“Youth Justice in New Zealand: Future Challenges”

A Paper presented at the New Zealand Youth Justice Conference
“Never Too Early, Never Too Late”

Wellington
17 –19 May 2004

Judge Andrew Becroft¹
Principal Youth Court Judge
New Zealand Youth Court
Te Kaiwhakawa Matua o Te Kooti Taiohi
Judge.Becroft@justice.govt.nz

(See the Youth Court website for more information: http://www.courts.govt.nz/youth/)

¹ Compiled, in collaboration, by Judge Becroft and Clare Needham (BA, LLB), Research Counsel to the Principal Youth Court Judge.
CONTENTS

- Introduction p3

- 10 Challenges for Youth Justice in New Zealand p9
  1. The need to hold on to the principles of the Act p9
  2. The real picture with youth offending must be properly understood p18
  3. There must be a comprehensive early intervention policy p25
  4. Child offenders: we must do better p29
  5. The vital need to keep young people in the education system p30
  6. Serious youth offenders: earlier identification and more comprehensive responses required p34
  7. The Family Group Conference: the jewel in the crown of the New Zealand youth justice system needs polishing p51
  8. Residential services: “supervision with residence” must improve and the unacceptable levels of Police cell remands must decrease p55
  9. Particular systemic challenge for CYFS p60
  10. The challenges for Police Youth Aid: continued commitment to youth justice principles and the need for more resources p64

- Conclusion p66
INTRODUCTION

We are fast approaching the fifteenth anniversary of the introduction into New Zealand law of the groundbreaking Children Young Persons and Their Families Act 1989 (‘the Act’). That Act came into force on 1 November 1989.

“At its introduction, the 1989 Act was seen as a completely new process of youth justice – a New Paradigm – and it has since become ‘an international trend setter’.”

Experts reflecting upon the effect of the legislation were unanimous. For instance, Judge FWM McElrea, a senior Youth Court Judge, concluded:

“…we definitely do have a new model or paradigm of justice in New Zealand, and indeed one that turns the old model on its head.”

“The new paradigm does not easily fit within the old parameters – liberal/conservative, justice/welfare, punishment/rehabilitation, justice/mercy. It cannot be described in those terms because it requires a new way of thinking, and of doing justice.” (emphasis added)

Similarly, the then Chief Social Worker, Mike Doolan, said that:

“The Act creates the opportunity for a new and meaningful process to develop – one that upholds the right and dignity of the offender and victim alike, that focuses on the nature of the offence and its impact on others, and where effort is devoted to restoring social connectedness not only for offenders, but often for whole families, who become isolated by the behaviours of their offending young people. The challenge for practitioners – police, social workers, lawyers and judges alike – is to abandon the language of threat and the exercise of power and domination over young people, and to seek a new language in its place.”

Fifteen years on from the establishment of the “new paradigm” in New Zealand, it is appropriate to examine our youth justice system, its structure and its operation. In particular, it is opportune to consider some future challenges the system faces.

Structure and principles of New Zealand youth justice are sound

The starting point is to emphasise that the fundamental structure and principles of the New Zealand youth justice system are sound (and have been for 15 years). The outcomes since the passage of the legislation suggest that the system is working. An increase in diversion and decrease in cases coming to the Youth Court, together with decreases in incarceration and institutionalisation, are achievements of which all those working in the New Zealand youth justice sector may justly be proud.

Contrary to some doom and gloom predictions at the time the legislation was enacted, the reverse has proved the case. For instance the specialist Youth Aid division of the New Zealand Police, numbering about 160 officers, has bought into the ethos of the Act in a quite spectacular way.

---


4 Above n3, p13.

Diversion/alternative action rates have remained consistently high, between 75-80% of all cases. “Alternative action” or “diversion” initiatives are locally based, draw on community strengths, and are often very creative plans or programmes that directly respond to local youth offending. This is a much under-estimated and unpublicised feature of the New Zealand Youth Justice system. Quite simply, it could not cope without it.

**Diversion Rates per 10,000 distinct cases in Youth Court aged 10–16 years; 1987 to 2001**

Since the inception of the current system of Youth Justice in New Zealand, there has also been a marked decline in incarceration of young people.

**De-carceration: number of cases receiving custodial sentences: 1987-2001**

In addition, there has been a huge reduction in the number of children and young persons in State institutions since the passage of the new legislation. The Department

---


7Above n6.
of Child Youth and Family Services maintains about 75 beds today for youth justice purposes, compared to the more than 1000 beds available in the 1980s. In the last 6 years or so, the pendulum has arguably swung too far, and more beds are required for Youth Justice.

In spite of these significant, and at the same time controversial innovations, youth offending has not skyrocketed out of control; indeed, it has been relatively stable in the last 7 years.

It appears that the New Zealand system is a “success”. Most youth justice experts, researchers and practitioners regard it as a comprehensive improvement on the system that preceded it. Indeed, former Principal Youth Court Judge Mick Brown notes that, invariably, “sensible people overseas are jealous of our system”. It is not possible, in New Zealand, because of the mandatory nature of Family Group Conferences (or ‘FGCs’) to conduct a comparative study of the effects of the FGC process on young offenders; we have no control group of young offenders who do not undergo FGCs. In other jurisdictions, where FGCs (or their equivalent) are discretionary mechanisms, it is possible to conduct such comparative studies and to ask how an FGC affects outcomes for young offenders. The answer to that question appears to be: very positively indeed. Practitioners in other jurisdictions regard what we have in New Zealand, in particular our central and mandatory FGC process, as a model to aspire to.

Operational difficulties

It must be frankly acknowledged, however, that there are some real difficulties with putting the system into practice. Many of these difficulties relate to under-resourcing or to not prioritising youth justice appropriately. Some are due to a lack of agreement or insight into the real problems that face the system, or a lack of commitment to working within the framework we have to improve our performance. As Chief District Court Judge Carruthers put it in a letter to Hon Phil Goff and Hon Steve Maharey at the time of the report of the Ministerial Task Force on Youth Justice:

“The overwhelming message received by the Taskforce throughout the country is that there is widespread community and Government agency support for the legislative basis of the youth justice system. However, there is significant concern that the innovative aims of the youth justice provisions of the Children, Young Persons and Their Families Act 1989, widely acclaimed internationally, are being thwarted by inadequate resourcing, inconsistent inter-agency cooperation, and a lack of national leadership and direction.”

Challenges for the system

This paper sets out to highlight 10 “future challenges” for the New Zealand youth justice system. The list is not exhaustive, but the challenges in it are of particular relevance and particularly pressing. Many are not new.

—

8 Comments made to the writer, 12 May 2004.
9 Letter dated 5 December 2001, from Judge Carruthers and Principal Youth Court Judge AJ Becroft.
There has been a series of reports and speeches, which have identified similar concerns. These include:

- the Morris and Maxwell Report (1992);\(^\text{10}\)
- the Mason Report (1992);\(^\text{11}\)
- the Brown Report (2000);\(^\text{12}\)
- the Youth Offending Strategy (2002);\(^\text{13}\)
- the Baseline Review of CYFS (2003); and \(^\text{14}\)
- the Achieving Effective Outcomes in Youth Justice report (2004).\(^\text{15}\)

The challenges for our system have previously been identified in a paper presented by the writer at a conference of the Australian Institute of Criminology\(^\text{16}\).

By far the most trenchant assessment of the operation of the New Zealand youth justice system was by former Chief District Court Judge RL Young. In 1998, Chief Judge Young gave a speech to the International Youth Justice Conference in Wellington. In it he made the following comments in relation to how the New Zealand youth justice system, under the 1989 Act, operated in practice:

>“From the perspective of the judiciary youth justice co-ordinators have individually had some success, sometimes spectacularly so. Individual co-ordinators have brought extraordinary energy and inventiveness to their tasks and individual social workers have also brought a professionalism and energy to their work which has been impressive. But all too often Judges have observed the following shortcomings:

1. A lack of independence of youth justice co-ordinators from CYPFS, so essential to the credibility of their job.
2. Family group conferences called outside the time limits provided in the Act.
3. Family group conferences adjourned because essential participants are not present.
4. Conferences, without victims and without essential family members present. Too often because inadequate effort has been made to ensure their presence.
5. Conferences all too often suffering from uninventive and poorly structured results.
6. Conferences where the players are only going through the motions of a process.
7. Recommendations of family group conferences that are often nothing more than apologies and purposeless community work.
8. CYPFS reports, too often superficial, which fail to get to or address the real issues for the family.
9. Rehabilitative community based programmes available and successful can’t or won’t be funded by Social Welfare.

\(^{10}\)Morris and Maxwell “Juvenile Justice in New Zealand: A New Paradigm” (1993) 26 ANZJ Crim 72, 81-82; and A Morris and GM Maxwell, *Family, Victims and Culture: Youth Justice in New Zealand* (Institute of Criminology, Victoria University of Wellington, 1993)


10. Sentencing options that are desirable seen as too expensive by CYPFS or requiring too much supervision by them.
11. Lack of credibility of sentencing options. Too often no monitoring of sentences with the result that judges and the community have no idea whether the sentences are completed or not. In short, lack of sentence integrity.

\[\ldots\]

So often criticism of youth justice is focused on the provisions of the Act. So often the fault has not been the statute but the performance of those responsible for administering the Act. Too often the five principles that I mentioned at the beginning of this speech have been forgotten about. I return to them now.

1. Young people and accountability.

It is not possible to make young people accountable for their behaviour if we don’t have a credible system of youth justice which puts energy and inventiveness into family group conferences and which ensures where penalties are imposed that they are monitored and carried out. Perhaps we need in youth justice a bit more adult accountability amongst those who administer the system.

2. Community rather than expert based

This is a statute where those involved as “experts” need to give up feeling that they know best. Judges have had to do it. They have had to step aside in making decisions in youth justice to try and let families, victims and others mediate a settlement. The statistics show that the Judges have been able to accept this change in their role. I wonder whether other professionals have similarly accepted the change in their own role.

3. Strengthening families

The process designed by this statute is intended to strengthen families to deal with their own problems. If we allow the merging of care and protection and youth justice issues then I predict we will shortly return to the previous philosophy of youth justice – removing young people from their families where they offend, seen somehow as a solution to their criminal activity. This of course will be in complete conflict with the principles and philosophy of the Act but inevitable should the two services merge.

4. Professionalism

Individuals have brought their individual professionalism to the work of the Youth Court, but a general assessment of the quality of the work done in youth justice would I think struggle to receive a pass mark. I don’t intend to repeat why, I have said so already.

5. Restorative justice

And underpinning this process is of course the restorative principle. This can be so easily undermined in youth justice with a failure to attend to victims and a failure to put energy and time into inventive, individualised family group conferences. If family group conferences simply become a mindless part of a process to deal with young people then we will have done a great disservice to this statute. So I describe to you today what I say are failures of support, training, resourcing and leadership.

So why are these failures occurring? As a Judge it’s impossible to know. It will be a combination of many factors and may include:

- Inadequate Government funding
- Inadequate allocation of resources within departments
- Poor training of social workers
- Lack of commitment of social workers to the statute’s principles
• Poor local management of resources and people

And there will be others.\textsuperscript{17}

There have been some significant improvements in practice since Judge Young made these comments. For example, better adherence to statutory timeframes, improved victim and family/whanau attendance at FGCs; consistently better FGC plans; a national management structure for Conference co-ordinators under the leadership of Neil Cleaver. Fundamental systemic concerns remain, however, for example in relation to funding, resource allocation and variable performance of local management. The capping of CYFS’ budgets in an increasingly demand driven environment goes some way to making poor performance by CYFS understandable.

Given the succession of reports focussing on youth justice, and the ensuing legitimate public debate, it is essential that the challenges addressed in this paper are immediately addressed. Nothing less than the integrity of the New Zealand youth justice system is at stake. And it is emphasised that these challenges will be particularly pressing in the next five years when there will be a bulge in the 14 – 16 year old population, as demonstrated by the following graph.

\textsuperscript{17} Young, RL., \textit{Youth Justice in New Zealand – Some Problems}, Address to the International Youth Justice Conference, Wellington, October 1998.
10 FUTURE CHALLENGES FOR YOUTH JUSTICE IN NEW ZEALAND

1. THE NEED TO HOLD ON TO THE PRINCIPLES OF THE ACT

The New Zealand youth justice model is unique. It is based on a set of groundbreaking principles designed to give effect to the underlying philosophy of the Children, Young Persons and Their Families Act 1989.

We need to be vigilant to guard and promote the founding charter of our youth justice system.

Youth justice is now largely in the hands of a new generation of youth justice practitioners who simply were not practising under the regime that existed prior to the 1989 Act. Most of our youth justice community have no first-hand experience of the radical nature of the systemic change ushered in by the passage of the Act. It is easy to forget how radical the principles of the Act were 15 years ago.

The same holds true for the New Zealand community. The youth justice system is poorly understood by the New Zealand public. There has been understandable public outrage at what have so far been isolated cases of violent offending by young people, with calls to consider imposing harsher and longer punishments and for ‘adult time for junior crime’. In election year youth justice always becomes a political issue. Some politicians have gone so far as to suggest the abolition of the Youth Court. These reactions place the principles of the Act squarely under threat.

It is easy too to become blasé about what is truly a trail-blazing piece of legislation. The challenge for all involved in Youth Justice is the need to hold onto the objects and principles of the Act.

Objects of the Act

The objects of the Act are set out in s4, as follows:

"4 Objects

The object of this Act is to promote the wellbeing of children, young persons and their families and family groups by –

(a) Establishing and promoting and assisting in the promotion, of services and facilities within the community that will advance the well-being of children, young persons, and their families and family groups and that are –

(i) Appropriate, having regard to the needs, values, and beliefs of particular cultural and ethnic groups; and

(ii) Accessible to and understood by children, young persons and their families and family groups; and

(iii) Provided by persons and organisations sensitive to the cultural perspectives and aspirations of different racial groups in the community;
(b) Assisting parents, families, whanau, hapu, iwi, and family groups to discharge their responsibilities to prevent their children and young persons suffering harm, ill-treatment, abuse, neglect, or deprivation:

(c) Assisting children and young persons and their parents, family, whanau, hapu, iwi, and family group where the relationship between a child or young person and his or her parents, family, whanau, hapu, iwi, or family group is disrupted:

(d) Assisting children and young persons in order to prevent them from suffering harm, ill-treatment, abuse, neglect, or deprivation:

(e) Providing for the protection of children and young persons from harm, ill-treatment, abuse, neglect, or deprivation:

(f) Ensuring that where children or young persons commit offences –

(i) They are held accountable, and encouraged to accept responsibility, for their behaviour; and

(ii) They are dealt with in a way that acknowledges their needs and that will give them the opportunity to develop in responsible, beneficial, and socially acceptable ways:

(g) Encouraging and promoting co-operation between organisations engaged in providing services for the benefit of children and young persons and their families and family groups.

For Youth Justice purposes, the key object is in s4(f)(i) and (ii). Section s4(f) encapsulates the balancing act we are called upon to perform as professionals within the New Zealand youth justice system.

Section 4(f) advocates a restorative approach that seeks both to hold young offenders accountable for their actions, and also to help them turn their lives around:

“Section 4(f) propounds the principle that young people committing offences should be "held accountable, and encouraged to accept responsibility, for their behaviour" and should be "dealt with in a way that acknowledges their needs and that will give them the opportunity to develop in responsible, beneficial and socially acceptable ways".

These provisions emphasise accountability and membership of a wider community. They are not "soft" or woolly concepts. Young people, even though they are often themselves "victims", are encouraged to take responsibility for the consequences of their actions, and not to blame others or "the system". This way they can start to take control of their own lives. We may think that the traditional court system holds offenders accountable but it has become too ritualised, too de-personalised, to succeed in many cases.”

Section 4(f) is misunderstood and has not been faithfully applied. Generally we have been successful in holding young people accountable and encouraging them to accept responsibility for their behaviour. However we have been less successful in addressing their needs, addressing the causes of their offending and assisting them not to re-offend. This must be the essence of what is set out in object 4(f)(ii). Sometimes this is the result of inadequate FGC plans; on other occasions inadequate resourcing. Sometimes a concentration on offenders’ needs and causes of offending is mistakenly seen as “welfarism”. It is not. If a charge is validly laid in the Youth Court, it is

---

essential not only that the wrong is put right, but that measures are put in place to ensure that the wrong does not occur again.

We need to embrace the **twin emphasis** set out in section 4(f). It is not enough simply to have a wonderful FGC where, as a result of restorative justice principles, there is a profound victim-offender reconciliation, if underlying criminogenic needs are not identified, addressed and resolved.

**Principles of the Act**

The general principles of the Act that must be applied by all youth justice practitioners are set out in s5:

```
5 **Principles to be applied in exercise of powers conferred by this Act**

... any Court which, or person who, exercises any power conferred by or under this Act shall be guided by the following principles:

(a) The principle that, wherever possible, a child’s or young person’s family, whanau, hapu, iwi and family group should participate in the making of decisions affecting that child or young person, and accordingly that, wherever possible, regard should be had to the views of that family, whanau, hapu, iwi, and family group:

(b) The principle that, wherever possible, the relationship between a child or young person and his or her family, whanau, hapu, iwi, and family group should be maintained and strengthened:

(c) The principle that consideration must always be given to how a decision affecting a child or young person will affect –

(i) The welfare of that child or young person: and

(ii) The stability of that child’s or young person’s family, whanau, hapu, iwi, and family group:

(d) The principle that consideration should be given to the wishes of the child or young person, so far as those wishes can be reasonably ascertained, and that those wishes should be given such weight as is appropriate in the circumstances, having regard to the age, maturity, and culture of the child or young person:

(e) The principle that endeavours should be made to obtain the support of–

(i) The parents of guardians or other persons having the care of a child or young person; and

(ii) The child or young person himself or herself –

... to the exercise or proposed exercise, in relation to that child or young person, of any power conferred by or under this Act:

(f) The principle that decisions affecting a child or young person should, wherever practicable, be made and implemented within a time-frame appropriate to the child’s or young person’s sense of time.
```
Finally, s208 sets out principles that are specifically applicable to youth justice matters:

“Subject to section 5 of this Act, any Court which, or person who, exercises any powers conferred by or under this Part or Part 5 or sections 351 to 360 of this Act shall be guided by the following principles:

(a) The principle that, unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter:

(b) The principle that criminal proceedings should not be instituted against a child or young person solely in order to provide any assistance or services needed to advance the welfare of the child or young person, or his or her family, whanau, or family group:

(c) The principle that any measures for dealing with offending by children or young persons should be designed-

(i) To strengthen the family, whanau, hapu, iwi, and family group of the child or young person concerned; and

(ii) To foster the ability of families, whanau, hapu, iwi, and family groups to develop their own means of dealing with offending by their children and young persons:

(d) The principle that a child or young person who commits an offence should be kept in the community so far as that is practicable and consonant with the need to ensure the safety of the public:

(e) The principle that a child’s or young person’s age is a mitigating factor in determining-

(i) Whether or not to impose sanctions in respect of offending by that child or young person; and

(ii) The nature of any such sanctions:

(f) The principle that any sanctions imposed on a child or young person who commits an offence should-

(i) Take the form that is most likely to maintain and promote the development of the child or young person within his or her family, whanau, hapu, and family group; and

(ii) Take the least restrictive form that is appropriate in the circumstances:

(g) The principle that any measures for dealing with offending by children or young persons should have due regard to the interests of any victims of that offending:

(h) The principle that the vulnerability of children and young persons entitles a child or young person to special protection during any investigation relating to the commission of or possible commission of an offence by that child or young person.”

From the writer’s perspective, there has been a watering down in the New Zealand youth justice community of some of the principles of the Act. Two principles, in particular, that appear currently to be under threat are s208(a) and s208(b).
Section 208(a): Inappropriate cases coming to Youth Court

A fundamental principle in the Act is that, unless the public interest requires otherwise, criminal proceedings should not be instituted against a young person if there are alternative means of dealing with the matter (s208(a)). This is a pivotal provision. The Police have bought into this provision with generally stunning results. Our diversion/alternative action rate is between 76 – 84% of all offences. It is understood that this figure surpasses every other Western world country.

During the process of developing the 1989 Act, there was much debate as to how appropriate it might be for Police to take responsibility for diversionary measures.

“[The 1986 Bill] rendered diversion the sole responsibility of the Police. While the Bill attempted to limit police powers of arrest and prosecution in order to minimise children’s and young people's contact with courts, their approach clearly ignored the 1984 Working Party's observation that:

The central duties of the Police are the prevention, detection and control of criminal behaviour. The normal outcome of successful Police action is a prosecution. To ask the Police to act as the main agency for keeping young people out of court creates a conflict in the various roles to be played by an individual Police Officer and may lead to conflict with his/her colleagues.”

…

The [1987] Working Party addressed criticisms of the Bill's inadequate diversionary procedures (and the resulting increase of police powers), and recommended the establishment of a 'Family Advisory Panel'. This was a diversion and consultation process similar to that of the Children's Boards and was to be composed of members of the community and co-ordinated by social workers.

…

[At the Select Committee stage] DSW recommendations disposed of the Family Advisory Panels, which were seen to have the same flaws as the Children's Boards. It was believed that they would suffer the same problems of net-widening, being by-passed by police, and remaining unfocused. Doolan further argued that the Panels would protract the blurring of welfare and justice processes and would swallow resources in establishing the infrastructure that could be better spent by carrying out the diversionary process.

Instead, Doolan proposed a statutory process that would give power and resources to the whanau/family in decision-making and retain the diversion process within the judicial framework. [i.e. the Family Group Conference]

…

Mike Doolan's report was immensely influential in the final re-casting of the 1989 Act. His suggestion of the whanau/family conference and his arguments for a separate court for young offenders as a branch of the District Court were both swiftly incorporated into the 1989 legislation. These proposals were appealing in that they seemed to offer a solution to the prevalent concerns: cultural appropriateness, due process, family empowerment, and a need to offer effective diversionary procedures without placing too much power with the Police.”

The success rates of Police diversion clearly illustrate the wisdom of providing for this mechanism in the 1989 Act. In recent years, however, the principle that cases
should be diverted away from the Youth Court wherever possible has been watered down, especially in some areas of New Zealand. Cases that palpably can and should be dealt with through diversion/alternative action are now being laid in Court.

Some recent examples (encountered in the month before writing this paper, and representative of the problem) include a young person charged with theft of $8.80 from a parking meter, a first “offence”. Another young person was charged with fine-only disorderly behaviour at a minor level, again a first offence. Another was charged with shop lifting $13.00 worth of meat from a supermarket, again a first offence. These are matters that should not be coming to the Youth Court. Too many matters are coming to Court. Certainly the young people concerned should be held to account (in accordance with s4(f)(i)), but our system offers other, much more appropriate, means to do so.

We must be vigilant to ensure that only serious (or moderate to serious) matters, or repeat offending by high-risk young offenders, result in charges being laid in Youth Court.

**Section 208(b): Laying charges solely to access welfare services**

Another principle that is suffering from erosion is s208(b). In some cases, Police are laying charges (often extremely minor or only arising out of family difficulties and conflict) solely to access welfare services. Certainly many young “offenders” need comprehensive help, but laying a charge in the Youth Court (which realistically only raises care and protection issues) in order to access welfare services is contrary to the Act.

**Unacceptable regional variations**

In theory, the existence of fundamental principles to guide all those who operate under the Act should largely result in consistency of approach and outcome. There are, however, unacceptable regional variations in practice. For example:

- In Christchurch 2 CYFS offices (Sydenham and Papanui) cover approximately 6% of the youth population of the country and account for around 20.5% of all Supervision with residence orders imposed nationally.

- Gisborne, which has its fair share of serious crime, sees incarceration in only 1% of cases. The community there finds other ways of dealing with young offenders.

Each community should look at finding ways to solve the problem of youth crime that are the least onerous and formal, consistent with public interest and safety considerations. The principles of the Act clearly call for this.

**Other threats to the youth justice system**

There have been recent calls for the youth justice system to adopt an approach that differs from that which is called for by the principles of the Act.
That approach being:

- to take a solely punitive rather than a restorative approach;
- to treat youth offenders simply as young adults;
- to transfer more cases to the District and High Courts; and
- to more frequently impose imprisonment.

This trend can be seen in communities and youth justice systems throughout the Western world (e.g. in America and, to a lesser degree, Australia). But a solely punitive approach is of limited effect. Incarceration and ever harsher sentences, at best, make no difference to recidivism rates and, at worst, cause an increase in recidivist offending.

A punitive approach is not effective in specifically deterring young offenders who are sent to prison. This is a difficult message to convey. It is counter-intuitive. The general feeling is that harsher penalties must prevent re-offending.

Certainly sentencing plays an important “general deterrent” role. Young people need to know that there are clear and appropriate and, if necessary, serious consequences for offending. However, this “general deterrent” message need not necessarily be conveyed by an increasingly punitive approach. And such an approach will not work with individual serious young offenders, most of who are profoundly dysfunctional young men, with limited victim empathy and who display little ability to foresee consequences.

Recent Canadian research has indicated (in relation to all offenders) that:

"sentence severity has no effect on the level of crime in society. It is time to accept the null hypothesis."\textsuperscript{20}

As a consequence of accepting the “null hypothesis”, to the Canadian researchers conclude that:

"deterrence based sentencing makes false promises to the community in dealing with crime. Further, as long as the public believes that crime can be deterred by legislatures or judges through harsh sentences, there is no need to consider other approaches to crime reduction."\textsuperscript{21}

Dr James McGuire, a leading UK criminological researcher based at Liverpool University, has conducted a meta-analytic study that appears to conclusively demonstrate that taking a punitive approach to youth criminal offending or placing an emphasis on specific deterrence will not result in reduced rates of recidivism. On the other hand, “appropriately designed and carefully delivered programmes of intervention have the capacity to secure a significant effect in reducing rates of offender recidivism.”\textsuperscript{22} This is not to say punitive sentences are not necessary to

\textsuperscript{20} Doob, AJ. & Webster, CM., Sentencing Severity and Crime: Accepting the Null Hypothesis, 19 January 2003, p1.
\textsuperscript{21} Above n20, p40.
\textsuperscript{22} McGuire, J., What Works in Reducing Criminality? University of Liverpool, paper presented at conference: Reducing Criminality: Partnerships and Best Practice, Australian Institute of Criminology, Perth, 31 July and 1 August 2000, p2.
protect the public, but it is to say that we should not expect such sentences to reduce re-offending.

Dr McGuire reviewed the recent international studies to reach the following two conclusions:

1. **High-end sentences have no appreciable effect on recidivism**

A 1994 study (Lloyd, Mair and Hough) examined offenders subjected to imprisonment, community service, and probation orders (with or without additional conditions) and found that these orders had no notable effect on whether or not an offender re-offended in the future. In Dr McGuire’s words:

> “None [of the orders] yielded any differential impact in terms of reductions in re-offending, nor any evidence of a suppressant or deterrent effect. The sentence of the court had no obvious bearing on the outcome.”

Dr McGuire explains this counter-intuitive result by reference to behavioural research, which shows that punishment is only effective when certain conditions are met, namely:

- punishment is inevitable/unavoidable; and
- punishment is administered a matter of days or weeks after the offence, no longer; and
- punishment should be applied at high intensity; and
- the offender must be able to resort to alternative behaviours to pursue his or her desired goals.

Dr McGuire states that:

> “These conditions are very unlikely to be met in the complex real world environment of the criminal justice system, or in the lifestyles of those who regularly come into contact with offenders.”

He goes on to note that most offenders do not have the concrete possibility of punishment in mind when they commit their crimes. They are usually aware of the risk of getting caught, but do not think as far as ‘and if I do, I may go to jail or have to do community work etc.’.

---

23 See above n 22.
24 See above n 21 at p 3.
2. There is no association between the lengths of prison sentences and rates of recidivism

A 1999 study (Gendreau, Goggin and Cullin) reviewed studies of the relationship between length of sentence and re-offending rates. As Dr McGuire puts it:

“In contradiction to the deterrence hypothesis, offenders who served longer sentences had slight increases in recidivism.”

Dr McGuire’s conclusions are echoed in the research of Ms Kaye McLaren, former Senior Researcher for the Ministry of Youth Development, into what does and doesn’t work with young offenders. The following is McLaren’s summary of what does not work:

“Shock tactics, punitive, deterrent and ‘punishing smarter’ approaches, including scared straight, boot camps, corrective training and shock parole probation. These are the interventions where the primary focus is on punishment, inducing fear of prison, and harsher treatment, with little or no emphasis on teaching new skills or reducing risk factors. Criminal sanctions also appear largely ineffective.

Individual and family counselling, or any other approach that doesn’t address key risk factors that lead to offending.

Approaches which provide low numbers of contact hours for higher risk offenders or high numbers of contact hours for low risk offenders.

Non-directive counselling or therapy (as opposed to highly structured, cognitive behavioural interventions) where there is little attempt to teach new skills, or to respond positively to desirable behaviour and negatively to undesirable behaviour.

Arrests of juveniles as the sole intervention.

Reduced caseloads alone on probation or parole are not sufficient to impact on re-offending.

Early release on probation or parole.

Use of ‘bad manners’ by police, in the form of less respectful and fair behaviour towards young people.

Intensive Probation Supervision (an intensive, ‘get tough’ version of probation for young offenders) does not appear effective unless combined with appropriate rehabilitative services.”

25 See above n 22.
26 McLaren, K., Tough is Not Enough, Ministry of Youth Affairs, June 2000, p 89.
2. THE REAL PICTURE WITH YOUTH OFFENDING MUST BE PROPERLY UNDERSTOOD

The real position about youth offending in New Zealand is seriously misunderstood. This is, sadly, consistent with a general, inaccurate perception of the prevalence and severity of crime in our society. As a recent Ministry of Justice survey of public perceptions of crime in New Zealand noted:

“During a time in which the New Zealand crime rate was slightly decreasing, the vast majority of respondents thought the crime rate was actually increasing. Survey respondents substantially overestimated that violent crime accounted for about six times more of the total crime than police statistics indicate, and more than two-thirds estimated that the prevalence of household burglary was at least three times higher than national victimisation statistics indicate.”

Certain misleading and incomplete statistics have formed the basis of media reports that have fuelled recent public debate of youth offending in New Zealand. While such debate is highly desirable, it is important that it be based on an accurate representation of the operation of the current system.

The following are two newspaper headlines that may sound familiar to many of you:

“There are a number of children running about the streets of Dunedin without the control of parents. If the government does not take them in hand they will become members of the criminal class. Youth offending is out of control.”

And the second headline:

“There is a definite relationship between the increase in the number of children on the streets and the increase in juvenile crime.”

The first statement is from the Otago Daily Times, 1884. The second statement was made in 1886.

The point is that every generation compares “today’s” young people with a supposed, previous golden age. “No one has had it as tough as we have it” is a familiar catch cry from those working in youth justice. In fact, every generation has its particular difficulties and challenges posed by young offenders.

It is important, also, to bear in mind that minor law breaking during adolescence is a common occurrence and tends, in the majority of cases, to be in the nature of boundary pushing and limit testing. This sort of behaviour is part of the maturation process and only a small proportion of it necessitates Police intervention. Almost everybody breaks the law, at least once, in some way while an adolescent.

We must also take care not to let the debate within New Zealand about youth offending be led by a misleading reliance on selected statistics. When such statistics

28 Quotes courtesy of Gabrielle Maxwell and Allison Morris, Crime and Justice Research Centre, Victoria University of Wellington.
are presented to the public by the media they can, understandably enough, lead to calls for fundamental change and assumptions that “the system is failing”. It is vital, then, that the real position, as best we know it, is made clear so that sensible and informed discussion can take place.

Despite a lack of a centralised system of collection and analysis of statistics about youth offending in New Zealand, the following can be said about “the real position” here\textsuperscript{29}.

\section*{NATIONAL STATISTICS}

\subsection*{1. Offending attributed to under-17-year-olds has increased over the last 12 years, but much less so over the last 7 years}

- The total number of resolved offences attributed to under 17 year olds has increased from 33,500 in 1989, to 45,522 in 2000, dropping slightly to 43,436 in 2001 and increasing to 44,533 in 2002. It has been relatively stable over the last 7 years.\textsuperscript{30}

\textit{(It should also be noted that this is not the same figure as the number individual offenders, and does not take into account population growth).}

- Similarly, the non-traffic apprehension rate (per 1,000 population) for 14–16 year olds increased from 148.2 in 1992, to 175.0 in 1993, to 182.8 in 1994, and to 193.4 in 1996. It has remained relatively unchanged since. It was 184.0 in 2001, and 181.0 in 2002, the lowest since 1993.

- More strikingly, the apprehension rate for 10–13 year olds has remained relatively static, being 46.5 in 1992, and 46.2 in 2001, and 44.7 in 2002 (the lowest since 1998).\textsuperscript{31}

- The number of charges processed in the Youth Court has increased from 8,674 in 1990/91, to 14,209 in 2000/01, but again has remained relatively static in the last 5 years and decreased to 13,754 for 2001/2002.\textsuperscript{32}

- The number of offenders (per 10,000) in the Youth Court has increased from 130 in 1990/91 to 197 in 2000/01. It dropped to 185.1 in 2001/2002. It has been reasonably stable in recent years.\textsuperscript{33}

Generally, while there appear to have been significant increases in offending in the first 5 years of the 1990’s, during the last 7 years there have only been relatively small increases in offending by under 17 year olds, and the trends have been relatively stable. Indeed there have been small drops in 2002.

\textsuperscript{29} The following statistics are taken from: Becroft, AJ., \textit{Youth offending: Putting the Headlines in Context} (Issue 2), August 2003 (available on the Youth Court website at \url{www.courts.govt.nz/youth})

\textsuperscript{30} Source: NZ Police.

\textsuperscript{31} Source: NZ Police.

\textsuperscript{32} Source: Ministry of Justice.

\textsuperscript{33} Source: Ministry of Justice.
Police apprehensions of children and young people aged between 10 and 16 increased by no more than 4.8% between 1996 and 2001, a period when the total population in that age group rose more than 8%.

2. **Offending by under-17-year-olds has remained a relatively static proportion of total offending over the last 10-12 years**

Under-17-year-olds account for about 22% of total offending. This figure has not significantly changed over the last decade (1994: 22.33%, 2002: 21.90%). In other words, while offending by under-17-year-olds has increased, it has not increased at any greater rate than adult offending.

In fact, offending by under-17-year-olds in the year 2001 was a slightly lower percentage of overall crime than in the 2000 year and similarly for the 2002 year (2000: 23.09%, 2001: 22.12%, 2002: 21.90%).

Debate about increasing youth crime should take place in the context of all crime increasing.

3. **Only a small percentage of offending by under-17-year-olds is "serious" offending**

- Just over 50% of the offences attributed to young people are dishonesty offences (52% in 2002).
- 20% of all offences attributed to young people are shoplifting.
- Property damage is the next largest offence, about 1 in 8 (12% in 2002).
- Nearly half the offences committed by under 17 year olds and recorded by the Police in a study in 2000/01, were rated by the Police as of minimum seriousness (these were mostly property and dishonesty offences involving goods of less than $100 in value).
- Violence makes up 1 in 10 of all offences, and has done so since 1994 (2002: 10.7%).
- Drug offences, anti social behaviour and property abuse each made up about 1 in 20 offences.
- The average seriousness of “proved” cases in the Youth Court has fluctuated over the last decade, with no clear pattern, save for significant increases in the most serious offences in the first half of the 1990’s.

---

34 Source: Child, Youth and Family Department.
35 Source: NZ Police and Ministry of Justice.
36 Source: NZ Police.
The proportion of “proved” cases that resulted in any type of custodial sentence remained between 8-9% from 1992 to 1997, but dropped to 5% by 2001.\textsuperscript{38}

4. Is violent offending by under-17-year-olds increasing?

Yes, and no. Violent offending attributed to 14–16-year-olds has increased since 1991 but only slightly since 1995.

- Apprehensions by the Police of 14–16-year-olds for violent offences increased from 104 per 10,000 of the population in 1991 to 196 in 1995. It has increased only slightly since then to 210 in 2001 and dropped to 205 in 2002.\textsuperscript{39}

- The number of serious offences for 14–16-year-olds has remained reasonably static over the last 5 years. For instance, there were 354 robberies by 14–16-year-olds in 1995, 310 in 2000 and 320 in 2002.\textsuperscript{40}

- Violent offending attributed to 10–13-year-olds peaked in 1997 but has decreased slightly since then. Apprehensions for 10–13-year-olds for violent offending increased from 17 per 10,000 of the population to a peak of 47 in 1997. They were reduced to 45 in 2000, and 42 in 2002. Robberies increased from 66 in 1994 to 77 in 2000.\textsuperscript{41}

It should be noted that over the last decade, the total number of violent offences recorded by the Police in New Zealand has increased. For instance the rate per 10,000 of violent offences committed by 31–50-year-olds increased more than for 14–16-year-olds.

It may be that society is becoming less tolerant of violence and that there are more complaints of violence. Whatever the reason for the increase, an important question is why is our society as a whole (not just young people) apparently becoming more violent?

Also the increase in violent offending does not represent any significant change in the percentage of young people involved in violence, which has fluctuated from 11 to 13% of all offences recorded by the Police (13.56% in 2000; 12.99% in 2002).

Moreover, in a 2002 Police youth diversion study, 51% of offences committed by young offenders were rated of minimum seriousness by the Police, and 78% of minimum or medium/minimum seriousness.\textsuperscript{42}

\textsuperscript{38} Source: Ministry of Justice: Conviction and Sentencing of Offenders in NZ: 1992-2001; Chapter 7

\textsuperscript{39} Source: New Zealand Police.

\textsuperscript{40} Source: Ministry of Justice.

\textsuperscript{41} Source: NZ Police.

\textsuperscript{42} Above n37, p19.
5. **Is the age at which under-17-year-olds start to commit violent offences decreasing? Is the violence becoming more serious?**

The statistics do not answer this question. Nor do they tell us whether the type of violence is changing.

Those in the field (Police Youth Aid, CYFS Social Worker and Co-ordinators) are quite sure that violent offending is starting earlier and is more serious in nature than it was 5 to 10 years ago. Regrettably, there are simply not the figures to prove or disprove this. The lack of statistics upon which informed debate can take place is concerning. The anecdotal evidence, however, is overwhelming.

What the available statistics do show is that over the last 10 years the proportion of young offenders in each of three different age groups under 17 has remained approximately the same:

- Under-10-year-olds form about 3% of under-17-year-old offenders (1.7% in 2002).
- 10–13-year-olds form about 24% of under-17-year-old offenders (21.8% in 2002).
- 14–16-year-olds form about 70% of under-17-year-old offenders (76.5% in 2002).

Also, the percentage of total offences which are violent, by age group, has remained stable over the last 7 years:

- For under-10-year-olds about 5–7% (6.2% in 2002).
- For 10–13-year-olds about 7–9% (9.3% in 2002).
- For 14–16-year-olds 10–11% (11.3% in 2002).\(^43\)

6. **Nearly 80% of youth offences are dealt with by the Police by "alternative action" through a diversionary approach, and do not result in a Youth Court appearance**

- Only 16% of cases are referred by the Police directly to the Youth Court. That is where the nature or amount of the offending is considered too serious to be dealt with by diversion.

---

\(^{43}\) Source: NZ Police; Ministry of Justice; Maxwell, G., Crime and Justice Research Centre, Victoria University 2002.
A further 8% of cases are referred to a Family Group Conference for consideration as to whether a charge should be laid. Usually a decision is made not to lay a charge.

76% of all cases are dealt with by alternative action/diversion, written warnings of other community based approaches co-ordinated by Police Youth Aid.44

7. The number of Family Group Conferences for Youth Offenders has remained much the same over the last decade: about 6,000 per annum, (though in the last year there have apparently been significant increases).

There were 6,806 Family Group Conferences in 1994/95 when the figures were first computerised. There were 6,831 in 2000/2001; 5,964 in 2001/2002; 6,529 in 2002/2003.

Court ordered Family Group Conferences arising from charges laid in the Youth Court rose from 3113 to 3990 from 1994/95 to 2000/2001.

Family Group Conferences convened before prosecution in the Youth Court dropped form 3693 to 2841 in the same period45.

However in the last 2 years the number of Court ordered Family Group Conferences and pre-charge Family Group Conferences have been about even.

8. Charges processed in the Youth Court have increased over the last 10 years, but have remained stable in the last 5 years and dropped last year

The number of charges processed in the Youth Court in 1990/91 was 8674 (this is not the same thing as offenders, as one youth offender may face several charges).

The number of charges processed in the Youth Court peaked in 1999/2000 at 15,588.

The number of charges processed in the Youth Court dropped in 2000/01 to 14,253, and in 2001/2002 to 13,754.46

Claims, therefore, that the workload of the Youth Court has tripled47 are without foundation and wrong.

It should be remembered that only the most serious youth offending comes to the Youth Court. And only the most serious of those serious offences are transferred for sentence in the adult Courts. In the last ten years, though there have been fluctuations

---

44 Above n36.
45 Source: Department of Child, Youth and Family Services.
46 Source: Ministry of Justice; Department for Courts, 2002.
47 For example: The Dominion newspaper, Wellington, 29 March 2002.
in that “transfer” figure: 254 young offenders were convicted in the District or High Court in 1991; 253 were convicted in 2000; 238 in 2001; and 226 in 2002.\(^{48}\) Conversely, 60% of charges in the Youth Court in 2001 were the subject of a s.282 discharge (absolute discharge) usually following a successful FGC, or were not proved.

9. **Numbers of young persons in the Youth Court have dropped in the last 2 years even though the population has increased**

- There has been a significant decline in the Youth Court rolling 12-month volumes (of offenders), from 7602 in 2000 to 6947 in February 2002, 6889 in February 2003.

- In February 2000, 728 offenders appeared in the Youth Court; in February 2002, only 537 appeared; and in February 2003, 588 appeared.

It should be noted that this is still just under half the number of young offenders who appeared in the old Children and Young Persons' Court, which existed before the Children Young Persons and their Families Act, 1989, was introduced.\(^ {49}\)

10. **There are huge regional variations in youth offending throughout NZ**

Far from youth offending increasing, in some areas it has significantly reduced.

This is usually due to good local practice and co-operation between government agencies and the community, and particularly because of pro-active and creative policing by the Police Youth Aid section.

11. **Recent Police statistics relied upon by the media can be misleading**

   **Police Statistics are based on "apprehensions" and are not offender based**

   - An apprehension is not the same thing as a charge. There may be an apprehension without a charge being laid (for example: for breach of bail).

   - Also, Police apprehension statistics do not represent a count of individual offenders.

   "Apprehensions“ are not necessarily a reliable statistical indicator of Youth offending:

   - The number of apprehensions is heavily influenced by:
     - Police resourcing.
     - Increases in the number of constables.
     - Increases or decreases in offending being reported.

\(^ {48}\) Source: Ministry of Justice.

\(^ {49}\) Source: Department for Courts.
An increase in apprehensions does not necessarily mean that offending has increased. Police figures can be heavily influenced by Police policy and the targeting of certain types of offence.

REGIONAL STATISTICS

If the national statistics are incomplete and unsatisfactory, even more so are regional statistics. It has already been said that it is unwise to generalise in relation to youth offending nationally. Nor can you do so on a regional basis. It is believed that there are significant regional variations in offending. There is a pressing need for much better figures in order to assess (and address) these variations. Regional figures that are needed include:

- Arrest rates.
- Diversion rates.
- Charging rates.
- Types of offences.
- Youth Court charges/offenders.
- Family Group Conference statistics (victim, family attendance etc.).
- Ethnicity, age and gender breakdowns.
- “Success” rates of youth court sentences, including supervision with residence.

3. THE FUNDAMENTAL NEED FOR A COMPREHENSIVE EARLY INTERVENTION POLICY

“Give me a child until he is seven, and I will give you the man (or woman)”

St. Ignatius of Loyola (1491 -1557)

In one sense the Youth Court is the ultimate ambulance at the bottom of the cliff. It can and does make a difference with young offenders, who present with a series of “failures”, often cumulative, in family, school, peer and community/ neighbourhood environments. But it is the community’s “last best chance” to turn around the life of a potential serious young offender.

The best, and most effective, youth offending strategy is early, comprehensive and co-ordinated intervention in the lives of prospective, serious young offenders. The earlier such intervention occurs, the better. Truly, youth justice begins at conception:

“From the first few days of conception our brains begin to form from rudimentary cell tissue. … In later foetal life and particularly from the moment of birth, experiences ‘switch on’ our connections and stimulate thousands of new connections to develop synapses. … This process of ‘connectivity’ or synapse formation … occurs over the first 3 years. … There are critical and sensitive periods in brain development during which rapid changes take place, and after which it becomes difficult if not impossible to re-capture those developments.

…
The experiences essential for activating neurones and promoting synapse formation need to be the right ones – if they are negative, then the hard wiring that takes place retains all the negative connotations including the emotional memory of the experience. … Therefore if a child is repeatedly smacked, put down, ignored or abused they may become “hard wired” for these emotions and after 2 or 3 years it may be too late to change.

Just as negative experiences can affect an infant in this way, lack of stimulation or neglect – lack of positive input – can be equally devastating. The connections will be weak and may never develop. On the other hand, when a child is nurtured, played with, sung to, cuddled and stimulated positively, he or she will be programmed in a positive fashion. This type of experience sets a child up for life, hopefully receptive to all forms of communication and experience.

…

It is important … [to give] all prospective parents and new parents in addition to all child care workers and policymakers this information so that there is awareness in the community of the importance of early childhood experience on later infant development. In the context of what is legally acceptable we need to remember that if we abuse or neglect our children, we don’t just cause acute pain and suffering at a humane level, we may also potentially damage their brain forever.”

Early intervention is designed to address issues of inadequate/inappropriate parenting, abuse, neglect, early childhood cognitive and behavioural problems, and family poverty, all of which are factors in future offending (amongst other negative consequences later in life).

“…In recent years, there has been a great deal of research into the way human beings develop, especially in the first five years of life… There has been a rediscovery in the policy world, of the role of early childhood as a lifelong determinant of health, well being and competence…. Recent insights from neurobiology, developmental psychology, and longitudinal studies of children give credibility to notions long held as common sense…”

“The better the care and stimulation a child receives, the greater the benefit for the national economy as well as the child. … The world is finally recognising that children’s rights to education, growth and development - physical, cognitive, social, emotional and moral - cannot be met without a comprehensive approach to serving their needs from birth”

A call for early intervention was made as recently as last week. In The Press on Tuesday, Professor David Fergusson, a leading Christchurch-based researcher, was reported as saying that childhood behaviour was “the best indicator we have” of potential problems in adulthood. Individuals who as children were rated as having the most problematic behaviours (including “defiance of authority, fits of temper, aggression or cruelty, destruction of property and dishonesty”) were:

- five times as likely to have a criminal conviction by age 18; and
- ten times as likely to be violent offenders, four times as likely to have made a suicide attempt, and more than three times as likely to be using illicit drugs, by age 25.

---

52 Carol Bellamy, UN Children’s Fund, 1999
Whilst problematic childhood behaviour did not ‘condemn’ young people to futures of crime, drug abuse or suicide, it did put them at higher risk. Professor Fergusson advocated early childhood intervention. He noted that, while his work was focused on primary school children, conduct problems could be accurately detected in children as young as pre-schoolers.

The research conclusions are overwhelming and frankly the issue is no longer if early intervention should take place and why, but how we do it and when.

**Seven Important Principles**

1. The earlier the better.

2. A holistic, family centred approach is best. It is counter-productive to isolate children from their living and learning environments. Early intervention initiatives should provide support across the major systems of influence in a child’s life.

3. Multi-component approaches, over prolonged periods of time, are likely to be more effective than single faceted, “one shot”, approaches. *Note: One programme doesn’t have to do it all: a co-ordinated range of programmes will be effective.*

4. **But,** reducing one risk factor is likely to reduce others as well.

5. Programmes designed to:
   - reduce risk of child abuse and neglect; and
   - combat “child poverty”,
   will be particularly important.

6. Targeting a particular disadvantaged group is effective.

7. Ongoing, repetitive effort required.

**What isn’t happening?**

At the moment, as far as early intervention goes, there appears to be:

- No overarching, cross-departmental, national policy for early intervention.
- No adequate, (single) funding source for early intervention work.
- No co-ordinated, comprehensive, national delivery of early intervention. There are a variety of early intervention initiatives developed by different government departments, but arguably not enough attention to a co-ordinated cross-departmental delivery system.
- Insufficient co-operation between the many excellent advocacy and operational groups working with children.
What is?

The Youth Offending Task Force recognised the need for appropriate and effective early interventions as one of its key focus areas. In its 2002 report, the Task Force said:

“There is a long-standing concern that the need to respond to immediate and tangible problems, including youth offending, takes priority over the need to intervene early in children’s lives. This is particularly where the benefit of that intervention may not be immediately apparent and the identification of that child or family may be difficult. A balance is required between responding to the needs of children and young people who offend and improving the provision of services at the early developmental stages of childhood. The importance of early intervention initiatives needs to be supported and reinforced by the youth justice sector.

…

As with other key areas, increased co-ordination and collaboration between government agencies and with the community is required to improve consistency of funding and programme objectives, identification of gaps in services, and appropriate assessment and referrals of families/whanau and their young children.” 54

The Taskforce identified the following concerns with the response of the youth justice community to this issue at the time:

The need to respond to immediate and tangible problems, including youth offending, takes priority over the need to intervene early in children’s lives.

…

A balance is required between responding to the needs of children and young people who offend and improving the provision of services at the early developmental stages of childhood.

…

There is an ongoing need to ensure that all programmes are high quality, service providers are properly trained and monitored, and effective supervision and accountability mechanisms are put in place.” 55

The Task Force proposed the following initiatives to improve early interventions:

- Continuing to ensure the needs of young children (0-4 years) receive high priority in the social, health and education sectors.
- Providing and supporting culturally responsive services for Māori and Pacific Island families experiencing multiple disadvantages (especially young parents).
- Ensuring family support and skills programmes are provided by trained providers, are high quality, and have effective supervision and accountability mechanisms.
- Increasing co-ordination and collaboration across government agencies and community groups; improving consistency of funding and programme

54 Above n13 at pp22&26.
55 Above n13 at pp 26-27.
objectives; identifying gaps in services; appropriately assessing and referring young children.

- Continuing efforts to increase participation (particularly of Māori and Pacific Island people) in key preventative services (such as early childhood education).

It is respectfully suggested that central government consider giving early intervention a greater priority, with greater co-ordination and with one over-arching policy. The benefits in reducing youth crime would be incalculable.

4. CHILD OFFENDERS: WE MUST DO BETTER

If the Youth Court is the “last, best chance” to address offending, then working with child offenders represents the “second to last, best chance”.

In the New Zealand system, offending by children (10, 11, 12 and 13 year olds) is seen as a “care and protection” issue involving a whole family. Other than for murder or manslaughter, under 14 year olds are not regarded as “mature” or “grown-up” enough to take full responsibility for their offending. The philosophical basis of the Children, Young Persons and Their Families Act is that until young offenders are 14 they should be dealt with in the context of their families.

Child offending is dealt with in the Family Court, although the offences must still be proved to the criminal standard, and the Court must be satisfied that the child “knew either that the act or omission [constituting the offence] was wrong or that it was contrary to law.”56

Upon a finding that the number, nature or magnitude of offence(s) committed by a child are such as to give serious concern for the child’s wellbeing, a declaration can be made that the child is in need of care and protection.

The Family Court has greater powers available to it in dealing with child offenders than the Youth Court does in dealing with youth offending. These include counselling and support orders made against the parents/guardians of the child. Such measures may be agreed to at an FGC, without the need for a formal Family Court hearing.

While there may be legitimate debate as to the age when offending by children should cease to be regarded as a care and protection issue – i.e. at what age they should be considered old enough to take full responsibility in their own right for their offending (some would argue for 12, or even lower) – it is suggested that the underlying principle is sound. For further discussion of this point see the papers to be presented in a workshop session at this conference by His Honour, Judge Peter Boshier, Principal Family Court Judge, and Don Kennedy, a senior Youth Advocate from the Hawkes Bay.

56 Section 22(1) Crimes Act 1961.
There is no evidence to suggest that the New Zealand child offender practice, providing it is properly resourced, is not working. Child offending statistics show remarkable stability over the last 7 years, and important indicators such as violent offending have very slightly decreased in the last couple of years.

However, there have been consistent concerns as to the operation of the current system for dealing with child offending. There are proposals to reduce the age at which children/young people can be prosecuted (at least for purely indictable offences) to 12. Before that step is taken it will be important to ask two questions:

- What do statistics show about child offending? Is out of control? In fact, generally the statistics do not indicate a chaotic spiral of child offending (see Challenge 2).

- Is it really the system that is intrinsically deficient, or are the problems a result of under-resourcing and lack of good, clear understanding of how it works?

One thing is clear, the way child offenders are presently dealt with needs to be improved upon. In particular, there need to be more facilities and stable community placements for holding alleged child offenders who are waiting for their cases to be resolved. This concern is not new. Such was the anxiety about our responses to child offending that the previous Principal Youth Court Judge, His Honour Judge David Carruthers, initiated the publication of a Child Offenders’ Manual, under the authorship of Judge Peter Boshier, now Principal Family Court Judge. A national training scheme, pioneered by CYFS, for those working with child offenders has been in operation for several years. But, still, significant concerns remain.

Given the considerable concerns about the way in which child offending has been handled, it seems inevitable that the debate will continue as to whether such work will be moved over to youth justice, so that children/young people aged 12 and over will all be dealt with in the Youth Court under the youth justice system and principles.

5. **THE VITAL NEED TO KEEP YOUNG PEOPLE IN THE EDUCATION SYSTEM**

The writer claims no expertise in education law or policy. However, to be involved in the youth justice system is to daily confront young offenders, almost all of whom are not part of the education system. While there are no accurate figures, anecdotally, it is thought that up to 80% of offenders in the Youth Court (and only the most serious 16-20% of offending results in Youth Court charges) are not formally “engaged” with the education system. The word “engaged” is used advisedly. Technically many are not truants, because they are not enrolled at a secondary school to be a truant from. They are simply not in the formal education system. They are drifting. They are between schools. They may have been excluded, are not enrolled elsewhere and await placement in alternative education. Or they may have been granted an exemption and are waiting for a course, seeking employment, or doing nothing.
Involvement in school is one of the big four protective factors against risk

Involvement in education is one of the “big four” protective factors against adverse life outcomes, including criminal offending. The “big four” areas/risk factors are family, community, school and peer group.

The importance of school participation was emphasised in the important research by Ms Kaye McLaren:

“Lipsey (1992) found that impact on delinquency was more strongly linked with participation in school by young people than with school achievement or changes in psychological measures. Neither of the latter had a significant relationship with delinquency. Simply participating in school appeared to lead to changes in psychological measures, interpersonal adjustment, academic performance and vocational accomplishment. Lipsey concluded that “while change in psychological variables and interpersonal adjustment… does not seem to be closely linked to change in… delinquency, it does seem to be closely linked to change in… school participation which, in turn, is linked to change in delinquency” (1992:142). So it appears that increasing participation in school by young people is a key part of reducing their antisocial behaviour and offending.”

The link between non-school attendance and crime

Not all truants or non-school attendees commit offences or become young criminals. However, almost all offenders before the Youth Court are not at school. The link between non-school attendants and offending may not be causative, but there is certainly a clear association. Moreover, non-school attendance is seldom the problem. It is usually a symptom of much greater problems at home, with peers, or with drugs/alcohol/psychological or psychiatric issues or with learning/behavioural problems. An unresearched issue in New Zealand is the number of young offenders who may have specific learning disabilities.

As noted by Judge Fred McElrea in a 1997 paper, “an American writer recently summed up the connection between education and crime this way:

“Truancy may be the beginning of a lifetime of problems for students who routinely skip school. Because these students fall behind in their school work, many drop out of school. Dropping out is easier than catching up.

Truancy is a stepping stone to delinquency and criminal activity. A report compiled by the Los Angeles County Office of Education on factors contributing to juvenile delinquency concluded that chronic absenteeism is the most powerful predictor of delinquent behaviour.

Truant students are at a higher risk of being drawn into behaviour involving drugs, alcohol or violence. A California deputy assistant attorney who handles truancy cases says he has “never seen a gang member who wasn’t a truant first.”

57 Above n26, p21.
58 Above n26, p31.
Those concerned with youth offending often ask what is the single most important step that could be taken to reduce youth offending. Is there a “king hit”? Keeping every young person actively involved in education until the age of 16 would be a very good start. Especially as Police figures indicate that, generally, 25% of youth offending takes place between 9.00 am and 3.00 pm. In some areas it is much higher. Although rather a simplistic analysis, just keeping the young people at school could, conceivably, reduce youth offending by 25%!

**Specific issues for education**

Those who work with youth offenders are concerned about a number of issues in relation to education. A detailed analysis of these issues is outside the scope of this paper. It is sufficient simply to list the key issues. Many of these have been recently identified in detail by Mrs Pat Harrison, former principal of Queen’s High School, Dunedin61, and will be addressed in a separate presentation in this conference:

- **School Participation.** The fundamental issue, from the perspective of the Youth Court, is simply school participation. Although a crude generalisation, there is truth in the statement that “every young person kept at school is one less potential young offender”. There is a great opportunity (and it might be respectfully emphasised a great responsibility) for the education sector to directly reduce youth (and subsequent adult) offending.

- **The lack of a national secondary school database to clearly establish the extent of non-enrolments.** This issue has been frequently discussed. It is understood that given difficulties (such as transient students), the margin of error in any such database may be greater than the group of non-enrolled students sought to be identified. That said, in theory the database would be a useful tool to identify young people who have “fallen through the cracks” in the education system, so that the extent of the problem can be identified and addressed.

- **The need for improvements in current policies and action taken to ensure non-enrolled students attend mainstream education.** The NETS (Non-enrolment Truancy Service) does very good work in attempting to place non-enrolled students back within the system, but it relies heavily on notifications by others. Without a database it is simply impossible to know the extent of the problem; a “best guess” is that at least 1,000 students slip through the system.

  In 2002 there were 6251 referrals to NETS, of whom 50% were Maori. 33% of those were “helped into education” (of which 10% were enrolled in correspondence school), and 8.6% were helped into training or work. There is no evidence of successful integration.62 44% of the referrals were inappropriate and required no further action.

---


62 Above n61 at p6.
• **Truancy.** “Rates of unjustified absences remain unacceptably high. In 2002, a survey of absences over one week found that one third (86,918) of absences involved truancy. … Truancy is more likely for those who are Maori or Pacific Island, and are from a low socio-economic area. More than likely they come from a town and are at a secondary school of between 251-500 students.”\(^63\) Associated issues include the lack of a clear national policy as to when action should be taken regarding truancy; and the lack of a nationally co-ordinated truancy service. There are around 125 District Truancy Services, most of which do excellent work, but in respect of which there is limited national quality control, accountability and resourcing. It is understood that the Government has announced new initiatives over the coming year to target truancy.

• **Suspensions/exclusions from secondary schools.** In the last three years the levels have remained stable. In 2002, 4,937 students were suspended, with 2,924 returning to their suspending school. Exclusions numbered 1,465. 30% of those were granted exemptions to enrol in a course or allow for employment. “Males and Maori were over-represented while drugs and continued disobedience remained the most frequent reasons for suspensions.”\(^64\) A small proportion of schools accounts for the great majority of all exclusions. Special initiatives to reduce suspensions/exclusions of Maori students appear to have been very successful. An associated issue concerns the responsibility of an excluding school to attempt to re-enrol an excluded student in another secondary school. The point needs to be made that every excluded student is problem relocated, not solved. There is a real challenge for schools to hold on to all students. Simplistic as it is to say, every excluded student is one more potential young offender. And if exclusions are necessary, there are surely reciprocal responsibilities on other schools to enrol that student.

• **Alternative Education.** Some students will inevitably be alienated from school. What becomes of them? An alternative education system is obviously necessary. At present there are 1820 places available. There are some important issues around the alternative education debate. Is there a national strategy as to the quality of alternative education? Who should be eligible for it? Is alternative education a threat to mainstream education if the barriers to entry are too low? Should alternative education be limited to students of secondary school age, or should it include those of intermediate age as well? If so, are the aims for alternative education the same for each age group? Should there be a seamless transition between secondary school and alternative education? Why do a small (but significant) number of students not make the transition? In 2002, there were 3,094 students in alternative education\(^65\).

• **Correspondence School.** Is this excellent service sometimes used as a “dumping ground” for students who simply cannot cope or survive within

\(^63\)Above n61 at p8.  
\(^64\)Above n61 at p10.  
\(^65\)Above n61 at p12.
mainstream education? Is it fair to place this burden on the Correspondence School if it is done simply to ensure that problematic youths are technically enrolled?

- **Exemptions.** The Secretary of Education can exempt a 15-year-old student from attendance where the educational problems, conduct of the student or suitability of the school environment are such to convince the Secretary to do so. Exemptions are a major concern of the Youth Law Tino Rangatiratanga Taitamariki. In a paper presented at a Youth Law policy conference in November 2003, solicitors from Youth Law noted:

  “In our experience this option is used frequently with regards to 15-year-old students excluded from school who fail to be accepted into another school as a result of their exclusion and require considerable efforts by the Ministry of Education to facilitate a placement”.66

A key issue is whether exemptions are granted too easily. In 2002, early leaving exemptions were granted to 3,848 students, for the purposes of entering employment or being enrolled on a Youth Training Course. There is a question about quality standards of some courses, and the extent to which they address educational under-achievement.

**Conclusion**

The number of young people outside the education system (excluded, or non-enrolled) according to “best estimates” (and not disputed by the Ministry of Education) is around 2,000 – 3,000. This is only a small proportion of the 300,000 odd young people of secondary school age. But these young people who are outside the school system, are virtually the whole of the problem in Youth Court. This is why focusing on keeping young people in school is an absolutely crucial aim in terms of youth justice.

The “Education Sector” cannot solve by itself the problem of seriously at risk youth. But it remains the best environment and entry point where the issues facing these young people and their families can be identified and addressed.

**6. SERIOUS YOUTH OFFENDERS**

As was emphasised in a seminal paper by Mike Doolan, former Chief Social Worker for CYFS67:

“...concerns arose during the 1990’s that the [New Zealand system] was proving largely impervious to a small but significant group of young people, who were responsible for an amount of offending out of all proportion to their number. There was concern that public confidence in the law was at risk unless determined efforts were made to address what was seen as a significant problem in the system. In addition, it was thought that there should have been stronger evidence of a reduction in those young people who continue to offend into young adulthood than was apparent at the time.

66Hancock, J., and Trainor, C., *Ensuring consistency with the Education Act 1989: In a child’s best interests*.
Policy debate centred about whether there was a need for a differentiated response. The principle that welfare services should not be delivered through the criminal justice system (in other words, young people should not be locked up “for their own good”) seemed to have resulted in a denial of social services to those who needed them or a failure to identify the need for social services because of the effectiveness of the police diversion activity. Diversion from the criminal justice system may have become for many diversion from services.”

The “small but significant group” who are responsible for the majority of youth offending (50 – 75%), and who continue to offend as adults, make up only 5 – 15% of all young offenders. They are variously described as “early onset” offenders, “persisters” and “chronic young offenders”. They are to be distinguished from the majority of young offenders (around 80%) who begin offending with the onset of adolescence, and cease in their 20s or early 30s. This group is referred to as “adolescent specific” or “adolescent limited” offenders.

These two types of young offender present with different general characteristics and respond positively to different methods of intervention, as Mike Doolan puts it:

“Most young people who offend can be regarded as adolescent specific offenders. They are young people whose lives are not markedly disordered but who through factors such as poor parenting, low socio-economic status or attraction to deviant peer models, or even none of these, embark on a period of offending in their early and middle teenage years, some of which can reach serious proportions. Such young people are best managed through an approach that emphasises accountability for their offending, being made to address the impact of their offending and ensure appropriate reparation to their victims. As they are not seriously disordered, and do experience the range of emotions from which remorse and willingness to put things right spring, they seem to be good candidates for a restorative justice approach. Adolescent specific offenders age out of lives of crime as they grow up, leave school, find work and form new peer relationships, particularly a sustained partner relationship. It is important that the management of this group is low-key and measured and does not involve responses that may confirm the young person in an adult offending career. The regime should be focused on shutting down the offending cycle at the earliest possible time, but should also include increasing personal cost for increased offending.

The second group of young people is classified as early onset offenders. This is a much smaller group, but may account for the majority of crime committed by young people. These young people are characterised by major personal, social and family disorder. They typically lack developed feelings of guilt or regard for others and are quite ego-centric and seekers of immediate gratification. While they should be held accountable for their offending, and their victims have a right to restitution and reparation, these processes are likely to have a limited impact on the thinking and behaviour of these young people. A much more sophisticated policy and practice response is required.”

Kaye McLaren similarly distinguishes between persisters/early onset offenders and desisters/adolescent limited offenders. She describes the two groups as follows:

“FOR ‘DESIETERS’ OR ADOLESCENT-LIMITED OFFENDERS

Young people in this group start offending at 14, or later, don’t make many court appearances and have fewer risk factors. Also called ‘adolescent limited’ offenders, they tend to show two risks in particular... substance abuse and antisocial peers … The next highest risk factors for this group are poor parental monitoring and negative relationships with parents …

68 Above n 67 at p4.
The following table gives an order of priority for addressing these risks:

- mixing with antisocial peers
- substance abuse
- family problems – poor parental monitoring, negative parent-child relationships
- poor performance and attendance at school, negative feelings about school
- others as per ‘persisters’ list.

FOR ‘PERSISTERS’ OR EARLY ONSET OFFENDERS

This group starts offending young, usually before 14 and often before 10. They tend to come from multi-problem backgrounds, and are most likely of all offenders to keep offending into adulthood, and attract costly custodial sanctions. All identified risks (and they will have many) need to be addressed with this group. The more of these risks that are addressed, the more effective the intervention will be. Top priority should be given to improving social ties, reducing antisocial peers, improving parental monitoring and positive relationships with the young person, and school performance.

Targets for intervention are given in order of priority from highest to lowest in the following list:

1. having few social ties (being low in popularity, and engaging in few social activities)
2. mixing with antisocial peers
3. having family problems, particularly poor parental monitoring of children and negative parent-child relationships
4. experiencing barriers to treatment, whether low motivation to change, or practical problems such as difficulty in attending appointments due to lack of transport and work hours
5. showing poor self-management, including impulsive behaviour, poor thinking skills, poor social/interpersonal skills
6. showing aggressiveness (both verbal and physical, against people and objects) and anger
7. performing and attending poorly at school, lacking positive involvement in and feelings about school
8. lacking vocational skills and a job (for older offenders)
9. demonstrating antisocial attitudes that are supportive of crime, theft, drug taking, violence, truancy and unemployment
10. abusing drugs and alcohol
11. living in a neighbourhood that is poor, disorganised, with high rates of crime and violence, in overcrowded and/or frequently changing living conditions
12. lacking cultural pride and positive cultural identity.

Desisters begin to offend later in life (at age 13/14) and cease offending when they are in their 20s or early 30s. They are a large group in terms of overall youth offending (around 80%), but they commit less than 50% of all offences. The only common characteristics of desisters are association with anti-social peers and drug/alcohol abuse.

Persisters start offending young, commit the majority of offences carried out by young people (around 50 – 75%), although they are a very small percentage of all youth offenders (5 – 15%), and typically have several of the following characteristics:

- 85 % will be male.
• Many will have no adequate male role model and/or some form of family dysfunction.
• Many, some estimates are as high as 80%, will not have “engaged” with the education system since the third form, and most will be truants or simply not enrolled at a secondary school.
• Many, some estimates are as high as 75% - 80%, will have a problem with cannabis or another drug, solvent and/or alcohol.
• Many will have at least a borderline personality disorder, ADHD, or other psychological or psychiatric issue.
• About 50% will be Māori, and in some Youth Courts, such as Rotorua, the proportion will be almost 90%.

An Auckland Youth Forensic Study identified the following characteristics from a survey of young offenders in 2000/2001, referred to that service for assessment:

• 80 – 85% male.
• Māori and Pacific Islanders over-represented.
• 70% used cannabis.
• 50% lived in at least 3 different placements.
• 30 – 40% had a care and protection history.
• 20% were involved in gangs.
• 70% were unemployed/not attending school (40% reached 3rd Form/Year 9; 30% reached 4th Form/Year 10).
• They had a history of 5 – 10 offences.

Similar characteristics are observed in the most difficult young offenders the world over, for example, in England and Wales:71

• 83% male.
• 70% from single parent families.
• 41% regularly truanting.
• 60% have special educational needs.
• Over 50% use cannabis.
• 75% smoke and drink.
• 75% are considered impulsive.
• 25% are at risk of harm as a result of their own behaviour (with 9% at risk of suicide).

Persisters/serious young offenders and desisters/adolescent limited offenders respond very differently to interventions. So, it is vital that:

• each individual is accurately identified as a “persister” or “desister” (as above, ARNI is a good tool for this); and
• a model of intervention that works is then applied.

71 From a study of 4000 young offenders.
Identifying Serious Young Offenders: “ARNI” (Adolescent Risk and Needs Inventory)

The Youth Aid division of the New Zealand Police use “ARNI” or an Adolescent Risk and Needs Inventory, to assess each young offender and identify whether or not they are likely to have persistent patterns of offending.

ARNI was designed as a quick and effective screening tool for young offenders. It comprises a series of critical questions (ARNI is not a tool for procuring all possible information from young person) to quickly identify potential persisters/early onset offenders and to achieve consistency in dealing with them amongst the various Police Youth Aid offices nation-wide.

In the guidelines that were issued when ARNI was launched, the following “risk factors” were identified as potentially pointing towards the need to use ARNI:

- Repeat offending over a short period of time (identified as a “serious risk factor”).
- Previous offending that was dealt with in Court, not by Alternative Action.
- Offending at an early age (“the earlier offending commences the higher the risk of becoming a serious offender”).
- The young person having associates who are known to the Police and who have a strong influence over the young person.
- Non-attendance at school or poor education.
- The more agencies involved with the young person, the higher the risk.
- Drug or alcohol dependency – as opposed to a one-off incident of drunkenness.
- A history of family violence.
- Socio-economic area and decile rating of the young person’s school.
- Unstable living environment (e.g. parents going through a separation; single parent home and ‘blending’ of families; parents going through problems/unable to cope) or frequent changes of home address – the latter is identified as a “very high level of risk”.
- History of offending within the family (identified as a “very high risk factor”).
- A history of the young person suffering child abuse (“a strong correlation” is identified between this and serious offending).
ARNI was instigated in December 2003. It is currently being used throughout the country on a trial basis.

**What works with desisters**

Desisters or adolescent limited/specific young offenders are prime candidates for Police Youth Aid diversion and Alternative Action programmes, which currently deal effectively and creatively with around 80% of young offenders. Police Youth Aid is under-resourced, but still does a sterling job – it is a “shining light” in New Zealand’s Youth Justice system.

**What works with persisters: generally**

In his paper, Mike Doolan crystallises the following four over-arching principles for developing effective policy as regards interventions with chronic young offenders:

```
i. The use of programmes that *co-ordinate the full range of services* these young people need.

ii. Development of policies and practices directed towards achieving *clearly stated outcomes*.

iii. The use of *researched case management decision-making instruments* – an approach known as Structured Decision-making.

iv. Extensive use of *research into the outcomes of intervention* as the basis for the development of new programmes."72
```

He goes on to flesh these principles out and his analysis is worth quoting in some detail:

```
"Close co-ordination of programmes

There are a number of practice models emerging to draw … individual programmes into a co-ordinated intervention. All models involve a central assessment point at which the issue or problem is determined and an intervention designed that draws on a range of services from individuals providers.

…

Keeping families engaged and promoting the family as the change agent is an important component of this work, alongside ensuring accountability for offences occurs.

Policy based outcomes

…

Many services can be seen as processes clients are put through rather than changes that are sought in their lives.

…

The most fundamental difference between managing for process and managing for outcomes relates to notions of success and failure. Under the former, success means that clients completed the process as it was designed, but whether the process made a difference is not normally examined. … Managing for outcomes means achieving intended changes.
```

72 Above n 67, p 6.
Outcomes based policy requires a knowledge based approach. If the intended outcome of the youth justice system is to be “the reduction of further offending” then programmes and services must be designed on the basis of approaches that research has confirmed are effective ways of achieving that outcome. These are likely to accent keeping the young person out of the criminal justice system, and particularly out of custody, maintaining them in their communities and in mainstream activity as they are held accountable for their behaviour, and addressing the social services needs of those whose lives are seriously disordered.

Structured decision-making

Workers with different levels of knowledge and experience in different parts of the system apply different philosophies and quite personal criteria in making decisions about how to respond to a service need. This can result in case management decisions that are erroneous, inconsistent and even iniquitous. Structured decision-making means that key decisions are made with the assistance of simple instruments based on research finding [for example: Risk and Needs Assessments, such as ARNI – discussed above – and CYFS new Risk and Needs Assessment Policy – discussed below].

Use of research

[Doolan advocates the use of research to develop effective policies and practices and notes that:]

Analysis (DSW 1997) of the policy implications of this is interesting and points a way ahead:

- Most un-researched interventions are either detrimental, produce no change at all or produce relatively little cost-effective change.
- Providing the right kind of intervention is more important than providing a lot of intervention.
- Contact with the official, punishment oriented justice system has either no effect on future offending behaviour or increases it.
- Treatment based around counselling and psychotherapy have limited impact and are probably not cost effective.
- Programmes that keep young people in the mainstream (school for example) and prepare them for adult roles, or actually getting them employment are the most effective.
- All cultures and both genders respond in similar ways.

The US Comprehensive Study (OSDJJ 1995) between 1993 and 1995 found that the most effective programmes were those that:

- Were directed to achieving the outcome of interrupting progress towards adult offending.
- Incorporated prevention services involving the identification of the small group of high-risk children who are showing problem behaviour before they offend.
- Immediate intervention in response to the onset of offending.
- Aftercare involving progressively declining levels of supervision and support.73

73 Above n 67, pp 6 - 9.
Kaye McLaren’s paper examines patterns and trends in youth offending and risk factors for the different types of young offender. She concludes that what works generally is:

- using a multi-faceted approach, which targets a number of needs or skill deficits, and uses a variety of techniques. For instance, an intervention can target both education and work skills, use modelling and reinforcement to teach skills and a behavioural contract to specify what actions the young person will take and what consequences they will earn.

- using cognitive-behavioural techniques [i.e. staff demonstrating positive behaviour and responses and rewarding young offenders when they emulate this] which actively teach new skills and attitudes, making them clear to young people through modelling them, allowing opportunities to practise skills in the real world, and providing positive consequences for using them. Cognitive-behavioural techniques also include things like behavioural contracts, identifying and challenging irrational thinking that may lead to crime, and various techniques for learning to stop and think before acting (including time outs).

- targeting the causes of offending (risk factors) that each young person shows…

- teaching life skills to higher risk offenders.74

McLaren draws the following conclusions as to what works with persisters/early onset/chronic young offenders:

- Working with the whole family in their home to change risk factors which lead to offending (such as poor parental monitoring and supervision, cold, harsh parent-child relationships, accommodations difficulties).

- Addressing key areas of risk and seeking to strengthen the personal and institutional factors that contribute to healthy adolescent development.

- Strengthening bonds with prosocial people, including family members, adults outside the family and peers.

- Behaviour contracts with rewards and sanctions.

- Interpersonal skill training and cognitive behavioural programmes.

- Alternatives to secure confinement.

- Intervening in the four environments where young people grow up – family, school/work, neighbourhood and peer group.75

Specific tools and programmes that work with Serious Young Offenders

A number of programmes and tools are currently working effectively with persisters/early onset/chronic young offenders in New Zealand. The discussion below examines some of those programmes which appear to work and notes areas where improvements could be made.

74 Above n 26, pp 57-58.
75 Above n 26, pp 86-87.
(a) Risk and Needs Assessments before Family Group Conferences

When it comes to addressing offending behaviour, care must be taken to properly assess each young offender as an individual. A key tool for doing this is a detailed “risk and needs assessment”. This should be carried out before any Family Group Conference and the results made available to it, and (a summary) to the Youth Court.

**CYFS’s Risk and Needs Policy**

The Police’s risk and needs assessment tool, ARNI, has already been mentioned. CYFS has recently adopted their own clear policy as to when Risk and Needs assessments should be carried out. This policy was helpfully summarised by Judge Chris Harding (a Youth Court Judge since 1996) recently, as follows:

“The Ministry’s policy requires Risk and Needs Assessments to be carried out in the following four situations:

1. On any repeat offender – that being any young person appearing in the Youth Court who has committed an offence or offences within the previous six months, or a young person referred to a Youth Justice Co-ordinator who has committed any offence or offences within the previous 12 months (this will ‘catch’ about 80% of all those who undergo a Family Group Conference).

2. In respect of all young people detained under s.238(1)(d) or s.238(1)(e).

3. Whenever a Youth Justice Co-ordinator, during the process of convening a Family Group conference, feels as a matter of discretion that such an assessment should be done.

4. Where social work reports and plans will be recommending orders under s.283(k), (l), (m), or (n), of the Children Young Persons & Their Families Act 1989 (i.e. supervision, community work, supervision with activity, or supervision with residence).

The tools used for such assessments include Cage Kessler, Suicide Screens, and Well Being Assessments.

The sort of detail which can reasonably be expected in cases where the policy applies is illustrated below.

The writer interviewed B on 21 July 2003 and completed a Cage Kessler and Well Being Assessments the outcome of this assessments is as follows:

**The Cage Screen Assessment** (identifies drug and alcohol abuse) indicated that there are no drug and/or alcohol abuse issues with B.

**The Kessler Screen Assessment** (identifies any psychological distress) this assessment indicated that B’s psychological state of mind needs to be immediately assessed by experts in Psychological and Sex Offender’s field as a result of disclosure of sexual abuse.

**The Suicide Screen Assessment** (which recognises any risk of suicide) indicated that further assessment was not required.

**The Well Being Assessment** (which identifies the wellbeing of a young person) indicates that B is an assertive young man. He is aware of his surroundings and the current situation; he is not oblivious to the serious charges that he is facing and the penalties that each charge carries.”
Even though this clear CYFS policy exists, all too frequently Family Group Conferences are held without a proper risk and needs assessment having been conducted. Would a surgeon perform an operation without a diagnosis of the problem?

If we are serious about dealing with persistent young offenders who are likely to move onto a life of adult crime, we must do better than this. Full, relevant information received early on is a key tool for dealing with chronic young offenders.

**Forensic Psychiatric Assessments**

The majority of chronic young offenders have mental health issues. Forensic psychiatric assessments are thus a vital tool in assessing the best way to prevent future offending and put these young people on a path to a better life.

Unfortunately, the Youth Court is under-resourced when it comes to procuring forensic psychiatric reports. The only service providers available to supply the Court with such reports in New Zealand are:

- Auckland Youth Forensic Services;
- Capital Coast Health Services in Wellington Region;
- Dr Knight (Dunedin); and
- a Hamilton Youth Court service started late last year.

There is a need to concentrate resources in this area to ensure that the steps we take in Youth Court to address the behaviour of chronic young offenders will be effective.

It should also be emphasised that obtaining an expert assessment, usually with clear recommendations (which is difficult enough, given current resource shortages) is only the first step. More important (and even more difficult) is accessing services which can implement the recommendations.

**Other Reports**

Drug and alcohol assessments can be obtained; again, there tends to be a shortage of resources to implement recommendations contained in this sort of assessment/report.

The Youth Court is also empowered to obtain community and cultural reports.

Increasingly, educational reports are sought and provide a useful tool, covering the education standards that a young offender has reached and potential resources available.
(b) Family Group Conferences as a Tool for Working with Chronic Young Offenders

The Family Group Conference is a powerful tool, but there is room for improvement in the way it is used to address the needs of persisters/early onset/chronic young offenders. This topic is discussed in detail under Challenge 7.

(c) Programmes and Specialist Services that Work

Kaye McLaren makes an important point as regards assessments of what works with persisters/early onset/chronic young offenders. She says:

“One of the traps for young players in the effectiveness research [i.e. research into what works with young offenders] is the tendency to focus on specific types of effectiveness approaches at the expense of general characteristics shared by a number of effectiveness approaches. This ‘label’ approach can be dangerous in that it suggests that a work programme, for instance, will always be effective. In fact, a closer examination of the research shows that there are a few wildly successful work programmes, and a lot of work programmes that have not much impact at all. What seems to be more important is the way the work programme is designed and delivered, and those features could apply equally to a whole range of programmes.”76

It is important then to remember that not all programmes of any one ‘type’ will be successful, but that programmes that incorporate certain effective elements will be. It is important to look closely at how individual, successful programmes work to prevent future offending by potential persisters/early onset/chronic young offenders.

i. Programmes for Addressing Drug and Alcohol Addiction

In many cases of chronic youth offending, the young person has one or more drug or alcohol problems. Often offending is fuelled or motivated by addiction. Consequently, many Family Group Conference plans incorporate a requirement to participate in a drug or alcohol treatment programme. For a drug or alcohol dependant serious young offender, by far the most effective method of treatment is residential care. Unfortunately New Zealand has only two residential alcohol and drug treatment programmes for young people. These are:

- Rongo Atea - Alcohol and Drug Treatment Residential Service based at Kirikiriroa Marae in Hamilton. Rongo Atea is available to youth aged 12 - 18 years. It operates a live-in rehabilitation centre with a Māori context and philosophy. It is managed by community health provider Te Runanga o Kirikiriroa.

- Odyssey House in Auckland, which operates a range of programmes for young people aged 14 to 17, based on the Therapeutic Community model. Odyssey House operates:

  - An evening programme for young people designed to intervene and prevent drug use by young people at risk of abusing drugs.

76 Above n 26 at pp 52 - 53.
A day programme aimed at arresting drug-use before it becomes habit-forming. The young person attends school at Odyssey House, and returns to his or her family at nights and weekends. The day programme is used for young offenders who are not in need of residential care and who have a stable home environment.

A residential programme for persistent offenders with no stable home environment who have entrenched patterns of substance abuse and behavioural problems. The programme incorporates live-in treatment and schooling.

These two programmes do excellent work, but there are insufficient places on them to cater to the needs of chronic young offenders. This is a resourcing issue that needs to be addressed.

ii. The Youth Drug Court

In recognition of the fact that drug and alcohol problems are a major factor in the criminal behaviour of many chronic young offenders, a Youth Drug Court is being piloted in Christchurch (established in March 2002).

The Youth Drug Court is a Youth Court with special attributes and processes designed to enhance the treatment of young persons who are repeat offenders and who have a serious drug dependency that is contributing to their offending. Alcohol is included within the term “drug”.

A young person appearing in the Youth Court is identified (by a social worker, the Police, a Youth Advocate, or by the presiding Judge) as possibly fitting the criteria for entry into the Drug Court. The criteria are simply: repeat offender with a serious drug dependency contributing to offending.

Once this identification has been made, the young person is screened by a drug clinician based at the Court. If the result of that screening is that the identification is likely to be correct, then the presiding Judge is advised and he or she then makes a decision whether to transfer the young person to the next Youth Drug Court.

If the decision is made to transfer the young person, then he or she is remanded – typically for three weeks, but certainly no more than four – to the next appropriate Youth Drug Court. During the remand, a full assessment is carried out on the young person, including assessment of the drug dependency, but also a detailed assessment of the young person’s family situation, education, and any other aspect of their life likely to affect the treatment plan required.

A treatment plan is developed and funding for it is arranged. If there is to be placement in a programme, this is arranged too. Towards the end of the remand, a Family Group Conference is convened, which is primarily to consider the treatment plan. This provides an opportunity for family and the victim to be engaged early in the Youth Drug Court process. It is not intended to be the only Family Group Conference because a drug dependent young person is unlikely to be in any position to contribute in any meaningful way to a Family Group Conference at this stage.
Certainly issues of reparation are unlikely to be able to be addressed while the dependency is raging. For these young people, if the choice is between funding a habit and paying reparation, the dependency will win every time.

At the first Youth Drug Court appearance, the Judge explains to the young person what is expected in the Court, what the consequences of failure to comply with the programme may be, the fact that completion of the programme is a significant matter taken into account in the final outcome of the case, and the fact that failure to engage in the programmes can result in the Judge deciding to discharge the young person from the Drug Court programme and transfer them back to the mainstream Youth Court.

If the young person is accepted into the Drug Court, then he or she is released on bail with conditions that reflect (in detail) the programme that must be undertaken. The Drug Court Team is made aware, on a daily basis, whether there has been compliance or not – and any failure to comply can result in immediate arrest for breach of bail and return to Court; this is a very important feature.

The young person is usually remanded, at least in the early stages of a treatment programme, for a period of two weeks to come back to the Youth Drug Court for review of progress. These two-weekly remands reflect the intensity of the monitoring process. On each occasion that the young person comes to Court the same Judge and Drug Court Team is present.

On the day of each remand the Drug Court Team meets in the morning to discuss each of the cases that are to be considered in the Youth Drug Court. The young person’s Youth Advocate (i.e. specialist lawyer) is invited to this meeting, but the young person is not. In the course of the meeting full details of the progress of the treatment plan are discussed, any changes to it are considered, and the result is that when the young person appears in Court everybody in the team knows everything that has occurred. There are no arguments concerning treatment, funding issues or placement issues and there can be full concentration on the treatment needs of the young person at that point.

Overseas, the Youth Drug Court process has been shown to be very successful in tackling recidivist youth offending resulting from drug dependency. The two critical features are consistency of Judge (and other Drug Court Team members) and immediacy of treatment.

Each time the young person appears in Court he or she is faced with the same Judge. Not only does this mean that the Judge builds up a detailed knowledge of the young person’s case, but this repeat contact also enables a relationship to be established between the Judge and the young person – and this enhances the treatment process. The fact that one Judge is monitoring performance, reviewing the case on a regular basis and is clearly knowledgeable about the circumstances surrounding the young person does not go unnoticed by the young person. It is usually the first time a person in authority has demonstrated such an interest. The positive recognition of progress and the responses to failures are effective tools employed by the Judge.
Immediacy of treatment ensures that any level of motivation on the part of the young person engendered by the Court process is harnessed as early as possible. The paralysing debate between agencies as to who is going to be responsible for funding a treatment programme has to be avoided in order to ensure this immediacy of treatment. The team approach of the Drug Court and the agencies involved in it ensure immediacy of treatment.

iii. Programmes for Youth Sexual Offenders

Section 128B(2) of the Crimes Act 1961 requires the Court to sentence an offender who commits rape or sexual violation to imprisonment, unless there are exceptional circumstances, having considered the particular circumstances of the offence or the offender. The problem is that there is a lack of facilities for holding and treating under 17-year-olds convicted of sexual offences.

There is one CYFS residential treatment facility in Christchurch, Te Poutama Arahi Rangitahi (or ‘TPAR’). TPAR has 12 beds and provides residential treatment for up to 2 years, including: schooling; individual and group therapy; and case management therapeutic plans for each individual offender. Unfortunately, TPAR cannot be used by Judges wishing to sentence young sexual offenders in the criminal Courts. It is a care and protection unit and is not regarded as ‘secure’. Also, offenders cannot be held there after they turn 17 because they are held only on Family Court custody or guardianship orders. In some cases, Youth Court Judges do manage to get young sexual offenders into TPAR before they are formally sentenced.

Young sexual offenders who are subject to prison sentences are not eligible to receive treatment in programmes such as Kia Marama and Te Piriti because they are too young (the lower age limits for entry to such programmes is 18). The answer, however, is not to lower the entry age to such programmes. There are good policy reasons for it to be set as it is, including preventing adverse psychological and physical risks to young offenders on exposure to older entrenched offenders who may seek to sexually ‘groom’ or abuse them.

There are no other residential programmes available to young sexual offenders. The SAFE and STOP programmes are both run as outpatient services. There is a genuine public concern about young sexual offenders being in the community while receiving treatment.

Finally, the short duration of the custodial sentence available by the Youth Court (3 months) is not suitable for the effective treatment of sexual offenders. Clinical experience demonstrates that, particularly in high risk cases, longer periods of mandated treatment are much more likely to reduce recidivism.
iv. Multi-Systemic Family Therapy

Some programmes are better than others. In his 2001 paper, Mike Doolan cited US research from 1992\(^77\) which drew the following conclusions as regards seven common strategies at that time for dealing with chronic young offenders:

<table>
<thead>
<tr>
<th>Intervention type</th>
<th>Change in expected re-offending rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preparing for employment</td>
<td>35% decrease</td>
</tr>
<tr>
<td>Behavioural contract</td>
<td>25% decrease</td>
</tr>
<tr>
<td>Institutional training</td>
<td>15% decrease</td>
</tr>
<tr>
<td>Court/probation</td>
<td>10% decrease</td>
</tr>
<tr>
<td>Offender counselling</td>
<td>8% decrease</td>
</tr>
<tr>
<td>Family counselling</td>
<td>No change</td>
</tr>
<tr>
<td>Deterrent sentencing</td>
<td>25% increase</td>
</tr>
</tbody>
</table>

Two important points should be noted as regards this table:

1. Since it was compiled, Multi-Systemic Family Therapy has come to the fore. It is estimated that its effectiveness in cases of chronic youth offending produces somewhere in the region of a 40% - 50% decrease in offending (see: Kaye McLaren quote below).

2. Deterrent sentences do not have a positive effect on chronic young offenders, indeed there is evidence that they may cause an increase in recidivism. This point is discussed in more detail below.

‘Multi systemic family therapy’ (or ‘MST’) is currently regarded as the gold standard for addressing recidivist youth offending. Kaye McLaren discusses MST in her paper, where she says:

"Multi-Systemic Family Therapy (MST) is one of the most effective interventions to emerge in recent years, reducing youth offending rates by up to 50%. What’s more, it works with chronic, violent, recidivist young offenders who are headed for prison, and it does so in the community. One of the reasons that MST is so successful appears to be that it targets the problems that actually lead to offending."

And:

"Multi-Systemic Family Therapy (usually called MST) is one of the few interventions that started out by identifying the causes of offending, and then built itself around treating them. It is called ‘multi-systemic’ because it works across the different social systems that the young person moves in – family, school, peer group and neighbourhood.

The distinguishing characteristics of MST are probably these:

- it addresses risk factors that lead to offending


\(^78\) Above n 26, pp 27 – 28.
it works with the whole family as well as the offender, coming to the family’s environment in their time, and asking what the family needs
it works in the four social environments of the young person – family, school, neighbourhood/community and peer group
it works in the community with chronic young offenders who are prison-bound.

However the most distinguishing characteristic of MST is it is one of the most effective interventions currently in existence.

MST emphasises working with the whole family, and it also makes a case for some individual therapy where needed. This particularly involves training the young person in seeing things from another person’s point of view (social perspective taking), changing their belief system, and increasing motivation.

MST also assesses the young person’s antisocial peer networks and attempts to change them. This is done partly by involving the young person in leisure time pursuits at school, and partly by introducing them to new social groups and activities which don’t involve antisocial behaviour (such as sports).

Parents are also asked to aid these attempts, by improving their monitoring of who their child is mixing with, aiding involvement with new groups and activities through transport and supervision, and providing negative consequences for continued mixing with antisocial peers.79

MST has markedly positive effects of the lives of chronic young offenders. In 1997, the following observations about the efficacy of MST in the US were made80:

- youth who received MST had significantly fewer arrests, reported fewer criminal offences and spent an average of ten fewer weeks in detention during a year long follow-up
- these results were maintained at a 2.4 year follow up, with MST essentially doubling the percentage of youth not arrested
- MST was equally effective with youth and families from different backgrounds, irrespective of race, age, social class, gender, arrest and incarceration history, family relations, peer relations, social competence, behavioural problems and parental symptomatology.

- MST has proven effective with adolescent sex offenders, with 62.5 percent lower level of sex offending three years after treatment and reduced frequency of arrest (although these findings are tentative due to a small sample of 16)
- four years after treatment, chronic juvenile offenders who received MST offended 50 percent less than those doing another treatment and 65 percent less than those who completed neither treatment
- MST was more effective than parent training in helping abusive and neglectful parents to control their children’s behaviour, as well as restructuring parent-child behaviour patterns that distinguish maltreating families from non-problem families
- MST reduced substance abuse significantly in juvenile offenders at a four year follow-up, as well as reducing drug related arrests by three quarters. In another study, MST reduced rearrests by 26 percent and resulted in a 40 percent reduction in days incarcerated for drug using delinquents, at a one year follow up.

79 Above n 26, pp 64 – 65.
80 Henggeler, S (1997) Treating Anti-social Behaviour in Youth, Office of Juvenile Justice and Delinquency Prevention; this summary is from Tough is Not Enough, above n 25 at pp 65 – 66.
• in this study, 98 percent of families assigned to MST completed a full course of treatment during the first five months of the programme
• with violent and chronic juvenile offenders living in rural areas, MST decreased incarceration by almost half (47 percent) at 1.7 year follow up, but did not decrease criminal activity as much as other recent trials."

v. Reducing Youth Offending Programme\textsuperscript{81}

The Reducing Youth Offending Programme focuses on youth offenders who are at high risk of progressing to chronic adult offending. It a four-year pilot is being run in two sites, Christchurch and Auckland.

The programme is a joint agency approach and accepts clients from the Department of Corrections and Child, Youth and Family. Both agencies have equal responsibility and input into the implementation of the pilot programme.

The Reducing Youth Offending Programme is for youth offenders aged between 14 and 18 years inclusive, who are at high risk of progressing to chronic adult offending and are available to receive intensive community-based rehabilitation.

Youth who participate in the programme must meet the following criteria:

1. have been sentenced for an offence of sufficient gravity to justify a four- to six-month period on the programme, with a penalty for non-completion;
2. have a risk profile that suggests a high probability of progressing to adult crime; and
3. reside with their family/whanau or a caregiver and consent to participate in the programme.

Up to 130 youth and their families per year are accepted across both sites – up to 90 in Auckland and 40 in Christchurch.

Social Workers and/or Probation Officers make referrals to the programme via court orders or sentences. The referral process requires the young offenders to have been sentenced for a six-month period with special conditions. All statutory powers will remain with the Social Worker or Probation Officer while offenders are on the programme.

The pilot programme is based on the Multi-Systemic Therapy (MST) approach to the management of young people with behavioural problems.

Cultural supervision is an integral part of the programme and local Maori and Pacific peoples have identified people from their communities who would be suitable to under take these roles. At each of the pilot sites a range of cultural supervisors are available to work alongside Case Workers to ensure safe practice, consistent with the youth and their families cultural identification.

\textsuperscript{81} The information in this section of this paper was kindly provided by the Department of Corrections and was accurate as at the end of March 2004.
The primary outcomes sought by the programme are that the youth has abstained from offending or the offences committed have reduced in number and/or seriousness.

Other expected outcomes will include some of the following:

- Is functioning well in school, training or employment
- Is enthusiastically involved in at least one pro-social group activity
- Has reduced contact with anti-social friends
- Has developed skills, knowledge and behaviours to develop respectful relationships with family, friends and partners
- Has developed skills to manage any disorders, symptoms or substance dependency to the extent that they no longer impact on offending

The Departments of Child, Youth and Family and Corrections have sponsored an independent evaluation of the Reducing Youth Offending programme with formative, process, outcome and economic components. The final evaluation report will be completed in June 2006.

In addition to informing Government of the degree of success achieved by the programme, the evaluation will report on the potential to expand the system, funded at least in part by reductions in justice sector costs generated from the pilot programmes.

7. **THE FAMILY GROUP CONFERENCE: THE JEWEL IN THE CROWN OF THE NEW ZEALAND YOUTH JUSTICE SYSTEM NEEDS POLISHING.**

The Family Group Conference (or ‘FGC’) is the “lynch-pin” of the New Zealand system. It allows for a quite radical transfer of State power to the family, victim and wider community, subject, of course, to the Youth Court’s power to approve and monitor decisions and recommendations that are made. A recent report (already mentioned in this paper) by Dr Gabrielle Maxwell and others on the effectiveness of the FGC mechanism will be discussed in detail at this conference.  

As observed by Mike Doolan:

“The Family Group Conference applies to all offenders between the ages of 10 and 17 whom the Police believe require a more definitive response than is permitted to them under the law. It is the only forum available for the management of a child offender (other than one charged with murder or manslaughter) and is the primary forum for dealing with young persons who offend. It brings together the child or young person who offends and their immediate family, members of the extended family and significant others [and the victim and supporters of the victim] to work with professionals to devise a plan for the management of the young person. Its aims are to keep young people within the context of their family and to give their wider family systems...”

---

82 *Achieving Effective Outcomes in Youth Justice*, Final Report: see above n15.
the power, the opportunity and the resources necessary to reassume their control of and influence on the young people.”

In particular the FGC allows:

- The genuine involvement of victims. Victims are central to the process and are given a meaningful opportunity to express their views and contribute to outcomes involving the young person. Victims are key participants and the numbers of victims participating rose steadily during the 1990’s. Victims now participate in 51% of FGCs.

- Active participation by young offenders.

- Direct, if not enforced, involvement of families, who are encouraged and empowered to take responsibility for the offending of a young person within their family group. “Family groups have proved capable of taking prime responsibility for their own young people despite initial scepticism about this.”

- Collaborative responses to youth offending.

The Youth Court and Police nearly always accept plans made at FGCs, and upon successful completion s282 “absolute discharges” can be ordered.

Problems with FGCs

As the FGC is at the heart of the youth justice system and provides a creative, collaborative means for resolving the majority of cases, it follows that, any problems with the resourcing or conduct of FGCs will severely impact on the youth justice system as a whole.

Timeframes breached

Young people are highly attuned to adult inability to address their issues. They need to see swift, decisive action if they are to participate willingly and confidently in the system.

In some cases, statutory timeframes for FGCs are not being adhered to. The result is that any FGC held is usually invalidated and the charges dismissed so that the Youth Court is denied jurisdiction over the young offender in question. Recently, this issue has been highlighted to Youth Justice Co-ordinators (or ‘YJCs’) and steps are being taken to ensure timeframe compliance. Thankfully there seem to have been some very significant improvements. Timeframe compliance now occurs for 95% of conferences; 3 years ago it was as low as 30%.

---

83 Above n67, p2.
84 Source: Neil Cleaver, National Manager FGC Co-ordinators.
85 Above n67, page 3.
86 Source: Neil Cleaver, National Manager FGC Co-ordinators.
Poor Attendance at FGCs

An FGC is only as effective as the Youth Justice Co-ordinator responsible for it. Youth Justice Co-ordinators have responsibility for organising the time, date and place for an FGC. They are also charged with arranging who will attend and ensuring that they are properly notified and enabled to be present. Most YJCs are diligent and dedicated. Some, however, occasionally let the system down.

In some cases, FGCs are being held where only the Police, YJC, young person and one parent (usually the mother) attend. This is not a “true” FGC; a restorative justice approach is thwarted:

- **The absence of the victim** makes it impossible to harness the power of a direct, honest account of the effects of offending, and the consequent remorse of the young person. It is understandable that in some cases victims wish to wash their hands of a traumatic incident in their lives. In some cases, however, YJCs do not, or because of caseloads cannot, make sufficient effort to encourage a victim to attend. The minimum requirement would be phone contact, preferably a personal meeting. Other barriers include victim reluctance to attend for fear of further victimisation, victims’ lack of confidence in the system, and unhelpful negative comments from frontline police about the effectiveness of FGCs. In some cases it might be possible to substitute a victim’s representative or a letter from the victim to be read out by the YJC. Victim attendance rates (only where there is a clear victim) have been about 50% for the last two years.87 Obviously this is concerning. Victim consultation rates currently average about 80%.88

- **The absence of more members of a young person’s family than a single parent means that the FGC is not a real ‘family group’ conference.** The intention of the FGC model is that a young person’s family, in the broadest sense, should be involved in resolving the consequences of his or her offending and in providing solutions. In some cases, a young person may simply have no extended family members who participate in his or her life on whom to call. Other factors which inhibit family attendance are “FGC burnout, particularly with repeat offenders and the fact that the FGC often comes some way down the track after Police alternative action hence families have lost interest or run out of ideas”.89 However, where the absence of extended family is due to a lack of time or effort on the part of the YJC, the Youth Court will order that an FGC be reconvened to allow for better efforts to be made. The average number of family/whanau attending FGCs has increased from 2.8 in 2002 to nearly 4.0 in 2004 – which is better than “the mum and the kid” stereotype.90 The increase in funding for FGCs as a result of the Baseline Review should see results improve significantly.

---

87 Above n84.
88 Above n84.
89 Above n84.
90 Above n84.
Poorly prepared, resourced and monitored FGC plans

YJCs are empowered to take steps to ensure that all the resources required by the FGC are available to it. This may include professional advisors (such as a psychiatrist or psychologist) or specific factual information in relation to programmes of activity the young person might undertake etc. A failure to properly prepare such resources could stymie the work of an FGC.

Besides risk and needs assessments and forensic psychiatric reports, which have already been discussed, relevant information could include any of the following reports:

- Reports by social workers or prominent members of young persons’ communities.
- Reports addressed to the specific issues faced by the young person (for example an assessment of his or her drug/alcohol problem).

YJCs should also use their best endeavours to ensure victim attendance and family support (as previously discussed). A letter in the post or a phone call to these people is inadequate preparation. One home visit in each case ought to be a minimum requirement.

An undesirable tendency in relation to FGCs previously noted by Youth Court Judges is the “sameness” of their plans. While young offenders may have certain similar characteristics that need to be addressed, they are all unique. The uniformity of plans sometimes coming out of FGCs (apology, reparation payment, community work) suggest something of a “cookie-cutter” mentality amongst the Youth Justice professionals involved. Under the leadership of the National Manager for Coordinators, again there appear to have been significant improvements, but more is required. Youth Court Judges address this issue by sending plans back for a more creative application of participants’ minds to the specific young person, and the offending, being dealt with.

Other difficulties with FGC plans include:

- A lack of proper psychological, psychiatric, education and health assessments to identify the complex issues that a young offender may face.
- A lack of resourcing such as comprehensive residential and other rehabilitative drug and alcohol programmes, youth forensic services, and special education services for the persistent truant or chronically non-enrolled young person.
- Poor monitoring. This is a scourge of the FGC system and results in unnecessary delays and pointless repeat Court appearances. Young people are sometimes being left to themselves to “get on with” plans which they are uncertain how to commence or require encouragement to fulfil. The work does not end with an approved plan. While Police are good at enforcement of their own diversion schemes, the same is not always true with regard to FGC.

---

91 s255 CYPF Act.
programmes. Most families need considerable help, for instance in identifying and arranging community work. Invariably after a month’s adjournment from when the FGC plan was approved in Court, community work has only just started, if at all. When a plan provides for a Youth Justice social worker to assist with aspects of a plan, there are frequently difficulties and delays in appointing a social worker – mainly because it appears there are insufficient social workers with too many plans to supervise.

Conclusion

FGCs have been successful in ensuring accountability, i.e. that the offence “wrongs” are put right by the young person, especially when victims are present at the FGC (see s4(f)(i)). Because of the above weaknesses (which have been subject to some significant recent improvements), they have been less effective at addressing the causes of re-offending (see s4(f)(ii)).

There is also a pressing need to review the status and independence of FGC Co-ordinators, which arguably has diminished since the high water mark of the Act’s introduction.

8. RESIDENTIAL SERVICES: “SUPERVISION WITH RESIDENCE” Must Improve and Unacceptable Levels of Police Cell Remands Must Decrease

Introduction: shortage of secure residential placements.

CYFS has the statutory authority and function to establish and maintain residences for remand purposes, the provision of programmes and rehabilitation, and for the “secure care” (as that phrase is specifically defined in s367 of the Act) of young offenders and alleged young offenders (see s364).

In fact the term “residences” is widely defined in s2 of the Act, and certainly is not restricted to secure, lock up facilities as is often assumed. “Residences” include family homes, group homes and foster homes.

Young persons subject to a remand order in the custody of the Chief Executive (s238(1)(d)) and young persons subject to the top end Youth Court sentence – Supervision with residence (3 months in residential care followed by 6 months supervision in the community by a social worker) may be placed in any residence or suitable organisation at the discretion of the Chief Executive (see s361 & 362). Usually “remanded” alleged youth offenders are placed in one of the three youth justice residences operated by CYFS. Supervision with residence is always served in one of those three residences. There are now 90 beds available, for young persons on remand, or subject to residential sentences. This is plainly insufficient. There is a critical shortage of secure residential facilities available to provide for the number of placements needed.
This is not a new problem. It has concerned Youth Court Judges and others in the youth justice community since the late 1990’s. In the 2002 Taskforce on Youth Offending, the problem with residential inadequacies was highlighted:

“there is no spare capacity to cope with sharp increases in the number of young offenders requiring placements. There have been significant difficulties in establishing new youth justice facilities because of the requirements of the Resource Management Act 1991. The level of youth justice accommodation is being addressed through Child, Youth and Family’s Residential Services Strategy.”

There is an immediate need for at 15-20 more beds just to cope with current demand. There appears to have been a lack of careful forward planning in the late 1990’s. That is compounded by difficulties in obtaining legal consents to the establishment of new residences. No neighbourhood seems to want a secure youth justice residence in its own back yard, although there are repeated calls for more custodial sentences. At any rate, there is now a crisis. It is compounded by the erosion of community-based facilities available to CYFS and the absence of any remand alternatives such as 24 hour supervised bail “hostels” etc.

The CYFS Residential Services Strategy, now being finalised, addresses all these issues. It is late, but it signals a proper approach to residential services that will bear fruit in the next 2-5 years. Twelve more residential beds will be available by about September 2005, when the new youth justice residence at Rolleston will be completed.

Lest the writer be misunderstood, a return to the flawed residential policies of the past is not advocated. It was undoubtedly the correct decision to close down the huge number of youth justice beds that were not needed in the 1980’s, and to emphasise custody as a last resort. Also it is accepted that, within reason, no matter how many secure residential beds are available they would always be filled. But the pendulum swung too far and there has been a critical shortage of residences for at least the last 7 years.

**Police cell remands**

The current rate of Police cell remands (the only remand option when CYFS residences are full) is unacceptable.

Police cells are inappropriate for other than short-term emergency remands. Few if any Police stations have purpose-built cells for young people. There are inadequate sanitation and hygiene facilities. There is no access to appropriate quality meals. Family visitation is difficult and usually depends on the discretion of the Watchhouse Keeper. Neither can any education or other services be provided, as is available at a CYFS residence.

In 2002, 447 young persons were remanded in Police cells for a total of 1152 nights. Twenty young persons were remanded for between 7 and 12 nights. In 2003, 522 young persons were remanded in Police cells for a total of 1677 nights. Maori were disproportionately represented.

92 Above n13, p 39.
The figures for January – March this year continue to make sobering reading. During that period, 122 young persons had been remanded in Police cells for a total of 402 nights. Again, Māori were disproportionately represented, making up 81 of the 122 young people held – or 66%. This is a very troubling statistic, given that Māori young people make up only 22% of the total population of New Zealand young people, and account for about 50% of youth offending.93 The reasons for this disproportion appear complex, confusing and require more research.

“Supervision with residence” and prison sentences.

There is a shortage of beds for young offenders subject to a prison sentence. There is currently only a 6 bed unit (where there is gender mixing) devoted to youth offenders who are sentenced to prison. The overflow ends up:

- for young male offenders, in one of four youth units attached to a male prison, where there is mixing with 17 – 20 year olds (a highly undesirable phenomenon);
- for young female offenders, in a women’s prison.

Whilst the number of residence orders is on the rise, the number of beds continues to be insufficient. It is possible (though highly undesirable) that social workers may begin to avoid recommending, and Judges may begin to avoid imposing, residential sentences, knowing that there will be limited room for young offenders to be placed. Certainly Youth Court Judges are sometimes being asked to delay making a Supervision with residence order because there are no residential beds available to give effect to the order.

Quite apart from potential reticence to make Supervision with residence orders because of the unavailability of placements, there are real questions being asked about the efficacy of the order.

In 2002, the Taskforce on Youth Offending made the following comments:

“Research has shown that custodial sentences and orders alone are ineffective in reducing re-offending by this group, and that holistic programmes addressing risk factors and delivered in the community tend to be more cost-effective.”94

The theoreticians say that three months (usually reduced to two for good behaviour) is sufficient for young persons to be removed from destructive environments and initial therapeutic work to be done. In practice, however, the progress that can be made in this short space of time has proven to be less than satisfactory, especially if there is a mixing of ‘remand’ and ‘sentenced’ young offenders. If a change to the law is not to be made extending the term of the order, then CYFS must improve the quality of


94 Above n 13, p39.
programmes provided at residences. Nevertheless, debate is likely to continue as to whether a three-month period is sufficient, even with the very best programmes in place.

The only higher ‘more severe’ order available to the Youth Court is, of course, conviction and transfer to the District Court for sentence. Through that order, in some cases, Judges may be able to achieve a longer period of incarceration where this is called for. There are, however, considerable restrictions on the making of this order (s290):

- The young person must be 15 years of age (arguably, at the time of offending; at the very least, at the time the Court makes the order).

- The young person must have committed a purely indictable offence; or if he or she did not, then:
  - if, hypothetically, the young person had been an adult convicted of the offence in question in an adult Court, a sentence of imprisonment would have been required; or
  - the Judge must be satisfied that, because of the special circumstances of the offence, a non-custodial sentence would be clearly inadequate.

**Section 18 of the Sentencing Act 2000**

Even where conviction and transfer to the District Court is justified, there are considerable restrictions on the imposition of a prison sentence. Section 18 of the Sentencing Act 2000 provides that imprisonment can only be imposed in respect of a person who was under 17 at the time of offence, provided the offence is “purely indictable” i.e. within a small category of very serious offences. Under the previous legislation imprisonment was only available if the young person was 16 or over at the time of conviction. While the principle behind the provision is well understood, it has the effect of preventing imprisonment, for instance, in the case of a serious serial burglar who can only receive repeat supervision with residence orders or in a serious case of dangerous or intoxicated driving causing death.

**Te Hurihanga**

In response to a gap identified by the Taskforce for Youth Offending in programme provision for serious and/or recidivist young offenders, Te Hurihanga was established. Te Hurihanga is an intensive, therapeutic, 9 to 18-month residential and community-based programme, based on a concept developed by Judge Carolyn Henwood, a vastly experienced Youth Court Judge.

While living at the Te Hurihanga residence, each young person will receive an intensive, therapeutic programme designed specifically to address their needs, such as drug and alcohol addiction or illiteracy. The programme will address these needs

---

95 The following information was kindly provided by the Ministry of Justice’s Crime Prevention and Criminal Justice Group.
through a mix of education, life skills training, and medical and psychological care. Consistent with international best practice, the programme will:

- only be for high-risk young offenders (i.e. those with the greatest risk of continuing to offend into adulthood);
- focus on helping the young people to resolve problems identified as contributing to their offending behaviour;
- involve the young person’s families/whanau in working on family issues likely to reduce reoffending;
- focus on improving educational deficits in the basic skills, such as literacy and numeracy;
- help the young people develop work-skills which can lead to further training opportunities and real jobs; and
- establish and strengthen relationships with people in the young person’s life who can become mentors and role models.

Te Hurihanga has been developed as a three-phased programme to ensure that intensive community-based supervision and reintegration services are provided to young offenders as they move from the residence back home to their family/whanau.

Young people sentenced to Te Hurihanga 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 facility 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 supervised by a staff member. During the day, the young people will participate in educational activities, such as Correspondence School lessons via the Internet, group and individual therapy, and recreation activities.

---

96 Young people on the programme will have been sentenced in the District Court to Supervision with special conditions that they attend the programme and comply with the programmes rules.
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 local school or beginning work experience. There are two beds at the residence which are 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 with in the community, he will travel directly from his home to school and work experience.

During the Community Phase, the young people will be living in the community full-time and the focus of the programme staff will be to provide monitoring and support rather than supervision and intervention.

Unlike other residential programmes, which accept young people from anywhere in New Zealand, Te Hurihanga will only accept young people who live within an hour’s drive of the residence. This will ensure that staff can fully support their transition back into the community, participants are able to continue with work and education opportunities after they leave the residence, and family can participate in all phases of the programme without having to travel for long distances.

9. THE PARTICULAR CHALLENGE FOR CYFS

Introduction

No discussion regarding future youth justice challenges would be complete without confronting the role played by Child Youth and Family Services (CYFS). It is a beleaguered organisation. It has come in for significant criticism in a succession of reports, many of which are identified in the Introduction to this paper, and they have recurring themes. The most recent, the Treasury led “Baseline Review”97 was particularly damning and identified chronic and systemic failings.

It is stressed that none of what is said in this paper is a personal criticism of CYFS staff, including CYFS Head Office staff. In CYFS, as in every organisation involved in the youth justice system (Police Youth Aid, Youth Advocates, Courts etc.), there are proficient and less competent staff. The concerns are well beyond personalities. In fact, most youth justice CYFS employees are extremely committed to the objects and principles of the Act and strive day after day to make a difference. The debate is now about systemic deficiencies.

It is convenient to analyse the issues facing CYFS in terms of its statutory youth justice responsibilities. There are concerns in respect of each area of responsibility. Equally, it is accepted that CYFS appears to be chronically under funded and under
resourced in an (increasingly) demand driven environment. There are significant and well-documented pressures, especially within the care and protection areas, that are beyond CYFS’ control and which make efficient operating very difficult.

I am conscious that it is not appropriate for a Judge to intrude into administrative areas under the control of the Executive branch of government. The comments in this paper are simply observations arising from many years of involvement in the youth justice system and after visits to nearly every Youth Court within New Zealand. Most Youth Court Judges share these concerns.

**Areas of statutory responsibility**

Even more so than Police Youth Aid, CYFS play the most pivotal and important role within the formal youth justice system. By statute it must discharge a number of responsibilities:

- To convene and hold Family Group Conferences (FGCs) in cases where there has been no arrest and where Police believe “alternative action” is not appropriate. These are called “pre-charge” FGCs. They are held in about 8% of all cases. When the Act was introduced “pre-charge” conferences accounted for about two thirds of all FGCs, but now the figure is less than half all FGCs.

- To convene and hold FGC when ordered by the Youth Court, following a charge being laid in Court which is not denied. This accounts for about 16% of all offending.

Issues with FGCs have been previously discussed, at Challenge 7. In addition, it is a real concern that “pre-charge” FGCs have seemingly fallen out of favour. Some of the reasons for this are the difficulties, given scarce resources, in having pre-charge/intention to charge conferences convened within the proper timeframes. It seems that Police will often prefer to handle offending themselves by way of alternative action, or to lay it in Court, rather than go through the intention to charge procedure. Is it too much to suggest that at least in some areas of the country there is a crisis of confidence with the intention to charge/pre-charge procedure?

That said, as emphasized at Challenge 7, it needs to be recognised that there have been significant improvements in the FGC process in the last three years, especially with the appointment of Neil Cleaver as the National Manager of Co-ordinators. Victim and whanau attendance has improved, (although it is still far too low) and timeframes for Court-ordered FGCs are being much more consistently met.

**Obligation to give effect to decisions, recommendations and plans of FGCs (s268 of the Act)**

Unless it is clearly impracticable or clearly inconsistent with the youth justice principles set out in the Act, CYFS must give affect to decisions and recommendations of plans by the provision of such services and resources, and the taking of such action and steps, as are necessary and appropriate in the circumstances of a particular case: (s268 of CYPFAct) This is a key obligation. It is misunderstood
or little known within the youth justice community. Too often plans are limited or
tailored by a lack of resources, especially at a local level and particularly towards the
end of a financial year. “Subject to finance”/“subject to resources” recommendations
in a plan ought to be unacceptable. Similarly, where for instance a young offender
has a serious drug problem and needs on-going long term counselling and other
psychological assistance, it seems unsatisfactory to restrict the services provided to
conform to limited local operating budgets.

To provide social work resources and to ensure the administration of formal orders

The role of CYFS social workers under the Act arises directly and indirectly. Social
workers may attend a FGC, must provide social work reports and plans prior to an
order being made (s334), and are responsible for the administration of many formal
orders made by the Youth Court under s283. In addition, they are also frequently
asked to monitor and assist in the completion of formal FGC plans and to provide risk
and needs assessments prior to an FGC.

There appears to have been an erosion of youth justice social work expertise over the
last 5 – 10 years. The move towards “generic social workers”, so that CYFS social
workers can practice in both youth justice and care and protection fields, is sound in
theory, but creates real difficulties when, as appears to have been the case, there are
insufficient CYFS social workers to begin with. Then there is an understandable, but
unacceptable, gravitational drift of social workers to address unallocated care and
protection caseloads. The generic social work approach seems to have resulted in a
net loss for youth justice.

Similarly, the Youth Specialty Services initiative, which has been commendably
targeted at “at risk” youth who have not yet offended, has again drained social worker
resources that would otherwise be available for actual offenders. There also appear to
be insufficient youth justice social workers. Studies are presently being carried out as
to what is the optimum case load for a youth justice social worker, which, when
applied to demand levels, can provide a formula as to the optimum number of youth
justice social workers CYFS should employ. It is concerning that this work has
apparently not been done much earlier. It has been difficult to calculate how many
youth justice social workers should be employed by CYFS to adequately meet its case
load.

There are also concerns with the level of training provided to youth justice social
workers both at an introductory and on-going level.

Care and protection cross over (s280 of the Act)

Section 280 of the Act contemplates that some charges will raise solely care and
protection issues and provides for such matters to be referred to a care and protection
co-ordinator with the youth justice proceedings adjourned pending the outcome of
that reference. This is a sound provision in principle. Regrettably, the references
consistently seem to take too long to be addressed and are frequently subject to
delays. Too often Youth Courts feel compelled to retain the matter in the Youth
Court where it can be resolved more quickly, and where such resources as are
available in the Youth Court can be directed to the young person and his/her family
more quickly. There is a need for a much better systematic approach to youth justice care and protection “cross over” cases.

Responsibility for youth justice residences; remand and Supervision with residence

This has already been discussed at Challenge 8. The numbers of young people being remanded to Police cells is unacceptable. Also, there are real concerns with the administration of the Supervision with residence sentence. These concerns relate both to the quality of treatment/rehabilitation and supervision during the residential component of the sentence, and to the subsequent period of supervision. There are no figures available as to the order’s efficacy. Even given that it is dealing with the most serious, top-end young offenders, the re-offending rate seems worryingly high.

Should youth justice remain a responsibility of CYFS?

Given these specific concerns, there are real questions being asked as to whether the youth justice responsibilities presently discharged by CYFS should be transferred to a separate organisation. The CYFS youth justice responsibilities would then operate as a separate, stand-alone organisation, within, for instance, the Ministry of Justice, as is the case in NSW, Australia. This issue is made more pressing by the apparent failure to provide a clear youth justice leadership stream within CYFS and the perennial problem of protecting youth justice resources (social workers/co-ordinators and financial resources) from being re-directed towards urgent and unmet care and protection cases.

Of course, in a perfect world, there should be no question of a separate delivery system. Ideally, youth justice and care and protection services should be delivered by the same organisation, if for no other reason than most serious young offenders have a significant care and protection history and will already be known to the organisation. Also, care and protection expertise will often be of great assistance in addressing the criminogenic needs of young offenders.

That said, in the view of many, there have simply been too many broken promises and too many unactioned recommendations directed towards proper resourcing and protection of youth justice resources within CYFS for youth justice to any longer remain within the CYFS umbrella.

For instance, in a letter from the writer and Chief District Court Judge Carruthers accompanying the report of the Ministerial Taskforce on youth offending98, it was specifically noted that:

“Thirdly, I want to emphasise a key issue which preoccupied the Taskforce from its earliest days. It is the issue of the Department of Child, Youth and Family services’ involvement in youth justice. You will be aware that the is a substantial debate about whether the Department, in the interests of all New Zealanders, should be the Department which services youth justice matters or whether there is an overwhelming case for a separate, stand alone delivery agency.

98Above n9.
Those involved in the Taskforce finally came to the clear view that a change at this time would be more destructive than helpful, especially as so many young offenders have long standing care and protection issues.

Our recommendations for the continuation of Child, Youth and Family Services department as the service provider are therefore made expressly conditional upon appropriate assurances being given by the Department to protect the delivery of youth justice services and in particular, the resourcing, training and leadership roles which are necessary for the continued delivery of such services.

I feel it necessary to make this point very clearly to you since it was the subject of much comment from New Zealanders as we travelled around the country.”

It needs to be said that those specifically noted assurances seem not to have been actioned.

Indeed, the recently completed Baseline Review, which carried out a fundamental analysis of CYFS operations, seemed unable to ascertain whether CYFS was presently capable of carrying out youth justice services and required that a capability review be prepared to be made available by June 2004.

In the writer’s view, given the previous systemic failures, youth justice should now be delivered by a separate organisation. It is recognised that some significant and important work is currently being carried out within CYFS by, for instance, Ms Lisa Hema as the leader of the Policy Team within CYFS. Similarly, the Acting Manager of Operations within CYFS, Ms Shannon Pakura, formerly Chief Social Worker, is absolutely committed to improving the delivery of youth justice services. Their excellent work ought to be acknowledged. But, given the previous difficulties in properly protecting and resourcing youth justice services within CYFS, it is now appropriate to relocate youth justice services elsewhere, so that CYFS can concentrate on what many would consider its core business in any case, that is, child protection.

**If Youth Justice is to remain within CYFS…**

If youth justice is to remain within CYFS, the opportunity given by the Baseline Review to conduct a full regional review of capability to provide youth justice services is the last opportunity for CYFS to ensure proper and adequate youth justice delivery. If youth justice services within CYFS were a cat, it has just had its ninth life! It is absolutely vital that the capability review benchmarks optimum social work numbers, ensures introductory and on-going social work training, increases the status of Youth Justice Co-ordinators in keeping with the original intentions of the Act, and urgently attends to youth justice residential services.

Most importantly, in the writer’s view, there needs to be a clear youth justice leadership stream and organisational structure within CYFS.

10. **THE CHALLENGE FOR POLICE YOUTH AID: CONTINUED COMMITMENT TO YOUTH JUSTICE PRINCIPLES AND MORE RESOURCES**
The significant contribution played by the 163 Police Youth Aid officers to the Youth Justice system has already been identified in this paper. Without the Police commitment to diversion/alternative action, the Youth Justice system would suffocate. The fundamental challenge for Police Youth Aid is to maintain its commitment to the principles of the Act, especially s208(a) (no prosecution unless public interest requires it and there are no alternative means of dealing with the offending). New Zealand’s diversion rate (80%) is world leading – though under-valued – and most young offenders dealt with in this way never enter the formal criminal justice system. This extraordinary success rate should receive due acclamation and attract a fair share of the budget pie to the Police Youth Aid division.

It is vital that this important work is properly understood within the Police and is not denigrated. There is still, it seems, ongoing pressure on the Police to be seen to be out doing ‘front line’ work – work which is valued highly within the force and rewarded accordingly – rather than working with young people in Police Youth Aid. Difficulties also remain with negative attitudes by front-line Police staff to the youth justice system, often due to misunderstanding or lack of knowledge about the system. This was a frequent concern identified during the regional visits undertaken by the Ministerial Taskforce on youth offending.

With regard to Youth Aid services, significant concerns were identified by the Ministerial Taskforce on Youth Offending and the subsequent Youth Offending Strategy, which still remain unaddressed.

While the national diversion/alternative action rate has remained stable at about 80%:

“[s]tatistics show evidence of significant variations between Police Districts in how youth offending is resolved. For example, in 2000/01, the proportion of children and young people diverted ranged from 69% to 91% and the proportion prosecuted in the Youth Court ranged from 7% - 24%. These variations may be due to a range of factors, including different recording practices or differences between Districts in how offending by children and young people is addressed”.99

Diversion/alternative action levels must be maintained; some regions must address why their levels are relatively lower than the national average (see comments under Challenge 1). The same comments can be made in respect of Police “automatic arrest” policies for young people breaching bail, which in some areas, on any analysis, must be contrary to s214 of the Act.

Other concerns listed in the Youth Offending Strategy include:

- To review the status of Police Youth Aid officers.
- To increase the number of Police Youth Aid officers.
- To improve representation of Māori, Pacific and female and Police Youth Aid officers, and to review the ethnic and gender mix of staff.
- To improve Police Youth Aid recruitment and retention policies and especially to develop a career structure within youth aid, so that experienced and committed constables (along with their wealth of accumulated knowledge) are not forced to seek promotion to other fields of police work.

99 Above n13, p33.
• To provide on-going education to all Police officers about the role of Police Youth Aid officers, the provisions of the CYPF Act 1989 and dealing with youth offenders.
• To provide on-going training for Police Youth Aid officers to ensure a consistent and high quality practice across the country.
• To develop a support structure for Police Youth Aid at National level.

It was originally envisaged that the Police would report on all these issues by 30th June 2002. Given the restructuring of the Police National Office and with the appointment of Superintendent Steve Christian to overview all Police youth services, these issues are now included as part of an overall National Youth Policing Plan, to be implemented by the new financial year. As part of this policy, Police Head Office has recently moved to co-ordinate its Youth Education and Youth at Risk services so that they are properly aligned and co-ordinated with its Youth Aid services.

It is vital that these matters be given urgent attention.

CONCLUSION: FURTHER CHALLENGES

The most important of these challenges is the pressing need to improve the administration, practice and outcomes of Family Group Conferences. Nor are the ten challenges in this paper the only challenges facing youth justice in New Zealand. Other challenges might include:

1. UNCROC

An important issue is the extent to which New Zealand complies with the United Nations Convention on the Rights of the Child (UNCROC). There are some well-known and previously identified failures. Interestingly, if New Zealand were fully to comply with UNCROC, the jurisdiction for the youth justice system would be extended to include 17 year olds, as in most Australian States.

2. Māori young offenders

There is also one profoundly challenging dimension to virtually all the 10 challenges identified that has not been explicitly addressed. That relates to the significant over representation of Māori in the youth justice system. It is usually thought, although there are no accurate details, that about 50% of young offenders are Māori. In some Youth Courts, the percentage of Māori young offenders appearing is as much as 90%.

This is a figure that should perplex and challenge all those involved in youth justice.

While Māori experts remind us that it is wrong to call our youth justice system a Māori model, it certainly has many aspects to it that are entirely consistent with a Māori cultural approach to offending. It is generally assumed that the New Zealand

---

100 See recent report: *Children and Youth in Aotearoa*, The second NGOs’ report to the UN Committee on the Rights of the Child, published by Action for Children and Youth Aotearoa, March 2003.

101 Above n13, pages 11 & 12.
system is appropriate to all offenders, irrespective of ethnic background or agenda. Certainly, all those involved in youth justice must continually develop stronger relationships with tangata whenua and encourage regional Māori initiatives for dealing with youth offending.

3. A poorly drafted Act

Any system of justice should serve the purpose of “general deterrence”: i.e. young offenders (in this case) ought to be able to clearly understand the system and the likely consequences. Moreover, any community as a whole needs to have confidence in its Youth Justice system – and confidence comes from a simple and easily understood system. It is arguable the New Zealand system fails on both counts. The Children, Young Persons and Their Families Act is a very complicated and confusingly drafted piece of legislation which, in respect of least one section (s248 – waiver of FGCs), is all but impenetrable. The Act also sets out a very complex Youth Justice process, which is not easily explained (as may be evident from Challenge 6 in this paper).

For instance “purely indictable” cases are not initially “in” the Youth Court. However, Youth Court jurisdiction may be offered (after an FGC) and, if accepted, the case may be heard in the Youth Court. It then may be transferred back out of the Youth Court to the District Court, but only if the young person is over 14 and then a lower maximum sentence applies than if Youth Court jurisdiction had not been offered in the first place. Confused? Most are. The point is that, while the end result can be justified as perfectly appropriate, and, even if a prison sentence is inevitably imposed in the District Court as a proper response for serious offending, few in the community understand what has happened in individual cases (not least the young offender).

Also, in respect of serious offending, the public often loses track of what is happening and assumes that an offer of Youth Court jurisdiction guarantees a “lenient penalty”. Surely it would be simpler to have all “purely indictable” cases initially within the Youth Court jurisdiction, with the option of transferring them to the District or High Court at any stage in the proceedings, with or without restriction. The advantages of the FGC would be preserved.

With a little work, needless complexities in the Act could be “ironed out” for the sake of clarity and public confidence.

For the future: Youth Offending Strategy

All the challenges listed previously are contained in the Youth Offending Strategy, finally released in April 2002. That Strategy lists seven key focus areas:

- Co-ordination and leadership.
- Information.
- Early intervention.
- Children and young people at risk.
- First contact with the Police.
- Family Group Conferences.
• Serious young offenders.

If all these focus areas, and the recommendations arising in respect of each contained in the Strategy, were addressed, then there is every reason to believe there would be significant advances in our New Zealand youth justice system.

**New Youth Justice Leadership Structure**

A particular challenge will be the part played by the new youth justice leadership structure, set out in Key Focus Area 1. Thirty-one Youth Offending Teams (YOTs) were established, primarily to increase regional co-operation between the four key Government agencies involving youth justice: Police Youth Aid, Children Young Persons and Their Families Service (CYFS), Health and Education. The extent, to which these local YOTs are able to pioneer a truly inter-agency approach to youth justice and to involve all other relevant local community groups, will be critical. It may also be that YOTs can concentrate on particularly hard cases.

The National Youth Justice Leadership Group (YJLG), with the Ministry of Justice taking the lead role for youth justice within New Zealand, will play a very important role in analysing local trends and responding to unmet needs. The YJLG is composed of senior officials from all relevant government Departments and supervises the work of the YOTs. The Independent Youth Justice Advisory Group (IAG), chaired by the Principal Youth Court Judge, will also play an important role in ensuring that an independent community voice is heard and that the Youth Offending Strategy is quickly and faithfully implemented.

> “Early adolescent years – ages 10-14 – are the community’s last best shot at preventing social problems”
> (Carnegie Council on Adolescent Development, 1995)

What shot will you fire?

Will you make it count?