



## **CHILD PARTICIPATION IN JUVENILE JUSTICE IN NEW ZEALAND**

### **National Report for AIMJF's Comparative and Collaborative Research.**

*La participación de los niños en la justicia juvenil en Nueva Zelandia*

*Informe nacional para la investigación comparativa y colaborativa de la AIMJF*

*La participation des enfants à la justice juvénile en Nouvelle Zélande*

*Rapport national pour la recherche comparative et collaborative de l'AIMJF*

Ida Malosi<sup>1</sup>

**Abstract:** The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation in juvenile justice. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in New Zealand.

**Resumen:** El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre la participación de adolescentes en la justicia juvenil. El artículo explica los aspectos legales, institucionales y procesales de la participación infantil en el sistema de justicia en Nueva Zelandia

**Résumé :** Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur la participation des enfants à la justice juvénile. L'article explique des aspects légaux, institutionnels et procéduraux de la participation des enfants dans le système de justice en Nouvelle Zélande

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### **Introduction**

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links between judges from different countries, promoting transnational judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

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<sup>1</sup> Principal Youth Court Judge for New Zealand



To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.

The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of how child participation in juvenile justice is organized worldwide.

This national report is based on a questionnaire prepared by AIMJF.

## **Questionnaire**

### **1. General description of the procedure and the system**

#### **1.1. What is the name of the Court in your country with jurisdiction for wrongful acts committed by children? Does the name vary among different regions of your Country? Does this Court also have jurisdiction for other matters? Which one?**

The Youth Court in New Zealand has the jurisdiction to deal with some 12 or 13 year old children and most 14 to 17 year old young people under Part 4 of the Oranga Tamariki Act 1989 (“the OTA”). Exceptions to this jurisdiction include murder, manslaughter, certain serious charges for 17-year-olds, and infringement offences.

The OTA also governs the care and protection jurisdiction of the Family Court, outlined in *Child Participation in Family and Child Protection Matters in New Zealand*. Accordingly, many of the legal principles and duties are identical across the care and protection and youth justice jurisdictions in New Zealand. Under its care and protection jurisdiction, the Family Court has the power to deal with children aged 10 to 13 who have committed offences of a sufficient number, nature or magnitude to cause serious concern for the well-being of the child.

#### **1.2. What is the minimum age of criminal responsibility (MACR)?**

The MACR in New Zealand is 10 years, although children aged 10 and 11 may only be charged with murder or manslaughter. Since 2010, children aged 12 and 13 may be

charged with certain serious offences (for which the maximum sentence is life or imprisonment for at least 14 years) or where they are considered a previous offender and have committed a sufficiently serious offence (for which the maximum sentence is imprisonment for 10 to 14 years). From age 14, young people may be charged with any offence.

**1.3. Until which age is a child subjected to the jurisdiction of the Youth Court? Does your legislation provide the possibility or possible obligation to treat a child under 18 as an adult? If yes, in which cases and in what way?**

Since 2019, young people are subjected to the jurisdiction of the Youth Court until they reach the age of 18. However, 17-year-olds charged with certain serious offences (such as sexual violation, wounding with intent to cause grievous bodily harm and aggravated robbery offences) will automatically be transferred to the District Court to be dealt with under the adult criminal jurisdiction.

The OTA provides the possibility of transferring a young person to the District Court or High Court for sentencing under the adult criminal jurisdiction in certain circumstances, however this power is rarely used. In the event that a young person is transferred to the District Court or High Court for sentencing, the Sentencing Act 2002 applies as it does to adults. However, youth may be a significant mitigating factor and the court should, to the extent possible, act in accordance with the United Nations Convention on the Rights of the Child.

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**1.4. Does this Court maintain the jurisdiction regardless of age at the time of the judgment if the offense was committed before the age of 18?**

The Youth Court does not maintain jurisdiction where a person aged 19 or older is charged for offending that was committed before the age of 18. Orders made in the Youth Court expire when the young person reaches the age of 19. Charges laid against persons aged 19 or older will be dealt with in the adult criminal courts, regardless of their age at the time of the alleged commission of the offence. However, youth may be a significant mitigating factor in sentencing where the offence was committed before the age of 18.

**1.5. Can you describe the general steps of the procedure?**

*Coming to court*

The OTA strongly emphasises diverting children and young people away from formal criminal justice processes. As a result, approximately 70 to 80 per cent of children and

young people who come to the attention of the police for offending behaviour never come before the Youth Court. Instead, they are dealt with through alternative action by Police Youth Aid officers.

For offending which is sufficiently serious to require formal court interventions, there are two pathways for bringing children and young people before the Youth Court. A police officer may arrest a child or young person without warrant and bring them to court if satisfied on reasonable grounds that the arrest is necessary to ensure the child or young person's appearance before the court, prevent further offences, or prevent the loss or destruction of evidence, and issuing a summons would not achieve those purposes. A police officer may also arrest a child or young person if they have reasonable cause to suspect that the child or young person committed a category 3 or 4 offence (for which the maximum sentence is imprisonment for at least 14 years or life) and reasonably believes that the arrest is required in the public interest.

If the grounds for arrest without warrant are not met, the only alternative pathway is to hold an 'intention to charge' family group conference ("FGC") before laying charges in the Youth Court. The general FGC process is outlined further below. The 'intention to charge' FGC provides another opportunity to consider diversion away from the court. At this FGC, the child or young person and their family, the prosecutor, the youth justice co-ordinator from New Zealand's Ministry for Children, Oranga Tamariki, and anyone else present will consider whether the child or young person should be prosecuted or whether the matter can be dealt with in some other way.

#### *Family Group Conferences*

Once a child or young person appears before the Youth Court, they will either 'deny' or 'not deny' the charge. The vast majority of children and young people in the Youth Court do 'not deny' the charges. Where a child or young person does 'not deny' the charge, the judge will direct an FGC which ascertains whether the child or young person admits to the offence. The court file will then note the offence as "Proved by Admission at Family Group Conference". Denying the charge is essentially the same as entering a plea of not guilty, and the matter will go to a defended hearing before a judge in the Youth Court, or to a trial by jury if the child or young person elects, although the latter is very rare. At the hearing, the prosecutor must prove beyond a reasonable doubt that the child or young

person committed the offence. The same general rules and processes for trials in the adult criminal courts apply in these circumstances.

Once the offence is proved, either at the FGC or defended hearing, the FGC has the responsibility of designing a plan for the child or young person to complete in response to the offending. The Youth Court must approve the FGC plan and then monitors the child or young person's completion of the plan. The aim of these plans is twofold – holding the young person accountable for their offending and addressing the underlying drivers of their offending. The FGC has statutory authority to make such decisions and recommendations and formulate such plans as it considers necessary or desirable for the child or young person.

The OTA provides some guidance that an FGC may recommend that proceedings be discontinued, that Police should give a formal caution to the child or young person, that restorative justice actions be undertaken, that an application should be made to the Family Court regarding a child's care and protection, that the child or young person should make a reparation payment to the victim or be subject to other appropriate penalties. Beyond this, the FGC has creative freedom to design a plan for meeting the child or young person's needs and acknowledging the harm done to the victim. Common components of FGC plans include measures to hold the young person accountable and prevent reoffending – such as community work, monetary reparations to the victim, donations to charity, an apology letter to the victim, curfews, rules not to associate with certain peers – as well as measures to improve the circumstances that led to the offending – such as referral to drug and alcohol treatment, counselling, education services and cultural programs.

### *Disposition*

There are a variety of final orders available to the Youth Court, ranging in seriousness from discharges; fines and other reparation payments; parenting, mentoring and rehabilitation programmes; community work; supervision and supervision with activity; supervision with residence (a custodial sentence to a youth justice detention centre); and conviction and transfer to the adult courts for sentencing.

The Youth Court may obtain several expert reports, including psychological and cultural reports, to inform its decision on the appropriate final order to make. These reports contain information such as a child or young person's mental health or substance

dependency concerns, recidivism risk, rehabilitative potential, as well as resources available in the community to support the child or young person and their family. Where the court is considering imposing a higher end order, such as supervision with residence, it must obtain a report from a social worker including a plan detailing how the order would be implemented.

In approximately half of all cases, the Youth Court will grant a total discharge under section 282 of the OTA. This discharge has the effect of charges never being laid in court, meaning there is no formal record of the offending. A section 282 discharge is typically granted upon successful completion of the FGC plan, as the recommended outcome of the FGC.

#### **1.6. What are the opportunities for the child hearing in the whole proceeding?**

There are several opportunities for the hearing of substantive issues throughout the Youth Court process outlined above, including:

- The child or young person's first appearance in the court, where charges are denied/not denied and issues such as bail and remand are determined.
- Defended hearings to determine whether the charge is proved where the child or young person has denied the charge.
- Monitoring appearances to oversee the child or young person's completion of the FGC plan and address any barriers to completing the plan.
- Disposition hearings to determine the appropriate final outcome of the proceedings.

As discussed further below, there are legal duties on the Youth Court to ensure the child or young person's participation in all these stages of the proceedings. The OTA contains principles that children and young people should be supported to participate in the proceedings affecting them, and that measures for dealing with offending should be designed to strengthen the child or young person's family, whānau (extended family), hapū (sub-tribe) and iwi (tribe) to develop their own means of responding to the offending. A child or young person and their family group have the opportunity to share their views throughout the proceedings. If the child or young person, or their family, do not wish to take up that opportunity to talk to a Judge, they do not necessarily have to.

It is important to note that the FGC process, discussed above, is the practical manifestation of these statutory principles. It is designed to delegate responsibility to the child or young person's family to respond to the offending. No significant decisions can

be made in the Youth Court without first going through the FGC process. FGCs are private meetings convened by Oranga Tamariki co-ordinators. The OTA specifies who has the right to attend the FGC: the child or young person, their family and supporters, the Oranga Tamariki co-ordinator, the prosecutor, the child or young person's lawyer, social service representatives, and the victim of the offence. FGCs are not held at court, the judge does not attend and is not privy to the details of what is discussed at the conference. This enables the participants to speak freely about what happened and what should be done in response.

**1.7. Are there differences on how to proceed according to the age or other criteria?**

**Please specify.**

There are several differences to the court process according to whether the individual is a child (under age 14 years) or a young person (age 14 to 17 years). As explained above, child offenders may be dealt with in the Family Court, rather than through the criminal justice system in the Youth Court. Intention to charge FGCs must consider whether the child is in need of care or protection on the grounds in s 14(1)(e) and, if so, whether the public interest requires that instead of criminal proceedings being instituted, the matter should be dealt with by the Family Court. Where charges are nevertheless filed against a 12 or 13-year-old child in the Youth Court, the judge may refer the matter back to the prosecutor to consider making an application to the Family Court to have the case dealt with on a care and protection basis rather than continuing with it as a criminal proceeding before the Youth Court. The ability for the Court to refer the matter back to the prosecutor in that way is referred to as “the pushback.” The Youth Court charges are deemed discharged when the prosecutor applies to the Family Court, if not earlier. The *doli incapax* presumption applies to children in the Youth Court. In order to find a charge proved against a 12 or 13-year-old, the Youth Court must be satisfied that the child knew either that the act or omission constituting the offence was wrong or that it was contrary to law.

There are also specialist Youth Courts which apply the same law and follow the same general process outlined above, with some modifications to the monitoring stage of the proceedings to meet the cultural or other needs of the child or young person. Rangatahi and Pasifika Courts transfer monitoring of FGC plans to marae (traditional meeting houses) or Pasifika community settings, where the hearing is facilitated by the Youth





Court judge alongside elders from the community. These specialist courts incorporate Māori and Pacific languages and customary protocols, primarily as a means of connecting children and young people back to their culture. However, children and young people of any ethnicity may be referred to these courts if they admit to the offending, and if referral is agreed to by the FGC. The Youth Drug Court uses the judicial process to refer young offenders with identified serious drug and alcohol problems to a treatment plan under judicial supervision. The judge is assisted by a team to coordinate services to address this underlying cause of offending, made up of representatives from Police, Oranga Tamariki, the Ministry of Health, the Ministry of Education, and the child or young person's youth advocate. Similarly to the FGC plan, the successful completion of the treatment plan is taken into account in determining the final order imposed by the Youth Court.

## **2. Judicial hearing**

### **2.1. Is it mandatory for the child to participate in the hearing or is it optional? Is the child invited or summoned for the hearing?**

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It is generally mandatory for the child or young person to participate in Youth Court hearings. As mentioned above, there are a range of statutory duties placed on the Youth Court, as well as Oranga Tamariki youth justice FGC co-ordinators and youth advocates, to ensure the child or young person's participation in the proceedings.

In all Youth Court proceedings there is a duty on the court and the youth advocate to explain the nature of the proceedings in a manner and language that can be understood by the child or young person and to satisfy themselves that the child or young person does understand. When certain orders are made the court and lawyer must explain the nature and requirements of the order, provisions to vary it and the existence of rights of appeal. Also, the child or young person must be encouraged and assisted to participate in the Youth Court proceedings and the FGC process to the degree appropriate for their age and level of maturity unless that participation is not appropriate, having regard to the matters to be heard or considered. The child or young person must be given:

- reasonable assistance to understand the reasons for the Youth Court proceedings or FGC process, the options available to the decision-maker, and how these options could affect them; and



- reasonable opportunities to freely express their views on matters affecting them. If a child or young person has difficulties in expressing their views or being understood (for example, because of their age or language, or because of a disability), support to assist them to express their views and to be understood must be provided.

Any views that the child or young person expresses (either directly or through a representative) must be taken into account and any written decision must set out the child's views and, if those views were not followed, include the reasons for not doing so; and the decision, the reasons for it, and how it will affect them must be explained to the child.

Those statutory considerations are consistent with New Zealand's obligations under the United Nations Convention on the Rights of the Child ("the CRC"), and the Convention on the Rights of Persons with Disabilities ("the CRPD"). The OTA requires that children's rights under both of those Conventions must be respected and upheld.

Article 12 of the CRC, for example, provides:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided with the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

In relation to the CRPD, relevant articles include:

- Article 7 requires States Parties to ensure that all children with disabilities have the right to express their views freely on all matters affecting them on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realise that right.
- Article 12 requires that those with disabilities have legal capacity on an equal basis with others and that they receive the support required to exercise their legal capacity.
- Article 13 requires effective access to justice by providing procedural and age-appropriate accommodations in legal matters.

The significance of such provisions has become much more apparent in recent years with the growing awareness of the prevalence of communication disorders and learning disabilities (often comorbid with other neuro-disabilities) amongst children in the youth justice system. As a result, the involvement of communication assistants is becoming increasingly common so as to enable the child or young person's understanding and meaningful involvement in the proceedings.

In certain circumstances, the child or young person's attendance at the court hearing may be excused. This may occur when the hearing is administrative in nature (for example, a request for an adjournment or certain pre-trial applications) and there are no substantive issues to address.

Where the grounds for arrest outlined above are not met, the child or young person will be summoned to the first Youth Court hearing following the 'intention to charge' FGC. The child or young person and their family would be aware of the upcoming court date from discussions at the FGC. A Police Youth Aid officer would typically serve the child or young person with the summons at a later date at their home with their family present.

**2.2. Is this call to appear, irrespective of its modality, made together with parent/representative or does the child receive a separate invitation/summon? Is it made in a child-friendly language? Can you please add a copy of this document?**

The child or young person receives a separate summons. Their parent or guardian may be separately summoned to appear when a charging document is filed against the child or young person. The summons for a child or young person in the Youth Court has the same form as a summons for an adult defendant in the District Court. A copy of the summons document is attached at the end of this questionnaire as Appendix 1.

**2.3. Are there separate entrances and accesses for the child and other persons (professionals, victims and witnesses) to the room where the child is heard?**

There are 45 Youth Courts across New Zealand, located in District Court buildings which also house the adult criminal courts, Family Courts, Civil Courts and various Tribunals. The entrances and accommodations vary across the different courthouses depending on their size. The Youth Court is generally separated from the area of the court building where adult criminal proceedings are heard. There is generally one entrance into the courtroom for the child or young person, professionals, victims and witnesses. The

prosecutor, youth advocate and court staff are expected to manage the child or young person, victims and witnesses entering and exiting the courtroom separately.

**2.4. Is there a specific waiting room assigned to the child, separated from other people (especially victim and witnesses of the same case; any adults)? Can you share a photo of this place, if any?**

As mentioned above, the Youth Court is generally separated from the area of the court building where adult criminal proceedings are heard. There is not always a dedicated waiting room assigned to children and young people in the courthouses, however there are ‘interview rooms’ available where the child or young person may meet privately with their Youth Advocate and support persons before and after the hearing. Most courts have victim advisors who victims may privately speak to before and after the hearing, either in a dedicated office or a witness room.

**2.5. If children are brought by the police from places of detention, are they transported separately from adults? Do they have to wait in cells, if so under what conditions (e.g. single or group cells, separation from adults etc.)?**

There are limited circumstances where a young person may be detained in a police cell – where the grounds for arrest are met (set out at answer 1.5 above), or where the court remands the young person to be detained in police custody. The court may only remand a young person (never a child aged 10 to 13) into police custody where it is satisfied that the young person is likely to abscond or be violent and there are not suitable Oranga Tamariki facilities available for the safe detention of the young person. Where a child or young person is arrested, there are procedures in place to transfer them into the custody of Oranga Tamariki where there are suitable facilities available, rather than remaining in the police cells. Children and young people generally cannot be detained in police custody for over 24 hours.

Where children and young people are detained in police custody, Police processes endeavour to separate them from adults, including when they are transported to court and places of detention. However, police cells are designed for adults and are not suitable places for the continued detention of children and young people. When children and young people arrive at court following arrest or remand in police detention, they may have to wait in the court cells. The number of court cells in each courthouse varies, and some courts do not have any cells.

Where a child or young person is transported or remanded into a youth justice residence or community home, Oranga Tamariki is responsible for transporting the child or young person to court. In these circumstances, children and young people will not be transported alongside adults and will not wait in the court cells with adults.

**2.6. Is there some space where the child and his/her support persons can meet confidentially before and after the hearing?**

This is covered in answer 2.4 above.

**2.7. Where does the hearing occur? In the courtroom, chambers, in another room (if so please specify)? If various options apply, which situation will determine the difference in the approach?**

The hearing typically takes place in a dedicated Youth Court courtroom. As explained below, the design of the Youth Court differs significantly from the hearing room for adult criminal proceedings. As mentioned above, the hearing may be transferred to other sites for specialist Youth Court monitoring processes, such as marae (traditional meeting houses) and Pacific community centres.

**2.8. Are there differences in terms of accommodation between the hearing environment in comparison with a family (or child protection, or child victim/witness) hearing environment?**

The hearing environment in the Family Court and the Youth Court are similar – the court is closed to the public and the courtroom is designed to be less formal and to encourage participants to talk more freely. The below picture illustrates a common style of courtroom layout in the Youth Court:



As discussed above, given the overlapping statutory duties and principles in both the care and protection and youth justice jurisdictions to encourage the child or young person's participation in the proceedings, there are similar accommodations available in both the Family Court and Youth Court, such as the use of communication assistants (discussed further below).

**2.9. Are there differences regarding the hearing room in comparison with a regular criminal courtroom (for adults)?**

The Youth Court environment differs significantly in comparison with a regular criminal courtroom for adults. The physical layout of the courtroom is designed to make the space less intimidating and encourage engagement between all participants. There is still a dock for those in custody and for use in judge alone trials. The judge sits where the court taker would usually be placed, at a physically lower level than in a regular criminal courtroom. As discussed further below, there is a team of multi-disciplinary experienced professionals (such as the social worker, lay advocate, alcohol and drug clinician, youth forensic services workers, education officers) in the courtroom. Everyone sits in a 'horseshoe' layout to engender participation and discussion between the child or young person and the Youth Court team. The child or young person is placed right next to their lawyer, often with their family and other supporters sitting behind them.

Defended hearings before a Youth Court judge take place in the Youth Court whereas a trial by jury takes place in a regular criminal courtroom for adults, which has the necessary facilities for this type of hearing (for example, a jury box). As in the regular Youth Court hearing room, the child or young person will be seated next to their lawyer, often with their family and other supporters sitting behind them.

**2.10. Are hearings sound or video recorded? Does such option exist?**

Youth Court hearings are generally not video recorded. Defended hearings are sound recorded for the purpose of transcribing the evidence given in court. Media may apply to sound or video record Youth Court hearings with the permission of the Judge. There are statutory restrictions suppressing the publication of any identifying information of children and young people appearing in the Youth Court, and the judge who heard the Youth Court proceedings must grant leave to publish.

**2.11. Who must, may, may not take part in the judicial hearing? If there are differences according to the situation, please specify.**

Youth Court hearings are closed to the public. Only the following persons are entitled to attend Youth Court hearings:

- The child or young person
- The parents or guardians of the child or young person
- The barrister or solicitor or youth advocate (an appointed lawyer who is specially-trained in youth justice) representing the child or young person
- A barrister or solicitor representing the child or young person’s parents or guardians
- The prosecutor
- Officers of the court
- The chief executive of Oranga Tamariki and its delegates (social workers)
- The Oranga Tamariki youth justice co-ordinator
- A representative of the FGC
- A lay advocate (a specially-appointed person who brings to the attention of the Court important cultural information about the young person and their whānau)
- The victim and their support persons
- Witnesses
- Accredited new media reporters
- Any other person whom the Judge permits to be present – this includes other professionals who are often in the courtroom, such as communication assistants, youth forensic nurses, and education officers.

The make up of the multidisciplinary team varies across different Youth Courts according to the needs and resourcing of the particular area. The persons present at Youth Court hearings will also vary according to the interests of each child or young person, for example a lay advocate or communication assistant will not be appointed in every case. It will also vary according to the type of hearing. At a defended hearing before a Youth Court Judge, the broader team of professionals will typically not be in attendance; only the child or young person, their lawyer and the prosecutor must take part.

The following persons are entitled to make representations in Youth Court hearings:

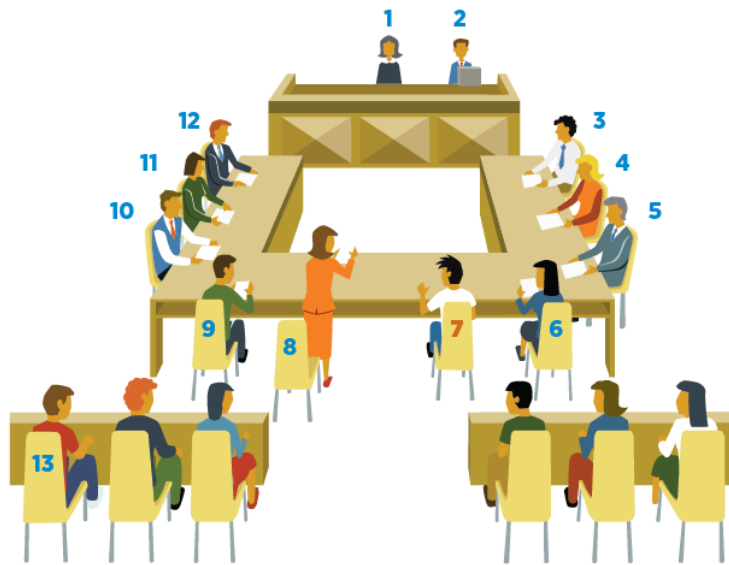
- The child or young person
- Their lawyer
- Their parents or guardians

- Any lawyer representing the parents or guardians
- A lay advocate
- A representative of the FGC
- Any other person with the leave of the court

A child or young person must be legally represented by a barrister or solicitor or appointed youth advocate in Youth Court hearings.

A broader group of individuals are entitled to attend FGCs which are held throughout the Youth Court process, including members of the child or young person’s whānau (extended family) and representatives of iwi (tribal) or cultural social services.

**2.12. Can you please share a photo of the hearing room, specifying where each person sits? (or provide a drawing of photo not possible)**



1. Judge
2. Court taker
3. Prosecutor
4. Police Youth Aid officer
5. Oranga Tamariki youth justice coordinator
6. Communication assistant
7. Young person
8. Youth Advocate



9. Lay Advocate
10. Oranga Tamariki social worker
11. Alcohol & drug clinician or youth forensic services worker
12. Education officer
13. Young person's family and whānau

**2.13. Is there any informative material for children to explain who will attend and how the hearing will be held? Can you please share it/them?**

An information pamphlet for children and young people is displayed at the court to explain the Youth Court process and who will attend the hearing. The pamphlet is attached at the end of this questionnaire as Appendix 2. There are also very helpful resources provided by communication assistants that are specially prepared for children and young people and often tailored to their individual communication needs.

**2.14. Who normally hears the child in juvenile justice proceedings? Is it the Judge or other professional? If it is another professional, does the child have the right to be heard by the Judge? In which circumstances?**

The Judge hears the child or young person in Youth Court proceedings.

**2.15. Are there guidelines or a protocol on how to interact with the child? Can you please share it/them? Do those interacting with the child receive specific training on this?**

There is no institutional protocol on how to interact with children and young people in the Youth Court. The multi-disciplinary Youth Court team discussed above are specially trained to interact with children and young people and are aware of the importance of plain language and other communication accommodations in the Youth Court. Each organisation may have its own internal protocols or guidelines on interacting with children and young people.

Youth Court Judges receive training and other resources on fulfilling the duty of the court to ensure a child or young person's participation in court proceedings. For instance, the Youth Court Bench Book is a judicial handbook providing procedural guidance on a range of topics, including identifying communication difficulties and measures to enhance participation such as using child appropriate language and screening for communication vulnerabilities.

Given the duties on the Youth Court to provide support to assist children and young people express their views and be understood where they have difficulties doing so, and the growing awareness of the prevalence of neuro-disabilities amongst children and young people in the youth justice system, the involvement of communication assistants in Youth Court proceedings has become more common in recent years. These communication assistants are usually speech-language-therapists who typically assist in two ways;

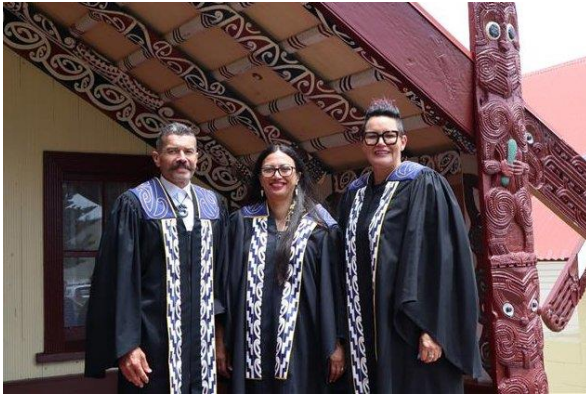
- By assisting the child or young person to understand and follow what is happening in the proceedings so as to enable the child or young person’s meaningful participation; and
- By advising the professionals involved in a case about adaptations they need to make to the conventional language and processes used to enable the child’s understanding and meaningful participation.

Communication assistants have also been training social workers and Youth Advocates to prepare their documents in more child-friendly formats.

**2.16. Can you please describe the ritual? (Some guiding questions are below)**

**2.16.1. Does the judge wear a gown/wig during the hearing? Would it be different in a family court? And in a criminal court for adults? Can you please share a photo?**

District Court Judges in New Zealand wear robes, but not a wig, during hearings. This is the same in the Youth Court, the adult criminal court and the Family Court. New judicial robes with a Māori cultural pattern are being introduced throughout the country:



**2.16.2. Does the prosecutor and the defense attorney have to wear a gown or to use special clothes?**

The prosecutor and youth advocate do not have to wear a gown in the Youth Court, but the prosecutor and youth aid officer appear in standard police uniform. Defence Counsel do not wear gowns in the District Court, except when appearing in jury trials but do wear gowns routinely in the High Court, Court of Appeal and Supreme Court.

**2.16.3. Who else is allowed to attend the hearings?**

This is covered in the answer to 2.11.

**2.16.4. Are there clothing restrictions for the child, his/her parents or non-legal professionals to enter in the hearing room?**

There are no clothing restrictions for the child or young person, their parents or non-legal professionals to enter the Youth Court hearing room, apart from a prohibition on gang insignia.

**2.16.5. When the child is deprived of liberty, does he/she wear regular clothing or a uniform? What kind of security measures/measures of restraint may be adopted? Is their use regulated by law (if so, please share provision)? Would it be visible for any attendee that the child is deprived of liberty?**

When a child or young person is remanded or sentenced to custody in a youth justice residence, they wear regular clothing. A child or young person's right to wear their own clothing in an Oranga Tamariki residence is enshrined in regulations under the OTA. In reality, however, children and young people's personal clothing is often confiscated when they arrive in residence due to associations between certain gangs and clothing brands. The regulations also provide that no child or young person who is in secure care in a

residence shall be required to wear any uniform or clothing item which identifies them as being in secure care.

**2.16.6. Is the judge/decision maker in the hearing room when the child enters?**

In the majority of hearings on the Youth Court list (for example, hearings to determine remand options or monitor the child or young person's completion of the FGC plan), the Judge will already be in the hearing room when the child or young person enters, and will introduce themselves to the child or young person.

As discussed above, the general ritual for defended hearings in the adult criminal court applies in defended hearings in the Youth Court where the child or young person has denied the charge against them. In defended hearings, the parties to the case (the child or young person, their lawyer and the prosecutor) will be in the hearing room when the judge enters. The ritual is further detailed in the answers below.

**2.16.7. Does the child have to stand up?**

In defended hearings, everyone present in the courtroom, including the child or young person, stands up when the judge enters the courtroom. Once the judge reaches the bench, bows, and counsel bow back, everyone may sit down. The child or young person's youth advocate is expected to explain this ritual to them, and provide any necessary queues throughout the process. The child or young person will then remain seated for the remainder of hearing, until the judge exits the courtroom or asks them to stand while being addressed by the court.

In other shorter Youth Court list hearings, the child or young person will typically remain standing for the duration of the hearing. The judge may instruct the child or young person to sit down, particularly for longer matters.

**2.16.8. Does someone have to allow the child (or others attendees) to sit down?**

This is covered in answer 2.16.7 above.

**2.16.9. Does the child have to remain standing during the hearing?**

This is covered in answer 2.16.7 above.

**2.16.10. Is there any kind of solemn speech or specific information/explanations provided to the child before he/she has the opportunity to speak? What is it said at this moment?**

There is no standardised specific explanation provided to the child or young person before they have the opportunity to speak. As discussed above, there are statutory duties on the

Youth Court to explain the nature of the proceedings, satisfy itself that the child or young person understands the nature of proceedings, and encourage the child or young person to participate in the proceedings and express their views. Each judge will have a different approach to explaining the proceedings to the child or young person and encouraging their participation in the proceedings.

**2.16.11. Does the child have to make any kind of commitment or swear an oath before speaking?**

A child or young person does not have to make a commitment or swear an oath before speaking at most Youth Court hearings. As discussed further below, the Youth Court operates with toned down formalities compared to other courts. The exception to this is at defended hearings where the child or young person has denied the charges. If the child or young person elects to give evidence themselves, which they are not required to do, they must swear an oath before speaking, as all witnesses are required to do so.

**2.16.12. Who poses the questions to the child: judge, psychologist, any other? Does the child respond directly or via a third person, eg lawyer?**

In most Youth Court hearings, the judge will pose questions to the child or young person, who typically responds directly but may respond indirectly via their youth advocate. If a child or young person elects to give evidence in their defended hearing in the Youth Court, the prosecutor, defence counsel and judge may all pose questions to the child or young person in accordance with the ordinary rules of examination-in-chief and cross-examination. The child or young person responds directly when giving evidence, and when required will do so with the support of a communication assistant.

**2.16.13. Is the child allowed to consult his/her defense attorney or his/her family during the hearing?**

The child or young person is allowed to consult their youth advocate, lay advocate and their family during the hearing. As explained above, the Youth Court hearing room is designed to facilitate engagement between the young person, their lawyer and their family by seating them in close proximity.

**2.16.14. Who is allowed to address the child? Only the judge, both the judge and the parties (prosecutor and defense attorney) or just the parties (prosecutor and defense attorney)? Is there an order of who interacts with the child?**

This is covered in answer 2.16.12 and 2.16.15.

**2.16.15. If other professionals (such as social workers or probation officers) are attending the hearing, what is their role? Are they allowed to speak to the child?**

As explained above, a multidisciplinary team of professionals attend Youth Court hearings (with the exception of defended hearings) to identify the needs of the child or young person and inform plans to respond to the identified issues. The layout of the Youth Court is a ‘horseshoe’ shape to facilitate discussion between all participants. Any professionals are allowed to speak to the child or young person during the hearing, with the judge managing the conversation and inviting participants to contribute.

**2.16.16. If some professional presents a report during the hearing, is the child allowed to interfere or correct the information or conclusions?**

In most Youth Court hearings (with the exception of defended hearings), the child or young person is allowed to interfere or correct the information or conclusions of a report provided to the court, such as a psychological, cultural or social work report. They may do so either directly or indirectly via their youth advocate or other support person (such as a lay advocate). If a professional gives the report as evidence in a defended hearing, the child or young person will not be allowed to directly interfere while the evidence is given. They may raise concerns about the information or conclusions with their lawyer seated next to them, who may address these concerns in their questioning of the witness.

**2.16.17. Do you consider that the hearing is structured in a formal way or is it more open to a dialogical interaction with the child?**

As discussed further above and below, Youth Court hearings (with the exception of defended hearings) are significantly less formal compared to hearings in the adult criminal courts. The process is designed to facilitate dialogical interaction between the child or young person and the court.

**2.16.18. How would you characterize the tone of the dialogue and the general attitude of the hearing? Must the child answer strictly to the questions or is he/she allowed to freely speak about what has happened? The interaction is focused on the wrongful act or, additionally, is it open to contextualize the child’s behavior, his/her family condition, educational process, social experiences, and to express some aspects of his/her subjectivity? What promotes such dialogue, what hampers it, in your opinion?**

The New Zealand Youth Court operates with a solution-focused approach, focused both on the child or young person taking accountability for the offending and addressing the underlying causes of that offending. The process is designed to contextualise the child or young person's behaviour within their unique environment that has led to the offending behaviour. Common driving factors include exposure to family harm, early onset alcohol and drug dependence, neurodiversity, mental health difficulties, and being out of school. The Youth Court endeavours to remove the barriers to participation in court proceedings. As discussed above, the Youth Court hearing room is set up to engender the child or young person to participate and share their views during the hearing, with the support of their lawyer and family nearby, the judge sitting at the same level as the child or young person, and the courtroom closed to the public. Toning down the formalities of the court ritual and emphasising the use of plain language in the courtroom, including by the judge, are key measures adopted in New Zealand to ensure the child or young person understands the proceedings and is enabled to meaningfully participate in the hearing. We aim to have consistency of judge so relationships can be fostered and conversation enhanced, however this is not always achieved in practice. The ability to have a communication assistant support the child or young person for the duration of the hearing has been a significant advancement in addressing the major challenges to engagement faced by children and young people with communication difficulties, who make up the majority of the Youth Court cohort in New Zealand.

Despite these measures, in reality many children and young people are hesitant to engage in extensive dialogue in court, which is an inherently strange, unfamiliar and often frightening environment for a young person. The New Zealand Youth Court process accordingly involves several stages for engagement between the child or young person, their family and professionals outside of the courtroom. As discussed above, the FGC process intentionally occurs out of court to enable the child or young person and their family to speak freely with professionals to formulate decisions, plans and recommendations to respond to the child or young person's offending. Other out of court processes include engagement between the child or young person and lay advocates, cultural report writers, psychologists, social workers, and youth forensic nurses.

**2.16.19. Is it an occasion for the Judge to strictly give the opportunity for each party to speak, according to the rules, in order to take a decision, or a moment that**



**enable some kind of less formal interaction with the child with some kind of feedback on the pros and cons of his/her behavior as part of a negotiation of plea-bargaining, restorative justice or other alternative to the trial?**

As discussed above, most Youth Court hearings involve the Judge managing discussion with and between the child or young person and the various professionals in the courtroom. Each judge will have a unique approach to managing the discussion in the courtroom. The process will typically involve a combination of less formal interaction with the child or young person with feedback on the positives and negatives of their behaviour (such as their completion or lack thereof of their FGC plan), as well as inviting the youth advocate, prosecutor and other professionals to speak on the matter for the judge to decide at the hearing.

**2.16.20. Is the Judge or any other professional allowed to make any recommendation on how the child should behave?**

As part of the above interaction, the judge (or other professional in the courtroom where appropriate) may make recommendations on how the child or young person should behave. For example, the judge may make recommendations on improving the child or young person's compliance with the FGC plan or bail conditions or behaviour in a youth justice residence.

**2.16.21. Does the child have, during the hearing, the same legal and procedural guarantees and safeguards as an adult? What are the differences?**

The legal and procedural guarantees and safeguards contained in the New Zealand Bill of Rights Act 1990 and common law principles apply equally to children and young people in the Youth Court and adults in the criminal courts. This includes, for example, the right to consult and instruct a lawyer without cost, the presumption of innocence, the right to present a defence at trial in front of an independent judge or jury, the right to be tried without undue delay, the right to examine and cross-examine witnesses, and the right to appeal. The New Zealand Bill of Rights Act also guarantees the right of children to be dealt with in a manner that takes account of their age.

The OTA accordingly strengthens the safeguards provided to adults, such as the right to be tried without undue delay taking into account children and young people's different perception of time. As explained above, defended hearings in the Youth Court follow the same general rules and procedure as adult criminal trials to ensure children and young

people enjoy the same fair trial rights as adults. Accommodations are made to assist a child or young person's understanding of and participation in the defended hearing, such as an emphasis on using plain language and taking frequent breaks to assist their attention levels.

**2.16.22. What special protections are available to prevent trauma to the child (because of the nature of a hearing) which are not available in regular criminal court for adults?**

The special protections afforded to children and young people in the Youth Court which are not available in regular criminal courts for adults are outlined in several of the answers above – including closed hearings, automatic identity suppression, toned down formalities and plain language, family involvement throughout the proceedings, an emphasis on diversion throughout the youth justice process, professional support such as lay advocates and communication assistants, and required legal representation by a barrister, solicitor or specially-appointed youth advocate.

**3. Generic questions concerning the improvement of Youth Courts**

**3.1. In your country, do the judges, prosecutors and defense attorneys benefit from specific initial and continue training on children's rights in juvenile justice and specifically on child hearing in this setting?**

Judges receive initial training on children and young people's rights under the OTA and international law when they are designated as Youth Court judges. Youth Court judges receive continuing training on youth justice matters on an annual basis.

Youth advocates are defence lawyers who are specially appointed to represent children and young people in the Youth Court. The OTA provides that youth advocates must be suitably qualified to represent children and young people by reason of their personality, cultural background, training and experience. The New Zealand Law Society offers training and education programmes at a local, regional and national level for appointed and aspiring youth advocates.



Police and Crown prosecutors in the Youth Court are trained on the law applying to children and young people under the OTA.

**3.2. Anything else you would like to add on this topic?**

The collaborative approach which is the hallmark of the Youth Court jurisdiction in New Zealand extends to opportunities across the youth justice sector which allows all stakeholders to come together to share and expand their knowledge, e.g. seminars and conferences. At a local level stakeholders' meetings are held on a regular basis and typically involve systemic issues being brought to the table for resolution, and emerging themes brought to the attention of everyone. At a national level the Principal Youth Court Judge has an Advisory Group of senior Youth Court Judges who meet regularly to discuss the pressing issues for the Youth Court and ways in which those can be addressed.

**3.3. Any reform proposals in progress on any of the above issues?**

Not at this point.

**3.4. Any suggestions for improvement from your side?**

One key focus area for improvement is ensuring that all written documents produced in the Youth Court, such as the summons form below and bail forms, use child-friendly language. Another area for improvement is updating the Manual which sets out the different procedures for dealing with child offenders in the Family Court and the Youth Court as discussed in answers 1.1 and 1.7.

**Appendix 1: Summons to Defendant**

**Summons to Defendant****Defendant Copy**

ss 28-29 Criminal Procedure Act 2011

**To**

Name: [First Name, Middle Name, Last Name] of [Multiple address lines]  
OR Organisation Name]

Driver licence no:

Vers:

PRN:

**Charge details**

The charge against you is that

[on / on or about / between / on diverse dates] [date]

at [location]

you [short description of each charge – if more than one, list one per line]

**First appearance hearing**

YOU MUST APPEAR

at the [District / Youth] Court sitting at: [Location]

on

at

[am/pm]

**Issued by**

Signed: KED223 Kirsten Evans

Senior Sergeant

Date:

Failing to attend at Court may result in a warrant to arrest being issued.

It is important that you read all of this document carefully, including the back of this page.



## Appearing in court

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If you are charged with an offence that is not punishable by imprisonment, you may be entitled to enter a guilty plea without having to come to court. Contact your local court for more information.

When you do appear in court, the judicial officer or registrar will make a decision whether you are held in custody, on bail, or free to go (at large) until you have to come back to court.

If you do not come to court when you are meant to, a warrant for your arrest may be issued.

If you are receiving a benefit and a warrant to arrest is issued, your benefit may be reduced or stopped until the warrant is cleared. If this occurs, your benefit will not be paid in full until the warrant is cleared – it will not be backdated.

## Availability of free legal advice

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### Community law centres

Your local community law centre can give initial legal advice free of charge. More information is available from the community law centre website.

### Duty lawyers

On the day you have to come to court, you can ask to see a duty lawyer. Duty lawyers are at court and can give free legal advice to people who have been charged with an offence.

### Legal aid

If you want a lawyer to act for you, but you think you cannot afford one, you may apply for criminal legal aid. Ask the duty lawyer, your nearest community law centre, or legal aid office how to apply. Information on legal aid is also available from the legal services website.

## Diversion

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The prosecutor who filed charges against you may operate a diversion scheme. You can ask the prosecutor whether they operate a diversion scheme and whether you will be offered diversion.

## Prosecution disclosure duties

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Before, when, or soon after you first appear in court, the prosecution must give you:

- a copy of the charging document; and
- a summary of facts (what the prosecution says happened); and
- a summary of your right to ask for further information; and
- the maximum penalty for the offence (and minimum penalty, if applicable); and
- a list of any previous convictions that the prosecutor knows you have.



## **Appendix 2: Information Pamphlet**

# Youth Court/Te Kōti Taiohi o Aotearoa

## Information about the court for young people

The Youth Court deals with criminal offending by children and young people aged 12 to 17 years old that's too serious to be dealt with by the Police in the community.

### Community-based diversion process

Most young people who get in trouble with the law don't go to court; 70% to 80% of the time, young people are dealt with by Police in the community. This could mean getting a Police warning or being referred to Police Youth Aid for what's called "Alternative Action".

Alternative Action means the young person, their family and the Police decide on a plan to deal with the offending. An Alternative Action plan can include things like:

- paying for damage caused
- doing community work
- going to counselling
- writing an apology letter
- agreeing to attend school every day, and
- doing an assignment about the effects of their offending.

Young people dealt with by Police don't get a criminal record or conviction but Police keep information about the young person in case they reoffend.

### Family group conference

A family group conference happens in more serious circumstances where the Police can't deal with the offending in the community.

A family group conference is a meeting for a child or young person, their family or whānau and the victim. The police and a youth advocate (a lawyer for the child or young person) also come to the conference.

The conference gets everyone together to talk about what the child or young person did, how it can be put right and what can be done to stop reoffending.

Sometimes a conference will happen **before** the Police decide whether to charge a young person with a crime (if they charge the young person, this means the young

person has to go to court). The conference will help the Police to decide what should happen.

Most of the time, the conference happens **after** the Police have charged the young person. This means the young person will first go to court for their first appearance (their first time in court), and the family group conference will happen soon afterwards. By law, the conference has to happen very soon after the young person has gone to court.

Before the conference, a youth justice coordinator will contact everyone who needs to attend to explain what it's about and to arrange a time and place for the conference.

During the conference, a plan is made for the child or young person. If the young person was charged before or after the family group conference, they'll need to go back to a Youth Court Judge to approve the plan.

Once the plan is approved, the Judge will give the child or young person enough time to complete the plan. They'll then arrange for the young person to return to court to make sure it has been carried out.

### Who's in the court room?

**Youth Court judges** are specialist District Court judges chosen for their training, experience and understanding in dealing with children and young people. They oversee the court case and make the decisions.

The **prosecutor** presents the case against the child or young person. At Youth Court, the prosecutor is usually from the Police.

A **youth advocate** is a lawyer (appointed by the court) that represents the child or young person and helps them with their case in court.

The **child or young person** attends court and may be asked some questions by the Judge. The child or young person will be helped by their youth advocate, who stands next to them in court.



A **lay advocate** supports the child or young person in court. They are not lawyers and are appointed by the court. They make sure the court knows about all relevant cultural matters, and look after the interests of the child or young person's family if they're not already represented.

An **Oranga Tamariki - Ministry for Children social worker** may also give extra support throughout the family group conference process, assess needs and make sure the family group conference plan is completed.

The **Oranga Tamariki - Ministry for Children youth justice coordinator** manages the family group conference process. They will contact the family, whānau, victim or anyone that may contribute at the family group conference, run the conference and record the outcome.

**Family and whānau** are encouraged to go to Youth Court hearings to support their child or young person.

There may also be other specialist officers such as a Police youth aid officer, an education officer and a probation officer.

### Who else can go to the Youth Court?

Victims can go to court and speak at the hearing.

The media can go to court but they must ask the judge's permission before publishing anything. They're not allowed to report any details that could identify a child or young person, their family, school or the victim.

Youth Courts are closed to the public.

### At Youth Court

Young people who go to the Youth Court have what is called a hearing. This is where the young person goes into the Court and the Judge hears their case. The young person must have a lawyer with them at their hearing. The Court will appoint a specialist youth lawyer called a Youth Advocate for free. However, the young person can also choose to pay for their own lawyer if they want to.

The Youth Advocate will contact the young person and their family/whānau before the hearing to talk about it and what to expect.

The Court may appoint a Lay Advocate to support the young person and their whānau/family in Court. Lay

Advocates are people with mana or standing in the young person's community. They make sure the Court understands any cultural matters to do with the case as well as representing the family's views.

### What happens in the court room?

Youth Court hearings are less formal than an adult court - for example the judge will call the young person by their first name and the court room is usually arranged in a way that encourages people to talk.

Because the public can't be inside the Youth Court, the young person and their family/whānau only come into the court room when their name is called for the hearing.

When their hearing starts, the young person will be asked by the judge whether or not they deny what the Police says they did.

### What sort of decisions can a Youth Court judge make?

The judge can make a wide range of decisions including ordering the child or young person to:

- complete a family group conference plan
- return or give up property
- pay money to the victim or pay a fine
- be disqualified from driving
- do community work
- do a parenting education, drug, alcohol or mentoring programme
- be supervised with various conditions, including electronic monitoring of a curfew and judicial monitoring, either in the community or a residential facility.

In some cases, where the offending is very serious, the judge might decide the child or young person's case should be transferred to the District Court for sentencing.

The judge may also order the parent or guardian of a child or young person to undertake a parenting education programme.

In some circumstances, a child or young person can appeal decisions made by the Youth Court. This should be discussed with a youth advocate.

[youthcourt.govt.nz](http://youthcourt.govt.nz)