

# COURT IN THE ACT

Issue 87 | March 2021

THE YOUTH COURT OF NEW ZEALAND  
TE KŌTI TAIOHI O AOTEAROA



## Specialist Courts



A report on some of Aotearoa's specialist courts in action. Words by Stephen Woodwark.... p 4

## Te Kōti Rangatahi



The latest Te Kōti Rangatahi was launched in Heretaunga in October. Words by Holly Bullock..... p 5

## DNA and Donuts



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# Editorial



In November 2020, Chief Judge Taumaunu gave the Norris Ward McKinnon Annual Lecture, in which he outlined his vision for the future of Te Kōti-ā-Rohe (the District Court) of New Zealand. The vision is termed “Te Ao Mārama”, originating from the phrase “mai te pō ki te ao mārama”: from the darkness to the enlightened world. Te Ao Mārama sets out the framework for how the District Court will respond to the calls for transformative change to the justice system. The focus of this editorial is on how Te Ao Mārama, and the theme of solution-focused justice, relates to the Youth Court.

Chief Judge Taumaunu spoke of mainstreaming best practice from our specialist courts into the District Court, and implementing solution-focused judging as standard practice. The concept of “solution-focused” courts, or justice, has developed out of Drug Courts that started in the United States in the late 1980s. In short, it involves addressing the underlying drivers of offending, often through a team of professionals from various agencies working cooperatively together to achieve better outcomes for victims,

defendants, whānau and the wider community. The Oranga Tamariki Act 1989, which sets out the provisions for youth justice and care and protection in New Zealand, was pioneering when it first came into force (then called the Children, Young Persons and Their Families Act). Although at this time the concept of a solution-focused approach was still in its emerging phases globally, the Oranga Tamariki Act had, and continues to have, all the hallmarks of a solution-focused justice approach.

There are certain statutory requirements found within the Act that point in the direction of solution-focused justice. For example, judges and counsel must engage directly with young people and their parents and guardians, and encourage and assist young people’s participation in proceedings. Young people must be given reasonable opportunities to freely express their views on matters affecting them, and be

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*The Oranga Tamariki Act had, and continues to have, all the hallmarks of a solution-focused justice approach*

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provided with support and assistance if they have trouble expressing their views or being understood. All approaches taken to address the offending must be centred on a young person’s rights, promotion

of their best interests and advancement of their well-being. Approaches must also address the young person’s needs, ensure the underlying causes of their offending are addressed, hold them accountable and give consideration to any victim’s interests.

These practices were innovative at the time the Act came into force, and continue to be heralded as pioneering today. The themes continue to inform all aspects of the youth justice system. The numbers of children and young people appearing in the Youth Court, and placed in custody, have reduced considerably over the past few decades. This can in part be credited to the

coordinated approach promoting the wellbeing of children and young people. The establishment of Te Kōti Rangatahi and the Pasifika Courts is an even stronger example of a solution-focused approach. These courts involve the local iwi and community actively participating and engaging in the court process. The incorporation of te reo and tikanga into the mainstream courts is an integral part of Te Ao Mārama.

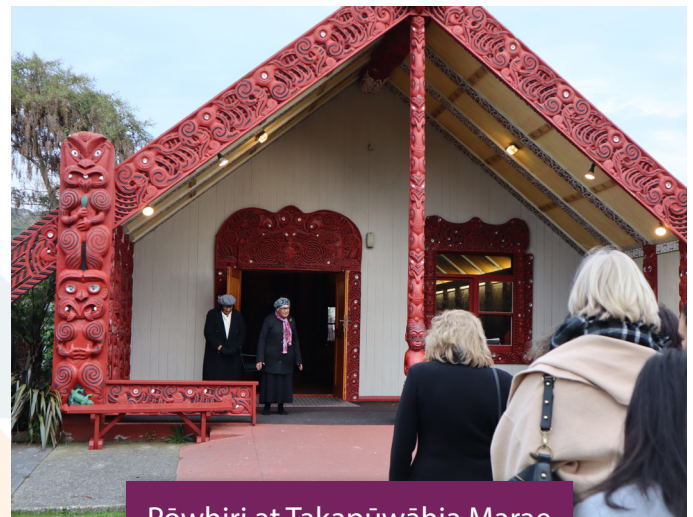
Principles from the Youth Court have already been informing the mainstream criminal justice system. For example, the Young Adult List, a pilot court for 18-25 year olds in Porirua that was launched in 2020, builds upon and adapts the approach used in the Youth Court. Te Ao Mārama goes further in mainstreaming many of the principles found within youth justice. It is envisioned that many of these principles will help establish the foundation of the District Court in the future. Infusing tikanga Māori into the courtroom, increasing engagement from participants, toning down formalities and improving interagency coordination — these are familiar concepts to those in the Youth Court, and the prospect of these concepts becoming commonplace in the District Court is exciting.

Last year was an unusual one. It was undoubtedly difficult, causing feelings of anxiety and fear amongst many of us. It was meaningful, I think, to end the year with the announcement of Te Ao Mārama, allowing us to look forward with hope. Te Ao Mārama is a chance to answer the calls for change within the justice system — some of which have been answered in the Youth Court, but many of which still have a long way to go before they are fulfilled. The next few years will be pivotal for the future of the District Court, and I look forward to seeing the fulfilment of Chief Judge Taumaunu's vision.

**Judge Walker**  
Principal Youth Court Judge for New Zealand



Opening of the Young Adult List



Pōwhiri at Takapūwāhia Marae



Te Kōti Rangatahi ki Heretaunga

# Specialist Courts in Action

Stephen Woodwark

*At the start of December, the four Judges' Clerks from Te Whare o Ngā Kaihautū Waka o Te Kōti-ā-Rohe o Aotearoa travelled to Tāmaki Makaurau to observe some of our specialist courts. Here is a quick report from their trip. A massive thank you to all the judges and staff for supporting us and giving up their time. Kia ora!*

The specialist courts scattered across Aotearoa represent judicial innovation. Distilling down and applying best practice from these courts is a central component of Te Ao Mārama. After many months of supporting the Chief Judge in developing the Te Ao Mārama strategy, it was high time that we experienced solution-focused judging at the coal face.

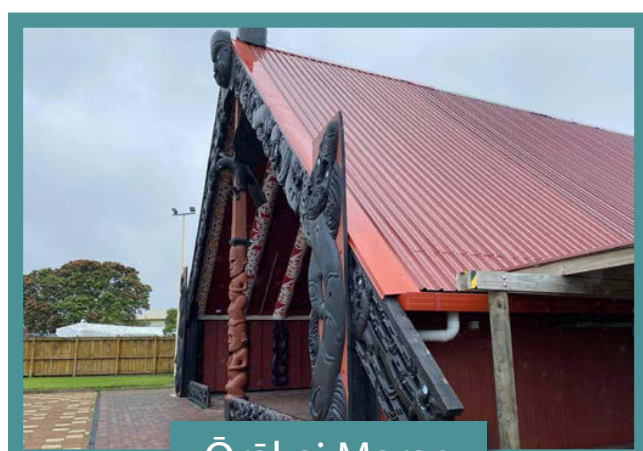
On 2 December the four clerks visited Kaikohe District Court to observe the Matariki Court, presided over by Judge Davis. This court utilises tikanga and te reo Māori, as well

as strong community services, to provide the necessary support for defendants and their whānau. It was a unique experience to see two of the proceedings conducted entirely in te reo.

The following day we attended a Rangatahi Court based at Ōrākei Marae, presided over by Judge Eivers. Following a pōwhiri, we were able to join in a kōrero where one of the young people shared the pepeha that they had prepared. Holding court on a marae was a testament to the flexibility available to the District Court and made a real difference to the warmth of proceedings.



Matariki Court



Ōrākei Marae

With an AODT Court being established in Hamilton this year, it was also an opportunity to see this court in person at the Auckland District Court. It was humbling to see Judge Sharp interact with all the participants and it was clear he has come to know many well through overseeing their journeys. On our final day we sat in on Youth Court with Judge Otene in Manukau and Te Kooti o Timatanga Hou, The New Beginnings Court, with Judge Fitzgerald. Again, we saw the power of the court to bring vulnerable people to a place where they can seek the support they need, supported by a judge who cares about their lives and their recovery.

# Te Kōti Rangatahi ki Heretaunga

Holly Bullock

Back in October, I attended the opening of the new Te Kooti Rangatahi at Te Aranga Marae in Flaxmere in Hawkes Bay (third time lucky!).

Despite the rain and cold, it was heart-warming to hear whaikōrero from a number of groups and individuals including the kaumātua, Chief District Court Judge Taumaunu, former Justice Minister Andrew Little, and Hastings mayor Sandra Hazlehurst. The success of the other Rangatahi courts around the country was discussed and showed pride in the Māori community and a hope for a similar success story for Hawkes Bay rangatahi and the wider community.

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*This court will provide a space for youths to be properly heard and create amazing paths to become highly successful members of the community*

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The cloaking of Judge Bidois, and the gifting of a bone carving that was passed around to those present to be worn by his Honour during the sitting of the new court, was incredibly special. His experience, knowledge and the respect shown to him was palpable and I look forward to seeing what he, and the other Judges, can achieve through the Rangatahi system.

The energy, kindness, dedication and aroha exhibited during the afternoon left me with no doubt that this court will provide a space for youths to be properly heard and create amazing paths to become highly successful members of the community.



Pōwhiri process



Judge Bidois wearing his korowai



Hastings Mayor Sandra Hazlehurst

# The Use of DNA in Criminal Investigations

## DNA and Donuts: hearing the voices of young people

Clair Trainor - Te Aka Matua o te Ture | Law Commission

*When they took my DNA [Police said] we can do this the easy way or the hard way. I was like I better comply, they might chop my [finger]. I was like [aged] 13/14. Sitting in the police station.*

That's the experience of one young person who had a DNA sample requested for a criminal investigation. When Te Aka Matua o te Ture | Law Commission was asked to review the law on using DNA in criminal investigations, we knew the law applying to young people required our attention. But we had only second or third-hand stories about what the current DNA system is like for young people. This article tells how lawyers from the Commission gathered and reported the experiences of those seldom heard in high-level policy debate – teens in a youth justice residence.

Any review we undertake would be incomplete without solid consultation, including with those who directly experience the law as it is. We needed to adapt our thinking, messages and delivery to suit the group and to respect that they are experts in their own lives. It was a valuable experience.

What is it like to have Police obtain your DNA and then keep it, maybe indefinitely? On current data, only around 3% of our population will experience this. A youth justice residence seemed the perfect place to find a group of young people who had the experience we needed. We were assisted greatly by those at Oranga Tamariki who saw the value of our proposed engagement and who recommended conducting our consultation at Korowai Manaaki youth justice residence in Wiri, Auckland.

Korowai Manaaki provides secure accommodation for a maximum of 46 children and young people who have been sent there by the court (there are 40 Youth Court beds and six for placements via the adult jurisdiction). It is divided into six units, which gave us the space to conduct small group workshops on DNA collection and retention and to hear young people's views in an informal setting where they felt supported.

### Ethics, Trust and Care

Careful preparation and relationship-building were integral to the engagement. To work with the young people, we needed to plan carefully, thinking about how we would share information about our project with them, how we would obtain their consent to the process, how we would hear and record their views, and how we would demonstrate we valued any information they chose to provide. Very importantly we had to think about how we could help young people trust us enough to share what they thought. In undertaking this preparatory work, we received excellent advice and services from youth-focused professionals.

First, we connected with the manager of youth services and the voices of young people team at Oranga Tamariki for advice on how we could engage effectively and safely with the young people. They issued an important challenge: were we prepared to change our views depending on what we heard from young people? We explained we didn't have a fixed view and that there was other information to be gathered (such as submissions and the views of academics who were expert in youth justice). We were also clear that the



final decisions on what we recommended on DNA law reform would be made by the Law Commission, not by young people, academics or submitters.

To help us share information in a way young people would understand, we asked **Talking Trouble Aotearoa** to assist us in creating material that would tell the story of DNA law reform and help us to accurately record what young people told us.



Our prior knowledge of the youth justice system (including Youth Court ethnicity statistics) led us to hypothesise that around two thirds of the young people in the residence would identify as Māori. We planned our engagement with this in mind. For instance, we allowed plenty of time for relationship building and whakawhanaungatanga as well as for closing our sessions, which was done with gifts and karakia.

We did our best to model reciprocity, to show we valued the young people and the gift of the knowledge they had provided to enhance our project (while good for Māori participants, these processes are good for all).

We connected with Voyce Whakarongo Mai, which was visiting the residence on a regular basis. The residents were familiar with the two youth workers from Voyce who joined us in running the engagement sessions. We believe this made a tremendous difference to young people's willingness to trust and engage.

We asked a lawyer from YouthLaw Aotearoa to be part of the team, in case young people had any legal concerns that required follow-up.

Finally, in getting everything set up, we appreciated the assistance and manaakitanga of staff at Korowai Manaaki. Without this, we would not have been able to engage with the young people in the way we needed.

The table below provides a snapshot of residents' ethnicity during the month of our visit. It is notable that **65% of the residents were Māori**. This over-representation is well known in the justice sector and work on several fronts is required to reduce it.

### Korowai Manaaki Youth Justice Residence Ethnic Breakdown of Cohort - October 2019

Ethnicity	Number	Percentage
NZ Māori	35	64.9%
NZ European	4	7.4%
Cook Island Māori	5	9.3%
Samoan	4	7.4%
Tongan	3	5.6%
Tuvaluan	1	1.8%
German	1	1.8%
Indian	1	1.8%
Total	54	100

## More than Just Sugar and Socks ...

As pragmatic caregivers of teenagers ourselves, we were aware it could be hard to persuade the young people to talk about DNA law reform during their school holidays!

For that we unleashed some secret - and not-so-secret - weapons ...



We did our research: donuts, chocolate, fruit and socks were the gifts we brought to help the conversation flow. As mentioned above, carefully chosen gifts were also an important way to demonstrate reciprocity: that young people's time and thoughts were a valuable contribution to our project.

Loaded with these crucial offerings, we headed to Auckland to conduct our planned engagement at Korowai Manaaki. In each unit, everyone introduced themselves before we talked about the information-sharing consent process. Then we talked a little about our work and DNA law before playing a game. Then it was time to hear from the young people.

## What Did We Ask Young People?

Overall, our recommendations to the Government aim to ensure that Police has the tools to investigate crime whilst safeguarding privacy and human rights and recognising and providing for tikanga Māori. We have made specific recommendations to protect children and young people's rights in this area and to align DNA law with the youth justice principles of the Oranga Tamariki Act.

We focused on two areas: the **collection** of young people's DNA (usually at a Police station) and the **retention** of young people's DNA.

## In Their Own Words ... What Did Young People Tell Us?

### About the collection of DNA:

- The law on collection is **confusing** – don't know if you can say 'No'.
- Don't know who decides whether police can take your DNA if you're a young person.
- An adult on your side is good to have [some mentioned the youth worker who accompanied us].
- The independent person is **biased**.
- Can be scary to try and say 'No'.

### About the retention of DNA:

- DNA should just be used for the investigation that it's collected for; it's unfair to keep it afterwards.
- If it's kept, DNA could be used to get young people for stuff [offences] they didn't do.
- DNA shouldn't be kept after the young person leaves the care of Oranga Tamariki.
- If DNA is to be kept, the maximum time should be four years.



## Valuing What Young People Told Us

Back in Wellington it was time to transcribe what we had heard and send it back to the young people to check if we had accurately recorded their views. Once we had done that, we wrote about the young people's views in our final Report. We took their views into account along with the **submissions** we received, the research we did on DNA laws in other countries and the opinions of youth legal experts in order to reach our recommendations. When our final Report was published, we sent a copy to Korowai Manaaki so those young people who were still there could see their views had been included – and had influenced our recommendations.

## What Have We Recommended?

### Collection of DNA

We have recommended that children and young people's DNA should only be collected subject to an order made by a Youth Court Judge. This is a change from the current law, which allows a young person's DNA to be collected by Police without a judge being involved.

### Retention of DNA

We have recommended that no child or young person's DNA profile should be retained if their charge is discharged under section 282 of the Oranga Tamariki Act, *even if the charge was proved*. Children and young people's DNA should only be retained if they are *convicted* of a qualifying offence [an offence punishable by two or more years' imprisonment] and the judge orders that retention. Judges making those retention decisions must take into account the considerations and principles under the youth justice part of the Oranga Tamariki Act.

If a Judge decides a young person's DNA should be retained on the offenders' index of the DNA databank, but the young person is *not* imprisoned for their offending, their DNA should be taken off the DNA databank after five years. If DNA is loaded onto the offenders' index, and the young person *is* imprisoned, or they are subject to another section 283 order or conviction within five years, their DNA should be subject to the more severe, adult DNA retention rules.

We have made more general recommendations as well, including that oversight of the whole DNA system be improved by increasing the role of the judiciary, establishing a new DNA Oversight Committee (with mandatory Māori representation), and providing for external auditing by the Independent Police Conduct Authority.

## The views of young people at Korowai Manaaki

have influenced the law changes that we have recommended to the government. We are very grateful to these young people, to Oranga Tamariki, Korowai Manaaki staff, Talking Trouble Aotearoa, Voyce Whakarongo Mai, YouthLaw Aotearoa and the administrative committee of Youth Court judges for supporting our work, which has culminated in the Report available via the link at the bottom of this box.

**Chapter 21** is devoted entirely to young people's issues. Young people's issues as suspects are also discussed in **Chapter 8**.

**Paragraphs 8.76 – 8.83 in Chapter 8 and paragraphs 21.87 – 21.93 in Chapter 21** report on the views of the young people to whom we spoke at Korowai Manaaki.

**Recommendations 52 and 53 on page 23 and recommendations 164 – 169 on pages 41 – 42** are directed to children's and young people's issues.

**Report 24 November 2020**

## Case Watch

*NOTE: Youth Court decisions are published in anonymised form on the District Court of New Zealand website. These cannot be republished without 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.*

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### *New Zealand Police v NK* [2020] NZYC 123

The Judge in this case was faced with the decision of whether or not to grant a s 282 discharge for a young person facing 19 charges over a six month period, the most serious being burglaries. The Judge took into account the significant 1 July 2019 changes to the Oranga Tamariki Act 1989 when considering the young person's sentence. Although there were some delays, the young person successfully completed the requirements of the FGC plan: involving community service, mentoring and apologising to victims. The Judge found that NK had been held accountable for their behaviour and that it was in NK's best interests that a s 282 discharge be granted.

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### *R v DV* [2020] NZYC 249

The issue at hand in this case was whether to transfer DV's case to the District Court for sentencing. DV faced three charges, one each of aggravated robbery, kidnapping and common assault. The Judge determined that DV should be sentenced to supervision with residence in a youth justice facility, stating that it was better for the community that DV returns to it with a comprehensive, youth-focused plan, rather than tainted by the dysfunction of the adult prison. The Judge noted the weaknesses of the adult system in providing supervision of young men, and the risk that DV could come out of the adult system hardened, belonging to a gang.

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### *R v ES* [2020] NZYC 434

Defence counsel for ES sought to have the charge of sexual violation by rape dismissed under s 322 of the Oranga Tamariki Act 1989 on the basis of undue delay. Delays occurred due to the length of time that it took the complainant to report the incident (although the Judge noted there was no criticism of this delay), Police resourcing issues, and the COVID-19 lockdown and subsequent backlog. The Judge found that the delay was both unnecessarily protracted and unduly protracted, and dismissed the application under s 322.

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### *New Zealand Police v JM* [2020] NZYC 273

This case focused on whether the young person was fit to stand trial. The Judge determined that the young person met the criteria under the Criminal Procedure (Mentally Impaired Persons Act 2003) and was deemed unfit to stand trial. In particular, the Judge made reference to the fact that JM was unable to effectively participate in the court process, due to challenged executive functioning and other disabilities. This was despite the fact that JM had an apparent knowledge of the court process due to his "street-smarts" or what he had learnt by rote.

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# Recent Research and Publications

## NEW ZEALAND

**Report title:** Children Who Offend: Why Are Prevention and Intervention Efforts to Reduce Persistent Criminality so Seldom Applied?<sup>1</sup>

*Authors:* Jerome Reil, Ian Lambie, John Horwood and Andrew Becroft.

*Summary:* This article outlines recent trends in international child and youth offending and reviews current youth justice issues. It then summarises research on the characteristics, trajectories, and potential consequences of child offending. Some of the shortcomings in current child welfare and crime prevention policy and practice in effectively addressing the needs of CWHO are highlighted. Overall, this article calls for a spotlight on child offending in research, policy, and clinical practice. Increased attention to CWHO and those at risk of offending is urgently needed for developing more effective identification and intervention strategies, ensuring more positive outcomes for children, families, and communities, and reducing criminal justice costs if we are truly going to address burgeoning prison populations across the globe.

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**Report title:** Improving treatment and outcomes for young people with fetal alcohol spectrum disorder in the youth justice system: A social work led response and practice framework<sup>2</sup>

*Authors:* Vanessa Oatley and Anita Gibbs.

*Summary:* Young people with fetal alcohol spectrum disorder (FASD) in Aotearoa New

Zealand are both primed for, and hindered within the youth justice (YJ) system. This research provides a fresh perspective on how social workers can take a lead role in ensuring young people with FASD receive neurodevelopmentally appropriate interventions both within the YJ system and upon return to their communities.

## AUSTRALIA

**Report title:** Care-experienced children and the criminal justice system<sup>3</sup>

*Authors:* Andrew McGrath, Alison Gerard and Emma Colvin.

*Summary:* The current study examines the factors underlying pathways from out-of-home care into the criminal justice system. Using a multi-method approach — specifically, court observations, file reviews and qualitative interviews — we found evidence of how histories of trauma and situational factors relating to the care environment interact to increase criminalisation. While many policy initiatives have been developed to address this criminalisation, in all parts of our study we found little evidence these are having an impact on practice in relation to care-experienced children. Some innovations we observed in our United Kingdom case study offer potential solutions to address this serious and ongoing problem.

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**Report title:** Themes in sentencing young adults charged with serious violent crime involving alcohol and other drugs<sup>4</sup>

*Authors:* Siobhan M Lawler, Emma L Barrett,

1 <https://doi.org/10.1037/law0000286>

2 <https://anzswjournal.nz/anzsw/article/view/737/702>

3 [https://www.aic.gov.au/sites/default/files/2020-09/ti600\\_care-experienced\\_children\\_and\\_the\\_criminal\\_justice\\_system.pdf](https://www.aic.gov.au/sites/default/files/2020-09/ti600_care-experienced_children_and_the_criminal_justice_system.pdf)

4 <https://doi.org/10.1177/0004865820907149>

Lexine A Stapinski, David A Bright and Maree Teeson.

*Summary:* In Australia, the majority of young people in custody have alcohol and other drug problems and over 90 per cent report past-year experiences of high-risk drinking and illicit drug use. Despite a strong link between drug use and violent offending, there is a dearth of information about how this relationship plays out in sentencing young adult offenders. This study examines themes in the sentencing of drug-using young adults facing court for serious violent crime and describes how judges discuss rehabilitation as a consideration for this high-risk group.

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**Report title:** Economic evaluation of the impact of speech pathology services on criminal justice outcomes<sup>5</sup>

*Author:* Intellectual Disability Behaviour Support Program, University of New South Wales.

*Summary:* Speech Pathology Australia commissioned the Intellectual Disability Behaviour Support Program at the University of New South Wales in conjunction with the Centre for Health Economics Research and Evaluation at the University of Technology, Sydney, to undertake a project to investigate the life course impact of speech pathology intervention for people with Speech, Language and Communication Needs who are at risk of contact with or are in the criminal justice system and to explore the economic benefits of these interventions.

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**Report title:** What are the characteristics of effective youth offender programmes?<sup>6</sup>

*Author:* Kamarah Pooley.

*Summary:* A large body of literature has attempted to answer the question: what works in reducing youth reoffending? However, this literature often fails to provide specific guidance on program implementation. This review consolidates research on the practical implementation of tertiary youth offender programs to identify the design, delivery and implementation factors associated with positive changes in youth offending behaviours.

## UNITED KINGDOM

**Report title:** Offending Girls and Restorative Justice: A Critical Analysis<sup>7</sup>

*Author:* Jodie Hodgson.

*Summary:* The contemporary popularity of restorative justice, within youth justice, has expanded significantly in recent decades. Despite this, there is a considerable lack of research which explores girls' experiences of restorative justice interventions. Drawing on the experiences of young female offenders, who have participated in restorative justice conferencing, this article presents research findings generated from interviews undertaken with 15 girls and 13 youth justice practitioners, in order to critically analyse their views and experiences through a gendered lens. The analysis and discussion presented provides a critical insight into the ways in which girls experience, internalise and engage in restorative justice conferencing and how these experiences fundamentally conflict with practitioners' views on conferencing with girls in the youth justice system.

5 [https://www.speechpathologyaustralia.org.au/SPAweb/Resources\\_for\\_the\\_Public/Advocacy/Economic\\_modelling/SPAweb/Resources\\_for\\_the\\_Public/Advocacy/Economic\\_modelling](https://www.speechpathologyaustralia.org.au/SPAweb/Resources_for_the_Public/Advocacy/Economic_modelling/SPAweb/Resources_for_the_Public/Advocacy/Economic_modelling)

6 [https://www.aic.gov.au/sites/default/files/2020-09/ti604\\_what\\_are\\_the\\_characteristics\\_of\\_effective\\_youth\\_offender\\_programs.pdf](https://www.aic.gov.au/sites/default/files/2020-09/ti604_what_are_the_characteristics_of_effective_youth_offender_programs.pdf)

7 <https://doi.org/10.1177/1473225420967751>