

CHALLENGES TO JUVENILE TREATMENT IN NEW ZEALAND

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I. INTRODUCTION

This paper examines the challenges of the Children, Young Persons and Their Families Act 1989.

II. THE CHILDREN, YOUNG PERSONS AND THEIR FAMILIES ACT 1989

A. Introduction

The New Zealand Children, Young Persons and Their Families Act of 1989 (CYP&F Act) came into effect on 1 November 1989. The legislation introduced new principles and procedures for dealing with young people who had committed offences, and provided for

jurisdictional separation between children and young people in need of care and protection and those who had committed offences. The legislation in effect moved practice from a 'welfare' approach to young people who had offended towards a 'justice' approach.

B. Theoretical Base

At the time of development of the legislation in New Zealand much of the debate about the most appropriate way of dealing with young people who offended centred on two models - the welfare model and the justice model.

The table below represents a comparison between the two models.

| Welfare (needs) | Justice (deeds) |
|--|--|
| 1. How offending is viewed (causes of crime). | |
| Offending is due to criminal individual pathology, family breakdown or community disruption. | The process of growing up is characterised by testing boundaries and trying new things out. Therefore behaviour that can be classed as criminal is a normal part of growing up. Some individuals become serious offenders. |
| 2. Intervention. | |
| The causes of the offending should be found and dealt with. The 'needs' of the child or young person should be focused on rather than the offence. | Intervention should be offence or 'deeds' related. |

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| Welfare (needs) | Justice (deeds) |
|---|---|
| 3. Child's or young persons involvement. | |
| Programmes should focus on the needs of the individual. | A child or young person has rights that should be protected. They should be held accountable for their actions, although age is recognised as a factor when determining the appropriate sanction. |
| 4. Family/whanau involvement. | |
| Family are seen as part of the problem, or as being unable to provide adequate care and control of their child or young person. | Family seen as part of the solution and entitled to be primary players in the decision making process. |
| 5. Victim involvement. | |
| Victims have no right to be involved in the outcome. They are seldom seen as helpful. | Victims have a valid and legitimate entitlement to participate in the process of holding the young person accountable for their offending. |
| 6. Criminal justice system. | |
| The criminal justice system is used to access welfare resources for the child or young person and their family. | Intervention by way of the criminal justice system should be delayed as long as possible. Such interventions tend to achieve outcomes that are unlikely to have a positive effect on the offending behaviour. |

C. Social Background

A number of issues emerged at the same time and shaped the legislation. These issues included:

1. Growing Dissatisfaction among Practitioners

The apparent lack of effectiveness when working with young offenders was resulting in a growing dissatisfaction among practitioners in the youth justice field and this was reflected in the wider community.

2. Self-determination for Maoris

Maori were making new and determined efforts to secure self determination in a mono-cultural legal system which demonstrably discriminated against Maori and places

little value in Maori customs, values and beliefs.

3. Rejection of Paternalism of the State and its Agents

Concern was being expressed in the wider community about the needs to redress the imbalance between the power of the state and its agents and that of individuals and families involved in the criminal justice system.

4. Lack of Impact on Levels of Offending

Costly therapeutic programmes were emerging as part of the problem and acknowledged as having no impact on the levels of offending. Pressure was forming to free up resources for other uses and to seek more positive outcomes for young people.

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5. Due Process for Young People

Concerns were also emerging in relation to the process of dealing with young people who had committed offences and the sentence outcomes that they were receiving. Courts were dismissing cases where the police had failed to observe procedural safeguards in the questioning and arrest of young people and increasing numbers of young people were being sent to adult courts for sentence.

D. The Reform Process

In 1984 the Government of the day determined that problems with the care and protection provisions could not be remedied by legislative amendment and ordered a full review of the Children and Young Persons Act of 1974.

Much of the attention focused on the care and protection provisions of the Act. The reforms under way in the youth justice provisions elicited little debate. Either the youth justice reforms were swamped by the debates relating to the care and protection reforms or they held widespread acceptance.

E. Feature of the Law

1. Principles

The youth justice provisions of the Act have their own set of principles distinct from the provisions relating to the care and protection provisions. All those working under the Act must apply these principles.

The principles are summarised in the paper "Restorative Justice Initiatives in New Zealand." A further principle that applies is that:

- The vulnerability of young people entitles them to special protection during any investigation in relation to the commission of an offence.

2. Age of criminal responsibility

Child under 10 years: No child under the age of 10 years can be charged with an offence—no criminal responsibility.

Child offenders aged between 10 and 13 years can be charged with murder or manslaughter. The prosecution must prove that the child knew that the act or omission was wrong and contrary to law. In these cases a preliminary hearing is held in the Youth Court and, if a prima facie case is established, the case is transferred to the High Court for hearing, and sentencing if found guilty.

For other offences child offenders can be referred for a Family Group Conference if the police believe they are in need of care and protection because of their offending, and the public interest requires such action. Any court action is in the Family Court.

Young offender is aged between 14 and 16 years is dealt with in the Youth Court, or can be convicted and transferred to the District Court for sentence.

3. Limitations on Arrest and Procedural Safeguards During Investigations

The law limits the powers of police to arrest in preference to proceeding by way of summons. New procedures governed police actions when questioning a young person suspected of having committed an offence and established the rights of children and young people to consult with other. For example no statement made by a child or young person is admissible unless it was made in the presence of a trusted or neutral.

4. New diversion process and the Family Group Conference

There were two major defects in diversionary mechanisms previously adopted by New Zealand. Firstly, they

had been constructed around panels of professionals and co-opted community members and functioned as quasi-judicial bodies, and secondly they were bypassed when police exercised their powers of arrest.

The policy imperative was to find a solution that was not bypassed by arrest, was not susceptible to net widening, and which eliminated the quasi-judicial panel approach. The result was the development of the family group conference, convened and facilitated by a new statutory official, known as the Youth Justice Coordinator.

The restoration of harmony is fundamental to the Family Group Conference. From the outset, the presence of harmony will maximise the potential for relationships between all participants to move away from the adversarial and confrontational atmosphere common to the criminal court and set the scene for a negotiated outcome.

5. The Youth Court.

A new Youth Court was established as a subsidiary of the District Court. The key features of this are:

a. Designated Judge

No judge may be designated a Youth Court judge unless they are suitable by way of training, experience, personality and understanding of the significance and importance of different cultural perspectives and values.

b. Legal representation

All young persons must be legally represented, with the Court appointing a youth advocate where no private arrangements have been made.

c. Lay advocates

Courts may, in addition, appoint lay advocates to ensure the Court is made aware of all relevant cultural matters.

d. Status of Family Group Conference

The family group conference has a status in any proceedings and has the right to make representations.

e. Hearings in the Youth Court

All hearings of the Youth Court are to be held separately from other Courts. The Court schedules hearings to ensure that waiting times are minimised and congregation in common waiting areas are kept to a minimum.

6. Court Orders

A new tariff of court orders was established. Major changes occurred at the top of the tariff with the introduction or limitations being imposed on the following orders:

- Community work order—not more than 200 hours.
- Supervision order—no longer than 6 months.
- Supervision with activity order—3 months, can be followed by a supervision order for 3 months.
- Supervision with Residence order—3 months, must be followed by a supervision order for up to three months.
- Transfer to District Court—only if nature of offence and circumstances of the offender requires this.

F. Flow chart of the Youth Justice System

A flow chart of the Youth Justice system is attached as appendix 1.

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III. TEN YEARS ON

The youth justice system has now been a feature of the New Zealand system for ten years.

The following table demonstrates the results against the goals of the youth justice system.

| Goal | Result |
|--|--|
| <p>Diversion: Keeping young people out of courts and out of custody</p> | <p>Court appearances pre 1988: 10,000 - 13,000 Court appearances post 1989: 2,500 - 3,000 Residential beds pre 1988: 250 Current residential beds: 75 FGC's per year: 5,700 - 6,500</p> |
| <p>Accountability: Young people taking responsibility for their offending and putting right the harm they have done to others</p> | <p>95% of young people were held accountable for their offending.</p> |
| <p>Enhancing well-being and strengthening families: Families receiving services that will strengthen them to respond to their families needs.</p> | <p>Appropriate programmes not always available. Families felt they wanted more support.</p> |
| <p>Due process: Ensuring that young peoples rights are protected.</p> | <p>Proper procedures not always followed by police in relation to questioning of the young person. At times young people felt pressured to admit an offence.</p> |
| <p>Family participation: Involving families and young people in making decisions for themselves and taking charge of their lives.</p> | <p>Families participated fully, however only one third of the young people felt involved in the process.</p> |
| <p>Victim involvement: Involving victims in decisions about what should happen to 'put right the wrong' and 'restore harmony'.</p> | <p>41% of victims attended their conference.</p> |
| <p>Consensus decision making: Reaching agreement between the conference participants on what should happen.</p> | <p>95% of conferences reached agreement about what should happen.</p> |
| <p>Cultural appropriateness: Providing for different ways of resolving matters and obtaining services, depending on the culture of the young person and their family.</p> | <p>At times the processes were quite foreign to participants particularly families from the Pacific Islands.</p> |

IV. CONCLUSION

The Children, Young Persons and Their Families Act 1989, changed the face of Youth Justice in New Zealand. There have been tremendous successes in reducing the numbers of young people in residential care and appearing before the Courts. Victims have been for the first time involved in decision-making in relation to the offence committed against them.

In recent years the body of research on risk and protection factors and interventions known to work with young offenders has been growing. The Department of Child, Youth and Family Services has recently been incorporated into a strategy aimed at the most high-risk recidivist offenders—it is hoped that this strategy has a similar success to the introduction of the Act.

Appendix 1
Flow Chart Indicating Pathways Through the System

