



Young Offenders (Serious Crimes) Bill

Youth Horizons Submission to the Law and Order Select Committee

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About Youth Horizons

Youth Horizons is a non-profit organisation providing evidence-based sustainable solutions for families and young people who are at risk of poor outcomes due to complex behavioural and/or mental health needs. These include youth with conduct disorder/antisocial behaviour – some of the most difficult children and young people in New Zealand.

The organisation provides a range of interventions in residential and FosterCare settings, and intensive clinical support services in the community. We work with children, young people, their families/whanau and the communities in which they live, with an underlying philosophy that young people should be empowered to fully participate in family/whanau and community activities.

All Youth Horizons programmes, from the founding Auckland Bridging Programme (established in 1997) onward, have been based on state of the art best practice and research, clinical oversight, and ongoing evidence-based development. We have been acknowledged as a national and international leader in solutions for children and young people with conduct disorders. The recent independent evaluation by the MSD's Centre for Social Evaluation and Research found that Youth Horizons programmes were working as designed and produced generally good and enduring results for our young people, contributing to significant reductions in risk for the young people, their families and the communities in which they reside.

Youth Horizons is governed by a Board of Trustees, comprised of the following individuals:

Robert Swales (Chair)

Justine Kingi

Ian Lambie

Dorothy McCarrison

Rawiri Wharemate

Heemi Witehira

Jill Worrall

More information about Youth Horizons is available at the organisation's website: <http://www.youthhorizons.org.nz>

About this submission

Although Youth Horizons is contracted to provide a wide range of services to children and young people (including treatment programmes for individuals diagnosed with conduct disorder) this submission is not intended to procure any gain – pecuniary or otherwise – for the organisation. Rather, it is a reflection of the qualified clinical and scientific expertise that Youth Horizons possesses and has developed through providing programmes to Young People, and that we believe ought to be taken in to account in the law-making process.

In preparing this submission Youth Horizons has consulted with other organisations and individuals in the field of child and adolescent mental health. Youth Horizons has also had the opportunity to consult with children and young people over the contents of the Bill, and has delivered presentations and gathered feedback at several youth forums.

This submission has been endorsed by the Board of Youth Horizons and is thus officially representative of the organisation's views.

Executive Summary

Youth Horizons opposes all parts of the Young Offenders (Serious Crimes) Bill, and believes that the changes to the Youth Justice system contained within this proposed legislation are reactionary and unneeded. It is Youth Horizons' view that the Bill will not lead to reduced offending or rates of recidivism, and may in fact increase it. More young offenders will be sentenced to adult correctional facilities and will perpetuate the cycle of persistent lifelong offending. We do believe that children and young people should be held accountable for their offending, and this is achieved through the Youth Justice System already in place; the current Youth Justice System is adequately able to deal with serious young offenders in its current guise: children can be tried in the High Court for murder or manslaughter, and young people can be tried in the District Court or High Court for any purely indictable offence.

We oppose the Bill because clinical and social research shows that:

- There is no crisis of youth offending in New Zealand – it is not increasing, and violent offences are a very minor subgroup of offences;
- Children and young people do not have the cognitive maturity to be as culpable of an offence as an adult at the time of the offence, nor to be held to the same degree of account in legal proceedings;
- Delinquency is a natural part of adolescence and the overwhelming majority of individuals desist naturally;
- Individuals who will become lifelong persistent offenders are identifiable at a young age, when treatment options are most likely to be successful;
- Offenders who go through juvenile courts have significantly lower rates of offending than those who go through the criminal justice system;
- Incarceration in an adult facility has iatrogenic effects on children and young people and is not safer for the community in the long-term;
- Therapeutic and rehabilitative programmes are more effective at reducing recidivism and intensity of offending
- Therapeutic programmes and early interventions are more cost-effective than incarceration;
- The criminal justice system is less efficient at disposing young offenders than are juvenile courts;
- Transfer to the criminal courts is likely to result in a disproportionate number of Maori and Pacific Island youths being removed from the Youth Justice system;
- Adult correctional facilities are not prepared to house youth, and will be faced with a legal quagmire.

For the reasons outlined above we believe that young offenders should be kept away from the criminal justice system for as long as possible. Only as a last resort for persistent recidivists, or for truly serious or heinous crimes, should children or young people be subjected to the criminal justice system. This is the system that is currently in place and ought not to be changed in such a drastic fashion.

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1. Introduction

Youth Horizons Trust (hereafter referred to as YH) unreservedly opposes all changes to the current Youth Justice system proposed by the Young Offenders (Serious Crimes) Bill (hereafter referred to as 'the Bill'). The proposed changes are diametrically opposed to the content and spirit of the Children, Young Persons and their Families Act 1989, clinical and social research and established international best practice.

With the introduction of the CYPF Act, New Zealand was heralded as a world leader in Youth Justice. Youth Horizons does not deny that New Zealand's Youth Justice system exhibits occasional imperfections, but believes that current problems have stemmed from poor infrastructural investment, lack of communication between statutory agencies, and other problems related to the implementation of existing provisions of the CYPF Act. These ought to be remedied in other ways, not by lowering the age of criminal responsibility for almost all offences and the age of imprisonment. We are also concerned about the removal of the legal distinction between child and young person for criminal purposes that will be introduced should this Bill pass.

The provisions of this Bill will not lead to reduced offending by children and young people, and will instead see more children and young people incarcerated in correctional facilities (which are already beyond their capacity). Research shows that young offenders who are tried in the adult criminal system and handed custodial sentences are more likely to re-offend and become career criminals. However, with appropriate treatment and therapeutic interventions that do not involve incarceration young offenders can be steered off this course.

Youth Horizons also believes that it is disingenuous to propose "adult punishment" for "adult crimes" without taking in to regard the "other circumstances that may have contributed or are contributing to the offending" (as stated in the Bill's Explanatory Note). Research cited below will show that the overwhelming majority of young offenders are not serious or recidivist offenders, but are merely acting out natural delinquency – an important and formative phase of the maturation process for adolescents.

Ironically, to criminalise children and young people who are not on the path to life-long offending may have such an untoward and iatrogenic effect that it may in fact steer them on that course. Lowering the age of criminal responsibility (to 12, or as the wording of the Bill gives effect, to the age of 10) across the board does not deal with the reasons for their offending and will not protect the community in the long term. The criminalising approach has proved to be a failure, following the similar moves in most US states in the early 1990s which are now widely regarded as an abject failure.

We take issue with the presumption that there "is a clear perception that the youth justice system is too lenient towards...offenders, and that the system is not working" (Explanatory Note). If such a perception does exist in the public arena, then it can only be a by-product of media attention and politicising the issues; the facts and figures show that there is no crisis of youth offending in New Zealand, and that youth offending has been relatively stable for the last 15 years. Violent youth offending is not increasing.

Youth Horizons recognises that the Bill goes against New Zealand's international legal obligations to treaties such as the United Nations Conventions on the Rights of the Child (UNCROC) and should be seen as a basic infringement of many children and young people's human rights. We acknowledge that other people and organisations will make submissions against this Bill from a legal and international viewpoint and we wholeheartedly support such an argument. In this submission we have, however, focused on the clinical and scientific evidence that clearly demonstrates this Bill should not be implemented, for this is our organisation's area of expertise.

First we discuss the specific provisions of the Bill and why they should not be enacted, and then we focus on four areas of clinical and social research that suggest the provisions of the Bill are anathema to a progressive and successful Youth Justice system:

1. Youth offending in New Zealand – there is no crisis;
2. Biological, social and psychological maturation of juveniles
3. Juvenile culpability and legal competence to stand trial
4. Therapeutic interventions versus incarceration

2. Provisions of the Bill

Definition of a serious offence

We take issue with the definition of a serious offence. By defining it as any offence with a maximum penalty of imprisonment for not less than three months or a fine of not less than \$2000, the following will be considered serious offences:

- Unlawful assembly;
- Indecent acts in a public place;
- Criminal nuisance;
- Theft and reception of stolen goods worth over \$500;
- Any form of assault;
- Possession of Class C drugs for personal use.

In a relative sense none of these offences are “serious” or heinous, and yet under this law a first time offender would be transferred to the District Court for trial and sentencing, with the outcome being a permanent criminal record. These are the sort of offences many adolescent-limited offenders (see definition below, in Section 4) will commit before they naturally desist from offending; they are a normal part of life for many teenagers who will not become serious or chronic offenders and who may have offended for a variety of reasons (for example peer pressure) that should not, according to this Bill, be taken in to account. We disagree, and believe that the reasons for offending are at least as important as the offending itself and that subjecting children and young people to criminal courts for these kinds of offences is an unacceptable overreaction that will in many cases lead to deleterious consequences for the individual and for society.

Altering the jurisdiction of the Youth Court

Section 8(1-5) of the Bill makes wholesale changes to the jurisdiction of the Youth Court, in effect removing its role in hearing and trying cases involving a “serious offence”. The role of the Youth Court will in such cases, we imagine, become one of preliminary hearings, whereby cases involving alleged serious offences will be transferred to the District Court (as is the process for Murder and Manslaughter which are transferred to the High Court.) Not only will this be a very inefficient process, but overseas research shows that disposing of cases in a juvenile court tends to lead to lower rates of recidivism for youth offenders. Moreover, Youth Court judges and staff have specific experience in dealing with young people, whereas there is no guarantee of that expertise with District Court or High Court staff.

By reducing the age of criminal responsibility to 10, which is what the Bill does in its current form because of the insertion in to the CYPF Act at section 272(3), the Bill assumes that a child aged 10 has the same culpability as an adult. Recent research emphatically suggests that this is not the case and that a 10 or 12 year old does not have the same cognitive maturity as an adult, and therefore can not be held as accountable as their adult counterparts who have committed similar crimes, either at the time of the offences or at the time they are tried. Therefore we agree that young offenders should be held accountable for their offending, but we disagree that they are as culpable or should be held to the same degree of accountability as an adult. The current Youth Justice System recognises this, by allowing transfer of children to the High Court for murder or manslaughter, and young people to the

High Court or District Court for any purely indictable offence. This system ought not to be changed.

Age of Imprisonment

Section 14 of the Bill lowers the age of imprisonment to 16 for all offences and allows any child or young person 10 years or older to be sentenced to a period of incarceration for any serious offence defined as serious by this Bill. We cannot support this for the reasons outlined above, and we believe that this will lead to a dramatic increase in the number of young offenders held in adult prisons; New Zealand has a shortage of youth criminal justice beds and will not be able to cope with such a rise. Sentencing young offenders to adult prison will expose youth to an environment of hardened criminals and the consequences of that exposure such as higher rates of recidivism.

3. Youth Offending in New Zealand – there is no crisis

Concern over the attitude and conduct of children and adolescents has been a constant factor throughout history; indeed the inevitable decline of civilisation has constantly been postulated on account of the moral decay of children. Plato, around the turn of the 4th Century BC, wrote:

What is happening to our young people? They disrespect their elders, they disobey their parents. They ignore the law. They riot in the streets inflamed with wild notions. Their morals are decaying. What is to become of them?

One could be forgiven for believing the same is true in contemporary New Zealand. Media coverage in the last few years has highlighted a few shocking crimes perpetrated by children and young people in recent years, most notably the involvement of Bailey Junior Kurariki in the murder of Michael Choy. However, statistics do not support the assertion that there is a crisis of youth offending and that the children and young people of New Zealand are out of control. Rather, the facts are:

- the rate of youth offending has been relatively stable since the mid-1990s;
- the proportion of offending committed by youth has remained stable for the last decade (around 22% since 1994);
- the rate per 10,000 of violent offences committed by 31-50 year olds has increased more than the rate for violent offences committed by 14-16 year olds;
- violence offences comprise around 10% of all youth offences;
- 56% of all violent offences committed by children and young people were rated by the Police as not being of medium or greater seriousness (Becroft 2003);
- only a small proportion (less than 10%) of youth are at risk of becoming persistent offenders;
- the highest officially recorded rates of offending are in the 17-20 year age group, which is covered by existing adult criminal law (Zampese 1997).
- youth diagnosed with severe conduct disorder constitute under 5% of the population and yet are responsible for around 50% of all crimes and all the more serious crimes (Werry 2004; Church 2003).

In the case of Kurariki, current provisions of the Youth Justice system were able to adequately deal with the perpetrators of Michael Choy's murder. The teenagers were dealt with by the High Court (as permitted under the CYPF Act), found guilty, and received lengthy sentences commensurate with the severity of their offences.

4. Biological, social and psychological maturation

Children and young people are both biologically and socially immature when compared to adults. It is unreasonable to assume that a 10- or 13-year-old child possesses the physical and social maturity that holds them culpable of any crime to the same extent as that of a fully mature adult. It is irresponsible, therefore, to subject a child or young person to the same legal processes and sanctions as an adult.

Biological and physical maturation of the brain

The human brain is not physically mature until at least the early part of the third decade of life; some researchers have even suggested that full physical maturity of the brain may not be achieved until the age of 25 in many people (Giedd et al. 1999). Furthermore, the frontal lobe – the part of the brain that allows humans to control impulses, anticipate consequences, prioritise thinking, plan, organise, and think in abstract – is the very last part of the brain to mature. Therefore, to expect children and young people to display the same capacity for reasoned judgement and control of impulsivity as adults is in itself unreasonable. These character traits we associate with maturity and have a biological basis in the form of a fully developed and mature brain. In sum, a child or young person does not have the physical capacity to think and act rationally to the same extent as an adult. To judge them by the same standards as adults and expose them to the same avenues of criminal punishment as adults does not reflect the proven biological and psychological immaturity of children and young people.

Most of the brain and its structure are differentiated during foetal development, but much of the maturational process occurs outside the womb.

The frontal lobe, where “executive” functions of higher thinking take place and which, importantly, exercises restraint over impulsive behaviour, does not begin to mature until around 17 years of age (Beckman 2004; Paus 2005).

Just before puberty all children undergo a dramatic overproduction of grey matter (the “thinking” cells in the brain) particularly in the frontal lobe (Giedd et al. 1999). Then during adolescence follows a period of massive “pruning” where unused neuronal connections are destroyed; this continues until about 20-22 years of age. The total volume of white matter (cells that improve the accuracy and speed of signal conduction along neurons) is dramatically increased in a process known as myelination, which is the standard index of brain maturation.

Adolescent brains are in such a state of flux that around 1% of grey matter is destroyed per annum until the process is complete around 20-22 years of age. It is theorised that the purpose of this pruning is to shape the brain’s neural connections for adulthood (Beckman 2004). Concomitantly there is a significant increase of myelination in late adolescence (Paus 2005) and this continues into early adulthood (Gogtay et al. 2004; Sowell et al. 1999). Myelination sees neurons wrapped in a fatty tissue (white matter, or myelin) that acts as an insulator, much in the same way that insulation of electricity cables increases conduction over a long range.

The consequences of myelination are well understood: various parts of the brain are able to share more information more efficiently. Unused neurons and their connections wither away to allow more efficient use of the remaining system (Gur 2005).

Studies have shown that the brain matures in a back to front pattern. Areas in the cerebral cortex (responsible for higher-order integration) only mature after lower-order somatosensory and visual cortices have developed (Gur 2005). The greatest delay in myelination is in the brain’s frontal pathways. A frontal lobe that is fully matured is able to curb impulses that come from other parts of the brain that develop earlier, such as those that control aggression

and impulsivity (Beckman 2004). In sum, the frontal lobe is “involved in behavioural facets germane to many aspects of criminal culpability”.

The immature brain has a very real effect on the cognition of children and adolescents. Both children and teenagers are significantly less able to identify fear in human faces than adults. In studies looking at recognition of facial emotions, it has been shown that children and teenagers use more impulse-driven parts at the posterior of the brain to interpret emotion and feelings of others, leading to a more emotional and impulse-driven response; adults, however, process these functions in the frontal lobes, resulting in a more fully-reasoned response (Paus 2005; Beckman 2004). Other studies have shown that teens’ impulse control is not on par with adults’ (Beckman 2004).

In the words of researcher Dr Ruben Gur, “if the neural substrates of these behaviours have not reached maturity before adulthood, it is unreasonable to expect the behaviors themselves to reflect mature thought processes” (American Bar Association 2004).

Psychosocial maturation and youth offending

Children and young people undergo a major transformation of cognitive thinking during early adolescence. This development sees the emergence of formal reasoning to address problems with the physical world prior to the development of capacity to address interpersonal issues (Spear 2000). Also, the capability of adolescents to make informed decisions may be more vulnerable to disruption by stresses of everyday life than the capacity of adults (Spear 2000). Because children and young people are psychosocially immature, they are less culpable than fully matured adults and should not be held accountable to the same degree.

Intelligence

It is implicit in the measurement of intelligence that children and young people do not have the inherent cognitive abilities of mature adults until at least the late teenage years. This is clearly demonstrated by the fact that different tests and scales are required when measuring IQs of children and adolescents. The Wechsler Adult Intelligence Scale (WAIS), the standard test for measurement of adult intelligence, is ill-suited for people under the age of 16, and thus two different scales are used for this age group: the Wechsler Pre-school and Primary Scale of Intelligence (WPPSI) is employed for children between 3 and 7 years of age, and the Wechsler Intelligence Scale for Children (WISC) is utilised for children 7- to 16-years-old. Furthermore, all cognitive and academic assessments for children require raw scores to be adjusted up until around 16 years of age in order to accurately reflect the cognitive maturation process.

Peer influence

Peer influence plays an important role in youth offending; young adolescents are more susceptible to its influence than are children or adults (Scott and Grisso 1998). Normal psycho-social development sees young people trading reliance on parents and guardians for reliance on members of a peer group (Steinberg and Silverberg 1986).

The development (and waning) of peer influence is a normative part of child and adolescent development, and tends to operate through two means: conformity and social comparison. By comparing themselves to their peer group, adolescents measure and moderate their own behaviour (Scott and Grisso 1998). By conforming to their peer group, adolescents’ behaviour is in turn modified and affected, and in some instances results in adolescents making choices in response to direct peer pressure (Scott and Grisso 1998). An adolescent may also adaptively model his behaviour on a peer (or peer group) if he – either consciously or unconsciously – believes that such behaviour will allow him to accomplish his goals (Moffitt 1993). The effects of peer influence tend to peak at about 15 years of age (Scott et al. 1995; Steinberg and Silverberg 1986), which is also around the time youth offending peaks.

These exigencies of peer influence have important implications for offending: youth offences are more likely to be committed by groups of children and young people than they are by individuals (Moffitt 1993). By the time persistent offenders reach adulthood, the influence of their peer group(s) diminishes significantly, with most adult offenders committing offences as individuals, not as part of a group.

Risk-taking in children and young people

Children and young people differ markedly in their utilisation and perception of risk. Adolescents engage in more frequent and higher levels of risk taking in a process which is, as research suggests, a normal part of psychosocial development.

Risk taking may be seen as a form of sensation seeking; that is, the adolescent personality seeks new, varied and complex sensations and experiences, resulting in concomitant behavioural manifestations of reckless and risky behaviour (Arnett 1992). This risk-taking steadily increases from 9-14 years of age, peaks in late adolescence and then steadily declines (Trimpop et al. 1999). One study reported that 80% of 11.5- to 15-year-olds engaged in risk taking problem behaviours – including school misconduct, substance use, unprotected sex, antisocial behaviour (theft and fighting), and disobeying parents – during the one month period prior to the study (Maggs et al. 1995). Risk-taking and deviant behaviour is, it appears, endemic in normal teen life and for the overwhelming majority of individuals does not lead to a deviant and anti-social lifestyle; it is merely a transitory phase (Spear 2000).

Research suggests that risk-taking and problem behaviour may serve important developmental and constructive functions in psycho-social maturation of adolescents, such as fostering ties with peers, exploring issues of personal identity, and indicating a transition to a more mature status (Maggs et al. 1995). Furthermore actions and behaviours that, to an adult, would be considered problematic are in many instances part of adolescent development. For example, studies have demonstrated that adolescents use drugs when they believe it will be rewarding, yet abstain when they believe it will not be rewarding (Maggs et al. 1995). Social research also strongly suggests that the perception of risk is a trait that is developed steadily through adolescence with increased experience. Youths may be unaware of certain risks or calculate the magnitude or probability of the risk differently (Scott et al. 1995).

It has been suggested that adolescent risk-taking may have an evolutionary antecedent, and this theory is lent weight by studies demonstrating that adolescents of other species (non-human primates and rats) display such behaviour as they mature (Spear 2000).

We believe that children and young people should not be exposed to the same treatment and punishment as adults for behaviour that in most cases is a natural and transitory phase of risk-taking and reckless behaviour. This behaviour has important psycho-social developmental and adaptive features as adolescents struggle to find their place between childhood and adulthood. The provisions of this Bill are too wide-ranging and may well result in many teenagers engaged in risk-taking behaviour being subject to overly-harsh penalties that are not commensurate with what is essentially a natural biological and psychological phenomenon. There are adequate provisions under New Zealand's current Youth Justice System to deal with those young offenders who engage in non-serious risk taking behaviour as well as those who commit truly serious and heinous crimes.

Delinquency and the reasons for Youth Offending

Delinquency is not just common in adolescence, it is in fact normative; offending and illegal behaviour are so prevalent during this formative stage that "participation in delinquency appears to be a normal part of teen life" (Moffitt 1993; see also Spear 2000; Loeber 1982)

and abstaining from delinquent behaviour is abnormal. For the overwhelming majority of youth, this is merely a transient stage – something they will “grow out of”. There is a steep decline in antisocial behaviour and offending between the ages of 17 and 30 years, following a dramatic increase in such behaviour between the ages of 7 and 17 years. Whereas the majority of criminal offenders are teenagers, by the early 20s, the number of active offenders decreases by over 50%, and by the age of 28 around 85% of former delinquents have desisted from offending (Moffitt 1993). Groundbreaking research by Moffitt in the early 1990s distinguished two groups of offenders which he termed *life-course-persistent* and *adolescence-limited*. Life-course-persistent offenders (those who, as the name suggests, do not naturally desist from offending) comprise around 5% or 6% of the offending population (Loeber 1982; Moffitt 1993).

Delinquency serves an important purpose in normal psychosocial maturation and development, and most offenders are not violent. Indeed, around four-fifths of males will have some police contact in their lives for a minor infringement or misdemeanour, and most of these contacts will occur during the adolescent years; three quarters of individuals who begin offending in their teenage years will have ceased all offending by their mid-20s (Moffitt 1993). Psychologically, adolescence-limited delinquency is mimicry of a pathologically antisocial child by a non-pathological child as the latter struggles to come to terms with its changing role and the gap between childhood (parental dependence) and adulthood (independence). This delinquency is reinforced by its own consequences for the period the individual is in the “maturity gap”: for most adolescents, deviant behaviour is a statement of personal adulthood; it is a way of them proclaiming their independence from their parents and other authority figures as they strive to bridge the gap between burgeoning biological maturity and social maturity. As they mature in to adulthood, the rewards for deviant behaviour vanish, as does the behaviour. Delinquent behaviour exhibited by adolescence-limited offenders is behaviour that is learned from observing antisocial youth (who are perceived to be more adult like), and is also easily unlearned when the transition to adulthood is completed (Moffitt 1993).

Life-course-persistent offenders differ from adolescence-limited offenders in that their offending tends to start at a much earlier age, in preadolescence. Concomitantly, children who begin to display antisocial behaviour and offend at an early age are at serious risk of becoming chronic serious offenders because their criminal conduct is unlikely to be part of a normal developmental phase; they are thus unlikely to desist naturally (Scott and Grisso 1998). These children are readily identifiable; the more extreme the antisocial behaviour at a young age, the more likely the individual is to continue the behaviour throughout their life (Loeber 1982). They usually display significant neuropsychological deficits as a result of their upbringing and they are most likely to be found in environments that are not conducive to the amelioration of problem behaviour at an early age. That is, they will most often grow up in households that are socially and economically disadvantaged and have deviant parents or other figures of authority (Moffitt 1993). For example, Moffitt’s analysis of the New Zealand longitudinal study data found that among the 365 boys in the sample, the 75 who showed both low scores on the neuropsychological test and came from adverse home environments had an average aggression score that was over four times higher than those boys with either neuropsychological problems or adverse environments (but not both). The Church Report found that the proportion of antisocial children in low decile schools in New Zealand is between 3 and 6 times greater than the percentage of antisocial children in high decile schools (Church 2003).

The life-course-persistent antisocial offenders as adults have a limited behavioural repertoire, as they have not followed the “normal” course of psychosocial maturation; they have not had the chance to learn or practice prosocial behaviours with their peers at every stage of development. As a result, the aggressive behaviour and poor self-control they exhibited as children (that was rejected by peers) continues to be their only recourse in later settings. As adults they will be prone to drug and alcohol abuse, psychiatric illnesses, violent assault, domestic violence, neglected and abused children, and unemployment (Moffitt 1993).

Interventions for adult life-course-persistent offenders have historically been dramatically poor and are unlikely to improve in the foreseeable future; the behaviour that is learned and reinforced through childhood, adolescence and emerging adulthood is in many cases simply too ingrained to be changed effectively. However, if targeted interventions are implemented early enough (when the potential offender is an antisocial child) this learned behaviour can be successfully modified.

We agree with the conclusions drawn by Scott and Grisso (1998):

Most delinquent youths will grow into useful (or at least not criminal) citizens if they survive this stage without destroying their life chances. When and whether they emerge into productive adulthood is likely to be at least in part a function of the system's response to their adolescent criminal conduct. It seems likely...that categorically imposing adult criminal penalties on adolescents will increase the likelihood that they will become career criminals, or at least that it may delay desistance.

Thus, we believe that the provisions of this Bill will not allow for the natural recovery and desistance of adolescence-limited offenders. First, the Bill seeks to recommend the employment of overly harsh penalties that are not commensurate with the natural course of youth offending and that is adequately rectified by the current Youth Justice system. Secondly, by subjecting adolescence-limited offenders to the adult criminal system, this Bill may in fact prolong the period until desistance or, conceivably, result in some young people being transformed in to chronic serious offenders if they are exposed to adult criminal procedures (or even incarceration in an adult institution) during formative periods essential to their psychosocial maturation.

We recommend that resources would be better directed to identifying young antisocial children who are likely to become persistent and chronic offenders before adolescence, and that rehabilitative programmes be implemented for them so their antisocial behaviours may be rectified as early as possible; the earlier in life problem behaviours are identified, the more likely treatment programmes are to be effective and alter the targeted behaviours.

5. Juvenile culpability and legal competence to stand trial

New Zealand law does not permit children and young people to vote, sign legal documents without parental or guardian oversight, join the army, or marry without parental/guardian approval. Furthermore, we currently do not allow those under 18 years to purchase alcohol; in fact this Government is considering raising the age to 20 years. In sum, an array of other legislation constrains the legal rights and privileges of children and young people for the very reason that in many cases these young people are still in the process of developing the cognitive maturity to make well-reasoned decisions; it is thus recognised that they cannot be held fully accountable for their decisions to the same extent that a mature and fully-developed adult is (Scott et al. 1995). Criminal law, in our view, should be no different. As the US Supreme Court wrote in deciding *Thompson v Oklahoma* (1988):

The reasons why juveniles are not entrusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of any adult.

Competence and the similarity to mentally impaired adults

It is a founding principle of Western jurisprudence that a defendant must meet certain criteria of mental ability in order that he or she be tried and found guilty; in order to maintain the integrity of the justice system and fairness to the defendant, the accused must be competent

to understand the trial process, their rights, and be able to communicate with their counsel to conduct a defence.

Recent research suggests that many children and young people, due to their developmental immaturity, can be likened to mentally impaired adults for the purpose of their ability to stand trial; that is, they will lack understanding of the trial process, and competence and ability to effectively instruct their counsel will be seriously diminished, thus fulfilling the criteria of the *Criminal Procedure (Mentally Impaired Persons) Act 2003*. Section 4 of this Act defines a person unfit to stand trial as:

- (a) ...a defendant who is unable, due to mental impairment, to conduct a defence or to instruct counsel to do so; and
- (b) Includes a defendant who, due to mental impairment, is unable –
 - (i) to plead:
 - (ii) to adequately understand the nature or purpose or possible consequences of the proceedings:
 - (iii) to communicate adequately with counsel for the purposes of conducting a defence.

It is a commonly-held notion that individuals who have been detained in the justice system have, on average, significantly lower IQ scores than the average in the community (Grisso et al. 2003). Grisso and colleagues (2003) demonstrated a significant average variance of 11 IQ points between detained juveniles and a non-detained community (control) sample. But, more importantly, they concluded from their data that two-thirds of the detained juveniles aged 15 years and younger that they studied had an IQ that was "associated with a significant risk of being incompetent to stand trial due to impaired Understanding or Reasoning or both." Moreover, they found that around one third of 11 to 13 year olds, and about one fifth of 14 to 15 year olds were "as impaired in capacities relevant to adjudicative competence as...seriously mentally ill adults who would likely be considered incompetent to stand trial by clinicians who perform evaluations for courts." In other words, a significant proportion of their subjects lacked the intellectual, psychological and cognitive development that would hold them competent to stand trial should they be adjudicated as an adult.

Grisso and colleagues (2003) also concluded that young defendants may be affected by psychosocial immaturity in other ways (i.e. beyond the formal understanding and reasoning criteria required by law). This and other research (Peterson-Bidali and Abramovitch 1993; Kaser-Boyd et al. 1985) suggests that children and young people are more likely than adults to:

- comply with authority figures (e.g. confessing to police) as opposed to remaining silent;
- not recognise risks or consider long term effects when being interrogated by police, consulting with a lawyer, or evaluating a plea agreement. That is, they were more likely to focus on short term consequences of compliance, e.g. immediate release from custody if complying (Grisso et al. 2003).

Previous research in this area also shows that many young people have a significantly different perception of their legal rights. A study conducted by Melton (1980) found that children below 13 or 14 tended to view their rights as "preconventional" and non-absolute; that is, they tended to believe that legal rights were granted by authority and could easily be retracted by the same authority figures. This study demonstrated that most juveniles did not form the conventional view of legal rights, that is, as absolute entitlements, until around the age of 14 years. Read (1987) found that one-third of 15- to 16-year-old offenders believed that rights were conditional and not automatic. Two earlier studies (by Grisso 1997, and Lawrence 1983 respectively) found that less than a quarter of juvenile delinquents could define a right as an entitlement; rather, these adolescents viewed a right as something a person was allowed to do, as opposed to an entitlement.

New Zealand's criminal law does not hold that a child or young person is incompetent to stand trial merely on account of age. However, as the data above strongly suggest, there are robust parallels between a sizeable minority of young offenders and mentally impaired adults who would not be considered fit to stand trial. As Grisso and colleagues (2003) conclude:

The optimal age boundary for an automatic inquiry into competence is not obvious; clearly jurisdictions and courts will vary. It does seem clear, however, that at some minimal age, the risk of incompetence is so great that a determination should always be a predicate to adjudication in adult court. Even with youths older than this minimum age, defense attorneys, prosecutors and judges should be concerned about a defendant's competence to stand trial whenever adult adjudication is proposed for a juvenile.

We believe that further research on this issue in the New Zealand context is required. The data suggests strongly that the risk of a 10- or 12-year-old (indeed anyone under the age of 15) being incompetent to stand trial if transferred to the adult courts is too great to implement the changes proposed by this Bill. Empirical evidence strongly suggests that many (if not most) young people under the age of 15 have diminished responsibility for their offences, but not a total lack of responsibility (Scott and Grisso 1998).

The current provisions for transferring to the adult courts specified in the CYPF Act should, we believe, be strengthened by adding a safeguard to ensure a young offender's competence should his / her offence be transferred to the District or High Court.

Young offenders and culpability

Research by Cauffman and Steinberg (2000) demonstrates that adolescents' psychosocial functioning is diminished when compared to adults: they have lower levels of self-reliance and personal responsibility, have difficulty viewing long-term perspectives, are less likely to consider empathetic viewpoints and see things from others' perspectives, and have greater difficulty in restraining their aggressive impulses. Responsibility, perspective and temperance are character traits that develop throughout adolescence; full psychosocial maturity may not be fully developed in most individuals until sometime between 16 and 19 years. Perspective and temperance tend to increase in developmental pace during mid- to late adolescence, whilst responsibility tends to develop more gradually. Cauffman and Steinberg (2000) further demonstrated that there is a strong causal link between psychosocial immaturity and antisocial behaviour; as an individual matures and psychosocial characteristics begin to fully develop in late adolescence, there is a concomitant decline in antisocial behaviour and offending.

As Cauffman and Steinberg (2000) write:

The question is not whether robbing a liquor store is a bad decision.
The question is whether this decision arose from factors that put adolescents, relative to adults, at an inherent disadvantage when faced with choices in potentially antisocial situations.

We assert that there is sufficient evidence to suggest that adolescents, because of their developmental immaturity in the three key dimensions of responsibility, perspective, and temperance, are inherently less culpable than adult offenders. This is not to say that young offenders should not be held accountable for serious offending – they should, and currently they are – but rather that they should not be automatically subject to the same criminal processes and punishment as adult offenders, because their developmental immaturity is a major mitigating factor in their offending.

Serious offences such as murder and manslaughter are adequately dealt with for 10- to 13-year-olds under current provisions of the CYPF Act, and offending by 14- to 16-year-olds is

also dealt with satisfactorily under this Act. In short, the CYPF Act currently recognises that developmental immaturity is a mitigating factor in juvenile culpability and this is backed up by empirical research; there is no reason to change the current provisions and lower the age of criminal responsibility.

6. Therapeutic Interventions Versus Incarceration

It is Youth Horizons' view that public resources would be better spent on early identification and therapeutic interventions for high risk youth and young offenders than on incarceration. Indeed, therapeutic interventions are more cost efficient and effective at preventing recidivism than incarceration; this is well supported by research conducted by both New Zealand agencies and international criminologists. Furthermore, it is possible to identify individuals at an early age (around 5 years, possibly earlier) who will likely become persistent offenders. We believe therapeutic interventions should be targeted at this age group, rather than passively allowing antisocial children to develop into persistent offenders.

Therapeutic interventions

For many young offenders, reducing recidivism is best achieved by rehabilitative and therapeutic interventions that are skill-oriented. Research has demonstrated that high risk offenders generally respond favourably to cognitive treatment programmes based in the community, and that interventions that are delivered in correctional facilities are less effective; studies also show that a programme offered to a young offender who is incarcerated is less likely to reduce recidivism than the same programme offered in a community setting (Zampese 1997). For this reason, we believe that incarceration and subjection to criminal processes and punishments is best reserved for those young offenders who commit heinous violent crimes and who would constitute a serious threat to the welfare of the community if they were not incarcerated; this approach is currently in place under New Zealand's contemporary Youth Justice System. We thus advocate systemic and ecological programmes that focus not just on the offender, but on their environment (family / whanau, peers and community), believing these should be expanded and offered to many more young offenders.

There are several therapeutic interventions that are highly effective at reducing recidivism for young offenders. The two considered to be the frontrunners of this group are Multidimensional Treatment Foster Care (MTFC) and Multi-systemic therapy (MST), both of which are based on empirical and theoretical research and have sound evaluation bases. They are applicable to a wide target population, including serious and violent young offenders with prior criminal arrests and incarceration.

Multidimensional Treatment Foster Care is a programme developed by the Oregon Social Learning Centre, USA. It is based on a points system (a "token economy") that aims to correct antisocial behaviour by providing a structure in which coercive parent-youth interactions can be successfully avoided. It is a targeted intervention for children and adolescents with significant behavioural, emotional and mental health problems that aims to closely match the therapeutic environment with their home environments (Chamberlain et al. 2002). Foster Care parents are trained to provide daily feedback by awarding and deducting points, to turn problem situations into learning opportunities for the young person, and to respond to aggression in non-reactive ways (Smith 2004). The programme is based on the theory that the most effective way to treat antisocial youth is in a family environment and community setting where systematic control can be exercised over the determinants of the youth's antisocial behaviour (Fisher and Chamberlain 2000). Research by Smith (2004) showed that completing MTFC treatment decreased the probability of reoffending for both boys and girls by 19.8%. Fisher and Chamberlain (2000) reported further positive outcomes for this programme:

- boys in MTFC had significantly fewer arrests than their control group¹ (2.6 compared to 5.4 arrests respectively);
- MTFC boys self-reported engaging in fewer delinquent activities following treatment, including serious crimes and offences against the person (12.8 compared with 28.9 self-reported criminal activities);
- MTFC boys spent fewer days incarcerated than boys in the control group (53 compared to 129 days);
- MTFC boys absconded from their placements less frequently than control subjects (18 and 36 days respectively);
- After two years, more MTFC boys reported they were in legal jobs, had positive relationships with parents, refrained from unprotected sex and used hard drugs and marijuana less often than control boys. (Fisher and Chamberlain 2000).

Multisystemic Therapy is an intervention that addresses intrapersonal (e.g. cognitive) and systemic (family / whanau, peers, and community) determinants of antisocial behaviour and offending, as opposed to focusing intervention solely on the individual (Borduin et al. 1995). The programme is an evidence-based model incorporating structured and disciplined supervision, data collection and monitoring. It sees qualified therapists working not just with the child or young person, but also with those systemic factors that affect offending and antisocial behaviour. Due to its evidential results over many years, MST programmes have been implemented in 30 states in the US, and are now established in eight countries. Norway has implemented MST teams in 17 of its 19 county municipalities, and by 2002 one third of all youths receiving in-home care through Child Welfare were also receiving MST (Ogden and Halliday-Boykins 2004). We note that MST is significantly cheaper to implement than incarceration (see below).

Results from studies on the efficacy of MST in the United States show just how effective this intervention is. One early study found that youth receiving MST had significantly fewer arrests when compared to the control group who received “conventional” justice services: an average of 5.8 versus 16.2 respectively (Henggeler et al. 1993). This finding has been replicated in several other studies that have shown it to be more effective than individual therapy; the Missouri MST study showed that MST treatment completers were significantly less likely to be arrested than those who received individual therapy – 22% versus 72% (Henggeler 1997). A recent meta-analytic review of MST programmes found that treatment completers were functioning better and offending less than 70% of their counterparts who received alternative or no treatment interventions, and that these treatment effects were sustained over the four-year follow-up period (Curtis et al. 2004).

The Church Report (Church 2003) found that the earlier interventions were targeted at antisocial children, the more effective and successful they were: interventions targeting pre-school children can halt antisocial development and accelerate prosocial development in 75% to 80% of antisocial children. Interventions for children between the ages of 5 and 7 years are successful in 65% to 70% of cases, and between the ages of 8 and 12 years, efficacy drops to around 45% to 50%. It is thus imperative to target antisocial behaviour as early as possible.

Cost-benefit analysis

The New Zealand Corrections Department estimates that a serious adult offender could cost the taxpayer somewhere in the order of \$5 million for a lifetime of welfare and institutional support (i.e. incarceration); the average persistent lifetime offender will cost around \$3 million to taxpayers and victims (Department of Corrections 2001). Early interventions that target at-risk families and children are more cost effective in preventing offending by those who are deemed to be on a trajectory to persistent youth and adult offending; the earlier an

¹ The control group in this study was a matched cohort of juvenile delinquents in group care.

intervention is targeted at a high risk individual or family, the cheaper and more effective it is.

The New Zealand Corrections Department has identified four options to reduce the number of persistent lifetime offenders; each option is a targeted intervention at a different stage of development before the young offender reaches adulthood. All options offer persuasive economic benefits when compared to the estimated \$3m the country will incur over the life time of every persistent offender. The four options are:

1. *Reduce the number of highest risk births* by providing comprehensive sexual and reproductive strategies to young women and families who receive social or justice services. The estimated benefit/cost ratio (i.e. an estimate of the crime prevention return per dollar spent) is 50:1.
2. *Provide support for high-risk new mothers* by using risk assessment methods to identify those most at risk, and then offer tailored packages of support and responses for the family. The estimated benefit/cost ratio for this service is 25:1.
3. *Deal with conduct disorder at school entry* by providing comprehensive behavioural modification programmes to conduct-disordered children at a young age. These children are readily identifiable, and interventions are around 75% successful. The estimated benefit/cost ratio is 51:1.
4. *Identify and manage high-risk early youth offenders* by providing comprehensive treatment programmes to recidivists between the ages of 10 and 15 (Department of Corrections 2001). The estimated benefit/cost ratio is 36:1.

Research carried out by the Washington State Institute for Public Policy, commissioned by the Washington State Legislature, found that "certain well-implemented programs can achieve significantly more benefits than costs." They concluded that taxpayers "will be better off if investments are made in these successful research-based programs" (Aos et al. 2004). In their analysis, Multidimensional Treatment Foster Care was found to have a net benefit of US\$24,290 per youth, and Multisystemic Therapy a net benefit of US\$9316 per youth.

We support the Correction Department's assertion that in order to reduce crime (not just youth crime) interventions need to be seen on a life-long continuum and embedded as social interventions at first, and then progressing to criminal interventions later in life if those social interventions fail. The Department's own analysis shows that it makes good economic sense to implement a comprehensive preventative approach such as this, rather than allowing young offenders to embed themselves in the criminal system.

Currently there is a dearth of programmes in New Zealand that target at-risk individuals at an early age (that is, pre-school and primary school children). We recommend that resources would be better spent developing and implementing programmes of this nature as opposed to criminalising young offenders, many of whom will not be serious or violent.

Correctional incarceration

In sum, incarceration as a policy to deal with many young offenders should not be considered unless appropriate treatment programmes are implemented to significantly reduce the rate of re-offending upon return to the community. To date, such programmes have not been implemented in New Zealand's youth justice system, and do not appear likely to be implemented in the near future. The research strongly suggests that incarceration without appropriate treatment will not prevent re-offending.

Adult criminal incarceration is intended to be custodial, not correctional; juvenile justice programmes however tend to be more skills-based and correctional-oriented, through the use of behavioural therapy and other more ecologically-focused therapy programmes.

Youth Horizons does acknowledge that, in certain cases, incarceration will be the only viable option open to sentencing judges that will provide adequate protection to the community. It

should be reserved only for the highest-risk violent offenders or for those who are at high risk of recidivism. However, the provisions of this Bill allow children and young people who have not committed serious or violent crimes to be incarcerated in a correctional facility. Given that the number of criminal youth justice beds throughout the country is limited to six, we assume that any young offenders given a custodial sentence would be housed in adult correctional facilities. Research shows that this is far from ideal, both for the child / young person, and for prison management (see below). We believe that the current law is satisfactory in its approach to transferring young offenders to the District or High Court, but New Zealand's current Corrections infrastructure will be unable to adequately deal with an influx of young juvenile offenders who receive custodial sentences. There are simply not enough youth criminal justice beds, and sentencing young offenders to adult correctional facilities would be disastrous (see below).

Transfer to the Adult Courts will not be a deterrent to youth offending, but will probably increase it

The experience of the US strongly implies that the policy of transferring young offenders to the adult criminal courts will not serve as a deterrent to youth offending (Bishop 2000). There is also no evidence to suggest that transfer will have any benefits over processing in the Youth Court (Bishop 2000).

Empirical comparative research conducted by Fagan (1996) demonstrated that whilst rates of incarceration were higher for adolescents sentenced in an adult criminal court, sentence lengths were comparable with those imposed on closely-matched offenders tried in juvenile court on the same charges. Most importantly, a significant difference in rates of recidivism was noticed, with adolescents sentenced in the juvenile court demonstrating a markedly lower rate of re-offending. For example, annual re-arrest rates for juveniles convicted of robbery offences in the juvenile court were more than 75% lower than for juveniles convicted of the same offence in adult criminal courts. Processing, conviction and sentencing in juvenile court also significantly extended the time to the next subsequent re-arrest; when those juveniles did re-offend, the average time to next arrest was over 50% longer than those sentenced in adult criminal court (631 versus 392 days). White (1986) found a recidivism rate that was 150% higher for juvenile offenders transferred to the criminal justice system. Similar results are reported by other studies (Winner et al. 1997; Podkopacz and Feld 1996).

Fagan's (1996) study disaggregated types of crime and controlled for prior conviction record and sentence severity finding that, in sum, "the hazards of re-arrest for adolescents are far lower when they are sanctioned by the juvenile court compared to the criminal court." Fagan's data led him to conclude that:

...there may be a negative return from criminalizing adolescent crime...Accountability for adolescent offenders in criminal courts was significantly greater than in juvenile court, as evidenced by the higher conviction and sentencing rates. However, criminal court punishment was not a more effective strategy for crime control. Quite possibly, more harm than good resulted from the effort to criminalize adolescent crimes (Fagan 1996).

A study conducted by Bishop and colleagues (1998) sought the views of young offenders who had experienced the juvenile and adult courts in the United States. To the researcher's surprise, nearly all of the subjects described the juvenile court in favourable terms (even those who had been transferred to adult courts by juvenile court judges), recounting how the judges seemed genuinely interested in their background and personal problems and showed concern for their wellbeing. Many commented that the judges interacted with them personally and were motivated to help them, and most believed that the purposes of the court were commendable and the processes and outcomes fair (even if punishment was intended).

In contrast, offenders transferred to the criminal courts expressed their beliefs that criminal court judges had little or no interest in them or their problems, and that the proceedings were overly hurried or formal. Many youths did not understand the legal terminology that was used and could not differentiate between roles of judges, prosecutors and defence counsel; to the young offender, all were perceived as adversaries. Most of those interviewed believed their sentences were decided on personal character traits (that the judge believed they were irredeemably depraved) rather than on consideration of their offence(s). Some reported that they had been personally vilified by the judges due to personal animosity which they believed was unjustified (Bishop 2000; Bishop et al. 1998).

Atrogenic effects of adult punishment for juvenile offenders

Adolescents, due to their developmental immaturity and malleability, are especially susceptible to external influences. Not only does this make many young offenders good subjects or targets for rehabilitative programmes, but also means that they are particularly susceptible to negative influences such as those found in adult correctional facilities. High-risk youth, when compared to low-risk youth, are particularly vulnerable to poor outcomes due to peer aggregation, which can also be found in juvenile correctional facilities (Leve and Chamberlain 2005).

Studies comparing American juvenile delinquents incarcerated in adult prisons with young offenders sentenced to juvenile correctional facilities have shown that the former became more violent in order to adjust to their violent surroundings, whilst the latter chose less violent ways to adapt; the former also experienced more personal victimisation by other inmates (Forst and Blomquist 1991; Eisikovits and Baizerman 1982).

Several commentators have also referred to a theoretical detrimental effect of adult punishment for transient youth offenders: stigmatisation and obstruction of opportunities due to a criminal record. It is theorised that youths who have a criminal record and experience in an adult correctional facility will face prejudicial barriers to finding legitimate jobs and fully exploiting opportunities open to many young adults, which will make re-offending more likely. This would have the effect of closing the normal transition from risk-taking adolescence to desistance in adulthood (Bishop 2000). Although there is a dearth of studies in this area, and no hard data exist, this theoretical argument seems entirely plausible and likely.

Racial disparity

There is a distinct possibility that the provisions of this Bill which allow for all charges of "serious offences" to be disposed in the District or High Courts will have a disproportionately adverse effect on Maori and Pacific Island youths; the experience of the US² certainly suggests that minorities will be disproportionately affected. In the US in 1995, white youths comprised approximately 80 per cent of the population at risk of delinquency and accounted for 66 per cent of the delinquency cases formally disposed by the juvenile courts. However, only 46 per cent of those juveniles transferred to the adult criminal courts were white offenders. Young black offenders were transferred to the adult courts at a higher rate than

² In the early to mid-1990s 44 states and the District of Columbia passed legislation to more readily remove youth offenders from the juvenile courts and transfer them to the adult criminal system. This did away with the previous system of personal and offender-oriented transfers from the juvenile court (decided by juvenile court judges) and introduced offence-based absolute categories. A major result of these changes is that a significant range of young offenders, who are neither chronic nor particularly serious, have been transferred to the adult justice system, and the proportion of violent offences transferred has declined significantly with a concomitant rise in property offences; in sum the changes have brought "younger defendants into the criminal justice system and exacerbate[d] racial disparities" whilst the estimated number of juveniles in adult prisons has risen by 37 per cent (Bishop 2000). The move towards more retributive (and less rehabilitative sentences) in the US is summated by Forst and Blomquist (1992): "The new models in juvenile justice may not have grown out of an evolving jurisprudence or juvenile justice, but rather out of a political expediency to give juveniles longer and harsher sentences." The parallels with New Zealand's current way of handling violent at-risk offenders and the proposed changes under this Bill, with the changes of the US juvenile justice system, are significant and extensive.

white offenders in all categories of offences (Bishop 2000). The few studies conducted on this matter have concluded that racial bias was not present when the transfer was made as a result of a judicial decision, that is, judges' decisions were not racist (Barnes and Franz 1989; Fagan, Forst and Vivona 1987; Podkopacz and Feld 1996; Poulos and Orchowsky 1994). However, other studies have shown that there is strong evidence suggesting that race plays a significant role earlier in the process: in the decisions whether to press charges, and whether to dispose in the juvenile or adult criminal system etc. (Bishop and Frazier 1996), and that this has the effect of a significant disproportion of minorities being tried or heard in an adult court.

Problems with incarceration in adult institutions

Besides our evidence-based and moral objection to allowing children and young people to be imprisoned in an adult correctional facility, there is further evidence from the United States that it will create a legal minefield for prisons and prison management. As adult American prisons saw a large influx of juvenile offenders in the mid-1990s, prison management had to contemplate issues along the lines of:

- Can a young offender with a nicotine addiction have access to tobacco products?
- Who can approve an underage inmate's non-emergency medical care?
- Can an incarcerated juvenile file a complaint of child abuse against prison staff?
- Is CYF, or another requisite agency that might have had responsibility for the child / young person, no longer legally responsible for the child? If not, who is the legal guardian or custodian?
- Can a child or young person be forced to attend mandatory treatment or educational programmes? (Jepsen 1997).

This Bill has not contemplated or addressed issues such as these. Significant further legal revisions would be required in order to comprehensively address these issues.

Efficiency of Transfer to Adult Courts

We assume that, because the way the Bill is worded, young offenders charged with a "serious offence" will have a preliminary hearing in the Youth Court and then be transferred to either the District or High Court (as appropriate and determined by the charge) if the judge finds there is a case to answer, which is the process that is currently in used for charges of murder, manslaughter and (in the case of a young person 14 or older) other offences a youth court judge believes should be referred to the adult courts. Research conducted by Rudman and colleagues (1986) into a similar process that takes place in the US court system suggests that this will be an ineffective way of processing and disposing of juvenile cases: overall, cases that were transferred from the juvenile courts to the adult criminal system took on average 2.5 times longer to conclude than if the case had stayed in the juvenile court. One major city in the study took over four times longer on average to conclude transferred cases (Rudman et al. 1986; Forst and Blomquist 1991). Such a delay has important implications for the delivery of services to young offenders who are eventually convicted and will most likely have deleterious effects (Forst and Blomquist 1991).

Current provisions of the Youth Justice system already adequately allow for "adult punishment"

There is no need to change the current youth justice system because it already allows for serious young offenders to be transferred to the District or High Court. This can occur at two stages. First, the Youth Court judge may transfer a young person to the District or High Court if the alleged offence is purely indictable or if the maximum punishment is over three months' imprisonment and the young person elects trial by jury (under Section 66 *Summary Proceedings Act 1957*). Secondly, the judge may transfer the case if the young person would be sentenced to a custodial sentence if an adult, and if the judge believes that a non-custodial sentence will not be adequate (Morris 2004). By making transfer an automatic process and removing judicial discretion, children and young people who may benefit from

the processes and options available to the Youth Court will be needlessly transferred to the District Court or High Court for trial. Research recounted above shows that the effects of this may be deleterious for individual offenders and seriously deleterious for rates of recidivism throughout the country.

7. Alternatives to the Bill

We would like to propose the following alternatives that we believe would help reduce youth offending and recidivism and are better propositions than this Bill.

Increase police consistency across districts

Currently the Police have wide discretion over how to proceed with young offenders; this is not codified by specific legislative criteria. A district-by-district analysis conducted by Maxwell, Robertson and Anderson (2002) found considerable variation across police districts: apologies were made by less than 20% of offenders diverted in one district, but were made by 93% in another; in one district around half of all offenders diverted made reparation, but only 7 per cent made reparation in another; curfews and restrictions were made for about 40 per cent in one district, and not used in another (Morris 2004). We suggest that perhaps government should investigate drafting specific binding criteria under which the Police should operate when dealing with young offenders; this may increase consistency across the different districts.

Identify potential chronic offenders early, and treat them

Research (cited above) suggests that the small group of offenders who are likely to become persistent lifetime offenders can be readily differentiated from adolescent-limited offenders: they are more likely to display antisocial behaviour and offend at an earlier age, and their criminal conduct is chronic, frequent and more violent than their peers. We believe that resources should be focussed on identifying these potential offenders at an earlier age and engaging them in rehabilitative programmes in an attempt to steer them off this course. If nothing else, such an approach makes good economic sense when the cost of pre-emptive or rehabilitative treatment is compared to the costs society incurs because of a persistent lifetime offender. This is in line with the recommendations made by the Department of Corrections (2001) and Professor John Werry (Werry 2004).

Alert Youth Court Judges to treatment programmes and increase length of orders

Currently a Youth Court judge can only sentence a young offender to a total of nine months in a youth justice facility or programme. Whilst most therapeutic interventions are of relatively short duration (around 6 months), there are some individuals who will benefit from more intensive and longer intervention programmes. We believe the CYPF Act should be amended to allow Youth Court judges to pass supervision or residence orders for a maximum of at least 18 months (and possibly even two years) in exceptional circumstances, so that these individuals are not forcibly returned to the community before the maximum therapeutic effect of a programme has been reached. We also believe that more therapeutic programmes should be implemented and Youth Court Judges alerted to the existence of current programmes.

Operationalise the current provisions of the law

We believe that this Bill is reactionary to the failings to operationalise or implement the principles of the CYPF Act. Most parts of the current law are satisfactory; it is the implementation of the provisions that is not. CYF has been plagued by a lack of resources

and poor interagency communication (which is in part related to Privacy Regulations, and in part operational), and a reportedly high staff turnover rate. Another significant factor is its focus on child abuse at the expense of youth offending, which has diminished importance.

A significant problem in this sector is the lack of facilities for youth with severe mental health problems, who often cannot be placed appropriately – adult forensic mental health facilities do not take young people, and Youth Justice units are not equipped to cater for them.

8. Conclusion

In conclusion, we would like to re-emphasise our opposition to this Bill. We believe that if it passes, it will have a seriously deleterious effect on New Zealand society as young offenders become embedded in the cycle of contemporary persistent adult offenders. New Zealand has the opportunity to break this cycle by focusing therapeutic interventions on young offenders; criminalising offences which are not in reality “serious” will not only perpetuate offending by youth, but will in all probability increase recidivism. As Scott and Grisso (1998) write:

In the contemporary context, the most important practical implication of adopting the developmental framework is the recognition that severe sanctions imposed on adolescents whose crimes reflect transient developmental influences are unlikely to serve the interests of either society or of offenders. In policy terms, this should translate into a presumption against adult criminal adjudication and sanctions for first offences by these juveniles, even for serious crimes.

9. References

- American Bar Association. 2004. "Adolescence, Brain Development and Legal Culpability." Washington, D.C.: Juvenile Justice Center, American Bar Association.
- Aos, S., R. Lieb, J. Mayfield, M. Miller, and A. Penucci. 2004. *Benefits and Costs of Prevention and Early Intervention Programs for Youth*. Olympia, Washington: Washington State Institute for Public Policy.
- Arnett, J. 1992. "Reckless Behavior in Adolescence: A Developmental Perspective." *Developmental Review* 12:339-373.
- Barnes, C.W., and R. S. Franz. 1989. "Questionably Adult: Determinants and Effects of the Judicial Waiver Decision." *Justice Quarterly* 6: 117-135.
- Beckman, M. 2004. "Crime, Culpability, and the Adolescent Brain." *Science* 305:596-599.
- Bishop, D. M. 2000. "Juvenile offenders in the adult criminal justice system." *Crime and Justice* 27:81-167.
- Bishop, D. M., C. E. Frazier. 1996. "Race Effects in Juvenile Justice Decision-Making: Findings of a Statewide Analysis." *Journal of Criminal Law and Criminology* 86:392-413.
- Bishop, D. M., C. E. Frazier, L. Lanza-Kaduce, and H. G. White. 1998. *Juvenile Transfers to Criminal Court Study: Phase I Final Report*. Washington, D.C.: U.S. Department of Justice, Office of Juvenile and Delinquency Prevention.
- Becroft, A. 2003. *Youth Offending: putting the headlines in context*. Available at <http://www.justice.govt.nz/youth/media/rates0803.html>
- Borduin, C. M., B. J. Mann, L. T. Cone, and S. W. Henggeler. 1995. "Multisystemic Treatment of Serious Juvenile Offenders: long-term prevention of criminality and violence." *Journal of Consulting and Clinical Psychology*. 63:569-578.
- Cauffman, E., and L. Steinberg. 2000. "(Im)maturity of Judgement in Adolescence: why adolescents may be less culpable than adults." *Behavioral Sciences and the Law* 18:741-760.
- Chamberlain, P., Fisher, P. A., and Moore, K. 2002. "Multidimensional Treatment Foster Care: applications of the OSLC intervention model to high-risk youth and their families." In J. B. Reid, G. R. Patterson, and J. Snyder (Eds). 2002. *Antisocial Behaviour in children and adolescents: a developmental analysis and model for intervention*. Washington, D.C.: American Psychological Association.
- Church, J. 2003. *Church Report - the definition, diagnosis and treatment of children and youth with sever behaviour difficulties*. Wellington: Ministry of Education.
- Curtis, N. M., K. R. Ronan, and C. M. Borduin. 2004. "Multisystemic Treatment: a meta-analysis of outcome studies." *Journal of Family Psychology* 18:411-419.
- Department of Corrections. 2001. *About Time: turning people away from a life of crime and reducing re-offending*. Wellington: Department of Corrections.
- Eisikovits, Z., and M. Baizerman. 1982. "Doin' time: Violent youth in a juvenile facility and in an adult prison." *Journal of Offender Counseling Services and Rehabilitation* 6:5-20.

- Fagan, J. 1996. "The comparative advantage of juvenile versus criminal court sanctions on recidivism amongst adolescent felony offenders." *Law and Policy* 18:77-114.
- Fagan, J. A., M. L. Forst, and T. S. Vivona. 1987. "Racial Determinants of the Judicial Transfer Decision: Prosecuting Youth in Criminal Court." *Crime and Delinquency* 33:259-286.
- Fisher, P. A., and P. Chamberlain. 2000. Multidimensional Treatment Foster Care: a program for intensive parenting, family support, and skill building. *Journal of Emotional and Behavioral Disorders* 8:155-164.
- Forst, M. L., and M. Blomquist. 1991. "Cracking down on juveniles: the changing ideology of youth corrections." *Notre Dame Journal of Law, Ethics and Public Policy* 5:323-376.
- Giedd, J. N., J. Blumenthal, N. O. Jeffries, F. X. Castellanos, H. Liu, A. Zijdenbos, T. Paus, A. C. Evans, J. L. Rapoport. 1999. "Brain development during childhood and adolescence: a longitudinal MRI study." *Nature Neuroscience* 2:861-863.
- Gogtay, N., J. N. Giedd, L. Lusk, K. M. Hayashi, D. Greenstein, A. C. Vaituzis, T. F. Nugent III, D. H. Herman, L. S. Clasen, A. W. Toga, J. L. Rapoport, and P. M. Thompson. 2004. "Dynamic mapping of human cortical development during childhood through early adulthood." *PNAS* 101:8174-8179.
- Gur, R. C. 2005. "Brain maturation and the Execution of Juveniles: some reflections on science and the law." Available at <http://www.upenn.edu/gazette/0105/0105expert.html>
- Grisso, T. 1997. "The competence of adolescents as trial defendants." *Psychology, Public Policy, and Law* 3:3-32.
- Grisso, S., L. Steinberg, J. Woolard, E. Cauffman, E. Scott, S. Graham, F. Lexcen, N. D. Reppucci, and R. Schwartz. (2003). "Juveniles' competence to stand trial: A comparison of adolescents' and adults' capacities as trial defendants." *Law and Human Behavior* 27:333-363
- Henggeler, S. W. 1997. "Treating serious antisocial behaviour in youth: the MST approach." *Juvenile Justice Bulletin*. Washington, D.C: US Department of Justice, Office of Juvenile Justice and Delinquency Prevention.
- Henggeler, S. W., G. B. Melton, L. A. Smith, S. K. Schoenwald and J. H. Hanley. 1993. Family preservation using multisystemic treatment: long-term follow-up to a clinical trial with serious juvenile offenders. *Journal of Child and Family Studies* 2:283-293.
- Jepsen, B. 1997. "Supervising youth offenders." *Corrections Today* 59:68-70.
- Kaser-Boyd, N, H. S. Adelman, and L. Taylor. 1985. "Minor's ability to identify risks and benefits of therapy." *Professional Psychology* 16:411-417.
- Lawrence, R. A. 1983. "The role of legal counsel in juveniles' understanding of their rights." *Juvenile and Family Court Journal* 34:49-58.
- Leve, L. D., and P. Chamberlain. 2005. "Association with Delinquent Peers: intervention effects for youth in the juvenile justice system." *Journal of Abnormal Child Psychology* 33:339-347.
- Loeber, R. 1982. "The stability of antisocial and delinquent child behaviour: a review." *Child Development* 53:1431-1446.

- Maggs, J. L., D. M. Almeida, and N. L. Galambos. 1995. "Risky Business: the paradoxical meaning of problem behaviour for young adolescents." *Journal of Early Adolescence* 15:344-362.
- Maxwell, G., J. Robertson, and T. Anderson. 2002. *Police Youth Diversion: Final Report*. Wellington: Crime and Justice Research Centre.
- Melton, G. 1980. "Children's concepts of their rights." *Journal of Clinical Child Psychology* 9:186-190.
- Moffitt, T. E. 1993. "Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: a developmental taxonomy." *Psychological Review* 100:674-701.
- Morris, A. 2004. "Youth Justice in New Zealand." In Michael Tonry and Anthony N. Doob (Eds.) *Youth Crime and Youth Justice*. Chicago: University of Chicago Press.
- Ogden, T., and C. Hallodday-Boykins. 2004. "Mutlisystemic Treatment of Antisocial Adolescents in Norway: replication of clinical outcomes outside of the US." *Child and Adolescent Mental Health Volume* 9:77-83.
- Paus, T. 2005. "Mapping brain maturation and cognitive development during adolescence." *Trends in Cognitive Sciences* 9:60-68.
- Paus, Tomas, A. Zijdenbos, K. Worsley, D. L. Collins, J. Blumenthal, J. N. Giedd, J. Rapoport, and A. C. Evans. 1999. "Structural Maturation of Neural Pathways in Children and Adolescents: in vivo study." *Science* 283:1908-1911.
- Peterson-Bidali, M., and R. Abramovitch. 1993. "Grade related changes in young people's reasoning about plea decisions." *Law and Human Behaviour* 17:537-552.
- Podkopacz, M. R., and B. C. Feld. 1996. "The End of the Line: An Empirical Study of Judicial Waiver." *Journal of Criminal Law and Criminology* 86:449-492.
- Poulos, T. M., and S. Orchowsky. 1994. "Serious Juvenile Offenders: Predicting the Probability of Transfer to Criminal Court." *Crime and Delinquency* 40:3-17.
- Read, A. 1987. *Minors' ability to participate in the adjudication process: a look at their understanding of court proceedings and legal rights*. Unpublished Master's Thesis, University of Toronto: Toronto.
- Rudman, C., E. Harstone, J. Fagan, and M. Moore. 1986. Violent youth in adult court: Process and punishment. *Crime and Delinquency* 32:75-96.
- Scott, E. S., N. Dickon-Reppucci, and J. L. Woodward. 1995. "Evaluating Adolescent Decision Making in Legal Contexts." *Law and Human Behavior* 19:221-244.
- Scott, E. S., and T. Grisso. 1998. "The evolution of adolescence: a developmental perspective on juvenile justice reform." *Journal of Criminal Law and Criminology* 88:137-189.
- Smith, D. K. 2004. "Risk, Reinforcement, Retention in treatment, and Reoffending for Boys and Girls in Multidimensional Treatment Foster Care." *Journal of Emotional and Behavioral Disorders* 12:38-48.
- Sowell, E. R., P. M. Thompson, C. J. Holmes, T. L. Jernigan, and A. W. Toga. 1999. "In vivo evidence for post-adolescent brain maturation in frontal and striatal regions." *Nature Neuroscience* 2:859-861.

- Spear, L.P. 2000. "The adolescent brain and age-related behavioral manifestations." *Neuroscience and Behavioral Reviews* 24:417-463.
- Steinberg, L., and S. B. Silverberg. 1986. "The Vicissitudes of Autonomy in Early Adolescence." *Child Development* 57:841-861.
- Trimpop, R. M., J. H. Kerr, and B. Kirkcaldy. 1999. "Comparing personality constructs of risk-taking behavior." *Personality and Individual Differences* 26:237-254.
- Werry, J. 2004. *Speech at the opening of the Epuni Residential Centre*. October 2004.
- Winner, L., L. Lanza-Kaduce, D. M. Bishop, and C. E. Frazier. 1997. "The transfer of juveniles to criminal court: re-examining recidivism over the long term." *Crime and Delinquency* 43:548-564.
- White, J. 1986. *The Comparative Dispositions Study: Handling Dangerous Juveniles*. Executive Summary. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.
- Zampese, L. 1997. *When the bough breaks. A literature based intervention strategy for young offenders*. Christchurch: Psychological Service, Department of Corrections.