

“Court in the Act”

***The Youth Court; The Children, Young Persons, and their Families Act 1989;
And topical issues arising for NZ Youth Justice practitioners***

A newsletter co-ordinated by the Principal Youth Court Judge to those involved in the Youth Justice community. Contributions, feedback, letters to the Editor, are not only acceptable, but encouraged

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***Young people do not have the experience to have developed judgment.
That is why, generation after generation, they attempt and achieve the impossible.”***

Anon

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“Lies, Damned Lies and Statistics”: What’s the real picture about youth offending.

Contrary to popular opinion and media headlines, youth offending is not skyrocketing, let alone out of control. In fact, for the last five years it has been relatively stable.

Certainly, there were very considerable increases in the first five to six years of the 1990’s. Since that time, no clear trends have emerged. Some important indicators, such as the Police (non-traffic) apprehension rate, and number of offenders in the Youth Court, have recently dropped, albeit

slightly. “Seriousness” indicators have fluctuated.

There are still two questions that we cannot answer:

- Is the age at which young people begin to commit violent offences getting younger?
- Is the violence committed by young people becoming more serious?

Police Youth Aid Officers and front line youth justice professionals seem reasonably sure that the answer to both questions is: yes.

Overall, the message must be that there is room for cautious optimism. As always, the real solutions will be found in co-ordinated, inter-agency, properly funded early intervention programmes. Nevertheless, the youth justice system can and does continue to make a significant difference in the lives of those young people who do offend.

I attach my second, annual summary of youth offending trends: “Youth Offending – Putting the Headlines in Context”. I am happy for you to make whatever use you wish of this report.

SPECIAL FEATURE

Supervision Orders and their “Enforcement” / “Review”

This special focus is designed to comprehensively improve the current very poor practice throughout the youth justice system as to the imposition, and subsequent enforcement of Supervision Orders.

What is a Supervision Order?

An order where a young offender is placed under the supervision of CYFS, or any other person or organisation specified in the order, for a period of six months or less. A supervision order consists of all the standard conditions set out in s.305, and any “additional” conditions that may be imposed under s.306.

Before a Supervision Order can be Imposed

The Youth Court must obtain a written Social Worker’s Report and Plan. The Plan should clearly set out the objectives and aims of the proposed order.

- Most importantly, the plan should also clearly list the “additional conditions” that are to be imposed under s.306. Almost invariably “additional conditions” will be required to ensure that a tailor made plan for a young person can be formulated to meet the objectives and aims of the plan.
- “Additional conditions” under s.306, must be lawful. For instance, an additional condition of a proposed Supervision Order that a young person carry out community work is not lawful.
- Supervision plans that do not list additional conditions (additional conditions will almost always be relevant) are deficient. Most plans currently do not specify the additional conditions. They are only vaguely referred to in the plan. Usually a Judge will defer imposing the order until the writer of the report can provide a written list of lawful additional conditions.

The Supervision Order

- A Supervision Order must specify the additional conditions.
- A written statement, which includes the terms of the Supervision Order, must be handed to the young offender before he/she leaves Court (s.340 of the Act).

- The written statement must specify all the additional conditions, so it is crystal clear what is expected of the young person.
- A Supervision Order cannot be made in “general form”, with the conditions to be imposed at a later date. This is bad practice, not to mention unlawful. The “whole” order must be made in full, at the one time.

“Enforcement” / “Review” of Supervision Order

A young person’s compliance with a Supervision Order may be enforced under s.309 and s.310 of the Act. The two procedures are quite different and should be clearly understood.

1. Section 309: Declaration of Non-compliance and “Re-sentence”

S.309 is the more fundamental of the two provisions. Upon an appropriate application for a declaration that a young person has failed to comply with a condition of a Supervision Order, a declaration of non-compliance can be made. Then, and only then, the Court has the power to cancel the Supervision Order and substitute a new order in its place. S.309 is a form of re-sentencing after breach.

A two-step process is envisaged:

1. An application to the Court, by the person ordered to supervise the young person, for a declaration that the young person has failed, without reasonable excuse, to comply with a condition of that order (including any “additional” condition imposed under s.306).
2. Following a declaration of non-compliance, the Court may cancel the order and substitute any other order under s.283 as the Court thinks fit, or any order it is empowered to make under s.310. This second step is dependent upon the first, but it does not have to be taken.

Points to Note:

- A declaration of non-compliance, obviously, cannot be made if the allegedly breached additional condition was not one that could be lawfully imposed in the first place (e.g. failure to complete community work hours)
- If an application for a declaration of non-compliance is filed and served on the young person, and the young person does not appear, it seems that there is a “hole” in the Act. There is no power to arrest the young for non-appearance. This will require legislative amendment. Probably the Court can proceed in the young person’s absence. If the young person subsequently disputes any declaration of non-compliance that is made, then a re-hearing could be granted.
- An application for a declaration of non-compliance should be filed in a timely manner.

- If a Supervision Order has expired before an application for a declaration under s.309 is heard, then the Court cannot ever cancel it.
- In such a situation the Court can make a declaration that the young person has failed to comply with the order, which may be useful in any subsequent proceedings against the young person. But there can be no cancellation and “re-sentence”.
- If the Supervision Order looks likely to expire before the Court will have an opportunity to hear and determine the application under s.309, a concurrent application to suspend the order until the application is heard (s.310) should be filed. This will have the disadvantage of suspending social work services to the young person; but it will give the Court jurisdiction to eventually cancel the order and impose a new “sentence”.
- Applications for a declaration should never be allowed to drift. They should be filed and heard urgently, as a priority. If they are not defended, and there is no reason why a decision on this point cannot be quickly reached (following advice from a Youth Advocate), then the declaration should be promptly made.
- If a declaration is made, a Family Group Conference (FGC) must be directed and convened before any new sentence can be imposed.

2. Section 310: Cancellation, Suspension or Variation of a Supervision Order

Section 310 is a more mechanical/administrative section.

It enables:

- a young person; or
 - his or her parent/guardian or care giver; or
 - the person ordered to supervise a young person under a Supervision Order;
- to apply to cancel the order, suspend or vary it, or suspend or vary a condition of the order. The “supervisor” may also apply to impose a further condition. It does not contemplate a new sentence being imposed in substitution for the original order.

The differences between s.309 and s.310 must be clearly understood. The standard of practice throughout the country regarding the proper procedure when a Supervision Order is breached is very poor. There needs to be an urgent improvement.

*If you want more detailed reading on this subject (**Police v B**, Youth Court Wellington, 12 August 2003) is available from this office. Please contact my Personal Assistant, Jayne Collins if you require a copy.*

High and Complex Needs Strategy

Some of you will be aware of this initiative which encourages “inter-agency” collaboration. Most of the serious young offenders who appear in the Youth Court would be assisted by intervention from the High and Complex Needs Unit.

You should not be hesitant in contacting an advisor from the High and Complex Needs Unit. Set out below is relevant information about the High and Complex Needs Strategy that has been forwarded to me from Lyn Doherty, an advisor to that Unit who can be reached on Ph: (09) 914 1173.

“The High and Complex Needs Strategy encourages intersectoral collaboration to meet the needs of children and young people who have such high and complex needs they cannot adequately be met by existing ‘core’ health, education and social services. Typically these young people would have been involved with more than one service over time, and due to a range of complexities, will have experienced little or no recent improvement in positive outcomes.

The High and Complex Needs (HCN) unit enables intersectoral teams to apply firstly, for eligibility, which enables access to extra resources, to support an intervention plan targeting needs across a range of domains – safety and security, physical and mental health, attachment and belonging, social interaction, development and independence, cultural identity and educational foundations for lifelong learning.

Such plans have been written for young people involved with the unit, and in one case recently, a Youth Court Judge requested HCN involvement for a young person appearing before him. HCN plans

seek to assist the young person, often within the context of their families and wider community to develop attitudes, values, behaviours, communication and interpersonal skills to pursue lifelong learning and active participation in society that is beneficial. It is with rehabilitation and long term goals of making contribution to our community in mind, that these plans are put forward to the Youth Court for consideration.

The High and Complex Needs Unit advisors have begun a dialogue with Judge Andrew Becroft, with a view to sharing information and understanding regarding the strategy, and working more closely together in supporting proactive initiatives involving youth coming into contact with police and the courts.

For further information, contact Senior Administrator: Jocelyn Davey, ph 04 918 9276”

Security in the Youth Court

The Youth Court Liaison Judges who have responsibility for the operation of Youth Courts within their region meet three times a year in Wellington. At the last meeting it was decided that in principle everybody entering a Youth Court should undergo a security search by way of scanner or wand.

At present the Department for Courts simply does not have the resources to do this. In time, it will become standard practice.

Given the typical layout of a Youth Court, which Youth Court Judges want to remain the same, and given recent security issues in and outside Youth Courts, there is really now no option but to insist on scanner or wand searches of all those entering a Youth Courtroom. No doubt you will all understand that this is now a fact of life.

Good Work by Some Youth Offenders

We are all encouraged by excellent outcomes of well conducted Family Group Conferences (FGC's). Two outstanding examples have recently come to my attention.

The first is an essay from a young offender, which is self-explanatory. I set it out with his express permission.

I also attach as a separate document a project "Fatal Denial"; from a young woman who admitted a charge of driving while in excess of the breath alcohol limits. Both are excellent pieces of work, which I commend to you.

Here is the first essay:

Here's the stupid thing about peer pressure.

On a dark night recently I was in town with some friends, just the usual stuff happening, drinking to impress, being stupid, thinking it was making us look cool. It doesn't sink in at this stage though, that the alcohol clouds your judgement, and makes an ass of you. So we get to thinking about what we can do together, that's cool, and will break the boredom? Then it comes to us, as a friend calls out to us, let's go for a joy ride in this boat! We think if the owners are silly enough to leave the keys in it, how can we be blamed for just going for a ride? Not hurting anyone right? WRONG.

What we hadn't even thought of was this boat was someone else's and not just sitting there for our pleasure, it's called "conversion".

So that's the first of many stupid things we will do tonight, but the alcohol is doing it's job so far, so why worry?

We set off into the night, and it's getting exciting, the adrenalin is pumping now, but our thoughts of "just a joy ride" take on a whole new life. The "skipper" of our night ride tells us he knows where we can get some free goodies! It's cool guys he tells us, "I've done these places before" no sweat, we'll just break in and grab what we like, then cruise off.

My heart jumps, did he just say that we will now be breaking into some ones batch? Yep, that's what he said alright. How can I say I don't want to go along with this and still be considered cool and one of the boys? So I say nothing. If everyone else thinks this is going to work, why should I worry?

So we do the break in. Once again the blood is pumping, what a rush! It's so wrong what we're doing, but in this crowd I feel wanted, needed, and just happy to be accepted by my peers.

That night we broke into several batches, stealing what we thought we deserved, and needed, and all the while the alcohol did it's job well. At the time I thought it was so clever, how could anyone know what we had just done? We were invincible!

Our "skipper" had looked after us well, and we felt close to him, he was our leader, and he had dealt with this kind of thing many times before, his age was testimony to that! So much older than us, but still considered "one of the boys" what a cool guy.

The morning came around to soon, and reality cut in, did my memory serve me correctly? That blur of memory, that fuzz, my conscious told me I had done something outrageous last night, had I?

A quick phone call confirmed that I had been involved in several burglaries, and converting a boat. I called my mates, how did they feel? Could I tell them how I really felt? Or do I just go along with their story, about how well we had all done last night, and how we had made it into the "big boys club" and how on earth could we be caught? We were so clever, no one else had ever been so careful in their planning, and we didn't even have a plan, so how cool was that? Anyway the cops are thick, and none of us will ever tell, so a good result.

However with the new day came the shock of "someone" bragging about it. The rest is "history" as they say. The cops turned up and trashed my parents home, looking for the stolen goodies. I didn't even have any, the "skipper" had seen to that, saying he had the contacts to deal with that sort of stuff, but that didn't stop the cops, they took a real good

look around the house, even in my sisters room, man that nearly destroyed her I can tell you! Still thought we were in the clear though, no one had squealed in our tight group, had they? YEP, it seemed some one had.

I'm not trying to say I was right in any way, but could I blame it all on that alcohol? Was that a legitimate excuse? Seemed o.k. the other night, why not now?

If I could leave a message to teenagers like me, it would be:

*Listen to your inner voice, it wont lie to you

*Don't be afraid to speak out about what you believe to be right, don't just agree with your mates about doing what you already know to be wrong

*Don't treat your parents with contempt, they are not as dumb as you think, it wasn't that long ago they too were teenagers, and already know how to listen to the inner voice

*Believe it when people say "you can't handle the alcohol" cause they see you for what you are, not the blurred conception you have of yourself when in a drunken stupor

* Be honest to yourself, and your friends. If they are "true friends" they will like you for who you are, not who they would like you to be.



And the second one "Fatal Denial" is attached as a separate document.

Te Hurihanga

I attach as a separate document, an update regarding "Te Hurihanga": the new Youth Residential Pilot Programme being developed in Hamilton for young Waikato male offenders. Te Hurihanga or "The Turning Point" is being developed to fill a gap in the rehabilitation of young offender's aged 14 to 17. The Ministry of Justice is overseeing it. It had its genesis in the "Henwood Project" adopted in the Government's Youth Offending Strategy (the initiative pioneered for several years by Youth Court Judge Carolyn Henwood). You will find this very interesting reading.

Most involved in youth justice seem to accept that the Supervision with Residence "sentence", is simply not long enough to deal with the serious young offenders who come before the Youth Court, many of whom cannot be sentenced to imprisonment in the District Court by virtue of s.18 of the Sentencing Act 2002. That section provides that if an offence is committed by a young person, imprisonment can only be imposed if the offence is "purely indictable" (e.g. sexual violation, aggravated robbery, arson, serious violent assaults).



STOP PRESS

CYFS Baseline Review

Many of you have asked what the CYFS Baseline Review says about youth justice. The answer is it makes some very clear and specific recommendations. I attach the relevant pages as a separate document.

It could be said that if youth justice within CYFS were a cat, it's ninth life had just been used up! CYFS really must stand and deliver on the youth offending issues raised in this Baseline Review. My personal view is that if there is not the continued significant improvement envisaged in this Baseline Review, then youth justice would need to be removed from CYFS and operate as a stand alone independent organisation.

URGENT ANNOUNCEMENT

ANNOUNCEMENT FROM CHILD YOUTH AND FAMILY SERVICES REGARDING THE NATIONAL YOUTH JUSTICE CONFERENCE 2004

Please Note: The Youth Justice Conference scheduled for 18-20 February 2004 has been postponed until 17 – 19 May 2004.

A letter will follow shortly to those of you who submitted an abstract for the workshops or who were to be main speakers explaining the reasons for this postponement and the selection and advice of acceptance process.

We apologise if this postponement causes you any difficulty.

If you require any further information you can contact Lisa Hema, Manager Youth Justice Team at Child, Youth and Family on (04) 918-9142 or lisa.hema001@cyf.govt.nz or Steve Pasene at Child, Youth and Family on (04) 918-9375 or steve.pasene001@cyf.govt.nz.

We hope that you will still be able to attend on the new dates.