Court in the Act

A regular newsletter for the entire youth justice community

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

Nau mai Welcome

to the New Year and edition 65 of Court in the Act.

We at the Principal Youth Court Judge's Chambers hope that you have had a relaxing break with whānau and friends and have come back energised for the year ahead.

We also wish Emily Bruce, former Research Counsel to Judge Becroft and editor for CIA, well in her exciting new adventures. Emily is now practicing as a family and criminal defence lawyer in Gisborne and hopes to be involved in the Youth Justice community. Koia kei a koe Emily!

Which means that I should introduce myself to you after having stepped into Emily's role. Ngā mihi nui ki a koutou, ko Sacha Norrie tōku ingoa. After spending six weeks in Chambers so far, I can safely say that I am excited and energised about what lies ahead in 2014 for Youth Justice in Aotearoa.

This issue of CIA will provide you with an update of the legal changes that have happened in the Youth Justice sector over the New Year, including legislative amendments and some exciting developments that are happening both locally and internationally.

We would love to hear about what you're doing, reading and thinking about in the Youth Justice sector! If you would like to make a contribution to Court in the Act feel free to email all enquiries and submissions to **sacha.norrie@justice.govt.nz**

Hei kōna mai!
Sacha Norrie

Court in the Act

is a national newsletter/ broadsheet dealing with Youth Justice issues. It is coordinated by research counsel attached to the office of the Principal Youth Court Judge. It receives wide circulation and we are keen for the recipients to pass it on to anyone they feel might be interested.

We are open to any suggestions and improvements. We are also very happy to act as a clearing-house, to receive and disseminate local, national and international Youth Justice issues and events.

In this issue

Editorial: A "Creamoata" Moment?

Some of you will remember Creamoata. In its heyday, it was considered quite "the national breakfast". It was an oatmeal type of porridge. I remember it from my childhood. It was on all the supermarket shelves. I think there was even a line of Creamoata "happy families" playing cards that we used when I was growing up.

I was reminded of Creamoata recently on a drive from Dunedin to the Invercargill Youth Court. I stopped at Gore for coffee. There was the still-standing, iconic local building - the Creamoata Factory - and still labelled that way with the famous "Sergeant Dan" logo on the wall. The mill was once considered one of the most modern cereal factories in the southern hemisphere. From the outside it now looked in a state of disrepair. It has been taken over by another company. Apparently, the building is protected by a New Zealand Historic Places Trust categorisation.

In the 1950s, there were massive sales of Creamoata. By the 1990s there had been a sharp decline in popularity. Newer and fancier cereals took over. Production of Creamoata was moved to Australia in 2001. Creamoata was eventually discontinued in 2008 after dwindling sales rendered production unsustainable.

On the drive to Invercargill, I reflected on the lessons there might be for the Youth Court in the story of the once great Creamoata. I am not sure why Creamoata foundered. Perhaps it assumed too much from its early success and failed to adhere to and explain its core business and what it stood for; maybe it failed to adapt and make changes in its approach. On both these counts (and others) perhaps there are challenges for the Youth Court.

Our youth justice system was established 25 years ago. In my view, its principles and its core approach remain sound and innovative. This is the clear conclusion of both the 2001 Youth Offending Strategy and the 2013 Youth Crime Action Plan. Those of us involved in the system need to remember that and take confidence. We need to remind ourselves of what a pioneering piece of legislation it was. We can take confidence that overseas, our youth justice system is frequently described as world leading. In one sense we need to "keep the faith".

The Children, Young Persons and Their Families Act (CYPFA) stands for important principles, still absolutely relevant. Foremost is the twin emphasis on accountability but also responses which address the needs of the young offender and the causes of offending.

Continued over page

Court in the Act

A regular newsletter for the entire youth justice community

Editorial continued...

Other key principles include the strong focus on police led, community based diversion wherever possible rather than charging; the importance of family, whānau and victim involvement; the Family Group Conference as a key decision making mechanism with a restorative justice approach for serious cases; community involvement in the process; reduced reliance on institutionalisation and incarceration; rehabilitative, wraparound, community-based sentences as a priority. These principles will stand the test of time. They are principles which are being implemented daily by passionate, committed and expert youth justice practitioners up and down the country. And these principles are making a difference: there are record low numbers in our youth justice system – both in terms of the apprehension rates by the police of children and young persons and the rate of Youth Court prosecutions. We can be encouraged. As we begin 2014 we can celebrate a sound, principled system that is working.

However, over time, our practice and delivery of these principles may need to change and adapt. Did Creamoata fail to do this? There may be some challenges for the Youth Court which cannot be avoided.

More and more (as it should be) the Youth Court is the preserve of some of the most difficult and problematic young people in New Zealand: 2,000 – 3,000 of them each year. We also know more and more about them.

The great majority will have neuro-developmental disorders (often co-occurring), including learning disabilities, dyslexia, communication disorders, attention deficit hyperactive disorder, autism spectrum disorder, traumatic brain injury, epilepsy, fetal alcohol syndrome. Many will come from deeply disadvantaged, transitory and violent or abusive homes. Most won't be meaningfully involved in education, will be drug and/or alcohol dependent, and without positive male role models. In this context, some of the sacred cows of the past might need to be thoughtfully challenged. Perhaps in 1989 the amount of police diversion and alternative responses to offending was not anticipated; neither was it evident how disordered and challenging the small group of offenders before the Youth Court would be.

The Children, Young Persons and Their Families Act 1989 was introduced in an environment where there was too much reliance on professional input at the expense of family decision making. Whānau were disempowered. There was an over use of custody. Institutionalisation of challenging young people was too common.

Nobody pines for a return to those bad old days. That said, does the system need more input and information from experts as to the extent of a young person's neuro-developmental disorders?

Dealing with these disorders may be fundamental to any long term rehabilitation. Does the Family Group Conference process need to take more account of the many young people encouraged to participate in the process who suffer from some form of (communication) disorder? I had a bad stutter myself as a teenager. My unwillingness to verbally participate in an FGC could well have been misunderstood as a lack of empathy or "failure to engage". Do FGCs need more external input from health, education and community professionals to put issues on the table for families to discuss?

These difficult and developmentally challenged young people are often from highly fractured families. Paradoxically, in the youth justice process we rely heavily on family input – from the very families who may be least able to do this. Do we need to put more emphasis on encouraging wider family attendance? In the early days after 1989 huge effort was made to locate wider family members who could assist. Frequently they were assisted to attend an FGC. The Youth Court process needs good input from Education Officers, drug and alcohol clinicians, and forensic nurses. All Youth Courts need these services. And 2014 will see the rise and rise of lay advocates (family/cultural advocates) a vision included in the 1989 legislation but only recently taken up. Rangatahi Courts (coordinated by Judge Taumaunu), an evolutionary development to respond to the increasing disproportionality of Maori young offenders in the Youth Court, will continue to grow. So will our two Pasifika Courts led by Judge Malosi in Auckland. The approach of the Christchurch Youth Drug Court (Judge McMeeken) and the Intensive Management Court in Auckland (Judge Fitzgerald) will continue to provide lessons for mainstreaming in our other Youth Courts.

The Youth Court deals with the toughest young offenders in New Zealand. About 45% of them will go on to seriously re-offend as adults. While we must do better, actually, judged by international standards, that is quite a good success rate.

We should not shrink from addressing some of these challenges. We need to consider whether parts of our process need to be re-jigged - without compromising the legislative principles, or becoming "a welfare court," which is the statutory responsibility of the Family Court. What we have learnt over the last 25 years may point to the need for some modifications. This could be our "Creamoata moment". The recently released Youth Crime Action Plan (YCAP) and the Chief Social Worker's review of FGCs are very much part of this re-focussing process.

Creamoata lives on – but only by virtue of its recipe – available online. But that is a pale substitute for the real thing. New Zealand's youth justice system and the Youth Court are the real thing and are alive and well. But as we begin 2014, are there salutary lessons from Creamoata which should not be lost on us?

Judge Andrew Becroft

Principal Youth Court Judge
Te Kaiwhakawa Matua o Te Kooti Taiohi

Legal Update

An Early Christmas Present: Amendments to supervision with residence and early release in CYPF Act

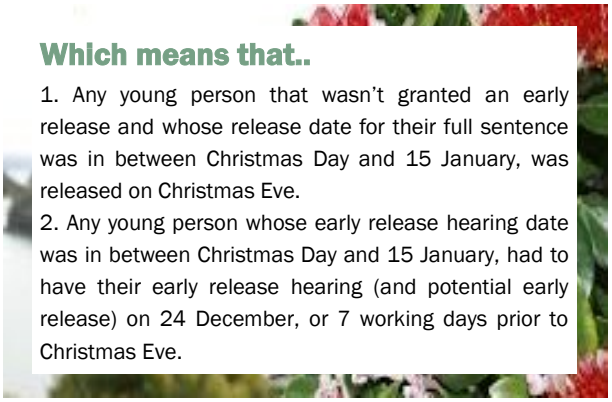
On 4 December 2013, the Children, Young Persons and their Families Amendment Act (No 2) 2013 came into force.

The following changes to supervision with residence orders and, specifically, early release hearings, have now been in force in the Youth Court since 5 December 2013:

- Section 311 has been amended to allow Judges who are making a supervision with residence order to adjourn to consider early release EITHER
  - on the date on which two-thirds of the period of the order has elapsed (as was previously required) OR
  - if it is not practicable to hold a hearing on that date, on a date not more than 7 working days before that date.

- Section 314 now requires the Judge to release the young person on the day of the early release hearing if the conditions listed in that section are met.

- Section 317 now provides that, if the period of a supervision with residence order made under section 311(1) elapses on a day that is a "non-release" day, the order is treated as if it expires on the nearest preceding day that is not a non-release day.
  - Non-release days are defined in that section and include weekends, public holidays, regional holidays and 25 December—15 January.



Which means that..

1. Any young person that wasn't granted an early release and whose release date for their full sentence was in between Christmas Day and 15 January, was released on Christmas Eve.
2. Any young person whose early release hearing date was in between Christmas Day and 15 January, had to have their early release hearing (and potential early release) on 24 December, or 7 working days prior to Christmas Eve.

New Application Form for Electronically Monitored Bail

The Department of Corrections (Corrections) and the New Zealand Police (Police) have been jointly managing Electronically Monitored Bail (EM bail), under a shared service model, in the adult jurisdiction since 1 October 2013 and in the youth jurisdiction since 1 February 2014.

A new EM Bail Application form and a Notice of Application to Vary Bail Conditions has been designed to align with the changes and will apply to both the Youth and District Court jurisdictions.

The new EM Bail Application form must be used for all new EM bail applications. Only applications completed on the new form will be accepted so dispose of any stockpiles of the old forms you might have.

There is no change to the application process; lawyers and youth advocates are still required to file the application form to court and obtain a hearing date on behalf of their clients.

The new forms are available from:

Department of Corrections
http://corrections.govt.nz/working_with_offenders/courts_and_pre-sentencing/em_bail.html

Ministry of Justice
http://www.justice.govt.nz/services/information-for-legal-professionals/criminal-court-processes/forms-and-documents

New Zealand Police
http://www.police.govt.nz/about-us/programmes-initiatives/embail

On 31 January 2014, Police transitioned the last remaining Electronically Monitored Bailees (including the youth cohort) to Corrections.

Police will still continue to respond to any non-compliance with court-imposed bail conditions, and will arrest and return the bailee to court if necessary.

Visit the EM bail section on Corrections website for more EM bail information and resources:
http://www.corrections.govt.nz/resources/prison-operations-manual/Public-RL/I.07.Res2.html

Setting the record straight: media and the Youth Court

Media are welcome in the Youth Court. However, there is some uncertainty within the Youth Justice sector, the media and the public about what the rules are in relation to the reporting and publishing of Youth Court proceedings by the media in Aotearoa New Zealand.

> **One of the most common "myths" promulgated by the media is that a Judge, during the course of proceedings, has made an order that the identity of a young person or other party to the proceedings must be suppressed. But it is just that, a myth. In fact, a Judge has no power to order the suppression of the identity of any party to a legal proceeding in the Youth Court because the prohibition against releasing a young person's identity is automatic, absolute and codified in statute.**

Below is a copy of the Media and Reporting Protocol for the Youth Court. This document acts as a guideline for Judges and media reporters and sets out the entitlements and restrictions in relation to reporting Youth Court proceedings.

Media and Reporting Protocol in the Youth Court

The Youth Court is a division of the District Court. Its proceedings are not open to the public. However, media are legally entitled, and permitted, to attend Youth Court proceedings under 329(1)(l) of the Children Young Persons and Their Families Act 1989 ("the Act"), and are welcome to do so. The reporting of Youth Court proceedings is subject to a statutory prohibition against publication, except with the leave of the Judge that heard the proceedings. The Youth Court wishes to adopt an open approach to publication, and will generally take the least restrictive approach necessary in all the circumstances of a case, consistent with the principles of the Act.

The key statutory provision regarding the publication of reports of Youth Court proceedings is s 438 of the Act, which is set out in full at the end of this Protocol. The following notes will act as a guide to the application of s 438, subject to the discretion of the Youth Court Judge in individual cases. Of course, these notes have no legislative force and do not create rights additional to those in the Act.

1. "Accredited" news media reporters are entitled **as of right** to be present at any hearing of proceedings in a Youth Court: see s 329(1)(l) of the Act. Reporters are welcome to attend, but may be asked to demonstrate accreditation, usually by providing appropriate written documentation.
2. Leave of the Court is required before any person publishes any report of proceedings in the Youth Court (s 438(1) of the Act).
3. Such a request, wherever possible, should be made in writing, in advance, to the Court Registrar. If necessary it can be made orally by the news media representative in Court when the case is first called. Alternatively leave may be sought orally or in writing at the completion of the case.
4. A Youth Court Judge may seek the views of the youth advocate, the Police, and other relevant parties regarding the request to publish.
5. In deciding whether leave to publish should be granted, **the welfare and best interests of the child or young person shall be the first and paramount consideration**: s 6 of the Act applies to s 438. This is one of the rare situations in which this section applies to youth justice proceedings.
6. If leave to publish is granted, the permission will usually be unconditional. On some occasions the leave to publish may be subject to specified conditions.
7. It is only in rare cases that leave to publish will be refused, such as in order to protect witnesses who may be later giving evidence in trials in the District/High Court or to ensure that a fair trial is not prejudiced.
8. It is recognised that it would be inappropriate and contrary to the New Zealand Bill of Rights Act 1990 for the Youth Court to adopt a practice of requiring to see and approve an intended report prior to publication. Such a power will only be exercised in special cases, such as suggested above. However, a Youth Court Judge maybe willing to assist in ensuring that a report is accurate and complies with s 438 of the Act; there is no objection to an intended report being submitted to a Youth Court Judge on that basis.

Continued over page

Media and Reporting Protocol in the Youth Court

9. If leave is given to publish, then there are certain matters under s 438(3) of the Act that are absolutely prohibited and which cannot ever be published. A Judge does not need to order suppression of these details as they are automatically suppressed. A Judge can never approve publication of these details. These details include:
   a. The name of the young person or the names of the parents or guardians or any person having care of the young person.
   b. The name of any school the young person is or was attending.
   c. Any other name or particulars likely to lead to the identification of the young person or of any school that the young person is or was attending.
   d. The name of the complainant / victim (this will not usually include a victim or complainant who is deceased).

10. It is quite wrong and misleading for any media report of any Youth Court proceedings (for which leave has been given to publish in accordance with this Protocol) to suggest that the Judge has prohibited publication of any of those four details listed in 9, above. This is because, as explained, it is Parliament's direction that these details are automatically and absolutely suppressed.

11. Section 38 of the Act prohibits publication of the proceedings of any Family Group Conference ("FGC"). However, a Youth Court Judge will ordinarily give leave to publish details discussed in the Youth Court relating to the "plan" formulated by the FGC. Attention is drawn to s 38(3) of the Act, which absolutely prohibits the publication of any particulars that could lead to the identification of a particular person who was the subject of, or a participant in, the FGC. Generally, the Youth Court will be vigilant to guard the "confidentiality/privacy" of the FGC, but equally will not want to suppress the details of what was agreed as part of the FGC, and discussed in Court, unless that might prejudice the treatment or rehabilitation of the young person or otherwise compromise the principles or provisions of the Act.

12. The *In-Court Media Guidelines*, effective from 1 January 2004, which relate to the filming, still photography or voice recording of Court proceedings, apply to the Youth Court, as the Youth Court is a division of the District Court. Where media coverage as contemplated by those Guidelines is sought, then those Guidelines must be complied with, subject of course to s 438 of the Act.

Andrew Becroft
Principal Youth Court Judge
15 December 2004
Amended as from 1 February 2014

Children, Young Persons, and Their Families Act 1989

438[Publication of reports of proceedings under Part 4]

(1) Subject to subsection (2) of this section, no person shall publish any report of proceedings under [Part 4] except with the leave of the Court that heard the proceedings.
(2) Nothing in subsection (1) of this section applies to the publication of—
   (a) Any report in any publication that—
      (i) Is of a bona fide professional or technical nature; and
      (ii) Is intended for circulation among members of the legal, medical, or teaching professions, officers of the Public Service, psychologists, counsellors carrying out duties under this Act[, counsellors and mediators carrying out duties under the Care of Children Act 2004] or the Family Proceedings Act 1980, or social ...workers:
   (b) Statistical information relating to proceedings under this Act:
   (c) The results of any bona fide research relating to proceedings under this Act.
(3) In no case shall it be lawful to publish, in any report of proceedings under [Part 4],—
   (a) The name of any child or young person or the parents or guardians or any person having the care of the child or young person; or
   (b) The name of any school that the child or young person is or was attending; or
   (c) Any other name or particulars likely to lead to the identification of the child or young person or of any school that the child or young person is or was attending:
   (d) ... the name of any complainant.
(4) Nothing in this section shall be construed to limit—
   (a) The provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings; or
   (b) The power of any Court to punish any contempt of Court.
(5) Every person who contravenes this section commits an offence against this Act and is liable on... conviction,—
   (a) In the case of an individual, to a fine not exceeding $2,000:
   (b) In the case of a body corporate, to a fine not exceeding $10,000.

Compare: 1974 No 72 s 24; 1980 No 94 s 169; 1982 No 135 s 6

Case Brief

UK Court upholds international standards: 17 year olds not to be treated as adults

In a recent case concerning a young person in police detention, the English High Court in A child v Secretary for State; Commissioner of Police made a firm statement against treating 17 year olds as adults within the criminal justice system.

While in police custody the young person was not allowed to call his mother to inform her of his arrest and detention because, as a 17 year old, under the Police Code of Practice he was considered to be an adult.

Lord Justice Moses describes a "leaden irony" to these proceedings: the 17 year old claimant legally required the assistance of his mother to commence proceedings to challenge a law which denied him the assistance of his mother.

***A Child v The Secretary of State for Home Department; The Commissioner of Police of the Metropolis* [2013] EWHC 982 (Admin).**

The full judgment text can be found here: http://www.bailii.org/ew/cases/EWHC/Admin/2013/982.html

Facts

Four weeks after his 17th birthday, X was arrested. He was suspected of aggravated robbery which took place on a bus. X, who had never been in trouble with the law, was cooperative with Police.

At the Police Station X requested that a "nominated person", his mother, be informed of his detention. However, this request was denied on the basis that X, as a 17 year old, was to be treated as an adult and therefore had no right to the assistance of an appropriate adult.

After being detained for 12 hours X was bailed. No charges were ever brought against him. Had the details of X's bus card been checked earlier, it would have been apparent that he could not have been at the scene of the offence.

Legal Framework

The Police applied Code C of the Code of Practice (the Code) under the Police and Evidence Act 1984. This permits the Police to treat a 17 year old detainee as an adult. As an adult, X had no unqualified right to let his mother know what had happened, nor did his mother have a right to speak to him.

The essential distinction between the treatment of a juvenile detainee under 17 and of an adult detainee is the unqualified right conferred on the juvenile to have a person responsible informed, and the support and help of an appropriate adult during the custody procedures. In the case of adults, the right to have someone informed may be delayed and there is no right to the assistance of an appropriate adult.

Had X been regarded as a juvenile, the Police would not have been entitled to delay before informing his mother or permitting her to speak to him. X would not have been able to refuse to see a solicitor or obtain free independent legal advice without seeing an appropriate adult and receiving the benefit of their advice.

Treatment of a 17 year old as a child

Most statutory provisions relating to criminal justice in the United Kingdom draw a line between those who have reached 18, who are treated as adults, and those under 18, who are treated differently from adults. However, the only place that a 17 year old is treated as an adult within the criminal justice system is in a police station.

"This makes 17 year olds an anomaly. Under all other United Kingdom Law and United Nations Conventions, a child or young person is considered to be up to 18 years old. However in a police station, a 17 year old is treated as an adult."

The underlying principle is that the criminal justice system should take account of a defendant's age, level of maturity, and intellectual and emotional capacity. It is only by doing so that the system can redress the imbalance which is the inevitable result where a child or young person is confronted by the power of criminal justice.

In this case, there was no doubt as to that imbalance and as to the intimidating effect of X's first experience of the criminal justice system when taken into custody for interrogation.

Case Brief

International law and the need for special protection for 17 year olds

Lord Justice Moses clearly expressed that the treatment of 17 year olds as adults when arrested and detained is inconsistent with the following international instruments:

United Nations Convention on the Rights of the Child 1989 (UNCROC)

- Article 1 defines a child as a person aged under 18, unless under domestic law, age of majority is attained earlier. The age of majority in the UK is 18.
- Article 3(1) safeguards and promotes the welfare of children when in contact with the law.
- Article 5 requires respect for the rights and responsibilities of parents to provide guidance and support.
- Article 40 affords children under 18 accused of breaking the law certain procedural rights emphasising the role of parents .

United Nations Committee on the Rights of the Child

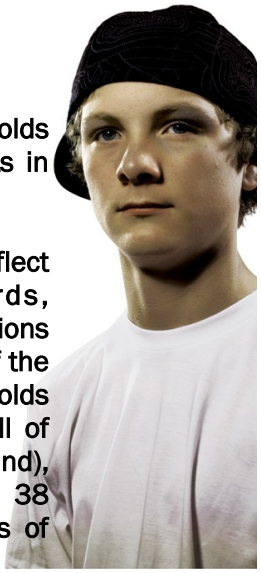
- Recommended in 2007 that all States change their laws to a non-discriminatory application of their Juvenile Justice Rules to all persons under 18 years.

The Beijing Rules

- Rule 15.2 entitles a parent to participate in legal proceedings.

Council of Europe Guidelines on "child friendly justice"

- Guideline 27 requires police to respect the rights of children and have regard to their vulnerability.
- Guidelines 28 and 29 give children the opportunity to contact their parents when detained at a police station.



In New Zealand 17 year olds are considered to be adults in the criminal justice system.

Most western countries reflect international standards, primarily the United Nations Convention on the Rights of the Child, by including 17 year olds in the youth jurisdiction: all of Australia (except Queensland), Canada, Great Britain and 38 states of the United States of America.

Concluding judgment

The Judge ultimately concluded that it was **inconsistent with the rights of the claimant and his mother** for the Secretary of State **to treat 17 year olds as adults** when in detention.

> *"To do so disregards the definition of a child in the UNCROC, in all the other international instruments, and the preponderance of legislation affecting children and justice which include within their scope those who are under 18."*

In this case, the Secretary of State was bound by the European Convention of Human Rights. The Judge found that if Article 8 of the Convention, which guarantees the right to establish, develop and maintain relationships and in particular the family relationship, was engaged then it must be interpreted in harmony with the general principles of international law including Article 3.1 of the UNCROC.

The Secretary of State's reasons for declining to amend the Code to treat 17 year olds as juveniles contained no reference to the UNCROC, which brings within the scope of its provisions those who are under 18.

> *"This is a binding obligation in international law, and the spirit, if not the precise language, has also been translated into our national law."*

Therefore, the Secretary of State's failure to amend Code C to treat 17 year olds as juvenile while in police detention was in breach of her obligation and was declared unlawful.

Alison Cleland from Action for Children and Youth Aotearoa calls for submissions: Youth Justice and the UN Convention on the Rights of the Child

The government of Aotearoa must report to the UN Committee on the Rights of the Child in 2015, on how far it has implemented children's and young people's rights under the UN Convention on the Rights of the Child.

Action for Children and Youth Aotearoa (ACYA) is the non-governmental organisation that provides a shadow report to the Committee. ACYA produces position papers in the key areas covered by the report. One of these is youth justice.

ACYA is calling on all those with knowledge of and interest in youth justice in Aotearoa to comment on the youth justice position paper. For a copy, send an email request to: golrizghahraman@acya.org.nz or alison.cleland@auckland.ac.nz

Bail and remand for young people in Australia: A national research project

Kelly Richards and Lauren Renshaw

Overview

The custodial remand of young people has recently emerged as a key issue for youth justice in Australia, due primarily to concerns about perceived increases in young people on custodial remand. A young person can be placed in custody on remand – that is refused bail – in several circumstances. After being arrested by police they could be remanded because no plea has been entered for criminal charges, while awaiting trial, during trial or awaiting sentence.

Although custodial remand plays an important role in Western criminal justice systems, minimising the unnecessary use of remand is important in youth justice, as Australia has obligations under several United Nations instruments to use detention of any kind only as a last resort for young people. Further, each of Australia's jurisdictions has legislation in place that provides that young people should only be detained as a last resort.

This new research identifies trends in the use of custodial remain and explores the factors that influence its use for young people nationally and in each of Australia's jurisdictions. While a number of research studies and reviews on this topic have recently been published, this report provides the first detailed national consideration of the issue.

Custodial remand of young people in Australia

This exploratory study used qualitative and quantitative methods to explore trends in the use of custodial remand for young people and potential 'drivers' of these trends.

A concerning key finding of this study is that while the rate of young people in detention who are on remand has increased, the rate of sentenced young people in detention has decreased more substantially over the same period of time.

Analysis of quantitative data did indicate, however, very high levels of young people on custodial remand in some jurisdictions (in particular, the Northern Territory), as well as differences between the length of time spent on remand by Indigenous and non-Indigenous young people, with Indigenous young people spending longer on remand than their non-Indigenous counterparts.

Drivers of custodial remand for young people

Given these findings, and Australia's international and legislative obligations, it is vital to consider the factors that influence rates of young people on custodial remand. Based on the existing literature, and qualitative interviews undertaken with a wide range of stakeholders in each jurisdiction, this study considers in detail the following 'drivers' of remand for young people:

- rates of offending by young people;
- increasingly complex needs of young alleged offenders;
- young people not applying for bail;
- lack of access to legal representation;
- judicial attitudes;
- punitive community attitudes;
- court delays;
- difficulties locating 'responsible adults' to support young people's bail applications;
- pre-court decisions;
- risk aversion;
- the influence of victims' rights;
- inappropriate and/or arbitrary use of bail conditions;
- breaches of bail;
- policing performance measures;
- policing practices;
- administrative errors;
- lack of access to services/programs; and
- the influence of therapeutic jurisprudence.

Special Report

Bail support services and programs for young people

Given that supporting young people on bail can contribute towards minimising the unnecessary custodial remand of young people, this study also provides an overview of bail support services and programs for young people in each jurisdiction. This report argues, however, that the available bail support for young people is limited and in some instances problematic, for the following reasons:

- in some jurisdictions, only small numbers of young people participate in bail support programs;
- there is a metropolitan bias and a lack of support for young people in regional, rural and remote areas;
- there is a lack of clarity about the purpose of bail support services and programs;
- there is a lack of engagement with young people with complex needs and/or offending histories, with some programs actively excluding these young people;
- there are differences among programs as to whether young people must plead guilty in order to participate and therefore whether it is appropriate to address 'offending' behaviour; and
- in some cases, bail support services and programs increase the monitoring and scrutiny of young people.

A key recommendation of this study is therefore that bail support services reconsider the aims and objectives of their service, as well as the international evidence about what works with young people on bail.

Key findings

The key findings from this review are:

- there is a need to look beyond legislative reform in minimising the custodial remand of young people;
- there is a lack of consensus on what bail can achieve for young people by bail decision makers;
- young people in out-of-home care in particular are highly vulnerable to being placed on custodial remand. They are frequently unable to obtain bail as they either 'fall through the cracks' of the youth justice system, or are placed on custodial remand as a result of coming under a high level of scrutiny in residential care facilities;
- young people with complex needs and welfare issues (ie those with mental health, alcohol and other drug abuse problems, and/or a history of experiencing child maltreatment or other violence) are most vulnerable to receiving custodial remand—they are often excluded from mainstream and community-based services. This, combined with legislation that aims to 'protect' a young person from the outside world and/or because required services are only available in custody, contributes to situations where young people may be remanded in detention 'for their own good';
- evidence-based early intervention and prevention of offending by young people plays an important role in minimising the rate of custodial remand of young people; and
- a process of 'mesh-thinning' occurs for some young people—particularly for vulnerable groups of young people such as those in out-of-home care such that once they are 'caught up' in the youth justice system, young people's opportunities to exit the system diminish.

Key recommendations

Numerous factors impact on the level of young people on custodial remand. If the unnecessary custodial remand of young people is to be minimised, a multifaceted approach is therefore required. This research, relevant for New Zealand also, highlights in particular the need for renewed debate about:

- the purpose(s) of bail;
- the importance of implementing evidence-based policies and programs that prevent the onset of offending by young people; and
- the implementation and evaluation of appropriately targeted bail support services for young people, particularly those with multiple, complex needs.

The full report can be accessed here: http://www.aic.gov.au/publications/current%20series/rpp/121-140/rpp125.html

Te Wero: The Challenge

On June 28 2013, Aotearoa New Zealand's first bilingual dictionary of Māori legal terms was launched

He Papakupu Reo Ture:
A Dictionary of Māori Legal Terms

He Papakupu Reo Ture is the culmination of a five year research initiative lead by the Legal Māori Project out of the Victoria University Faculty of Law. The kaupapa (policy) behind the project is, in part, the recognition that te reo Māori is a living legal language of Aotearoa New Zealand. It was evident that there is also a need to reduce miscommunication between Māori and English speakers in the justice system.

In the spirit of manaaki (support) for this kaupapa, a wero (challenge) is put forward to everyone in the Youth Justice sector: whatever your current knowledge of te reo Māori , why not have a go at incorporating a few Māori kupu (words) into your everyday communication within the Youth Justice sector.

Ma wai e ora ai te reo mo ake ake?
Ma tatau katoa
Through whose efforts will the language endure?
Through all of ours

The health and wellbeing of te reo Māori as a functional legal language depends on the efforts of many, not just a few. Because every journey starts with a single step, the table below contains some kupu to get you started.

These kupu have been sourced from:

- Māmari Stephens and Mary Boyce (eds) *He Papakupu Reo Ture: A Dictionary of Māori Legal Terms* (LexisNexis, Wellington, 2013).
- John C Moorfield *Te Aka Māori-English, English-Māori Dictionary* (3rd ed, Pearson, North Shore, 2011).
- P M Ryan *The Raupō Dictionary of Modern Māori* (2nd ed, Raupo, North Shore, 2008).

atawhai	foster, care for	**tangata hara**	offender
hara kirimina	criminal offence	**tauiwi**	people of foreign or Pākehā decent
hauora	health, wellbeing	**tautoko**	advocate, support, agree
hauora hinengaro	mental health	**Te Kaikōmihana mō ngā Tamariki**	Children's Commissioner
huarahi	procedure	**Te Kōti Taiohi/ Te Kōti Rangatahi**	Youth Court/ Rangatahi Court
kaitiaki	guardian, caregiver	**tiati**	Judge
kōrero	speak, talk, address	**tika**	just, lawful, fair
kura tuarua	high school	**tikanga**	traditional Māori laws
manaakitia	to look after, protect	**tino pai**	excellent, very good
oranga	welfare	**tohunga**	expert
peira	bail	**tuakiri**	identity
pārurenga	victim	**ture**	law
pirihimana	police, police officer	**Ture Āwhina i te Tamaiti, Rangatahi, me te Whānau 1989**	Children Young Persons and their Families Act 1989
pono	correct, accurate	**whakamana**	authorise, validate
Tāhū o te Ture	Ministry of Justice	**whakapāha**	apology, regret
taitamariki	teenager, young person	**whānau**	family
tamariki	child	**whare herehere**	prison

Latest Research /Articles

An update on some of the current research and publications from the Youth Justice sector

New Zealand

The Health and Wellbeing of Māori New Zealand Secondary School Students in 2012. Te Ara Whakapiki Taitamariki: Youth'12.
Author: Adolescent Health Research Group 2013
Source: The University of Auckland Faculty of Medical and Health Sciences
Abstract: This is New Zealand's largest and most comprehensive survey of the health and wellbeing of taitamariki Māori in high schools, including the survey of healthy development factors such as whānau/ family, community, education and social environments.

Offending behaviours of child and adolescent firesetters over a 10-year follow-up
Authors: Ian Lambie, Julia Ioane, Isabel Randell, and Fred Seymour
Source: (2013) 54(12) Journal of Child Psychology and Psychiatry.
Abstract: The findings of this study indicate that deliberate firesetting in young people is a risk factor for later offending.

The impact of incarceration on juvenile offenders
Authors: Ian Lambie, Isabel Randell
Source: (2013) 33 Clinical Psychology Review at 448 – 459.
Abstract: Recent research demonstrates that in order to achieve the best outcomes for youth offenders and the general public, community-based, empirically supported intervention practices must be adopted as an alternative to incarceration wherever possible.

Effective practice, Challenges and the Road Ahead for Alternative Education: Provider Perspectives (July – November 2012)
Authors: John Tuamoheloa, James Widgery
Source: Unpublished – contact sacha.norrie@justice.govt.nz to request a copy
Abstract: A research project that examines effective practices within Alternative Education as a means of understanding what can be done to improve the system for providers and students.

Regional variation in sentencing: the incarceration of aggravated drink drivers in the New Zealand District Courts
Authors: Wayne Goodall and Russil Durrant
Source: (2013) 46(3) Australian & New Zealand Journal of Criminology.
Abstract: This study uses administrative data to examine the degree to which similar offenders convicted of aggravated drink driving receive similar sentences for similar offending in the different circuits of the New Zealand District Courts.

United Kingdom

How and why people stop offending: discovering desistance
Authors: Fergus McNeill, Stephen Farrall, Chaire Lightowler, Shadd Maruna
Source: IRISS Insights (no. 15) April 2012: www.iriss.org.uk
Abstract: A brief introduction to the research evidence about the process of desistance from crime. This paper is part of a wider project, Discovering Desistance, which aims to share and extend knowledge about desistance and how criminal justice supervision can better support individual efforts to change.

The right of children deprived of their liberty to make complaints
Authors: Penal Reform International and the Interagency Panel on Juvenile Justice
Source: www.penalreform.org
Abstract: An overview of the right for a child who has deprived of their liberty to complain about their conditions, treatment and care.

Ten-Point Plan for Fair and Effective Criminal Justice for Children
Authors: Penal Reform International and the Interagency Panel on Juvenile Justice
Source: www.penalreform.org
Abstract: A Ten-Point Plan focusing on ways that law and policy makers and criminal justice practitioners can respond effectively and positively to children in conflict with the law, by focussing on prevention, diversion, rehabilitation and alternatives to imprisonment.

Europe

Adolescent delinquency and diversity in behaviour settings
Authors: Wim Bernasco, Gerben Bruinsma, Lieven Pauwels and Frank Weerman
Source: (2013) 46(3) Australian & New Zealand Journal of Criminology.
Abstract: This study aimed to test whether adolescents' delinquency is related to the geographic, functional and social *diversity* of the behavior settings that they are exposed to.

Latest Research /Articles

United States

Better Solutions for Youth with Mental Health Needs in the Juvenile Justice System
Authors: National Mental Health and Juvenile Justice Collaborative for Change
Source: http://www.modelsforchange.net/publications/519
Abstract: A new white paper urges the use of community -based treatment interventions as the more appropriate and effective response to the needs of youth offenders with mental health needs.

The Decisional Capacity of the Adolescent: An Introduction to a Critical Reconsideration of the Doctrine of the Mature Minor
Author: Brian C. Partridge
Source: (2013) 38 Journal of Medicine and Philosophy.
Abstract: This issue of *The Journal of Medicine and Philosophy* brings together psychological and neuropsychological research with philosophical-bioethical reflections on what should count as decisional capacity or decisional agency for adolescents.

Does Recent Research on Adolescent Brain Development Inform the Mature Minor Doctrine?
Author: Laurence Steinberg
Source: (2013) 38 Journal of Medicine and Philosophy.
Abstract: US Supreme Court rulings concerning sanctions for young offenders have drawn on the science of brain development and concluded that adolescents are inherently less mature than adults in ways that render them less culpable.

Criminalizing normal adolescent behaviour in communities of color: the role of prosecutors in juvenile justice reform
Author: Kristin Henning
Source: (2013) 98(2) Cornell Law Review at 383 – 462.
Abstract: This paper contends that contemporary narratives portraying black and Hispanic youth as dangerous and irredeemable lead prosecutors to disproportionately reject youth as a mitigating factor for their behaviour.

Using Adolescent Brain Research to Inform Policy: A Guide for Juvenile Justice Advocates (2012).
Author: National Juvenile Justice Network
Source: www.njjn.org
Abstract: Factsheet that provides an overview of the dramatic impact that changes in brain development have on adolescent behaviour.

The Efficacy of the Risk-Need-Responsivity Framework in Guiding Treatment for Female Young Offenders
Author: Nina Vitopoulos
Source: (2011) Masters Thesis, Department of Human Development and Applied Psychology, University of Toronto.
Abstract: Research supports rehabilitative youth programming that addresses risk, criminogenic needs and responsivity factors with the goal of reducing reoffending. However, the Risk-Need-Responsivity (RNR) framework takes a 'gender neutral' approach that overlooks the unique needs of females.

Australia

Criminal Responsibility of Children in Australia
Authors: Magistrate Paul Mulroney and Tijana Jovanovic
Source: Unpublished – contact sacha.norrie@justice.govt.nz to request a copy
Abstract: Under Australian law children's criminal responsibility may be limited on the basis of their age or mental or intellectual capacity, regardless of the offence with which the child has been charged.

Change and stability in ethnic diversity across urban communities: explicating the influence of social cohesion on perceptions of disorder
Authors: Renee Zahnow, Rebecca Wickes, Michele Haynes and Lorraine Mazerolle
Source: (2013) 46(3) Australian and New Zealand Journal of Criminology.
Abstract: A growing body of research shows that perceived community disorder is not solely driven by crime, but is influenced by the community's social cohesion and ethnic composition. This study indicates that high proportions of Indigenous residents and high levels of reported crime averaged across time are associated with greater perceived disorder.

News Worth Celebrating

Art initiative reduces tagging in Hamilton District Court

Graffiti and tagging have been an ongoing issue at the Hamilton District Court, especially in the men's bathrooms at the Youth Court.

Local artist, Jeremy Shirley, offers a unique approach to the problem of tagging. Part of an initiative to reduce tagging, over the past few years he has painted artworks on several bus shelters, public toilets, pedestrian underpasses and the east side of Cobham Bridge.

"After talking through some ideas with us, Jeremy came up with a concept he thought the youth would respond to" says Court Service Manager Aaron Greensil.

Artist Jeremy Shirley (image source stuff.co.nz)
Article source: Just Us, December 2013, p 4

The bathroom provided a challenge for Jeremy as the area was small, enclosed and outdated. But four weeks since the modern artwork was painted in the Youth Court bathroom there has been no graffiti.

"We overheard a youth discussing with his mother how cool the artwork was so it's obviously making an impression on everyone who sees it. We think this is a great initiative and something that could also work in other courts with similar graffiti issues".

Whānau Pack releases 3rd edition due to popular demand

The very popular Tai Tokerau/Northland Whānau Pack parenting resource has now been updated in a 3rd edition and has been released by the Northland District Health Board

The Whānau Pack offers simple strategies to improve communication and help strengthen relationships between parents and teens. This edition updates information around the supply of alcohol to minors as reflected by the new law changes that came into effect on 18 December 2013.

In response to requests from throughout New Zealand, 25,000 copies of this unique Tai Tokerau resource have been printed and are available for distribution to organisations working with parents, teenagers and whānau.

Project leader Dave Hookway says "We've been overwhelmed with requests for copies of the Whānau Pack and so were able to offer other organisations throughout the country the opportunity to obtain their own copies through the benefit of the larger print run. We are also able to supply free copies to health and community organisations based in Tai Tokerau."

An online copy of the Whānau Pack can be sourced at: http://www.northlanddhb.org.nz/Portals/0/CommunicationsPublications/

Rangatahi Court to be launched in Christchurch

On 22 March, the South Island's first Rangatahi Court will be launched at Ngā Hau e Whā Marae in Christchurch. The proposed marae-based Youth Court has been met with much enthusiasm by Ngāi Tūāhuriri (mana whenua in the rohe/region), Ngāi Tahu, members of the judiciary and community.

There are currently ten Rangatahi Courts in Aotearoa New Zealand. A Rangatahi Court is a Youth Court that holds part of the Youth Court process on a marae and Māori language and protocols are incorporated as into Court processes.

Young Māori are over-represented in the Youth Justice system in Christchurch. In 2006, Māori made up approximately 22% of Christchurch's youth population. In 2012, Māori made up approximately 37% of Christchurch's Youth Court population (115 out of a total 312 young people). The Christchurch Rangatahi Court will explore ways to work alongside the Christchurch Youth Drug Court and will incorporate tikanga based intervention programmes to deal with young offenders within the context of their whānau, hapū and iwi.