



The Youth Court and Youth Justice in New Zealand

In 1989 New Zealand enacted the pioneering Children, Young Persons and Their Families Act 1989 (CYPF Act). That Act enshrined new objects and principles for youth justice and established the Youth Court, part of an innovative system for responding to children and young people who offend. Many commentators say that a revolution took place in the way New Zealand dealt with young offenders.

Since then this system has been hailed as a ground-breaking combination of a Police-led diversionary approach together with a restorative system using family group conferences to resolve youth justice issues. The main features are -

- A heavy statutory emphasis on diversion without charge (in practice up to 80% of youth offences are diverted);
- A restricted use of the Youth Court for no more than 20% of youth offenders; and
- Reliance on the family group conference (an example of restorative justice practice) as a key decision making tool, at virtually all stages of the court process and as a diversionary mechanism in its own right.

Youth Offending - the Statistical Context

Young people (14 - 16 year olds) are responsible for 15% of all criminal apprehensions in New Zealand, most of which are not serious. As a simplistic statement and generalisation, about 80% of youth offenders commit about 20% of all youth offences. Only the most serious youth offenders are dealt with in court.

- Only about 5% of youth offenders can be considered serious 'hard-core' offenders;
- Of these, over 80% are male, up to 70% have a drug or alcohol problem and are not enrolled in school;

Contents

Youth Offending— The statistical context	1
Jurisdiction	2
Diversion / Police Youth Aid	2
Youth Court & Youth Advocates	3
Family Group Conferences	3
Formal Sentencing Options	5
Youth Drug Court / Intensive Monitoring Court	5
Rangatahi Courts	6



- About 60% of serious youth offenders are Māori, although Māori only make up roughly 20% of the total youth population. In some areas, up to 90% of young people appearing in Youth Court are Māori. In a small number of provincial Youth Courts, 100% of appearances are Māori. The disproportionate overrepresentation of young Māori in Youth Court is getting worse not better (increased from 54% in 2005 to 61% in 2014).

Police apprehension rates for young people have been steadily decreasing for the past 10 years. However there has been a noticeable and worrying increase in apprehension rates for serious assaults since 2005, as there has been for all age groups within the population.

The overall number of charges and the overall number of youth offenders dealt with by the Youth Court is at the lowest in recorded history, and has declined significantly since 2010.

JURISDICTION

The Youth Court, like the Family Court, is a specialist division of the District Court. The Principal Youth Court Judge manages a roster of Youth Court Judges who are all District Court Judges with specialist designations for the Youth Court. Most spend approximately 10% of their time hearing Youth Court matters (and a small number spend 50% of their time). Usually Youth Courts sit once a week, although in the provincial areas it may be once a fortnight.

The age of criminal responsibility in New Zealand is 10. However, the Youth Court only deals with criminal offending by young people aged between 14 and 16 years old (although since 1 October 2010, some 12 and 13 year olds who commit very serious offences can also be charged in the Youth Court).

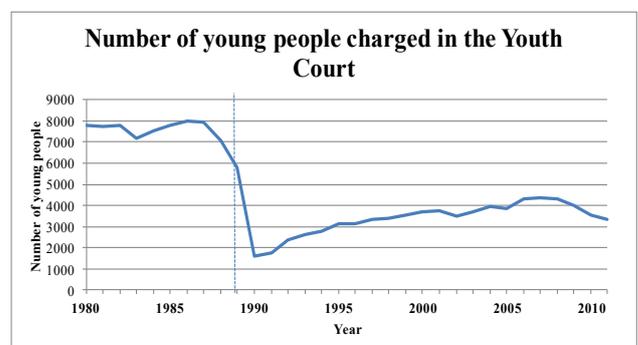
The Youth Court hears all kinds of criminal cases except murder; manslaughter; cases where the young person elects jury trial (very rare); and, at the lowest end of the scale, non-imprisonable traffic offences

DIVERSION / POLICE YOUTH AID

Most young offenders do not commit serious offences. Wherever possible they are diverted away from actually appearing in court, and are dealt with by Police in their local community. In fact, section 208(a) CYPF Act requires everyone exercising powers under that Act to be guided by the principle that unless the public interest requires otherwise, criminal proceedings *should not be instituted* against a child or young person if there is an alternative means of dealing with the matter.

In practice this means that Police make extensive use of warnings and diversionary programmes as alternatives to criminal proceedings. Up to 80% of all youth offenders come into this category and most do not re-offend. These rates of diversion are a significantly under-recognised and integral part of the youth justice system.

The success of this diversionary approach in the CYPF Act was immediate, and resulted in a dramatic reduction in the number of offences dealt with in the Youth Court.



This approach is largely successful because New Zealand has a specialised Police force dealing with young offenders called Police

Youth Aid. The levels of knowledge and experience that have been built up within this division of the Police is an important factor in the success of the youth justice system under the CYPF Act.

YOUTH COURT, YOUTH ADVOCATES & LAY ADVOCATES

Young people can only be charged in the Youth Court if they have been arrested or, when there is no arrest, when a family group conference has been held and it is decided that a charge should be laid.

Youth Court proceedings are closed to the public. Reporters are permitted to attend, but they cannot publish without the permission of the Judge.

Another reason for the success of New Zealand's youth justice system is that Youth Advocates (lawyers for the youth offender) are appointed by the Youth Court, and are universally paid for by the government, irrespective of the young person's family's ability to pay. Youth Advocates are specifically trained in the youth justice system.

When appointing Youth Advocates, the court takes into account a range of matters including knowledge of the objects and principles of the CYPF Act; knowledge of the roles and practice of various professionals within the youth justice system; ability to relate to young people and their families; and knowledge of restorative justice principles and practice.

Lay Advocates were provided for in the original 1989 legislation. Their statutory role is to represent the family and make the court aware of all cultural matters relevant to the proceedings. Little used initially, increasing use is now being made of Lay Advocates.

FAMILY GROUP CONFERENCES

At the heart of the system in respect of serious offending lies the family group conference (FGC). The FGC enables those involved in the life of the young person and the victims of offending to be involved in decisions designed to ensure accountability, repair harm, and prevent re-offending.

The FGC model draws on Māori and western approaches. In Māori custom and law the concept of wrongdoing is based on the idea that responsibility is collective rather than individual and that redress is due to the victim's family as well as the victim. The reasons for offending are thought to stem from a lack of balance in the offender's social and family environment, rather than just the individual. Therefore, the causes of this imbalance have to be addressed in a collective way. In particular, the imbalance between the offender and the victim's family has to be restored through mediation. In the modern FGC it is intended that responsibility is given to families, whānau, hapū, iwi and other family groups to respond to their child's offending, and to deal with it without necessarily involving social workers.

The FGC is not a purely Māori model. However, many of the philosophies enshrined in the CYPF Act can be attributed to Māori concerns prior to the CYPF Act about the previous methods of dealing with young Māori offenders, which featured high levels of charging and institutionalisation.

The FGC forms the basis of decision-making in the Youth Court. The two most common situations where a FGC will be held are: if a young person has not been arrested but the Police nevertheless wish to lay charges in court (a "pre-charge FGC"); and where a young person has been arrested, appears in the Youth Court, and does not deny the charge (a mandatory "court-ordered

FGC”) . Relatively few charges in the Youth Court are denied. It is important to emphasise that FGCs are thus reserved for the most serious 20 - 30% of all youth offending which is not diverted by the Police.

The FGC is convened and run by the Youth Justice Co-ordinator and is attended by the young person, his or her Youth and Lay Advocates or lawyer, members of the family, family group, the victims and supporters, the Police, and any other person invited by the conference (such as the social worker). A Youth Court Judge does not and cannot attend.

The legislation gives FGCs a wide range of specific decision making options. Beyond those options though, the Act sets no limitations on the imagination and ideas that flow from the group of people who wish to produce constructive solutions to the problems of the young person’s behaviour. This is, in many ways, the strength of the system.

In the most common scenario the young person will admit the offending at the FGC and a plan is agreed which aims to ensure accountability, repair harm and prevent re-offending. When the FGC results in an agreed plan for the young person, the Youth Court retains an important supervisory and

monitoring role. All plans arising out of court-ordered FGCs must be approved by the Youth Court.

Usually the Youth Court will approve the plan, assist to monitor it, and, if it is satisfactorily completed by the young person, the Youth Court may grant an absolute discharge. When the goals of the youth justice system are met FGCs have been shown to be successful in reducing re-offending and promoting the wellbeing of young people who have offended. Evaluation has shown that a third of young people who have been through a FGC did not reoffend in the two years following their 17th birthday. Another third only offended in a minor or medium way.

FGCs are a more inclusive and restorative forum for decision-making. They should not be considered a “soft” option for young offenders but rather an emotionally gruelling and confrontational process. For instance, FGCs have been known to unanimously decide that a custodial sentence is appropriate. As a result of the significant success of FGCs in the youth justice system, a similar process is currently being piloted in adult criminal courts in New Zealand, and has been introduced as part of many youth justice systems around the world.



Judge Walker sits at the Youth Court in Porirua

FORMAL SENTENCING OPTIONS

If the FGC cannot agree on a plan, or if the plan is not completed satisfactorily by the young person, or if the offending is very serious, the Youth Court has a range of formal orders it may make. These orders range from a discharge or fine, to six months custody at a youth justice facility (youth prison) or conviction and transfer to the (adult) District Court for sentencing.

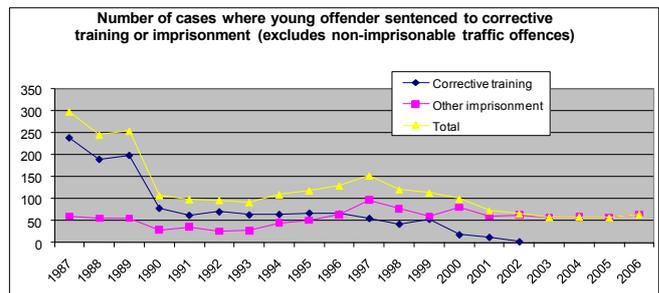
From 1 October 2010 the Youth Court was given a range of new sentencing options and some of its existing options were lengthened. The new sentencing options include—

- Participation in a parenting education programme (this order may also be made against the parents of the young person);
- Participation in a mentoring programme;
- Participation in a drug or alcohol rehabilitation programme;
- A supervision order for up to six months, under which the young person is supervised by a social worker;
- An activity order for up to six months, under which the young person must attend a programme designed to address the causes of their offending. If that programme is residential, the young person must live at the programme. This is usually followed by a supervision order of up to 6 months.
- A direction for judicial monitoring, under which the young person must appear before the Youth Court at specific times at least every three months, for the Judge to monitor his or her compliance with a supervision order or an activity order;
- An intensive supervision order, under which a young person who has failed to comply with a judicially monitored order, is placed under the supervision of a social worker for up to 12 months, and may be subject to other conditions. Those conditions may include a curfew for up to 84 hours in a week.

Electronic monitoring may also be imposed if it is necessary to ensure compliance with the intensive supervision order;

- A residence order, under which the young person is in custody at a youth justice residence (youth prison) for a period between three and six months, which must be followed by a supervision order of 6-12 months.

As can be seen from the table below, the introduction of the CYPF Act dramatically reduced New Zealand's rates of incarceration.



Custodial Sentences for Youth Court Cases, 1987–2006

YOUTH DRUG COURT / INTENSIVE MONITORING GROUP

The Youth Court runs several therapeutic courts, for example the Youth Drug Court in Christchurch, and the Intensive Monitoring Group in Auckland.

The Youth Drug Court commenced in 2002 for young people who have a serious drug dependency which is contributing to their offending. Its purpose is to hold the young person accountable for his or her offending while at the same time enhancing their treatment for their drug or alcohol problem.

Typically, an alcohol or drug screening process is conducted before a young person appears for the first time in the Youth Court. If he or she is eligible, the Youth Court may decide to remand the young person to the Drug Court. Before the first appearance in the Drug Court, a full assessment is carried out on

the young person including their drug dependency, their family and education situation, and other relevant aspects of the young person's life. A treatment plan is developed and funding is arranged. This may involve participation in a programme.

Towards the end of the remand period (usually around three weeks), a family group conference is held to consider the treatment plan. If the family group conference supports the plan and the Youth Court agrees, the young person is then supported to complete the plan. This may involve daily drug tests and fortnightly appearances before the Drug Court Judge and specialist clinical team to assess progress.

The Intensive Monitoring Group in Auckland is very similar, but has a broader reach to include young people with mental health problems.

RANGATAHI COURTS

Some sittings of the Youth Court are now held on Marae (Māori meeting houses) rather than in the courthouse. This is a judicial initiative designed to provide the best possible rehabilitative response to Māori young offenders by encouraging strong cultural links and involving communities in the youth justice process. While Māori young people make up approximately 20% of the population, they account nationally for -

- 58% of Police apprehensions;
- 61% of Youth Court appearances; and
- 65% of sentences to supervision with residence (youth prison), which is the highest Youth Court sentence before a conviction and transfer to the District Court.

The Rangatahi Court is not a separate court or system of youth justice, nor does the Rangatahi Court move the Youth Court's business to the

Marae on a wholesale basis. All young offenders will still be required to appear first in the Youth Court. If they accept the offending for which they are charged, they will still be required to undergo a FGC. Part of the comprehensive FGC plan may include provision for regular and consistent monitoring of their progress to take place on the Marae. If the offending is too serious to be dealt with by a FGC plan, in which case a formal Youth Court order will be imposed and the Rangatahi Court process will not be used.

In essence, the Rangatahi Court monitors the performance of the FGC plan. However, the Rangatahi Court offers additional components. Because many of the young people who appear in Youth Court have lost touch with their sense of identity as Māori, emphasis is placed on the young person learning who they are and where they are from, and learning significant aspects of their Māori tribal history. There is an expectation that every young person who appears in the Rangatahi Court must learn their pepeha (a traditional tribal saying of identification). Many of the young people who appear have never spoken te reo Māori prior to their appearance in the Rangatahi Courts and their efforts can result in an intense personal journey of discovery. Specialist tikanga wānanga programmes are provided as part of, or in addition to, the FGC plan.

As at 1 April 2015 there are thirteen Rangatahi Courts and two Pasifika Courts. Early results in engaging Māori communities, involving Lay Advocates and offering more culturally appropriate processes are very positive.



Judge Taumaunu sitting at the Rangatahi Court in Gisborne.