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Youth Justice: Part 2 - Responding to youth offending and related issues

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Introduction

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

Before considering the detailed options for responding to youth offending outlined in this Part 2 of the Youth justice chapter, ensure that you are familiar with:

- the purposes and principles of the Oranga Tamariki Act 1989 (The Act) applying to youth justice
- the limitations on when children and young persons can be held criminally responsible for any offence, and the effect of age on the proceedings that can be brought against them.

These matters are covered in detail in **Part 1 ‘Introduction to youth justice’.**

This Part 2 of the ‘Youth justice’ chapter outlines the **general processes** for dealing with children (aged 10-13) and young persons (aged 14 - 17) who offend, and details the various options that may be considered in response to their offending and related issues.

This Part 2 provides guidance and details procedures and legal responsibilities for:

- questioning or interviewing children and young persons
- rebutting the *Doli incapax* presumption (children aged 10 -13 years)
- arresting and explaining rights
- giving warnings
- making 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 and photographs of children and young persons
- taking DNA samples from children and young persons.

It also includes guidance on responding to truancy and other care, protection and well-being issues, e.g. intoxication, that may be impacting on a child’s or young person’s offending.

Part 3 of the ‘Youth justice’ chapter details the **criminal procedure applying in the Youth Court** and for dealing with Schedule 1A (OT Act) offending.

Process for dealing with offenders aged 10 to 13

Children who commit murder or manslaughter

Children aged 10 to 13 can be prosecuted for the offences of murder and manslaughter.

Where a child is alleged to have committed murder or manslaughter, charges are filed in the District Court, the first appearance takes place before the Youth Court, and the case then automatically transferred to the High Court for trial and sentencing under section 36 (2) of the Criminal Procedure Act 2011.

Children can be sentenced to imprisonment for murder or manslaughter and be detained in an Oranga Tamariki Youth Justice Residence under the custody of the Chief Executive of Oranga Tamariki, Ministry for Children. Child offenders who are declared in need of care and protection can be detained in a Care and Protection Residence under the custody of the Chief Executive of Oranga Tamariki, Ministry for Children.

Options for dealing with offences other than murder or manslaughter

For offences other than murder or manslaughter, children aged 10 to 13, whether or not they have been arrested can:

- have no action taken
- be issued a warning or formal caution by Police
- be referred to Police Youth Aid, who may arrange an alternative action (diversion) after consultation with victims, the child and their family/whānau
- be referred to an Oranga Tamariki Youth Justice Coordinator (YJC) for a family group conference (FGC) if the number, nature or magnitude of their offence(s) give serious concern for their well-being (s14(1)(e))
- be referred to the Family Court either without notice or subsequent to a FGC, where a care or protection order may be made, provided the court is satisfied the child knew that the offence was wrong or contrary to law
- an interim custody order may be made by the Family Court where it is in the best interests of the child that it be made as a matter of urgency or it is in the public interest that an interim custody order be made in respect of a child and the grounds on which the order is sought relate to offending or alleged offending by the child (s78(1A) & (1B)).
- subject to s272 (1)(b) or (c) criteria being met, be referred to Oranga Tamariki YJC for a FGC to consider filing a charging document in the Youth Court, or
- subject to s272 (1)(b) or (c) criteria being met and the child **has been** arrested, file a charging document in the Youth Court.

Between initial contact and the decision to arrest, Police have significant discretion in deciding how to proceed. Considering the risk factors for a young offender will provide guidance as to what level and degree of intervention is required.

See 'Options following the arrest of a child or young person' in the arresting section of this chapter for further information.

Referral to a family group conference for care and protection

Children can be referred to family group conferences convened by the OT Youth Justice Coordinator for care and protection purposes on account of their offending (s14(1)(e)). Youth Aid officers represent Police at these FGCs.

Where a child is referred to a FGC for care and protection purposes, it may recommend that:

- proceedings be discontinued
- a formal Police caution be issued
- the child make reparation to the victim(s), and/or
- agree to some form of assistance (e.g. request a psychological assessment, referral to a rehabilitative programme).

The FGC can also agree that a recommendation should be made to the Family Court that particular care or protection order(s) be made where the number, nature or magnitude of the offending is such as to give serious concern for the well-being of the child. (Care or protection orders is defined in section 2 of the OT Act and includes interim custody orders (s78) and custody orders (s101)).

Family Court options when a care or protection order is made:

When the Family Court is satisfied that a child is in need of care or protection (s14 and 14AA) it can under s83 do one or more of the following:

- discharge the child or young person, their parent or guardian or any person having their care
- make an order that the child or parent comes before the Court if called upon within two years
- make an order requiring counselling
- make a services order (s86), restraining order (s87), support order (s91) or custody order (s101)
- order the appointment of a guardian.

When the Family Court is satisfied that a child is in need of care or protection on the grounds of a child's offending, the court can under s84, in addition to or instead of the orders listed above:

- admonish the child
- direct reparation or restitution
- order forfeiture of property.
(s84)

Further, if an order requiring a person or organisation to support the child is made, the Court can also impose:

- where satisfied that the child is in need of care or protection on section 14(1)(d) or (e) grounds, conditions requiring non-association, the child to attend/remain at a Centre or any other conditions it thinks fit to reduce offending
- conditions requiring examination/treatment/counselling/therapy
- where satisfied on s14(1)(e) grounds, any other condition it sees fit to reduce the likelihood of further offending by the child.
(s96)

Referral to FGC when considering charges in the Youth Court

Children can also be referred to family group conferences convened by the OT Youth Justice Coordinator for offending if the child has committed an offence(s) that meets the criteria as set out in s272(1)(b) or (c). Youth Aid officers also represent Police at these FGCs.

Where a child is referred to an FGC for serious offending, it may recommend that:

- a plan is developed to address the child's causes of offending, address their needs and hold them accountable
- an information is to be laid in the Youth Court.

Note: You must always consider the s208 Youth Justice principles when deciding upon the most appropriate courses of action for child offenders. Further, if an information is laid in the Youth Court, that Court may decide to refer the case back to be dealt with as a care or protection proceeding under s280A.

Process for dealing with offenders aged 14 to 17

Introduction

Young persons aged 14 to 17 can be charged and prosecuted for any offence. However, youth justice principles (s208) require offences to be dealt with at the lowest level possible taking into account the type of offence(s) and the age of the young person. Not all young persons who come to notice for offending behaviour are going to require intensive intervention from Police. Statistically, the majority will commit one offence and never come to Police notice again.

Murder or manslaughter

Where a young person is alleged to have committed murder or manslaughter, charges must be filed in the District Court but the preliminary hearing of the charge takes place in the Youth Court before being automatically transferred to the High Court for trial and sentencing. Young persons can be imprisoned for murder, manslaughter, category 4 offences and category 3 offences for which the maximum penalty available is or includes imprisonment for life or for at least 14 years. They can also be detained in an Oranga Tamariki Youth Justice residence under the custody of the Chief Executive of Oranga Tamariki, Ministry for Children.

Offences other than murder, manslaughter, Schedule 1A offences or traffic offences that are infringement offences

Options for dealing with young persons aged 14 to 17 for offences other than murder manslaughter, Schedule 1A offences or traffic offences that are infringement offences, whether or not they have been arrested, include:

- no further action
- being issued with a warning or formal caution by Police
- being referred to Police Youth Aid, who may arrange an alternative action (diversion) after consultation with victims, the young person and their family/whānau
- being referred to Oranga Tamariki for a family group conference to consider filing a charging document in the Youth Court or dealing with the matter outside of the court system
- being arrested and having charges filed against them in the Youth Court.

Between initial contact and the decision to arrest, the Police have significant discretion in deciding how to proceed. The OT Act limits the use of arrest but this does not minimise the accountability of the young person.

Considering the risk factors for a young offender will provide guidance as to what level and degree of intervention is required.

Note: While traffic offences that are infringement offences will not usually be heard in the Youth Court, there can be an exception if the infringement offence arises out of the same event or series of events as any other offence in respect of which the young person is required to be brought before the Youth Court and the court considers it desirable to hear the charges together, e.g. an 'Excess Breath Alcohol' and a 'Careless Use of a Motor Vehicle' charge.
(s272(5))

For more information see the 'Manage Youth Aged 14 to Under 18 process' below

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Manage Youth Aged 14 to Under 18 process (July 2019)	551.82 KB

Risk factors for youth offenders

Risk factors

There are key factors that contribute to a child or young person being at risk of offending and/or becoming a victim of crime. Some of these factors are **static** (meaning they cannot be changed by any intervention or Police work). Other factors are**dynamic** (meaning they can be positively influenced by intervention).

Static risk factors

Some examples of static factors that put children or young people in a category of high risk for offending include:

- being male
- age at which offending was first reported to Police (the younger the age, the more at risk)
- previous offending history of family members.

Dynamic risk factors

Some examples of dynamic factors that put children or young people in a category of high risk for offending include:

- lack of involvement in regular education/employment
- negatively influenced by peer group
- dependency on drugs/alcohol
- lack of connection with community.
- family harm

Youth offending risk screening tool (YORST)

YORST is a systematic evaluation of the likelihood of a child or young person offending. It is a cross-agency tool (between Police and OT) and involves 14 questions which enquire about risk factors in key areas of the child's or young person's life. It explores:

- offending and care and protection history
- family factors
- drugs and alcohol
- education/employment
- peers.

The YORST guides actions/interventions carried out by Police youth specialists dealing with young offenders.

See the YORST policy and YORST information sharing guidelines (agreed between OT and Police) below for further information.

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YORST Policy (June 2019)	850 KB

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YORST information sharing guidelines (June 2019)	838 KB

Questioning or interviewing a child or young person

Entitlement to special protection during investigations

The vulnerability of children and young persons entitles them to special protection during any investigation relating to the commission or possible commission of an offence by that child or young person.
(s208(h) the Act - youth justice principles)

Questioning children and young people as suspects

There are strict legal requirements for questioning and interviewing children and young persons.

Children and young persons suspected of committing an offence must be dealt with fairly and courts adopt a strict approach to confessions obtained outside the requirements of the Act.

In particular, and to ensure admissibility of evidence, you must:

- explain their rights to the child or young person as specified in s215 (using the Police rights caution for children and young persons):
    - if there are reasonable grounds to suspect they have committed an offence, or
    - before asking questions intended to obtain an admission, or
    - before continuing questioning, if at any time during the interview you form the view that there are reasonable grounds to suspect they have committed an offence.
- ensure that the child's or young person's rights/caution have been given in a manner and language they understand. Ask them to explain the caution/rights back to you to ensure understanding
- before the interview, inform their parents or guardians that they are at the station for questioning or interview
- conduct any interview in the presence of a nominated person of their choice and a lawyer or both (if requested).

Spontaneous statements

Statements made by the child or young person spontaneously to Police before the officer has had a reasonable opportunity to comply with the requirements above, may still be admissible as evidence (s223).

Links to detailed information about interviewing children and young persons

For detailed information about the requirements above and to ensure evidence given by a child or young person is admissible, see 'Children and young people as suspects' in Investigative interviewing - suspects requiring special consideration.

Youth justice checklist

Always use the "Youth Justice checklist - Steps for investigation" (Pol 388) located in Police Forms> Children and Young Persons to ensure that:

- you comply with the provisions of sections 215 to 232 of the Act and the requirements of the Chief Justice's practice note on Police questioning
- others working on the case can see that procedures have been followed correctly.

Covering important topics in children's interviews

When planning and preparing for an interview with a child suspect, an important topic to cover is whether the child had knowledge that the acts were wrong or contrary to law at the time of offending. This information is necessary to rebut the doli incapax presumption. (See Rebutting the Doli incapax presumption (children aged 10 -13 years) below and the 'Criminal responsibility of children and young persons' table in Part 1 - Introduction to Youth justice) for more information).

The questions you ask will depend on the requirements of your investigation and the child's account of events, if given. When attempting to establish whether the child has the requisite knowledge of wrongfulness during the interview, it may be helpful to check the child's understanding at the time of offending of:

- the likely consequences of the criminal act, e.g. what they thought would happen to the victim/property, what would happen to the child themselves if they got caught, how they would feel if someone did the same thing to them

- what other family members or members of the community would think of the criminal act, e.g. a respected family member such as an aunty or uncle, or their teacher
- why they did what they did, e.g. why throw away the knife they threatened Joe with
- any rules or laws about the criminal act.

Children are susceptible to suggestion, so use open TEDS type questions (tell me, explain, describe, show) to encourage them to do most of the talking. Keep questions short and simple. For example, to find out what the child thought the likely consequences were for the victim, you could ask a question like "You said you kicked Johnnie in the head, What did you think would happen to him when you did that?"

See the Investigative interviewing - suspects requiring special consideration chapter for further information.

Questioning children and young persons as witnesses

Follow the Investigative interviewing witness guide and additional procedures for children and young persons in Investigative interviewing - witnesses requiring special consideration when interviewing children and young persons as witnesses (i.e. not as suspects/offenders) to ensure the evidence given is admissible. The Specialist child witness interview guide may also apply in some cases.

Contacting Youth Aid in serious cases

Do not forget, your Youth Aid Section is available to provide specialist advice if you have any concerns or queries when investigating matters involving children and young persons. For serious cases, it is advisable to speak with Youth Aid prior to commencing any interviews to consider how the offending should be dealt with, e.g. release, or arrest and bring before the Family Court to seek a custody order or whether to commence proceedings in the Youth Court.

Rebutting the *Doli incapax* presumption (children aged 10 -13 years)

Use this information when investigating offences alleged to have been committed by children between the ages of 10 and 13 years inclusive. It focuses on the necessity of ensuring that the 'doli incapax' presumption is *rebutted.*

What is doli incapax?

Doli incapax is an ancient common law presumption that children under a particular age are "incapable of evil" and therefore should not be culpable for any criminal acts or omissions. In New Zealand there is:

- An irrebuttable presumption that a child under 10 years cannot be held legally responsible for their actions (s21 Crimes Act 1961).
- A rebuttable presumption that a child aged 10 - 13 years inclusive cannot be criminally liable unless they knew their act or omission was wrong or contrary to law. This is found in both section 22 of the Crimes Act 1961 and sections 198 and 272A(1)(d) of the Act.

Who is responsible for rebutting the presumption?

The presumption that the child does not know what they did was wrong or contrary to law is rebuttable by the prosecution during court proceedings.

What happens if Police fail to prove the requisite knowledge?

If the prosecution fails to prove the requisite knowledge, then the child is deemed to have committed **no** offence.

For child offenders, there are three aspects of the offence that the prosecution must prove to ensure culpability:

- mens rea **plus**
- actus reus **plus**
- at the time of offending, knowledge of wrong or that the act/omission was contrary to law.

Establishing the requisite knowledge

There are a number of avenues of inquiry that can be followed during the investigation to establish whether the child knew at the time of the offending that what they did was wrong or contrary to law.

Investigating officers should, whenever possible, investigate and then interview the suspect rather than interview and then investigate.

This table outlines a number of options available to investigators:

Evidence source	Description	Relevant case law
Actions of the child	Whether the child ran away or hid evidence may demonstrate that they knew their act was wrong. Also, their demeanour in court may be useful.	*V v United Kingdom* (24888/94)(2000) 30 EHRR 121
Type and seriousness of the offence	The more serious the offence and the older the child within the 10-13 year age bracket, the more likely it is that the court will accept that the child knew their act was wrong. Further, certain offences are more likely to be understood to be wrong, e.g. assault. More complex offences such as bribery or concepts such as being a party to an offence may be more difficult for a child to understand as wrong.	*C (a minor) v DPP* [1995] 2 All ER 43, 62 (HL) *JBH and JH (minors) v O'Connell* [1981] Crim LR 632
Statements made by the child	Whether the child admits or denies the offence may be telling, as may statements made by the child in questioning as to their understanding (see Covering important topics during interviews in the "Interviewing" section above for further information)	*F v Padwick* [1959] Crim LR 439 *JM (A Minor) v Runeckles* (1984) 79 Cr App R 255
Previous misconduct	Evidence of previous offending may be useful in showing that a child has been told in the past, and has understood, that this conduct was wrong. The NZ Courts have held that previous offending may be admitted if its probative value outweighs its prejudicial value. Note section 213 the Act: previously given warnings and formal cautions are not admissible other than on behalf of the defence and so cannot be used to show knowledge.	*R v B, R v A* [1979] 3 All ER 460 *R v Rapira* [2003] 3 NZLR 794; (2003) 20 CRNZ 3
Lay persons	People such as Youth Aid officers, teachers, school principals, sports coaches may offer useful information about the knowledge of children of that age generally and compare this to their view of the knowledge of that child offender in particular.	*R v Rapira*[2003] 3 NZLR 794;(2003) 20 CRNZ 396
Medical specialists	Evidence from medical specialists such as psychologists or psychiatrists. Section 333 the Act reports may be useful.	*L v DPP, T v DPP, W, GH and CH v DPP* (31 May 1996, The Times, London, Lord Justice Otton)

Following the recent case *of R v J* [2007] ACTSC 51 (Australian case) the New South Wales Director of Public Prosecutions recommended the following guidelines:

- It is permissible to rely on the circumstances surrounding the commission of an offence as demonstrating that an accused knew what he or she was doing was seriously wrong, e.g. clear indications of distress and resistance on the part of the victim, the furtive nature of an offence or what the child said or did before and after the offence.
- The evidence of others may also be used to rebut the presumption, e.g. the giving of a false alibi, the child's educational standard and intellectual ability at school, whether the child gives a coherent account to Police about the offence and any admissions given in interview.
- A psychiatric assessment may be obtained.
- Evidence of flight is generally not sufficient to rebut the presumption. (Note that this conflicts with the first bullet point above relating to the "actions of the child" and demonstrates differences in approach between UK and Australian case law).
- The closer the child is to the age of 14 years the easier it will be to rebut the presumption.

Interviewing child suspects to determine knowledge

Refer to Covering important topics during interviews above for information about how to cover off during interviews whether the child had knowledge that the acts were wrong or contrary to law at the time of offending.

Arresting a child or young person and explaining rights

When can you arrest without a warrant

You must have a power under an enactment to arrest any person without a warrant. Section214 limits your powers to arrest children and young persons.

You can only use your power to arrest children and young persons without a warrant-

if ...	and...	Section
you are satisfied on reasonable grounds that an arrest is necessary to: - ensure the appearance of the child or young person before the court, or - prevent the child or young person from committing further offences, or - prevent the loss or destruction of evidence relating to an offence you suspect the child or young person has committed, or - prevent interference with any witness to the offence...	that proceeding by way of summons (where that is an option) would not achieve that purpose.	s214(1)
you have reasonable cause to suspect that the child or young person has committed a category 4 offence or category 3 offence for which the maximum penalty available is or includes imprisonment for life or for at least 14 years	you believe on reasonable grounds that the arrest is required in the public interest.	s214(2)
the child or young person has been released on bail	you believe on reasonable grounds that the child or young person: - has breached a condition of that bail, **and** - has on 2 or more previous occasions breached a condition of *that bail* (whether or not the same condition), **or** - the breach satisfies the criteria for arrest in s214(1) (see Breaches of bail (children and young persons in this chapter)	s214A s214(1)

Exceptions

Nothing in the provisions of section 214 limits or affects the powers of an enforcement officer under:

- Land Transport Act 1998, sections 68 - 72 (Breath alcohol and blood alcohol provisions) (s233 the Act)
- Immigration Act 1987, other than sections 126(4) and 142 (s244 the Act).

Advising a child or young person of their rights on arrest

You must advise a child or young person of their rights in these situations.

Situation	Section OT Act
Before questioning when you have reasonable grounds to suspect the child or young person has committed an offence or before asking any question in which you intend to obtain an admission to an offence.	215
When the child or young person asks you about their rights. This applies when you are questioning a child or young person in relation to their involvement in the commission of any offence or suspected offence and the child or young person asks you about their rights.	215A
When you have decided to charge the child or young person after questioning them.	216
When you have arrested a child or young person.	217
Immediately after a spontaneous statement is made if there are reasonable grounds to suspect a child or young person has committed an offence.	223

How should rights be explained?

Explain rights using the rights caution for children and young persons (detailed on an insert card for your notebook or in Checkpoint). Any nominated person also needs to be advised of these rights.

Ensure the explanations provided to the child or young person are given in a manner and language that is appropriate to their age and level of understanding.

You are not required to explain sections 215-217 to a child or young person if you have done so within the last hour (s219). However, if the child or young person requests their rights to be explained within the hour timeframe, do not hesitate informing them again as it may avoid any subsequent legal arguments in court.

Exceptions

Nothing in the provisions of section 214-232 limits or affects the powers of an enforcement officer under Land Transport Act 1998, sections 68 - 72 (Breath alcohol and blood alcohol provisions) (s233 the Act).

Nothing in section 214 - 243 limits or affects any provision of the Immigration Act 1987, other than sections 126(4) and 142 (s244 the Act).

Reporting the arrest

If you arrest a child or young person, you must provide a written report to the Commissioner of Police within three days of making the arrest. Use the Arrest/Removal of Child/Young Person *YOUTH form located in the Bulletin Board's "Create Notification" feature.

Every report must state the reason why the child or young person was arrested without warrant (s214(3) & (4)).

Options following arrest of a child or young person

When a child or young person has been arrested (with or without warrant) the following options are available to you:

- release the child or young person
- bail the child or young person in accordance with section 21 Bail Act 2000 (see also Releasing the child or young person on bail in the 'Charging' section of this chapter)
- deliver the child or young person to the custody of a parent, guardian or other person having care of that child or young person
- with the agreement of the child or young person, deliver them to:
  - any iwi, social service or cultural social service, or
  - any other person or organisation approved by the Chief Executive of OT, Ministry for Children, or a constable for that purpose.
    (s234 (a) -(c))

See also Charging and holding children and young persons in custody in this chapter for further information.

When drunk or intoxicated children and young persons are in custody

Refer to 'Dealing with drunk or intoxicated children and young persons' in Care and protection and other well-being issues in this chapter.

Releasing without charge

If you have arrested a child or young person and you think the arrest has achieved its purpose, the O/C must decide whether to release the child or young person without charge to the custody of:

- parents or guardians, or
- any iwi social service or cultural social service (with the agreement of the child/young person), or
- any other person or organisation approved by CE Oranga Tamariki or constable (with the agreement of the child/young person).

Consider this in the case of offences where the arrest was unavoidable, but the reason for the arrest no longer applies, e.g. where a shop-lifter refused to supply particulars but co-operated on arrival at the station.

When dealing with children and young persons, the situation continually changes. It may be necessary and highly appropriate to arrest an uncooperative youngster, but this action may in itself achieve the desired effect.

Releasing the child or young person does not mean that they will not be held accountable, as Youth Aid can still deal with the matter by way of warning, alternative action or FGC.

Actions when releasing without charge

Take these steps if you release a child or young person without charge.

Step	Action
1	Either give a warning or refer them to Youth Aid for further action. In both cases, forward a file to Youth Aid for their action. (Warning letters must be sent by Youth Aid). In the case of children, releasing and reporting to Youth Aid is usually the best option.
2	Complete a Custody/Charge Sheet, but note on it that the child or young person was released under section234 of the Act.
3	Complete Notification of Arrest to the Commissioner (*YOUTH).
4	Whatever your action, forward file to Youth Aid.

Warnings

When are warnings appropriate?

As a first step it may be sufficient to give the child or young person a warning, unless a warning would be clearly inappropriate because of the seriousness of the offence and the nature and number of previous offences by that child or young person. (s209)

Warnings may be considered in, but are not limited to, the following situations:

- victimless offences such as language and behaviour offences
- offences where the victim suffers only minor harm
- offences involving property damage that is minor or easily repaired, or for which reparation is made
- offences where property of low value is taken and recovered
- traffic offences that are not punishable by imprisonment, and do not involve injury to people or damage to property.

Factors to consider

When deciding whether to issue a warning, consider the:

- nature and circumstances of the offence
- nature and number of any previous offences
- the child's or young person's attitude to the offence
- victim's views on the matter.

Giving a warning

If you decide to give a warning, do so as soon as practicable after detecting the offence. Where possible, give it at a police station and in the presence of a parent/guardian or nominated adult. (Refer to the 'Children and young people as suspects' section of Investigative interviewing - suspects requiring special consideration for information about who can be a nominated person).

Do not:

- use threats that cannot be enforced
- use words the offender does not understand
- talk down to the offender, or say so much that they 'shut off'
- use wording that precludes a subsequent warning in the event of further offending.

You do not have to issue the warning yourself. It may be more effective if it comes from a respected member of the offender's community or an organisation (s210).

If you are in doubt about whether to warn, you can delay the warning in order to consult with your supervisor or Youth Aid, or to consult further with the victim.

Informing parents and Youth Aid of warnings

If you give a warning, you must take these steps to inform the child's or young person's parents or guardians.

Step	Action
1	Inform the child's or young person's parents, guardians or caregiver in person or by telephone, in accordance with s8 of the Act when a warning has been given. Once this has been done, send the file to Youth Services. Include: - brief details of the circumstances - the particulars of the child or young person - the particulars of the person who has care of the child or young person - the name and address of any victim.
2	Youth Services check the child's or young person's name against NIA and decides whether to take follow-up action.
3	Youth Services must give written notice of the offence and warning to the child or young person and the person having their care (s212). (If your district has a regular requirement for the notice in a language other than those supplied, obtain a translation through the Youth Services Group at PNHQ).
4	Youth Services updates NIA and, if appropriate, initiates follow-up action.

If you decide not to give a warning

If you decide not to give a warning all files are to be referred to Youth Aid following the completion of the investigation.

Considering victims before initiating a warning or alternative action

Before issuing a warning or initiating an alternative action plan, seek and consider the views of the victim. Ensure that the victim is fully involved in the youth justice process by taking these steps. This is in keeping with youth justice principle s208(g) which requires the interests of the victim to be taken into account and also the primary consideration relating to victims in s4A(2)(c).

Step	Action
1	At the outset, record in the NIA Case Contact and Correspondence node. This should: - accurately record the victim's name, address and telephone number(s) and age in the file - be updated whenever contact is made with the victim.2
2	If the victim is a child or young person, make contact and consult through a parent.
3	Give the victim accurate information on the Police's options for dealing with the offender. If the offender is not to be prosecuted, advise the victim and give the reasons.
4	If the offence requires more than a warning, complete a Victim Impact Statement.

For further information on dealing with victims, see the Victims (Police service to victims) chapter in the Police Manual.

Information about warnings is inadmissible

Where a child or young person has been warned or formally cautioned about any offence:

- no information about that warning or caution is admissible against the child or young person in any criminal proceedings against them
- no evidence of the offence is admissible against the child or young person in any other criminal proceedings against them. (s213)

Referral to Youth Aid

Always refer child offenders under 10 years to Youth Aid

A child under 10 is not criminally liable but the offending must be reported to Youth Aid as the younger a child is at age of first offence the higher the risk of them developing into a serious adult offender.

Youth Aid may consider whether there are grounds under section 14 for a child to be referred for a care and protection family group conference (FGC). (While s14(1)(e) refers to children over 10 years and under 14 years, action under the other provisions of section 14, e.g. s14(1)(d), may apply to everyone under 18 years of age).

Refer young persons to Youth Aid when a warning is not sufficient

If the offence is serious or the child or young person has a history of offending, a warning may not be sufficient. On the other hand, the circumstances in which the child or young person is apprehended may not justify an arrest. In such cases, prepare a file to prosecution standard, including victim's details, contact numbers and reparation schedule, and forward it to Youth Aid. Do this promptly, as undue delay can jeopardise the prosecution if the matter does ultimately go to the Youth Court (s322).

The Youth Aid Officer may consider alternative action and develop an alternative action plan that holds the child or young person accountable but at the same time acknowledges their needs and addresses the causes of their offending.

Youth Aid to consider further referral to Youth Justice Coordinator

If a warning or alternative action is clearly inappropriate having regard to the seriousness of the offence and the nature and number of previous offences committed by the child or young person, Youth Aid will then consult with a Youth Justice Co-ordinator at OT with the intention of having a family group conference convened.

(Under section 245 of the Act, unless a young person has been arrested, Youth Court proceedings cannot be instituted against a young person unless a Youth Justice Co-ordinator has been consulted and a FGC held).

Youth Aid action

Youth Aid officers will consider the circumstances of the referral and take these steps as appropriate.

Step	Action
1	Find out the child's or young person's background by: - checking NIA records - making a home visit - conducting enquiries, using your networks with schools and well-being and community agencies.2
2	Use this information to help determine whether the child or young person should be dealt with by: - warning, or - alternative action, or - referral for FGC, or - prosecution following FGC. See Factors to be considered when deciding action below.
3	The decision must be made promptly so that any charge subsequently filed cannot be dismissed under s322.
4	Youth Aid take the appropriate action as per the outcome of Step 2.

Factors to be considered when deciding action

When deciding whether a child or young person should be dealt with by way of warning, alternative action, referral for FGC or

prosecution following FGC, consider:

- youth justice principles (see s4A(2), s5 and s208)
- nature and circumstances of the offence
- degree of involvement of the child or young person
- attitude of the child or young person to the offence (Remember that to be eligible for alternative action, the child or young person must admit the offence. Do not, however, obtain a confession on the promise of such action)
- response of the child’s or young person’s whānau/family
- attitude of the family to the child or young person
- proposal to make reparation or apologise to the victim
- effect of the offence on the victim
- victim’s views on the proposed course of action
- the child’s or young person’s previous offending
- effect of previous sanctions imposed on the child or young person
- public interest - does it require criminal proceedings?
- are custody or bail conditions required?

When deciding on an appropriate course of action, remember:

- the principles of the Act (s4A(2), s5 and s208)
- keep the plan clear and concise
- the course of action should:
  - reflect the offence
  - consider the victim’s interests
  - address the causes underlying the offending
  - assist the child or young person to develop within their whānau/family group
  - be fair and achievable
  - have a set time-frame

Do not take further action if a warning alone will suffice.

Alternative action

What is alternative action?

Alternative action involves Police choosing to address a child's or young person's offending without recourse to criminal proceedings. It is a form of diversion completed under Police monitoring and supervision and is commonly called 'youth diversion' by those outside of the Youth Justice sector.

Note: Any action other than warning the child or young person or referring for an FGC should be regarded and recorded as an alternative action.

Note: Although no Family Group Conference can be held for Schedule 1A offences, Police is still required to consider alternative means for Schedule 1A offences (under section 208(a)), as we are for all alleged offending by young persons. This enables Police to decide whether an alternative action plan is appropriate for some 17 year olds alleged to have committed Schedule 1A offences. This is likely to be a small minority of this group of 17 year olds and must be balanced with other considerations, particularly the primary considerations of the public interest (including public safety) and accountability of the young person, and the victim's interests (section 4A(2)). If we decide to put in place an alternative action plan and the 17 year old does not complete the plan, we can charge the 17 year old with the Schedule 1A offence.

Legislation requiring alternative action to be considered

Under section 208 of the Act, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter. This means alternative action is a valid option to address offending without resorting to criminal proceedings. It is a practical response for children and young persons who come to Police notice for offending.

The alternative action process

The decision to give a child or young person an 'alternative action' is made by a Youth Aid Officer when they consider that a warning is inappropriate having regard to:

- the seriousness of the offence, and
- the nature and number of previous offences committed.

The alternative action process involves the Youth Aid Officer meeting with the child or young person and their parents or caregivers when an offence is alleged to have been committed. Together they develop a plan which may include elements that:

- aim to redress the harm done, make amends to the victim, if appropriate, address the child or young person's offending-related risk factors, and
- hold them accountable.

The plan is recorded in writing and has a clearly defined timeframe within which it is to be completed.

If a plan is not agreed or is not completed the matter may be referred by Police to Oranga Tamariki for a Family Group Conference.

Aims and elements of alternative action plans

The core aims of an alternative action plan are to:

- hold the young person accountable for their actions
- make amends to the victim
- address needs that the child or young person may have which contribute to the risk of future offending.

Elements of a plan

The elements of a plan must be reasonable and achievable and may include, but are not limited to:

- a letter of apology to the victim
- reparation or financial restitution to the victim
- a donation to a nominated charity
- community work

- attending a programme or counselling related to the offending-related needs of the child or young person
- participating in a pro-social activity/club
- re-enrolling in school or a training course
- curfew or commitments not to associate with certain peers seen to be a negative influence or other restrictions.

(A more comprehensive list is found in the 'National Guidelines for Police Alternative Action' below.

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Alternative Actions Guidelines - June 2019 1.91 MB

Risk and needs screening

Alternative action plans should be designed to address the needs of the child or young person that contribute to the risk of further offending. Tools such as the Youth Offending Risk Screening Tool (YORST) assist with highlighting these needs. (See Risk factors for youth offenders in this chapter for further information).

National Guidelines for Police Alternative Action

The National Guidelines for Police Alternative Action aim to assist Youth Aid Officers and their supervisors implement effective and meaningful alternative actions with children and young people.

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Alternative Actions Guidelines - June 2019 1.91 MB

Checklist

A checklist to assist Youth Aid Officers and supervisors is available in Police Forms> Children and Young Persons > Alternative Actions Checklist.

Charging and holding children and young persons in custody

If you decide to charge

Follow these steps if you decide to charge a child or young person following arrest. (Remember a child can be charged only with murder or manslaughter or in circumstances outlined in s272 - see Age of criminal responsibility in 'Part 1 Introduction to Youth justice').

1	Before charging, inform the child or young person of their rights in a manner and language appropriate to their level of understanding. (You don't need to explain the rights if they have already been explained within the last hour) (s219).
	Can this matter be dealt with in an alternative way? See the 'National Guidelines for Police Alternative Action'. -
3	Explain the specific nature of the charge, in language they can understand, to the child or young person, the caregivers and the nominated person. You can do this verbally or in writing (s232).
	Prepare the arrest file to the usual prosecution standard. The court will (in most cases) order a family group conference (FGC), so full victim details must be on the file.
5	Consider whether the child or young person should be released, bailed or held in custody (s234, s235 or s236). See Placing a child or young person in OT custody and Holding in Police custody below.
	Advise Oranga Tamariki (OT) of the arrest if the child or young person will be attending court so that they have the opportunity to send a representative to the Youth Court.
7	Liaise with the court to ensure the child or young person is brought before the Youth Court as soon as possible.

For more information refer to the Manage Custody of youth aged 14 - under 18 process

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Manage Custody of youth aged 14 - under 18 process 405.27 KB

Releasing the child or young person on bail

A young person who has been charged may be released on bail under section 21 of the Bail Act 2000. Bail conditions can be imposed by the Police. It is good practice to discuss the conditions with the person into whose care the child or young person is released. This person and the child or young person must sign the bail bond to confirm acceptance of the conditions.

If you decide to release the child or young person on bail, remember that they will have to appear at an initial court hearing within seven days. In smaller centres, practice differs, but may mean a special Youth Court sitting.

Note: A young person cannot be released on a summons (s245).

Selecting suitable bail conditions

Bail conditions must have a clear and reasonable link to the child's or young person's current charges and criminal and bail histories. Selecting appropriate conditions in the first instance will reduce unnecessary arrests for breaches of conditions later. (See Bail conditions in the Bail chapter).

Opposition to bail

You should consider completing an opposition to bail (POL 128Y in Police Forms> Children and Young Persons) for offenders who need

to be kept in custody.

Bail opposition must comply with the strict requirements of sections238 and 239 of the the Act. If statutory requirements are met, the Youth Court will remand the child or young person into either:

- OT custody (s238(1)(d)), or
- rarely, Police custody (s238(1)(e)), or
- Youth Unit of a Prison (s238(1)(f)) where the young person is 17 years old.

Note: You **should seek immediate guidance** from a Youth Aid officer if you want to oppose bail of a defendant aged 12-17 years.

Preparing opposition to bail

Complete a POL128Y in Police Forms when opposing bail for a child or young person in the **Youth Court**. Follow the guidance on the POL 128Y itself when preparing your bail opposition.

If the young person is appearing in the District Court having been transferred subject to section 283(o) after conviction in a Youth Court, the provisions of sections 7, 8 and 15 of the Bail Act will apply and you must complete an opposition to bail using a POL 128. In these cases, follow the guidance on preparing bail opposition forms in the Bail chapter.

Bail and Schedule 1A offending

If a 17 year old is charged with a Schedule 1A offence then they may initially be granted bail by the Youth Court but, following first appearance in the Youth Court, the proceeding will be transferred to the District or High Court where the 17 year old may be granted adult bail. (See 'Dealing with Schedule 1A offending' in **Part 3 - Criminal procedure in the Youth Court**).

For that reason, it is necessary to identify which Court has granted bail when considering arrest for bail breach. If the 17 year old is subject to adult Court bail then the protections of section 214 and 214A related to arrest for bail breach will not apply (s214B).

Further, it will be necessary to complete a youth opposition to bail form for the 17 year old's Youth Court appearance but the adult form if bail is to be opposed in the adult Court.

Victim's views on release of child or young person

For victims of an offence specified under section 29 of the Victims' Rights Act, Police **must** make all reasonable efforts to ascertain the victim's views on types of orders the court may make and inform the court of those views.

Police **must** inform each victim, whether or not the victim's views have been ascertained, of:

- the order made by the court
- if the child or young person is bailed, any conditions of bail that relate to the safety and security of the victim or their immediate family or require the child or young person not to associate with or contact the victim or their immediate family (s238(2)).

See 'Notification rights for victims of serious offences' in the Victims (Police service to victims) chapter for more information on bail applications when section 29 applies.

Placing a child or young person in OT custody

Following the arrest of a child or young person, or in the case of a child who has been arrested and who may be subject to proceedings relating to child offending in the Family Court, the child or young person must be placed in the custody of the Chief Executive OT as soon as practicable and no later than 24 hours after the arrest if you have reasonable grounds for believing:

- the child or young person:
    - is not likely to appear before the court, or
    - may commit further offences, or
- it is necessary to prevent:
    - the loss or destruction of evidence relating to an offence committed by the child or young person or an offence you have reasonable grounds to suspect them of having committed, or
    - interference with any witness in respect of any such offence, or
- the child or young person has been arrested under section 214A and is likely to continue to breach any condition of bail.

(s235(1) & (1A))

Police obligations when placing a child or young person in OT custody

When placing a child or young person in OT custody, you must:

- deliver the child or young person to a social worker, and
- give details to the social worker in writing (form POL 235) relating to:
  - the child or young person's identity
  - the circumstances of the arrest
  - the date and time of the intended appearance of the child or young person before the court having jurisdiction over the matter(s).
  (s235(2))

The 24 hour time limit does not:

- allow you to hold the child or young person solely for the purpose of making further enquiries,
- allow you to delay contacting OT solely to keep the child or young person in Police custody for the maximum period of time.

It is important to advise OT as soon as possible to allow the social worker sufficient time to arrange for a suitable placement. A lack of resources, such as a bed, on the part of OT should not affect custody transfer timeframes.

Record in the custody module, in whose custody the child or young person is being placed.

Note: Once the child or young person is released into OT's custody, they then become the social worker's responsibility. You can make recommendations about the type of custody but the final decision is with the social worker.

Holding in Police custody

There is **no** provision for keeping a **child** in Police custody for more than 24 hours.

A **young person** may be detained in Police custody for more than 24 hours and until their appearance in court only if a joint certificate has been obtained and signed by a delegate of the Chief Executive of OT and senior sergeant (or above). These two people must be satisfied on reasonable grounds that holding a young person for more than 24 hours is necessary where:

- the young person is likely to abscond or be violent, and
- suitable OT facilities for the detention in safe custody of the young person are not available.

A joint certificate on the POL 236 must be completed by Police and the OT delegate in these situations. You must provide a copy of this certificate to the Commissioner within 5 days and a written report explaining:

- the circumstances in which the certificate was issued, and
- the duration for which the young person was detained or is likely to be detained in Police custody.

Do this by emailing the joint certificate to this email address.
(s236 (1) & (2))

See the People in Police detention chapter for the procedures to be followed when children and young persons are held in Police custody or court cell blocks.

See Manage Bail/Remand for Youth aged 14 to Under 18 process

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Manage Bail Remand for Youth aged 14 to Under 18 process (July 2019) 339.31 KB

Note the requirement to keep children and young persons separate from adults.

Youth justice residences

See the Ministry for Children, Oranga Tamariki (Youth Justice) webpage (www.orangatamariki.govt.nz) for information about youth

justice residences.

Breaches of bail (children and young persons)

Introduction

When dealing with a child or young person, the provisions of the Bail Act 2000, including the power to arrest for breach of bail under section 35 must be read subject to the provisions in the Act.

When can you arrest without warrant for a breach of bail

You may **only** arrest a child or young person for a breach of bail, including a breach of electronically monitored (EM) bail:

if ...	**and...**
you are satisfied on reasonable grounds that an arrest is necessary to: - ensure the appearance of the child or young person before the court, or - prevent the child or young person from committing further offences, or - prevent the loss or destruction of evidence relating to an offence you suspect the child or young person has committed, or - prevent interference with any witness to the offence…	that proceeding by way of summons (where that is an option) would not achieve that purpose. (s214(1) the Act)
OR...	
the child or young person has been released on bail	you believe on reasonable grounds that the child or young person: - has breached a condition of that bail, **and** - has on 2 or more previous occasions breached a condition of that bail (whether or not the same condition). (s214A the Act)

Arrests may be challenged requiring the Youth Court prosecutor to establish that the conditions of section 214 or 214A were met at the time of the arrest.

Key factors to consider before arresting under section 214A

When dealing with a child or a young person who has breached a condition of their bail and on two or more previous occasions breached a condition of that bail, the first consideration must be whether it is appropriate to return them to the custody of their parents or caregiver.

This response enables Police to deal with less serious breaches that do not require or justify the further detention of the child or young person.

Police should only arrest a child or young person for breach of bail with the intention of providing the court with information and recommendations to strengthen a more effective bail management plan or where police are seeing to oppose bail.

Note: To confirm whether a child or young person has breached their bail conditions on two or more occasions, you must only calculate the number of bail breaches from their last youth court appearance. It is the responsibility of the Youth Prosecutor to ensure the Youth Court are aware of any breaches to bail when the child or young person has a court appearance. Any matter relating to bail should be dealt with on this occasion. Following the court appearance the number of bail breaches for the child or young person resets, regardless of whether any bail conditions are changed.

Procedures for responding to bail breaches

You must follow these steps when responding to bail breaches. (See also responding to breaches of electronically monitored (EM) bail below if applicable).

Step	Action
1	Seek an explanation from the child or young person for the breach.
2	Consider if the child or young person can be returned home and placed into the care of their parent, caregiver or guardian. **(This is always the primary consideration**).
3	If the child or young person is returned home, forward the file to Youth Aid section.
4	Consider giving a warning for breach
5	Only arrest if the criteria in section 214(1) or 214A are met and in the case of section 214A, you have approval to do so. See Arrest for two or more bail breaches under section 214A below for more information.
6	If you are placing the child or young person before the court: - oppose bail, or - seek amendment of bail conditions, or - seek a warning from the judge.
7	If necessary, consider custodial options following arrest. (These are set out in sections 234, 235, and 236). Young persons detained in police custody for more than 24 hours should only be those whose bail you wish to oppose.
8	Report all arrests under section 214 to the Commissioner, using the Child/Young Person Arrest/Removal notification in Microsoft Outlook.

Responding to breaches of electronically monitored (EM) bail

The Department of Corrections has primary responsibility for EM bail including:

- writing EM bail assessment reports for the courts
- inducting defendants who have been granted EM bail
- overseeing, with the assistance of a monitoring company, the electronic monitoring of defendants subject to EM bail (EM bailees), and
- managing EM bailees' curfew schedules and approving their movements.

In the case of children and young persons, this is done in consultation with OT.

Police are responsible for:

- responding to alarm notifications and breaches, as directed by the Police Communications Centre, and
- taking all enforcement action in relation to EM bail, including attending breach of bail hearings.

See information in the Bail chapter on responding to:

- EM bail alarm activations involving children and young persons
- breaches of EM bail and situations when EM bail addresses become unsuitable.

Arrest for two or more previous bail breaches under section 214A

Before arresting under section 214A, you must be certain that the child or young person has:

- been released on bail conditions, **and**
- breached a condition of that bail, **and**

- on 2 or more previous occasions breached a condition of their bail.

Note: It is not appropriate to conduct multiple bail checks in a short period of time solely to generate repeated bail breaches so that a subsequent arrest can be made.

The power to arrest a child or young person for 2 or more breaches of their bail conditions must be used appropriately and only when other options to deal with the child or young person are not appropriate (e.g. issuing a warning, or returning them to their caregivers).

Approval required to arrest under section 214A

Before making an arrest under section 214A, you must have approval from a Youth Aid Sergeant, or in their absence, from your own supervising Sergeant (or above) or a qualified Youth Aid officer.

Using warnings for breaches of bail conditions

Exercising discretion in bail enforcement

Use discretion in bail enforcement to make the best decision in the circumstance for the child or young person and making more effective use of Police and court resources. Achieving this requires:

- O/C cases and Police prosecutors to seek only appropriate bail conditions in the first instance
- police to consider referring matters to Youth Aid or warnings, rather than arrest, when policing bail conditions.

Bail conditions

Bail conditions must have a clear and reasonable link to the child’s or young person’s current charges and criminal and bail histories.

The Bail Act requires conditions that ensure a child or young person appears in court on the date set, does not interfere with evidence or witnesses and does not commit offences while on bail.

Approval for issuing warnings for breaches of conditions

All bail breach warnings should be approved by your supervisor.

Reporting arrests for bail breaches to the Commissioner

See the earlier ‘Reporting the arrest’ topic. For bail breach arrests, your report must also specify:

- whether section 214 or 214A was used to invoke this power
- if arrest was on the grounds of repeated breaches of bail (s214A), the name of the supervisor who approved the arrest without warrant.

For Schedule 1A offences, note also the Bail and Schedule 1A offending requirements in the earlier ‘Opposition to bail’ topic.

Prosecution and family group conferences

Arranging an FGC

Where a young person or child is not arrested but prosecution may still be appropriate, an Intention to Charge Family Group Conference (FGC) will be required. To do this refer the matter to Youth Aid who will:

- refer the matter to the OT Youth Justice Co-ordinator
- consult with the OT Youth Justice Co-ordinator.
  (s245)

If a child or young person has been arrested and charged a FGC may be convened after an initial Youth Court hearing.

Referral to the Youth Justice Coordinator

Referral to the Youth Justice Coordinator must include the following information:

- POL 3040 Family Group Conference referral form (in Police Forms > Children and Young Persons)
- Caption summary
- victim details
- reparation schedule and supporting documentation
- alternatives to prosecution that have been considered

A youth advocate will be appointed by OT for an Intention to Charge FGC to represent the child or young person where the offence has a sentence of 10 years or more imprisonment.

Consultation

The Youth Justice Co-ordinator will want to be assured that all alternatives have been considered before referring for a FGC. In line with the section 4 purposes, section 5 and section 208 principles of the Act, consultation will involve discussions between a Police Youth Aid Officer and the coordinator to look for alternatives to prosecution (e.g. does this really need to go to court) and to agree on the objectives for the FGC and how best to achieve them. The discussion should also include who should attend the FGC).
(s245)

Consultation might conclude with:

- the matter going no further
- Police taking alternative action (considering care and protection factors, and Family Court orders), or
- proceeding to prosecution.

Time frames for convening FGCs

The timeframes for convening and completing a FGC are outlined in this table.

Family Group Conference Type	Convene	Complete
Child offender (s247(a))	Within 21 days of Youth Justice Coordinator (YJC) receiving a report from the enforcement officer. (s249(1))	Within 1 month of convening. (s249(6)(b))
Pre-charge (s247 (b))	Within 21 days of YJC receiving notification that despite consultation the Police desires that the young person be charged. (s249(2))	Within 1 month of convening. (s249(6)(b))
Custody Young person denies the charge and is remanded in custody under s238(1)(d) or (e). (s247 (c))	Within 7 days of court order. (s249(3))	Within 7 days of convening. (s249(6)(a))
Court Ordered Charge "not denied". (s247 (d))	If remanded in custody under s238(1)(d) or (e) within 7 days; otherwise within 14 days of court direction. (s249(4))	Within 7 days of convening. (s249(6)(a))
Charge Proved (s247 (e))	Within 14 days of the finding of proof. (s249(5))	Within 1 month of convening. (s249(6)(b))
At any other stage if desirable (s281B)	No time specified	No time specified.

Purpose of a youth justice FGC

The purpose of the FGC is to hold children and young persons accountable for their offending and encourage them to take responsibility for their behaviour, seek redress for the victim and address the underlying causes of offending.

This table outlines the functions of a FGC convened for youth justice purposes as set out in sections 258 and s259. (See also Formulating recommendations and plans below).

Where a young person...	the functions of the FGC are to:
has allegedly committed an offence but proceedings have not been commenced	consider and recommend to the relevant enforcement agency whether the young person should be dealt with by prosecution, or in some other way.
has allegedly committed an offence and proceedings have been commenced	consider and recommend to the court whether the young person should be dealt with by the court, or in some other way.
is being held in custody on a charge	make a recommendation to the court on their custody pending the determination of that charge.
admits to, or is found guilty of, a charge	consider and make a recommendation to the court how they should be dealt with.
denies the charge meaning Police can no longer informally proceed	

The Youth Justice Coordinator is responsible for providing a record of the outcome of the FGC (s262). The Youth Aid Officer must get a copy of this and put it on the Prosecution file.

FGC for child offenders - care and protection

Where the conference is convened pursuant to section 18(3) (which relates to a child's need for care or protection on account of

offending) the functions of the conference are:

- to consider any matters relating to the care or protection of the child
- where the conference is agreed that care or protection is needed, make decisions, recommendations and plans consistent with the principles set out in the Act
- to review these decisions and plans from time to time.

FGC for a child's serious offending - Youth Court

Where the conference is convened pursuant to section 247 (b) when Police are considering prosecution under s272 (1)(b) or (c), the functions of the conference are to consider whether:

- the public interest requires criminal proceedings to be commenced
- the child is in need of care or protection as specified in s14(1)(e) and if so whether public interest requires that the matter be dealt with by commencing Family Court proceedings or in "some other way".

Refer to the Solicitor-General's Prosecution Guidelines for guidance on 'public interest' considerations.

Formulating recommendations and plans - child and young person

The FGC formulates a plan for the child or young person making recommendations (which may include prosecution). Common elements of FGC plans include an apology, reparation, working for the victim or community, a donation to charity, curfews, counselling or training programmes. The FGC may also recommend that proceedings be discontinued or that a formal Police caution be issued.

Anyone legally entitled to attend an FGC (including the victim of any offending) can assist in making the plan. They can agree or disagree with any recommendation made by the family group, and if they disagree, the matter is likely to progress to the Family Court or Youth Court. If the conference is able to reach agreement on part of the plan, these agreement areas are recorded. The judge should be made aware of the points of agreement as well as disagreement.

The plan must be approved by the judge and if the young person completes the plan agreed at the FGC, the charge is usually withdrawn or discharged.

Who can attend a FGC?

Section 251 of the Act lists who is entitled to attend the FGC.
Note the victim is entitled to attend the FGC with a reasonable number of support persons. Alternatively, the victim can nominate a representative to attend on their behalf with a reasonable number of support persons.

Police are represented at the FGC by Youth Aid officers.

The O/C case is not an entitled person under section 251. However, in serious or complicated cases, the Youth Aid officer may consider arranging for the O/C case to accompany them to the conference. This requires the permission of the child's or young person's family group and if permission is granted, the O/C case cannot influence any plan or penalty unless invited to by the family group. However, if the O/C case attends in place of a Youth Aid Officer, they are the Police representative, with all the associated rights.

No person, including the child or young person, can be compelled to attend a conference.

The family group conference must be convened in accordance with the Act.

Related information

See also 'Procedures for family group conferences and afterwards' below.

Procedures for family group conferences and afterwards

A family group conference can determine its own procedure. Youth Aid officers represent Police at youth justice family group conferences.

Preparing for the FGC

Use this table as a guide when preparing for a youth justice FGC.

Step	Action (Youth Aid Officer)
1	Ensure that you know: - the details of the offence - the part played by the young person - how much reparation is sought - the maximum penalty. In cases involving child offending, also ensure you have sufficient details to make submissions on public interest.
2	Familiarise yourself with the child's or young person's: - NIA Youth Folder - background and family history (canvass your network contacts and complete a home visit) - response to interventions imposed by any previous FGC.
3	Contact the victim to check that they: - are aware they can have support people at the conference, and that the local victim support group can also help. (If necessary, offer your own support and suggest meeting outside the conference venue) - are aware of their rights during the conference. Although it is the Youth Justice Co-ordinator's responsibility to explain these, victims often feel more comfortable if Police offer further advice and support - have proper estimates or receipts for any damage incurred. If necessary, update the victim impact statement. A statement completed at the time of the offence might not show its long-term effects. See the Victims (Police service to victims) chapter for detailed information on preparing victim impact statements.
4	Liaise with the O/C case to ascertain their views and obtain background information. (In some circumstances you may wish to seek permission for the O/C case to attend- see 'Who can attend a FGC').
5	You are the decision maker at the FGC. Regardless of the views of other officers, you are the one who is provided with information at the FGC which will influence your ultimate decision to agree or disagree with the proposed plan.

At the FGC

Use this table as a guide when attending a youth justice FGC.

Step	Action (Youth Aid Officer)
1	Although you will have considered possible interventions, do not arrive at the FGC with a predetermined view on the outcome. Listen to all proposals and be flexible.
2	Introduce yourself and circulate. Be aware of cultural requirements associated with the family group or venue. Explain the nature of the offences to the conference and answer any questions honestly.

3 Read the summary of facts including any other helpful information. Ask if the child or young person admits guilt.

If the family group requests it, give the child's or young person's previous history.**Note**: You cannot do this as of right.

4 If the victim is not present, ensure that their views are accurately represented. If they are present, support them if necessary. This is a function that may also be undertaken by the YJ Co-ordinator as they are legally obliged to provide this information (s254).

5 Where appropriate, provide relevant information to the FGC to enable sound and informed decisions to be made.

6 If the family group seeks guidance on a suitable intervention and the recommendations you intended to make still seem appropriate, put these to the conference.

7 If the family group makes recommendations on the outcome of the FGC:

- ask yourself if they:
  - are appropriate to the offence (and if they have previously committed offences that they are taken into account)
  - are fair and realistic
  - comply with the objects and principles of the Act
- consider the victim's views (their acceptance of the plan is a major factor in determining yours). However, remember that victims sometimes have unreasonable expectations and the co-ordinator is not bound to act in accordance with these views
- be prepared to negotiate with the family group if the plan it suggests is clearly impracticable, unreasonable or inconsistent with the principles of the Act. If necessary, have the courage to use your power of veto, particularly if the child or young person has been responsible for the failure of any previous interventions.

8 You can defer your decision on whether to accept a recommendation in difficult cases while you discuss the matter with your supervisor.

Limit this discussion to the plan itself. Although you have the power to insist that the matter goes to court, exercise this power with care. The court will severely criticise any action that does not comply with the objects and principles of the Act.

9 The final plan may include, as appropriate:

- the penalty imposed (see possible outcomes from a FGC below)
- time-frame for completion
- individual tasks and responsibilities
- the standards required
- nature and frequency of supervision
- names of the supervisors, and their agreement to participate
- amount and form of any reparation
- arrange to report to the victim and other interested parties when the plan is complete
- regular review of progress
- the course of action to be followed if the plan is not completed.

10 Make a note of the plan (the Youth NIA module has a plan template) while you are still at the FGC, because the written notification from the Youth Justice Co-ordinator may not arrive until some time later.

11 If the FGC cannot reach a decision, it may be adjourned for further consideration or the matter referred to Youth Court for the judge to adjudicate on the issues.

Note that the proceedings of family group conferences are privileged and must not be published (s271).

Possible outcomes from a FGC

Possible outcomes from a FGC include:

- deny: charges filed (possibly some changes to charges)
- deny: no charges filed, alternative action taken or no further action
- admit: non-court plan
- admit: charge filed for court outcome (sentencing / orders).

After the FGC

Take these steps after a youth justice FGC.

Step	Action (Youth Aid Officer)
1	Update NIA.
2	Ensure that you complete any task you have agreed to undertake.
3	Although it is the Youth Justice Co-ordinator’s responsibility to ensure that the plan is carried out, you should check with the victim or another interested party to see for yourself, and report back to the Co-ordinator if anything is amiss.

Administering a formal caution

If an offence is admitted or proved and a FGC has been held recommending that a child or young person receive a formal Police caution, Youth Aid must give written notice of the offence and formal caution to the child or young person and the person having their care.
(s212)

Note The formal caution differs from a warning in that a FGC must have been held and a recommendation made and agreed that a formal caution is to be given.

Give the formal caution to the child or young person:

- where practicable, at a Police station
- in the presence of a parent, guardian or other person who is the usual caregiver, or an adult nominated by the child or young person.
(s211)

Who gives the caution?

The caution must be given by a constable of or above the position level of sergeant. If this is not possible, it can be given by the most senior constable available.

Decision to charge

Follow these steps if there is a decision to file a charging document:

Step	Action (Youth Aid Officer)
1	Update NIA with decision.
2	Determine the appropriate charge. Have a supervisor review and endorse the charging decision.
3	Determine the proposed set of bail conditions, and provide with the charges to the File Management Centre. Ensure bail conditions selected have a clear and reasonable link to the child's or young person's current charges and criminal and bail histories and are consistent with the Bail Act.
4	Contact the File Management Centre and have them create a charging document in NIA. Have the charge 'force filed.'
5	The File Management Centre enters the proposed bail conditions, or opposition to bail.
6	The O/C case prints the summons (ensuring the charging document has been filed) and serves the summons.
8	Take fingerprints and photograph the child or young person and consider taking a DNA sample.*
7	Record service of the summons on the Police copy of the summons, and return the Police copy to the Prosecution file. Update NIA with the summons served date.
9	Prepare the prosecution file and provide to the Youth Court prosecutor prior to first appearance. (SeeProsecution file and trial preparation for information on preparing prosecution files for first appearance).

* Conditions apply to the collection of identifying particulars from children and young people. Police are entitled to collect identifying particulars (including fingerprints and photographs) under the Policing Act 2008. See Fingerprinting and photographing children and young persons for more information.

In some situations, DNA samples may also be obtained from the child or young person. (See **Youth DNA Sampling**.)

Fingerprinting and photographing children and young persons

Identifying particulars

“Identifying particulars” is defined in section 32(5) of the Policing Act 2008 as any or all of the following:

- the person’s biographical details (e.g. the person’s name, address and date of birth)
- the person’s photograph or visual image
- impressions of the person’s fingerprints, palm-prints, or footprints.

When can fingerprints and or photographs be obtained?

Under statutory authority

Police have a statutory authority to take fingerprints and photographs from children and young persons in the following circumstances:

- under section 32 of the Policing Act 2008 if they are in the lawful custody of Police and are detained for committing an offence (they must be at a Police station or another place being used for Police purposes); or
- under section 33 of the Policing Act 2008 when the child or young person is suspected of committing an offence and Police intend to prosecute by way of summons.

In addition to the above police also have a statutory authority to take photographs:

- under Section 47(1), Search and Surveillance 2012
- under Section 110(j), Search and Surveillance 2012

In some situations, DNA samples may also be obtained from the child or young person. (See Youth DNA Sampling)

The collection of their fingerprints and photographs when in lawful custody or on summons is a crucial part of policing in the community. Collection of fingerprints and photographs must be done in a lawful and ethical manner that protects the rights afforded to children and young persons under the Act and the New Zealand Bill of Rights Act 1990.

The objects and principles of the Act (s4(1)(i)) include holding children and young persons who commit offences accountable for their offending. Fingerprints and/or photographs obtained outside the law and these guidelines are inadmissible as evidence.

If there has been no arrest, if a FGC has not been completed or a summons served in relation to a schedule 1A offence, then fingerprints and photographs cannot be collected under section 32 or section 33 without the intent of prosecuting the child or young person.

There is no provision for taking voluntary fingerprints or photographs.

Authority through other legislation

Although police have no statutory authority to take an identifying image of a person under the Privacy Act 2020, under certain situations, a photograph can be taken. The provision to do this is strictly controlled. Please refer to the police instructions chapter of photographing and videoing of people members of the public.

When fingerprints and/or photographs are already held

The fact that Police may already hold fingerprints and/or a photograph for the child or young person does not preclude you from collecting further fingerprints and photographs under section 32 or 33.

These are collected as part of each particular arrest/charging process. Between 70-80% of youth fingerprints and photographs taken under section 32 or 33 end up being destroyed due to the case outcome (see retention of fingerprints below). Therefore, Police should collect further fingerprints and photographs from youth when they are in lawful custody or on summons, in accordance with section 32 or 33 Policing Act.

Do not:

- take fingerprints or photographs from any child **under ten** years unless required for elimination purposes (these will be destroyed once the elimination comparison has been carried out). The Crimes Act 1961 sets the minimum age of criminal responsibility at ten years.

- collect the fingerprints or photographs of any child/young person who is with Police by reason of a place of safety warrant (s39 of the Act) or an unaccompanied child/young person (s48 of the OT Act). These are care and protection provisions only and youth justice interventions cannot be applied.
- take voluntary fingerprints or photographs.

Retention of fingerprints and photographs

Fingerprints and photographs of children and young persons can legally be retained when taken as part of the arrest or summons process (s32 and 33 Policing Act).

Fingerprints and photographs taken by the arrest or summons process must be destroyed when:

- a decision is made not to charge the child/young person in respect of the offence for which the fingerprints were taken; or
- criminal prosecution proceedings that are commenced against the child/young person in respect of the offence for which the particulars were taken do not end with:
    - a conviction for the offence for which the fingerprints were taken, or
    - an order made by the Youth Court under section 283(a)-(o) of the Act (s34 and 34A Policing Act 2008).

Up until the time at which sections 34 and 34A apply, fingerprints and photographs can be legally retained and searched against the unsolved crime prints database (ABIS).

Note: Cases need to be closed promptly and Youth NIA updated as soon as it is clear that criminal proceedings will not be commenced, i.e. there is no possibility of a Youth Court order being made. You cannot delay making your decision on whether to commence proceedings in order to extend the period of retention of fingerprints and/or photographs.

Ensuring compliance with destruction requirements

To ensure compliance with the requirements for destruction, you **must regularly update** the active youth case folder and related fingerprints and photographs, with progress/outcomes. This is the only source of information the National Biometrics Information Office can use to make a decision on whether to retain or destroy a set of youth fingerprints and/or photographs.

Youth DNA sampling

Obtaining DNA samples from children and young persons

This part of the Youth Justice chapter contains summary information only about when DNA samples may be obtained from children and young people under the Criminal Investigations (Bodily Samples) Act 1995 (CIBS Act).

Refer to these sections in the DNA sampling chapter in the Police Manual for detailed information about when DNA samples can be taken and the **procedures** for doing so:

- Suspect samples from young persons
- Powers in respect to suspect samples from children
- Obtaining DNA suspect samples from children (Part 2A samples)
- Part 2B Sampling Procedures - 'Intention to Charge' Persons of or over 14 years and under 18 years.

See also:

- Oranga Tamariki Act 1989
- the 'Intention to Charge youth 14 to under 18' and the 'Decision tree - Take a DNA sample or not' processes below for an overview of child and youth DNA sampling.

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Manage Intention to Charge Youth 14 to under 18 years (July 2019) **505.9 KB**

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Decision tree - Take a DNA sample or not (July 2019) **123.05 KB**

Overview of sampling rules- persons of or over 14 years and under 18

This table provides an overview of when DNA samples can be obtained from persons of or over 14 years and under 18 years.

Intention to Charge (Part 2B) (Databank)	**Suspect Samples (Part2) (Casework)**	**Suspect Samples (Part2A) (Case-work)**	**Databank Compulsion Notices (Part 3) Post Conviction (Databank)**	**Databank Voluntary (Part 3) (Databank)**
Yes if Police intend to charge the donor with a **relevant** offence.	Yes if suspected of an **imprisonable** offence and the DNA analysis will tend to confirm or disprove their involvement. (By consent or Suspect Compulsion Order)	N/A	If charged with an **imprisonable** offence and s283(a) to (o) OT order made or convicted by District Court but not sentenced to imprisonment or sentenced to imprisonment by a court.	N/A

Part 2B intention to charge DNA sampling

The CIBS Amendment Act 2009 (Phase 1) extended the Police powers to take Databank bodily samples for DNA analysis and comparison, including youth aged 14 to 18 years (s24K). Sampling process should be consistent with principle 208(a) OT Act 1989 requiring police to look at alternatives to prosecution. Unless the youth is arrested and charged straight away, DNA sampling from youth can only occur post FGC when the decision has been made to charge the individual.

Refer to the DNA Sampling chapter and the Police Form POL 806 (in Police Forms>DNA>Sampling Forms) for further Intention to Charge (Part 2B) DNA sampling information.

Section 60A(3)(A) specifies an expiry date of two months between the sampling date and the relevant offence charge being filed date.

Taking a databank DNA sample at ‘intend to charge’ stage will mean the profile can be compared and matched against unsolved crime scene samples earlier on in the process, prior to the person's conviction or acquittal.

Overview of sampling rules- person of or over 10 years and under 14

This table provides an overview of when DNA samples can be obtained from persons of or over 10 years and under 14 years.

Intention to Charge (Part 2B) (Databank)	Suspect Samples (Part2) (Casework)	Suspect Samples (Part2A) (Case-work)	Databank Compulsion Notices (Part 3) Post Conviction (Databank)	Databank Voluntary (Part 3) (Databank)
No	Yes, if the child can be lawfully prosecuted (refer to S272 (1A) and (1B) of the Oranga Tamaraki Act and the DNA analysis will tend to confirm or disprove their involvement. (By Suspect Compulsion Order)	Yes if suspected of an **indictable** offence and the DNA analysis will tend to confirm or disprove their involvement and the child **cannot** be prosecuted for the offence. (By Consent)	If charged with an **imprisonable** offence and s283(a) to (o) OT Act order made or convicted by District Court but not sentenced to imprisonment or sentenced to imprisonment by a court.	N/A

Qualifying offences - Suspect (Part 2) and DNA Databank (Part 3)

The CIBS Amendment 2009 Phase 2 changed the qualifying offence to imprisonable offence for suspect sampling and post-conviction DNA Databank sampling (DCN). The legislation governing voluntary DNA Databank sampling has not changed - youth **cannot** provide a voluntary Databank sample (Part3).

A person who is suspected of committing an imprisonable offence can be requested (Suspect consent) or compelled (Suspect compelled) to give a DNA sample.

A person who has a qualifying conviction for an imprisonable offence (not a section 282 OT Act discharge) can be compelled to provide a sample after a Police Inspector issues a Databank Compulsion Notice to them.

Retention of youth DNA

See Management of DNA samples and profiles in the ‘DNA sampling’ chapter for details of the outcomes necessary to enable DNA samples from youth to be retained and retention periods.

Truancy

Background

Alienation from a young person's education can result in significantly diminished opportunities and has been found to be a strong indicator of violence later in life, as well as being anticipatory of delinquency, substance abuse, suicidal risk, unemployment and early parenting. Because of these indicators there is considerable concern surrounding the links between truancy and crime.

This is not simply a matter of truancy or skipping school. Many absences, especially among younger students, are excused by parents or caregivers, whether justified or not. Often absences are tied to health problems, such as asthma, diabetes, and oral and mental health issues. Some are connected to a lack of parental control or apathy towards education due to a parent's own negative experiences.

Given the concerning link between truancy and crime there is an expectation that Police address truancy, at least on an acute level, with truants who are located being returned to school or home.

Legal requirement to attend school

Under sections 35 to 46 of the Education and Training Act 2020, every person who has turned six and is not yet 16 must be enrolled at and attend a school, unless:

- the parent has been issued with a certificate exempting the person from enrolment (in these cases, the person may be required to enrol at a correspondence school)
- the person has been exempted from attendance by the principal (this exemption cannot exceed five days).

Responsibility for ensuring attendance and dealing with truancy

The responsibility for ensuring enrolment and attendance rests with parents or guardians. The responsibility for dealing with truancy, including prosecution, rests with school Boards of Trustees. However, the harm caused by chronic absenteeism is well documented and although it is a care and protection issue, it clearly impacts on the levels of crime and victimisation in New Zealand.

Police action relating to truancy

Police action in relation to truancy includes:

- checking truants encountered during routine patrols or localised crime prevention operations and, if required, returning them to their school or home
- seeking out truants at suspected gathering places during truancy prevention patrols
- helping schools organise school-based and community-based truancy detection programmes
- providing Boards of Trustees with information, when it is available, to enable them to action care and protection proceedings under the joint OT/Ministry of Education protocol on truancy
- at the discretion of the District Commander and under the authority of Boards of Trustees, assisting with the prosecution of the parents of persistent truants. (Advice on prosecution is available from your local prosecutions office or Youth Services Co-ordinator).

Powers when dealing with truants

Section 49(1) of the Education and Training Act 2020 gives Police the power to **detain** any person appearing to be aged 5 to 15 years (not yet turned 16) and who is not then at school, and question the person as to:

- their name and address
- the school (if any) at which the person is enrolled and its address, and
- the reason for the person's absence from school.

(Obviously this must be when schools are open and operating).

If not satisfied by the person's answers that they have a good reason for not being at school, Police may take the person to:

- the person's home, or
- the school at which the officer thinks the person is enrolled.

(s49(3))

While it is an offence to intentionally obstruct or interfere with an *attendance* (truancy) officer exercising their powers under section 49 of the Education and Training Act (s242), the Act does not provide any powers of arrest. As a last course of action, it may be necessary to arrest the person under section 23 Summary Offences Act 1981 for resisting and obstructing Police. Remember that s214 OT Act must apply if arresting a child or young person under these circumstances.

For further information about dealing with truants see the Ministry of Education website.

Care and protection and other well-being issues

Care and protection issues

Refer to the Child protection investigation policy and procedures for information about Police responsibilities for the care and protection of children and young persons and the investigation of reports of concern.

Dealing with drunk or intoxicated children and young persons

You have more than one option available when dealing with drunk or intoxicated children and young persons. Where possible, as a first course of action, try to get the child or young person's consent to be taken home. Often the child or young person is more than willing to be returned to their home.

Options under Oranga Tamariki Act 1989

This table outlines your options under the Oranga Tamariki Act 1989 for dealing with drunk or intoxicated children and young persons.

Situation	Appropriate action	Legislation
Child or young person is unaccompanied and found drunk but is able to give their home address or communicate to the degree that you can deliver them home or to OT.	Take them home if they consent and their address can be ascertained. If not, deliver them to OT via the on call social worker.	s48 the Act 1989
Child or young person is found intoxicated to the extent where Police reasonably believe they are: - incapable of protecting themselves from physical harm, or - likely to cause physical harm to another person, or - likely to cause significant damage to property, and Police are not satisfied that taking them home would suitably protect them from the above.	Take them to a temporary shelter, or if one is not available, take them to the Police station until they are no longer intoxicated or can safely be returned home. **Note**: unless a medical practitioner recommends a longer detention, you cannot detain them for longer than 12 hours.	s36 Policing Act 2008

Suicide

If you encounter a child or young person who is at risk of attempting suicide, their physical safety is paramount and should be your first concern. If necessary, you can use force to prevent a child or young person attempting to commit suicide (s41 Crimes Act 1961).

If required, contact the mental health crisis team to have the child or young person assessed and consider referring them to an appropriate support agency, such as mental health service, a counselling service, or local ethnic support group. Maintain good links with these agencies and with local health services, including forensic court liaison services and accident and emergency departments.

See the People with mental impairment chapter for information about your powers under the Mental Health (Compulsory Assessment and Treatment) Act 1992 for dealing with a mentally disordered person.