

Youth Justice: Part 1 - Introduction to Youth Justice

Table of Contents

Table of Contents	2
Policy statement and principles	3
What	3
Why	3
How	3
Overview	4
Background	4
Inter-agency collaboration	4
Outline and purpose of the Youth justice chapter	4
Child protection needs	5
References to the 'Act'	5
Related information	5
Definitions and abbreviations	6
Abuse	6
Child	6
Near relative	6
Non-Schedule 1A	6
Parent	6
Related charge	6
Residence	7
Schedule 1A	7
Victim	7
Young person	7
Youth	7
Purposes and principles applying to youth justice	7
Police must follow purposes and principles of the Act	7
General purposes	7
General principles of the Act	8
Youth justice principles	8
Section 11: Child's or young person's participation and views	9
Criminal responsibility of children and young persons	10
Age of criminal responsibility	10
When is a child a previous offender?	10
The effect of age on proceedings	12
Which court and rights caution applies?	12
Delay in proceedings	14
When child, youth or adult offenders are jointly charged	14
Process maps and related youth justice documents	15

Policy statement and principles

What

In relation to youth justice, the object of the Oranga Tamariki Act 1989 (the Act) is to promote the well-being of children, young persons and their families, whānau, hapū, iwi, and family groups, by holding children and young persons accountable for any offences they commit, and dealing with them in a way that acknowledges their needs and enables them to develop in responsible, beneficial and socially acceptable ways.

The Act also details a range of general principles and additional youth justice principles that must guide any court or person exercising powers.

Key amongst these is involving the child's or young person's family group in decisions affecting the child or young person, finding alternatives to criminal proceedings unless the public interest requires otherwise, and dealing with children and young persons using measures designed to strengthen the family group and foster its ability to develop its own means of dealing with the offending.

The [three-part Youth Justice chapter](#) outlines the relevant law and provides guidance on the Police response to youth justice matters.

Why

The reasons children and young persons offend are complex and varied. Research has shown that approaches conducted outside the formal Youth Court system appear most effective in reducing crime and making a positive difference for children and young people who offend. Many young offenders grow out of it as part of the natural maturing process and unnecessary prosecution may do lasting damage to them, actually setting them on a road to criminal offending.

The vulnerability of children and young persons means they require special protection during any investigation.

How

Police will

- take the purposes and principles of the Act into account when responding to offending by children and young persons
- work collaboratively with other agencies to address factors which contribute to their offending behaviour
- provide special protection for children and young persons during any investigation
- consider and implement effective and meaningful alternative actions with children and young persons
- ensure fingerprints and photographs from children and young persons are obtained and retained in line with the [Photographing and videoing members of the public](#) policy.

Overview

Background

The youth justice provisions of the Act stress that young offenders should be held accountable for their actions and encourage families to participate in dealing with their children's offending. Families should work with victims, Police and the justice system to decide outcomes.

Local experience and many overseas studies show that a lot of youth offending is opportune and offenders will grow out of it as part of the natural maturing process. 'Labelling' children and young persons as offenders through unnecessary prosecution may do lasting damage and actually set them on a road to criminal offending.

The Act allows for and specifies the ability to carry out alternative methods of holding children and young people accountable for their offending without involving the formal intervention of the prosecution system.

Research has shown that approaches that are conducted outside the formal Youth Court system appear most effective in reducing crime and making a positive difference for children and young persons who offend.

Therefore, Police are encouraged to warn children or young persons or refer them to a Youth Aid Officer for appropriate alternative action. This does not mean that Police should not take firm action when necessary.

Dealing with children and young persons in trouble is difficult, but Police must be patient, understanding and objective. Remember that your actions and the image you project will have exaggerated importance and could have a lifelong effect on the child's or young person's attitude towards Police.

Inter-agency collaboration

Children and young persons who offend, and in particular those who are persistent youth offenders, almost always have a number of needs which contribute to their offending behaviour. These can include factors such as:

- conduct and/or behaviour and/or learning disorders
- abuse and neglect (physical, sexual or psychological)
- poor health issues
- lack of attachment to primary caregivers
- lack of engagement in education
- poor social skills
- lack of cultural pride/identity
- mixing with anti-social peers.

To deal holistically with the causes of youth offending, it is imperative that Police work with other government and non-government agencies which have the skills and resources to address specific needs children and young persons may have. Police have a responsibility where possible to identify factors contributing to the offending behaviour so that appropriate referrals can be made to relevant agencies. Failing to do this increases the chance of further offending and even escalated offending.

Strategic and beneficial working relationships are essential to achieving positive outcomes in reducing youth crime and victimisation.

Outline and purpose of the Youth justice chapter

The **Youth justice** 'chapter' is comprised of 3 parts:

- Part 1 - Introduction to youth justice
- [Part 2 - Responding to youth offending and related issues](#)
- [Part 3 - Criminal procedure in the Youth Court](#)

This '**Part 1 - Introduction to youth justice**' outlines:

- the [purposes](#) and [principles](#) of the Act applying to youth justice
- when children and young persons can be held [criminally responsible for an offence](#), and the [effect of age on whether](#)

[proceedings can be brought](#) and if so, the court in which their case will be dealt with.

It also includes [definitions and terms](#) used across all three parts of the Youth justice chapter.

Part 2 - Responding to youth offending and related issues outlines the processes for dealing with [child](#) and [youth](#) offenders and details procedures for:

- questioning and interviewing them, including explaining and providing guidance on how to rebut the 'doli incapax presumption' applying to children aged 10-13 years
- arresting and explaining rights
- considering and giving warnings
- referrals to Youth Aid
- alternative actions
- charging and holding children and young persons in custody
- responding to breaches of bail
- prosecutions and Family Group Conferences
- taking fingerprints from children and young persons
- taking DNA samples from children and young persons
- responding to truancy and other care, protection and well-being issues, e.g. intoxication.

Part 3 details the [Criminal procedure in the Youth Court](#)

Child protection needs

See the [Child protection investigation policy and procedures](#) for information about the Police response to cases of alleged child abuse (applies to all cases where the victim is under the age of 18 years).

References to the 'Act'

In the 'Youth justice' chapter, unless specifically stated otherwise, all references to the Act, and all section references are to the [Oranga Tamariki Act 1989](#).

The Children, Young Persons and Their Families Act 1989 was re-named the Oranga Tamariki Act 1989, or the Children's and Young People's Well-being Act in July 2017.

Related information

See also: Oranga Tamariki Ministry for Children, (www.orangatamariki.govt.nz) for information about dealing with young offenders.

Information and a database of Youth Court decisions are also available at www.justice.govt.nz/youth.

Definitions and abbreviations

Relevant definitions are set out in section [2](#) of the Act. This table includes key definitions and terms used in this chapter.

Term	Meaning
Abuse	The harming (whether physically, emotionally or sexually), ill-treatment, abuse, neglect or deprivation of any child or young person. Refer to the Child protection investigation policy and procedures for more detailed definitions of various types of abuse (e.g. serious child abuse, serious wilful neglect, psychological abuse).
Act	Oranga Tamariki Act 1989
Chief Executive	Chief Executive of Oranga Tamariki-Ministry for Children.
Child	A boy or girl under the age of 14 years.
CPT	Child Protection Team.
Custody	The right to possession and care of a child or young person.
Family Group	In relation to a child or young person, means a family group, including an extended family: <ul style="list-style-type: none"> - in which there is at least one adult member: - with whom the child or young person has a biological or legal relationship, or - to whom the child or young person has a significant psychological attachment, or - that is the child's or young person's whanau or other culturally recognised family group.
FGC	Family group conference.
Near relative	A step-parent, grandparent, aunt, uncle, brother, or sister. Includes a brother or sister of the half-blood as well as of the full-blood.
Non-Schedule 1A	An offence that is not specified in Schedule 1A and that is within the jurisdiction of the Youth Court
OT	Oranga Tamariki, Ministry for Children
OTA	Oranga Tamariki Act 1989 (Up until July 2017 known as the Children, Young Persons and Their Families Act 1989)
Parent	In relation to a child, includes a step-parent of the child, but only if the step-parent shares responsibility for the day-to-day care of the child with a parent of the child.
Related charge	A charge for a non-Schedule 1A offence that the Youth Court has determined to be related to a charge for a Schedule 1A offence that arises from the same incident or series of incidents

Residence	<p>Any residential centre, family home, group home, foster home, family resource centre, or other premises or place, approved or recognised for the time being by the chief executive as a place of care or treatment for the purposes of the Act, and:</p> <ul style="list-style-type: none"> - includes: <ul style="list-style-type: none"> - any place of care or treatment, so approved, whether administered by the Crown or not - does not include: <ul style="list-style-type: none"> - a prison - a psychiatric hospital or a facility within the meaning of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 - a children's health camp (operated by Children's Health Camps-The New Zealand Foundation for Child and Family Health and Development).
Schedule 1A	An offence specified in Schedule 1A of the Act
Victim	<p>A victim is:</p> <ul style="list-style-type: none"> - a person against whom an offence is committed by a child or young person - a person who, through, or by means of, an offence committed by a child or young person, suffers physical injury or loss of, or damage to, property - a parent or guardian of a child or young person who is a victim above, unless that parent or guardian is the child or young person charged with the offence or against whom a charge has been proved - a member of the immediate family of a person who, as a result of an offence committed by a child or young person, dies or is incapable unless that family member is charged with the offence or against whom a charge has been proved. <p>A victim does not include any other person against whom the offence, or an offence relating to the same incident, is proved, or a person who is charged with or convicted of the offence or an offence relating to the same incident. This applies whether the person was a principal, party or accessory after the fact or otherwise.</p>
YJC	Youth Justice Coordinator
Young person	A person of or over the age of 14 years but under 18 years.
YORST	Youth Offending Risk Screening Tool
YOT	Youth Offending Team
Youth	A generic term used in this chapter to cover children and young persons.
Youth Aid	The specialised police group that work with children and young persons who are involved in offending or at risk
Youth Aid Officer	A Constabulary officer that has undergone specialist training and qualification in applying legislation and policy, when dealing with children and young persons for offending and care and protection concerns. Also applies to constabulary officers undergoing the two-year training programme to qualify as a youth aid officer.

Purposes and principles applying to youth justice

Police must follow purposes and principles of the Act

When dealing with any child or young person alleged to have committed an offence, Police must be guided by the purposes and general principles of the Act (detailed in sections [4](#), [4A](#) and [5](#)) and the Act's principles relating to youth justice ([s208](#)). These purposes and principles apply to all people, agencies, organisations and groups working with children and young persons who offend.

General purposes

In relation to youth justice, the purpose of the Act is to promote the well-being of children, young persons and their families, whānau,

hapū, iwi and family groups by-

Supporting and protecting children and young persons to-

- prevent them from suffering harm (including harm to their development and well-being), abuse, neglect, ill treatment, or deprivation; or
- prevent offending or reoffending or respond to offending or reoffending.

Responding to alleged offending and offending by children and young persons in a way that -

- promotes their rights and best interests and acknowledges their needs; and
- prevents or reduces offending or future offending; and
- recognises the rights and interests of victims; and
- holds the children and young persons accountable and encourages them to accept responsibility for their behaviour.

Establishing and promoting services that are designed to affirm mana tamaiti (tamariki), that are centred on their rights, promotes their best interests and provides for their participation in decision making that affects them.

Providing a practical commitment to the principles of the Treaty of Waitangi (te Tiriti o Waitangi) in the way described in the Act (s 4(f)). (Read [s4](#) for a full list of the purposes of the Act).

General principles of the Act

Any court or person exercising any power conferred by the Act must be guided by the principles in section 5, some of which include:

- encouraging and assisting the child's or young person's participation in expressing their views in any proceedings and taking these into account
- ensuring the child's or young person's well-being is at the centre of any decision made that affects the child or young person
- recognising the child's or young person's place within their family, whānau, hapū, iwi or family group
- recognising the child's or young person's place within their community
- respecting and upholding the rights of the child or young person (including the rights set out in the United Nations Convention of the Rights of the Child (UNCROC) and the United Nations Convention on the Rights of Persons with Disabilities). Note particularly, Article 37 of UNCROC which says that detention must be a measure of last resort.
- Decisions should be made and implemented promptly and in a time frame appropriate to the age and development of the child or young person.

(Read [s5](#) for a full list of these principles)

Youth justice principles

A Court or person, when exercising powers under the youth justice provisions in the Act, must take into account the four primary considerations described in [s4A\(2\)](#). These are:

- the well-being and best interests of the child or young person; and
- the public interest (which includes public safety); and
- the interests of any victim; and
- the accountability of the child or young person for their behaviour.

When weighing those four primary considerations, the Court or person must be guided by, in addition to the principles in [s5](#), the following principles found in [s208](#) which include:

- finding alternatives to criminal proceedings, unless the public interest requires otherwise
- not instituting criminal proceedings in order to provide assistance or services needed to advance the well-being of the child or young person, or of their family, whānau, hapū and family group
- dealing with children and young persons using measures designed to strengthen the whānau, hapū and family group and foster its ability to develop its own means of dealing with the offending
- keeping children and young persons in the community, unless they are a danger to the public
- using a child's or young person's age as a mitigating factor in determining whether a penalty should be imposed, and the nature of that penalty

- any measures for dealing with offending by a child or young person should so far as practicable to do so address the underlying causes of their offending
- imposing penalties that will promote the child's or young person's development within the whānau, hapū and family group and take the least restrictive form that is appropriate in the circumstances
- when determining measures for dealing with offending by children or young persons, considering the victim's interests and views and that any measures should have proper regard for the victim's interests and the impact of the offending on them
- taking into account the vulnerability of children and young persons by providing special protection during any investigation.

Section 11: Child's or young person's participation and views

The child's or young person's participation must be encouraged and enabled and their views heard and taken into account in:

- Court proceedings
- the convening and proceedings of FGCs
- the preparation or review of a plan for a child or young person under the Act, and
- the taking of any other action or making of any other decision (any other process) under the OT Act that significantly affects a child or young person who is the subject of that process.

The child or young person must be able to freely express their views and those views must be taken into account. **Any written decision must set out the child's or young person's views** and, if those views were not followed, include the reasons for not doing so. The decision, and the reasons for it, must be explained to the child or young person.

([s11](#))

Criminal responsibility of children and young persons

Age of criminal responsibility

This table outlines the criminal responsibility of children and young persons by age.

Age	Criminal responsibility	Section
Under 10 years	A child under the age of 10 years is not criminally responsible for any offence. While not criminally responsible, serious offending by a child under 10 years of age can be dealt with under the care and protection provisions (Part 2) of the Act .	Crimes Act 1961 s21(1)
10 - 13 years of age	These are the only 3 situations in which proceedings can be lawfully commenced against a child aged 10 - 13 years: <ul style="list-style-type: none"> - the child is of or over the age of 10 years, and the offence is murder or manslaughter - the child is aged 12 or 13 years and the offence is punishable by 14 years to life imprisonment (other than murder or manslaughter) - the child is 12 or 13 years, is a previous offender, and the offence is punishable by 10 to 14 years imprisonment. The Act s272(1) 	
	If a decision is made to commence proceedings against a child aged 10 - 13 years, the prosecution must satisfy the Youth Court that the child knew either: <ul style="list-style-type: none"> - that the act or omission constituting the offence charged was wrong, or - that it was contrary to law. This is known as the doli incapax presumption . (See more detailed guidance on the <i>doli incapax</i> presumption and how to establish during investigations whether the child had the requisite knowledge in ' Part 2- Responding to youth offending and related issues ').	The Act s198 & s272A(d) Crimes Act 1961 s22(1)
	Other offences by children in this age group may be dealt with under the care or protection provisions of the OT Act (s14(1)(e)).	
14 years or over	A person who is 14 years of age or over can be charged with any crime or offence.	

When is a child a previous offender?

A child is a previous offender if:

- an application is made to the Family Court for a care or protection order on [s14\(1\)\(e\)](#) grounds, and
- on that application, the Family Court having found one or more of the offences alleged in the application proved in accordance with [s198\(1\)\(a\)](#) and (b), makes a care or protection order or indicates that, but for [s73](#), it would have made a care or protection order on that ground, and
- one or more of the earlier offences had a maximum penalty of 10 years to life imprisonment.

A child is a previous offender if:

- an application is made to the Family Court for a care or protection order on [s14\(1\)\(e\)](#) grounds, and
- on that application, the Family Court having found one or more of the earlier offences proved, makes a care or protection order or, but for [s73](#), would have made a care or protection order that the child was in need of care or protection, and
- one or more of the earlier offences had a maximum penalty of 10 years to life imprisonment. [s272\(1A\)](#)

A child is also a previous offender if:

- they have been convicted by the High Court of murder or manslaughter; or
 - as a result of an election of jury trial, they have been convicted by a District Court or High Court of one or more offences where the maximum penalty is 14 years to life imprisonment (other than murder or manslaughter); or
 - proven in the Youth Court against them one or more offences where the maximum penalty is 14 years to life imprisonment (other than murder or manslaughter).
- [s272\(1B\)](#)

Contact your local Youth Aid Section if you require clarification if the child meets the 'previous offender' criteria.

The effect of age on proceedings

Whether proceedings can be brought against a child or young person and if so, the court which will deal with the matter, varies depending on their age at the time of their offending and at the time proceedings are commenced (e.g. a child may have become a young person since the offending and a young person, an adult). The age of the child or young person at various times during proceedings also determines whether they receive the standard adult rights caution or rights under the Act.

Which court and rights caution applies?

This table details the caution to be provided and the court in which a case is dealt with, having regard to the child's or young person's age.

Age at time of offence	Age at time charging document is filed	Rights required	Court in which case is to be heard or actions to be taken
0-9 years	No charging document can be filed as the child is not criminally liable	N/A	Can be dealt with by Family Court for care or protection issues but note that s14(1)(e) grounds do not apply to this age group.
10-11 years	No charging document can be filed for child offenders of this age, except murder or manslaughter -see below.	The Act rights	Dealt with in Family Court under s14(1)(e) if criteria is met. Note: If a child or young person comes to attention for child offending after turning 18, they cannot be dealt with under s14(1)(e) .
10-13 years for murder or manslaughter	10-17 years	The Act rights	Filed in the District Court for first appearance in the Youth Court.* Transferred to the High Court after first appearance.
	18 years	Bill of Rights	Filed in the District Court for first appearance in the Youth Court.* Transferred to the High Court after first appearance.
	19 years and over	Bill of Rights	Filed in the District Court. Transferred to the High Court after first appearance.
12 - 13 years (if child meets s272 criteria)	12-17 years Note that there are specific protections in s272A for 12-13 year olds charged with an offence specified in s272(1)(b) or (c).	The Act rights	Dealt with in Youth Court if a charging document is filed and s272 criteria met. Note however, that the Youth Court may refer the matter back to Police under s280A to consider care and protection proceedings or to deal with the matter in some other way. Alternatively, if the child is 12 -13 years, they can be dealt with in the Family Court under s14(1)(e) if that criteria is met. Note: If a child or young person comes to attention for child offending after turning 18, they cannot be dealt with under s14(1)(e) .
14-17 years	14-17 years	The Act rights	Filed in the District Court,* and dealt with in the Youth Court
	18 years	Bill of Rights	Filed in the District Court,* and dealt with in the Youth Court.
	19 years and over	Bill of Rights	District Court
17 yrs Schedule 1A Offences only	17 years	The Act Rights	Filed in the District Court,* first appearance in the Youth Court and then transferred to the District Court
17 yrs Schedule 1A Offences only	18 years	Bill of Rights	Filed in the District Court,* first appearance in the Youth Court and then transferred to the District Court

Note: * The above table outlines charges that are to be laid in the District Court even though they will be heard in the Youth Court. These may appear to be incorrect however they are not. The following explains the reason for this:
The effect of Schedule 1, cl (2)(a) of the Oranga Tamariki Act 1989 is that charging documents must be filed in the District Court (as per section 14 of the Criminal Procedure Act 2011). Once filed, charges within the jurisdiction of the Youth Court must be heard or

determined in the Youth Court (see Schedule 1, cl(2)(b)).

Delay in proceedings

If the young person is 17 years old, do not be tempted to wait until they turn 18 before filing a charging document. Any undue delay between the offence and filing a charging document may result in the Judge dismissing the case outright (s322). Lack of Police staff or resourcing has been rejected by the Courts as a valid reason for delay. Lines of enquiry must be actively pursued.

Case Law: [Police v B](#) (6 October 1999) YC, Hamilton, CRN 9219024334/24318-9, Twaddle DCJ

When child, youth or adult offenders are jointly charged

See [Procedure where child or young person jointly charged](#) in 'Part 3 - Criminal procedure in the Youth Court' for information about how jointly charged children, young persons and adults are proceeded with in the Youth Court.

s277 the Act.

Process maps and related youth justice documents

These Process Maps and other documents are related to the 'Youth justice' chapter:

- Manage Youth Aged 14 to Under 18 process (July 2019)
- Manage Custody of youth aged 14 - under 18
- Manage Bail Remand for Youth aged 14 to Under 18 process (July 2019)
- Intention to Charge youth 14 to under 18
- Decision tree - Take a DNA sample or not
- Manage Court Process Youth (July 2019)
- Manage Schedule 1A Offence Process - Offenders aged 17 years
- YORST policy
- YORST Information sharing guidelines
- Alternative Actions Guidelines
- [POL 388](#) - Youth Justice checklist - Steps for investigation
- [POL 128Y](#) - Opposition to bail (Youth)
- [POL 235](#) - Notice of Placement in Custody
- [POL 236](#) - Detention in Police Custody of a Young Person
- [POL 3040](#) - Family Group Conference referral form

(POL forms located [here](#) or in WORD> Police Forms> (A-H)> Children and Young Persons)
