

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ASHLEY YOUTH DETENTION CENTRE MET AT THE WELLINGTON DISTRICT COURT, 49 BALANCE STREET, WELLINGTON, NEW ZEALAND ON TUESDAY 22 MAY 2007.

DISCUSSION WITH **JOHN WALKER**, YOUTH COURT JUDGE.

Mr WILKINSON – The Young Persons, Children and Their Families Act came into being in 1999 and followed the South Australian model, which followed the New Zealand model, as I understood, which came in in 1986, then the detention centres. We have one detention centre - Ashley Youth Detention Centre.

Mr WALKER - I've been reading about that. It's very expensive.

Mr WILKINSON - It's got some problems. It's in Greg's area and, as a result, Greg has been lobbied by a number of people. We have spoken to Mike, the magistrate, and he has already spoken to us about his belief that there should be dedicated youth justice magistrates, which we don't have at the moment. The magistrates in Tasmania do everything. They can sit in the Children's Court one minute and then straight into an adult court. We were wondering about the benefits of a dedicated court or, if we couldn't do that because of numbers, dedicated magistrates to deal with it. We would also like to know about any changes that would be appropriate as a result of what you have learnt over the past, say, 20-odd years in relation to the act.

Mr WALKER - We are used to having a separate assessor court out of this jurisdiction. Our Youth Court judges do not have a separate warrant for that. We all do something else, but we have a designation of a Youth Court judge under the act, by virtue of training experience, personality or whatever. There are a number of designated criteria in our act.

Mr MARTIN - Some of you specialise more in the Children's Court.

Mr WALKER - Yes. I think most people would do probably 10 to 15 per cent at the most. It may go as high as 20 per cent in some cases. We think of this as unsatisfactory and that we should be moving to having fewer Youth Court judges responsible for more courts and spending the time on it, even if it's three-quarters of their time and a quarter back in the general jurisdiction in order to develop expertise in the field. While we probably have more specialist judges in the area than you do, from the sounds of it, we think, for reasons which I'll elaborate on, that we should be moving even further to making the core of Youth Court judges even smaller. To give you an example, I am a trial judge and I do civil and ordinary criminal list courts - we have a lot of melded county court-magistrates court jurisdiction. I am doing Youth Court tomorrow and again in another city on Friday, but basically I do a day a week.

To us it is a very specialised area. The legislation is specialised, the procedures are specialised. It is all right while things procedurally are going normally but when you get difficult things, such as indictably-laid charges or trial matters, there are a lot of nuances in all of that. So you need to understand communicating with young people. We are

dealing with typically 15 and 16-year-olds - sometimes 14, but mostly they are 15 or 16 or just about to turn 17. That is our capture age group. There is a need for judges to be savvy about how to communicate with young people, to understand different mental levels and how that might be affected by age and drug use, to understand the interrelationship between the various players in Youth Justice and to know who they are and what their responsibilities are, to know what services are available for interventions. We think you need to know all of that to be a Youth Court judge.

Mr WILKINSON - If I am a kid of 14 and commit, say, 30 burglaries in a short space of time, I would come before you. On my first appearance there would be an adjournment, I take it - unless you want to plead guilty and get it out of the way straightaway.

Mr WALKER - You would come to court on the first occasion. If it is a recent matter there will be a youth advocate appointed for that person, so that will have just happened. The youth advocate will have some discussions with the police to get the file and see what is going on, but typically the adjournment might be for a week - a maximum of two at that stage. They come to court and they do two things: either deny, in which case it goes off to Fixture; or they will indicate 'not denied'. So we do not have a plead of guilty or not guilty. We have a denial and it just goes down the track, as you would imagine, in an ordinary defended case or we have a 'not denied'. 'Not denied' means it goes immediately off to family group conference. We don't see it again probably for three weeks, until the family group conference has been convened and we have a plan and an outcome.

Mr WILKINSON - 'Not denied' is like not guilty, I take it?

Mr WALKER - It is a little different from that. We talk about it as being 'not denied', but in fact the act says that unless a charge is denied, the judge shall send them to a family group conference. We tend to have developed a procedure where we say, 'Is it denied?' because we don't want to bring people to a family conference, convene it and then find that it is in fact denied. We just clarify that if it is 'not denied' it is effectively guilty. If it is denied it is not guilty. It is the usual parlance. There are some nuances there.

The actual admission is at the family group conference, usually in the presence of the victim so it is quite an important part of it. It comes back to us as having been admitted at a family group conference. That is what we actually note. If we were noting a plea of guilty, we would be saying 'proved by admission at a family group conference and confirmed to the court'.

Mr WILKINSON - Have they organised what they believe to be the appropriate penalty in that family group conference?

Mr WALKER - Yes. What we get is a set of agreed outcomes at the family group conference. Police are part of that agreement with victims.

Mr WILKINSON - I know at home you can record a conviction but don't proceed to penalty on the basis that the individual is of good behaviour for a period of however many months and has to carry out all reasonable demands made of him by a probation officer, or something along those lines.

Mr WALKER - Typically in a family group conference plan we would be dealing with a victim by way of an apology. There might be a reparation component, if there is loss, and how that might be satisfied; some community work; some punitive element; attendances at programs or courses; attendance for psychological counselling; making sure they still went to school, if that was the situation; dealing with other underlying issues. They would be set out in the plan and it wouldn't be until the plan had been completed that we would end it by either a discharge with or without a record being kept.

Mr MARTIN - How does it come back to your attention?

Mr WALKER - It is remanded back to the Youth Court for say, typically, two or three weeks for review. Typically with young people they have only done some of the community work or some of the apology and missed a few appointments. That would be more normal than the one who comes along and has done the job. So there would be further remand, further remand, to keep them engaged. At the end of the process we are asked to give effect to the final disposition part of the agreement, which might be a discharge without a record being kept or discharge with a record if they have a long history.

Mr WILKINSON - If he has a number of community or service orders to complete, that might take the best part of three or four months?

Mr WALKER - Yes. The danger is that they will commit other offences in the meantime, which then brings it back to court. Somebody who has been recidivist in offending can stay in that system for quite a while, often with escalating offending. But there is focus on them so there is some chance of having an effective intervention.

Mr MARTIN - For this sort of crime, at what stage would you run out of patience?

Mr WALKER - We have different grades of offending. We are talking about family problems and those sorts of outcomes and reviewing it. It is probably not going to be a person with a lot of history, there is probably not going to be a history of violent offending, if there are not indictable charges such as serious sexual offending or aggravated robbery or something of that nature, which goes down a different track within our Youth Court. We would run out of patience when there is a continual racking up of further offences against a background of non-compliance. We would be calling then for going down a different track, which is between going up to the District Court for sentencing and this family group conference outcome business. We would be calling for a social worker's report or orders, which might include residence.

Mr MARTIN - But that really is the last resort for you?

Mr WALKER - Absolutely.

Mr MARTIN - Is it the same for all the judges?

Mr WALKER - It is a last resort in Youth Court, absolutely. In fact, those restrictions in our act on what we call 'supervision with residence' - and what you saw today - fulfils a couple of purposes: remand for those who need to be contained in some way; and also those who are undergoing what we call 'supervision with residence', which is residence

for up to three months, followed by six months' supervision in the community. It is a last resort for us.

Mr MARTIN - One of the things during this process that the committee was appalled at but wasn't aware of is the extraordinary length of time that a young person can be on remand at a detention centre.

Mr WALKER - How long?

Mr MARTIN - Nine months.

Mr WALKER - Waiting for a hearing?

Mr MARTIN - Yes. Can that happen here?

Mr WALKER - That can happen on a serious charge, if somebody is on a murder or manslaughter charge. With a jury trial I can conceive of it being that long, but for matters disposed of in the Youth Court we would find that extraordinary.

Mr MARTIN - What's the longest term of remand in the Youth Court?

Mr WALKER - If they were waiting for a hearing in the Youth Court and they were held in custody, we would hear their case in certainly not longer than two months. Part of that is because we have to hear it before they have to serve the time. We are talking about three months maximum, but two months for good behaviour and they are waiting for a hearing.

Mr MARTIN - It would seem logical in their position.

Mr WALKER - That's right. In that circumstance we would be moving all sorts of cases to get their case heard first.

Mr WILKINSON - So you have a maximum of three months' incarceration?

Mr WALKER - Yes.

Mr WILKINSON - That can be increased in the Children's Court in Tasmania, so it's not three months at all.

Mr WALKER - My opinion is that it is too short to effect interventions. What we should be doing with residents is not treating it as a prison or a jail, we should be treating it as a way of taking people out of their environment and intensively treating them for whatever the underlying causes are, moving them then from that into a long-term supervision. If it was six months in residence, we might be able to get some programs up and running and get some interventions, but I also want in the best of worlds to have an ability for a long-term supervision program, which might be up to two years.

Mr WILKINSON - And the maximum -

Mr WALKER - Six months. To me, that is not long enough to effect changes in a lot of these complicated cases. I am particularly thinking about the alcohol and other drug dependencies. I set up a youth drug court in Christchurch and presided over that for quite a few years. It is a particular area for me both in respect of youth and adults.

Mr WILKINSON - With the supervision, is that supervision at their home?

Mr WALKER - Yes, back in their environment.

Mr WILKINSON - Do you put curfews or conditions on them?

Mr WALKER - Yes. It is down to the social worker to implement the plan. On the point that we sentence to 'supervision with residence', the judge is adamant. We do not see it unless it's a breach and it comes back for review.

Mr WILKINSON - And that breach can be a breach of a probation or a social worker's -

Mr WALKER - Effectively they will not comply in the long term when they are supposed to and they will come back for a cancellation of those things, but we have probably already used the maximum result so it is a pretty rare thing to get an application for review.

Mr WILKINSON - But can they then be charged with breaching an order?

Mr WALKER - No, there is no offence of breaching an order, as there is in the adult sphere. It comes back for a declaration that they haven't complied with the order and a resentencing, but we can't do anything more than that for most of these kids because there are restrictions on transfer to the District Court and our prohibition on imprisonment for people under 17 unless they have committed an indictable offence.

Mrs JAMIESON - John, if you had your way and you had a 15-year-old who had raped twice, for example, with aggravation and assault, what would you like to see as a sentence and/or rehabilitation afterwards?

Mr WALKER - Are you talking about rape?

Mrs JAMIESON - Yes.

Mr WALKER - That would be out of the Youth Court. That would be into the District Court for sentence. The adult regime would be available to take account of that. We are dealing with a 14-year-old at the moment in one of our courts who is charged with sexual violation - it was on another male, an eight-year-old male - and the Crown has said in that case, 'Leave it here. We want the rehabilitative aspect to kick in'. A 14-year-old and an 8-year-old complainant is unusual. In most cases of sexual violation by 15 or 16-year-olds we would not be offering Youth Court jurisdiction in that circumstance. They would be in the District Court for sentence.

I will use another example. Say it was a low-level aggravated robbery by a drug-dependent young offender, ideally in that circumstance you would be looking at quite a long-term intervention. Six months would give an opportunity to get them out of their environment, detox, start to work on some motivational counselling with them to

get them in a state where they wanted to go into residential treatment. They could move from there into a residential treatment unit, which might be for eight or nine months, and then have follow-up supervision.

Mrs JAMIESON - Within your order can you also direct the family, for example, because they may have been the ones who started the young fellow off on that track? Can you direct them into some sort of program?

Mr WALKER - No. I know from my drug court experience in Christchurch that most of the kids had a genetic predisposition and the families pull them back into the family situation and immediately undo whatever's been done.

Mr MARTIN - What would you do in that situation where you knew the family was the problem?

Mr WALKER - What happens in practise is that if they are lucky enough to get a place in a residential treatment centre they are away for six, eight or nine months. It is often in another city and in our country we have so few of these. They often see the need to establish themselves in another place. They have support around them, the halfway houses, jobs and new placements out of their area quite often happens. It is very difficult because the kids want to be back with their family most times.

Mr MARTIN – Regarding the services such as halfway houses and support -

Mr WALKER - Odyssey House does that in Auckland. They have a transition program.

Mr WILKINSON - Do you have specific drug courts as well, John?

Mr WALKER - We have one at Christchurch. That is a youth drug court mainly. We have just started what we call an intensive monitoring group at the Auckland Youth Court and we are taking the hard, difficult cases away from the ordinary list and putting them on a separate day, wrapping the team around as we do in the drug court model and using the same judge appearing in that court on every occasion so you have that consistency.

Mr WILKINSON - That is what Mike is trying to do now in Tasmania.

Mr WALKER - He would understand that because he understands the drug court model - therapeutic jurisprudence. In the drug court model I would say that consistency of judge is a not-negotiable matter.

I know if I go into a court that I am not the usual judge; I am just processing. I don't know who the people are around me. They introduce themselves to me, they have never seen me before and they clam up most of the time. They won't talk to a stranger, so it is very difficult to operate as a Youth Court judge in that circumstance. It is much more comfortable when we go into the court and it is our court. I would stress that if you are looking at specialist judges or a small pool of judges I would support that wholeheartedly, as a judge. It is much more effective.

Mrs JAMIESON - Have you noticed the profile of youth changing over the last few years in the type of crimes they are committing?

Mr WALKER - Yes. Our figures show that they are basically stable in terms of numbers, but there are more young girls appearing and involved in violent offending. That would be biggest change. We have quite a serious binge-drinking culture. I don't know what it is like in Tasmania.

Mrs JAMIESON - So amphetamines are not a problem here?

Mr WALKER - We have methamphetamine, which is a serious problem in our adult court for violent offending, as opposed to party pills and ecstasy. Methamphetamine occurs in some of our bigger cities in our young population in Youth Court but it is thankfully rare. Opiates are very rare in our young people, thankfully again.

Mrs JAMIESON - What about mental health problems and/or people with intellectual disabilities?

Mr WALKER - Sure, all of that is there as well.

Mrs JAMIESON - Do you have a policy of how you deal with people who have a mental health problem, for example?

Mr WALKER - Of course. In a sense that is a contributing factor. We call for psychological assessments and reports if that is of concern. It doesn't go so far as providing a defence or an inability to take part in or be a major factor in explaining the offending. I would like to think there is a sympathetic approach to that underlying cause.

Mr MARTIN – Regarding your Youth Justice Act, I think there is a review going on at the moment. Are there changes to be made?

Mr WALKER - Are there changes?

Mr MARTIN – Are there changes that you would like to see made?

Mr WALKER - I think the act is a sound piece of legislation. I think we need some more flexibility around the length of time so that we have some ability to fix the time, not have the three months and six months statutory times.

Mr WILKINSON - You think that should be at the discretion of the judge?

Mr WALKER - Yes, it should be.

Mr WILKINSON - Forget about time and just leave it at your discretion?

Mr WALKER - Yes. We should be able to. One shoe doesn't fit all necessarily. Sometimes six months is absolutely appropriate and three months is absolutely appropriate but on other occasions it won't be. With some longer sentences available there would be less need to transfer people to the District Court for sentencing. Often that is done because we say they have outgrown what is available to us, so they are out of this team sort of approach to youth justice and into the District Court, often because we want a longer period of supervision, not necessarily because they want to go jail. There might be a

longer community work order required and, more importantly, longer supervision. So often there will be a transfer and you will see sometimes in our Youth Court, through all the various hurdles that we have to get through, somebody is transferred to the District Court. The Youth Court judge will then convene the court as a District Court and on almost the same day is able to impose a longer sentence.

Mr WILKINSON - Is this penalty because of youth immediately halved? It is in Tasmania. In other words, if you get six months you do three; if you get 12 months you do six.

Mr WALKER - No. If a young person goes to the District Court for sentencing - say it is a serious aggravated robbery - we have guideline judgments that might suggest that for an adult you would start with, say, four years' imprisonment, taking stuff off for pleas of guilty and so on. Youth is a major factor as a mitigating circumstance in all of that, but there is no formula as to what extent that would clearly reduce it. There is no mathematical formula for that.

Mrs JAMIESON - Is there anything else in the act that you would like to see changed to make it more workable?

Mr WALKER - No, but it needs to be properly resourced. That is why I said before that I think the act is sound. We need dedicated Youth Justice social workers who aren't also doing Care and Protection because Care and Protection seems to suck people out of Youth Justice whenever there is a conflict or a shortage of resources. I think we need Youth Justice coordinators to have more time to convene conferences. We are really pushing to the limit the number of Youth Justice coordinators there are and the number of family group conferences they need to convene and to do that properly they need the time. I think in New South Wales they get something like 18 hours to convene and hold a family group conference. That would probably be two a week. Some of our Youth Justice Court matters only convene four or five in the course of a week. I think resourcing is a major issue, and resourcing of services that can give effect to orders. If there is an underlying cause, an educational difficulty or a literacy or numeracy problem, the system needs to be able to deal with that. It is the same with drug and alcohol issues. It needs to be well resourced.

Mr MARTIN - Do you have an opinion on how well the detention centre system is working in terms of rehabilitation?

Mr WALKER - I don't know the figures around that. My impression would be that when somebody gets to that stage, with that limited amount of intervention occurring, it is unlikely to effect change.

Mrs JAMIESON - Are there any figures to show the efficacy overall of the youth conferencing?

Mr WALKER - I'm not sure. There has been an independent look at it by a woman called Dr Gabrielle Maxwell, a Victorian university student of criminal justice studies. It would be worthwhile to dig out her material. She has done a couple of publications but I just can't call to mind now whether they deal with general efficacy or whether it is just an analysis of a process. We can get that material for you, if you like.

Mrs JAMIESON - Certainly, it would be useful. There are times when you wonder just how effective it is. Kids can nod their heads wisely and give you all the right answers and you just wonder sometimes how effective it is in the long term for keeping them out of mischief.

Mr WALKER - I think it is very difficult. You would need some sort of control group if you were going through that process. Those evaluations become very difficult unless you can ever do that. I suppose all you can say is that you are giving it the best shot you can. Of course you never hear about the ones who don't proceed.

Mrs JAMIESON - Are the kids given any chance of saying no, that they don't want to go into youth conferencing at all?

Mr WALKER - No.

Mrs JAMIESON - So it is mandatory?

Mr WALKER - They do it. They know they have to come to court. I have never had a kid say, 'I'm not interested'. Something like 70 per cent or higher of all offences are dealt with outside of the court. That is the biggest strength of our system. We have to remember that when we are dealing in the Youth Court we are dealing with 20 per cent of people who have either failed that or been there too often for it to be effective.

Mr WILKINSON - Plus yours is 14 upwards, too, isn't it?

Mr WALKER - Sure.

Mr WILKINSON - If they are up for murder or manslaughter.

Mr WALKER - Yes.

Mr WILKINSON - Whereas ours is 10.

Mr WALKER - That's not to say that there isn't some intervention for a 10-year-old offender through our Care and Protection jurisdiction. It is right to say that the age of criminal responsibility is 14, but it is not right to say that a 10-year-old offender doesn't receive attention through the Family Court and the Care and Protection jurisdiction. There is an ability to deal with them if there has been a symptom of the need for Care and Protection.

Mr WILKINSON - Would it be fair to say, with the experience you have seeing these people come past you day in and day out, that the best thing that anybody could do is make sure there were resources on the ground to give proper effect to the orders that a court may make?

Mr WALKER - Absolutely. We battle - I suppose judges around the world battle - getting an intervention, getting it properly funded and having somebody on the case ensuring that the young person turns up. There are usually pretty shambolic households and they usually have all sorts of issues with drugs and alcohol and they actually need to be taken from point to point for the various assessments and interventions. I am very much

attracted to the idea of co-locating services that a Youth Court might need in the one building. I saw a Community Justice centre in Liverpool last year and I spent a week at the centre. You have a Community Justice centre that has just started in Collingwood in Melbourne. We are interested in the concept here. The key feature of that is the co-location of services; everything is in the one building.

Mr WILKINSON - It is a one-stop shop.

Mr WALKER - Yes. The judge is there as well. When I saw it at Liverpool all the people you would have in Youth Justice Court matters - social workers, drug and alcohol treatment, Youth Aid officers, Youth Justice Court, family youth conferencing - could be held in the same building. The judge could be an adjunct to that in hearing them. At Liverpool, all these services that the adult court needed - probation, police, adult intervention services, housing, employment - were in an open-plan office. They all knew everything that was going on with every single case. They have problem-solving meetings at the drop of a hat. The judge says, 'Could you have a meeting this afternoon and chat about that and come back and tell me what you've organised?'. They can come back and say, 'We've got a bed in such and such a place and he goes up tomorrow'. We would wait three weeks for that by the time they got their act together and talked, sent e-mails, wrote reports saying, 'I understand that so-and-so is doing the report but I haven't been privy to that, so I am doing this on the basis of what I think they might say'.

CHAIR - We talked about that issue, that lack of cohesion, with an NGO provider just prior to coming here today.

Mrs JAMIESON - It's the same old story, though, unfortunately, everywhere. John, in your experience have you had many families where you have had generations of families and/or brothers and sisters?

Mr WALKER - Yes.

Mrs JAMIESON - That's rather said, isn't it.

Mr WALKER - Yes, it is sad. There is often an underlying cause. When I see families turn up in court with their young kids I know they have child-care difficulties, but I just hate to see it. It is not appropriate for this eight-year-old to be there. This becomes normal family activity, 'We're off to court'. They sit there all day and are told to shut up and say nothing. I just hate it. I want to say, 'Get that kid out of there', but I know that they have nobody to look after the kids and they have had to come to court so they bring the kids with them.

Mrs JAMIESON - Breaking the cycle is just so difficult.

Mr WALKER - Yes.

Mr MARTIN - One of the criticisms of family conferences is the fact that there are sometimes so many family members that it is difficult because it is overpowering and intimidating.

Mr WALKER - I think that is probably valid. There should be some balance. If there was a whole extended family, I must say it would be pretty rare.

Mr MARTIN - Someone told us that it was encouraged.

Mr WALKER - Certainly it is encouraged for family to turn up. In fact, when I see a large family coming I think, 'This is great. This is probably going to work out', particularly if the grandparents are there, the kids are there in school uniform. More often than not, though, I get a 15-year-old with nobody at all. With most family group conference records that I see, it would be very rare for me to see a list of attendees that showed that balance. I wouldn't say that it is a problem that has come to my attention. Occasionally, the victim would feel outnumbered in that circumstance, having such huge family support that follows through to the court room and the outcome is probably going to be good, so we probably wouldn't want to stop it.

CHAIR – John, thank you very much for your valuable time.

DISCUSSION CONCLUDED.