"Court in the Act"

A regular newsletter for the entire youth justice community

THE YOUTH COURT OF NEW | TE KŌTI TAIOHI O AOTEAROA

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Christmas Editorial

Judge Andrew Becroft, Principal Youth Court Judge

Dear "Court in the Act" readers,

I have just returned from a quick and hastily arranged visit to New York, with a reinforced view that our youth justice system is fundamentally sound and indeed deserves its reputation as principled, creative, and innovative. Along with Professor Chris Marshall, (recently appointed Professor to the first Chair of Restorative Justice that we know of in the world, based at Victoria University), I attended a consultation on youth incarceration and restorative justice funded by the Carnegie Institute. We were part of a panel of four overseas speakers. It was a fascinating experience and full of many challenges and highlights.

One that stood out was attending Riverside Church, where Dr Martin Luther King once preached, and then meeting for one hour (extended to three hours) a group of prisoners in the church's "Coming Home" programme. The programme provides mentors, employment and regular support group meetings for prisoners released back into the community. I met one man, imprisoned at age 16, for what he described as "second degree murder". A friend of his had pulled the trigger and killed a young man whom they vaguely knew. He took the "plea bargain" to second degree murder rather than running the risk of being convicted of first degree murder and thereby exposed to life imprisonment without parole. He was released at age 52! He told me that he certainly needed to be held to account. But he also reflected that he had been a young, irresponsible and reckless 16 year old who just did not think through events at the time. He wished his 52 year old self could have spoken to his 16 year old self.

I was advised, at least at the start of the meeting, not to disclose that I was a Judge. When I did mention my profession he fought to hold back the tears and said the only Judge he had met was the one who had sentenced him to imprisonment thirty-six years ago. Five other recently released prisoners all had similar stories.

The youth justice system in New York at least, seemed to depend heavily on charging wherever possible with an apparently strong reliance on custodial interventions. In that context, the four overseas delegates, the two from New Zealand, a professor from Belfast and the deputy head of Corrections from Oslo, Norway, all were encouraged to speak frankly about different models for youth offending and youth imprisonment. The New Zealand model attracted significant interest. Its twin emphasis on non-charging (up to 75% of young offenders dealt with firmly and ...

Editorial

promptly but in the community, not by the Court) and for those who were brought to the Youth Court (about 25%) – delegated decision making through the restorative family group conference model, seemed to catch the imagination of the conference.

I was struck by the juxtaposition in the USA of world-leading research – e.g. brain science and in respect of interventions for adolescent offenders that work – against what appeared to be quite restrictive legislation.

One matter of embarrassment is that New Zealand was invited to showcase its innovative system, but those in New York had not realised that the New Zealand legislation does not include 17 year olds within the youth justice process. In New York the cut off is at 16th birthday – hence the lengthy imprisonment for the 16 year old second degree murderer. In fact, it seems that only four jurisdictions in the developed world do not include 17 year olds – North Carolina, New York, Queensland and New Zealand. There is a strong "raise the age" movement within New York to follow what has recently happened in Connecticut. It will be interesting to observe developments in the New York State. There certainly seems a growing momentum for change. I was frequently asked, given New Zealand's signing of the United Nations Convention on the Rights of the Child, (which defines adulthood as beginning at 18th birthday), and given what the rest of the world is doing (to say nothing of the brain science), why our apparently innovative system does not include 17 year olds? The current situation is a source of considerable embarrassment to New Zealand on the world stage. Of course this is a matter entirely within the province of the legislative branch of government.

Not surprisingly, young offenders before the juvenile courts in the US, just as here typically accompanied by their mother, seemed little different from our offenders in New Zealand. Their problems – school disengagement, drug and alcohol use, transient and violent families, neuro-developmental issues such as Fetal Alcohol Syndrome and traumatic brain injury all seemed sadly familiar. This is to say nothing of the enormously disproportionate number of young offenders who have a past or present care and protection background of abuse and neglect.

As Christmas approaches, I want to pass on my thanks to all of you – individuals and government and non-government organisations. Thank you for the fantastic and usually unsung contribution you make in working with young people and their families – some of the most disadvantaged, marginalised and difficult in the country. In my view, your work is as good as any in the world. Your commitment, professionalism and energy is exemplary. Please keep up all you are doing.

The rates of apprehensions for youth offences in New Zealand have never been lower. Similarly, Youth Court numbers have nearly halved in five years. These figures are unprecedented in New Zealand's youth justice history. We have an opportunity as never before to emphasise our best practice and to re-double our commitment to reducing offending and Youth Court numbers. We must make the best use of this unparalleled, once in a lifetime opportunity for youth justice in New Zealand.

I wish each and every one of you a relaxed and refreshing and family-based Christmas and New Year period. The Youth Crime Action Plan charts the way forward for 2014. I look forward on behalf of the Youth Court to working with the wider youth justice system to ensuring implementation of YCAP and to secure further improvements in the delivery of our youth justice system.

With warm Christmas regards.

Yours faithfully,

Andrew Becroft

Note from editor:

This will be my last edition of Court in the Act as I am finishing up at Christmas time and off to go and start a career as a lawyer. It has been a real privilege to work with so many great people in the youth justice sector, and to edit this newsletter. Thank you very much to everyone who has helped contribute to it. I hope everyone has a relaxing and refreshing Christmas break—and look forward to a brand new editor of Court in the Act for 2014 :)

Ngā mihi maioha ki a koutou katoa.

Nāku, nā

Emily Bruce, Research Counsel to the Principal Youth Court Judge

Stop Press: EM Bail Changes

Corrections and Electronic Monitoring on Bail for Youth

Many people will already be aware the Department of Corrections (Corrections) and the New Zealand Police (Police) have been jointly managing Electronically Monitored Bail (EM Bail), in the adult jurisdiction, under a shared service model since 1 October 2013.

From 1 February 2014, Corrections will also take over the monitoring aspects of EM Bail for youth and will work collaboratively with Child, Youth and Family (CYF) to complete EM Bail Suitability Reports for the Youth Court. Corrections will also work closely with any allocated CYF Social Worker while the child or young person is subject to EM Bail.

Police will continue to be responsible for managing all other elements of EM Bail, including monitoring of non-electronic bail conditions (e.g. non-association conditions). Police will respond to notifications of non-compliance and undertake all enforcement action.

A new EM Bail Application form that will apply to both the Youth and District Court jurisdictions and an updated EM Bail Information Sheet for Youth will be available on the Department of Corrections and the New Zealand Police websites. The new streamlined form will be available for public use from 1 February 2014.

You can also access the new EM Bail Application form from the Ministry of Justice website from 1 February 2014.

A Letter to Be Proud Of

A Judge in Rotorua recently submitted this letter from a young person to us. We think that the young person's response is one of which many can be proud—those who worked with the young person and, most importantly, the young person himself.

Dear Judge,

I am writing to you to thank you for helping me in a dark time of my life.

I don't know if you know that you have helped me but you have. I know that you never wanted to send me to this yj but it was a only option.

I have got all the help I needed and more in here by staff and other young people, staff helped me by being suportov, caring and just being there for me me even if i was having a bad day, yp's helped me by making me never want to leave and never return.

I really appreciate this chance that im getting from you. All I can say is Thanks but what i can do is much more, and that is to take this chance and use it to get the best out of it.

Yours sincerly,

T

What do you do?

In this edition we talk to Pauline Gardiner, lay advocate.

Where Do you Work?

I am one of the two Lay Advocates in Whakatane – Vikki Paul and I were originally appointed as Lay Advocates for Te Kooti Rangatahi held once a month at Wairaka Marae, but increasingly youth appearing at District (Youth) Court are being assigned Lay Advocates.

Initially, it did feel a bit strange to me to be a Pakeha tasked with providing a cultural report to the Judge and I suppose I did anticipate that I might meet some resistance at times to that idea, from the various whanau or Rangatahi, but in nearly two and a half years I have not faced that situation.

Describe an Average Day

We don't really have an 'average' day as we are not working full time, but work for an allocated number of hours with each Rangatahi. So it may be best to describe our 'average' assignment with a youth.

We receive a letter from the Court, once a Youth Advocate, or the Judge has requested that a Lay Advocate be assigned – or if it is decided at an FGC that the youth wishes to transfer to Te Kooti Rangatahi.

We then visit with the Rangatahi – and hopefully some of the whanau – (it is most helpful if we are appointed prior to the first FGC, as that meeting usually offers the best opportunity to meet with most of the key contacts in the life of the Rangatahi).

At our first meeting, or interview with the young person, we establish how strong – if any, their cultural links are with their Marae, Tikanga, Te Reo etc. We help to prepare their pepeha and if they don't already know it, we try to find a member of the whanau who is able to give them the details.

It is quite concerning that many – if not most of Rangatahi are disconnected from their Marae – if indeed they, or their parents have ever really been connected. Many of the Rangatahi have however been through Kohanga Reo but have not retained fluency.

Along with reporting on their cultural connectedness, we do a full report for the Judge on other aspects of their life including whanau, education drug and alcohol issues, goals and barriers. Unfortunately, Alcohol and issues, goals and barriers. Unfortunately, Alcohol and drugs issues – particularly the very high use of cannabis is a factor in almost all cases.

(It is also very common to find these issues in their immediate whanau). I tend to ask a thousand questions to get as much information as possible and I am always amazed that the Rangatahi and indeed, most whanau answer very open and honestly, some very probing and personal questions. I think this may be due to the fact that as a Lay Advocate – we are not actually part of the 'system' of the 'authorities'.

We offer the Rangatahi and whanau any additional support they may need, or advocate a course of action on their behalf and act as a bit of a 'conduit' between other agencies during the Youth's time of involvement with the Court. We do try to encourage the whanau to attend Court and try to identify a Kaumatua or Kuia in their whanau, or from their Marae who might attend Court with them. We also speak about them, or for them in Court to perhaps put a different perspective to the Judge, or to provide some extenuating circumstances which may influence the way the Judge may make 'his' (in our case) ruling.

Do You Work with Other Agencies?

We work very closely with CYFS, Youth Aid, Marae or Iwi Social Services, Mental health and A & D services, schools and other agencies or service providers who work with Youth. We are very fortunate in our area that our CYFS Social Workers and Youth Justice Coordinators are very experienced, committed and caring and they do the majority of the hard work and support of these Rangatahi. Sometimes it could seem that we might be 'doubling up', but I think the crossover of our roles and support is really very positive and reduces the chances that we might overlook something important. Similarly – the Police Youth Aid Officers are just so impressive with their commitment and their willingness to help these young offenders find their way through their legal challenges with the least damage or long term ramifications as possible.

Our other agencies and service providers are quite overwhelmed with demands and it would be wonderful to multiply them by 5 or 10!

What Do You Love about your Role?

I love the opportunity given to Rangatahi to attend Te

Kooti at the Marae.

The difference between Court at the Marae and Court at District Court sometimes seems to be light years apart – although the same laws apply and often the same Judges are sitting, but the atmosphere, the process and the attitude of the Rangatahi (and sometimes their supporters) simply cannot be compared to the process at the Marae, where the first noticeable difference is the respect shown by the young person. Secondly – the involvement of the Kaumatua and Kuia in Court allows for an openness and honesty and sometimes an admonition of whanau, which seems to have such an impact on all involved.

Wairaka Marae, Whakatane.

Source: Te Ara Encyclopedia

We had our first Pakeha at Te Kooti a little while back – her background was dire, and in effect – she was an orphan. After the wonderful words from Kaumatua and the welcome of all, she was quite overwhelmed and said for the first time, she felt really wanted.

What are the Challenging Aspects of the Job?

I have to say that we don't seem to face many 'practical' challenges at all. The challenge is more likely to be in absorbing the most difficult backgrounds of many of our Rangatahi and almost accepting that their lives - their crimes, their drug use, their lack of hope and motivation – could hardly be much different considering what they have had to face in their short lives.

I believe our biggest challenge in this sector is the shortage of sound, reliable, proven 'solutions'. We need to have more placements available for just a few youth at a time – on a farm – up a valley – on a boat – a Tikanga programme – a Waka Ama programme – an Alternative (or Charter) School – more Iwi/Marae based services – an Army or Outward Bound scholarship – scholarships to reputable Boarding Schools! We need to be able to isolate our young people from their very damaging environments for long enough for the changes to have an effect – this is particularly true when it comes to staying off drugs (cannabis) long enough for their brain to become their real 'normal'.

None of these will be a 'miracle cure' – but the longer we can keep these Rangatahi in a positive, supportive environment where they are achieving, re-learning, learning to respect themselves, the better their chances long term. In my previous work in the drug field, our mantra was – "the length of time getting into and using the drug – the length of time getting off it and recovering from it".

For many – most - of our Youth, who often start as young as 8 or 9, this means we really need to support them for a minimum of 3 or 4 or 5 years.

Some Solutions I would Like to See:

I believe we should hold Youth in the Youth system till age 18 – not 17 years – for the reasons above. The longer we can hold them – and allow the positive changes to become entrenched, the better their chances.

I would like to see automatic, random drug testing throughout the period of the Youth's involvement in the Justice system, as an additional support for them to fall back on when they face pressure to use again – and to have some kind of tangible recognition at their completion, as an additional goal to work for.

I believe that when a Youth is charged with an offence, the parent or legal caregiver/s should be charged with an associated charge – (accessory-after- the-fact-type -of-thing). This would allow for the Family Group Conference to fully investigate their role and their ability to parent and support their child, but more importantly, would allow them to be referred to and access whatever additional services and supports they may need to help them through their own issues if any, and to more readily support their child. It would also give some authority to ensure that they were meeting their obligations alongside their child.

The third change I would like to see implemented, is for the default Court for Youth to be Te Kooti – Court held at a Marae wherever possible, with an 'opt out' for those who prefer to go to Youth Court, rather than at present where one or several people need to encourage a Rangatahi and their Whanau that they should attend Te Kooti. The Te Kooti process and environment is by far the most suited to young people – and their families. Every time I asked a Rangatahi to describe their feelings about Youth Court and Te Kooti the response is <u>always</u> the same (with words of the same meaning) – "at Te Kooti I feel like someone cares".

What can the youth justice System be Proud of?

The current legislation that allows for FGCs, that allows for 282 discharges when appropriate, the instigation of Te Kooti, and most of all the commitment and determination of all agencies and individuals working together to try their utmost to give the kid a chance.

Laura's Song

The following song was written by a young person in Palmerston North following a FGC. Laura is not the young person's real name. It was agreed that this young person has great talent in songwriting.

'Young people roaming the streets,
Its 1'oclock on the dock,
Their hustling for a couple bucks,
Just to buy them another box,

With their parents sitting at home,
Wondering whats going on,
They don't know what to do but they'll do anything for you

Im internalising a complicated situation
In my head.

Its not okay to blame the alcohol,
Its okay to ask for help,
You've helped me too better myself.

Its not okay to go drink driving
Its not okay to hurt myself and others
It is okay to ask for help.

Its not okay x4

I couldn't live without myself if I hurt somebody else
Its not okay

Im not only hurting myself
Im also hurting someone else
Im also hurting there loved ones
And my loved ones too.

At the end of the day whose there for me
At the end of the day whose there for them
Its our families for them and for me

Im internalising a complicated situation
In my head.

Its not okay to blame the alcohol,
Its okay to ask for help,
You've helped me too better myself.

Its not okay to go drink driving
Its not okay to hurt myself and others
It's okay to ask for help.
Its not okay x4
I couldn't live without myself if I hurt somebody else
Its not okay

Special Report

Launch of the Youth Crime Action Plan

The Youth Crime Action Plan (YCAP) was launched on 31 October 2013 in Auckland. It replaces the Youth Offending Strategy 2002, and sets out actions which government departments must achieve in the youth justice sector, together with a new governance structure for youth justice.

YCAP will last for ten years, be reviewed every two years and will guide all government work in the youth justice field for the next ten years.

Three interconnected strategies for addressing youth crime have been identified in the Plan, each of which have a list of "actions" linked to it. These are:

1. Partnering with communities

- Introduction of a how-to guide (toolkit) for use by practitioners and community groups to support working well together in communities. MOJ to create by 31 Dec 2013, all agencies to implement.

- Working in partnership with communities to develop local community "action plans" (where they are not already developed) to reduce youth crime. The first of these plans are to be in place by 30 Jun 2014 (identifying those areas with highest need first) and rolled out over the next 3 years in areas where there are Youth Offending Teams (areas without YOTS should get these in the future).

- Creating a "feedback loop" for local communities to evaluate these plans and share information and progress across communities. MOJ to establish a process by 31 Dec 2013.

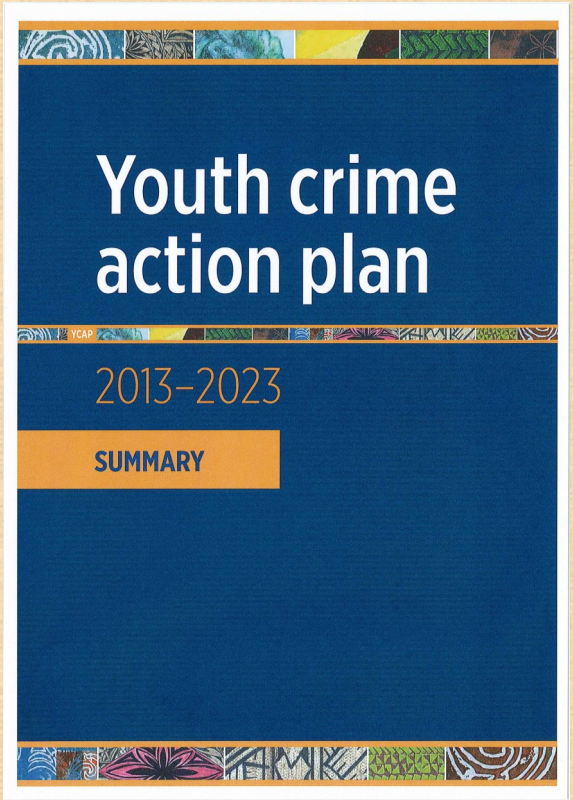
Development of an outcomes framework to evaluate the effectiveness of community-based initiatives and innovations. MSD to do this by 30 June 2015.

2. Reducing escalation.

- Ensuring the majority of cases are referred to Police Youth Aid, by 30 June 2015, led by Police.

- Developing a process of early case consultation, identify the underlying causes of offending by children and young people earlier and providing the appropriate intervention in a timely fashion, by 30 June 2015 led by Police and CYF.

- Implementing operational improvements in Youth Court, namely focussing on effective communication



with children and young people and their support persons in the Youth Court and the timeliness of Youth Court scheduling, by 30 Jun 2014 led by MOJ.

- Exploring the introduction of youth advocates at non-court ordered FGCs, by 30 June 2014, led by MOJ and MSD.

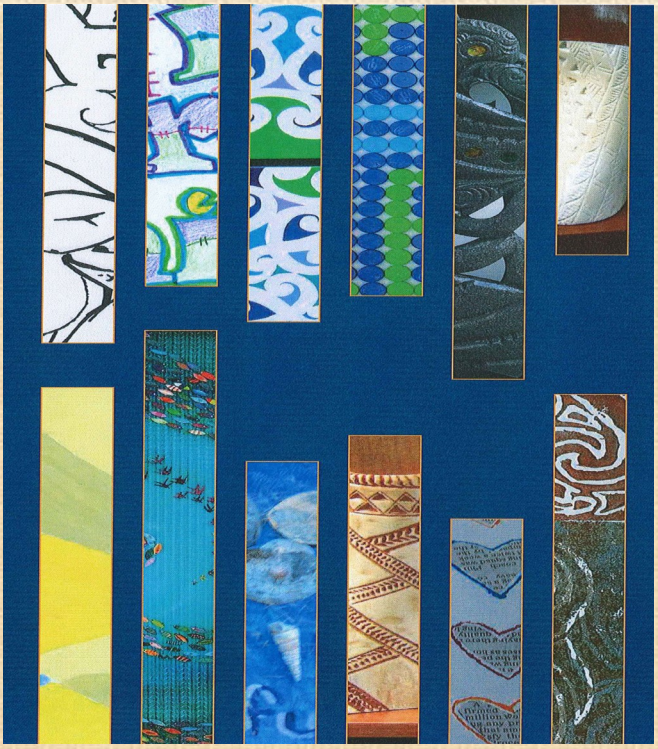
- Increasing attendance of youth forensic mental health staff at Youth Courts, by 30 June 2014, led by MOH.

- Practice changes to guide police officers to charge young offenders only when custody or bail with conditions is required, to be completed by 30 June 2015, led by Police.

- Increasing alternatives to the remand of young people in residential facilities (without compromising community safety), through a trial in Auckland of a new assessment centre approach for young people on remand in custody, and enhancing supported bail accommodation options and electronic monitoring. By 30 June 2015, MSD to lead.

3. Early and sustainable exits.

- Improving the quality and outcomes of FGCS and increasing community involvement in them which includes developing and implementing FGC performance standards and a new accreditation system for FGC coordinators, establishing criteria around when a professional's attendance is necessary



Artwork from young people in CYF residences, from the YCAP report

to support good decisions, pilot iwi-led conferences, establishing community partnerships in FGC processes. By 30 June 2014, led by CYF.

- Improving practice post intervention with young offenders around what works in a peer setting to support good behaviour and reduce offending. By 30 June 2015, led by MSD.
- Increasing and strengthening the range of alternative options (including Police Alternative Actions) and limiting escalation to FGCs to those young people where the level and frequency of offending requires it. By 30 June 2015, led by Police and CYF.
- Developing new youth forensic mental health services in the community and a secure inpatient facility, and expanding alcohol and drug services for young people. By 30 June 2015, led by MOH.
- Expanding the transition model used for young people in residences to all out-of-home placements - social workers will be more active. By 30 June 2014, led by MSD.
- Increasing the focus on evidence-based programmes (including collecting NZ based evidence of community-based innovations and what works for Māori), by 30 June 2014, led by MSD.

There are also three "building blocks" (so-called) which will identify these three strategies and for the "building blocks", there are also a number of specific actions. These are:

a) Workforce development

- Mapping out the youth justice workforce
- Increasing workforce awareness and skills in cultural competency
- Holding a youth offender symposium for youth justice practitioners, academics and frontline staff every two years
- Exploring a collaborative approach to enhance training and workforce development opportunities across professional and non-professional groups and NGOs
- Enhancing a common understanding of the core components in work, improving consistency in practice and role clarity - involving further development of the Youth Justice Learning Centre website

b) Information Sharing

- Improving information sharing through developing a youth offending minimum dataset, introducing information sharing agreements, using a unique identifier to track young people across the youth justice system, establishing key performance indicators to inform the difference that YCAP is making
- Monitoring youth justice data; and
- Developing a proposal for an intelligence hub on youth crime

c) New Governance

YCAP also changes the governance of youth justice. It recommends that:

- A new governance framework be introduced by December 2013. This will include a refreshed local governance structure
- The present Youth Justice Independent Advisory Group be disestablished and replaced with a new ministerial consultative group, with significant Māori representation
- There be a biennial review of YCAP progres; and a new work programme be developed every 2 years.

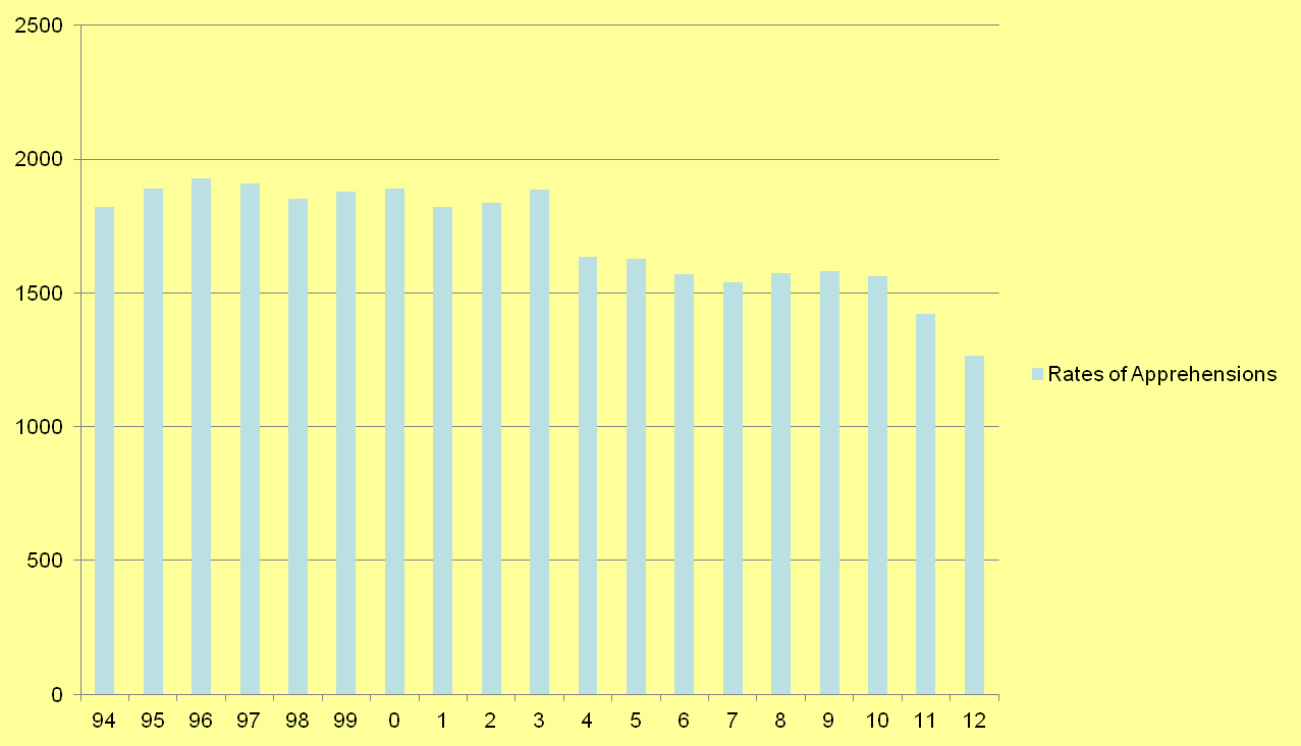
A copy of the full report of YCAP, as well as summaries, is available here: http://www.justice.govt.nz/publications/global-publications/y/youth-crime-action-plan-full-report.

Special Report

Youth Crime Statistics

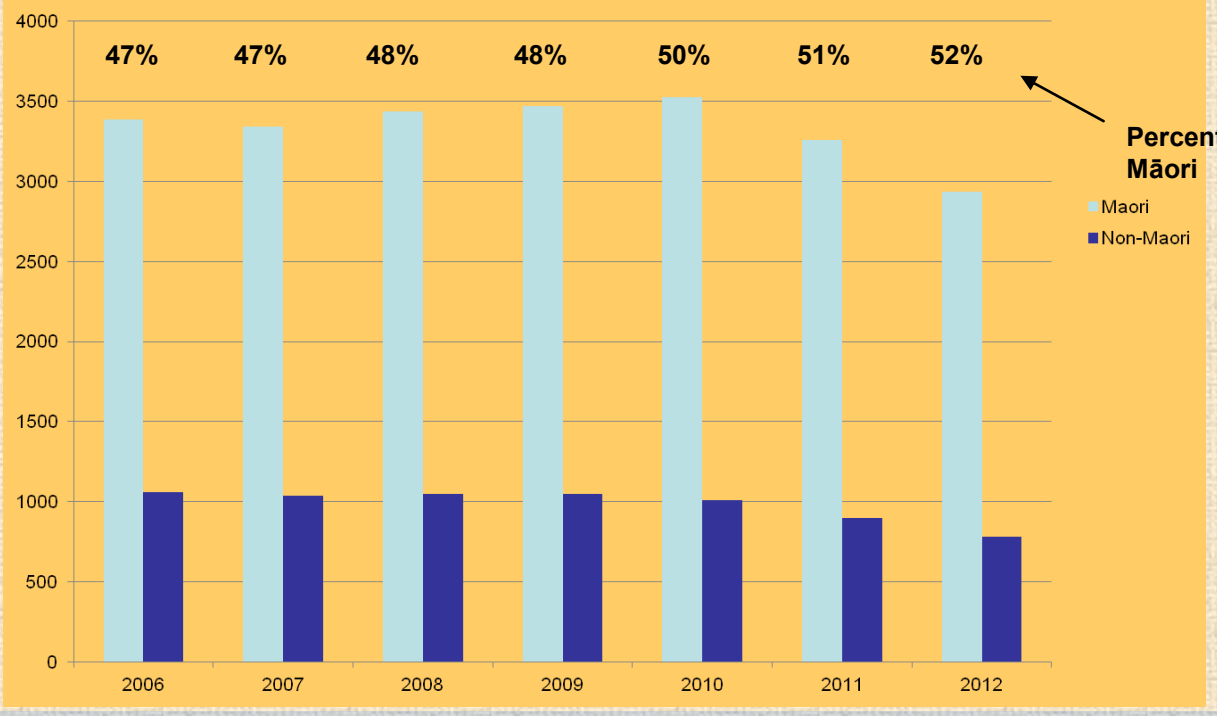
An important part of all of our work in the youth justice system is observing trends in statistics—they can both reflect and inform the work that we do. The following report uses New Zealand Police, Ministry of Justice and national population statistics (from Statistics New Zealand) to chart recent developments in youth justice up to and including 2012. (Please note that the rates calculation is crime statistic for 14-16 year olds/number of 14-16 year olds in national population x 10,000).

Rates of Apprehensions for Offences by 14-16 Year Olds, 1994-2012



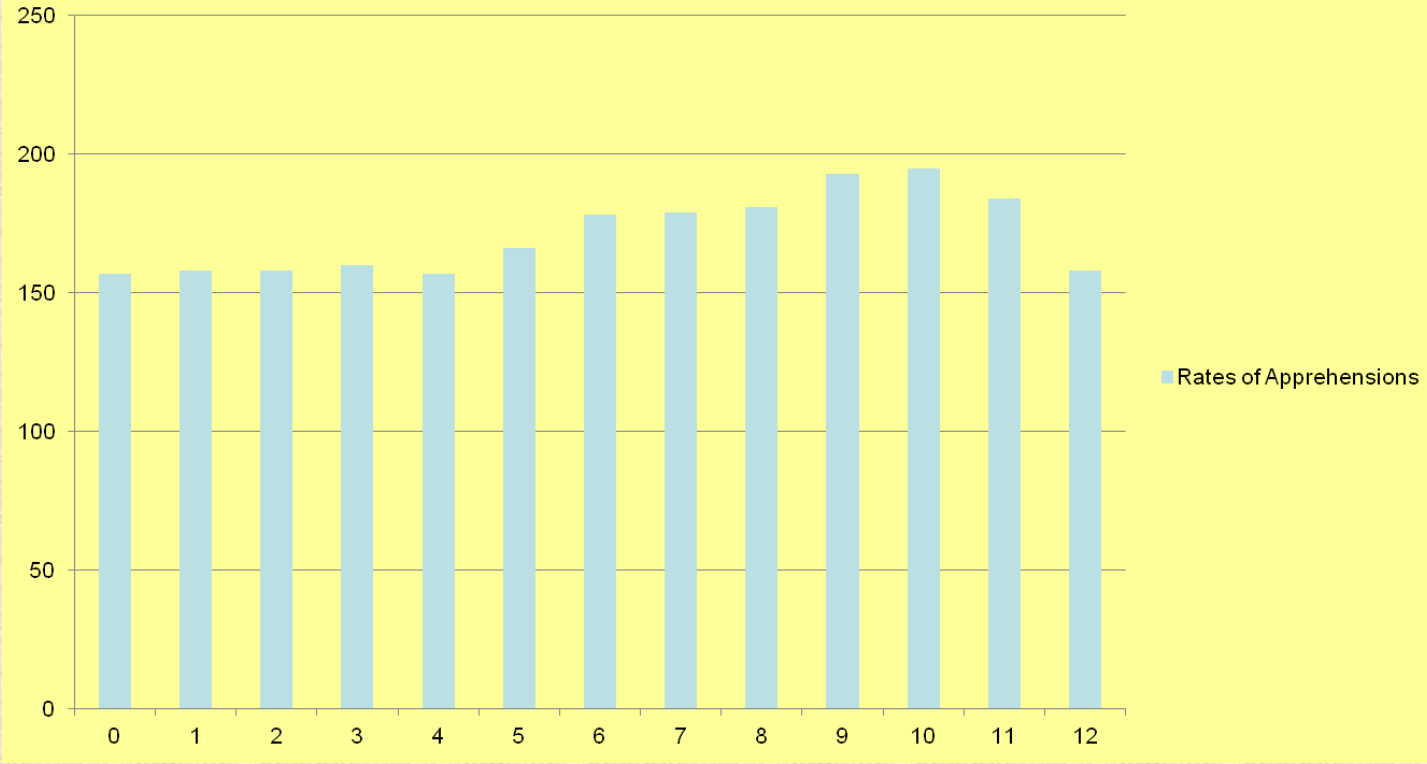
Notes: apprehensions are a record of alleged **offences** rather than of individual **offenders**.

Rate of Apprehensions for Maori and Non-Maori, 2006-2012

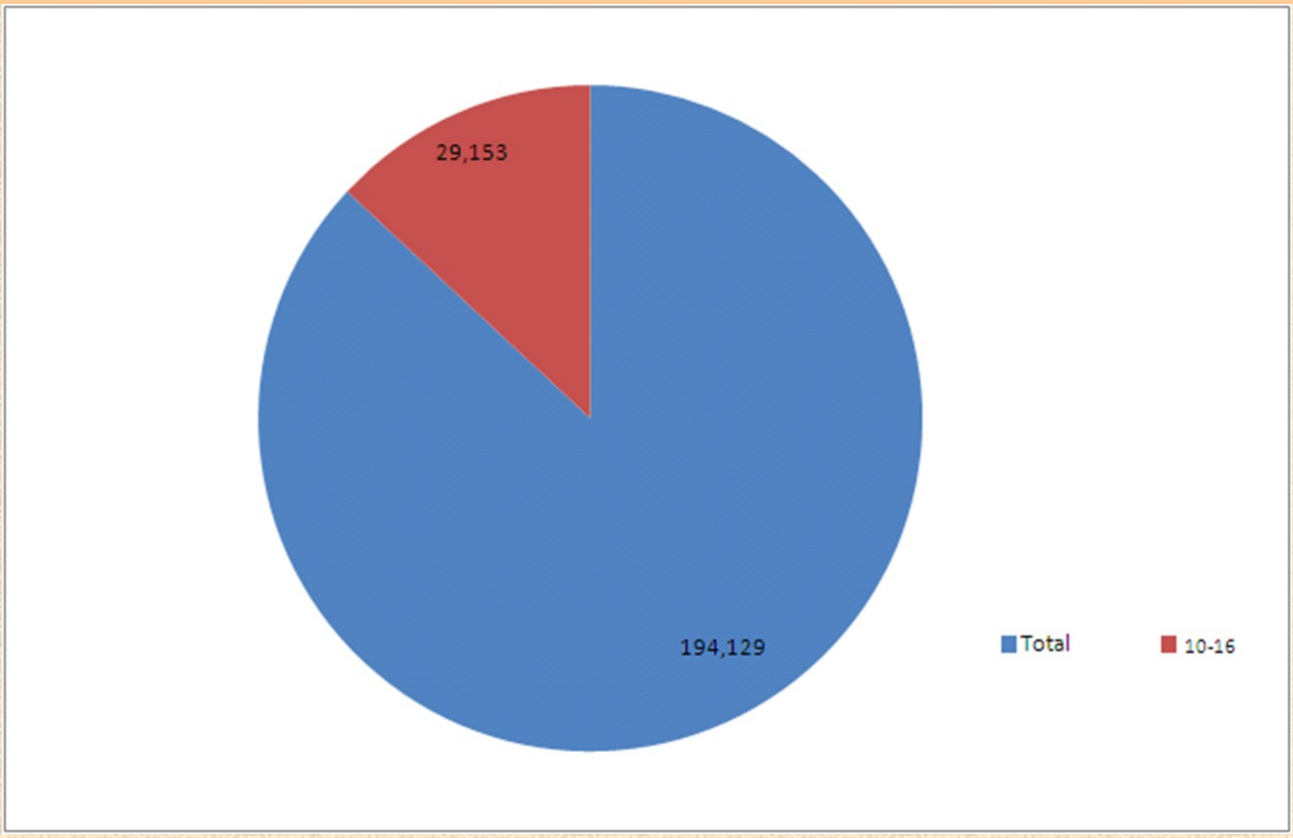


Notes: since 2006, rates have decreased by 26% for non-Māori and 13% for Māori

Rates of Apprehensions for Violent Offences by 14-16 Year Olds, 1994-2012

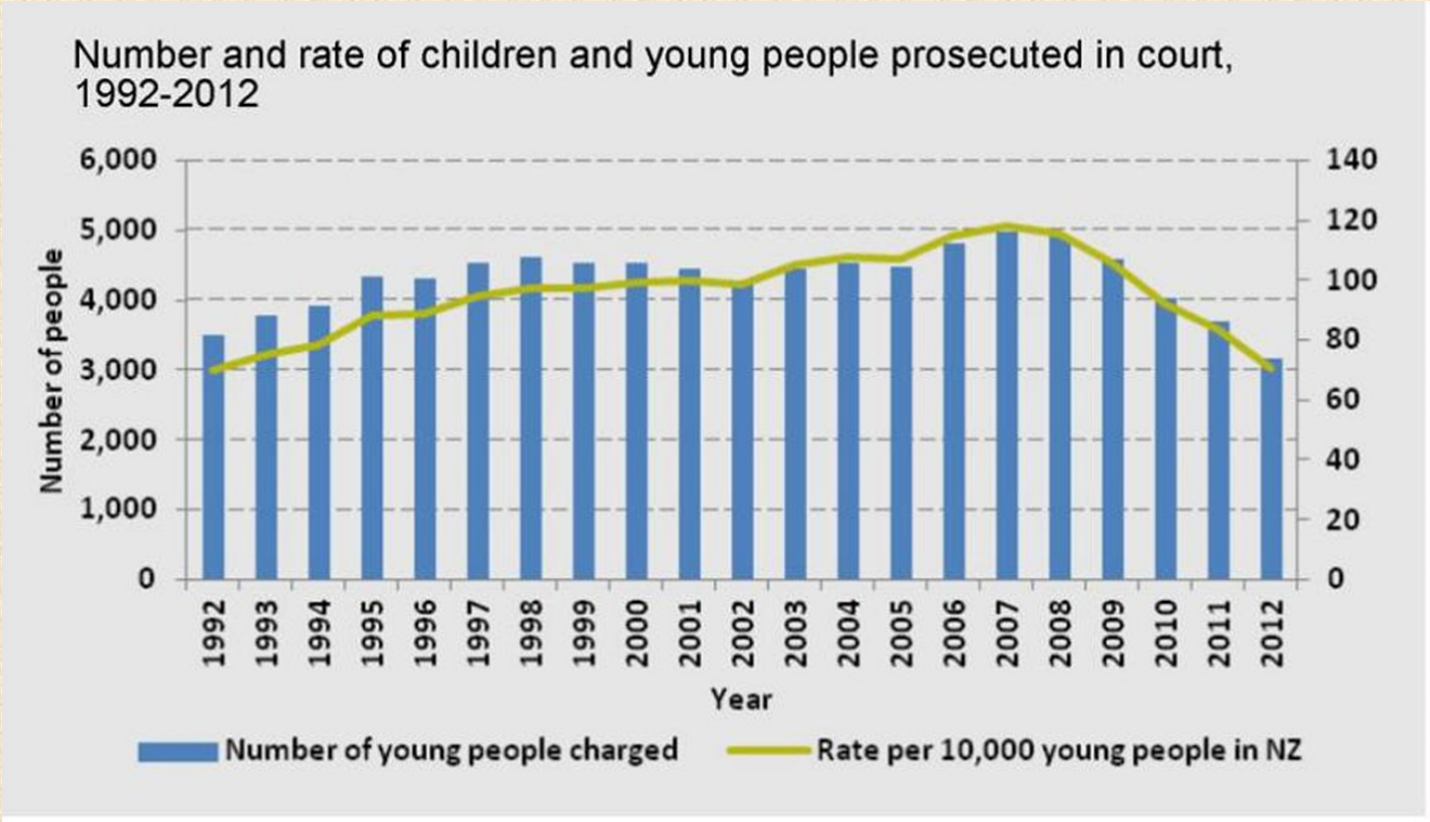


Apprehensions of Children (10-13 Year Olds) and Young People (14-16 Year Olds) as a Percentage of Total Apprehensions



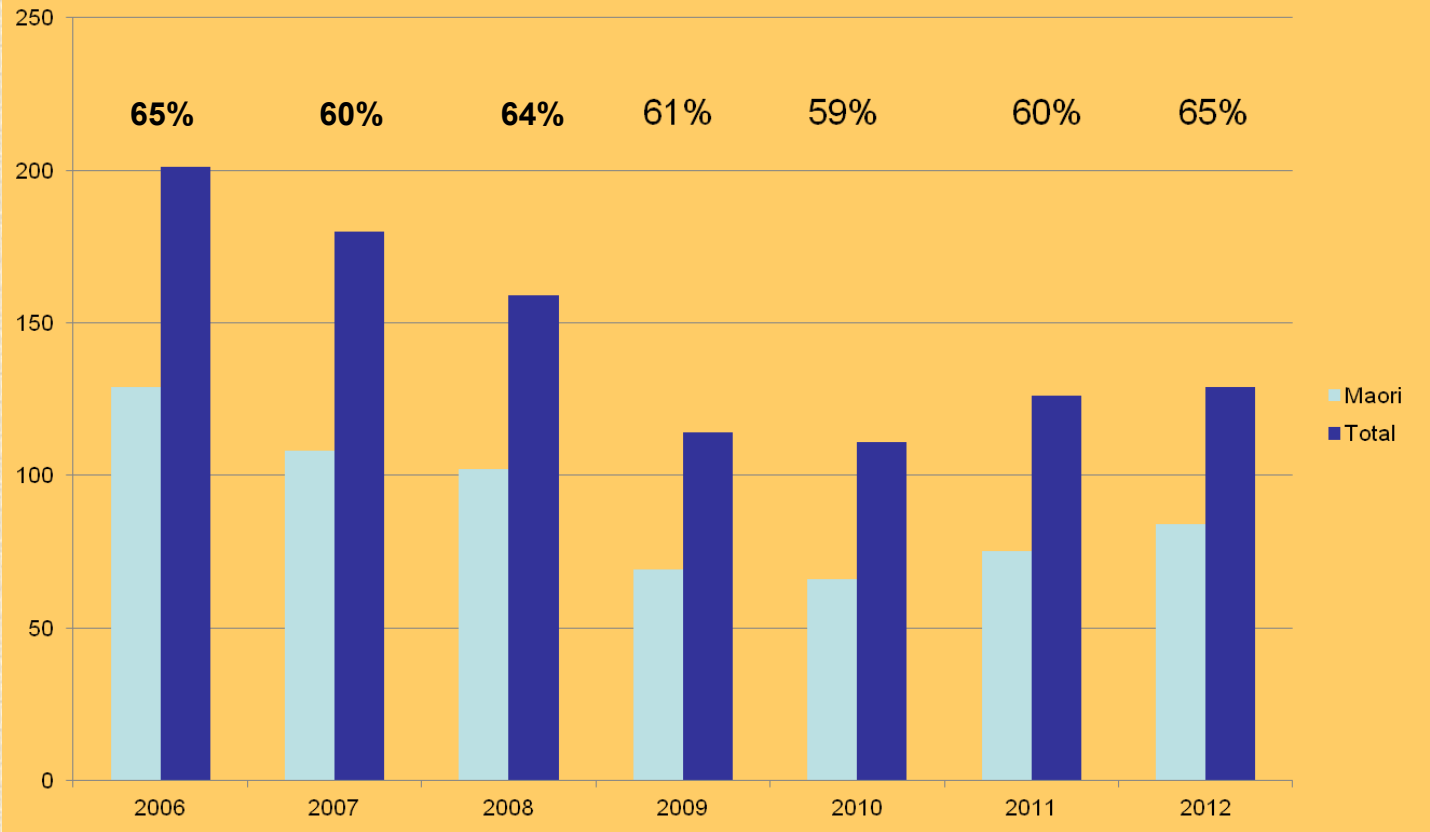
Special Report

Numbers and Rates Prosecuted in Youth Court, 1992-2012



Source: Ministry of Justice Statistics Report, 2012

Supervision with Residence Orders in Youth Court (total ethnicity and Māori), 1992-2012



Conference Reports

South Pacific Council of Youth and Children's Courts' Conference

On Sunday 22 September, Judges and Magistrates of the Pacific, Australia and New Zealand gathered for a week of great learning, and sharing of learning.

About the South Pacific Council of Youth and Children's Courts (SPCYCC)

The Judges and Magistrates were all in Auckland for the annual meeting of the South Pacific Council of Youth and Children's Courts (SPCYCC). The SPCYCC is an independent and autonomous judicial grouping of the Heads of Youth/Children's Courts, open to all self-governing countries of the South Pacific, and the states and territories of Australia. Where there is no Youth/Children's Court in a member country, the country may be represented by the Judge or Magistrate with a leading role in developing the law relating to children or youth in that country.

The SPCYCC, which first met in 1995 and which adopted its present name in 2004, meets annually. It is chaired on a rotating basis, usually alternating between Australia/New Zealand and Pacific island venues. Council meetings are hosted by the Chair of the Council for that year.This year, the role of Chair was assumed by Judge Andrew Becroft as the Principal Youth Court Judge of New Zealand, together with Judge Ida Malosi, an experienced Youth Court Judge currently seconded by the New Zealand Government to Samoa.

This year's meeting brought together representatives from New Zealand, all Australian states (with the exception of South Australia) and eight Pacific states (Samoa, the Solomon Islands, Kiribati, the Cook Islands, Niue, Tonga, Papua New Guinea and Vanuatu), with apologies from Palau, Fiji and Tokelau. The attendance of eight Pacific delegates was funded by NZ Aid and other conference costs by the New Zealand Ministry of Justice.

Learnings from New Zealand

Delegates were exposed to three core aspects of the New Zealand youth justice process:

1. Non-Charging/Alternative Responses

Delegates at the meeting spent the week with and heard a presentation from Acting Inspector Kevin Kneebone (Prevention Manager, Youth and Community) about Police Youth Aid. This presentation had a focus on diversion.

2. Family Group Conferencing

SPCYCC delegates heard from and spoke to CYF social workers about Family Group Conferencing, and watched plans being monitored in Court.

3. Specialist Youth Courts

Delegates at the meeting sat in on the Hoani Waititi Rangatahi Court, the Mangere Pasifika Court, the Intensive Monitoring Group and heard a presentation on the Christchurch Youth Drug Court.

Impressions

Many of the delegates commented that seeing New Zealand initiatives in practice was a powerful and useful experience for them. The group were unified in agreeing that approaches which focus on diverting young people from the criminal justice system and which delegate some responsibility to families and the community are positive and worthy of further development.

Visits to the Rangatahi and Pasifika Courts in particular furthered discussion about practical ways to address disproportionate indigenous representation in youth justice systems. This is an issue for many countries represented in the SPCYCC. Delegates were impressed by the effect of incorporating Māori and Pacific cultural processes into the formal youth justice process. They noticed that this added a powerful new dimension. The delegates also commented that the presence of elders from Māori and Pacific communities in these Courts, who sit on the bench next to the Judge and give advice to the young people in Court, seemed truly empowering for the young person and for the community involved.

Learnings from Other Youth Justice Systems

It was not just the New Zealand youth justice system which delegates discussed (although as host country, New Zealand was expected to take the lead). They were also updated on developments and key issues facing the Australian states and territories, such as the closures of Youth Drug and Koori Courts in Queensland. They also learned a lot from sharing the ways in which their criminal justice systems interact with young people. For example, in countries where there is no separate youth justice system, a significant first step is separating files concerning young people from files concerning adults. One practical way of doing this is to colour code charging files so that it is clear whether they relate to children/young people or adults. This simple and effective mechanism presented by one Pacific delegate was applauded by many delegates who do not have such a system,

and they took this idea home with them to consider implementing.

Learnings from Initiatives in the South Pacific
The meeting was also made aware of the work of the Pacific Judicial Development Programme (PJDP) and the assistance that the PJDP is able to give countries to develop their youth justice and youth and child protection systems. Judge Peter Boshier, who is one of the Judges assigned to the Programme and a trainer in the Pacific, was present throughout the week and gave a well received presentation on the PJDP and its services.

The Pacific delegates also enhanced the meeting's awareness of NGOs and organisations doing important work in the Pacific. Save the Children, for example, was an organisation that several Pacific countries referenced as playing a key role in the development of youth justice systems.

Learnings from the Experts
The meeting strived to upskill delegates in working with young people, and in particular in working with young indigenous and Pasifika people. A standout workshop for many delegates was a presentation on adolescent brain development by our "Brainwave Trust", a charitable trust which educates the community about child and adolescent brain development based on emerging brain science research (http://www.brainwave.org.nz/).

The presentation began by exploring the vast growth of the child's brain in the first three years of life, which emphasised to delegates the importance of supporting a child in his or her early years to prevent entry into the youth justice system or adult criminal justice system later in life. They then charted the adolescent brain, and showed the scientific data establishing that young people's brains are in a process of maturing and that they are scientifically proven to be more prone to risk taking than adults. The presenters examined effective ways of communicating with young people. It caused the delegates to think carefully about the behaviours of young people in court, and consider whether their own actions in court are effective.

For New Zealand Judges, it was also helpful to learn more about trends in offending by young Pacific people in New Zealand. Drs Ian Lambie and Dr Julia Ioane of the University of Auckland provided an insightful presentation on communicating with young people, with an emphasis on young Pasifika people who commit violent offences.

The Future of the SPCYCC
On the final day of the meeting, the delegates discussed the future of the SPCYCC, and ways in which delegates can be even more effective in supporting one another to develop effective separate youth justice systems. Consequently, a "15 Point Assessment of a Youth Justice System" was created. This assessment provides a simple tool for New Zealand, Australian states and Pacific countries to evaluate their youth justice systems (or, where there is no youth justice system, the way in which young people are dealt with in the adult criminal justice system). These assessments are with delegates and member countries now. Once these assessments have been completed, decisions will be made as to both substantive areas of future focus for the SPCYCC, and as to which states could be provided greater support by the SPCYCC.

Next year's meeting of the SPCYCC will be hosted in Samoa. Samoa will therefore also assume the role of Chair for that meeting. New Zealand will act as secretariat for the Council in the year leading up to the meeting. It was an honour and a privilege to be involved in hosting this meeting in New Zealand. It was exciting to meet Judges from across the Pacific, all of whom are striving to ensure that their systems work in a way that ensure the best possible outcomes for young people. We look forward to continuing our conversations with them into the future.

The Pasifika Court at Mangere

Intensive Supervision

It has been requested that Court in the Act provide some information about the intensive supervision order available under s 296G of the Children, Young Persons and their Families Act 1989. The following details the process for making an intensive supervision order. It seems to be a relatively unknown and perhaps under recommended sentence.

What is an intensive supervision order?

An intensive supervision order under s 296G means a young person will be:

- placed under the supervision of CYF or any other person or organisation, for a specified period and not more than 12 months; and
- subject to standard conditions and possibly to extra discretionary conditions, including electronic monitoring.

Preconditions to intensive supervision

An intensive supervision order firstly requires an order to be judicially monitored. A Judge can judicially monitor an order of supervision or supervision with activity if either (s 308A):

- the order is made or varied as a result of a declaration under section 296B(3) that the young person has without reasonable excuse failed to comply satisfactorily with a term, condition, or other requirement of a supervision or supervision with activity order; OR
- the order is made after a charge is proved in the Youth Court and the young person has previously been subject to an order under s 283 (k) or above, or convicted of a community based sentence, sentence of home detention or imprisonment in the District Court

Once an order is judicially monitored, the Court can then make an intensive supervision order if:

- the Court then makes a declaration of non-compliance. That is, it is satisfied that the young person has, without reasonable excuse, failed to comply satisfactorily with a condition of the judicially monitored order(s 296B(3)(c) and s 296G); and
- a social worker report and plan has been obtained (s 334(2)); and
- the person or organisation under whose supervision the young person will be placed, has agreed to supervise the young person (unless the supervisor is CYF) (s 286).

When making an order for intensive supervision the Court **must** also:

- cancel the original order (s 296B(3)(c); and
- promptly fix dates for review of the plan prepared under s 335 (s 296M(1)).

Written statement of terms

After imposing an intensive supervision order, the Court must cause a written statement to be supplied to:

- the young person; and
- his or her barrister, solicitor or Youth Advocate (s 340).

The written statement must specify (s 340(1)):

- the terms and conditions of the order (for example, any additional curfew and electronic monitoring conditions);
- the reasons for the imposition of any electronic monitoring condition;
- the consequences of failing to comply with the order;
- the provision for varying the order;
- rights of appeal against the order or finding on which the order is based.

The written statement must be supplied:

- before the young person leaves the Youth Court (s 340(1)). The Court is empowered to direct the young person to remain at the Court for up to one hour to do this (s 340(3)); or
- if this is not practicable, as soon as practicable (s 340(4)).

In practice, if a young person is sentenced and his or her parent is not present, the Court ***must***, through its staff, ensure that the parent is then informed of the sentence.

Conditions of an intensive supervision order

i) Standard Conditions: Section 305

Where the Court imposes an intensive supervision order, the following conditions shall apply to it (s 305, **but not** s 305(b)):

- the social worker or person or organisation specified in the order to supervise the young person ("the supervisor"), may, at reasonable times, visit/enter any building/place the young person is living (s 305(a));
- the young person must not live at any address where the supervisor has told him or her not to live (s 305(c));
- the young person may only continue in employment or engage in an occupation if this is

approved by the supervisor (s 305(d));
- the young person shall ensure the supervisor knows at all times the address where he or she is living for the time being (s 305(e));
- the young person must not associate with any specified person or class of persons the supervisor has, in writing, warned the young person not to associate with (s 305(f)).

Section 296I(b) applies in place of s 305(b). The young person must report to the social worker or specified person or organisation:
- at least once each week during the first three months of the intensive supervision order, and at least once each month after that; and
- as and when required to do so at other times by the social worker or person or a representative of the organisation.

Additional (discretionary) conditions: section 306

If the Court imposes an intensive supervision order, it may, in its discretion, apply any or all of the following conditions:
- any contribution to costs or reparation ordered must be paid within a period and in instalments specified by the supervisor (s 306(1)(a));
- the young person must not own or drive a motorcycle or any other kind of motor vehicle (s 306(1)(b));
- the young person must not associate with any specified person or class of person (s 306(1)(c));
- the young person must undergo a specified medical examination and treatment or psychological or psychiatric examination, counselling or therapy (s 306(1)(d)). This condition may **only** be imposed **with the consent** of:
  - if a young person is 16 or older, the young person;
  - if not, the young person's parent or guardian (not being CYF);
  - if no parent or guardian is in New Zealand, or no parent or guardian can be found with reasonable diligence, or that parent or guardian is not capable of consenting, then by a person in New Zealand who has been acting in place of a parent to the young person; or if no person in New Zealand is so acting, or no such person can be found with reasonable diligence, or that person is not capable of consenting, then by a District Court Judge or the Chief Executive of CYF (s 306). In addition, the Court may impose:
- any conditions relating to the young person's place of residence, employment or earnings as the Court thinks fit (s 306(1)(e)); and/or
- any other conditions as the Court sees fit to reduce the likelihood of further offending by the young person (s 306(10)(f));
- a curfew condition, with or without electronic monitoring (s 296J).
- a condition that the young person attend and remain at a specified centre approved by the department, and take part in any activity required by the person in charge of the centre, for any specified hours (s 296J(e));
- a condition that the young person undertake any specified programme or activity (s 296J(f)).

The Court should take care to ensure that:
- all conditions are accurately recorded;
- the young person is notified of them in language he or she can understand; and
- it does not impose any illegal conditions (such as a condition that a young person carry out community work, which cannot lawfully be imposed under s 306): see *Police v B* (Youth Court Wellington, 12 August 2003, Becroft DCJ).

Curfew Condition

After making an order for intensive supervision (s 296G), the Court **may** make that order subject to a curfew condition (s 296J(1)). A curfew condition must specify (s 296J(2)):
- the curfew duration;
- the daily curfew period; and
- the curfew address.

A daily curfew period (s 296J(3)):
- must not be for a period of less than two hours; and
- must not be collectively imposed for a total of more than 84 hours in any week.

The imposition of a curfew condition means that the young person:

- must not leave the curfew address during the daily curfew period except as specified below (s 296J(4)(a));
- must co-operate with the Chief Executive during the curfew duration and must comply with any lawful direction given by the Chief Executive for the purpose of implementing a curfew condition (s 296J(4)(b));
- submit to electronic monitoring (where the order has been made subject to electronic monitoring under s 296J(6)), including being connected to electronic monitoring equipment for the duration of the order, not just the duration of the curfew (s 296J(4)(c)).

The young person may only leave the curfew address during the daily curfew period (s 296J(5)):

- to seek urgent medical or dental treatment;
- to avoid or minimise a serious risk of death or injury to the young person or any other person;
- with the approval of the Chief Executive:
    - to seek or engage in employment; or
    - to attend educational, training or other rehabilitative or reintegrative activities or programmes; or
    - to attend a FGC or other process relating to the young person's offending; or
    - to implement a FGC plan or other plan relating to the young person's offending.
- and subject to any further conditions, on humanitarian grounds.

If a young person breaches the curfew condition he or she may be:

- detained without warrant and returned to the curfew address by a constable or social worker (s 296L(1));
- arrested without warrant by a constable (s 296L (2)).

Before a constable can arrest a young person for breach of curfew, he or she must be satisfied that the arrest without warrant is necessary to (s 214(1)):

- ensure the appearance of the young person before the Court; or
- prevent the young person from committing further offences; or
- prevent the loss or destruction of evidence relating to an offence committed by the young person or an offence that the constable has reasonable cause to suspect that young person of having committed, or prevent interference with any witness in respect of any such offence.

If a constable arrests a young person for breach of curfew, there are powers in certain limited situations to place the young person in CYF custody (s 235) or detain the young person in police custody (s 236).

A young person breaching the curfew condition does not, by reason only of that fact, commit an offence of escaping from lawful custody under s 120 of the Crimes Act 1961 (s 296L(3)).

Electronic Monitoring Condition

After making a curfew condition under s 296J(1), the Court **may** also impose a condition of electronic monitoring if it is satisfied that the other conditions of the intensive supervision order are likely to be insufficient to secure the young person's compliance with the order (s 296J(6)).

The electronic monitoring condition must be for a specified period not exceeding six months (s 296J(6)).

If imposing an electronic monitoring condition, the Court **must** record in writing its reasons for doing so (s 296J(7)).

Review of Intensive Supervision

After making an intensive supervision order under s 296G, the Court **must** also fix dates for review of the s 335 plan prepared before the order was made (s 296M(1)).

Those dates must be not later than three months after the date on which the order is made, and at least once every three months after that date, but before the order expires.

On or before each of the dates for review of the plan, the social worker (or other person directed by the Court under s 296M(1)(b), must furnish to the Court a report which (s 296M(3)):

- states whether the objectives set out in the plan have been achieved or not achieved; and
- states what actions are required to achieve those objectives which are not yet achieved; and
- makes recommendations in relation to any order (or condition of an order) made under Part 4 of the CYPF Act in relation to the young person ; and
- states whether each person required to be given a copy of the plan, agrees with those recommendations.

At the hearing to review the plan, the Court **must** consider the report, and **may** (after giving any person it thinks fit the opportunity to be heard) (s 296M(4)):

- cancel the order;
- suspend the order for a period specified by the Court;
- suspend a condition of the order for a period specified by the Court;
- impose a further condition of the order;
- vary a condition of the order; or
- direct a further report or revised plan or both if it considers the original to be inadequate.

Expiry of Intensive Supervision Order

Every intensive supervision order will expire when the young person turns 18, unless it expires sooner (s 296).

Coming Up

Youth Justice Practice Forums

An opportunity to bring colleagues together to discuss and share ideas

Date: Tuesday 25th February 2014

Time: 12:30pm – 4.00pm

Location: Building number 731 **Lecture room number**: 731:201 University of Auckland, Tamaki Campus

https://maps.google.co.nz/maps?ie=UTF-8&hl=en

Free parking and $10.00 cash for afternoon Tea

Programme

12.30pm – 1.15pm Judge Tony Fitzgerald - "Cross Over Kids"

Judge Fitzgerald will talk about the function and work in the Cross Over Court, Auckland District Court.

1.15 – 2.00pm Associate Professor Ian Lambie – Clinical Psychology, University of Auckland

"Recent research on adolescents who sexually offend and child arsonists in New Zealand

Ian will present the findings of recent research including recidivism data and risk factors.

2.00pm – 2.30pm Afternoon Tea

2.30pm – 3.15 Jo Smith – Project Manager, Engaging Challenging Youth Team, Child Youth and Family.

CYF team will talk about their work with high risk youth

3.15pm – 4.00pm Louisa Webster – Psychologist, Department of Corrections "Breaking the Cycle"

Louisa will present on the new Youth Offenders programme being run by the Dept. of Corrections

RSVP catering to: s.robertson@auckland.ac.nz

Guest Article

Judge Leonard Edwards (ret), Santa Clara Superior Court published the following article. It can be accessed via his website: http://judgeleonardedwards.com/

Are Children Simply Small Adults?

The Juvenile Court Corner

This sounds like a foolish question. We all know that this is not true, yet do we design our public policy to reflect the reality that children are not small adults? For example, do our criminal and juvenile justice laws reflect the fact that children are different from adults? The answer is "No," but times may be changing. That is what this article is about.

The juvenile court was founded on the perception that children are different than adults. At the time (1899), the field of psychology (then quite new) asserted that children were developing beings whose future could be redirected towards a productive life and away from a life of crime. The founders believed that the juvenile court could rehabilitate errant children. From the outset, the juvenile court resembled a problem-solving clinic more than a court of law. The juvenile court and juvenile corrections were separated from the adult criminal system. There were no attorneys and little due process; instead probation officers and service providers worked with the judge to redirect offending children. Proceedings and records were confidential so that a youth would be offered a fresh start and the stigma of a law violation would not make rehabilitation more difficult.

Are Children Simply Small Adults?

Much of that changed during the last half of the 20th Century in the United States. The courts and state legislatures modified the juvenile justice system making it resemble the criminal justice system and sending more and more children into the criminal courts. The reasons for these changes included a loss of faith in the notion of rehabilitation, a perceived rise in violent crime committed by children, extensive media attention to youth crime, and a conclusion by some that the juvenile court did not work and did not adequately protect society from crime. Some even called for its abolition.1

Significant political rhetoric accompanied these changes. For example, the Director of the Office of Juvenile Justice and Delinquency Prevention (the federal agency overseeing juvenile justice in the United States), stated that the country needed to "get tough" on juvenile crime, as juvenile offenders "are criminals who happen to be young, not children who happen to be criminals."2 The rhetoric reached fever pitch when Professor John Dilulio, Jr., Director of the Brookings Institution for Public Management , invented the term "super-predators" to describe what he called a growing number of "totally out of control" "brutally remorseless" children of all ages who will create "a demographic crime bomb" that will wreak havoc on our country.3 His conclusion was that, "we will have little choice but to pursue genuine get-tough law-enforcement strategies against the super-predators."4

Judge Leonard Edwards (ret)

Perhaps the earliest sign that the juvenile court was changing was the case of *In re Gault* 387 U.S. 1 (1967). *Gault* brought due process into the juvenile court, the United States Supreme Court declaring that children accused of crime were entitled to timely notice of the charges, an attorney at state expense, the right to confront and cross-examine witnesses, and the privilege against self-incrimination. Identifying the failures of the juvenile court, the majority opinion stated that "[t]here is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds; that he gets neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children."5

But state legislatures were not concerned about due process or the rights of children. Driven by media stories of violent children, the perception that youth violence was increasing exponentially6, and general public dissatisfaction with the juvenile justice system, state legislatures have over the past 40 years modified juvenile court statutory schemes to remove more and more children to the adult criminal system and make the juvenile court look more like the criminal court.7 The legislation has taken many forms. Some states lowered the age when a child can be prosecuted as an adult, some have given greater powers to prosecutors to file charges against a child directly in criminal court, some mandated that certain crimes be prosecuted directly in the adult criminal court, others have restricted judicial discretion to keep a child in juvenile court when serious charges are filed, and still others opened juvenile proceedings to the public, and made record sealing more difficult.8 Moreover, prosecutors - never part of the original juvenile court – are now an integral part of the juvenile court.9 All of these changes were deemed necessary in order to accomplish the goals of "getting tough on juvenile crime" and "adult time for adult crime."

In several states most youths 15 years-of-age and over accused of felony crimes are automatically transferred to the adult criminal court and treated as adults for all purposes.10 In California, the prosecutor

can file criminal charges in the adult criminal court directly against a 14 year old if the crime alleged is serious as described in the Welfare and Institutions Code.11 Criminal court procedures make possible adult criminal sentences for these youth.

Many of these legislative changes were the result of sensationalized media attention to children committing crimes, inaccurate data, and myths about juvenile crime. In addition to the myth about super-predators, others involved a juvenile violence epidemic occurring in the late 1980's and early 1990's, juveniles frequently carrying guns and trafficking in them, juvenile offenders committing more and more violent crimes at younger ages, the public no longer supporting rehabilitation of juvenile offenders, and the juvenile justice system in the United States being viewed as a failure because it cannot handle today's more serious offenders.12

In the past decade there has been modest movement in the opposite direction. The United States Supreme Court has taken the lead in this movement, concluding that there are certain sanctions that are prohibited when applied to children even when those children are prosecuted in the criminal court for serious law violations. In order to reach these conclusions, the court has revisited the reasoning that resulted in the creation of the juvenile court – that children are different from adults.

While the Supreme Court has stated that "[o]ur history is replete with laws and judicial recognition that children cannot be viewed as miniature adults,"13 yet it permitted the execution of some children for serious law violations.14 Recent scientific developments in neuropsychiatry along with actions by a few states curtailing the death penalty led the court to declare unconstitutional the death penalty and life without possibility of parole for children under 18 when the crime was committed.15

In 2002 the Supreme Court held that individuals with mental retardation could not be executed.16 *Atkins* laid the foundation for cases involving juveniles. Thereafter, *Roper v Simmons*17 and *Graham v Florida*18 established that children are constitutionally different from adults for sentencing purposes. In these cases the court found that children's "lack of maturity" and "under-developed sense of responsibility" lead torecklessness, impulsivity, and heedless risk-taking. Children "are more vulnerable…to negative influences and outside pressures," including from their family andpeers; they have limited "control over their own environment" and lack the ability to extricate themselves from horrific, crimeproducing settings. Because a child's character is not as "well formed" as an adult's, his traits are "less fixed" and his actions are less likely to be "evidence of irretrievable depravity."

United States Supreme Court

Roper and *Graham* emphasize that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.

Roper and *Graham's* foundational principle is that imposition of a state's most severe penalties cannot on juvenile offenders proceed as though they were not children. "[O]ur society views juveniles … as 'categorically less culpable than the average criminal.'"19 In 2012 *Miller v Alabama* the Supreme Court went further, holding that life without the possibility of parole cannot be automatically mandated for children even for homicide convictions, but that the trial court must exercise discretion in making that decision.20 Some state court judicial decisions have followed the Supreme Court's lead and have struck down long sentences for children convicted of serious crimes as cruel and unusual punishment.21

Most of these Supreme Court decisions have been decided in the last decade. Up until the 21st Century, a 16 or 17 year-old could be executed or sentenced to prison for life. The seriousness of the crime committed was a sufficient basis for treating the juvenile the same as an adult offender. The Supreme Court decisions cited above have slowed down the process of treating child law-breakers the same as adults,22 but several other changes should be considered. First, the process for transferring children to the criminal court, the waiver or fitness hearing, should be reexamined. At a waiver hearing,23 the judge hears evidence from the prosecution, the defense, and from the probation officer who has completed an intensive social study. The judge has the opportunity to look carefully at all aspects of the offense and examine the youth who is before the court. With a thorough social study and a judicially supervised hearing, a judge is in the best position to determine whether a child should be prosecuted as an adult or retained in juvenile court. The judge can identify the children who have the best

Brief for Alabama in Miller v Alabama. Source: http://awww.pewstates.org/projects/stateline/headlines/states-reconsider-juvenile-life-sentences-85899407729

chance for rehabilitation. Neither the legislature nor the prosecutor should make the waiver decision.The legislature does not have the benefit of any particularized facts, while the prosecutor has only the police investigation on which to base his decision.

Second, the legislature should reexamine the possible penalties for youthful offenders who appear in the adult criminal court. We know now that a youth's brain development continues until the mid-20's. The chance for rehabilitation remains possible. Forty, fifty and sixty year sentences are almost the same as life imprisonment.They go beyond public protection and reflect retribution. Moreover they disproportionally impact young people who will live longer than a 40 year old convicted of the same crime.

Lowering prison sentences has not been popular. It is difficult to recall the legislature ever reducing sentences for crimes. Being "tough on crime" has been an important political slogan for decades. Yet it is time for state legislatures to acknowledge the differences between children and adults and to recognize that children should have the opportunity to rehabilitate. It is time to recognize that laws relating to the punishment of children were poorly conceived and based on public hysteria and myths about youth crime. Paying attention to the scientific developments that persuaded the United States Supreme Court should lead state legislatures to restructure the length of sentences for juveniles convicted of crime even when those juveniles appear in adult criminal court. Public support for such legislative changes exists, but it must be translated into legislative action.24

Third, juvenile records should be automatically sealed at 18 years of age. A record can follow a person through life. If available to employers or schools, it can limit a person's ability to secure employment or positions of trust as well as make it difficult to avoid a life of criminality.25 If social policy is to acknowledge and reflect that children are different from adults and that rehabilitation of youth is a goal, then access to juvenile records should be restricted.

The current record sealing process requires the youth to petition the juvenile court to have his or her juvenile record sealed. Studies show that most youth do not take the time to do so.26 Indeed, it is the serious lawbreakers who are more likely to ask for their records sealed. At the California Department of Juvenile Justice (formerly the California Youth Authority) special attention is paid to sealing a youth's juvenile record upon completion of the program. No such counseling is provided to the children committing less serious crimes who are placed on probation in the community. The best policy is to automatically seal all juvenile records when the child reaches 18 years of age. These records could be unsealed should the youth end up in criminal proceedings, but for the great majority of youth, it would mean that they would know that their records are sealed when they reach 18 and that they can respond to an employer that they do not have a juvenile record.

The juvenile court came under attack during the last decades of the 20th Century. Public fear combined with political pressure and myths about youth crime led state legislatures to change their juvenile codes so that children were more likely to be prosecuted in criminal court. What was forgotten was that children are different from adults, are more susceptible to peer pressure, have less mature thought processes, and can and should not be held as responsible as adults for the crimes they commit.

The United States Supreme Court has started a movement back towards the original juvenile court. It remains to be seen if state legislatures will acknowledge that they overreacted to the media hysteria of the late 20th Century and will have the courage to modify their laws so that the rehabilitative ideal can be achieved. No, children are not little adults – they are children, developing human beings. Our justice system should reflect this reality.

Endnotes

1. Ainsworth, Janet, "Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court," *North Carolina Law Review*, Vol. 69 at pp 1083- 1133; Feld, Barry, "Transformed but Unreformed: Juvenile Court and the Criminal Court Alternative," paper presented at the American Society of Criminology, Annual Meeting, 1990, Baltimore, Maryland.

2. Regnery, Alfred, "Getting Away With Murder: Why the Juvenile System Needs An Overhaul," 34 *Policy Review* 65 (1985).

3. Delulio, John, "The Coming of the Super-Predators," *The Weekly Standard*, November 27, 1995, Vol. 1, No. 22, p. 23.

4. Id. Professor Delulio has since retracted his statements about super-predators and admitted he was incorrect. Juvenile arrest rates have dropped significantly and as Professor Zimring has written, "His theories on super-predators were utter madness." Baker, Elizabeth, "As Ex-Theorist on Young 'Super-predators,' Bush Aide Has Regrets," *The New York Times, http://www.nytimes.com/2001/02/09/us/as-ex-theoriston-young-superpredators-bush-aid*...

5. In re Gault, 381 U.S. 1 (1967) at p. 5.

6. This is one of the untrue "myths" concerning youth crime. See Zimring, Frank, "The Youth Violence Epidemic: Myth or Reality?", Wake Forest Law Review, Vol. 33, Fall, 1998, at p. 727.

7. Deitch, M. et. al. (2009) "From Time Out to Hard Time: Young Children in the Adult Criminal Justice System," Austin, TX, The University of Texas at Austin, LBJ School of Public Affairs

8. Id. At pp 19-34

9. Sagatun, I., & Edwards, L., "The Role of the District Attorney in Juvenile Court," *Juvenile and Family Court Journal*," Vol. 34, No. 2, May, 1979.

10. Deitch, M. et. al. *op.cit.* footnote 7 at p. 22.

11. California Welfare and Institutions Code section 707(d)

12. All of these myths and more are discussed in Howell, James, *Preventing and Reducing Juvenile Delinquency*, SAGE, (2009), Chapter 1, pp. 3-16.

13. Eddings v. Oklahoma, 455 U.S. 104, 115 (1982) "[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage."

14. Stanford v Kentucky, 492 U.S. 361 (1989)

15. Roper v Simmons, 543 U.S. 551 (2001) and Graham v Florida, 130 S. Ct. 2011

16. Atkins v Virginia (2002) 536 U.S. 304

17. Roper v Simmons, *op.cit*., footnote 13

18. Graham v Florida, *op.cit*. footnote 13

19. Roper v Simmons, op.cit. footnote 13 at 567

20. Miller v Alabama, 132 S.Ct. 2455 (2012). In still another case the Supreme Court held that age is relevant when determining police custody for *Miranda* purposes. *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011).

21. In the case of *People v Caballero*, 145 Cal.Rptr.3d 286, the California Supreme Court struck down a sentence of 110 years to life for the crime of attempted murder holding that the sentence did not provide the juvenile defendant with a realistic opportunity to obtain release through demonstration of growth and maturity.

22. Some critics assert that *Roper* was incorrectly decided and argue that the death penalty may be appropriate for some juveniles. See Rowe, J., "Mourning the Untimely Death of the Juvenile Death Penalty: An Examination of Roper v Simmons and the Future of the Juvenile Justice System," *California Western Law Review,* Vol. 42, Spring, 2006, p. 287; Jovanovic, A., "Roping in Roper: The Problem with Bright Line Rules in Juvenile Death Penalty Cases," *Michigan State University Journal of Medicine & Law*, Vol. 14, Spring, 2010, pp 281-311.

23. Different terms are used in various states. Waiver refers to the juvenile court waiving a minor to the adult criminal court. Fitness refers to the judicial determination whether a youth is "fit" to remain in the juvenile court. Other terms include transfer, certification, remand, removal, and declination of jurisdiction. This article will use the term fitness hearing.

24. "Public Willing the Pay More for Rehabilitation of Juvenile Offenders," ModelsforChange, *http://www.modelsforchange.net/newsroom/18*

25. Edwards, L., & Sagatun, I., "A Study of Juvenile Record Sealing Practices in California," Pepperdine Law Review, Vol. 4, (1977), pp 543- 572 at p. 544; Sagatun, I., & Edwards, L., "The Significance of Juvenile Records," Juvenile and Family Court Journal, Vol. 30, February, 1979, at pp 29-35.

26. Id.

Youth Court, New Zealand

Latest Research and Developments

New Zealand

Source: www.teara.govt.nz

"A Review of the Literature on Pacific Island youth offending in New Zealand"

Drs Julia Ioane, Ian Lambie and Teuila Percival *Aggression and Violent Behavior* Vol 18, Issue 4, July–August 2013, Pages 426–433

Abstract

"This review examines the current literature on Pacific youth offending in New Zealand. Pacific Island youth offenders are over-represented in the rates of violent offenses, despite not being overly represented in youth offending statistics. A major concern is that the Pacific population has the largest percentage of children and young people under 15 years old in New Zealand. Therefore, this is an issue to be faced by Pacific and wider communities in New Zealand. We focus on risk factors of offending, and its current impacts on Pacific Island youth in New Zealand.

A literature review was conducted to explore some of the risk factors for offending looking at New Zealand studies and government reports. This was followed by a review of overseas literature regarding Pacific youths and their offending behavior. Following this, ethnic minorities were included in the literature review from New Zealand and international perspectives. Expectedly, results in this area are sparse. However, a number of efforts have been made to address this gap in the literature which this review included.

The findings in this review make future recommendations for Pacific youth with offending behavior. These include that ethnicity should be taken into account when addressing research on youth offenders; data relating to the youth offender such as social and demographic history should also be considered for a more collaborative approach to researching and understanding this population; and more targeted studies towards this population are needed to improve the overall health of the Pacific Island population in New Zealand and overseas. Finally, existing programs and interventions currently in place for our Pacific youths with offending behavior needs to be evaluated to ensure it continues to meet the dynamic needs of our Pacific youth population."

Conduct Problems: Effective Programmes for Adolescents by the Advisory Group on Conduct Problems

From: http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/research/conduct-problems-best-practice/effective-programmes-for-adolescents.html

"This report was prepared by the Advisory Group on Conduct Problems (AGCP) on the prevention, treatment and management of conduct problems in adolescence.

The AGCP was established to provide advice to the Ministries of Social Development, Education and Health on improving the delivery of behavioural services in New Zealand.

This is the fourth report completed by this group, following the publication of the Conduct Problems: Best Practice report, Conduct Problems: Effective Services for 3-7 Year Olds report, and Effective Services for 8-12 Year Olds report.

This report has a strong focus on making behavioural services more culturally responsive for Māori, and looks at how both 'western science' and 'matauranga Māori' knowledge sit beside each other in understanding and measuring successes of behavioural interventions.

This report will be of interest to policy makers and practitioners."

To read more and view the report, visit the webpage listed above.

International

"Consensus Development Conference on Legal Issues of FASD September 18-20, 2013, Institute of Health Economics, Edmonton, Alberta."

This conference produced a consensus statement on legal issues of FASD (fetal alcohol spectrum disorder). This statement was produced by a jury led by the Honourable Ian Binnie, former Justice of the Supreme Court of Canada, and includes a range of recommendations calling for changes to the way people with FASD are dealt with by the legal system in Canada. It is available here: http://www.ihe.ca/research/knowledge-transfer-initiatives/--consensus-development-conference-program/legal-issues-of-fasd/consensus-statement/

Conference papers from the conference will likely also be of interest to Court in the Act readers. The presentations were incorporated into sessions which asked the following questions:

QUESTION 1: What are the implications of FASD for the legal system?
QUESTION 2: How can efforts to identify people with FASD in the legal system be improved?
QUESTION 3: How can the criminal justice system respond more effectively to people with FASD?
QUESTION 4: How can family courts and the family/child welfare legal system address the specific needs of people with FASD?
QUESTION 5: What are best practices for guardianship, trusteeship and social support in a legal context?
QUESTION 6: What legal measures are there in different jurisdictions to contribute to the prevention of FASD, and what are the ethical and economic implications of these measures?

Papers and videos of the presentations are available here: http://www.ihe.ca/research/knowledge-transfer-initiatives/--consensus-development-conference-program/legal-issues-of-fasd/presentations-1/

Coming up 2014—Conferences

World Congress on Juvenile Justice – Geneva (Switzerland) – 26th to 30th of January 2015.

Terre des hommes
aide à l'enfance | Kinderhilfe
aiuto all'infanzia | child relief | www.tdh.ch

(from http://www.tdh.ch/en/news/world-congress-juvenile-justice)

The Government of Switzerland and the Terre des hommes Foundation announce the organisation of the World Congress on Juvenile Justice at the International Conference Center of Geneva – CICG.

Why a World Congress on Juvenile Justice?

Despite progress achieved over the last decades, the improvement of the juvenile justice system remains a critical element for the respect of the best interest of children in conflict with the law as well as the interest of the society as a whole. This need is present regardless of the economic status of a country. Despite the vast diversity of judicial systems, the similar challenges arise such as detention conditions for children in conflict with the law, the respect of the rights of children in conflict with the law, the efficiency of non-custodial measures, the advantages of restorative juvenile justice, the reform of the juridical system and the effective prevention of youth offending.

What are the objectives of the Congress?

Legal instruments, norms and international standards exist. The Congress aims at promoting the implementation of these norms and standards through the exchange of experiences, innovations and best practices. The Congress will invite State actors and civil society to take actions for improved cooperation between the relevant stakeholders in each country, as well as for regional and international cooperation.

Who are the participants?

- Governments are invited to present achievements in juvenile justice (legislative, pilot project, innovations, lessons learned, etc.), to share challenges, to discuss implementation of measures as well as articulate needs and/or proposals for regional and international cooperation.
- Juvenile justice professionals (judges, magistrates, prosecutors, academics, penitentiary administration, social institutions and services, police, lawyers, etc.) are invited to expose their lessons learnt and their proposals;

International organisations, United Nations Agencies, non-governmental organisations and other stakeholders in the field of Juvenile justice, in order to strengthen their coordination capacities.

How will the Congress be organized?

The Congress will be held in three official languages (French, English and Spanish) and will consist of presentations, round tables and numerous workshops on specific topics regarding first children in conflict with the law, but also children victims and witnesses. Active participation will be encouraged to ensure that the Congress is an opportunity for participants to share lessons, to discover current practices and to develop networks. The agenda, website and the general logistics of the Congress are in development. All interested governments, public actors and civil society members are invited to save the following dates in their calendar as of now : 26 – 30 January 2015.

Contact: JJ2015@tdh.ch

The 19th International Association of Youth and Family Judges and Magistrates (IAYFJM) World Congress

This year, the overriding dedication of the **International Association of Youth and Family Judges and Magistrates (IAYFJM)** has been the arrangements for its 19th Worldwide Congress. The event will be held in the city of Foz do Iguaçu (Iguassu Falls in the State of Paraná), Brazil, from March 25 to 29, 2014, and its core objective is to elaborate worldwide guidelines towards Child-friendly Justice.

The proposal is grounded on three regional documents already produced in this regard: the Council of Europe document (established in 2010); a document prepared by a group of African experts and accepted by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC, 2012); and a document produced by the MERCOSUR International Association of Childhood and Youth Judges (AIMJJ, 2012). The presence of two thousand participants is estimated in the Congress, including judges, prosecutor attorneys, lawyers, social workers, psychologists and other members of the care system for children and teenagers in various corners of the world. Further information can be obtained by the e-address secretarygeneral@aimjf.org

Wishing you all a fantastic and restful Christmas and New Year !