



New Zealand's Youth Justice Transformation: Lessons for the United States

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EXECUTIVE SUMMARY

In the 1980s, New Zealand’s youth justice system was in crisis – skyrocketing youth incarceration rates, overrepresentation of the marginalized native Māori youth population, infrequent use of diversion by the police, and a court system that intervened too often in the name of rehabilitation, using alienating court processes that youth and families found difficult to participate in or understand. The United States is currently plagued by many of the same problems. Through an analysis of New Zealand’s successes and challenges, we have drawn policy recommendations for the United States.

Overview of New Zealand’s Transformation

The Children’s and Young People’s Well-being Act 1989 (the Act), also called the Oranga Tamariki Act 1989,¹ represented a seismic shift in youth justice in New Zealand. It dramatically downsized the entire youth justice system and established a restorative, rather than retributive, approach to youth justice. The Act’s goals included reducing youth involvement with the courts, promoting diversion, empowering victims, strengthening families and communities, and utilizing culturally appropriate practices.² This Act is the first time that a Western nation legislated the mandatory use of restorative practices throughout their youth justice system.³

Key components of the Act include:

1) STATUTORY LIMITS ON ARREST

New Zealand drastically reduced the number of youth arrested by enacting into law strict limitations on the police’s power to arrest without a warrant. Instead, minor incidents are handled by front-line police with an immediate caution or warning to the young person or diversion.⁴ Arrest occurs only in about 12% of all cases of youth offending.⁵

2) SEPARATION OF CARE AND PROTECTION FROM JUSTICE ISSUES

The Act maintained the separation of the Family Court’s handling of care and protection issues (for 10 to 13-year-olds, “children”) from the Youth Court’s handling of justice issues (for 14 to 17-year-olds, “young persons”)⁶ – an important division to prevent net widening of the Youth Court and to provide appropriate services to youth. In 2017, New Zealand made a vital amendment to the Act by expanding the age of jurisdiction for their youth court from 16-years-old to 17-years-old by 2019 for all but the more serious offenses.⁷

3) STANDARD USE OF RESTORATIVE PRACTICES FOR YOUTH WITH SERIOUS OFFENSES

Restorative practices were integrated into the youth justice process through the Family Group Conference (Conference). The Conference brings together the youth and their family with their

lawyer, social worker, and others who can offer support, as well as the person harmed, if they choose to attend. It is used as the standard mechanism for processing serious cases where a youth does not deny their charges; the vast majority of minor cases are diverted and do not go through a Conference.⁸

4) FORMAL COURT PROCESSING BECOMES A LAST RESORT

By combining strict limitations on arrest and standard use of family group conferencing, New Zealand has been able to use formal court processing as a last resort, except in cases of murder and manslaughter. The number of young people charged in court was driven down from approximately 6,000 when the Act was passed in 1989 to 1,884 children and young people in 2017.⁹

5) DEEP FAMILY ENGAGEMENT

The Act's principles emphasize involving the family group in all decision-making and interventions. This is most clearly seen in the Family Group Conference, in which families are asked to be fully involved in the process of determining a response to the young person's behavior.

Indigenous Māori Youth Overrepresented in Justice System

A key impetus for transforming New Zealand's youth justice system was its disparate and negative impact on indigenous Māori youth (of Polynesian ethnicity) compared to white youth (descendants of the European colonizers). Between 1980 and 1984, rates for Māori youth entering the system were more than six times higher than for non-Māori youth and disproportionate numbers of young Māori received custodial sentences compared with non-Māori youth.¹⁰

ENDURING RACIAL DISPARITIES

New Zealand's Act has resulted in significant reductions in the overall number of youth arrested, charged, and incarcerated. However, as has often happened with justice reforms in this country, New Zealand's reforms did not affect the disparate treatment of Māori youth. While the numbers of young Māori charged in the Youth Court have decreased, the rate is lower than the decrease for non-Māori, leading to an increase in the proportion of Māori youth in court from 49% in 2008, to 64% in 2017.¹¹ In fact, Māori youth are disproportionately represented at every stage of the justice process – from arrest through orders for residential care – for the same type of offending as their white counterparts.¹²

REASONS FOR DISPARITIES SIMILAR TO ISSUES DRIVING DISPARITIES IN THE U.S.

As with minority groups in the United States, decades of historical intergenerational marginalization have contributed to Māori overrepresentation in the justice system.¹³ A 2007 New Zealand Department of Corrections analysis and report on the overrepresentation of Māori (youth and adults) in the justice system, concluded that the disparity was due to both justice system bias – in police apprehensions and at other key points in the justice system – as well as the greater social and economic disadvantage of the Māori, which their research showed was correlated with greater offending.¹⁴

ADDRESSING DISPARITIES

New Zealand made several amendments to the Act in 2017 to reduce these disparities, such as setting measurable outcomes, developing more partnerships with – and delegating justice system processes to – Māori organizations, and supporting cultural competency of justice system actors. At its passage in 1989, the Act was imbued with Māori cultural rhetoric and elements but was not an indigenous method of dispute resolution. Māori activists argue that for any intervention to be effective, the Māori must have more ownership of the process and must be involved in the identification of community needs, as well as designing, delivering and evaluating the interventions.

Policy Recommendations

THOSE MOST HARMED BY THE SYSTEM MUST BE INTEGRAL TO THE DESIGN OF ITS TRANSFORMATION

Māori pressure helped to reform New Zealand’s youth justice system, with the understanding that a system of justice that is rooted only in the values and traditions of the majority culture is a form of institutionalized racism. Participation by marginalized populations in the form and substance of the system is essential for it to have legitimacy and, ultimately, to be successful. One could argue that New Zealand’s failure to organize a Māori-centered system of justice has led to the on-going overrepresentation of Māori youth in the justice system.

SHRINK THE SYSTEM DRASTICALLY

New Zealand downsized its youth justice system significantly. Over 75% of youth are handled through police warnings or diversion.¹⁵ Youth face serious and prolonged harms from contact with the juvenile justice system whether they have a glancing contact or deep engagement through incarceration.¹⁶ Yet, most youth will naturally age out of delinquent behaviors and are best assisted in this process through community- and family-based approaches rooted in youth development principles. After New Zealand drastically reduced arrests and confinement, the overall youth crime rate initially remained stable and recently has decreased.¹⁷

ORIENT THE FORMAL SYSTEM AROUND RESTORATIVE JUSTICE

Restorative practices can be a transformational approach to a community's response to crime. New Zealand has shifted from a retributive approach, focused on determining blame and administering punishment, to a restorative one, in which crime is viewed as a violation of people and relationships creating obligations for the responsible party to right the harm.¹⁸ There have been many positive impacts from the use of restorative practices in New Zealand, including high victim satisfaction (82%) with the family group conferences in which they participated.¹⁹

INTRODUCTION

Thirty years ago, New Zealand found itself with a broken youth justice system that was overburdened, ineffective, and had resulted in an incarceration rate for young people that was one of the highest in the world.²⁰ In addition, the system had a disparate and negative impact on indigenous Māori youth (of Polynesian ethnicity) compared to white youth (descendants of the European colonizers). Between 1980 and 1984, rates for Māori youth entering the system were more than six times higher than for non-Māori youth and disproportionate numbers of young Māori received custodial sentences compared with non-Māori youth.²¹

In fact, the system was riddled with problems. A 1987 report found that the police did not have confidence in the efficacy of the diversion systems and thus used them infrequently, preferring to make an arrest that would lead to prosecution. People also criticized the failure to sufficiently involve communities and families in the process, a lack of understanding and participation by youth, and the sense that diversion, when used, was actually having a “net-widening” effect for youth with petty offenses.²² For the many youth who were not diverted, they faced a court system that intervened too heavily in the name of rehabilitation and used alienating court processes that young people and their parents felt unable to effectively participate in or understand.²³

To address this situation, New Zealand passed groundbreaking legislation in 1989 – the Children’s and Young People’s Well-being Act (the Act), also called the Oranga Tamariki Act,²⁴ which restructured their youth justice system. The Act both fundamentally and dramatically shrank the youth justice system and paved the way for a restorative justice approach.²⁵

The United States now finds itself with a youth justice system plagued by similar problems to those New Zealand faced thirty years ago – in far too many jurisdictions throughout the country the youth justice systems are overburdened and ineffective, resulting in the United States having the dubious distinction of the highest youth incarceration rate in the world.²⁶ As in New Zealand, youth of color in the United States are significantly, disproportionately represented at every stage of the youth justice system compared to white youth.²⁷

Goals of the Children’s and Young People’s Well-Being Act

Diversion

Keep young people out of the courts and prevent labelling them as offenders.

Accountability

Hold youth accountable by having them accept responsibility for their actions and repair the harm they have caused.

Victim Involvement

Address victims’ needs and provide them with an opportunity to participate in the process.

Family Engagement

Involve the youth’s family in the process to encourage the young person to make good decisions and provide them with needed support.

Allan MacRae and Howard Zehr, *The Little Book*

The United States, however, faces some challenges that are distinct from New Zealand. New Zealand has a national justice system and police force. Therefore, any legislation that it passes changes the justice system throughout the country. In the United States, states and localities have their own laws, regulations, and policies governing their youth justice and law enforcement systems. While the United States can pass federal laws that affect state-level justice systems, our federalist system prohibits the federal government from mandating state compliance; rather, it must encourage compliance with federal policy through various carrots and sticks, such as penalties for non-compliance and/or increased funding for full compliance.²⁸

While the change levers for our two countries vary, there are also many similarities which make New Zealand's approach worth examining. New Zealand has made great strides in reducing the institutionalization and court contact of youth through legislatively-mandated diversion practices and the utilization of restorative justice practices that engage youth, their families and communities in the justice process. Instructively, while Māori-led agitation for change against injustice was one impetus for passing the Act, it has not ultimately resulted in a reduction of the disproportionality of Māori youth involved in the justice system.

This publication is focused on what the New Zealand model can teach us about the successes and challenges in transforming an overgrown justice system that disproportionately impacts youth from the non-dominant culture. Emerging from these lessons, we make the following policy recommendations.

POLICY RECOMMENDATIONS

THOSE MOST HARMED BY THE SYSTEM MUST BE INTEGRAL TO THE DESIGN OF ITS TRANSFORMATION

Māori pressure helped to reform New Zealand’s youth justice system, with the understanding that a system of justice that is rooted only in the values and traditions of the majority culture is a form of institutionalized racism. Participation by marginalized populations in the form and substance of the system is essential for it to have legitimacy and, ultimately, to be successful. One could argue that New Zealand’s ultimate failure to organize a Māori-centered system of justice has led to the on-going overrepresentation of Māori youth in the justice system.

SHRINK THE SYSTEM DRASTICALLY

New Zealand downsized its youth justice system significantly. Over 75% of youth are handled through police warnings or diversion.²⁹ Youth face serious and prolonged harms from contact with the juvenile justice system whether they have a glancing contact or deep engagement through incarceration.³⁰ Yet most youth will naturally age out of delinquent behaviors and are best assisted in this process through community- and family-based approaches rooted in youth development principles. After New Zealand drastically reduced arrests and confinement, the overall youth crime rate initially remained stable and recently has decreased.³¹

ORIENT THE FORMAL SYSTEM AROUND RESTORATIVE JUSTICE

Restorative practices can be a transformational approach to a community’s response to crime. New Zealand has shifted from a retributive approach, focused on determining blame and administering punishment, to a restorative one in which crime is viewed as a violation of people and relationships creating obligations for the responsible party to right the harm.³² There have been many positive impacts from the use of restorative practices, including high victim satisfaction (82%) with the family group conference that they attended.³³

RECOMMENDATIONS TO TRANSFORM A YOUTH JUSTICE SYSTEM

1. Those most harmed must be integral actors in the redesign process.
2. Shrink the system dramatically.
3. Orient the remainder around restorative justice processes.

OVERVIEW OF THE CHILDREN'S AND YOUNG PEOPLE'S WELL-BEING ACT 1989

Hailed as “a new paradigm,” the Children’s and Young People’s Well-being Act 1989 (the Act), also called the Oranga Tamariki Act 1989,³⁴ established principles and practices to further the goals of reducing youth involvement with the courts, promote diversion, empower victims, strengthen families and communities, and utilize culturally appropriate practices.³⁵ The object of the Act was “to promote the wellbeing of children, young persons, and their families and family groups.”³⁶ Through the processes New Zealand developed and implemented to reduce the use of court processing, particularly the Family Group Conference, New Zealand became one of the first youth justice systems to legislate and make widespread use of restorative justice practices.³⁷

Specifics of the Act

The Act represented a seismic shift in youth justice that, in large part, achieved the objectives discussed above by instituting the following five practices.³⁸

Limiting arrest - Requiring the use of police alternative responses such as warnings and diversion instead of arrests and severely limiting the police’s power to arrest without a warrant. Arrest occurs only in about 12% of all cases of youth offending.³⁹

Separating care and protection from justice issues - The Act maintained the separation of the Family Court’s handling of care and protections issues (for 10 to 13-year-olds, “children”) from the Youth Court’s handling of justice issues (for 14 to 17-year-olds, “young persons”).⁴⁰ There have been two significant changes to this age breakdown since enactment of the Act. In 2010, amendments to the Act extended jurisdiction of the Youth Court to include 12 and 13-year-olds charged with serious or recidivist offenses.⁴¹ In 2017, the age of Youth Court jurisdiction was raised to 17 for less serious offenses, to take effect in 2019.⁴²

Establishing the Family Group Conference (“Conference”) as a mechanism to avoid charging, and as the prime decision-making mechanism for those youth who are not diverted from the system and do not deny the charges.

Using formal court processing as a last resort, except in cases of murder and manslaughter.

Engaging the family - Establishing principles that emphasize involving the family group in all decision-making and interventions. Māori cultural practices were promoted in the original Act, in part, through legislative principles which encouraged participation in decision-making on the case by a youth’s “whanau” (extended family), “hapū (clan), “iwi” (tribe), as well as their family group, and stressed the importance of maintaining and strengthening these ties.⁴³

In July of 2017, New Zealand amended the Act and bolstered the provisions connected to Māori culture in several areas, for instance by promoting services that are culturally appropriate and that affirm “mana tamaiti (tamariki)” – or the child’s intrinsic value and dignity.⁴⁴ The attention paid by the original Act and its amendments to preserve Māori cultural practices, however, does not supersede the underlying structure for the justice system, which remains, fundamentally, a western model.

GLOSSARY

Hapū – clan

Iwi - tribe

Mana tamaiti (tamariki) –the child’s intrinsic value and dignity.

Marae -- a Māori community hub

Whanau – extended family

Outcomes

A far smaller system: The Act resulted in significant decreases in arrests, in the use of court proceedings, and in youth imprisonment. Most of the offenses committed by children and young people are now handled by police warnings or pre-arrest diversion without court referral.⁴⁵

No increase in youth crime: Youth crime has remained stable or dropped over the decades. Between 1989 and 2003, youth crime held steady at 22 % of all offending.⁴⁶ More recently, from 2011 to 2017, youth crime declined by 33%.⁴⁷

Effective use of restorative justice practices for serious cases: Family Group Conferences are integrated into the justice system, forming the core of Youth Court processing. Conferences are the normal way to handle most cases significant enough to merit moving beyond a warning or diversion and enable decreased reliance on judicial decision-making.⁴⁸

Increased victim satisfaction: A large majority of victims (82%) reported satisfaction with the Family Group Conference they attended, according to a 2011 study.⁴⁹

Māori youth left behind: The impact on Māori youth is more troubling. The over-representation of Māori youth in the justice system has increased and there is evidence of Māori discontent with the family group conferences.⁵⁰

A DEEPER DIVE INTO THE THREE CHANGE COMPONENTS

New Zealand's transformation of its justice system can be summarized by three core elements: 1) a community-led response to systemic disparities; 2) a drastic downsizing of the system itself; and 3) integration of restorative practices.

A Community-Led Response to Systemic Disparities

In New Zealand, as in the United States, the highest proportion of youth involved with the justice system have historically been those youth that are a marginalized, minority population in the country – in the case of New Zealand, this is the indigenous Māori youth. Between 1980 and 1984, rates for Māori in trouble with the law were over six times higher than for non-Māori. Disproportionate numbers of young Māori also received custodial sentences compared with non-Māori youth.⁵¹ New Zealand's Act made significant changes to their youth justice system, which greatly lowered the number of all youth arrested and charged but did not affect the disparate treatment of Māori youth.

MĀORI ACTIVISM HELPS LEAD TO CHANGES IN THE YOUTH JUSTICE SYSTEM

New Zealand was colonized by the British in the nineteenth century, after which the British Crown slowly dispossessed the indigenous Māori of the vast majority of their land through wars, confiscation, and purchases. By the end of the nineteenth century, most land was no longer under Māori ownership.⁵² In addition to land dispossession, the Māori were economically and socially disadvantaged.⁵³ In the 1970's, the Māori rose up with grievances over further attempts by the Crown to confiscate land with passage of the 1967 amendment to the Māori Affairs Act. The rise of a young, radical, politically active Māori leadership mirrored events occurring in other countries, such as Canada and the United States, and was caused by factors such as overt assimilationist government policies, institutionalized racist government practices, and the economic downturn. This time period was characterized by violent protests and incidents of civil disobedience in all three jurisdictions in the 1960s and 1970s.⁵⁴

Māori activism led to a wholesale review of much of New Zealand's statutes, including the Children and Young Persons Act of 1974. Subsequently, the Minister of Justice issued a 1986 report entitled, 'Te Whaingā I Te Tika,' ("In Search of Justice"), which claimed: "The present system is based wholly on British system of law and justice, completely ignoring the cultural systems of the Māori..."⁵⁵

Māori leaders pointed out that New Zealand had imported a western justice system that was not in keeping with their cultural traditions. In traditional Māori culture, the whole community was involved in the system of justice with a focus on repair rather than blame. The Māori tradition focused on why the offense was committed and was concerned more with healing and problem-

solving than with punishment. Māori leaders argued that the Western system, by ignoring the values and traditions of the indigenous people, was a form of institutionalized racism.⁵⁶ A 1987 report of the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare (the “Puao-te-ata-tu [day break]” report) confirmed this finding of institutionalized racism within the Department of Social Welfare. It stated that the national welfare structures had evolved to be rooted in the values, systems and viewpoints of one culture only. Participation by minorities was conditional on the subjugation of their own values and systems to those of ‘the system’ of the power culture.⁵⁷

The original bill that was introduced in 1986 was met with widespread public dissatisfaction, with the Māori people particularly critical of its lack of culturally relevant approaches to care and protection and offending issues. Government leaders traveled to Māori and Pacific Island centers throughout the country to hear how to improve the bill; this information was used in drafting the Children’s and Young People’s Well-being Act of 1989.⁵⁸ This legislation represented the first time that the concerns expressed by the Māori regarding removal of children from their whānau (family), hapū (clan) and iwi (tribe) were directly addressed in the principles of the Act, with the family and native whānau statuses clearly recognized and protected.⁵⁹ While this policy change was imbued with Māori cultural rhetoric and elements, it still did not do much to empower Māori.⁶⁰

RANGATAHI COURTS ESTABLISHED (2008)

The creation of Rangatahi Courts in 2008 emerged from the third principle in the Act, which called for the strengthening of the whānau (family), hapū (clan) and iwi (tribe). The Rangatahi Courts work within the Youth Court framework established by the Act – operating with the same laws and consequences – but are informed by Māori values and are meant to reduce the overrepresentation of Māori youth in the youth justice system.⁶¹

Youth can choose to have their Family Group Conference plans monitored by a Rangatahi Court. If they do, then all subsequent Court appearances until the plan is completed are held on the marae venue – a Māori community hub – and Māori elders are involved in follow-up activities where appropriate. Typically, the young person appears at the Court every two weeks, and each hearing usually involves the same judge.⁶² The Courts support Māori cultural practices and Māori language and protocols are incorporated as part of the court process. It has been described as a way for Māori youth to learn about who they are, where they are from, and where they fit in as young Māori people in New Zealand.⁶³

There are now fourteen Rangatahi Courts throughout New Zealand as well as two Pasifika Courts in Auckland that were recently established to serve Pacific Islander youth. A recent analysis indicated that young people who appeared in a Rangatahi Court from 2011 to 2013 had a 6% lower rate of reoffending than comparable Māori youth who appeared in mainstream youth courts.⁶⁴

ENDURING RACIAL DISPARITIES

The increasing disproportionate representation of Māori youth is probably the biggest challenge to the New Zealand youth justice system.⁶⁵ While the numbers of young Māori charged in the Youth Court have decreased, it has been at a lower rate than the decrease for non-Māori.⁶⁶ In fact, Māori youth are disproportionately represented at every stage of the justice process – from arrest through orders for residential care – for the same type of offending as their white counterparts.⁶⁷ While Māori youth aged 14 to 16-years-old comprised 23% of the New Zealand youth population in 2012, they comprised 52% of youth apprehensions, 55% of Youth Court appearances, and 66% of Supervision with Residence orders (the highest Youth Court order before conviction and transfer to the adult District Court).⁶⁸ By 2016, these statistics worsened, so that Māori youth comprised only 25% of New Zealand’s youth population but they comprised 60% of youth apprehensions, 61% of Youth Court appearances, and 72% of Supervision with Residence orders.⁶⁹ In some Youth Courts, over 90% of the youth appearing before the court are Māori⁷⁰ – all of the young people appearing in five of the Youth Courts in 2015 were Māori.⁷¹

REASONS FOR THE DISPARITIES

“The fact that most professional decision-makers in the youth justice system are from the dominant white culture and are rarely identified as working class, contributes directly to this state of affairs.”

– Mike Doolan, Chief Social Worker for Child and Youth Services

There are varied reasons for this disparity. Research from the late 1990s found that most officers believed that some of them were treating Māori youth differently than white youth.⁷² Additional research found that Māori youth were entering the justice system, on average, for less serious offenses than white youth, leading the researchers to suggest that the over-representation of Māori youth was a result of “increased vigilance” by the public and the police regarding Māori youth.⁷³ Since researchers determined that previous offense history was

correlated with reoffending, by entering the justice system more, it means Māori youth are then more likely to continue to re-enter it.⁷⁴

As with minority groups in the United States, decades of historical intergenerational marginalization have contributed to Māori overrepresentation in the justice system.⁷⁵ A 2007 Department of Corrections report on the overrepresentation of Māori (youth and adults) in the justice system concluded that the disparity was due to both justice system bias – in police apprehensions and other key points in the justice system – as well as the greater social and economic disadvantage of the Māori, which correlated with greater offending.⁷⁶ A more recent report by the Iwi Chairs Forum, a Māori leaders organization, also points to the impact of New Zealand’s colonization of the Māori as well as enduring systemic and racial discrimination as a cause of the disparities.

Māori youth comprise 23% of the youth population, but 64% of all 2017 youth court appearances.

Other factors referenced in the report are the high rate of Māori children growing up in poverty, which has “deep emotional costs,” and the de facto housing segregation of Māori into poorer neighborhoods with less access to employment opportunities, education, and services.⁷⁷

Additionally, the system itself has inherent biases as it is still structurally a European model staffed mostly by white professionals. Mike Doolan, the first Chief Social Worker for Child and Youth Services in New Zealand, remarked that “The fact that most professional decision-makers in the youth justice system are from the dominant white culture and are rarely identified as working class, contributes directly to this state of affairs.”⁷⁸ New Zealand Judge Carolyn Henwood also stated that there was a lack of effective engagement with iwi (tribe) and that the system did not address the cultural needs of the Māori.⁷⁹

RESPONSES TO THE DISPARITIES

In July of 2017, New Zealand made many amendments to the Act, several of which addressed the issue of Māori disparities. The chief executive is now required to set measurable outcomes for reducing the disparities of Māori involved in the youth justice system.⁸⁰ In addition, the chief executive must develop strategic partnerships with iwi and Māori organizations to:⁸¹

The 2017 amendments to the Act might lead to increased Māori control over the youth justice process.

- invite proposals and set targets to improve the outcome of justice involved Māori youth;
- engage in a regular exchange of information;
- delegate functions under the Act to Māori organizations; and
- support the cultural competency of justice system stakeholders.

Finally, the chief executive must make a public report at least once a year on the measures taken to implement these changes and the impact on improving outcomes for Māori youth.⁸²

New Zealand has also instituted several programmatic fixes for these disparities. In 2010, the Tūhoe “iwi,” or tribe, in partnership with Whakatane Police, launched the Oho Ake (to awaken) framework, in which youth are given an option to be diverted to a Māori health agency run by the Tūhoe iwi. The Tūhoe utilize a Ngā Pou/Whānau Ora screening tool with the youth to assess the needs of both the youth and their whanau (extended family) to determine the level of intervention required. A four-year evaluation of the 91 referrals from police found that the Oho Ake framework reduced youth offending in the Whakatane area.⁸³

Several underutilized provisions in the Act also have the potential to reduce the overrepresentation of Māori youth in the justice system. For example, the Act permits the Iwi Social Services Departments (which serve the Māori people) to provide for the care and custody of Māori youth involved in the judicial system. But stakeholders rarely take advantage of this provision of the Act.⁸⁴ Another seldom-used provision of the Act allows the Youth Court to obtain a cultural or community report to provide a holistic assessment of the child’s cultural heritage, environment, affiliation, needs and wishes before sentencing a young person.⁸⁵

Finally, Conferences could be moved to more culturally appropriate venues, such as a marae (a Māori community hub) to facilitate better outcomes. Most Conferences are held in the offices of the Child, Youth and Family department, which can create a tense atmosphere for the Māori, many of whom have had negative relationships with state agencies.⁸⁶

Māori criminologists offer additional ideas for reform. Juan Tauri argues that since New Zealand’s family group conferencing is a state hybrid “social control mechanism” that severely restricts Māori judicial autonomy, a better approach would be to empower the Māori to employ these processes as they see fit.⁸⁷ Māori researchers Moyle and Tauri state that for any intervention to be effective, the Māori must be involved in the identification of community needs, as well as designing, delivering and evaluating the interventions.⁸⁸ Ceding further responsibility and resources to the Māori to exert control over the youth justice process and for the care and protection of their youth and communities, as appears to be the intent of some of the 2017 amendments, may be the best way to reduce this disproportionality.

Shrinking the System

The Act instituted major reforms in how youth are handled by police, including limitations on arrests, an emphasis on police driven diversion, and limitations on bringing charges. These reforms greatly reduced the number of youth who are arrested and confined - only 24% of all youth offenses are now formally processed by either a Family Group Conference or by the Youth Court.⁸⁹ The United States could learn from New Zealand’s progress in this area as we have the largest number of youth arrested and confined in the Western world.

LIMITATIONS ON ARRESTS AND CHARGING

The Act severely limits the police’s power to arrest without a warrant.⁹⁰ Arrest is only justified to ensure appearance at Court, to prevent further offending, to prevent witness interference or evidence tampering, or in the case of serious offenses (potential penalty of at least 14 years) if required by the public interest.⁹¹ Therefore, arrest occurs only in about 12% of all cases of youth offending.⁹² Instead, front line police handle many minor incidents (approximately 43% of all youth offending) through a warning to the young person.⁹³ Police record the incident, send the notification to a specialized police unit, Police Youth Aid,⁹⁴ and inform the youth’s parent or guardian.⁹⁵ The young person cannot be charged for an offense for which they were given a warning and evidence related to this offense is inadmissible in any future criminal proceeding.⁹⁶ When the police determine that a warning is an insufficient response to a youth’s behavior, they may refer the case to Police Youth Aid for further assessment.⁹⁷

Arrest occurs in only 12% of all cases of youth offending. The majority of youth are diverted or responded to directly by police.

Police Youth Aid, a specialized and highly trained section of the police force, handle youth with more serious or persistent offending behavior.⁹⁸ The 260 Youth Aid officers across the country have national standards, training, and a handbook to develop consistency.⁹⁹ Police Youth Aid

have a range of actions that they can take including: deciding no further action is needed; issuing a warning; diverting; referring to a Family Group Conference to consider whether to file charges; or pressing charges when they have made an arrest.¹⁰⁰ Note that in non-arrest cases, the police cannot file charges until they have referred it to a Family Group Conference for their recommendation.¹⁰¹

INCREASING INFORMAL DIVERSION

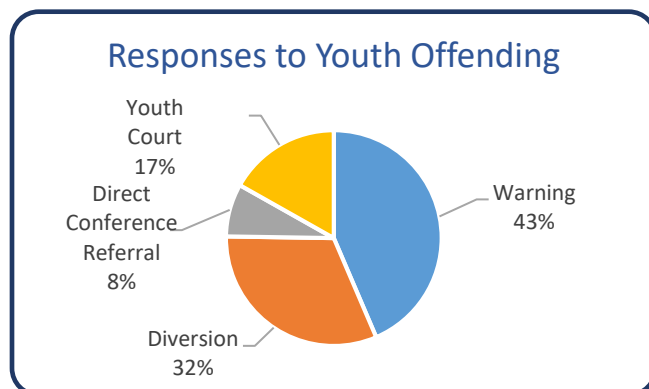
Police Youth Aid handle youth offending through informal diversionary plans in approximately 32% of the cases.¹⁰² These diversion or “Alternative Action” plans can include activities such as listening to a victim’s account of the impact of the offense, returning stolen property, payment for damage, community service work, counseling, writing an apology letter, attending school every day, or doing an assignment on the effects of their actions.¹⁰³ The police sometimes use a risk screening tool to develop targeted interventions aimed at addressing the reasons behind the crime.¹⁰⁴ This diversion system is the entire responsibility of the police to develop and monitor; the court and attorneys are not involved and nothing gets entered on a young person’s record.¹⁰⁵

*Section 208 of the Act:
if alternatives exist, criminal
proceedings should not be
instituted*

If the young person does not complete the diversion plan, then the police may send the case to Youth Court. This happens infrequently, however, because of section 208 of the Act, which states that unless public interest requires otherwise, criminal proceedings should not be instituted if there are alternative means for dealing with the matter.¹⁰⁶

OUTCOMES - SIGNIFICANT REDUCTIONS IN ARRESTS, PROSECUTIONS, AND CONVICTIONS

Few Youth Go Through Formal System: New Zealand has been able to transform their system so that the vast majority of youth are dealt with outside of the formal court system. Overall, more than 75% of youth are dealt with by police warnings or by Police Youth Aid diversion, 8% by direct referral to a Family Group Conference and 17% by charges in the Youth Court.¹⁰⁷ The number of youth charged in Youth Court declined from approximately 6,000 youth, when the Act was passed in 1989, to 1,884 in 2017.¹⁰⁸



Youth Court Outcomes	
Discharged ¹⁰⁹	46%
Acquitted ¹¹⁰	20%
Convicted ¹¹¹	29%
Adult Court ¹¹²	4%

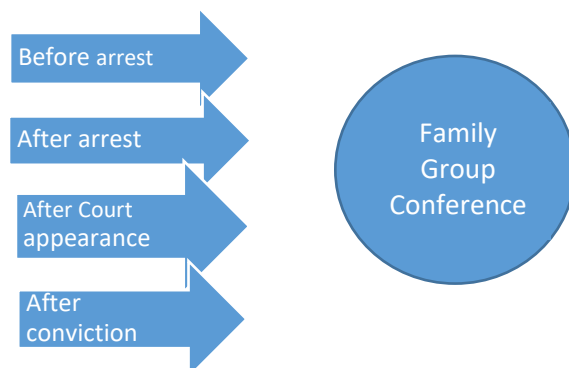
Decrease in Police Apprehensions and Custodial Sentences: Between 1992-2008 apprehension, prosecution and conviction rates for both children (10-13) and young people (14-16) trended downward significantly.¹¹³ The number of young people given custodial sentences has also dramatically declined from close to 300 youth at the time the Act was introduced in 1989 to approximately 30 youth in 2013 (less than .5% of young people appearing in youth court).¹¹⁴ Approximately 560 young people are also held in detention each year.¹¹⁵

Orienting the Formal System Around Restorative Justice

The Family Group Conference (Conference) was a key component of New Zealand’s youth justice system overhaul. Though not defined as “restorative justice” in the Act, the Conference is fundamentally restorative in nature. The aim of the Conference is to help young people take responsibility for their actions and make lasting, positive changes in their lives, while also providing for the interests of the victims. In 2016, just under 2500 young people were involved in Conferences.¹¹⁶

The Conference is integrated into the justice system, forms the core of the Youth Court processing and enables decreased reliance on judicial decision-making. As such, restorative justice in New Zealand is not merely tacked onto an existing system as an add-on program but is the normal way to process most cases where a youth is charged – not just minor cases – with the courtroom serving as a backup.¹¹⁷

WHEN THE FAMILY GROUP CONFERENCE CAN BE INITIATED



The statute allows Conferences to be used both as a diversionary technique (pre-adjudication) and at a (post-adjudication) pre-sentencing stage. This utilization of Conferences intends to make the community, not the court, the center of decision making.¹¹⁸ Youth are sent to a Conference under the following circumstances:

- Pre-Charge: Youth participate in a “pre-charge” Conference if the police want to charge a youth who has not been arrested. The Conference considers the matter and can recommend

either a diversionary plan or that charges be brought. Police can also initiate a pre-charge Conference after an arrest.

- **Post-Charge and Pre-Trial:** If a youth is charged in court and the charges are not denied, then the court must convene a Conference. Note that most charges (98%) are not denied.¹¹⁹ If the young person admits the charges at the Conference (similar to pleading guilty in the U.S.), then the Conference will formulate a plan for the young person.
- **Sentencing:** Conferences are also convened if the charge is admitted or proved in Youth Court and the Conference is needed to determine how to handle the young person or when the police believes a child needs care and protection.

Most of the cases that go to Youth Court are resolved through a Conference plan without the need for a formal court order; in 2013 only 26% of Youth Court appearances resulted in a formal order.¹²⁰

THE MECHANICS OF THE FAMILY GROUP CONFERENCE

A Youth Justice Coordinator, employed by the Department of Social Welfare and expected to be an impartial facilitator, organizes and leads the Conference.¹²¹ Participants in the Conference

Who May Participate in a Conference?

- Coordinator
- Youth
- Important adults to youth such as: family, lawyer, whānau, teachers, health workers
- Victims and victims' supporters

include the youth and anyone who plays an important role in their life, as well as others who may be able to offer support or services, including the young person's lawyer and social worker, members of the family and whānau (extended family), and other professionals such as teachers or health workers. The victim and supporters are also invited to attend.¹²²

Conferences are intended to be adapted to the needs and perspectives of the participants, so there is no specific model that must be used.¹²³ Generally, it may open with a prayer, depending on the cultural or religious background of the family.¹²⁴ The police officer often reads the report out loud and, if the youth agrees, the Conference will go forward (otherwise the police will handle the case or it will be returned to court). The participants discuss the

offense and the impact it has had on both the victim and the young person's family. The victim shares ideas on how the young person can address the harm. The Coordinator can also make expert reports available regarding education, health, and welfare. The family and the young person take time to discuss a plan to bring back to the others. The wider group reviews the plan and finds an appropriate resolution before it is finalized and brought to the court.¹²⁵ The plan is supervised by someone the group selects, such as a family member.¹²⁶

The plan generally enables the young person to make amends and can include community service or getting a part-time job to help pay for damages. The plan can also address the youth's needs, such as anger management or alcohol or drug abuse. Finally, the plan helps the young person set goals for the future, such as life skills, education, and employment.¹²⁷

The court is required to consider the plan but does not have to adopt it. In the vast majority of cases, the Court adopts the plan and then monitors it on a regular basis.¹²⁸ Once the agreement has been successfully fulfilled, the case is formally withdrawn, and no formal court order imposed. If the youth is non-compliant, s/he is referred back to court for formal sanctioning.¹²⁹

Youth who received a direct referral to a Conference, and avoided Court, were less likely to be convicted as an adult and had better life outcomes than similarly situated youth.

FAMILY GROUP CONFERENCES AND MĀORI CULTURE

The Conference is not an adoption of an indigenous or Māori method of dispute-resolution and a rejection of the Western legal system nor does the Act create a Māori framework for responding to youth offending. Rather, the Act seeks to make the established system more culturally appropriate and flexible and offers the opportunity for processes to better reflect the “needs, values and beliefs of particular cultural and ethnic groups” by giving decision-making primacy to family or kinship groups.¹³⁰

The Conference is considered by some to be a “partial amalgamation of traditional Māori and European approaches to criminal justice.”¹³¹ For instance, some parallels can be drawn between Māori tikanga (custom) and kawa (protocol) and the commonly utilized format of the Conference. Many Conferences open with karakia (prayer), those present are introduced, and there is an opportunity for information sharing and consensus decision making, which are all aspects of traditional Māori dispute resolution principles and practices. Regardless, almost all parties agree that the New Zealand restorative justice model is not an indigenous method of dispute resolution.¹³²

All cases brought to Youth Court, except murder and manslaughter, are referred to a Conference.

The Conference, however, has been criticized as a mere co-optation of Māori terms that are layered on top of the dominant culture’s justice structures, without providing an opportunity for real Māori-control over response to crime.¹³³ Māori authors Moyle and Tauri argue that the restorative justice design is based on “Eurocentric notions of ‘best practice’” for responding to social harm and that the process is often neither culturally appropriate nor empowering for Māori youth.¹³⁴

Moreover, the manner in which the Conferences have been implemented has alienated Māori families. Moyle’s in-depth interviews with Māori social workers and families involved in the Conferences identified that there was a lack of cultural responsiveness and capability by the non-Māori professionals as well as a perceived biased application of the rules.¹³⁵ Māori families believed that most non-Māori social workers did not understand how to engage with them, lacked sufficient knowledge of Māori cultural perspectives and operated from a Eurocentric approach.¹³⁶ Māori family participants in the Conference process viewed it as largely negative, culturally inappropriate, and disempowering, which is believed to have hindered their full and meaningful involvement.¹³⁷ Research participants viewed risk-assessment tools as particularly problematic as they did not allow practitioners to consider historical factors, such as

colonization, and contemporary factors, such as systemic discrimination.¹³⁸ All of these issues have created significant barriers to Māori families in attaining positive outcomes from the Conference process.

FAMILY GROUP CONFERENCE OUTCOMES

Notwithstanding the above-described concerns around the Conference process for Māori youth, there are a number of advantages of the Conference process over a typical court process: young people are actively involved in the discussions about their behavior and rehabilitation; victims have the opportunity to express their emotions, share their views, and contribute to decisions about how to move forward; and the family is involved in the decision-making process.¹³⁹ A 2001 study found that most youth sincerely tried to repair harm they had caused and the large majority completed the tasks assigned to them.¹⁴⁰

Conferences are not without problems, which include failure to adhere to statutory timeframes, poor attendance, poorly prepared, resourced, and monitored plans, and insufficient assessments and service provision.¹⁴¹ Some have also suggested that youth be afforded increased due process by being able to consult with counsel before agreeing to a Conference so that they are fully aware of the consequences of admitting guilt and of a failure to adhere to a plan.¹⁴²

Positive Impact on Youth

An in-depth study of the youth justice system over the period from 1998 to 2001, found many positive results for youth that had gone through a Conference:¹⁴³

- 70% had been employed in the last six months;
- 80% reported having close relationships with partners, family, or friends;
- 60% reported not wanting any further involvement in crime; and
- 30% had not reoffended.

Although, a majority of the youth had subsequent involvement in the justice system, most of the new offenses were property offenses followed by traffic offenses and then violent offenses.¹⁴⁴ The study found that youth had decreased recidivism and better life outcomes when they were dealt with in a less restrictive way. For example, when the seriousness of the offense was held constant, youth who received less restrictive plans through a direct referral to a Conference, rather than being charged in Youth Court, were less likely to be convicted as an adult and less likely to have poorer life outcomes. The report recommended diverting youth to the lowest level of the system possible and using the least restrictive penalties consistent with the nature of the offending.¹⁴⁵

Positive Impact on Victims

In 2011, the Ministry of Justice conducted a Restorative Justice Victim Satisfaction Survey in which they surveyed 154 victims who had attended a Conference. Of those, a large majority (82%) of victims were satisfied with the Conference they attended.¹⁴⁶ The majority of victims

who attended felt well prepared and informed and had voluntarily attended. The biggest motivations for attending the Conference were wanting the youth to know the impact of the offense on them, receiving an explanation from the youth, and expressing their feelings directly to the youth. A 2001 study found that compared to the court system, victims were much more likely to receive an apology and some reparation for damages. Additionally, victims felt reassured to meet the young person and learn how the youth was being held accountable and what actions were being taken to prevent re-offending.¹⁴⁷

Unclear Impact on Families

One of the objectives of the Act is to promote the welfare of the family.¹⁴⁸ Through the Conference, families are asked to be fully involved in the process of determining a response to the young person's behavior. Whether the Conference actually strengthens families is difficult to determine.¹⁴⁹ A 2001 study found that Conferences were having difficulty in enhancing the well-being of the young people and their families due in part to a lack of drug, alcohol, and mental health programs, and inadequate family supports.¹⁵⁰ Additionally, as authors Moyle and Tauri stated, for the Conference “to work as a culturally responsive, empowering and whanau inclusive process for Māori participants, then it must be delivered by, or at the very least reflect the needs and cultural contexts of the communities within which it is practiced.”¹⁵¹

CONCLUSION

New Zealand provides an illustrative and cautionary tale about the potential for the uprising of indigenous, marginalized and oppressed populations to effectively re-write justice systems so that they no longer serve as a tool for continued oppression. Partly due to increased Māori political power, New Zealand revamped its justice system so that it greatly reduced the formal court processing and institutionalization of its youth, and implemented family group conferences that have engaged youth, families and communities in a restorative justice process that has had some positive impacts. And yet, despite these advances, the disproportionality of Māori youth in the justice system has increased, rather than decreased, and many Māori still do not feel that the youth justice system is sufficiently culturally responsive and empowering.

What can, or should we take from the New Zealand example? Certainly, many of New Zealand's practices hold promise for the United States, such as legislating limitations on police ability to arrest, heavier use of diversion, limitations on charging cases in court, and raising the age at which youth can be tried in court. Following New Zealand's clear separation of care and protection issues from justice issues could also help to reduce net widening of the justice system. And inarguably, integrating restorative practices as an inherent part of the justice system – rather than tacking on programs for youth with low-level offenses – holds promise as a way to address youth behavior that is more satisfying to all parties involved – youth, family, community, and victim – and can more effectively help to set youth on a positive development trajectory.

It is too early to assess the impact of New Zealand's recent amendments to the Act to address the on-going and increasing disproportionality of Māori youth in their justice system. Their work to provide more culturally appropriate diversionary services, venues for proceedings, social services, and screenings and assessments, and to more heavily engage Māori families and communities in helping youth, has yet to be fully measured. However, if the United States' experience with its own entrenched problems with disparate treatment of youth of color is relevant, we can assume that without understanding and addressing root causes of disproportionality, which are connected to implicit and explicit bias and structural racism, New Zealand will continue to struggle with these disparities and will fall far short of a truly just system.

GLOSSARY

Hapū – clan or sub-tribe

Iwi - tribe

Mana tamaiti (tamariki) - the intrinsic value and inherent dignity derived from a child's or young person's whakapapa (genealogy) and their belonging to a whānau, hapū, iwi, or family group, in accordance with tikanga Māori or its equivalent in the culture of the child or young person

Māori – the indigenous Polynesian people of New Zealand

Marae – a communal and sacred meeting ground for Māori communities. In New Zealand it generally consists of a fenced-in complex of carved buildings and grounds that belongs to a particular iwi (tribe), hapū (sub tribe) or whānau (family).

Pākehā – a Māori language term for non- Māori or New Zealanders who are of European descent

Rangatahi – younger generation or youth

Tikanga Māori – Māori customary law and practices

Whakapapa - the multi-generational kinship relationships that help to describe who the person is in terms of their mātua (parents), and tūpuna (ancestors), from whom they descend

Whānau - extended family

Whanaungatanga —the purposeful carrying out of responsibilities based on obligations to whakapapa; the kinship that provides the foundations for reciprocal obligations and responsibilities to be met; and the wider kinship ties that need to be protected and maintained to ensure the maintenance and protection of their sense of belonging, identity, and connection

APPENDIX A: Age Distinctions in New Zealand's Justice System

The justice processes in New Zealand differ for youth aged 10 to 13-years-old and those aged 14 to 17-years-old. Pursuant to the Act, most youth aged 10 to 13-years-old are handled through the “child offending process” and youth aged 14 to 17-years-old are handled through the “youth justice process.”

Youth Aged 10 to 13-Years-Old

The majority of children who offend are handled by the police with alternative action or diversion, such as writing an apology letter or paying for the damage.¹⁵² For more serious offenses alleged to be committed by children aged 10 to 13-years-old (other than murder and manslaughter), the police may consult with the Youth Justice Coordinator to determine whether a Family Group Conference (Conference) should be convened. If convened, this could result in an application to Family Court for a declaration by the Court that the child is in need of care and protection. This cannot, however, result in a conviction for an offense.¹⁵³

The Youth Court has jurisdiction over children aged 10 and above for the offenses of murder or manslaughter.¹⁵⁴ Youth Court jurisdiction was further expanded for certain categories of offenses in 2010. New Zealand, as part of a campaign to “get tough” on children who commit offenses, enacted amendments to the Act in their “First 100 Days” program.¹⁵⁵ One of these amendments extended jurisdiction of the Youth Court to include 12 and 13-year-olds charged with serious or recidivist offenses.¹⁵⁶

Youth Aged 14 to 17-Years-Old

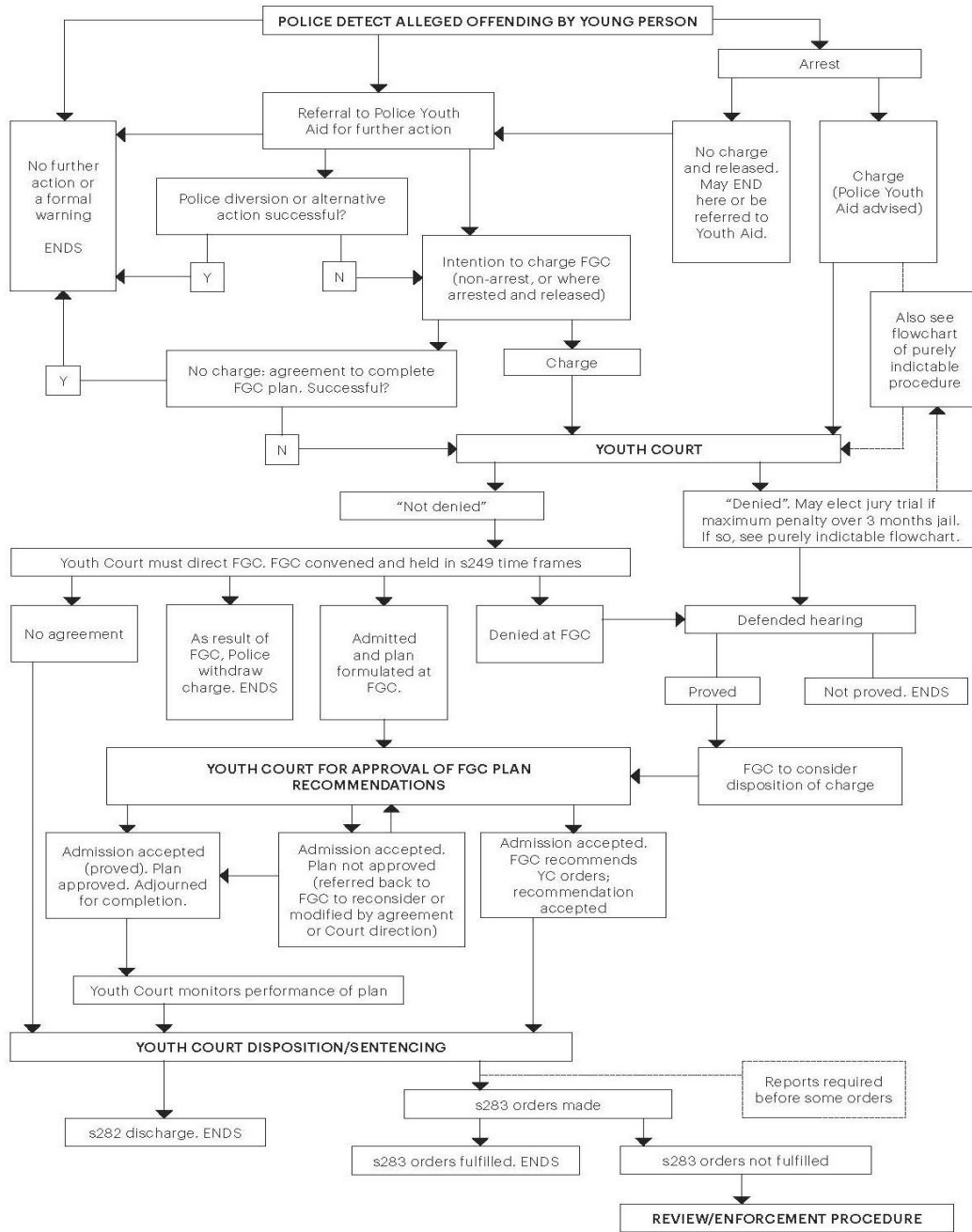
The legal age of criminal responsibility for the youth justice system pursuant to the Children’s and Young People’s Well-being Act 1989 was initially 10 to 16-years-old and was raised to 17-years-old for all but the most serious offenses in July 2017 through amendments to the Act, which will take effect in 2019.¹⁵⁷

Youth aged 14 to 17-years-old, “young persons,” can be issued a warning or referred to the Police Youth Aid Section and can be arrested in limited circumstances. When a warning is issued, the young person cannot be charged for that offense. If the young person is later charged with another offense, information relating to that previous warning cannot be disclosed, unless on behalf of the defense.¹⁵⁸ If referred to Police Youth Aid, they may be given a diversion plan, or “alternative action.” Youth charged with more serious offenses or who have previously been involved in the justice system participate in a Family Group Conference and/or can be charged in Youth Court.¹⁵⁹

Youth aged 14 to 17-years-old can ultimately be tried in Youth Court or High Court (adult criminal court) depending on the offense. The 2010 amendments provided Youth Court with

some more punitive measures for dealing with young people including: increasing residential orders from a maximum of 3 months to 6 months; allowing orders that require parents and young people to attend parenting programs; obliging young people to attend mentoring and alcohol and drug rehabilitation programs for up to 12 months; and intensive supervision orders for up to 12 months when young people fail to comply with court orders, which can result in judicial monitoring that includes electronic monitoring.¹⁶⁰

APPENDIX B: Flow Chart of Justice Process



SOURCE: Iwi Chairs Forum, “Rangatahi Maori and Youth Justice – Oranga Rangatahi” (Henwood Trust, New Zealand Law Foundation, and Todd Foundation, March 2018): 75, <http://iwichairs.maori.nz/wp-content/uploads/2018/02/RESEARCHRangatahi-Maori-and-Youth-Justice-Oranga-Rangatahi.pdf>

ENDNOTES

¹ The legislation was originally titled the “Children, Young Persons and their Families (Oranga Tamariki) Legislation Act 1989” and was changed in 2017. Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, s. 5, <http://bit.ly/2JcARy1>.

² Emily Watt, “A History of Youth Justice in New Zealand” (New Zealand: Dept. for Courts, 2003): 26, <http://bit.ly/2GTGRx6>.

³ Judge Andrew Becroft, “Youth Justice – The New Zealand Experience Past Lessons and Future Challenges” (2003): 11. Paper presented at the “Juvenile Justice: From Lessons of the Past to a Road for the Future” conference, Canberra: Australian Institute of Criminology, Sidney, Australia, Dec. 1-2, 2003, <http://bit.ly/2ImvQ19>.

⁴ Special Representative of the Secretary-General (SRSG) on Violence Against Children, “Promoting Restorative Justice for Children” (New York: 2013), 7, <http://bit.ly/2q3np6N>.

⁵ Becroft, “Youth Justice – The New Zealand Experience,” 33.

⁶ Becroft, “Youth Justice – The New Zealand Experience,” 8. See the Appendix for further information on the legal processes for handling children (considered ages 10 to 13-years-old) and youth (considered ages 14 to 17-years-old) in New Zealand.

⁷ District Court of New Zealand, “Annual Report 2017” (2017), <http://bit.ly/2ILTyrC>; Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, s. 7.

⁸ Allan MacRae and Howard Zehr, *The Little Book of Family Group Conferences: New Zealand Style* (Intercourse, PA: Good Books, 2004), 13-14.

⁹ Prior to passage of the Act the number of young people charged in youth court had reached a high of 8000 in 1986 and then had begun decreasing. Judge Andrew Becroft, “Signed, Sealed – (but not yet fully) Delivered” (2014): 16. Paper delivered at the “Healing Courts, Healing Plans, Healing People: International Indigenous Therapeutic Jurisprudence Conference,” Oct. 9, 2014, <https://bit.ly/2E5hy60>; New Zealand, Ministry of Justice, “Youth Prosecution Statistics: Data Highlights for 2017” (March, 2018):1, <http://bit.ly/2HfWpLL>; Note that New Zealand’s youth population as of their most recent census in 2013 was 299,000 children between the ages of 10 – 14 years old and 190,000 youth between the ages of 15 – 17 years old. New Zealand, Children’s Commissioner, “Population, Ages, and Ethnicities of Children,” Infographic (June 2016), <http://bit.ly/2q1T34E>. For comparison, there were 291,888 children in New Zealand between the ages of 10 – 14 years old in 1986 and 184,149 youth between the ages of 15 – 17 in 1986. New Zealand, Ministry of Social Development, “Children and Young People: Indicators of Wellbeing in New Zealand” (Wellington, New Zealand: December 2004): 14, <http://bit.ly/2q0w7n4>.

¹⁰ MacRae and Zehr, 10.

¹¹ New Zealand, Ministry of Justice, “Youth Prosecution Statistics: Data Highlights for 2017,” 2.

¹² Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 46.

¹³ Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 34.

¹⁴ New Zealand, Department of Corrections, Policy, Strategy and Research Group, “Over-representation of Maori in the Criminal Justice System: An Exploratory Report” (Sept. 2007): 37-40, <https://bit.ly/2GDXvRn>.

¹⁵ New Zealand, Ministry of Justice, Youth Court in New Zealand, “Youth Justice: Youth Justice Principles and Processes,” accessed on April 3, 2018, <http://bit.ly/2GAnEgQ>.

¹⁶ Juvenile Justice Information Exchange, Juvenile Justice Resource Hub, “Community-Based Alternatives: Key Issues/Why We Need Alternatives to Formal Juvenile Justice System Processing and Incarceration,” n. 6-10, accessed April 24, 2018.

¹⁷ Becroft, “Youth Justice – The New Zealand Experience,” 36; New Zealand State Services Commission, “Better Public Services: Reducing Crime,” accessed Aug. 24, 2017, <http://www.ssc.govt.nz/bps-reducing-crime>; New Zealand, Police National Headquarters, “New Zealand Crime Statistics 2014” (April, 2015): 13, <https://bit.ly/2axRova>. The rate of children aged 10-13 coming to the attention of the police for offending dropped by 33% between 2009 and 2013. New Zealand, Ministry of Social Development, “Offending by Children in New Zealand” (September 2016): 1, <http://bit.ly/2Hu7oPC>.

¹⁸ New Zealand, Ministry of Justice, “Victim Satisfaction with Restorative Justice: A Summary of Findings” (Wellington, NZ: September 2011):1, <https://bit.ly/2sx57eO>.

¹⁹ New Zealand, Ministry of Justice, “Victim Satisfaction with Restorative Justice,” 1.

²⁰ MacRae and Zehr, 10.

²¹ MacRae and Zehr, 10.

²² Watt, 14.

²³ Watt, 15.

²⁴ See Note 1.

²⁵ Judge Andrew Becroft and Sacha Norrie, “Out of Court (And Sometimes In) – Playing to Win: Restorative Practices and Processes of the New Zealand Youth Justice System,” *Restorative Practices in Action Journal: For School and Justice Practitioners* (Albany, NY: New York State Permanent Judicial Commission on Justice for Children, 2015): 101-102, <http://bit.ly/2q3mUtr>.

²⁶ The Annie E. Casey Foundation, “Youth Incarceration in the United States” (Infographic), <https://bit.ly/2m24iYh>.

²⁷ W. Haywood Burns Institute, “Stemming the Rising Tide” (Oakland, CA: 2016):1, <http://bit.ly/2HkLCxw>; Juvenile Justice Resource Hub, “Racial-Ethnic Fairness,” accessed April 9, 2018, <https://jjie.org/hub/racial-ethnic-fairness/>.

²⁸ The Juvenile Justice Delinquency and Prevention Act (JJDP A) is a good example of this type of federal law. It sets out federal standards for the care and custody of youth in the justice system but states must opt into it with the promise of federal funding to encourage participation. Juvenile Justice and Delinquency Act of 2002, 42 U.S.C. § 5633 (2002).

²⁹ New Zealand, Ministry of Justice, Youth Court in New Zealand, “Youth Justice: Youth Justice Principles and Processes,” accessed on April 3, 2018, <http://bit.ly/2GAnEgQ>.

³⁰ Juvenile Justice Information Exchange, Juvenile Justice Resource Hub, “Community-Based Alternatives: Key Issues/Why We Need Alternatives to Formal Juvenile Justice System Processing and Incarceration,” n. 6-10, accessed April 24, 2018.

³¹ Becroft, “Youth Justice – The New Zealand Experience,” 36; New Zealand State Services Commission, “Better Public Services: Reducing Crime,” accessed Aug. 24, 2017, <http://www.ssc.govt.nz/bps-reducing-crime>; New Zealand, Police National Headquarters, “New Zealand Crime Statistics 2014,” 13.

³² Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Herald Press, Scottsdale, PA: 2005), 180-81.

³³ New Zealand, Ministry of Justice, “Victim Satisfaction with Restorative Justice: A Summary of Findings,” 1.

³⁴ See Note 1.

³⁵ Watt, 26.

³⁶ Watt, 1; citing the Children's and Young People's Well-being Act 1989, s 4.

³⁷ The concept of "restorative justice" was a relatively new one at the time so was not mentioned in the 1989 Act but was later added into the 2017 amendments in describing the actions that Family Group Conferences could take as restorative justice actions. Becroft, "Youth Justice – The New Zealand Experience," 11; Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, s. 111, 112.

³⁸ Becroft and Norrie, 81-83.

³⁹ Becroft, "Youth Justice – The New Zealand Experience," 33.

⁴⁰ Becroft, "Youth Justice – The New Zealand Experience," 8-9. See Appendix A for further information on the age distinctions in New Zealand's justice system.

⁴¹ Hannah Wilson, "Swings and Roundabouts: Evaluating the Children, Young Persons, and their Families (Youth Courts Jurisdiction and Orders) Amendment Act of 2010, s 14" *Victoria University of Wellington Law Review* 42 (2011): 562, <http://bit.ly/2q2Yj81>; citing Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010, s 6. A child aged 12-13 years old can be tried in Youth Court if they are charged with an offense where the maximum penalty is imprisonment for life or at least 14 years or if the child is a "previous offender" and their current offense carries a penalty of 10 – 14 years. The child is considered a previous offender if they were previously found to be a child in need of care or protection on the grounds of an offense where the maximum penalty is life or at least 10 years or they were previously convicted of murder, manslaughter, or an offense for which the maximum penalty is life or at least 14 years. Children and Young People's Well-being Act 1989, s 272.

⁴² District Court of New Zealand, "Annual Report 2017" (undated): 27, <http://bit.ly/2ILTyrc>; Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, s. 113, 114, 115.

⁴³ Children, Young Persons and their Families Act (1989), s 208.

⁴⁴ Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, s. 9, <http://bit.ly/2qVs4YH>.

⁴⁵ New Zealand, Office of the Ministry for Social Development and Office of the Minister of Police, "Investing in Children Legislative Reform: Underpinning the New Operating Model – Youth Justice" (2016): 3, <https://bit.ly/2q1zmK5>.

⁴⁶ Becroft, "Youth Justice – The New Zealand Experience," 36.

⁴⁷ New Zealand State Services Commission, "Better Public Services: Reducing Crime."

⁴⁸ MacRae and Zehr, 13-14.

⁴⁹ New Zealand, Ministry of Justice, "Victim Satisfaction with Restorative Justice: A Summary of Findings," 1.

⁵⁰ New Zealand, Ministry of Justice, "Youth Prosecution Statistics: Data Highlights for 2017," 2; Paora Crawford Moyle and Juan Marcellos Tauri, "Maori, Family Group Conferencing and the Mystifications of Restorative Justice," *Victims and Offenders* 11:1 (Feb. 2, 2016): 15-16, <https://bit.ly/2uGYLYu>.

⁵¹ Watt, 16.

⁵² Museum of New Zealand, "Maori in the 20th Century: Maori Land Rights," accessed Jan. 17, 2017, <https://bit.ly/2EeDETE>; New Zealand Tourism, "Treaty of Waitangi," accessed Nov. 7, 2017, <https://bit.ly/2JeLD71>.

⁵³ Manying Ip, "Maori-Chinese Encounters: Indigine-Immigrant Interaction in New Zealand," *Asian Studies Review* 27:2 (June 2003): 227, <http://bit.ly/2rCKZva>.

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- ⁵⁴ Juan Tauri, “Family Group Conferencing: A Case-Study of the Indigenization of New Zealand’s Justice System,” *Current Issues in Criminal Justice* 10:2 (1998):169-70, <https://bit.ly/2EeEWxY>.
- ⁵⁵ Watt, 16.
- ⁵⁶ MacRae and Zehr, 10-11.
- ⁵⁷ Judge Andrew Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 6.
- ⁵⁸ Michael Doolan, “Youth Justice Reform in New Zealand,” *Preventing Juvenile Crime* (1989): 123, <https://bit.ly/2uHjiOC>.
- ⁵⁹ Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 20.
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- ⁶⁶ New Zealand, Ministry of Justice, “Youth Prosecution Statistics: Data Highlights for 2017,” 2.
- ⁶⁷ Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 46.
- ⁶⁸ Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 41-2.
- ⁶⁹ Iwi Chairs Forum, 19.
- ⁷⁰ Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 42.
- ⁷¹ Iwi Chairs Forum, 37.
- ⁷² Gabrielle Maxwell, Venezia Kingi, Jeremy Robertson, Allison Morris, and Chris Cunningham, “Achieving Effective Outcomes in Youth Justice: Final Report” (Ministry of Social Development, Feb. 2004): 294, <https://bit.ly/2GSzDJK>.
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- ⁷⁴ Maxell, et al., 294.
- ⁷⁵ Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 34.
- ⁷⁶ New Zealand, Department of Corrections, “Over-representation of Maori in the Criminal Justice System: An Exploratory Report,” 37-40.
- ⁷⁷ Iwi Chairs Forum, 23-25.
- ⁷⁸ Becroft and Norrie, “Out of Court (And Sometimes In) – Playing to Win,” 85.
- ⁷⁹ Iwi Chairs Forum, 9.
- ⁸⁰ Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, s. 14.
- ⁸¹ *Ibid.*
- ⁸² *Ibid.*
- ⁸³ Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 47.
- ⁸⁴ Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 44; Iwi Chairs Forum, 51.
- ⁸⁵ Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 44.
- ⁸⁶ Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 48.
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- ⁹⁰ Children’s and Young People’s Well-being Act 1989, s 214; Watt, 27-28.
- ⁹¹ Children’s and Young People’s Well-being Act 1989, s 214; Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 11.
- ⁹² Becroft, “Youth Justice – The New Zealand Experience,” 33.
- ⁹³ Becroft, “Youth Justice – The New Zealand Experience,” 13.
- ⁹⁴ Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 17.
- ⁹⁵ Parliamentary Library Research Paper, “Youth Justice in New Zealand: Principles and Procedures” (New Zealand Parliamentary Library: July 22, 2009): 4, <http://bit.ly/2Jho5Ov>.
- ⁹⁶ Ibid.
- ⁹⁷ Ibid; Children’s and Young People’s Well-being Act 1989, s 245; MacRae and Zehr, 14; Watt, 28.
- ⁹⁸ The police started a Juvenile Crime Prevention division in 1958 to educate young people and encourage them not to commit offenses. This later became “Youth Aid.” Gabrielle Maxwell, “Youth Offenders – Treatment of Young Offenders, 1840 – 1980s,” Te Ara – the Encyclopedia of New Zealand, accessed April 3, 2018, <http://bit.ly/2GyCZya>.
- ⁹⁹ Judge Andrew Becroft (March 16, 2016). Phone Interview with Sarah Bryer, Executive Director, National Juvenile Justice Network.
- ¹⁰⁰ See Appendix B – Flow Chart of Justice Process.
- ¹⁰¹ Parliamentary Library Research Paper, “Youth Justice in New Zealand: Principles and Procedures,” 4.
- ¹⁰² New Zealand, Ministry of Justice, Youth Court of New Zealand, “About Youth Court: Before the Youth Court,” accessed April 3, 2018, <http://bit.ly/2q12ZeL>.
- ¹⁰³ New Zealand, Ministry of Justice, Youth Court of New Zealand, “About Youth Court: Before the Youth Court,” accessed April 3, 2018, <http://bit.ly/2q12ZeL>; Becroft, “Youth Justice – the New Zealand Experience, 13-14.
- ¹⁰⁴ Deb Stringer, “A Day in the Life of the Youth Aid Section,” (May 1, 2010), accessed April 3, 2018, <http://bit.ly/2Eh5mPn>.
- ¹⁰⁵ Judge Andrew Becroft (March 16, 2016). Phone Interview with Sarah Bryer, Executive Director, National Juvenile Justice Network.
- ¹⁰⁶ Ibid.; Children’s and Young People’s Well-being Act 1989, s. 208 (a).
- ¹⁰⁷ New Zealand, Ministry of Justice, Youth Court in New Zealand, “Youth Justice: Youth Justice Principles and Processes,” accessed on April 3, 2018, <http://bit.ly/2GAnEgQ>. However, note that the percentage of youth referred to youth court is up from 1990/91 when only 10 % had been referred to youth court. Maxwell, et. al., 299.
- ¹⁰⁸ Prior to passage of the Act the number of young people charged in youth court had reached a high of 8000 in 1986 and then had begun decreasing. Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 16; New Zealand, Ministry of Justice, “Youth Prosecution Statistics: Data Highlights for 2017,” 1. Note that New Zealand’s youth population as of 2016 was 299,000 children between the ages of 10 – 14 years old and 190,000 youth between the ages of 15 – 17 years old. New Zealand, Children’s Commissioner, “Population, Ages, and Ethnicities of Children,” Infographic (June 2016), <http://bit.ly/2q1T34E>. For comparison, there were 291,888 children in New Zealand between the ages of 10 – 14 years old in 1986 and 184,149 youth between the ages of 15 – 17 in 1986. New Zealand, Ministry of Social Development, “Children and Young People: Indicators of Wellbeing in New Zealand,” 14.

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- ¹⁰⁹ The most common outcome in Youth Court is a discharge under Section 282 of the Act, where the charge is dismissed as if it had never been brought. New Zealand, Ministry of Justice, Statistical Bulletin, “Child and Youth Offending Statistics: An Overview of Child and Youth Offending Statistics in New Zealand: 1992 to 2008,” (Wellington, NZ: April 2010): 5, <https://bit.ly/2uOeiMT>.
- ¹¹⁰ New Zealand, Ministry of Justice, Statistical Bulletin, “Child and Youth Offending Statistics,” 6.
- ¹¹¹ Ibid.
- ¹¹² Ibid.
- ¹¹³ Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 16; The child apprehension rate reached a high of 543 per 10,000 child population in 1996 and dropped to 336 in 2008 and the youth apprehension rate was also at a high in 1996 of 1,926 per 10,000 youth population and dropped to 1,572 in 2008. New Zealand, Ministry of Justice, Statistical Bulletin, “Child and Youth Offending Statistics: An Overview of Child and Youth Offending Statistics in New Zealand: 1992 to 2008,” 1. Apprehensions have further declined since 2008. Between 2009/10 to June 2014, the number of ten to sixteen-year-olds apprehended by police declined by 40 percent. Adele Redmond, “Drop in Child Crime Reflects Better Collaboration in Youth Justice” *Stuff* (March 14, 2016), <http://bit.ly/2q23TZg>.
- ¹¹⁴ Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 26.
- ¹¹⁵ New Zealand, “Investing in Children Legislative Reform: Underpinning the New Operating Model – Youth Justice,” 8.
- ¹¹⁶ Iwi Chairs Forum, 32.
- ¹¹⁷ MacRae and Zehr, 13-14.
- ¹¹⁸ MacRae and Zehr, 17.
- ¹¹⁹ Iwi Chairs Forum, 37.
- ¹²⁰ Judge Andrew Becroft, “It’s All Relative: the Absolute Importance of the Family in Youth Justice (a New Zealand Perspective)” (2015): 13. Paper to be delivered at the World Congress on Juvenile Justice, Geneva, Switzerland, January 26-30, 2015, <http://bit.ly/2GNn42x>.
- ¹²¹ Note that while the police are present at the Family Group Conference they have no coordinating role. Judge FWM McElrea, “The New Zealand Model of Family Group Conferences” (1998): 12. Paper prepared for the International Symposium, “Beyond Prisons: Best Practices Along the Criminal Justice Process,” Queen’s University, Kingston, Ontario, Canada (March 15-18, 1998), <http://bit.ly/2GTndBA>.
- ¹²² New Zealand, Oranga Tamariki - Ministry for Vulnerable Children, “Youth Justice – Family Group Conferences,” accessed April 3, 2018, <http://bit.ly/2GuQ12L>.
- ¹²³ MacRae and Zehr, 13.
- ¹²⁴ Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 19.
- ¹²⁵ New Zealand, “Youth Justice – Family Group Conferences,” accessed April 3, 2018; Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 19.
- ¹²⁶ McElrea, 3.
- ¹²⁷ New Zealand, “Youth Justice – Family Group Conferences,” accessed April 3, 2018.
- ¹²⁸ Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 20.
- ¹²⁹ SRSG on Violence Against Children, *Promoting Restorative Justice for Children*, 8; McElrea, 3.
- ¹³⁰ Becroft, “It’s All Relative: The Absolute Importance of the Family in Youth Justice,” 22-23.
- ¹³¹ Becroft, “Youth Justice – The New Zealand Experience,” 5.
- ¹³² Ibid.
- ¹³³ Tauri, “Family Group Conferencing, 170-71.
- ¹³⁴ Moyle and Tauri, 9-10.

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- ¹³⁵ Moyle and Tauri, 13.
- ¹³⁶ Moyle and Tauri, 15-16.
- ¹³⁷ Moyle and Tauri, 18, 22.
- ¹³⁸ Moyle and Tauri, 13-14.
- ¹³⁹ Becroft and Norrie, 83-93.
- ¹⁴⁰ Maxwell, et. al., xviii.
- ¹⁴¹ Becroft, “Youth Justice – The New Zealand Experience,” 39-40.
- ¹⁴² Maxwell, et. al., 12-13.
- ¹⁴³ Maxwell, et. al., 290-91.
- ¹⁴⁴ Approximately two-thirds of the sample had further justice system involvement: nearly half appeared in court within a year of turning 17-years-old; 69% appeared in court within three years; and 22% received a prison sentence within three years. Maxwell, et. al., 291.
- ¹⁴⁵ Maxwell, et. al., 300. Note that a 2002 study also found lower rates of recidivism for youth who had a Conference versus youth court. Of those prosecuted in youth court, 51% re-offended within 18 months and of those that had an Conference which resulted in an intention to charge, 37 % re-offended within 18 months. The Pathways to Resilience Project, “Pathways to Youth Resilience: Youth Justice in New Zealand,” (New Zealand: Resilience Research Centre, Massey University, January, 2013): 12, <https://bit.ly/2uJGaSp>.
- ¹⁴⁶ New Zealand, Ministry of Justice, “Victim Satisfaction with Restorative Justice: A Summary of Findings,” 1.
- ¹⁴⁷ Maxwell, et. al., xix.
- ¹⁴⁸ Children’s and Young People’s Well-being Act 1989, s 4.
- ¹⁴⁹ Becroft, “It’s All Relative: The Absolute Importance of the Family in Youth Justice,” 25.
- ¹⁵⁰ Maxwell, et. al., xix.
- ¹⁵¹ Moyle and Tauri, 26.
- ¹⁵² New Zealand, Oranga Tamariki - Ministry for Vulnerable Children, “Children Who Offend,” accessed April 23, 2018, <https://www.orangatamariki.govt.nz/youth-justice/children-who-offend/>.
- ¹⁵³ The Family Court has a wider array of orders and responses it can make than the Youth Court. For instance, the Family Court has power to make custody and guardianship orders as well as counselling orders. Becroft, “Youth Justice – The New Zealand Experience,” 8.
- ¹⁵⁴ Children and Young People’s Well-being Act 1989, s 272.
- ¹⁵⁵ Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 35.
- ¹⁵⁶ Hannah Wilson, “Swings and Roundabouts: Evaluating the Children, Young Persons, and their Families (Youth Courts Jurisdiction and Orders) Amendment Act of 2010, s 14,” 562; citing Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010, s 6. A child aged 12-13 years old can be tried in Youth Court if they are charged with an offense where the maximum penalty is imprisonment for life or at least 14 years or if the child is a “previous offender” and their current offense carries a penalty of 10 – 14 years. The child is considered a previous offender if they were previously found to be a child in need of care or protection on the grounds of an offense where the maximum penalty is life or at least 10 years or they were previously convicted of murder, manslaughter, or an offense for which the maximum penalty is life or at least 14 years. Children and Young People’s Well-being Act 1989, s 272.
- ¹⁵⁷ District Court of New Zealand, “Annual Report 2017” (undated): 27, <http://bit.ly/2ILTyrc>; Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, s 7.

¹⁵⁸ Parliamentary Library Research Paper, “Youth Justice in New Zealand: Principles and Procedures,” 3-18.

¹⁵⁹ Becroft, “Youth Justice – the New Zealand Experience,” 13-15.

¹⁶⁰ Wilson, 565.

