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## Welcome

...to edition 58 of Court in the Act! In this issue, we look at a range of developments in several areas, such as neuroscience and restorative justice and hear reports from a variety of people about their work.

We are introducing two new regular items to Court in the Act : a "stop press" page, listing the latest research and publications relevant to youth justice (both in New Zealand and internationally), as well as a letters to the editor column. We would love to use these two pages as a chance to get your contributions: please write a letter about anything of interest or concern (in this newsletter or youth justice in general) or let us know about any new research of note!

Please email Emily on [emily.bruce@justice.govt.nz](mailto:emily.bruce@justice.govt.nz).

## Letters to the Editor

Hi,

Thanks for this interesting newsletter ; it is great to read about the innovative and thoughtful work you are doing through Youth Justice, and I wish you well.

We are having an increasing numbers of school aged students on our site through Gateway Programme initiatives and other opportunities to give college age kids a chance to experience working in trades. Porirua Partners is keen on developing these experiences on our sites too.

Next year we'll have 2 houses being built at local Polytechnics (Whitireia in Porirua and UCOL in Palmerston North) so that trade students at those institutions can experience real building skills with "lasting power" which, also have the feel good benefit of helping families who need a home.

Cheers for now,

**Gillian Burns**

Resource Development Manager , Habitat for Humanity

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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](http://www.youthjustice.co.nz)

# Special Report

## Some Reflections on Youth Justice from a Comparative Perspective

Dr Nessa Lynch

I have just returned from a half year's research leave from VUW to work on a book, and have been spending time in the United States, Ireland, Northern Ireland, Belgium and next week, England and Wales. I wanted to share some reflections on youth justice, primarily arising from two recent events.

I was able to attend a European Commission day of discussion on minimum rights in criminal processes for children and vulnerable adults. This was attended by youth justice and human rights experts from a number of European Union member states. Last evening, I presented a comparative seminar at University College Cork with Professor Ursula Kilkelly, an Irish expert in children's rights and youth justice. We discussed how fairly similar pieces of youth justice legislation in Ireland and New Zealand have been implemented quite differently. We hope to write this research up for publication later in the year.

### Aspects in which New Zealand's system measures up well:

- Our emphasis on the rights of children and young people during police questioning, and particularly the requirement to ensure that the child or young person *understands* their rights. The fact that these requirements are backed up by inadmissibility of evidence where non-compliance is found
- The specialisation of our judiciary and of our Bar
- Non-stigmatising Youth Court (the appointment system, participation, confidentiality)
- The transfer of power (in terms of proof of the offence and sentencing) to the FGC and the willingness of the judiciary to accept the FGC plan
- The development of the Rangatahi and Pasifika Court

### Some Aspects of Concern:

- Our age of criminal responsibility seems very low when compared to European jurisdictions (even taking our graduated system of responsibility into account) At the other end, 17 year olds are considered adults.

- The age of 14 for possible transfer to the adult system was shocking to European colleagues, as well as the fact that young people could be sentenced to adult prison (albeit to youth units). Ireland has recently announced the closure of St Patrick's institution (a sort of youth prison for 16-18 year olds) citing welfare and rights concerns as well as recidivism rates). Some food for thought here. Are we really doing our best for these young people?



St Patricks' Institution, Dublin. Photo : <http://www.rte.ie/news/2012/0402/govt-to-end-detention-of-children-in-st-pats.html>

Our police-led diversion scheme has many positive aspects. But its non-statutory basis and police-led nature means a lack of publicly available statistics and some concern for transparency. Ireland has a similar rate of police diversion, but clear statutory guidelines and a statutory committee to supervise. Children and young people have the opportunity to access independent legal advice before agreeing to a diversion.

When I get back to Wellington, I hope to convene another discussion morning to share some of these experiences.

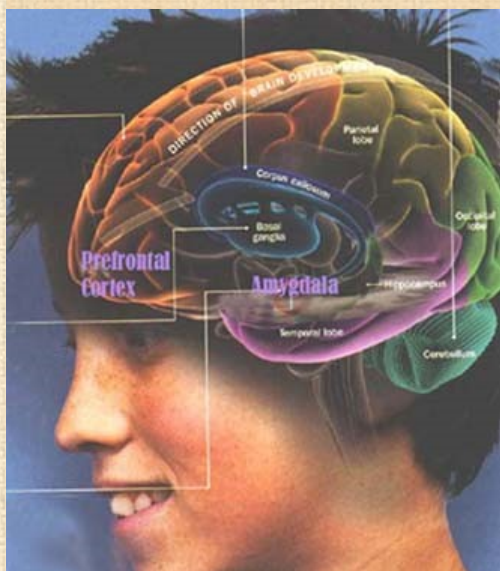
-Dr Nessa Lynch

([nessa.lynch@vuw.ac.nz](mailto:nessa.lynch@vuw.ac.nz))

# The Brain Science Update

In this column, we look at some of the latest research on the adolescent brain, and the implications it might have for the criminal justice system.

## 1. The Brainwave Trust Aotearoa



Source: [www.weteachwelearn.org](http://www.weteachwelearn.org)

The Brainwave Trust Aotearoa, renowned for their work on the infant brain, has recently dubbed the 2000s “the decade of the adolescent brain.” New scientific findings provide insight and understanding about the adolescent brain and the second wave of brain development that occurs during these years. At the recent triennial District Court Judges’ Conference, all Youth Court judges were privileged to see a presentation devoted to the adolescent brain and facilitated by Sue Wright, the Executive Director of the Brainwave Trust.

Sue’s presentation showed the changes to the brain throughout adolescence as charted by recent MRI brain imaging. She considered several issues from a neuroscience perspective, such as why young people can be emotional, sleepy and have risk behaviours. She analysed the impact of drugs and alcohol, violent television and video games and digital media on young people’s development, as well as the “protective factors” that help them to survive the turbulent teenage years.

## Food for Thought: Studies Explored in the Brainwave Trust’s Presentation

### 1. *Is My Face Conveying the Expression I Think it Is?*

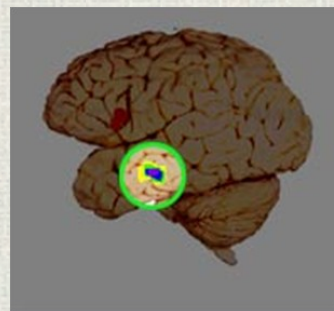
Deborah Yurgelun-Todd, director of neuropsychology and cognitive neuroimaging at McLean Hospital in Massachusetts, put a group of teenagers and a group of adults through an MRI and studied how their brains responded to a series of pictures. She asked the volunteers to match the following images with emotions. Interestingly, all adults identified the emotions correctly, but the teenagers misread many of the expressions. Most notably, only around half correctly identified “fear”, confusing it instead with surprise or anger. When she examined their brain scans, Todd found that the teenagers were using a different part of their brain when reading the images. She discovered upon considering the scans that young people were using less of the prefrontal (upper) region of the brain than adults. The prefrontal (cortical) region carries out the brain’s more executive functions such as planning, judgment and insight) and is less activated in young people than in adults. What responded to a greater extent for young people, then, was the amygdala: the emotional centre of their brains.



The image that conveyed “fear” but was interpreted as surprise or anger by young people



Left: adult brain.



Right: teenage brain.

The prefrontal region in the adult brain is used much less than the lower, emotional regions



## 2. Do our Daily Timetables Accommodate Young People?

Brain science research suggests that it is not just late nights that make our young people sleepy. During adolescent maturation, brain scientists suggest that in adolescence, sleep patterns change in several ways. There is, for example a decrease in the duration and depth of some of the known stages of sleeping, there are increases in daytime sleepiness, and there is a shift in the body's circadian pattern, which naturally drives young people towards a more nocturnal rhythm: later bedtimes and wake-up times.



Researchers at three American universities had children return to a "sleep camp" each summer with the total amount of time in bed held constant year after year. They showed that even with the same amount of night time sleep as in previous summers, objective measures of sleepiness showed increased sleepiness as the young people matured (as compared to in the prepubertal phase). Researchers have suggested that adolescents need 8.5 hours to 9.25 hours, and only 10-15% get this. Given evidence like this, some schools across the country (such as Wellington High School in New Zealand) are now choosing to start classes for senior students later in the morning. Is this something we in the youth justice system should also be thinking about?

This is only a small taste of the information covered in the presentation. If you would like to know more you can arrange a presentation on the adolescent brain, just contact the Brainwave Presentation Coordinator Jane Valentine email: [jane@brainwave.org.nz](mailto:jane@brainwave.org.nz).

Brainwave Trust is a charitable trust set up to educate New Zealanders from all walks of life about the latest research in neuroscience. For more information about Brainwave Trust visit their website [www.brainwave.org.nz](http://www.brainwave.org.nz).



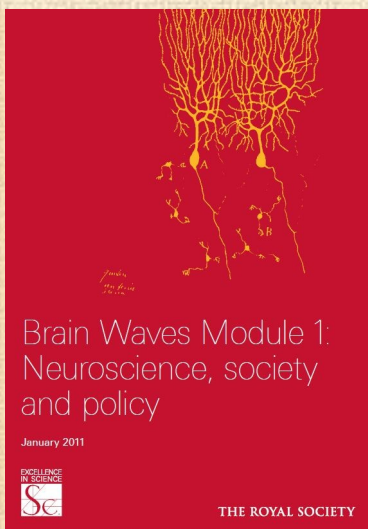
## 2. Improving the Transition

An extremely valuable resource for New Zealand research into the adolescent brain is the Chief Science Advisor Peter Gluckman's report "Improving Transitions: Reducing Social and Psychological Morbidity During Adolescence".

Released in May last year, the report responded to a request from the Prime Minister in 2009 to provide a report on how to improve the outcomes for young people in their transition from childhood to adulthood, arising from the concern that young New Zealanders have relatively high morbidity relative to other developed countries. The report summarises a wide variety of literature and takes an in-depth look at social and psychological morbidity, analysing, for example, the effect of media on adolescents, depression, youth suicide and adolescent drug use. It can be accessed at: [www.pmcsa.org.nz/wp-content/uploads/2011/06/Improving-the-Transition-report.pdf](http://www.pmcsa.org.nz/wp-content/uploads/2011/06/Improving-the-Transition-report.pdf).



### 3. Brain Development and the Age of Criminal Responsibility



In December 2011, a report from the Science Policy Centre of the United Kingdom's Royal Society, entitled "Neuroscience and the Law" noted the concern among professionals in the field that the age of criminal responsibility in the United Kingdom (10) is too low, and that an arbitrary cut-off age altogether may be inappropriate.

In support of this, it cited developments in neuroscience revealing that "changes in important neural circuits underpinning behaviour continue until at least 20 years of age" and the "huge individual variability in the timing and patterning of brain development" which "could be taken to imply that decisions about responsibility should be made on an individual basis at this stage of development." (p 13). This part of the report sparked much interest in debate, with articles in the Guardian, BBC and Daily Mail all generating a great degree of public response and comment. The full report can be found here: <http://royalsociety.org/policy/projects/brain-waves/responsibility-law/>.

### 4. Room for Debate: New York Times Articles on Brain Maturity



*These two articles were recently published in the New York Times "Room for Debate" Column. They were both written by Laurence Steinberg, distinguished university professor of psychology at Temple University, is the author of "[You and Your Adolescent](#)" and a member of the [MacArthur Foundation Research Network on Law and Neuroscience](#).*

#### "What the Brain Says About Maturity"

-May 29, 2012

<<http://www.nytimes.com/roomfordebate/2012/05/28/do-we-need-to-redefine-adulthood/adulthood-what-the-brain-says-about-maturity>>

Neuroscientists now know that brain maturation continues far later into development than had been believed previously. Significant changes in brain anatomy and activity are still taking place during young adulthood, especially in prefrontal regions that are important for planning ahead, anticipating the future consequences of one's decisions, controlling impulses, and comparing risk and reward. Indeed, some brain regions and systems do not reach full maturity until the early or mid-20s. Should this new knowledge prompt us to rethink where we draw legal boundaries between minors and adults?

**Alas, age boundaries are drawn for mainly political reasons, not scientific ones.**

Maybe, but it's not as straightforward as it seems, for at least two reasons. First, different brain regions and systems mature along different timetables. There is no single age at which the adolescent brain becomes an adult brain. Systems responsible for logical reasoning mature by the time people are 16, but those involved in self-regulation are still developing in young adulthood. This is why 16-year-olds are just as competent as adults when it comes to granting informed medical consent, but still immature in ways that diminish their criminal responsibility, as the Supreme Court has noted in several recent cases. Using different ages

for different legal boundaries seems odd, but it would make neuroscientific sense if we did it rationally.

Second, science has never had much of an influence on these sorts of decisions. If it did, we wouldn't have ended up with a society that permits teenagers to drive before they can see R-rated movies on their own, or go to war before they can buy beer. Surely the maturity required to operate a car or face combat exceeds that required to handle sexy movies or drinking. Age boundaries are drawn for mainly political reasons, not scientific ones. It's unlikely that brain science will have much of an impact on these thresholds, no matter what the science says.



### Seeing Juveniles' Maturity, and Immaturity

-June 5, 2012, <<http://www.nytimes.com/roomfordebate/2012/06/05/when-to-punish-a-young-offender-and-when-to-rehabilitate/sentences-should-acknowledge-juveniles-maturity-and-immaturity>>

It's important to note that this debate is not about whether juveniles should be excused from criminal responsibility. Juveniles know right from wrong, should be held responsible for their behavior and should face consequences when they violate the law. The question is whether the way we respond to a juvenile who commits a serious crime should differ from how we respond when the same crime is committed by an adult. I think so, for two reasons.

Because juveniles are more impetuous than adults, they are inherently less responsible for their acts, and are therefore less deserving of harsh punishment.

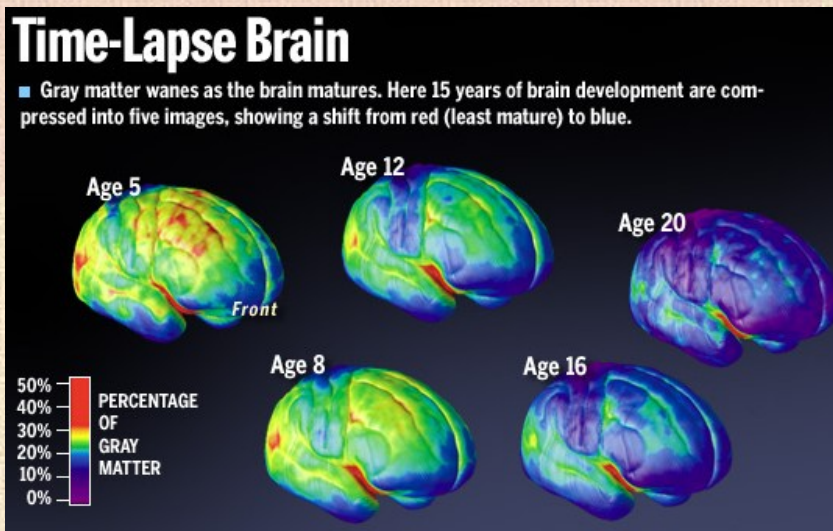
A bedrock principle of our criminal law is "penal proportionality" — that the extent to which people are punished should be tied to the degree of responsibility they had for the crime. This is why we punish premeditated crimes more harshly than impulsive ones and are more lenient in response to crimes that have been coerced than those that are completely voluntary. Because juveniles are more impetuous, short-sighted and susceptible to intimidation than adults, they are inherently less responsible for their acts, and are therefore less deserving of harsh punishment. Research on brain development helps explain the biological underpinnings of this immaturity, but neuroscience isn't necessary to make the basic argument that adolescents are less mature than adults in ways that mitigate their culpability.

The second reason to sentence juveniles less harshly than adults is purely pragmatic. Most juvenile offending is transitory; only 10 percent of serious juvenile offenders become adult criminals. It is important to avoid responding to juveniles' crimes in ways that will make them more likely to re-offend, as does incarceration in prison, a staggeringly expensive sanction that is ineffective beyond the period of incapacitation. (Few proponents of imprisoning juveniles consider what these individuals will be like when they are released back into the community, as the vast majority of them will be.) Moreover, there is no evidence that sentencing juveniles to prison deters other adolescents from committing crimes, because the same immaturity that leads teenagers to behave recklessly makes them unlikely to think far enough ahead to be deterred by the prospect of a serious punishment.

Left image source: <<http://csulapeep.org/articles/2004/teenstick.html>>

"New MRI scanners have looked at the brain over time to see how it matures and several studies have shown quite dramatically that the last parts to mature deal with things like logic, judgement and wisdom. Those x-rays show they may not be mature until people are 25 to 30."

-Professor Peter Gluckman, Sunday Star Times 12/10/2008



# Restorative Justice News

A wealth of exciting restorative justice developments are currently emerging, both in the youth and criminal justice, and the education sectors. In this article, we chart some of those.

## 1. Restorative Schools

Restorative practices have been developing in schools across the country for over a decade. More and more schools are recognising the need to find “alternatives to more punitive disciplinary systems and procedures where often there have been little or no links between wrongdoers and those they have harmed, nor any real connections between the punishment and the actual offence.”

Many individual teachers and increasingly whole schools, have developed robust restorative approaches under the guidance of experienced restorative practitioners; Marg Thorsbourne ([www.thorsborne.com.au](http://www.thorsborne.com.au)) and Greg Jansen and Richard Matla of the “Restorative Schools” team ([www.restorativeschools.org.nz](http://www.restorativeschools.org.nz)).

Restorative approaches in schools operate along a continuum from the very low level relational interactions individuals have with one another to high end conferencing around serious harm and misconduct.

### How Does It Work?

The team offer training to schools to enable them to introduce restorative practices in several forms:

#### 1. *Building social responsibility and caring school communities*

Restorative approaches begin with the base line interactions and communications we have with one another. The team help schools develop strong relational teaching strategies and approaches, caring cultures within classrooms and social competencies within individuals allowing schools to have a solid platforms to engage students through their teaching and learning relationships. The team also offer a variety of strategies for working with young people (such as the Australian Behaviour Specialist Bill Rogers’ low level strategies for supporting behaviour change in young people).

## 2. Restorative Conversations

The team offer several strategies that enable restorative conversations to occur between teachers and students alike. A sample script of a restorative conversation is reproduced below. This scripted approach helps teachers and students alike stay focussed on the issues and in a non threatening way, explore the harm caused, look at ways to repair that and move forward. These informal conversations can powerfully redirect behaviour, create a new understanding and build empathetic young people and schools.

The essence of the restorative conversation has 4 keys

1. Tell the story
2. Explore the harm
3. Repair the harm
4. Move forward

### 1. What happened? (tell the story)

What were you thinking at the time?  
What have you thought about since?  
What did you have control over?  
If there was a video camera on the wall what would it have seen?

### 2. Who do you think has been affected? (explore the harm)

Who else has been affected?  
In what ways?  
Was this fair or unfair?  
Was this the right or wrong thing to do?  
Tell me more about that...

### 3. What do you need to do to put things right? (repair the harm)

What else might need to happen?  
How will this help? Tell me more about this.  
When can this happen?  
What exactly are you saying sorry for?

### 4. How can we make sure this doesn't happen again? (move forward)

What do you need to do? What can I do to help?  
What are your goals to help you move forward?  
What are you going to do to reach these goals?  
What other support do you need?

The script of a restorative conversation from <http://restorativeschools.org.nz>



### 3. Mini Conferences/Class Conferences/Circles

Teachers and education providers can also be trained to run restorative conferences for entire classes or groups of young people where there are moderate level incidents. For whole class issues that need to be addressed, a format called the “No Blame Conference” is used. This is ideal for a situation where there are no identified victims or offenders, multiple victims and offenders, or when offenders are victims as well and vice versa. The process is designed to engage everybody involved to share openly about what has happened to them and how they are affected by it, rather than attributing blame.

The team assist schools to prepare effectively and hold successful conferences effective, for example through the provision of anonymous staff and student questionnaires prior to the conference to research the nature of the harm occurring. At the end of the conference, an agreement or contract is put in place for the class to adhere to. There is also the option of introducing “circles”: another solutions-focussed form of conference which uses a “talking piece” (any object that is passed around that symbolically gives the person the right to talk). The team provide exercises that can be conducted in the circles, such as “a moment’s silence”, confidentiality agreements, sentence starters, and praise rounds to ensure the environment is positive.

### 4. Full Community Conference/Hui Whakatika

Finally, the restorative schools team provide for a full community conference or hui whakatika, where there has been behaviour that has caused serious harm and a forum is needed for offenders, victims and their respective supporters to meet and discuss this harm. Prior preparation is done in the form of pre-conference interviews to ascertain what the problem is. Each person present in the conference has an opportunity to present their views, and an agreement is come to by all parties at the end. Some of the features of a full community conference/hui whakatika were explored in a recent Ministry of Education FGC simulation, discussed below.



For more information on Restorative Schools, or to find out about training sessions available, visit [www.restorativeschools.org.nz](http://www.restorativeschools.org.nz) or contact Greg and Rich on [info@restorativeschools.org.nz](mailto:info@restorativeschools.org.nz)

## 2. The Ministry of Education— Restorative Practice Model

*- Mark Corrigan, Ministry of Education*

The Ministry of Education is developing a restorative practice model as part of PB4L. They hope to build a well organised approach to support schools to do really effective restorative practice work. The model is initially for intermediate, area and secondary schools. So far, they’ve documented the evidence base for restorative work, and drafted a practice model. They’re thinking about the most helpful ways to support schools develop, implement, and review their RP work. I hope many people who work in schools or in RJ might be interested in this work.

They’d love your feedback.

This is the link to our online forum about the Restorative Practice work under way within PB4L. Click on the link to read our evidence base for RP, and to look at the draft practice model. <http://www.vln.school.nz/pg/groups/622607/pb4l-restorative-practice-forum/>

You can post feedback on the forum’s blog. Here’s how:

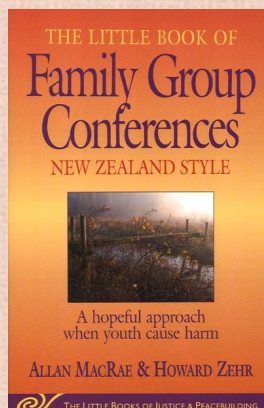
1. Click the link above
2. Go to the top right hand corner of the webpage. Click “log in”.
3. Click “register” on the right hand side of the page. Enter your name, e mail address and a password. It takes about one minute to sign up.
4. They send you an e mail to “validate” your account.

You can now log in, edit your profile, and contribute to the forum. (Just enter “RP forum” into the search box to go to our RP forum.) You can click “subscribe to feed” on the left hand side to keep track of what others have to say about this work. This link can be distributed widely among those interested in RP in NZ schools.



### 3. Restorative Justice and Family Group Conferences

The Ministry of Education recently hosted a simulation youth justice Family Group Conference, in the style of a restorative full community conference or hui whakatika. The co-ordinator of the conference followed a typical script that schools would typically use in a full community conference. Some of the key elements of the simulation conference that were noted by participants were:



- That the conference did not begin by the police reading out a summary of facts – this occurred later once all parties had had a turn to speak about the incident. Many commented that they felt like this assisted to ensure the full story was heard.
- That the first person to be questioned by the co-ordinator was the offender, rather than the victim. Questions such as: “Can you tell us the story of what happened that day? How did you come to be involved? What were you thinking when...? What were you hoping would happen? What have you thought about since this all happened? Who do you think has been affected by your actions and in what ways?”
- That the conference’s speaking order devoted time to each of the victims and offender’s supporters. Emphasis was placed on ensuring they could comment on how the offending had affected them and how they felt about what had happened.
- That the seating plan for the conference was very deliberately organised: the mothers of two offending boys sat next to each other, for example, to try and encourage the development of a relationship of mutual support between the two of them.

The Chief Social Worker’s office at CYF is doing some work to explore the relevance of this model for social workers and co-ordinators.

### 4. Restorative Justice and Victims– Latest Research

*The Offer of Restorative Justice to Victims of Crime: Should it be Protective or Proactive?*  
-Jo-Anne Wemmers and Tinneke Van Camp  
(Centre international de criminologie compare, 2011)

A study was recently conducted in Canada to consider the most suitable way to introduce restorative justice to victims of serious crime. Researchers considered whether victims prefer a **protective approach** (i.e one that prioritises protecting victims from any possible risk of secondary victimisation and so excludes victims from restorative justice programs unless the victim actively seeks to participate), or a **proactive approach** (which gives priority to victims’ need for information and informed choice and so systematically offers victims information about restorative programs and lets them decide whether to participate or not). 14 victims who had experienced a protective model, and 19 who had experienced a proactive model were surveyed. The restorative practices in which the victims had participated included victim-offender mediation, family group conferencing and victim-offender encounters.

18 of the victims who were approached proactively about the restorative offer were satisfied with this approach. Only one noted particular dissatisfaction: he felt it was too early to meet the offender because he was too traumatised. The protective approach resulted in less positive feedback: nine victims did not comment negatively, but were not particularly forthcoming with positive feedback either. Five had issues with the protective approach, with a common theme to their criticisms being wanting to meet the offender but having their request ignored.

The study proposes a model for contacting victims. The model represents the victims’ overall view that restorative justice should be open to all, but compliant with certain conditions (for example, that the offer to participate in restorative justice should be flexible, voluntary participation should be allowed and clear and complete information should be given to victims. The report also noted a preference for interpersonal communication instead of mere written information.

**The full report:** <https://depot.erudit.org/bitstream/003511dd/1/Rapport%20de%20recherche%20n4%20Wemmers%20Final.pdf>

# YMCA Youth Education

The following is a feature on the YMCA's "Education Pathways Course", contributed by the team at YMCA.

**WHAT:** Education Pathways, YMCA Greater Wellington  
**WHERE:** 84 Willis St, Wellington  
**WHEN:** Year-round  
**WHO FOR:** Unemployed youth who have dropped out of school without NCEA Level 1. Mainly aged 15-18, may be up to age 24. Referred by WINZ, the Justice system or by friends who are on the course  
**WHY:** To obtain NCEA Levels 1 and 2 credits and help them find jobs

## Sorting out the messes in young lives so they can learn again

While the rest of New Zealand was enjoying the Rugby World Cup opening gala last year, YMCA's Lisa Phillips was rehousing five young people to protect them from danger.

It was a traumatic night, but sorting out the personal problems of unemployed youth is an essential part of Lisa's job as an education programme manager.

Their personal safety is one of the first things she asks about when young people are referred by WINZ, the Justice system or come with friends to the YMCA Greater Wellington Education Pathways course.

"You can't be expected to study if your life's in a mess," she says.

"It's our philosophy to address the issues that are messing up the students' lives before we try to teach them anything. Once they're settled, they are way more able to take on their studies."

YMCA Greater Wellington Chief Executive Simon Jackson agrees: "We have a government contract to teach unemployed kids NCEA unit standards so they can get a job or go on to further education. But to make that work, we need to achieve a lot more for them."



Left: YMCA Greater Wellington Chief Executive Simon Jackson



Education Manager Lisa Phillips

"My vision is that we become a centre of excellence for these kids, but that does need more funding. We have to help them take care of the basic necessities of life first – food, housing, safety. They're not going to learn if they're hungry or living on the street."

The young people who come to the Education Pathways programme all dropped out of school early without completing NCEA qualifications. They are mostly aged 15 to 18 but can be up to age 24. What they all have in common is personal upheaval in their lives.


Lisa came to her YMCA job in downtown Willis Street, Wellington, after teaching in public schools from Primary to Year 13 for five years.

"I saw a lot of students not doing well because they were a challenge to the system and got written off. Here at our centre, we make them feel secure and they are in a relaxed atmosphere with tutors who respect them as individuals and work alongside them. The highly motivated kids are powering through their NCEA unit standard workbooks, often doing several books a week."

The Education Pathways programme is funded by government agency, the Tertiary Education Commission (TEC). With the 15 to 18 year old age group, the course regularly achieves more than the required number of NCEA credits and more than expected 60 per cent of students moving on to a job or further training.

"In 2011, all our students achieved their contracted requirement of completing 20 credits. We also had 74% of our youth learners moving on to employment or further training, with the remaining students needing longer to find a direction for their lives," Lisa says.

"For 2012, this requirement has been raised to 40 credits which our students are well on the way to achieving. Academic achievement was a highlight last year, with eight learners gaining NCEA Level 1 and two gaining NCEA Level 2. Many learners are only a few credits away from reaching their levels this year."



Below are the stories of two young people who have been through the YMCA's Education Pathways Course.



### *Rangì's story*

Rangì Davis, 18, couldn't fit into state schools in New Zealand after a childhood spent learning in the private school system in Australia. He got into trouble instead.

Rangì was born in Australia and went to a private school in Sydney until he was 10 when his family moved to New Plymouth and later

to Wellington.

"I think I must have gone to just about every high school here in Wellington but I didn't do well in mainstream schools. For me there wasn't enough one-on-one education. I didn't fit and I talked to my mates in class and stuff and distracted other people. So I left."

He caught up on some of his education at second-chance learning centres the Wellington Activity Centre Challenge 2000.

"They're like the Y programme and they both helped me hard out. But the last couple of years I've stuffed around a bit, hanging out on the streets. Then I meet a nice girl who changed my life. I was doing a course at the Wellington Professional Bar and Restaurant School when I met her but then I got into a bit of trouble with the police and got famous.

"I had my photo on the Police Ten-7 television show for breaching my supervision and probation conditions. I was just not going. It seemed a minor thing to be making a big deal about on TV especially when the next person whose photo they had on the show was wanted for something like assault. What I'd done was rob a building. I robbed the same building twice when I was real drunk. It was the Department of Conservation and they had stuffed with my family's land up the Whanganui River so it was like I was trying to stuff it to them because I don't like them."

"But since I came here to the Y course (in late 2011), I've stayed completely out of trouble. I want to get my NCEA out of the way so I can go to university before I'm 21. My credits from all my other schools still haven't been uploaded yet so I don't know how far I have to go. "The tutors here are really cool and the work's not like immensely hard or anything. If you ask for help, well they'll just show you how to do it. You work at your own pace. The minimum you can do is one book a week and I try to do one book a day. "

Rangì's partner is fellow Y student Zara McQueen who introduced him to the course. They are living with Rangì's father in Strathmore.

"I've pretty much started over again with a new life, new friends," Rangì says.

"A lot of hard things happened that kind of snapped me out of it. I had a tight bond with some close friends and one of them goes and kills himself which blows all us apart, like we were fighting all the time and stuff. So I've tried to disassociate myself from that group."

Rangì would like to go back and finish his course at the Professional Bar and Restaurant School. He has his sights set on doing a business degree and starting a small hospitality business with Zara, like a restaurant or bar. For now he's working on fast-tracking himself through his NCEA Level 2 credits at the Y so he can get back on track to achieving his ambitions.



### *Hayley's Story*

Hayley Whanau, 17, went through the despair of depression, then found being the centre of attention when she returned to school after months in hospital just too hard to bear.

A combination of issues made her hate being back at school. She got sick of overhearing teachers and students talking about her. She was dropped back a year and, instead of going to normal classes, was put in the learning support unit to finish NCEA Level 1 through correspondence, where she says she didn't get the teaching support she needed.

At that point Hayley left school for good. Some friends who had enrolled at the YMCA Pathways course showed her the set-up in Willis Street, Wellington, and she enrolled herself in March last year (2011).

"I was admitted to hospital in 2010 with depression and was in the health system for probably three months including getting transferred to Richmond House in Napier. When I tried to get back into school in Kapiti, it didn't really work out," Hayley says.

"Everyone thought, oh, we must look out for Hayley, she's a brilliant student. But then I couldn't handle it because everyone looked at me differently and I didn't like it. I just used to always hear teachers talking about me like just walking past you'll get the whole mmm, mutter, mutter. It just carried on into the students and I just got sick of it.



“It got to the point that the teachers I was actually trusting in were blabbing about me, you know, because I actually walked into it one day. And I was like, nuh, stuff it.

“I would have been in Year 12 but I was dropped down a level so I could finish Level 1 NCEA. It really sucked because we had this meeting with the staff and I thought it all went well but they put me into learning support where I did correspondence. I didn’t actually get the support I needed because the aides that were in support learning, they’re not teachers.”

Hayley felt she had no control over how things were going. It reminded her of how she felt in hospital after being sectioned under the Mental Health Act – the feeling that she had no say over what happened to her. “And that was a very scary moment in my life because it made me feel so vulnerable.”

Life has changed for the better now and Hayley reckons being at the Y has helped her gain control over her life. She lives with her parents in Paekakariki and travels by train into Wellington to the Y Pathways course. She has now completed NCEA Level 1 and is planning to do Level 2 this year (2012) with the Y.

“They’ve also helped me create a CV which I’m really proud of. It’s probably the best work I’ve done here so far.

“Just learning life’s skills is really cool and the people I meet here, everyone has a story. It’s just so awesome because we can all learn off each other and ‘stay safe in the city’. It’s different coming from school where you have nowhere to go for lunch and stuff and now we’re here and we can just walk straight into town and have a break.

“It’s a really different environment. In some ways I’m still getting used to it, you know, like I get to go shopping now because I’m working part-time at Kapiti Pak’nSave at the weekends. I love working. I’m more of a practical person than a book worker. I’ve been there for probably two and a half years now in the service deli. I work with awesome people as well. They keep me sane.”

“Ever since I came here I’ve felt so much more independent and confident in myself. I’m pretty much in control of my life now with the guidance of the tutors and my parents. I’m just happy I was able to change my life around at that point because, man oh man, that was a really dark time.”

Hayley says she’s happy with life because she’s on the right track now.

“I still ponder upon that dark side sometimes. But I get through it just talking to everyone here at the Y and talking to Mum and Dad. I learned a lot of techniques through the hospitals and counsellors. I think I’ve done a good job dealing with it - so far anyway.

“If I was giving someone advice in my situation, I’d tell them don’t look back, just keep looking forward. Look for the opportunities that you can get. Keep opening those doors for yourself.”



Images: Young people from the course

# Conference Updates

## 5<sup>th</sup> National Biennial Conference on Adolescents and Adults with Fetal Alcohol Spectrum Disorder, Vancouver, 18 – 21 April

- Judge Tony Fitzgerald

### "It's a Matter of Justice"

was the theme of the 5<sup>th</sup> National Biennial Conference on Adolescents and Adults with Fetal Alcohol Spectrum Disorder ("FASD"), held in Vancouver, Canada in April this year. The catch-cry from a key note address, that captured the mood, was,

### *"Instead of being tough on crime we need to be effective on crime".*

The conference marked 40 years of work with FASD in Canada. There, and in parts of the USA and a few other countries, they are alert to the cognitive and behavioural problems caused by FASD that bring many of those affected before the Courts. Over those 40 years, a range of supports and services have been developed, in the health and justice sectors, to cater for this significant social problem.

In New Zealand, the link between FASD and offending gets scant recognition despite awareness that the excessive use of alcohol here contributes to a range of serious harm including FASDs (1). A lack of awareness here, of the link between mental impairment and offending, means calls to do something about issues such as FASD, have gone largely unheeded. That must change. Until it does, offending and recidivism rates of those affected by such impairment will remain high. As awareness increases, it is reassuring to know there are excellent resources available, and a wealth of knowledge and experience we can glean from the work being done in more enlightened countries to help bring our processes into the 21<sup>st</sup> century.

In 2002, Judge Carlie Trueman of the Provincial Court of British Columbia observed:

*"The cognitively challenged are before our Courts in unknown numbers.*

*We prosecute them again, and again, and again.*

*We sentence them again, and again, and again.*

*We imprison them again, and again, and again.*

*They commit crimes again, and again and again.*

*We wonder why they do not change.*

*The wonder of it all is that we do not change our expectations rather than trying to change them."*

The change in expectations required, if we are serious about reducing recidivism, involves recognising that a significant number of offenders are before the Court on account of a cognitive impairment, often appearing repeatedly for similar types of offences and/or non compliance with Court orders.

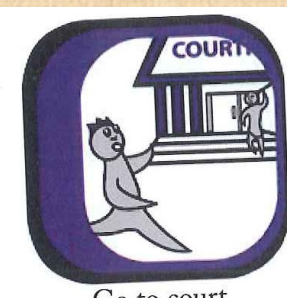
We assume those appearing in Court to be competent but in many cases that is not a safe assumption to make. Those who show physical signs of their disability are usually not hard to recognise but the many who show no such outward signs often go by with their disability undetected.



Employment & training



Abstain



Go to court

Above: an example of an innovative way of working with young people with FASD: bail conditions by picture. These are available in Canada.

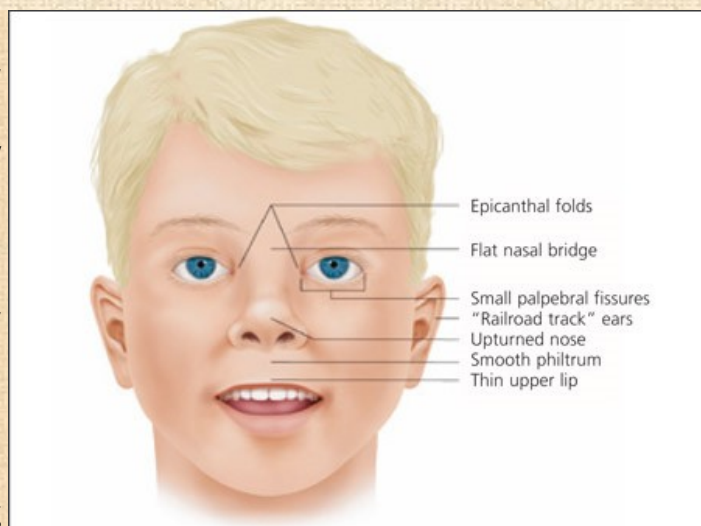
(1) Law Commission report, April 2010; Alcohol in our lives; Curbing the harm. Part 1, Page 7



We should be identifying those with such impairments, obtaining proper diagnoses and treating the disability appropriately, rather than trying to force compliance with sanctions that the young person(2) is biologically incapable of understanding, remembering or carrying out.

Cognitive impairment can be due to a number of causes such as autistic spectrum disorders or acquired brain injury. However, FASD is the single most commonly occurring form of preventable, non-generic mental impairment(3).

The needs of this group we are largely failing to meet. That is unacceptable for the young person who is an entirely blameless victim of maternal alcohol use during pregnancy. It is also unacceptable for the community because FASD affected youth are significantly more likely to offend and so should be identified and supported early so as to reduce that risk.



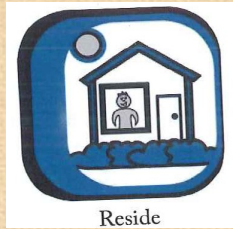
Characteristic facial features in a child with fetal alcohol spectrum disorders. Source: <<http://www.aafp.org/afp/2005/0715/p279.html>>.

## PREVALENCE

Conservative estimates internationally are that 1% of babies born are affected by a FASD (4). Other studies have put prevalence in the range from 2 to 5 %(5). A large scale study revealed that about 60% of people in the FASD population had been in trouble with the law(6). They are then prone to have other adverse life outcomes as well. For example, 60% are likely to have a disrupted or curtailed education (7). 94% of children with FASD have a secondary mental health disorder (8). 60% of children with FASD eventually were incarcerated (9).

Applying the conservative estimate of 1% to the New Zealand population, there are at least 600 babies born with FASD each year (10). Of 12 to 16 year olds in New Zealand, of whom there are approximately 300,000, there would be about 1800 committing offences who are likely to be affected by FASD. How many of those are amongst the 4,500 who appear in the Youth Court each year we do not know because, for the most part, we are not even looking for it.

Many FASD-affected people show no outward signs of their disability. Those with Fetal Alcohol Syndrome ("FAS") (11), may have the facial features that are recognised as an external signal of impairment. However the majority, who do not have those facial features, may have the same brain damage and disability but go unnoticed and untreated.



Left: further examples of bail conditions by picture, as designed for young people with FASD.

- (2) Reference to young person includes 12 & 13 year olds in respect of whom proceedings are brought on account of offending. It is important to note that FASD is permanent brain damage and therefore a life-long disability. Evidence suggests there may be deterioration in cognitive functioning over time.
- (3) Alcohol Healthwatch, June 2011.
- (4) Sampson et al, (1997) 56 Teratology 317
- (5) May et al, (2009) 15 Dev Disabil Res Rev 176
- (6) Ann P Streissguth et al; August 1996
- (7) Streissguth et.al
- (8) Wells AM, Chasnoff IJ, et al, 2011
- (9) Streissguth et.al 1996
- (10) D Sellman & J Connor (2009) 122(1306) NZMJ 6
- (11) The least prevalent manifestation of FASD – Sampson et.al 1997



## **EFFECT ON BEHAVIOUR**

**ALARM** is a mnemonic for the core deficits associated with FASD (12). It stands for:

Adaptive functioning, Language, Attention, Reasoning and Memory.

### ***Adaptive functioning***

This means how well a person manages common demands of life and how independent they are compared to others of a similar age and background. It includes practical skills (eg; at home and with personal care); social skills

(eg; behaviour toward others, feelings about themselves, problem solving ability, susceptibility to influence, ability to follow rules); conceptual skills (eg; ability to plan and organise and ability to use abstract concepts like time, money and numbers).

Most people with FASD have IQ levels in the average to borderline range, but typically function like people who are intellectually disabled(13). They struggle to adequately perform many ordinary tasks of daily living, including self-care and appropriate social relationships. They are often not able to interpret social cues, or to know what to do in social settings or understand social cues concerning boundaries. This, and a tendency of some to be hypo-sensitive to touch (feeling not enough), can mean they are overly physical. An inability to properly regulate emotions in stressful situations increases the risk of harm to themselves or others.

## **LANGUAGE**

Those affected by FASD generally have poor literacy and numeracy skills, make poor progress academically and therefore tend to drop out of school early. They have difficulty translating verbal directions into action or even understanding the instructions and so are often non-compliant with rules. Because of their inability to understand abstract concepts, such as time, they are often late for appointments, or struggle to comply with curfews. They usually won't understand idioms or sarcasm. However they often do learn to exploit non-verbal cues to maintain conversational flow and so can appear chatty and able to use age appropriate language when, in fact, their comprehension is much lower than it appears.

## **ATTENTION**

Attention deficit, impulsivity, increased distractibility and high activity have been found in up to 60 to 75% of people with FASD. They struggle to concentrate and pay attention to what they see and hear.

## **REASONING**

Executive functioning is often severely impaired in those with FASD due to damage caused to the frontal lobe of the fetal brain. They have difficulty in decision making, planning, prioritising and multi-tasking. Their ability to exercise good judgement is compromised. They are vulnerable to negative peer influence, often gullible and have a longing for acceptance due to their history of rejection and teasing. They therefore often gravitate toward gangs. They are often highly suggestible and prone to making false confessions or self-incriminating statements. Problems with abstract reasoning often show up as a failure to learn from mistakes or anticipate disastrous consequences of their own, and others, actions. They cannot link cause and effect, cannot see similarities and have difficulty generalising from one event to another. As a result they often repeatedly make the same mistakes.

Because they cannot monitor or appreciate where their behaviour is leading them, perseveration is common. That is the inability to change course midstream despite obvious negative consequences.

(12) Conry J & Fast D. (2000) Fetal Alcohol Syndrome and the Criminal Justice System. BC FAS Resource Society

(13) N Novick-Brown et.al (2010) 38 Journal of Psychiatry and Law 383



## MEMORY

FASD people have deficits in a range of specific types of verbal and nonverbal memory as well as impairments in short term memory and delayed memory. They may be incapable to retaining a message long enough in their short-term memory for it to imprint into their long term memory and be available to help guide future actions.

## CONCLUSION

With these deficits, it is easy to see why FASD affected young people are at increased risk of offending, and are not able to cope well in the Youth Justice system. Better professional and public awareness of the issue, and better assessment and support facilities are needed, in order to prevent offending by those with FASD and other impairments, or to become effective in our response when they do offend.

## **National Conference on Juvenile and Family Law, Las Vegas, USA, 21-24 March, 2012**

### *-Judge Tony Walsh and Judge Maree MacKenzie*

Judges Walsh and McKenzie attended this conference as representatives of the New Zealand Youth and Family Courts. The conference was open to people working in a variety of sectors affecting young people and families, and diverse educational sessions focussed on challenges such as child abuse and neglect, mental health, delinquency, custody, immigration, domestic violence, and substance abuse. The Judges have provided us with the following ten key impressions emerging from the sessions they attended.

### SOME MATTERS FOR CONSIDERATION

1. The importance of screening/assessment process of all young people coming into the Youth Court jurisdiction.
2. Issues relating to cultural diversity, the structure of “family” and diverse relationships and changing attitudes relating to violence.
3. The need for collaboration and use of community resources. Assessing advantages of multi-agency involvement.
4. Issues relating to poverty, addiction and mental health do not fit well within the black-letter law. An allied issue is the need to be aware of the rise of creative and unusual drugs, such as bath salts and window cleaner.
5. The impact of technology on the lives of young people and evidential issues related to technology-related offending. Cyber-bullying is now a real issue. How is that issue dealt with?
6. Assessing the effectiveness of programmes – do people learn from the programme? How can you test the pre-knowledge and post-knowledge and the pre-post-attitude of young people. What are core components of “good programmes?”
7. The need to understand issues associated with trauma experienced by young people.
8. Alternatives to juvenile detention – electronically-monitored sentencing and mentoring, potential of therapeutic sentencing involving the whole family is often more effective than focussing solely on the young person.
9. The use of the internet for online programmes addressing issues relating to youth offending. In particular, involving domestic violence and addiction. Do they work? Can they work?
10. The role of judicial leadership and the need for Judges to take the initiative.



# Stop Press

## Latest Research and Developments

### New Zealand

-Denise Barrington “A Very Different Way to Judge” (article about the Youth Drug Court) <[www.nzlawyermagazine.co.nz/Archives/Issue180/180F2/tabid/4117/Default.aspx](http://www.nzlawyermagazine.co.nz/Archives/Issue180/180F2/tabid/4117/Default.aspx)>.

-Matiu Dickson “The Rangatahi Court” (2012) 19(2) Waikato Law Review 86.

-Gabrielle Maxwell “Story: Youth Offenders” (a recently added contribution to the Te Ara Encyclopedia of New Zealand) <http://www.teara.govt.nz/en/youth-offenders>

-”Growing Up in New Zealand: A Longitudinal Study of New Zealand Children and their Families: Report 2– Now We Are Born” <<http://www.growingup.co.nz/media/19226/now%20we%20are%20born%202012.pdf>>.

-JustSpeak “Maori and the Criminal Justice System—a Youth Perspective” <<http://www.rethinking.org.nz/assets/JustSpeak/JustSpeak%20-%20Maori%20and%20the%20Criminal%20Justice%20System%20-%20A%20Youth%20Perspective.pdf>>

-Nessa Lynch “Playing Catch Up? Recent Reform of New Zealand’s Youth Justice System” (2012) Criminology and Criminal Justice

-Sacha Thom “Fetal Alcohol Spectrum Disorder and the New Zealand Criminal Justice System” (PHD Thesis)

-Recent 2-3 page summaries from Judge Becroft: “Child and Youth Offending in New Zealand: Introductory Notes”, “Child and Youth Offending in Auckland: Introductory Notes”, “Mentoring in New Zealand : A Youth Court Perspective”.



Source: [www.teara.govt.nz](http://www.teara.govt.nz)

### International

-Ashley Nellis (Sentencing International) “The Lives of Juvenile Lifers: Findings from a National Survey “ : [http://sentencingproject.org/doc/publications/jj\\_The\\_Lives\\_of\\_Juvenile\\_Lifers.pdf](http://sentencingproject.org/doc/publications/jj_The_Lives_of_Juvenile_Lifers.pdf).

-National Autistic Society (London) “Autism: a Guide for Criminal Justice Professionals” <<http://www.autism.org.uk/working-with/criminal-justice/autism-a-guide-for-criminal-justice-professionals.aspx>>

-Ojmarrh Mitchell, David B.Wilson, Amy Eggers, Doris L. MacKenzie “Drug Courts’ Effects on Criminal Offending for Juveniles and Adults” (The Campbell Collaboration) <[www.campbellcollaboration.org/lib/download/1771/](http://www.campbellcollaboration.org/lib/download/1771/)>.

- Chad R. Trulson, Matt DeLisi and James W. Marquart “Institutional Misconduct, Delinquent Background, and Rearrest Among Serious and Violent Delinquent Offenders” (2011) Crime and Delinquency 57 709 (summarised in vol 12(4) of “Criminological Highlights” ([http://criminology.utoronto.ca/lib/criminological\\_highlights.html](http://criminology.utoronto.ca/lib/criminological_highlights.html))).

-Judge Mark Marien SC “Cross-over Kids—Childhood and Adolescent Abuse and Neglect and Juvenile Offending” <[http://www.lawlink.nsw.gov.au/lawlink/childrens\\_court/ll\\_cc.nsf/vwFiles/Cross\\_Over\\_Kids\\_2012.pdf/\\$file/Cross\\_Over\\_Kids\\_2012.pdf](http://www.lawlink.nsw.gov.au/lawlink/childrens_court/ll_cc.nsf/vwFiles/Cross_Over_Kids_2012.pdf/$file/Cross_Over_Kids_2012.pdf)>

-Penal Reform International: “Ten Point Plan for Fair and Effective Criminal Justice for Children” - <<http://www.penalreform.org/publications/ten-point-plan-fair-and-effective-criminal-justice-children>>


### Media

- Luka Lesson (Director, Center for Poetics and Social Justice) “17” (a performance poem about the age of entry into the criminal justice system in Queensland, Australia): <<http://vimeo.com/36798558>>

- Office of the Children’s Commissioner—rap written and performed by young people in Te Maioha Youth Justice Residence (as part of Green Paper submission): <http://www.youtube.com/watch?v=bG63gLOAZTo> (short version) (<http://www.youtube.com/watch?v=tGyLOe7Zcps>)

- Office of the Children’s Commissioner— Green Paper submission montage (views of young people in residences): <http://www.youtube.com/watch?v=0Zn94MZTnfw>

If you are interested in any of the articles for which there is not a link, please feel free to request these from us. We would also love to hear from you about research we should know about for upcoming editions of Court in the Act.



## Breaking News

US Supreme Court Rules Against Mandatory Life Without Parole For On Monday, June 25 the Supreme Court of the United States held in [Miller v. Alabama](#) and [Jackson v. Hobbs](#), in a five-to-four vote, that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without parole for juvenile offenders who commit homicide offences.

This is the third in a line of cases concerning the rights of young offenders in adult courts. In [Roper v. Simmons](#) (2005), the Court held that juveniles cannot be sentenced to death, and in [Graham v. Florida](#) (2010), the Court held that juveniles cannot be sentenced to life without parole for non-homicide offenses.

As *Miller v Alabama* and *Jackson v Hobbs* found only that life without parole for juvenile offenders convicted of homicide cannot be **mandatory**, there remains the possibility of a fourth case concerning whether or not there is discretion to grant life without parole for juvenile offenders convicted of homicide offences at all.

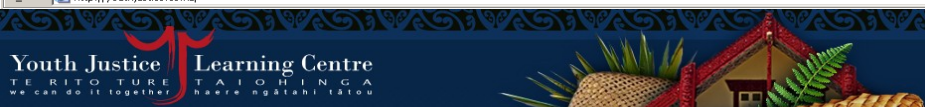
Some world leading American criminologists and sociologists are quoted in the submissions, which discuss in detail the latest scientific research suggesting that adolescents are biologically less developed and consequently less culpable than adults.

Submissions by counsel in this case can be found here: [http://www.americanbar.org/content/dam/aba/publications/supreme\\_court\\_preview/briefs/10-9646\\_petitioner\\_amcu\\_aber\\_et.al.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/10-9646_petitioner_amcu_aber_et.al.authcheckdam.pdf)

The full opinion of the court can be found here: <[www.supremecourt.gov/opinions/11pdf/10-9646g2i8.pdf](http://www.supremecourt.gov/opinions/11pdf/10-9646g2i8.pdf)>.

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](http://www.youthjustice.co.nz)

Address <http://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.

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