



**National Council of
Women of New Zealand**
Te Kaunihera
Wahine O Aotearoa

National Office
Level 4 Central House
26 Brandon Street
PO Box 25-498
Wellington 6146
(04) 473 7623
www.ncwnz.org.nz

13 July 2006

S06.25

Submission to the Law and Order Select Committee on the Young Offenders (Serious Crimes) Bill

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 38 Nationally Organised Societies. It has 31 branches throughout the country attended by representatives of those societies as well as some 150 other societies, and many individual members. The Council's function is to work for the well-being of women, the family and the community at local, national and international levels through research, study, discussion and action.

This submission has been prepared by the Justice and Law Reform Standing Committee, based on consultation with NCWNZ members through the circulation of questions by email.

NCWNZ, over the 110 years of its existence, has made many submissions on the welfare of children and families and the treatment of offenders. In its Book of Resolution there are many policy statements on these matters, and while this particular matter has not been discussed for a number of years, in general NCWNZ has always sought for the rehabilitation of offenders and for sufficient funding for the early recognition and care for children at risk including for the provision of education in parenting.

General Comments

There was no agreement on the proposals in the Bill, and most respondents consider the matter to be a complex one, which cannot be addressed by simple solutions, although it is realised that young people must learn to take responsibility for their actions.

Our members raised a number of issues that should be born in mind when considering young offenders.

The problem starts early and it is in the formative years that an example and training must begin. But often, even with the best of intentions this is extremely difficult. New Zealand studies have proven that there are many cases where alcohol abuse during pregnancy (foetal alcohol syndrome) has impaired the learning capabilities of children, especially in regard to the understanding of the consequences of actions.

Much has been written about mental health but there is a need to study and research the development of the brain in young people. Overseas studies show that for many young people the brain does not develop properly until the latter part of the teen years. Adolescents are NOT adults - physically they are on the way to this, emotionally and mentally they are not - in fact they can best be described as more or less emotionally confused until somewhere in their late teens, and even early twenties, depending on the person. Parents, teachers and youth leaders realise this very well.





Specific Comments

Part 1

Amendments to Children, Young Persons, and Their Families Act 1989

8 Jurisdiction of Youth Court

(5) Section 272 is amended by adding the following section:

(6) In this section serious offence means any offence-

(a) for which the maximum penalty is imprisonment for a term of not less than 3 months or a fine of not less than \$2,000 ; or

(b) that is, in the case of any other offence, committed by an offender to whom this section applies who has previously been convicted of an offence to which paragraph (a) applies or has three or more previous convictions for offences other than those to which that paragraph applies.

The proposed definition of a serious offence is excessive and would lead to dealing with young offenders more harshly than are adult offenders. Virtually all summary indications under the Summary Proceedings Act 1981 start from three months imprisonment. Under these proposals crimes such as urinating in public, noise control breaches, thefts of goods over the value of \$500 and minor assaults would be classified as serious offences.

Part 2

Amendments to Crimes Act 1961

12 Children between 10 and 14

(1) Section 22 is amended by repealing subsection (1), and substituting the following subsection.

"(1) No person may be convicted of an offence by reason of any act done or omitted by that person when the age of 10 but under 14 years, unless the person either –

"(a) has committed a serious offence; or

"(b) knew, in the case of any other offence committed by that person, either that the act or omission was wrong or that it was contrary to law."

While not all replies received by NCWNZ were in favour of this section, many respondents consider that it seems to be unfortunately necessary to lower the age of responsibility for serious offences as offenders seem to get younger. This is where offending gets started; much youth crime begins with truancy and is committed during school hours. Other respondents however consider that current legislation is adequate to deal with the really serious offences such as rape, murder and manslaughter.

Members questioned what the effect of a criminal conviction will be on the child's subsequent ability to work training, travel overseas, etc. He or she could be labeled, and that often means, punished for life, although others wonder what effect the clean slate legislation will have. It was also stated that there are huge differences / disparities in human development, mental and emotional between 12 and 17 year old when it comes to accountability and responsibility, punishment should be aimed at the individual child's development stage.

Part 3

Amendments to Sentencing Act 2002

14 Limitation to imprisonment of person under 17 years

(1) The heading of section 18 of the principal Act is amended by omitting "17" and substituting "16"

"(1 A) Despite subsection (1), a sentence of imprisonment may be imposed on any offender under the age of 16 years who is convicted of a serious crime.



The change proposed here is not a simple matter of lowering the age by one year, The effect is likely to bring a drop of two years. The current law states 'if at the time of the commission of the offence, the offender was under the age of 17 years', but the proposal will read 'if at the time of the conviction of the offence the offender was under the age of 16 years'. Given that it frequently takes up to a year from the time of the commission of the offence to the time of conviction, the offence may well have been committed when the offender was 15.

While a custodial sentence for young people who have committed serious crimes is necessary, NCW members generally are opposed to these sentences meaning imprisonment within the current understanding of prisons. While these are euphemistically referred to as places of corrections our members have seen little evidence of correction for adults, and do not want young people placed in such institutions. It is essential that young offenders not be influenced by adult prisoners and be able to work through their problems/issues with their own peers along with support from trained professionals and family /whanau.

Great concern was expressed that there is, even now, a serious shortage of facilities to hold sentenced young offenders and that current secure units for children are suffering overcrowding. Placing young offenders in adult prisons will have serious detrimental consequences, leading e.g. to high rates of suicide, sexual assault, and attack by other prisoners. Should these proposals be agreed to, implementation must be delayed until there are sufficient and adequate units specifically for young people. Members were in full agreement that young offenders must not be placed in adult prisons.

Members noted that former facilities for young people at risk are now closed and consider it is time to re-establish purpose built facilities to cater for special educational, recreational, cultural, and needs that have been lacking. There is also a place for secure residential homes to be set up in districts where offenders would have family/ whanau support for rehabilitation. This would provide for parental education at the same time. Parents must take responsibility for their children and should share in their rehabilitation.

Conclusion

A number of other matters were raised by some of those who responded to our questions.

The Bill fails to recognize that there is adequate legislative remedy available to the Courts, and is an unfortunate knee-jerk reaction to a few high profile cases of youth offending which have been greatly emphasised and constantly referred to by the media. However both the NZ Police and Judge Andrew Becroft Chief Youth Court Judge have recently reported that most youth offences are not serious and that very few young offenders become persistent and serious offenders.

Under International conventions and human rights legislation 18 is the age at which young people are classified as adults. Judge Becroft has pointed out that minors are not supposed to be in adult prisons or to be held in police cells for any length of time.

New Zealand's youth justice system has been regarded as a world leading system, with Family Group Conferences, in general, being very successful in holding young people accountable for their offending, of realising the consequences of their actions, and in helping to prevent re-offending. Many members of NCWNZ see no reason to undermine a system that is, on the whole, working effectively, and which could be even more so, particularly if resources were available to provide various rehabilitative services.



Many respondents stated that facilities established in their communities are making inroads to remedy a problem with an identified child at risk e.g. Resource Teacher Learning and Behaviour (RTL), Schools for drop-outs and teenage mothers, Epuni Care and Protection Unit, Restorative Justice System.

But most of these facilities and services are seriously under-funded and reach only a comparatively few of the children, young people and their families who need such assistance.

Teachers and social workers are constantly concerned about the children they are unable to help because the finances are not available to assist children at risk at the time at which their lives could be turned around.

Money spent in imprisoning young offenders at a lower age would be used more effectively in preventing the desire to offend.

Christine Low
National President

Joan Howse
Convener, Justice & Law Reform Standing Committee