



31 March 2008

Mayor Rick Cooper
Taupo District Council

Cc:

Taupo Times
Maurice Gianotti
Tiwha Hakaraia
Tony Jeurison

Dear Mayor Cooper,

Crime and the Community – Avoiding Moral Panic

I note that the community is meeting this evening to discuss issues of community safety. I am in Singapore at present, doing work for the Singapore Department of Corrections, but wanted to write and congratulate the community on its efforts to address what is essentially a local community issue. I have been most impressed at the approach taken by local community leaders over the last 2 – 3 months, and the very workable approach they are advocating.

However, our project has become increasingly concerned about the role that the Sensible Sentencing Trust is taking, and the ideas that it is promoting to the community. It seems to me that the recent murder is being used as an opportunity to peddle its ideas, most of which have been shown not to work.

The initial question about community safety was first raised by Kelly Te Heu Heu and Garth McVicar, in an article in the Taupo Times on 21 December 2007. A couple of minor incidents were cited, and doubts raised about the level of community safety. The counter response from the community was encouraging.

In summary:

- Senior Sgt Tony Jeurison took the view that Police survey of the community showed that Taupo was considered a safe town. A survey showed that 81% of the community felt safe, and improvement over the 77% two years previously;
- The Principals of Taupo-Nui-a-tia and Tauhara Colleges made it clear that there were no significant youth crime problems. The Educational Review Office reports confirmed that.

Certainly, the Police and criminal justice statistics do not reveal any great variation either in recent increases, or in comparison with communities of a similar size. There is no discernable youth crime wave.

The Karen Aim murder presented an opportunity for further dialogue, about what could be done to reduce offending levels further. Local community leaders made excellent contributions. Your intent to re-establish the Safer Community Council was an excellent idea. Senior Sergeant Jeurison showed he had a very pragmatic grasp of the issues. Maurice Gianotti and Tiwha Hakaraia came to the party with very sensible and workable ideas, all emphasising the need for the community to work together.

Josef Stalin once said, "One death is a tragedy – one hundred deaths is a statistic". The Karen Aim murder was a tragedy. What it didn't do was provide evidence of a significant increase in youth crime, or demonstrate evidence of a recent upwards trend. One of the first questions that should be asked is, "what is the extent of the problem – if any" How can we reduce youth offending further, without creating an environment of fear and mistrust?

Tragedies of this kind can make the community more fearful, and take unnecessarily retributive steps, which will aggravate rather the issue, rather than deal effectively with it.

Often the most outrageous responses come from people outside the community, with a political agenda.

Enter the Sensible Sentencing Trust. The tactics employed by the SST in recent years, is to:

- 1) "Beat up" the crime issue in the community,
- 2) Contact the victim's family, and offer advice and support,
- 3) Encourage victims to speak out and become public icons, at a time when they are often heavily traumatised, and need to have their privacy and dignity respected,
- 4) Introduce a package of proposals which are highly punitive and unworkable
- 5) Claim that what currently exists is not working, (including family group conferences, restorative justice conferences, and community based sentencing) when the available evidence does not support that view.

All this is done to promote their call for more punitive measures. The unfortunate aspect of this intrusion upon the community is that none of their so-called solutions have been known to work. The SST package usually includes:

1. Early arrest of young offenders, mandatory court appearances, and imprisonment at an early age;
2. Boot camps for young offenders;
3. "Tent Cities" - harsh, highly punitive prison sentences

4. Chain Gangs
5. Reduction of the age of criminal responsibility
6. Zero Tolerance/ Broken Windows approach to crime prevention

All those proposals have been thoroughly researched over the years, and the evidence is pretty clear. If any of those ideas were introduced, (with the exception of Broken Windows) they would most likely result in an increase in youth offending, rather than a decrease. The concept of 'Zero Tolerance' is widely misunderstood, and the evidence for its effectiveness is greatly overblown. On the other hand, all the available evidence shows that the programs that are currently criticised by the SST are giving good results – although there is always room for improvement.

Opposition politicians will sometimes take this time of community insecurity to promote their own political agenda, in the knowledge that the community is nervous, insecure, fearful, and thus open to proposals of a more punitive nature. My one regret is that government has failed to recognise what is happening. It has the resources to, on occasions like this, support local community leaders in supporting community dialogue of this kind, through ensuring that community criminal justice providers and professionals who understand these issues, are available if needed, to provide support for the community in its planning to increase safety and reduce crime. One of the major deficits in the criminal justice system at present, is a belief that government can take responsibility for developing 'effective interventions' without consulting with the very people who are impacted and victimised by crime.

I have attached some information about SST's proposals to this letter think it important the local community leaders don't allow this meeting to be captured by the SST and politicians marketing their wares. There is enough understanding of community processes within Taupo, for the community to come up with workable solutions which provide the right mix of accountability and support to the young people of Taupo.

All the very best for the community meeting. I shall follow the outcome with great interest.

Kind regards,



Kim Workman

Project Leader

Rethinking Crime and Punishment

SST Proposal One: Tent Cities and Chain Gangs

How tough is tough?

The “Get Tough” mantra was first promoted in advance of the 1999 General Election. Together with the now infamous referendum, it provided a mandate to increase the length of sentences. It encouraged a conservative sentencing and prison culture, which has seen release to work and community sentencing opportunities fade, and the quantity and quality of recreational activity, work and training opportunities, education, and medical care recede. At the same time, the prison population increased by around 50%. While the growth in prison population shows no sign of slowing, recent efforts have seen work and employment training increasing, more release to work approved, and an increase in drug and alcohol treatment facilities. The approach has been dubbed by the Minister of Corrections as “tough but smart”. “Tough” still has significant appeal to the voting public, and its eradication from the official lexicon would be a rare act of courage and leadership this close to a general election.

Recent Press Release

“Garth McVicar’s claim that the reoffending rate in Maricopa County, Arizona is around 16% is wrong – and he knows it”, says Kim Workman, Project Leader of the Rethinking Crime and Punishment Project. The Sensible Sentencing Trust are deliberately misleading New Zealanders, in an attempt to generate a climate of fear, and support for extreme retribution.

Mr Workman was commenting on a report in the Matamata Chronicle, (11 March 2008), of a public meeting, held by the Sensible Sentencing Trust, in which Garth McVicar claimed that the chain gangs and tent cities in Arizona had reduced reoffending.

“Garth’s earlier reported statements vary widely. In Hawkes Bay Today, (13 August 2007) he stated that “the reoffending rate for ex-prisoners is “believed to be 32%”. A week later on Campbell Live, TV3, (20 August) he said, “He (Arpaio) doesn’t know what the recidivism rate is and doesn’t care. He’s keeping crims off the street – that’s what its all about! “

“What is the truth? A 1998 Arizona State University study tracked 4,800 released Maricopa County inmates and showed no evidence that harsh treatment reduced recidivism. Arpaio discounted this study as false and continues to claim that his jail program has reduced crime in the valley. No one actually knows with any certainty what the recidivism rate is – including Garth McVicar.”

“The other claim made by Garth McVicar was that **“Sherriff Arpaio’s aim is to lower the number of prisoners in the system (Hawkes Bay Today – 13 August).** Well he hasn’t succeeded. Maricopa County has the third largest county jail population in the United States, and it increases every year. The County Jail statistics for the last four years were:

- 2004 - 8,657
- 2005 - 9,054

- 2006 - 9,733
- 2007 - 10249

Arizona has an imprisonment rate of 808 prisoners per 100,000 population – higher than the national average, and more than four times higher than New Zealand’s 195 per 100,000.

High imprisonment rates might be acceptable if they succeeded in reducing the crime rate. That hasn’t happened either. Arizona has the 8th highest homicide rate in the US. The rate is 7.5 per 100,000 compared to 2.4 per 100,000 in New Zealand.

Arizona’s robbery rate is 147.7 per 100,000 compared to 67.6 per 100,000 in New Zealand. The Arizona crime rate is extremely high.

Why would New Zealand want to adopt a system that fails to deter offenders, increases the number of people in our prisons, and contributes to a horrendously high crime rate.

Garth McVicar has called his presentation “The Silent Majority Slowly Awakens”. Yes they are – to a massive con job.

SST Proposal Two: Harsher and longer prison sentences

In his pre-visit publicity, Garth McVicar has made a number of claims in support of the “**Get Tougher**” approach, and his promotion of Joe Arpaio. In a news release to the Hawkes Bay Today on 13 August, Sensible Sentencing claimed that:

1. **The New Zealand prisoner re-offending rate is between 80 – 86% .**
Comment: This statistic did not come from official sources. For full information refer to the Department of Corrections report “Reconviction Patterns of Released Prisoners – a 36 month Follow Up Analysis”
2. **The re-offending rate for ex- prisoners from Maricopa County is ‘believed to be’ 32%. (Garth McVicar Hawkes Bay Today – 13 August)**
This changed to

He (Arpaio) doesn’t know what the recidivism rate is and doesn’t care. He’s keeping crims off the street – that’s what its all about! (Garth McVicar, TV3 Campbell Live – 20 August)

Comment: A 1998 Arizona State University study tracked 4,800 released Maricopa County inmates and showed no evidence that harsh treatment reduced recidivism. Arpaio discounted this study as false and continues to claim that his jail program has reduced crime in the valley. No one knows with any certainty what the recidivism rate is.

3. **Sherriff Arpaio’s aim is to lower the number of prisoners in the system (Hawkes Bay Today – 13 August)**
Comment: Maricopa County has the third largest county jail population in the United States. **The County Jail statistics** for the last three years were:

- 2004 - 8,657
- 2005 - 9,054
- 2006 - 9,733

The county jail population has increased every year for the last three years.

Arizona has an imprisonment rate of 808 prisoners per 100,000 population – higher than the US national average, and more than four times higher than New Zealand’s 195 per 100,000.

4. He has worked out a system to deter people from wanting to come back. (Hawkes Bay Today – 13 August).

Arpaio – “You don’t carry guns in New Zealand? You should start thinking about it. (TV3 Campbell Live – 20 August)

Comment: Arizona has the 8th highest homicide rate in the US. The rate is 7.5 per 100,000 compared to 2.4 per 100,000 in New Zealand. Arizona’s robbery rate is 147.7 per 100,000 compared to 67.6 per 100,000 in New Zealand. The Arizona crime rate is extremely high. The attached report is provided by a justice reform organisation, and we cannot attest to its reliability. But it does suggest that the “tough on crime’ regime in Arizona is not working.

Are there Any Benefits? What Does the Research Say?

The research is very clear, and has been around for some time.

Lesson One: Imprisonment Does Not Act as a Deterrent

The deterrence effect of sentences has been widely studied, and while the incapacitation of criminals clearly reduces the immediate commission of crimes these reductions come at the cost of future crimes. A recent research paper from the Office of the Solicitor General of Canada brought together the results of 50 studies of the deterrent effect of imprisonment, which altogether involved more than 300,000 offenders.¹ The study found that imprisonment instead of community sentence, did not reduce reoffending after release. It also found that longer prison sentences did not reduce reoffending and may have increased it.

¹ Gendreau, P, Goggin, C and Cullen FT, The effects of prison sentences on recidivism. Office of the Solicitor General, Canada, p.24, 1999.

Lesson Two: Harsher Prison Conditions Don't Reduce Re-offending

Research shows that harsher prison conditions do not reduce post-release criminal behavior, and may even increase it. ²

Lesson Three: Traditional Boot Camp Approaches Don't Work

Traditional boot camps (high discipline, strict rules, military drills and physical training), and deterrent interventions such as correction training do not reduce reoffending, and are likely to increase it. ^{3 4}

There is a substantial body of research around what approaches work for offenders. In 2000, Kaye McLaren reviewed existing research on what works to reduce offending by young people. Read her report, "Tough is Not Enough – Getting Smart About Youth Crime".

The Effect of Punitive Prisons

In the past, Sensible Sentencing Trust has advocated for longer sentences, and the limiting of parole. Support for Arpaio's prison management regime, is support for the harsh, punitive and degrading treatment of prisoners.

Prison regimes which promote harsh, punitive sentencing in the false belief that it will deter offenders, develop a high level of tolerance for unfair, brutal and inhuman treatment of prisoners. The Maricopa prison system is considered to be one of the most brutal in the United States, and there is ample online evidence of that, and the opposition he attracts.

SST Proposal Three – Zero Tolerance and Broken Windows

Our comment on this subject comes from a local expert on Policing Theory. He is:

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² M. Keith Chen, Yale University and Cowles Foundation, and Jesse M. Shapiro, University of Chicago and NBER, "Do Harsher Prison Conditions Reduce Recidivism? A Discontinuity-based Approach" 2007

³ Kaye McLaren, "Reducing Reoffending: What Works Now" 1992, Department of Justice

⁴ Lynn Atkinson, "Boot Camps and Justice: A Contradiction in Terms" Australian Institute of Criminology 1995

I freely admit that I have no tolerance for zero tolerance. After all zero tolerance is a repressive style of policing that impinges on the human rights of respectable citizens and criminals alike. However, the ideas expressed by the broken windows hypothesis, which advocates community policing when dealing with problems of disorder do show promise. Given that both of these ideas are so different, it is exasperating when the terms broken windows and zero tolerance are assumed to mean the same thing. A recent example of this common misunderstanding was expressed in the Taupo Timesⁱ. This article covered the views and concerns about local crime and disorder taken from active community workers. On the one hand there were calls for a community working together to maintain the social bondsⁱⁱ that are supposed to alleviate crime with a police that are back walking the community beat. On the other hand the words zero tolerance were used on numerous occasions, most notably by Garth McVicar of the Sensible Sentencing Trust who seemed to advocate the arrest of everyone in sight in order to fill boot camps, an approach that has always failed miserably in the past. What follows is my attempt at removing some of the confusion that surrounds the concept of the broken windows theory by explaining how it differs from zero tolerance.

In the early 1980s Wilson and Kellingⁱⁱⁱ used the metaphor of broken windows to explain their approach to crime prevention. Taking into consideration the current media preoccupation with tagging I will explain Wilson and Kelling's approach by using the metaphor of painted walls. If someone paints their initials on a wall and this tag is left for all to see, it creates the impression that nobody cares what happens in this neighbourhood. This is a sign to taggers that it is alright to spray on this wall. As time goes by the number of tags rises until the whole wall is covered and spaces adjacent to the wall are incorporated. These painted walls advertise that there is no one willing to monitor, or control unacceptable behaviour in that area. So, other small incidents of disorder are likely to increase such as vandalism, littering, rowdy teenagers, obstruction of the streets, aggressive begging, public urination, loiterers and public drinkers etc. The Broken windows theory asserts that the cumulative effects of incivilities are as important to people as other more serious crimes. These incivilities create an atmosphere that makes the street appear uncontrollable and disorderly. In short, a source of distasteful and worrisome encounters that heighten people's fear of crime^{iv} even when there is little to fear. When people are afraid they change their behaviour to avoid the source of their concern. In turn, this reinforces the message that the area is uncontrolled which leads to more disorder and finally, depending on how resilient the neighbourhood is, to serious crime.

From a broken windows perspective the problem of crime can be tackled with interventions that preserve and regenerate urban areas, such as persistent maintenance of public property ensuring the quick removal of all tagging when it occurs. Therefore, the broken windows theory is very much an approach that favours community engagement in urban care as a means of improving the quality of life of residents. A well kept neighbourhood appears orderly and provides residents with information that implies safety. Wilson and Kelling also indicated that the policing of disorder was about the reinforcement of informal mechanisms of social control present in all communities. This involves the removal of police officers from their cars to be deployed on foot patrol so that they can learn the informal rules that govern the neighbourhood and take measures to keep order. The emphasis is on moving people on and/or informally resolving disputes. While arrest is an option, the emphasis is on maintaining the

informal standards of the neighbourhood rather than the rules of the state. In short, this style of policing is informed by the local environment in partnership with stakeholders and is aimed at reducing community concerns by keeping order rather than merely arresting people.

The term zero tolerance was first used in the United States during the Reganite war on drugs during the 1980s^v, an era that used extremely coercive policing practices characterised by raids on houses with urban assault vehicles, crack downs, and racial profiling^{vi}. After this, zero tolerance was linked to the New York crime control initiatives under the auspices of Bill Bratton and Rudolph Giuliani. Unlike the policing associated with the broken windows approach where discretion allows for a neighbourhood sensitive approach to keeping order, zero tolerance eliminates discretion, in favour of the wholesale enforcement of the law^{vii}. However, there are too many laws both trivial and serious for the police to enforce equally. Therefore, zero tolerance policing involves the flooding of a specific area with large numbers of officers who then set about arresting local residents for trivial infractions of the law. The majority of leading police officers have been quick to distance themselves from this overzealous approach due to the possibility that encouraging intolerance of offending will lead to police misconduct^{viii}. Indeed, Detective Inspector Ray Mallon, one of the few to implement zero tolerance policing in the UK was suspended on charges that he turned a blind eye to his men selling drugs to criminals for information^{ix}. This was not the outcome expected by the politician who supported him.

More recently, zero tolerance has become a fashionable slogan used to express a commitment to a harsher criminal justice system. It ignores the results of years of criminological investigation in favour of the populist views that often drive the political agendas of the get tough on crime crowd. Furthermore, the rhetoric of zero tolerance exhibits a particularly blinkered, mean spirited, self serving and intolerant discourse. From this perspective it is not just a style of policing but an expression of an intolerant attitude against those perceived as different. Unlike the broken windows approach dealing with disorder by alleviating the fear of crime, the rhetoric of zero tolerance is about engaging the media in a sensationalist frenzy that instils the fear of crime in the public often for political gain.

Given appropriate funding and correct implementation, the broken windows approach provides the potential to alter people's perceptions of crime and reduce public fear; maybe even reducing crime itself. However, a note of caution seems appropriate. For those people who want to invoke zero tolerance – beware! The repetitive chanting of these words has the potential to provide us with intolerant communities ruled by fear and policed in a harsh manner. This is not what we should aspire to.

Proposal Four: Support for the Ron Mark Bill

Reviewing the Young Offender's (Serious Crimes) Bill - the RCAP View

Introduction

This private member's bill was introduced in 2006, and was an effort to address what was described by its proposer, Mr Ron Mark MP as an issue of widespread public concern – that there is a group of young offenders (sometimes as young as 10 years old), who are committing serious crime, and for whom current measures are largely ineffective. The Bill proposes that “young offenders who commit serious crimes should be accountable for their crimes more in the same way as adult offenders. The principle behind this Bill is “adult punishment” for “adult crimes”.

Is there a Problem?

Overall, youth offending (14 – 16 year olds) and child offending (10 – 13 year olds) has stabilized in the last eight years. It has increased no more quickly than total offending, and for the last 14 years, has remained constantly at about 22% of overall offending.

Around 75% of all youth offending is dealt with by the Police Youth Aid Section, by way of community diversion, without charges being laid, or the offender going to Court. The more serious offences are dealt with by Family Group Conferences (FGC's). One third of those appearing before the FGC do not re-offend at all, and a further 22% only re-offend in a very minor way. It is in fact, an improvement on past performance, and similar to comparable countries such as Australia.

The group we are really concerned with is the 5 % who are serious offenders – and in particular those who are referred to as the “persisters”. This is the group that is likely to become recidivist adult criminals.

What currently happens in cases of serious offending?

Top end penalties include 3 months in a secure youth residence followed by 6 months intensive supervision. In the case of **very** serious offences:

- A child aged 10 years or older who is charged with murder or manslaughter will be transferred to the High Court for trial and/or sentence.
- A child aged 14 years or older who is charged with a serious crime may have the case heard in the District Court or the High Court if trial by jury is elected or if the Judge refuses to deal with the matter in the Youth Court
- A child aged 15 years or over against whom a serious charge has been proved may be sent to the District Court for sentence

Who are the “Persisters”

A small group of 5 % of youth offenders, often called “Persisters” or “early on-set offenders”,⁵ are very difficult to manage and are likely to become career criminals.

They share the following characteristics:

- 85% are male
- 70 – 80% have a drug and/or alcohol addiction (usually cannabis)
- 70% are not at school – many are not even enrolled at a secondary school
- Most come from backgrounds of disadvantage and lack positive male models; many have a history of abuse and neglect
- A number report having had psychological or psychiatric difficulties, and some display little remorse, let alone victim empathy
- About 50% are Maori - in some Youth Courts the Maori appearance rate is 90%.
- Persisters usually start offending before age 14 and are responsible for at least 50% of youth offending in New Zealand.

Underlying Assumptions

Ron Mark proposes in his introduction that:

- Serious youth offenders should be held accountable for their actions;
- Serious youth offenders should be punished for their crimes, in the same way as adults.

⁵ Moffitt T E (1996) *Adolescence-Limited and Life-Course Persistent Offending: A Complementary Pair of Developmental Theories*, in T Thornberry (eds) *Advances in Criminological Theory: Developmental Theories of Crimes and Delinquency*, 11-54, London: Transaction Press quoted in K L McLaren, *Tough is Not Enough – Getting Smart about Youth Crime*, available at <http://www.myd.govt.nz/Publications/Justice/toughisnotenough-gettingsmartabout.aspx>, n 6, 16.

On the Campbell Live programme shown on TV3 on 12 May 2006, Mr Mark argued that:

- Child and Youth Offending is on the rise to the point where new interventions are required;
- That if enacted, children and young people would think twice before committing a crime because of the risk of imprisonment

Rise in Youth Crime

As pointed out earlier, there is no evidence that offending by children and young people is on the rise, to the point that a change in legislation of this kind is required.

‘Thinking Twice’

National and international studies demonstrate that the opposite is true. Because of their reduced maturity, children are far less likely than adults to make rational choices about their behaviour. They place less emphasis on the consequences of their actions.⁶

Child and youth crime is not usually premeditated. Almost all child and youth crime is impulse driven, and rarely a solo effort. The more serious the crime, the more likely adults are involved, even if at the periphery. Adults, unlike children, generally fully know and understand the nature of what they are doing and the consequences that flow from the criminal action and the impact on others.

The Age of Criminal Liability – the Principle of *Doli Incapax*

At present, Section 22 of the Crime Act provides that a child of 10 and under 14 cannot be charged with an offence unless the child knew the act was wrong or contrary to law. It is known as the presumption of *doli incapax*. It is a rebuttable presumption that recognises that children mature at different rates, and provides some flexibility against an arbitrary minimum age of criminal liability. Children between the ages of 10 and 13 years vary greatly in their maturity and understanding of wrongdoing.

The Bill re-defines what is a serious offence, and allows children as young as 10 years of age to be convicted of almost all offences regardless of whether they knew their actions were wrong or contrary to law. However, crimes outside the Bill’s definition of “serious crimes”, such as fighting⁷ or drinking⁸ in a public place, using offensive language or behaviour in a public place⁹

⁶ Scott, E., Grisso, T., The Evolution of Adolescence: A Development Perspective on Juvenile Justice Reform, in *Journal of Criminal Law and Criminology*, Vol 88, 1997, at pages 156-157.

⁷ Summary Offences Act 1981, s7.

⁸ Summary Offences Act 1981, s38.

⁹ Summary Offences Act 1981, s4.

and throwing stones,¹⁰ **do** require that the child must have known either that the act or omission was wrong or that it was contrary to law, will remain. The Bill seeks to remove the protection afforded by this element of knowledge from those children accused of almost all crimes except the least serious. We find this provision illogical.

Holding Offenders Accountable

It is very common for promoters of new legislation, programmes or services, to argue that offenders need to be held accountable. It is less clear as to **whom** they should be accountable – the victim, the Court, or society at large. Often it is another way of saying that an offender should be punished.

Accountability to the Victim

Unlike the adult Court, the Youth Court gives victims the right to be involved in the court hearing. Victims are entitled as of right to attend Family Group Conferences.¹¹ The Youth Justice coordinators must do their best to involve victims in the Conference, and can recommend that a young person make reparation to a victim.¹² In attending the Conference the victim can express their views, talk about how the crime has impacted on their life and give a personal view of how the offender should be treated. In this way, the victim is part of the justice system and may well experience healing as a result. The Bill effectively removes accountability to the victim, as almost all cases will now be heard in the adult Court.

Accountability to Society

The Bill may contemplate that a child should be held accountable to society by being punished as an adult – although it is not clear. Punishment may include a term in a prison or youth-justice facility. Those who understand the experience of imprisonment or confinement, argue that it is not possible to expect young offenders to be accountable, when sentencing them to a period of institutional confinement actively removes their capacity to do so.

The Impact of Punishment

Kaye McLaren, in her research review¹³ states “the most certain finding about what does not work is approaches that focus on deterrence through a harsh, punitive experience are largely ineffective. Punishment on its own is not enough to reduce offending, particularly by chronic young offenders, whose offending is caused by a complex network of circumstances.”

McLaren also found that residential interventions were less successful than non-residential approaches, although they can be successful under the right conditions. In general, residential interventions have to try harder than non-residential ones to do what any effective programme does and do it very well.

The Impact of Imprisonment

¹⁰ Summary Offences Act 1981, s34.

¹¹ Children, Young Persons and Their Families Act 1989, s251(1)(f).

¹² Children, Young Persons and Their Families Act 1989, s260(3)(e).

¹³ Kaye L McLaren, “Tough is not enough – Getting Smart about Youth Crime” Ministry of Youth Affairs, 2000.

If punishment includes the possibility of imprisonment, then the evidence is clear that early imprisonment increases the likelihood that a youth offender will become a career criminal.

*Children whose lives have been damaged and disfigured by disadvantage, neglect and abuse are the very children who occupy the juvenile remand wings of our prisons. These are the children for whom the fabric of life invariably stretches across poverty; family discord; public care; drug and alcohol abuse; mental distress; ill-health; emotion, physical and sexual abuse; self-harm; homelessness; isolation; loneliness; circumscribed educational and employment opportunities and the most pressing sense of distress and alienation.*¹⁴

In a soon to be published paper, Chief Youth Court Judge Andrew Becroft puts the position squarely¹⁵:

Imprisonment alone is a particularly poor response to youth crime. There are numerous negative psychological and behavioural consequences for young people who are imprisoned as adults, and with adult offenders.¹⁶ While adults adapt to the custodial system, children and young persons may be adopted by it.¹⁷ Marginalised youth may learn to fit into the prison culture in the way they would fit into a family culture and continue to use that culture's norms upon release. Stealing another person's shoes, violence or joining a gang are normal behaviours from the viewpoint of a "custody culture" which prizes power, status and indifference to the predicament of the other person.¹⁸

Although young people might be adopted by the custody culture, some find it is every bit as dysfunctional as their "birth" families. Young inmates may experience intimidation and bullying by older inmates.¹⁹ Verbal, physical, sexual and emotional abuse is particularly likely for those incarcerated for the first time, those that are small, from a middle class

¹⁴ Goldson, 2002:51 quoted in Geoff Monaghan, Pam Hibbert, Sharon Moore (2003) *Children in Trouble: Time for Change*, Essex, United Kingdom: Barnados, 33.

¹⁵ Becroft, Andrew; "Time to teach the old dog new tricks? What the adult Courts can learn about sentencing and imprisonment from the Youth Court", From "Beyond Retribution- Advancing the Law and Order Debate", a report on the Prison Fellowship National Conference 2006. Soon to be published.

¹⁶ Adams, 1992; Bishop & Fraser, 2002; Bishop et al., 1996; Calabrese & Adams, 1990; Lane et al., 2002; Taylor, 1996; Tie & Waugh, 2001 quoted in Dr Ian Lambie (2006) *The Negative Impacts on Juvenile Offenders Incarcerated in Adult Prisons*, paper in draft at time of going to press.

¹⁷ B Clark & T O'Reilly-Fleming, eds. (1993) *Youth Injustice: Canadian Perspectives*, Toronto: Canadian Scholars Press Inc, 189, 194 quoted in R G Green and K F Healy (2003) *Tough on Kids: Rethinking Approaches to Youth Justice*, n 2, 23.

¹⁸ Jerome Miller, *Prison and Its Alternatives*, Ideas (CBC Radio transcript, 1996) quoted in R G Green and K F Healy (2003) *Tough on Kids: Rethinking Approaches to Youth Justice*, n 2, 23.

¹⁹ Department of Corrections, *Young Male Inmates* available online at <http://www.corrections.govt.nz/public/aboutus/factsheets/managingoffenders/youngmaleinmates.html> (last accessed 10 May 2006).

background, are effeminate in behaviour or lack “streetwise” knowledge.²⁰ Further, juveniles in adult prisons are at greater risk of suicide.²¹

Young people do not have the same developmental level of cognitive or psychological maturity as adults.²² They are more vulnerable to provocation, duress or threatening behaviour and are particularly influenced by peer approval and fear or rejection.²³ Thus, young people are more likely to react unlawfully to a threatening or provocative situation and, once in prison, are more likely to be negatively influenced by its “custody culture”. It is little surprise then that incarcerated youth are at high risk of serious re-offending.²⁴

What Works?

There is no quick fix solution for persistent offenders. There is good evidence to suggest that some of these young people have effectively been “hard wired” for a life of crime by the age of two years.

Research shows that the greatest change in expected re-offending rates for Persisters was achieved through:²⁵

- Preparation for employment 35% decrease
- Behaviour contract 25% decrease
- Institutional training 15% decrease
- Court/Probation 10% decrease
- Offender Counselling 8% decrease
- Family Counselling No change
- **Deterrent Sentencing 25% increase in re-offending**

Other factors that have proved useful include:

- Family Group Conferencing preceded by full assessments such as risk and needs assessments, psychological, medical, educational and cultural assessments and comprehensive plans or supervision orders.

²⁰ Maitland & Sluder, 1998 quoted in Dr Ian Lambie (2006) *The Negative Impacts on Juvenile Offenders Incarcerated in Adult Prisons*, n 8, 6.

²¹ Dr Ian Lambie (2006) *The Negative Impacts on Juvenile Offenders Incarcerated in Adult Prisons*, n 8.

²² Steinberg & Scott (2003) quoted in Dr Ian Lambie (2006) *The Negative Impacts on Juvenile Offenders Incarcerated in Adult Prisons*, n 8.

²³ Moffitt (1993) quoted in Dr Ian Lambie (2006) *The Negative Impacts on Juvenile Offenders Incarcerated in Adult Prisons*, n 8.

²⁴ Dr Nick J Wilson, *Assessment, Treatment and Management of High Risk Incarcerated Youth Offenders*, Wellington, New Zealand: Department of Corrections. Full report available on <http://www.corrections.govt.nz/public/research/risk-need-profile-youth-offenders/method.html> (last accessed 10 May 2006).

²⁵ M W Lipsey, *The Effect of Treatment on Juvenile Delinquents: Results from Meta-Analysis*, in F Losel, D Bender and T Bliesener (eds) *Psychology and Law: International Perspectives*, 1992, Berlin, Walter de Gruyter and Co.

- Multi-systemic therapy, a licensed and franchised intensive community-based intervention programme for serious young offenders.
- A specialist Youth Drug Court and other programmes that provide intensive assessment and supervision have also proved useful in assisting Persisters.

The 2002 Ministerial Taskforce “Youth Offending Strategy” considers that the key lies in a two fold approach. First, there needs to be a comprehensive, nationwide early intervention policy, which recognises and responds to the needs of children as young as pre-schoolers, who can be identified as struggling. Second, we need effective programmes for young offenders, which work. For some that may involve “multi-systemic family therapy, using a range of experts working with an offender’s whole family. For some it may be a significant community agency or individual, working intensively with a family over many years. A focus on developing resilience within ‘at risk’ families, and building on existing strengths within the family unit, are strategies that work well.

But Wait There’s More – the Impact of Bad Drafting

In a press release by New Zealand First 06 Apr 2006, Ron Mark said that many people who have reacted against his Member’s Bill, have done so based on the false premise that it proposes ‘throwing 12-year-olds into jail’. “That is a totally wrong assumption. This Bill does not alter the system by which young offenders are treated and the Youth Court and the Youth Justice System will remain the appropriate means for dealing with them.

It is clear then, that the Bill has strayed well away from Ron Mark’s intent, and it would seem to be very bad drafting. In summary, the effect of the Bill is that:

1. All offenders under 17 years of age will be liable for imprisonment for “serious offences” with the exception of a few minor offences; e.g. fighting²⁶ or drinking²⁷ in a public place, using offensive language or behaviour in a public place²⁸ and throwing stones
2. Family Group Conferences will no longer be available for all but a few minor offences;
3. The redefining of serious offences effectively abolishes the Youth Court;
4. The protection available to 10 to 13 year olds inclusive through the *doli incapax* presumption (see above) is virtually abolished. The protection that the child must have known either that the act or omission was wrong or that it was contrary to law, will remain. The Bill removes the protection afforded by presumption from those children accused of almost all crimes except, the least serious. We find this illogical.

From Punishment to Problem Solving

²⁶ Summary Offences Act 1981, s7.

²⁷ Summary Offences Act 1981, s38.

²⁸ Summary Offences Act 1981, s4.

It is difficult to comprehend the damage this Bill would cause to the youth justice system if it were introduced in its entirety. There is no evidence or research that we can find to support the arguments for this Bill either in regard to its stated intent, or the unintended consequences of poor drafting. The Bill as drafted does not pass Rethinking's "Will it Work" Test (See Appendix).

Why has this happened? Since the introduction of Family Group Conferences, and the establishment of the Youth Court, the focus has been on the welfare of children and young people, and away from the "Cops, Courts and Corrections" scenario which has typified other jurisdictions. In recent years however, there has been an increasing political preoccupation with public safety and protection, even where there is no evidence to support that concern. Headlines such as "the youth justice system is failing", or "youth crime out of control" are often a knee jerk reaction to a particularly appalling instance of youth offending which has rightly shocked the nation. Alternatively, they may be triggered by victim dissatisfaction where the system has botched it – as occasionally it does. The statistics demonstrate that the headlines are factually incorrect, but they serve to create a momentum away from problem solving to punishment.

There is presently considerable frustration at the inadequacy of child and family services, and it is clear that much greater investment is needed to meet the growing incidence of child abuse, of educational and child mental health issues, and in supporting struggling families. If that support is not forthcoming, these problems will manifest themselves in increased child and youth offending.

How does a government cope when responses to the most damaged children who present the greatest needs and the highest risks are inadequate? What does it do when the current responses are inappropriate, when young people who get into trouble are unable to receive the attention and services they need to help them stay out of trouble? What does it do when the range of community-based and residential placements for young people who cannot stay with their families, is simply unable to cope with the demand?

One response is to re-define the problem. The children who were adjudged not to be under proper care and control, and were regarded by the system as helpless victims, suddenly at the age of 10, are classified as offenders. That shifts the responsibility from the state, which has a duty to protect children living in dysfunctional families, back to the child, who is now classified as a young criminal and 'accountable', without the need to show that they understood that what they were doing was wrong.

For the vast majority of children and young people, public protection should not be a high priority – certainly not over the essential outcomes for New Zealand children – being healthy, staying safe, enjoying and achieving, making a contribution and achieving economic well being.

What Should We Do with the Persisters?

Having said that, we also believe that the risks posed by a small number of dangerous youth offenders, need to be better managed. We are not convinced that the programmes and services available through youth justice facilities meet their needs, and for some of them, it is in the interests of public safety that they be isolated and provided with effective programmes in a secure setting. The "recycling" of some of those offenders back to their highly dysfunctional families after a three months Court Order, is not in the interests of either the offender, the family, or the community. That is an issue which is outside the scope of this paper. That is the

challenge we currently face; but it will not be addressed by this Bill. Of particular concern, is the lack of implementation by Child, Youth and Family Services, of the youth justice system, including the recent Youth Justice Capability Review 2006.

ⁱ Heynes, D. (2008) Town Urged to Pull Together. *Taupo Times*, Friday 7th March

ⁱⁱ Hirschi, T. (1969) *Causes of Delinquency*. Berkeley: University of California Press.

ⁱⁱⁱ See Wilson, J.Q. & Kelling, G.L. (1982) Broken Windows: The Police and Neighbourhood Safety. *Atlanta Mon.* 249: 29-38.

^{iv} Innes, M. (2004) Signal Crime and Signal Disorders: Notes on Deviance as Communicative Action. *The British Journal of Sociology*. 55:3. p 335-355.

^v Jones, T. & Newburn, T. (2004) The Convergence of US and UK Crime Control Policy: Exploring Substance and Process. In T. Newburn, & Sparks, R. (eds) *Criminal Justice and Political Cultures: National and International Dimensions of Crime Control*. Cullompton: Willan Publishing.

^{vi} Davis, M. (1990) *City of Quartz: Excavating the Future in Los Angeles*. London: Pimlico.

^{vii} Dixon, D. (1999) *Beyond Zero Tolerance*. Paper Presented at the 3rd National Outlook Symposium on Crime in Australia, Mapping the Boundaries of Australia's Criminal Justice System. Convened by the Australian Institute of Criminology. Canberra 22-23 March.

^{viii} Jones, T. & Newburn, T. (2002) Learning From Uncle Sam? Exploring US Influences on British Crime Policy. Governance: *An International Journal of Policy, Administration and Institutions*. 15:1. 95-119.

^{ix} Vallely, P. (2002) Ray Mallon: The Return of Robocop. *Independent*. 5th March.