

"Court in the Act"

A regular newsletter for the entire youth justice community

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

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Youth Justice Discussion Morning, 2 November 2011

Challenging and innovative conversations about youth justice arose from a recent youth justice discussion morning initiated by Dr Nessa Lynch, who is the Victoria University Faculty of Law's lecturer specialising in youth justice. Dr Lynch invited a group of about twenty people involved in the youth justice system, both academics and practitioners, to the meeting, held at the Victoria University School of Law. In particular the forum reflected on the amendments to the Children, Young Persons and their Families Act which came into force on 1 October 2010, and the extent to which they were meeting their purpose.

The morning opened with an address by Judge Becroft, who posed to the group the ten challenges summarised on page 2.

Alison Cleland, Senior Lecturer at Auckland University's Faculty of Law then presented her work "Underlying Causes for Optimism: The Significance of the New Youth Justice Principle. She has



Victoria University School of Law

conducted interviews with court staff across the country to consider the effects of the new s 208(fa) of the Children, Young Persons and their Families Act (which requests that measures dealing with offending address the causes of the offending).

Dr Lynch then presented her work "Theorising Youth Justice Reform in New Zealand" in which she analysed a shift in the youth justice system towards more punitive policy in line with the adult criminal justice system and other jurisdictions. Dr Lynch questioned whether or not factors which up to now have allowed the youth justice system to remain non-punitive may act to mitigate the potentially harsh effects of the legislative changes.

Where to from here? Feedback on this event has been very positive, and many attendees commented on a wish for further events like this to discuss critical youth justice issues. If you are interested in becoming involved in such events in the future, or have ideas or feedback for future events, please do not hesitate to contact Dr Lynch (nessa.lynych@vuw.ac.nz).

Please turn over for Judge Becroft's "Ten Challenges for Youth Justice" Presentation from the morning



“Some Reflections on Youth Justice in New Zealand”

Judge Becroft’s presentation to the Youth Justice Discussion Morning, Wellington, November 2, 2011

1) Is the youth justice system at the beginning of a more punitive swing of the pendulum? What should be the approach?

Some would argue that changes to the Children, Young Persons and their Families Act 1989 (such as allowing 12 and 13 year olds to be brought before the jurisdiction of the Youth Court) have given the youth justice system a more punitive leaning, especially when coupled with some of the pre-existing provisions, which, for example, allow sentencing young offenders in adult courts. Some would suggest this may be part of a wider worldwide swing of the pendulum. Is this the case? What is the appropriate approach for those involved in the youth justice system, in order to explain the system, and correct misunderstandings? Who speaks for youth justice? At the same time, the Brainwave Trust has suggested that the “2010s” will be the decade of the teenage brain: now more than ever do we have access to research on the teenage brain and its functioning.

2) A continuing problem: our response to child offenders (10 -13 year olds).

Currently this is a Family Court responsibility. The question we might ask ourselves is: have we been too compartmentalised? By concentrating on youth justice (as strictly defined), have we dropped the child offender ball? A Select Committee enquiry on Child Offenders is still to be reported, and is currently being harmonised with work on the Green Paper.

3) A need for increased police diversion/alternative action rates and consistency.

The importance of firm, prompt, community based diversion cannot be overestimated. National rates of diversion have been declining, but the Police National Headquarters have set a goal of a 10% increase in diversions for the next year.

4) The challenges for Family Group Conferences.

We need to constantly strive to improve our delivery of Family Group Conferences. We need to be avoiding a mechanistic, “tick box” approach to outcomes and tailoring the conference to each young person. There is also the philosophical debate of: for whose benefit do we have FGCs? Is it for the young offender, the

victim, the community? How do we reconcile their needs? The new Victims of Crime Reform Bill is set to change the role of the victim in the Youth Court, but the effect that this will have on the FGC process remains to be seen.

5) A move towards a more managed approach by the Youth Court, for more serious and problematic offenders.

Currently, we have adopted the attitude of taking “therapeutic justice” seriously, and have developed the Youth Drug Court in Christchurch and the IMG Court in Auckland. It is necessary for us to strive to find ways to ensure we use this for the “right” offenders (i.e. those who will benefit from a focused team approach) (see the article on the IMG Court in the newsletter).

6) Dealing better with Maori young offenders (and Pasifika).

Maori and Pasifika young offenders are still grossly overrepresented in our statistics. As a response to this, we now have 10 Rangatahi Courts and 2 Pasifika Courts, with research soon to occur on the Rangatahi Courts. These initiatives require the support of by Maori for Maori programmes in order to reach their full potential. A vision I have is a New Zealand sponsored, first, international “Indigenous Courts” Conference, for 2013.

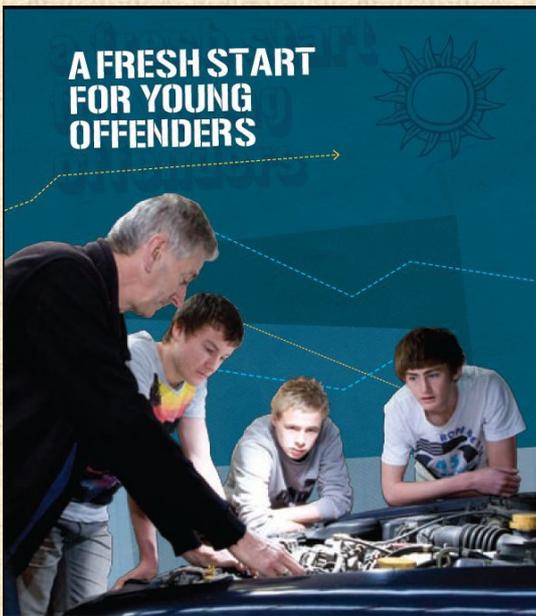


Judge Taumaumu (centre) presides at the first sitting of the Gisborne Marae Youth Monitoring Court, pictured with Kaumatua from the Turanga-Nui-a-Kiwa Kahui Kaumatua

7) Has "Fresh Start" been a fresh start?

Jurisdiction of Youth Court: The United Nations has criticised the fact that 12 and 13 year olds can now be brought before the Youth Court. So far, sixteen 12 or 13 year olds have been charged before the Youth Court (though most have been "pushed back" to the Family Court).

Orders: Of the three new orders that have been introduced, "parenting orders" have been by far the least utilised and recommended by CYF. Does this suggest a philosophical opposition to such orders? Evidence also suggests that the availability of longer supervision with residence sentences have apparently resulted in less young people being sentenced before the District Court under 283(o).



Youth Justice System 'Not a Soft Touch'

From *The Ashburton Guardian*, Susan Sandys, 15/11/2011

The youth justice system is not a soft touch, an Ashburton woman says. The mother of a 14-year-old offender was responding to a story in the Ashburton Guardian, in which another young offender's mother criticised the system for not being strong enough.

The woman said that her son had started to get into trouble after she moved with him and the rest of the family to another South Island location. The 14-year-old had started to wag school and drink alcohol after getting with the wrong crowd. Soon he was committing offences, and next thing he was one of three boys charged with aggravated burglary. He owned up to his part in the crime, and following a family group conference he had to attend school, address his drinking problem and undertake community service.

The woman said her son had begun to undertake community service tasks before he was sentenced, and the judge was impressed with his attitude. The boy completed everything, and his brief brush with the

30 months of formal Youth Court orders are now possible (for example, a young person could be ordered up to 18 months supervision with residence, followed by 12 months mentoring or drug and alcohol or parenting orders).

MAC Camps: Two camps have been completed, and one is currently in progress. Each camp has involved five days "outside the wire", followed by standard supervision with residence.

8) The rise and rise of Lay Advocates:

Not before time has this long under-utilised and far sighted legislative provision, been given life. The challenge now is how we move towards a national lay advocates movement.

9) A continuing blight on our understanding: lack of good statistics (Youth Offending Strategy 2002, Key Focus Area 2 still not achieved):

We still need, but do not have, the statistics for how many child offenders progress to the Youth Court; and how many first offenders in the adult courts were youth and/or child offenders.

10) Who leads youth justice in NZ?

justice system had been enough to straighten him out. He was now back in Mid Canterbury, back at school and back on track in his life. "The judge was excellent, it wasn't a soft approach, it was – this is serious, this is one step below going to jail," the mother said. "It was a big wake-up call for him." One of his fellow offenders, who had been the one to be physical in the aggravated burglary, had had to undertake a sentence at a residential facility. The results had been the same in this case – it had been enough to straighten the young man out, and he was now doing well in his life.



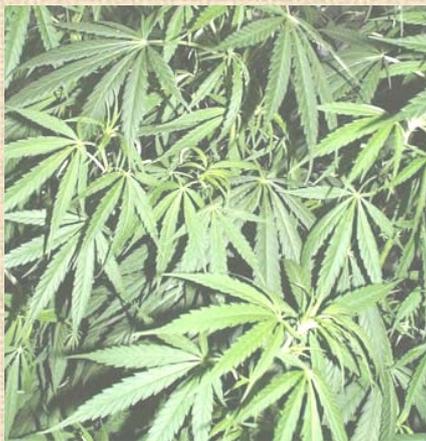
Cannabis



Judge McGuire, a Rotorua based District Court Judge with a real interest in young people presented a summary of recent good quality research into cannabis to a recent District Court Judges' Conference. He considered local research (New Zealand or Australian) where possible. Here are some of his findings:

1. Potency of cannabis

Indoor grown cannabis (approximately 2/3 of New Zealand's national crop)¹ has far higher levels of THC (4.3-25.2%, on average 14.75%)² than more "traditional" outdoor grown cannabis (between 2.1 and 3.5%, on average 2.8%).³



2. Cannabis and risk of psychosis

Research suggests the risk of psychosis is "much greater" both amongst those who use cannabis with a high THC level (12-18%)⁴ (ie around the median of THC strength of New Zealand indoor grown cannabis) and amongst those who daily used traditional low strength cannabis (2.1-3.5% THC).⁵

3. Age at commencement of cannabis use and psychosis and psychosis-like disorders

Compared with those who had never used cannabis, young adults (ie those under 21 years) with six or more years first use of cannabis were twice as likely to develop psychosis and four times more likely to have a highest quartile score on the Peters Delusional Inventory (a psychological test to measure delusional ideation in the general population).⁶ Researchers in the UK estimate that 14% of psychotic outcomes in young adults would not occur if cannabis were not consumed.⁷ The onset of psychosis for cannabis users also occurs 2.7 years earlier than the norm.⁸

4. Cannabis and depression

Those with some degree of cannabis dependence are associated with three to four times' greater risk of major depression.⁹

5. Cannabis and suicide and serious suicide attempt

A New Zealand study using randomly selected controls found a marginally significant association (twice the risk compared with the control group after confounding factors had been accounted for) of suicide or serious

suicide attempt on the part of those who abused cannabis or were cannabis dependant.¹⁰ A US study a year later found a slightly increased risk (2.4 times the risk compared with the control group).¹¹

6. Cannabis and violence

Those with cannabis dependence are associated with 3.8 times' greater risk of becoming violent.¹²

7. Cannabis and impaired educational and life achievement

The results of the Otago Population Study suggest that increasing cannabis use in late adolescence and early adulthood is associated with poorer educational outcomes, lower income, greater welfare dependence and unemployment and lower relationship and life satisfaction.¹³

8. Cannabis and respiratory disease

The risk of lung cancer increases eight percent for each year a subject who smokes 20 joints or more.¹⁴

9. Is cannabis a 'gateway' drug?

That is; does it lead the user to go on to use/ experiment with other drugs? The Christchurch Population Study found that regular or heavy cannabis use was associated with an increased risk of using a wider variety of other illicit drugs, and abusing or becoming dependent upon them.¹⁵

Sources

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- 6 McGrath and others - "Association between Cannabis use and psychosis related outcomes using sibling pair analysis in a cohort of young adults" *Arch Gen Psychiatry* Vol 67 (5) March 1 2010. A population study of 3801 young adults born 1981- 1984 as part of the Mater - University Study of pregnancy.
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- 9 Chen and Ors - (John Hopkins University) *Social Psychology and Psychiatric Epidemiology* 2002; 37: 199-206
- 10 Beautrais and Ors (Otago University) *Addiction* 1999; 94: 1155-64
- 11 Barges and Ors, *American Journal of Epidemiology* 2000; 151: 781-789
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IMG Court

This month we look at the views of those working in the Intensive Monitoring Group Courts System (see page 5). Here is some information on the court and its procedures:

What is the IMG?

The Intensive Monitoring Group (IMG) Court is a specialised, solution-focused Youth Court, based in the Auckland Youth Court. It was set up by Judge Fitzgerald in 2007 in order to provide therapeutic justice to young people considered to be at particularly high risk. It is modelled on the Christchurch Youth Drug Court.

Who is eligible?

A young person is eligible to enter the IMG Court system if, after the entry of a "non denial" or charge/s having been proved, it can be shown that they fulfil two conditions:

- 1) That they have moderate to severe mental health concerns (including conduct disorder), as forensically assessed, and/or moderate to severe alcohol/drug dependence and
- 2) That they are assessed as being at medium to high risk of re-offending.

The process

For a young person who meets such conditions, a therapeutic plan is prepared in the Family Group Conference prior to referral to the IMG Court. The young person's case is then separated out from the regular Youth Court, and they begin the IMG process.

Once in the IMG system, the young person is assigned a Judge, and there is an unbroken, continuous involvement of the Judge in monitoring the progress of the young person with their plan. The young person meets regularly with that Judge, as well as with a social worker who is assigned to their case, and a group of professionals who assist that young person to meet their plan.

Before each sitting of the IMG, the professional team sit down together and go through the cases set down for the day. At each meeting, the social worker assigned to the young person's case is required to file a written progress report on the young person's compliance with their plan and related issues for the team to discuss.

Participation requires continued commitment by the young person, and failure to comply with or commit to the court means a return to usual court process and the sanctions available there.

The young person continues to appear before the IMG Court until successful completion of the FGC and treatment plan. The outcome for the young person would normally be in accordance with the agreement reached at the FGC.

Who is involved?

The professional team working in the IMG system consists of:

- ◆ The IMG Judge and Court clerk.
- ◆ The IMG Police prosecutor.
- ◆ Social Workers assigned to IMG work.
- ◆ A representative from Regional Youth Forensic Services
- ◆ The service providers; eg: Youth Horizons Trust and Odyssey House.
- ◆ Ministry of Education representative.
- ◆ Youth advocates
- ◆ Lay Advocates
- ◆ Youth justice co-ordinator(s)



Please turn over for some reviews by professionals involved in the Courts

IMG Court Reviews

Catherine McGeorge, Youth Advocate, recently compiled the views of those working in the Intensive Monitoring Group Court system. Here are some of the responses:

"The main benefit for me is it holds the professionals accountable in their roles in that no one wants to front up fortnightly at a professionals meeting and not have delivered on what they said they would deliver....I love the therapeutic hands on social work role that allows me to build long term trusting relationships with young people and provide them with opportunities to stop offending if they are prepared to "do the work".

-Dave Brown, Senior Practitioner, IMG Group Programme Social Worker

"..Sometimes a kid comes to court, charms the judge and gets no consequences, that undermines the process. That doesn't happen with IMG because of the interdisciplinary meetings where this can be discussed. There are other cases where a kid has tried hard and needs a level of leniency and it may not happen in normal Youth Court where the outcome is unpredictable. Whereas with IMG we can be strategic."

Belinda Seymour-Wright, Youth Horizons Trust Educational Psychologist

"It is great because you get so much information. The gatekeeping is hard to work with. Unfortunate that its benefits can't be extended to other regions. Great for really vulnerable kids, you get a wraparound and know for example that medical issues will be addressed thoroughly"

Helen Bowen, Youth Advocate

"..The IMG puts in place a structure that the kids have never had before, where the focus is on their needs. The focus on their needs is what good parents do."

Adriana Pinnock, Youth Advocate

"..It is sort of like a "shared parenting" model of justice with a very high level of input and an ability to ensure that the young person is held to account and encouraged to change"

Catherine McGeorge, Youth Advocate

"...In the IMG Court there is a direct and empathetic communication by the judge with the offender which in turn gives the offender a sense that the judge cares for him or her personally.....it holds the professionals accountable every two weeks and with the assistance of the dedicated social worker assures the best social work support available"

Jim Boyack,, Youth Advocate

"One client was not initially suitable. But when the plan was not being adequately implemented and monitored, it was important to put her on a programme where the professionals would be accountable, and the parents would be educated. Sometimes it is a back door approach, sometimes you come at it as the young person is the problem and you work with the whole network including family and professionals to create long lasting change. "

Kiri Brokenshire, Regional Youth Forensic Service Social Science Worker

Human Rights and Prisons

Dr Elizabeth Stanley from Victoria University's Institute of Criminology has recently completed a comprehensive review to the Human Rights Commission entitled "Human Rights in Prisons." The review has been used to inform the development of the Commission's recent report on the status of human rights ([Human Rights in New Zealand 2010](#)). This summary will examine her findings on children and young people.

Who?

Stanley's investigation focussed specifically on children and young people detained by the Department of Corrections. She noted that "there is very little publicly available literature on (youth justice) residences and further research in this area would be very welcome."

Nature of Offending::

Stanley comments that overall rates of crime by young people appear to have been in decline, or at the least very static, and that the recent concern about the growth in offending by girls is not borne out of the data. She emphasises, however, that it is clear that Maori children and young people are being apprehended far more than other groups.

Detention Rates:

Stanley notes the trending upwards of youth prosecutions (which have risen from 13.2% in 1995 to 29% in 2008). While acknowledging many potential causes for this, an issue to be further examined in her view is regional inconsistencies, with some areas sentencing 5 young people to prison in 2008 in contrast to 0-2 in most others.

Age Mixing:

For young male prisoners, Stanley notes that there are youth units attached to male prisons. The risk of exposure to adult offenders is not eliminated, however, as offenders aged 17 and under can be joined also by at risk 18 or 19 year olds. Of concern also is the distance that a placement in the units creates between a young person and their whanau. However, she also notes the Ministry of Youth Development's assessment that these units cater to the specific needs of young prisoners, and adds that they provide under 16 year olds with education, vocational training and other programmes (subject to funding). However, young female prisoners are held alongside adult prisoners, a practice which has faced consistent

Human Rights and Prisons

A review to the Human Rights Commission

Elizabeth Stanley



criticisms from the UN Committee on the Rights of the Child and the UN

Committee Against Torture. She notes small scale research from Christchurch Women's Prison of 11 young women revealing a "mixed relationship with adult offenders".

Stanley applauds recent moves to address the age mixing problem (such as the prohibition on young people being transported to prison with adult offenders), but encourages more. She notes also that despite some recent improvements in the area, there remains concern about the number of young people being detained in police cells for many days.

Impact of Detention on Children

Stanley contrasts the extensive research establishing the ineffectiveness and negative flow on effects of extensive

incarceration of young people with research suggesting the positive benefits of community-based programmes. A potential answer to this in her view is further consideration of small-scale, dispersed Youth Rehabilitation Centres.

Priorities

The following, in Stanley's view, are worthy of continued prioritization and enhancement

1. An acknowledgment that children and young people require different responses from those with adults.
2. That the welfare of children and young people is prioritised, and that social welfare interventions work to assist children and young people to appreciate the seriousness of their actions and focus on changing behaviours.
3. Full transparency of formal procedures and practices.

Cases and Overseas News

Recent Case

R v M [2011] NZCA 582

17 November 2011, O'Regan P, Wild and Heath JJ

Unreasonable delay – s 322 post committal—Reasons to follow

A 16 year old faced a serious purely indictable charge of sexually violating a person. He sought a jury trial and was committed to the District Court for trial. The young person applied in the District Court to be discharged pursuant to s 347 Crimes Act on the basis of “unreasonable delay” under s 322 Children, Young Persons and their Families Act. The accused was discharged, with some reservations about the application of s 322 in the District Court (namely that the claim related to an indictment, rather than “information” as the section requires, and would create an inconsistency with *Pouwhare v R*, which held that sentencing principles from the Sentencing Act (rather than the CYPFA) would apply in District Court proceedings.

On appeal, the Judge held that it was **not** correct to conclude that s 322 continued to apply following committal to the District or High Court for trial, or to find that youth justice principles generally were relevant when considering an application for discharge pursuant to s 347.

Decision

Order discharging respondent quashed. New trial ordered. Reasons to follow.

Life Sentences for Juveniles Will Be Subject to U.S. Supreme Court Review—From Bloomberg News (www.bloomberg.com/news/), Greg Stohr, 8/11/2011

The U.S. Supreme Court agreed to decide whether 14-year-olds convicted of taking part in a murder can be sentenced to life in prison without the possibility of parole.

Less than a year and a half after ruling that such sentences are unconstitutional for youths convicted of a crime other than murder, the justices today accepted two inmate appeals that would extend that conclusion to homicide cases, at least for children 14 and under. The disputes will test the reach of the constitutional ban on cruel and unusual punishments.

In one case, the high court will hear an appeal from Evan Miller, who was 14 at the time he killed his neighbor, Cole Cannon, in Lawrence County, Alabama, in 2003. Prosecutors said Miller and an accomplice robbed and beat Cannon before setting his trailer on fire and killing him in the process. Miller's lawyers said in his appeal that he is one of 73 people in 18 states to have received such a sentence for a crime committed at the age of 14 or younger. The second case concerns Kuntrell Jackson, who was convicted for his role in the 1999 shooting death of a video-store clerk during a robbery in Blytheville, Arkansas. Jackson, who had turned 14 less than a month earlier, says that he served only as the lookout in the attempted heist and that another boy fired the fatal shot.

In both cases, state courts upheld sentences of life without the possibility of parole. The cases are *Miller v. Alabama*, 10-9646, and *Jackson v. Hobbs*, 10-9647.

Remember, the Youth Justice Learning Centre lists all the youth justice training opportunities available in New Zealand, as well as a host of youth justice information, resources and links.

www.youthjustice.co.nz



“Court in the Act”

is published by the office of the Principal Youth Court Judge of New Zealand.

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We welcome contributions to the newsletter from anyone involved in youth justice in New Zealand or internationally.