

New Zealand's Youth Justice Transformation: Lessons for the United States

Executive Summary



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About the Cover Picture: The Māori protests in the 1970's against the confiscation of their land and other unjust practices led to the 1989 rewrite of their justice code described in this paper. Source: Wikimedia commons.

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EXECUTIVE SUMMARY

In the 1980s, New Zealand’s youth justice system was in crisis – skyrocketing youth incarceration rates, overrepresentation of the marginalized native Māori youth population, infrequent use of diversion by the police, and a court system that intervened too often in the name of rehabilitation, using alienating court processes that youth and families found difficult to participate in or understand. The United States is currently plagued by many of the same problems. Through an analysis of New Zealand’s successes and challenges, we have drawn policy recommendations for the United States.

Overview of New Zealand’s Transformation

The Children’s and Young People’s Well-being Act 1989 (the Act), also called the Oranga Tamariki Act 1989,¹ represented a seismic shift in youth justice in New Zealand. It dramatically downsized the entire youth justice system and established a restorative, rather than retributive, approach to youth justice. The Act’s goals included reducing youth involvement with the courts, promoting diversion, empowering victims, strengthening families and communities, and utilizing culturally appropriate practices.² This Act is the first time that a Western nation legislated the mandatory use of restorative practices throughout their youth justice system.³

Key components of the Act include:

1) STATUTORY LIMITS ON ARREST

New Zealand drastically reduced the number of youth arrested by enacting into law strict limitations on the police’s power to arrest without a warrant. Instead, minor incidents are handled by front-line police with an immediate caution or warning to the young person or diversion.⁴ Arrest occurs only in about 12% of all cases of youth offending.⁵

2) SEPARATION OF CARE AND PROTECTION FROM JUSTICE ISSUES

The Act maintained the separation of the Family Court’s handling of care and protection issues (for 10 to 13-year-olds, “children”) from the Youth Court’s handling of justice issues (for 14 to 17-year-olds, “young persons”)⁶ – an important division to prevent net widening of the Youth Court and to provide appropriate services to youth. In 2017, New Zealand made a vital amendment to the Act by expanding the age of jurisdiction for their youth court from 16-years-old to 17-years-old by 2019 for all but the more serious offenses.⁷

3) STANDARD USE OF RESTORATIVE PRACTICES FOR YOUTH WITH SERIOUS OFFENSES

Restorative practices were integrated into the youth justice process through the Family Group Conference (Conference). The Conference brings together the youth and their family with their

lawyer, social worker, and others who can offer support, as well as the person harmed, if they choose to attend. It is used as the standard mechanism for processing serious cases where a youth does not deny their charges; the vast majority of minor cases are diverted and do not go through a Conference.⁸

4) FORMAL COURT PROCESSING BECOMES A LAST RESORT

By combining strict limitations on arrest and standard use of family group conferencing, New Zealand has been able to use formal court processing as a last resort, except in cases of murder and manslaughter. The number of young people charged in court was driven down from approximately 6,000 when the Act was passed in 1989 to 1,884 children and young people in 2017.⁹

5) DEEP FAMILY ENGAGEMENT

The Act's principles emphasize involving the family group in all decision-making and interventions. This is most clearly seen in the Family Group Conference, in which families are asked to be fully involved in the process of determining a response to the young person's behavior.

Indigenous Māori Youth Overrepresented in Justice System

A key impetus for transforming New Zealand's youth justice system was its disparate and negative impact on indigenous Māori youth (of Polynesian ethnicity) compared to white youth (descendants of the European colonizers). Between 1980 and 1984, rates for Māori youth entering the system were more than six times higher than for non-Māori youth and disproportionate numbers of young Māori received custodial sentences compared with non-Māori youth.¹⁰

ENDURING RACIAL DISPARITIES

New Zealand's Act has resulted in significant reductions in the overall number of youth arrested, charged, and incarcerated. However, as has often happened with justice reforms in this country, New Zealand's reforms did not affect the disparate treatment of Māori youth. While the numbers of young Māori charged in the Youth Court have decreased, the rate is lower than the decrease for non-Māori, leading to an increase in the proportion of Māori youth in court from 49% in 2008, to 64% in 2017.¹¹ In fact, Māori youth are disproportionately represented at every stage of the justice process – from arrest through orders for residential care – for the same type of offending as their white counterparts.¹²

REASONS FOR DISPARITIES SIMILAR TO ISSUES DRIVING DISPARITIES IN THE U.S.

As with minority groups in the United States, decades of historical intergenerational marginalization have contributed to Māori overrepresentation in the justice system.¹³ A 2007 New Zealand Department of Corrections analysis and report on the overrepresentation of Māori (youth and adults) in the justice system, concluded that the disparity was due to both justice system bias – in police apprehensions and at other key points in the justice system – as well as the greater social and economic disadvantage of the Māori, which their research showed was correlated with greater offending.¹⁴

ADDRESSING DISPARITIES

New Zealand made several amendments to the Act in 2017 to reduce these disparities, such as setting measurable outcomes, developing more partnerships with – and delegating justice system processes to – Māori organizations, and supporting cultural competency of justice system actors. At its passage in 1989, the Act was imbued with Māori cultural rhetoric and elements but was not an indigenous method of dispute resolution. Māori activists argue that for any intervention to be effective, the Māori must have more ownership of the process and must be involved in the identification of community needs, as well as designing, delivering and evaluating the interventions.

Policy Recommendations

THOSE MOST HARMED BY THE SYSTEM MUST BE INTEGRAL TO THE DESIGN OF ITS TRANSFORMATION

Māori pressure helped to reform New Zealand’s youth justice system, with the understanding that a system of justice that is rooted only in the values and traditions of the majority culture is a form of institutionalized racism. Participation by marginalized populations in the form and substance of the system is essential for it to have legitimacy and, ultimately, to be successful. One could argue that New Zealand’s failure to organize a Māori-centered system of justice has led to the on-going overrepresentation of Māori youth in the justice system.

SHRINK THE SYSTEM DRASTICALLY

New Zealand downsized its youth justice system significantly. Over 75% of youth are handled through police warnings or diversion.¹⁵ Youth face serious and prolonged harms from contact with the juvenile justice system whether they have a glancing contact or deep engagement through incarceration.¹⁶ Yet, most youth will naturally age out of delinquent behaviors and are best assisted in this process through community- and family-based approaches rooted in youth development principles. After New Zealand drastically reduced arrests and confinement, the overall youth crime rate initially remained stable and recently has decreased.¹⁷

ORIENT THE FORMAL SYSTEM AROUND RESTORATIVE JUSTICE

Restorative practices can be a transformational approach to a community's response to crime. New Zealand has shifted from a retributive approach, focused on determining blame and administering punishment, to a restorative one, in which crime is viewed as a violation of people and relationships creating obligations for the responsible party to right the harm.¹⁸ There have been many positive impacts from the use of restorative practices in New Zealand, including high victim satisfaction (82%) with the family group conferences in which they participated.¹⁹

ENDNOTES

¹ The legislation was originally titled the “Children, Young Persons and their Families (Oranga Tamariki) Legislation Act 1989” and was changed in 2017. Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, s. 5, <http://bit.ly/2JcARy1>.

² Emily Watt, “A History of Youth Justice in New Zealand” (New Zealand: Dept. for Courts, 2003): 26, <http://bit.ly/2GTGRx6>.

³ Judge Andrew Becroft, “Youth Justice – The New Zealand Experience Past Lessons and Future Challenges” (2003): 11. Paper presented at the “Juvenile Justice: From Lessons of the Past to a Road for the Future” conference, Canberra: Australian Institute of Criminology, Sidney, Australia, Dec. 1-2, 2003, <http://bit.ly/2ImvQ19>.

⁴ Special Representative of the Secretary-General (SRSG) on Violence Against Children, “Promoting Restorative Justice for Children” (New York: 2013), 7, <http://bit.ly/2q3np6N>.

⁵ Becroft, “Youth Justice – The New Zealand Experience,” 33.

⁶ Becroft, “Youth Justice – The New Zealand Experience,” 8. See the Appendix for further information on the legal processes for handling children (considered ages 10 to 13-years-old) and youth (considered ages 14 to 17-years-old) in New Zealand.

⁷ District Court of New Zealand, “Annual Report 2017” (2017), <http://bit.ly/2ILTyrC>; Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, s. 7.

⁸ Allan MacRae and Howard Zehr, *The Little Book of Family Group Conferences: New Zealand Style* (Intercourse, PA: Good Books, 2004), 13-14.

⁹ Prior to passage of the Act the number of young people charged in youth court had reached a high of 8000 in 1986 and then had begun decreasing. Judge Andrew Becroft, “Signed, Sealed – (but not yet fully) Delivered” (2014): 16. Paper delivered at the “Healing Courts, Healing Plans, Healing People: International Indigenous Therapeutic Jurisprudence Conference,” Oct. 9, 2014, <https://bit.ly/2E5hy60>; New Zealand, Ministry of Justice, “Youth Prosecution Statistics: Data Highlights for 2017” (March, 2018):1, <http://bit.ly/2HfWpLL>; Note that New Zealand’s youth population as of their most recent census in 2013 was 299,000 children between the ages of 10 – 14 years old and 190,000 youth between the ages of 15 – 17 years old. New Zealand, Children’s Commissioner, “Population, Ages, and Ethnicities of Children,” Infographic (June 2016), <http://bit.ly/2q1T34E>. For comparison, there were 291,888 children in New Zealand between the ages of 10 – 14 years old in 1986 and 184,149 youth between the ages of 15 – 17 in 1986. New Zealand, Ministry of Social Development, “Children and Young People: Indicators of Wellbeing in New Zealand” (Wellington, New Zealand: December 2004): 14, <http://bit.ly/2q0w7n4>.

¹⁰ MacRae and Zehr, 10.

¹¹ New Zealand, Ministry of Justice, “Youth Prosecution Statistics: Data Highlights for 2017,” 2.

¹² Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 46.

¹³ Becroft, “Signed, Sealed – (but not yet fully) Delivered,” 34.

¹⁴ New Zealand, Department of Corrections, Policy, Strategy and Research Group, “Over-representation of Maori in the Criminal Justice System: An Exploratory Report” (Sept. 2007): 37-40, <https://bit.ly/2GDXvRn>.

¹⁵ New Zealand, Ministry of Justice, Youth Court in New Zealand, “Youth Justice: Youth Justice Principles and Processes,” accessed on April 3, 2018, <http://bit.ly/2GAnEgQ>.

¹⁶ Juvenile Justice Information Exchange, Juvenile Justice Resource Hub, “Community-Based Alternatives: Key Issues/Why We Need Alternatives to Formal Juvenile Justice System Processing and Incarceration,” n. 6-10, accessed April 24, 2018.

¹⁷ Becroft, “Youth Justice – The New Zealand Experience,” 36; New Zealand State Services Commission, “Better Public Services: Reducing Crime,” accessed Aug. 24, 2017, <http://www.ssc.govt.nz/bps-reducing-crime>; New Zealand, Police National Headquarters, “New Zealand Crime Statistics 2014” (April, 2015): 13, <https://bit.ly/2axRova>. The rate of children aged 10-13 coming to the attention of the police for offending dropped by 33% between 2009 and 2013. New Zealand, Ministry of Social Development, “Offending by Children in New Zealand” (September 2016): 1, <http://bit.ly/2Hu7oPC>.

¹⁸ New Zealand, Ministry of Justice, “Victim Satisfaction with Restorative Justice: A Summary of Findings” (Wellington, NZ: September 2011):1, <https://bit.ly/2sx57eO>.

¹⁹ New Zealand, Ministry of Justice, “Victim Satisfaction with Restorative Justice,” 1.

