



New Zealand Nurses Organisation

**Submission to the Social Services
Select Committee**

On the

**Children, Young Persons, and Their
Families (Youth Courts Jurisdiction
and Orders) Amendment Bill**

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EXECUTIVE SUMMARY

1. The New Zealand Nurses Organisation welcomes the opportunity to comment on the Children, Young Persons, and their Families (Youth Courts Jurisdiction and Orders) Amendment Bill.
2. NZNO subscribes to the United Nations Convention on the Rights of the Child (UNCRC) and the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).
3. We note that lowering the age of criminal responsibility is inconsistent with recent attempts, for example with The Children, Young Persons, and Their Families Act Amendment Bill (No 6), to standardize the definition of “young person” by extending it to include 17 year olds, a position we strongly support.
4. We note that the bill’s definitions for “serious crime” are predicated on criminal offences and sentencing for adults, where *mens rea*, that is an understanding of what constitutes a crime, prevails. The definition of children and young persons precludes this.
5. We strongly support provisions to prevent children from serving prison sentences and to extending residential opportunities for supervision and remediation using trained health, education, community and social workers to address physical and mental health needs and to deliver programmes of proven efficacy.
6. However, we do not believe the bill adequately addresses the underlying causes of offending.
7. There is no evidence to show that criminal prosecutions of children and unspecified “activity orders” are effective means of changing embedded antisocial behaviours; there is, however, robust evidence supporting more alternative strategies.

8. NZNO offers examples of collaborative programmes where the police, government, health and community organisations have had some success in addressing family violence, sexual offending and delinquency and which we believe this bill may undermine.
9. We believe resources should be directed at supporting these holistic strategies in the “window of opportunity” that adolescence presents to effect long-term change in repeat offenders.
10. We are also very concerned that there is a high risk that a small increase in the anticipated numbers of adolescents impacted by the bill would hugely outstrip the facilities and resources available, undermining remedial and protective measures for adolescents that are integral to social justice. This will compromise New Zealand’s already poor international reputation regarding child safety and high rates of incarceration especially of young people, and may fuel the rapid growth of an underclass of criminalized young people with little hope and the potential to wreak havoc for decades to come.
11. Though we do support some parts of this bill, overall we think that there is too great a risk that lowering the age of criminal responsibility and extending the definition of serious crime will simply criminalise a larger number of at-risk juveniles, and thus escalate rather than address the problem.
12. Accordingly, NZNO **does not** support this bill.

ABOUT THE NEW ZEALAND NURSES ORGANISATION

13. The New Zealand Nurses Organisation (NZNO) is the leading professional body of nurses and nursing union in Aotearoa New Zealand, representing over 42 000 nurses and health workers on a range of employment related and professional issues across the public, private and community sectors.

14. Te Runanga o Aotearoa is the arm through which our Te Tiriti o Waitangi partnership is articulated.
15. The majority of our members are registered, enrolled and student nurses, and midwives and we also include kaimahi hauora, health care workers and allied health professionals.
16. The NZNO vision is “Freed to care, Proud to nurse”. Our members enhance the health and wellbeing of all people of Aotearoa New Zealand and are united in their professional and industrial aspirations to achieve a safe, sustainable and accessible system of public and primary health care for all New Zealanders.

CONSULTATION

17. NZNO has consulted its staff and members in the preparation of this submission. In particular, we have consulted with our Professional Nursing Advisors, Legal Advisors, Policy Analysts, Te Runanga, and specialist colleges and sections, including the Nurses for Children & Young People Aotearoa; Women’s Health Section; Mental Health Nurse Section; Pacific Nurse Section; Public Health Nurse Section; and the NZ College of Practice Nurses which includes Prison Nurses and those nurses working in the Primary Health Care Sector.
18. We have had strong feedback from members who have experience in working in the variety of health settings where there is direct or indirect involvement with the children, young people and their families who will be affected by the provisions of this bill.
19. In addition, our comments have been informed by discussions with allied organisations such as Plunket and New Zealand Family Planning and those with working in collaborative community and DHB remediation programmes, such as the Family Violence Prevention Programme at Nelson DHB and the Wai Puna Trust in Christchurch.

DISCUSSION

Age of criminal responsibility

20. NZNO subscribes to the United Nations Convention on the Rights of the Child. As an evidence-based profession, we agree with its statement of principle that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection” because that position is based on sound physiological evidence and social science research. It also embraces a fundamental principle of social justice and humanity that the environment in which young people are raised is a collective responsibility.

21. We also subscribe to the UN Standard Minimum Rules for the Administration of Juvenile Justice. We draw your attention to the commentary accompanying Section 4 covering the age of criminal responsibility which states:

If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.).

22. Such criteria clearly indicate that, in New Zealand, twelve and thirteen year olds are not regarded as responsible adults and therefore they should be afforded the legal protection their age requires.

23. We note and support recent efforts, such as with The Children, Young Persons, and Their Families Act Amendment Bill (No 6), to ensure consistency in the definition of young person, which this bill undermines and contradicts.

24. However, NZNO does not believe that young people should not be accountable. They do need to be trained to take responsibility for their actions. Many are poorly equipped to do so and lack the physical, mental and social resources to act responsibly.
25. In this context it is relevant to note the foetal drug and alcohol effects on long term behavioural and cognitive functioning for children. Statistically the long term effect of antenatal substance exposure is highly significant in the criminality of youth offenders. NZNO strongly suggests that a better long-term solution than lowering the age of criminal responsibility for those who are, in effect, victims, would be to put greater emphasis on the control, education, and marketing of alcohol and drugs.
26. We note that there is a pilot programme Te Oranga Pumau in Auckland, which specifically provides remedial and therapeutic residential environment for Māori youth with foetal alcohol effects. The emphasis is on developing whānau, friendship, tikanga and educational opportunities.
27. NZNO has pointed out elsewhere¹ that high risk children who are removed from dysfunctional and/or abusive homes are often simultaneously removed from the public health system and have never received the healthcare that all children are entitled to. It is hardly surprising that that these children, who have experienced the *double* failure of family and society to nurture and protect them, have developed severely antisocial behaviours. If parents cannot nurture their children then society must.
28. Justice and humanity (and the future protection of society) demands that, in what remains of their childhood, their health and developmental needs are attended to. The term of that childhood should not be reduced by introducing prosecution and punishment at a younger age *which evidence shows* will further entrench antisocial activities and sustain the cycle of

¹ NZNO submission The Children, Young Persons and Their Families Amendment Bill (No 6), April 2008.

deprivation, ignorance, ill-health and violence inevitably leading to a lifetime in and out of prison.

29. We **do not** support expanding the jurisdiction of youth courts by making 12 and 13 year old children liable to prosecution for serious offences.

Serious offences

30. NZNO regards any physical assault, including sexual assault, with the use of weapons and/or intent to cause grievous bodily harm as a serious offence.

31. However, the bill's definitions for "serious crime" are predicated on criminal offences and sentencing for adults, where *mens rea*, that is, an understanding of what constitutes a crime, prevails. Clear physiological evidence precludes this for children and young persons. In this way the bill is actually making the terms of prosecution a lot wider for children than for adults.

32. Practically speaking, how can a child of 12 direct a lawyer or make an appropriate plea? They would surely have to be advised by others who did understand the implications. *Quod erat demonstrandum*.

Sentencing provisions

33. NZNO strongly believes that there must be a balance between increased police and powers to act decisively for public protection, and increased provision for and direction to appropriate remediation and support services for young offenders.

34. We agree that the courts should be empowered to impose pressure on parents to be accountable for their children and strongly support parenting education programme orders under *new section 283(ja)*. We note, however, that these are not always available, and that those that are, are often run voluntarily and intermittently by church and community

groups. Thus we foresee a problem of enforcement with this excellent initiative.

35. We also note that there is little support for parents who are not coping or who are trying to enforce normal social sanctions with troublesome teenagers, such as curfews, school attendance etc. There is a distinction between adolescents who do not like authority figures and those who come from wholly dysfunctional families. While the safety of children is paramount, there is a need for balance and it is important that social services support parents. NZNO's Pacific Nurse Section is strongly in favour of involving *trained* community and church leaders to work with at-risk families and who can help re-integrate young offenders back into the community. Without this involvement, they warn young Pacific people who have got into trouble can be shunned and thus further marginalised and isolated from their communities.

36. We strongly support mentoring programme orders under *new section 283(jb)* and alcohol or drug rehabilitation programme orders under *new section 283(jc)*.

37. However we are less convinced by ill-defined "activity orders". We note that media discussion of this bill refers to "military style activity camps" and "boot camps" and we do not believe that there is sufficient, or indeed any, evidence to show that such camps will be effective while the underlying causes of social dysfunction are ignored.

38. However, there is an abundance of evidence² to show that, below 16 years of age at least and up to 25 years of age, human brains are physically immature and cognitive abilities are not fully functional; that early criminalisation, particularly prosecution and imprisonment, 'hardens' attitudes and increases recidivism; that criminal activity is often

² There is ample evidence of the failure of imprisonment in reducing recidivism and good evidence for alternative approaches for people with underlying drug and alcohol issues and those involved in less serious crime (Ministry of Health 2007)

linked to a raft of social determinants in the face of which individual children are powerless; and that treatable mental and physical illness, family dysfunction and poor education are common denominators amongst offenders.

39. NZNO notes that there are a number of government strategies which take a collaborative, multi-agency approach to dealing with systemic failures and inequities. Combining the resources, facilities and expertise of police, health, social, education and community agencies and nurturing a culture of trust, transparency and cooperation takes time, but there are signs, for example in the reduction of overall crime, and the reduction of youth suicides, that this holistic approach is working. Lowering the age of criminal responsibility effectively reduces the opportunities for such interventionist programmes which have proven outcomes.

40. We support extending residential opportunities for supervision and remediation using trained health, education, community and social workers to address physical and mental health needs, to deliver programmes of proven efficacy, such as SAFE³ (a community network programme for adolescent sexual offenders whose rate of reappearance in the justice system is just three percent compared with 60% for non-treated clients) and to equip at-risk young people and their families with the skills and resilience they need to break entrenched patterns of violent and criminal behaviour.

41. However, we note that if the intention is to have longer *sentences* rather than remedial programmes, and if younger children are removed from families for longer periods without proper provision of healthcare, education and rehabilitation, longer periods will not be effective. The effects of prosecution and conviction will be there for life.

³ <http://www.safenz.org/Data.htm>

42. Since the bill proposes sentencing which encompasses the same means of addressing offending: proper supervision, counselling, education etc., it is difficult to see the point to lowering the age of criminal responsibility, and adding further costs and processes, especially when resources are very limited.
43. The NZ Police has indicated that their support for this bill is predicated upon addressing a very small (i.e. estimated ~100) pool of young repeat offenders engaged in extremely serious criminal activity. NZNO perceives a very high risk of escalation in the event of underestimation of that number or the anticipated use of the provisions of this bill. It is evident, given New Zealand's high rate of incarceration particularly of young people, that if the provision for prosecution exists, it will be used and numbers will not be contained.
44. Appropriate facilities are already at a premium and new ones take time, and money, to build. What will happen in the event of a shortfall? Will the current practice, which no agency supports, of putting juveniles in with adult offenders become even more common and subvert the course and intent of the youth courts jurisdiction and orders?
45. We note that there is already a severe shortage of trained social, health, justice and education professionals to meet the varying needs of juvenile offenders; we note that, in the adult prison population, mental and physical health problems are endemic, recidivism is high and opportunities for rehabilitation low. It makes more sense to deploy existing resources where they will be most effective, that is, in preventing the criminalisation of young people. Our large prison population of young offenders is testament to failed social policies which have not addressed the underlying causes of criminal activity. Lowering the age of criminal responsibility will simply ensure the continuation of the same cycle.

Underlying causes of offending

46. NZNO does not believe that the bill addresses the underlying causes of offending and young people should not be the scapegoat for wider issues over which they have no control. Aotearoa has a unique population of young people which in other arenas – creative industries, sport, science, IT, for example, drives our international success. We cannot claim credit for one and abandon the other, but must find ways of nurturing and releasing the potential of all.
47. The underlying causes of offending are well known and multi-factorial. They are the social, cultural and economic determinants such as income and poverty, employment and occupation, housing education and social support. While it is difficult to determine the impact on those factors at an individual and family level, the impact on health is very clear and well documented.
48. It is worth noting that disparities in access to healthcare are exactly reflected in disparities in prison populations. NZNO strongly suggests that addressing healthcare needs is a priority and should be an integral part of rehabilitative and educative programmes with at-risk families.
49. Health problems are endemic in delinquents and *most are treatable*. Children that don't listen, for instance, often can't hear – literally. Children brought up in dysfunctional homes often have mental health problems. Children living in poorly insulated houses will get sicker and have more hospital admissions ⁴ - it is not difficult to see that they will also miss more school and get behind.
50. The widespread availability and use of alcohol and drugs, particularly cannabis, amongst young people is also of concern as both have negative health implications. Although illegal, cannabis seems to be freely available. More than one member questioned why the age for criminal

⁴As indicated by Professor Philippa Howden-Chapman's recent research

responsibility should be lowered when school children in uniform can be seen openly smoking cannabis and going to “tinny houses” – what is being done to protect children from drugs and alcohol which can exacerbate antisocial behaviour and mental illness and disrupt learning?

51. We also note that broadcasting and media standards have a significant role in establishing social norms and are not surprised that increasingly violent and extreme programming is reflected in increasingly violent and extreme behaviour. In this context NZNO also acknowledges the strong message against domestic violence sent by the repeal of Section 59 of the Crimes Act, and the excellent public education programme “Family Violence: It’s not OK”.
52. At the root of most antisocial behaviour is a sense of isolation and not belonging, which is why gangs have such an attraction.
53. There are many ways in which Aotearoa is making provision for more equitable and positive social participation and embracing diversity, because it is clear that one size does not fit all. Because the underlying causes of youth offending are complex and multi-factorial, the solutions must be the same.
54. Ideally, there should be provision for early identification and intervention for at-risk families. Lead Maternity Carers, Neonatal nurses, Plunket, School, Family Planning and Public Health nurses are continually in contact with at risk families. They do fulfill obligations to do opportunistic screening for family violence and abuse; they frequently refer families to appropriate agencies and more and more they are working with a range of other agencies to effect the network of health, social, justice, and community care needed.
55. This collaborative work is just beginning. The cultures of large organisations like hospitals, police and social and community welfare

agencies are not easily changed; nor are the attitudes and behaviours of some family groups and communities. Yet it is only with full engagement and collaboration that systemic failures evidenced by repeat offending can be addressed. NZNO believes that there is a real risk that, just as innovative strategies and programmes are beginning to take shape and to have some effect, this bill, which offers an alternative pathway to dealing with young offenders, will undermine them. The long-term fall out could be truly disastrous.

56. Holistic, collaborative, programmes which involve communities, families, and multi-disciplinary expert care in safe learning environments are the only way that damaged children and young people can be healed.

57. One such, the Wai Puna Trust, is in Christchurch where a member reports: “At risk youth who have committed a crime are introduced to the outdoors, with recognition that large numbers of this group spend a lot of their time at the mall. They are encouraged, with support to take some responsibility and to talk, sing, paint & write about their feelings. With trained youth workers they achieve some incremental successes & some major successes. During this time they are respected, clothed and fed. While they have to return home to what may not be the most encouraging background, some of what they have learned gives them the building blocks to do OK in life. What if this system of educating young people was in place to prevent crimes being committed?”

58. With crime, as with health, NZNO believes prevention is better than cure. We urge the Social Services Committee to use the wealth of evidence that is available, to ensure that young people have the full protection of the law in all circumstances.

CONCLUSION

59. In conclusion NZNO **does not** support the bill and recommends that the Social Services Committee:

- **Does not** proceed with this bill lowering the age of criminal responsibility for serious crime or expanding the jurisdiction of youth courts by making 12 and 13 year olds liable to prosecution in respect of “serious offences” other than manslaughter.
- **Agree** that it is inappropriate to define serious crime with reference to adult crime and sentencing which requires a level of understanding, *mens rea*, that does not apply to juveniles.
- **Agree** that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection” (UNCRC).
- **Note** the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), and particularly the commentary on Section 4, the age of criminal responsibility.
- **Agree** that lowering the age of criminal responsibility is inconsistent with recent legislative attempts to extend “young person” to include 17 year olds.
- **Note** the lack of evidence that a lower age of age of criminal responsibility will be effective in changing antisocial and criminal behaviour in adolescents.
- **Agree** there are more appropriate and proven means of addressing entrenched antisocial and criminal activities in young people; that there are several such collaborative programmes underway now which, by providing a pathway to prosecution, this bill would undermine.

- **Agree** that the causes of such activity are complex and driven by a wide range of social determinants that children, and often their families, have no means of influencing.
- **Note** our support for parenting education programme orders under *new section 283(ja)*; : mentoring programme orders under *new section 283(jb)*; :and alcohol or drug rehabilitation programme orders under *new section 283(jc)*:
- **Note** that we do not support “military style activity camps” or “boot camps”
- **Note** Aotearoa’s high rate of incarceration, particularly of juveniles, compared with other OECD countries which this bill risks increasing.
- **Note** that health problems, such as deafness, mental illness, addiction and chronic conditions such as asthma, feature strongly in prison and delinquent communities and that attending to these is a priority.
- **Agree** that there is a very small number of young repeat offenders of serious crime and that blanket legislation lowering the age of criminal responsibility and extending the definition of serious crime carries a high risk of criminalizing an increasing number of young people.
- **Note** the high risk of cost blowouts and inability to provide proper facilities and resources, should numbers increase.
- **Note** the high individual and societal costs of failure to turn around young offenders of serious crime.
- **Agree** that juvenile justice should be part of a comprehensive framework of social justice and that every effort should be made to involve the full resources of society including the family, volunteers, trained community leaders and schools as well as the police.
- **Note** NZNO’s previous submissions on the Domestic Violence – Enhancing Safety - Amendment Bill (February, 2009)) Children, Young Person and Their Families Amendment Bill (No 6) (April , 2008); Public

Health Bill (March, 2008); Crimes (Abolition of force as a Justification for
Child Discipline Bill) (February 2006)

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