# Court in the Act

Issue 76

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. It is coordinated by the Research Counsel to the Principal Youth Court Judge.**

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

**Kate.Peirse-O'Byrne@justice.govt.nz**


## EDITORIAL

### Principal Youth Court Judge John Walker

In the last few years I have been heavily involved in District Court – led initiatives to improve the way we respond to family violence in the District Court and, of course, in improving the way we respond to youth offending in our Youth Courts. I had seen these efforts as quite separate.

Family violence involves often severe violent behaviour, sometimes life threatening, including non fatal strangulation ("I am not killing you, but I could") towards a partner, or towards the partner's and or perpetrator's children. This is behaviour that takes place inside the home and is often repeated over and over again.

**It has become clear that there is a real connection between exposure to family violence and violent offending.**

On the other hand, I have been involved in dealing with offending – sometimes seriously disturbing behaviour including ram raids, aggravated robberies, serious gratuitous violence – by children, and increasingly not just boys but girls as well, aged sometimes as young as twelve or thirteen.

It has become clear that there is a real connection between exposure to family violence and violent offending.

### Family violence

Family violence is an endemic issue in New Zealand.

In 2015 alone, there were 110,114 family violence investigations by NZ Police. There is a call for Police services in relation to family violence every 6 minutes.

In New Zealand, children are present at about half of all family violence callouts by police. And police report that in approximately 70% of family units where IPV exists, the children are also direct victims of some form of violence (New Zealand Family Violence Clearinghouse Issues Paper 3, April 2013).

When we consider the fact that only about 20% of family violence is ever reported, these numbers become even more gravely concerning. Tens of thousands of children in New Zealand are growing up in a climate of violence. And the effects of being subject to violence within the home, or of witnessing or hearing such violence, are severe: physically, emotionally and developmentally.

**"I would get a hiding probably twice a day from my Mum's partners for standing up for my Mum... I've been unconscious twice from Mum's partners." - Gina, 16**

These effects include, but are not limited to anxiety, fear, depression, toxic stress, aggression, PTSD, emotional and behavioural problems, and impaired social skills. (New Zealand Family Violence Clearinghouse Issues Paper 3, April 2013)

There are also more subtle consequences of experiencing or witnessing violence in the home. A child may learn that violence is normal, is an effective way of getting what you want, and is a marker of power and prestige. A child may learn to disrespect women with violent actions and words, or that violent behaviour is part and parcel of an intimate relationship.

A research project conducted in 2011 in the Tasman district (The Girls Project) examined the origins of violent behaviour by school age girls. It noted that familiarity with family violence meant these girls were more apt to form relationships with like-minded partners, to be more accepting of their behaviour and to end up in violent intimate relationships.

One example from that project is Gina (*name changed*), now 16, who the authors noted had more assault charges than her age. She explained: "I would get a hiding probably twice a day from my Mum's partners for standing up for my Mum... I've been unconscious twice from Mum's partners." At 15, Gina moved in with her boyfriend. She describes the relationship: "He kicks me, he drags me on the ground, he punches the living f*** out of me, he strangled me, he's put me in hospital.'"

Gina tried to stay at school, but during the school day, Gina's boyfriend hounded her through phone calls and texts. Then one day, ignoring the teacher's warning to put away her phone, Gina snapped at the teacher. "I threw a chair at her and she ended up falling and I beat the living sh** out of her head.'"

The family is key to socialisation. It is where children learn strategies for dealing with conflict and challenges. We cannot address youth violence – including that which escalates to the adult criminal justice system – if we do not address family violence.

The first few years of a child's life are crucial for the child's healthy development – including to the child's later social development. One report on violence reduction stated that "If a child's early experience is fear and stress, especially if these are overwhelming and occur repeatedly, the neurochemical responses to fear and stress become the primary architects of the brain". Research has shown the propensity to violence develops primarily from wrong treatment before the age of three (The WAVE Report 2005). Several studies have shown that male aggressive behaviour is highly stable as early as age 2. Closer to home the Dunedin study establishes that predictors of future criminal behaviour can be identified at the age of three.

## Youth Court

In my role as a Youth Court Judge I have dealt with some extremely disturbing, destructive and violent behaviour. And when we have the opportunity to look into the backgrounds of these children committing these offences, 70% of the time, there has been a history of care and protection issues, by which I mean there have been previous notifications to CYF for abuse or neglect, or other proceedings in the Family Court.

In 2011 a study on young people in NZ aged between 10-24 years who had committed a violent crime found that 66% of the young people who had committed a violent offence had had a police family violence notification, meaning they had been exposed to family violence as a victim, witness or offender at some stage of their offending history. A higher percentage of repeat offenders (72%) had also been exposed to family violence compared with non-repeat offenders (56%). (New Zealand Family Violence Clearinghouse Issues Paper 3, April 2013)

**Within their families violence may have been used to assert power, to gain status, or as a "normal" or "accepted" alternative to expressing emotions.**

While there is no one single cause of youth offending and there is no magic silver bullet to address youth offending, my experience in the courts tells me that violence breeds violence. If a child grows up in a war zone they will turn into a warrior.

And when we add into the mix neuro-disability including FASD and traumatic brain injury, mental illness (PTSD, early onset of schizophrenia connected with drug use), AOD dependency and disengagement from school, it is a very challenging mix.

When these young people come to the Youth Court at say 15 years of age, not only are these problems are well established, exposure to family violence will often have been repeated over and over.

Clearly, every opportunity for an effective intervention must be taken from very early in life, if we are to have any real chance of effecting change.

One of the clear challenges for the youth justice system is the need to have families and whānau front and centre when coming up with solutions – but also to take into account the possibility that home is where this violence has come from. In particular, the centrality of family group conferences in decision making poses a problem if there is violence at home. Additionally, there is the challenge of ensuring that we do not bail young people to abusive homes – in contravention of protection orders that may have been made in the Family Court without Judges in the Youth Court knowing about this.

**We are a very small country, individual communities are even smaller. It is not beyond us to make change happen.**

But broader than this is the issue that for many young people in New Zealand, violence has played a significant role in their lives. Within their communities – or at least their families – violence may have been used to assert power, to gain status or reputation, or as a "normal" or "accepted" alternative to expressing emotions.

I know of one young person in South Auckland who is named after his uncle. Nothing unusual about that. I am named after my uncle. But his uncle is a Gang Enforcer, a hard and violent man. His nephew thinks that he has to live up to the uncle whose name he carries- that he has an obligation to be hard and violent.

In highlighting the problem of family violence I do not wish to demonise the families from which these damaged young people emerge. As our Chief Social Worker Paul Nixon has observed:

> "Many parenting problems are underpinned by significant societal problems beyond the reach of social work alone. Tackling family violence often requires dealing with economic issues, poverty, housing, transport, structural issues around gender inequalities, sexism and attitudes to violence. Police and court responses to violence in the home are often reactive and short-term and do not address the underlying causes." (Ma Matou Ma Tatou - Working Together to Change Young Lives: Where to Next with Child Protection in New Zealand?)

Addressing youth offending and family violence is complex and multifaceted. It requires a multi faceted response but very importantly it requires communities to be assisted to fashion responses that suit a particular community.

National policies can never fix a community problem. Policies can provide some overarching guidance and resource but what drives offending in one community may be quite different to what drives offending in another community. Even within one city, responses need to be tailored to constituent communities.

We are a very small country, individual communities are even smaller. It is not beyond us to make change happen.

It is my priority to push for communities in South Auckland to be assisted to confront the drivers of youth offending, to have the drivers identified and addressed in communities, to have the Youth Court, with its multidisciplinary solution focussed approach, assisting the communities which the court serves.

In the Youth Court we see the confluence of drivers of offending, laid bare as we deal with the symptoms, the offences, and we can bring that special knowledge to the formulation of solutions.

I know that I have painted a bleak picture, but it is only bleak if it is seen as hopeless. It is not. It is a challenge, but I am sure that community by community, real change can happen. We just need to start the work. ■

# SPECIAL REPORT

# Youth Justice in New Zealand:

## Not perfect... but responding

Mark Stephenson | Court Appointed Communication Assistant at Talking Trouble

**Mark is developing an oral language assessment tool for young people who offend. Here, he shares his insights into the communication difficulties experienced by many young people in our youth justice system.**

## "When you're 17, you need a bit of a scare!"

When the news was released that the youth court jurisdiction would be extended to include 17 year olds, there was some reaction. Some believed that the best way to deal with young people who committed offences was to scare them straight. The rationale was offered that "I knew exactly what I was doing at 17 – and a bit of a scare will wake them up to change their ways." Oh that it were that simple!

## Youth... and Justice

The youth justice system in New Zealand is world class. It is based on a model of restorative and therapeutic justice, holding young people to account for their behaviour whilst striving to help them address the underlying issues that manifest in offending.

For the last 10 years, I have worked within this system. In the last 12 months, the Vodafone Fellowship has released me to focus on my passion: young people within the legal system and the issues that they face understanding the language associated with that journey.

I've had a bit of a scare! The processes within our youth justice system that are designed to be restorative often fall at the language hurdle. Well-intentioned agencies and dedicated youth justice professionals fail to account for the fact that the majority of young people we work with have a significant and identifiable problem with oral language.

**He sat across the table from me in the classroom. I asked him how his court appearance went. "All guds... [pause] – but what does 'guilty' mean?" ' - 16 year old**

A "significant and identifiable issue with oral language" describes young people who struggle to understand what people are saying to them and to express themselves.

Research indicates at least 60% of young people within the youth justice system have oral language problems. Youth justice professionals that I have encountered around New Zealand put the figure much higher - "ALL the young people I work with have problems with language."

## Youth were once children - who were once babies

Issues with oral language don't start when a young person is arrested. The developmental work vital for oral language competence should have started 17 years previously in the context of whānau relationship. Bonding, attachment, developing language, turn-taking, learning to relate to others, understanding the world of words and using words to express yourself effectively.

When these foundations aren't established for whatever reason, problems with oral language result and children carry these issues into their 'young person' years. There is a strong association between behavioural difficulties and oral language difficulties.

Many young people involved in offending are disengaged from education, training or employment and yet engagement in education, training or employment is a protective factor against offending.

Why the disengagement?

Oral language is at the core of everything.

It is essential for relating, connecting, attaching, negotiating, belonging. Oral language is the foundation for reading text. Reading is assigning symbols to words that we first encounter through talking. If you struggle with oral language, chances are you will struggle with reading.

**"They said I was being charged with 'possession of instruments for conversion'. The only instruments I knew were musical ones – so I thought they were trying to charge me with a ram raid on a music shop..." - 15 year old**

Young people can struggle to remain engaged in a learning environment where they can't understand what's going on and where they keep getting into trouble for not doing what they're told because they don't understand. Young people get angry and frustrated, disengage and end up 'expressing' themselves physically, acting out and acting up. The result? Stand down. Suspension. Exclusion. The cracks open up and they slip through.

Those who then encounter the legal system enter into a space with its own language. They meet a new vocabulary. Custody. Supervision orders. Curfew. Bail. In addition, the restorative nature of youth justice involves oral language – police interviews, family group conferences, drug and alcohol counselling, anger management counselling, family therapy... it's all a talkfest!

**"I was in my family group conference. They asked me if I felt remorse for what I did? I didn't know if I did or not – I didn't know what 'remorse' meant..." - 15 year old**

## Youth Justice in Aotearoa New Zealand: not perfect... but responding

It's within this system that I am seeking to effect change. Training youth justice professionals to recognise these issues. Developing an oral language assessment tool for use in the justice system. Assisting agencies to help young people understand and express themselves effectively in the legal system.

Our youth justice system isn't perfect, but it is starting to respond to the significant oral language needs of young people, recognising the connection between a young person's understanding, engagement, sense of justice and readiness to change. It is a system uniquely positioned to respond to the developmental needs of young people.

A young person of 17 can't legally drink alcohol, buy a packet of smokes, get married without parental consent, vote in elections, buy an Instant Kiwi ticket or get a credit card. We understand that a 17 year old is still developing the necessary insight to be able make certain decisions. We seek to protect them until that maturity is more likely to have emerged.

Why then would we demand that a 17 year old be treated the same as a mature adult when it comes to the law? And as a majority of 17 year olds in the legal system have a significant issue with oral language, consigning them to an adult process doesn't deliver justice – for them, or the victims of their offending.

**"He sat across the table from me. Eighteen months on remand. I asked him, "When is your next hearing?" He asked me, "What's a hearing?" - 25 year old**

It is appropriate that 17 year olds be included within the youth justice system... a responsive and developmentally appropriate system that is the most effective context for young people who offend.

When a 17 year old offends, "a bit of a scare" won't do them, their victim or the community any good. The scare can actually end up reinforcing the negative thinking and behaviours it is trying to curb.

A 17 year old who offends needs a place where needs are acknowledged and addressed so that they understand and engage, take responsibility for their actions, address offending behaviour and head toward a different future. That place is youth justice. ■

# PRESS RELEASE

## More International Recognition for Rangatahi Courts

Marie McNicholas | Strategic Communications Advisor, Office of the Chief District Court Judge

**20 January 2017**

The District Court judge who led the development of Ngā Kōti Rangatahi o Aotearoa, the Rangatahi Courts, has received an international award honouring his pioneering work. Judge Heemi Taumaunu is the latest recipient of the prestigious Veillard-Cybulski Award recognising innovative work with children and families in difficulty.

Judge Taumaunu developed and presided over New Zealand's first Rangatahi Court in Gisborne in 2008 and encouraged fellow judges to set up other marae-based youth courts. There are now eight judges running Rangatahi Courts at 14 marae.

**Judge Taumaunu**

The award is made every two years by the Switzerland-based Veillard-Cybulski Association.

The award judges praised Judge Taumaunu's leadership skills in devising an inclusive system where Māori children learn who they are and where they have come from so they can change behaviour and realise their potential. Previous recipients include Dignité en Détention, a mental health project for young detainees in Rwanda, and Terre des Hommes - Aide à l'enfance Foundation which implemented juvenile restorative justice in Peru.

**"I see this as a shared honour, which recognises the commitment of all the judges involved in Rangatahi Courts and those communities who have embraced the concept"-Judge Taumaunu**

Rangatahi Courts aim to provide the best possible rehabilitative response for young offenders by reconnecting them with their cultural identity, and meaningfully involving local Māori communities in the process. Judge Taumaunu adapted the concept from Koori Courts that cater for indigenous youth offenders in parts of Australia. The model has also been adapted for Pasifika youth in New Zealand through two Pasifika Courts.

Auckland-based Judge Taumaunu now sits in Rangatahi Courts at Orākei in Auckland, Hoani Waititi in Waitakere and Ōtautahi in Christchurch as well as Te Poho-o-Rāwiri in Gisborne. He was unaware he had been nominated for the award: "I see this as a shared honour which recognises the commitment of all the judges involved in Rangatahi Courts and those communities who have embraced the concept of marae-based courts so their young people are offered more culturally appropriate access to justice," he said.

Principal Youth Court Judge John Walker said Judge Taumaunu's hard work and vision had helped embed the Rangatahi Courts in the New Zealand criminal justice system, encouraging a wider appreciation for the value of culturally responsive justice.

Chief District Court Judge Jan-Marie Doogue said the award was further recognition of innovative, judicially led initiatives in New Zealand. In 2015 the Rangatahi Courts won the Australasian Institute of Judicial Administration's Award for Excellence in Judicial Administration and in 2016 they received an Institute of Public Administration New Zealand award.

The Veillard-Cybulski Fund Association honours the work of husband-and-wife magistrates Maurice Veillard-Cybulski and Henryka Veillard-Cybulska, who both worked to advance the rights of children in the justice system. ■

# SPECIAL REPORT

## FASD in New Zealand: Are we doing enough?

Kesia Sherwood | University of Otago

**The high prevalence of FASD among the youth offending population is becoming an issue of increasing concern and the focus of new research. Kesia Sherwood, University of Otago Faculty of Law, recently won a Law Foundation Doctoral Scholarship for her research into FASD and the youth justice system. In the following article, Kesia sets out what led her to this topic and her findings thus far.**

Fetal Alcohol Spectrum Disorder (FASD) is a debilitating, lifelong condition likely affecting a large proportion of our population. Although there are currently no prevalence studies available for New Zealand, it is estimated that FASD affects 1 in 100 children (Ministry of Health, 2015) and it is likely to contribute significantly to our youth offending and adult incarceration rates (Popova, 2011). Diagnostic, policy, and legislative initiatives to support youth with FASD in New Zealand are limited, resulting in an overrepresentation of young people with FASD passing through our justice system, often undetected and unsupported.

**Our current legal landscape provides only for offenders with an intellectual disability or those who are "mentally disordered"... A significant number [of individuals with FASD] do not fit into either category.**

### My empirical research

My doctoral study is focusing on the impact of FASD on youth offending in New Zealand. I am analysing the current diagnostic, legislative and policy initiatives, with a view to identifying areas in need of amendment. I am being supervised by Professor Mark Henaghan, Dean of the Otago Faculty of Law, and Nicola Taylor, Director of the Children's Issues Centre Dunedin.

In order to fully inform my research, I am undertaking a small-scale qualitative project to examine the impact of FASD in the youth justice context in New Zealand. This year I will be speaking with a range of professionals from the health, education and justice sectors, as well as families and key stakeholders. For the families, I want to speak with parents or caregivers of children with FASD (even if their children have since grown up), to gain an insight into the lived experiences of FASD. I also want to speak with young people with FASD who have had contact with the youth justice system. The contact need not have resulted in a formal action against the young person.

### FASD and offending

The social and behavioural traits that exhibit in an individual affected by FASD can translate to offending behaviours. Unfortunately, this occurs relatively frequently due to the specific neurological impairments of FASD often precluding the individual from accessing important mental

### NOTICE: Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill

Read submissions | Track the bill's progress

**The Government has introduced the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill. This bill is a response to Government decisions following recommendations from the Modernising Child, Youth and Family Expert Panel. It would amend a number of Acts to establish a statutory framework for the new operating model of the Ministry for Vulnerable Children, Oranga Tamariki.**
**The majority of proposed amendments are to the Children, Young Persons, and Their Families Act 1989. There are a number of significant changes proposed, including extending the definition of "young person" to include 17-year-olds. Submissions close on 3 March. To read submissions or track the bill's progress, visit:**

https://www.parliament.nz/en/get-involved/topics/all-current-topics/a-children-first-approach-for-the-ministry-of-vulnerable-children-oranga-tamariki/

functions that usually allow people to control the way they act and how they respond to situations. Attributes commonly seen in individuals with FASD such as impulsivity, reduced capacity to be aware of the consequences of their actions, inability to grasp the abstract concept of time, reduced ability to empathise, lability of mood and pseudo-sophistication all contribute to the increased likelihood of contact with the justice system and subsequent escalation of offending or recidivism (Freckelton, 2016).

Addressing the many connections between the behavioural attributes of FASD and offending behaviours in any significant detail is beyond the scope of this article. However, an example is provided below to illustrate the point.

Lability of mood is an attribute seen in individuals with FASD that can increase irritability and lead to aggressive, violent outbursts (Freckelton, 2016). Outbursts can be triggered or exacerbated by the individual being subject to increasing frustration, especially if confronted with situations demanding complex communication skills (Crawford, 2013). The criminal justice system, with its complicated jargon and somewhat elusive processes, is a prime example of a situation demanding sophisticated communication skills. Unfortunately, individuals with FASD may have higher levels of oral vocabulary than actual comprehension, resulting in pseudo-sophistication that makes their communication deficits difficult to identify (Freckelton, 2016).

**Outbursts can be triggered or exacerbated by the individual being subject to increasing frustration, especially if confronted with situations demanding complex communication skills.**

## Diagnosis

The problems New Zealand faces in regards to adequate support for individuals living with FASD largely stems from a distinct lack of funded diagnostic services. The Hawke's Bay District Health Board initiated a FASD Assessment pathway for children exhibiting developmental difficulties in 2010 (Health Promotion Agency, 2015). This initiative presents a step in the right direction for diagnostic services for FASD in New Zealand, and acknowledges the importance of diagnosis as providing the "impetus that leads to the development of resources" (Chudley, 2005, p. s11). In 2015 an evaluation of the assessment pathway was conducted and overwhelmingly concluded that similar diagnostic programmes needed to be initiated throughout the country. The current assessment pathway is serviced by a single diagnostic team, and for a neurological condition as complex and multifaceted as FASD, assessments require a multidisciplinary approach. Unfortunately, the demands on this single diagnostic team are high, and there is considerable delay throughout the assessment process, due to a lack of resources (both finance and the availability of appropriately trained health professionals).

In Auckland, the FASD Centre Aotearoa was established in 2012 by several health professionals determined to provide diagnostic services despite a lack of government funding or recognition. Neuropsychologist Valerie McGinn and Paediatrician Zoe Mclaren have developed a grass-roots service to fill the diagnostic void, and additionally have provided diagnostic training to approximately 40 clinicians nationwide. However, the wait-list for assessment is significant, and the options for families living outside the Auckland or Hawke's Bay regions are still extremely limited.

Developing comprehensive and well-funded diagnostic services for FASD throughout New Zealand needs to be a priority. As noted in the Canadian Guidelines for Diagnosis, "rather than labelling, a diagnosis provides a blueprint for early intervention" (Chudley, 2005, p. s14). This observation has been corroborated in the New Zealand context. In 2008 a survey was conducted to establish the experiences of birth mothers with children affected by FASD and found that their predominant feeling post-diagnosis was one of relief, rather than shame or stigma (Salmon, 2008). Early discussions of my doctoral study have also shown this, with families reporting that diagnosis provided an explanation for the indescribable challenges posed by parenting a child with FASD. Additionally, diagnosis is invaluable for the child, providing a reason for their behaviour beyond simply that they are "naughty" or "bad".

## Legislative context

Our current legal landscape provides only for offenders with an intellectual disability or those who are "mentally disordered". Unfortunately, due

to the "swiss-cheese" nature of the brain damage sustained by individuals with prenatal alcohol exposure, a significant number do not fit in to either category, despite having significant adaptive behaviour deficits. The Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (IDCCR) explicitly excludes anyone with an IQ of over 70 from coming within its ambit (ss 7 and 8). FASD *is* a leading cause of intellectual disability in New Zealand; however, for many FASD affected individuals, intellectual functioning will not be impacted, and in fact some young people may be functioning at a higher intellectual level than their non-FASD affected peers (Streissguth, 1996).

The lack of legislative support for offenders with FASD is a concern, particularly given their general inability to learn from the consequences of their actions or appropriately attribute their punishment with the criminal conduct that they engaged in. Without some form of legislative or policy initiative addressing this gap, young offenders with FASD will continue to be funnelled through the general system. New Zealand's youth justice system relies on young people being able to learn from their mistakes and acknowledge the impact of their offending on any victim or society in general. So how effective is such a system when applied to a young person who does not have the *capacity* to learn from their mistakes or acknowledge the effect of their offending?

Despite the aforementioned legislative gap, establishing comprehensive diagnostic and support services for FASD is critical before any draft legislation could be considered. ■

## PARTICIPANT RECRUITMENT

I have recently begun the recruitment process, but am currently looking for more participants who may be interested in being interviewed by me to help me gather valuable information.
If you are a member of any of the professional groups mentioned at the start of this article, or if you know of families affected by the intersect between FASD and youth offending who may be interested in being involved, please do not hesitate to get in touch with me. I can provide you with an information sheet that explains the research in more detail, and I am always happy to respond to any questions you might have.

Contact kesia.sherwood@otago.ac.nz

# SPECIAL REPORT

# The Kids Are(n't) Alright:

## An Analysis of Differentiated Legal Responses to Young People who Commit Sexual Offences

Charlotte Best | University of Auckland

**Charlotte Best recently completed her Masters of Law at the University of Auckland, in which she critically analysed New Zealand's response to youth sex offending. Here, for the first time, she provides the findings of her thesis.**

In an address to the New Hampshire Senate Judiciary Committee, Governor John Lynch said: "People who prey on children are the most dangerous criminals in our state, targeting our most precious and vulnerable citizens" (press release, 1 April 2008). Few would disagree. However, what happens when those who perpetrate such crimes are in fact children themselves?

Young people who commit sexual offences provide a problematic dichotomy for the New Zealand legal system. Between 2004 and 2014, 12 per cent of those apprehended for sexual offences in New Zealand were under the age of 17 years (Statistics New Zealand "Annual Recoded Offences for the latest Fiscal Years (ANZSOC)" (2014)). Their offending is arguably that of the most serious kind that can be dealt with in the youth justice system and is often viewed as distinctly "adult" offending. Yet their personal histories make them one of the more vulnerable offending populations within the system – often plagued by mental health and behavioural issues, family dysfunction and serious victimisation histories. They are unique, differing from both adult sexual offenders and the general youth justice population.

Under the Children, Young Persons, and their Families Act 1989 (CYPF Act), young offenders are not categorised by offence type (aside from those who commit murder, manslaughter, traffic offences and infringements against relevant Acts). Consequently, New Zealand does not have a specific legislated approach to addressing sexual offending by young people. Young people who commit sexual offences are dealt with in much the same way as any

other young offender – typically by Family Group Conference (FGC). However, the Youth Court does retain the discretion under s 283(o) of the CYPF Act to transfer young people to the District Court or High Court for sentencing in cases of very serious offending.

A FGC will generally be convened and a plan made much like any other youth justice FGC. In addition, plans will often involve referral to one of New Zealand's treatment programmes for young people who have engaged in harmful sexual behaviour: SAFE, STOP, WellSTOP or Te Poutama Ārahi Rangatahi. SAFE, STOP and WellSTOP are community based interventions for young people aged 12-17. Treatment can take between 3 and 27 months. Te Poutama Ārahi Rangatahi is a specialist residential treatment facility with treatment typically lasting between 9 and 24 months.

The decision to deal with young people who commit sexual offences in much the same way as other young offenders is positive when considered in light of the alternative – dealing with them in the same way as adult sex offenders – however there is still significant room for improvement. It is recognised that young people who commit sexual offences have different needs to the general young offender population. Sexual offending is a behaviour which often requires specific intervention to ensure it does not continue. At present, the longest order the Youth Court can implement is of six months duration (s 307 CYPF Act) – the belief being that the Youth Court should not interfere any more than is necessary in the lives of teenagers. Arguably, this consideration should have less weight when addressing young people who have committed sexual offences given our understanding of the time required for effective intervention. However, it will remain an important consideration.

**As [sexual offending treatment programmes] often take longer than 6 months to complete, at present judges are being forced to create ad-hoc methods to ensure participation in these programmes.**

As programmes such as these often take longer than 6 months to complete, at present judges are being forced to create ad-hoc methods to ensure participation in these programmes while keeping these young people in the Youth Court jurisdiction. One such method is the extension of a FGC plan to last the duration of treatment (for example, one year), followed by implementation of the 6 month supervision period. This gets around the legislated maximum supervision period of six months in order to align with the need for extended supervision to ensure treatment programmes are completed. While some may argue that if it aint broke, don't fix it, when we consider the serious negative effects that sexual offending can have on victims and the concerning clinical profile of many young people who engage in such offending, surely we should be doing everything possible to ensure this offending is dealt with in the most effective way. Without formal legislation to guide the approach to dealing with these young people, it is impossible to know whether they are all being dealt with in the same manner. Further, when such a response is not formally legislated, more is required from judges whose role is not actually to dictate what the system should look like.

This is not altogether surprising given that when the CYPF Act was first implemented in 1989 we did not have the knowledge we now have regarding young people who commit sexual offences. However, now that we do we must use this knowledge to create a more effective system for all young offenders.

In 2009, the Youth Court of New Zealand put forward submissions to the Social Services Committee regarding the Children, Young Persons, and Their Families (Youth Court Jurisdiction and Orders) Amendment Bill highlighting the need for a tailored order that could last up to two years for young people who have committed sexual offences. The Court noted that although the previous extension of such orders of supervision from three to six months had enabled the Court to order longer term programmes for the benefit of young offenders, even those extended orders were still not long enough for some of the most effective programmes available in the area of youth sexual offending. Seven years on and no such change has occurred.

The state of Victoria provides a fully state government funded response called the Therapeutic Treatment Order (TTO) which addresses sexually abusive behaviour committed by young people (Children, Youth and Families Act 2005 (Vic), s 244). The TTO legislation enables the Court to require a young person aged between 10 and 14 years who has engaged in sexually abusive

behaviour, and who is believed to be in need of therapeutic treatment, to participate in an appropriate therapeutic treatment programme addressing sexual offending behaviour (s 244). It is also currently being extended to the 15 to 17 year age group. A TTO can be extended to last a total of 24 months. The focus is entirely rehabilitative and where such treatment is considered to be successfully completed the Court can dismiss any and all criminal charges the young person faces for the matter. (s354(4))

**Young people [who sexually offend] are in need of treatment themselves in order to enable them to manage their sexual behaviours and to return to a healthy developmental pathway.**

The introduction of the TTO in Victoria marked a shift in thinking and in practice regarding how sexually abusive behaviour by young people was addressed, demonstrating an acknowledgement that such young people are in need of treatment themselves in order to enable them to manage their sexual behaviours and to return to a healthy developmental pathway. The system aims to provide young people with early intervention and the best opportunities to access treatment without resorting to criminal justice intervention; the belief being that earlier non-criminal intervention will prevent future and more serious ongoing offending. In 2014, approximately 2,000 young people in Victoria had been treated within the TTO framework, with the majority fully or substantially achieving their treatment goals.

While the TTO system is still relatively young – only nine years into its operation – it provides a useful model for how such an approach could work in practice. Of course, we cannot and should not simply cut and paste a system from one jurisdiction into another without modification to suit the specific context. Rather, the TTO system in Victoria should provide a useful model to guide New Zealand in its own system development. Any new system implemented to address young people who commit sexual offences would need to be developed within the wider context of the New Zealand youth justice system and specifically, in conjunction with the FGC. Further evaluative research and the formulation of best practice principles for the TTO system in practice are also still needed. However, at present it provides a novel and positive approach to addressing an as yet unsolved problem for New Zealand.

Implementation of such an approach would allow New Zealand to better address offending by this group in the youth justice system, without the need to resort to ad-hoc or adult criminal justice solutions (e.g. intensive supervision orders), while also recognising that young people who commit sexual offences may need a different response to the general young offender population. This will help New Zealand to better address this group and ultimately reduce the frequency of this type of offending in the future.

New Zealand has a highly successful youth justice system for young offenders generally but now it is time to ensure its success extends to all different groups within the system. Young people who commit sexual offences are one such group. It is time for New Zealand to implement formal law change to modify the CYPF Act in order to allow professionals in the youth justice system to provide the best outcomes for these young people with the support of the law and legal system. This in turn will provide the best outcomes for society. As our knowledge around young people who commit sexual offences continues to grow it is clear that we can do better for this group and so it is essential that we do just that. ■

**REFERENCES**


HE Barbaree and CM Langton "The effects of child sexual abuse and family environment" in HE Barbaree & WL Marshall (eds) The juvenile sex offender (2nd ed, Guilford Press, New York, 2006

Ian Lambie (in Getting it right: An evaluation of New Zealand community treatment programmes for adolescents who sexually offend: Ka put e ruha, ka hao te Rangatahi (Ministry of Social Development, Summary Report, August 2007)

Russ Pratt "A Community Treatment Model for Adolescents Who Sexually Harm: Diverting Youth from Criminal Justice to Therapeutic Responses" (2013) 8 International Journal of Behavioral Consultation and Therapy 37

Russell Pratt, Robyn Miller and Cameron Boyd Adolescents with sexually abusive behaviours and their families: Best interests case practice model: Specialist practice resource (Victorian Government Department of Human Services, Melbourne, 2012)


**TO REQUEST A COPY OF CHARLOTTE BEST'S THESIS, PLEASE CONTACT:**

Kate.Peirse-O'Byrne@justice.govt.nz

# RESEARCH & PUBLICATIONS

# NEW ZEALAND

### *Legislation note. Vulnerable Children Act 2014*

**Author:** Andrew Grant

**Available:** Auckland University Law Review 22 2016:401-408

**Abstract:** The author examines the Vulnerable Children Act 2014 (VCA), considering the legislative scheme for protecting children prior to the enactment of the VCA. The article also details the background and legislative process to the Act becoming law. It then analyses the key features and implications before drawing conclusions as to the contributions of the VCA to the protection of children from violence and abuse in this country.

### *Childhood forecasting of a small segment of the population with large economic burden*

**Author:** Avshalom Caspi and others

**Available:** Nature Human Behaviour published online 12 December 2016

**Abstract:** New findings out of the University of Otago's Dunedin Multidisciplinary Study suggest that a small segment of the population accounts for a disproportionate share of costly service use across a society's health care, criminal justice, and social welfare systems. Paediatric tests of brain health can identify these adults as young as age three.

### *Under the Bridge*

**Author:** Kirsty Johnston

**Available:** 30-minute documentary about Papakura High School, available to view at http://features.nzherald.co.nz/under-the-bridge/

**Abstract:** At the edge of the city and the margins of society, a school and its students are fighting back. Under The Bridge is the story of a year inside their world.

## STATISTICS: DID YOU KNOW?

Statistics New Zealand publishes Child and Youth Prosecution Tables online. These tables provide information on the number of children and young people prosecuted (and the outcome of this prosecution) in the New Zealand court system; and the age, gender and ethnicity of the children or young people. Tables can be customised according to your requirements.

Try the tool yourself at: http://www.stats.govt.nz/tools_and_services/nzdotstat/tables-by-subject/child-youth-prosecution-tables-calendar-year.aspx

# AUSTRALIA

### *Secure Welfare Services: Risk, Security and Rights of Vulnerable Young People in Victoria, Australia*

**Authors:** Kate Crowe

**Available:** (2016) 16(3) Youth Justice 263

**Abstract:** The Victorian Children Youth and Families Act 2005 authorises the detention of children aged 10–17 years in Secure Welfare Services (SWS) if there is a substantial and immediate risk of harm. Children are generally on protection orders and administratively detained by the Department of Human Services. In 2014, the Children, Youth and Families Amendment (Security Measures) Bill 2013 was passed uncontested in parliament. It codifies existing SWS practices including searches, seizure of property, use of force and seclusion. The Security Measures Bill and associated government discourse construct children as risk and security as a necessary precursor to meeting their welfare needs. These conceptualisations problematise the safeguarding of children's rights.

### *Sentencing offenders with Foetal Alcohol Spectrum Disorder (FASD): the challenge of effective management*

**Authors**: Ian Freckelton

**Available:** Psychiatry Psychology and Law 23(6) December 2016:815-825

**Abstract:** The criminal justice system in Australia is increasingly being required to deal with offenders exhibiting the symptomatology of Foetal Alcohol Spectrum Disorder (FASD). Disproportionately they are indigenous. Diagnosis of the disorder is challenging and too frequently still not being made accurately. This paper reviews the what the authors describes as the creative and compassionate judgment of the Western Australian Court of Appeal in Churnside v The State of Western Australia [2016]

WASCA 146. It argues that the decision constitutes a model for the efforts that should be made by sentencing judges dealing with recidivist offenders with FASD.

# UNITED KINGDOM

### *Review of the Youth Justice System in England and Wales*

**Author:** Charlie Taylor

**Available**: https://www.gov.uk/government/publications/review-of-the-youth-justice-system

**Abstract:** In September 2015 Charlie Taylor was asked to lead a departmental review of the youth justice system for the Ministry of Justice (UK). The Taylor Review makes recommendations for extensive reform of the youth justice system in England and Wales covering devolution, courts, sentencing and custody.

The government's response supports many of the principles of The Taylor Review and sets out the intention to review the governance of the system, improve the way they tackle youth offending and put education and health at the heart of youth custody.

### *A Study into Breaches of Youth Justice Orders and the Young People Who Breach Them*

**Authors:** Laurie D, Grandi and Joanna R. Adler

**Available**: (2016) 16(3) Youth Justice 205

**Abstract:** This study concerns the incidence and aetiology of breach of youth community sentences. A between-groups archival study compared those who breached with those who did not, on socio-demographic and criminogenic factors. Breachers were a minority, likely to breach repeatedly and were similar to those who re-offended. Whether they breach or re-offend may depend on something other than the characteristics of the Order and the young person's situation. Youth Justice Professionals should be mindful of the identified areas of need and responsivity when considering compliance.

### *Punishment, Youth Justice and Cultural Contingency: Towards a Balanced Approach*

Authors: Claire Hamilton, Wendy Fitzgibbon and Nicola Carr

**Available**: (2016) 16(3) Youth Justice 226

**Abstract:** Reflecting developments in the broader penological realm, accounts have been advanced over the last number of decades about a 'punitive turn' in the youth justice systems of Western democracies. Against the background of this work, this project seeks to identify convergent and divergent trends in the youth justice systems of England, the Republic of Ireland and Northern Ireland as well as the rationalities and discourses animating these.

### *Tough Choices: School Behaviour Management and Institutional Context*

**Author:** Jo Deakin and Aaron Kupchik

**Available**: (2016) 16(3) Youth Justice 280

**Abstract:** In the light of recent disciplinary reform in US and UK schools, academic attention has increasingly focused on school punishment. Drawing on interviews with school staff in alternative and mainstream schools in the US and the UK, we highlight differences in understandings and practices of school discipline. We argue that, in both countries, there is a mismatch between mainstream schools and alternative schools regarding approaches to punishment, techniques employed to manage student behaviour and supports given to students. These disparities pose particular problems for children transitioning between the two types of school. In this article, we raise a series of questions about the impact of these mismatches on children's experiences and the potential for school disciplinary reform to achieve lasting results.

### *From the Mouths of Dragons: How Does the Resettlement of Young People from North Wales Measure Up? In Their Own Words?*

**Author:** Kathy S. Hmpson

**Available**: (2016) 16(3) Youth Justice 246

**Abstract:** Young people in custody are likely to reoffend, questioning current resettlement practice. In Wales, the Resettlement Broker Project was established to address this, beginning by assessing current practice. The ensuing data set of interviews with young people was analysed regarding custody and resettlement experiences. The slowness of the English and Welsh youth justice system to truly incorporate desistance thinking means that these young people missed a potentially beneficial working ethos, centred on personal goals and individual strengths, indicating the need for radical change.