

## Neurodisability and Youth Offending: the connection has been made

by Kate Peirse - O'Byrne

**Kate Peirse - O'Byrne has produced the first comprehensive analysis of neurodisability and youth offending specific to Aotearoa New Zealand. Identifying and Responding to Neurodisability in Young Offenders: why, and how, this needs to be achieved in the youth justice sector draws on the recent study "Nobody Made the Connection: the prevalence of neurodisability in young people who offend" by the Office of the Children's Commissioner for England, which found a high prevalence of neurodisability in the youth offending population. Applying this correlation to the New Zealand context, this work uses legal and pragmatic arguments to highlight the importance of identifying and responding to neurodisability in the youth justice system. To assess whether we are achieving this goal, current processes and practice in the New Zealand youth justice system are examined and finally, recommendations for improving the identification of, and responses to, neurodisability within youth offending are provided.**

In 2012, the Children's Commissioner for England published a report entitled 'Nobody Made The Connection: The Prevalence Of Neurodisability In Young People Who Offend'.



The report, which amassed evidence of the staggering correlation between youth offending and neurodisability, caused ripples – and then waves – in New Zealand's youth justice sector. For the first time, youth justice workers had a piece of research that, in no uncertain terms, testified to the profound importance of neurodisability to the question of youth offending.

In brief, neurodisability is a broad term encompassing such atypical neurological profiles as intellectual disability, Foetal Alcohol Syndrome Disorder, and Attention Deficit

Hyperactivity Disorder. Characteristics symptomatic of such neurodisabilities include hyperactivity and impulsivity, low intelligence and cognitive impairment, alienation, and aggressive behaviour. These characteristics can directly lead to offending; low impulse control and social immaturity could, for example, result in deviant sexual behaviour. They can also lead to life choices that increase the likelihood of offending; a sense of alienation, combined with cognitive impairment, may render a child particularly vulnerable to the influence of gang culture.

This evidence has manifold implications for the youth justice sector. **From a moral standpoint, failing to take account of neurodisability in responding to offending is indefensible.** New Zealand responds differently to young people by virtue of their neurology: young people have different cognitive capacity to adults. By the same logic, young people with neurodisability merit a justice response that identifies and takes account of their neurological impairment.

**Pragmatically speaking, if we do not tailor our responses to—for example—a child with an intellectual disability or communication disorder, the child may be incapable of engaging with the**

**intervention.** Court processes and rehabilitative programmes are expensive. When they are ineffective, that money is wasted, but more concerning are the immeasurable costs to the offender and to society. **Indeed, ineffective processes can result in an increased risk of recidivism.**

**Now that the relevance of neurodisability to offending is indisputable, so too is the relevance of neurodisability to fulfilling our legal obligations.**

The obligation to identify and respond to neurodisability is implicit in both international human rights conventions (especially those pertaining to young people and to disability) and domestic human rights statutes (the Human Rights Act 1993 and Bill of Rights Act 1990). It is implicit in the 'fitness to stand trial' legislation, as neurodisability is now a potential basis for a finding of 'unfitness' (see the Criminal Procedure (Mentally Impaired Persons) Act 2003 and the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003).

Of most relevance to the youth justice sector is the Children, Young Persons and Their Families (CYPF) Act 1989, whose principles and objectives impliedly require a response to

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neurodisability. The principle of addressing the causes underlying offending (s208(fa)) cannot be realised without knowledge of contributing neurodisabilities. Nor can sanctions “most likely to maintain and promote the development of the child” (s208(f)) be employed without knowledge of the child’s neurological profile.



Moreover, without knowledge of and response to neurodisability, specific personnel cannot fulfil their statutory obligations. Under s255(1), Youth Justice coordinators must ensure that *all relevant information*, including information relating to the offender’s health, is before the Family Group Conference (FGC). Under s10, the Youth Court and lawyer representing the young person must satisfy themselves that the young person *understands proceedings*; understanding can be profoundly affected by neurodisability. The Youth Court must have regard to the “*personal characteristics* of the young person” when imposing any sentence (s284).

**These obligations necessitate an understanding of a young person’s neurological impairments, and thus provide the framework and imperative to respond.**

Addressing the gaps in our responses will not be a simple task. Neurodisability is not necessarily visible or easily deducible. Children with complex neurological conditions may show few signs of brain damage,

cognitive impairment, or difficulty regulating emotion, and may not be capable of understanding or describing their difficulties. **For this reason, we need comprehensive screening processes, and these are not currently available: youth justice routes developed under the CYPF Act are largely reliant on ad hoc information gathering by legal personnel.**

Where information regarding underlying neurodisability is available, we then need to provide tailored responses. **Neurological impairments—such as learning disabilities—may result in a reduced capacity to comprehend the criminal process.** Without adjusted processes or special explanations, the young offender may disengage from a process that is “alien, confusing and misunderstood”.

Evidence strongly indicates that while the FGC and Youth Court forums are working for some young offenders, neither forum is adequately equipped to tailor its process to young offenders with neurodisabilities. Young people are a hugely diverse population. In some cases, the FGC focus on taking verbal responsibility for one’s actions will not be appropriate or effective: a child with a communication disorder may be incapable of expressing him/herself, and a child with autism may find the experience distressingly overstimulating. Radical changes to processes will sometimes be necessary.

Post-justice system supports then need to be responsive to specific needs and learning styles, which will differ depending on the young person’s neurological profile.

FGC plans do have the potential to provide totally individualised responses, but evidence shows they are not always looking at the bigger

picture. Without tailored services and supports, universal interventions may be employed—at a significant cost to the state—with no effect. Correspondingly, goals such as preventing long-term recidivism, and enabling reintegration into society, fail to be achieved.

Meeting these challenges is a considerable task, exacerbated by a paucity of appropriate available resources. While surmounting the financial barrier requires political buy-in, **the youth justice sector is empowered by the CYPF Act 1989: an excellent legislative vehicle for creative legal responses to neurodisability.** Its principles support the development of such initiatives as the Intensive Monitoring Group—an initiative spearheaded by His Honour Judge Tony Fitzgerald, which involves case management and a therapeutic court for high-risk young offenders. Its holistic approach recognises that criminal behaviour is not only a justice issue, but also a health issue, and a social issue. To paraphrase Judge Fitzgerald:

**New Zealand has the potential to dramatically alter crime statistics if we pause, consider the causes of offending, and recognise criminal behaviour as a multifaceted—and therefore multiagency—issue. Our challenge is to pave the way towards a collaborative response to crime, and to engage wider society on this path.**

**If you would like a copy of the full report *Identifying and Responding to Neurodisability in Young Offenders: why, and how, this needs to be achieved in the youth justice sector* please email:**

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