

## **David and the Justice System**

25/06/2012

### **Purpose**

The purpose of this submission is to bring to the attention of those in authority the parlous state of the justice system and its inadequacies when dealing with young people with disabilities- in this case, intellectual disability and fetal alcohol syndrome. If a young person appears before the court with an already diagnosed intellectual disability, it should be automatically assumed that the person is unfit to plead without the need for further assessments, and the case dealt with accordingly. The case of David<sup>1</sup>, as outlined below, proves that the present system is unwieldy, time-wasting and very expensive. David appeared in court approximately eleven times, on several of those occasions being flown up from Christchurch to Blenheim accompanied by two adults. He was held in custody at Te Puna Wai o Tuhinapo for several months, a most unsuitable environment for a young person with his level of disability. I believe the law in these cases needs to change; the offences need to be dealt with much more swiftly.

### **Background**

My grandson, David, of whom I am a guardian, has an intellectual disability caused by Fetal Alcohol Syndrome. This intellectual disability was diagnosed through CAMHS (Child and Adolescent Mental Health Service) in Blenheim in 2007, and subsequently Fetal Alcohol Syndrome by a medical geneticist, in Nelson in 2008. David often acts in impulsive ways, and is easily influenced by his peers, who he seeks to impress. David is fifteen years old and has lived with me and my husband (now deceased) since he was aged one.

### **November 2011**

On the 17<sup>th</sup> November 2011 David, in the company of two other youths, attempted to rob a dairy in Picton using a knife to intimidate the shop assistant. The purpose of this "assault with intent to rob" was to procure cigarettes. After running away from the scene, he was apprehended by police and subsequently spent a night in the Blenheim Police Station cells. He appeared in court on the morning of Friday 18<sup>th</sup> November, and was bailed into respite care for the weekend. On Monday 21<sup>st</sup> he appeared in court again and was bailed into my care, with support workers provided by the Open Home Foundation who at that point had custody of David.

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<sup>1</sup> Names have been changed or removed for privacy reasons.

He reappeared in court two weeks later on Tues 29<sup>th</sup> November at which point the Open Home Foundation withdrew their support from David. Judge Russell was presiding. At that stage the police raised the possibility that David was not fit to plead, and the judge ordered that two psychological reports be done to determine this. As the police and court would not allow David to live with me unsupervised, the judge felt he had no choice but to send David to Te Puna Wai o Tuhinapo, a youth residential facility in Christchurch, i.e. prison, while awaiting the two reports, which were to be completed within two weeks. This was a totally unsuitable environment for a person with David's level of disability, and at his next two court appearances I made application to have David bailed to me until the psychiatric reports were received, believing that they would be completed within two weeks, as the judge had directed. During his time at Te Puna Wai, David was brought back to court every two weeks, and as the reports were not completed, he was sent back to Te Puna Wai, as, according to CYFS, there was nowhere else for David to live. Eventually, David spent three months in total at Te Puna Wai o Tuhinapo.

### **Feb/Mar 2012**

The length of time taken for the two reports to be completed was unacceptable, and, when they were finally presented in court, the two psychologists disagreed over whether David was fit to plead. There was a further delay and David was returned to Te Puna Wai while a date was set for the two psychologists to appear in court to be cross-examined by Judge Zohrab. The two psychologists swore an oath that David DID have an intellectual disability, but still disagreed as to whether he was fit to plead. The judge then ordered that David be placed under Richmond Trust in Christchurch for a psychological assessment under the IDCC&R Act to ascertain whether David did, in fact, have an intellectual disability. During this time I travelled to Christchurch for a meeting with the Compulsory Care Coordinator of RIDCA, (Regional Intellectual Disability Care Agency) and representative from Richmond Trust. However, this meeting was cancelled when they received notification from the latest psychologist, that her assessment of David concluded that he DID NOT have an intellectual disability. The police expressed some concerns about this report, feeling that it was not sufficient to prove that David did not have an intellectual disability, as the psychologist had stated that much of the data was uninterpretable. When David returned to court on the 21<sup>st</sup> March a submission was presented from Counsel for the Chief Executive of the Ministry of Social Development. Several options were suggested; the one Judge Zohrab adopted was that an independent review of the report should be undertaken.

### **April 2012**

In the meantime, custody had changed from Open Home Foundation to CYFS under an S78 order. David was placed in a CYFS family home re-opened especially for him. A team of carers were provided 24/7 by Care Solutions, contracted by CYFS. David at this stage was still on bail, so was accompanied by a support worker at all times. The independent review of the latest psychological assessment was available in court on the 1<sup>st</sup> May, and stated this

report was not sufficient to conclude that David did not have an intellectual disability. The recommendation was that David should undergo another psychological assessment, and this is what the judge ordered.

### **May 2012**

An Auckland Psychiatrist and specialist assessor under the IDCC&R Act 2003 assessed David again on the 17<sup>th</sup> and 18<sup>th</sup> May. His report was dated 25<sup>th</sup> May 2012. This Dr's assessment concluded that David DOES have an intellectual disability, and made several recommendations.

David appeared in court again on the 29<sup>th</sup> May, at which time the Judge made a two year order under the IDCC&R Act that David be placed in "Community Secure" care. The Representative from Richmond Trust was in court, and accompanied David back to Christchurch.

This seems to be a good outcome for David and the RIDCCA system should be able to help him through to adulthood, lowering the risk of any re-offending.

### **Concerns**

The justice process took far too long, and there was such a degree of uncertainty about the outcome, that was quite detrimental to David's mental well-being. As already mentioned, the environment of Te Pun Wai o Tuhinapo was totally unsuitable for a young person with this level of disability. It took six months for the Court to determine that David was not fit to plead. During this time David has not received any education, has been moved around from place to place and has had to deal with high degrees of uncertainty that the multiple court appearances contributed to.

At the same time his supporters had to put their lives on hold attending court appearances generally every two weeks for a great chunk of this time.

In addition I believe the process was probably quite distressing for the victim of the original crime as well.

### **Recommendation**

My personal preference would be that where a diagnosis already exists (in this case for Intellectual Disability and for Fetal Alcohol Syndrome) that that form the basis of the decision on fitness to plead. That way this case could have been resolved in a matter of weeks not months.

It is my understanding from the Police that there are more and more youth who present with these kinds of issues and it would be my wish that they and their families are dealt with in a more streamlined manner to the benefit of all concerned including the victim. There must be a much quicker and less expensive way to resolve such cases. It's very important

that the psychologists involved understand Fetal Alcohol Syndrome, which is very different than other forms of Intellectual Disability-everyone needs to remember it is a brain injury, not a mental illness, and “it is not his fault”!

No criticism is implied of the judges or court officials concerned. It is the system that is at fault and needs to be rectified.