SUBMISSION
To the Law and Order Select Committee of Parliament

From Amnesty International Aotearoa New Zealand
on the
Young Offenders (Serious Crimes) Bill

The New Zealand Section of Amnesty International (AINZ) is part of a worldwide voluntary movement in support of universal human rights. This submission is presented by **Peter Sutton,** co-ordinator of the Children's Rights Network of AINZ.

My address and contact details are as follows: 113 Halifax Street East
The Wood
Nelson 7010.
Telephone (03) 546 9140 Email psutton@xtra.co.nz

I am a former member of the governance committee of AINZ and was, for two years, national Chair of the organisation. My wife and I have been joint co-ordinators of the AINZ Children's Rights Network since its creation in 2002.

I am a retired Senior Psychologist with the Department of Education and was formerly a primary school teacher and principal. My 21 years experience of psychological practice included work with schools, families, the Department of Social Welfare (now Child, Youth and Family Services) and the Family Court. I was formerly chair of the Family Court Associations in both Dunedin and Nelson.

Amnesty International opposes this Bill. It believes that the "problem" of youth offending has been greatly exaggerated and that the proposed legislation would be ineffective, counter-productive and, most importantly, would violate the rights of children which this country is pledged to uphold by its ratification of the UN Covenant on the Rights of the Child.

1. Youth Justice

1(1) The present situation.

- "The age of criminal liability in New Zealand is 10.
- However, until a young person reaches the age of 14, he/she cannot be charged with any offence in a criminal Court except murder or manslaughter.
- Offenders aged 10 – 13 years are called "child offenders" and they can be dealt with in the Family Court on the basis that the offending is caused by lack of parental control and protection.
- Offenders aged 14 – 16 years are called "youth offenders" and they can be dealt with in the Youth Court."(1)

1(2) Are there problems with the present situation?

The rates of offending by children under the age of 17 years has remained stable for the last five to ten years at about 22% of total offending, although some shocking individual cases of violent offending have been reported. 76% of all youth offending is dealt with by Police supervised community diversionary programmes; a further 8% are resolved by pre-charge Family Group Conferences most of which result in no charges being laid in Court and less than 20% come to the Youth Court.(2)

In the absence of any indication that youth offending is increasing, the move from an essentially restorative and rehabilitative approach to a punitive one seems ill judged. It must be recognised that youth is a time when the mind is malleable and when change is possible in the attitudes and behaviour of the young person. International research has shown that children are different from adults in many ways especially in their impulsivity and failure to recognise the results of their actions. They will therefore be most unlikely to be affected by the deterrence of any possible punishments. This is the reason why youth justice systems are designed to utilise this opportunity for reform by involving the family/whanau and community in dealing with the offender.

This Bill seeks to make Youth Courts nugatory and to replace them with adult sentencing which has clearly failed to deter adult prisoners from re-offending. To place juvenile offenders in prison is, on all the evidence available, to make their re-offending much more likely.

There are some problems with the present youth justice system; they include the fact that the process is significantly under-resourced, particularly in the support of Family Group Conferences, that children are frequently held on remand in police cells for several days in inadequate and unsatisfactory conditions, and that they are sometimes held with adults. However, the fundamental fault is that "youth justice" includes only young people under the age of 17 whereas the UN Convention on the Rights of the Child defines 18 as the age at which a person ceases to be a child.

In summary, the Bill addresses a problem for which there is no substantive evidence and proposes measures that will abolish opportunities for reform and encourage recidivism among young offenders.

2. The Rights of Children

2(1) The rights of all people under the age of 18 are contained in the UN Convention on the Rights of the Child adopted by the United Nations on 1 October 1990 and ratified by New Zealand on 6 April 1993. It came into force here on 6 May 1993.

2(2) The Preamble to the Convention includes *inter alia* the following passages:

"Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance."

"Bearing in mind that, as indicated in the Declaration of the Rights of the Child, the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection…."

2(3) Article 40 of the Convention includes the following:

"*1. States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."*

"2. " To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

- *(a)* Omitted as irrelevant.
- *(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:*
  - *(i) to (vii)* Omitted as irrelevant

(viii) States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed penal law, and, in particular:

(ix) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(x) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected."

"3. "A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."

[My emphasis throughout paragraph 2(3)]

3. Comment by the UN Committee on the Rights of the Child.

In response to New Zealand's Report to the UN Committee, in October 2003, the Committee raised a number of concerns:

1). New Zealand's youth justice laws apply only to young people under the age of 17 years. The Convention requires that every person under 18 should have the benefit of the rights provided to young offenders.

2). Children who are deprived of their liberty are not always kept separate from adult detainees and the conditions in which they are held at times do not take full account of their needs and their right to be treated with humanity and respect for their human dignity.

3). Because of the lack of sufficient youth facilities, children are at times held in Police holding cells, which lack basic facilities and are quite unsuitable. Children can be locked up in Police cells for several days or weeks because Child, Youth and Family has no beds available for them.**(3)**

4. Commentary

4(1) The youth justice provisions of the Convention on the Rights of the Child (Article 40) were framed on the understanding that children lacked the maturity and judgement to be held fully responsible for actions which brought them into conflict with the criminal law. They recognised that young people follow impulses without consideration of their results for themselves and others, and that they fail to appreciate fully the concepts of social responsibility and the rights of others. The provisions also recognised that children's immaturity gave authorities the opportunity for rehabilitation and re-education.

4(2) International research into child development and youth offending since 1990 has confirmed that these assumptions are absolutely valid. I commend to the Committee the summary of research by Kaye L. McLaren for the Ministry of Youth Affairs published in June 2000 **(4)**. She examines research into the factors involved in serious youth offending and the treatment of offenders. She concludes: -

1. There is hope – offending by young people can be reduced.
2. The worst cases need most attention.
3. Effective interventions with young people address the known causes of offending.

4. To have the maximum impact, target multiple causes of offending using multiple techniques.
5. Effective interventions teach new skills in active ways.
6. Good outcomes need good people.
7. Effective interventions touch the four corners of a young person's life – family, school/work, peer group and neighbourhood.
8. Good processing seems to make good outcomes more likely.
9. Residential interventions have to work harder to succeed.
10 Tough is not enough.

4(3) To indicate the complexity of the problem, I summarise comments by Judge Andrew Beecroft, Principal Youth Court Judge, about the characteristics of the 5% of "hard core" youth offenders;

- 85% are male; 70 –80% have a drug and/or alcohol problem with a significant number addicted; 70% are not enrolled in secondary school (Non-enrolment rather than truancy is the problem); most experience family dysfunction and disadvantage; most lack positive male role models; many have some form of psychological disorder and display little remorse; at least 50% are Maori; and many have a history of abuse and neglect. **(5)**

Read in conjunction with Kaye McLaren's article and Article 40 of the Convention on the Rights of the Child, this suggests that the simplistic solution contained in this Bill has no hope of success and will only serve to confirm offenders in a life of crime.

4(4) Historically, the 20th century was a period in which states became aware of the special needs of children and young people for protection from involvement with the adult concepts of crime and punishment. Child welfare and juvenile justice systems took over the role of dealing with young people who offended against penal law. This Bill is a backward step to 19th century England when children were charged and punished in adult courts with the result that many were sentenced to imprisonment, transportation or even death for what today are considered comparatively minor offences. This Bill could result in a child of 14 being sentenced to prison for shoplifting.

4(5) The inevitable result of this Bill would be increasing numbers of juvenile offenders being held in Police cells, being sentenced to imprisonment and held in adult prisons which are already overcrowded, and being denied the psychological treatment, counselling, educational facilities and treatment for drug and alcohol abuse that they need.

5. Conclusions and Recommendations.

Amnesty International concludes that this Bill would result in violations of the rights of children contained in Article 40 of the UN Convention on the Rights of the Child. It would exacerbate the present concerns of the Committee on the Rights of the Child about the detention of children in Police cells and adult facilities and result in further international criticism of New Zealand's failure to honour its obligations under the Convention.

Amnesty International recommends:

1. That the Select Committee recommends to the House that this Bill does not proceed beyond this stage.

And to ensure New Zealand's conformity with Article 40 of the Convention

2. That the Committee recommends to the House that legislation be prepared to

amend the Child, Youth and their Families Act 1989 to provide greater focus on child offending (10 to 14 years) through the use of restorative justice principles and psychological and educational assistance as well as care and protection orders.

3. That the Committee recommends to the House that the procedures for dealing with Youth Offenders (15 to 17 years) be strengthened by the mandatory use of restorative justice through Group Family Conferences for all offenders not dealt with by Police Diversion and by the increased provision of specialist services such as counselling, psychological assistance, drug and alcohol treatment, and remedial education - including at Youth Prisons.
4. That the Committee recommends to the House that financial provision be made for the increased use of specialist help, for the urgent provision of appropriate youth holding facilities in all major centres, for increased support for Group Family Conferences and for recruitment and training for the Child Youth and Family service.
5. That the Committee recommends to the House that serious consideration be given to including 17 year-olds in the provisions of Youth Justice.

General Reference

1. Convention on the Right of the Child, United Nations General Assembly (1989)

Specific References

(1) Becroft, A (Principal Youth Court Judge), Youth Offending, Office of Children's Commissioner (2006?)

(2) Becroft, A. *ibid* (Summarised by the writer)

(3) Ludbrook, R. Children's Rights in Youth Justice, newsletter, Office of Child Commissioner,(2005)

(4) McLaren, K.L. Tough is not Enough, Getting Smart about Youth Crime, Ministry of Youth Affairs, (2000)

(5) Becroft, A. *ibid* (Summarised by the writer)

I would appreciate the opportunity to address the Select Committee in support of this petition.