

Young People with cognitive and mental health impairments in the criminal justice system – Consultation Paper 11

Introduction

The Illawarra Legal Centre's Children Court Assistance Scheme (CCAS) has an average of twenty seconded workers attending Children's Court assisting young court attendees and their families.

CCAS provides support for young people and their families when attending Children's Court. CCAS workers provide support with court processes and link young people with key community services. CCAS workers identify policy and law reform issues arising from Children's Court days and interactions with court users groups who assist young court attendees.

CCAS workers have a range of skills and experience and make referrals to mental health specialists and appropriate counsellors.

Questions and observations from a community work perspective

The following points arise from our CCAS work and observations arising from our interactions with a variety of court users groups including, Juvenile Justice workers, mental health practitioners, Department of Community Services staff and a range of community based support workers in the areas of housing, post-release support and drug and alcohol.

- A significant number of young people attending Children's Court have limited family or other similar support that can help identify cognitive or mental health impairment.
- A noteworthy number of family members and extended family members report that they have life challenges particularly with their health and wellbeing that erodes their capacity to do all the things they want to do to assist a young family member in the juvenile justice system.
- There appears to be a significant number of young people who may have had limited interaction with formal mental health or cognitive assessment procedures who are part of the juvenile justice system.
- A significant number of young people within the juvenile justice system report problems with drug and alcohol use that in some cases may be linked to poor mental health or circumstances that leave them vulnerable to developing mental health problems. These circumstances may include substance abuse, homelessness, poor diet and sleep patterns, loss and grief and limited interaction with responsible, resourceful adults.
- A significant proportion of young people attending Children's Court nominate barriers to comprehension, poor concentration, restlessness through to anger and other behavioural issues that affect their capacity to comply with official directions or maintain constructive routines.
- Most young people nominate a desire to work and be earning a wage or a desire to complete their studies as goals they want to achieve.

The Illawarra Legal Centre

The Illawarra Legal Centre (ILC) is a community legal centre providing free legal advice to people in the Illawarra and surrounding areas. In our 25th year we continue to be an active centre in the State and National Community Legal Centre movement.

The ILC has a number of specific projects covering different areas of law and a free telephone advice service and legal representation arising from our advice.

The ILC projects include:

- Welfare Rights
- Tenants Service
- Financial Counselling
- General Law
- Child Support
- Children's Court Assistance Scheme (CCAS)
- Aboriginal Legal Access Program

Young People with cognitive and mental health impairments in the criminal justice system

Bail

CCAS workers are concerned that many homeless young people are bail refused on the basis that there is insufficient suitable housing in the community. Some homeless young people indicate that they have health issues. CCAS concern extends not only to the amount of time a young person is detained but whether that child has access to appropriate health care and education during this detention period.

Issue: What health assessments and associated follow up is available for young people in detention? What processes trigger health interventions? What post-release follow up is available?

Key concern: Children with mental health disabilities should not be detained in the juvenile justice system and should be referred to appropriate medical services.

A young person living with a mental illness may struggle to fulfil their bail conditions, for example, to undertake counselling at a specific organisation, if they have limited family or social support. If they fail to complete undertakings directed by the court they are at risk of being further entrenched in the juvenile justice system.

Scenario 1

Adel was diagnosed with a mental illness and the magistrate had directed him to undertake psychological treatment with a specific organisation. He attended the first appointment but failed to continue.

*Discussions with workers from the Children's Court Assistance Scheme (CCAS) revealed that he needed to walk two kilometres to a train station for the 25 minute trip and then walk for a further 15 minutes to the appointment destination. He said he struggled to get out of bed and could not motivate himself to make the trip. The CCAS worker was able to confirm that the health service could pick him up and return him home after the appointment. The young man was willing to accept this arrangement and keep going to the mental health support service.**

Young people attending Children's Court regularly report that they find it difficult to fully understand what the magistrate has ordered during their court proceedings. Despite having clarity after attending the court registry they can later report that they do not understand what they need to do to fulfil court directives regarding bail, curfews or other restrictions to their behaviour. Some young people nominate nerves, health problems, difficulties with concentration or poor literacy as reasons why they struggle to comprehend information surrounding their court attendance.

Scenario 2

*Bell said she was homeless and her life was hectic. She described a life without regular meals, frequent drug use, anxiety about court, fines and few future housing options. She said she struggled to remember to keep official appointments at Centrelink and with medical practitioners. She outlined how she had intermittent contact with youth workers and counsellors.**

Issue: Without appropriate support and follow-up many young people are at risk of breaching bail conditions.

Key concern: Many young people miss those referral options and do not have people who can support them undertake their official obligations.

Apprehended Violence Orders

Some young people appear to struggle with understanding the purpose and procedures around AVO. The following examples illustrate this problem.

Scenario 1

*B (who did not nominate any barriers to comprehension or understanding his previous court appearance process) was ordered to stay away from his former girlfriend and not go to her house. B got a friend to check that she was a work and he entered the house via an open window to take his personal belongings. When he faced the magistrate for breach of his AVO he repeatedly argued that it couldn't be a breach as she wasn't there and he was trying to avoid her and do the right thing.**

Scenario 2

*When L received a text message from his girlfriend asking him to come over he thought that it was alright to visit her despite having an AVO that barred him from contact with her or going to her home. When the visit turned sour the police were called and he was charged with breach of his AVO. He thought that if his girlfriend invited him to her house this would not put him in breach of the AVO.**

Key issue: Children with cognitive or mental health impairments would struggle to understand the complexities of the AVO.

Diversion

Diversionary options under the Young Offenders Act must be strengthened to ensure that children with cognitive and mental health impairments are provided treatment plans, support and intensive interventions that divert them from the juvenile justice system.

Improved needs assessment that is accessible and affordable at the earliest stages can assist direct a young person to appropriate care.

Scenario 1

*Brian had a mix of criminal offences before the Children's Court although predominantly they were minor offences and behaviour that suggested a range of social problems and loneliness. Brian revealed to a CCAS worker that he was a carer for an incapacitated relative and that no one supported his family in any way and that he didn't contact anyone seeking help.**

Scenario 2

*A young man from a large extended family assisted his mother with care of his siblings and cousins. His mother undertook a key support role in her community using her English language skills to assist those who had recently arrived to Australia. She was also very involved in her church while struggling to also look after her family. Mother and son seemed exhausted and overwhelmed by the Children's Court process.**

Key issue: Some young people could be at risk of developing mental health problems due to their exceptional family responsibilities and limited capacity to fulfil these duties.

Key concern: That some young Aboriginal people and young people from culturally and linguistically diverse backgrounds may have fewer appropriate support options for critical times of stress or hardship.

Support People and police interviews

There is an urgent need for trained community advocates to fulfil the role of support people during police interviews to safeguard the rights of all young

people, most particularly, those interviewees with mental health or cognitive impairment.

There is a need for police training and orientation to the concept of 'Support Person Advocate' to ensure that all parties at a police interview are aware that the young person's support person is their advocate and not there solely to facilitate a police interview. The support person is there to protect the interests of the young person by monitoring that they understand the situation and their legal rights.

Key issue: Police and support people should be trained to identify cognitive and mental health impairment as well as other vulnerabilities that can disadvantage a child in a police interview.

Key concern: Appropriate police training is not currently available. In addition the police and community advocates have divergent interpretations of the aim of an independent support person in police interviews and training needs to be based on a consensus of the legal purpose of the role.

Scenario 1

*Sally was new to youth work and a reluctant support person when asked to attend the police interview. The young person felt confident that he could give the police his story when assured he was likely to only attract a minor penalty. The young person had been given legal advice by phone. Sally felt she should intervene when the boy seemed to be giving too much information and could be liable to serious penalty. The police officer seemed to be discouraging any intervention by the support person.**

Key issue: A need for training for both police and support people on the rights of a young person in police interviews.

Assessment

The Adolescent Court and Community Team (ACCT) as part of Justice Health provide an invaluable role in Children's Court. The Port Kembla Children's Court has had limited opportunity to work with the Justice Health worker as the position had periods of time when it was unfilled. At this time there is no one in this role.

In the brief time that ACCT was at Port Kembla Court, the nurse took referrals, made assessments and wrote reports for court. This expertise appeared to assist legal practitioners assist their clients and potentially could provide an opportunity for follow-up if the child had to return to court.

Court users interacting with CCAS workers have identified difficulties in obtaining psychological or psychiatric reports for presentation to the court.

Key issue: There needs to be continuity of service delivery in the area of adolescent mental health assessment, referral and delivery.

Aboriginal Legal Service (ALS) solicitors note they are unable to get grants for external psychiatric reports. There are limitations on Health Justice undertaking some medical reports in serious matters.

Key concern: That limited referral options in mental health for young people with emerging mental health issues or identified mental health or cognitive impairments will result in increased numbers within this group being in detention without appropriate care.

Youth Drug and Alcohol Court (YDAC)

YDAC is not based in the Illawarra and there has been extensive discussion and lobbying for one to be based in the region.

Key issue: There should be an investigation into the establishment of YDAC, MERIT or CREDIT type programs for young people with cognitive and mental health impairments.

Conclusion

CCAS community workers from Illawarra services seek to assist all young people at Children's Court, most particularly those who live with cognitive or mental health impairments, by making appropriate referrals.

There is great value in having Justice Health workers at every Children's Court sitting day allowing that worker to create relationships with solicitors, Juvenile Justice workers and other court users group members to find the best solutions for young people who live with cognitive or mental health impairments.

There needs to be greater protections for these young people to divert them from juvenile detention.

A 2009 Access Economics report on the Cost of Youth Mental Health stated that only 25% of people with mental illness aged 16-24 years of age received any treatment. It continued, stating that only 15% of males aged 16-24 received any treatment for their mental illness.

This report concluded that best practice mental health treatment is cost effective, most particularly if applied to prevention and early intervention strategies as a way to reduce the burden of mental illness.

Sharon Callaghan

3 March 2011

** These case studies are illustrative of problems encountered by local community workers. The names do not relate to any actual service users.*