Issue 29

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www.justice.govt.nz/youth

"Court in the Act"

A newsletter co-ordinated by the Principal Youth Court Judge for the Youth Justice Community

In this issue...

"It is rare to see a young person come into the court with his or her school uniform on and followed by parents or grandparents. More often the young person will be alone or perhaps with a gang colour around his neck."

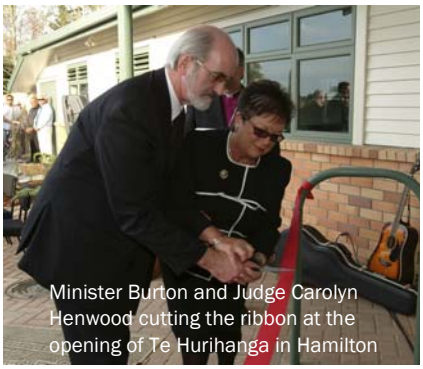
Judge Walker

Te Hurihanga — a 'turning point' for youth and youth justice

The recently opened Te Hurihanga youth residential programme "represents an exciting new sentencing option", and "could be a model for the rest of the country".
This was the view of Principal Youth Court Judge Andrew Becroft, speaking at the opening of the Te Hurihanga youth justice home in Hamilton last month.

Judge Becroft paid tribute to the vision of Youth Court Judge Carolyn Henwood, who steered the development of the project through its early stages. The Judge also mentioned Warehouse founder Stephen Tindall, who provided initial seeding finance for the project, until it was taken up by the Ministry of Justice in 2002.

In his introductory speech, Judge Becroft highlighted what he called a "wide-spread, long-standing concern" about sentencing options in the Youth Court. He also recognised that research has shown that "segregating violent, impulsive conduct disordered boys, and aggregating them together... is counter-productive".



Minister Burton and Judge Carolyn Henwood cutting the ribbon at the opening of Te Hurihanga in Hamilton

In her opening speech, Judge Carolyn Henwood said the opening of Te Hurihanga was a "momentous occasion", but that the project was one that she never, in her wildest dreams, envisaged pursuing.

For more on the opening of Te Hurihanga, turn to page 2.

Alcohol and Young Offenders

From an address by His Honour Judge John Walker to the ALAC Conference Christchurch 4 May 2007

In the course of a busy day I will hear 70, 80, 100 stories about the lives of offenders, the distress of victims and the great human cost of crime.

In 80% of cases the offender will have an alcohol or other drug dependency or abuse issue connected with the offending. More often it is the violent offender. Judges who sit in specialised Family Violence lists will tell you that it is rare for alcohol not to be involved in cases before them. On a conservative estimate, that can amount to 3200 alcohol-related appearances in the District Courts in one week.

Similarly in the Youth Courts, the percentage of alcohol-related offences is the same. These young people are often in households where adults have a dependency. I have sat in a Youth Court and heard where parents have supplied cannabis to the young offender.

Binge drinking and drinking beer at the rugby club are social norms, making it difficult to tell a young offender in the Youth Court that excessive drinking is a problem.

The underlying causes of offending must be confronted if crime is to be reduced. We need to face this reality. No part of the community can deal with the problem on its own. What is required is a multi-disciplinary, interagency, whole of community attack and nothing less.

In sentencing the Courts endeavour to deal with an underlying cause of offending.

There is a need for an interface between the Court and those agencies that deliver the intervention. The intervention will be multi-faceted and may include alcohol and drug issues, literacy, non-violence programmes and mental health intervention to name a few.

The two barriers to the obtaining of timely advice are the expectation that the offender will be able to turn up for numerous appointments on time, and that the various agencies rarely talk to each other.

Last year I was the fortunate recipient of the ALAC Gary Harrison Fellowship, which has enabled me to study the interface between health agencies and the Justice sector in England and Scotland.

In Glasgow and Edinburgh the services used by the Sheriff's

Continued on page 10

Te Hurihanga

by Emma White-Robinson

On 27 April 2007, the Te Hurihanga residence was officially opened by the Hon Mark Burton, Minister of Justice. The grounds were blessed at a traditional dawn ceremony, which was overseen by local kaumatua, earlier in the week on 23 April 2007. The programme will be ready for the first group of participants from mid May 2007.

L - R Andrew Bridgman, Judge Clark, Judge Connell, Judge McAloon, Judge Becroft, Minister Mark Burton

Te Hurihanga is an intensive, therapeutic, nine – eighteen month residential and community-based programme for recidivist young offenders, based at Te Ara Hou Villiage, Hillcrest, Hamilton. A programme of this type was first proposed to the Government by Youth Court Judge Henwood, back in the late 1990s. It was picked up by the Ministry of Justice and developed in response to the Government's *Youth Offending Strategy*, which identified a gap in programme provision for recidivist young offenders. The programme and will be piloted for three years, and formally evaluated.

Youth Horizons, a national provider with extensive experience working with young people with severe behavioural problems, has been developing the programme over the past two years. Youth Horizons have formed a partnership with Maatua Whangai, a Hamilton based Maori provider, to develop and deliver the programme

Te Hurihanga is for:

- Males;
- Aged 14-17 years;
- Who live within 60 minutes of the residence;
- Who have appeared before the Court.

It is for young people with the greatest likelihood of reoffending who require the most intensive level of intervention. Young people will be selected for Te Hurihanga based on their need, not on the number or nature of the offences they have committed. Those who are convicted of sexual offences, or the most serious offences such as murder or manslaughter, will not be accepted for Te Hurihanga.

Young people on the Te Hurihanga programme will spend three to six months living in the residence, then three to six months gradually transitioning from the residence back to their family home, and then three to six months living in the community under close supervision and monitoring. The three-phased programme approach is illustrated below:

During the Residence Phase, the young people will live at the residence full-time and will be under constant supervision from staff members. The young people will not leave the residence during this phase unless they are accompanied by a staff member. During the day, the young people will participate in educational and therapeutic activities, including group and individual therapy, and recreation activities.

During the Transition Phase, the young people will not be required to be supervised 24 hours a day, 7 days a week. However the level of supervision and support will remain high initially with a gradual reduction over the phase. It is expected that initially the young people will continue to live at the residence, and they will begin community-based activities; for example, attending a school close to their home, or beginning work experience. There are two beds at the residence which will be reserved for young people on the Transition phase of the programme. After the young person has settled into community-based activities, they will move from the residence back into their own home. It is expected that this will occur gradually; for example, with weekend visits home for the first few weeks. Once the young person is living at his home full time, he will travel directly from his home to school and work experience.

During the Community Phase, the young people will be living at home full-time and the focus of the programme staff will be to provide monitoring and support for the young person and their family through Multi-Systemic Therapy.

For further information about Te Hurihanga please contact Emma from the Youth Justice Team on (04) 49 49 726 or email emma.white-robinson@justice.govt.nz.

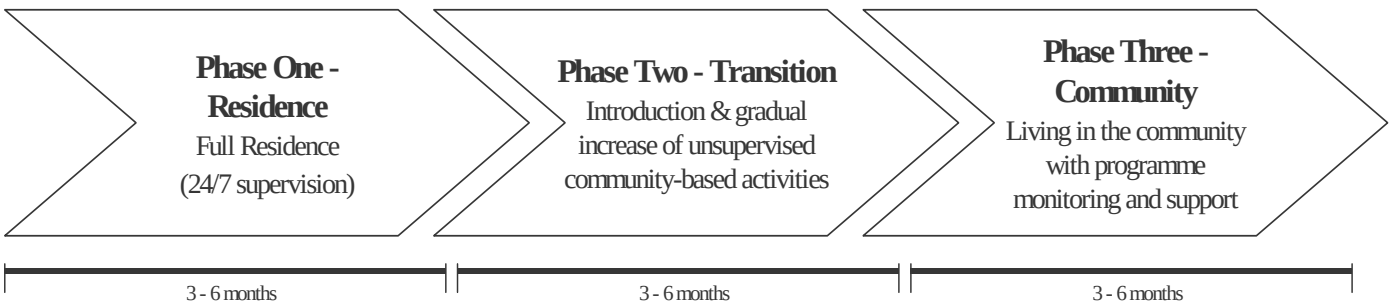
Opening Speech by Judge Henwood

"Today is a very momentous occasion because we are opening this youth justice house Te Hurihanga.

It is momentous because what happens in this house will have a very big impact on the lives of the young men who come here.

Never in my wildest dreams did I ever envisage myself pursuing such project. I want to see all young people flourishing in the homes of their families surrounded by sensible loving adults, pursuing their dreams and preparing to take their place in the world as reliable, honest adults.

Continued on page 8



An Apology from a Young Offender

Hi my name is B T.

I was named after my father.

I love to play Basketball, Rugby Volley Ball and I'm pretty good at cross country.

I even came first every year till 5th form. That's when I pulled out of school but when I did go to school my favourite subject was P.E and Maths.

From my education I wanted to be a Real Estate agent.

In the next 5 years I'll probably be in a construction job.

I live in Porirua and have two sisters and my mother.

I didn't grow up with a Father but who needs 'em anyway. (emphasis added)

Well to the point. I'm really sorry for what me and my friends did to you and your friends.

The part I play in the incident was the one who took the X-box game.

I'm really sorry. I had no right to do what I did.

What I done shamed me and my family – My family is embarrassed for what I done and also Apologises.

Letter to Editor

Your Honour,

My name is Joseph Tohilima, Youth Justice Coordinator for Child Youth and Family Services, Grey Lynn Auckland. I have just finished reading the March Issue of ""Court in the Act"" an item called Intention to Charge FGC's. The issue of whether a Youth Advocate should attend a s247(b)or not has certainly been part of debates that has gone on during the consultation process with the Police. It was certainly brought up at one of our training forums by Youth Aid Sergeant where she objected to my asking at the beginning of the conference whether the Police have any intention of laying any matter before the Court as it is for the Police to decide whether to lay matters or not.

My view and how I have dealt with that is:

At some of the conference that I have facilitated, I have had reason to ask the Police at the beginning of the conference whether they have any intention of laying the matter in Court due to the seriousness of the charge and if they do than I would like to adjourn the conference so that they can lay the matter in Court as the conference has been held. This would give the YP an opportunity to have a Youth Advocate to be appointed to represent the Young Person at the re convene Conference. Some Youth Aid Officers have disagreed with this process believing that it is their right to lay matters in Court as they please.

My view is that if matters are to be laid in Court from a s247 (b) referral than the opportunity should be given to the young person and their families to have legal representation during the FGC.

There have been instances in the past that under an FGC held under s247(b)the matters were laid in court and a plan accepted without giving the young person the right to have a Youth Advocate present at the conference. In having the plan accepted and sanctioned by the Court I believe that the YP rights to have representation has been violated. Does this violate the rights of the YP under the Geneva Convention?

Joseph Tohilima

Youth Justice Coordinator

Managing your Youth Court cases in a client friendly way

I have been a Youth Advocate since 2001 but Counsel for Child (or shall I say Lawyer for Child) since the 1980's.

How times have changed. Fortunately for me, or perhaps my clients, I am also the mother of four text savvy children. I in turn have had to develop these skills as well.

I have a large number of contacts in my cellphone memory a lot of whom are my Youth Court (and some Lawyer for Child) clients.

Increasingly a lot of families who have children appearing in the Youth Court do not have access to a landline phone but do have cellphones. A large proportion of my Youth Court clients have cellphones and I find it easy to contact them by text. There is seldom any point ringing their phones. They don't answer nor do they retrieve their messages. The famous $10.00 texts (per month, including boost, if you know what that is) do not extend to making calls.

So if you have trouble getting in contact with your Youth Court clients (or their families) try a text. You can text about Court hearings, community work, apologies or any aspect of their plan that needs your action.

Bernadette Farnan

Youth Advocate

Dunedin

Section 283(o) CYPFA

"It seems that a young person who is proceeded against in the District Court under s283(o) CYPF Act or by electing trial by jury may get a

better outcome in some cases as s18 of the Sentencing Act precludes

imprisonment unless purely indictable offending. It seems that the s283 menu eg. supervision and residence may only be imposed in Youth Court (see para 75 of *X v Police* (2005) 22 CRNZ 58)."

Steven Zindel
ZINDELS
Barristers & Solicitors
NELSON

Thanks Steven

Yes, you are right - which is why for non-purely indictable cases, they are usually retained in the Youth Court, as at least in the Youth Court a young person can be sentenced to supervision with residence whereas in the DC, as you correctly point out there is NO custodial option available.

Editors

From Punishment to Problem Solving in the UK

"It seems that in some areas we are ahead of the UK (older age of accountability, restorative justice), but we may be in the process of falling behind

(shift from punitive to developmental).

The idea of longer sentences to residence would be particularly effective if young people were sentenced to programmes rather than facilities and there were strong human attachments as part of the programmes. The recent (last ten years) work on brain development that shows the brain changes in youth being a "work in progress" and to some extent responsive to the environment makes for some exciting possibilities if we were brave enough to do the obvious as research projects. Unfortunately, we shy away from rigorous evaluation research in favour of politically generated decisions."

Commentary *from* ***John Newman****, Clinical Leader, Centre for* ***Youth Health Kidz First, CMDHB***
JNewman@middlemore.co.nz

Towards a Hip Hop Theory of Punishment

Summarised from an article by Paul Butler in 56 Stan.L.Review 983

Butler's thesis is that every society including the hip-hop nation has a need to punish, but that hip-hop can improve the ideology and administration of justice in the United States.

The core principles of the hip-hop nation are that people who harm others should suffer retribution, but criminals are human beings who deserve respect and love and that communities can be destroyed by both crime and punishment. The hip-hop community does not claim that wrongdoers should not be punished, but that "respect" for criminals as human beings should be included and that they are not just seen as statistics.

As a large proportion of blacks in prison are there for non-violent drug crimes the concept needs to be taken seriously. The impact on then community is also critical. When a criminal justice system is constructed so that a large percentage of young black men are locked away, have the harms of the system outweighed the societal benefits of the system? In hip-hop culture the perception that minorities are selectively prosecuted is in some cases accurate. For example, according to U.S government statistics, blacks are about 15% of monthly drug users any yet they account for 33% of drug possession arrests and more than 70% of people imprisoned for drug use.

Hip-hop acknowledges the poor consequences that drugs have on individuals and communities, but this acknowledgement does not necessarily lead to a belief that drug offenders should be punished. Because of environmental factors that contribute to drug use, the perceived complicity of the government and the legality of tobacco and alchol and the selective enforcement of drug laws in minority communities, the hip-hop culture seems largely against the punishment of drug offenders. The government bears the burden of regulating drugs in a manner free of racial bias.

Representation is an important theme in hip-hop culture which means to "represent' oneself in a way that makes the community proud, and implies responsibility. In sentencing law-breakers, representation of the hip-hop community would enhance the expressive value of punishment, giving it a legitimacy it now lacks.

Hip-hop depicts imprisonment as being driven by profit rather than public safety and claims that it is expedient to warehouse people whose problems are difficult and expensive to treat. The hip-hop perspective is that it is immoral to punish people as a means of benefiting society.

Continued on page 7

HEALTH UPDATE:

The Ministry of Education Recognises Dyslexia

Sources: New Zealand Dyslexia Foundation and The British Dyslexia Association

We reported in Court in the Act (issue 24), that the Ministry of Education did not recognise dyslexia as a disorder here in New Zealand, even though it is acknowledged as a specific disorder in both the US and the UK.

It is estimated that one in ten of us have some form of dyslexia; a difficulty with reading and writing caused by a brain that processes information differently.

The Ministry of Education is now willing to embrace the term dyslexia, following the completion of its analysis of international research and examination of various international definitions and science around dyslexia.

The Ministry will now work on initiatives with the Dyslexia Foundation of New Zealand and other stakeholders to define how this will result in changes in the delivery of learning in the classroom.

"As a ministry, we are committed to ensuring that the needs of all students are met. We want to work in collaboration with schools as well as those with specific relevant expertise to strengthen support for students with serious reading and writing difficulties. This includes working with organisations such as the Dyslexia Foundation," Ministry of Education Deputy Secretary, Schooling, Anne Jackson said.

The Chairman of the Dyslexia Foundation, Guy Pope-Mayell said it is now critical that teachers receive training in the recognition of dyslexia and provide learning strategies appropriate for dyslexic children.

Studies in the UK and elsewhere have reported a higher incidence (about three to four times) of dyslexia among offenders than in the general population.

This suggests that if we address dyslexia, we may enjoy unexpected consequences like stopping young people who have trouble reading from going off the rails.

Voluntary Fingerprinting of Children and Young Persons

by Robert Ludbrook

An important aspect of the youth justice provisions of the Children, Young Persons and Their Families Act 1989 is the restriction placed on police powers of arrest of young persons. They can only be arrested:

- if a warrant for arrest has been issued; or
- for a purely indictable offence, where the police believe an arrest will be in the public interest; or
- for other offences, where police have a reasonable belief that arrest is necessary to ensure the young person's appearance in Court or to prevent him/her from committing further offences or from destroying or interfering with the evidence. Under this ground the police must also have a reasonable belief that proceeding by way of a summons would not achieve these purposes.

Because of these restrictions on arrest, the police have limited rights to take fingerprints from an alleged young offender. Section 57(1) Police Act 1958 empowers the police to take fingerprints from a person only if that person is in 'lawful custody' in a police station. A child or young person who attends voluntarily at a police station cannot be said to be in 'lawful custody'.

Unless a young person is arrested, the only way in which the police can obtain fingerprints is by requesting the young person to give the prints voluntarily. Until this year, police practice on taking fingerprints from children or young persons by consent was regulated by a police Practice Note *Fingerprinting of Child and Youth Offenders* issued in February 2001. This Practice Note attracted some criticism from Whiteria Community Law Centre and some youth advocates. The main criticisms were:

-the 2001 Practice Note states that taking young persons fingerprints by consent provides police with a valuable tool and that the police have a responsibility to prevent youth offending. It indicates that the taking of fingerprints of children or young persons with informed consent will be likely to deter them from further offending. It fails to emphasise that they were being asked to surrender fundamental human rights to privacy and non- self-incrimination;

- the Practice Note acknowledged that fingerprints cannot be taken from a young person without his/her informed consent and required that the consent of a parent, guardian or carer must be obtained on Form POL545. However, the Form is defective because it is not clear that the signature of the child/young person or the parent is a consent to fingerprinting;
- the Practice Note indicated that consent to the voluntary giving of fingerprints could only be withdrawn *before* the fingerprints had been taken. There was no indication that children who have voluntarily provided fingerprints could require that they be destroyed;
- the Practice Note applies to all children and young persons even though children cannot be charged with any offence other than murder or manslaughter or minor traffic offences;
- the Practice Note indicated that a police officer could take fingerprints from a child by consent without the need for approval of the Youth Aid section of the police;
- the Practice Note refers to the need to obtain fingerprints from 'high risk' children and young persons without defining what is meant by the term 'high risk'. It is not explicit that only children and young persons who have committed offences should be asked to voluntarily provide fingerprints;
- The view taken by the police at the time was that fingerprints voluntarily provided could be retained indefinitely in the national database and that they did not have to be returned or destroyed even if the consent to their retention was later withdrawn. This view was incorrect as Privacy Principle 3, Privacy Act 1993 requires that personal information held by an agency must be corrected upon request and it follows that information voluntarily given must be removed from the agency files on request.

In 2003 Mary More of Whiteria Community Law Centre raised questions about the Practice Note after the Law Centre had been approached on behalf of a 12 year old who had been fingerprinted with his father's consent after taking money from his sister's money box while on an access visit to his father. The Law Centre was advised that the police were entitled at law to take the fingerprints and to keep them indefinitely. After further pressure was exerted on the police, they agreed in early 2005 to review the 2001 Practice Note and gave assurances that a new Practice Note would be issued within a few months. Only after much prompting and several Official Information Act requests was a new Practice Note *Fingerprinting of Children and Young Persons* released in January 2007. The Practice Note is published in the police journal TEN ONE 294 2 March 2007. A copy of the Practice Note and instruction form is set out below.

The 2007 Practice Note is a definite improvement. It makes it clear that children under the age of ten years should only be fingerprinted for the purpose of eliminating them from a police inquiry and that children aged ten to thirteen years cannot be fingerprinted without written approval of the Youth Aid section of the police. It stresses that children and young people and their parents should be advised that they are entitled to contact a lawyer before giving consent, and that persons giving consent must be advised that their prints can be destroyed if they write to the Police National Fingerprint Office. It also indicates that voluntary fingerprints should not be sought where a child or young person shows no high-level risk factors and has no prior offending history. It implies (but does not state explicitly) that fingerprints should only be requested from children and young persons who are suspected of having committed offences.

The 2007 Practice Note is open to criticism in several respects:

Continued on page 10

Child Rights and Culture in the Pacific

Three papers were presented at a Seminar on 30 October 2006 in collaboration with UNICEF Pacific relating to Child Rights and Cul-

The first paper was by Dr. Vanessa Griffen, "**Gender relations in Pacific culture and their impact on the growth and development of children**".

This paper explores the gender relations of children in Pacific cultures and the impact on their growth. It is clear that children are not doing well in institutions such as the family, based on gender relations. While both boys and girls suffer gender violence, boys are socialised into asserting dominance over woman and girls as their "natural right". Subordination through violence and sexual abuse affects the life of women and children in Pacific families. This problem affects the reality for almost half of Pacific woman and children and gender inequality is evident in all Pacific countries.

Women have unequal positions in all sectors of Pacific society. Dr Griffen questions whether work for Pacific children's rights and growth and development will continue to ignore gender as a prime influence in children's lives?

She stated that social relations in key institutions in the Pacific need review, from an equality and rights perspective. The position of girls in relation to violence and abuse is 'horrendous". Dr Griffen asks that UNICEF and other agencies to focus on areas such as child sexual abuse and the commercial exploitation of children. What is needed is that gender relations are incorporated into children's rights work.

Dr Elise Huffer presented a paper entitled, "**Children's Rights and Culture in the Pacific**"

This paper examines the relationship between cultural rights and children in the Pacific. Dr Huffer argues that cultural rights of children, as contained in the Convention on the rights of the Child, CRC are not being met by Pacific countries. She continues that cultural rights are the least well articulated set of rights within the United Nations system.

Of specific concern is that the education sector, which has done very little to ensure children develop respect for their cultural identities, language and values. Many children are not taught in their mother tongue and access to material is limited in indigenous languages. While children are not officially denied the right to speak in their own language, speaking the mother tongue in schools is often discouraged.

Dr Huffer argues that the enhancement of cultural rights for children in the Pacific should be a goal of Pacific people and government. This will be done by raising awareness of cultural rights, supporting changes in educational policy, assisting organisations involved in implementing bilingual materials, assisting the local media in targeting cultural content at children and producing culturally valuable documentaries and films.

Dr. Chris McMurray presented a paper entitled, "**Young People's Participation in the Pacific – Facilitating Factors and Lessons Learned"**

This paper explores the problems faced by young people in the Pacific with regards to par-

Continued on page 7

Identifying effective programmes for Youth at Risk of Serious Offending

Research Paper by Dr Gabrielle Maxwell

A report to the Henwood Trust in 2005 provided an overview of selected international and New Zealand research based on research reviews contained in documents prepared by Kaye McClaren and Gabrielle Maxwell.

1. Programmes for child victims of family violence

Six programmes were evaluated over 1997-1999.

Three provided individual counselling and three provided a group programme involving activities, discussions and games.

Key features associated with success were:

Design

The programmes were designed to create a safe and responsive environment. Delivery catered for various needs, included 'fun" activities and provided options regarding group or individual counselling.

Both children and parents were involved in the planning.

Parents and children both reported they had learnt something, trusted staff and had enjoyed the programme. Parents of Mäori children reported that they had enjoyed the programme.

Staff

Successful programmes employed staff who were skilled and experienced in dealing with children. Facilitators were of different ethnicities and staff were supported and supervised.

Agency

The successful programmes were secure, adequately funded with quality record-keeping and good interagency communication.

Outcome

Children reported feeling safe and had developed a safety plan for dealing with future family violence.

2. Child and Young Person's Support Worker Demonstration Projects

This programme took a case management, wraparound approach. All of the people accepted into the programme had a history of involvement in anti-social behaviour, low self-esteem, a lack of social ties and poor school attitudes.

Key features associated with success were:

Design

The design was based on individual needs and long term intervention was provided when appropriate.

Children and their parents were involved in the planning and actively.

The programmes provided therapy if needed, involved learning new skills, recreation and leisure activities.

Continued on page 7

Identifying effective programmes for Youth at Risk of Serious Offending
Continued

Caseworkers

Caseworkers visited regularly and formed trusting relationships with children and parents.

Feedback was provided to parents and to referring agencies. The caseworkers reviewed plans regularly and liaised with the school.

Inter-agency relationships

Regular meetings with relevant agencies in order to keep them informed of changes and consultation with other agencies about proposed changes in policy and plans for specific clients.

Key outcomes were improved behaviour at school and at home, school attendance, decreased involvement in anti-social and criminal activity and more effective and efficient use of services.

3. Programmes that were part of the 1997 Crime Prevention Package.

The programmes aimed to improve the health and education outcomes for youth "at-risk" of offending and to improve communities ability to these people and reduce recidivism.

Key features of successful programmes were the extent to which the programmes provided or generated:

Support to the young person

Assistance in the development of relationships with others

A rewarding experience

For young people and families, involvement in the selection of the goals and methods

A sense of trust in the providers

Acquisition of skill by the young people

An intention to change constructively

A culturally appropriate method of delivery

A holistic approach to the range of needs for the young person.

Not all programmes reliably collected this data. Data was collected for Police programmes (below).

4. Police Youth at Risk of Offending Programmes – 1997-2000

Five programmes were provided in 'hot spots', and another nine were set up by police..

Most of the programmes (11) were categorised as adopting a community-based case management approach to each young person. Two programmes were built around a mentoring approach and another used a school-based model. The final programme was a wrap-around "wellness" programme that was already operating in the area.

Effectiveness in reducing needs was related to the amount of need identified initially. The extent of the reduction for those with greatest need is impressive. The results from the most effective programmes indicate that even young people in a lot of difficulty were capable of benefiting substantially from involvement in the programmes.

The most successful overall were the community-based programmes, followed by the mentoring programme. The school-based programme was not as effective, but this was due in part to the fact that many young people in this programme were initially low in need.

Another factor predicting change was the amount of contact the young person had with the programme.

A critical factor in effective service provision was the amount of support provided from national office.

Full report available from Henwood Trust, PO Box 10852, Wellington, Phone 473 9252.

Child Rights and Culture in the Pacific
Continued

ticipation in decision-making. The hierarchical nature of Pacific society and the emphasis on authoritarian style parenting means that young people in Pacific countries are excluded from decision making and in voicing their opinions. Many young people engage in high-risk activities due to their marginalisation in society, which in turn is a significant cost to the community. Dr McMurray argues that greater participation by young people in Pacific society is essential development strategy and part of the solution to economic and social problems.

The process for change in this respect is not simple and a multi-faceted, coordinated approach would be required to enhance participation in a broad range of community activities. Essentially a change in attitude to youth by the community is required. In addition effective budgeting processes must be implemented, advocacy skills amongst the young must be improved and a commitment to ensure that youth recommendations are incorporated into policy must be ensured.

Dr McMurray also argued that youth participation is only sustainable if parents and the education system enable these changes to come about.

See www.unicef.org.

Towards a Hip Hop Theory of Punishment
Continued from page 4

Hip-hop artists often express their distrust of discretion exercised by people outside their community often conveyed in critiques of the police. One response might be that punishment be imposed by people within the community. Thus, a defendant would have the right to jurors from his community and those jurors would have sentencing authority.

Hip-hop artists and Civil Rights Activists

"For the Hip-hop nation, one of the enduring lessons of civil rights movement is that the criminal law was used as an instrument of racial subordination."

Both hip-hop artists and traditional civil rights activists vigorously protest racial profiling by the police. Hip-hop, however, supports the human rights of criminals as enthusiastically as the rights of the falsely accused. They are also more willing to use non-traditional methods to change law.

One serious deficiency in Hip-Hop is its sexism and homophobia. For hip-hop to command moral authority, it must address this issue. The problem detracts from its important evaluation of criminal justice.

"Hip-hop has a long way to go, however, before its constructive political analysis is not compromised by lyrics, visual images, and attitudes that put down a considerable portion of its own community."

Te Hurihanga - Opening Speech by Judge Henwood

Continued from page 2

But 22 years of sitting as a Judge in the criminal Courts of this country and on the parole board has shown me at close quarters another reality, the tragedy of thousands of young New Zealand males locked up in containment in our prisons. Where will it all end?

As a Youth Court Judge we learned that a small number of young people are brought before the Court and about two thirds of them are able to be effectively resolved through Family Group Conference plan and other community-based sanctions.

> *"22 years of sitting as a Judge in the criminal Courts of this country and on the parole board has shown me at close quarters another reality, the tragedy of thousands of young New Zealand males locked up in containment in our prisons. Where will it all end?"*
>
> *Judge Carolyn Henwood*

Around 28% persist with their offending and they are a group who will go on to serve several jail terms. We as Judges know these repeat offenders need an intensive intervention if they are to change the path they are on. We are constantly frustrated not having an effective and robust strategy for this group.

In 1998 following an international Youth justice conference of which I was the convenor, it was clear to all that New Zealand did not a have a credible responsur young repeat offender. We had the community and we had jail, neither of which was fit for this complex challenge.

Judge Carruthers, the then principal Youth Court Judge and leader of the Youth Justice Task Force encouraged me, as did Minister Phil Goff, to embark on a massive negotiation to try and obtain a programme that would answer the need for our community. I thank them both for the part they played in this challenging initiative.

I searched the international scene, but NZ is a leader in youth justice and I found nothing out in the world to impress me. So we began at the beginning. I enlisted the help of James Johnston, Chairman Rainey Collins, Youth advocate and now chairman of the Law Foundation. He has stood by my side for 7 years while we went on the most incredible roller-coaster ride from 1999 until now in search of our vision.

It was clear to me that the challenge that these young offenders presented because of the complex issues surrounding each and every one of them that it would take everyone to pull together if we were to make a difference. No government alone could do it, no community could do it, the professionals alone could not do it. We all needed shoulders to the wheel. Government, community and private business.

I chose Hamilton because sadly this area featured well up ion the statistics for the imprisoning of young men. If we started with a programme here it might help this community.

The first thing I did was write to the late Mäori Queen, Dame Te Ata and that resulted in a meeting with Maharia and Don some years ago. I asked them whether they thought such a programme would be useful and whether they would help me. Well, it's taken a long time Maharia, but I would like to pay tribute to you today for all the years of work you and Matua Whangai have done in youth justice, and so successfully, and for standing by the programme and now going forward together with the Youth Horizons Trust. It is an amazing collaboration with huge potential and will be very successful.

Knowing that we needed the help of the business community, I approached Stephen Tindall who kindly agreed to see me and discuss this initiative in the midst of his busy life. He could see that jobs were needed for the young men once they had been rehabilitated, and the then commissioner of Police was prepared to back the project, but only if jobs were part of the equation.

Who better than Stephen Tindall to know how to seek out jobs for these young men? Stephen has patiently stood by for some six years waiting for lift-off. In the meantime Stephen has provided support for the Henwood Trust, which is dedicated to finding effective strategies for young offenders. Thanks to you Stephen – your presence in the project has been essential and we have not even started.

Next I approached the Law Foundation for funding and they embraced the vision and provided funding for a cost benefit analysis to be done by PricewaterhouseCoopers, and they provided funding for a salary for Alex Ross. Alex dedicated many hours to writing up the therapeutic model for this programme and helped with the cost benefit analysis, as did Dr Gabrielle Maxwell.

The Vision

I believe it is possible to lift a young offender (even one with recidivist behaviour) right out of the offending cycle and keep him out.

It will be a challenge, but if we to target each young man as an individual, assess his well being and help him untangle the difficulties in his life, get his reading and writing up, find him a job and support him in the future there is good chance he will be able to live without needing to be incarcerated.

Te Ara Hou village performing a waiata

The law requires us to make the young person accountable for his offending and then to assist him to develop in socially acceptable ways.

For every young man that meets the challenge of Te Hurihanga, he will have the chance to break the cycle of offending and he, his family and children will have a better life.

Continued on page 9

Speech and Language Therapy in Young Offender Institutions

Sourced from Bulletin:December 2006.www.rcslt.org

In October, Lord Ramsbotham, former Chief Inspector for Prisons, introduced a debate on the subject in the House of Lords.

"*I have never found anything so capable of doing so much for so many people at so little cost as the work that SLTs carry out*."

Lord Ramsbotham worked with RCSLT (Royal College of Speech Language Therapists) England Policy Officer Jane Mackenzie, who provided him with expert advice.

When visiting the HM Young Offender Institution (YOI) in Polmont in 2000, Lord Ramsbotham was told by the governor, that if he had to get rid of all his staff, the SLT would be the last on out of the gate. The governor regarded investment in speech as an, 'essential component of an effective rehabilitation strategy."

Lord Ramsbotham also worked with Professor Karen Bryan, "the best SLT in England", and asked her to put 10% of boys at another institution to tests to confirm whether the work was realistic and valuable.

Professor Bryan's tests showed that half of the young offenders had substance-induced memory loss, 47% reported their talking was poor, 37% had literary problems, 30 % had difficulty in speaking with others, 23% scored less than an 11-year old in comprehension tests, 20% had definite learning difficulties and 17 % had hearing difficulties.

Based on these findings Lord Ramsbotham had recommended that SLTs be appointed to every YOI, however nothing had happened by the time he left his post as Chief Inspector for Prisons.

Lord Ramsbotham detailed a two-year trial of two SLTs in Staffordshire, which began in July 2003.

The SLT diagnosed the young people's speech, language and communication difficulties and then planned and delivered appropriate interventions. The SLTs supported and advised staff to enable them to access education and treatment provision designed to address offending behaviour.

Lord Ramsbotham said the trial showed the whole establishments could benefit from Speech and language therapy. These services fell between the jurisdictions of the Home Office, the Department for Health, the Department for Education, children's services, the Prison Service and the Youth Justice Board. It falls through the gap.

As speech and language therapy is funded by primary care trust to an establishment, it has to compete with other priorities for funding.

Lord Ramsbotham drew attention to I Can's report, "The Cost to the Nation of Children's Poor Communication." The reported highlighted that 10% of children have persistent communication difficulties, and half of those can, with support catch up.

In conclusion Lord Ramsbotham urged that money should be found for SLTs. "*Let's give these young people the start in life that we have a responsibility to provide."*

Jane Mackenzie and Lord Ramsbotham and Liberal democrat Peer Lord Avesbury subsequently met to discuss the next developments, such as the Prison Reform Trust's report on language and learning disabilities.

Te Hurihanga

Continued from page 8

I believe that is initiative will impact and ripple through the community and that more good will come from it than was ever envisaged.

With all of us focussed on the needs of the young person and the delivery of quality services, between us we can succeed.

Expectations

I know it will take every adult working on this programme to give of their best, because nothing less will do. So often programmes for young people do not succeed because they are run by people who do not have the skills or the resources to deliver on the promises, or worse all the arrangements are made to suit the needs of the staff, and not to meet the needs of the young people.

I do not want to see any young person leave on a benefit. I want them to lift their sights way beyond social welfare. I want to see them in work and work that is suitable, lasting and properly paid. Each young man will need to be mentored in the work place.

I want the daily life at Te Hurihanga to be busy for the young men and for quality one-on-one teaching where necessary and more.

We must strengthen the young men and encourage the qualities of humanity, integrity bravery and courage so they can turn their back on crime, drugs and violence.

So often these young men have been let down by the adults around them. Each young man is important and we want to see every one of them have a future.

I feel today that we are on the brink of something that has the potential to be world leading and brilliant. To me, Te Hurihanga is a triumph for common sense and social justice.

Congratulations to all who have played a part in making this happen.

I know there are many, many people whose hands have touched this project and there will be many, many more to touch it in the future."

NOR REI RÄ
TËNÄ KOUTOU TËNÄ KOUTOU TËNÄ TÄ TOU KATOA

Working Together

Ma tini ma mano ka rapa te whai
(many hands make light work, unity is strength)

www.yoc.org.nz

On behalf of the Ministries of Justice, Social Development, Education, Health and the New Zealand Police we are pleased to invite you to take part in Working Together, a practical conference on offending by young people in New Zealand. Working Together will be held at Wellington Town Hall from Monday 26 November to Wednesday 28 November 2007.

CALL FOR PAPERS
The conference panel is currently developing an exciting programme and has confirmed Dr Simon Rowley, Principal Youth Court Judge Andrew Becroft and Lloyd Martin as keynote speakers at the conference.

The call for papers is open and organisers invite abstract submissions for practical workshops, papers or group discussions that will actively endorse the conference objectives. Potential presenters should visit <http://www.yoc.org.nz/cfp> for further details on conference workstreams and the submission process.

Call for papers CLOSES 9 JULY 2007
Registrations OPEN MID AUGUST 2007.

Alcohol and Young Offenders

Continued from page 1

Court are co-located in a single building close to the Court.

In Glasgow the probation officers, AOD workers, forensic psychiatrists, doctors and psychologists all work in the same building. The offender has two places to go, the Court and the adjacent building. Those involved can have case meetings and talk to each other at any time.

The most highly developed model of co-location is the Community or Neighbourhood Justice Centre. A Liverpool example of this approach was established after consultation with the community. A disused building was found in the heart of the community. It is now a Court and also on the ground floor a large open-plan office in which the court staff is located. On another floor, in an open plan office are the health, housing, employment services, victim advocates, forensic psychiatry, and drug treatment clinicians.

These services are immediately available to Judges in that court and to everyone in the community.

The community is fully engaged with the Court and has input into its operation.

> *"What saddened me was that I knew most were from disadvantaged and gang related families and the chances would be high that in 3-4 years time they would be in trouble."*
>
> *Judge Walker*

While not every community can have such an enhanced Court the principles are transportable.

A small number of District Courts in New Zealand are providing Alcohol and Drug clinicians in the court room, providing same day screening and arranging the delivery of treatment. I encourage the expansion of these initiatives.

In prisons most of those who go into them with a dependency, come out with it untreated. These people reoffend, usually for the same reasons. There needs to be effective prison-based programmes, drug free wings and we need to think about how treatment is continued on release.

There is a special role for the collaborative approach in the Youth Courts and in the Alternative Action processes by which young people are diverted from the Courts. It is rare to see a young person come into the court with his or her school uniform on and followed by parents or grandparents. More often the young person will be alone or perhaps with a gang colour around his neck.

Communities can provide mentors for these young people. I was recently entertained by a choir of 7 and 8 year olds from a decile 1 school.

What saddened me was that I knew most were from disadvantaged and gang related families and the chances would be high that in 3-4 years time they would be in trouble.

I know I have painted a gloomy picture, but I am confident much can be improved. I want everyone to think about what they or their agency can do. It is only by working together that we have any chance of reclaiming lives for the benefit of all.

For a copy of the full speech, email *Court in the Act* courtintheact@justice.govt.nz.

Newspaper Apologises for its Cannabis Stance

http://news.independent.co.uk/uk/health_medical/article

In 1997 the Independent on Sunday launched a campaign the decriminalise cannabis which resulted in a 16,000 strong pro-cannabis march to London's Hyde Park. The march was credited with the government being forced to downgrade the legal status of cannabis from a class B to class C.

In the light of irrefutable evidence on the damaging effects of cannabis use and especially skunk, the Independent has now issued a front-page apology for its stance.

Their decision has come following statistics from the NHS national treatment Agency that show the number of young people in treatment almost doubled from 5000 in 2005 to 9,600 in 2006.

Skunk has a 25-fold increase in the amount of tetrahydrocannabidinol, THC in it than traditional cannabis resin. Research published in the Lancet showed that cannabis is more dangerous that LSD and ecstacy. Professor Robin Murray, from the London Institute of Psychiatry told the paper that at least 25,000 of the UK's 250,000 schizophrenics could have avoided the illness if they had not used cannabis.

The guilt trip

From an article by journalist Mary Riddell in the New Statesman 12 February 2007

RESTORATIVE JUSTICE

Restorative justice, RJ is used as an alternative or adjunct to the criminal justice system. The victim and the offender meet along with relatives and mediators and agreements are drawn up. The agreements are designed to ally victims' fears, chart a course of action, such as drug treatment, designed to stop the perpetrator reoffending.

If it is properly resourced and led, restorative justice approaches move towards a more productive way of tackling the harm either alongside of, or instead of conventional criminal justice.

Lawrence Sherman, Wolfson Professor of Criminology at Cambridge University, and his co-author Heather Strang, published a report on 8 February which suggested a revolution in law and order thinking for the UK, with RJ at its heart. According to Sherman and Strang's research in Australia, the US and Britain, RJ can reduce repeat offending by up to a half. RJ has reduced victims' post-traumatic stress and could reduce costs.

Trials involving Northumbrian teenage girls where half of the group had a restorative justice conference, and half went into the criminal justice system, showed that the restorative justice group proved twice as likely to stay clear of trouble.

Restorative justice appears to work better with serious crimes such as robbery rather than victimless offences such as shoplifting. Sherman believes that crimes of high emotion may lead to greater remorse.

Continued on page 15

Recent Cases

The Queen v Adam Anish Chand-Whakaue - power to imprison for non-purely indictable offences

CA [2007] NZCA 216

Chambers, Gendall and Heath JJ

Decision: There are no exceptions to s18 of the Sentencing Act 2002. A sentence of imprisonment may not be imposed on a young offender who has committed a non-purely indictable charge.

Successful appeal against sentence following the appellant's guilty plea and sentencing in the DC to 18 months imprisonment on a charge of assault with intent to injure. The appellant was 14 years old at the time of the offending.

Issues: 1. Whether the DC had jurisdiction to impose imprisonment? 2. If not, what was the appropriate sentence?

Background Facts: During an altercation with the victim, the appellant kicked and punched the victim, leaving him unconscious outside his flat in the cold. The victim suffered severe brain damage.

The appellant denied the charge in the YC and a preliminary hearing took place in the YC on 28 July 2005. At the preliminary hearing, the YC judge held that a *prima facie* case had been established.

Judge declined to offer YC jurisdiction for the purely indictable offence. In exercising his discretion not to offer YC jurisdiction, the Judge took into account the seriousness of the charge and the inability to transfer the appellant for sentence in the DC (the appellant being under 15 years of age). The appellant was committed for trial in the HC. Subsequent orders were made by the HC under s 168A of the Summary Proceedings Act 1957 transferring the appellant's and the adult co-offender's trials to the DC. Before trial the Crown Solicitor filed an amended indictment containing one count of assault with intent to injure (not a purely indictable charge) to which the appellant plead guilty.

The majority decision, Chambers and Gendall JJ

District Court Jurisdiction: The DC Judge referred to s 18 of the Sentencing Act, but considered it was trumped by s 17 of the Sentencing Act. Section 17 reads "*Nothing in this Part limits the discretion of a court to impose a sentence of imprisonment …if that offender is unlikely to comply with any other sentence…*"

The CA considered that s 17 of the Sentencing Act did not trump s18 of the Sentencing Act. The meaning of s17 of the Sentencing Act 2002 lay in its legislative history and its forerunner the Criminal Justice Act 1985.

The CA considered that it is absolutely clear that under s 8 of the Criminal Justice Act 1985, a youth under 16 years could not be imprisoned except for a purely indictable offence. Section 9 of the Criminal Justice Act 1985 was essentially reproduced in s 17 of the Sentencing Act. Section 9 of the Criminal Justice Act 1985 could only override ss6 and 7(1), not s 8 of the Criminal Justice Act 1985. Section 9 read "*Nothing in section 6 or 7(1) of this Act shall*

Continued on page 16

MK TO v New Zealand Police - liability of parents to pay reparation

30 May 2007, HC, Palmerston North, CRI –2007-454-02, Mallon J

Decision: Reparation orders can only be made against the parents of an offender pursuant to s283(f) of the CYPFA where the parents are at fault.

Issue: The overriding considerations in the exercise of a discretion under s283(f) of the CYPFA are whether it is appropriate to make a reparation order in respect of the offending and reasonable to order that it may be made against a parent?

Case Summary: Successful appeal by the appellants against an order for reparation for $10,000. The appellants are the parents of a young person, J. The order was made pursuant to s283(f) of the Children Young Persons and their Families Act 1989, CYPFA. Where the young person is under 16 years, that order may be made against the parent or guardian of the young person.

FACTS: J had a significant history of offending and difficulties beginning from his early school days. Significant steps were made to deal with J's difficulties. J was placed in Warkworth, from which he absconded and then offended, which led to his first remand and sentence to a Youth Justice Center in 2004. The Judge had described J, when in offending mode as "cunning, manipulative and devious".

The Youth Court Judge described the appellants' role in relation to J as 'long-suffering' and as having 'a continuing desire throughout to have J at home … providing moral and practical support …and had remained a family group to which J was strongly attached.'

On 8 August 2005 J was on bail, conditional on him residing at his parents house, a 24 hour curfew, and a condition that he present at the door if called on by police. The YC Judge also stated that a further condition of bail was that J's parents supervise the curfew. That latter condition was not recorded on the notice of bail.

On 11 August the curfew was relaxed to a 10pm to 7am curfew. Following further offending it went back to 24 hour on 16 September 2005, unless accompanied by parents or approved persons.

Between 14 October and 10 November 2005, when subject to a 24 hour curfew, J committed burglaries, thefts and car conversions in various towns, including Levin. The offending in Levin was the subject of the reparation order. J burgled a farmhouse with another on 25 October 2005. The burglary took place at 5pm and involved approximately $80000 worth of property, including firearms, cash and alcohol.

J was sentenced to up to 3 months residence and 6 months to follow. A reparation order was sought by the owners of the Levin property against J. The Judge declined to grant the order against J, as he could not meet such an order.

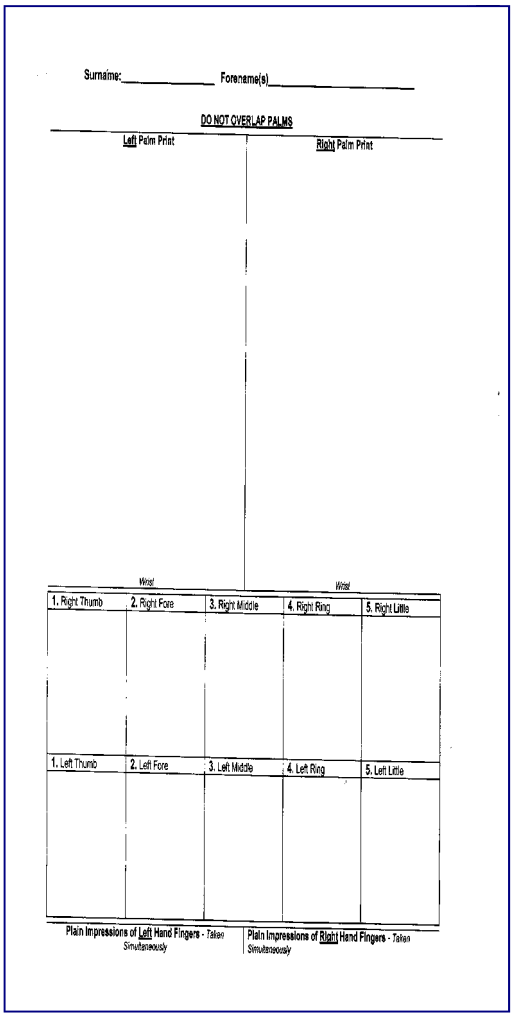
The basis for the reparation order against the appellants was that J had been absent from his home on 25 October 2005 and the appellants had failed to advise Youth Aid or the Police. The Judge concluded the appellants should have been more proactive. The Judge took into account the amount of loss, and considered the most that could be ordered against the parents was one half of the loss. Taking into account their financial position and need to

Continued on page 17

Voluntary Fingerprinting of Children and Young Persons

Continued

- Like the earlier Practice Note it suggests that it is in the best interests of children and young persons to voluntarily agree to be fingerprinted. In reality, voluntarily given fingerprints provide the police with a tool which will greatly increase the likelihood of their being identified in future police investigations;
- The Practice Note makes reference to the child or young person's rights under Principle 3 of the Privacy Act1993 but makes no reference to the right of children under s245(i) New Zealand Bill of Rights Act 1990 to be dealt with in a manner that takes account of the child's age nor to the it clear that, in signing the document, the child/young rights conferred on under-18s by the UN Convention on the Rights of the Child, especially Article 16(1) (children not to be subjected to unlawful interference with their privacy) and Article 40(1) (children to be treated in a manner which takes into account of their age and the desirability of their reintegration into society);
- The 2007 Practice Note (unlike the 2001 Practice Note and an earlier draft of the 2007 Practice Note does not state specifically that the consent of a parent, guardian or carer must be obtained before the fingerprints of a child or young person are taken, although this can be inferred from a reading of the Practice Note as a whole and from Form POL 545. The wording and layout of Form POL 545 do not make person and the parent are consenting to voluntary fingerprinting. There is no requirement that, if the parents are not living together, the parent who is asked to give consent is the parent with day-to-day care of the child.
- The Practice Note still authorises the obtaining of voluntary fingerprints from children in the ten to 13 age bracket even though they cannot be charged with criminal offences other than murder or manslaughter or minor traffic offences ;
- The Practice Note does not require the police to inform the lawyer acting for the child or young person of the request for fingerprints and fingerprints may be taken without the lawyer's knowledge;
- While it is clearly stated that a child/young person or a parent/guardian can at any time request that fingerprints given voluntarily be destroyed by writing to the National Fingerprint Office no address or contact details are provided for that office.



The very loose arrangements regarding the voluntary provision by children and young people of fingerprints can be compared with the stringent requirements in respect of taking of buccal samples for DNA analysis by consent under s8 and Part 2A Criminal Investigations (Bodily Samples) Act 1995. The taking of fingerprints of a child or young person by consent can have serious consequences for the child or young person: consequences that may well not be foreseen by the child or young person concerned. The fundamental civil liberties of children and young people are affected and police powers and the rights of children and young persons should be set out in legislation with children and young persons being provided with no lesser safeguards than they enjoy under Bodily Samples legislation and the Children, Young Persons and their Families Act.

The Police Act 1958 is currently being reviewed. A Background Paper released as part of that review asks for comment on whether the collection of voluntary fingerprints from children and young people could be put on a statutory footing in the proposed new Police Act. It advises that the Police Fingerprints Section attributes 20% of resolved burglaries to the voluntary fingerprint scheme: NZ Police Issues Paper 5 *Powers and Responsibilities* Part 3 Voluntary Fingerprint Scheme (October 2006).

In the meantime it is important for Youth Advocates and other lawyers representing children or young persons to inquire whether they have provided the police with voluntary fingerprints and, if so, to discuss with them the advantages of requesting that the fingerprints be destroyed. The request should be made to: New Zealand Police, National Fingerprinting Office, PO Box 693, Wellington.

A suggested letter or request for destruction of fingerprints is set out on the next page.

Robert Ludbrook
Children's Rights Advocate

Editor's note - This article has been sent to Police Youth Justice for possible future comment.

Manager
New Zealand Police
National Fingerprinting Office
P O Box 893
Wellington

Dear Manager

Request for destruction of fingerprints voluntarily given

In or about [***date or approximate date when fingerprints taken]*** I agreed to be fingerprinted in response to a request from the Police at *[police station or other place where fingerprints taken]*

My full names are [***full names of child or young person***] and my date of birth is [***date of birth of child or young person***].

I withdraw my consent to retention of my fingerprints and request that the fingerprints be destroyed.

Would you please acknowledge receipt of this letter and confirm that the fingerprints have been destroyed in accordance with this request.

Yours sincerely

[***Signature of child or young person or of parent/guardian making request on behalf of child or young person***]

Fingerprinting of Children and Young Persons Practice Note

Police Journal Ten One, 294, 2 March 2007

Introduction

1. This practice note outlines the standards required and procedures to be followed when obtaining fingerprints from children and young persons, under statute or voluntarily by *informed consent.*
2. This practice note revokes and replaces the existing practice note published in Ten-One 221, 9 February 2001.
3. Police may obtain fingerprints:
   a) Pursuant to section 57 of the Police Act 1959 (following arrest and in custody on a charge); and
   b) By informed consent.

Section 57 Police Act 1958 – Fingerprinting under statute

1. Section 57 of the Police Act 1958 provides that:
   a) Police may take the particulars of any person who is in lawful custody on a charge, including fingerprints and palm prints;
   b) It is an offence for any person to fail to provide fingerprints when required to: and
   c) Where any person is subsequently acquitted of the offence for which fingerprints are taken, those fingerprints shall be destroyed forthwith.

1. When a child or young person is being held in custody on a charge and they are subsequently released, if the matter is then referred to Youth Aid, it is lawful for Police to retain those finger/palm prints.
2. Therefore, whenever a child or young person is in lawful custody on a charge, Police are authorised to obtain the fingerprints of that child or young person.

Voluntary Fingerprinting

1. Voluntary fingerprints are a valuable tool in solving crime, particularly burglary and vehicle crime. A large number of burglary and vehicle offences are committed by young offenders. Therefore, the collection of voluntary fingerprints is a crucial part of policing in the community. It must, however, be done in a lawful and ethical manner that protects the rights afforded to children and young people under the Children, Young Persons and Their Families Act 1989 (the CYPF Act).
2. The objects and principles of the CYPF Act (section 4(f)) include holding children and young persons who commit offences accountable for their offending. Voluntary fingerprinting of children and young persons is an acceptable practice. However, fingerprints that are obtained outside the law and the guidelines of the practice note may be inadmissible as evidence.
3. The aim of voluntary fingerprinting of children and young persons is to aid in the resolution of past or future crimes and to act as a deterrent from future offending. The taking of voluntary fingerprints must be the result of an assessment involving a number of sources that identify the young person being at risk of or developing a pattern of offending.
4. Voluntary fingerprinting shall not be sought where the child or young person shows no high level risk factors and has no prior offending history.
5. The CYPF Act specifically acknowledges that children and young persons are more vulnerable than adults and therefore are entitled to special protective measures during an investigation. Police must ensure the request and information provided are in a language and manner that both the child/young person and their parent/guardian are able to understand.
6. In deciding whether or not to request that a child or young person provide Police with his or her voluntary fingerprints, the following factors must be considered:
   a) The nature and seriousness of any suspected offending
   b) The nature and extent of information already collected on the child or young person's offending /behaviour;
   c) Whether Police already have the child or young person's fingerprints; and
   d) Whether the situation necessitates a formal action and would be more appropriately dealt with by way of arrest.

1. In seeking voluntary consent, Police must also take careful consideration of Information Privacy Principle 3 of the Privacy Act 1993 *Collection of Information from Subject*. This Principle states that *where an agency collects personal information directly from the individual concerned, the agency shall take such steps (if any) as are, in the circumstances, reasonable to ensure that the individual concerned is aware of:*

a) The fact the information is being collected;

b) The purpose for which the information is being collected:

c) The intended recipients of he information;

d) The name and address of:

i) the agency that is collecting the information

ii) the agency that will hold the information

a) If the collection of the information is authorised or required under law:

i) the particular law by or under which the collection of the information is so authorised or required:

ii) whether or not he supply of the information by that individual is voluntary or mandatory;

a) The consequences (if any) for that individual if all or any part of the requested information is provided: and

b) *The rights of access to, and correction of, personal information provided by these principles.*

Continued on page 15

Fingerprinting of Children and Young Persons Practice Note

Continued

1. Police will comply with the Privacy Principle 3 of the Privacy Act 1993 by following the directions given below.

Voluntary Consent – Best Practice Directions

1. The Crimes Act 1961 sets the minimum age of criminal responsibility at ten years. For this reason, Police shall not take fingerprints from any child under ten years unless required for elimination purposes (these will be destroyed once the elimination comparison has been carried out).
2. The child/young person and their parent/guardian must be advised by Police that they have the right to consult a lawyer prior to giving or refusing consent.
3. Fingerprints shall only be taken from children aged 10-13 years with the written approval of a Youth Aid Officer. That Officer must sign the corresponding POL 545.
4. The child/young person and their parent/guardian must be informed that if consent is given, it can be withdraw at any time up until the time at which the fingerprints have been taken.
5. The child/young person and their parent/guardian must be informed at any time after the fingerprints have been taken, they may request the records be destroyed without specifying a reason. The child/young person must be advised they can initiate this process by writing to the national Fingerprinting Office.
6. Police must not use coercion or any inducement – for example, offering leniency – to encourage a child/young person of their parent/guardian to provide consent. Where any coercion or inducement is used the fingerprints and any evidence obtained as a result of he fingerprints may be inadmissible.
7. No requests for fingerprints are to be made to a child/young person who is with Police by reason of a place of safety warrant (section39 of the CYPF Act) or an unaccompanied child/young person (section 48 of the CYPF Act).
8. When obtaining fingerprints from children and young people, it is essential that officers are aware of the vulnerability of children/young persons, and that this entitles them to special protection during any investigation.
9. Key Performance Areas (KPA) for voluntary fingerprinting of children/young persons must have a qualitative focus. These measures must take into account the relatively small percentage of children/ young persons who will be fingerprinted following consideration of the factors on compliance with relevant legislation and the direction given in this practice note and not on the volume of voluntary fingerprints collected.

The guilt trip

Continued

Early Evangelists

Riddell questions whether the then Chancellor, and now Labour leader, Gordon Brown will allow the Criminal Justice system to be revolutionised.

RJ has gained financial support, especially in youth justice. A government grant of £4.9 million saw a large proportion being used to test RJ on adult burglars and robbers, who met their victims at conferences. Riddell reported that one particular victim, when faced with a "needy wastrel" rather than the imagined monster, had got her life back. However, despite pleas by judges, funding was wound down, and RJ and its potential benefits for victims was removed.

The idea is supported by other high profile people, for example Cherie Booth, who reported to Riddell, "If the evidence shows it [RJ] is successful, in particular in helping cut reoffending, I believe it could boost confidence in the criminal justice system."

Others caution that despite its "distinctive benefits for offenders and victims" it should not be seen as a "magic bullet." (Enver Solomon, deputy director of the Centre for Crime and Justice studies.)

Questions still remain regarding when RJ should be used, whether it should be used as a replacement to the Court System or as a supplement to it.

Powerful Drug

Sherman and Strang's report stated that it "is a powerful drug which needs to be carefully tested for specific kinds of cases before it is put into general practice."

Whether the Labour leader is likely to support a proposed expansion of research and running of a programme may depend on a number of factors. Gordon Brown is reportedly at pains to stress his 'toughness". However RJ is appealing on two levels. Firstly, a RJ justice system fits in with his 'championing of the good society and his targeting of "hearts and minds"'. Secondly the costs of keeping each offender in prison is £35,000 per year. It is argued that the government must evaluate the cost benefits of RJ.

If Brown is persuaded, there will be radical changes in justice. If the proponents of RJ are correct, then prisons should begin to empty, reoffending will reduce and children will no longer be criminalised.

" The question is not so much whether Brown dares to take up the challenge of RJ. It is whether he dares not to."

Recent Cases

The Queen v Adam Anish Chand-Whakaue continued

limit the discretion of the court to impose a full-time custodial sentence…".

The CA considered the wording was changed to "Nothing in this Part…" in s 17 of the Sentencing Act because the Criminal Justice Act was very sparse in setting out purposes and principles of sentencing.

Only ss 5,6, and 7 dealt with this topic. Section 9 was available to override ss 6 and 7's presumptions *against* imprisonment where the court was 'satisfied on reasonable grounds that the offender was unlikely to comply with any sentence other than imprisonment'.

The Sentencing Act was structured differently, where the presumptions of ss 5-7 of the Criminal Justice Act 1985 were replaced by a raft of considerations, setting out where imprisonment would be appropriate.

It was no longer possible just to refer to two sections limiting the court's discretion to impose full-time custodial sentences.

The CA considered that when Parliament referred to 'nothing in this Part," it was referring to '*so much of ss 7-16 as may point against a sentence of imprisonment*".

Nothing in the legislative history of the Sentencing Act 2002 suggested that Parliament intended to reverse the dominance of s 8 of the Criminal Justice Act 1985 (now s18 of the Sentencing Act) over s 9 (now s17).

Indications to the contrary included that Parliament raised the age at which a person became eligible for imprisonment for purely indictable offences from 16 to 17. It would be unlikely that Parliament intended to then widen the net by rendering all young people eligible for imprisonment, including those who have committed only non-indictable offences.

Secondly, ss 8 and 9 of the Criminal Justice Act 1985 have been placed in reverse order in the Sentencing Act 2002. That suggested that Parliament was emphasising the limits on a court's discretion to impose imprisonment to which s17 of the Sentencing Act 2002 was referring were those limits found in the immediately preceding sections. Section18 of the Sentencing Act 2002 was dealing, not with limits on the courts' *discretion* to impose imprisonment, but a prohibition on imprisonment of young people, except for those committing purely indictable offences.

Held:

1. The charge to which the appellant pleaded guilty was not a 'purely indictable offence.' Imprisonment could only be imposed if s17 trumped s18 of Sentencing Act 2002. The CA was satisfied that it did not. The DC had no jurisdiction to impose imprisonment on the appellant; therefore the sentence was quashed on jurisdictional grounds

2. The appellant was sentenced to 200 hours community work, 18 months supervision, with special conditions not to consume alcohol or use illicit drugs, not to associate with his co-offenders or the victim.

The appellant was ordered to undertake an assessment for drug and alcohol counselling.

The appellant was ordered to report to a probation officer within 72 hours of this judgment.

The following is a summary of the dissenting view of Heath J. Heath J agreed with the result, but took a different view on the interrelationship between ss 17 and 18 of the Sentencing Act 2002 Act 2002.

Heath J.

On the face of it the s18 (1) of the Sentencing Act 2002 prohibition on any court imposing a sentence of imprisonment on an offender under 17 at the time of the offence, is absolute.

However, Heath J considered that s 17 of the Sentencing Act qualifies the circumstances in which s 18 is engaged. Section 17 of the Sentencing Act has primacy over s 18 of the Sentencing Act. The opening words to s17 "nothing in this Part…" are plain and make s 18 subservient to s 17 of the Sentencing Act 2002.

Heath J considered it unlikely that Parliament intended to curtail completely a court's ability to sentence a young offender to imprisonment for a non-purely indictable offence.

The ability to imprison arising from section 17 of the Sentencing Act is limited. The court must be satisfied that the offender would be unlikely to comply with a non-custodial sentence, and be satisfied that imprisonment is otherwise appropriate.

The reason for the application of the s 17 qualification is clear. Otherwise, a court would be required to sentence the offender to a non-custodial sentence even though it had reasonable grounds to believe the offender would not comply with its terms.

If the approach of the majority was correct, a young offender could refuse to comply with a non-custodial sentence in the knowledge he or she could not be imprisoned for breach. This would impact adversely on public confidence in the criminal justice system. Public safety issues will arise if violent offenders cannot be imprisoned. Police prosecutors might seek to charge more serious offences in cases where they have a genuine belief that imprisonment should be the appropriate sentence.

A YC may under s283(o) of the CYPFA 1989, transfer a young person for sentence in the DC if that young person is 15 years or older. The DC has the ability to imprison, subject to s17.

The appellant's age was significant for assessing whether imprisonment was 'otherwise appropriate" for s17 purposes. It was a material pointer for a non-custodial sentence.

There were no reasonable grounds to believe the appellant was "unlikely to comply" with a sentence of community work. Therefore there were no grounds to apply s17, with the consequence that a non-custodial sentence was required.

Recent Cases

MK TO v New Zealand Police continued

'underline the seriousness…of good parenting and the standard required in certain circumstances', the Judge made the order for $10,000.

The Court considered the principles for making an order for reparation pursuant to s283 of the CYPFA, and the factors to be considered under s284 of the CYPFA. General guidance as the when it would be appropriate to make an order against the parents of a young person is found in ss4,5, and 208 of the CYPFA. Orders for costs of prosecution, reparation and restitution may be imposed on a parent where the young person is under the age of 16 years.

The Court compared the principles of the CYPFA with the similar provision in England in s137 of the Powers of Criminal Courts (Sentencing) Act 2000. In contrast the CYPFA, the English legislation applies to fines, but where the young person is under 16 the Court is required to order that the parent pay the fine, compensation or cost, unless the Court is satisfied the parent cannot be found or it would be "unreasonable to make an order for payment, having regard to the circumstances of the case." Cases have considered the steps taken by parents and local authorities to control the offender. In relation to parents, parental responsibility has been considered by asking whether the parents have done what they reasonably could be expected to do to keep the young person from offending.

The liability of parents generally is set put in the Care of Children Act 2004. There is no obligation under the provisions of the Care of Children Act 2004 or the common law for a parent to assume financial responsibility for the actions of their children. However, a parent may be liable when he or she has a duty to a third person to control a child and is negligent in the exercise of that control.

Reasoning

Where a young person is under 16 years the presumption is that the young person does not have the ability to pay. Whether it is reasonable to make an order against he parents depends in part on the parent's ability to pay. It will not be reasonable to order reparation against a parent in the absence of fault. Fault will be determined by what reasonably could be expected of the parents in the circumstances.

There must be a causative link between the parent's fault and the offending. This is consistent with the requirement that damage be caused "through or by means of an offence", before reparation is ordered under the CYPFA or the Sentencing Act. It is also consistent with the s4(g) and s280(c) of the CYPFA principles that the relationship between the young person and his family should be maintained and strengthened. Reparation against the parents in the absence of fault risks interfering with strength and stability of the family and may hinder the ability of a family to deal with the offending.

Where the parents have done what reasonably can be expected of them, taking the approach of *Wilmot v Police*, the parents actions or inactions must have been a material cause of the offending in respect of which reparation is to be ordered.

HELD:

1. It would be inconsistent with other jurisdictions to impose reparation orders against parents when there is no parental fault. It would also be inconsistent with the philosophy of the CYPFA. Imposing a reparation order on parent's risks alienating them from the Youth Court process, especially where the offending has occurred through no fault of the parents.
2. The Judge erred in finding the parents at fault through their failure to notify the police of J's absence. They could not be at fault if it was not made clear to them that they were to actively contact the police if J was absent. It was not a condition of bail that they do so and they were aware the police would make regular checks. Even if they were at fault for not pro-actively contacting the police, the second error was in not determining whether a pro-active approach would have been likely to have prevented the offending.
3. There was nothing to suggest the police would have apprehended J before the burglary had the appellants alerted the police. The failure to notify the police was not a material cause of the loss suffered by the owners of the farm property
4. The reparation order was unduly punitive.
5. Appeal allowed.

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Court In The Act welcomes contributions or comments from anyone involved in youth justice in New Zealand or overseas.

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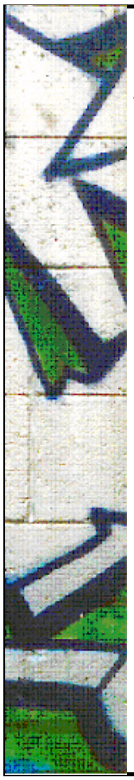

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