

# “Court in the Act”

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

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## Young Offenders (Serious Crimes) Bill.

Judge Becroft attended a Parliamentary Select Committee on Wednesday 18 July 2007 in order to address the structure and unintended consequences of Ron Mark’s Young Offenders (Serious Crimes) Bill. The Bill would effectively abolish the Youth Court and end the family group conferences system. In keeping with constitutional convention, Judge Becroft’s submissions were limited to matters of drafting, structure and implications for the Youth Court, but not matters of policy. Judge Becroft’s prime concern was that the drafting of the Bill was very poor—“abysmal”—his words to the Select Committee.

Despite suggestions by framers of the Bill that the Bill was being misrepresented— in fact its effect is plain.

### Judge Becroft’s Submission

The essence of Judge Becroft’s submissions was what he considered to be six unintended consequences of the Bill.

1. That the effect of the Bill is to remove YC jurisdiction for almost all criminal offences from the Youth Court.
2. Family Group Conferences would be removed for virtually every offence
3. The Bill is inconsistent and confusing where it maintains existing procedures for dealing with 10-13 year olds and at the same time introduces a new system whereby virtually all children will be charged in the adult criminal courts.
4. The Bill will mean that almost all under 17 year olds, if charged, will be able to be imprisoned (section 18 of the Sentencing Act 2002 currently allows young people to be imprisoned only in respect of “purely indictable” offences – a small handful of very serious offences). This is because the definition in the Bill of serious offences is so wide.

5. The historic protection of the *doli incapax* presumption afforded to 10-13 year olds is virtually abolished. This doctrine presumes children are criminally incapable, but is rebuttable and a child may be convicted of an offence if there is proof that the child understood their act to be wrong. In practice, capability is virtually always conceded. The authors don’t know of a single case where the doctrine was relied upon in the last 5 years, but it is important that it be retained as a matter of principle.
6. Provisions of the Bill conflict with statutory youth justice principles.

### Age of Prosecution

In respect of age of prosecution, Judge Becroft acknowledged this was a legitimate policy decision for Parliament—outside his scope. However he did say that in any debate it would be important to consider;

- Offending rates for 10-13 year olds, and whether offending was growing and out of control; and
- Whether the existing child offender provisions are working and the extent to which they could be modified and improved. This issue is within the domain of the Principal Family Court Judge as child offenders (10–13) are dealt with by that Court.

Judge Becroft urged the Select Committee to consider these obviously unintended consequences of the Bill as it is currently drafted.

As to the question of offending rates for 10-13 year olds, see Table 1 on the following page.

Copies of Judge Becroft’s submission may be obtained by emailing a request to: Tracey.Cormack@justice.govt.nz

*“Under the new Bill, only a handful of charges, for example stone throwing, would end up in the Youth Court jurisdiction”*

**Judge Andrew Becroft**

## Apprehensions decrease for 10-13 year olds over the last 10 years

The table below shows a reduction of 10.78% in apprehensions for 10-13 years olds for apprehensions for the years 1997 to 2006.

One thing is clear from this table. Apprehensions overall in this age cohort have decreased over the last 10 years for all categories of offences.

While there has been an increase in apprehensions for violent offending for 14-16 year olds in recent years, this trend is similar for all adult age cohorts (see table 6, page 8) except 10–13 year olds.

### Percentage increase for apprehensions for violence:

10-13: 10.79% **reduction** from 1997 to 2006

14-16: 47.5 % increase from 1997 to 2006

17-20: 41.83% increase from 1997 to 2006

21-30: 7.8% increase from 1997 to 2006

31- 50: 46.98% increase from 1997 to 2006

51–99: 71.67% increase from 1997 to 2006

Tables revealing offending numbers and offending rates are included below and on pages 4 and 5 of this newsletter.

### Apprehension Statistics: Table 1: 10-13 year olds: Numbers and Rates Per 10,000 of Population

National Annual Apprehensions for the Latest 10 Calendar Years								
AGE 10 - 13 Numbers of Apprehensions								
	Violence	Sexual	Drugs & Anti-social	Dishonesty	Property Damage	Property Abuse	Administrative	Total
1997	1,038	63	713	7,334	1,617	996	75	11,836
1998	867	36	563	6,201	1,361	843	74	9,945
1999	904	34	705	6,997	1,613	853	58	11,164
2000	1,062	55	1,016	7,260	1,987	917	111	12,408
2001	1,083	48	834	6,221	1,804	1,010	125	11,125
2002	1,035	203	849	6,307	1,621	985	130	11,130
2003	1,013	78	796	6,456	1,679	921	353	11,296
2004	1,050	113	635	5,503	1,508	870	63	9,742
2005	988	67	627	4,747	1,456	694	45	8,624
2006	926	64	557	4,223	1,517	569	34	7,890
10 - 13 Rates of Apprehensions (per 10,000)								
1997	47.18	2.86	32.40	333.32	73.49	45.27		3.41
1998	38.42	1.60	24.95	274.82	60.32	37.36		3.28
1999	39.14	1.47	30.53	302.98	69.84	36.94		2.51
2000	44.74	2.32	42.81	305.88	83.72	38.63		4.68
2001	44.41	1.97	34.20	255.13	73.98	41.42		5.13
2002	41.74	8.19	34.24	254.37	65.38	39.73		5.24
2003	40.41	3.11	31.76	257.56	66.98	36.74		14.08
2004	42.26	4.55	25.56	221.49	60.70	35.02		2.54
2005	40.47	2.74	25.68	194.44	59.64	28.43		1.84
2006	38.42	2.66	23.11	175.20	62.94	23.61		1.41

## UK - Report: Criminal Age of Responsibility Should Be Raised

Source: [http://bbc.co.uk/2/hi/uk\\_news/5369274.stm](http://bbc.co.uk/2/hi/uk_news/5369274.stm)

**T**he UK government is being urged to raise the age of criminal responsibility in England and Wales from 10 to 14.

A report for the Centre for Crime and Justice Studies suggested that too many children are prosecuted and criminalised.

It called for greater emphasis on educational, social and mental health needs and suggested care proceedings should be used for younger offenders.

The report recommended a new sentencing framework, including a residential training order of up to two years (five years for serious crimes).

The author of the report, Rob Allen spent eight years on the UK Youth Justice Board and said that there has been an increasing intolerance by the public for teenage misbehaviour. Speaking of the young offenders he has dealt with, he said that they often came from disturbed backgrounds. He believes that often they have not reached a point in development where they you could confidently say they know right from wrong and may not be aware of the consequences of their actions.

The age of criminal responsibility is higher in many other countries, for example France is 13, Japan is 14 and Italy is 15.

Mr Allen suggested that the labelling of young offenders as delinquents may initiate a cycle that may be difficult to break out of.

In 1997, the UK government lowered the age of criminal responsibility from 14 to 10 and since then, according to the report, this had resulted in an increased proportion of young people being prosecuted.

The Home Office justification is that the current age of criminal responsibility allows for early interventions in order to prevent offending and help young people develop personal responsibility.

The Children's Society Chief Executive Bob Reitemeier considered it was "absolutely essential" that the age of criminal responsibility was raised back to 14.

He said that the it was "...staggering that young people as young as 10 can be placed in custody..." and that there should be attention on prevention and alternatives to custody.

## "Hot Off the Press - Youth Justice Statistics In New Zealand: First Annual Release"

The following tables are part of a recently published report by the *Ministry of Justice: Youth Statistics in New Zealand:1992- 2006 (by Jin Chong)*.

This is the first release of annual stand-alone Youth Justice figures. The full report can be found at: <http://www.courts.govt.nz/pubs/reports/2007/nz-youth-justice-statistics-1992-2006/index.html>.

The Ministry is open to suggestions as to how to improve the content and format of the Report.

"Court in the Act" editors have summarised the key messages as follows:

1. 2006 was the lowest police apprehension rate for youth offending since at least 1995.
2. The apprehension rate for property offending was the lowest in 10 years
3. Burglary apprehension rates are dropping
4. While apprehensions for violent offending have increased, the significant increases have only occurred since 2004. As to the violent offending statistics:
  - (a) The actual number of people involved may be no more than about 1000; and
  - (b) The rate of the increase in apprehensions for serious violent youth offending mirrors that in almost all other cohorts of the population (except 10-13 year olds where there is a significant reduction in apprehension rates for violence: refer to table 1 on

page 2).

The rise in apprehensions for serious violent offending should concern us all, and those involved in youth justice must take it seriously.

The real question however, appears to be – when statistics across the whole community appear to be stable or decreasing, why are apprehensions for violent offending for every age group increasing (except for 10- 13 year olds)?

The other point is that the increase in apprehensions for violent youth offending is the truth, but not the whole truth. Few commentators or media reporters have presented a balanced view of the issue. Most have failed to highlight the significant decrease in the rate of offending for youth overall.

**Note:** All the following tables are based on charges laid, rather than young people charged.

Table 3.3 on page 4 refers to **numbers** of apprehensions for 14-16 year olds from 1995 -2006. Table 3.4 on page 5 refers to the **rates** of offending per 10,000 of population for 14-16 year olds from 1995-2006. The latter gives a truer picture as it takes into account the population growth, while raw numbers may be misleading.

**Table 3.3 National Annual Apprehensions for the Latest 10 Calendar Years: 14 –16 Year Olds: Numbers****Table 3.3 Number of Police apprehensions of 14 to 16 year olds for non-traffic offences, by offence type, 1995 to 2006 <sup>1</sup>**

Offence type	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Homicide <sup>2</sup>	8	5	4	6	1	3	5	7	5	12	3	8
Violent sexual <sup>3</sup>	89	99	88	102	69	91	89	127	127	130	82	125
Aggravated robbery	216	184	240	201	179	171	170	192	215	180	290	310
Robbery	138	138	118	94	87	139	94	128	111	106	177	185
Grievous/serious assault <sup>4</sup>	862	858	815	840	953	980	987	1049	1097	1235	1324	1512
Minor assault <sup>5</sup>	1231	1308	1209	1263	1250	1272	1394	1344	1412	1370	1345	1392
Other violent	146	149	156	152	169	173	146	188	199	197	223	211
<b>Subtotal—Violent</b>	<b>2690</b>	<b>2741</b>	<b>2630</b>	<b>2658</b>	<b>2708</b>	<b>2829</b>	<b>2885</b>	<b>3035</b>	<b>3166</b>	<b>3230</b>	<b>3444</b>	<b>3743</b>
<b>Other against persons</b>	<b>409</b>	<b>459</b>	<b>448</b>	<b>495</b>	<b>477</b>	<b>578</b>	<b>571</b>	<b>666</b>	<b>701</b>	<b>687</b>	<b>689</b>	<b>847</b>
Burglary	3721	3943	3750	3487	3430	4093	3514	3295	3529	3386	3516	3677
Theft	8608	8442	7123	7250	7722	7628	7308	8053	8185	7962	7766	6733
Motor vehicle conversion	2260	2218	2042	1681	1534	1347	1581	1720	1767	1527	1666	1461
Arson	142	159	153	197	175	227	193	138	227	226	211	254
Wilful damage	2528	2766	3248	2600	3269	3519	3552	3202	3714	3399	4040	4129
Other property <sup>6</sup>	3481	3478	3347	3335	2835	2873	2753	3193	3535	2609	2562	2574
<b>Subtotal—Property</b>	<b>20740</b>	<b>21006</b>	<b>19663</b>	<b>18550</b>	<b>18965</b>	<b>19687</b>	<b>18901</b>	<b>19601</b>	<b>20957</b>	<b>19109</b>	<b>19761</b>	<b>18828</b>
<b>Drug</b>	<b>1184</b>	<b>1492</b>	<b>1950</b>	<b>1851</b>	<b>1910</b>	<b>1977</b>	<b>1917</b>	<b>1829</b>	<b>1723</b>	<b>1315</b>	<b>1275</b>	<b>1312</b>
<b>Against justice</b>	<b>467</b>	<b>586</b>	<b>759</b>	<b>952</b>	<b>1018</b>	<b>1331</b>	<b>1308</b>	<b>1444</b>	<b>1240</b>	<b>1082</b>	<b>956</b>	<b>804</b>
<b>Good order</b>	<b>3412</b>	<b>3354</b>	<b>3839</b>	<b>3501</b>	<b>3720</b>	<b>3712</b>	<b>4127</b>	<b>4322</b>	<b>4560</b>	<b>4119</b>	<b>3950</b>	<b>4059</b>
<b>Miscellaneous</b>	<b>1487</b>	<b>1633</b>	<b>1738</b>	<b>1992</b>	<b>1867</b>	<b>1210</b>	<b>1082</b>	<b>1198</b>	<b>1647</b>	<b>958</b>	<b>1024</b>	<b>858</b>
<b>Total</b>	<b>30389</b>	<b>31271</b>	<b>31027</b>	<b>29999</b>	<b>30665</b>	<b>31324</b>	<b>30791</b>	<b>32095</b>	<b>33994</b>	<b>30500</b>	<b>31099</b>	<b>30451</b>

**Notes**

1. The data used to produce this table were sourced from New Zealand Police. For consistency with the rest of the report, offences were grouped using the Ministry of Justice offence classification rather than the Police classification. The miscellaneous category includes a small number of apprehensions that were classified as unknown. The figures in this table do not refer to distinct offenders, as people who are apprehended for more than one offence are counted once for each offence. See Section 2.3 for more detail on statistics sourced from New Zealand Police.
2. Murder, manslaughter and attempted murder.
3. Sexual violation, attempted sexual violation and indecent assault.
4. Grievous and serious assaults, including assaults by males on females and assaults on children. Grievous assaults include assault with a weapon, wounding with intent and injuring with intent, but also include aggravated wounding or injury, disabling, doing a dangerous act with intent, acid throwing and poisoning with intent to cause grievous bodily harm. Serious assaults include common assault under the Crimes Act 1961, but also include assault with intent to injure, injuring by an unlawful act and aggravated assault (including assault on a Police officer or a person assisting the Police under the Crimes Act 1961).
5. Mainly common assault under the Summary Offences Act 1981.
6. Mainly unlawfully getting into or interfering with a motor vehicle, unlawfully taking a bicycle, receiving stolen property and fraud-related offences.

**Table 3.4. National Annual Apprehensions for the Latest 10 Calendar Years: 14-16 Rates of Offending per 10,000 population of 14-16 year olds.**

**Table 3.4 Police apprehension rates per 10,000 population of 14 to 16 year olds for non-traffic offences, by offence type, 1995 to 2006**

Offence type	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Homicide <sup>3</sup>	0	0	0	0	0	0	0	0	0	1	0	0
Violent sexual <sup>4</sup>	6	6	5	6	4	5	5	7	7	7	4	7
Aggravated robbery	13	11	15	12	11	10	10	11	12	10	15	16
Robbery	9	8	7	6	5	8	6	7	6	6	9	10
Grievous/serious assault <sup>5</sup>	54	53	50	52	58	59	58	60	61	66	70	79
Minor assault <sup>6</sup>	77	81	74	78	77	77	82	77	78	74	71	73
Other violent	9	9	10	9	10	10	9	11	11	11	12	11
<b>Subtotal—Violent</b>	<b>167</b>	<b>169</b>	<b>162</b>	<b>164</b>	<b>166</b>	<b>171</b>	<b>171</b>	<b>174</b>	<b>176</b>	<b>174</b>	<b>181</b>	<b>196</b>
<b>Other against persons</b>	<b>25</b>	<b>28</b>	<b>28</b>	<b>31</b>	<b>29</b>	<b>35</b>	<b>34</b>	<b>38</b>	<b>39</b>	<b>37</b>	<b>36</b>	<b>44</b>
Burglary	231	243	231	215	210	247	208	189	196	182	185	192
Theft	535	520	438	447	473	460	432	461	454	428	409	352
Motor vehicle conversion	141	137	126	104	94	81	94	98	98	82	88	76
Arson	9	10	9	12	11	14	11	8	13	12	11	13
Wilful damage	157	170	200	160	200	212	210	183	206	183	213	216
Other property <sup>7</sup>	216	214	206	206	174	173	163	183	196	140	135	134
<b>Subtotal—Property</b>	<b>1289</b>	<b>1294</b>	<b>1209</b>	<b>1145</b>	<b>1161</b>	<b>1187</b>	<b>1118</b>	<b>1122</b>	<b>1163</b>	<b>1027</b>	<b>1040</b>	<b>983</b>
<b>Drug</b>	<b>74</b>	<b>92</b>	<b>120</b>	<b>114</b>	<b>117</b>	<b>119</b>	<b>113</b>	<b>105</b>	<b>96</b>	<b>71</b>	<b>67</b>	<b>69</b>
<b>Against justice</b>	<b>29</b>	<b>36</b>	<b>47</b>	<b>59</b>	<b>62</b>	<b>80</b>	<b>77</b>	<b>83</b>	<b>69</b>	<b>58</b>	<b>50</b>	<b>42</b>
<b>Good order</b>	<b>212</b>	<b>207</b>	<b>236</b>	<b>216</b>	<b>228</b>	<b>224</b>	<b>244</b>	<b>247</b>	<b>253</b>	<b>221</b>	<b>208</b>	<b>212</b>
<b>Miscellaneous</b>	<b>92</b>	<b>101</b>	<b>107</b>	<b>123</b>	<b>114</b>	<b>73</b>	<b>64</b>	<b>69</b>	<b>91</b>	<b>51</b>	<b>54</b>	<b>45</b>
<b>Overall</b>	<b>1889</b>	<b>1926</b>	<b>1907</b>	<b>1851</b>	<b>1878</b>	<b>1889</b>	<b>1821</b>	<b>1838</b>	<b>1886</b>	<b>1639</b>	<b>1637</b>	<b>1591</b>

#### Notes

1. The data used to produce this table were sourced from New Zealand Police. For consistency with the rest of the report, offences were grouped using the Ministry of Justice offence classification rather than the Police classification. The miscellaneous category includes a small number of apprehensions that were classified as unknown. The figures in this table do not refer to distinct offenders, as people who are apprehended for more than one offence are counted once for each offence. See Section 2.3 for more detail on statistics sourced from New Zealand Police.
2. Rates per 10,000 have been calculated using population estimates for the 14 to 16 age group in Table 2.1. See Section 2.2.1 for more detail on population estimates sourced from New Zealand Police.
3. Murder, manslaughter and attempted murder.
4. Sexual violation, attempted sexual violation and indecent assault.
5. Grievous and serious assaults, including assaults by males on females and assaults on children. Grievous assaults include assault with a weapon, wounding with intent and injuring with intent, but also include aggravated wounding or injury, disabling, doing a dangerous act with intent, acid throwing and poisoning with intent to cause grievous bodily harm. Serious assaults include common assault under the Crimes Act 1961, but also include assault with intent to injure, injuring by an unlawful act and aggravated assault (including assault on a Police officer or a person assisting the Police under the Crimes Act 1961).
6. Mainly common assault under the Summary Offences Act 1981.
7. Mainly unlawfully getting into or interfering with a motor vehicle, unlawfully taking a bicycle, receiving stolen property and fraud-related offences.

### Grievous/Serious Assault Data – Unpacked.

We at ‘Court in the Act’ were particularly interested in unpacking the apprehension numbers and rates for grievous assaults for 14-16 year olds for the years 1995 – 2006. Much is made of the increase in numbers of violent offences for this age group and we wanted to see whether the increase was actually due to top-end offences or whether there was another explanation.

#### The Results

There has been a large increase in rate of apprehensions for the least serious offence within this category, that is common assault for which the rate has increased from 27 per 10,000 of population in 1995 to 37 per 10,000 in 2006.

The numbers for common assault are significantly higher than other types of offences, so that it would appear that the bottom end offending accounts for most of the overall increase in apprehensions for grievous/serious assault offences.

Assault with a weapon, and wounding with intent have also increased significantly.

Male assault female apprehensions have remained fairly constant over the last 10 years, with the rate fluctuating between 5 and 7 per 10,000.

Note: the tables do not refer to distinct offenders, as people who are apprehended for more than one offence are counted once for each single offence.

**Table 4** Number of Police apprehensions of 14 to 16 year olds for grievous/serious assault offences, by offence type, 1995 to 2006

Offence Type	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
<b>Grievous Assault</b>												
o Wounding With Intent	18	25	31	21	16	26	16	18	38	34	45	74
o Injuring With Intent	50	33	25	41	15	39	31	50	53	81	43	104
o Aggravated Wounding/Injury	10	5	6	5	0	1	1	5	6	5	2	4
o Disabling/Stupefying	2	0	1	0	0	0	0	0	0	0	0	0
o Dangerous Acts With Intent	10	0	4	7	4	0	2	1	6	0	0	2
o Assault With Weapon	74	105	113	120	158	125	185	187	152	177	229	217
o Miscellaneous Grievous Assaults	0	0	1	0	0	1	0	0	0	0	0	0
<b>Serious Assault</b>												
o Injure - If Death Ensued	0	0	0	0	0	1	0	2	0	1	0	5
o Aggravated Assaults	53	26	35	50	63	42	39	21	42	48	55	52
o Assault With Intent To Injure	102	70	63	64	83	56	82	98	95	119	123	147
o Assault Police	11	15	23	11	22	25	19	27	33	23	22	45
o Assault Person Assist Police	2	2	1	5	2	3	2	1	1	1	0	3
o Assault Person Lawful Executing Process	0	0	0	0	0	0	0	0	2	0	0	1
o Common Assault	436	453	427	425	491	576	504	531	536	608	691	705
Male Assault Female	81	109	71	73	85	73	89	94	119	123	104	136
Assault Child	13	15	14	18	14	12	17	14	14	15	10	17
Total Grievous/Serious Assault	862	858	815	840	953	980	987	1049	1097	1235	1324	1512

#### Notes

1 The data used to produce this table were sourced from New Zealand Police. For consistency with the Youth Justice annual report, offences were grouped using the Ministry of Justice offence classification rather than the Police classification. The figures in this table do not refer to distinct offenders, as people who are apprehended for more than one offence are counted once for each offence.

2 Offence types with small number of apprehensions must be treated with caution, as significant percentage changes between these years are due to the small numbers.

**Table 5 Police apprehension rates per 10,000 population of 14- to 16-year-olds for grievous/serious assault offences, by offence type, 1995–2006**

Offence Type	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
<b>Grievous Assault</b>												
○ Wounding With Intent	1	2	2	1	1	2	1	1	2	2	2	4
○ Injuring With Intent	3	2	2	3	1	2	2	3	3	4	2	5
○ Aggravated Wounding/ Injury *	1	0	0	0	0	0	0	0	0	0	0	0
○ Disabling/Stupefying *	0	0	0	0	0	0	0	0	0	0	0	0
○ Dangerous Acts With Intent *	1	0	0	0	0	0	0	0	0	0	0	0
○ Assault With Weapon	5	6	7	7	10	8	11	11	8	10	12	11
○ Miscellaneous Grievous Assaults *	0	0	0	0	0	0	0	0	0	0	0	0
<b>Serious Assault</b>												
○ Injure - If Death Ensued *	0	0	0	0	0	0	0	0	0	0	0	0
○ Aggravated Assaults	3	2	2	3	4	3	2	1	2	3	3	3
○ Assault With Intent To Injure	6	4	4	4	5	3	5	6	5	6	6	8
○ Assault Police	1	1	1	1	1	2	1	2	2	1	1	2
○ Assault Person Assist Police *	0	0	0	0	0	0	0	0	0	0	0	0
○ Assault Person Lawful Executing Process *	0	0	0	0	0	0	0	0	0	0	0	0
○ Common Assault	27	28	26	26	30	35	30	30	30	33	36	37
Male Assault Female	5	7	4	5	5	4	5	5	7	7	5	7
Assault Child	1	1	1	1	1	1	1	1	1	1	1	1
<b>Total Grievous/Serious Assault</b>	<b>54</b>	<b>53</b>	<b>50</b>	<b>52</b>	<b>58</b>	<b>59</b>	<b>58</b>	<b>60</b>	<b>61</b>	<b>66</b>	<b>70</b>	<b>79</b>

**Notes**

- 1 The data used to produce this table were sourced from New Zealand Police. For consistency with the classification used for courts statistical reports, offences were grouped using the Ministry of Justice offence classification rather than the Police classification. The figures in this table do not refer to distinct offenders, as people who are apprehended for more than one offence are counted once for each offence.
- 2 Rates per 10,000 have been calculated using population estimates for the 14 to 16 age group sourced from Statistics New Zealand, see Table 2.1 for population estimates as presented in the annual report titled 'Youth Justice Statistics in New Zealand: 1992 to 2006'.
- 3 The offence types are marked with an \* to signify that there were ten or fewer apprehensions, these values must be treated with caution as the rate is calculated from small numbers



**Table 6 National Annual Apprehensions for Violence Offences for the Latest 10 Calendar Years : 14-16 and Adult Age Groups:  
Numbers 1997-2006**

<u>AGE GROUP</u>	<u>Violence 14-16</u>	<u>Violence 17- 20</u>	<u>Violence 21- 30</u>	<u>Violence 31-50</u>	<u>Violence 51-99</u>
1997	3,156	5,582	10,961	10,297	1,165
1998	3,137	5,687	10,631	10,601	1,289
1999	3,233	5,535	9,947	10,809	1,280
2000	3,384	5,554	10,476	11,465	1,432
2001	3,507	5,746	10,684	12,658	1,658
2002	3,636	5,958	11,095	13,079	1,698
2003	3,882	6,508	11,313	13,925	1,727
2004	3,845	6,366	10,944	14,396	1,867
2005	4,280	7,133	11,404	14,641	1,841
2006	4,655	7,917	11,816	15,135	2,000

  

<b>National Annual Apprehensions for Violence Offences for the Latest 10 Calendar Years : 14 –16 and Adult Age Groups: Rates (per 10,000 of population)</b>					
1997	194.12	258.14	194.26	91.94	12.91
1998	193.73	263.20	191.52	93.77	13.87
1999	198.03	255.67	184.08	95.06	13.39
2000	203.88	255.78	198.56	100.25	14.60
2001	207.81	260.37	206.95	110.28	16.47
2002	208.49	260.45	214.11	112.26	16.45
2003	215.74	275.79	215.00	117.50	16.31
2004	206.62	267.81	205.51	120.15	17.21
2005	225.18	297.89	212.39	121.61	16.54
2006	243.04	326.23	217.45	125.38	17.51

### Youth Offending Rates Consistent With The Rest of the Population

This table clearly demonstrates that the increase in apprehensions for violent offending over the last 10 years is not solely a “Youth” problem. The rate of the increase in apprehensions for serious violent youth offending mirrors that in almost all other cohorts of the population (except 10 –13 year olds, see Table page 2).

## **Free Legal advice and Representation Available to Children and Young Persons** by Robert Ludbrook

### **Obligation on Police to Advise Children and Young Persons of Free Legal Advice and Representation Available through Emergency** By Robert Ludbrook, Legal and Policy Consultant

There has been a significant enhancement of the rights of children and young persons being interviewed by the police. It is now necessary for the police, in addition to advising young suspects of their entitlement to consult with a lawyer, to advise them of the availability of a lawyer without cost under the Police Detention Legal Assistance Scheme.

This change has come about through combined effect of a Practice Note issued by the Chief Justice effective from 1 August 2007 and a High Court decision by Justice Baragwanath in June 2007.

#### *Practice Note on Police Questioning*

This Practice Note issued by the Chief Justice pursuant to s30(6) Evidence Act 2006 restates the Judges Rules and incorporates the advice requirement in s23 New Zealand Bill of Rights Act 1990. The Practice Note applies to adult suspects as well as those under

17 years. Paragraph 2 of the Practice Note states that whenever a member of the police has sufficient evidence to charge a person or seeks to question a person in custody the person must be cautioned before being invited to make a statement or to answer questions. It states that the caution to be given includes:

- (b) that the person has the right to consult and instruct a lawyer without delay and in private before deciding whether to answer questions *and that such right may be exercised without charge under the Police Detention Legal Assistance Scheme* (emphasis added).

#### *Case law on obligation of police to advise suspect or availability of free legal advice*

It was said in *R v Mallinson* [1993] 1 NZLR 528; (1992) CRNZ 707 (CA) that

“There is no duty on the police when informing persons arrested of their right to a lawyer to go on to give advice designed to facilitate the exercise of that right ... any duty to facilitate the manner

(Continued on page 9)



(Continued from page 8)

of its exercise is not triggered until there is an indication by the person arrested of the desire to consult with a lawyer (at 531, 710).

*R v Mallinson* involved an adult arrestee and was concerned with the accused's rights under s23(1)(b) Bill of Rights Act which states that every person who is arrested or detained shall have the right to consult and instruct a lawyer without delay and to be informed of that right.

The authors of Thomson/Brookers Child Law II Youth Justice have expressed the view that "If a right to the advice and assistance of a lawyer is to be meaningful to a young suspect, the child or young person must be aware that the attendance of a lawyer at the police station can be arranged without cost and that, once a request is made, questioning will be delayed until the lawyer has arrived. Children and young persons are less likely to have had a previous connection with a lawyer and to be aware of schemes that provide free legal advice for young suspects": para YJ6.3.03.

The Court of Appeal in *R v H* 26/7/02 CA 214/02 was concerned with a 15 year old who was suspected of committing a very serious offence. The police officer advised the young person that he could speak to a lawyer and that if he wished to speak to his own lawyer he could use the yellow pages or a phone book. He was further informed that the police had a list of lawyers available to give advice to suspects. The Court of Appeal followed its earlier decision in *Mallinson* but left open the question whether the police must advise a young suspect of the availability of free legal assistance through the Police Detention Legal Aid (PDLA) Scheme if the question of cost was raised by the young person.

In the earlier decision *Batish v Ministry of Transport: Keni v Police* (1993) 10 CRNZ 623; 1 HRNZ 333 (CA) the Court of Appeal had declined to adopt as a general principle the decision in *R v Brydges* (1990) 1 SCR 190 where the Canadian Supreme Court had decided that, as a matter of routine in all cases of arrest or detention, an accused must be informed of the availability of a roster of lawyers whose services are available free of charge. The Court of Appeal in *Batish* held that each case must be decided on its own facts and that what is required is a proper informative notification of the suspect's statutory rights tailored and appropriate to the particular circumstances.

It should be noted that *Batish* was decided before the PDLA scheme had been established and was influenced by the fact that the Legal Services Act 2002 did not at that time provide legal aid for police station advice. The scheme, which now has statutory force under ss49 to 52 Legal Services Act 2000, was established with the object of ensuring that there is available a sufficient number of lawyers to provide legal advice, or legal assistance, or both, to any unrepresented persons who:

- wish to consult or instruct a lawyer about any matter relating to their questioning by the police in relation to the commission of an offence; or
- are detained by the police, with or without arrest, and are entitled, under s23(1)(b) Bill of Rights Act 1990 to consult and instruct a lawyer without delay: s51(1) Legal Services Act.

The need for the police to advise young suspects of their right to free legal assistance came before the Court of Appeal in *R v A/o* 3/5/2007 CA/155/06 where it was argued that the principle in *Mallinson* did not apply and that a young suspect should be given information as to how a suitable lawyer could be contacted and that legal advice and representation could be obtained without cost. The Court was divided but, after reviewing the competing policy issues, held that there is no absolute requirement for the police to advise suspects of the PDLA scheme but failure to give such advice will be in breach of the Bill of Rights Act if:

- The circumstances at the time of the interview, including the suspect's age, experience and remarks, provide a substan-

tial basis for believing that the suspect might not have appreciated that he or she had a practical ability to obtain legal advice;

- The defendant provides an evidential basis for the contention that he or she chose not to take legal advice because of cost considerations;
- The Crown cannot disprove that contention on the balance of probabilities.

*Hugh Court decision in R v Z*

The right of a young suspect to be informed of the availability of free legal assistance received close consideration in *R v Z* 23/6/07, Baragwanath J HC Auckland CRI 2006-204-0487 where Justice Baragwanath examined the differences between the Bill of Rights Act provisions and those in the Children, Young Persons and their Families Act. He noted that the general policy of the law is that a statement by a person who has been detained or arrested is admissible but that the general policy in respect of under-17s is precisely the reverse: a statement is to be excluded unless the provisions in the CYPF Act are complied with. That policy conforms with the principle in s208(h) that a child or young person is entitled to special protection – a principle that is also reflected in Care of Children Act 2004. His Honour remarked that the fact that the majority in *A/o* had emphasised the importance of the suspect's age and this, taken together with the strength of the dissenting judgment of Chambers J in that case, suggested that young suspects must be advised of the means of getting practical access to legal advice so that the decision not to request such advice is truly autonomous. He added that:

"The need for an immediate response requires a learned capacity to give a considered reply; young people are not as a rule familiar with lawyers and means of access to them and cannot be said to have any intuitive capacity. There is no factual basis for a finding that young people generally have learned the skills required to secure a lawyer with or without fee. There is therefore a powerful case for making mandatory advice to young suspects as to how they can realistically secure legal advice".

The view that a young suspect's right to legal advice and assistance is not effectively met unless he or she has the information necessary to exercise that right seems unassailable. It is fortified by the requirement in s215(1) CYPF Act that the police officer must *explain* to the child or young person his or her right to a lawyer (a stronger term than *be informed of* in s23(1)(b) Bill of Rights Act) and the further requirement in s218 that the explanation of rights shall be given 'in a manner and in language that is appropriate to the age and level of understanding of the child or young person'.

The right under the Practice Note to be informed of the availability of a lawyer without charge under the PDLA scheme is restricted to situations where the police have sufficient evidence to charge a person with an offence or where the police seek to question a person in custody. The decision in *R v Z* is not so restricted and applies to any situation where the police ask a question intended to obtain an admission of an offence (s215 CYPF Act) or where a child or young person is in hospital.

These changes are likely to mean that more children and young persons will seek assistance from the Police Detention Legal Aid Scheme and members of PDLA panels will need to familiarise themselves with the specific protections afforded to children under the CYPF Act. The changes may provide an incentive for youth advocates to join the PDLA scheme as many young persons have made damaging admissions before they have the opportunity to receive advice from their youth advocate.

**Robert Ludbrook**  
28/8/07

## TRANSFER PROVISIONS NOT EFFECTIVE

### Summary, "New Campaign for Youth Justice Launched to End the Practice of Trying Youths as Adults"

By Roger Ghatt and Seth Turner, in *Juvenile and Family Justice Today/Summer 2007* -15

On March 21 2007, a new national campaign was unveiled in the USA, - The Campaign for Youth Justice (CFYJ) - designed to end the practice of trying youths as adults.

The CFYJ report *The Consequences Aren't Minor: The Impact of Prosecuting Youth as Adults and Strategies for Reform* examined state-level policies that emerged in the 1990's due to predictions of a violent crime wave in the 1990s caused by young "superpredators". The predictions did not come true, but in the meantime nearly every state passed laws to make it easier to try and sentence youths in the adult Courts. The report highlighted the following:

- Most often the decision to transfer youths to adult courts is not made by Youth Court Judges
- Most youths tried as adults are charged with non-violent offences.
- Placement of youths in adult jails is increasing - where they are at increased risk of assault, abuse and death.
- Laws allowing youths to be tried as adults do not promote public safety
- Access to effective legal counsel is a deciding factor on whether a youth is prosecuted as an adult.
- Transfer laws ignore the latest scientific evidence on the adolescent brain - the same evidence that barred the juvenile death penalty
- State laws contradict core federal protections which are supposed to prohibit youths from being confined with adult inmates.
- Youths of colour are disproportionately affected by these policies.

The report recommends that judicial transfer (waiver) should be a judicial decision only. Public polls supported this recommendation. Other state-level policy recommendations include:

- Increasing the age of juvenile Court jurisdiction to 18
- Ending the placement of youths in adult jails and prisons
- Increasing options for sentencing young offenders as adults
- Redirecting resources to expand developmentally appropriate treatment and service for youth
- Investment in quality legal counsel for youth.

### Transfer Provisions are Not Effective.

*Recent related research from the United States of America shows that young offenders are not being deterred by the threat of receiving criminal sanctions following direct waiver.*

Benjamin Steiner & Emily Wright, have published their findings following studies evaluating the effectiveness of the waiver, or transfer laws in *Assessing the Relative Effects of State Direct File Waiver Laws on Violent Juvenile Crime: Deterrence or Relevance?*

The use of transfer provisions or "waiver" laws are justified as a deterrent for those young people who are considered to be beyond the rehabilitative measures of a Youth Court, but those arguments are not necessarily convincing. Recent research from the United States has assessed the effects of 'direct file waiver laws' in fourteen states and the District of Columbia.

The findings from the study do not support the conclusion that young offenders are being deterred by the threat of receiving criminal sanctions following direct waiver. The analysis showed that the direct file law had a deterrent effect in only one state. The other thirteen states had either no effect or experienced an increase in their arrest rate for violent youth crime.

"Research from the United States of America shows that young offenders are not being deterred by the threat of receiving criminal sanctions following direct waiver."

## FETAL ALCOHOL SPECTRUM DISORDER

Excerpts from an Alcohol Healthwatch briefing paper, **“Fetal Alcohol Disorder in New Zealand: Activating the Awareness and Intervention Continuum”**

This paper outlines current knowledge of Fetal Alcohol, Spectrum Disorder, FASD. This disorder is caused by alcohol consumption by the mother during pregnancy.

The paper also explores the situation in New Zealand regarding its prevention and treatment.

### The Disorder

Alcohol is toxic to the fetus, particularly to its developing central nervous system.

FASD can cause permanent disabilities. As these disabilities are preventable, intervention is a critical public health issue. There is no known safe level of exposure to alcohol during pregnancy and the possible adverse effects can vary depending on for example, the timing of the exposure and the amount of alcohol consumed.

Fetal Alcohol Syndrome, FAS is regarded as the leading preventable cause of mental retardation in the developed world and is estimated to affect 1 in 100 live births.

The resulting disabilities may be associated with conditions such as Attention Deficit Disorder, Autistic Spectrum Disorder or Conduct Disorder.

### The New Zealand Position

The number affected is largely unknown, but on estimates of 1 case per 100 live births, New Zealand could expect 500 new cases per year.

A 2006 study showed that around 50% of women believed that some alcohol consumption in pregnancy was safe and nearly 20% had binged on at least one occasion in pregnancy.

### Alcohol and Pregnancy Advice in New Zealand

Medical advice on alcohol consumption during pregnancy is mixed.

A survey of medical practitioners over 11 years revealed that less than half of the doctors surveyed advised pregnant woman to abstain from alcohol, however most midwives advised abstinence, but 79% wanted more training in effective communication about alcohol and pregnancy.

There is a debate about the amount of alcohol that is safe to drink, with some advocating ‘moderate’ intake, which conflicts with official advice that there is no known safe level of alcohol consumption during preg-

nancy.

### FASD COSTS

The costs have never been estimated in New Zealand, but overseas evidence in Canada for example, suggests that the life-time care cost of \$1 million per person costs taxpayers an extra \$4 billion every year.

### Recommended Actions in New Zealand

Acknowledgement of the level of drinking in New Zealand requires urgent nationwide action.

Culturally appropriate, non-judgmental prevention programmes to high risk groups should be implemented.

Research into the advice that pregnant women are receiving and the provision and resourcing of education programmes to the primary health care section is required.

There needs to be an acceptance that the international cost estimates of FASD are applicable in New Zealand.

We must acknowledge that FASD is already costing New Zealand, and undertake an econometric study of the likely cost and cost effectiveness of establishing, integrating and maintaining FASD prevention and early intervention.

### New Zealand Policy

Compared to other countries there has been little development of policy relating to FASD in New Zealand.

### Current Policy Includes:

Priority three of the National Drug Policy 1998-2003 is “the reduction in the prevalence of drinking among pregnant women and women planning pregnancy”

The National Drug Policy 2007-2012 (NDP) recognises that alcohol-related harm includes “birth defects, including Fetal Alcohol syndrome and other permanent disabilities” A strategy based on the NDP has not yet been developed.

The existing National Alcohol Strategy 2000-2003 has identified outcomes of a reduction in drinking among pregnant women, and states that “indicators/targets cannot be identified until baseline data are generated”

The Ministry of Health strengthened their advice regarding drinking during pregnancy in 2006. Policy and programmes have not been developed, possibly due to the lack of evidence of the prevalence and incidence of

“A 2006 study showed that around 50% of women believed that some alcohol consumption in pregnancy was safe and nearly 20% had binged on at least one occasion in pregnancy.”

## Fetal Alcohol Syndrome... Continued from page 11

FASD in New Zealand.

FASD has limited recognition as a disability in New Zealand. Support is offered when an intellectual threshold is met, that being an IQ of under 70.

There is currently no indication that FASD is considered systematically as a specific policy issue within the Mental Health Directorate and associated services.

### Moving Forward on FASD prevention

Prevention measures need to be carried out with social, not economic imperatives in mind. It is important that while raising awareness of this sensitive issue, that any stigma and guilt be reduced and to ensure adequate follow-up support is available.

There needs to be a continuous delivery of health messages about drinking during pregnancy through the media. Information should be available on a planned, proactive and sustained communication strategy.

Secondary prevention aims to reach specific subgroups in society, such as adolescent pregnancies.

Universal and targeted screening will provide an effective early intervention opportunity to reduce the risk of alcohol use disorder on women and will ensure that all women are considered and treated equally.

High-risk factors for mothers of children with full FAS include poverty, having more than 3 children, a family background of alcohol abuse and starting drinking at an early age.

### Early intervention for high-risk women and children.

Comprehensive early intervention programmes have been implemented in a programme in Toronto which has reduced harm by using several integrating theoretical frameworks such as harm reduction, relational theory and attachment theory.

In New Zealand, the closest model to an integrated service is the Pregnancy and Parental Service of Community Alcohol and Drug Services in Auckland.

It does not have an integrated child assessment service. The model could be expanded to include children and support for families.

### Improving the outcome for the affected child

#### Suggested actions

A nationwide skills training programme from the health sector and allied workforce.

National guidelines for the support and treatment of FASD.

Training programmes for all relevant sectors to increase understanding of appropriate responses to address the needs of affected children.

Ensuring the eligibility for government funded services includes criteria that reflect the functional and behavioural deficits of development disorders like FASD to reduce the risk of secondary disability and family burnout.

## ASSESSMENTS NEEDED for Childhood learning Disabilities

*Moira Buchanan, founder of LBCTNZ, trading as Hope Train International has suggested that the area of Youth Offending should be in the office of the Principal Youth Court Judge.*

*“At the moment all Child/Youth offending comes under CYPFA, but as has happened in the past and is still happening now, FGC’s and their outcome is usually determined before it has even taken place. Judgments are made on young people before all the facts, including behaviours are investigated”*

*Buchanan argues there could be neurological differences, related to any of the following conditions. All of these conditions have are accompanied by a great lack of self-esteem, lack of confidence and depression.*

- Dyslexia
- ADD/ADHD
- Dyspraxia
- Dysgraphia
- Hyperlexia
- Hyper-sensitive Hearing
- Aspergers Syndrome
- Autistic Syndrome

*Buchanan believes that all youth, from 12 to 18 years should be assessed for their neurological pathways at their first or second offending. She says this can be done very quickly and with simple questions.*

*“CYPFS need to identify if the young person or persons have any learning or behaviour challenges, as these can and do impede their personal judgment.” This is quoted as “best practice for the child” in the United Nations Charter Rights of the Child.*

*Buchanan argues that youth aid police, tactical team police, probation officers, counsellors, CYFS social workers, Youth Court Judges and any others that have input to the future of young people all should be given the tools to help these young people.*

*At all meetings surrounding the young person, the young person should have input. If the offending is in a low category it should be encouraged that the offender and the victim work together with support, so the offender can learn respect and responsibility from within all those who are part of the teamwork to encourage positive engagement for all.*

**Dyslexia** summarised from [www.ninds.nih.gov/disorders/dysgraphis/dysgraphis.htm](http://www.ninds.nih.gov/disorders/dysgraphis/dysgraphis.htm) National Institute of Neurological Disorders and Stroke.

Dyslexia is a brain-based type of learning disability that specifically impairs a person's ability to read. These individuals typically read at levels significantly lower than expected despite having normal intelligence. Although the disorder var-



## CHILDHOOD LEARNING DISABILITIES CONT...

ies from person to person, common characteristics among people with dyslexia are difficulty with phonological processing (the manipulation of sounds) and/or rapid visual-verbal responding.

The main focus of treatment should be on the specific learning problems of affected individuals. The usual course is to modify teaching methods and the educational environment to meet the specific needs of the individual with dyslexia.

The prognosis for dyslexia is mixed as the disability affects such a wide range of people, producing different symptoms and varying degrees of severity, that predictions are hard to make. The prognosis is generally good, however, for individuals whose dyslexia is identified early, who have supportive family and friends and a strong self-image, and who are involved in a proper remediation program.

Current research avenues focus on developing techniques to diagnose and treat dyslexia and other learning disabilities, increasing the understanding of the biological basis of learning disabilities, and exploring the relationship between neurophysiological processes and cognitive functions with regard to reading ability.

**Dyspraxia** – summarised from [www.dyspraxia.org.nz](http://www.dyspraxia.org.nz)

Dyspraxia, also known as developmental dyspraxia, is a neurologically based disorder of the processes involved in the planning of movement (praxis) to achieve a purpose. The condition may affect the acquisition and execution of new skills.

Dyspraxia may affect physical, intellectual, emotional, social, language and sensory development. It may impair the normal process of learning and thus is a learning difficulty. It affects each person in different ways and at different stages of development and to different degrees.

Children with this handicap appear no different than their peers, until new skills are tried out and difficulties become apparent.

The World Health Organisation has stated in their "Diagnostic and Statistical Manual IV" that dyspraxia affects 6% of all children to varying degrees.

Therapy covers many areas, and may include perceptual motor training, speech and language therapy, maths and numeracy, reading and literacy, spelling, environmental manipulation, behavioural modification, and medication and treatment for any other disorders.

The main aim of treatment is to help the child to achieve his or her potential. Without the appropriate help at the right time, the child may grow into an extremely frustrated and possibly unemployable adult. There are those, who without early help, are a drain on our welfare and prison systems, and live with constant frustration.

**ADHD** summarised from [www.adhd.org.nz/define1.html](http://www.adhd.org.nz/define1.html)

"Attention Deficit Hyperactivity Disorder, ADHD, is an early onset, biological disorder, classically characterised by a triad of symptoms: hyperactivity, inattention and impulsivity. These 3 symptoms are persistent and at developmentally inappropriate levels."

*While much of what is written about ADHD is the subject of debate, the following information is generally agreed upon by the wider medical and scientific community.*

The Diagnostic and Statistical Manual of Mental Disorders

(4<sup>th</sup> Edition) breaks ADHD into 3 sub-categories:

- i. Attention deficit/hyperactivity disorder: combined type.
- ii. Attention deficit/hyperactivity disorder: predominantly inattentive
- iii. Attention deficit/hyperactivity disorder: predominantly hyperactive or impulsive

In New Zealand the exact number of children is not known, however in the USA approximately 2-5% of the school population has been diagnosed with one of the 3 types of ADHD. ADHD is 3 to 4 times more likely to occur in males than females.

The cause of ADHD is unknown, but it is agreed that it is biological in nature. Possible factors include genetics, exposure to toxins, and episodes of oxygen deprivation or exposure to toxins during pregnancy.

Two-thirds of children who have ADHD may have additional problems. 30-50% may have conduct disorders, and 20-30% may have anxiety problems. 20-30% of ADHD children also have learning problems and up to 30% have delayed motor development.

ADHD is not curable, but can be managed with behavioural and pharmacological regimes.

**Dysgraphia** summarised from [www.ninds.nih.gov/disorders/dysgraphis/dysgraphis.htm](http://www.ninds.nih.gov/disorders/dysgraphis/dysgraphis.htm) National Institute of Neurological Disorders and Stroke.

Dysgraphia is a neurological disorder characterised by writing disabilities. It causes a person's writing to be distorted or incorrect. The disorder emerges when children are introduced to writing. They make inappropriately sized and spaced letters, or write misspelled words, despite thorough instruction. These children may have other learning disabilities, but usually do not have any other social or academic problems. Dysgraphia is also characterised by wrong or odd spelling. The cause of the disorder is unknown.

Treatment may include treatment for motor disorders to help control writing movements and other treatments may address impaired memory or other neurological problems. Some physicians suggest that people with dysgraphia use computers to avoid the problem.

Some individuals with dysgraphia improve their writing ability, but for others, the disorder persists.

**Hyperlexia** summarised from [www.hyperlexia.org/aha\\_what\\_is.html](http://www.hyperlexia.org/aha_what_is.html)

Hyperlexia is a syndrome observed in children who have an ability to read words, far above what would be expected at their chronological age. They may have significant difficulty in understanding verbal language and abnormal social skills and difficulty in socialising and interacting appropriately with people.

Some children who are hyperlexic may also learn expressive language in a peculiar way, echo or memorise the sentence structure without understanding the meaning. A hyperlexic child rarely initiates conversation, has an intense need to keep routines and may exhibit ritualistic behaviour. In addition,

## CHILDHOOD LEARNING DIFFICULTIES cont...

tion they may have unusual fears, have difficulty with abstract concepts and have difficulty answering questions such as “what,” “where,” “who” and “why”.

Hyperlexia has characteristics similar to other disorders, such as autism, behaviour disorder, language disorder, emotional disorder, Attention Deficit Disorder, hearing impairment, giftedness or, paradoxically, mental retardation. Effective teaching strategies differentiate hyperlexia from other disorders. A thorough speech and language pathologist who is familiar with the syndrome of hyperlexia is a crucial first step. Psychological tests which emphasise visual processes rather than verbal skills aid in identifying hyperlexia.

The prognosis for a hyperlexic child depends on developing language expression and comprehension skills. Speech and language therapy and early intervention programs can help achieve this objective.

It is important to teach the child appropriate social skills. Providing opportunities for the child to interact with children whose behaviour is more socially appropriate is one way to accomplish this.

**Asperger Syndrome** summarised from [www.ninds.nih.gov/disorders/dysgraphis/dysgraphis.htm](http://www.ninds.nih.gov/disorders/dysgraphis/dysgraphis.htm) National Institute of Neurological Disorders and Stroke.

Asperger syndrome (AS) is a developmental disorder. It is an autism spectrum disorder (ASD), one of a distinct group of neurological conditions characterised by an impairment in language and communication skills, as well as repetitive or restrictive patterns of thought and behaviour. Unlike children with autism, children with AS retain their early language skills.

The most distinguishing symptom of AS is a child’s obsessive interest in a singular interest to the exclusion of any other. Children with AS want to know everything about their interest and their conversations with others will be about little else. Other characteristics of AS include repetitive routines or rituals; peculiarities in speech and language; socially and emotionally inappropriate behaviour and the inability to interact successfully with peers; problems with non-verbal communication; and clumsy and uncoordinated motor movements.

Children with AS are isolated because of their poor social skills and narrow interests. They may approach other people, but make normal conversation impossible by inappropriate or eccentric behaviour, or by wanting only to talk about their singular interest. Children with AS usually have a history of developmental delays in motor skills. They are often poorly coordinated with a walk that can appear stilted. Ideal treatments for AS coordinates therapies that address the three core symptoms of the disorder: poor communication skills, obsessive or repetitive routines, and physical clumsiness. Most professionals agree that the earlier the intervention, the better.

An effective treatment program builds on the child’s interests, offers a predictable schedule, teaches tasks as a series of simple steps, actively engages the child’s attention in

highly structured activities, and provides regular reinforcement of behaviour. It may include social skills training, cognitive behavioural therapy, medication for co-existing conditions, and other measures.

With effective treatment, children with AS can learn to cope with their disabilities, but they may still find social situations and personal relationships challenging. Many adults with AS are able to work successfully in mainstream jobs, although they may continue to need encouragement and moral support to maintain an independent life.

Research includes studies to understand what causes AS and how it can be effectively treated. One study is using functional magnetic resonance imaging (fMRI) to show how abnormalities in particular areas of the brain cause changes in brain function that result in the symptoms of AS and other ASDs. The effectiveness of an anti-depressant in individuals with AS and HFA is being trialed.

**Autistic Syndrome** summarised from [www.ninds.nih.gov/disorders/dysgraphis/dysgraphis.htm](http://www.ninds.nih.gov/disorders/dysgraphis/dysgraphis.htm) National Institute of Neurological Disorders and Stroke.

Autism (sometimes called “classical autism”) is the most common condition in a group of developmental disorders known as the autism spectrum disorders (ASDs).

Autism is characterised by difficulties with social interaction, problems with verbal and nonverbal communication, and repetitive behaviours or narrow, obsessive interests. These behaviours can range in impact from mild to disabling. Autism varies widely in its severity and symptoms and may go unrecognized, especially in mildly affected children or when more debilitating handicaps mask it. The cause of autism is uncertain, but it’s likely that both genetics and environment play a role.

There is no cure for autism. Therapies are designed to remedy specific symptoms and can bring about substantial improvement. The ideal treatment plan coordinates therapies and interventions that target the core symptoms of autism. Most professionals agree that the earlier the intervention, the better.

For many children, autism symptoms improve with treatment and with age. Some children with autism grow up to lead normal or near-normal lives. Children whose language skills regress early in life, usually before the age of 3, appear to be at risk of developing epilepsy or seizure-like brain activity. During adolescence, some children with autism may become depressed or experience behavioural problems.

### Correction: Court in the Act Issue 30

Page 2 Supervision with Activity Orders

The table on page 2 incorrectly recorded the 5th and 13th rating as “Whakatane”.

The correct 13th rating should have read “Waitakere”.

Apologies for the error.– Eds.



## Health and Education Assessment Programme

The Health and Education Assessment Programme is an inter-agency collaboration (Ministry of Health, Child Youth and Family, Ministry of Education) aimed at reducing re-offending by children and young people.

The programme is funded with \$1.16 annually to provide 460 Education and 1110 Health and Education Assessments, and recruitment and training of assessors.

### Key Objectives

1. To complete assessments before the Family Group Conference (FGC).
2. To inform FGC decision making
3. To have recommendations specifically addressing issues that are contributing to re-offending

### Eligibility

All child offenders subject to a FGC and young offenders subject to a first FGC are eligible. The programme is designed to target young people where a health or education issue becomes known or suspected during the consultation and convening process.

The co-ordinator has the responsibility to ensure the FGC is well informed and that the young person has the opportunity to give their informed consent.

### What happens to the Assessments?

The assessments inform the FGC and matters raised in the assessments are then reflected in the FGC plans and the recommendations are made available to the Court.

### Progress

The first 12 months of the programme 350 children/young people were referred and 292 assessments were completed. There has been 160 referrals in the first quarter of the second 12 month period, which amounts potentially to 640 referrals and 512 assessment for this year.

### Youth Justice Managers

The role of the Youth Justice Manager, (YJM) is to promote collaboration between the agencies or individuals providing the assessments and to ensure the Coordinators are making the assessments available to appropriate client. The YJM will advise the Programme Coordinator of any issues that might prevent assessments being completed and work with the Coordinator to ensure the programme runs successfully.

### Monitoring

The programmes are monitored, by a central monitoring group that meet monthly. Reports are completed quarterly.

### Key Contacts:

Mark Thorburn,	Ministry of Education
Shelly Dean,	Ministry of Education
Colin Hamlin,	Ministry of Health
Janette Thompson,	Child Youth and Family

## Decision not to transfer....R v LF, 17 August 2007, Youth Court, Waitakere, CRI-2005-004-014541, Judge P Recordon

**Charge:** GBH with intent to cause GBH, s283(o)CYPFA

### Case Summary:

LF (15 ½ yrs at the time of the offence) charged with two others after fight outside school ball after-party. LF and victim from rival schools, and associated with (but not part of) rival gangs. LF challenged victim to fist fight, which proceeded until victim was hit over the head by another offender with a piece of wood. LF kicked victim in the head as he lay on the ground after being hit with the wood. A bystander broke up the fight but victim was left close to death, and suffers from ongoing problems.

LF first appeared in Youth Court on 21 July 2005. Preliminary hearing in the Youth Court established a case to answer. Adult co-offenders then committed to High Court. LF offered Youth Court jurisdiction based on LF's clean record, his age, and CYPFA youth justice principles.

Delays in proceeding with defended hearing. Defended hearing held 12 months after first appearance (July 2006), with Court finding that charge was appropriate given evidence that LF could have caused brain injury by kicking.

FGC held September 2006. No decisions or recommendations made. Victims family forgave LF and invited LF and family around for a meal. Social worker report eventually prepared December 2006. Report recommended supervision order with detailed conditions. Court asked counsel for submissions relating to extending YC jurisdiction until LF was 19 yrs old. Court also asked CYF for further comprehensive plan involving LF's school. Hearing in June 2007 to consider plan.

Meanwhile Crown counsel questioning delays, and lack of orders. Suggested Court was preparing a backdoor to a s282 discharge,

and conducting an "experiment", "so inconsistent with what was required by law that the case would raise issues of credibility that could compromise the situation". LF's counsel advocating extended plan which would lead to s283 discharge.

Court considered s283(o) conviction and transfer to District Court. Cited *S v Police* [2000] NZFLR 380 (Potter J), *W v Registrar of the Youth Court (Tokoroa)* [1999] NZFLR 1000, and s284 factors. Judge acknowledged likelihood of appeals, and commented that appeal court would need to consider differences between Justice Harrison in *Police v Moala* (HC, Auckland, CRI-2006-404-389, 2 March 2007, Harrison J), and Justices Heath and Courtney in *X v Police* (2005) 22 CRNZ 58 in relation to sentencing of youth offenders in the adult courts.

Court also highlighted CYPFA age-related principles and cited *W & Ors v Registrar of the Youth Court (Tokoroa)* [1999] FRNZ 433 in the CA, before canvassing recent s283(o) cases.

### Decision

Decision adjourned. LF to participate in detailed social work plan until age 19. Conviction and transfer not appropriate due to high likelihood of rehabilitation plus good family and victim support. Seriousness of offence noted. By the time he is 19, LF will have been subject to plan terms the equivalent of home detention for 3 ½ years.

Court acknowledged that LF would prefer prison, and may not be the perfect candidate for Youth Court rehabilitation, due to minor bail breaches and attitude towards schooling. Also acknowledged that success of plan relies on the social worker. Judge promised to monitor LF's progress every two months, and transfer LF to District Court "if LF goes off the rails".

## NEW SKILLS FOR YOUTH JUSTICE RESIDENTS

Source: Issue 14, June 2007, Newsletter from Child Youth and Family, Ministry of Social Development.

Kingslea School is located inside the Child, Youth and Family youth justice facility, Te Puna Wai o Tuhinapo in Rolleston. The school now runs a course in barista skills to train students in hospitality. This was following the initiative of Tina Lomax, school principal who applied for funding to the Ministry of Education to use STAR Funding.

The course is NZQA- approved and teaches the students about coffee making and the commercial realities of the food and beverage industry.

*"Not only does the programme provide students with the skills that will enable them to find employment in the workforce, it also opens them up to café culture.*

*When they leave here, they won't feel threatened about going into a café or coffee shop – environments which may previously have been foreign or frightening to them. It expands their community if you like, it allows them access to places they can now feel comfortable and confident visiting," said Tina.*

TVNZ presenter John Sellwood visited the facility and on 6 June 2007 Close Up aired a feature which can be viewed at <http://tvnz.co.nz/view/page/410965/1169104>.

Kingslea School students will be offered other courses in the future, including audio-engineering, health and beauty, nutrition and health and safety.

## FAMILY GROUP CONFERENCE CONCEPT RECEIVES AWARD

Source: Issue 14, June 2007, Newsletter from Child Youth and Family, Ministry of Social Development

The American Humane Association presented an award to New Zealand Ambassador Roy Ferguson at a ceremony in Washington DC at the Association's Annual Family Group Decision Making Conference.

The award was in recognition of New Zealand's role as the pioneer of the Family Group Conference.

*"This award is valuable recognition from one of the oldest United States organisations dedicated to child protection, who*

*say that the Act and the Family Group Conference process have resulted in great strides in the child and family welfare systems in their country. Most importantly, they believe that the Family Group Conference has improved the lives of the United States' most vulnerable families. The Family Group Conference's origin's are uniquely New Zealand and because of its success, it has now been adopted and adapted as a best practice model in more than 20 countries worldwide and at least 35 states in the United States."* Ruth Dyson: Minister for Child Youth and Family

## SUCCESSFUL INTENSIVE YOUTH PILOT SCHEME

By Gregory Allen, Senior Police Youth Aid Officer

**N**elson Bays Intensive Youth Shadow Pilot contract initially funded for 18 months 2006-07 by the Crime Prevention Unit has shown a huge reduction in offending by a group of what had been hard core recidivist youth offenders.

The model is fantastic and the cost to run per year (wages for one person and funding of \$300 per person) is similar, or less than the cost of keeping one youth offender incarcerated in prison for 12 months.

Nelson needs immediate financial help from the youth justice sector to continue this programme which I am sure can be mirrored and successfully run throughout the country. The programme involved 64 hrs intensive time spent working with a young person and their family. The social worker had a budget of \$300.00 to spend on each client.

### ACHIEVEMENTS:

\* Huge reductions in offending by recidivist offenders whilst on programme, eg. youths with 30 plus offences over previous 3 yrs reduced offending levels to one - three offences over 6mths engaged in project. One boy went from 50 offences over 4 yrs to only one offence over last three months.

\* Youths reduced alcohol and drug abuse through education and informed choices. eg. Cannabinoid charts used to show success of reducing cannabis levels

\* Strengthened family relationships and quality family time which reduced tension and violence in family, and in turn reduced violence and wilful damage in the community.

\* Families gained confidence to re-engage in community and actively seek employment.

\* Young persons completing FGC plans successfully and within timeframes which reduced their time in the Youth Court.

### HOW IT WORKED:

\* Holistic plan written for young person and having significant adults in their life, eg. Y.P. plans a menu, budgets, cooks and serves the meal to family or "significant adults". For one Y.P. this was the first time in 6 mths that he had sat down and shared a meal at the table with his family yet he lived at home.

\* Strength based by using the Y.P. natural skills and positive aspects of personality to draw out their confidence and give success to what they do, eg. Y.P. re-discovers her musical talents and by building up her confidence becomes lead singer in a band at night and commences a music course during the day.

\* Re-invent their future by facilitating ideas, opportunity and vision., eg. Y.P. reconnected with parent doing a long prison sentence. This gave Y.P. strength to move on in his own life and he moved forward into employment whereas before he had no vision or drive.

This pilot was the most successful non-government driven intervention I have seen in 30 years policing that ran on a low budget and achieved top results. Consequently the Board of trustees at The New Hub have found some financial support to keep the project running a further month, and are working hard to find further funding.

**"IS THERE ANYONE OUT THERE"** in the youth justice sector in the position to give us discretionary funding, or know who we should be shoulder tapping to keep our proven project alive please contact; [gregory.allen@police.govt.nz](mailto:gregory.allen@police.govt.nz) or [Margaret Earney at IYS@nelsonhub.org](mailto:Margaret Earney at IYS@nelsonhub.org)

## Letters to Editor

Sir

In the June Issue of Court in the Act, you published a letter from my colleague Joseph Tohilima, Youth Justice Co-ordinator. His letter raises some interesting points to which I would like to respond. Joseph expresses his concern about young persons being prosecuted without having had legal representation at s 247 (b) Conferences which proceeded to Court. My concern in this area relates to the increasing numbers of young people appearing in Courts, and the number of times they are required to appear.

I became a Co-ordinator in 1989, and worked in Auckland and Taranaki until 2000. In 2004 I began relieving in the role on contract and have worked in seven different sites to date, for periods of up to four months. It is my observation in this period that we have lost the original impetus to keep young people out of Courts.

With the implementation of the new Act, there was a focus on keeping young people out of Court. Section 208 states as the first of the Youth Justice Principles "that, unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter."

The mechanism established for Police to directly refer offences to the Youth Justice Co-ordinator for a Family Group Conference, was in fact an extension of the existing Police powers to divert offenders out of and away from the criminal justice system. There were pre-existing diversionary processes (Children's Boards and Youth Aid diversions) but power still rested with officials, and often the focus was on "treating" young people out of offending, rather than holding them accountable for their actions. The only alternative to diversion was arrest and appearance in Court, followed by decision making done by officials, and unlikely to offer families opportunities to deal themselves with their young person, and certainly not giving victims the opportunity to be heard or involved in the decision making process.

The "system" held all the power, and the effect was net widening, young people often removed from their families and communities and incarcerated for long periods with other young offenders, and petty offenders becoming subject to social work attention which intruded on their lives for lengthy periods in a way which would never have been sanctioned for similar offending committed by adults. The system sought to "cure" them of offending, disempowered their families in the process, and failed to hold them accountable for their choices.

In 1993, Judge Fred McElrea, writing in a Legal Research Foundation publication, stated that the Court had now become a place of last resort. The available published figures suggested "that about 90% of young people's offending" was being diverted away from the Court. He wrote that the "there has been a dramatic reduction in the number of cases coming to Court in the order of 75-80%." He attributed this to the Principle in s208 quoted above, and the Family Group Conferences which it enabled. This change was seen as one of the crucial achievements of the Family Group Conference process, since research showed that young people who appeared in Court were more likely to appear again. The focus was clearly on keeping them out of Court. At Court, attention was paid to the principle of not having young offenders congregate in the Court setting; Youth Courts were separated out from adult Courts; several Courts introduced appointment systems; and Judges were careful to minimise the number of appearances of each young person. Indeed if there were an intention to discharge the informations, s282, on completion of the Plan, and confirmation would be provided of that completion, then it was the practice of Judge Mick Brown not to require the young person to be present at the remand date when the Discharge was ordered. Contrast that with practice in some Courts now, where young people are required to appear regularly to review progress of their Plan whilst they are completing it - a practice leading to multiple Court appearances. It is my belief that this practice is a serious interference with a young person's rights, and one which would not be tolerated in the adult jurisdiction for people undergoing community based sentences.

In addition in the early days the circumstances of arrests were rigorously scrutinised for adherence to the criteria for arrest set down in s214. This scrutiny was motivated by Judges, but also by Youth Advocates and Youth Justice Co-ordinators. As a result informations laid for some young people were withdrawn and proceeded through the s247 (b) referral channels to Conferences, and may have not been prosecuted thereafter. Police may well have arrested

## 'Giving up on Kids?' [Supervision with Activity]

The decline in use of SWA signals a broader malaise, that is, the sense of giving up on our kids. It should therefore be no surprise that the kids are giving up on society in large numbers.

Despite attempts to discuss the approaches of positive youth development with education and Youth Justice, we remain obsessed with curriculum, behaviour and containment.

It should therefore be of no surprise to anyone with knowledge of the youth development literature, that our young people will drop out of society and find solace in a variety of underclass cultures (often called "Gangs"). As a society we continue to adopt silo and piecemeal approaches as if Justice, Health and Education are uniquely separate entities.

Recent attempts in YJ Residences to focus on containment and security at the expense of positive youth development are but one example, you have just provided another in your 30th CIA newsletter.

Terry Fleming's recent work on young people who are not part of society's systems helps to quantify the problem and should have been a wake up call.

Counties Manukau is not unique, just quantitatively different. Increasing custodial approaches (or reducing SWA approaches) will not solve problems at a population level, although it will offer some young people access to youth development opportunities where someone is prepared to push the issue).

Increasingly I am having to turn to the NGO sector as the only major opportunity to create positive change for our young people. That may be a good thing overall, except that it again signals a defeat in the public sector.

Thank you for raising the agenda.

Is anyone listening?

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in the heat of an offending situation but could (and still can) exercise their discretion not to proceed with the arrest procedures and laying the informations. This practice seems to have been lost, with the result that Courts are clogged with cases which have no real need to be there. Thus we see the anomaly of aggravated robberies coming through on referral, (I have no problem there!) while shoplifting offenders are appearing on arrest.

The argument that a high %age of matters prosecuted culminate in a s282 Discharge, is not relevant to my argument, as an arrested young person will still have attended Court on three occasions. Indeed if the Youth Advocate has not had access to disclosure prior to the young person's first appearance, necessitating an initial remand without plea, (which seems to be par for the course in most cases) then there will be at least four appearances. This is a massive intervention by the state in the life of a young person and the family, for what can be minor offending.

Figures available for the year to date (from July 1 2006) are in my view a sad indictment of our

*(Continued on page 18)*



*Continued from page 12*

failure to keep up the momentum achieved by 1993, in terms of comparison between Diversions and Prosecutions. This year, nationally we have had referred 4034 Conferences under s247(b). From Court via s247(d) we have had 3886 ordered. (If you add in the s247 (a) (c) and (e) and s281 Conferences, the Court total becomes 4197.) Contrast these figures with the gains which had been made by 1993. I believe all involved professionals need to be examining and addressing the reasons for this preventable backsliding.

With reference to Joseph's enquiry to the Police at the beginning of the Conference, as to their intention to lay the information, I would comment that at Consultation, s245, there is clearly an intention to charge, or Police would not be making a referral. At that consultation, I need to be convinced that Police ARE prepared to prosecute, and can support that stance by indicating that they have sufficient evidence to believe they could prove the charge if it were laid and denied. Then the whole point of the Conference, is to enable the participants to put before the Police a plan which will persuade them NOT to prosecute, but to give the young person an opportunity to accept responsibility, demonstrate accountability, remain in the community, and satisfy the public interest. Thus, at the end of the Conference, when the family's Plan is put before the Officer, the family is recommending that the matters not be prosecuted, if the young person carries out the Plan. Officers then consider whether they accept that recommendation. They will make that decision based on a number of factors, including what transpires at the Conference (and the victim/offender interaction is crucial) and the Plan developed and presented by the family in their deliberations. Should they have reservations, then it is the Co-ordinator's job, to mediate between the parties to attempt to reach agreement. A compromise may have to be sought between the Police "bottom line", and the family's wishes, if they do not initially match. Most Youth Aid Officers I have worked with operate in this way, but I have also experienced the situation where Officers were acting under instructions from senior Officers to prosecute regardless of the Plan presented. This in my view seriously negates the Conference process, undermining the ability of families, and thus the public, to have faith in it.

If Police come to the Conference with an implacable intention to prosecute, and refuse to negotiate on this point when the family's Plan is presented, then this can create an atmosphere of frustration and injustice. Section 258 (b) in delineating the functions of the Conference, states that the Conference "is to consider whether that young person should be prosecuted, or whether the matter can be dealt with in some other way, and to recommend to the relevant enforcement agency accordingly". However, the final decision whether to prosecute or not, clearly belongs to the Police. What is unacceptable, is an Officer attending the Conference under instruction from a senior non attending officer to prosecute regardless of the family's Plan and wishes. For the process to be credible, the Officer representing the Police at the Conference, must be empowered to make that decision. Perhaps Police could comment on my understanding that it is contrary to the Police Youth Offending Strategy, for the attending officer not to have that autonomous decision.

Co-ordinators may also exercise the option provided by S.263 (2) to meet with the Enforcement agency, accompanied by a nominated person from the Conference. I have taken this step where I believed that the Plan proposed was sound, and the decision to proceed with prosecution unjustified. At that meeting, I then expect the Senior Officer to be able to justify their reasons for seeking prosecution (or for withholding agreement in the case of a disagreed outcome for a Court ordered Conference) with reference to the Principles of S.208. The presence of a satisfied victim at the Conference, can be a strong counterpoint to any argument that it is in the "public interest" to prosecute. I would also expect the officer to be able to explain how the Plan was impracticable, or at odds with the Principles of the legislation. I would point out that the option of Prosecution is still available should the young person not comply

with the requirements of the Plan. Attention needs to be paid also to the difference between recidivist and repeat offending. Just because a young person has previously appeared in Court, does not mean that any or all further offending should be prosecuted.

I have at times shared Joseph's concerns about legal input at S.247(b) Conferences, notably where the Summary of Facts appears "iffy", or where there are legal complexities, or where the family expresses strong reservations about the information. Sometimes at Consultation I have asked for a Summary to be redrafted to clarify the events, or have questioned whether the proposed charge fitted the facts given, before accepting the referral.

Sometimes the young person just needs to deny the offences as is his/her right. Appraised of the intention to deny the charge, I would then advise any victim that the Conference would not proceed beyond the entering of the denial and that there is therefore little point in their attending. In fact where a young person plans to deny the offences at the Conference, I believe the victim should NOT be present, because if the matter proceeds to a defended Hearing, I do not believe there should be any contact between them prior to that Hearing, particularly if the victim is likely to be asked to give evidence as to identification of the offender, as such evidence would clearly be contaminated if they have sat in a room with the identified alleged offender. Perhaps legal practitioners could comment on this aspect.

In most of the Jurisdictions I have worked, Youth Advocates are prepared on the request of the Co-ordinator, to attend a s247 (b) FGC where the matter is clearly likely to proceed to Court (e.g. for serious recidivist offending, or where a young person is on existing Orders) to give legal advice. Usually they will excuse themselves at the point where the family retires for private deliberations. Their presence is enabled under s25(1) (o). It is made clear to the family that the Advocate is not representing the young person, but is there to give legal advice. Where the matter then proceeds to Court, the Advocate will arrange to be appointed retrospectively. Very occasionally, an Advocate has attended in a pro bono capacity. In addition, most Advocates are prepared to offer advice to a Co-ordinator who seeks it. Of course, our new structure also gives us access to Departmental solicitors with Youth Justice expertise.

Where a s247 (b) Conference proceeds to Court, and a young person has not had legal representation, Youth Advocates will be appointed when matters are laid. It is their responsibility to ensure that the young person's legal rights are not transgressed. If they believe there are matters of concern they can make submissions accordingly. Perhaps Youth Advocates could comment on their experience representing young people who have been prosecuted following s247(b) Conferences.

Finally Joseph wonders whether we are breaching young peoples' rights under the Geneva Convention if they do not have representation at the Conference. The United Nations Convention on the Rights of the Child defines as a child everyone under the age of 18, thus covering the young people with whom we are concerned. Article 40 refers to children who have, or are alleged to have, infringed the penal law. It is far too long to quote here in full, but worth comparing with our legislation. My conclusion is that our legislation complies with its dictates, and it is then up to us as practitioners to ensure that we do so too. I will however quote s3(b) which exhorts States to establish laws and procedures applicable to children who have infringed penal law and "Whenever appropriate and desirable, measures for dealing with such children WITHOUT RESORTING TO JUDICIAL PROCEEDINGS (My caps) providing that human rights and legal safeguards are fully respected.

Sounds familiar – isn't that our s208 (a)?

Trish Stewart

Youth Justice Coordinator

## “Short story of a victim of crime”

### By A S. A young offender

The author of this work of fiction is a young offender. A Judge asked her to write this during a remand while she could not attend school for a fortnight.

The winter days in Christchurch were like nothing that I had ever experienced before. It was hard to believe that it could get so cold in New Zealand. I reached for the matches to light the indoor fire, the only thing separating me from the icy winter blast. I cautiously lit the fire and began to huddle in front of it, praying that it would soon bring warmth to the chilly house that had begun to put me in a terrible mood. As I had contemplated many times, it is one thing to be in a house that's cold, but to be alone in one makes the situation that much more depressing. It was 6:50 and nearing the time for my daily intake of Shortland Street. My addiction to the drama series had heightened since my partner had left and the soap was quickly becoming a ritual for the cold and lonely nights I had been spending alone in the house. I glanced around; this place which I could no longer call home was the most familiar thing to me. Even when I closed my eyes for another night I could still picture where everything was placed. It had all become so familiar to me, as though I was a part of the furniture. I sometimes wondered if any of the neighbors even noticed that I was living here. But then I remembered the interfering next-door neighbors, always peering over the fence to try and catch me doing something interesting that they could add to their weekly gossip group. Oh how I despised gossip.

Halfway through Shortland Street I decided that the dramas of Chris and Toni Warner were the least of my problems and that their relationship issues were nothing compared to my past experiences. I arose from my seat and headed towards the TV to switch it off. As I was making my way across the living room I spotted something out of the corner of my eye, but this wasn't something that fitted in with my humble surroundings. No, what I saw wasn't the moth eaten couch or the empty fridge, it was something else, something I hadn't expected. Movement. I took another look to identify what it was that I had seen and didn't believe my eyes. Was that a person standing outside my window? No, it couldn't be. I never had visitors and even if I did wouldn't they have had the decency to come to the front door? Maybe it was Mrs. Jenkins, one of the prying next-door neighbors. Yes that would be it.

I turned off the TV and headed back for the couch, which had been adopted as my bed for the past couple of weeks. As I rested my head on one of the cushions I lay down to catch up on some of the sleep that I had been missing. I closed my eyes for what seemed like only a few seconds and awoke to someone breathing over me. I let out a scream that pierced through the silent house like a hot knife through butter. The figure grabbed a hold of my arm and lifted me to my feet. As I got to my feet I saw another figure in the shadows. One of them walked me over to a dinner table chair that had been placed in the middle of the room. I screamed for help, but no one came. Oh how I wished that Mrs. Jenkins would come and be nosy, just this once. I was told to sit down and blatantly refused. What was going on? A shotgun was pulled out and held to my head. I began to freak out. What was going to happen to me? What had I done to deserve this? And more importantly who were these people and what could they possibly want from me?

I acted in accordance with the demands being made by these people. I was scared for my life. Yes I had been very lonely these last couple of weeks however I was getting through it. I got a good look at one of the people who had invaded my house. They were wearing a black balaclava with a big black jacket on. Very original I thought. While one of the offenders was holding me in place with a gun to my head the other was going through all my stuff. No doubt

looking for something valuable. I could see the phone. I thought about it for a second then realized that I wasn't going anywhere with a gun held to my head. It was hard to catch what was being said as their balaclavas were muffling their voices. I came to the conclusion that the two people who had willingly entered my house without my prior consent were two males. They both had rather deep voices so I supposed that they must have been fairly old.

The house phone was within my reach, did I dare? Did I dare reach out to the phone to call the emergency services and put my life in the firing line? Was this person really going to pull that trigger if I moved? I had no idea. I could feel my heart beating in my throat. I was sweating; I seemed to be under a lot of pressure to make the right decision. How does one decide what to do in this situation?

I came to a decision and I very slowly and cautiously moved my left arm towards the phone, edging ever so slightly to grasp the hand piece. I warily dialed 111 and placed the phone down hoping that the call alone would be enough to send the police or some other form of help. I watched on helplessly as these 'thugs' ransacked my house, I watched as they tipped my life upside down leaving no cushion unturned and no cabinet unopened. I had never felt so vulnerable in all of my life.

I saw a flashing light outside. A couple of seconds passed before the intruders realized that the police had arrived outside my residence. The two began to panic as the police entered my home and pursued the offenders. They made a dash for it and sprinted through the kitchen hoping to evade the following police officer. All this was happening as I sat and observed as the two darted from the room and headed for the door only to be greeted by another police officer.

I was looked after and was handed a cup of tea. All this had happened so fast that it was hard to believe only a few minutes ago there was a gun being held to my head. They were taken away in the police car and I was assured that I would never see them again.

The image of the faces of the two people who had entered my home stayed in my mind for weeks. I had nightmare after nightmare, unable to shake their faces from my mind. The looks on their faces and the pure hate that I have for those two people is always at the back of my mind. The scene of the crime is replayed time and time again in my head and it's hard to believe that someone could be so inhumane. I am thankful everyday for the assistance of the police and without them I shudder to think what would have happened.

I no longer feel safe in my own home so I now live with Mrs. Jenkins and we are both a lot better off. She doesn't scrutinize me quite as much as earlier days but this arrangement is working out to my advantage. No longer do I spend my nights alone and I'm no longer within the firing line of crooks wanting to invade my personal space. My advice to anyone who is living alone or even thinking of taking on the world by themselves, look after yourself and put measures in place to make sure that this doesn't happen to you. Time has passed now and I still can't believe that only a few weeks ago I was put in that dreadful position. I am forever grateful to the police force of New Zealand.

## Letter From a Young Offender

**Letter from a 16 year old girl. Through an adult she became involved in dealing Cannabis . The adult's case was dealt with in the District Court and the Young Person's file was referred to Youth Aid.**

“ Out of everything I have done in my life, selling Marijuana is the one thing I wish I could go back and change. At the same time, however, I am glad I got in trouble for it. When I think back now, it was a good thing the police got involved. I don't even like thinking about what I'd be like now if they hadn't.

I know it was wrong and I still think to myself 'why'. I was stupid and didn't think my actions through and just thought 'oh well other people are doing it, why can't I? WRONG mentality to have and I feel idiotic thinking back to that point. I regret what happened so much it pains me thinking about it still.

My parent's reaction was the hardest part of the whole experience for me to handle. It felt as though I had ripped their hearts out. Not a nice feeling at all. I was their baby and I had ruined every part of the relationship I had with them in a single moment. To have that feeling sitting inside me, knowing what I had done to them cut every piece of my heart and soul. They have still been more supportive to me than anyone throughout this whole experience and I am so appreciative of that.

Losing friends was hard for about the first month and a half after returning back to school. Slowly however, people got over it and moved on and now nearly everyone that I in-

volved is talking to me again. At first when I went back to school, I adapted myself to not caring what other people think. I now know who my real friends are and I couldn't be happier. The friends that I did do in, I can understand why they hated me. Having one of your good mates give your name to the police can't be a good feeling.

From what I did, the biggest lesson I have learnt is to clearly and intelligently think things through before you do it and think about the consequences of your actions. Because I didn't do this I lost friends, lost so many peoples trust and lost a lot of my own dignity. It was an absolutely stupid decision on my part and I regret it every day. There are some people I am still friends with and some that I am not but the group of friends I have now are awesome and don't hold what I did in the past against me. I wouldn't have it any other way.

The policeman that handled my case was really nice to me during the trial and beforehand gathering information for the trial (*editors note: this trial was for the adult involved*). He didn't treat me as if I was just another dumb teenager but rather an actual person who had made a mistake and needed help.

I am finishing 7<sup>th</sup> form this year and enjoying it. My plans for next year are to continue working as a waitress getting my hospitality knowledge level up while completing a Business Management degree and hopefully after that travel the world for a year. My long term goal is to won a business by the time I am 30. I know it will be hard, but it is what I want so much and I am going to strive for it.”

## RESILIENCE IN DEVELOPMENT - Why some children 'make it' against the odds.

**SOURCE: Resilience Processes In Development: Fostering Positive Adaptation in the Context of Adversity** By Margaret O'Dougherty Wright and Ann S. Masten

In 'Handbook of Resilience in Children'

This chapter examines how children and adolescents 'make it' when their development is threatened.

The study of resilience has advanced in three major waves over the last 30 years from a primary focus of earlier clinical research on children at high risk for psychopathology to firstly descriptions of resilience phenomena. Secondly, by accounting of resilience by adopting a dynamic developmental-systems approach to theory and research on positive adaptation in the context of adversity or risk. The third wave is focused on creating resilience by preventative interventions, directed at changing developmental pathways.

### The First Wave

The first wave focussed on identifying predictors of positive adaptation against a background of risk or adversity. It soon became apparent that risk factors rarely occur in isolation and outcomes generally worsen as risk factors pile up in children's lives and resilience becomes less common. It became necessary to examine cumulative risk factors in order to predict and understand developmental outcome. Some forms of adversity are so chronic and massive that no child could be expected to be resilient until a safe and normative

environment is restored.

Protective variables have been harder to identify than assets as they are defined as exerting their effect primarily in the context of risk. One finding that has emerged is that resilient adaptation rests on good family relationships. A responsive, caring and competent caregiver is a very powerful asset fostering the child's growth in any context.

### Short List of Resilience Correlates.

**Person Focussed:** Identified resilient individuals to determine how they differed from others facing similar adversities who were not doing well.

**Variable-Focussed Approaches:** Examined the linkages among characteristics of individuals and their environments that contributed to good outcomes when risk or adversity was high. The research revealed a striking consistency of findings of broad correlates that has been referred to as "the short list".

### Examples of Assets and Protective Factors

#### Child Characteristics

- Social, adaptable temperament in infancy
- Good cognitive abilities and problem solving skills
- Effective emotional and behavioural and regulation strategies
- Positive view of self and on life
- Faith and a sense of meaning in life
- Characteristics valued by society and self



### Family Characteristics

- Stable home environment
- Parents involved in child's education
- Parental qualities listed as protective
- Socio-economic advantages
- Post secondary education of parent
- Faith and religious affiliation

### Community Characteristics

- High neighbourhood quality
- Effective schools
- Employment opportunities
- Good public healthcare
- Access to emergency services
- Connections to caring adult mentors and pro-social peers

### Cultural or Societal Characteristics

- Protective child policies
- Value and resources directed at education
- Prevention of and protection from oppression or political violence
- Low acceptance of physical violence

### The Second Wave

This wave focussed on an integrative understanding of the processes leading to resilience in development. Research has focussed on contextual issues, recognising the role of developmental systems in causal explanations, which has led to a greater emphasis on the role of relationships and systems beyond family. Studies are contextualised, 'including how the individual interacts with many other systems throughout life and with greater care about generalising conclusions about risk and protective factors from one context to another.'

Some adaptive systems have been well studied in the field of developmental psychology and include: the development of attachment relationships, moral and ethical development, self-regulatory systems for modulating emotion, arousal, and behaviour mastery. Other systems involve the broader cultural context such as extended family networks and religious organisations. 'If the major threats to children's adaptation are stressors that undermine the development of these basic protective systems, then it follows that children's ability to recover and be resilient will be highly dependant on these systems being restored.'

Studies have explored moderating processes that would explain protective effects that seem to work for only some people under some conditions.

One study found that maltreated children who displayed long-term adjustment drew on fewer relational resources and displayed more restrictive emotional self-regulation styles than control groups. Interpersonal and affective distancing and low expectations for parental involvement were related to later resilience.

### Stability and Change in Resilient Adaptation

As research developed it became clear that a child could be resilient or adaptive at one point, but not another. Conse-

quently the most complex models of resilience focus on healthy versus maladaptive pathways of development. The data obtained in longitudinal studies highlights the 'enduring capacity for change that exists throughout development' and provided insight into the possible processes that can produce stability or change. An example given was recent studies of 'desistance' in youth delinquency. The studies suggested that complex interactions of youth with parents, peers, and other adults in the home, neighbourhood and schools and workplace contribute to positive and negative trajectories across the transitions from childhood to adolescence and early adulthood. The studies suggest there are critical turning points in response to specific developmental challenges (eg. entering school). The reports are encouraging, with one report showing that most of their high-risk youths with serious coping problems had recovered by their 30's. Across all studies, strong ties to work and one's spouse were associated with eventual positive adaptation.

### The Third Wave: Intervening to Foster Resilience

Research to promote resilience is underway and increasingly takes the form of experimental studies to test resiliency theory.

Interventions to alter the life course of a child at risk for psychopathology, whether by reducing the risk exposure, boosting resources, or mobilising protective systems is itself a protective process.

Experimental intervention designs can provide a powerful test of how resilience occurs, how the intervention is associated with changes in this process and how the changes are associated with a subsequent change in the targeted behaviour of an individual.

Research on interventions to create resilience is in its early stages. The primary thrust of the third wave is to understand processes well enough to manipulate them most effectively to benefit children and society.

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