COURT IN THE ACT

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

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Editorial

We all aim to recognise and account for the vulnerability of children and young people at every stage of the youth justice system – from their initial encounters with police, to their appearances in the Youth Court and beyond. The inherent vulnerability of children and young people in one of the very first steps in the youth justice process – police questioning – is explicitly recognised in the Oranga Tamariki Act. It is well known by now that young people, by virtue of their age, have an underdeveloped brain. Certain traits such as lower executive functioning and risk assessment skills influence both the behaviour that brings young people to the attention of the police and their behaviour when they interact with the justice system.

In recognition of this developmental immaturity and vulnerability, young people are statutorily entitled to special protections in the course of police questioning. A key protection is the right to consult with, and make any statement in the presence of, a lawyer and/or a nominated person. An enforcement officer must explain this right to a child or young person in age-appropriate language prior to questioning where there are reasonable grounds to suspect them of having committed an offence, or where the questioning is intended to obtain an admission of an offence. A statement by a child or young person must be made in the presence of a lawyer, nominated person, or both to be admissible in court.

In order for this right to be effective as a protection, the young person will need to understand the choices available to them and be in a position to assess whether the right should be exercised or not and in what form. The young person will need to understand what a lawyer does, what their role is and how they can assist, and will need to appreciate the lawyer/client relationship, confidentiality and the duties of lawyers to clients. They will need to understand that the lawyer is free of charge, that they will work in the child's interests and that they are not part of the Police who it will seem are providing the lawyer. They need to understand all of this or else it is likely they will choose to go with a nominated person, who they may readily see as a supporter. The problem is that a nominated person is unlikely to understand the intricacies of the law or what is in fact required to support a young person and are unlikely to provide advice on whether the right to silence should be exercised.

When an adult is taken to a police station for questioning they will be told that they have a right to consult and instruct a lawyer, and that if they do not have a lawyer then one will be provided from a list of lawyers available to provide such advice free of charge. They are not told that they can instead just have a lay person support them in the process. If that is all the assistance they had, it would be unlikely that what they said would be admissible in court.

The question then becomes – should it be possible for our most vulnerable young people to have less protection than an adult when being questioned by police?

Experience has shown that a child or young person, without a full understanding of the type of advice a lawyer could give them, will often choose only to consult with a nominated person. A nominated person may be a parent or guardian of the child or young person; an adult member of the family, whānau or family group; any other adult chosen by the child or young person; or an adult nominated by the enforcement officer if the child or young person refuses or fails to nominate someone. A young person may fail to nominate someone because they do not have anyone that they think will support them or they are too embarrassed to let anyone know they are being questioned by the police. In that event, the person they will need to rely on for advice and support will be selected by the police, for example, a Justice of the Peace.

Should it be possible for our most vulnerable young people to have less protection than an adult when being questioned by police?

More often than not, the nominated person will be a family member, typically a parent or caregiver. While the presence of a family member as a support person during police questioning generally accords with the legislative emphasis on upholding family and whānau involvement at the centre of responses to youth offending, the presence of a lawyer will not displace that involvement.

Under the Oranga Tamariki Act, the duties of nominated persons include taking reasonable steps to ensure that children and young people understand their rights during police questioning and supporting them before and during the questioning process and the making of statements. Compared to a lawyer, nominated persons will themselves often lack a full understanding of the young person's rights. They likely will not know when to correct enforcement officers who give inaccurate advice or when to intervene where inappropriate questions are being asked. They may not understand the serious jeopardy that a young person could be facing, particularly where complex legal matters such as party liability for group offending are relevant. They may be emotionally connected to the situation and unable to provide objective, reasoned advice. They may try to speak on behalf of the young person or pressure the young person to admit to the offending. They may not know that a valid defence exists or that there is a lack of evidence to charge the young person. In some situations, nominated persons, through lack of understanding, may unintentionally act entirely contrary to the young person's best interests.

Taking these issues into account, I suggest it is time to explore whether the nominated persons system adequately provides the necessary special protections for inherently vulnerable children and young people during police questioning. We know much more about the disabilities which may be affecting a young person than was known in 1989 when the Act was passed. Our exploration of this issue will be informed by the growing awareness of the prevalence of neurodisabilities and other vulnerabilities amongst the young people who interact with the justice system. In addition to having generally underdeveloped brains, the cohort likely to be questioned by police on serious charges are high-needs young people who often experience complex issues such as neurodisabilities, mental health issues, substance abuse problems, impacts of childhood trauma, or a combination of all these factors. Neurodisabilities (ranging from autism, fetal alcohol spectrum disorder, ADHD, dyslexia,

and acquired brain injury, to name but a few) in particular are likely to impact on a young person's ability to understand the legal system and the choices they have within it. Young people with neurodisabilities may struggle to understand the language used during police questioning, such as the legal terminology used to describe the charges they are facing and the implications of those charges. They may be particularly hypersensitive in stressful situations, which heightens the risk of inaccurate statements or false confessions. They may have difficulties processing information, including explanations of their rights or details of the allegations made against them. Nominated persons themselves may experience similar vulnerabilities or other challenges which affect their ability to effectively advocate for a young person.

In my view, it is time to consider whether the nominated person option remains fit for purpose when we apply our current knowledge. We need to consider whether the availability of this option affords young people less protection than that given to adults, when usually we would be affording them greater protection. It may be time for the Oranga Tamariki Act to require the assistance of a lawyer before any statement by a young person is admissible in court.

It may be time for the Oranga Tamariki Act to require the assistance of a lawyer before any statement by a young person is admissible in court.

A primary consideration in the administration and application of youth justice legislation is the well-being and best interests of the child or young person accused of offending behaviour. All credit is due to the youth justice stakeholders who are relentlessly committed to adapting our processes to promote the well-being of our rangatahi. This applies to the frontline Police Youth Aid officers who divert the majority of young people away from formal court interventions, to the multi-disciplinary Youth Court teams who provide wrap-around support for the young people who do appear in the courtroom.

Once young people enter the Youth Court, they are universally provided with legal representation and, if necessary, communication assistance to support them to be seen, heard, understood and meaningfully participate in the proceedings. There is no reason why children and young persons' needs and best interests ought not to be similarly protected throughout the entire legal process, right from their first interaction with the justice system.

Judge Walker
Principal Youth Court Judge for New Zealand

Young Adult List Evaluation - Summary

The Young Adult List is a judicially-led initiative established in the Porirua District Court since March 2020. The initiative separates out young adults aged 18 to 25 years into their own list with an adapted court process. The objectives of the Young Adult List are to ensure young adults can fully engage in, participate in, and understand the court process, and have the opportunity to be referred to interventions that meet their needs.

An evaluation of the Young Adult List was completed in July 2021 by Artemis Research. This is a formative evaluation and a short-term outcome evaluation, and is intended to be the first in a series of evaluations. Below is a summary of the evaluation's findings.

Process

The evaluation results were obtained through interviews with court participants (30 defendants from the Young Adult List and 25 defendants from a comparison court), interviews with 18 key stakeholders of the Young Adult List, and analysis of administrative data comparing the Young Adult List and the comparison court.

Court Participant Interviews

In contrast to the comparison court, the defendants at the Young Adult List were more likely to:

- Say they could hear and understand the Judge.
- Say the Judge had shown them respect.
- Be referred to an intervention that was a better fit with their needs.
- Say the court experience had made them think about making positive changes in life.

Of the participants interviewed who had had an experience of another court, all preferred the Young Adult List over other District Courts.

Stakeholder Interviews

Stakeholders thought that young adults and their support people were more engaged in court. They were more likely to have a better understanding of the decisions affecting them. Engagement and participation were improved because of:

- Judges taking a less punitive approach.
- Judges addressing defendants directly.
- Professionals using plain language.
- Changes to the courtroom layout.

Stakeholders thought the Young Adult List was contributing to increased trust and confidence in the criminal justice system.

New Young Adult List Courts Launched

Following the success of the evaluation of the Young Adult List pilot at Porirua District Court, the Young Adult List was launched in Gisborne on 5 May and in Hamilton on 20 June 2022. The Young Adult List will be rolled out nationally as a central pou of Te Ao Mārama, the Chief Judge's vision for the District Court. The Te Ao Mārama kaupapa aims to mainstream the best practice of the Young Adult List and other specialist courts, including the use of plain language and reducing formalities in order to support all court participants to feel seen, heard, understood and enabled to meaningfully participate in the proceedings which are about them.

The launch ceremony in Gisborne was attended by members of the judiciary; local court staff and legal practitioners; officers of New Zealand Police and Police Prosecution Service; officials from the Ministry of Justice, Department of Corrections, and Ministry of Health; and local iwi representatives. The large group in attendance illustrated the Young Adult List, and the broader Te Ao Mārama kaupapa, as *he waka eke noa* - a vessel that can be used by all (as described by Chief District Court Judge Taumaunu in his opening address).

The success of this kaupapa requires everyone – from the court and counsel, to national and regional government agencies, as well as local communities, hapū and iwi – to work together. I commend the remarkable efforts of all those who have embraced the kaupapa and embarked on a collective journey towards a shared vision. A vision that all people who come before the courts will be treated in a manner that is both fair and just, and ultimately helps to make our special country in the bottom corner of the globe a better place to live.

Case Watch

NOTE: Youth Court decisions are published in anonymised form on the District Court of New Zealand website. These cannot be republished without leave of the court, and no identifying particulars of any child or young person, or the parents or guardians, or the school they attended, may be published.

New Zealand Police v JV [2021] NZYC 248

JV was brought before the Youth Court for a charge of aggravated burglary committed when he was 12. The police also applied to the Family Court for a care and protection order in relation to that incident. This was one of five cases in a similar time period identified by the Judge as having concurrent Youth Court and Family Court proceedings. The Judge questioned whether it was appropriate for children who have offended to be dealt with in contemporaneous, parallel proceedings, when the underlying causes are almost solely care and protection. His Honour argued that this amounted to a form of criminalisation of care and protection, and discharged the Youth Court charge under s 282 of the Oranga Tamariki Act 1989.

R v CD [2021] NZYC 91

CD was sentenced for sexual connection with a young person under 16 and doing an indecent act on a young person under 16. The issue was whether to discharge the proceedings under s 282 of the Oranga Tamariki Act 1989, which is a total discharge, or under s 283(a), which leaves a record. The victim and her family wished for there to be a record of the offending. The Judge took into account factors including CD's well-being and best interests, the interests of the victim, CD's remorse and offer to pay reparation, and noted that sexual offending has the lowest rate of recidivism of any offence in the Youth Court. His Honour considered that a discharge under s 282 was appropriate in this case.

New Zealand Police v CV [2021] NZYC 26

CV was arrested for their alleged involvement in a group assault. The issue was whether the arrest was lawful pursuant to s 214 of the Oranga Tamariki Act 1989. The Judge found that there were not reasonable grounds to be satisfied that an arrest was necessary to ensure CV's attendance at court, nor to secure any outstanding evidence. However, the Judge considered that the arresting officer had reasonable grounds to be satisfied that an arrest was necessary to prevent CV from becoming involved in further offending, and therefore the arrest was lawful.

New Zealand Police v JD [2021] NZYC 117

This case concerned an early release hearing. The test for whether someone is eligible for early release is set out in s 314 of the Oranga Tamariki Act 1989. While in custody, JD was the perpetrator of a serious unprovoked attack on another young person. JD's Youth Advocate argued that because JD had not been formally charged, this did not count as committing a further offence. However, the Judge found that while it was an allegation, it had been referred to the police and further action was likely, so the allegation did amount to a further offence.

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New Zealand Police v LB [2020] NZYC 318

This case concerned an application by LB for the charge against him to be dismissed because of undue delay under s 322 of the Oranga Tamariki Act 1989. At the time of LB's first appearance in the Youth Court, approximately one year had passed since the date of his alleged offending. While recognising that the Court will not typically second-guess Police resourcing decisions, the Judge considered that there was a significant time period before the matter came to Court which constituted an undue delay without a clear reason. In exercising its discretion, the Court decided that it was appropriate to dismiss the charge against LB. The Judge had particular regard to the stress an undue delay can place on a complainant, who may be waiting to move on with their lives.

R v GL [2020] NZYC 636

The Court considered whether to transfer GL to the District Court for sentencing under s 283(o) of the Oranga Tamariki Act 1989 for aggravated robbery charges. As required under s 284(1A), the Court considered the seriousness of the offending, the criminal history of the young person, the interests of the victim, and the risk posed by the young person. While acknowledging GL's history of offending and the significant impact on the victims, the Judge concluded that it was unnecessary to transfer GL for sentencing in the District Court to hold him accountable for this offending and reduce the risk to the public. The Judge considered that continuing GL's rehabilitation in the youth justice system was more likely to lower the risk of re-offending.

R v SR [2020] NZYC 602

SR had been charged with sexual violation in the Youth Court and was facing similar charges in the District Court. The prosecution sought to join his charges so all could be dealt with in the District Court. The charge before the Youth Court was laid when SR was 17 years old, however the alleged offending occurred when he was aged 15. The Judge emphasised that the relevant consideration is a young person's age at the time of the offence. Her Honour held that a joinder pursuant to s 138 of the Criminal Procedure Act is not available between the Youth Court and District Court, as this would be inconsistent with the intention of the Oranga Tamariki Act.

New Zealand Police v GW [2020] NZYC 629

GW challenged the admissibility of a written statement and fingerprints obtained by police under s 30 of the Evidence Act 2006, during a burglary investigation. The Judge held that the fingerprints were improperly obtained and therefore inadmissible, as the Constable's actions fell short of the standards and process established by the Police. The Judge similarly found that the written statement was inadmissible, as police had failed to give effect to the intended protective value of GW's rights as he was not adequately informed of how to exercise them, particularly the right to obtain free legal advice.

Case Note: New Zealand Police v HN

New Zealand Police v HN [2021] NZYC 364 provides comprehensive discussion on the United Nations Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

Background

[1] *New Zealand Police v HN* concerns a young person appearing before the Youth Court for 23 offences committed between March 2019 and June 2020.

[2] HN is Samoan but was born in New Zealand in 2003. He had a tumultuous upbringing, with frequent moves between Samoa, New Zealand and Australia, and a number of different homes and caregivers. HN showed developmental delays since birth, although it was not until 2018 that he was identified as having severe learning difficulties and behavioural problems.

Youth Court Involvement

[3] By 2019, HN had started absconding frequently from home and living on the streets. He came to the attention of police, who eventually laid three charges in court. HN admitted these charges at a Family Group Conference (FGC) in June 2019, and it was agreed that he should have his FGC plan monitored at a Pasifika Court for three months, with a s 282 discharge order to be made if the plan was completed satisfactorily.

[4] In July 2019, HN appeared in court facing a new charge. He admitted this charge at a subsequent FGC and it was agreed that he should be allowed to complete an updated plan, still to be monitored in the Pasifika Court, and with the recommendation that the four charges be discharged under s 282 upon completion of the plan.

[5] Two reports were ordered at this stage. An education assessment identified severe learning difficulties, and a s 333 report drew attention to the nature and extent of HN's disabilities, raised questions about his fitness to stand trial and made a referral to a support service.

[6] In November 2019, the presiding Judge in the Pasifika Court was not prepared to discharge the four charges, although HN had completed the FGC plan. One week later, HN was arrested and charged with three further charges. In February 2020, HN was arrested for four new charges and was remanded in secure custody at a youth justice residence. He was arrested again in June 2020, having amassed seven new charges, and was again remanded in secure custody.

Fitness Process

[7] The fitness process under the Criminal Procedure (Mentally Impaired Persons) Act 2003 was triggered in June 2020, and two health assessors' reports were ordered. At the fitness hearing in February 2021, the Judge found HN to have a mental impairment on the basis of the evidence of the health assessors.

[8] His Honour was satisfied on the balance of probabilities that HN was fit to plead. This was due to agreement between the health assessors that HN understood the charges he faced and recalled the incidents leading to the charges. He understood the concept of the trial process, his plea options, defences available to him, and could instruct his advocate on these matters. The health assessors were confident overall that HN was capable of participating meaningfully if necessary supports were provided, including a communication assistant and adaptations to process such as regular breaks. The Judge found that HN was fit to stand trial on the basis that these supports would be provided.

The Oranga Tamariki Act 1989

[9] The discussion of the law began with the relevant provisions in the Act:

(a) Purposes (s 4): The purposes of the Act are to promote the well-being and best interests of HN and his family, by complying with a list of requirements to provide supports.

(b) Primary considerations (s 4A): HN's well-being and best interests were best served by ensuring he was in a safe, stable and loving home. There was a strong public interest in seeing HN continue in his current situation, as a law-abiding, productive member of the community. HN had made apologies to the victims and was willing to pay reparation. He had been held truly accountable, with a significant time spent on remand in a secure residence.

(c) General principles (s 5): HN's meaningful participation was enabled thanks to his Communication Assistant and Youth Advocate. His mana and well-being were protected, thanks to his Lay Advocates. However, important decisions did not occur promptly or in a timeframe appropriate to his age and development.

(d) Youth justice principles (s 208): HN's age was considered, as was the principle of taking the least restrictive option appropriate.

(e) Factors relevant to sentencing (s 284): HN expressed remorse and was willing to make reparation and apologise to any victims.

The Convention on the Rights of the Child

[10] Since 1 July 2019, the Act requires that the rights of children and young people under the UN Convention on the Rights of the Child (the CRC) and the UN Convention on the Rights of Persons with Disabilities (the CRPD) must be respected and upheld. The Judge found that there were breaches of HN's rights on account of his disability, under the CRC and the CRPD. These breaches were common to many cases of young people with disabilities in youth justice:

(a) lack of access to appropriate supports and services;
(b) long-term detention in youth justice facilities; and
(c) significant delays in resolving the proceedings.

[11] His Honour referenced the following relevant articles of the CRC:

(a) Article 2: States Parties must respect and ensure rights of every child are upheld without discrimination of any kind, including disability.

(b) Article 3: A young person's best interests are a primary consideration.

(c) Article 23: Recognises the rights and needs of children with disabilities.

(d) Article 37(b): Custody shall be used only as a measure of last resort and for the shortest appropriate period of time.

(e) Article 40: Sanctions and outcomes should be consistent with the promotion of a young person's sense of dignity and worth, and should be proportionate.

(f) Article 40(2)(b): The right to have the matter determined without delay.

[12] His Honour then considered two United Nations General Comments (the 2006 UNGC and the 2019 UNGC). The 2006 UNGC states that children with disabilities are often denied access to health and social services due to discrimination. For HN, despite a referral made to a support service in October 2019, no supports or services had been provided by August 2021. The 2006 UNGC also states that children with disabilities should not be placed in a juvenile

detention centre by way of pre-trial detention or punishment. This right was breached for HN during his remands at a secure residence. The 2019 UNGC states that exposure to the criminal justice system has been demonstrated to cause harm to children.

The Convention on the Rights of Persons with Disabilities

[13] His Honour began his analysis by pointing out that under the CRPD, disability is viewed through a human rights lens, and seen not as an individual problem but as the result of a flawed organisation of society. Article 1 of the CRPD has an open definition of persons with disabilities, including those with long-term physical, mental, intellectual or sensory impairments, which in interaction with external barriers may hinder full and effective participation in society on an equal basis with others. His Honour noted that:

Society must therefore restructure its policies, practices, attitudes, environmental accessibility, legal provisions and political organisations, to remove the barriers that prevent full participation of persons with disabilities in society.

[14] The Judge referenced the following articles of the CRPD:

(a) Article 5: Requires States Parties to prohibit discrimination on the basis of disability, and guarantee effective legal protection against discrimination.

(b) Article 7: Requires States Parties to take all necessary measures to ensure that children with disabilities have full and equal enjoyment of human rights.

(c) Article 13: Requires effective access to justice for persons with disabilities, including the provision of procedural and age-appropriate accommodations.

(d) Article 14: Requires that those with disabilities are not deprived of their liberty unlawfully or arbitrarily.

(e) Article 26: Requires States Parties to strengthen and extend comprehensive habilitation and rehabilitation services.

[15] HN's rights under the CRPD were not respected and upheld. However, to a large extent, this was because they could not be, due to the prevailing policies, practices, attitudes and legal provisions. His Honour stated that there would need to be a major re-structuring in society before most rights under the CRPD could be respected and upheld properly. First, the rigid definition of disability that applies in New Zealand is contrary to the CRPD, with eligibility for supports and services limited to those who meet the diagnostic criteria. Second, even when criteria are met (as for HN), the supports and services are extremely difficult to access. Third, the delays for reports and proceedings is in breach of the right to have decisions implemented in an appropriate timeframe.

[16] His Honour concluded by saying that:

If the rights of a young person with a disability were to be enjoyed on an equal basis with other young people, it would be necessary to eliminate the systemic problems that cause these delays and inefficiencies. It would also require having appropriate facilities, able to accommodate young people who satisfy the CRPD definition of disability, with suitably trained staff. The time in such a residence, would always be for the shortest appropriate period and there would then be the necessary supports and services available in the community.

Outcome

[17] The Judge considered it appropriate to grant a s 282 discharge for the first four charges, as HN had done all that was asked in relation to them, and this was the order he was promised. Reparation orders were made on three charges where they were sought. The remaining orders received s 283(a) orders.

Letter from a Young Person

The following letter was written by a young person to his victims. The young person appeared in the Youth Court facing numerous charges. The Judge presiding over this case was impressed with the young person's empathy and understanding reflected in this letter, developed through his involvement in the Youth Court process and particularly the Family Group Conference process. The young person has given his permission for this letter to be included in Court in the Act.

Dear [name deleted]

Lately I have been reflecting on my actions from early this year and have started to get the thought of how my victims of my past offending may be feeling (you are two of them). So here I am, this is me apologizing for my actions I have made to corrupt yours & your daughter's lives. I am sorry to you [name deleted] for the horrifying choices I have made to affect your life and privacy. Nobody should have to deal with the fact of wondering if they went into a local shop quickly, a family members house or to a dance class to find when they go to walk back to their vehicle, it has been taken. I regret every moment of my offending it has caused me to be unable to go out into public, to not be able to see people I had good connections with, to have no support from any organizations, to not be able to get a job or get into any kind of schooling. My offending took full control of my life and made me look like a person I never wanted to be.

I am apologizing for the fear I have put into your lives, the anxiety I have brought to your daughter's life and the actions I have made for you to be unable to replace what I have taken, I do not have any income at all because I am only [age deleted], but if I could I would pay back every cent I have taken from you both and your family, I have tried my hardest for the last 5 months to strive to be a better person, to fight for my freedom, to make sure my victims get justice & to forever stay away from trouble, I have been clean off offending for nearly 5 months now and will continue to do this for the rest of my time.

I want to say a special sorry to you [name deleted] as I realize what I have done has affected your way of thoughts & lifestyle of privacy a lot, I am still a young person to so I definitely get that this has given you a real big fright, I am so sorry for bringing anxiety to your attention and am dearly sorry the fear, the worry and the wonder you had that night of my offending I plan to never do such a thing again. I want you and your mother [name deleted] to know I hear you and I hear what you guys are saying, I understand what I have caused and what I have manifested is not okay, I've never wanted anything like this for anybody. You [name deleted] and you [name deleted] I give both of you my full sorrow, I did what I did to innocent people and it took arrogant actions to make it happen, I am sorry [name deleted] and [name deleted] for everything I have done to make your lives turn this way.

Sincerely
[name deleted]

Recent Research and Publications

NEW ZEALAND

Article title: "Decidedly but Differently Accountable"? - Young Adults in the Criminal Justice System

Authors: Stephen Woodwark and Nessa Lynch

Abstract: Young adults are increasingly recognised as a distinct group, both in society and in the context of the criminal justice system. This article explores the evidence which highlights the distinct characteristics of young adults, and the principle supporting differential treatment of this age cohort. Consideration is given to the existing provisions that cater for young adults, including the newly established Young Adult List Court. Particular focus is given to assessing the efficacy of discounts provided for age under the Sentencing Act 2002. Two potential conceptual models for reform are canvassed. Processes and responses available under the current youth justice system may be extended where appropriate; such an approach has been adopted by several overseas jurisdictions. Alternatively, a distinct "third system" may be established with procedures and outcomes developed specifically for young adults.

Article title: Young people in police interrogations

Author: Katherine Werry

Abstract: The youth justice system in New Zealand recognises that children and young people are vulnerable and in need of special attention. It is widely accepted that young people, by virtue of their age, need greater protection than adults. Recent research shows that the human brain is not fully developed until at least a person's mid-20s. This article focuses on the statutory protections provided to young people during police investigations, which, upon closer examination, "are not very special at all" (*New Zealand Police v FG* [2020] NZYC 328, [2020] DCR 320, at [165]). This article draws attention to the fact that young people are not required to have legal assistance when being questioned by the police. It suggests that legal assistance should be mandatory in these circumstances, unless the young person explicitly waives that right.

Article title: Protective Measures for Children Accused or Convicted of Serious Crimes

Author: Nessa Lynch

Abstract: Most offences committed by children are minor to moderate in seriousness, and it is largely accepted that the response should be primarily tolerant and reintegrative. Children who commit serious offences pose conceptual challenges for norms of youth justice and are an understudied group of children both in the scholarly literature and international human rights guidance. Such children are likely to have complex and multiple needs and risk factors, and measures must also be cognisant of public safety and the interests of potential future victims. This chapter considers the profiles of children who are accused or convicted of serious crimes and considers what protective measures might minimise harm to such children. Specific case studies, generally from New Zealand, but of wider application, are employed to consider appropriate protective measures for these children.

Article title: Crossover kids in New Zealand

Author: Katherine Werry

Abstract: Children and young people in the

youth justice system in New Zealand are complex, high-needs and distinctly vulnerable individuals. A subsection of this group has been termed "crossover kids": those children or young people who have had involvement with both the youth justice and care and protection systems. A smaller subsection of those are "dual status" children and young people, being those with criminal charges before the Youth Court as well as active care and protection proceedings before the Family Court (*New Zealand Police/ Oranga Tamariki v LV* [2020] NZYC 117 at [13]). This article discusses recent reports, cases and legislation.

UNITED KINGDOM

Article title: The Minimum Age of Criminal Responsibility: The Need for a Holistic Approach

Authors: Aaron Brown and Anthony Charles

Abstract: The minimum age of criminal responsibility in England and Wales remains 10 years: something which has attracted criticism globally by policy makers and youth justice practitioners. Yet, the Westminster Government refuses to consider changes to minimum age of criminal responsibility, despite evidence supporting reform. This article, drawing on the United Nations Committee on the Rights of the Child's consultation to revise General Comment No. 10 (2007) and the activities of UK devolved administrations, explores the need for minimum age of criminal responsibility reform, considering how a holistic approach focused on diversion and the provision of rights respecting appropriate interventions can create positive, even transformative outcomes for children.

Article title: Exploring Children's Understanding of the Legal Rights of Suspects in England and Wales

Authors: Vicky Kemp and Dawn Watkins

Abstract: While studies have explored adult suspects' understanding of their legal rights, seldom are the experiences of children and young people taken into account. In this article, we discuss findings arising out of research interviews conducted with 61 children and young people; many of whom have experience of being suspects. From listening to their points-of-view, we find that children and young people fundamentally lack understanding of the rights of suspects, and especially the inalienable nature of those rights. We argue this is not surprising when children are being dealt with in an adult-centred punitive system of justice, which is contrary to human rights standards.

AUSTRALIA

Article title: Therapeutic Recommendations in the Youth Justice System Cohort Diagnosed with Foetal Alcohol Spectrum Disorder

Authors: Natasha K. Russell, Kuen Yee Tan, Carmela F. Pestell, Sophia Connor and James P. Fitzpatrick

Abstract: Patches Paediatrics is a specialised private multidisciplinary service in Western Australia (WA), offering a range of developmental diagnostic assessments such as foetal alcohol spectrum disorder (FASD). Many FASD assessments occur in children and youth who are engaged with the justice system in WA and the Northern Territory (NT). There are currently no studies outlining the types of clinical recommendations and management strategies made or implemented by clinicians for this clinical population within Australia. This study outlines therapeutic recommendations made as part of the youth justice FASD diagnostic process within Patches Paediatrics to ultimately refine recommendations to inform therapeutic strategies.