



Youth justice – a research perspective

Gabrielle Maxwell discusses the implications of new research for principles, policy and practice

This article is the first of two taken from the paper Dr Maxwell presented at ‘Never Too Early, Never Too Late’, the Youth Justice Conference held in Wellington in May 2004. Part two will appear in the December issue of *Social Work Now*.

Introduction¹

In 1989, new legislation resulted in a new youth justice system for New Zealand that is now recognised as the first formal adoption by the legal system in any country of a system of justice based on restorative principles and practice. It also introduced the family group conference (FGC), which has since become the prototype for restorative conferencing processes, used as an alternative to sentencing in the criminal courts. From 1990 to 1991, Allison Morris and I were fortunate enough to be able to evaluate the effectiveness of the new system and the results of that research were published

in 1993 (Maxwell & Morris, 1993). At that time, the focus of our research was primarily on the extent to which the new Act achieved its objectives and it was too soon to collect data on

the longer-term outcomes for those children and young people who became involved with it.

In 1999 we obtained funding for a new study on achieving effective outcomes (AEO, Maxwell et al, 2003) that was designed to provide more reliable answers to questions about the impact of the key new restorative youth justice processes and the factors involved in best practice. This

research is reported here. The goals of this study have included examining the extent to which the goals of the youth justice legislation are being met, and a summary of these findings is presented in the first part of this two-part article. Other goals included determining the extent to which restorative aspects of process



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are achieved and identifying best practice by determining practice factors associated with reoffending and the factors related to achieving positive outcomes. It is these goals that will be presented in part two of the paper.

Methodology

The retrospective study

A sample of 24 youth justice coordinators was selected who varied with respect to age, ethnicity, sex and practice. Another group of 1,003 young people who were at least 15 years and 9 months old around 1998, at the time they had a FGC facilitated by the selected coordinators, was drawn from the files of Child, Youth and Family to provide a retrospective sample. Around a third were Māori, 15 per cent of them were female and 15 per cent were Pacific Island young people.

The prospective study

A sample of 115 FGCs was obtained in 2001/02. These comprise a prospective sample that will be followed up in 2003/04. These conferences were facilitated by 18 of the same 24 coordinators whose cases made up the retrospective sample or by an additional Pacific coordinator especially recruited for the prospective study. Interviews were conducted with at least 100 young people, families and victims after the conclusion of the conference and Youth Court proceedings. Second follow up interviews with victims were also conducted when any actions that the young person had promised to perform for the victim should have been completed.

Police Youth Diversion study

Other data come from a study of 1,794 cases involving young people apprehended by the police in 2000/01 and from Child, Youth and Family files on the entire 6,309 cases referred for a FGC in 1998. An initial report describing the processes operated by the New Zealand Police

has already been published (Maxwell et al, 2002), and further work is currently underway to relate experiences of diversion to reoffending data.

Additional sources

The New Zealand Police, the Ministry of Justice, Department of Child, Youth and Family Services and Department for Courts have all supplied additional relevant data from 1987 to the present time on young people who have offended.

Goals and values in the youth justice system

The youth justice system in New Zealand is set out in the Children, Young Persons, and Their Families Act 1989 and the goals and values underpinning the system are explicitly described in its objects and principles. These highlight established values relating to the protection of rights, welfare and justice considerations. There is an emphasis on accountability and a separation of welfare and justice matters:

- Protection of rights – children and young people must be informed of their rights, strict and limited conditions govern police powers of arrest, a parent or nominated person is required to be present any at interview, children and young people are not required to make a statement, they are entitled to legal representation, and they must be fully informed of their rights in language and a manner that they can understand.
- Welfare – rehabilitative options and support for families should be provided, children cannot be prosecuted in the Youth Court until they reach the age of 14 years and timeframes for resolving matters must be appropriate to their age.
- Justice – diversion from courts and custody is to be preferred as are other less restrictive sanctions.

Newer and restorative values of empowerment of children and families, repair of harm and the

reintegration of offenders into society are encouraged by the following guidelines:

- Young offenders are expected to attempt to repair the harm they have done and this may happen through the genuine feelings of remorse, expressions of apology, making restitution or reparation and undertaking work for the victim or work in the community.
- Empowerment of victims is to be achieved through both practice and processes that emphasise the meeting together of those involved in or affected by the offending, participation of them in the process and their involvement in reaching consensus decisions. This process is to include participation by families and offenders.
- Reintegration can be achieved through forgiveness, restoring connectedness among those involved and putting in place plans for the young person that will be rehabilitative and build skills.

Key innovative processes

The new youth justice system has adopted a number of new processes that are key to achieving the goals outlined above.

Police warnings, both informal verbal warnings or formal written warnings sent to the young person and their family, are used to indicate the inappropriateness of the offending behaviour and to warn of the consequences of future offending². About 44 per cent of young offenders are dealt with in this way.

Police youth diversion (or as it is sometimes called – alternative action) is used for about a third of all children and young people who come to police attention. These will involve a Police Youth Aid officer developing a plan with the young person and their family (and sometimes in consultation with the victim), which can include

actions intended to repair harm and plans to prevent further offending by referring the young person and/or the family to suitable services or negotiating about schooling problems.

FGCs are at the heart of the new system for the more serious offenders. Around eight per cent of serious offenders will be referred directly by the police and the Youth Court will refer the remaining 17 per cent who have been formally charged with a serious offence for a FGC before any decision is made about the court's response. FGCs have been described more fully elsewhere (Maxwell & Morris, 1993, Maxwell et al, 2003), but it should be noted that they are intended to provide an opportunity to those most affected by the offending (the young person, their family and the victims) to play a full part in the process of discussing possible outcomes and reaching a consensus decision about recommendations and plans for repair of harm and prevention of future reoffending.

The Youth Court itself is required to manage matters in ways that enhance participants' understanding of procedures and involve families and young people, to consider the recommendations of the FGC and to follow them unless there is no agreement or there are good reasons under law for modifying them. It, too, is required under the Children, Young Persons, and Their Families Act to follow principles that are diversionary, involve less restrictive sanctions, and minimise the time taken to process cases and complete tasks.

Youth offending teams are currently being set up throughout the country (Ministry of Justice and Ministry of Social Development, 2002). These teams comprise representatives of the key government agencies involved in service provisions, including those from the areas of

² There is provision for a formal police caution but, in practice, this is not used.

health, education and community services. Their role is to ensure that the needed services and backup are provided to children, young people and families, and especially to young people with high needs.

Research outcomes

The goal of achieving accountability for young people is being managed almost universally through the plans agreed at an FGC (90 per cent of conferences' plans include measures intended to ensure accountability) and through the orders of the Youth Court. Although there are no data reporting on the outcomes of monitoring of these, information from the young people indicates that in over 80 per cent of cases the required tasks are satisfactorily completed.

When data on the accountability elements in any plans are further broken down, the results show that some form of response intended to repair harm is part of the plans for four out of five of the young people. Elements that are fundamentally restrictive were present for nearly 60 per cent of the plans, although it is doubtful that these will have always been necessary for public safety or consistent with the goals of the Children, Young Persons, and Their Families Act.

Measures to enhance wellbeing were included in the plans for over half the young people – 39 per cent of the plans had some type of reintegrative element and 31 per cent had a rehabilitative element. However, the elements of plans intended to promote wellbeing are not necessarily being fully implemented, and this is

especially true of their rehabilitative aspects. Both reintegrative and rehabilitative options are too rarely available for the young people, and those that are available are not necessarily effective.³

Empowerment

Generally, the main process goals of the FGC ensuring that the appropriate people participate, that victims and families are involved and that there is consensus decision-making appear to be achieved. Not all victims attended, but this was mainly because they did not choose to do so. More young people reported feeling involved than in the years immediately after the Children, Young Persons, and Their Families Act (Maxwell & Morris, 1993).

However, only about half of them reported a feeling of involvement so there is still room for improvement if the FGC is to reach its full potential. Final decisions did not always reflect a true consensus and at times there was evidence that professionals dominated decision-making.

Cultural responsiveness

The data on the experiences of FGCs for Māori and Pacific offenders shows that they can be successful in engaging families and arriving at successful outcomes. Success appears to be aided when the process treats the family members with respect and acknowledges them and their role in a manner that goes beyond token gestures. The participants need to feel validated and central to the process rather than that they are merely being provided with an opportunity to take part. They need to be left to take charge of decisions rather than have professionals suggest or make these for them. They need to be spoken to in a

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³ Some increase in the proportion referred to programmes or training courses was, however, noted for the 2000/2001 sample compared to the 1998 sample and since that time additional resources have been made available to improve services.

language and a manner they understand by people who understand and can respond to them in ways that are affirming and respectful. In turn, they may need encouragement to provide their young people with the support, affirmation and forgiveness the young person will need if they are to become part of a solution that rights wrongs and builds towards a constructive future. In addition, speakers of English as a second language must always be assisted to understand the process.

There is clearly room for improvement in the way FGCs are managed in these respects. Best practice would be for the convenor to ascertain the specific cultural expectations of the participants before the conference and to clearly explain the use of any culture-specific processes at the beginning. In particular, it is important that the convenor ensure that all participants in the FGC are introduced to each other. When interpreters are not present, any non-English speakers should be identified and encouraged to seek clarification throughout the conference.

Timeframes

For the most part, appropriate timeframes in convening and completing FGCs get met by Child, Youth and Family, but the timeframes for police and the Youth Court to make referrals seem unnecessarily long. Considerable delays can occur in the Youth Court, especially where sittings are infrequent, through administrative problems and, less frequently, when there is repeat offending before a case is completed. Other contributing problems appeared at that time to be the lack of monitoring of timeframes and of progress towards the completion of plans.

Protecting rights

Information on the extent to which young people's rights were being protected was not available. Procedures for recording actions of the police in arresting and interviewing young people were in place during the early years of the Act (Maxwell and Morris, 1993), but these appear to have been discontinued. In addition,

records have not been kept on whether the young person was asked if he or she agreed with the summary of facts and, if not, what processes were followed either to correct the allegations of police or to arrange a defended hearing. All young people who were charged in the Youth Court had a youth

advocate appointed to represent them. However, there are no formal arrangements for monitoring the performance of youth advocates.

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Diversion and decarceration

Achieving diversion and decarceration are integral objectives of the Children, Young Persons, and Their Families Act. The increased use of diversionary practices and the decreased use of incarceration are some of the most dramatic consequences to have occurred with the introduction of the Act and they have continued over recent years. Since 1990/91, the use of police warnings has remained much the same, there has been an increased use of police youth diversion with fewer being sent for FGCs, a slight decline in the numbers of convictions and transfer to the adult courts, and, over recent years, fewer young people received prison sentences. Figure 1 indicates the decline that has occurred in the number of Youth Court appearances since before the introduction of the Act and Figure 2 indicates the decline in custodial outcomes.

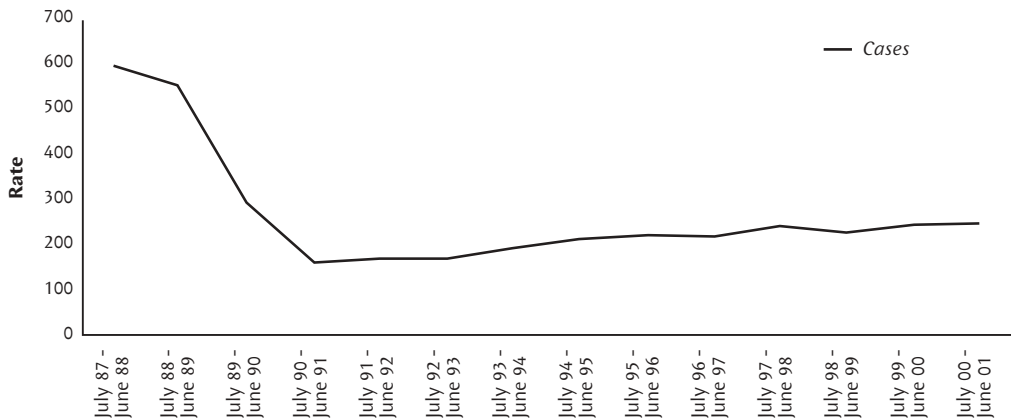


Figure 1 Rates per 10,000 distinct cases aged 10-16 in the Youth Court from 1987 to 2001



FIGURE 2 Numbers of young people receiving custodial sentences as a result of a conviction and sentence in the District or High Court from 1987 to 2001

However, there are two areas where there has been an increase in the use of criminal proceedings that do not appear to be related to the increased seriousness of the offending or to the increased severity of the outcomes. The first is that, compared with 1990/91, police are referring a greater proportion of cases to the Youth Court (17 per cent in this study, but only 10 per cent as reported by Maxwell and Morris

in 1993). The second increase is the somewhat greater use of Youth Court orders, although this may be a consequence of the greater number of referrals. These findings may be related in part to limited resources for managing FGCs and in part to a lack of commitment to the importance of diversion from the Youth Court among some police officers. Better resources, better training and increased consultation among professionals

could lead to a reduction in Youth Court loads and the need for Youth Court appearances for relatively minor matters, without compromising the need to ensure appropriate outcomes. The new Youth Offending Teams may prove to be useful in this respect.

Summary

This first part of this article provides background information on the New Zealand youth justice system, describes research carried out to evaluate it and reports on the extent to which the goals of the legislation are being met. The second part of the paper will examine factors related to successful life outcomes for those who become involved in the system and identifies key factors in effective outcomes. It will also analyse the implications of these results for practice and police, and provide an overall assessment of the system.



*Until recently **Dr Gabrielle Maxwell** was the Director of the Crime and Justice Research Centre at Victoria University of Wellington. She is now working as an independent consultant.*

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