Police referrals continue to come in and the Academy does all that it can to accommodate them. No family is ever chased up for the \$5 per week (or \$50 per term) cost.

For Sinead, it is the sense of belonging, discipline and structure which enables the programme to effect the change in the way that it does. "It's such an effective, positive way to reach young people. Many of these young people have had a real challenging start to life, and I believe we can reach them by providing them with opportunities. There is always a way back."

Positive development is rewarded alongside physical goals at the annual Naenae Boxing Academy Prizegiving. Daniel, a young man who completed year 13 last year as Head Boy at his high school, credits the programme for pushing him to his limits in both respects. "It challenges you. The workouts aren't easy, but the way things are run facilitates growth. It pushes you to not be average"



The young people grow and develop in leaps and bounds during their time at the Academy. One young girl who had been referred to the Academy by the local Neighbourhood Policing Team, was initially quiet and hesitant to fully engage. 10 months on, she has never missed a session. Staff have seen changes in her self-confidence, the way she holds herself and the pride she takes away in achieving each goal she sets her mind to. It is a positive cycle which has the potential to impact families at home as well.

As well as dealing directly with youth, coaches and mentors enjoy being able to relay the progress back to the parents or caregivers of the young person. "In some cases, a parent may have been hearing constant negative feedback about their child's behaviour elsewhere. If the young person wants to do better at the Academy, and is working hard, then we can go back to their mum, dad or caregiver with genuine, positive feedback. This helps to build relationships and mutual respect with the whole family.' Sinead explains. This too adds to a sense of community, and results in connections that run deeper than simply coordinating classes. It may involve clothing drives, food, support and assistance. Some of the young people who started at the Academy in 2006 have since returned to coach, and are passionate about training the next group of youth coming through.

An important aspect of the programme is the inter-relationship between the Academy and Police. Constable Andred Saker of the Naenae Neighbourhood Policing Team is engaged with the programme, and has witnessed first-hand the changes some youth experience. "There is no denying the positive effects that come from the training. If we focus on pre-emptively targeting youth with these sorts of programmes, it can have a real impact. If they are already offending, we've dropped the ball. It is that much harder at that stage."



*Judge Walker with the Senior Boys training group*

In 2016 Sergeant Dave Stone took up a 15-month placement as the Police Liaison Officer at the Foundation. Several times a year trainings also take place with police recruits. The close relationship enables the young boxers to see a different side to police, to relate to and respect authority.

The Billy Graham Youth Foundation was the second organisation in New Zealand to receive White Ribbon Business Accreditation, acknowledging the commitment to breaking the cycle of male to female violence. In accordance with the values instilled in its members, it will continue to bring its unique mix of fitness and personal development to other young people around the country.

Thank you to Kerri and Billy, Sinead, David, Andred and the Junior and Senior Boys of Wednesday night, for taking the time to talk through the programme and underlying ethos. For further information, please visit [www.bgyf.org.nz](http://www.bgyf.org.nz)



## CASE WATCH

All published judgments are anonymised to comply with legal requirements.

**POLICE v HJ [2018] NZYC 286**

Judgment Date: 14 May 2018

*Judge Recordon*

This recent case involved a hearing pursuant to s 9 Criminal Procedure (Mentally Impaired Person) Act 2003 wherein the issue of doli incapax arose. The child had been charged with one count of aggravated burglary of a petrol station where cigarettes and cash were stolen. The offenders then fled in a stolen car that was crashed during the escape. The child was apprehended by police as he was fleeing from the crashed car.

The court was asked to address the issue of "doli incapax" — the principle that children under a certain age are "incapable of evil" and should therefore not be criminally liable. The Court noted that the presumption under this principle can only be displaced where there is proof that the child knew the act or omission was wrong. The Court took into account the fact that the child had a shirt around his face to conceal his identity, the child's statement that "the cops were coming", the child being armed with a screwdriver, and the child's choice to flee and found that those factors supported the inference that the child knew the aggravated burglary was contrary to law. Therefore the Court was satisfied on the balance of probabilities that the child knew what he was doing was wrong and that the presumption of "doli incapax" had been rebutted.

The full judgment can be accessed on the District Court Website: [Youth Court Judgments \(Police v HJ\)](#).

**New Zealand Police v SD [2018] NZYC 169**

Judgment Date: 12 March 2018

*Judge Walker*

The context of this decision was whether the proceeding was to remain in the Youth Court for disposition, or whether the young person should be transferred to the District Court for sentence under s 283(o) OTA 1989. The young person faced charges including aggravated robbery, an associated kidnapping, an aggravated injuring with intent to commit crime of theft, and associated car conversion.

The Court noted that if looking purely at the seriousness of the offending and by emphasising a punitive response, then a transfer to the District Court would be the right decision. However, that would fail to take into account all the other mandatory factors which in this case weighed heavily against a transfer. The Court therefore ordered that the young person be subject to Supervision with Residence for six months, and was to engage in the residential education training programme. This included a psychological assessment and counselling, behaviour therapy and alcohol and other drug counselling.

The full judgment can be accessed on the District Court Website: [Youth Court Judgments \(Police v SD\)](#).

**Remember:** all Youth Court cases since 2016 are now published in full on the District Court website. Just click '[All Judgments](#)' at the top left of the homepage and search from there.

Prior to 2016, summaries are available through the [Online Summary Database](#).

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## SPECIAL FEATURE: “POVERTY OF HOPE”

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AUTHOR: RON ROWE\*

There is a ‘Poverty of Hope’ amongst many of our youth and younger people. This startling and telling comment was made by Paediatrician Dr Russell Wills in his former capacity as NZ Children’s Commissioner. Dr Wills had been approached in February 2015 for his advice as to the best possible long term opportunity through which the Napier RSA might commemorate its Legacy over 100 years of community service and to recognise those who made the ultimate sacrifice.

The ‘Poverty of Hope’ remark translates to the reality that many youth never get to fulfil the potential that is possible to them. Decades of research and practice confirms that large numbers of youth never get to fulfil the opportunities available to them. Youth lose out then, and into their future, as do their families/Whanau, their communities, and our nation. We miss out on what might or could have been.

Hope is an optimistic state of mind based on an expectation of positive outcomes with respect to events and circumstances in one’s life or their immediate world. As a verb, definitions include: “expect with confidence” and “to cherish a desire with anticipation”. *An example of hope is when a person believes their life situation will improve.*

Most philosophers acknowledge that hope plays an important role in regard to human motivation and attitudes like belief and desire. More recent discussions of hope provide independent accounts of its nature and its relation to desire, intention and optimism. (The Stanford Encyclopaedia of Philosophy.)

According to Meirav’s “External Factor Account” (Meirav 2009), hope also involves an attitude towards an external factor (e.g., nature, fate, God) on which the realisation of the hoped-for end causally depends. “If one views the external factor as good, then one hopes for the prospect. If one views it as not good, then one despairs of it.” Meirav links this definition to a claim about the rationality of hope: the rationality of hope depends on the belief in the goodness of an external factor.

Meirav argues that the standard definition fails to distinguish hope from despair: two people can have identical desires and beliefs about the possibility of an outcome, and yet one of them may hope for the outcome while the other despairs of it.

Esther Duflo, MIT economist and co-founder of the Poverty Action Lab, asks why the world’s poorest people tend to stay poor. Duflo’s pioneering research applies randomized trials, used extensively in drug discovery research, to development economics. The idea of poverty traps has long been known, but Ms Duflo’s provocative argument was that her research and that of others showed that a profound lack of hope—and not just capital, credit, skills, or food—could create and sustain a poverty trap.

At the Rotorua workshop ‘Tackling Poverty NZ,’ August 2016, Judge Louis Bidois highlighted that poverty goes beyond the material – being hungry or homeless – and that ‘it extends to poverty of spirit, poverty of hope, poverty of opportunity and poverty of cultural identity.’

Now that really is very powerful. Yet *hope* lies at the very heart of making a difference in the lives of youth.

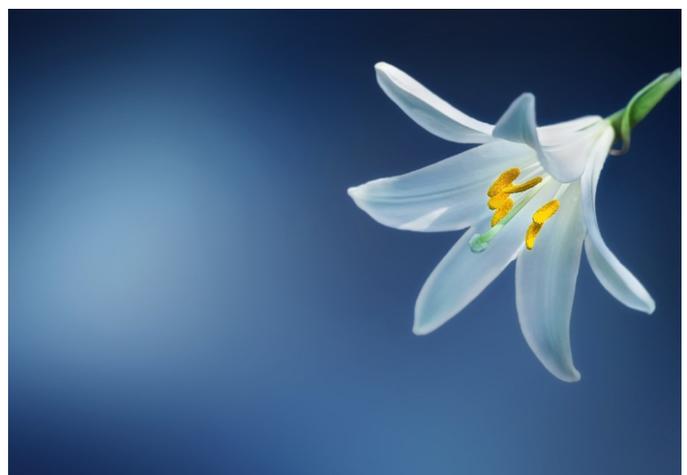
In a recent talk I proposed that however poverty is seen or described it does not of itself need to destroy virtue. Virtue is always found in the true character of the person ... day to day ... yet, (and here is the key, in my view) to fully enable a young person’s character to be strong and resilient in the face of pressure from peers, family and society their potential to achieve must be nurtured and brought to fruition.

The often seen ‘hopeless’ situation that many young people describe themselves in is due mainly to lack of sound nurturing, and societal factors that impinge on those youth getting a break, ‘to be all that they can be.’

*“Poverty does not destroy virtue, nor does wealth bestow it.” Spanish Proverb*

The purpose of the Napier RSA’s Centenary Legacy Trust is: to identify, support, mentor and fund young students, from throughout Hawke’s Bay, where the realisation of their potential may be impeded due to family situations, background, or other circumstances and to help them into health and/or social services careers where on completion of the studies they would return to their communities to assist and bring about positive, attitudinal changes thereby growing social and human capital in that community and reducing disparities.

(Continued overleaf.)



The primary beneficiaries:

- The young person(s) being assisted;
- Siblings of the young person being assisted;
- Immediate Families/Whanau of the young person being assisted;
- Extended Family/Whanau of the young person being assisted;
- Other young persons who see the opportunities afforded to and attainment of their peers.

And very importantly; the community of the young person being assisted and the wider community as the young person takes their training and development into other locations into the future.

The vulnerable of our society are those who live in a Poverty of Hope. Yet neither poverty nor hope is ever irretrievably fixed in place. How can we be so certain of this? From the many thousands of people who break through the shackles, most usually as a result of someone realising and nurturing their potential.

It has been my experience "Everyone no matter who they are or from where they come, has potential."

***\*Ron Rowe is a former Judicial Justice of the Peace.***

*A Life Fellow of the NZ Institute of Management with over 50 years of active leadership in several community based and volunteer organisations.*

*A key note speaker at the UN International Year of the Volunteer, he established the first NZ/South Pacific secretariat for Lions Clubs International.*

*With his wife, Ron spent two years in Papua New Guinea with Volunteer Service Abroad, and then Samoa. In addition, he has been a lecturer and an advisor in tertiary teaching, leadership and business, management.*

*Until recently he and his wife operated a small successful management consultancy, with the specialist fields of Capability Development - Governance and Strategy.*

*Ron is an experienced speaker and presenter to large and small groups and conferences.*

## Final Sitting of Judge Philip Recordon

Thursday 29 March 2018 marked Judge Philip Recordon's final sitting day in the Manukau District Court. A Judge of the District Court for 15 years, with a Youth Court warrant, in addition to warrants for jury trials, civil and family cases, the occasion was celebrated by an unexpected 'ceremony' in Court.

Sir Ted Thomas, an old friend of Judge Recordon, arrived to Courtroom 14 to the Judge's surprise. Sir Ted explained to counsel and others that it was Judge Recordon's final sitting day but the Judge had declined a ceremony. Sir Ted said he felt, in light of the Judge's distinguished history of judicial and public service, that Judge Recordon deserved a ceremony and would get one, "of sorts", whether he liked it or not.

Sir Ted recounted meeting with Judge Recordon as part of litigation to prevent the All Blacks' tour of South Africa in 1985, in which Judge Recordon became one of the plaintiffs. Sir Ted paid tribute to Judge Recordon as a person of exceptional courage and integrity whom he held in the highest esteem; sentiments Sir Ted was aware were widely shared.

Quentin Duff, a barrister in court that day, rose to say that the Judge was regarded by South Auckland lawyers with the utmost respect and affection and as being dedicated, courteous and compassionate. Mr Duff said Judge Recordon would be greatly missed.

A special morning tea honouring Judge Recordon, was held shortly after. Judge Recordon made it clear that he intended to continue sitting at court with an Acting Warrant.



His Honour Judge Philip Recordon.

## SPECIAL FEATURE:

### “CHILDREN IN BOTH YOUTH AND FAMILY COURTS: NEW ZEALAND”

Author: Judge A FitzGerald

First published in full in the *Chronicle*, the International Association of Youth and Family Judges and Magistrates, January 2018.

#### Hera

Hera is 14 years old. A young Māori woman born into poverty and a childhood of abuse and neglect, she came to the notice of our welfare agency, Oranga Tamariki (“OT”)<sup>1</sup> at an early age as had her older siblings. Eventually proceedings were brought to the Family Court regarding Hera’s need for care and protection because of the abuse and neglect she had suffered. A declaration to that effect was made by the Family Court plus an order granting custody of Hera to the Chief Executive of OT. Still Hera remained in her impoverished, neglectful, abusive home continuing to use synthetic drugs as did everyone else living there.

As she approached adolescence Hera increasingly came to the attention of the Police. When she was old enough to be charged with offending she was, and came before the Youth Court charged for the minor part she played in an aggravated robbery. Because she was likely to abscond from any community placement other than home, and was at risk of committing further offences if she stayed there, she was inevitably remanded in a secure Youth Justice residence after having spent time detained in police cells. She stayed on remand in the secure residence for four months, far longer than she would ever have received as a sentence for her offending; in fact she would not have received a custodial sentence if there was a suitable place for her in the community. The residence she was placed in was in the South Island, far removed from her home and family in Auckland toward the top end of the North Island.

During that remand period she could not be sentenced to any community-based programme because there were no suitable placements in the community for her. When bail options were raised in the Youth Court crossover list the advice from the OT care and protection social workers was that there was nowhere at all other than her home available despite extensive searching.

Eventually Hera was released from residence and discharged from the Youth Court on a “time served” basis and would have been returned to her impoverished, neglectful, drug-soaked home had it not been for one of the professionals involved in her case who, in an extraordinary act of kindness, offered to take her in.

When I acknowledged the injustice of the time spent on remand to Hera, she just gave me the “whatever” look in return; she was probably the one person in the courtroom least surprised by, and therefore concerned about, the injustice she had suffered at the hands of the system; after all, she has grown up expecting to be treated badly.



For many “crossover kids” it does not end as well as it did this time for Hera. For most there is no option but to go back into the same unsatisfactory situation they were in before being arrested without a careful transition. Many will have spent significant periods of time in custody on remand not necessarily because of the seriousness of the offending, nor any risk they pose to public safety, but simply because no suitable community placement is said to exist.

The extent to which that is happening has been brought into sharp focus ever since the Youth Courts in metropolitan Auckland, and some other courts around the country, started operating “crossover lists”. They are a judge-led initiative, the aim of which is to co-ordinate what is happening for the young people caught up in both the youth justice and care and protection systems and to address the serious dysfunction that has characterised how they were being dealt with previously. These lists are not a solution to the problems; they are in response to it. The solutions lie far away from the Youth Court and long before it becomes involved.

Since focussing on what happens to crossover kids in the Youth Court it has become blindingly obvious why they have the worst prognosis of all young people who come before the Youth Court and why little or nothing is currently happening to change the trajectory they are on toward adult offending.

This article begins by introducing who crossover kids are. There is then a summary of the legal context in New Zealand and a description of some of the practical problems that led to crossover lists being established. That is followed by a report of progress to date and where we might be heading. For now, what is set out in this article, is the extent to which there is information sharing, or coordination of what is happening, for a young person who is before the Youth Court and has had any involvement in Family Court proceedings.

## Crossover kids

73% of OT's youth justice clients are also known to them for care and protection concerns.<sup>2</sup> These are the young people referred to here as "crossover kids". They have at least been the subject of notifications to OT about care and protection concerns that have been investigated but not necessarily progressed to the point where applications have been made to the Family Court.

"Dual status" is the label given to those who are before the Youth Court and are also the subject of care and protection proceedings in the Family Court (and therefore a subset of the crossover kids). Hera was a dual status crossover kid. This group have the worst prognosis of any appearing in the Youth Court, with about 9 out of 10 progressing to adult offending.<sup>3</sup> 83% of those imprisoned in New Zealand who are aged 17, 18 and 19, had a previous care and protection record with OT.<sup>5</sup>

They present the Youth Court, and all of the agencies and professionals involved, with their biggest challenges. For most, the trouble they get into that brings them to court is an almost anticipated result of the traumatic life of abuse and neglect they have suffered. Most abuse substances to self-medicate, dulling down the pain their trauma causes. In addition to that life experience, most have left education early and spend their days with others in a similar situation. Many become involved in gangs which usually leads to offending. The reason many have left school early is due to a learning disability and behavioural problems that are a direct consequence of a neuro-disability they have such as FASD,<sup>6</sup> traumatic brain injury, ADHD,<sup>7</sup> Autism and a variety of other mental health concerns.

As a result of such disabilities they are very heavily over-represented in the cases where fitness to stand trial is an issue and where communication assistance is needed. They spend long periods of time on remand in Youth Justice residences while those complex proceedings drag on through the court process. Some are placed far from their home and family so that contact is limited, and commuting to and from court arduous. Their behaviour is difficult for the residence to manage and so these already traumatised young people often end up spending time in solitary confinement known as "secure care".

As was the case with Hera, the time spent in residence often means they are eventually discharged from the Youth Court on a time served basis to go back to hopeless unsupported situations in the community they came from. Most therefore do not get the benefit of a careful transition home or the community based support and wraparound programmes they need. Nor is the necessary scaffolding built around their home situation to address the concerns so as to make placing them back there acceptable. Having been set up to fail in that way, many are back before the court soon afterwards facing further charges. The nature of their home life, and the disabilities many suffer, make compliance with court requirements such as bail conditions difficult at best. Being non-compliant, repeat offenders they rapidly become deeply

entrenched in the Youth Justice system before moving into the adult criminal justice system when they reach age 17. A disturbingly large proportion are Māori or Pasifika.

## Law

The Oranga Tamariki Act 1989 ("the Act") governs the New Zealand Youth Justice system as well as the law regarding children<sup>8</sup> and young people<sup>9</sup> in need of care and protection. The care and protection provisions are set out in Part 2 of the Act and the Youth Justice provisions in Part 4 and there are very clear signs of an intended interface between those two parts.

About 80% of young people who offend are not charged or brought to Court. Instead they are dealt with by alternative action in the community by a specialist division of our police force named "Youth Aid". Of the remaining 20% who are charged and brought to Court, about ½ to ¾ come from multi-problem backgrounds, with a large number of offending-related risk factors emerging at an early age. To be before the Court, these young people are generally facing serious charges, and/or are repeat offenders, and present with a complex range of issues underlying their offending which the Court is required to see addressed wherever possible. It is this group that occupies much of the Court's time and the resources of all the agencies involved. A large proportion are crossover kids.

Essentially all important decision making, on issues governed by the Act, passes through the Family Group Conference ("FGC") process. Under the Youth Justice provisions that includes whether a young person suspected of having committed an offence (but who has not been arrested) should be charged, as well as making recommendations about how those young people who are before the court should be dealt with. Combined with this are the general and specific youth justice principles that emphasise the need to involve and strengthen family whānau<sup>10</sup> Hapū,<sup>11</sup> and Iwi<sup>12</sup> in the process, decision making and outcomes. It is clear that, unlike adults, young people are to be seen and dealt with, wherever possible, in the context of their family and family group which should be involved in the decision-making about the young person.

In addition to holding young people who offend accountable, and encouraging them to accept responsibility, the Youth Court is required to ensure that their needs are acknowledged,<sup>13</sup> and the underlying causes of offending addressed.<sup>14</sup>

Emphasis is placed on timeliness, a key principle being that decisions should, wherever practicable, be made and implemented within a timeframe appropriate to the young person's sense of time.<sup>15</sup> Not only is this included as a general principle, it is an important theme throughout all of the youth justice provisions.

Important duties for the Court (and counsel) include explaining the nature of the proceedings to the young person in a manner and in language that can be understood, being satisfied he/she understands,<sup>16</sup> and encouraging and assisting him or her to participate in the proceedings.<sup>17</sup> The extent of the challenge these particular obligations pose for the Court has only started to become apparent in recent times with growing awareness about the prevalence of neuro-disabilities

in youth offenders and the impact this has on their comprehension and communication skills. Again, a very large number of the young people with significant needs of this sort are the crossover kids.

One of the general objects of the Act is to promote the well-being of children, young persons and their families and family groups by encouraging and promoting co-operation between organisations engaged in providing services for the benefit of children, young persons and their families.

These statutory requirements are reinforced by obligations we have under the UNCROC,<sup>18</sup> which New Zealand ratified in March 1993, and the Beijing Rules,<sup>19</sup> which both emphasise a young person's right to due process, to not be detained pending trial except as a matter of last resort, and then only for the shortest possible period of time,<sup>20</sup> and to having their cases determined without delay.<sup>21</sup> Given the disproportionate overrepresentation of Māori in the Court, and the large number of young people appearing in the Court who have neuro-disabilities, the UN Declaration on the Rights of Indigenous People,<sup>22</sup> ("the Indigenous People's Declaration"), ratified by New Zealand in April 2010, and the UN Convention on the Rights of Persons with Disabilities,<sup>23</sup> ("the Convention for People with Disabilities"), ratified by New Zealand on 30 March 2007, need to be considered too. Again, a large proportion of young Māori before the court, and those with disabilities, are crossover kids.

There is no question about the Act being a visionary piece of legislation but many of its important features and provisions were slow to be implemented and some have still not been. Two prime examples (in the current context) are, firstly, that the provisions relating to the interface between the two parts of the Act have not been working properly in practice. Secondly those that provide for Iwi Social Services, or a cultural social service<sup>24</sup> to take young people on remand remain dormant. Given that one of the major injustices the Act aimed to address was the institutionalisation of young offenders, largely Māori and often far from their homes and whanau, the architects of the Act would be deeply disturbed, I expect, by what still happens today especially with the crossover kids.

It is important to emphasise that the Act is not the problem. The problems, for the crossover kids at least, are caused by what has been happening, and not happening, in practice.

### Practice and Problems

The way the Youth Court has been operating for most of the 28 years since the Act's inception is not the type of court the Act describes. Until recently, the Youth Court has operated much the same as the adult criminal court. The work has simply been divided into two categories; "list courts" where often large numbers of young people are pumped through in random order with the same allocation of time (ten to fifteen minutes maximum); and "defended hearing" courts for those cases where charges are denied. In courts such as these, young people with high and complex needs, such as the crossover kids, do not receive the care and attention they deserve or that the Act envisaged.

When the Act came into force, despite the very clear interface between the Youth Justice and Care and Protection

provisions of the Act, both the Ministry of Justice and OT set up their systems so that there was no interface at all in practice.

So, for example, there was no ability within the Court system to share any information between the Youth Court and Family Court. If a young person with care and protection status in the Family Court came into the Youth Court, the Youth Court registry could not identify that fact nor obtain any information about that young person from the Family Court through any official channels. Young people with dual status could therefore pass through the Youth Court without anyone there knowing about the care and protection proceedings in the Family Court. Even if they did know, it would not occur to many of the key players in the Youth Court that the information held by the Family Court might have some relevance in the Youth Court. There were even those who argued that it was not appropriate for such information to be shared!

The dysfunction was at its worst in a big city like Auckland. Most of the dual status young people would have two different lawyers, two different social workers and two different plans (one for care and protection issues and the other for youth justice issues) which at times would be at odds with each other. There would then be different hearings in different courts before different judges. Certainly in the city courts, one group would sometimes not even know the other existed; if they did, they usually did not talk or share information.

As a result, it was not at all unusual for young people to be granted bail by the Youth Court to reside in a home they had been removed from on care and protection grounds; or worse still, in at least one case, bailed to live with a parent against whom the Family Court had made a restraining order prohibiting that parent from having contact with the young person.

In response to this situation an information sharing protocol between the Youth Court and Family Court was established in 2007. The primary purpose was to enable the Youth Court to identify those young people coming before it who have dual status and obtain from the Family Court relevant information and share it appropriately with those entitled to receive it. Having access to such information would then enable the Youth Court to carry out its functions properly. In particular it would help:

- \* Make sensible bail decisions;
- \* Inform decisions about obtaining forensic assessments to identify the young person's needs and underlying causes of offending. In some cases there are already forensic reports on the Family Court file.
- \* In deciding whether to approve a Youth Court FGC plan and be satisfied it is in harmony with the plans in place in the Family Court and synchronise the Family Court review of plan to coincide with the end of the Youth Court plan or end of Youth Court orders. By doing so the Youth Court involvement could then end in the knowledge that any ongoing welfare and therapeutic needs will be addressed in the Family Court.
- \* With sentencing decisions (given, for example, that one of the factors the court must have regard to in sentencing is the personal history, social circumstances and personal characteristics of the young person).

OT also created in practice a complete separation between their Youth Justice and Care and Protection divisions with no coordination or co-working arrangements. Children and young people would therefore have two different social workers, one for each issue who did not necessarily communicate about what was happening for the young person and certainly, in years gone by at least, did not work cooperatively with each other.

One of many consequences of that separation was that when a young person with care and protection status entered the Youth Court, that was taken as a signal that the care and protection involvement was at an end so they would step back to let the Youth Court deal with the situation. That mindset also infected many lawyers who were acting for such young people before the Family Court. It became standard practice in the Family Court for social workers to recommend the care and protection proceedings be closed and orders discharged because the young person was before the Youth Court, and the young person's lawyer would advocate for that outcome. There were several consequences of such nonsensical practices and attitudes. Two common examples are:

\* In cases where the Family Court involvement continued, there were cases where the Family Court plan did not address welfare or therapeutic needs because it was believed the Youth Court was doing so, while the Youth Court did nothing because it believed the Family Court was.

\* In cases where Family Court involvement ended when the young person entered the Youth Court, there was pressure put on the Youth Court to remain involved far longer than it should have, to deal with welfare issues. Instead of the Youth Court plans being time limited and ending soon after accountability and victim related issues were addressed, there was ongoing involvement to see various therapeutic needs addressed. This was another of the inappropriate practices the Act was aimed at overcoming.

In an attempt to improve how the cases of children and young people with dual status were being dealt with, and to at least try and mitigate problems such as these, crossover lists were progressively established in all of the metropolitan Youth Courts starting in 2011.

### **Crossover lists**

From the outset these lists were emphatically and unequivocally limited to enabling appropriate information sharing and coordination of what was happening for children<sup>25</sup> and young people with dual status. Having crossover lists was about identifying these cases early, giving them their own dedicated space, allocating sufficient time to do justice to them and having an approach that was consistent across the various courts involved. A Youth Court Judge who also has a Family Court warrant presides. A primary goal was to ensure that Youth Court involvement ended sooner rather than later (soon after the accountability and victim related issues were addressed) and that there could be confidence about that happening if the young person's ongoing need and welfare issues were being properly addressed and monitored in the Family Court under the care and protection plan.

However there was strong opposition from some quarters. In 2012, someone senior in OT referred to crossover lists "setting the clock back to before 1989 where young people came before the court for justice matters and then became cast while all the other non-offending matters became the focus and took over the case". The complaint was that it would be "welfarising" the Youth Court to bring care and protection issues into it. Of course, the flip side to that is "criminalising" care and protection issues and using Youth Justice powers and facilities to deal with them as is happening. Both are wrong and we need to work in a way that prevents both from happening.

Crossover lists strike the right balance in that respect and have been effective in over-coming much of the dysfunction referred to above. They also give practical effect to the information sharing protocol in the ways I have referred to above, eg; helping inform forensic assessments, synchronising what is happening for the young person in both the Youth Court and Family Court and having necessary information for making disposition decisions in the Youth Court.

But the importance of having access to such information runs much deeper than that. The Family Court files are usually covered in red flags marking issues the Youth Court simply has to be made aware of. To start with is the importance of recognising the impact trauma has on behaviour. The information is also relevant as to whether there might be fitness to stand trial issues or whether communication assistance or other support might be needed for the young person to engage properly in the proceedings. Without access to such information the young person's needs and the underlying causes of offending go unidentified and therefore untreated or misdiagnosed and mistreated. This is not only completely unsatisfactory for the young person but for the community too if these failures mean the re-offending risks are not identified and addressed properly.

This sharing of information and co-ordination of proceedings must happen in a courtroom that conforms with the requirements in the Act and that is starting to happen more consistently now. This is a courtroom where there is collaboration between the professionals and agencies involved by being all<sup>26</sup> represented in the courtroom and working together in a non-adversarial, co-ordinated way; where all those entitled to be heard can be in a meaningful way; where there is time for judges and lawyers to explain things to young people, and encourage their participation in a manner and language they can understand; where needs and underlying causes are properly identified and necessary assessments obtained; where sufficient time is available to ensure that what is happening in both jurisdictions is properly coordinated; where a young person's whanau are involved in decision making that happens in a timely way and strengthens the young person's relationship with whanau, hapu and Iwi.

As crossover lists have started to eliminate the dysfunction, what has come into stark focus is the situation Hera was in which is common to many crossover kids; they come before the Youth Court but there is often nothing constructive that court can do until placement is sorted

out. Because placement is a care and protection issue to resolve there has not been a forum previously where the options can be discussed and progress in finding something addressed. Although we now have that forum (in crossover lists) there often are no appropriate placement options and the default position is for the young person to languish in a Youth Justice residence. In finding a solution to this problem, it is to be hoped that the Act's untapped potential in relation to placing young people with Iwi social services, or an appropriate cultural social service can be realised and that appropriate, well supported community based placements, close to where the young person comes from, can be found.

### What next?

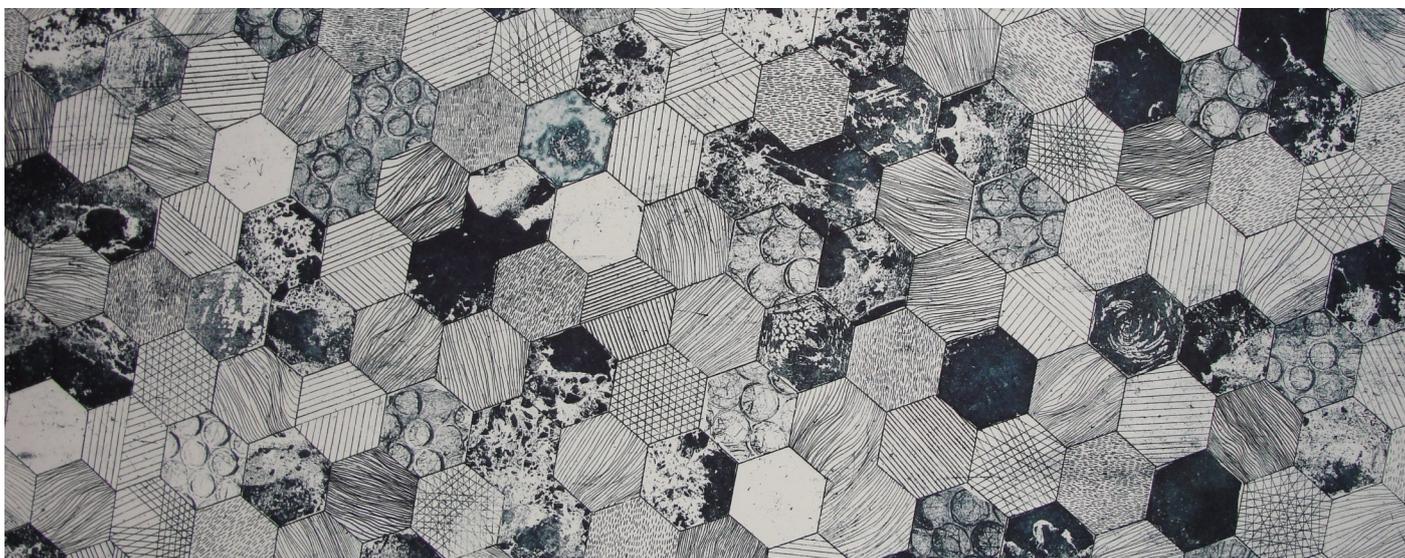
What I have described is where things stand at present in relation to the interface between Youth Court and Family Court involvement for young people in Auckland New Zealand. With more time and resource it would be logical to adopt this approach with all crossover kids, not just those with dual status. Given what we now know about the impact exposure to domestic violence and bitter parental conflict can have on a young person's behaviour there is an arguable case for saying access to relevant information about a young person held on files in Family Court proceedings under the Domestic Violence Act 1995 and Care of Children Act 2004 should be available too.

But we are not there – yet.

### Judge A FitzGerald has a Youth Court designation and general District Court and Family Court warrants.

### End Notes

- 1 The Ministry for Children/Oranga Tamariki.
- 2 Centre for Social Research and Evaluation; Crossover between child protection and youth justice, and transition to the adult system, (Ministry of Social Development, July 2010) at 8.
- 3 See Mark Lynch and others "Youth Justice: Criminal Trajectories" (2003) 265 Trends and Issues in Criminal Justice (Australian Institute of Criminology, Canberra, 2003). This refers to research carried out in Australia which involved following 1503 young offenders for 7 years to track their trajectories. 91% of those who had been subject to a care and protection order, as well as a supervised justice order, had progressed to the adult corrections system and 67% had served at least one term of imprisonment.
- 4 Despite being a party to UNCROC (see n 24 below), NZ does not include 17 year olds in the Youth Justice system.
- 5 Above n 2 at 9.
- 6 Fetal Alcohol Spectrum Disorder.
- 7 Attention Deficit Hyperactivity Disorder.
- 8 Child is defined as a boy or girl under the age of 14 years.
- 9 Young person in relation to the Youth Justice provisions is defined as a person of or over the age of 14 but under the age of 17 years.
- 10 Extended family, family group; the primary economic unit of traditional Maori society.
- 11 Kinship group, tribe, subtribe.
- 12 Extended kinship group, tribe, nation, people.
- 13 Section 4(f).
- 14 Section 208(fa).
- 15 Section 5(f).
- 16 Section 10.
- 17 Section 11.
- 18 United Nations Convention on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990).
- 19 United Nations Standard Minimum Rules for the Administration of Juvenile Justice A/RES/40/33 (1985).
- 20 UNCROC, art 37(b).
- 21 UNCROC art 40.2(b)(3).
- 22 United Nations Declaration on the Rights of Indigenous Peoples GA Res 61/295, LXI A/RES/61/295 (2007).
- 23 United Nations Convention on the Rights of Persons with Disabilities 2515 UNTS 3 (opened for signature 30 March 2007, entered into force 3 May 2008).
- 24 Section 238(1)(d).
- 25 Both those who are before Family Court under s14(1)(e) of the Act or the Youth Court under s 272.



## RECENT RESEARCH AND PUBLICATIONS

### NEW ZEALAND

#### ***Building blocks: building the foundations for implementing the Children's Convention in Aotearoa***

Author: The Children's Convention Monitoring Group  
Source: Children's Commissioner, Wellington, April 2018

**Abstract:** This report focusses on ten building blocks that are required to enable the implementation of the [UN Children's Convention](#) in New Zealand. Recent progress in some of these areas is highlighted as is where we have fallen short as a country in laying the proper foundations needed to implement the Children's Convention. Fifteen key recommendations for progress are made.

#### ***'It's like he just goes off, BOOM!': mothers and grandmothers make sense of child-to-parent violence***

Authors: Megan Williams, Keith Tuffin, Patricia Niland  
Source: Child and Family Social Work 22(2) May 2017: 597-606.

**Abstract:** Child to parent violence (CPV) involves continual and cumulative abusive actions perpetrated by children and adolescents towards their parents or caregivers. This abuse produces short-term distress and ongoing long-term harmful consequences for parents and their families. Practitioners, researchers and policy-makers are increasingly challenged to identify, conceptualize and respond to this form of family violence. A major challenge is that parents and caregivers under-report this abuse so there is a lack of awareness and understanding of their psychological experiences in relation to CPV. This research adopts an interpretative phenomenological approach to explore the psychological experience of CPV. Interviews were conducted with six New Zealand mothers and two grandmothers who all experienced CPV.

#### ***Using evidence to build a better justice system: the challenge of rising prison costs***

Author: Associate Professor Ian Lambie  
Source: Office of the Prime Minister's Chief Science Advisor, Wellington, 29 March 2018.

**Abstract:** This paper explores the drivers of the continued growth of the New Zealand prison population, including consideration of crime rates, remand, sentencing and parole practices.

The first of two reports: it discusses the general issues and factors related to exploding prison population and costs.

#### ***It is never too early, never too late: A discussion paper on preventing youth offending in New Zealand***

Author: Associate Professor Ian Lambie  
Source: Office of the Prime Minister's Chief Science Advisor, Wellington, 12 June 2018.

The second of the two reports: this discussion paper describes how young people might find themselves on the path to prison, and how to prevent that criminal trajectory. It is available in full [here](#).

### ENGLAND AND WALES

#### ***Gender Comparison of Young People Charged With Murder in England and Wales***

Authors: F. Jeane Gerard, Kevin D. Browne, Kate C. Whitfield  
Source: International Journal of Offender Therapy and Comparative Criminology 2017, Vol. 61(4), 413-429. DOI: 10.1177/0306624X15596387

**Abstract:** This study investigated gender differences regarding young people charged with murder in England and Wales. A sample of 318 cases was collected from the Home Office's Homicide Index and analysed. Of these cases, 93% of the offenders were male and 7% female. The analyses explored gender differences in terms of the offender's race, offender's age, victim's age, victim's gender, weapon used, offender-victim relationship, and circumstances of the offence. The study found that a female offender was significantly more likely to murder a family member than a male offender, and a male offender was significantly more likely to murder a stranger than a female offender. In addition, a female offender was significantly more likely to murder a victim below the age of 5 than a male offender. Implications for interventions with young people who are charged with murder are discussed.

#### ***Starting to Stop: Young Offenders' Desistance from Crime***

Gráinne McMahon, Deborah Jump  
First Published November 20, 2017  
Source: Youth Justice Journal Vol 18, Issue 1, 2018

**Abstract:** This article explores the complexities of the interplay between structural and agentic changes in 21 young offenders' lives as they start to stop offending. The young people's ability to desist from crime was dependent upon their engagement with a 'hook for change', their development of prosocial relationships

and 'knifing off' of elements of their offending past, the extent of their identity change, and their confidence about desistance. Desistance was less likely in the absence of a 'hook' and where offenders were running a 'condemnation script'. The study challenges previous research that argues that desistance from crime in adolescence is unlikely.

***Consensual teenage sexting and youth criminal records***

Author: Raymond Arthur

Source: Criminal Law Review 5 2018 – 377-383

**Abstract:** Currently the law in England and Wales means that young people who engage in consensual teenage sexting are at risk of being charged with child pornography and indecency offences. Even where no formal action is taken, any investigation of such behaviour will be recorded on the young person's criminal record where it may be disclosed in a way which impacts upon the young person's future access to education, employment, travel, insurance and housing. This article argues that it is critical to find a balance between children's protection rights and their right to sexual self-determination.

***'There's Not Going to Be a Single Solution': The Role of Resettlement Consortia in Improving the Resettlement Outcomes of Young People Leaving Custody***

Author(s): Paul Gray, Hannah Smithson, Richard McHugh, Graham Smyth

Source: Youth Justice Journal Vol. 18 No. 1, April 2018 68-71.

**Abstract:** As part of the government's Transforming Youth Custody programme, in 2014 the Youth Justice Board (YJB) established four new resettlement consortia in four areas in England. This article presents the findings from a process evaluation of the new consortia, paying particular attention to the enablers and/or barriers that affected the implementation of an enhanced resettlement offer. We found that the consortia did appear to improve partnership working and collaboration between key agencies. Yet the delivery of an enhanced offer was often hampered by the geographically dispersed nature of the consortia, along with problems accessing suitable accommodation upon release.

***"Working with female offenders in restorative justice frameworks: Effective and ethical practice"***

Authors: Isla Masson, Linnea Ostermann

Source: Probation Journal, Vol 64(4) 354-371, 2017. DOI: 10.1177/0264550517728784

**Abstract:** Despite a recent increase in restorative justice practice in the criminal justice system, to date there has been no in-depth consideration of the impact of gender in these settings. This paper presents findings from a unique qualitative study on female offenders' experiences of restorative conferencing in England and Wales, drawing on interviews with practitioners who have worked with female cases, as well as with women who have gone through a restorative justice conference in a perpetrator capacity. Gender-specific factors, suggested to be especially valuable for practitioners to consider when delivering effective and ethical restorative conferences with female offenders, are outlined.

***Victim-offender trajectories: explaining propensity differences from childhood to adulthood through risk and protective factors***

Authors: Whitney DeCamp, Heather Zaykowski and Brian Lunn

Source: The British Journal of Criminology 58(3) April 2018: 667-668

**Abstract:** Although extensive evidence supports a relationship between victimization and offending, research has been limited in focusing on this association during only a brief period in the life course. Existing research has not adequately considered the influence of early-onset problem behaviours on victimization and offending later in life. This study advances the literature by examining propensities for violent victimization and offending and whether differences in these trajectories can be explained by early-onset problem behaviour.

***Desistance Approaches in Youth Justice – The Next Passing Fad or a Sea-Change for the Positive?***

Kathy S. Hampson

Source: Youth Justice Vol. 18 No. 1, April 2018: 18-33

**Abstract:** Youth justice in England and Wales has followed a risk-orientated model for almost two decades, requiring interventions with young people to mitigate assessed risk factors for offending. The desistance revolution evident in much of the adult system and research has been slow to influence change. The Youth Justice Board recently established the desistance-led AssetPlus assessment model, proclaiming that it will facilitate this change. However, youth justice practitioners appear not to have been able to apply desistance theory, resulting in 'business as usual' assessments and deficit-focused intervention plans. How can desistance be truly embedded in a system still dominated by risk?

## EUROPE

### ***Why Children Obey the Law: Rethinking Juvenile Justice and Children's Rights in Europe through Procedural Justice***

Authors: Maria Jose Bernuz Beneitez, Els Dumortier

First published: January 24 2018

Source: Youth Justice Vol. 18 No. 1, April 2018: 34-51

**Abstract:** This article explores how the idea of procedural justice can help us to rethink juvenile justice and research children's rights in Europe differently. To frame the following argument, we will question four implications of the procedural justice perspective: 1) the need to implement rights and not just proclaim them, 2) the need to investigate a 'double perspective' on children's rights implying both juvenile justice professionals and children in conflict with the law, 3) the child's right to effectively participate and be involved in the process and 4) the idea that age matters in the judicial reaction to crime. The resulting conclusions and discussions revolve around the scientific consequences and challenges we must face when we take procedural justice perspective seriously.

### ***"Restorative Justice With Female Offenders: The Neglected Role of Gender in Restorative Conferencing"***

Authors: Linnēa Osterman and Isla Masson

Source: Feminist Criminology Journal 2018, Vol. 13(1) 3-27

**Abstract:** This article presents findings from a new qualitative study into female offenders' experiences of restorative conferencing in England and Wales. It is argued that gendered factors of crime and victimization have a definite impact on the restorative conference process, particularly in the areas of complex and interacting needs, differently natured conference engagements, and risks around shame, mental health, and stereotypical ideals of female behavior. For women to reap the full benefits of restorative justice, it is argued that the particular needs and circumstances of female offenders must not only be acknowledged, but also incorporated into the field and mainstreamed into practice.

### ***"A Qualitative Examination of the Self-Medicating Hypothesis Among Female Juvenile Offenders"***

Authors: Paula Smith

Source: Women & Criminal Justice, DOI: 10.1080/08974454.2017.1377673

**Abstract:** Substance misuse among criminally delinquent youth has typically been described as a concurrent part of their participation in risky and delinquent

behavior. Using Khantzian's self-medication hypothesis, this article presents an alternative view by presenting qualitative data which suggests that substance misuse for female juvenile offenders may serve as self-medication for mental health problems stemming from early trauma, often at the hands of their families. Based on the narratives of 30 female juvenile offenders, this article examines the lived experiences of girls with childhood trauma and substance misuse, followed by arrest and incarceration. The paper concludes with recommendations for juvenile justice and child welfare practitioners.

## NORTH AMERICA

### ***"Are Canadian Girls Becoming More Violent? An Examination of Integrated Criminal Court Survey Statistics"***

Author: Jennifer Silcox

Source: Criminal Justice Policy Review 2017, 1-26. DOI: 10.1177/0887403416685815

**Abstract:** Girls often find themselves at the center of a moral panic surrounding youth crime with claims that their behavior is out of control in national news media. While media often readily suggests that crime among girls is on the rise, there is little scholarly consensus. This article explores the Integrated Criminal Court Survey to analyse whether guilty findings among girls are rising, what can be said about girls' involvement in crime and violence over the past few decades, and how legislation changes and ideological shifts have altered how youth in conflict with the law have been treated.

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