



Aotearoa New Zealand Association of Social Workers
Submission on the Children, Young Persons and their
Families (Youth Courts Jurisdiction and Orders)
Amendment Bill

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ANZASW would welcome the opportunity to speak to this submission, to further represent and give voice to the views of Social Workers.

1. Introducing ANZASW

- 1.1 The Aotearoa New Zealand Association of Social Workers (ANZASW) is the professional body for Social Workers in Aotearoa New Zealand. It was formed in 1964 and currently has approximately 3900 members.
- 1.2 A significant cross-section of our members are engaged in social work practice that relates to areas relevant to youth justice, and are directly employed predominantly by government agencies or non-government organisations to carry out responsibilities for providing services required to implement this proposed legislation.
- 1.3 The ANZASW operates under a bicultural model in accordance with Te Tiriti o Waitangi. Some components of this include: the Tangata Whenua Takawaenga o Aotearoa (Māori caucus), a parallel Niho Taniwha (kaupapa Māori model) competency assessment tool and process, and principles of partnership, participation and protection of rights woven into and throughout the organisational structure.
- 1.4 At an international level ANZASW is an active member of the International Federation of Social Workers (IFSW), which provides ANZASW with a valuable international perspective as referred to in the Appendix to this submission.

2. Opening points

- 2.1 In the preparation of this submission ANZASW has taken a lead from the work of one of our members, Mike Doolan, a former Chief Social Worker of Child Youth and Family Services who led the policy team responsible for the youth justice provisions of the principal Act to which this Amendment Bill applies, namely the Children, Young Persons and their Families Act 1989 (CYPF 1989).
- 2.2 In a yet-to-be published article titled *Understanding the Purpose of Youth Justice in New Zealand* – as previously circulated for the information of members of the Social Services Select Committee by



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email on 7 April 2009 and now appended to this submission – Mike firstly provides an overview of the ways in which “childhood” has been historically constructed vis-à-vis a child welfare model, attendant with widespread dislocation and alienation of children from families and whanau, through to CYPF 1989.

- 2.3 The three principal drivers or imperatives that emerged with CYPF 1989 for reform of the youth justice system were:
1. The need for **Due Process guarantees**, so that children and young persons should be subject to the same standards of standards of evidence and proof of offending as adults and so that no child or young person was to suffer a restriction of freedom that would not be permitted or used for adult offenders committing similar offences.
 2. **Accountability for offending through means other than prosecution**, i.e. an imperative to limit involvement with the formal system where this was possible (along with the principle that age is a mitigating factor in determining whether a sanction is required and the nature of any sanction)
 3. **Culturally respectful processes**, including the privileged nature of the proceedings of a family group conference.
- 2.4 ANZASW considers these three drivers should continue to be regarded as yardsticks for assessing the impacts of any amendments to the Youth Justice provisions of CYPF 1989.
- 2.5 Within the relatively limited timeframe available to it ANZASW undertook a close reading of the Amendment Bill - with some cross reading against the principal Act (in which the meaning of Child is given as a boy or girl under the age of 14 years, and Young Person as a boy or girl of or over that age but under 17 years).
- 2.6 Our analysis gave rise to some questions/ points of clarification that will be raised in this submission, as well as providing a basis for ANZASW to canvass a cross-section of its membership (as per the description in para 1.2 above), a sample of which is appended.
- 2.7 The majority of individual responses received from the consultative exercise we undertook with our members* were of the view that the introduction of more sentencing options as contained in the Bill, can be seen as positive. A common reservation attached to this measured support for the Bill was that imposing immediate sanctions is no substitute for making commitments to long-term rehabilitative or therapeutic solutions.

* This was supplemented by an introductory discussion at our annual Congress held this year in Wellington on 17 & 18 April 2009.



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3. Concerns and queries in relation to the Bill as drafted

- 3.1 A paramount concern is that care should be taken to ensure that this legislation does not have the unintended consequence, as far as possible, of shifting young people into a context of other young people who are offending, rather than remaining in the context of the family and whanau. That would simply contradict the intentions of the principal Act.
- 3.2 ANZASW notes that there are points made in concurrent submissions to the Select Committee from the NZ Council of Christian Social Services and the National Youth Workers Network that ANZASW also generally supports, particularly in relation to criticism of the lowering of the age of the jurisdiction of the Youth Court to include children aged 12 and 13 years (being contrary to our obligations as a signatory to UNCROC – the United Nations Convention on the Rights of the Child) and in regard to a concern that “individually tailored plans” must be based around the strengths and needs of the people most influential to any child or young person termed an “offender”, given that without the support of these people any plan will struggle to be effective.
- 3.3 Following its close reading of the proposed Bill ANZASW recognises that on a clause by clause basis, a number of the changes are in the nature of relatively straightforward additions or adjustments. However we also found aspects of the Bill that have raised questions for us that we would expect the Social Services Select Committee to consider as part of your role in assuring the quality of the legislation:
- Were any Care and Protection Coordinators and Youth Justice Coordinators consulted during the drafting of the Bill?
 - What thought has been given to ensuring Due Process guarantees are upheld around the process of a family group conference determining if a child is a “previous offender”, other than the right to legal advice, and how will this be monitored? (Clause 10).
 - Were MSD and CYF Social Workers consulted about the workload implications and efficacy of producing reports required when the Court makes specified orders in respect of parenting programmes, mentoring programmes, alcohol and drug rehabilitation programmes (noting also that each report must be accompanied by a plan on how the order is to be implemented)?
 - Were frontline Social Workers consulted about the workload implications and efficacy of producing the written progress reports on a young person’s compliance with conditions under the proposed new judicial monitoring direction? Likewise were frontline Social Workers consulted about the workload implications and efficacy of producing the reports that will be required as a result of



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the proposed new intensive supervision order? Have any estimates been made around the need for the recruitment of sufficient social workers/ youth workers/ community workers?

- Given the acknowledged risk that there will not be sufficient services to support some orders (page 30 of Explanatory note) is the Select Committee confident that this situation can be addressed sufficiently before 1 October 2010?
- How will more detailed definitions of “quality programmes” and “appropriate staff” and “wraparound services” be formulated, and made widely known?
- ANZASW is aware that a recent report published by the NZ Council of Christian Social Services (*Grassroots Voices*, 2009) has highlighted problems families have in accessing help when they need it and the lack of services available to them is a pressing issue. A lack of affordable (or free) parenting support and a lack of specialist support services for parents whose children have behaviour problems were two “gaps in services” highlighted in *Grassroots Voices*.
- Will there be any independent monitoring of the impact of these reforms other than by the key youth justice agencies noted on page 31 of the Explanatory note (being the Ministry of Justice and the New Zealand Police)? ANZASW suggests it would be useful to see the results of careful tracking of the frequency with which the Youth Court diverts prosecutions of children that they consider the public interest requires should instead be dealt with under Family Courts’ care and protection jurisdiction (p.30).

3.4 Some of the other key concerns that we wish to raise, many expressed here as questions for your consideration, include:

- It was unclear from feedback gathered by ANZASW to what degree, if any, it has been fully assessed that the current law and/or powers available to the Family Court have fallen short?
- Is the principle being preserved or lost, that criminal proceedings should not be instituted against a child or young person in order to provide any assistance or services needed to advance the welfare of the child or young person or their family?
- Put differently, is the Select Committee confident that young people will not be prematurely labelled as “previous offenders” through leveraging family group conferences purely in order to facilitate access to assistance or services by way of the new orders and programme provision?
- Following on from this: Will the proposed changes open up the family group conference process to unintended mis-use?



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- On the topic of labelling (see p.7 of Mike Doolan's article, as appended) ANZASW would urge the Select Committee to consider that each and every time a young person is labelled, firstly as a "previous offender" and then subsequently comes before a Youth Court (instead of the Family Court) there is a risk that they are thereby promoted into a distinct 'delinquent subculture', with attendant negative self-concepts. (Similarly the proposed intensive focus on compliance and non-compliance has the potential to compound into a pattern of increasing criminality and a 'cycle of crime' almost of its own making).
- ANZASW considers that the highly targeted nature of the Fresh Start initiative that has been publicly associated with this proposed legislation (particularly as it relates to the use of "military activity camps") is such that "young offenders" who are literally the first to be put under the 'spotlight' will run a potentially lifelong risk of being labelled. Without care and protection they could be subject to an intense media glare (or what Maori Party MP Hone Harawira referred to in the First Reading of this Bill as "media hype"), which they may well then feed off as much as the media.
- It is unclear how the elements of a Supported Bail Programme and treatment foster homes, both highlighted in the Fresh Start initiative announcement, will or will not be further enabled and/or supported by this legislation?
- It is of concern that no explicit mention is being made of restorative justice. Judge Becroft has elsewhere made the point that a restorative justice approach is entirely consistent with the objects and principles of the CYPF Act.

4. **Closing points**

- 4.1 ANZASW would urge the Select Committee not to rush its report, which we understand is not due until 18 August 2009.
- 4.2 We concur with the comments made at the First Reading by Labour MP Nanaia Mahuta that any further lack of consultation would be detrimental to the quality of the legislation and its implementation. Maori Party co-leader Pita Sharples captured this point of view in his brief address to the recent Drivers of Crime Ministerial Meeting when he said: "Government must support whanau-led responses. Māori providers, practitioners, offenders and whanau should contribute to policy discussions". We also acknowledge the statement made by Maori Party MP Hone Harawira that "the challenge is bigger than just youth crime", and that the important thing is to allow a "debate to continue".



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- 4.3 We are also hopeful that public attention can be turned in some measure to finer aspects of the Bill over and above the headline-grabbing military activity camps aspect, so that due attention can be given to the much larger and wide-ranging resources needed for youth justice if this is to be considered a “major programme” rather than simply legislative tinkering.
- 4.4 As regularly stated in our submissions ANZASW believes issues that relate to implementation of legislation, if identified and raised during the Select Committee stage, should be part and parcel of the legislative debate. On that basis and on behalf of our members who have expressed an interest in this particular area of social work, ANZASW looks forward to being able to make a constructive and positive contribution to informing improvements to youth justice in accordance with the values we attach to social justice, human rights and Te Tiriti o Waitangi.
- 4.5 Drawing on the often untapped expertise and knowledge of our members, it has been suggested that youth resiliencies, in terms of turning lives around, must be balanced around identified risk factors and that much more use could be made of flexible approaches that utilise multi-systemic therapy (MST). As articulated by one of our members a key success factor if a custodial response is unavoidable is to ensure young people are “anchored back into the community”, with the “anchor points” including: cultural anchors, family and whanau, educational and vocational options, ongoing recreational connections.
- 4.6 There are other concerns about the operation of youth justice that ANZASW is aware of, for instance in regard to the current operation of youth residences or examples of work specific to Pasifika social work, that we have not yet had time to research in ways that could be presented to the Select Committee and other MPs in this document. One of the constructive inputs we are able to make would be to further canvass our members for suggestions about the effectiveness of mentoring programmes, as referred to in the Bill. Indeed we are currently collecting information on this aspect which we would like to make available for the benefit of this overall process at a later date.
- 4.7 Overall ANZASW does have a residual concern that under the current direction an ‘offender’ view of youth may come to overshadow the notion of ‘at risk youth’; and that the skills of social work and Social Workers should not become mired in systems that are almost exclusively weighted to punishment first, and rehabilitative or therapeutic needs second. In closing, we again commend the attached article by Mike Doolan for your reading, and trust that the Selected References which follow provide a helpful indication of the range and scope of available researched evidence and data, from over a long period, that could offer a more solid foundation for your deliberations.



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Selected References

Books & Reports:

- *Young and Accountable? – Should New Zealand lower the age of criminal prosecution?* – UNICEF (October 2008); see <http://www.unicef.org.nz/page/249/YouthJustice.html>
- *Youth justice and social work* – Paul Dugmore and Jane Pickford with Sally Angus, published by Learning Matters, 2006 (www.learningmatters.co.uk)
- *Sentencing serious youth offenders: does age matter?* – Rebecca Paton. Victoria University of Wellington, 2006.
- *Process Evaluation of the Christchurch Youth Drug Court Pilot* - Dr Sue Carswell (November 2004) <http://www.justice.govt.nz/pubs/reports/2004/process-evaluation-chch-youth-drug-court-pilot/>
- *Pathways from Child Maltreatment to Juvenile Offending* – A. Stewart, Susan Dennison and E. Waterson, Australian Institute of Criminology (2002) <http://www.aic.gov.au/publications/tandi/ti241.pdf>
- *Child Offenders Manual - A practical guide to successful intervention with child offenders* - (3rd ed), Wellington, Chief Judges Chambers, 2002. <http://www.justice.govt.nz/family/publications/research/child-offenders-manual/child-offenders-manual-2002.pdf>

Articles:

- *Another silver bullet to end offending by young people?* – David Hanna (Wesley Community Action), in Law Scene, March 2009
- *Youth Justice in New Zealand: A Children's Rights Perspective* – Nessa Lynch, in Youth Justice, Vol 8, No.3, pp 215-228 (2008)
- *Escape from Alcatraz* – Matt Nippert, in Listener, 20 September 2008, p.26-32
- *What makes good kids go bad?* – Nikki Macdonald, in Dominion Post, 1 March 2008 p.E 1-2
- *Teens on the knife edge of society* – Greer McDonald, in Dominion Post, 2 February 2008, p.A17
- *Kinds are not so bad, after all* – Shane Gilchrist and Rosie Manins, in Otago Daily Times, 11 August 2007, p.15
- *The trouble with youth* - Simon Collins, in New Zealand Herald, 21 July 2007, p.B3
- *Cracking down on problem kids* – Chris Barton, in New Zealand Herald, 26 May 2007, p.B5
- *Creating new kids on the block* – Simon Collins, in New Zealand Herald, 31 March 2007, p.B4
- *Foster and Kin Care – Healing the trauma that predisposes youth offending* – Jill Worrall, (2006?); available at: <http://ips.ac.nz/events/downloads/2009/Jill%20Worrall.doc>
- *Youth social work enhanced by fa'asamoa imperatives: patience, humility and balance* – in (ANZASW) Social Work Review, 18 (1) 2006, p.42-46



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- *Implementing the Youth Criminal Justice Act* – Sharon Small, in *Canadian Social Work*, Volume 7 (1), Autumn 2005 p.12-18
- *Beating the law-and-order drum*, Mike Houlahan, in the *Christchurch Press*, 26 March 2005, p.A21
- *Making choices for change* – Graeme Munford and Mike Garland, in *Social Work Now*, Dec 2005, p.21-25
- *Critical incident responses in secondary schools in Aotearoa New Zealand: are we doing justice to our adolescents?* – in (ANZASW) *Social Work Review*, 16 (1) 2004, p.13-18
- *Keeping kids off the suspension merry-go-round – a restorative conferencing project in schools* – in (ANZASW) *Social Work Review*, 16 (1) 2004, p.32-36
- *Born to be wild?* – Ashley Seaford, in *Social Work Now*, Aug 2004, p.29-34
- *Question of identity for our rangatahi* - in (ANZASW) *Social Work Review*, 14 (2) 2002, p.25-28
- *Every child has a silver lining: domains of resilience in child welfare* - in (ANZASW) *Social Work Review*, 13 (4) 2001, p.41-43
- *Creative Youth Justice Practice* – Marlene Levine, Aaron Eagle, Simi Tuiavi'i, in *Social Policy Journal/ Issue 11*, December 1998

Presentations:

- Parliamentary Breakfast – “Talking on models of positive youth development”, 29 July 2008 – published at <http://communitycentral.org.nz>
- *A Restorative Justice System for Juveniles: Information for Mexico from New Zealand's experience* – Dr Gabrielle Maxwell, Institute of Policy Studies, School of Government, Victoria University of Wellington (November 2006)
<http://ips.ac.nz/events/completed-activities/Restorative%20Justice%20Mexico.html>

Relevant websites – Aotearoa NZ:

Office of the Children's Commissioner

www.occ.org.nz

Families Commission

www.nzfamilies.org.nz/searchbibliographies?sort=desc&order=Title

Ministry of Justice – Effective Interventions

www.justice.govt.nz/effective_interventions/home.asp

Compendium of Youth Justice articles

<http://justice.org.nz/youth/publications/compendium.asp>

Youth Justice Staff Training

www.hma.co.nz/Programme-Design-And-Development/Youth-Justice-Staff-Training.asp

Relevant websites – international:

International Federation of Social Workers

www.ifsw.org

Office of Juvenile Justice and Delinquency Prevention, US Dept of Justice

www.ojjdp.ncjrs.org



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Appendices:

1. An international social work perspective
2. Feedback from cross-section of ANZASW members
3. *Understanding the Purpose of Youth Justice in New Zealand*, by Mike Doolan – attached.

1. An international social work perspective

As stated in para 1.3 of our submission ANZASW is an active member of the International Federation of Social Workers (IFSW) and thereby supports IFSW's international policy statements. For instance in its International Statement on Youth, IFSW places a high onus on the responsibility of Governments to systematically review and evaluate:

- the content of programmes that impact on young people (in relation to the problems tackled);
- the methods of service delivery and implementation (in relation to reaching the target groups, and whether strategies and approaches are appropriate);
- and resource utilisation, considered in terms of cost-efficiency and cost-effectiveness (including the mobilisation of local and indigenous resources and people).

IFSW also suggests that objectives of programmes aiming to meet the needs of youth should include:

- strengthening family life and relationships, and encouraging parental participation in programmes;
- promoting productive employment opportunities;
- improving general education and specific education on youth issues.

IFSW recognises that young people are often exposed to values, lifestyles and culture which may be harmful to their development (through no fault of their own). While IFSW supports having custodial facilities that cater exclusively for youth where such facilities do not exist, it also supports decriminalising 'offences' such as vagrancy or some violations where no victims are involved.

An important principle in the IFSW Statement that ANZASW believes should be seen to be fostered in this Amendment Bill but that is absent from its emerging outline of activity, is the absence of any allowance for ensuring that young people are active participants in formulating programmes, rather than passive recipients of a totally "top down" approach. IFSW also advocates positive mobilisation and organisation of young people in order to help achieve their potential. This can include: Promoting non-formal education programmes, based on the needs of young people, rather than commercial considerations; and working to enhance the preservation and promotion of indigenous culture and values where these are regarded as positive for young people.



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2. Feedback from cross-section of ANZASW members

ANZASW approached members with relevant knowledge to offer feedback on different aspects of the Bill; comments are summarised here under general headings:

Some of the compelling overall observations offered by ANZASW members in response to the time-constrained opportunity to comment on this proposed legislation were:

- “It is clear we do not have the system right yet”.
- “Being able to implement more timely interventions (including School-based interventions) with monitored outcomes would be a great place to start”.
- “The basis for change is for young people to know that they are being understood”
- “Few young persons set out to alienate themselves from the rest of society if they have known love, nurturing and appropriate boundaries”.

Validity of “cycle of crime” point of view

- Some of my clients, especially those who are young parents, are also victims.
- With the Pacific families I work with there is increasing and concerning evidence of what I prefer to call ‘intergenerational family violence’ rather than words like crime cycle. It is more of a modelling of adult behaviour and (trying to) learn how to deal with conflicts, the world at large and shift perceptions from what they have learnt.
- Some of the young people I speak with know no other way to be.
- I have noticed a cycle of crime in working with young women coming out of prison – both their parents frequently having been involved in crime to some degree.
- If we explore everything from truancy to parental supervision to drugs and alcohol and abuse history issues, violence etc then young people are being caught up in a wider cycle.
- Over the past five years I have seen siblings of offenders come into the system.

Validity of limited sentencing options

- I don’t feel the current youth justice system has limited options but limited in the number of quality of youth (and social) workers to enforce and manage what they currently have.
- From experience working in a Youth Justice residence it has become clear that the present system does not work for the young offenders. The main reason, I believe, is that nothing remedial can be put into place until a Young Person has been sentenced. With the given timeframe of eight weeks for Supervision with Residence, although we have some excellent programmes



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to combat re-offending, eight weeks is just not enough to even begin to scratch the surface.

- Therapeutic options within residences or as options for CYF are very limited.
- The more flexibility allowed the better.
- We do need a variety of options available as people do react and respond differently to the programmes on offer.

Support for emphasis on addressing underlying causes

- As a practitioner I support the principle and measures that deal with underlying causes. When assessing a young person's environment, I am constantly being brought back to the parents/ aiga/ community. The most underacknowledged issue around youth offending is – where did they learn their behaviour from? What/ who are the major influences on this young person? At what stage/ age/ place did they absorb/ justify/ set a destructive pattern of behaviour?
- Absolutely, YES. Until the underlying reasons are discovered and dealt with, nothing will move on. They need to be able to come to terms with why they offend in the first place. Punitive consequences will not have any impact, until some change in the thinking occurs.
- My experience, and as you know, much of the research points to the fact that offending may be the end result of underlying problems. In my role working from a youth justice perspective with under 13s, there are usually always underlying serious care and protection factors contributing.
- For me this is about a variation on that age old adage – prevention IS the cure.
- In my experience marginalising factors, including socio-economic and cultural factors, are usually involved in young peoples' offending.
- Often the underlying causes have been “brewing” for many years and as people do not always have the skills to deal with this then they will externalise their angst and anger and this leads to the offending. Unless we deal with these causes we will never be able to stop them offending.

Demands on administering orders & supplying new services

- Resources in CYF are already stretched but if there is funding to provide for NGO contracts this could be positive for children and families.
- The number of people to fulfil (an approach) like this will be vast.
- How government agencies and non-government agencies work together is vital, recognising the voluntary nature and status of NGOs.
- Ensuring we have enough trained staff to deal with the new roles brought on by this (is essential). I think it best to have one centralised service doing the coordinating of this.
- Although in my local area there are currently not enough services available to support this amendment to the Act, there are many people who would early love to provide these services and if they were supported by CYF/MSD I am sure that we will be able to provide sufficient services.



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- Why reinvent the wheel, when you can, for instance, increase numbers of Social Workers in Schools, increase resources to 'essential services' as already identified, fund more social work driven programmes and give communities such as Pacific and Maori more flexibility and choices to target their families in the way they know works for them.
- I think this needs to go as wide as possible. It needs to involve Police, Health and Ministry of Education. From a social worker perspective, this new law is again silo thinking. Best outcomes and best practise favours a 'holistic' way of working. I think organisations like Family Start can play an active role. I think there will be sufficient services.
- My biggest concern is where will we get sufficient skills professionals? Professionals who are capable of reaching to these young people, fulfilling what is required of them and keeping them long enough to stabilise their learning and ensuring that they are heading in the right direction. Many of the young people cannot return to their dysfunctional homes, because all the good work would be undone.
- I can see not point in putting parents into parenting programmes. This has been done before and it has proven extremely difficult to get the parent to even attend, let alone change the way they parent their child. Most of these parents have been badly parented themselves, consequently, intellectually and emotionally, they will never be able to parent much better than they are already. A parent struggling financially may need a job more than a parenting programme.
- We will need more resources, more professionally trained providers and definitely much more collaboration. We see so much written documentation relating to best practice which does not necessarily flow down to those at the coal face.
- It is my view that there is a serious shortage of resources within health, education and welfare. To make it actually work it is my view that the resources need to be available within a 3 to 4 week timeframe. There are too many services where the waiting lists or the red tape involved in assessments and availability of services means that many young people have out grown the service they were originally referred to.
- There is a drastic need for A&D programmes and also other addictions such as gambling, shoplifting and for anger management. In particular the rules around when people (in residence) can do these programmes still appears to be problematic ie. they do not always get to them while (in custody). Mentoring programmes do not seem to be prevalent and rely on volunteers – all these areas drastically need more resourcing.
- I would perceive that whilst there are many good ideas already being employed in the youth social service sector the scant resources to follow up properly jeopardises real success. When I see the successes of intensive interventions such as Ian Lambie's camps/ follow-ups and long-term social work relationships I see that troubled situations are not turned around quickly. The investment however is worth it if we prevent imprisonment and long-term offending.



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Military-style activity camps

Serious reservations

- I don't like the idea of boot camps for under 14s but implementing a therapeutic aspect would I believe assist many young people and the communities they reside within.
- It depends on how they are run and particularly by who. Authoritarian perspectives will not be successful without caring and compassion. Ongoing support will be an important aspect of a successful programme.
- I have to say that I have seen a few men who either have been in the army or who are still there that have required some work on violence prevention (themselves). I do not think that the majority of our youth will benefit from such expertise. Most young people that get to this point come from authoritarian type of parenting styles together with a neglectful background. Learning more abuse, though termed differently, would not address underlying causes of offending.
- We seem to have come full circle and we're just starting over again.

Some support

- Previous experience has shown that these boot camps do not work for all. However, I believe that for some young people they can be very effective.
- I think these camps will benefit many, maybe not all, young offenders if they develop a sense of pride and self-esteem along with self discipline.
- The advantage could be to break the cycle of a life pattern and put some lives back on track, with modelling and education.

ENDS