

New youth justice legislation – “the most significant amendment since 1989”

This special edition of Court In The Act focuses on the legislative amendment to the Children, Young Persons, and Their Families Act 1989, which came into force on 1 October 2010. In the opinion of Principal Youth Court Judge Andrew Becroft, “these amendments are the most significant in the history of the Youth Court since its inception in 1989”. Judge Becroft said that the amendments have important implications for the Youth Court and will present some substantial new challenges for all involved with the youth justice system.



The amendments fall into four key areas:

Dealing with very serious 12 and 13 year old child offenders within the Youth Court	Existing orders which are now longer, and more targeted
A suite of new orders	Miscellaneous amendments

“The amendments are an opportunity for real progress, and to provide, in many cases, much more comprehensive, tailored and focussed interventions for serious young offenders than have been available in the past.”

Judge Andrew Becroft
Principal Youth Court Judge for
New Zealand

Major agencies and other groups who must implement the changes in the new legislation have been delivering training to staff. Police Youth Aid, Child, Youth and Family (CYF), and the Courts division of the Ministry of Justice have all undertaken national training programmes, and a significant part of the 2010 Triennial Youth Court Judges Conference, held in early September, was devoted to the new legislation. Judge Becroft said he believed that the youth justice sector as a whole was as ready and as prepared as it could be to face the challenges of the new law. In his opinion the sector is “good to go”.

So what’s new?

12 and 13 year olds

Children who commit serious offences when they are 12 and 13 year olds can be charged in the Youth Court. These children are defined as needing care and protection through the Family Court on account of their offending **but** the public interest requires that criminal proceedings also be instituted against them.

Continued

Despite this, Youth Court Judges have the power to refer any 12 or 13 year old back to the Police if they think that the public interest would be better served if they were dealt with in the Family Court instead.

Other new provisions regarding 12 and 13 year olds include:

- Children cannot be remanded by the Court directly into police custody
- Purely indictable offences against children can be discharged under s282
- No child can be transferred to the District Court for sentencing
- No child can be in prison while a child
- All reasonable practical alternatives must be considered before placing a child in a youth justice residence

Longer orders

The 'activity' part of supervision with activity is doubled to a maximum of 6 months, and the supervision part is also doubled to a maximum of 6 months.

Supervision with activity orders are also more flexible and targeted.

The 'residence' part of supervision with residence can

now be ordered for between 3 and 6 months (double the previous maximum), and the 'supervision' part can now last as long as 12 months (also doubled).

The making of these supervision orders can now also be delayed in order to see how the young person performs while undertaking their activity or serving their time in residence.

New orders

The Youth Court can now order:

- A child or young person or their parents or caregivers to attend a parenting education programme
- A child or young person to attend a mentoring programme
- A child or young person to attend an alcohol or drug rehabilitation programme

Judges can now direct that certain young people be judicially monitored for the duration of their order, and if they do not comply with that direction, the Judge can impose an order of intensive supervision, including a curfew condition which may be electronically monitored.

When a Youth Court Judge considers making orders or combinations of orders, he or she must assess the restrictiveness of those orders and

ask themselves whether a less restrictive outcome would still be adequate. If it would be adequate, the Judge must not impose the orders they originally considered.

Miscellaneous

The underlying causes of a child's or young person's offending should be addressed if it is practical to do so.

Consideration should be given to the interests and views of **victims** of a youth's offending, and regard should also be given to victims' interests and the impact of the offending on them.

Community work orders no longer need the consent of the young person.

New provisions in the legislation only apply to offending that occurred from 1 October 2010 **unless** the young person consents otherwise.

Implications

Attached to this edition of Court In The Act is a list of suggested or predicted implications that arise from the new legislation. This list has been compiled by judges, youth advocates and research counsel, and is intended to focus discussion on some of the issues that will need to be addressed in the weeks and months following 1 October 2010.

Feedback

Principal Youth Court Judge Andrew Becroft says he is very keen to hear of the challenges and implications arising from the new legislation. He urges practitioners and other involved with implementing the changes to contribute their thoughts and observations to his office via research counsel Tim Hall (tim.hall@justice.govt.nz) and Linda McIver (linda.mciver@justice.govt.nz).



The Youth Justice Learning Centre website will also feature information about the new Fresh Start initiatives and an FAQ providing readers with an opportunity to ask questions and receive guidance about the new legislation from relevant agencies.

“Court in the Act” is published by the office of the Principal Youth Court Judge of New Zealand.

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