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Judge: courtintheact@justice.govt.nz

Thank you to the rangatahi from Te Maioha o Parekarangi who are responsible for the artwork on this page. This was completed as part of their "Fantastic Feathers" Project in art class at Kingslea School. For more, see page 3.

EDITORIAL

Titiro whakamuri, kokiri whakamua

Look back and reflect, so you can move forward

Judge Tony FitzGerald

2019 has seen the introduction of the most significant changes to the Oranga Tamariki Act in its 30-year history. As the end of the year now approaches, let us reflect briefly on that history, and those changes, so as to move forward next year with enthusiasm and determination to meet the challenges that lie ahead.

The seminal 1986 report *Puao-te-Ata-Tu*, identified the disadvantaged situation of young Māori in Aotearoa as being of crisis proportions – resulting in the 1989 Act that provided us with the opportunity to bring about much needed change in that regard; change that is yet to happen.

We now have obligations to bring about change that will see the purposes of the Act fulfilled and principles faithfully applied. Those purposes and principles, couched in strong directive language, can leave us in absolutely no doubt at all about what is expected of us. As well as obligations, the amendments to the Act give us tools necessary to enable that change to occur.

Clearly a much more sophisticated and nuanced understanding of Te Ao Māori is required, including recognition of mana tamaiti and whakapapa and the practice of whanaungatanga. A practical commitment to the Treaty of Waitangi must be demonstrated.

The emphasis in these respects is not just on young people but on their vital and inseparable place within whānau, hapū and iwi. Their place is there - at the heart of the harakeke - protected and sustained by whānau, hapū and iwi, the leaves that provide that protection and sustenance. Not only must we ensure the young person is there at the heart, we must also ensure the harakeke itself is made or kept intact and nurtured.



Photo credit: Manaaki Whenua—Landcare Research

With the strong focus now on well-being we must strive to keep pace with science. For example, as well as responding appropriately to the large numbers of young people with neuro-disabilities, we must recognise the impact that trauma has on the brain and behaviour, causing adverse life experiences for every young person we see. What we do, and how we do it, must be properly informed by the science around the effects of trauma and tailored to meet the unique needs of every single young person.

Given the prevalence of communication disorders and learning disabilities, and our obligations under the Act as well as the international conventions, we must now ensure that all the ways we communicate with young people are effective and enable proper and

meaningful participation and understanding. In that regard I acknowledge the tremendous work being done by communication assistants who are now important members of our Youth Justice community.

The fact that 91% of young people in the youth justice system have also been the subject of care and protection notifications tells us how important it is to improve our responses to this very vulnerable group and to better co-ordinate assistance and intervention. In particular, for these young people, the extent to which youth justice powers and facilities are being used to manage care and protection concerns needs urgent attention and we will work together to ensure that attention is provided.

Another change of great importance is that young people's rights under the Children's Rights Convention, and the Convention on the Rights of Persons with Disabilities, must now be respected and upheld. I especially draw attention to the UN's latest general comment on child justice, released in September 2019. This is the first general comment on this subject since 2007 and a timely new aid to interpreting and applying the articles of the Rights Convention. Read alongside the Treaty of Waitangi, the Conventions and the new provisions of the Act are powerful tools to aid advocacy and decision making.

The new year will provide us with ample opportunity to make use of these powerful tools to bring about positive change in the lives of young people caught up in the youth justice system.

For now, sincere thanks to all members of the youth justice community around the country for your hard work and dedication again this year, it is much admired and appreciated.

Ngā mihi o te Kirihihi me te Tau Hou hari.

YOUTH JUSTICE NOTICE BOARD

Whakairo/Māori Carving Programme

Recently a ceremony was conducted at Te Puna Wai (TPW) to unveil and bless whakairo (carvings) completed by three young men. The rangatahi completed a 10 week program under the tutelage of Kaiwhakairo/Carver, Caine Tauwhare (Ngāi Tahu, Waikato) at the Whakaraupo Carving Centre in Lyttelton. The students studied the art of Whakairo/Māori Carving and unpacking Te Ao Maori cultural concepts. Such concepts include whakapapa (geneology); mihimihi (speeches of greeting and interrelationship); pūrākau (myths and legends); pakiwatara (tribal stories and accounts); te taiao (the environment – flora and fauna); tiakitanga (guardianship); manaakitanga (the process of showing respect) and whakawhanaungatanga (the process of establishing relationships).

The brief was to research and design carvings to represent the creation story of the Rakaia River. The name Rakaia was gifted to TPW by Kaumatua from the Taumutu Runanga at the time it was opened in 2005.

The Rakaia River possesses a range of characteristics that are considered to be outstanding for spiritual, cultural and environmental reasons and fundamental to the relationship of Ngāi Tahu to the Rakaia River. Mahinga kai is one of the most important of these, as the catchment once provided an abundant source of mahinga kai or food resources. A creation legend speaks of a battle between a taniwha, Tūterakiwhāno and Te Maru (the North West Wind) which resulted in the creation of the Rakaia Gorge. The legend also entails the important underlying lesson that through compromise, overcoming issues and co-operation, Tūterakiwhāno and Te Maru were able to achieve spectacular results in creating the Rakaia River and gorge.

The young men are now able to demonstrate practical skills in design principles and pattern conventions used to generate whakairo designs through to completion. They are also able to demonstrate an understanding of how the above tikanga or principles can be applied within their daily lives.



YOUTH JUSTICE NOTICE BOARD

UN Children's Convention: 30th Anniversary Edition

The Office of the Children's Commissioner has launched a new pocket edition of the United Nations Convention on the Rights of the Child (Children's Convention) to celebrate its 30 year anniversary. You can download the full version as well as the separate English and te reo Māori versions.

The United Nations Convention on the Rights of the Child sets out the rights of all children, aged 0 to 18 years, and the responsibilities of governments to ensure those rights are respected.

The New Zealand Government signed up to the Children's Convention in 1993. This means the Government has agreed to promote, respect, protect and fulfil the rights of all children.

[UNCROC—30th Anniversary Edition](#)

"Billy and the Kids"

A real life story of how a bit of love goes a long way. Directed by Mark Albiston, "Billy and the Kids" gives an insightful look inside the boxing academies run by champion Kiwi boxer Billy Graham and his wife Kerry Graham, through the eyes of the kids whose lives they have changed.

"We're not talking about making champion boxers, we're talking about making champion young people".

[Billy and the Kids—International Film Festival](#)



INTERNATIONAL SOCIETY OF FAMILY LAW (ISFL) 17TH WORLD CONFERENCE

14-18 July 2020, Hilton Barbados Resort, Barbados

The International Society of family Law Conference will be held in Barbados, 14-18 July 2020.

The theme of this Conference is "Safeguarding the Human Rights of Family Members from the Womb to the Tomb". The human rights of children, parents, stepparents, grandparents, spouses, siblings and other family members are, too often, not recognised, or sufficiently protected, or not safeguarded at all, by legal systems.

Most State Parties have ratified international instruments, such as the United Nations Declaration of Human Rights, the United Nations Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of Persons with Disabilities, as well as regional conventions.

On behalf of the International Society of Family Law, the Conference organising committee, the Child Rights and Restorative Justice Organisation (CRARJO) and supporters, I look forward to welcoming you to this 17th World Conference to share your knowledge and expertise with the global community. For more information see: [ISFL](#).

Conference Convener, Senator Hazel Thompson-Ahye, HBM, LLB, Hons., LL.M Merit, M.S.(R.P.)

YOUTH JUSTICE NOTICE BOARD

2019 Youth Court Judges' Triennial Conference

In July 2019 the Youth Court Judges from around the country came together in Auckland to learn, discuss and hear from an array of speakers on diverse youth justice-related topics. The theme of the conference was "Leading Change, He Kaiarahi I te huarahi hou".

Day one was held at Ōrākei Marae. At the forefront of discussions was the application of new provisions under the Oranga Tamariki Act 1989.

The Judges would like to thank Ōrākei Marae for the kind hospitality shown, and to all those who contributed to the conference as presenters.



RECENT INTERNATIONAL DEVELOPMENTS

The UN Global Study on Children Deprived of Their Liberty

Nessa Lynch, Associate Professor, Faculty of Law, Victoria University of Wellington

An international study on children deprived of their liberty has been released recently. It is a very large report, and can be accessed at [Omnibook.com](https://www.omnibook.com).

The aim of this report was to "[be the] first scientific attempt, on the basis of global data, to comprehend the magnitude of the situation of children deprived of liberty, its possible justifications and root causes, as well as conditions of detention and their harmful impact on the health and development of children".

The report shows the magnitude of children in various forms of deprivation of liberty across the globe, estimated to be between 1.3 and 1.5 million children.

(cont. overleaf)

RECENT INTERNATIONAL DEVELOPMENTS

Nessa Lynch, Associate Professor, Faculty of Law, Victoria University of Wellington

Two developments in the international youth justice context will be of interest to the readership of *Court in the Act*. These are the recent revision of the United Nations Committee on the Rights of the Child's General Comment on the rights of children in child justice systems, and a recent study on children in detention globally (p5).

Committee on the Rights of the Child – General Comment no 24

The United Nations Convention on the Rights of the Child (Convention) is the most widely ratified human rights treaty, which celebrated its 30th anniversary in late November 2019. A 30th anniversary copy of the Convention in both English and te reo Māori was recently released by the Children's Commissioner in partnership with the Children's Rights Alliance, Save the Children and UNICEF.

The Convention has a record of judicial use in interpreting domestic statutes, but of increased importance post-1 July 2019 where under the Oranga Tamariki Act, decision-makers are required to uphold and respect the rights of the child or young person, including those in the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

I would encourage you to read the full General Comment which is available here: Committee on the Rights of the Child, General comment No. 24 (2019) on children's rights in the child justice system [CRC/C/GC/24](#).

The key principles of a Convention compliant youth justice system may be summarised thus:

- **Best interests:** the best interests of the child or young person are a primary consideration in all decisions;

- **Participation:** the child or young person's effective participation is promoted in matters affecting them, and their views are taken into account in any decisions made;
- **Reintegrative focus:** any outcomes and processes must aim to reintegrate the child or young person so that they may take part in society, and avoid punitive and stigmatising processes and sanctions;
- **Age-appropriate timeframes:** processes and outcomes are delivered in a timeframe appropriate to the age and other characteristics of the child or young person; and
- **Non-discrimination:** the youth justice system does not further perpetrate discrimination, and is cognisant of the needs and particular characteristics of groups such as ethnic minorities, indigenous peoples and children and young persons with disabilities

The revision of the General Comment has some updated guidance:

Child justice – the most readily apparent change is the move from using the term 'juvenile justice' to the less stigmatising 'child justice'.

Age of criminal responsibility- The Convention itself does not provide for a specific minimum age of criminal responsibility but in this General Comment, the Committee calls for a minimum age of at least 14 years of age (para. 22). The Committee also "commends States parties that have a higher

RECENT INTERNATIONAL DEVELOPMENTS

minimum age, for instance of 15 or 16 years of age, and urges States parties not to reduce the minimum age of criminal responsibility under any circumstances” (para. 22).

Brain development - Scientific findings are increasingly used in human rights analysis to justify protective measures for children and young persons. The Committee uses brain development evidence to justify the recommendation of a higher minimum age of criminal responsibility: “documented evidence in the fields of child development and neuroscience indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing...” (para. 22).

Children and young persons with neurodisabilities –

The Committee recommends at para.28 that “children [and young persons] with developmental delays or neurodevelopmental disorders or disabilities (for example, autism spectrum disorders, fetal alcohol spectrum disorders or acquired brain injuries) should not be in the child justice system at all, even if they have reached the minimum age of criminal responsibility. If not automatically excluded, such children should be individually assessed”.

Children or young persons accused of serious offences

- The Committee stresses that all children or young people, who were under 18 at the time of committing the offence, should be dealt with in child justice proceedings, and criticizes the practice of transferring children or young persons to the adult court system (para. 30). The Committee strongly recommends that States parties abolish all

forms of life imprisonment, including indeterminate sentences, for all offences committed by persons who were below the age of 18 at the time of commission of the offence. (para. 81)

Customary and non-state justice processes – The Committee approves of measures which involve customary and non-state justice processes, particularly for indigenous children or young persons. Such processes “...can contribute to increased respect for the traditions of indigenous societies, which could have benefits for indigenous children [or young persons].” (para 104). Nonetheless, the Committee emphasizes the importance of ensuring that due process rights are protected and that (para 103) “Customary justice processes and outcomes should be aligned with constitutional law and with legal and procedural guarantees. It is important that unfair discrimination does not occur, if children committing similar crimes are being dealt with differently in parallel systems or forums”.

Custody as a last resort - The Committee confirms that the use of arrest, detention and imprisonment must be a measure of last resort and for the shortest appropriate period of time.

Emerging adults – it is becoming more common for jurisdictions to extend their youth justice systems to emerging adults (those aged 18 until the mid- 20s), or to have a third system to deal with this age group. The Committee approves this, noting that “States parties that allow the application of the child justice system to persons aged 18 and older whether as a general rule or by way of exception. This approach is in keeping with the developmental and neuroscience evidence that shows that brain development continues into the early twenties” (para 32.).

Learning the Lessons of the Youth Court



Principal Youth Court Judge

John Walker

When a young person enters the District Court jurisdiction they bring with them all the disabilities they may have had since childhood, together with those that they may have gathered along the way. These disabilities do not have an expiry date.

Our courts have come to recognise the mitigatory effect of youth in a sentencing context, often referring to the underdeveloped brain and the inability to assess consequences when justifying this factor as one which reduces culpability. However, the conglomerate of disabilities that affect so many of those who appear before the court are not only matters of mitigation, they call for greater accommodation to be given within the processes of the court.

Procedural fairness requires the engagement of a defendant in the process which directly impacts on them. Engagement requires an understanding of what is happening and an ability to participate in the decision-making process. The presence of disability, intellectual disability, mental health conditions, neuro-disability, acquired brain injury, in addition to the under developed brain, requires special consideration when it comes to court process.

We know that these characteristics do not disappear when a young person turns 18. They are static factors which a young defendant carries throughout their life.

We also know that jurisdictional age limits are arbitrary and do not reflect actual development. Arguments about the Youth Court age limit will perpetuate this arbitrariness. In my view, it is more useful to argue about age appropriate processes in any court.

The processes in the Youth Court, and the multi-disciplinary teams that operate in the court, are designed to recognise the immaturity and the likely presence of disability, as well as a history of trauma. The young age means that a history of trauma is likely to be recent and the effects still raw. But this also means that the opportunity for redirection of their life trajectory is real.

"We know that these characteristics do not disappear when a young person turns 18."

Cognitive skills and emotional intelligence that mark the transition from childhood to adulthood continue to develop at least into a person's mid-20s. Traits such as impulsivity, high susceptibility to peer pressure, tendency to be overly motivated by reward seeking behaviour, do not conclude at 17 or 18. Further, protective factors such as marriage, educational milestones and meaningful employment are happening at a later stage in a young person's life.

This contributes to an extended transitional phase from immature delinquency to mature. As such, decisions and actions undertaken by 18-24 year olds may be mitigated by their lack of maturity and sanctioning them like fully mature adults could have life-long consequences that harm the young person and communities and negatively impact on public safety.

So, against this background the question I pose is why do we suddenly treat young people as if they are fully competent adults when they enter the District Court? In my view we need to recognise that there remains a separate cohort of defendants in the District Court who require, as a matter of procedural fairness, a different approach and for whom a different approach is necessary for the delivery of effective interventions.

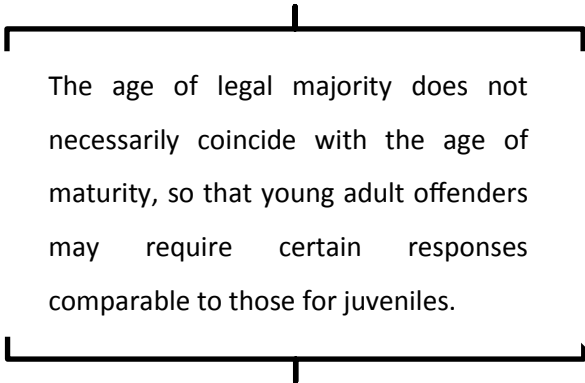
It is for this reason that in 2020 a trial will be piloted at the Porirua District Court. This will incorporate the learnings of the Youth Court into the existing legal framework of the District Court.

While still in its planning phase, the idea is that this will tap into resources and processes that we know work in the Youth Court. Forensic screening is available in almost all our Youth Courts and full assessments and reports can be ordered. Forensic nurses observe a young person's presentation and interactions and hear what is happening. This results in better informed interventions.

We have education officers, and Lay Advocates. Communication Assistants to assist understanding. We have become more alert to the possibility of neuro-disability and mental illness and are starting to confront the cognition issues that may accompany acquired brain injury and neuro-disabilities.

I am not suggesting that it will be realistic to employ all these techniques and resources in a District Court context for adolescents aged 18-25, at least in the short-term. What I am saying is that we need to adjust and make changes where we can. We need to listen to the evidence of how challenging our system can be for defendants, and particularly young defendants, and I suggest there are lessons to be learned from the Youth Court process.

The Council of Europe's 2003 and 2008 recommendations included that courts should be guided in policies and practice by the consideration that:



The age of legal majority does not necessarily coincide with the age of maturity, so that young adult offenders may require certain responses comparable to those for juveniles.

International considerations support the momentum toward diversion, minimum intervention, education, restorative justice and other constructive measures.

There are approximately 25,000 unique offenders between the ages of 17-24 in New Zealand. This is a significant percentage of the criminal justice population, and I suggest one of the most malleable groups for which change could be effected. If we can make a difference in the life-course trajectories of this group of people through utilising appropriate processes within existing legislative framework, there is a chance of fewer becoming recidivist offenders, and consequently fewer victims in our society.

Further updates of the Porirua Young Adult Pilot will be provided in future editions of Court in the Act.

YOUTH JUSTICE NOTICE BOARD

Ahead of the outbreak game – the importance of early intervention

The following has been submitted for inclusion in Court in the Act.

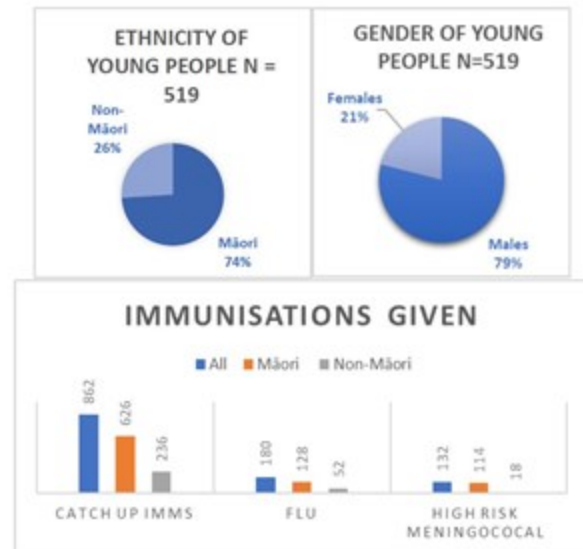
Health Connections provides timely catch-up immunisations to protect children and young people. Many are in a youth justice (YJ) residence. Measles is a significant issue for children and young people – with many at risk in the adolescent age range.

Having a measles contact or suspected measles in a YJ residence has the potential to put many other young people and staff at risk. Keeping ahead of the outbreak has been a priority for Health Connections delivering health service to Korowai Manaaki YJ (KMYJ).

Health Connections provides a unique model of primary health care that is described as a youth specialty enhanced primary health care service. They provide their services in various environments where, traditionally, primary health care has not always been delivered in such a way.

From our continuing review of health issues young people present with when they arrive, Health Connections note that approximately 60% of young people are not fully immunised as per the NZ Immunisation schedule. This prompted a proactive approach to ensure all young people admitted to KMYJ are given all catch up immunisations along any other immunisations for those living in proximity – eg flu vaccine and High-Risk meningitis (ACYW) vaccine.

Having this proactive approach has meant that Health Connections delivered a total number of 1174 immunisations over a 2-year period. The tables below show the gender and ethnicity of the young people we have immunised and the immunisations administered. Catch up immunisations include the measles vaccination.



This approach has resulted in zero presentations of measles within KMYJ – an achievement that represents the proactive approach from Health Connections and the strong partnership with KMYJ teams.

In acknowledgment of this achievement, Health Connections were awarded the Ministry of Health Kōkako Immunisation Award for Service Delivery and Practice for 2019. The Kōkako award is provided by the Ministry of Health as direct acknowledgement of the contribution immunisation makes towards the health and wellbeing of New Zealanders. In particular it acknowledges the role of service delivery and practice as the crucial link between population health and whānau. Health Connections are continuously striving to improve the health outcomes of young people – and to this end we are pleased to announce from 1st March 2020, young people aged between 10 and 25 years in Auckland can register with Health Connections to be their primary care provider.

Some of the Health Connections team are pictured with the Award:



INTRODUCING: CHIEF DISTRICT COURT JUDGE HEEMI TAUMAUNU



Republished with permission from the [District Court website](https://www.districtcourt.govt.nz/).

His Honour Judge Heemi Taumaunu was appointed the Chief District Court Judge for Aotearoa in September 2019, succeeding Justice Jan-Marie Doogue. A special swearing-in ceremony was held at Whāngārā marae in Gisborne in October, as well as a pōwhiri to welcome him to Chambers in Wellington, now known as Te Whare o Ngā Kaihautū Waka o te Kōti-ā-Rohe o Aotearoa. The following gives some insight into the new Chief Judge’s background, values, and vision for the future.

Born in Gisborne, Chief Judge Taumaunu’s tribal affiliations are Ngāti Pōrou and its sub-tribe Ngāti Konohi, and Ngāi Tahu. He is a fluent te reo Māori speaker, and during his time as a District Court Judge has been heavily involved in the Youth Court. In particular, Chief Judge Taumaunu was at the forefront in establishing Te Kōti Rangatahi, Rangatahi Courts.

Chief Judge Taumaunu’s early childhood was spent in Tolaga Bay on the East Coast before his family moved to the South Island. Judge Taumaunu spent his primary and high school years in Christchurch. On leaving Riccarton High School at 16, he joined the New Zealand Army as a Webb Class Regular Force Cadet and served as a Regular Force soldier for a year and a non-commissioned officer in the Royal New Zealand Signals Corp for a further four years.

He then took up fulltime law studies at Victoria University of Wellington, gaining entry to the law faculty under the first year of a Māori quota system. He graduated with a Bachelor of Laws in 1993, and during his studies was awarded the Quentin Baxter Memorial Scholarship and the Ngā Rangatahi Toa Scholarship. He was the first person from Ngāti Konohi to gain a law degree and to practise as a barrister and solicitor. In his 10 years as a barrister, he gained

substantial experience in jury trials, as a Youth Advocate in the Youth Court, and as a lawyer for child and counsel to assist in the Family Court.

Chief Judge Taumaunu was appointed to the District Court bench in January 2004. At a special sitting of the court at Whāngāra Marae in Gisborne for his swearing in, he became the first District Court Judge to swear the oaths of office and allegiance in both English and te reo Māori. Judge Taumaunu was first assigned to Whāngārei District Court before becoming a resident Judge at Waitakere District Court. From 2014 he was based at the Auckland District Court.

Chief Judge Taumaunu is regarded as a pioneer of Ngā Kōti Rangatahi o Aotearoa, the Rangatahi Courts, having developed the first Rangatahi Court in Gisborne in 2008. In 2017 he received the prestigious Veillard-Cybulski Award, an international tribute recognising innovative work with children and families in difficulty, through the Rangatahi Courts initiative. The Judges of the award praised Chief Judge Taumaunu's leadership skills in devising an inclusive system where tamariki Māori learn who they are and where they have come from so they can change behaviour and realise their potential.

As National Liaison Judge for Rangatahi Courts, he has encouraged fellow judges to set up other marae-based youth courts and there are now at least 12 judges who preside at Rangatahi Courts at 15 marae around the country. His vision is widely regarded for helping to embed the Rangatahi Courts in the New Zealand criminal justice system, encouraging a wider appreciation for the value of culturally responsive justice.

He has been the tangata whenua representative on the Chief Judge's Advisory Group and has chaired the Kaupapa Māori Advisory Group. In these roles he has been a driving force in encouraging the District Court to embrace tikanga as a way to enhance Māori engagement and confidence in the court. Chief Judge Taumaunu has also served as a Judge of the Court Martial of New Zealand since 2012. In February 2018, he was appointed Deputy Judge Advocate General and Deputy Chief Judge of the Court Martial of New Zealand.

Married with three adult children, Chief Judge Taumaunu is from a high achieving sporting family. In his spare time he enjoys the outdoors and spending time with family.



YOUTH JUSTICE KEY INDICATORS 2019

The following information was published by the Ministry of Justice.

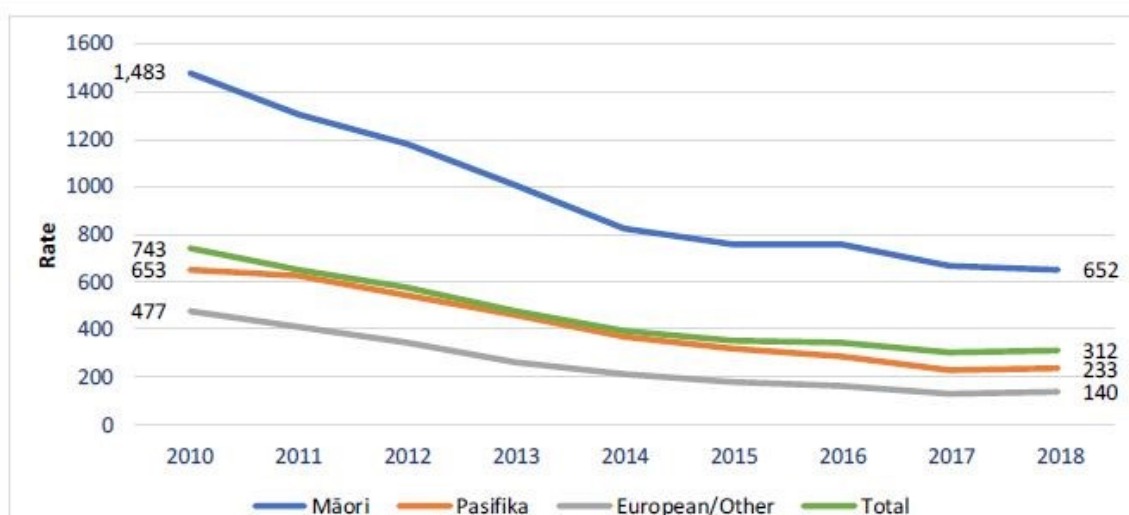
For full information see the [Youth Justice Key Indicators 2019](#).

YJI 1.1 (14-16): Offending rates per 10,000 population for young people aged 14 to 16

The offending rates youth justice indicator helps us understand the proportion of young people coming into contact with the youth justice system.

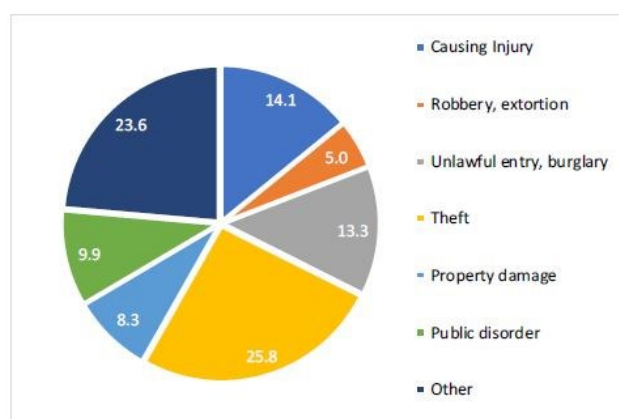
It measures the volume of young people who Police take proceedings against for allegedly breaking the law, compared to total populations of the same age.

The overall offending rate for young people fell **58%** between 2010 and 2018, from **743** per 10,000 to **312** per 10,000. Over that period, the reduction in the offending rate has been much higher for European/Other (**71%**) than for Māori (**56%**), while the rate for Pasifika decreased by **64%** over the period



In 2018:

Percent by offence division



Percent by gender



Offending rates per 10,000 population by Police District



CASE WATCH

Youth Court decisions are published in anonymised form on the District Court New Zealand website. These cannot be republished without the leave of the court, and no identifying particulars of any child or young person, or the parents or guardians, or the school they attended may be published.

New Zealand Police v HX [2019] NZYC 521

A revised family group conference plan better responded to the young person's needs and offending and complied adequately with the new provisions of the Oranga Tamariki Act 1989. The Judge was able to defer sentencing to enable progress of the plan to be monitored at Te Kōti Rangatahi, Rangatahi Court. The young person identified strongly with both Nieuan and Māori culture and could also consider the Pasifika Court as an appropriate option for monitoring. In comment on the nature of Youth Court sentencing, the Judge noted the relevance of the UN General Comment on the need to take a "differentiated individualised approach for young people because they are different from adults in their physical and psychological development".

New Zealand Police v SH [2019] NZYC 452

SH was charged with family violence offences, namely assaulting a child, male assaults female and assault. According to specialist assessments, SH (aged 14) has the reading/spelling level of a 10-year old.

The court considered undue delay, focusing on three timeframes and determined that the delay had not reached the stage where the court should exercise its discretion under s 322. However, in all the circumstances, the Judge noted that SH's neuro-disability and his cognitive impairment mean that the effects of the delay are exacerbated.

It was appropriate to exercise the judicial discretion to dismiss the charges.

Ray v New Zealand Police [2019] NZHC 2958

This appeal considered the appropriateness of a supervision sentence in the District Court for a 17 year old charged with family violence offences and also made subject to a protection order. Of note, the new Oranga Tamariki Act 1989 (OTA) provisions were raised as they would apply had Mr Ray committed the offending post 1 July 2019.

The Judge determined that the sentence had been proper and appropriate given the seriousness of the offending and Mr Ray's personal circumstances (including age). The Judge noted "there will always be persons falling on one side or the other of a line drawn by a legislative change. The fact an offender is "close" to that line does not mean that the proper principles for sentencing ought not to be applied" at [35]. The Judge acknowledged however that so long as consistent with the Sentencing Act, it was open to the Judge to take into account the youth justice principles from the Act. Even taking into account such principles however, the High Court Judge was satisfied that the sentence imposed in the District Court was the least restrictive outcome that was appropriate in all the circumstances, and consistent with s 4A(2) OTA primary considerations.

Youth Court judgments released since 2016 are published in full on the District Court website. Select 'All Judgments' at the top left of the homepage to search.

RECENT RESEARCH AND PUBLICATIONS

NEW ZEALAND

Report title: Understanding the motivations of fleeing drivers: literature review of youth motivations

Author(s): Kate Mora | Ryan Jones

Source: Performance and Research Insights Unit, Evidence Based Policing Centre, New Zealand Police, Wellington, September 2019

Abstract: Fleeing drivers present a unique challenge to police, with 3796 events recorded in 2017. While most pursuits are abandoned, others end in crashes, injury and even fatalities. The Independent Police Conduct Authority reviewed a sample of fleeing driver events and found offenders were commonly young, Māori, male, often with criminal histories and traffic offending, and without a current drivers licence. While the review could identify who is likely to engage in this behaviour, it could not address why. The Evidence Based Policing Centre was therefore commissioned to undertake a programme of research examining the motivations of offenders who flee police. This report examines what previous research about young people's perceptions of police, and their driving behaviour can tell us about their motivations to flee police.

Article title: "I am more than a piece of paper"

Author(s): Olivia Hyland | Ian Lambie

Source: New Zealand Law Journal September 2019:297-302

Abstract: In this article, the authors look at opportunities for the pretrial period in New Zealand led by current innovations. This is done through highlighting the consideration of a whānau-centric approach as important. The authors consider how the system could recognise and respond to need as well as inform the crucial bail decision, as illustrated by the Remand Option Investigation Tool for young people in the youth justice system, and the Bail Support Service pilot, Electronically Monitored Bail Ready initiative, Community Accommodation Service and Communication Assistance Service for those in the adult justice system. They then look at opportunities for remand prisoners before considering the services provided in the court and the setting of the court in which the matters are heard.

They consider efforts to mainstream the work of specialist courts and the developing role for intervention services under the courthouse roof, in order to enable referrals to much needed services.

Article title: Are police cautions a soft option? Reoffending among juveniles cautioned or referred to court

Author(s): Jia J Wang | Don Weatherburn

Source: Australian and New Zealand Journal of Criminology 52(3) 2019:334-347

Abstract: During the 1990s, many jurisdictions introduced police cautions as an alternative to referral to court for juveniles committing comparatively minor offences. The policy was motivated by a concern that contact with the court system for such offenders might be criminogenic.

In recent years, however, elected officials have criticised police cautions as a 'soft option' and this (in some jurisdictions at least) has led to a decline in their use. Past research has often failed to ensure that the comparison group for a police caution consists of children referred to court who could have received a police caution.

The current study overcomes this problem and employs a rigorous set of procedures for minimising the risk of selection bias. The results here indicate that cautioning young offenders who have committed comparatively minor offences and who have not previously been referred to court results in a lower risk of reoffending than referral to court.

Article title: 'It's really good, why hasn't it happened earlier?' Professionals' perspectives on the benefits of communication assistance in the New Zealand youth justice system

Authors: Kelly Howard, Clare McCann and Margaret Dudley

Source: Australian & New Zealand Journal of Criminology 0 (0) 1-20 (2019).

Abstract: Communication assistance is a form of specialist support for witnesses and defendants in justice settings who have been identified as having communication difficulties. This new role in New Zealand is modelled on the role of the intermediary in England and Wales. To date however, there has been no published review or evaluation on how communication assistance is functioning and being viewed by professionals in practice. This study provides a qualitative analysis of professionals' perspectives (n=28 participants) on the benefits of communication assistance for young people facing criminal charges in the New Zealand youth justice system. The main finding is that professionals are overwhelmingly in support of this new role. Professionals considered that communication assistance helps put the young person at the centre of youth justice, brings new knowledge and a fresh perspective, and helps the system to function as it ideally should.

AUSTRALIA

Report title: What children and young people in juvenile justice centres have to say

Author(s): NSW Advocate for Children and Young People
Source: Office of the Advocate for Children and Young People, Strawberry Hills NSW, Australia, 2019.

Abstract: All children and young people have the right to have their voices heard when decisions are made that affect their lives; including children and young people in detention. This Australian report details the findings from Advocate for Children and Young People (ACYP) consultations with children and young people in Juvenile Justice Centres between 2015 and 2019.

ACYP consulted with young people in detention to inform the development of the State's first Strategic Plan for Children and Young People. Since then, the Advocate and ACYP staff have made at least two visits to every Juvenile Justice Centre in NSW to hear from children and young people.

Article title: Adverse childhood experiences in a South Australian sample of young people in detention

Author(s): Catia G Malvaso | Paul H Delfabbro | Andrew Day

Source: Australian and New Zealand Journal of Criminology 52(3) September 2019:411-431

Abstract: Empirical knowledge about the prevalence and interrelatedness of adverse childhood experiences in young people involved in youth justice systems in Australia is limited. This study examined the prevalence of adverse childhood experiences in a sample of young people who were detained in youth justice services in South Australia. It also explored how adverse childhood experiences are interrelated and their associations with violent offending.

Article title: From child protection to youth justice: legal responses to the plight of 'crossover kids'

Author(s): Tamara Walsh

Source: University of Western Australian Law Review 46 (1) September 2019:90-110

Abstract: The statistical association between child protection and youth justice involvement is well-documented around the world, yet the effectiveness of current legal responses remains under-explored. To examine this, five focus groups with lawyers and youth workers who work with vulnerable young people were conducted in Brisbane, Queensland. Participants were asked about the pathways between the child protection and youth justice systems, and whether current legal responses were effective in preventing 'cross-over' between them. Participants said that children's contact

with police and formal justice processes should be minimised and that restorative techniques should instead be used to deal with challenging behaviour. They also said children were often safer at home than in out of home care, and they emphasised the criminogenic effects of residential care environments.

Article title: Youth justice and the age of criminal responsibility: some reflections

Author(s): Margaret White

Source: Adelaide Law Review 40(1) 2019:257-271

Abstract: In this article the author argues a public health and welfare model to drive policy about children and young people who demonstrate offending conduct, rather than a justice model, presents the greatest prospect of successfully rehabilitating what is largely a damaged group. The author considered it will be quite insufficient merely to raise the age of criminal responsibility.

EUROPE

Article title: 'So, why am I here?' Ambiguous practices of protection, treatment and punishment in Danish secure institutions for youth

Author(s): Ann-Karina Henriksen | Annick Prieur

Source: The British Journal of Criminology 59(5) September 2019:1161-1177

Abstract: This article explores how a nexus of punishment, treatment and protection creates unique mechanisms of control in secure institutions for young people. It is based on a study in Danish secure institutions, which accommodate young people confined on legal and welfare grounds. In these hybrid institutions, protection, treatment and punishment merge in ambiguous and contradictory practices that are experienced as unjust or even harmful by the young people and possibly breach the UN Convention on the Rights of the Child. The article contributes to wider debates on the treatment-punishment nexus, Nordic exceptionalism and criminal justice for youth in an era of neoliberal penal-welfarism.

