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# **ARE WE FAILING THEM?**

## **An Analysis of the New Zealand Criminal Youth Justice System: How Can We Further Prevent Youth Offending and Youth Recidivism?**

A thesis presented in partial fulfilment of  
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# Abstract

Youth crime is a prominent social issue in New Zealand that causes emotional and physical harm and loss to the numerous victims. This research provides an analysis of the current youth criminal justice system in New Zealand, beginning with a timeline of the history and evolution of the youth justice system to illustrate how New Zealand has arrived at the present system. The drivers of youth crime and youth involvement in criminal offending were found to be initially born from a lack of engagement with education; neurological disorders; learning difficulties and mental illness; as well as the impact of young people's childhood, which can include exposure to family violence; drug and alcohol abuse.

Comparative policy evaluation was applied with comparative methodology and comparative cross national research to undertake an analysis of the youth justice system in New Zealand. International comparisons were used to discover plausible and practical improvements to the current youth justice system in New Zealand. The OECD countries used in the comparative analysis included Canada, Scotland, England & Wales, United States and Austria, who between them have significantly diverse and contrasting youth justice models ranging from welfare, care and protection centred models, to community-based rehabilitation models; preventative education and support to punitive models in their response to youth crime.

It was found that several aspects of New Zealand's current youth justice system function well when compared internationally. However, the comparative analysis also highlighted that New Zealand's youth justice system presents a problematic gap in both the sheer lack of preventative methods in response to youth offending as well as community support during the rehabilitation stage.

A number of policy recommendations are included within this report in response to the present shortcomings of the existing youth justice system in New Zealand. These policy recommendations provide practical solutions; adopting a preventative policy focus with plausible improvement suggestions to the existing youth justice system. The objectives are to ameliorate the youth justice system to better support youth offending and youth recidivism.

# Acknowledgements

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Finally to my two beautiful sons, Lachlan 4 and Noah 2. I beamed with pride when Lachie said he wants to go to “Monsters University” like Mummy when he grows up. They have helped me with my drive and encouraged me to focus on my final outcome. They give me a sense of purpose and unconditional love. This process has been about bettering myself to inspire you two. I can only hope that I provide inspiration to you both now and in your wonderful futures.

# Dedication

*For my father, Peter,  
For filling me with self-belief.*

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# Preface

The story of Aiden.

Aiden was 16 years He was intelligent. He displayed understanding and a good comprehension between the differences of right and wrong. Aiden arrived at the Youth Court door facing 17 burglary and dishonesty charges. Most of these burglary crimes were committed for small technology devices such as cell phones, iPad and laptops so that he could conceal them in his backpack and walk away. Others were for a credit card he has stolen and used on the internet for a number of financially insignificant purchases, putting credit on both his, and his friends mobile phones and ‘Trademe’ accounts in which he was now facing criminal prosecution for.

Aiden appeared before the Youth Court. He was defiant. He displayed a poor attitude toward the charges he faced and the victims of his crimes. His aunty sat in the back of the Court in tears. She addressed the Judge in Court saying “Please help him, I don’t know what to do, and he doesn’t listen to a thing I say.”

Because of his defiant attitude and offending history he was placed in Korowai Manaaki youth justice residence while the matter progressed through the Youth Court as there was a significant risk to him reoffending if

was granted bail and his aunty had advised the Court that she did not feel that she could control him at all any longer.

Aiden had only minor contact with his mother who herself struggled with a severe alcohol addiction for years, he had little contact with his father during childhood but had not seen his father for a number of years. Aiden despised both his mother and his father.

Aiden was offered a life-changing opportunity, which was to attend an outdoor adventure educational camp alongside other youths not too dissimilar to him. Initially, he rejected the offer, however, he reluctantly accepted once given a choice between the camp and further remand at Korowai Manaaki.

As part of the camp, Aiden was challenged physically, mentally, emotionally and spiritually. The change in his overall attitude and consequential behaviour was amazing. The camp empowered Aiden, giving him a positive focus and outlet for his previously negative energy. Upon the conclusion of the camp Aiden worked with his aunty, who had also been given a toolbox of practical skills to support Aiden, enabling him to maintain his positive behaviour; he managed to return to school, subsequently passing NCEA Level 2 before obtaining an apprenticeship. This was an achievement that would have been most unlikely without the positive intervention occurring.

The story of Aiden, although entirely fictional, is reflective of the typical problems the youth justice system faces. The story illustrates the substantial positive effects of a preventative and rehabilitative strengths-based approach; an approach that is born from basic support mechanisms in a youth's personal community setting. These community based rehabilitative programmes are few and far between. These programmes are often used as a reactive last resort measure, once a youth has entered the youth justice system. There is a significant lack of both prevention social policy and community based support to assist with the issue of youth crime in New Zealand.

## CHAPTER 1:

# Introduction

*“This wasted potential is there for us to see... Rather than being the hope for our future these people represent our future fears.”*

(John Key – National Party Leader and current Prime Minister of New Zealand, January, 2008).

The perspective of New Zealand’s current Prime Minister succinctly illustrates common discourse of the increasing antisocial behaviour of children and young people in New Zealand today.

*“Although young people should be held responsible for their delinquent acts, all sanctions and interventions should be focused on their rehabilitation and reintegration in society and meet the specific needs which impede their growing up into responsible citizens.”*

(Working Group on Juvenile Justice, European Society of Criminology, 2006).

## **INTRODUCTION**

Youth offending in New Zealand is heavily reported in mainstream media. Reporters, who lack knowledge and an understanding of the subject area often misrepresent the issue; this misrepresentation feeds the negative perception of young people and youth crime in wider New Zealand. Although many youths break the law as part of normal adolescent behaviour, the rates of youth crime is decreasing generally, with 2014 statistics reporting the lowest number of young people charged in the Youth Court since 1992 (Ministry of Justice, 2014). The problem however is, that the rates of serious and persistent crime is increasing. Despite this, serious offending of people between the ages of 10 - 16 years only make up a small percentage of the overall offending from that age group. The majority of criminal offences are dishonesty related, “about 47% is property related offending, over a quarter of property offending is shoplifting” (Ministry of Justice, 2009, p.3). This thesis will explore the current youth justice system as it operates in New Zealand and compare it internationally to discover if there are improvements that can be made to the existing system.

## **THESIS STRUCTURE**

The thesis begins with a review of current literature, beginning with a review of the history and background of the youth justice system in New Zealand. This will illustrate the need for political ideological shifts, as well as

consistent review and improvement over time to meet the needs and requirements of New Zealand's ever-changing youth criminal justice issues.

The literature review will then look at what the drivers of crime are, and the reasons that youth's engage in criminal offending. It is found that addiction; family upbringing; disengagement with education and neurological disorders were the most prevalent reasons provided to understand youth offending. These issues seek to explain how a youth's immature and underdeveloped mind can result in their antisocial behaviours, which are at odds with the acceptable social constructs in today's society.

The methodology adopted was a critical analysis of current research and of the youth criminal justice system, to discover if there are currently areas that could benefit from policy amendments, both socially and financially. Comparative policy evaluation was applied with comparative methodology and comparative cross national research. This was done by comparing local and national government policies internationally, to determine their local success or otherwise. It involves a process of adopting areas of policy based on demographics, financial suitability to potentially apply when developing and improving New Zealand's current social policies.

Findings and implications for New Zealand social policy were compared internationally to six countries which are members of The Organisation for



Economic Co-operation and Development (OECD). This is because each of these countries has, as part of the OECD membership, a commitment to democracy that provides a platform to compare social policy experiences to find answers to common societal social (and economic) problems. Each of the OECD countries selected illustrated contrasting approaches to youth criminal justice ideologies, values and political belief systems. Despite this, similarities exist in the general realisation of the requirement for an evolving youth justice system. A number of practical and low cost social policy recommendations were made where they could be applied to better enhance the current New Zealand youth justice system.

### **RESEARCH OBJECTIVES**

The aim of the research is to critically review the existing youth justice system, with the objectives of identifying areas where the State could intervene with policy changes. The policy changes should adopt a preventative approach, rather than a reactive approach to youth criminal offending as it currently operates. The intended benefits of the State adopting a preventative approach to youth offending is that it achieves a win – win situation. This approach is beneficial to youth and their victims in crisis situations without the intervention of the criminal justice system.

Research suggests that first time youth offenders are typically unlike first time adult criminal offenders (Montemayor, 1998). This is thought to be due

to the fact that many youth offenders are highly affected by their personal or family situations while growing up (Morris & Young, 1987). They often have very severe and complex personal issues than adult first time offenders. Youth offenders often experience negative familial environments prior to, or at the time of their offending (Mannion, 2005). The existing youth justice policies could be enhanced to provide a support-based intervention to youth, in the attempt to negate this reoccurring issue. The goal is to identify if the State is succeeding (or otherwise) in dealing with New Zealand's troubled youth.

### **MY INTEREST**

Upon graduating from my undergraduate degree, I gained employment with Victim Support, a nation-wide crisis intervention advocacy support organisation for victims of crime which works in partnership with the New Zealand police. Following this role, I was employed by the Ministry of Justice (MOJ) where I am currently employed and have the benefit of seeing crime and offending from a different angle than with Victim Support. In this role with the MOJ, I case manage criminal cases that are within the District Courts jurisdiction. Although the Youth Court is managed by the section of the Court that I am a part of, I personally had little or no understanding or dealings myself with the Youth Court or relevant stakeholders.

When investigating different thesis topics within the criminal justice system, the role of youth justice and the Youth Court kept surfacing in my mind. It was significant to me in both the prevalence and volume of very young offenders, present within the Youth Court environment. I noticed that the volume of recidivist youth offenders who were continuously returning to the Youth Court, changed with further offences, and the volume of these individuals who would, upon turning 17 years old, be then seen in the District Court facing adult criminal charges.

My initial reflection was that this group of youth were not given enough tools and support prior to entering the Youth Court and once they had, it was already too late to prevent what often became a life of criminal behaviour. I noted that many were brought up within the context of drugs and alcohol in their home environment, severe abuse and neglect and a myriad of other negative issues including family separation, transience and parental involvement in criminality. Thus, for these young people committing crime then became a normal outlet for their behaviour and a normal part of their coping mechanism to survive the kind of environments they had been raised within. Had they been raised within a family (or family group), with more social capital, I wondered whether they would have ever have engaged in criminal behaviour and criminal offending.

My initial literature review tended to reinforce my personal view, that at times a young person's upbringing and familial environment is a causative factor in youths committing crime. It seems the State does not acknowledge at-risk youth until they appear in the Youth Court. At the point at which a young person finds them-self appearing in the Youth Court, their antisocial mentality, addiction and criminal behaviours are so engrained and severe that it seemed as though it was too late to create positive change with life-long positive outcomes, they were most likely to engage in a life of criminal offending. It was my view that the State is failing them.

Another key recurring issue that I was interested in, related to the complexities of the issues youth offenders encountered and the degree of support required from the State once a youth has become a criminal offender. Such support comes at an enormous financial expense to the State, whereas I wondered if strengths-based preventative community support and intervention would provide 1) more assistance to a young person in crisis, and 2) a resulting significantly reduced cost for the State to absorb. I believed that New Zealand's current youth justice system needed to adopt a preventive community or State support approach, which would provide positive intervention prior to a young person appearing in the Youth Court; a preventative model, as opposed to the current reactive model.

## **A PROFILE OF YOUTH OFFENDING IN NEW ZEALAND AND THE CREATION OF MORAL PANICS**

Within the New Zealand context, criminal offending by children and youth gain significant media attention and public scrutiny as well as political criticism and judgment, more so than similar offences committed by adults (Andrain, 2014). The media have been criticised as exaggerating and highlighting youth offending to point out the severe deterioration (in what is deemed as “acceptable” behaviour) present in that group of New Zealand’s population (Williams, 2013). The concept of moral panics (Cohen, 1972: Saraga, 1998) refers to the processes in which the collective anxieties of the public or certain groups in society are transferred onto an issue or group. In this case of young offenders, both the media and politicians have been guilty of creating a moral panic about the nature of youth crime. In the case of politicians this has often been exploited to legitimate the introduction of more punitive legislation to control the behaviour of young people (Earl, 2011).

Politicians use youth offending to ‘score’ political points as both National and Labour are aware that adopting a tough stance on youth crime is popular with the electorate (Earl, 2011) and collectively this further contributes to a public perception that youth criminal offending is not only a major social problem, but it is continuously worsening (Marsh & Melville, 2009). Specific youth offending tragedies as a result are easily recalled for the general public (Williams, 2013). For example, the Jamie Bulger homicide in the United Kingdom, the Columbine shootings in a High School in the United States, are

unfortunately illustrated within a New Zealand context by the murder conviction of Bailey Kurariki, a 12 year old school boy. However, these three examples are not an accurate reflection of youth crime, and rather, in reality, should be viewed as extreme acts of violence not consistent with the typical scope of youth offending within New Zealand. The poor reporting of youth crime by New Zealand's media becomes problematic particularly when analysing the way in which it shapes the general discourse around youth crime and young people in New Zealand.

This prejudice towards youth offending needs to be acknowledged by specific groups in New Zealand in order for them to establish a more accurate picture of youth offending so that the issue of youth offending, is better understood. These groups can be identified as, politicians, modern media, youth justice employees, police and the general public (Nelkin, 2013). This is because, only when an accurate profile of a youth offender is understood and accepted, can effective intervention strategies be formulated and implemented. So how can we better formulate an accurate reflection of the current state of youth offending; closing the gap between that and the public's perception of the problem of youth offending?

Criminology research used two main methods in discovering the true measures of offending. These are (1) official records, for example, police arrests and court records upon which numbers and statistical data can be

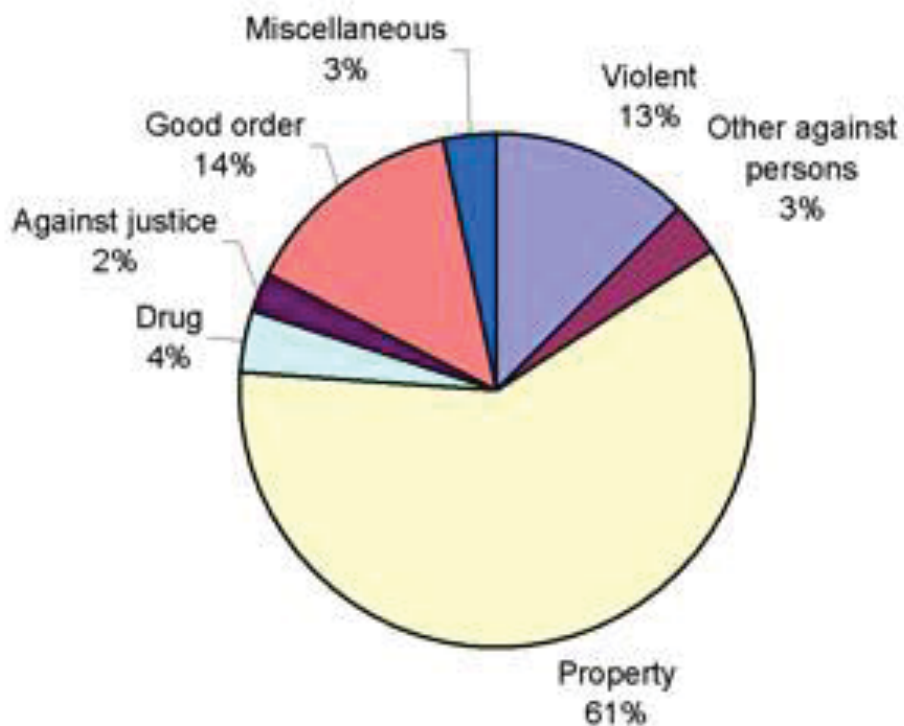
formulated, and (2) surveys of young people, whether their input is as the offender or the victim (Ministry of Justice, 2002). Official police and court records have limitations in that the statistical data derived from them relates to the number of arrests, convictions or apprehensions for youth offending, and does not relate to the number of youth offenders. Apprehension statistics relate to the number of offences that police record, not the number of offenders, for example, if a youth offender commits 10 acts of burglary, his is recorded as 10 police apprehensions (Ministry of Justice, 2002).

A problematic issue with this method of data collection for youth offending is that it has no way to record whether a young person has been 'warned' for his crime without being arrested. This creates a flow on effect in that the consequential result of this is that serious and violent crimes can be over exaggerated in formal records and statistical data (Maxwell & Morris, 1993). Another issue is that crimes are subjected to demographics. For example, youth in lower socio-economic areas often come to the attention of the police more so than youth from middle or higher socio-economic status areas (Maxwell, et al., 2002).

When analysing data for youth offending it is also important to take into account that youth typically involve themselves in 'binge offending', this will increase the chances of them being apprehended, and youth engaging in criminal activity in groups generate many arrests for one criminal offence

(Hodge, 2005). According to the Ministry of Justice (2015, p.2), “youth offending apprehension rates for youth offenders between 1992 and 2014 was 1,572 per 100,000 young people”. This is the equivalent of one in every seven of the total apprehensions in a year (Ministry of Justice, 2015).

**FIGURE 1: TYPES OF OFFENCES, 14 – 16 YEAR OLDS, 2007.**



(Ministry of Justice, 2009)

Figure 1 above, illustrates the types of criminal offences committed by 14 to 16 year old youth offenders. It highlights the large proportion of property offences in comparison to other crimes committed. This assists in building a profile of a youth offender in New Zealand.



## **ETHNOCENTRICISM AND CONTEMPORARY NEW ZEALAND POLICY**

An important factor in the formulation and understanding of youth justice policy, is to recognise the cultural beliefs and resulting ideologies behind them. Current State policies are commonly underpinned and dominated by Western ideologies, particularly colonial ideologies (Hokuwhitu, 2004). That is, Western ideology is often incorporated into New Zealand's policy objectives and a difficulty is often in the recognition of indigenous approaches to social problems (despite the legal requirements to biculturalism) (Durie, 2004) and finding a balance between the Western and indigenous ideologies and applying these in practice when responding to social problems (Archard, 2007).

Historically, there were issues when responding to small scale community and social disputes that were customary to the indigenous Maori customs that differentiated with western criminal justice beliefs (Church, 2003). The colonialists viewed Maori as primitive people with barbaric customs because they had no written laws. In fact Maori made significant use of their own customary laws, namely tikanga o nha hara, which they used, managed any form of antisocial behaviour using the Maori Law for wrong doings (Jackson, 1991).

According to Maxwell & Morris, (1994, p. 4), “it was clear that Maori did not live in a lawless society, there were rules by which they lived, and which covered all aspects of their life. The Maori law of tikanga o nha hara, translates into the ‘law of wrongdoing’, which in itself, illustrates that Maori did identify and run their society in a way where right and wrongs were identified and managed by Maori (McFarlane, 2004). This Maori law, however, was underpinned by the idea that if a social problem or wrong doing was done within the Maori community, the responsibility was collective, one on the part of whanau, hapu or iwi. Therefore wrong doings did not end with the victim, but also the victim’s family was regarded as a secondary victim (Maxwell & Morris, 1994). Further, the objective was to understand why the individual had offended, and this objective was seen as the whole community’s responsibility, not an individual’s personal issue to resolve on their own. Maori ideology, posits that if a Maori person offends, there is an imbalance between that particular individual’s social and family environment, which could be restored through mediation (Maxwell, at al., 2002).

According to Maxwell & Morris (1993, p.5), “Maori also had created runanga o nga ture, a council or court of law which comprised of “experts in law, kaumatua or kuia (elders), a representative from the victim’s family and a representative of the offenders family”. The council or group of these people would collectively decide how best to deal with the offence to restore

balance and harmony back to the community, for example they may have ordered the offender to provide certain goods to the victim (Lynch, 2012).

On the other hand, western ideology believes that there should be a community based intervention, and as described by Maxwell & Morris, (1993, p.7):

*“a consensus that involves whole community; that the desired outcome is reconciliation and acceptable settlement to rectify wrong doings; there is a concern not to abort blame but to understand and examine wider reasons as to why youth offended, (school, drugs, alcohol, mental illness); and finally; a shift away from punishment of breach of the law towards restoration of harmony”*

Colonialism destroyed many of these Maori customary legal responses to wrong doing which were the main mechanisms for maintaining justice within their own communities. Legal Representatives of the British Empire applied Western ideologies and methods and the values into their legal decision and the cultural practices of Maori were not acknowledged or even allowed (McElrea, 1994). In this way, the colonialists effectively dismantled Māori customary responses to crimes and enforced their assimilation into the British legal culture and responses to crime (Pratt, 1991). Maori then had no choice but to accept this dismantling of their current justice system as they were forced, first by weapons, then by sheer numbers by the colonialists to watch

their legal system be replaced by an ethnocentric British legal system (Maxwell & Morris, 1994).

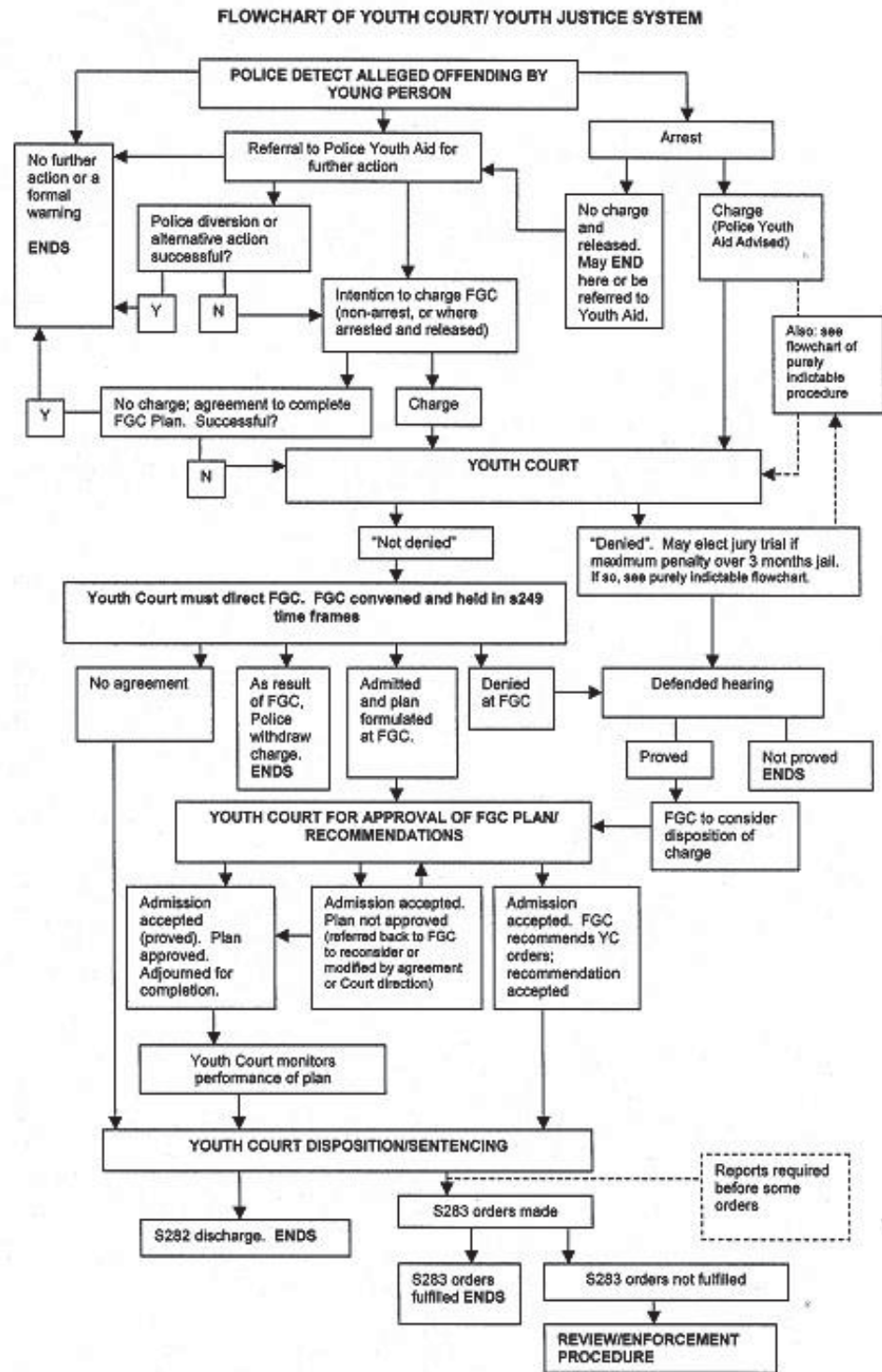
Modern law, however, as laid out within the Children, Young Persons and their Families Act 1989, stressed the provision of services that are:

*“Culturally sensitive and a process that is culturally appropriate, hence it is sought to re-introduce elements of cultural responses to dealing with offenders. This was partly a reflection of the resurgence of Maori culture and values since the mid-1970s but also recognised that the New Zealand population is made up of a number of different ethnic groups”* (Maxwell & Morris, 1994).

The differences in both Western ideology and Maori customary law are significant. For example, in the youth justice context, an indigenous approach is applied in that the aim of the Youth Court process is to involve the whole community in assisting with a youth’s rehabilitation plan, but this requirement has to be reconciled with the need to adopt Western ideologies by reconciliation and acceptable settlement plan (Marshall, 1985).

## THE CURRENT NEW ZEALAND YOUTH COURT

**FIGURE 2: FLOWCHART OF THE YOUTH JUSTICE SYSTEM**



(Ministry of Justice, 2007)

The Youth Court is a separate division of the District Court which deals with serious criminal offending that cannot be dealt with in any alternative way. It developed under the auspices of the Children, Young Persons and their Families Act 1989 (Lynch, 2012). According to Maxwell et al, (2002, p.17) “the legislation, together with its objects, sets out in statutory form a comprehensive set of general principles that govern both State intervention in the lives of children and young people and the management of the youth justice system” (Lynch, 2012).

The Youth Court deals predominantly with young people aged 14, 15 and 16 years old, but also 12 and 13 year olds who engage in serious, criminal offending. The three main aims of the Youth Court are to ensure: “accountability, resolution and restoration” (Ministry of Justice, 2012, p.2). Using these terms, the Youth Court aims to encourage the young person to be accountable and take responsibility for his or her actions, to find a resolution to their offending behaviour, and to encourage young people to ‘make right their wrongs’, and compel them to face their victims to hear the victims views on the reality of the impact of their offence on their victim (Lynch, 2012).

According to Maxwell, (2004, p.1) the specific objectives of the Youth Court are to:

*“promote the wellbeing of children, young people and their families, and family groups by providing services that are appropriate to cultural needs, accessible and are provided by persons and organisations sensitive to cultural perspectives and aspiration; assist families and kinship groups in caring for their children and young people , assist children and young people in order to prevent harm, ill-treatment, abuse, neglect and deprivation, hold young offenders accountable for their actions, deal with children and young people who commit offences in a way that acknowledges their needs and enhances their development, promote co-operation between organisations providing services for children, young people, families and family groups”*

As New Zealand’s youth justice system’s objectives are to deal with youth offending out of court if possible, the Youth Court is only for a small group, the minority of offenders. The contemporary Youth Court substituted the Children and Young Persons Court after the passing of the 1989 Children, Young Persons and their Families Act (CYF Act 1989), and deals with youth justice cases only, whereas historically, the Children and Young Persons Court dealt with both youth justice and care and protection (Maxwell. et all, 2004). As stated by Maxwell, “its establishment underlines the importance of the principals – on notions of accountability and responsibility for actions,

due process, legal representation, requiring judges to give reasons for certain decisions, and imposing sanctions which are proportionate to the gravity of the offence” (Maxwell. et all, 2004, p.20).

It is a private and confidential court in that it operates a ‘closed court’ so that members of the public do not have access. When a young person is charged, the Court appoints a lawyer free of charge for that young person who is specialised in youth justice, called a youth advocate. A lay advocate may also be appointed, generally to support the offender and his family culturally. A lay advocate has as his role, to ensure that the Court is aware of culturally sensitive issues directly relating to the proceedings. This is also provided free of charge by the Court.

After a Family Group Conference (FGC), a case may be transferred to the Youth Court. This can be because it is the recommendation after a FGC is held. It may be that the offender was not actively or appropriately participating in the FGC, or that an agreement on how to deal with them could not be reached between parties and it is a matter that the Youth court is better equipped to deal with. Depending on the severity of the crime, the case can actually be transferred to the District Court (McElrea, 1994). This would occur when the outcomes and punishments in the Youth Court’s jurisdiction are not considered sufficiently, and not proportionate and not equal to the offence committed. The Youth Court cannot convict on an offence, whereas



the District Court can. The District Court also has the jurisdiction to impose more significant sentences, and depending on the circumstances, it is sometimes felt that a particular youth offender should be treated as an adult in the criminal justice system (McLaren, 2000).

On the other hand, if a case stays in the Youth Court and is sentenced in the Youth Court, the outcomes are “supervision with residence, supervision with activity, community work, supervision, a fine, reparation, restitution or forfeiture, to come if called upon within 12 months (a type of conditional discharge), admonition, discharge from proceedings, and police withdrawal (of the charging document)” (Maxwell. et all, 2004, p.20). Disqualification from driving may also be imposed. Most of these sentences are monitored by Child, Youth and Family Services (CYFS).

### **THE YOUTH JUSTICE SYSTEM**

The guiding principles of the youth justice system is, in essence, that criminal proceedings through the Youth Court should not be embarked upon unless there is no other way in dealing with the youth offender. Measures need to be introduced in cases where a response to a young person’s offending is required to strengthen and support that young persons “family, whanau, hapu iwi and family group and foster their ability to deal with offending by their children and young people” (Maxwell, et al., 2002, p.4).

The values of the youth justice system are that young people need to be kept in their own community, it accepts that age and immaturity are mitigating factors. Therefore the system embodies an approach that sanctions must be less restrictive and should promote and influence the positive psychological and mental development of the child within his or her own family. The youth justice system has a very protective approach regarding the young person during any criminal investigations and proceedings (Ministry of Justice, 2002). Notwithstanding this, the youth justice system does have due regard to the impact of offending and seeks to uphold the interests of the victim/s of the criminal offending.

Similar to many youth justice systems internationally, the New Zealand youth justice system has several objectives and some of these are in conflict with each other. For example, the system seeks to involve families in decision making to obtain views on how best to deal with an offence and to consider the wishes of the young offender. However, it is also required to give due regard to the interests and wishes of the victim; the combination of these conflicting priorities can be considered a barrier in the promotion or enhancement of the child or young person's development (Becroft, 2004a).

The primary objective of the objective of the Children Young Persons and Their Families Act 1989 (CYF Act 1989) was to encourage the police to adopt "low key responses to juvenile offending except where the nature and

circumstance of the offending mean stronger measures are required to protect the safety of the public” (Maxwell & Morris, 1994, p.17). Pragmatically, the Act means that police cannot arrest a young offender unless specific and serious circumstances exist. The most important reasons for a youth arrest is to ensure the young person’s attendance in court, to prevent further offending or to prevent interference with evidence or witnesses (Ministry of Social Development, 2004).

### **THE ROLE OF THE POLICE**

The youth justice procedure after initial police intervention is that it is expected that minor and first time offenders are diverted from criminal prosecution by an immediate on the spot warning (Maxwell, et al., 2002). If it is believed that further intervention might be necessary, a specialised division of the police who deal with only youth offenders (Youth Aid) follow up with the offenders family, their school and may require certain things such as a letter of apology to any victim or undertaking some voluntary work within the community (Lynch, 2012).

### **CHILD, YOUTH AND FAMILY SERVICES YOUTH JUSTICE CO-ORDINATORS**

Where the Youth Aid division of the police force has concerns that require further action than previously described, it must refer that young person to a youth justice co-ordinator who is employed in the youth justice division of

CYFS. Together with the Youth Aid officer, they will liaise with each other to decide whether that individual can be dealt with or without Court intervention. For example, that specific individual may be suitable for police youth diversion, or if more serious, a Family Group Conference. (Maxwell et al., 2003, p.18).

### **FAMILY GROUP CONFERENCES**

A Family Group Conference (FGC) is one of the most significant aspects of New Zealand's youth justice system (McElrea, 1994). It adopts a restorative justice approach to criminal offending by way of a compulsory meeting for the youth offender with his victims, mediated by a police youth aid officer. FGC's are a method of dealing with the offending to avoid prosecution and helps the group collectively decide how best to deal with the offence and the resulting punishment (New Zealand Law Society, 2015).

If the police youth aid is intending on prosecuting a youth offender through the Youth Court, a FGC must be held first. The discussion centres on formulating a plan for the youth, with the aim of rectifying the resulting effects of his criminal offence, or to decide on ways to reduce the chances of reoffending and to increase the chance of a rehabilitation outcome. In essence, the outcome of a successful FGC can involve possibilities such as "repaying the victim and the community, penalties for misbehaviour and plans designed to reduce the chances of reoffending...common options

include an apology, reparation, work for the victim or the community, donations to charity, restrictions on liberty such as a curfew or grounding, and programmes of counselling or training” (McFarlane, 2004, p.14).

A FGC must occur for every criminal offence, even if the intention of the police youth aid and the family justice co-ordinator is to criminally prosecute the youth offender. They are only considered inappropriate where the offending is extremely serious, for example murder or manslaughter, or at the other end of the scale, for example, traffic offences (Maxwell & Morris, 1994). These offences are better dealt with by other means and not by a family group conference (Boushier, 2006).

The FGC itself is held at a location deemed suitable by all parties, particularly the offender’s family, whether it be a Marae, CYFS offices or a family home (Boushier, 2006). It is a private and closed, confidential meeting between the offender and his family (or family group), the police youth aid officer, the CYFS youth justice co-ordinator, a CYFS social worker, the victim and his family or support person. FGC’s are like formal meetings where discussions are held between all members of the FGC in how best to deal with the crime. The meetings can have breaks for private discussions to take place, and can be adjourned to other days if required for conversations and where investigations on particular matters are needed to be undertaken elsewhere (Maxwell & Morris, 1993). According to Maxwell & Morris

(1994, p.19), “the jurisdiction of the family group conference is limited to the disposition of cases where the young person has not denied the alleged offences or has already been found guilty.”

The FGC, has as its primary objective, a focus on the young person’s reasons for offending and all personal matters relating to the circumstances of the criminal offence. It is the role of the youth justice co-ordinator and the police youth aid officer to consult with family, the young person’s school and the victim and his family to ascertain their views on how they believe the crime should be dealt with and also, what they think is appropriate to manage and assist the young person away from further offending. Notwithstanding this, if the reason for the offending is directly related to welfare issues, the youth is to be protected by CYFS through their care and protection team and not necessarily by the youth justice avenue.

A successful result of a FGC is an agreed plan for the offender and his acknowledgement and acceptance of the crime and its resulting effects. A plan usually involves a sentence of some kind and can include a recommendation that the young person be prosecuted in court (Maxwell, year). There are certain parameters and regulations regarding the process, for example, where a young person is held in “CYF custody, the organisation of a FGC is done within 7 days, where the court orders a FGC it must be held within 14 days and where a youth justice co-ordinator received notification of

police intention to charge a young person who has not been arrested or a child (between the ages of 10 and 13) is in need of protection as a direct result of his offending; a FGC must be held within 21 days” (Maxwell & Morris, 1994, p.19).

Despite the successes, Moyles (2013) highlights the disadvantages and problems with FGC’s in relation to the venue and location of the conference where a youth, nor their family has a say in. Rather, it is set and advised without their input by CYFS youth justice advocates. FGC’s fail to appropriately cater for Maori and Pacifica families in that they provide little cultural support within the conference for those youths (Moyles, 2013). These do present as current problems, mostly derived from resources constraints. Despite these criticisms, the FGC sits at the core of the youth justice system, and adopts a restorative approach and where appropriate, provides an alternative method to deal with youth offending as opposed to criminal prosecution in the Youth Court. It is considered a successful response to a youth crime.

## **SUMMARY**

New Zealand’s current youth justice system is unique in the way that it draws from Maori customary law and has combined both Maori and Western ideology. It has restorative and preventative goals and, in a way, views the offender as a victim of his inability to balance and cope with an imbalance

between his social and family lives which is in need of support, guidance and assistance. In contrast to other justice systems internationally who have a punitive justice system, with the goal and desired outcome to punish the offender for his crime and to therefore have justice for the victim, New Zealand's system has adopted a restorative approach with the focus, not to punish the young offender but to 'restore' the effects of the offence by ensuring the offender is held accountable to his victim, to take responsibility of this crime and to restore damages resulting from his crime.

This approach focuses on empowering the offender to take charge of what he thinks is appropriate to correct his wrong doing by being involved with suggesting solutions and sentences for his offence. Young offenders are also encouraged to identify personal obstacles, if they can acknowledge and articulate any, they feel they require support for; this may be, for example, a drug and alcohol addiction, which is prevalent in youth crime. The youth justice system promotes cultural and family support for the offender. As youth crime is often viewed as an unfortunate and common yet normal part of adolescent behaviour, the emphasis on diverting formal criminal prosecution is desired (McElrea, 1994). There are a myriad of ways youth offences are initially dealt with to avoid criminal prosecution over 'silly adolescent mistakes.' For example, initial police responses may be through instant situational street warnings, written warnings, or referral to the Youth Aid section of the police where the outcomes may be a formal apology letter,



reparation, voluntary community work all resulting in a diversion of a formal prosecution (Maxwell. et all, 2004, p.21).

FGCs are considered the most important and central method of dealing with a youth criminal offence. If a successful FGC is undertaken, they are considered an integral way of adopting the restorative ideology of New Zealand's contemporary youth justice system and encourages a young offender to take responsibility and to empower him to avoid future offending by enabling him to understand the effects of his crime on his victims. However, they are case specific and depend heavily on the attitude of the youth offender.

## CHAPTER 2:

# The History and Evolution of the New Zealand Youth Justice System

## INTRODUCTION

Comprehending the contemporary youth justice system that New Zealand operates, is integral to understanding the evolution of youth crime and youth justice within the New Zealand context. To do this, a timeline based summary of the youth justice system in New Zealand is discussed. This summary provides an insightful illustration of the changing scope of youth justice over time.

This chapter illustrates and sets out the differences between historical and contemporary changes to youth justice, with the earliest known policy in 1867. This first policy primarily focused on a welfare based model in response to neglected children, with their engagement in criminal behaviour being perceived as a normal part of their adolescence and ensuing need to access welfare support and government intervention. This historic Act is then compared with New Zealand's current Act, the Children, Young Persons and their Families Act of 1989 (CYF Act 1989), which presently provides the legal framework for managing and responding to youth offenders.

The overarching theme of this chapter is that youth justice has gained significant attention as requiring its own specific field of practice within the present justice system. It was identified that it also requires a matching set of specialised services to properly assist problem youth. The needs of youth who engage in criminal offending are determined to be in contrast to the needs of adult offenders. As a result, youth offending requires its own set of specialised welfare, care, protection, punishment and rehabilitation policies (Ministry of Justice, 1999). This has been identified and understood over time as the government has sought to adopt the best policies to effectively respond to this social problem in New Zealand. These are illustrated in the historical timeline discussed in further detail below. This is followed by an exploration of key defining features in the contemporary youth justice system in New Zealand.

### **A HISTORICAL TIMELINE 1867 – 2015**

The very first known policy response to youth offending in New Zealand was the Neglected and Criminal Children Act 1867 (Watt, 2003). This Act essentially provided the courts with the first legal power over youth offenders where previously they had none. This piece of legislation empowered the State to legally commit children to industrial school, but this way for criminal children only (Watt, 2003). The Act is the first known policy designed specifically for youth offending and was bred from the rise in social issues with young delinquent youths alongside a view that troubled and delinquent youths were solely a result of child neglect.

Shortly after the design and implementation of this first youth focussed policy, the State identified the need for some improvements and the Neglected and Criminal Children Act was repealed in 1882 and replaced by the Industrial Schools Act. Initiating this shift was recognition that guardianship of young offenders needed to be legally provided by the industrial schools through its managers, making these youth's legal guardians of the school (Lynch, 2012). In addition, this Act, gave the Education Department increased legal discretion over where and how long a youth was placed in the school's care (Watt, 2003). Legislative amendments were made to this some years later to increase the age of 'committal' to an industrial school to 16 years (Watt, 2003).

Significant social policy changes occurred in 1882 when the Justice of the Peace Act was introduced (Watt, 2003). The State had recognised that the needs, and therefore equivalent responses of criminal children varied greatly with age and maturity. To incorporate this into law, there was a legal separation between children who were 12 year old and under to that of criminal youths who were between 12 and 16 years. Under the Act, with the exception of homicide, children aged 16 years or younger could only be charged summarily and if the State sought to charge a person under the age of 16 years with an indictable offence, their parents' consent had to be obtained first (Watts, 2003). The most common punishments in this era could range from a 'whipping', a fine to a custodial sentence (Watts, 2003).

The next step of legislative evolution in youth offending was the Criminal Code Act of 1893. This law, further amended the ages of criminal responsibility to align with government's changing values of youth offenders. The Act states that no child under 7 years old could face criminal prosecution at all. In addition, the Act employed the '*doli incapax rule*' (incapable of blame) in which 12 year old youths could benefit from the States belief that they were too young and mentally immature to truly comprehend and therefore, intend criminal malice by not yet possessing the maturity to fully distinguish between 'right' and 'wrong' (Watt, 2003).

One of the most influential pieces of legislation for youth justice was the 1906 Juvenile Offenders Act. This Act aimed to protect young offenders from the degrading influences of adult offenders in the criminal courts, providing a separate and private court hearing for youth offenders (Watt, 2003). This would generally be in the form of one private hour per day in a magistrate's (nowadays a Judge) court for offenders under the age of 16 years (Watt, 2003). The realisation for a separate youth justice process was being identified and had begun its incorporation into common judicial practice.

Amendments were made to this legislation as knowledge and research was growing. The amendment undertaken in 1917 paved the way for the establishment youth probation officers. This amendment illustrated the growing recognition by the State that the most effective responses in attempts

to rehabilitate youth offenders were better conducted in their home and community environment and also institutionalised punishment became a last resort. The States' attitude was shifting to a rehabilitative approach through state protection and support with less emphasis on a welfare model more popular in earlier legislation.

The Juvenile Offenders Act 1906 was further complimented by the passing of the Child Welfare Act of 1925. The Child Welfare Act aimed to provide, "better respect and maintenance, care and control of children who fall under the protection of the state and to provide generally for the protection of the state for the protection and training of indigent, neglected and delinquent children" (Watt, 2003. p.8). A defining feature of this legislation was that a separate 'Children's Court' was formalised which closely followed similar changes within the police force who had similarly recognised that there was a growing requirement for a specialised section of the police to separately manage youth offending. This was established by the police in 1957 and named the Juvenile Crime Prevention section, which is now called Youth Aid. Youth justice and youth welfare officer roles gained momentum and a welfare, care and protection approach towards youth offenders was gaining strength.

The direction of the youth justice system changed substantially in the 1960's and 1970's. The Crimes Act was passed in 1961, which raised the age of

criminal responsibility from 7 years old to 10 years old (Watt, 2003). At the same time, the Crimes Act was closely tailed by the Guardianship Act in 1968, which embodied new political ideologies about children's rights and child protection namely that a child's welfare was the paramount, guiding principle. Indeed the 1868 Act stated, stating that "the interests of the young child shall be first and paramount" (Guardianship Act, 1968, (s23(1))). The Department of Social Welfare was developed as part of this change, and commenced operation in 1972, with the idea that the State should be more involved in the general social welfare of its citizens, and was significant for children and young people.

Contemporary youth justice legislation, and arguably the most significant piece of legislation for youth justice in history is the current Children, Young Persons and Their Families Act, 1974 (CYF Act 1974). The CYF Act 1974 provided an enormous breakthrough in the way that youth crime was to be dealt with in New Zealand. It established an "innovative set of principles and procedures to govern the response to young offenders, and to manage the role of the State in the lives of young people and their families" (Watt, 2003, p.1).

The State considered this to be a considerably promising legislation to address major issues in youth offending. Notwithstanding this, it was criticized for allowing too many young people to be arrested, especially for very minor offences. The assumption that most youth offenders had special

family or social problems was soon understood as not being reflective of the reality of youth crime, and made apparent welfare dispositions not always appropriate. The State sought amendments to cater for this discrepancy. It also had the issue of not effectively responding to persistent offenders, hence, an amendment was made to the Act in 1977 allowed for children and youth to be criminally prosecuted, however, only in the case of homicide (Ludbrook, 2005).

More amendments were introduced to provide the police with more powers to deal with street children by derive and other (pre-court), practical interventions. Despite all of these evolutionary legislative changes, the public were of the view that there was no accountability for criminal offending committed by youths. Ludbrook, (2005, p.23) sums up the general discourse among the public population over the 1980's:

*“Our juvenile justice system prior to 1989 had the effect of cushioning young people from human, social and economic consequences of their behaviour. By parading young people before a line of public officials – Police, Judges, lawyers, social workers and residential case workers, they were sheltered from the consequences of their misbehaviour. They often came to see themselves as victims of the system rather than as the cause of suffering and anxiety to ordinary people in the community. Both the welfare and the*



*punishment philosophy stressed the role of the young offender as  
“victim”*

## **CRITICISMS OF THE CHILD, YOUTH AND FAMILY (CYF) ACT**

### **1974**

The CYF Act 1974 was criticized for having a more reactive than proactive nature. Similar to international welfare models of justice, the Act was accused of criminalising young people for minor offences which were thought to be not so much an issue of criminal behaviour but more a resulting issue of care and protection deficits (Becroft, 2009). It had become apparent that too many young people were being brought before the Courts to face criminal charges. There was a realisation that the underlying idea of this Act, that young offenders always have family or social problems, was not always the case. Hence, the welfare philosophy driving the youth justice system was not always appropriate (Watt, 2003).

The general public were losing faith in the youth justice system's welfare model, as it appeared to have minimal success in changing levels of youth offending (Watt, 2003). It appeared as though the youth justice system was not able to effectively target persistent young offenders, nor decrease recidivism as it had intended to do. There was significant scrutiny and public criticism of the lack of accountability of young offenders (Ludbrook, 2005). Youth offenders were said to be so sheltered from all consequences, (by

police, social workers, lawyers and residential case workers), that the offender himself, also viewed himself as a 'victim of the system', rather than the cause of suffering to innocent members of the community (Ludbrook, 2005). There was an obvious tension between balancing victim's rights and the rights of a child. Both the welfare approach and the consequential punishment were perceived to view the offender as a victim (Ludbrook, 2005). Also of increasing concern was that the system did not cater to the special cultural needs and wellbeing of Maori (Ludbrook, 2005), and due to the overrepresentation of Maori in the youth justice system, this was an area for review and reform (Maxwell & Morris, 1994).

### **THE 1986 REPORT ADDRESSING RACISM TOWARD MAORI**

The 1974 CYF Act came under increasing criticism in the 1980's as the emphasis on the Act not meeting the needs of Maori drew increasing attention. According to Watt (2003, p.13) "it was argued that the 'paramountcy principal' in the 1974 Act, which provided that the 'interests of the child or young person shall be the first and paramount consideration,' ignored the importance and subsumed the responsibility of the whanau, hapu and iwi in the children's life." This system was in contrast to Maori ideology and philosophy and it became apparent that Maori youth offenders were suffering the most (Watt, 2003).

There was a concerted effort in 1980 by Maori for more self-determination and autonomy which, coupled with higher youth offending statistics for Maori, compared to non-Maori gave rise to the 1986 'Te Whaingā I Te Tika' Report to the Minister of Justice. Between 1980 and 1984, the rates for Maori entering the youth justice system were six times higher than those of non-Maori with a significant disproportionate number of young Maori receiving custodial sentences (Watt, 2003).

In essence the Te Whaingā I Te Tika Report provided a starting point for a disempowering mono-cultural criminal justice system to grow and develop into a bicultural criminal justice system which allowed Maori and all other ethnic groups in New Zealand justice (Davies, et al., 1986). The Report suggested that “structural changes in dealing with minor criminal offending also are needed to relieve pressure on police, courts, and legal services. In addition, a Maori legal service should be established to provide advice, research, information, and education and to further promote the transition to a truly bicultural system” (Watt, 2003, p.12). The Report suggested that actions were required to change the negative perceptions held by Maori of the Courts and stakeholders for example, lawyers to improve the access of the criminal justice system. These as a start, would assist Maori in the criminal justice system, with its objective to decrease the overrepresentation of Maori facing criminal proceedings. The State recognised that the CYF Act 1974 required amendments to address the issues at hand. In 1989 this was achieved.

## **THE CHILDREN, YOUNG PERSON AND THEIR FAMILIES ACT**

**1989**

The CYF Act 1989 is currently the governing legislation for the existing youth justice system. The new and improved CYF Act, seeks to promote the wellbeing of young offenders and their families and family groups to empower families and communities with a protective focus on the child offender, rather than punishment as the primary focus (Lynch, 2012). Despite the fact that this model is regarded as a model for many other jurisdictions, it still provides for much debate on how a young person, who is in conflict with the law, should be treated. A social divide exists as to whether a young offender should be viewed as a dependant individual who needs protection and assistance (which is now a paramount principle of the CYF Act 1989), or whether a young offender should be treated as an autonomous individual who should be held accountable and responsible for his or her actions which is a neoliberal approach dominating the youth justice system at the moment (Lynch, 2012).

Upon its introduction, this legislation changed significantly the way child and youth offenders were dealt with within the criminal justice system, with its objectives to “promote the well-being of children, young persons and their families/whanau” (Ministry of Justice, 2014, p.1).

The National Government, in 2010, made further changes to the existing Act by incorporating the ‘Children, Young Persons and Their Families (Youth Court Jurisdiction and Orders) Amendment Act 2010.’ This change was said to be “the most fundamental change to New Zealand’s present youth justice system since its inception in 1989” (The Youth Court New Zealand, 2014, p.1) because it gave the Youth Court increased jurisdiction over sentencing orders to better manage offenders.

The CYF Act 1989 provides a framework whereby youth offenders were not only held accountable for their actions, but also to promote their own well-being by encouraging the offender to accept responsibility for their actions, therefore dealing with the offender in a way that acknowledges their own needs to provide them with the opportunity to develop themselves in a more socially acceptable, beneficial and responsible way (Ministry of Justice, 2014).

Its objectives are to not only protect youth offenders, but also to promote alternative action to criminal prosecution of that individual by the state. This legislation made youth arrests a last resort and incarceration prohibited unless a youth’s offence is categorised as an indictable offence (Ministry of Social Development, 2014, p.1). The CYF Act 1989 encourages youth offenders to be kept in their own community and be provided with support, resources and rehabilitation programmes. It emphasises a need for the youth offenders

themselves, their families, victims and the community to be involved in the rehabilitation process by offering their input into the consequences for the offence/s (Ministry of Social Development, 2014, p.1).

### **THE OBJECTIVES AND PRINCIPLES OF THE CHILDREN, YOUNG PERSON AND THEIR FAMILIES ACT 1989**

The CYF Act 1989, sets out a number of key objectives and principles to govern the youth justice system. The paramount objective is to promote the wellbeing of children and their families (Lunch, 2012). The Youth Court of New Zealand lists the key objectives as “providing services which are appropriate to their (the young person and their family) cultural needs and are accessible; assist families in caring for their children; ensuring that young offenders are held accountable for their actions; and dealing with children and young people who commit offences in a way that acknowledges their needs and enhances their development” (Youth Court of New Zealand, 2014, p.1). To complement the listed objectives, a set of guiding principles encourage: a need to involve families in all decisions made and seek their agreement on these decisions; to consider the young person’s wishes alongside their welfare; and process the case in such a time frame that is appropriate for the child or young person and their age (Youth Court of New Zealand, 2014).

A summary of the history of the New Zealand youth justice system was outlined and discussed to provide an understanding for how it has changed and evolved over time with the dynamic needs and political ideologies of the state. The changes have been tested and practiced overtime and continuously amended with the youth justice system consistently improving.

The contemporary defining features of the current youth justice system will be described in the coming section of this chapter. The current system employs a divertive and restorative approach in response to youth offending which involves a specialised and specific set of defining features which are discussed. These being the police Diversion Scheme; FGC's and restorative justice; the Youth Court; Youth Advocates and Lay Advocates; and Police Youth Aid, many of which are very specific to New Zealand.

### **POLICE YOUTH AID**

The police force has responded to youth crime with a specialised task force, Youth Aid. New Zealand is the only country in the world to have such a task force which involves in excess of two hundred and twenty specialised officers whose sole objective is to cater to the special needs of young offenders (Becroft, 2009). Police have significant discretion in providing 'alternative action' for the offence if possible, essentially to avoid criminally prosecuting the young offender. Notwithstanding, Youth Aid offer significant flexibility when applying these alternative actions, all action plans honour the

youth justice principals and involve similar practical plans. For example, the plans may include counselling, apology letters, informal community work, reparation agreements and others. All of these plans have as their outcome, to rehabilitate and discourage the youth offender from committing crime in future by facing some consequences, with the hope of encouraging guilt as a discourager for the offender. Due to the involvement of families and victims, Youth Aid often may use the family or victims response as a base for the alternative action (Ministry of Justice, 2014). However, the ‘alternative action approach’ to youth offending by way of warning, caution or other diversionary means, is only designed and appropriate for low level offending.

### **POLICE DIVERSION SCHEME**

Diversions are one of the core successes of the youth justice system. Section 208(a) of the CYF Act 1989 states that “unless the public interest requires otherwise, criminal proceedings should not be institutionalised against a child or young person if there is alternative means of dealing with the matter” (CYFS Act, 1989, s.208(a)). The term ‘diversion’ itself has evolved in its meaning. Historically, the term diversion meant to completely avoid the justice system. Nowadays it is a form of justice, diverting the young offender away from the formal aspects of the justice system such as arrests, court procedures and its resulting conviction (Lynch, 2012).



The most common method for the police youth diversionary plans for young offenders was an apology. These would be more frequently written, although sometimes in person. Reparation was often arranged to be paid by the youth offender to the victim, and otherwise a donation to charity (Maxwell, et al., 2002). Further to this, attending rehabilitative programmes were often a popular aspect of a diversionary plan. Maxwell, et al. (2002, p.61) provide examples of these rehabilitative programmes as the “Police Youth at Risk Programme, anger management programmes, drug and alcohol programmes, fire awareness programmes, driving instruction, strengthening families meetings, counselling referrals, church groups, outdoor programmes and various education options.” Another popular part of a diversionary plan are the use of a night time curfew, a non-association with specific people (most often other young offenders).

### **FAMILY GROUP CONFERENCES**

Family Group Conferences (FGC) are one of the most important events in the criminal justice system. They are an innovative approach to multicultural policy drivers in that they involve the family and the community in the resolution of the offence (Lynch, 2012). The FGC system deploys a restorative justice approach in that “victims are also invited to be involved in deciding on the consequences for the offender” (Stevens, et all, 2013, p.12).

Using the FGC as a restorative justice forum, the crime is not viewed as an offence against the State, rather, a crime against a community, and the victim in particular (Lynch, 2012). The objective is to create positive obligations for the offender, for example, a formal apology or a monetary reparation amount for damage done rather than imposing a negative consequence. According to Lynch, (2012, p.113), “restorative justice aims for reintegration and repair of harm rather than punishment and retribution.” When comparing the restorative justice model to the punishment model the main distinguisher between the two is said to be guilt. The formal legal process aims to determine whether the level of guilt is proportionate to the level of the crime committed (Hassell, 2013).

The FGC have been said to be the first step toward restorative justice in the youth justice system (Lynch, 2012). Despite this, there is no actual, specific mention of restorative justice in the Act. This is because ‘restorative justice’ itself has only been truly developed as a concept that could be practiced in the criminal justice system in the early 1990’s, after the CYF Act came into effect. This initially is understood to have derived from the work of Howard Zehr and John Braithwaite in their publications of crime and shame in 1988 and 1990 (Lynch, 2012). Essentially making restorative justice in the youth criminal justice system through the FGC’s a popular practice rather than resulting from a theoretical basis and written into the legislation (Lynch, 2012). However McElrea suggests that policy writers had a restorative justice model in mind when writing the CYF Act, as three major elements that

underpin restorative justice are also seen in the Act. These being; “the transfer of State power from the courts to the family and community, group consensus decision-making in the FGC and the involvement of victims leading to a healing process” (McElrea, 1993, p.3).

It could be said that a ‘successful’ FGC does not punish the offender. An ‘unsuccessful’ FGC, being that no consequential outcome for the offender could be agreed on by the family, community and the victim results in a charge being laid in the Youth Court. Whereas a successful FGC will result in some form of consequence, none of which are punishment.

According to Duff “punishments are punitive if they are intended or administered as mere retribution, with the sole aim of ‘making them suffer”” (Duff, 2003, p.24). This is confirmed by Luna (2003, p.47) stating “punishment entails the intentional infliction of pain or some type of deprivation that individuals would generally prefer to avoid, making it insufficient to simply declare that state-imposed sanctions are a necessary adjunct of a criminal justice system.” These definitions illustrate how an outcome of an FGC cannot be labelled punishment. For example, a monetary payment of reparation imposed on the offender, has as its sole purpose, to correct the wrong of the crime and make things right for the victim/s.

FGC's have a somewhat protective function for the offender; the objectives of a FGC are to also encourage a change in behaviour, to prevent reoffending and recidivism, while balancing the needs of both the offender and the victim (Lynch, 2012). This indicates the reason that makes it so important that an outcome is mutually agreed to by the offender, their family, the community and the victim. For a positive outcome to eventuate, the offender is essentially required to volunteer to attend the FGC to discuss the crime and appropriate consequences. If a FGC is not successful, further action will be pursued in Youth Court; offenders are therefore essentially given a choice of either: volunteering their own freewill giving him a decision to accept the decision and plan for their actions, or, to reject the FGC decision and plan and face the legal formalities in the Youth Court. An FGC is mandatory for youth offenders in more circumstances, bearing in mind that some offences are, as previously discussed, inappropriate for a FGC to take place.

An Intention-To-Charge (ITC) FGC is held when the police are seeking to charge a youth with a non-arrest case (Lynch, 2012). After the ITC FGC has taken place and an agreement and plan is put in place to deal with the youth offender through their family, the community and their victim, no charge will then be laid. If an agreement is not made, or if the youth offender rejects the charge, it will then be laid in the Youth Court and legal formalities will commence against the youth offender.

## **THE YOUTH COURT**

The Youth Court is a separate, specialised court held only for youth offenders. The jurisdiction extends to any youths who have been formally charged by the police within the ages of twelve and sixteen years old. In essence, the Youth Court deals with youth offenders whose offences are too serious to be dealt with by police alternative action. It has jurisdiction of all cases except homicide and manslaughter. Generally a young person has charges laid in Youth Court when an arrestable offence has been committed, or after the failure of a FGC, whereby an appropriate plan could not be agreed to.

Unlike all other Courts, the Youth Court has a unique character in both its statutory provisions and the process adopted by stakeholders, lawyers, judges and other professionals (Lynch, 2012). These courts are closed for privacy and protection of the young offender, however they are much less formal by nature when compared to other Courts. An example of this is the use of the young offender's first name by all parties involved in the hearing, with Judges often intentionally aiming to communicate directly to the offender, rather than solely through the youth advocate.

## **YOUTH AND LAY ADVOCATES**

Both Youth and Lay Advocates have specialised support roles within the Youth Court process to primarily support the young offender, but also to

assist the Court in the process. Youth Advocates are specialised lawyers for youth offenders funded by the State. The concept of a Youth Advocate was born after the passing of the Act, due to the creation of new philosophies for how the youth justice system should operate. In 1996 the Principal Youth Court Judge and the New Zealand Law Society formulated a plan to train a set of specialised lawyers to assist the Youth Court and young offenders through the Youth Court process (Morris, et al., 1997).

The core role of a Youth Advocate is primarily protect the rights of the youth offender. It is expected that they attend not only the formal court hearings and the FGCs, but also to explain charges and legal processes to the young person, as well as providing support to the youth, ensuring there is minimum intervention by the Youth Court by aiming to obtain a resolution that does not result in formal court orders (Morris, et al., 1997).

Often there is a need for additional support for the young person and their family during the Court process. The Court may appoint a 'Lay Advocate' for this purpose. "Lay advocates are people with 'mana' or standing in the young person's community" (Ministry of Justice, 2014, p.1). Lay advocates also ensure the Court understands cultural issues that impact the young person and cultural issues applicable to the case (Ministry of Justice, 2014). These measures have been a successful support for some youth offenders.

## CONCLUSION

The historical evolution of the youth justice system is vital to understanding the ideas of New Zealand's contemporary youth justice system. The first legislative responses to youth offending was a welfare approach which viewed youth offenders as neglected and delinquent youths in need of State adoption through industrial schools where their needs would be more appropriately met and their behaviour and conduct issues resolved. This welfare approach changed over time to include more community based punishments, but also with the adoption of a protective model of youth justice.

The contemporary Act 1989 is one of the most influential pieces of legislation in New Zealand to date as it incorporates a welfare, care and protection aspect, a divertive and a restorative and rehabilitative approach to youth offending. The underpinning ideology being; that some youths offend as part of normal adolescent behaviour and should be diverted from criminal prosecution. If there is the requirement however for criminal prosecution, the Youth Court provides specialised services to empower and rehabilitate the youth offender by supporting him or her to be involved with their own sentences, attempting to guide them away from reoffending.

This chapter has discussed the history of the youth justice system in New Zealand and how it has continuously developed into the contemporary youth

justice system that exists today; shaped by the ever-changing needs of young offenders and their victims. The current system employs a specialised set of defining features which emphasises divertive and supportive rehabilitation of young people with a focus on state protection of youth offenders. However, the question still remains, *why* do youth engage in criminal behaviour? This is explored in the subsequent chapter.



## CHAPTER 3:

# Why do Youth Offend? The Drivers of Crime and Some Explanations

## INTRODUCTION

Youth offending is a complex social and political issue in which young, immature minds are influenced or directed in some way or another into engaging in criminal activity. There are a number of contributing influences that can impart some explanation as to why a young person engages in criminal activity in the first instance.

This chapter will explore several drivers of crime for youth offenders. Initially investigating social drivers of crime, focussing on influences present within the offenders macro, meso and micro environment, including the society and community in which they live; next, the link between a youth's engagement, or lack thereof are explored, in educational institutions and youth offending; the influence of antisocial peers; youth substance abuse and the effects of drug and alcohol addiction as well as the role the family plays in the exposure and influence on a young, immature mind. The second part of this chapter looks at mental health influences and the link between neurological disability and its consequential link with youth offending.

It concludes that there are numerous social environments in which a youth can be negatively influenced, and as a result, provide a breeding ground for youth offending. With better understanding, recognition and State support of these social drivers, young people can be better supported to live a life free of crime.

These influences include the society and how it is structured to support youth, for example, the political, economic and social systems and their resulting indirect influences, the link between youth offending and education and the peer influence derived from attending educational institutions, the role and influence of the community, for example, areas of poverty, access to drugs and alcohol and access to community based interventions, family upbringing and influences, and also an individual's neurological issues are of significant consideration.

A review of research on youth offending shows that there is not a singular approach to youth justice. It is an area of complex issues and complex individuals, all with very different types of youth offenders and with different causes of youth offending (Becroft, 2001). The area of youth justice has gained increased attention in recent times with more emphasis being placed on how best to provide interventions to both the “needs of offenders and the causes of their offending” (Bottoms, 2007, p.140). This attention and research is providing more knowledge about what causes youth to engage in

criminal offending, and most importantly, “how to target every dollar spent so that it produces the greatest reduction in recidivism as possible” (Bottoms, 2007, p.157). To best cater to the prevention and minimisation of youth offending, we must appreciate the different causes of offending and cater for these individually. Becroft (2001, p.1) states that “overall, apprehension rates for child and youth offending are maintaining a slow decline, with one exception. Apprehension rates for violent crime are increasing.” This increase is a significant issue, the problematic areas that require targeting are discussed in further detail below.

### **THE IMPACT OF SOCIETY**

How a society is structured and how it caters for the needs of its youth, plays a significant role in influencing youth criminal offending behaviours. This can be illustrated by the way a political system operates within a society, for example, we can look at the funding and political priorities of the State, the current economic system operating within the society, employment rates (or unemployment rates), the education and training opportunities available to youth, the social systems of that society, the cultural and religious system and makeup, and the legal framework which governs that society. All of these factors play an important part in influencing youth as they develop and mature into adulthood. Where one or more of these aspects of society does not appropriately support the needs of youth, the engagement in anti-social or criminal behaviour becomes more likely.

## **EDUCATION AND YOUTH OFFENDING**

There is a strong link between youth criminal offending and engagement in education (McKlaren, 2000). This is seen clearly within the Youth Court where many youths who are before the Court do not appear to be engaged in any type of education system. Stevenson, et al., (2007, p.63) state that the “key challenge for managers and practitioners is how to support young people in sustaining an attachment to education, or helping them re-establish that attachment once it has broken.” Serious offenders before the Youth Court often have a disengagement with school or any other kind of education or training system in common.

Typically, once out of school or an education system, these youths are left ‘lost’, ‘uncaptured’ and ‘unmonitored’ by the State. From the perspective of the Youth Court, the number of these youths range between 1000-3000 individuals (Ministry of Justice, 2002). In essence, this shows us that there is a significant failure from the state in monitoring youths who leave school or other education system prematurely. The unfortunate consequence is that many of these youths subsequently appear in the Youth Court, where issues have often escalated to such an extent that it becomes increasingly difficult for this late intervention to have effect and more intensive and significant involvement from youth justice workers is required to assist effectively, a youth offender towards rehabilitation and away from reoffending. This often comes at a high cost for the State to bear.

Utilising proactive measures to prevent criminal offending behaviours can prove cost effective, reactive measures of youth justice intervene following criminal offending, by which point wider issues surrounding that youth and their environment will already exist. Preventative measures can intervene at the point at which emerging signs of criminal behaviour begin to appear, reducing the harm to victims, to the youth, and to wider society; preventative measures aim to target youths at the initial start of the 'crisis' (Freibery & Homel, 2011). The term 'crisis' is adopted as the leaving of high school or other educational institution, and often occurs only when the youth is suffering a crisis in their lives. For example, a crisis may be an addiction to drugs or alcohol. A social and relatively minor use of alcohol may have developed and escalated into an addiction to the point where a youth can no longer manage normal daily routines that the school or education system provides. If the State intervened at this point, the youth could stand a much better chance of recovering from the addiction and less chance of engaging in criminal offending.

The current youth justice system in New Zealand does not provide any space for preventative support for youth, only intervening to rehabilitate them once they engage in criminal offending. By the time a youth in crises comes to the attention of police and the Youth Court, it is sometimes too late or at least extremely difficult for these youths to return to education. There is a large variance in the associated cost to the state between the (likely) cost of a preventative system and the cost of one individual going through Youth

Court; the cost of a preventative youth justice system comes at a much lower price to the State than New Zealand's current system.

## **PEER INFLUENCE**

Peer influence is one of the most powerful influences in youth offending. Peer risk factors refer to the behavioural issues that arise from associating with delinquent youths who are already participating in criminal offending and other antisocial behaviours (Fergusson, 2005). Becroft, (2009, p.1) states that "these friendships become a training ground for antisocial behaviour". The influence and involvement of antisocial peers can often be, the only reason a young person engages in criminal offending behaviour (Curtis et al., 2002).

This cause of criminal offending is unlike many others due to the fact that many of the youth offenders who engage in criminal behaviour and activity due to association with other offending youths may have had a positive childhood and successful upbringing. Once they reach adolescence, the influence of the family weakens and the influence of peers strengthens (Curtis et al, 2002). Becroft (2009, p.1) suggests that "puberty represents a 'maturity gap' for adolescents." The ideology is that while an adolescent, there is a strong desire for an individual to be more mature and grown up than they actually are, hence, activities like driving cars and drinking alcohol

resemble some form of mature adult-like independence that many young adolescents crave (Curtis et al., 2002).

In a study of “905 children it was found that while younger children disliked their peers who were physically aggressive, during puberty, that dissolved, and teenagers came to perceive their aggressive mates as having higher social status and more influence” (Becroft, 2009, p.4). This study illustrates the impact and influence of a young person’s peers and need for popular and influential status. It is interesting, but not surprising that the most influential person, or, the leader of the group, is often the person who holds these negative characteristics. This is problematic however, as youths presenting with aggressive tendencies are usually the young people who will, or already do engage in criminal offending. If they are viewed as the popular, or influential individual within the group, this behaviour could be seen as desirable behaviour for other youths to participate in.

Another risk factor relating to peers and delinquent youths is the use of drugs and alcohol. There is some discussion about whether or not it is drug and alcohol abuse that is really the ‘cause’ of criminal offending behaviour in youths or whether it is simply an “additional factor present in the already disordered lives of young offenders” (Curtis et al., 2002). Notwithstanding this debate, the Youth Court commonly face youths who engage in criminal offending behaviour under the influence of alcohol and drugs. Youth

offending is complex and the best way to combat youth offending is contentious, in part this is due to the fact that youths often engage in criminal offending as part of normal adolescent behaviour, (Mooney, 2010).

### **DRUG AND ALCOHOL ADDICTION**

Drug and alcohol abuse is shown as a frequent problem for youth offending and is illustrated in the Youth Court (Lynch, 2012). It is clear that youths under the influence of drugs and alcohol are more likely to engage in criminal offending behaviour than those who are not. According to Walker “it is estimated that 80% of young people appearing before the Youth Court have alcohol or drug dependency or abuse issues connected with their offending” (Judge J Walker, “Address to the ALAC Conference” 4 May 2007, in Becorft, 2009, p,17). Managing these youth’s dependency and abuse of drugs and alcohol is difficult and complex as it requires consideration of many other issues present in the individual’s life such as mental illness, family conflict and disengagement with school (Curtis et al., 2002).

### **MENTAL WELLBEING**

According to Hon Harre, the (then) Minister of Youth Affairs:

*“The increasing rate of social change and competition for training and job opportunities is increasing the stress on young people. This is*



*reflected in rising mental health issues for this group. Over the past 40 years, the youth population has not shared the health gains of other population groups” (Ministry of Justice, 2002, p.10).*

This is significant as it illustrates the way in which economic and social pressures can affect a young person psychologically.

High pressure can have a negative impact on a young person’s mental wellbeing, as can a lack of employment which has a correlative effect on crime, and is often a precursor to youth crime. Young people participating in youth crime not only face societal and environmental challenges of ‘normal’ adolescence, but also have some kind of mental instability, whether this is the negative influence of their peers, depression, any myriad of other mental issues developed following the use of drugs or alcohol, including depression and irrational behaviour. Mental illness affects many youth participation in youth offending.

## **THE ROLE OF THE FAMILY**

The role of the family and family dynamics in general significantly affect how likely a youth is to participate in criminal behaviour. A child and young person’s mind while developing is immature and susceptible to all types of influences (whether positive or negative), the parental or guardian role model

plays an important part in ensuring the positive parenting of that child is upheld. While a young person is in the process of maturation, they are still very much a part of their own family and their behaviours reflect behaviours learnt in their immediate family environment (Arthur, 2007). For example, if a young person has been brought up in a violent household, the result is likely that they have an increased likelihood of developing into a violent adult. It is hereditary.

The family has the most influence on a young person during a child's formative years, and if negative parenting and role modelling is provided, the young person will be less likely to thrive. For example, the parent or guardian may abuse substances and expose their child to violent physical punishment. This child's potential is far more limited as opposed to a child whose family environment is positive.

According to Arthur, (2007, p.17), "outcomes for youth are hugely determined by the action or inaction of families." Becroft (2006, p.1) further lists five major risk factor areas for concern as:

*"1. Low levels of parental support of children and young people (and lack of positive male role models), 2. Lack of affection between family/whanau members, particularly from parents to children, 3. Poor supervision and monitoring which allows children and young*

*people to form associations with antisocial peers, 4. Parental antisocial behaviour including substance abuse, violence and criminal activity and 5. Low income.”*

This in itself is an issue for child welfare policy. While New Zealand culture, particularly more so for some cultures than others within the New Zealand context, hold a significance on the family and whanau unit, including extended family ties as significant for individual social and psychological wellbeing, they fail to address the other side of the spectrum by ignoring significant problems existing within the family network that often lead to youth offending. For example, abuse within the family home.

Worrall suggests that empirical research shows that antisocial behaviours in young persons were significantly increased in those with “family histories of domestic violence, offending, drug abuse, psychiatric illness and child abuse and neglect” (Worrall, 2009, p.53). The consequential behaviours of children and young people raised in homes with such abuse were drastically antisocial when compared to children and young people raised in homes without this abuse (Arthur, 2007). The youth breed from these environments often illustrated “attachment disorders, severe aggressive behaviour, destructive behaviour, conduct disorder, post-traumatic stress disorder and attention deficit disorders” (Worrall,2009, p.53).

It could be said that youth offending in these circumstances are just a result of a traumatic childhood. Furthermore, it could be suggested that focusing on healing severe trauma for these individuals could be a potential policy objective achieved by successful foster care placements. Further, the issues of child abuse and its links to offending are problems that youth justice systems cannot address.

The first part of this chapter has briefly discussed some problematic social explanations that contribute to youth offending. The second part of the chapter discusses neurological disorders and their influence on youth offending.

### **NEURODISABILITY AND YOUTH OFFENDING**

Neurological disorders provide a significant explanation as to why some youth offend. Only recently has the link between the two been identified within the 2012 England's Children Commissioners report, titled '*Nobody Made the Connection*' where research on the prevalence in neurodisability in youth offenders was undertaken. Research shows that the link between the two is significant and explains why some young people offend. This is unlike the social influences as described in the first part of the chapter in that neurodisability influences on youth offending cannot be addressed easily with improvements to areas of social policy and rather, involve a much more

intensive and scientific approach to support based intervention. It is different in its entirety.

*“Childhood neurodisability occurs when there is a compromise of the central or peripheral nervous system due to genetic, pre-birth or birth trauma, and/or injury or illness in childhood. This incorporates a wide range of specific neurodevelopmental disorders or conditions, with common symptoms including: muscle weakness; communication difficulties; cognitive delays; specific learning difficulties; emotional and behavioural problems; and a lack of inhibition regarding inappropriate behaviour.”*

(Hughes, et al., 2012, p.8).

There is such a significant range of neurological disorders. For example, learning disability, specific learning disability (dyslexia, dyspraxia, dyscalculia), communication disorders relating to speech and writing which significantly impact an individual’s ability in education systems, Attention Deficit Hyperactivity Disorder (ADHD), Autistic Spectrum Disorders (ASD), Traumatic Brain Injury (TBI), Epilepsy, Foetal Alcohol Syndrome Disorders (FASD) and Comorbidity are common neurological disorders that can have a heightened risk for negative (and sometimes criminal) resulting behaviours for sufferers (Hughes, et al., 2012).

**TABLE 1. THE PREVALENCE OF NEURODEVELOPMENTAL DISORDERS**

Neurodevelopmental Disorder	Reported prevalence rates amongst young people in the general population	Reported prevalence rates amongst young people in custody
Learning disabilities	2-4%	23-32%
Communication disorders	10%	43-57%
Attention deficit hyperactive disorder	5-7%	60-90%
Autistic spectrum disorder	1.7-9%	12%
Traumatic brain injury	0.6-1.2%	15%
Epilepsy	0.45-1%	65.1-72.1%
Foetal alcohol syndrome	0.1-5%	10.9-11.7%

*“Nobody Made the Connection: the Prevalence of neurodisability in young people who offend”*, Nathan Hughes et al, October 2012.

The table above, although drawn from the youth justice system in the United Kingdom, provides a concise illustration of the reported prevalence of

neurodevelopmental disorders among the general youth population as it compares to young people in custody for criminal offences.

It is apparent that there has been a dramatic increase in the reporting of the prevalence of neurodevelopmental disorders in those who have engaged in criminal offending behaviours compared with those who have not. This brings to the forefront the difficulties that neurological developmental issues present for individuals in terms of a higher risk of engagement with antisocial or criminal behaviour than other individuals might have (Wasserman & Miller, 1998).

Neurological disorders can have severe consequences for anyone, including young people. A neurological disorder left unmanaged can encourage antisocial behaviours as many strands of neurological disorders have criminogenic factors such as hyperactivity and impulsivity, cognitive and language impairment, alienation and poor emotional regulation, and also a “secondary association with truancy, poor educational attendance and attainment, illicit drug use and peer delinquency” (Hughes, et al., 2012, p.12). These systematic features of sufferers of neurological disorders increase the likelihood of antisocial behaviour resulting in the entering of the youth criminal justice system (Hughes, et al., 2012). The lack of recognition of the link between neurological disorders and youth offending only serves to criminalize and victimise the youth who suffer from these conditions.

Further research on this issue has been done by Cindy Kiro, previously New Zealand's Childrens' Commissioner. Kiro found in her research that a young person's brain and its subsequent development is use-dependant, with only the brainstem being fully developed at birth (Kiro, 2009). Kiro's research is supported by Shonkoff & Phillips, to describe that the first three years of life is a crucial time for brain development as it "establishes neural pathways that allow the more complex structures of the brain to come into being" (Shonkoff and Phillips, 2000; Perry, 1997; Schore, 2001; Thompson, 2001).

Any disruptions to the development of the "experience-dependant neurochemical signals during these periods may lead to major abnormalities or deficits in neurodevelopment" (Kiro, 2012, p.15). This evidence reinforces the highly influential role of the parent/s or caregiver and the importance of a positive wider environment in which a child is raised in; a child's successful development and neurological growth is dependent on it.

The impact of emotional trauma on a young and immature brain is also of large neurological significance. According to Perry, "during trauma, the brain adapts to a state of fear-related activation leading to adaptations in emotional, behavioural and cognitive functioning to ensure survival. Persistent trauma results in hyper-vigilance, anxiety, elevated heart-rate, elevated levels of stress-related hormones, and impulsivity" (Perry, 1997, p.74). This can influence engagement with criminal activity as normal emotional responses



fail when heightened stress-based and impulsive reactions take over. This can significantly affect a youth's assessment and reaction of a crisis situation, causing a response which may in some cases be an engagement with criminal or antisocial behaviour (Sutherland, 2006).

## **IMPLICATIONS OF NEURODISABILITY FOR THE YOUTH JUSTICE SYSTEM**

The evidence suggests that it is clear that neurodisability and its resulting antisocial behaviours at some point cross into the criminal justice sector. This is because there are many factors of neurodisability and its consequential behaviours that suggest an increased risk of offending. Hughes, et al., (2012), provide some examples of these behaviours which may include “hyperactivity and impulsivity; cognitive and language impairment; alienation; and poor emotional regulation” (Hughes, et al., 2012, p.12). While some youth who do not suffer from neurological disorders, display some of these behaviours from time to time, they are most often found in youth with specific disorders (Corriero, 2006; Coppock, 2002).

Neurodevelopmental difficulties also play a role in the increased risk of criminal offending and the consequential entering of the criminal justice system due to resulting antisocial behaviours (Hughes, et al., 2012; Corriero, 2006). These neurological developmental difficulties can include the way in which a youth is raised by his or her parent and the parenting style of those

parents, the detachment with education or influence with other antisocial peers. This portion of New Zealand youth seem to be continuously failed by a lack of knowledge and training in those supporting them, and a lack of specialised support generally for the needs of those suffering from a neurodevelopmental disorder, or the inability of “the individual to understand or articulate his or her needs” (Hughes, et al., 2012, p.12).

Conclusions can be drawn about youth offenders who suffer from neurological disorders. The consequences of living with a neurological disorder include out-of-control behaviour, leading to criminal offending, with the State failing to comprehend this aspect of youth offending results in the criminalising of this group of youths unnecessarily, rather than providing a preventative response (Bernard & Kurlyckeck, 2009). The current level of comprehension and understanding amongst legal professionals of neurological disorders among youth offenders is low (Becroft, 2004a). This can mean that these youths can be easily and unfairly portrayed in a ‘bad light’ by the prosecuting agent or on a recorded interview for example. It is not uncommon that a youth suffering from a neurological disorder “understands the consequences actions or have the cognitive capacity to instruct solicitors” (Hughes, et al., 2012, p.14). In turn, it only allows for these individuals to be criminalised and not supported by the State which is the only appropriate course of action. There is a strong requirement for social policy amendments to be made to specifically support this group of youths to prevent them being a victim of their disorder.

## CONCLUSION

A youth, as part of growing up, needs significant and positive support from family, society, school or education system, positive peers and to avoid other issues such as addiction problems. All of these play a critical role in how a youth develops, each area of a youths life needs to work cohesively to ensure that a youth can mature and develop in a positive, encouraging and supportive environment. A youth needs to be successful in school, emotionally secure, have positive relationships with his or her peers, engaging in only positive extra-curricular activities, for example, sports and music. This concept, although can sound simple to a well-functioning, secure family, actually presents much more difficulty than is realised.

There are several reasons to provide explanations as to why a young person engages in criminal and antisocial behaviour. For example, a youth may have an optimal environment in which he or she is raised (good school, good family and so forth). However one young antisocial peer may influence that youth to engage in drug use, which could result in criminal intervention. Sadly, sometimes that is all it takes. However, society is of the view that some youth offenders have engaged in criminal behaviour as a normal part of growing up, by experimentation. The idea here is that some youths make seemingly banal mistakes and they often leave the criminal justice system without ever returning. For others it is not that simple.

## CHAPTER 4:

# Methodology

## INTRODUCTION

The purpose of this study was to analyse the youth criminal justice system in New Zealand to gain an understanding of the different ways in which youth ‘fall’ into the criminal justice system to discover if there are areas for social policy improvements and areas of community development relating to governments social policies which have failed to assist troubled youth prior to their entering of the criminal justice system. This chapter discusses the social policy theoretical framework as the methodological approach. These are analysed and discussed as they apply to the research topic.

Comparative policy evaluation is applied with comparative methodology and comparative cross national research. This chapter explains the methodology that was followed to achieve the ambitions of the research topic.

Comparative policy was determined to be the best method in this area of research as the goal of the research was to critically analyse and to provide a detailed description of the current youth criminal justice system in New Zealand to understand where, if any social policy amendments could be made

to improve the outcomes for young people to prevent young people entering the criminal justice system.

## **TERMINOLOGY**

Consideration had to be given to the terminology used in this report. Terminology varied significantly between literatures, particularly in regards to ‘youth’, ‘juvenile’, ‘young person’ ‘adolescent’. The terminology used within this report is ‘youth offender’ and ‘youth’ as they are commonly used and accepted terms within other local New Zealand research and existing policies. The terms “young people”, “young person”, “youth” “youth offender” have all been adopted to describe the group of individuals that the report focusses on.

The acronyms ‘CJS’ and ‘YCJS’ refer to ‘the criminal justice system’ and the ‘youth criminal justice system’. The ‘Youth Court’ is used as it is the title given to New Zealand’s specialised youth criminal court. The term ‘Youth Justice’ is a New Zealand specific term.

## **SOURCES OF MATERIAL**

Material was used from a large range of sources. In the early stages of research, the material was limited to literature found on Massey University’s library catalogue and ‘Discover;’ data base. Other sources of material were

obtained using 'Google' and 'Google Scholar'. The most commonly searched terms were "youth justice", "juvenile justice" "youth crime", "youth offending", "justice policies", "child offenders".

Although I am currently employed by the Ministry of Justice, I did not have special access to any data or publications that other members of the public would not have access to. The exception to this is that the information which I did have access to in terms of inside knowledge about the Youth Court or the youth justice system was sensitive, hence confidential and not of any use for inclusion within the thesis. The Ministry of Justice's publications page was a large contributor of information. I obtained numerous articles and governmental research papers from the publication page, which became a key source of information. It also had the benefit of being presented and published by the government's justice sector which illustrated the States views on the justice system and related issues of policy objectives and initiatives.

Despite this, I did have the benefit of speaking with stakeholders within the youth justice system in which I gained significant insight and knowledge from. I was able to talk in chambers with Youth Court Judge Fitzgerald, accompanied by one of my supervisors, Dr Shirley Julich. Together we discussed youth crime and related issues from a Youth Court judge's perspective and his experiences. I was fortunate enough to attend a Youth

Court stakeholders meeting at work, held primarily by Judge Becroft, the Principal Youth Court Judge. At this meeting I was able to meet all of the current youth advocate, lay advocates, Youth Aid officers from the police, CYFS youth justice co-ordinators, and CYFs social workers, who are primarily involved with troubled youths, as well as other individuals such as a co-ordinator who runs supported bail, and co-ordinators of youth programmes for addiction support.

This networking provided me with valuable information and understanding of the youth justice system and provided insight into the ways in which stakeholders are working together doing very different things to achieve the same objectives. It was helpful to see the attitudes displayed in this meeting and the way in which young offenders were discussed in terms of being a child or young person in need of assistance and guidance, and recognition and congratulations were very readily given to those young people who were succeeding in restoring the negative impacts of their crime. The attitudes I have observed have been very positive and hopeful of good outcomes and good futures for troubled youths.

## **RESEARCHER**

My experience in the area of youth justice derives both from my early employment as Service Co-ordinator at Victim Support. In this role I had some contact with victims arising from youth offenders and assisted victims

to understand the youth criminal justice process. The location of this employment being in the community wing of the North Shore Policing Centre in the North Shore region of Auckland, next to the Police Youth Aid office was vital to this experience as I was in regular, daily contact with specialised police officers who dealt with only youth offenders and the youth criminal justice system.

Notwithstanding, it is my current employment with the Ministry of Justice as a Criminal Deputy Registrar that my specific interest in the area has grown. My role primarily involves contact with the summary criminal offences jurisdiction and the adult court. When looking at a topic, I decided to look at an area of the criminal justice system that I did not have a great deal of practical experience in and something that I, on a personal level, felt is an area which requires some policy reform. My preliminary interest stemmed from a concern that youth were not being supported prior to entering the criminal justice system, rather dealt with in a reactive way following a criminal offence being committed.

A considerable sum of government money funds New Zealand's very expensive youth justice system, however, little funding has been allocated to preventative community based organisations and government interventions which would both support and intervene with troubled youths as a problem begins to develop, for example, before drug or alcohol use becomes a full-



blown addiction. My interests in youth justice centre on preventative methods to assist the criminal justice system and to decrease the amount of youth offenders entering the system.

### **EPISTEMOLOGY, ONTOLOGY AND WORLDVIEW**

The ontology of a researcher is the lens in which she understands and interprets research. Clasen defined ontology simply as “what constitutes reality and how can we understand its existence” (Clasen, 2013, p.14), whereas epistemology is more about “what constitutes valid knowledge and how can we obtain it?” (Raddon, 2015, p.2). These are very important concepts to consider when conducting research as it explains how two people can interpret the same literature in very different ways (Babones, 2014).

The construction of the process of research can be broken down into four main ideas. According to Raddon, (2015, p.3), these are “methods - techniques or procedures 2. Methodology - strategy, plan or design linking the choice of methods to the desired outcomes 3. Theoretical perspectives - our philosophical stance, informing the methodology and providing context for its logic and criteria 4. Epistemology & Ontology - our theory of knowledge and view of reality, underpinning our theoretical perspective and methodology”.

As a researcher, undertaking this piece of research, I am interested in secondary sources of research for this topic because my world view is socially constructed and my interpretation of other research allows me to use hermeneutic methodology to interpret meaning. My experience from working within the New Zealand justice system in Court will influence how I interpret and understand research and the way in which I see this as being practically applied, where appropriate.

## **METHODOLOGY**

The methodology of this research report is qualitative using an interpretative methodology (Bryman 2007) adopting comparative policy evaluation which seeks to use a variety of research methods to examine the effectiveness of policies, initiatives and social interventions (Antal, et al., 1987). This can be specifically done by comparing local and international governmental social policies to determine how effectively social policies to determine how effective international social policies work, and how they might be applied practically within the New Zealand context.

## **METHOD**

The research undertaken is secondary research which had, as its aim, to compare literature to discover whether there were areas requiring policy reform, and identifying which specific areas of policy could benefit from policy reform. I used document analysis on Government publications to

understand the areas of youth justice that had been analysed and reported on. I analysed existing policies and the reasons for the policies, along with the practical outcomes of these. I used research from existing policies to understand what these were trying to achieve.

### **ADVANTAGES AND DISADVANTAGES OF A COMPARATIVE STUDY**

There are numerous advantages and disadvantages of using a theoretical framework of comparative evaluation. The main disadvantage is that the researcher relies solely on others' research, therefore other people's findings in this field of study (Lisle, 1987). That research and literature is affected by their authors' own epistemology and ontology which may differ from my own and how I may have interpreted the same information may have led me to a completely different conclusion than the authors of the literature I had analysed.

A advantage of conducting a desk based comparative analysis is that it is financially cost effective. I have also been able to do this research in my own time and this had allowed me to undertake this research despite being employed full time and managing the daily demands of two pre-school aged children. I began this when my youngest child was 5 months old, and I was on maternity leave from my employment. I often worked on this research while my children were asleep both during the weekend days and at nights.

Undertaking this thesis would not have been a practically possible had I not used this method of research.

### **ETHICAL CONSIDERATIONS**

Having emphasis and due care to ensure an ethical approach to research ensures no harm or risk is resulted from the research undertaken. My research was a desk based analysis of the youth justice system. Although there were some ethical considerations, the ethical risk was generally considered low. These are explained in the following paragraphs.

### **SECONDARY RESEARCH**

Secondary research, despite on the surface appears to have no ethical considerations, it does in fact in that there are several factors of how I incorporate and apply others' research into my own. One major important factor was that I did not want to disregard others' research because I didn't agree with it. There can be large variances between others' research and literature and real life experiences, and by not interviewing and surveying people within the youth justice system, I was in a sense, missing out on this information. It could mean that there are inconsistencies between literature and real life reality of the youth justice system.

## **INTERVIEWS AND CONFIDENTIALITY**

Interviews were not undertaken as part of this research as they held a confidentiality issue, in that I could not talk to youth offenders or youth advocates for example, as the information is very sensitive and youth offenders must be protected. However, as part of my employment with the Ministry of Justice I am privy to inside confidential specific information about youth offenders, which was an important ethical consideration as I had to ensure that this information, along with stories and discussions with other colleagues of mine who also had worked in the youth division, did not affect my research. Conducting interviews on youth offenders is also a conduct and ethical issue with my employer and is not permitted.

An ethical consideration from the exclusion of interviews is that this meant I was speaking ‘for’ rather than ‘with’ youth offenders in that I have not involved their input, so I have raised conclusions from other peoples research and my interpretation of that research. This means that the voices of the most marginalised are not heard in the research.

## **OBSERVING THE YOUTH COURT IN OPERATION**

I did however, in the early stages of my research, observe a ‘closed’ (from the public), Youth Court with my supervisor Shirley Julich to gain a better understanding and idea of how the Youth Court operated first hand, and to gain insight into some of the challenges the Youth Court faced. I have since

also been involved more within the Youth Court as a part of my employment with the Ministry of Justice, this has provided me with a much greater understanding of the efforts that the Youth Court and all involved stakeholders (police, CYFS, for example) aim to collectively achieve. It has also showed me the achievements the Youth Court makes with some offenders and the frustrating problems they face with others. Despite these observations, none of the cases observed were reported on so this was not of ethical consideration. However, what was of ethical significance is how I myself compared the literature I was researching with my real life experiences through my employment.

## **CONCLUSION**

Prior to commencing this research the findings expected were that the New Zealand youth justice system was not working to successfully assist youths and that it was an intervention too late to be successful with many youth offenders. What was in fact found was that it does in fact operate well however lacks prevention based policies to further improve the outcomes for problematic youth.

International comparisons show that each country is trying to manage the youth offending social problem as best as they can. Preventative approaches are proving to be most effective in responding to decreasing initial offending and re-offending.

## CHAPTER 5:

# An International Comparison: What Can We Learn From Other OECD Countries?

### THE BEST INTERESTS OF THE CHILD

*“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration”*

Convention of the Rights of the Child (UN doc. Art. 3, 1<sup>st</sup> para. (1989)).

*“Although young people should be held responsible for their delinquent acts, all sanctions and interventions should be focused on their rehabilitation and reintegration in society and meet the specific needs which impede their growing up into responsible citizens.”*

Working group on Juvenile Justice (European Society of Criminology).

## INTRODUCTION

International comparisons are often used by other countries when evaluating current policies. If there could be alternate ways to address a political issue to draw conclusions or to seek policy ideas from what other governments are doing in response to a similar social issue.

There is significant debate internationally about youth crime and how best to 'deal' with it. One concept is that on an international level, no-one really knows how best to deal with youth offenders; youth justice systems internationally move from cycles of punitive punishment as the best approach for criminal offending, to protective and rehabilitative methods with concerns for the welfare of the child (Bishop & Decker, 2006). Historical trends show that New Zealand is not dissimilar.

On an international scale, some countries have enforced a protective welfare approach to these individuals in response to their involvement in youth crime in which the child is protected by the State (Kramer, 2013). Others disregard and reject this entirely and adopt a zero-tolerance approach to crime within their society, regardless of whether the crime is undertaken by an adult or young person; the difference between the adult and youth justice systems may be predominantly for sentencing purposes only as is illustrated in the United States of America's youth justice system.



Six countries were selected for a comparison of their justice systems because their youth justice political models are diverse and New Zealand could learn significantly from these. Countries selected were Canada, which employs a community based rehabilitation approach; England and Wales, which has a largely punitive system but has moved with conflict between care and protection and punishment of young offenders; Scotland which employs a welfare model as the forefront of its system; United States which has punishment as their primary objective, and Austria that has prevention and protection models as their tactic against youth offending. Each of these justice systems will be summarised.

## **CANADA**

There have been significant changes to Canada's youth justice system in recent years. Although the national government is responsible for providing the policies to structure and organise the system, it is the "provincial governments that are responsible for managing juvenile confinement facilities, community-based programmes, and the various forms of treatment and rehabilitation services" (Jay, 2012, p.1). Canada's criminal youth justice system was governed by the 1908 Juvenile Delinquents Act until 1984. The 1908 Act was the first law in Canada which provided for a separation of legal procedures and different sentences for juveniles (Jay, 2012). It allowed for juveniles to be released from custodial sentences depending on each youths 'readiness' and this law placed the responsibility for determining the length

of these sentences on the executive rather than on the judiciary (Howell et al., 2014).

In 1984, the Young Offenders Act replaced the 1908 law and one defining feature was its set national range for juvenile ages, being between 12 and 16 years (Gough, 2013). “It also abolished indeterminate sentences and involuntary treatment of youths” (Gough, 2013, p.51). It gave legal right for the judiciary to have discretion “to release juvenile delinquents early and established guidelines for the use of community-based sanctions for youth offenders” (Jay, 2012, p.1). This was the start of the community based intervention for youth offenders. This law, however, gave way to much criticism, both political and public with the view that the Act provided maximum sentences of three years custodial as being far too lenient for serious violent offending.

According to Bala & Roberts (2006, p. 32), “by the early 2000s, Canada has one of the highest rates of youth custody in the world, increasingly the costs were becoming a significant burden”. This led to a review of the current youth justice system and resulted in the passing of the 2003 Youth Criminal Justice Act (YCJA) (Bala & Roberts, 2006). The law took a community based intervention focus to manage youth offending and the YCJA “prohibited the use of incarceration for violations of community sentences” (Bala & Roberts, 2006). In response to the existing problems with high custodial rates of youth offenders, the YCJA allowed custodial sentencing to

be only in the most serious or violent of offending. It specified that “the primary goals of youth justice were crime prevention and rehabilitation” (Jay, 2012, p.3). A main part of the Act was that custodial based sentences were only to be given to youth offenders where it was an issue of ensuring public safety (Jay, 2012). The passing of this Act in Canada, illustrated the significant shift in ideas and attitudes toward managing delinquent youths, moving toward an appreciation of protective and community based interventions.

By the end of 2004, one year on from the YCJA, youth custody rates declined by 37% (Bala & Roberts, 2006). The Act also reduced Canadian Youth court caseloads, according to King, these declined 28% between 1999 and 2006 (Kong, 2009) as youth offenders were being dealt with by a community based intervention approach which the YCJA promoted.

Despite the positives of the Act, there was still confusion and contrasting ideas on how to seek “an effective balance between offence-based sanctioning and needs-based rehabilitation” (Kong, 2009, p.56). The focus of the youth justice system under the YCJ Act was on crime prevention, rather than punishing youth offenders. The YCJA explored and encouraged options with the police and community agencies for “handling youth outside of the formal justice system, and Canadian policies encouraged rehabilitation through community supervision for all but the highest-risk juveniles” (Jay,

2012, p.5), who were dealt with in a more specific and intensive way by the Court (Bala & Roberts, 2006).

Canada's youth justice system now adopts a belief that community based responses to youth offending are more effective. The YCJA continues to protect the rights of a youth and the protection of a child and youth offender is vital. Section 3 of the YCJA contains a declaration principal which outlines an overall purpose of Canada's youth justice system, with section (1) (a) of the Act stating that the youth criminal justice system is intended to:

- I. Prevent crime by addressing the circumstances underlying a person's offending behaviour,*
- II. Rehabilitate young persons who commit offences and reintegrate them into society, and*
- III. Ensure that a young person is subject to meaningful consequences for his or her offence in order to promote the long-term protection of the public.*

This principal illustrates the view that rehabilitation is just as important as crime prevention and according to Bala & Roberts (2006, p. 43), "long term protection of the public is seen as the consequence of rehabilitation and accountability, rather than as an independent objective of the youth justice system".

The Canadian system, as with other countries, is in a constant debate about how best to appropriately manage youth offenders (Kong, 2009). The 1908 Juvenile Delinquents Act had little regard for the rights of the child and rather, a focus on the welfare of that child. The Youth Offenders Act of 1984, had clearer elements of criminal law and the rights of the child and adolescents, however because of the discretion given to the judiciary, consistency across the country was hard to achieve, especially with custodial remands and custodial sentences (Bala & Roberts, 2006). Political debates surrounding the youth justice system shifted focus to crime prevention and rehabilitation through community based support, rather than a welfare and custodial approach and Court intervention. Police and community organisations wanted to try to alternate methods in response to youth offending, except in the cases of very serious or violent offending, where the Court is required to be involved in these circumstances (Bala & Roberts, 2006).

## **ENGLAND AND WALES**

The English and Wales youth justice systems have undergone changes in ideologies in the past 50 years after political attention on the current punitive system was considered to have little or no impact on reducing future reoffending (Graham & Moore, 2006). The focus shifted from the current punitive method to looking at alternate methods to divert young offenders from the criminal justice system. The 1991 Criminal Justice Act incorporated a shift in sentencing juvenile offenders “depending on the seriousness and

nature of the offence, rather based on his or her criminal record” (Graham & Moore, 2006, p.65).

Also of importance, was that the punitive youth justice system in England and Wales in the 1990s put a heavy burden on the correctional facilities and resulting state expense. According to Mills, et al., (2010, p.17), “from 1998 to 2008, the prison population in the United Kingdom grew more than 26 percent and prison expenditures increased \$1 billion between 2004 and 2009”. The increasing prison population was causing not only a financial burden on the State, but also there was the issue of overcrowding (Mills et al, 2010).

According to Jay, (2012, p.14) “England has one of the highest rates of youth crime and violence in Europe. It also has one of the largest youth custodial populations in Europe”. This has a flow on effect to the prison systems as many youths were receiving custodial sentences. There were increasing concerns about the numbers of youth in custody in England and Wales, as the majority of those in custody had committed non-violent crimes (Soloman & Allen, 1991). Goals and policy changes were directed at decreasing the current prison population, especially for youth offenders.

However, the significant and tragic event of the abduction, torture and murder of James Bulger by two ten year old boys confirmed the view that

more attention was needed in the youth justice arena “to curb the delinquent tendencies of the new generation of ever-young and increasing persistent offenders” (Graham & Moore, 2006, p.65). Within a year of this incident, a new law was introduced which gave increased significant penalties for youth offenders, and specifically in a political response to the James Bulger incident, the new legislation extended the long term custodial detention of offenders between the ages of 10 and 13 years (Graham & Moore, 2006). This was the Criminal Justice and Public Order Act 1994. This law quickly turned the English YJS back to a punitive method in responding to youth offending. This law set the tone for the next decade (Graham & Moore, 2006).

The result of the Criminal Justice and Public Order Act was an increase in youth custodial sentences when previous legislations were aimed at decreasing this. As a consequence of this, “between 1993 and 1998, custodial sentences for 15-17 year olds doubled and by 2004, nearly 7000 youths of all ages were sentenced to custody” (Graham and Moore, 2006, p.67). The government was once again, forced to intervene due to the same issue of juvenile prison overcrowding, political campaigns suggested reducing the length of custodial sentences for youth offenders (Soloman & Allen, 1991).

The Crime and Disorder Act of 1998 did succeed in the political objectives and custodial sentences were shortened. The Government also reviewed and centralised all preventative services and this gave rise to 155 youth offending

teams that “co-ordinated youth services, assessed youth risk factors and acted as a liaison between the youth and the courts” (Graham & Moore, 2006, p.65). A single youth offender could be dealt with by police, a social worker, education officer, medical and health professionals and other experts to see that the youth was adequately assessed and their needs properly understood (Graham & Moore, 2006).

In 1999, the youth justice system adopted restorative justice systems and applied them to the Youth Court (Jay, 2012). This was predicated on the Youth Justice and Criminal Evidence Act and as in New Zealand, the restorative justice approach meant that a youth may be required to undertake alternative methods of seeking to rectify the damages of his or her crimes by reparation, apology letters, unpaid work, and orders to stay away from certain people or property (Akester, 2000). The State also brought in supervision and held a higher emphasis on community based sentences which worked to decrease the custodial population and overcrowding, which was its primary objective. While it might appear otherwise, England and Wales still have a punitive youth justice system. The constant law changes have been reactive to juvenile prison overcrowding, as well as to public and political pressure to increase harsher sentences. However, it currently has generally experienced a shift from custody based remedies to diversionary youth justice, but only to minimise costs and issues relating to prison overcrowding and does not appear to be for any other significant reason.



## SCOTLAND

Despite being a small country, Scotland has a distinctive criminal justice system with “unique institutional arrangements and certain political and legislative structures” (Burman et al., 2006, p.439). Scotland’s youth justice system, uses a welfare approach to youth justice. It encourages youth justice stakeholders to use minimal and early intervention for youth offenders (McAra, 2006). In recent times, Scotland developed “alternative sanctions for youth offenders to offer rehabilitation instead of punishment” (Jay, 2012, p.27). Thus, Scotland’s entire youth justice system is based on policies and methods to attempt to rehabilitate youth offenders. The youth courts have the power to enforce “community service, probation, drug treatment, liberty restrictions, supervised attendance, fines, deferred sentences or discharge” (Burman, et al., 2006, p.440). These sentences are strictly monitored and youth offenders face custodial sentences if they are not complied with (Barry, 2011).

Despite the focus on welfare approaches to youth justice unlike many other countries and the neo-liberal focus, Scotland has recently focused on making their ‘Children’s Hearings system’ more punitive (Burman et al. 2006). The system of Children’s Hearings has increased to allow jurisdiction of the judiciary to enforce custodial sentences for youth, only for “persistent” youth offenders (Burman, et al., 2006). The result of this change has meant that there is an increase in custodial sentences for high risk persistent offenders (Barry, 2011).

Scotland has developed new ways of targeting delinquent youths such as electronic monitoring, intensive supervision and antisocial behavioural orders (Barry, 2011). However, these methods are thought to be counterintuitive and rather than rehabilitate youth offenders, it is believed that they actually increase the chances of youth reoffending later in life (Barry, 2011). The punitive shifts in Scotland's youth justice system have resulted in higher rates of youth incarceration, which has added to the existing issue of overcrowding and high prison population in Scotland. In fact, according to Jay, (2012, p.28), "Scotland has one of the highest rates of imprisonment in the world and one of the highest youth custody rates in Europe". The punitive nature of Scotlands youth justice system is increasing and this is thought to be in response to the issue of persistent violent youth offenders.

Scotland's youth justice policies have been described however as 'getting tougher' on youth offenders. Policy had changed and political ideologies have shifted from a predominant concern with the individual youth offenders social and personal needs and how to assist them using a welfare approach to seek a rehabilitative method, to a focus on the nature and frequency of their offences (Burman, et al., 2006).

Political review and policy amendments have been made significantly in recent times with the aim to improve the entire youth justice system. Some of the most significant outcomes of this are the creation of multi-agency input

for youth offenders who each have input into the planning and development of the services aimed at youth offenders and the delivery of these services.

The Scottish youth justice system is fractured. It appears to be in conflict with itself. On one hand it adopts a welfare based approach with a rehabilitative emphasis and community based intervention and support through the development of the 'Children Hearings' system. On the other hand Scotland has attempted to rectify the problem of persistent violent offenders by adopting a punitive system, which has replaced the best interests of the child and is in some ways in conflict with the 'UN Rights of a Child'. Nonetheless, the Scotlands current youth justice system, illustrates the swinging pendulum of the similar battle between welfare and protection and punishment that other OECD countries continuously face, seeking the most effective policies to combat youth crime and youth justice.

## **UNITED STATES**

The United States has strong ideas about the best approach to respond to youth criminal behaviour. In the 19<sup>th</sup> Century, youth offenders faced the punishment and consequences from their Church (Bishop & Decker, 2006). In the 17<sup>th</sup> and 18<sup>th</sup> centuries there were only very slight differences between children and adults when it came to crime and punishment, and children as young as seven could receive the death penalty for a crime (Bishop & Decker, 2006). Early political debates during this time did discuss whether an

adult and children's justice system should be separated. Despite these discussions the two remained combined. However, the first known separation of juvenile justice systems was the use of refuge houses and reform schools which had reputations of mistreating unruly children who were sent there (Bishop & Decker, 2006). There were also child saving organisations who were dedicated to saving troubled and delinquent youths (Bishop & Decker, 2006).

In contemporary times, youth offenders, especially those of serious violent offences have said to have decreased generally. In the 1950s, there was little thought about why juvenile offenders were committing crimes and it was thought that the system did not understand the effects of mental illness, strong racial discrimination, those with health problems and learning difficulties and these youth offenders were dealt with by harsh punitive methods for their crimes (Bishop & Decker, 2006). In the 1970s, more divertive and community based interventions were gaining in popularity, however the 1980's 'tough-on-crime' policies paved the way for the US to manage their young offenders. The US's public perception of youth crime is that it cannot be prevented and those engaging in it will likely become life-time, persistent, criminal offenders. As stated in 1999 by American Judge Bill McCollum, "simply and sadly put: today in America no population poses a larger threat to public safety than juvenile offenders" (Bernard & Kurlcheck, 2009. p.24). The US posed harsher punitive policies for managing

youth offenders and this increased the public's perception and fear of the 'juvenile super-predator' (Bishop & Decker, 2006).

Today the US has continued their approach of punitive methods in response to juvenile crime. Schools and politicians have a zero-tolerance stance when responding to juvenile crime and have little regard to rehabilitation methods in response to youth offending. Rather, it is believed that punishment is the best method and as a result the US has almost entirely a punitive, neo-liberal approach to youth offending (Bishop & Decker, 2006; Gough, 2013; Kramer, 2013).

Due to the tough zero tolerance policies such as the famous 'War on Drugs' and 'Tough on Crime' policies, the American government implemented a 'three-strikes' policy (Kramer, 2013). Although the three strikes law was not solely for youth offenders, it came into force at a time when the youth and adult courts and the lines between the two were becoming increasingly blurred, the three strikes policy resulted in a dramatic increase of custodial sentences for juvenile offenders (Bishop & Decker, 2006; Kramer, 2013).

The contemporary debate with the US youth justice system is that it does not acknowledge the root causes of why young people criminally offend and focuses on economic and racial influences only in the incarcerated juvenile population (Bishop & Decker, 2006). The zero-tolerance policies in schools

have increased the numbers of young people who face criminal punishment and low socioeconomic youth, primarily of 'colour', those with learning difficulties or mental illness are over-represented due to the zero-tolerance policy (Bishop & Decker, 2006).

There appears to be no input into rehabilitating young offenders and the punitive approach does not seem to prove effective in decreasing the recidivism of youth offenders. According to Finlay, (2007, p.43), "research on juvenile incarceration and prosecution indicated that criminal activity is influenced by positive and negative life transitions regarding the completion of education, entering the workforce, and marrying and beginning families". Certain developmental theories suggest that youths "who are involved in the Court system are more likely to experience disruption in life transitions, leading them to engage in delinquent behaviour" (Finlay, 2007, p.43).

Finlay (2007) suggests that early intervention methods would be the best suited method to manage juvenile delinquents, Finlay advocates for developmental programs that have a rehabilitative rather than punitive approach. Howell (2014) argues that zero-tolerance policies are overwhelming for youths who often commit crimes as part of normal adolescent behaviour and as such they overwhelm the youth criminal justice system unnecessarily. Curtis (2014) argued that the incarceration of youths in the US should only be utilised as a last resort method and only if the public's

safety is at risk. Despite these suggestions from experts, Bishop and Decker (2006) point out that the political stance leans toward punitive methods of punishment, rather than preventative methods of rehabilitation. This is illustrated by the last decade in the US's youth system in which all "policy, legislative and program changes have been largely punitive, to the exclusion of consideration of the welfare of juveniles" (Bishop & Decker, 2006, p. 32).

### **AUSTRIA**

The Austrian youth justice system is at polar opposites with the US's political system; the Austrian system has as its key objective, a protective model of responding to youth offenders. Austria implements preventative methods to target delinquent behaviour at pre-school level. As stated by Bruckmuller, (2006, P.271) "they are intended to prevent anti-social behaviour in a very general sense as well as specific carinal behaviour". This is implemented through a range of programmes offered in school in which children undertake as part of the school curriculum. For example, these courses are based on "peaceful conflict resolution, prevention of violence, integration, and addiction awareness as well as the recognition of right and wrong" (Bruckmuller, 2006, p.271). These courses can be taken with the class, with their family or with other individuals upon request so that they are used to maximum capacity and are available to target the differing needs of individuals. These courses are run by both school teachers and social workers (Bruckmuller, 2006).

Social workers from the parole board, as part of a State preventative initiative, go to schools and teach students about various ways to deal with crisis and situations of conflict. The essence and intention of the content is to teach young people to learn how to resolve conflict through communication and compromise (Bruckmuller, 2006).

School teachers undertake conflict prevention efforts on a (sometimes) weekly basis. The basic Austrian school curriculum involves one lesson per week during which communication, conflict resolution and co-operation is taught and role-played and practiced by students (Bruckmuller, 2006). This method is thought to strengthen young people's coping mechanisms by providing them with communication tools and learning experiences to assist them should they come into a crisis situation (Bruckmuller, 2006).

Mediation is undertaken by older pupils who volunteer and have complete training on conflict resolution, so that if two students require mediation, this is mediated by an older student. The idea is that a mediator is more effective if he or she is closer to the other student's age group, the student requiring support might be more comfortable and open with someone closer to them in age, and more open to suggestions made by the mediator rather than an adult teacher (Bruckmuller, 2006).



Social workers offer drug-abuse prevention in secondary schools in Vienna (Bruckmuller, 2006). School teachers are first familiarised with topics which might be discussed, social workers then go to the classroom and work young people with problems. The social workers provide advocacy services to the young people and “introduce such institutions and help centre and drug advice centres” (Bruckmuller, 2006, p.272). The social workers teach young people not only about the “results of drug addiction but also about the roots of addiction in attempts to be more effective in preventing it” (Bruckmuller, 2006, p.273).

Since the mid-nineties, Austria has had a system of “supervision in public parks” (Bruckmuller, 2006, p. 273). Although this was originally set up to assist with the integration of immigrants, it also included crime prevention. According to Bruckmuller, “the initial reason for this project was the increasing amount of conflicts in the parks, stemming from the different social, ethnic and religious backgrounds of children” (Bruckmuller, 2006, p. 273). This is conducted by offering young people free play programmes (mainly group games). Young people who participate in these programmes learn peaceful ways to get along with others and by participating in group games, learn how to make common plans together (Bruckmuller, 2006). This tactic is adopted by many youth groups.

The Austrian police force offer crime prevention education to schools and leisure centres and extend support to seminars and workshops for parents

(Bruckmuller, 2006). Police have also set up a specialised service called the ‘Children’s Police’. It is conducted in a playful way to teach young children between the ages of five and twelve years old, “how not to become an offender, by learning to recognise wrongs” (Bruckmuller, 2006, p.274). The programme essentially educates young people about crime, violence and its effects on other people.

Austrian youth delinquency amounts to approximately 12% of all delinquency (Bruckmuller, 2006). It has a protective and preventative approach to youth offending. It aims to reduce youth crime through educational programmes as part of the school curriculum which aim to promote communication skills and conflict management to better equip young people to learn to cope better with crisis situations and hence, avoiding engaging in violent or criminal behaviours. Austria’s approach to youth justice appears to provide positive outcomes in managing youth crime.

## **CONCLUSION**

A review of six OECD countries were provided for a practical comparison to identify the different battles they are having in the youth justice political arena and how they have responded to these problems over time. The countries analysed were Canada, England and Wales, Scotland, United States and Austria. The reason these particular countries were chosen is that they

demonstrate a of youth justice systems that illustrate how contrasting underlying political concepts work in countries.

Canada has a community based political ideology to youth crime. Canada believes that the community is the best support for young offenders and community based intervention is considered one major success in the reduction of reoffending. Although in the past, Canada adopted a method of handing out significant custodial sentences to youth offenders, it now employs a community based focus whereby the current youth justice policy, the Youth Justice Criminal Act 2003 promotes the rights of the child, with a rehabilitation focus and meaningful community based sentences.

England and Wales historically have also maintained a punitive based response to youth justice. However, rehabilitative and divertive policy goals towards their youth justice system gained popularity when it was identified that the punishment tactics were not improving youth justice system rates and were adopted in the early 1990's. Sadly, England faced one of the most horrific child crimes also in the early 1990s with the murder of James Bulger and that politically swung the youth justice pendulum back in the opposite direction with a new emphasis on longer custodial sentences for very young, serious violent offences.

Scotland has at the forefront of its youth justice system, a welfare model and approach to youth offending. Under the welfare model, it views the child as a victim of his or her own circumstance and encourages minimal intervention for youth offenders, with rehabilitation and support for social problems the individual has, such as addiction issues, being identified and supported by the State.

United States has a punitive neo-liberal system with small regard to the rights of a child and it seems that their youth justice system might be in conflict with the UN Rights of a Child. United States has a punishment and ‘justice-for-victims’ approach and although many academics in the field have researched and provided rehabilitative methods for youth offenders, they have not been adopted by the government.

Austria on the other hand, has provided a different way of approaching the youth justice issue by focusing on prevention. They focus on teaching their young people about conflict resolution, communication skills, compromising and handling conflict resolution situations with mediation. These are as part of the compulsory school curriculum and provide a cost effective method to empower young people through knowledge and understanding to prevent them entering the youth justice system or engaging in youth crime.

The concept that youth offenders are victims of the conditions in which they are living result to them breaking the law system, regardless of the country, illustrated the value system and society culture of that country (Junger-Tas, 2006). Internationally, there has been significant changes in youth justice systems over time. Historical values and beliefs were mainly punitive and did not recognise certain social issues that may contribute or encourage anti-social behaviour of a young person as they do today. For example, little was known about mental health and learning disabilities and youth who suffered from these can lack the social skills or coping mechanisms when dealing with crisis or difficult situations as their peers who do not have these difficulties do. Contemporary society also recognises a young person's individual upbringing and community as also playing a huge role in the positive (or negative) development as they mature (Junger-Tas, 2006).

New Zealand can draw conclusions from a comparative analysis of youth justice systems internationally. In contemporary times, there is a lot of debate about the current model of New Zealand's youth justice system in that it has a protective and rehabilitative approach. The current youth justice system operates a rehabilitative and reactive system to youth offending with little attention given to preventative methods in response to youth offending (Junger-Tas, 2006). The other issue is that the youth court is constantly being frustrated by the lack of community support and development programs for young people which have been proven to be a significant asset in reshaping and guiding troubled youths down the right path and away from further

criminal behaviour. Drawing social policy initiatives, ideas and conclusions in comparing New Zealand to these above countries can assist with the improvement of some areas of youth justice, particularly, in the area of prevention.

# Conclusion and Recommendations

## INTRODUCTION

The issue for consideration in this chapter is to examine the degree of success of the youth criminal justice system and to also examine approaches for youth external to the criminal justice system. These external approaches may allow for interventions prior to youth involvement in the criminal justice system.

This chapter will consider youth offending issues and how they are likely to impact upon the future of our criminal justice system. It is accepted that our current approach in dealing with youth offending is in many ways experimental. Our development has been that we alternate between a punishment regime and a welfare regime and adopted a combination of both. In the welfare regime, the youth offender is also considered to be a victim who requires positive support and rehabilitation rather than an emphasis on a punitive response.

This chapter is divided into two parts. The first of which considers the principles and objectives set out in the CYF Act 1989. The second part, considers not only the criminal justice regime in New Zealand, but also how the criminal justice system operates in Canada, Scotland, England and Wales,

United States, and Austria as a comparison. The comparative analysis highlights a diverse range of approaches to youth offending; where a number of recommendations for policy improvements to New Zealand's system could be adopted.

The approaches adopted in these jurisdictions have been analysed and compared to the New Zealand approach. This has identified a number of differences in both the punitive or rehabilitative approaches. From this comparative analysis, a number of recommendations have identified and, if adopted, would improve the New Zealand criminal justice system and the way in which youth offending is otherwise dealt with. This comparative analysis has identified a number of recommendations that, if adopted, would improve the New Zealand criminal justice system and the approach to youth offending. Part one considers both the approach and impact of the CYF Act as well as other alternatives.

## **PART 1: THE CURRENT LEGISLATION**

The youth justice system as it currently operates in New Zealand, does not provide the complete answer when dealing with youth offending. The overriding objective of the CYF Act 1989 is premised on early intervention. This involves the identification of youth antisocial behaviour.



Section 4 of the CYF Act 1989 sets out the guiding objectives under which the youth justice system is expected to operate under. These objectives are:

1. *ensuring that where children or young persons commit offences,—*
  - i. *(i) they are held accountable, and encouraged to accept responsibility, for their behaviour; and*
  - ii. *(ii) they are dealt with in a way that acknowledges their needs and that will give them the opportunity to develop in responsible, beneficial, and socially acceptable ways*
  
2. *encouraging and promoting co-operation between organisations engaged in providing services for the benefit of children and young persons and their families and family groups.*

(Child, Youth and the Families Act 1989, s. 4.)

These objectives recognise youth accountability; opportunity to change; and institutional co-operation as the overall guiding objectives. In addition to the guiding objectives as outlined above, the CYF Act 1989 also contains 9

principles in which youth justice is expected to comply with. These principles are set out in section 208 of the Act and provide as follows:

- 1. Criminal proceedings should not be used if there is an alternate means of dealing with the matter;*
- 2. Criminal proceeding should not be used solely to provide assistance for welfare purposes;*
- 3. Measures for dealing with offending should strengthen the family group and foster their ability to deal with the offending.*
- 4. Young offenders should be kept in the community as far as it is consistent with public safety;*
- 5. That ages is a migrating factor when deciding on whether or not to impose sanctions and the nature of those sanctions;*
- 6. Sanctions should promote the development of the youth within the family group and to be the least restrictive;*
- 7. That measures for dealing with offending should address the underlying causes of the offending;*
- 8. That measures and the determination of them should have regard for the interests of the victim; and*
- 9. That the vulnerability of children entitles them to special protection during any investigation.*

(Child, Youth and the Families Act 1989, section. 208.)

These 9 principles are now considered and evaluated to determine their appropriateness and effect in light of the current needs of society and the comparison with the other jurisdictions.

***Criminal proceedings should not be used if there is an alternate means of dealing with the matter***

The CYF Act of 1989 was specifically enacted to recognise and understand the special requirements of youth offenders and recognise that a punitive regime is not necessarily the preferred option is to deal with them with other methods other than a punitive regime.

The police diversion scheme, in some circumstances, operates with the objectives whereby the criminal justice system takes second place to enable the youth offender a second chance. This scheme essentially prevents youth who have engaged in a crime in what is considered a 'silly mistake', resulting from an immature and developing mind an opportunity to be dealt with outside the Youth Court.

This adopts an informal approach and intends to teach the youth offender the consequences of his actions and allows him to engage in remedial action. This is usually achieved by requiring the youth offender to write a letter of apology to the victim; undertake voluntary reparation for any damage caused; or make a charitable charity; undertake some specified voluntary work within

the community. The objectives are to ensure that the youth is accountable for his crime but also adopts a protective approach to ensure that his is not criminally prosecuted for otherwise minor offences as a result of his juvenile decision making.

The police diversion scheme is not a suitable option in cases of serious offending and in the case of repeat offenders. In these instances, the restorative justice regime of which the Family Group Conference (FGC) plays an integral part is appropriate. Although the restorative justice approach.

If a youth is required to attend a FGC and a successful plan is agreed on by all parties (victim, offender, police, CYFS) in terms of their sentence and how they will seek to fix their crime and the youth then undertakes all of the elements in the FGC plan, then a charge either isn't laid in the Youth Court, or is already laid, it is dealt with by a discharge.

***Criminal proceeding should not be used solely to provide assistance for welfare purposes.***

This principle, is to ensure the State does not manipulate the youth justice system. Whereby if welfare purposes are the main objectives, those welfare purposes should not be advanced by manipulating the youth justice system. This ensures that criminal proceedings are abused in the youth justice system

as a method for the State to seek formal orders from the Youth Court in terms of custody and likewise problems. This adopts a protective approach for the youth, and prevents a youth falling into a generic system of welfare in which they are easily institutionalised by the state.

***Measures for dealing with offending should strengthen the family group and foster their ability to deal with the offending.***

Families of youth offenders are often willing to participate in the rehabilitation plans of their family members. Often it is the case that they do not have the tools or knowledge to help the youth themselves and require specialised support. The State wishes to involve the families of youth offenders as a participant in any rehabilitation plan. However, families often do not have the knowledge or skills required to positively contribute in these circumstances.

An example of this, is where a youth, who has suffered a bereavement and engaged in criminal activity arising out of the inability to cope with emotions. In these circumstances. The family may require additional support on how to direct the youth offender away from these criminal behaviours.

*Young offenders should be kept in the community as far as it is consistent with public safety.*

Youth are to be placed in custodial remands and custodial sentences only if the safety of the public is at risk. The objectives of custodial sentences and remands is for the purposes of public safety rather than as a punishment. This principle, ensures that custodial sentences are an option of last resort. The intent of the CYFS is to ensure that youth offenders are kept within the community with the support of their family.

*That age is a mitigating factor when deciding on whether or not to impose sanctions and the nature of those sanctions*

The difference between what a 14 year old might comprehend and a 17 year old might comprehend are very different. Generally, there is a significant difference in the maturity within this age gap. This principle, requires that age is a relevant factor in the way in which the youth offender is dealt with. A younger offender receives the benefit of leniency.

*Sanctions should promote the development of the youth within the family group and to be the least restrictive*

Sanctions that are imposed or agreed to on a youth offender have an empowering objective to positively develop the youth within his or her own family group and community. The States objective is to empower to assist the youth in a positive way and rehabilitative way.

*That measures for dealing with offending should address the underlying causes of the offending.*

The underlying causes of why a youth offending is explored with the objective to develop and understand on the underlying reasons. An example so this is where a youth who is a drug addict may offend in order to finance that habit. He would not otherwise have engaged in criminal activity had he not had a drug habit. These issues can be addressed in the identification and treatment of the root cause of the offending and if successful, would eliminate the need for criminal activity. In these instances, where the cause of offending can be identified, those issues can be addressed in the knowledge that the offender would not have the need to otherwise offend.

*That measures and the determination of them should have regard for the interests of the victim*

The youth justice system on the surface appears to cater mostly to the youth offender with a protective approach. However, the individual needs of the victim needs also to be considered.

The victim may require justice from an emotional, physical or financial harm as a result of the offending. These needs should be considered and addressed as part of the criminal justice system. An example of this is where a person who has been the victim of theft and requires restitution of his loss. Even

although there is a recognition of this that make reparation orders, it is often the case that a youth is not able to comply with the funding of this order.

*That the vulnerability of children entitles them to special protection during any investigation.*

The legal rights of youth are paramount when being investigated or prosecuted by police. In these circumstances, a youth must be legally represented and have a nominated parent, social worker, or an adult significant to that child's life involved in the process. This ensures that the youth, in this vulnerable situation, understands his rights and does not incriminate himself. This recognises the youth immaturity and age in the context of an otherwise foreign system of dealing with his offending.

Part 1 considers the New Zealand criminal justice system and comparative jurisdictions to highlight and explore their differences and whether we can learn from systems elsewhere.

## **PART 2: POLICY REFORM AND RECOMMENDATIONS**

Notwithstanding the successes of the existing youth justice system in New Zealand, there are several areas that require social policy improvement. The existing system has a rehabilitative approach as set out in sections 4 and 208 of the CYF Act 1989. It is only once a youth presents to the Youth Court that



this support and rehabilitation is provided by the State. The practical effect of this is that we are failing our youth. They are not supported at the time of the crisis.

State support is not being provided during the key period in which the cause of criminal offending is being manifested. There is significant shortcomings in New Zealand's approach in preventing youth offending and supporting troubled youths to direct them in a positive direction.

The social policy improvements that have been identified by analysing the history and development of our current youth criminal justice system and the overseas approaches to these issues are summarised below.

The policy recommendations are:

- 1. The education sector needs to develop a policy to promote better engagement of youths in schools.*
- 2. To incorporate Maori culture more specifically into school curriculum to improve Maori inclusiveness and cultural sensitivity.*
- 3. To incorporate 'life-skills' programmes as part of compulsory school curriculum.*
- 4. To provide increased accessibility of parenting courses and parenting support within the community.*

5. *Provide increased community funding to provide more substantial, free or low cost recreational facilities for youths.*
6. *To provide ongoing research and up to date information and polices to keep up with the ever changing youth culture.*
7. *To provide more community support for youth to assist with education and employment assistance*
8. *To provide free or low cost counselling services within the community (outside of the school system) for youths to access.*
9. *To produce an over-arching, cross-departmental policy to manage troubled youths.*
10. *To formulate a preventative, early intervention policy for youth at risk.*
11. *To adopt consistent police education within schools.*
12. *To increase funding to provide psychological treatment for youth with mental health issues.*

These policy recommendations are based upon three key areas. These are: the education system, the community and prevention. These are the principle areas lacking policy support and implementation. An explanation of these policy recommendations are explained and how they are expected to be implemented and operate.

*The education sector needs to develop a policy to promote better engagement of youths in schools.*

There are practical ways in which an at-risk youth can be identified. The most significant is through education and training programmes. A youth who presents with signs of disengagement within his or her own school environment should be provided with intervention and intensive support from that school.

A disengaged youth is often a youth who is presenting behaviours that illustrate that he or she is struggling. These behaviours may include antisocial behaviour and attitudes with the classroom environment or within the school environment. For example, within the classroom they may present with rude and offensive language, displaying disruptive behaviours. Within other areas of school time they may engage in different antisocial behaviours such as truancy, smoking, and drug and alcohol consumption.

Schools however struggle to work or deal with aforementioned youth's, with teacher and funding resources a main obstacle. Schools often resort to dealing with such behaviour in a punitive way, sometimes ending in suspension or expulsion from the school. This fails in rehabilitative and support based ideologies. Following drastic disciplinary measures, there is little or no support for the youth from this point.

The education sector, should address the above issue by developing and implementing a policy that addresses disengagement from schools and aims to provide strengths-based support with a preventative outlook. This should move the focus away from the suspension and expulsion system and towards an intervention based support process with the aim of rectifying behaviours and to promote these youths to better engage in their school. Education support classes could be provided to cater for the specific learning needs of these youths. Another recommendation is that there is better counselling support for these youths and that social workers are provided to all schools.

*To incorporate Maori culture more specifically to school curriculum to improve Maori inclusiveness and cultural sensitivity.*

Maori, especially male Maori are overrepresented in the youth criminal justice system. Although the inclusiveness of Maori has been a target area for many policies, it should also be better adopted within the school environment with the aim to provide better inclusion for Maori students within a western based education system, particularly in terms of responding to troubled Maori youths.

This should be incorporated both by the adoption of more Maori based curriculum in New Zealand, and also with the use of Maori culturally sensitive approaches in responding to antisocial behavioural issues. This has the benefit of better supporting Maori in New Zealand's education system

with the hope to promote an improvement of Maori inclusiveness and cultural sensitivity within the classroom environment. The present, and limited use of Kapa-Haka, and other cultural programmes including Te Reo Maori (Maori language) as a subject currently taught within the school system is inadequate.

***To incorporate 'life-skills' programmes as part of compulsory school curriculum.***

Life skills are not generally adopted as part of a general school curriculum in New Zealand as is seen internationally. The teaching of life skills within the school system is a low cost and simple way to provide youths with better knowledge and understanding with the objective to prevent 'bad' (or criminal) responses to conflict or troubling situations for youths.

This could be added to all school classes and be run as an additional subject within the existing school's curriculum. These classes would teach youth how to manage conflict and resolve conflict, improvements in communication skills, learning how to compromise and learning about other cultures, and the existing values of other cultures and how they influence communication delivery and reactions. The objective is to provide practical skills for conflict resolution, with the target aim to decrease youth criminal offending.

This proposal could be very simply applied to New Zealand's education system and would provide a low cost social policy response to youth crime. This also has, as its benefit to provide empowerment of the New Zealand youth population through education, knowledge, understanding and support to prevent them engaging in criminal activity prior to these social competencies being taught to them within rehabilitation programmes, after the fact.

***To provide better accessibility of parenting courses and parenting support within the community.***

Parenting support is generally lacking in New Zealand. It is often the case that parents learn as they go with little support from the community locally or the State to support their children. Notwithstanding the fact that once a child is born, or is soon to be born, much support is provided to the parents from a variety of support groups. For example, the hospital, antenatal classes, Plunket community support, and midwifery services are all support provided to parents of infants only and the support reduces until it ends once the child is a certain age. These programmes, have as their objective, a health-support based approach where they are provided by the Department of Health and are focussed on maintaining the optimal health and wellbeing of babies and infants, rather than the mother or the whanau as a whole.

Upon conclusion of these programmes, there is very little support provided to parents who struggle or are faced with difficulties as part of the parenting

process. There are counselling and parenting courses available, these are however targeted at parents who have come into contact with State agencies, such as CYFS or the Family Court already and this support often comes at a cost which is unaffordable.

There presents an obvious lack of a free or low cost parenting support within communities for parents. This support needs to attend to the diverse needs of parents, whether it is support in how to deal with unruly teen behaviour, to suspected use of drug and alcohol support, to positive parenting support. Courses could be presented for parents on how to raise a child, and presented in a way which separates children's age groups. This would be a significant help to youths as their parents could seek assistance prior to the youth engaging in crime or developing drug or alcohol addiction problems. It would empower families to try to manage some aspect of youth antisocial or problematic behaviour. It would also have the side effect of taking some of the weight off the state by strengthening and developing communities and their families.

***Provide increased community funding to provide better, free or low cost recreational facilities for youths.***

A local community environment plays a pivotal role in the development of youths who are living within that community environment. The way in which a community is constructed and what that community provides for its

members can provide either a positive or negative influence for troubled youth.

Small improvements can be made if the State financially supports communities better. If additional funding was given to communities to provide more parks or improvements in local parks, recreational activities and facilities, as well as community services to assist youth in transiting to employment or basic advocacy support that youth could trust and rely upon. For example, some local councils have built skate parks which have endeavoured to provide a free recreational activity targeted mainly towards teenagers. This use of funding for the community for this method provides a recreational activity that youth can engage in, rather than succumb to boredom and its resulting antisocial behaviour. It is considered a preventative support based approach which could potentially have a flow on affect to decrease youth criminal behaviour.

***To provide ongoing research and up-to-date information and polices to keep up with the ever changing youth culture.***

Research needs to be and ongoing to effectively respond to the ever-changing and developing youth culture of today. The research conducted needs to go beyond identifying the risk factors and harm caused and needs to look at more realistic preventative approaches to minimise youth offending and reoffending. Current statistics on youth offending could be improved by this.



Police statistics are more representative of youth offending and research could be applied in the initial apprehension stages to advance preventative research ideas.

***More community support for youth to assist with education and employment assistance***

The community could provide optional community based support to assist youths in their school and post-school options including employment support. This has the benefit of assisting young people in the gap between leaving school and university or employment and has an empowerment approach to supporting youths in the significant transitional phases to adulthood.

***To provide free or low cost counselling services within the community (outside of the school system) for youths to access.***

Counselling is often provided to youths by way of a school guidance counsellor. This presents two issues. Firstly, a school guidance counsellor is not always available and not all schools have them. Secondly, students often feel that approaching a guidance counsellor who works for the school is not private and embarrassing as other students may see them using this service. The trouble is that some youths may not seek assistance because of this negative pressure and any issues they might have sought counselling or advocacy for may develop and become more severe. If free or low cost counselling was available within the community and easily accessible for

youths, this may better support them. It again, adopts a community development approach to preventative intervention.

***To produce an over-arching, cross-departmental policy to manage troubled youths.***

Presently there is a significant, and obvious gap in departmental communication for troubled youths. State agencies need to adopt an over-arching policy that addresses issues that lead to youth offending such as the issues of youth disengagement from school, addiction problems and welfare and abuse affects. Currently there is no over-arching policy to assist with prevention methods and no single funding for prevention policies take place.

***To formulate a preventative, early intervention policy for youth at risk.***

It is a general idea that the earlier you intervene to assist a youth, the less chance the issue can develop into a significant problem and the better the outcome for that youth. Early intervention policies should adopt a family and community based holistic approach to align with the current research that youth issues are best dealt with within his or her own family group and local community.

Preventative policies could target child abuse, neglect and child poverty, promote positive parenting support within family groups and the local

community. This would have the positive effect of targeting specific groups who are in need of additional support. Notwithstanding this, ongoing and repetitive support will be required.

***To adopt consistent police education within schools***

A police in schools programme whereby police officers spend time with classes of all ages to teach them about crimes and criminal offending and its consequences could be easily adopted by the police force and has, as its benefit, to deliver key information to youths within a classroom setting. It could also change the way in which some youths negatively view the police, and promote positive attitudes towards member of the police.

***To increase funding to provide psychological treatment for youth with mental health issues.***

There is presently a lack of funding targeted towards youths who suffer from mental illness. There is a significant cost of psychological counselling and support within the wider New Zealand context due to the fact that the associated expenses are high. Psychological assessments and treatments are unaffordable for most families.

The Youth Court provides free psychological assessments and referrals to mental health treatment, however this is only funded because that individual

youth has already engaged in some kind of criminal activity. This presents the issue that preventative methods are not utilised even for those young people who suffer from mental health issues. State funding and State services should be available to adequately treat mental health problems.

## **THE FUTURE**

The current youth justice system treads a fine line between a punitive regime and a rehabilitative regime. The future direction and reform is dependent upon the course that society wishes to adopt. The emphasis on penalty is often counterproductive and generally harmful to society notwithstanding public pressure for offenders to be penalised. On the other hand, the rehabilitative regime has the potential to provide quite different outcomes for youth offenders; their families, and for society generally.

The recommendations outlined in this chapter are proposed upon the grounds that the youth criminal justice system is better served by concentrating on rehabilitation rather than penalty. This emphasis has an important place both internally and externally to the youth justice system.

New Zealand can draw conclusions from a comparative analysis of youth justice systems internationally. In recent times, there is debate about the current model of New Zealand's youth justice system in that it has a protective and rehabilitative approach. The current youth justice system

operates a rehabilitative and reactive system to youth offending with little attention given to preventative methods in response to youth offending (Jeffs, 2002). The other issue is that the Youth Court is constantly being frustrated by the lack of community support and development programs for young people which have been proven to be a significant asset in reshaping and guiding troubled youths down the right path and away from further criminal behaviour. Drawing social policy initiatives, ideas and conclusions in comparing New Zealand to these above countries can assist with the improvement of some areas of youth justice, particularly, in the area of prevention.

The current youth justice system in New Zealand, generally operates well. The system provides significant guiding principles to manage a youth offender where the State views the youth as a victim in need of support and rehabilitation. Notwithstanding, the system aims to incorporate a restorative approach by its use of FGC's to both empower the youth offender and to seek justice for the victim of the crime. Specialised police youth aid officers are employed to assess each youth crime in with both a divertive intervention approach. CYFS assess each youth offender in terms of care and protection of either his or her family group and home environment and provide custodial residences for youths who are ordered to live in residential detention. The Youth Court brings all of these stakeholders together and manages more difficult offenders and serious crimes. It had a focus on rehabilitation methods and only enforce custodial remands and sentences if it's essential for

the safety of the community, and not as a punishment. The protection, welfare and rights of a young person are adhered to.

Despite the successes of the existing system, there is room for improvement with preventative policies. Practical prevention methods as outlined in this chapter could support the existing system to better address the objectives (as set out in section 4) and the principles (as set out in section 208) of the CYF Act 1989. There is a need to be mindful to continually monitor the changing environment in which youth live and to continuously change and evolve to meet the changing needs of problematic youth so that the State does not fail them. Constant international policy observations will provide insight into how other jurisdictions are dealing with effectively the same problems, and these policies or recommendations could be adopted by New Zealand.

As famously stated by Franklin D. Roosevelt, 32<sup>nd</sup> President of the United States (1882 – 1945):

*“We cannot always build the future for our youth, but we can build our youth for the future.”*

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