Court in the Act

Issue 79

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

Our collective blind spot: female and gender diverse young people who offend

Principal Youth Court Judge John Walker

First I want to thank all who work in youth justice for everything you do to help children in conflict with the law and extend my best wishes for a restful Christmas break.

Of late, there has been a perceived increase in serious female offending, by both girls and women. New Zealand's youth justice system does not have tailored programs or approaches for dealing with female or gender diverse young people who offend. It is arguable that it has been "gender blind". The system, being dominated by young male offenders, is likely biased towards addressing the needs of young males – and may be blind to any unique needs of young female and gender diverse offenders.

On December 1st, an interagency meeting was held at my Chambers to start a conversation about these cohorts of young people. The meeting involved representatives from the Ministry of Justice, Oranga Tamariki, Department of Corrections, Ministry of Health, Ministry of Education, Police Youth Aid, Ministry for Women and legal and clinical academics from Victoria University of Wellington, as well as

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Youth Court Judges.

The intention was to get the lie of the land – to hear what is being done for female and gender diverse people who offend, to start considering where the gaps may lie, and to encourage discussion and debate. I am sure I speak for all in saying it was a very useful conversation, and we agreed to meet again in six months' time to discuss developments. It is a start.

Why does gender matter?

There is very little research into young female offenders. What research there is indicates differences between male and female pathways into offending.

Socioeconomic and family factors appear to play a greater role for young females (including low family income, large family size, parental conviction, low levels of parental supervision, and separation from a parent). Witnessing domestic violence appears more strongly related to female than male offending, particularly violent offending.

Additionally, trauma and abuse rates are elevated for females. Females are more likely to report a history of physical and/or sexual abuse and victimisation. One academic explains, "Abuse of females confirms their place in a gendered hierarchy".

Young female offenders have higher rates of Post Traumatic Stress Disorder and low self-esteem. In the United States, nearly half of offending females meet criteria for a major depressive episode, compared with 14% of offending males. The relationship between a mental health diagnosis and offending appears higher for females.

Girls are reported to have higher rates of STIs than young male offenders, following from more engagement in risky sexual behaviour, and survival sex (offering sex for money, shelter, protection, or money) or prostitution.

Agency representatives meet to discuss young female and gender diverse offenders

Some research shows (family group) conferencing processes may be harmful to females' internal processing and feelings of guilt, self-blame and self-harm.

While being in a stable romantic relationship is a protective factor for males, females with problem behaviours are more likely to be in a relationship with a male offender who may initiate offending behaviour.

There is also evidence of differences between male and female responses to justice system mechanisms.

Females are particularly vulnerable to re-traumatisation through confinement (e.g. through being restrained or observed by male staff). This can lead to further sanctions and longer YJ system involvement because challenging behaviours and delinquency escalate following retraumatisation.

In a study of FGCs in New Zealand, females felt less positive about FGCs, and were more likely to be described as less compliant and more likely to challenge the conference process than males. Other New Zealand-based research found that young women who had participated in school-based disciplinary actions involving mediation or restorative action did so without sincerity. Many simply went through the motions to meet requirements. A further study found females were less likely to feel that they could express their views as they felt intimidated, were less likely than males to report being fairly treated, less likely to feel that they could put their offending behind them, and only half as likely as males to report that the FGC process had mitigated against offending. Several authors have highlighted the risk of FGCs perpetuating gender power imbalances, and reinforcing subordination of females within families and communities. Some research shows conferencing processes may be harmful to females' internal processing and feelings of guilt, self-blame and self-harm.

The Oranga Tamariki Act 1989 requires the court to be guided by a number of principles, including that sanctions should take the form most likely to maintain and promote the development of the child or young person within their whānau, and that measures for dealing with offending should address the causes underlying offending. I would argue if we fail to take account of gender and its implications for engagement with youth justice processes, we are

failing to meet our obligations under these principles.

Considering gender will become a matter of explicit statutory imperative when the changes to s 5 Oranga Tamariki Act 1989 come into force. The Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 will amend the Oranga Tamariki Act 1989's s 5 principles to include reference to gender for the first time:

> 5 (b) the well-being of a child or young person must be at the centre of decision making that affects that child or young person, and, in particular,— [...]
>
> (vi) a holistic approach should be taken that sees the child or young person as a whole person which includes, but is not limited to, the child's or young person's—
>
> (A) developmental potential; and
>
> (B) educational and health needs; and
>
> (C) whakapapa; and
>
> (D) cultural identity; and
>
> (E) gender identity; and
>
> (F) sexual orientation; and
>
> (G) disability (if any); and
>
> (H) age:

Some of these factors will intersect. For example, the experiences and needs of young Māori women need to be considered. Additionally, the experiences and needs of gender diverse young offenders need consideration. While there is little research into female young people who offend, I am not aware of any research into gender diverse young people who offend (if you are aware of some, please contact our office).

We are only at the beginning stages of considering how the Youth Court – and youth justice system more generally – can cater to gender, in line with our statutory obligations. We have now taken the first step, and the challenge will be to keep momentum on this important issue. ■

References:

Allanah Colley "An Invisible Population? The Needs of Young Women Offenders and Why Gender Deserves Consideration in the Aotearoa New Zealand Youth Justice System" 3 NZLSJ 471.

Chrissy Severinsen and others "Female offending and youth justice interventions: a review of the literature" School of Social Work, Massey University, May 2016) at 18, 24 and 32.

Quotes to live by in youth justice

When a flower doesn't bloom you fix the environment in which it grows, not the flower.

- Alexander Den Heijer

In 1909, Judge Julian Mack, the second judge of the Chicago Juvenile Court, made the following observations – which are startlingly relevant today:

Why is it not just and proper to treat these juvenile offenders, as we deal with the neglected children, as a wise and merciful father handles his own child whose errors are not discovered by the authorities?

Why is it not the duty of the state, instead of asking merely whether a boy or a girl has committed a specific offense, to find out what he is, physically, mentally, morally, and then if it learns that he is treading the path that leads to criminality, to take him in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, to make him not a criminal but a worthy citizen.

— Judge Julian Mack, "The Juvenile Court," Harvard Law Review, vol. 23 (1909: 107)

The child who must be brought into court should, of course, be made to know that he is face to face with the power of the state, but he should at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude. The ordinary trappings of the courtroom are out of place in such hearings.

The judge on a bench, looking down upon the boy standing at the bar, can never evoke a proper sympathetic spirit. Seated at a desk, with the child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work.

— Judge Julian Mack (1909), 120.

Update: Remand Option Investigation Tool pilot

Oranga Tamariki

The ROIT's purpose is to promote cohesive decision-making by bringing different professionals and information together to discuss options for a young person's remand prior to presenting options in Court. The intention is for the tool to result in the court being presented with informed, multiagency recommendations that take into account protection of the public, victims' needs, and the needs of young people and their whānau. It is envisaged agencies involved will include police, social workers, education, health, lay advocates, youth advocates, and residential staff.

> *"The tool opens up doors and avenues for information sharing and gets agencies to be accountable to decisions". Sergeant David Mundy; Counties Manukau Police*

The pilot of the Remand Option Investigation Tool (ROIT) commenced on Monday the 20th of November in Counties Manukau. The purpose of the pilot is to test and evaluate the ROIT when applied in a 'live' environment to cases where police have opposed a young person's bail in the Manukau Youth Court. In addition, the outcomes of the pilot will guide how the final version of the tool may look and be used. While a digital version of the tool may be an option in the future the tool is currently in a paper-based format which presented a challenge requiring a local solution to determine how we use the tool in Counties Manukau.

The team coming together on day one of the pilot

The tool in action

Number of times bail was opposed
10

Number of times the tool has been applied to date
8

S238 (1)(d) detention recommendations
2

Bail recommendations
3

Non agreements
3

On the 10th of November sector agency representatives came together and designed the processes to use during the pilot. They identified five critical stages where we have the best opportunities to bring people together to apply the tool.

These stages are 1) at 8:00am at the police station prior to the young person appearing in court following an overnight arrest; 2) at court following any arrest after 8:30am; 3) at either a Residence or community remand placement after a young person

> *"One thing we noted was that each professional was able to bring new information to the table which changed the way in which the young person was being seen". Dr Ian Lambie*

"We need to move the discussion away from just 'crime and apprehension' to a more holistic perspective". Dr Ian Lambie

has been remanded; 4) at any reappearances by the young person and finally 5) in preparation for a Family Group Conference.

At the 8:00am meeting youth justice sector practitioners come together to collectively apply the tool using each of their agencies' information when police have identified that a young person is in their custody and bail is likely to be opposed. These meetings have really highlighted how important it is to bring people and information together at an early stage which is evident in the initial outcomes where the tool has been applied.

The pilot of the tool is now into week four and while the first week of the pilot presented challenges around how we apply and move the paper based tool through the five critical stages, the early indications are that the tool has shown value in terms of information sharing and outcomes for young people.

While the early stages of the tools application are still being fine-tuned the next goal is to ensure that information continues to be applied and assessed in the tool as it moves through residence, community remand placement, re appearance and FCG stages.■

Providing suitable alternatives to custodial remand

Allan Boreham, DCE Youth Justice at Oranga Tamariki

Oranga Tamariki is refurbishing community based family homes throughout the country to provide more alternative care options for young people who are arrested and remanded in the custody of the Chief Executive.

The first of these homes to open its doors is Will Street in Dunedin, followed closely by Te Kohanga

Until now there has been a clear gap in suitable care options for young people whose offences are not serious enough for Youth Justice residential care, but where returning home is not in their best interests either.

in Rotorua and Te Whare Awhi in Palmerston North. Work is underway to open other homes in Whangarei over the coming weeks.

Until now there has been a clear gap in suitable care options for young people whose offences are not serious enough for Youth Justice residential care, but where returning home is not in their best interest either.

At the other end of the spectrum sometimes the young person is charged with a serious offence and requires support while moving through the youth court process. Either way, there's a clear need for more community-based remand options.

Trends suggest the numbers of young people remanded in custody is likely to remain high and potentially increase. Without suitable options there is a risk the use of police cells as a remand alternative will continue to increase.

Detention of young people in police cells raises significant wellbeing issues. We also know when young people are placed in a Youth Justice residence they risk losing vital connections with their community and are living with other young people who face similar challenges.

Finally I believe we have found some middle ground with our community-based options.

We are providing a safe place to call home, for young people remanded by the youth court while they are supported to get their lives back on track.

Each home will provide care for between three and five young people and their stay could range from a few weeks to several months if required.

Staff will be employed to supervise the young people around the clock, encouraging them to make positive changes in their lives, while meeting their bail conditions. There will also be a strong focus on young people receiving the support and education tailored to meet their individual needs.

Most importantly, the remand homes will keep these young people and participating in their local community. They will be supported to continue at their school, and have positive time with friends and whänau while meeting the requirements of their bail conditions.

I truly believe it takes a community to support these young people to reach their goals. They will most likely be parents in the future, and have the potential to be leaders in our community such as teachers, coaches and health workers. We all have a part to play in helping them thrive.

I encourage all New Zealanders to think about how they can help make a difference in the life of a young person in need of opportunities and support. This could be as simple as sharing a skill, providing some mentoring or offering a fun or learning experience.■

FEATURE ARTICLES

Focus on Supervision with Activity

One of the lesser-known sentencing options available to the Youth Court is a residential supervision with activity order. Section 307(3)-(4) allows the court to make an order placing the young person in the custody of the chief executive, an iwi social service, a cultural social service, or the director of a child and family support service where the court considers that a program or activity is unable to be provided to the young person while they live with their parents or guardians.

There are three residential Supervision with Activity homes: Hillcrest Home, START Taranaki and Tirohonga Trust. In this edition, we profile the work each home does, in their own words.

Provider 1: Hillcrest Home

Judge Walker recently visited Hillcrest Home, where he met the team and was introduced to the unique support the program provides. The programme is fully residential for up to five tamariki at a time completing Supervision with Activity Orders through the Youth Court.

There are a range of things that differentiate Hillcrest Home.

Tailored Programmes for tamariki

Designing each programme for the individual is critical.

The programme on the surface appears very simple, and is easily understood by tamariki with just five rules and a repeating weekly schedule. This provides a predictable structure similar to that experienced by a young person following a timetable at high school, and including extracurricular activities.

The structure is presented visually to tamariki so they can understand it. In the background hanging the programme together are sophisticated layers of systems and processes. Internal data is captured to inform individual plans, future programme development and also staff training.

Staff Training

Staff are trained in a Logic Model which distinguishes programme components according to Cognitive Behaviour Theory practice logic and a detailed programme training manual. This programme includes a strong psycho-education component made up of Aggression Replacement Training®, group sessions with a psychologist and, where recommended, individual sessions with a psychologist.

This component works well with young people on the programme and the group sessions have assisted in the tamariki taking on individual therapy.

The environment is busy, structured and enjoyable to the point that many participants ask for follow on plans and orders to include heavy involvement from our team.

Clinical Advice Support for the team

There is regular clinical advice with Consultant Educational and Clinical Psychologist Christine Malins who has provided regular clinical advice to the team for the last 6 years. This evidence-based approach attracts university students to the staffing talent pool with many hoping to use the experience to become psychologists themselves.

Staff coach tamariki

Staff are known as "Coaches" and deliver both "in the moment" instruction, on how to self-regulate under stress, as well structured lessons on social skills and anger control. These individual approaches are discussed and consolidated in coaches' clinical advice, peer forums and through management oversight and support. This provides a balance between professional adult and strong advocate roles required to keep our clients focussed.

And there is Music, and sport

For many who reside or work here the most enjoyable programme component is the focus on sports and music activities to increase self-efficacy and pleasant events to improve mental health.

All young people receive professional tuition to learn music instruments and are encouraged to play in the Hillcrest Home band. Many young people become proficient in more than one instrument during their time on the programme.

Sporting activities are varied and individualised with the gym a common favourite. A gym in the community is accessed most mornings at 6:30am giving the tamariki the best possible start to the day. Other regular activities include playing for local sports teams, mountain biking, kayaking, fishing, rock climbing and bush walks.

The environment is busy, structured and enjoyable to the point that many participants ask for follow on plans and orders to include heavy involvement from our team.

The transition to Oranga Tamariki has been positive and the team look forward to our role within an evolving improved Youth Justice space. The team and tamariki were honoured to host Judge Walker in our home and we appreciated the words of thanks and encouragement for our work together. ■

Provider 2: START Taranaki

Background

START Taranaki was incorporated as a charitable trust in late 2003 and is governed by a Board of Trustees. As such, START Taranaki has 14 years' experience working with young men with offending behaviours.

START Taranaki's programme places emphasis on building meaningful relationships between staff and participants. It is the attachment between young people and positive role models which allows START's young people to feel safe, cared for and able to make positive changes.

START runs three SwA intakes per year, comprising of six young men aged 14-17, referred to us through from throughout New Zealand by the Youth Courts and MVCOT.

Programme Structure

The START Taranaki programme itself runs through three phases over 20 weeks with a focus on bringing about positive change for young people in eight key outcome areas.

1. Ability to recognise and seek trustworthy and healthy attachments;

2. Ability to express needs and feelings;

3. Self-esteem, self- confidence, knowledge;

4. Health, fitness along with associated skills and knowledge;

5. Resilience;

6. Connection to culture and environment;

7. Empathy, self-awareness and awareness of others; and

8. Ability to plan for future.

Phase One— an intensive four week 'Isolation' where young people are removed from their familiar environment. Kept on the move in a native bush setting they learn to live, work, interact constructively and be part of a team.

Kept on the move in a native bush setting they learn to live, work, constructively-interact and be part of a team.

Isolation consists of tramping and other outdoor/ bush activities, the penultimate being 'Solo'. After receiving instruction in bush craft and survival skills, each young person is then placed into a solo situation with limited human contact for three nights and three days. This solo experience is frequently the turning point that ignites motivation for change.

As a transitional phase from 'the bush' back into residential setting, youth spend four days at a Te Potaka Marae. During this time at the Marae, START Taranaki holds a 'Whānau Day'. Meetings take place with young people and their whānau to discuss progress made and develop plans for the future.

Phase Two— a residential period of six weeks which is called 'Ora Toa'. The focus is on maintaining motivation, goal setting, external counselling and installing routines for life back in the community. We aim to bring about awareness of how they can contribute positively to society through community based projects. Young people are placed in work experience to develop their work ethics and strengthen their community attachment.

Phase Three— called 'Transition'. Transition sees the young person placed back in the community with a solid plan for reintegration. Each young person returns to live with either family, approved caregivers or independently and has the opportunity to regain ownership of their place in society. Staff continue their work with them maintaining regular telephone and face to face contact.

Practice

All Staff hold a national certificate in Youth Work and are trained in Managing Actual and Potential Aggression (MAPA). START has an in-house MAPA Facilitator to ensure new staff are trained on induction and all staff are constantly refreshing their skills.

All staff have high level of understanding and insight into the behaviour of our young clients. This enables them to tailor programme content to the interests, strengths and needs of each young person, allowing them to flourish and discover success.

Tools

Throughout the programme and beyond START utilises two key tools to inform practice, the Results Measurement Framework (RMF) which tracks progress against the eight key outcomes previously mentioned and a '7P Case Assessment Guide.'

The '7P Case Assessment Guide' aids a holistic analysis of behaviour, whether general offending behaviour or more specific behavioural issues. It is a step by step tool that has practitioners examine:

- Presenting Problem;
- Pattern;
- Predisposing Factors;
- Precipitating Factors;
- Perpetuating Factors; and
- Protective Factors.

Taking into account all of the above, a 'Plan or Prognosis' can be formed. This plan is reviewed weekly and adapted as necessary. This helps our staff tailor their youth work to the specific needs of each young person.

Likewise the continuous tracking of the eight key outcomes in the RMF allows us to form a picture of how individual young people are tracking through the programme. This helps us to identify underlying issues, areas that need particular focus and development, as well as protective factors for a young person. It is also an excellent tool for reflective practice and programme review.

It is, however, the three-phase design of the programme, the strong and dedicated team of staff and their ability to develop healthy-meaningful relationships with the young people that forms the basis for success of the programme and practice. The tools ensure this sound foundation is ever-improving for the needs of the young person who sits at the centre of practice. ■

Provider 3: Tirohonga Trust

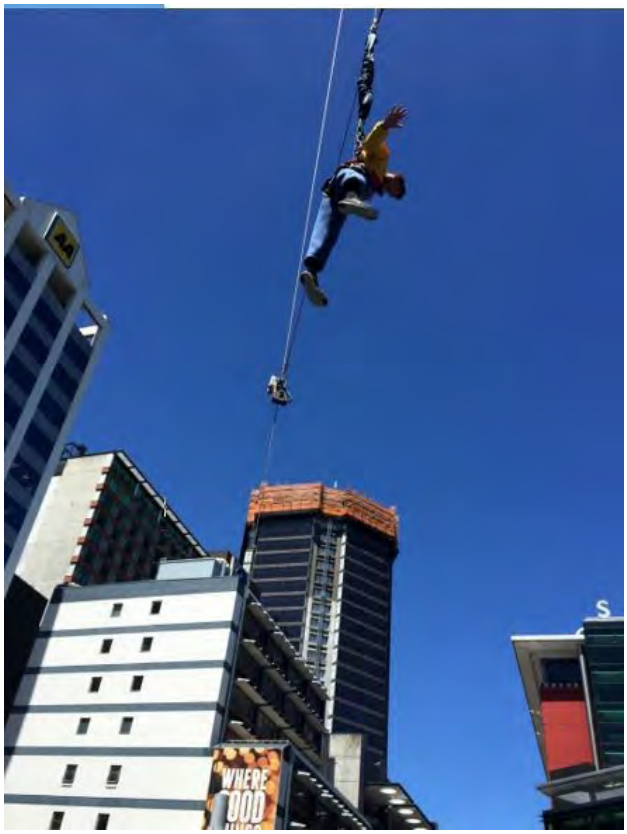
A rural gem providing holistic residential care to rangatahi in need.

Tirohonga Trust, founded in 2000, is a non-government organisation based in rural Auckland that provides a residential care service for up to 6 rangatahi at any one time, sentenced by the Youth Court. Tirohonga Trust is a farm-based service that offers skills-based workshops tailored to rangatahi, and individual needs-focused programmes to support each rangatahi's positive personal growth and development.

Rangatahi - Focused Workshops

Rangatahi-focused workshops include Drug and Alcohol Support & Education, Cooking and Hygiene, Budgeting and Life skills. In addition to these workshops and programmes we also work alongside various organisations and professionals to provide one-on-one mentoring, counselling, driver licensing, work-based certification and employment.

With a focus on the individual's needs, each rangatahi's plan is developed alongside their whānau, social worker and other professionals to ensure the plan is holistic and encompasses the



rangatahi's spiritual and cultural needs, among other important areas.

Behaviour Management & Support

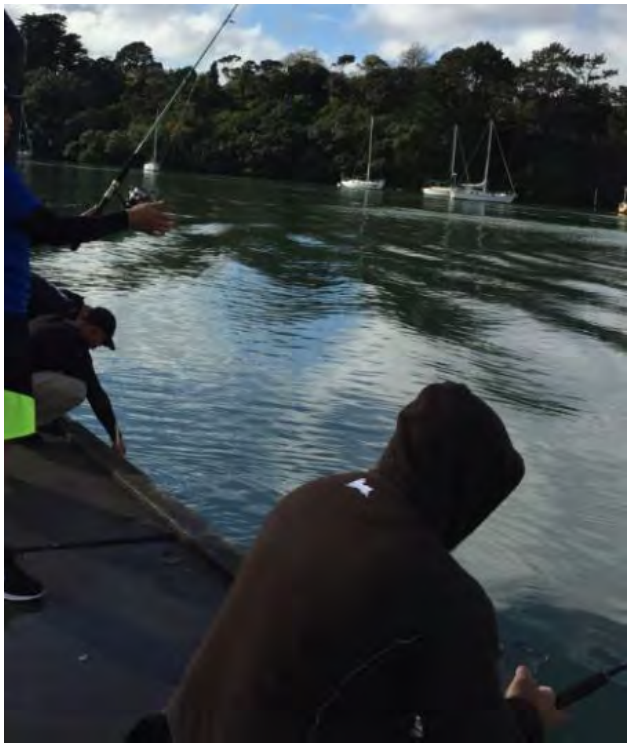
A key component in providing holistic care to our rangatahi is to provide behavioural support and equip them with the skills and tools they require to be able to manage their behaviour long-term. We work alongside a long serving counsellor who specialises in tamariki and rangatahi in care. The rangatahi engage well in these sessions and learn to recognise their behavioural triggers through Cognitive Behavioural Therapy and learn how to positively manage these triggers themselves.

Staff also receive clinical support to ensure they have the best information and tools they need to support each rangatahi's journey. With a psychologist on the team we always access to qualified and evidence-based frameworks to ensure we are working in the best proven way for our rangatahi.

Another area of focus in terms of behaviour management and support is celebrating achievements, when a rangatahi manages their behaviour in a positive way and continues to utilise the skills and tools they learn its vital to recognise such successes so they can see how much they've grown and developed.

Tautoko Whānau Engagement & Support Programme

In addition to rangatahi-focused services we also recognise the importance of engaging with and supporting the whānau. With this in mind we developed a programme that allows us to connect more with the whānau than ever before and vice



versa. With a secure online programme, all seamlessly presented in a client portfolio we have the ability to share the rangatahi's positive progress and good news stories with whānau, social worker and other invested parties (in line with contact arrangements where they exist) via invite only. It's an innovative and secure website with the ability to have a positive impact on how whānau engage with the programme.

We also offer a support service for whānau with a focus on managing the young person's post-placement care. With the support of a counsellor and invested professionals, we work together with the whānau to recognise areas of risk, develop a plan and provide tools and skills for the whānau to be able to positively manage these risks when the rangatahi returns home, with a focus on positive, lasting outcomes.

At Tirohonga Trust our focus is on supporting the rangatahi and whānau, by providing skills and tools to support them to achieve long-lasting positive outcomes in a structured and caring environment.

Hapaitia te aratika pumai ai te rangatiratanga mo nga uri whakatipu.

Foster the pathway of knowledge, to strength, independence and growth for future generations. ■

Tough Talk: Youth offenders' perceptions of communicating in the youth justice system in New Zealand

Sarah Lount, PhD candidate in Speech Science, University of Auckland

Supervisors: Dr Linda Hand & Professor Suzanne Purdy

Most youth justice systems rely heavily on oral language. New Zealand's Youth Justice System, in particular, makes a number of demands on the communication skills of young people because of its restorative focus. Taking family group conferences as an example, the communication skills a young person is expected to have include: understanding questions posed by a range of youth justice professionals (such as youth advocates, judges, youth justice co-ordinators, and police), and possibly the victim(s); understanding complex narratives; have real-time responses to questions; have narrative skills to be able to meaningfully and clearly explain their perspective of what happened; have appropriate non-verbal communication (such as eye contact and body language); and, adequate hearing, and language and auditory processing to understand language when people speak over each other in potentially emotionally-charged environments. However, international literature shows that many youth offenders have poorer language skills than their non-offending peers, which has implications for their participation in youth justice processes.

Researcher: Ok. Did the people using those long words, did they ever ask if you understood those words?

YP3: Nah, it's usually the judge, eh, saying those long words, and I'd only talk to the judge.

Researcher: And did they ever give you times where you could ask questions?

YP3: Nah, I never got to talk to the judge myself, barely {frustrated tone}.

Awareness is increasing of the communication needs of young people in New Zealand's context, but there remains little research in this area. We recently published the findings of our first study that used standardised measures to examine the hearing, auditory processing (listening) and language skills of males in youth justice residences. Our youth justice group had poorer performance than the controls in all three communication areas, with 64% fulfilling the criteria for language impairment (compared with 10% of the control group)1. These results are similar to those of international research. However, most of this research into youth offenders' communication skills focuses on standardised assessments and quantitative measures, with little known of young people's perceptions of communicating in the verbally-mediated youth justice setting. This quantitative data misses what young people feel is most difficult, what works, and what is most relevant for supporting their communication. Therefore, our most recent study aimed to address this gap by including the voice of young people in youth justice to examine their perceptions of communicating with youth justice professionals in the New Zealand Youth Justice System.

Researcher: How did you find it talking to people when you were in court?

YP1: Hard.

Researcher: It was hard? What was hard about it?

YP1: Just finding the words; just hard to talk to them. Because they talk all fancy, and sometimes I don't understand what they're saying.

YP2: There was a lot of fancy words that I didn't understand.

Methods: Our exploratory study used semi-structured interviews of eight males from one youth justice residence. These young people did not have their language skills assessed for this study, as we wanted to gain an understanding of the experiences of a sample of young people that could represent any (male) young person in a youth justice residence. Latent thematic analysis was used to identify dominant, frequently-occurring or significant content within or across the interviews.

Results: The difficulties the young people experienced communicating in the youth justice system had the potential to leave them feeling as though they had no control or 'voice'. The young people expressed this in various ways through how they talked about communication in court; many of the young people spoke with frustration and strong emotions about their difficulties understanding the language and events during their court hearing, as well as limited opportunities to speak.

YP3: I was like way in the dock, like way back, and can't really hear anything, even though they've got the mics, they're like, still quiet talkers.

Despite these difficulties described by the young people described, they were all able to identify people and factors that made communication easier. All identified a professional that was easy to talk to, and it was the relationship they established with the individual, rather than their role, which the young people identified was important. Trust and familiarity were key to this; some young people also mentioned that sharing a cultural understanding with the professional helped. Another notable finding was that most of the young people could identify strategies that could help when communication became difficult, but not all reported using them.

Conclusions and future directions: The findings from these young interviewees raise concerns that are likely to be relevant to other young people attending court in New Zealand, and question the young people's ability to fully participate in youth justice processes. Difficulties understanding court proceedings appear to be a barrier to the young person being able to fully participate and represent themselves, and this has the potential to leave the young person feeling frustrated or disengaged. The relationships the young people had with the professionals was a key factor in making communication easier. Therefore, the courts and professionals could focus on ensuring young people have a familiar source of support that they trust and can approach when communication or understanding becomes difficult. It is worth bearing in mind that this study included the views of a small group of males from one youth justice residence. Therefore, future research should expand on these findings by including a broader range of young people in youth justice. In particular, future research should include the voice of female young people to ensure any intervention or support are relevant to all young people in contact with the youth justice system. ■

Rewriting Children's Rights Judgments: From Academic Vision to New Practice

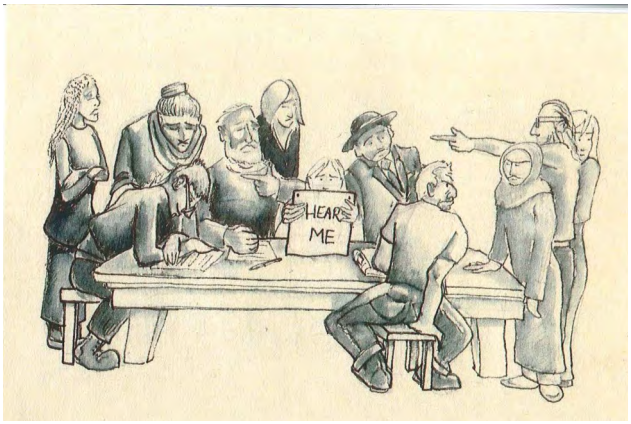
Edited by Stalford, Hollingsworth and Gilmore (2017, Hart Bloomsbury)

The children's rights judgment project is a collaborative project involving 56 academics and legal practitioners from across the world. Contributors rewrote 28 existing judgments from various courts and jurisdictions. The revised judgments and accompanying commentaries aim to demonstrate how children's rights principles, methods and research can be brought to bear more meaningfully and explicitly on the judicial process. The project also provided some insight into the practical, legal, cultural and ideological challenges facing the judiciary when dealing with cases involving children and considering how these might be overcome.

We identify five broad strategies which we see as indicative of a children's rights approach to judging:

Bringing children's rights principles to bear on judicial decision-making

The first strategy, and the one adopted by the majority of our fictive judges, is to draw more explicitly on children's rights principles when reasoning and deciding disputes. These principles – which include: recognising the child as a rights-holder; facilitating and giving effect to the voice of the child; prioritising the child's best interests; protecting against non-discrimination; and supporting the child's familial relationships - are often to be found within national law. Sometimes, as is the case in South Africa, they are even embedded in the constitution. However, the principles are most comprehensively articulated in international children's rights standards, most notably the UNCRC but also, for example, in Article 24 of the Charter of Fundamental Rights of the European Union. Even where these international standards are not directly enforceable in a particular domestic or supra-national legal system (for example, in the European Court of Human Rights (ECtHR) or the International Criminal Court), they can nonetheless be utilised by judges to push the boundaries in the interpretation, development and application of the law. Laura Lundy's rewritten ECtHR judgment in



Valsamis v Greece (App no 21787/93, 18 December 1996) makes extensive use of the UNCRC as well as its 'soft law' which can be derived from the Committee on the Rights of the Child's General Comments, Concluding Observations, and other UN rules (which can be used to flesh out the bare bones of the ECHR and to assist judges in interpreting and understanding the articles of the UNCRC). By doing this, Lundy was able to 'cross pollinate' children's rights standards, in a comprehensive and detailed way, to support the child's educational, religious and political freedoms. Similarly, Kirsty Hughes' rewritten judgment in the tortious damages claim in *AAA* (above) gave prominence to Article 3 UNCRC (the best interest principle), thus extending the Convention's horizontal reach (that is, in actions between citizens) into private law proceedings.

Bringing theoretical and empirical scholarship to bear on decision-making

Children's rights scholars spend much of their time grappling with tricky doctrinal, conceptual and empirically-informed legal issues that affect children. Much of this 'intelligence' does not reach the courtroom however, and though it is not uncommon for judges to cite doctrinal scholarship (where counsel have drawn on it in legal argument) it is much less usual for other types of academic research to be found (explicitly or implicitly) in judgments. And yet conceptual and empirical research can enhance the children's rights credentials of a judgment.

Scholarship informed the decisions of our fictional judges in various ways. In a number of cases, the theoretical work of authors such as Michael Freeman, John Eekelaar, Rosalind Dixon and Martha Nussbaum provided the implicit justification to treat children differently from adult rights-holders: sometimes to set the parameters of the child's own decision-making (for example in medical cases such as *Re W (A Minor)(Consent to Medical Treatment)*

A children's rights judgment is one where that narrative is child-centric: the facts are told and the decision reasoned from the experience of the child.

[1993] Fam 64 and *F v F* [2013] EWHC 2683 (Fam)); and sometimes to provide the requisite justification for preferential treatment of children over adults (for example, in the South African housing case of *Government of the Republic of South Africa and Others v Grootboom* 2001 (1) SA 46 (CC)). Elsewhere the work of relational theorists underpins reasoning that challenges the orthodoxy that a rights-holder is a self-contained, rational individual who needs rights to protect against interference from others (a description that is unsuited to children), and which views rights instead as supportive of connection and inter-dependency. This is seen in Amel Alghrani's approach in the heart-breaking case of *Re A (Conjoined Twins)* [2000] EWCA Civ 254. In other cases our fictive judges drew on research to argue that 'best interests' must be understood holistically, capturing all of the child's rights rather than simply reflecting a narrow, paternalistic, conception of welfare (see *C v XYZ* County Council [2007] EWCA Civ 1206 which brings the child's right to identity to bear on the assessment of the child's best interests in adoption proceedings).

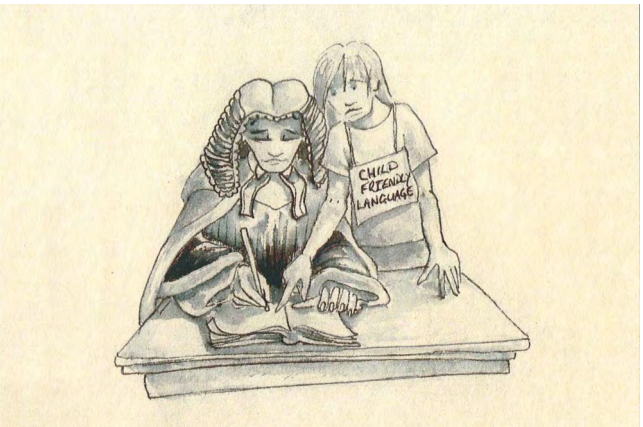
Endorsing child friendly procedures

Central to a children's rights judgment is facilitating the child's participation prior to the decision being made and the judgment written. All judicial and administrative proceedings should conform to child-friendly principles including those set out in domestic legislation as well as the 2010 Council of Europe Child-friendly Justice Guidelines and, more recently, in the Guidelines on Children in Contact with the Justice System. Both reinforce the duty of judges to ensure that children's voices are genuinely heard and, where possible, given effect to. Our judges were somewhat constrained in this regard in that they could not retrospectively include new evidence or processes which were not part of the original proceedings (even where, as in the rewrite of Begum, our authors had interviewed the child (now adult) at the heart of the proceedings). Nonetheless, the substantive focus of a number of our cases was children's participation in legal proceedings (including *P-S* and *Hoge Raad* above), and (fictional) dicta emphasised that children much be enabled to participate and that their views and wishes should inform the decision, rather than mere lip service paid through their symbolic inclusion.

Placing the child's voice, interests and experiences at the heart of the narrative

The fourth strategy we identify concerns the way in which the judgment is written – the 'how' rather than the 'what'. We only have to think of Lord Denning to be reminded of how judgments are, after-all, a form of story-telling and that judges use narrative to persuade their audience (the parties, the public, the legislature, or the appeal courts) that they have come to the right decision and have done so on the correct basis. Judges do this through fact-selection, style, tone, and structure. A children's rights judgment is one where that narrative is child-centric: the facts are told and the decision reasoned from the experience of the child. The adoption of the child's perspective can expose certain legal principles and concepts as adult-focussed (as our cases on criminal responsibility demonstrate). It also ensures that reasoning is based on the concrete, lived experiences of the individual child rather than abstract principles or generalised presumptions about childhood that otherwise sideline the individual child at centre of the proceedings.

Various techniques can be used by judges to ensure that the child is central to the narrative, and thus to the reasoning and outcome. First, the legitimate aim to preserve a child's anonymity should be achieved not by referring to the child with an initial, but through the use of a pseudonym. This brings the child 'to life', humanises her, and ensures we are reminded that there is an actual child at the heart of the case. In judgments where the child is named, for example in some criminal cases, the use of the child's first name rather than surname achieves a similar objective, and also helps to reveal the power differential between the child and the state (the rewritten *Roper v Simmons* employs this technique to good effect). Second, the facts should focus on the child's experience and



understanding rather than the adults' or those of the state. This is seen, for instance, in *Gas v Dubois v France* (App no 25951/07 15 March 2012) where there was a failure legally to recognise the child's social parent. In these and others ways, the crafting of a judgment - as well as the reasoning, outcomes and proceedings - can become a vehicle for the child's rights to be heard and for recognising children as active, rights-bearing agents.

Communicating the judgment in a child-friendly way

The final strategy we advocate here is that the judgment should be drafted in a way that addresses the child, or children in general, as the audience. This may be in the primary judgment or, if the case involves complex legal reasoning, in an adjunct version written in a child-friendly way. Certain areas of law, for example many family cases which involve the application of discretion to a well-settled area of law, lend themselves to child-friendly versions. There are a number of examples emerging in real-life; some of Peter Jackson's recent judgments stand out amongst the English judiciary for example. But these remain the exception rather than the rule and there is far greater scope for judgments to be written for children. This is important because it sends powerful messages to society that children are rights -holders and the law respects this; it helps the child accept the decision, increases the legitimacy of the law in her eyes, and allows the judge to send wider messages (eg that the child is loved and valued, and what is appropriate adult behaviour); they better conform to rule of law principles around children's access to justice; and a judge who writes a judgment for a child is more likely to see the case from their perspective and therefore more likely to reason in ways that are consistent with children's rights.

Some of our judges wrote additional versions specifically for children (*Valsamis v Greece; Grootboom, Re T (A Minor)(Wardship:Medical Treatment)* [1997] 1 FLR 502); others attempted to adopt a more child-friendly tone throughout the main judgment. But even amongst our judges there was considerable disparity, as there is in real life. We recently reviewed 30 child abduction cases and found some judges adopted simple, clear, language and structure that might readily be understood by an older child. Others, however, employed idioms and similes that even we did not recognise (!), or had a tone that was authoritarian, old-fashioned, or patronising. Such an approach alienates any child reading the judgment, and potentially harms a child's trust in, and respect for, the law and the legal system. An essential element of the rule of law is not only that the law is correctly interpreted and applied, but that it can be understood by those seeking to enforce it. The judiciary play a crucial role in this regard.

Ways in which judges can work towards child friendly judgments include: the use of a pseudonym instead of an initial for the child; the adoption of age appropriate language; the avoidance of obstuse similies or phrases; the use of short paragraphs and avoidance of long judgments: the avoidance of legalese and explanations of technical terms; explanations of the basis of the decision and reasons as simply as possible; by connecting with the child on the child's level; and by helping the child feel respected and valued.

Conclusion

We approached this project as academics with lots to learn and with an enthusiasm to bridge the academic/ practice divide by sharing our findings with practitioners and members of the judiciary. With the endorsement of some leading judges (including the President of the UK Supreme Court, Lady Hale, who has written the Foreword for the published collection of rewritten judgments), we hope that our insights into children's rights norms, methods and research offer a new and interesting perspective for judges and magistrates and a platform for more constructive, open dialogue and collaboration. Certainly, by stepping outside our academic comfort zone and genuinely trying to put ourselves into the shoes of the judiciary, we have learned a great deal about the challenges of crafting persuasive judgments that can respond to a diverse range of interests, often in the face of acute evidential, ethical and resource-related concerns.

The main output of the project, the book *Rewriting Children's Rights Judgment: From Academic Vision to New Practice,* is now available from Hart Bloomsbury. Our focus turns now to working collaboratively with judges to develop training materials in order to influence real-life judicial practice.

INTERESTED TO KNOW MORE? If you would be interested in getting involved or receiving the training materials that emerge from this follow-on work, please contact Stalford@liverpool.ac.uk and Kathryn.hollingsworth@newcastle.ac.uk.

RECENT RESEARCH & PUBLICATIONS

NEW ZEALAND

Getting it right: the children's convention in Aotearoa

Author(s): The UN Convention on the Rights of the Child Monitoring Group

Source: Office of the Children's Commissioner, Wellington, 2017

Abstract: This report looks at how New Zealand is putting the UN Convention on the Rights of the Child (Children's Convention) into practice, and where it can do better. The report makes three recommendations that Government can put into place immediately.

The Good Lives Model among detained female adolescents

Author(s): Lore Van Damme, Clare-Ann Fortune, Stijn Vandevelde and Wouter Vanderplasschen

Source: Aggression and Violent Behaviour volume 37, November 2017, pages 179-189.

Abstract: Female adolescents constitute a very vulnerable and challenging, yet understudied, minority within the criminal justice system. Up to now, problem-oriented risk management approaches, such as the Risk-Need-Responsivity (RNR) model, are still the most widely used rehabilitation frameworks. More recently, strength-based rehabilitation frameworks, such as the Good Lives Model (GLM), have received increased attention in guiding treatment of detained female adolescents. In the current paper, we explore the relevance and applicability of the GLM in the particular population of detained female adolescents, based on a critical reflection on the theoretical, empirical and clinical evidence available in the scientific literature. First, we argue that the GLM can help to overcome the RNR model's ethical, etiological and clinical limitations, thereby improving rehabilitation theory and effective practice for detained female adolescents. Second, we believe this model, given its holistic and person-centred approach, can be easily extended to this population, however not without taking into account particular developmental and gender issues. Third, we believe the GLM, as a rehabilitation framework, can easily "wrap around" existing evidence-based treatment programs for detained female adolescents. In addition, we think that the different phases of GLM-informed rehabilitation can be easily applied to this particular population. Finally, the application of the GLM among detained female adolescents entails some important research-related, practice-related and normative challenges.

The Good Lives Model: A strength-based approach for youth offenders

Author(s): Clare-Ann Fortune

Source: Aggression and Violent Behaviour volume 38, January – February 2018, pages 21-30.

Abstract: There is increasing interest in the use of strength-based approaches, such as the Good Lives Model (GLM), in the field of offender rehabilitation to complement primarily risk management models. To date, theoretical work has focused on the application of the GLM to adult sexual offenders, and primarily sexual offenders at that. This paper explores the theoretical application of the Good Lives Model (GLM) to the rehabilitation of youth offenders. Practitioners often struggle to engage young people in treatment as working towards the goal of avoiding further offending does not directly speak to their core concerns and, as such, is not very motivating. The GLM is a rehabilitation framework that focuses on approach goals, which encourages individuals to identify and formulate ways of achieving personally meaningful goals in prosocial ways. It is argued that as a rehabilitation framework the GLM has the flexibility and breadth to accommodate the variety of risk factors and complex needs youth offenders present with, and also provides a natural fit with a dynamic systems (e.g., family and educational systems) framework, and evidence based interventions in the youth offender field.

Cloak of Many Philosophies: Restorative Justice, Therapeutic Jurisprudence, and Family Empowerment in Aotearoa New Zealand's Youth Justice System.

Author(s): Selwyn Fraser

Source: (2007) 2 INT'L J. THER. JURIS 157

Abstract: This paper explores the philosophical makeup of Aotearoa's Youth Justice System. It

interrogates three philosophies often spoken of in conjunction with New Zealand's YJ System: Restorative Justice, Therapeutic Jurisprudence, and Family Empowerment. The three philosophies, despite numerous congruencies, are shown to give markedly different responses to two fundamental questions facing any YJ System. How much control should be given to the State as opposed to the community and its families? And how should the competing interests of the offender, victim, community and family be prioritised? Ultimately, the paper argues that Family Empowerment best captures the philosophical heartbeat of the Oranga Tamariki Act 1989, and so should set the tone for YJ practice on the ground.

Homeless Youths' "Street Families" in Aotearoa New Zealand's Youth Justice System

Author(s): Selwyn Fraser

Source: (2016) Waikato L.Rev 124

Abstract: When it comes to Youth Justice, family matters. The Oranga Tamariki Act 1989 places an emphasis on the participation and empowerment of the young offender's community and especially their family. But this article probes the question: who, precisely, is a young person's family or community? Specifically, it explores one especially "unconventional" family: the "street family", the communal association entered into by (many) homeless youth. The argument proceeds in two directions. First, it explores the interrelationships between youth homelessness and youth justice. But second, street families also provide an interesting test case through which our YJ System's approach to notions of family and community are assessed.

AUSTRALIA

The first thousand days: an evidence paper

Author(s): Tim Moore and others

Source: Centre for Community Child Health, September 2017

Abstract: Supported by a number of Australian organisations this paper provides a comprehensive summary of the evidence for the significance of the first 1000 days (from conception to age 2). In an exhaustive look at the latest science from numerous disciplines, the paper examines the impact of early experiences on all aspects of development and functioning, including health and wellbeing, mental health, social functioning, and cognitive development.

The duty we owe: Foetal Alcohol Spectrum Disorder, indigenous imprisonment and Churnside v Western Australia [2016] WASCA 146

Author(s): Jacqueline Baker

Source: University of Western Australia Law Review 42(2) October 2017:110-135

Abstract: The criminal justice system does not do justice to the pocket of Indigenous Australians suffering from a foetal alcohol spectrum disorder (FASD) due to prenatal exposure to alcohol. The criminal justice system has a duty to consider alternatives to incarceration for Indigenous Australians, particularly those with FASD, because many of the policy reasons for incarceration, such as deterrence and punishment, are not appropriate for someone suffering from FASD. This analysis considers that the judgment in Churnside v Western Australia [2016] WASCA 146 sets an important precedent in not only acknowledging the court's duty to consider alternatives to incarceration for non-violent crimes, but by positively acting upon their duty in making such arrangements.

Young people transitioning from juvenile justice to the community: transition planning and interagency collaboration

Author(s): Iva Strnadova, Therese M Cumming and Sue C O'Neill

Source: Current Issues in Criminal Justice 29(1) July 2017:19-38

Abstract: This study investigated the collaborative transition process for youth incarcerated for three or more months in New South Wales ('NSW') juvenile justice facilities. Qualitative methodology was employed to analyse interviews conducted with staff from both the education and juvenile justice systems in NSW to determine how the agencies involved with the transition planning for incarcerated youth collaborate. The study also aimed to determine the roles and understanding of staff in each sector with reference to the transition process.

Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory

Author(s): Hon Margaret White AO and Mr Mick Gooda

Source:

www.childdetentionnt.royalcommission.gov.au

Abstract: This report sets out the Royal Commission and Board of Inquiry's findings in relation to detention and child welfare in the Northern Territory. In relation to detention, findings included that youth detention centres were not fit for accommodating, let alone rehabilitating, children and young people; children were subject to verbal abuse, physical control and humiliation, including being denied access to basic human needs such as water, food and the use of toilets; children were dared or bribed to carry out degrading and humiliating acts, or to commit acts of violence on each other; youth justice officers restrained children violently, and isolation has continued to be used inappropriately, punitively and inconsistently with the Youth Justice Act (NT) which has caused suffering and, likely, lasting psychological damage.

The report makes a number of recommendations, including closing the Don Dale Youth Detention Centre; raising the age of criminal responsibility to 12 and only allowing children under 14 years to be detained for serious crimes; increasing diversion and therapeutic approaches; and increasing engagement with and involvement of Aboriginal Organisations.

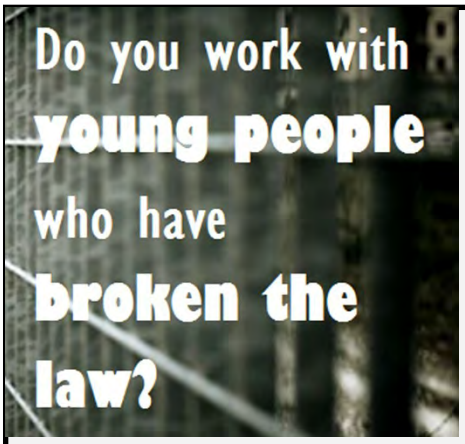
UNITED STATES

3 principles to improve outcomes for children and families

Author(s): Center on the Developing Child at Harvard University

Source: Science to policy and practice, 2017

Abstract: The science of child development and the core capabilities of adults point to a set of "design principles" that policymakers and practitioners in many different sectors can use to improve outcomes for children and families. That is, to be maximally effective, policies and services should: support responsive relationships for children and adults; strengthen core life skills; and reduce sources of stress in the lives of children and families. Each of the principles is discussed in detail in the paper.



I'd like to hear from you if a young person you have worked with has been supported by a communication assistant/speech language therapist.

I am a clinical psychology doctoral student and am conducting evaluative research into the new and evolving role of the communication assistant (usually a speech language therapist) in the criminal justice system. Communication assistants are being appointed in increasing numbers to support the oral language needs of young people who offend. I would like to hear your views – the good, the bad – the impact it had on the young person, your role, and the process.

Your views as a Judge, lawyer, youth advocate, lay advocate, youth justice co-ordinator, social worker or in any other role that comes into contact with young people who offend are important to me.

As a participant, you would be take part in a one hour interview. Interviews will be audio-recorded and take place at a time and accessible location of your choosing. I am based in Auckland, but can travel to your location within New Zealand.

In appreciation of your time, you will receive a $20 petrol voucher. If you are interested in participating or would like more information, please contact me via e-mail, Kelly Scott: kelly.scott@auckland.ac.nz

Approved by the University Of Auckland Human Participants Ethics Committee on 4 September for three years. Reference Number 019002.