



COURT IN THE ACT

THE YOUTH COURT OF NEW ZEALAND

TE KŌTI TAIOHI O AOTEAROA

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EDITORIAL

An Opportunity for Change

Judge John Walker

Principal Youth Court Judge



E ngā mana, e ngā reo, e ngā karangatanga maha, tēnā koutou katoa.

As 1 July 2019 fast approaches, there is an understandable focus on the incoming legislative changes. These changes are not to be minimised; they present huge potential for the Youth Court. As well as the increase in age to include most 17-year olds in the youth justice system, important amendments involving access to youth advocates, transfer-back, information-sharing and care and protection support for young people up to 21 or 25 in certain cases, will have a positive impact for our tamariki and rangatahi.

These finer details are important, and will consume much of our time as we prepare in a practical sense. However, I think it is important that all of us working in the youth justice field take a step back. In particular, to consider the important over-arching principles which apply not just to youth justice, but to all matters under the Oranga Tamariki Act 1989. I suggest that this requires a shift in thinking, a shift that has been warranted since 1989 and the Puaotea-Tu Report of 1988.

Court in the Act is a publication coordinated by the Office of the Principal Youth Court Judge.

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courtintheact@justice.govt.nz.

The Youth Court has been proactive and innovative in utilising the tools that have been provided by the legislation and developing in the spaces between. The development of Lay Advocates is an example. Section 326 OTA enables the appointment of a Lay Advocate to appear in support of the child or young person in proceedings. They come from a position of standing within the community and culture of the young person, and play an important role in advocating for them and their whānau, ensuring that the Court is made aware of all relevant cultural matters. It is positive to note that Lay Advocates have become established and valued members of the Youth Court team in many courts around New Zealand. This is a relatively recent innovation, yet the statutory basis has been around since 1989.

Ngā Kōti Rangatahi (“Rangatahi Courts”) and Pasifika Courts are other judicial initiatives which involve relocating the Youth Court proceeding to a culturally-appropriate setting. For Ngā Kōti Rangatahi, 15 marae around New Zealand have come forward to enable young people who have come into conflict with the law to have their FGC plan monitored in a way that enables engagement with te ao Māori, exposure to te reo Māori and building an understanding of the young persons’s identity and where they are from. Our Rangatahi and Pasifika Courts are accessible to all young people who have offended and do not deny the charges against them.

The process provides an opportunity for Kaumātua and Kuia to play a role in helping young people to redirect their life trajectories, and for whānau to more easily connect and engage.

The amended legislation has renewed emphasis on the principles of te Tiriti o Waitangi and on very important concepts such as mana tamaiti (tamariki), whanaungatanga and whakapapa. It is very important that all who work under the legislation: Judges, lawyers, social workers, lay advocates, police youth aid officers, have a firm understanding of the principles if true effect is to be given to them.

A major part of this year’s Youth Court Judges’ Conference will be devoted to education around these principles. I believe that this recognition and implementation of the purposes and principles of the Act, including references to the UN Conventions and ensuring participation by young people and their whānau, provides a real opportunity to effect change. History has shown that important statutory provisions can lie dormant, unused, for many years. The principles are only words on a page unless we all breathe life into them.

Let us all together seize this opportunity for effective change.

Ngā manaakitanga

John Walker

Principal Youth Court Judge for New Zealand

RECENT EVENTS

Australasian Youth Justice Conference—Sydney 2019

The 2019 Australasian Youth Justice Conference was held in Sydney, Australia over the course of three days (30 April—2 May 2019). A collaboration between the Australasian Juvenile Justice Administrators (AJJA) and the Australian Institute of Criminology (AIC), the conference brought together over 200 juvenile justice practitioners, policy makers, academics and others with a keen interest in effective, innovative youth justice outcomes.

The theme for the 2019 conference was “Contemporary Challenges, Innovative Solutions”. The conference touched on safety, security and rehabilitation, countering violent extremism, mental health, FASD and disproportionate representation of indigenous populations. It featured dynamic presentations from a diverse group of international and domestic speakers, including Grainne Moss, Chief Executive Oranga Tamariki, NZ and Peta Lowe, Director, NSW Dept of Justice.

To join the mailing list for information about future AYJC events, see: www.ayjconference.com.au

YOUTH JUSTICE NOTICE BOARD

SEMINAR: ORANGA TAMARIKI ACT—CHANGES

NZLS CLE is hosting a number of seminars to provide practitioners working in the area of child law (parenting, care and protection and youth justice) further insight into the implications of legislative change come 1 July 2019.

For full information, costs and registration see:

www.lawyerseducation.co.nz/courses.html

Topics covered will include: the context within which the Act sits; obligations in respect of Te Tiriti o Waitangi; key legislative changes; Tikanga Māori in relation to the Act.

Presenters:

- Her Honour Judge Sharyn Otene
- Natalie Coates, Consultant, Kahui Legal
- Dr Allan Cooke, Quadrant Chambers
- Darrin Haimona MNZM
- Erin Judge, Chief Legal Officer Oranga Tamariki

ADLS and CPD are hosting a youth justice specific seminar in Auckland on Tuesday 11 June 4:00-6:15pm, targeted to all those practising in the Youth Court jurisdiction or wishing to do so.

For full information, costs and registration see:

www.adls.org.nz/cpd/cpd-events

Topics covered will include: Oranga Tamariki Act changes including the duties on the chief executive OT, inclusion of 17-year olds and the role of whānau, hapū and iwi, and changes relating to ITC-FGCs.

Presenters:

- Associate Professor Khylee Quince
- Maria Pecotic, Barrister and Youth Advocate
- Anthony Dickson, Regional Litigation Manager OT

Chair: Judge FitzGerald

Christchurch	17 June 2019 (12:30-5:00pm)
Wellington	18 June 2019 (12:30-5:00pm)
Auckland	19 June 2019 (12:30-5:00pm) <i>Live stream also available.</i>

Auckland	11 June 2019 (4:00-6:15pm)
	<i>Live stream also available—see above link.</i>



“Just’ Responses to Children with Mental Health Problems in the Criminal Justice System: Lessons from the United States, Canada and New Zealand”

A recent report by Clement (Chun Wai) Ng, 2016 Churchill Fellow. A legal aid worker predominantly representing children in Central Australia’s criminal courts, Clement Ng has considered important aspects of the youth justice system. He makes key observations as to the ways in which processes can be improved.

To read the full report see: www.churchilltrust.com.au

“What Makes a Good Life? Children and young people’s views on wellbeing”

In February 2019 the Office of the Children’s Commissioner released a report which considered the views of over 6000 children and young people about what a good life is and what they thought were the most important areas to focus on to improve the lives of children and young people.

To download the full report or the “At a Glance” summary please see: www.occ.org.nz

UPCOMING CONFERENCE

The Australian Institute of Judicial Administration Conference on Youth Justice

November 8-9, Melbourne



What are the latest and most pressing problems in the highly complex area of youth justice? And how can the various courts and tribunals of Australia's juvenile justice system work together to provide a more effective and responsive youth justice system for all young people, including Indigenous, African and Pacific Islander youth?

Judicial officers, lawyers, police, medical experts, psychologists and social scientists from around Australia will be convening to discuss these issues at the Australasian Institute of Judicial Administration's conference on youth justice, to be held on November 8-9 at Melbourne's Rendezvous Hotel.

Join them in panel sessions that will focus on identifying the most urgent issues at hand in youth justice and on finding practical solutions for them.

Conference sessions will also cover the complex medical and psychological issues that are relevant in a jurisdiction that, at its best, can help divert the flow of damaged, marginalised and brutalised children away from youth detention and the adult prison system and back into family life.

A must for any professional working in this area, the conference will begin with keynotes from the NT's Judge Sue Oliver and then from Judge Amanda Chambers, President of the Children's Court of Victoria, together with Judge Peter Johnstone, President of the Children's Court of NSW.

To access the program and registration:

www.justiceforyoungpeople.com.au/program

Session topics will include:

- "Sad" kids or "bad" kids? Who are the children swept up by the youth justice system?
- How to turn a youth justice system around
- Is punishment a relevant consideration in youth justice? How can "rehabilitation" be achieved when children are locked up in extremely onerous conditions?
- The role of education for young people in custody
- The pathway from "out of home care" to youth prison
- Diversionary youth programs: which ones work? And why?
- Raising the age of criminal responsibility

RECENT YOUTH COURT APPOINTMENTS

A warm welcome to five District Court Judges who have recently been designated Youth Court Judges:

Judge Mina Wharepourī (Manukau)

District and Youth Court Judge



Judge Pippa Sinclair (North Shore)

District and Youth Court Judge



Judge Barbara Morris (Wellington)

District and Youth Court Judge



Judge Sanjay Patel (Manukau)

District and Youth Court Judge



Judge Claire Ryan (Auckland)

District and Youth Court Judge



YOUTH JUSTICE IN THE MEDIA

Recent articles in the media on the topic of youth justice:

- [“Young offenders show high rates of neurological impairment”](#)
Radio NZ 28 February 2019
Discussion with Professor Nathan Hughes, author of “Nobody made the Connection”.
- [“Big Read: Raising the youth justice age in 2019”](#)
NZ Herald 4 November 2018
An in-depth insight into the youth justice system and the experiences of those within it.
- [“Ngāpuhi based remand service launched to keep young offenders in the north”](#)
Stuff New Zealand 15 October 2018
A new remand scheme for teen offenders hopes to break the cycle of incarceration of young Ngāpuhi in prison.
- [Checkpoint with John Campbell \(Video\)](#)
Checkpoint 22 July 2018
John Campbell talks to the 14-17 year olds who call youth justice residence Te Au Rere a te Tonga home.
- [“Changing youth justice for the better”](#)
Stuff New Zealand 25 November 2018
Te Au Rere a te Tonga’s Kyle Kuiti was awarded a Public Service Medal for his work with youth.
- [“Pilot scheme gives Taranaki youth offenders tools to keep safe”](#)
Stuff New Zealand 29 August 2018
An innovative pilot in Taranaki working to ensure that youth have an opportunity to learn the tolls to keep themselves safe.

INCOMING LEGISLATIVE CHANGE

A summary of youth justice changes under the Oranga Tamariki Act 1989

From 1 July 2019 legislative changes to the Oranga Tamariki Act 1989 will come into force.¹ A brief overview of these changes is set out below.²

For information about accessing NZLS CLE and ADLS seminars on this topic, see [page 3](#).

Youth Court Jurisdiction

- The Youth Court will now deal with all 17-year olds except those charged with murder, manslaughter or a Schedule 1A offence. 17-year olds facing a Schedule 1A offence will have that charge transferred to the District or High Court.
- The Youth Court will also now deal with a child or young person charged with a traffic offence that is not an infringement offence.

Principles

- Renewed s 4 Purposes and s 5 Principles include recognition of terminology and concepts central to te ao Māori:
 - Protecting mana tamaiti (tamariki);
 - Recognising whakapapa;
 - Recognising whanaungatanga responsibilities.
- The child or young person's rights including those set out in UNCROC and UNCRPD must be respected and upheld.
- A holistic approach should be taken.
- Amendments to s 208 youth justice principles and primary considerations for youth justice: s 4A.

New Section 4A— Primary Considerations

- a. the **well-being and best interests** of the child or young person; and
- b. the **public interest** (which includes public safety); and
- c. the **interests of any victim**; and
- d. the **accountability** of the child or young person for their behaviour.

Family Group Conferences

- Youth Advocates will be appointed at intention-to-charge FGCs where the young person is facing charges with a possible maximum penalty of 10 years or more in prison: s 249A.
- Consideration must be given to what restorative justice actions could be undertaken during the FGC process: s 258.

Detention and remand

- The Youth Court must review any order to remand in Police custody under s 238(1)(e) at least once every 24 hours.
- A 17-year old may be detained in the youth unit of a prison under new s 238(1)(f) on a joint application from Corrections and Oranga Tamariki in certain circumstances. If granted, it must be reviewed by the chief executive at least once every 14 days.
- A 17-year old's supervision with residence order may be cancelled in certain circumstances: s 316(1A).

¹ Changes effected by the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017.

² At the time of publication, remedial legislation (the Oranga Tamariki Legislation Bill) was at Select Committee. Therefore this information may be subject to change.



Practical measures:

- Criminal proceedings involving 17-year olds that are underway at the commencement date are to be unaffected by the changes.³
- Changes apply to those proceedings commenced on or after 1 July 2019.
- A “transfer-back” provision (s 276A) will enable a 17-year old to be transferred back to the Youth Court if the circumstances for the transfer are no longer applicable.
- “Related charges” may also be subject to a transfer alongside the Schedule 1A offence. This is addressed in remedial legislation.



Section 7AA

- Section 7AA imposes a duty on the chief executive of Oranga Tamariki to recognise and provide for a practical commitment to the principles of te Tiriti o Waitangi. This is in regard to:
 - policies; and
 - developing partnerships.



Moving to independence provisions

- New provisions will provide for young people up to age 21 or 25 in certain circumstances.
- See: s 386AAA.



³ Section 138 CYPF(OT) Legislation Act 2017.

“Specified Offences”

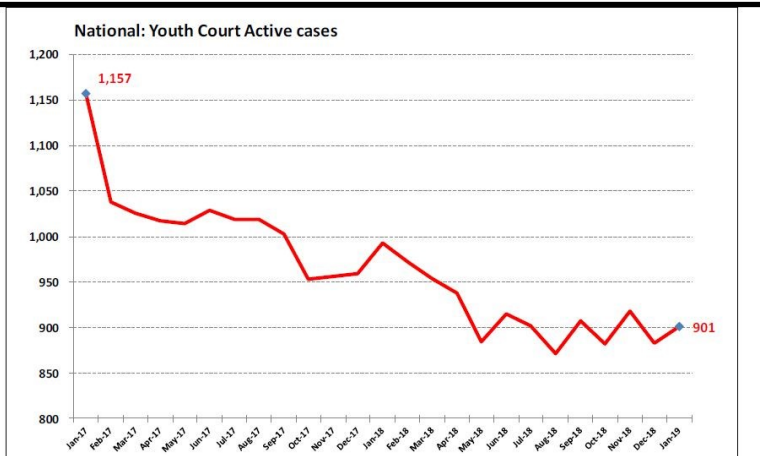
Where a 17-year old is charged with a specified offence, they will be transferred to the District Court. For the full list see [Schedule 1A](#).

Sexual violation.
Sexual connection with consent induced by threat.
Sexual connection with child under 12.
Attempted murder.
Wounding with intent to cause grievous bodily harm.
Aggravated wounding.
Discharging firearm or doing dangerous act with intent to cause grievous bodily harm.
Kidnapping.
Aggravated burglary.
Aggravated robbery.
Assault with intent to rob.
Arson.
Importing into or exporting from New Zealand any Class A or Class B controlled drug.
Producing or manufacturing any Class A or Class B controlled drug.
Supplying or administering, or offering to supply or administer, any Class A or Class B controlled drug to any other person, or otherwise dealing in any such controlled drug.
Possession of any Class A or Class B controlled drug for the purpose of supplying or administering, or offering to supply or administer, to any other person, or otherwise dealing in any such controlled drug.
Engaging in a terrorist act.

For the full list see [Schedule 1A](#) Oranga Tamariki Act 1989.

YOUTH JUSTICE STATISTICS

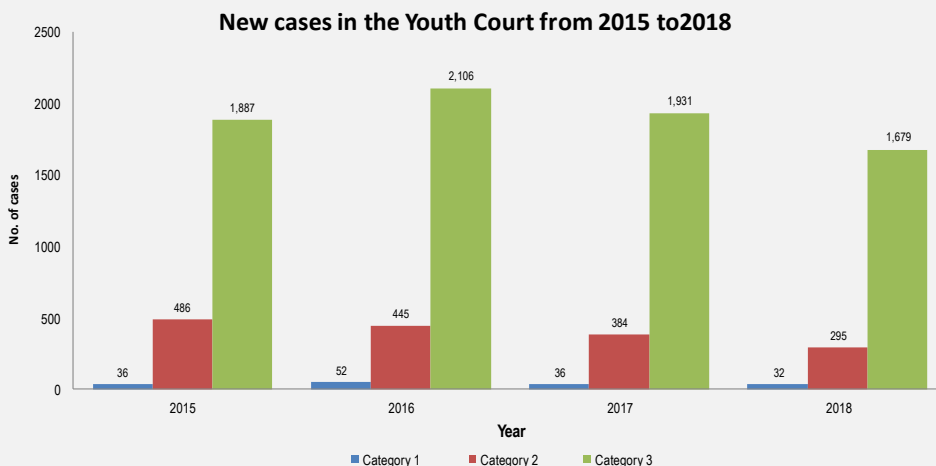
Over the last two years there has been an overall downward trend in the number of cases and young people appearing in the Youth Court.



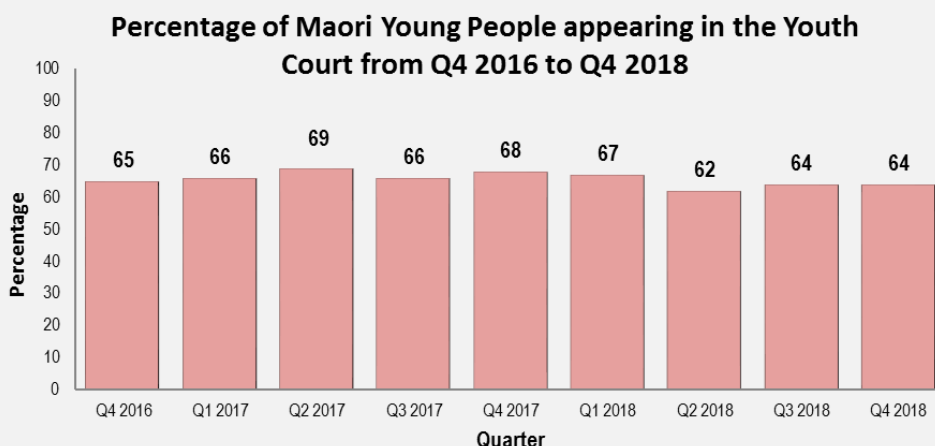
↑ Case numbers increased from 883 in December to 901 in January (+18). This is -256 cases or -22% less than January 2017 (1,157).

The Nature of Youth Offending in New Zealand

- Those aged 15 to 24 years (14% of the population) account for as much as 40% of criminal-justice apprehensions.
- Adolescent brain development extends into the mid-20s.
- Children with a parent in prison are 10 times more likely to be imprisoned in future than are non-prisoners' kids.
- Heavy drinking by 79% of young offenders and drug use precipitate and maintain offending.
- One in five youth offenders has a learning disability.



- Youth offenders are three times more likely than non-offenders to have experienced a traumatic brain injury.
- As many as 80% of young offenders experience family violence.
- Young Māori are significantly over-represented both as victims and offenders.



These statistics were collated as part of Dr Ian Lambie's report, "It's never too early, never too late: A discussion paper on preventing youth offending in New Zealand" 12 June 2018.

CASE WATCH

All Youth Court decisions are anonymised to comply with legal requirements.

H v R [2018] NZCA 376

Kos P, French and Miller JJ

The subject of this appeal was historic sexual offending of a now 78-year old man against his sister in the years 1955-1967 and his daughter in the late 1960s and 1970s when aged approximately 16 years old. The appellant argued against conviction and sentence, and claimed that the High Court twice wrongly refused to stay the proceedings.

The Court of Appeal dismissed the appeal. As the Court of Appeal had held in *R v M [Youth Justice]* [2011] NZCA 673 at [62]-[63], s 322 only applies to cases while they are in the Youth Court. However, youth justice principles continue to apply to a youth who is being dealt with in another jurisdiction. The Court also agreed with the High Court Judge that s 322 had no bearing on this particular case as the appellant was never charged, or in any way held to account, as a young person.

The Court also considered the implications of a judicial direction in respect to the passage of time. The appellant was between 16-20 at the time of the rape and the Court considered that he ought to have been treated as a “youthful offender”.

In February 2019 the Supreme Court granted leave to appeal this decision. The hearing took place on 4 April 2019.

Youth Court judgments released since 2016 are published in full on the District Court website. Select ‘[All Judgments](#)’ at the top left of the homepage to search.

R v Hurrell [2018] NZHC 2505

Davidson J

This case involved a 16-year old jointly charged with two others for manslaughter. In addition to analysis of the seriousness of offending within *R v Taueki* bands, the Judge noted the benefits the defendant had experienced in reconnecting and learning about his culture. This had been an integral part of his rehabilitation while on remand.

“From a Māori perspective, I therefore accept that addressing your compromised Māori cultural identity is crucial to unlocking your rehabilitation potential”.

W v Police [2018] NZHC 1428

Cooke J

W (16 years) had been sentenced in the Youth Court to five months’ supervision with residence for an aggravated robbery.

On appeal of the sentence, the High Court accepted new evidence that W had been approved a place at START Taranaki. In submissions the defence drew on principles set out in the UNCRDC and argued that had the information been before the Youth Court Judge an alternative sentence would have been imposed.

The Court allowed the appeal, holding that the circumstances now demonstrated that the less restrictive option was the s 311 order to the duration specified by defence to enable entry into START Taranaki. There was now an error in the sentence as imposed and a different sentence was to be imposed in accordance with s 250 of the Criminal Procedure Act 2011.

Prenatal Alcohol Exposure

Andi Crawford, PhD

<i>He mokopuna He taonga</i>	<i>A child, a treasure</i>
<i>Ko taku tamaiti e noho mai nei kei te kōpū</i>	<i>My child who lies within the womb</i>
<i>I te huaki pouri</i>	<i>On the edge of darkness, come forth</i>
<i>Nau mai, haere mai</i>	<i>Come forth into the world</i>
<i>He wahine, he whenua, ka ngaro ai te tangata</i>	<i>Women and land both provide sustenance and nourishment and without them the myriads of descendants are lost</i>

Prenatal Alcohol Exposure damages the developing brain. For some children and youth this results in severe neurodevelopmental impairments that meet criteria for a Fetal Alcohol Spectrum Disorder. Children and youth with FASD often experience significant problems with inattention, impulsivity, communication, memory, social skills and emotional dysregulation (Mattson et al., 2011). During their lifetime many people with FASD experience disrupted school, trouble with the law and alcohol and drug issues (Streissguth et al., 2004).

Doctoral research in the Hawke's Bay was undertaken to understand what factors were important for independent functioning at home and at school. The study included 39 children aged (8-12) who were referred to the FASD assessment pathway in the Child Development Service at Hawke's Bay DHB. Many of the children referred were male (77%), Māori (82%), resided in high deprivation areas (Dep 9-10, 59%) and whose mothers had not completed any high school qualifications (72%).

A comparison group (N= 29) was also included which was matched on age, gender, ethnicity, maternal education and deprivation index. It is important to recognise that the higher incidence of Māori in this study must be considered as a direct effect of colonisation, historical trauma and social disadvantage rather than due to ethnicity itself. Importantly, the research project was supported by a strong partnership with Te Wāhanga Hauora Māori (Māori Health Service) and findings were considered with regard to both the psychological literature, colonised history of Aotearoa New Zealand and Te Ao Māori worldview.

Research findings showed that children in the FASD group experienced severe learning and behaviour difficulties, often in the context of psychosocial complexity. Interestingly, impairments in social thinking (taking someone's perspective, recognising emotions) was the only important predictor of functioning at school even after accounting for IQ, higher reasoning skills and adverse childhood experiences the ability to understand social interactions. In particular, those children who could recognise emotions on adult's faces were more able to adaptive and function independently at school. Recognising emotions is important because it is the first stage of a social interaction relationships. Difficulties in social and emotional thinking is important as it can affect relationships and connections between children and their teachers thus resulting in a less effective learning environment.

Social thinking is especially important in Te Ao Māori as many communities are organised by social connectedness via whakapapa. Connectedness is also vital for passing down values and beliefs, for example the passing down of whakatukii occurs in a social dialogue rather than learning from books. Tikanga requires high levels of social and emotional competence as decisions are made by consensus rather than a more authoritarian or patriarchal approach. Consensus requires an ability to understand the emotions, intents and beliefs of others, reflect on others position, compare with their own and then find solutions that made sense to all. Whakawhanaungatanga (the process of building relationships) is essential in creating a secure identity. Difficulties in connecting with others may therefore threaten identity, belonging and participation in the community.

Children in this study also faced a number of other challenges. Many had experienced multiple placements, although most had been in a stable placement for the last three years. A high number of birth parents also experienced learning difficulties and 56% of children had experienced more than 4 Adverse life Experiences, which has been found to be associated with increased health risks such as alcohol and drug issues, depression, suicide, sexually transmitted diseases and suicide (Dube et al., 2003; Felitti et al., 1998). Using Durie's (1997) Māori model of health 'Te Whare Tapa Whā' many children with FASD were experiencing difficulties in all of the pillars; impairments in thinking (Taha hinengaro), poor physical health and housing issues, (Taha tinana), whānau separation or issues such as family violence (Taha whānau), and loss of connection to their whānau, land and where they belong (Taha wairua).

Despite challenges in all of the pillars, many children did not meet criteria for tertiary health and education services. Only 39% met criteria for Disability Services as acceptance criteria is based on a co-morbid diagnosis of Intellectual Disability, only 5-8% met criteria for Mental Health Services and only 46% had received specialist service from the Ministry of Education.

Within Te Whare Tapa Whā we can see that current services (health and education) are only brokered around one of the four components. Difficulties in taha hinengaro may broker service to the individual child in health (Disability, Mental Health) or education services, however many of the children with FASD in this study did not meet the criterion thresholds required to access these services. Our system creates barriers to complex presentations when we only offer service based on diagnosis or specific impairments. When services are brokered on separate components we can lose the cumulative effect when a number of risks/issues are present.



The present study has found a large proportion of the children referred for an FASD assessment are Māori and the way services are contracted for these children are fragmented with many children denied access to tertiary health service despite presenting with significant need. This gives an example of how western/Pākehā models of health, especially when they are formed around diagnoses, do not acknowledge strengths nor recognise the level of need that is present. It is true that these Pākehā, or

western models of health may not also satisfy the needs of either Pākehā or any other cultural group who experience FASD. However Pākehā are not experiencing the corresponding, historical trauma due to colonisation, level of inequality and social disadvantage that is present within Māori communities (Hawke's Bay District Health Board, 2014; Ministry of Health, 2015). Māori have specific cultural needs that must be viewed in a holistic way to in order to address the increasing risk factors that threaten a positive life experience for a child with FASD.

If eligibility for service is based on each issue considered separately then the system will inevitably fall well short of supporting these children and their whānau in a culturally appropriate way and therefore is an example of institutional racism. The way services are contracted must replicate what we are expected to do in clinical and cultural practice. Māori Models of health provide a holistic basis to review need within a culturally safe and appropriate context. Moving forward we must focus not just on the child but the whole whānau. Initiatives need to focus on building connectedness, belonging and identity.

And for the courts?

Moving forward it will be important to:

- Recognise and advocate for a holistic view of children and youth.
- Advocate for youth to have someone they trust, and are connected to, in the court process.
- Focus on the connection and attachments when youth are transitioning: back to school, between residences.
- Focus on plans which aim to support youth to create social connections, establish identity, and involve whānau (including the siblings).



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RECENT RESEARCH AND PUBLICATIONS

NEW ZEALAND

Realising the right of the child to participate in the criminal process

Author: Louise Forde

Source: Youth Justice 18(3) December 2018: 265-284

Abstract: The right of the child defendant to participate effectively in criminal proceedings is a fundamental aspect of the right to a fair trial, and is guaranteed under a number of international instruments, including the United Nations Convention on the Rights of the Child. Ensuring that the right is realised at the domestic level requires States to take positive steps to facilitate the child's effective participation. This article examines how the child's participation is supported through statutory provisions and by the courts in Ireland and New Zealand. The discussion highlights challenges and positive steps taken to facilitate effective participation in domestic law.

Tough talk: youth offenders' perceptions of communicating in the Youth Justice system in New Zealand

Author: Sarah A Lount and others

Source: Australian and New Zealand Journal of Criminology 51(4) 2018:593-618

Abstract: Youth Justice procedures rely heavily on oral language. International research suggests young people in the Youth Justice system have poorer language skills than their non-offending peers, which has implications for their participation in Youth Justice processes and rehabilitation programmes. This exploratory study used semi-structured interviews of eight males, of unknown language-skill status, from one Youth Justice residence in New Zealand. Results suggested the young people felt they had no control or 'voice' in court, or with adults whose roles, or with whom, they were not familiar.

AUSTRALIA

A child's capacity to commit crime: examining the operation of doli incapax in Victoria (Australia)

Author: Kate Fitz-Gibbon and Wendy O'Brien

Source: International Journal for Crime, Justice and Social Democracy 8(1) 2019:18-33

Abstract: The rebuttable presumption of doli incapax is available in all Australian states and territories and provides that, where a child is unable to comprehend the distinction between actions that are 'seriously wrong' and those that are 'naughty or mischievous', they cannot be held criminally responsible for their actions. Despite the key role that doli incapax should play in diverting the youngest offenders away from the criminal justice system, its operation to date has been largely unexamined. This article examines the need for, and the effectiveness of, the presumption of doli incapax in Victoria, Australia. Revealing inconsistencies in the use of the presumption, the article also examines the need for future reform of this area of law.

Domestic and family violence by juvenile offenders: offender, victim and incident characteristics

Author: Karen Freeman

Source: NSW Bureau of Crime Statistics and Research issue paper 136, September 2018

Abstract: The aim of this research was to examine domestic and family violence perpetrated by juveniles in New South Wales, including identifying characteristics of offenders, victims, and incidents. It concludes that while domestic and family violence by juveniles has commonalities with domestic and family violence by adults, the nature of the relationship between victims and offenders presents unique challenges in providing appropriate responses to, and services for, victims and offenders.

Adolescent violence towards parents: prevalence and characteristics using Australian Police Data

Author: Lauren Moulds and others

Source: Australian and New Zealand Journal of Criminology 52(2) 2019:231-249

Abstract: Adolescent violence toward parents is a unique form of family violence which for many, including police personnel, challenges traditional views of parent–child relationship, and raises questions about victimization. There has been minimal research in Australia to date in this area, and knowledge about both prevalence rates and the characteristics of offenders and victims remains limited. This exploratory study utilized police data from four Australian States to document prevalence rates of reported offenses to police, and the characteristics of adolescent violence toward parents in Australia.

Youths who Kill: when is homicide not homicide?

Author: Gareth Branston

Source: Criminal Law Review 5 2019: 411-423

Abstract: In this UK article the author considers issues relating to the trial and sentencing for youth of young persons for causing death by driving. The first issue addressed is the question of whether the person is charged with an offence of homicide, this determines whether the child or young person’s case is sent to the Crown Court. Then the author looks at what is an offence of homicide, how homicide is defined in other legislation, and the obvious offences of homicide. Then causing-death-by-driving offences are considered in relation to homicide, namely are causing-death-by-driving offences homicide? The author then puts forward reasons why he supports the view that Parliament did not intend causing-death by driving offences to be classed as homicide. These are discussed under the headings of either-way offences in the adult magistrates’ court; the [Domestic Violence, Crime and Victims Act 2004](#)(UK); history of the grave crimes and causing-death-by-driving legislation; sentencing powers of the Crown Court; other offences involving death and inchoate offences.

Sentencing and treatment of juvenile sex offenders in Australia

Author: Riddhi Blackley and Lorana Bartels

Source: Australian Institute of Criminology—trends and issues in crime and criminal justice 555, July 2018

Abstract: This paper examines sentencing and treatment practices for juvenile sex offenders in Australia and the challenges of reconciling the imperatives of rehabilitation, accountability and community protection. It begins with an overview of juvenile offenders and the juvenile justice system, including the principles for sentencing young offenders. It then considers the complex lives and offending patterns of juvenile sex offenders, before providing examples of judicial reasoning in sentencing. It concludes by examining best practice in treatment for sexually abusive behaviours and innovative justice responses to juvenile sex offending, such as therapeutic treatment orders and restorative justice conferencing.

UNITED KINGDOM

The Lammy Review: an independent review into the treatment of, and outcomes for, Black, Asian and minority ethnic individuals in the criminal justice system

Author: David Lammy

Source: Ministry of Justice, London, 2017

Abstract: This UK report highlights what it describes as disturbing trends around disproportionality in the youth justice system. The report is the product of an independent review, commissioned by two Prime Ministers. The review was established to ‘make recommendations for improvement with the ultimate aim of reducing the proportion of Black, Asian and minority ethnic offenders in the criminal justice system’. It reflects a growing sense of urgency, across party-political lines, to find solutions to this inequity.

Court in the Act is a publication produced by the Office of the Principal Youth Court Judge.

We welcome feedback, contributions and submissions. These can be sent to: courtintheact@justice.govt.nz