Court in the Act

Issue 78

TE KŌTI TAIOHI O AOTEAROA • THE YOUTH COURT OF NEW ZEALAND

IN THIS ISSUE

Court in the Act is a national newsletter dealing with youth justice issues, coordinated by the Research Counsel to the Principal Youth Court Judge.

We welcome your suggestions, feedback and contributions. Please email:

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EDITORIAL: New Christchurch Youth Court leads the way

Principal Youth Court Judge John Walker

In solution-focussed Courts such as the Youth Court, two key ingredients are the relationship between the Judge and the young person, and the provision of information, programmes and services by a multiagency team.

A Judge who establishes good rapport with a young person, by engaging with the young person successfully and showing genuine interest in their life and the challenges they face, can assist in engendering motivation to undertake interventions that take place as a result of the Court process.

Establishing such a relationship must first involve a conversation. It is difficult and intimidating enough for adults to converse with Judges in a formal Court setting. It is even more difficult, if not impossible, for most young people. To promote that conversation, Youth Courts endeavour to alter their internal architecture to make the Court more inclusive and conducive to participation. Furniture is rearranged in a horseshoe shape, and the Judge often sits at a lower level, as opposed to being at the raised bench.

The new Christchurch Court building provided a rare opportunity to design a Youth Court with principles of participation and inclusiveness in mind, rather than just adapting an existing courtroom. And so the new courtroom has a round table specifically built, with allocated space for the Judge to sit below the traditional raised bench, if they so desire. In either position, the rounded architecture means the Judge is very much a part of the team around the table. Additionally, the absence of a traditional "bar" between the public gallery and Court participants means there is an immediate sense of inclusion in the process for anyone in Court, including extended whānau there to support the young person, and

NGO representatives.

The youth justice space extends beyond the courtroom, too. While the conversation between the Judge and young person can act as a catalyst for the young person's engagement with the process, the ongoing work takes place outside of Court - where a multiagency team gathers critical information to then guide decision-making in the Youth Court, and where that same multiagency team then leads youth justice interventions.

As part of the Youth Court space, dedicated youth justice agency space has been secured, enabling agencies like Youth Aid officers, Oranga Tamariki, Youth Forensic Services and Education Officers to use the Youth justice space whenever they want to - not just on Youth Court days. The spaces can be used for multiagency conferences, meetings with the young person, forensic assessments, or for planning interventions for the Judge to consider. It is hoped that this facility will enhance the collaborative approach already in evidence and so important in fashioning effective responses. No other Youth Court arrangements so readily allow for the involvement of the multiagency team.

This is an exciting development for the Youth Court. It represents the first customised embodiment of the principles of inclusion and participation. This is exactly what is needed in order for the Youth Court to be effective in engaging with the young person, engaging with the agencies around the table and finding lasting solutions.

For an example of an innovative solution-focussed court in the mainstream adult world, see the article on Red Hook Community Justice Center on p 9. ■

Pānui: CYPF Act renamed the Oranga Tamariki Act

The Children, Young Persons and Their Families Act 1989 has been renamed the Oranga Tamariki Act 1989. Some amendments have been made to Part II of the Act (care and protection). Significant amendments to Part IV of the Act (youth justice) will come into force in the coming months and years.

The brand new Christchurch Youth Court. Privacy will be established by screening on the Courtroom's windows.

Children and young people's comprehension of the New Zealand Rights Caution

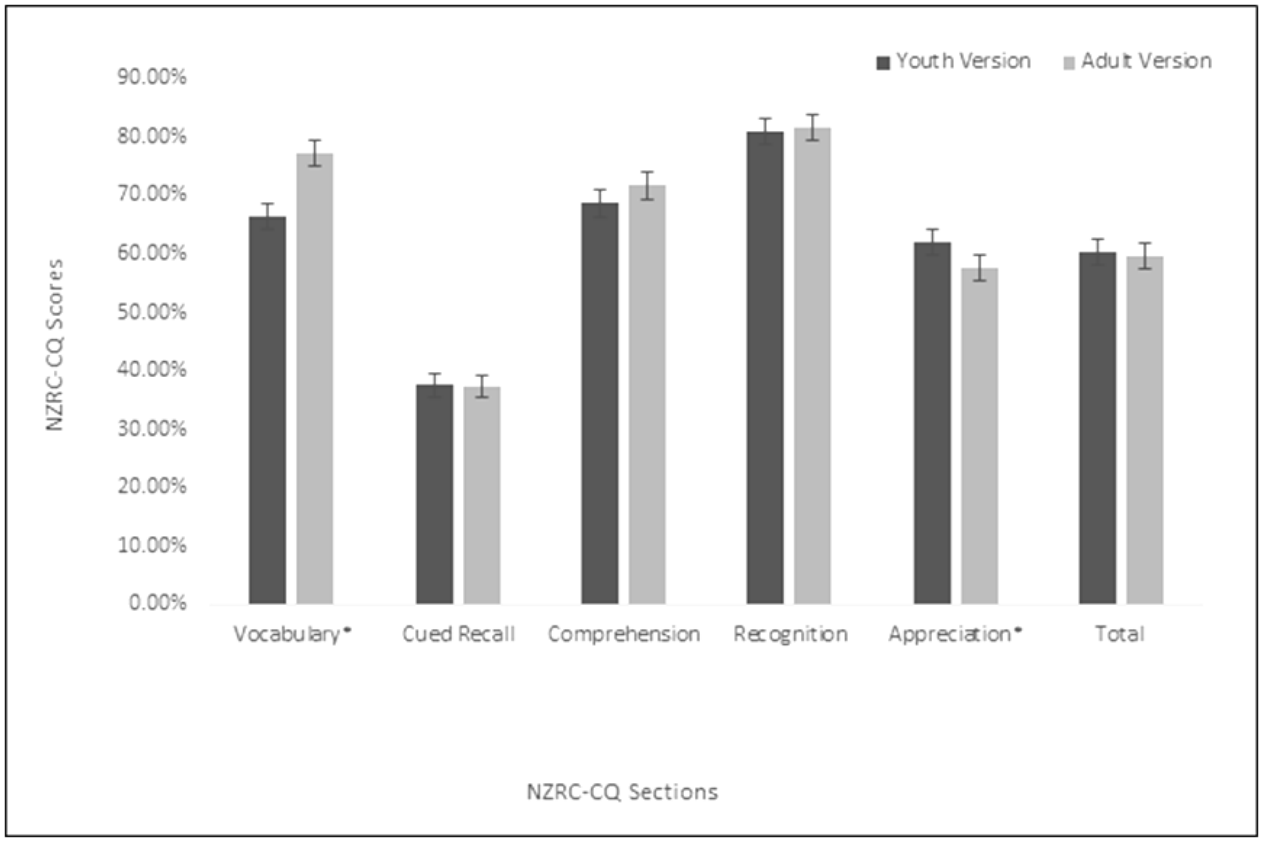
Frances Gaston, MSc in Forensic Psychology
Supervisors: Dr Clare-Ann Fortune and Dr Deirdre Brown. School of Psychology, Victoria University of Wellington

New Zealand has both a child/youth, and an adult version of the Rights Caution, which are the rights read to an individual when they are arrested, detained, or questioned by police. The child/youth version was created with the developmental needs of young people in mind, however, it remains unclear whether it is assisting young people to better understand their rights. No previous research has been completed in New Zealand looking at young people's comprehension of the Rights Caution. International research has shown that 1) the majority of individuals under 15 years old have limited rights comprehension, and 2) adapted versions of rights do not increase young people's understanding. In consideration of these findings, we conducted a pilot study with the aims of exploring 1) how well young people in New Zealand understood the Rights Caution and 2) if the child/youth version of the Rights Caution helped to increase young people's level of understanding of their rights, compared to the adult version.

The child/youth version of the Rights Caution did not assist participants in their understanding, and actually contained language that participants found more difficult to understand.

Methods:

For the pilot study 101 young people were interviewed from two schools in the Wellington region in order to assess their understanding of the New Zealand Rights Caution. They were randomly selected to be interviewed using either the child/youth, or adult version of the New Zealand Rights Caution. The questionnaire assessed five aspects of Rights Caution understanding: Participants' understanding of the vocabulary used in the rights, their ability to remember the rights after having them read to



Level of understanding was not affected by participants' ages; the older participants knew as little as the younger ones.

them, their comprehension of the rights, their ability to recognise the meaning of the right in different scenarios, and their appreciation of the protection awarded by the right. Additionally, participants' initial level of knowledge regarding their rights was assessed by asking them what they knew of their rights at the start of the interview.

Results:

The participants in our study had limited understanding of the Rights Caution. Their responses suggested a simplistic, rather than a sophisticated understanding of the rights that encompassed how to appropriately apply them. Level of understanding was not affected by participants' ages; the older participants knew as little as the younger ones. Furthermore, it was found that the child/youth version of the Rights Caution did not assist participants in their understanding, and actually contained language that participants found more difficult to understand (as seen by the significant difference in vocabulary scores between the two versions in **Figure 1**). These findings suggest that the New Zealand Rights Caution may not be effective in providing young people with the legal protection that it is intended to, and the processes around its use with New Zealand youth may need to be revised.

Conclusions and future directions:

The findings need to be replicated as there were some key limitations in the age and ethnic diversity of the sample, some of the participants did not have English as their first language in the home, and the younger participants attended a higher decile school than the older participants. Despite these issues the results highlight areas of significant concern that warrant further investigation.

Drs Clare-Ann Fortune and Deirdre Brown (Psychology), along with their colleague Dr Nessa Lynch (Law), plan to expand on the pilot study in the future with a more diverse youth sample. They also intend to expand the pilot study by interviewing parents who may act in the role of a 'nominated person' to ascertain their level of understanding and capacity to meaningfully advise youth who have contact with the Police. This issue has never been explored in New Zealand despite the emphasis placed on the nominated person in the New Zealand process, and international research suggesting parents/caregivers have greater levels of knowledge than young people but still present with incomplete knowledge and understanding of the legal process for youth. ■

Want to know more? The thesis is available at the following link:
http://researcharchive.vuw.ac.nz/handle/10063/1/browse?type=author&value=Gaston%2C+Frances

Citation:
Gaston, F. (2017). Young People's Comprehension of the Rights Caution in New Zealand. (Master of Science in Forensic Psychology), Victoria University of Wellington, Wellington, New Zealand.

Remand Option Investigation Tool

Associate Professor Ian Lambie, Dr Karmyn Billing and Dr Julia Ioane

It is widely acknowledged that youth crime in New Zealand has reduced over recent years (2012-2016).

However, the number of rangatahi / young people who are being detained in youth justice residences has increased. As a youth justice sector we are aware of the negative impact of incarcerating rangatahi / young people in secure care and the need to improve the lives of these young people by keeping them as close to their communities and whanau as possible.

As part of the investing in children programme, Oranga Tamariki contracted the development of a Remand Option Investigation Tool.

The Remand Option Investigation Tool is intended to provide the youth justice sector in New Zealand with important information to assist in the best decision-making regarding the most suitable placement of a rangatahi/young person following appearance in the Youth Court.

The development and introduction of the Remand

The Tool is to support youth justice sector agencies to provide the Court with options for young people under s 238 of the Act.

Option Investigation Tool is to support youth justice sector agencies to provide the Court with options for young people for consideration when the Court is determining remand status under s 238 of the Oranga Tamariki Act (bail versus custody versus detention) and to ensure that what is proposed considers the protection of the public whilst balancing the needs of victims, young people and their whānau.

It is important to note that the tool is not a formal risk assessment measure but its purpose is to assist cohesive decision by bringing different professionals and information together to assist in the decision making process. It is envisaged these will include police, social workers, education, health, lay advocates, youth advocates, and residential staff.

The group of youth justice experts responsible for the design and testing of the tool were Associate Professor Ian Lambie and Drs Karmyn Billing and Julia Ioane. All are clinical psychologists and have extensive experience practising in forensic settings including the youth justice sector over many years and with a wide range of services and client groups. This work is being managed by Andrew Beattie and Jason Edwards (seconded from Police) at Ministry for Vulnerable Children, Oranga Tamariki.

The process of developing the tool began with a literature review of national and international research. The writers also consulted with justice ministries and experts from academia internationally.

Locally, the writers consulted with Judge Walker, Police Youth Aid officers; Ministry for Vulnerable Children, Oranga Tamariki social workers, youth justice co-ordinators, supervisors; youth advocates; health professionals; Office of the Children's Commissioner and experts from academia and the Department of Corrections, including Professor Hinemoa Elder. Cultural consultation continues, and includes the Office of the Chief Social Worker – General Manager Māori and Principal Advisor Pacific, and community cultural advisors.

The tool provides an understanding of static and dynamic risk factors associated with the child or young person, while recognising cultural or individual needs and strengths. The sections of the tool are: A. Identity – includes culture, gender and sexuality; B. Trauma; C. Offending; D. Risk Factors; E. Protective Factors; F. Strengths of the Rangatahi/ young person; G. Alternative to Remand; H. Placement Options – includes bail to community or remand in custody; I. Recommendation.

The tool relies on the police Youth Offending Risk Screening Tool (YORST) being completed to develop a more complete assessment of reoffending risks. The YORST has been used by the police since 2009 to evaluate the likelihood of a child or young person offending and has been validated in terms of its predictive analysis. It helps identify those who are most likely to persist with their offending and anti-social behaviour and it can highlight factors that contribute to that offending. The screen also provides the foundation for a targeted and appropriate response.

The Remand Option Investigation Tool will provide a platform for ensuring that the courts, police and wider youth justice practitioners are provided with the necessary information to mitigate risk and ensure robust, trauma-informed recommendations when determining remand options.

The tool provides an understanding of static and dynamic risk factors associated with the child or young person, while recognising cultural or individual needs and strengths.

So far, we have successfully trialled it in Auckland and Christchurch with Police and Oranga Tamariki staff and in Kaikohe and Rotorua in a group setting involving police, social workers, education, health and youth advocates working through cases together. We have been encouraged by the positive feedback we have received from those involved in the piloting and the ease of using it. Following the feedback from these pilots, the plan is to test it in the Manukau, Christchurch and Rotorua Youth Courts later this year. We look forward to working with the youth justice sector to further refine and develop the tool, and ultimately improve the lives for rangatahi/young people involved in the youth justice system. ■

SPECIAL REPORT

Police-Tūhoe youth initiative wins top award

When the blue suit turns up at the door, it means arrest - and when social workers turn up, it can mean a benefit cut. But when Iwi Social Services turn up, it means help.

In 2010, the Oho Ake (to awaken) framework was launched by Tūhoe in partnership with Eastern Bay of Plenty Police. It was sparked by concerns about the increased overrepresentation of Māori in the youth justice system. In 2010 youth justice statistics showed that while 19% of the 14-16 year old population was Māori, Māori made up 49% of police apprehensions; 53% of Youth Court appearances and up to 66% of the youth custodial population.

Crucially, once a referral is made, Police step back and let iwi services address the causes of offending and hold the young person accountable.

Seven years later, Oho Ake has won the Supreme Award in the 2017 Evidence Based Problem Oriented Policing (EBPOP) Awards.

Presenting the award in Wellington yesterday, Police Commissioner Mike Bush said Oho Ake was making a massive difference to local communities and would have an impact on Police's target of a 25 percent reduction in Māori reoffending.

"You have made a significant difference in terms of the communities we all collectively serve," he told the project team.

Oho Ake is a tikanga-based process, founded in the key principles of Mauri Ora (state of wellbeing). Mauri Ora focuses on the wellbeing of whānau, hapū and iwi, and within that, individual Māori. It aims to reconnect children and young people with their identity, including their whakapapa and wider whānau.

Although it is aimed at Māori tamariki and rangatahi, the initiative includes any ethnicity, and a number of Pākehā families have opted to use the

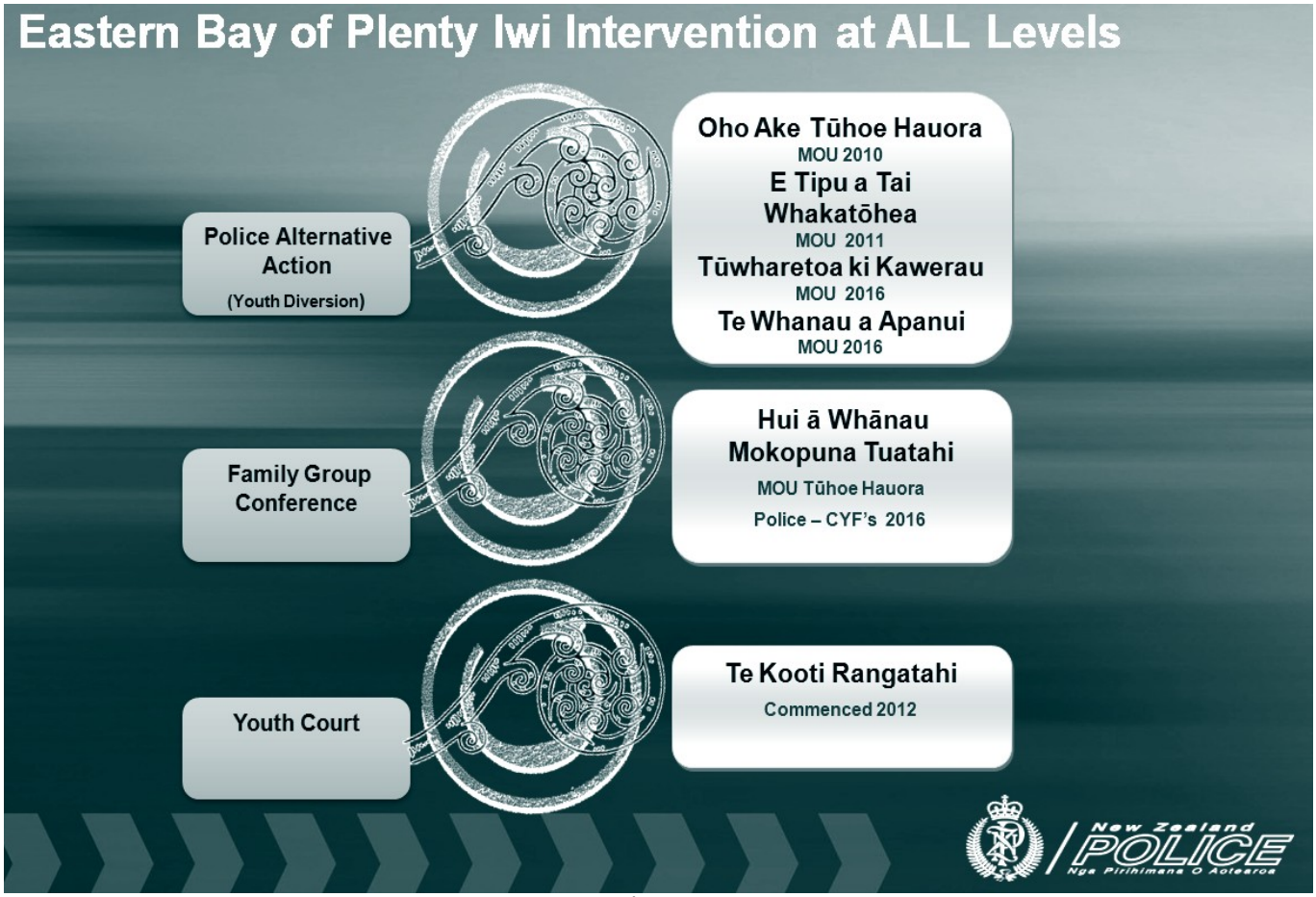


Figure 1

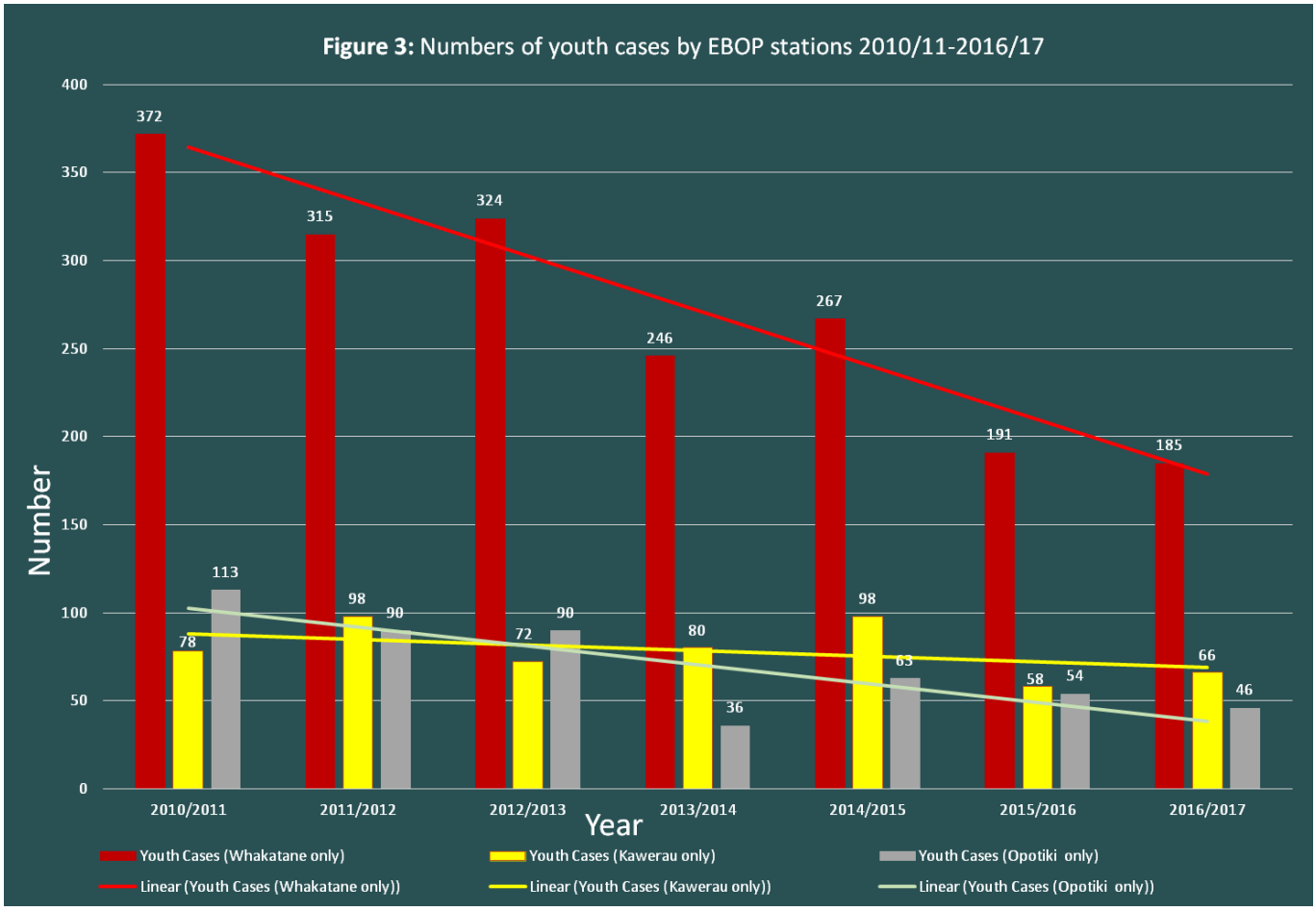


Figure 2

Oho Ake framework.

Under the Oho Ake framework, the Police Youth Aid team visits a young offender's home to gather information, then consults with Tūhoe Hauora on the case. If it is suitable, Tūhoe Hauora makes further visits and develops a whānau plan. This includes assessment of the family's needs and any underlying issues, setting of short and long-term goals for the whānau and offender - and ensuring the young person is held accountable for their offending.

Police are advised of progress at a review at three months and decide whether the case can be closed. Tūhoe Hauora continue to work with the whānau, sometimes for 18 months or more.

Crucially, once a referral is made, Police step back and let iwi services address the causes of offending and hold the young person accountable.

Police feedback shows a steady decline in youth offending and, in particular, Māori offending in the Whakatane area (see Figure 2). There has been a significant drop in re-offending by participants and a growing confidence in community collaboration.

Police feedback shows a steady decline in youth offending and, in particular, Māori offending in the Whakatane area (see Figure 2).

A 2014 evaluation of the framework showed that Oho Ake was working particularly well for young Māori offenders, their siblings and other whānau members.

Participants reported a positive change in their attitude, behaviour and interaction with police, responsibility and whakawhānaungatanga. Participants would access further services if required and reported benefits of the Oho Ake framework being delivered within a kaupapa Māori framework. The evaluation further shows that the majority of rangatahi have re-entered some form of education or work-environment; parents believed that they had become more active in their child's life; there has been a reduction in substance misuse; and all benefited by reconnecting to tikanga and their whakapapa.

There has been a significant drop in re-offending by participants and a growing confidence in community collaboration.

The Oho Ake framework evaluation concludes that Oho Ake has been instrumental in reducing the numbers of youth offending in the Whakatane area, a conclusion which is bolstered by Police statistics. The main influence appears to be the use of whakawhānaungatanga within a kaupapa Māori health service with highly knowledgeable and skilled staff in this area.

The positive benefits are reported not only between rangatahi and whānau but also the relationships between Tūhoe, police and whānau. The process relies on open communication and trust between Police and iwi, and on all parties acting in good faith. It represents a moves away from a Police focus on 'Outputs' - short term measures and inventions - to a focus on 'Outcomes': long term measures to change behaviours which benefit the whānau and the community as a whole. This is in line with the foundational principles of the Oranga Tamariki Act 1989: involving whānau, hapū and iwi throughout the process to help their children and whānau to address offending, and care and protection issues.

The Eastern Bay of Plenty Police now has a partnership with four local iwi in total. Whakatohea were next in 2011, followed by Tūwharetoa Ki Kawerau and Te Whānau Apanui in 2016. The first initiative, Oho Ake (led by Tuhoe Hauora) has now expanded into Hui ā Whānau: Iwi led and run family group conferencing, which also involves a partnership with Oranga Tamariki (see below). The movement shows no sign of slowing. ■

This article was written with assistance from Sergeant Tom Brooks, and with material from http://www.police.govt.nz/news/ten-one-magazine/police-t%C5%ABhoe-youth-initiative-wins-top-award

Recently, Minister for Children Anne Tolley released the following Press Release relating to Oranga Tamariki's work in the "hui-ā-whānau" space.

"Minister for Children Anne Tolley says the Ministry for Vulnerable Children, Oranga Tamariki is working with iwi to strengthen whānau connections and improve children and whānau participation in decision-making.

"There are a number of initiatives underway to build stronger connections with iwi to ensure children and young people are connected to their whānau and have safe, loving, stable homes," says Mrs Tolley.

"This collective approach ensures the right people are engaged in decision-making so we can address the needs of Māori tamariki in prevention, early intervention, care support, transition to independence, and youth justice.

"Early-stage whānau meetings (hui-a-whānau) and whānau searching are being trialled across 21 Ministry sites. Ngāti Porou, Ngāti Rangitāne, Ngāti Raukawa, and Ngāti Toa are also building capability to lead and co-ordinate Family Group Conferences.

"Hui-a-whānau provides a way for children, young people and whānau to work together to make decisions and resolve problems. At-risk families will be supported at an earlier stage, and outcomes of Family Group Conferences will be improved.

"Whānau searching will enable the Ministry to engage in a more culturally responsive way. As a result, children and young people are more likely to be placed with whānau, and develop a sense of belonging and connection.

"In Tairāwhiti two iwi co-ordinators have completed their first iwi-led FGCs with positive outcomes.

"For example, one young person attended the Te Ara Tuakiri Wananga Programme run by Turanga Ararau which teaches the requirements for Youth Court attendance, and participated in anger management classes and community work.

"Mokopuna Ora, which has been developed with Waikato Tainui, is being extended to South Auckland to keep children and young people connected with their extended whānau who will train a pool of people to act as kaitiaki.

"Mokopuna Ora has been successfully running in Waikato since 2015, and has resulted in 66 tamariki staying with whānau.

"Whānau are able to get extra help and support to safely care for their children at home. A whānau researcher also helps connect tamariki in care with their marae and hapū." ■

SPECIAL REPORT

Red Hook Community Justice Center, Brooklyn, New York

Kate Peirse-O'Byrne

In June 2017, I had the great fortune of visiting the Red Hook Community Justice Center in Brooklyn, New York. As I discovered when visiting, there's no subway line to the neighbourhood of Red Hook. It's a geographically isolated outpost of Brooklyn, which was once a bustling port town. When most of the ports closed down, the money disappeared, and Red Hook – which has one of the largest concentrations of social housing in New York State – languished. The area became synonymous with crime and deprivation, which culminated in the tragic shooting of a primary school principal in 1992. Red Hook was dubbed the "crack capital of America" by Life magazine; it was seen nationally as a neighbourhood in crisis.

These days, Red Hook is an emerging hub of creative activity and young families. Its former industrial spaces are being converted into workshops, galleries and markets. The name "Red Hook" is now also synonymous with visionary responses to community problems. In June 2000, the Red Hook Community Justice Center, housed in a former schoolhouse, opened its doors for the first time, and paved the way for neighbourhood transformation.

The Center revolves around a groundbreaking multi-jurisdictional community court, but also houses an array of community programs and services. It is now hailed as a "national model for community courts" and has sparked copycat initiatives around the world.

But Amanda Berman, the Project Director at Red Hook explains that the road to opening the Center was not easy. Interestingly, much of the early resistance came from within the community itself. People suspected that a court right in their midst would only serve to further denigrate the social value and safety of the neighbourhood. The challenge was to get the community on-board with a vision for a new kind of court – one that didn't represent state control and punishment, but that belonged to the community.

This happened incrementally, as the community entered the court's doors. At Red Hook, I had the opportunity of sitting alongside Judge Calabrese on the Bench of his court. Judge Calabrese has presided over the Center's court since the Center opened. He shakes hands with a defendant who's been clean for weeks and quietly asks him, off the record, how he's doing. The defendant tells the Judge he's doing great, he feels great. "I've been attending these AA meetings, and that's not even part of my plan," he says.

The road to the Center opening was not easy. Interestingly, much of the early resistance came from within the community itself.

A study published in 2013 found that a person in a regular court was 15 times more likely to go to jail than in Red Hook. Tellingly, regular courts had significantly higher recidivism rates: adults were

Amanda Berman, Director of Red Hook Community Justice Center in front of the Center's mural: Second Chance Street

Red Hook's Youth Court

found to be 10% more likely to be rearrested within two years, and young people ("juveniles") were 20% more likely to be rearrested. Much of this discrepancy is thought to be as a result of the procedural justice individuals experience at Red Hook - the perception of the process being fair and of being treated with respect. As one study found, the court is regarded "not as an outpost of city government, but as a home-grown community institution".

Its positive influence stretches far beyond recidivism rates. The court hears not only criminal cases, but also hears civil cases and - crucially - housing cases. The latter was the result of community concerns about public housing standards and evictions, which were inextricably interlinked with the high crime rates in Red Hook. The Center established a Housing Court, with cases being heard in the same space as the criminal court, and a Housing Resource Center down the corridor. Housing Resource Center staff show me a folder of before and after photos, the "before" photos being of frightening mould growth and leak-stained walls, of broken sinks and rotten floorboards, and the "after" photos of the same space - but mould free, leak free and freshly painted. This is a proud record of the repair jobs they have extracted from the City Housing Authority on behalf of members of the community – small but significant victories.

The court is regarded "not as an outpost of city government, but as a home-grown community institution".

What is truly remarkable is one judge – Judge Calabrese – sits in all of these jurisdictions. A person might go to court on a couple of drinking-related charges. On being questioned by the Judge, it emerges that his family is facing eviction from a property with chronic black mould issues and leaks. The same judge who resolves the defendant's criminal charges, and assists the defendant with accessing alcohol counselling, then assists the defendant with avoiding eviction and with holding the defendant's landlord to account for the poor standard of housing. Judge Calabrese has been known to visit clients' homes to inspect the property himself – or to turn up to the Housing Authority to put fire under a claim that is taking too long to resolve.

Red Hook is not only making a difference with its multijurisdictional court, but also with its groundbreaking array of community programs and resources, including programs directed at young people. For 17-21 year olds who failed or dropped out of school, Red Hook provides a bridging educational program, led by passionate teachers in a sunny upstairs room. Another youth-focussed initiative is the Youth Court (pictured). Only the same as New Zealand's Youth Court by name, Red Hook's Youth Court is run by a judge and jury of neighbourhood teens. Young people aged 10-18 can be referred to the Youth Court for offences such as vandalism, truancy and assault - where they are subject to the judgment of their peers. Amanda tells me that teens transform when they enter the court as judge and jury. They stop joking around and behave like professionals, committed to resolving the issues before them. Those who appear before the Youth Court and successfully graduate can then apply to become Youth Court members themselves, creating a cycle of positive peer influence.

Alternative dispute resolution is available to a broader population through the groundbreaking Peacemaking Program. The Peacemaking Program takes referrals from Judge Calabrese, District Attorneys, and members of the public: neighbours having a dispute over noise, or a single mother trying to deal with difficult teenagers. Peacemaking is a Native American dispute resolution process that focuses on storytelling to resolve disputes, with "talking pieces" used to determine who can speak. Participants tell their sides to the story, without interruption, and explain what they think should happen. Discussion continues - guided by the

talking piece - until all participants have said everything they want to say. Peacemakers, who are trained volunteers from the community, lead participants in reaching a consensus-based decision, which can be as simple as neighbours agreeing to greet each other when they see each other. There is a "breaking bread" element: you have something to eat with the person you're involved in the process with, much like in the Rangatahi Court process, where the pre-court cup of tea and snacks are an integral part of the process. As remarked by Coleta Walker, the Associate Director of Peacemaking, it's hard to be angry at someone when you're sharing a meal - food inevitably brings people together.

What is remarkable about Red Hook is the variety of different social problems it tackles, and tackles successfully. The atmosphere is one of busy productivity, of hope, and of warmth. It is easy, arriving in Red Hook in 2017, to forget the Center's origins, and the neighbourhood's former reputation as a place that was hopeless, helpless and dangerous. Through courageous innovation, the Center has helped the community to transform itself. ■

To learn more about Red Hook Community Justice Center, visit: http://www.courtinnovation.org/project/red-hook-community-justice-center

LEGAL ISSUES

Doli incapax: where does the burden of proof lie?

Office of the Principal Youth Court Judge

The presumption of doli incapax must be rebutted by the prosecutor before there is a case to answer.

It has come to our attention that Youth Advocates are sometimes requesting that a Judge direct a report under s333 to address the issue of doli incapax in defended cases involving those under the age of 14 years.

Ordering reports to determine whether the presumption of incapacity is rebutted is not the court's role. Instead, it is something that must be proved by the prosecutor before there is a case to answer. In other words, rebutting doli incapax is tantamount to an element of the offence.

Please see the extract below from the House of Lords case *C (a minor) v Director of Public Prosecutions* [1996] AC 1 (HL), which sets out the onus and burden of proof, and what must be done by the prosecution in order to rebut the presumption of doli incapax.

64. A long and uncontradicted line of authority makes two propositions clear. The first is that the prosecution must prove that the child defendant did the act charged and that when doing that act he knew that it was a wrong act as distinct from an act of mere naughtiness or childish mischief. The criminal standard of proof applies. What is required has been variously expressed, as in Blackstone, "strong and clear beyond all doubt or contradiction," or, in Rex v. Gorrie (1919) 83 J.P. 136, "very clear and complete evidence" or, in B v. R (1958) 44 Cr. App. R. I, 3 per Lord Parker C.J., "It has often been put in this way, that . . . 'guilty knowledge must be proved and the evidence to that effect must be clear and beyond all possibility of doubt'." No doubt, the emphatic tone of some of the directions was due to the court's anxiety to prevent merely naughty children from being convicted of crimes and in a sterner age to protect them from the draconian consequences of conviction.

65. The second clearly established proposition is that evidence to prove the defendant's guilty knowledge, as defined above, must not be the mere proof of the doing of the act charged, however horrifying or obviously wrong that act may be. As Erle J. said in Reg. v. Smith (1845) 1 Cox C.C. 260:

> "... a guilty knowledge that he was doing wrong - must be proved by the evidence, and cannot be presumed from the mere commission of the act. You are to determine from a review of the evidence whether it is satisfactorily proved that at the time he fired the rick (if you should be of opinion he did fire it) he had a guilty knowledge that he was committing a crime."

[…]

69. The Divisional Court here, assuming that the

presumption applied, would have reversed the Youth Court, rightly, in my opinion, because there was no evidence, outside the commission ofthe "offence," upon which one could find that the presumption had been rebutted.

70. In order to obtain that kind of evidence, apart from anything the defendant may have said or done, the prosecution has to rely on interviewing the suspect or having him psychiatrically examined (two methods which depend on receiving co-operation) or on evidence from someone who knows the defendant well, such as a teacher, the involvement of whom adversely to the child is unattractive. Under section 34 of the Criminal Justice and Public Order Act 1994 a child defendant's silence when questioned before trial may be the subject of comment if he fails to mention something which is later relied on in his defence and which he could reasonably have been expected to mention at the earlier stage, but I do not see how that provision could avail the prosecution on the issue of guilty knowledge.

RECENT RESEARCH & PUBLICATIONS

NEW ZEALAND

Hand in Hand book

Authors: Oranga Tamariki

Available: www.mvcot.govt.nz

Abstract: Hand in Hand book, produced by Oranga Tamariki with the Ministry of Health and Ministry of Education, provides information on publicly-funded health and education services available to families from before birth through to 18 years old.

"This is part of a wider multi-agency drive to increase uptake and engagement by New Zealanders with core health and education services."

The handbook covers services available to everyone as well as information on how to access more specialist support services. Hand in Hand book is being distributed to caregivers and is also available on Oranga Tamariki's website.

Youth suicide in New Zealand: a discussion paper

Author: Peter Gluckman

Available: Office of the Prime Minister's Chief Science Advisor, Wellington New Zealand, 26 July 2017

Abstract: This evidence-based paper makes the point that youth suicide is more than simply a mental health issue. The author believes the focus must also include an emphasis on primary prevention starting from a very early age. The epidemiology of youth suicide in New Zealand is discussed, as are the many factors that impinge on the risk of youth suicide.

AUSTRALIA

Evolution of Mentoring Relationships Involving Young Male Offenders Transitioning from a Juvenile Justice Centre to the Community

Author: José Hanham and Danielle Tracey

Available: Youth Justice 2017, Vol. 17(2) 116–133

Abstract: This qualitative longitudinal study focused on adolescent males who were being formally mentored during their transition from a juvenile justice centre to the community. Pre-release, the young men feared being exposed to negative peer influences and uncertainty about the future. In response to this anxiety, the young men valued the mentor as a guide, confidant and "watchdog". Post-release, the concerns of the young men turned to a sense of disconnection, institutionalisation and difficulties securing employment. Here, the young men required their mentors to be reliable, build confidence and assist with educational and occupational opportunities. The findings both inform theoretical understandings of mentoring and provide direction for supporting young offenders in the transition back into the community.

The Minimum Age of Criminal Responsibility in Victoria (Australia): Examining Stakeholders' Views and the Need for Principled Reform

Author: Wendy O'Brien and Kate Fitz-Gibbon

Available: Youth Justice Vol 17, Issue 2, pp. 134 - 152

Abstract: In Australia, children as young as 10 are charged, convicted and sentenced for breaches of the law. Drawing on interviews with youth justice professionals in Victoria, this study finds that inconsistencies in practice undermine the extent to which the common law presumption of doli incapax offers an effective legal safeguard for very young children in conflict with the law. This article advocates that the Australian minimum age of criminal responsibility be increased to 14, that the principle of doli incapax be applied consistently to all persons under the age of 18 and that justice responses be supplanted by therapeutic supports for children and families.

Accommodating impairments in empathy in the sentencing of individuals with Autism Spectrum Disorder

Authors: Joanna Connolly

Available: Criminal Law Journal 41(3) 2017: 151-163

Abstract: Autism spectrum disorder (ASD) is associated with deficits in social cognition and empathy. In the criminal context, this poses difficult challenges, undermining assumptions about a defendant's culpability and character and forcing recognition of the impact of social and emotional impairments on decision-making. Drawing on relevant court decisions, this article examines the sentencing response to defendants with ASD. It urges awareness of the distinct forensic aspects of ASD, so that courts can appreciate the subtle and often counterintuitive elements of this condition and their relevance to the sentencing process.

Individualised justice through indigenous community reports in sentencing

Authors: Thalia Anthony and others

Available: Journal of Judicial Administration 26 (3) 2017:121-140

Abstract: There is a growing pool of research on court outcomes in sentencing Indigenous people but relatively little research on the information available to sentencing courts to consider Indigenous background. Based on 18 interviews with judicial officers, lawyers and court staff in New South Wales and Victoria, this article identifies the need for more information on relevant Indigenous background factors in sentencing. This article makes reference to the wide-scale experience in Canada of First Nations presentence reports, known as "Gladue Reports", and the more small-scale Australian experiences of Indigenous cultural reports, to indicate how this material can enhance individualised justice in sentencing Indigenous peoples.

Violence Risk among Youth Referred to a Forensic Mental Health Service

Authors: Dominique Denaro, Bruce Watt & Tasneem Hasan

Available: Psychiatry, Psychology and Law (2017) 24 PPL 485 – 642

Abstract: The study investigates violence risk factors among young people referred to a child and youth forensic mental health service. The primary aim of this study is to examine the demographic, historical, and clinical characteristics of a sample of 91 young people in order to assess whether there are distinct groups or clusters that share common profiles. Using a two-step cluster analysis, three distinct clusters were found. Cluster 1 (generally non-violent) comprises a subgroup with fewer family adversity factors and an absence of serious violence. Cluster 2 (early violence) comprises a subgroup with serious violent histories, comorbid mental health disorders, and an early onset of behavioural difficulties. Cluster 3 (later violence) includes young people with serious violent and antisocial histories, and a later onset of behavioural difficulties. The results of the study support the notion that youth referred for specialised violence risk assessments are a heterogeneous group with distinct individual differences. This has implications for determining the level of intervention and treatment required to reduce youth offending and violence.

Young Offenders, Maltreatment, and Trauma: A Pilot Study

Author: Catia Malvaso, Andrew Day, Sharon Casey & Ray Corrado

Available: Psychiatry, Psychology and Law, 24:3, 458-469

Abstract: Although a large number of studies offer consistent and persuasive evidence that exposure to

childhood maltreatment and subsequent juvenile offending behaviours are related, relatively few studies have investigated the mechanisms by which maltreatment might increase risk in young offender populations. The aim of this pilot study was to collate data on the key areas of need from 28 young male offenders in secure care in an Australian jurisdiction, with a specific focus on the inter-relationship between scores on self-report measures of maltreatment, trauma, and mental health. The findings provide preliminary evidence that these key constructs are linked to other proximal risk factors for juvenile offending, such as poor anger regulation and antisocial thinking patterns. They offer a rationale for considering the sequelae of maltreatment in the development of service delivery frameworks for young offenders.

Rapid evidence assessment: current best evidence in the therapeutic treatment of children with problem or harmful sexual behaviours, and children who have sexually offended

Author: Aron Shlonsky and others

Available: Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017.

Abstract: The Australian Royal Commission commissioned this evidence review to identify current best evidence about the effectiveness and content of programs and practices, in Australia and internationally, aimed at treating children with problem sexual behaviour (aged under 10), harmful sexual behaviour (aged 10–17), and children who have sexually offended (aged 10–17). This report details the systematic methods used to locate and synthesise the evidence, the results of this process, and their implications for practice and policy in Australia.

Keeping kids in school and out of court: a study of education–youth justice collaboration in the US, Scotland and Denmark

Author: Jackie Anders

Available: The Winston Churchill Memorial Trust, 2016.

Abstract: This report outlines the development and operation of collaborative models in the area of youth justice. The report looks at the practice of education advocacy and examines different models of education provision for students who struggle in mainstream settings. The report concludes with recommendations for improvements for consideration by policy makers, practitioners and educators in the Australian youth justice and education sector.

Human rights and unfitness to plead: the demands of the Convention on the Rights of Persons with Disabilities

Author: Anna Arstein-Keslake and others

Available: Human Rights Law Review 17(3) September 2017:399-419

Abstract: Findings of unfitness to plead can result in individuals with cognitive disabilities losing access to procedural safeguards in the criminal justice system. They can also lead to long periods of detention and, in some cases, indefinite detention of persons with cognitive disabilities in prisons and other secure facilities. This raises significant concerns with human rights breaches, including the rights to legal capacity, a fair trial and liberty. This article provides a critical analysis of unfitness to plead regimes in common law and civil law countries in the light of key rights set out in the United Nations Convention of the Rights of Persons with Disabilities. It also examines how unfitness to plead regimes might be reformed.

Accommodating impairments in empathy in the sentencing of individuals with autism spectrum disorder

Author: Joanna Connolly

Available: Criminal Law Journal 41(3) 2017:151-163

Abstract: Autism spectrum disorder (ASD) is associated with deficits in social cognition and empathy. In the criminal context, this poses difficult challenges, undermining assumptions about a defendant's culpability and character and forcing recognition of the impact of social and emotional impairments on decision-making. Drawing on relevant court decisions, this article examines the sentencing response to defendants with ASD. It argues that the condition is raising unique challenges for sentencing judges. It urges awareness of the distinct forensic aspects of ASD, so that courts can appreciate the subtle and often counterintuitive elements of this condition and their relevance to the sentencing process.

Accommodating Youth Justice Review and Strategy: meeting needs and reducing offending (Victoria, Australia)

Author: Penny Armytage and Professor James Ogloff AM

Available: http://www.justice.vic.gov.au

Abstract: This is the first comprehensive independent review of Victoria's youth justice system in over 16 years. This report details the significant challenges and issues affecting the Victorian youth justice system at the community and custodial levels, as well as issues and shortcomings of the underpinning legislative framework, governance and administration. It provides a detailed account of the current cohort of young people in youth justice and offers a set of observations and recommendations necessary to recalibrate and refocus the system on what it must do: meet the needs of young people to address their offending behaviour and stop them from further offending.

UNITED KINGDOM

Lammy Review: Final Report

Author: David Lammy MP (UK)

Available: https://www.gov.uk/government/publications/lammy-review-final-report

Abstract: The Lammy Review is an independent review into the treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the English and Welsh criminal justice system. It shines a light on disproportionality across almost all parts of the criminal justice system with particular focus on the youth system. Over the last ten years there have been significant reductions in the numbers of children in custody and first time child entrants across all ethnic groups in England and Wales. However, reductions have been much greater for white children, meaning that BAME children now make up a much greater proportion. The review proposed 35 recommendations to address disproportionality.

EUROPE

Pathways of Transferred Youth Offenders into Adulthood

Author: Yana Jaspers, An Nuytiens, Jenneke Christiaens and Els Dumortier

Available: Youth Justice 2017, Vol. 17(2) 153–170

Abstract: In this article, the authors discuss the preliminary results of Belgian research on 210 young offenders transferred to Adult Court in 1999, 2000 and 2001. The long-term judicial pathways of these youngsters, now aged between 30 and 40, are explored. Drawing on the criminal records and detention records of the sample, judicial pathways into adulthood are charted. The results show that the greater part of the sample is still involved in the criminal justice system. More than 50% were convicted at some point in the last 3 years, and almost a third of the population is imprisoned. With this quite unfavourable picture of transferred offenders' future pathways, the authors hope to reopen the discussion about transfer policies in Belgium.

UNITED STATES

Using Research to Assess Children and 'Hear' Their Voices in Court Proceedings

Author: Ginger C Calloway and S Margaret Lee

Available: American Journal of Family Law 31(3) Fall 2017:140-157

Abstract: The authors argue that when children enter the legal system various lines of development must be understood in order to assess the reliability and validity of the input that they may have in a particular case. In this American article an overview of the areas of developmental research with which both experts and attorneys should be familiar is presented.

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