# Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill

Government Bill

As reported from the Social Services Committee

## Commentary

### Recommendation

The Social Services Committee has examined the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill and recommends by majority that it be passed with the amendments shown.

### Introduction

The Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill is intended to strengthen the response to serious offending by children and young people, and targets a group of approximately 1,000 serious and persistent young offenders.

The bill as introduced would amend the Children, Young Persons, and Their Families Act 1989 to extend the Youth Court's jurisdiction to cover the most serious 12- and 13-year-old offenders, and

to allow a wider range of sentencing orders to be made for dealing with offenders. These orders would be tailored to the individual offender, and could include a requirement to attend a rehabilitative or education programme, such as a parenting programme, mentoring programme, or alcohol and drug rehabilitation programme.

Most of our recommended amendments do not propose substantive changes to the bill, but address some significant omissions, improve its clarity, and clarify its intent.

## Wider Youth Court jurisdiction

While we are aware of some concern about the transfer of some child offenders to the jurisdiction of the Youth Court, the majority of us consider that this proposal is sound. Indeed, we note that our youth justice system, with its specified principles and objectives, diversionary nature, and family-based decision-making processes, would still ensure that 12- and 13-year-olds would be dealt with appropriately to their age. As the bill would allow for a dual pathway for serious child offenders, a Youth Court judge might decide that it would be more appropriate for the child to be dealt with as a care and protection matter by the Family Court. We were advised that a very small number (less than 100) of 12- and 13-year-olds would be dealt with by the Youth Court, because the bill defines serious offending in a way that captures only the most serious child offenders, and it includes important protections for them; for example, 12- and 13-year-olds would be protected from spending time in a youth justice residence where possible, and the *doli incapax*[1] rule would still apply to children appearing before the Youth Court.

However, we believe that some small amendments to the provisions regarding the Youth Court's jurisdiction over child offenders are necessary to improve their clarity and reflect the policy intent. We therefore recommend amendments to clauses 10, 11, 13, and 39 (discussed further below).

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[1] The *doli incapax* rule requires the Court to be satisfied that the offender knew that the act or omission constituting the offence was wrong and unlawful. It applies in care and protection proceedings (section 198 of the principal Act), and before a child aged 10 to 13 years old can be convicted (section 22 of the Crimes Act 1961).

## Previous offending

We recommend that new section 272(1B) (inserted by clause 10) be deleted so that offending admitted at a family group conference would not of itself expose young offenders to the Youth Court's jurisdiction. We were concerned that new section 272(1B), which would allow a child offender to be defined as a previous offender if he or she admits at a family group conference to offending, might allow a family group conference to be used to expose 12- and 13-year-olds to the Youth Court's jurisdiction for future offending. We consider that this is undesirable, and that using admissions of offending from an informal setting such as a family group conference, to potentially expose a child to Youth Court jurisdiction for any subsequent offending would be unjustified for a number of reasons, including the potential absence of legal representation for the child at a family group conference. We consider it preferable to rely only on offending proven before the Family Court or other Court to initiate involvement with the Youth Court.

To correct an omission, we also recommend inserting new section 272(1A) and (1B) to specify that a "previous offender" also includes cases where a 12- or 13-year-old has previously been convicted of murder or manslaughter in the High Court, or convicted in the High Court or a District Court for offences punishable by a maximum sentence of 14 years in prison. While such cases are extremely rare, we believe there should nonetheless be provision for them should they come before the courts. We also recommend that a child be defined as a previous offender where an offence punishable by a maximum sentence of 14 years or more imprisonment is proved against him or her before a Youth Court.

We also recommend that wherever the bill refers to a maximum penalty available that is or includes imprisonment for at least 10 or 14 years, this should be amended to also include reference to imprisonment for life. This would recognise that some serious offences do not specify a maximum penalty as a determinate number of years of imprisonment, and clarify which offenders are intended to be captured by the bill.

## Transfer of charges to other courts

While we note that election of trial by jury by a child, and thereby trial in a District or High Court, is very rare, we consider that this process requires clarification to reflect more accurately the policy intent in this area. In particular, the intention is that 12- and 13-year-olds could not be sent to these courts for trial except for murder or manslaughter, although a 12- or 13-year-old might elect trial by jury for any offence for which an adult may or must be tried by jury. It is also intended that, until a 12- or 13-year-old was committed for trial, the child could still elect to be tried in the Youth Court. For this reason, we recommend that new section 272A in clause 11 be amended to clarify that sections 273 to 276 (concerning transfer of charges from the Youth Court prior to a trial) would not apply to children aged 12 or 13 years who were charged with a serious offence other than murder or manslaughter, but that the following provisions would apply:

- Regardless of whether the offence was a purely indictable offence, the Youth Court would be required to hear and determine the information unless the child elected trial by jury or the Court discharged the information under section 282 of the principal Act.
- Certain provisions of the Summary Proceedings Act 1957 would apply to allow a child to elect trial by jury.
- If the child elected trial by jury, he or she could withdraw this choice at any time before committal without leave of the Court.
- Where the Court was required to or intended to commit the child for trial, or where the child wished to plead guilty at any time before committal to trial, the Court would be required (until it committed the child for trial) to continue to allow the child the opportunity to forego jury trial and elect to have the information heard and determined, or be dealt with, by the Youth Court.

We also recommend that clause 11 be amended to make it clear that section 282(1) would apply as if it empowered the Youth Court to discharge an information charging the child with an offence even if it were a purely indictable offence.

### Judicial powers

New section 280A in clause 13 of the bill would allow the Youth Court to refer a charge back to the Police or other informant if the Court believed that the matter should be dealt with by the Family Court. In its present form, the section could be interpreted to allow an informant to consider and report back to the Youth Court that continuation of the Youth Court proceedings would serve the public interest better than an application for a declaration (contrary to the Youth Court judge's decision), and would therefore allow Youth Court proceedings to resume. We recommend several amendments to new subsections (2) and (4) to make it clear that an informant could not recommend that the case continue to proceed in the Youth Court in response to a referral, as this is not the intent of the referral power. We consider that these amendments would ensure new section 280A and the role of the informant were clearer and conformed more closely to the policy intent, which is to allow an informant the opportunity to begin child offender proceedings in the Family Court or deal with the matter in a different way.

### Detaining child offenders in Police custody

We are aware that the way in which the bill is currently drafted could allow children to be detained in Police custody for an indefinite period. We note that currently there are limited circumstances in which a child who is arrested, or ordered by the Youth Court to be in the custody of the chief executive, may be detained in Police custody for no more than 24 hours after arrest, and we believe these powers are sufficient; it should not be desirable or necessary to detain children in the custody of the Police for open-ended periods. We therefore consider that the bill should clarify this matter, and recommend that new clause 5A be inserted to specify that a child cannot be detained in Police custody by a Youth Court order pending a hearing or determination of charges against them. Additionally, we recommend inserting new clause 5B to provide that a child or young person can be detained in the custody of the chief executive or an iwi social service pending the determination of an application for breach (or variation or cancellation) of orders.

For further clarification, we also recommend that clause 11 be amended to make it clear that sections 236, 238(1)(e), 239(2), 242(2), and 365(1) of the principal Act, relating to Police custody

and placements in a residence, do not apply to a child as if the child were a young person.

### Placing child offenders in residences

We recommend that clause 39 be amended to specify that it relates to placements of 12- and 13-year-olds in youth justice residences only. Clause 39 amends section 365 of the principal Act, and requires the chief executive to consider, before placing a young offender aged 12 or 13 years in a residence, all reasonably practicable less restrictive alternatives. The intent of the clause is, where possible, to protect 12- and 13-year-olds from placement in youth justice residences, where they may be exposed to harmful influences or victimised by older offenders. We believe that this amendment would remove any ambiguity about the purpose of the clause.

We also recommend that clause 39 be amended to provide a definition of a youth justice residence. We recommend further amendments to this clause and to new clause 39A to make it clear that sections 365 and 366 of the principal Act (dealing with the closing of residences and transfer of residents) are subject to section 312, which requires the Court's approval for placement in a residence, and transfer between residences, of a young person in the chief executive's custody under a supervision with residence order.

## Breaching, varying, and cancelling orders

As introduced, new sections 296A to 296C in clause 21 detail standard provisions for breach and variation or cancellation of orders. We believe that these provisions require substantial amendment to improve their clarity and allow more immediate responses should an offender fail to comply with curfew provisions of an intensive supervision order, or if a specified order needed to be varied or suspended. We consider that these amendments would also reduce delays in bringing proceedings for curfew breaches serious enough to warrant the arrest of the offender.

We therefore recommend that these provisions be amended to empower the Youth Court to issue arrest warrants for young offenders who fail to appear on breach applications (including offenders who cannot be served with the application or located); suspend the operation of an order at any time after an application under new sections

296B or 296C of the principal Act is made and before the disposal of that application; and make bail or custody orders under section 238 of the principal Act when an order is suspended.

For the same reasons, we also recommend inserting new section 296HA to empower the Police or a social worker to detain a young offender for the purpose of returning them to the applicable curfew address; and to empower the Police to arrest without a warrant a young offender who is in breach of curfew.

We recommend one further amendment to new section 296A in relation to breaches of parenting orders. We consider that all consequences of failing to comply with Court orders should be found in the same place; so new section 296A should specify that young offenders who fail to comply with parenting education programme orders will be subject to the breach procedures laid out in new section 296B. In addition, we consider that it should also be specified that section 296B, and other provisions allowing the Youth Court to substitute orders in response to breaches of orders, are subject to new section 289, which requires the Court to impose the least restrictive outcome adequate to the circumstances.

Lastly, we recommend two consequential amendments as a result of the proposed new warrant powers, inserting new clauses 39B and 39C.

### Parenting education programme orders

We believe that the phrase "every child or young person affected by the order" in new section 297A(4) of clause 22 as introduced does not communicate clearly enough the children or young people whose care or protection is to be considered by a family group conference that may be directed under this provision. We therefore recommend amending new section 297A to convey more clearly the policy intent of clause 22. This new section should specify that when a parent of an offender is subject to a parenting order, the young offender may be included in the referral for a family group conference. We also recommend making it clear that in situations where a young offender is ordered to attend a parenting programme and fails to comply, that although he or she would be subject to the breach conditions proposed in new section 296B, a family group conference referral could still be made in respect of the child of whom the offender is a par-

ent, guardian, or caregiver. Additionally, we recommend that section 296C in clause 21 be amended to make it clear that provisions relating to varying and cancelling orders apply also to Court-ordered parenting education programme orders for the parents or guardians of a young person.

### Intensive supervision orders

The bill as introduced sets out a hierarchy of orders that a Youth Court could make, ranging from the least restrictive (group 1) to the most restrictive (group 7). However, it does not mention intensive supervision orders, as such an order cannot be made when a charge against a young person is proved before a Youth Court. We recommend inserting new section 289(2) in clause 19 to clarify that new section 289 (which specifies that the Court should impose the least restrictive outcome adequate to the circumstances) applies when the Court considers all the orders (including intensive supervision orders) it may make in response to a breach of a judicially monitored condition of a supervision or a supervision with activity order, and that intensive supervision orders be treated as a group 5 response. This would make an intensive supervision order equivalent to a supervision with activity order in the hierarchy.

## Residential programmes

Section 396 of the principal Act allows the chief executive to approve bodies or organisations as child and family support services, iwi social services, or cultural social services. These bodies or organisations are approved only if the chief executive believes that, among other things, they are appropriate to act as custodians or guardians of children or young people. As this bill proposes that young offenders may be required to attend a programme or activity under a supervision with residence order, we believe to protect young offenders in this situation adequately the bill should require clearly that all residential programmes must be approved under section 396 of the principal Act. We therefore recommend that new section 290A be inserted into clause 20 to specify this, and to clarify what is meant by a residential component of a programme or activity. Additionally, we recommend that clauses 25 and 28, regarding supervision with

residence or activity orders, be consequentially amended to be subject to new section 290A.

We also recommend that new clause 39D be inserted to amend section 447 of the principal Act to allow regulations to be made to regulate the administration, management, and control of any residential component of a specified programme or activity that involves a residential component.

### Longer supervision with residence orders

We recommend minor amendments to clarify provisions relating to longer supervision with residence orders. Firstly, as military-style camps are likely to be an option for supervision with residence orders, we believe that the definition of "residence" should be widened to accommodate temporary camp arrangements; we therefore recommend inserting new clause 4A to make this amendment to the definition.

Secondly, we are aware that, as introduced, clause 28 of the bill could be interpreted to mean that a supervision order may be made only in cases in which the Court imposes a condition requiring a young person to take part in a programme or activity. As this is not the intention of the clause, we recommend amending new section 311(2) in clause 28 and inserting new section 311(2A), to make it very clear that making a supervision order following a supervision with residence order would not be limited to cases where a Court imposed further conditions.

In addition, we recommend amending new section 289 in clause 20 (Court to impose least restrictive outcome adequate to the circumstances) so that it would apply to any order imposed by a Court under section 316 (which would empower the Court to cancel a supervision with residence order if the young person absconded). We also recommend inserting new clause 29A to make the necessary amendment to section 316.

## Judicial monitoring

We consider that clause 26, which sets out provisions relating to judicial monitoring, requires a slight amendment to capture better the range of young offenders to which it may apply. Currently, new section 308A in this clause states that young offenders who have previously been subject to a supervision or more restrictive order from

the Youth Court, or have violated the conditions of a supervision or supervision with activity order, may be subject to judicial monitoring on some or all of the conditions of their supervision order. We recommend that new section 308A be amended to allow judicial monitoring of young offenders previously convicted in the District Court or the High Court and consequently sentenced to a community-based sentence, home detention, or imprisonment. While extending judicial monitoring in this way is likely to affect only a very small number of offenders, we consider that they should nonetheless be included.

## Intensive supervision orders

We recommend a small amendment to clause 21 regarding intensive supervision orders. The bill as introduced would not give the Youth Court the power to impose on such an order a condition that an offender undertake a programme or activity. We consider that intensive supervision orders should be balanced with the power to require offenders to participate in beneficial activities and programmes. We therefore recommend that new section 296F of this clause be amended by inserting new subsections (e) and (f), which would empower the Youth Court to make an intensive supervision order subject to the offender taking part in any specified activity or programme.

We also consider that new section 296I(4)(b) in the same clause, dealing with reviewing and revising intensive supervision orders, requires amendment to clarify its meaning and ensure its wording is consistent with similar provisions in the principal Act. We therefore recommend amending this new section to require the Court to specify the inadequacies it requires to be addressed when it asks for a revised plan. For the same reasons, we recommend that new section 319A(5)(b) in clause 30, regarding reviews of orders for periods of at least 8 months, be similarly amended.

## Technical amendments

We recommend a number of minor technical amendments to the bill.

New section 283(o) in clause 15 would allow a young person over the age of 14 years against whom the charge proved was a purely indictable offence to be convicted by the Youth Court and transferred to the District Court for sentence or decision. We recommend amending new section 283(o)(ii) in clause 15, and consequentially, new sec-

tion 285(6)(c)(ii) in clause 17, to clarify that they would not apply to young persons who had reached the age of 15 years. This would remove any ambiguity regarding the applicability of these sections to young people aged over 15 years.

Clause 12 amends section 274, and is intended to ensure that Part 5A of the Summary Proceedings Act 1957 applies to committal proceedings in the Youth Court (clause 43 is, therefore, unnecessary). However, Part 5A of that Act allows Registrars to conduct a standard committal, although it was not intended for Registrars to do so in the Youth Court. We therefore recommend that section 274 of clause 12 be amended to make it explicit that Registrars are not empowered to conduct standard committal proceedings in the Youth Court.

We also recommend incorporating two provisions from the Children, Young Persons, and Their Families Amendment Bill (No 6) amending sections 277 and 282 of the principal Act, which the previous committee supported during the last Parliament.[2] These amendments relate to applicable provisions where a young person is charged jointly with an adult (and require that in cases where a young person is charged jointly with an adult for purely indictable offences, and in cases tried by a jury, the trial must be heard in a Youth Court), and would empower the Court to make certain orders before it discharges an information. Given the non-controversial but significant nature of these procedural provisions, we believe that they should be brought forward into this bill. These provisions are detailed in new clauses 12C and 14A respectively.

We also recommend that all references in this bill to "preliminary hearings" be replaced with "committal proceedings". This would reflect the new committal procedure introduced by the Summary Proceedings Amendment Act 2008.

## Other issues

### Military-style activity camps

We are aware of concern that the proposed military-style activity camps envisioned by the Government as part of the new range of

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[2] At the time of our consideration of this bill, the Children, Young Persons, and Their Families (No 6) Amendment Bill was awaiting its second reading in Parliament.

Youth Court orders under the bill would be inappropriate for the rehabilitation of young offenders, especially given the lack of detail available when the bill was sent to us for consideration earlier in the year about what such camps could entail. However, Government members are assured that these camps will not be similar to the corrective training “boot camps” that previously existed in New Zealand. Instead, they will be focused on improving life skills and literacy and numeracy, are likely to involve outdoor adventure or wilderness training, and in some cases may offer alcohol and drug rehabilitation. We understand that they would also involve some aspects of military training, similar to the Limited Service Volunteer scheme that is currently operating in Canterbury, and that some camps would potentially be located on New Zealand Defence Force bases around the country.

### Further reform

We are concerned that current Family Court processes for dealing with child offenders are too slow in many situations, and are aware that many stakeholders, such as the Police and social workers, share this concern. While we were informed that a judge could impose “adjournment conditions”, such as a curfew, a prohibition from certain geographic areas, and short-dated family group conferences, on an offender following his or her first Youth Court appearance, such powers are not available in the Family Court. In order to allay concerns about the speed of some Family Court processes, we believe that the Family Court should have these powers; however we understand that empowering the Family Court with these abilities is outside the scope of this particular bill.

Additionally, we also considered whether we could improve Family Court powers to deal better with a number of matters, but particularly how the Court deals with recidivist but low-level offenders, early intervention, and better streamlining its processes; but such issues are also outside the scope of this bill. However, we understand that the Government also holds concerns about this area of child offending, and may look to introduce some legislation in the near future to improve child offending processes in the Family Court.

## New Zealand Labour Party minority view

### Introduction

New Zealand currently has a Youth Justice system that is both unique and internationally respected. Labour is concerned that some of the changes proposed in this bill will undermine our existing system, and are based on little to no evidence. We also believe this bill was a wasted opportunity. As many submitters noted, there are parts of the existing youth justice system that are overly complex, existing programmes that appear successful but are under-resourced, and there is very little information on the final outcomes for many of the young people moving through the system. These are issues which could have been addressed as part of this bill and debate, but were not.

### Child offenders

This bill enables proceedings to be commenced in the Youth Court against children aged 12 or 13 years who are alleged to have committed specified offences. The Chief Judge of the Youth Court, Judge Andrew Becroft, regarded this provision as "constituting the most fundamental change to the system since its inception in 1989."

Labour believes that very little justification was provided for such a substantive change. We maintain that the Family Court is best placed to deal with child offenders and associated care and protection issues. Judge Becroft also highlighted this point, stating that "there is a real concern by Youth Court judges that the Court will be assuming responsibility for the worst child offenders, who by definition will have the most serious care and protection issues, yet the Youth Court will not have the necessary statutory 'ammunition' to deal with the inevitable care and protection issues at the root of offending."

During the select committee process Labour suggested that if there was a genuine concern around the lack of "tools" available to Family Court judges to deal with the most severe child offenders, the Government should look at granting a greater range of powers to the Family Court rather than transferring children to the Youth Court. We were told that this suggestion was outside of the scope of this bill.

Labour will speak strongly against the Government's proposal to extend the Youth Court's jurisdiction to 12- and 13-year-olds, and will introduce a Supplementary Order Paper to remove these provisions from the bill.

### Young offenders

New Zealand's justice system currently moves young people (in most circumstances) into the adult system at the age of 17. As a result New Zealand is currently not meeting its obligations as a signatory to the United Nations Convention on the Rights of the Child. This issue was raised by a number of submitters, alongside evidence as to why young people up to the age of 18 should be treated as youth for the purposes of the criminal justice system. The Children, Young Persons, and Their Families Amendment Bill (No 6), which is currently on the Order Paper, sought to rectify this situation and these relevant provisions should have been picked up in this bill.

### New sentencing options

Labour supports in principle a greater range of sentencing options being made available to the Youth Court; however, we note that concerns were raised during the select committee process around the effectiveness of mentoring when compulsion is required, and the importance of mentors being well trained, supported, and available to young people beyond the length of the order. Labour will closely monitor the effectiveness of these orders.

Labour is also concerned that currently eighty percent of young people who appear before the Youth Court were under the influence of drugs or alcohol at the time of their offending. While drug and alcohol orders may be beneficial, they are an ambulance at the bottom of the cliff. The Government must ensure that enough emphasis is placed on early intervention through existing community-based drug and alcohol programmes—some of which have closed in recent months due to a lack of funding.

Labour is also disappointed that this bill has not been used to introduce a much needed, intensive, and tailored order for young sexual offenders. We also believe more should have been done to address the mental health issues that many young offenders present with.

### The Children, Young Persons, and Their Families Amendment Bill (No. 6)

Labour is disappointed that this bill was not used as a vehicle to introduce aspects of the Children, Young Persons, and Their Families Amendment Bill (No 6). The CYFs No. 6 Bill was introduced by

Labour in the last term, has been before select committee, and contained many procedural amendments that were non-controversial, including provisions to increase the role of victims in the youth justice system. Labour plans to introduce amendments to this effect as a Supplementary Order Paper during the final stages of this bill.

### Military-style training

Despite there being a number of substantive changes to the youth justice system contained in this bill, the most controversial element has been its association with military-style training camps, or "boot camps".

Labour believes the Government has been disingenuous in the way it has presented its youth justice initiatives. Publicly the Government described "Fresh Start" as army-run boot camps. But in the face of intense opposition by those working in the sector, the Government tried to paint a quite different picture of these residential programmes.

Boot camps have been tried unsuccessfully both in New Zealand and abroad. The last occasion something similar was established in New Zealand 92 percent of participants reoffended at the completion of the programme. The majority of submitters pointed to this kind of evidence to challenge the Government's proposals.

Labour notes that the pilot for these so-called military-run camps has already begun without the need for legislation, and little heed has been paid to the almost unanimous view of submitters. Many of these submitters were themselves already operating successful programmes for the same target group of offenders, but on a limited scale and with very little funding.

If indeed these camps are different to those that have failed in the past, then we await the evidence to demonstrate that. In the meantime, an opportunity has been lost to inject support into existing programmes that have an evidence base to demonstrate they work, and would not have been a costly populist experiment.

## Green Party minority view

The Green Party does not accept the concept behind this bill that will treat children as adults for serious offending under the criminal law. In our view, the age of criminal responsibility must be no lower than 14 years. In addition the bill is contrary to the UN Convention on

the Rights of the Child, which cannot be justified. This Parliament should not pass any legislation that erodes the rights of children as this bill does.

Young children who commit serious offences must be managed in the context of their family and their age. All the available evidence shows that the younger the offender, the more likely the success of his or her rehabilitation if the intervention is family-based and immediate. The best opportunity for that kind of systemic family intervention is in the Family Court rather than the Youth Court. There is no justification for why children as young as this should be dealt with in more formal, criminal proceedings. Indeed the contrary is true, that by intervening with a family-based approach rather than a criminal law approach, the outcomes for the children, the family and society as a whole are greatly improved.

This bill deals with the issue of children and serious offending the wrong way around. The bill would only apply to a very limited number of children per year and provides no support for the family, additional resources to the Family or Youth Court, no commitment to ongoing work with the child to prevent both future offending and the circumstances that gave rise to the offending in the first place. This bill will increase the risk of recidivism by children who offend, and fail to create safer environments for those children or the community as a whole.

Finally, we reiterate the risk that this bill will disproportionately affect Māori children, creating even greater levels of disparity and facilitating prejudice in the community. Research shows that young Māori offenders are more likely to come to the attention of the police (and therefore the courts) even though the offending is less serious than their Pakeha counterparts. This bill will exacerbate these racist filters in the legal system, leading to a disproportionate impact on young Māori.

In order to create a safer community, the Government must invest in our families and at-risk families as early as possible through education and health services. Where offending by children occurs, immediate support must be wrapped around that family and that child to deal with the causes of that offending. This bill provides no solution to the risks that young children at risk of more serious offending face; indeed, it re-creates for children the failed policies that apply

to adults and therefore makes our communities less safe for children overall.

# Appendix

## Committee process

The Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill was referred to us on 18 February 2009. The closing date for submissions was 17 April 2009. We received and considered 51 submissions from interested groups and individuals. We heard 23 submissions.

We received advice from the Ministry of Social Development, the Ministry of Police, and the Ministry of Justice.

## Committee membership

Katrina Shanks (Chairperson from 24 June 2009)

Chester Borrows

Sue Bradford (until 28 October 2009)

Jo Goodhew (until 24 June 2009) (Chairperson until 24 June 2009)

Hon Annette King

Tim Macindoe

Todd McClay

Hekia Parata (from 24 June 2009)

Dr Rajen Prasad

Su'a William Sio

Jacinda Ardern was a replacement member for this item of business.

Metiria Turei attended the latter stages of this item of business.

# Key to symbols used in reprinted bill

## As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

*Hon Paula Bennett*

# Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill

Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act **2009**.

**2 Commencement**

(1) This Act comes into force on **1 October 2010**, unless it is earlier brought into force on a date appointed by the Governor-General by Order in Council. 5

(2) One or more Orders in Council may be made bringing different provisions into force on different dates before **1 October 2010**. 10

**3 Principal Act amended**

This Act amends the Children, Young Persons, and Their Families Act 1989.

## Part 1
## Amendments to principal Act 15

**4 Purpose of Part**

(1) The purpose of this Part is to amend the principal Act to—

(a) enable proceedings to be commenced under the Summary Proceedings Act 1957 against—

(i) a child aged 12 or 13 years who is alleged to have committed an offence (other than murder or manslaughter) for which the maximum penalty 20

available is or includes imprisonment for life or for at least 14 years; or

(ii) a child aged 12 or 13 years who is alleged to have committed an offence (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for at least 10 years but less than 14 years and who ~~has previously committed an offence (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for at least 10 years~~ is a previous offender; and

(b) require to be brought before a Youth Court to be dealt with in accordance with the principal Act, and provide certain protections for, a child of that kind against whom proceedings under the Summary Proceedings Act 1957 have been commenced for an offence of that kind; and

(c) strengthen and expand the orders available to a Youth Court sentencing or otherwise dealing with a child or young person against whom a charge is proved before it, including by ensuring that measures for dealing with offending address the causes underlying the offending.

(2) A child aged 12 or 13 years is a previous offender for the purposes of **subsection (1)(a)(ii)** if, in accordance with **section 272(1A) or (1B)** of the principal Act (as substituted by **section 10(2)** of this Act), he or she has been—

(a) proved before a Family Court to have committed an offence for which the maximum penalty available is or includes imprisonment for life or for at least 10 years; or

(b) convicted by the High Court of murder or manslaughter; or

(c) convicted by a District Court or the High Court, as a result of an election of jury trial made in a Youth Court, of 1 or more offences (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or

(d) proved before a Youth Court to have committed 1 or more offences (other than murder or manslaughter) for

which the maximum penalty available is or includes imprisonment for life or for at least 14 years.

**4A Interpretation**

Paragraph (a) of the definition of **residence** in section 2(1) is amended by inserting "or place" after "or other premises". 5

**5 Principles**

Section 208 is amended by inserting the following paragraph after paragraph (f):

"(ff) the principle that any measures for dealing with offending by a child or young person should so far as it is practicable to do so address the causes underlying the child's or young person's offending:". 10

**5A Custody of child or young person pending hearing**

(1) Section 238(1)(e) is amended by omitting "the child or young person" and substituting "the young person (but cannot under this paragraph order that the child)". 15

(2) Section 239(2) is consequentially amended by omitting "child or" in each place where it appears.

(3) Section 242(2) is consequentially amended by omitting "child or" in each place where it appears. 20

**5B Restrictions on power of Court to order child or young person to be detained in custody**

Section 239(1) is amended by inserting ", or if the order is being considered under **section 296CA(3)**, pending the determination of the breach application or variation or cancellation application," after "pending the determination of the charge". 25

**6 New section 255 substituted**

Section 255 is repealed and the following section substituted:

**"255 Youth justice co-ordinator must ensure that relevant information and advice made available to family group conference** 30

"(1) Every youth justice co-ordinator who convenes a family group conference must take all reasonable steps to ensure that all in-

formation and advice the co-ordinator considers is required by the conference to carry out its functions (including information and advice relating to the health and education needs of every child or young person in respect of whom the conference is convened) is made available to the conference. 5

“(2) If it is appropriate for any person to attend a family group conference for the purpose of conveying to that conference any information or advice required by that conference to carry out its functions, that person may attend that conference for that purpose, but may otherwise attend the conference only with 10 the agreement of the conference.

“(3) **Subsection (2)** is subject to section 251.”

**7 Functions of family group conference**

Section 258 is amended by inserting the following paragraph after paragraph (b): 15

“(ba) if the conference is convened under section 247(b) or (d) in relation to an offence alleged to have been committed by a child, to consider,—

“(i) if the conference is convened under section 247(b), whether the public interest requires that 20 criminal proceedings should be instituted against the child in accordance with **section 272(1)(b) or (c)** or, if the conference is convened under section 247(d), whether the public interest requires that criminal proceedings instituted against the 25 child should be continued in accordance with Part 4; and

“(ii) whether the child is in need of care or protection on the ground specified in section 14(1)(e) and, if so, whether the public interest requires that 30 instead of criminal proceedings being instituted or continued that the matter should be dealt with under Part 2, whether by way of an application for a declaration under section 67 on that ground made in respect of that child, or in some other 35 way:”.

**8 New section 259A inserted**

The following section is inserted after section 259:

**"259A Family group conference must consider attendance at parenting education, mentoring, and alcohol or drug rehabilitation programmes** 5

Every family group conference convened under this Part must, in complying with **section 208(ff)**, consider—

"(a) whether the young person should be required to attend all or any of the following:

"(i) a parenting education programme: 10

"(ii) a mentoring programme:

"(iii) an alcohol or drug rehabilitation programme; and

"(b) whether a parent or guardian or other person having the care of the young person should be required to attend a parenting education programme." 15

**9 Family group conference may make decisions, recommendations, and plans relating to care or protection of child or young person**

Section 261(1) is amended by omitting ", with the prior agreement of a care and protection co-ordinator," and substituting ", 20 if it has received information and advice on care or protection matters under **section 255(1)**,".

**10 Jurisdiction of Youth Court**

(1) The heading to section 272 is amended by omitting "**Court**" and substituting "**Courts and children's liability to be prosecuted for criminal offences**". 25

(2) Section 272 is amended by repealing subsections (1) and (2) and substituting the following subsections:

"(1) The following are the only 3 situations in which proceedings may lawfully be commenced under the Summary Proceedings 30 Act 1957 against a child alleged to have committed an offence:

"(a) where the child is of or over the age of 10 years, and the offence is murder or manslaughter:

"(b) where the child is aged 12 or 13 years, and the offence is one (other than murder or manslaughter) for which 35 the maximum penalty available is or includes imprisonment for <u>life or for </u>at least 14 years:

“(c) where the child is aged 12 or 13 years and is a previous offender under **subsection (1A) or (1B)**, and the offence is one (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for at least 10 years but less than 14 years.

~~“(1A) A child is a previous offender under this subsection for the purposes of **subsection (1)(c)** if—~~

~~“(a) the child has been declared by a Family Court under section 67 to be in need of care or protection on the ground that the child has committed 1 or more earlier offences (the **earlier offences**) the number, nature, or magnitude of which is such as to give serious concern for the wellbeing of the child; and~~

~~“(b) for 1 or more of the earlier offences the maximum penalty available is or includes imprisonment for at least 10 years.~~

~~“(1B) A child is a previous offender under this subsection for the purposes of **subsection (1)(c)** if—~~

~~“(a) the child has been considered by a family group conference convened under Part 4 to be in need of care or protection on the ground that the child has committed 1 or more earlier offences (the **earlier offences**) the number, nature, or magnitude of which is such as to give serious concern for the wellbeing of the child; and~~

~~“(b) the child at that family group conference admitted, after having exercised his or her rights to legal advice and representation, that he or she committed each of the earlier offences; and~~

~~“(c) for 1 or more of the earlier offences the maximum penalty available is or includes imprisonment for at least 10 years.~~

“(1A) A child is a previous offender under this subsection for the purposes of **subsection (1)(c)** if—

“(a) an application is made to a Family Court under section 67 for a declaration that the child is in need of care or protection on the ground that the child has committed an offence or offences the number, nature, or magnitude of which is such as to give serious concern for the wellbeing of the child; and

"(b) on that application the Family Court, having found 1 or more of the offences alleged in the application (the **earlier offences**) to be proved in accordance with section 198(1)(a) and (b), either—

"(i) declares the child to be in need of care or protection on that ground; or 5

"(ii) indicates clearly that, but for section 73 (on the child's need for care or protection being able to be met by other means), it would have made a declaration that the child is in need of care or 10 protection on that ground; and

"(c) for 1 or more of the earlier offences the maximum penalty available is or includes imprisonment for life or for at least 10 years.

"(1B) A child is a previous offender under this subsection for the 15 purposes of **subsection (1)(c)** if—

"(a) the child has been convicted by the High Court of murder or manslaughter; or

"(b) the child, as a result of an election of jury trial made by the child in a Youth Court in accordance with section 66 20 of the Summary Proceedings Act 1957 (as applied by **section 272A**), has been convicted by a District Court or the High Court of 1 or more offences (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for life or for at 25 least 14 years; or

"(c) the child has been charged with, and a Youth Court has found proved before it the charge against the child for, 1 or more offences (other than murder or manslaughter) for which the maximum penalty available is or includes 30 imprisonment for life or for at least 14 years."

"(2) If a child of or over the age of 10 years is charged with murder or manslaughter,—

"(a) the ~~preliminary hearing of~~ committal process for the charge must, subject to section 274, take place before 35 a Youth Court; and

"(b) the provisions of this Act (other than sections 236, 238(1)(e), 239(2), 242(2), 275 ~~and~~, 276, and 365(1)),

and of any regulations made under this Act, apply accordingly as if that child were a young person.

"(2A) If a child aged 12 or 13 years is charged with an offence specified in **subsection (1)(b) or (c)** and proceedings under the Summary Proceedings Act 1957 are commenced against the child for the offence,—

"(a) the child must be brought before a Youth Court to be dealt with in accordance with the provisions of this Act; and

"(b) the provisions of this Act, and of any regulations made under this Act, apply accordingly as if that child were a young person but subject to the modifications in **section 272A**."

### 11 New section 272A inserted

The following section is inserted after section 272:

**"272A Modifications and procedure for child aged 12 or 13 years charged with offence in section 272(1)(b) or (c)**

"(1) The modifications referred to in **section 272(2A)(b)** in respect of a child aged 12 or 13 years charged with an offence specified in **section 272(1)(b) or (c)** are as follows:

~~"(a) if the offence with which the child is charged is a purely indictable offence, then despite section 274, a Youth Court must, subject to section 272, hear and determine the information unless—~~

~~"(i) the child under this subparagraph elects trial by jury in accordance with section 66 of the Summary Proceedings Act 1957 (which applies for the purposes of this subparagraph with all necessary modifications), in which case section 274(2)(a) and (b) apply; or~~

~~"(ii) the Court discharges the information under section 282 (which for the purposes of this subparagraph applies to the information as if it were an information charging the child with an indictable offence (other than a purely indictable offence)):~~

~~"(b) sections 275(1) and 276(1) apply as if, where the Youth Court is of the opinion that the evidence is sufficient to put the child on trial for the offence or (as the case re-~~

~~quires) the child indicates that the child desires to plead guilty to the offence, the Youth Court must (rather than may) give the child an opportunity—~~

~~"(i) to forgo the right to trial by jury and elect to have the information heard and determined in a Youth Court by a Youth Court Judge; or (as the case requires)~~

~~"(ii) to forgo the right to trial by jury and elect to be dealt with in a Youth Court by a Youth Court Judge:~~

"(a) sections 236, 238(1)(e), 239(2), 242(2), and 365(1) (on Police custody and placements in residences) do not, despite those sections referring to a young person and **section 272(2A)(b)**, extend or apply to the child as if the child were a young person; and

"(b) sections 273 to 276 (which specify procedures for dealing with offences) do not apply, and **subsections (2) to (6)** apply instead; and

"(ba) section 282(1) applies as if it empowers a Youth Court to discharge an information charging the child with the offence even if it is a purely indictable offence; and

"(c) a reference in this Act or regulations under it to the charge against the child being proved before a Youth Court must be treated as including a requirement that the Youth Court is satisfied that the child knew either—

"(i) that the act or omission constituting the offence charged was wrong; or

"(ii) that it was contrary to law.

"(2) The Youth Court must hear and determine the information charging the child with the offence (whether it is a summary offence or an indictable offence (including a purely indictable offence)) unless—

"(a) the child under this section elects trial by jury and is committed for trial; or

"(b) the Court discharges the information under section 282.

"(3) The child may under this section elect to be tried by a jury for the offence (whether it is a summary offence or an indictable offence (including a purely indictable offence)) and, if the child does so, the child's election must be made and dealt

with in accordance with section 66 of the Summary Proceedings Act 1957, which applies with all necessary modifications.

"(4) If the child elects trial by jury, the committal proceedings (including the standard committal, or committal hearing (if required)) must take place in accordance with Part 5 or 5A of the Summary Proceedings Act 1957, except that—

"(a) the committal proceedings must take place in a Youth Court which, for that purpose,—

"(i) has all the powers of a District Court; and

"(ii) must be presided over by a Youth Court Judge; and

"(b) sections 329 and 438 of this Act, and not section 138 of the Criminal Justice Act 1985, apply in respect of the committal proceedings.

"(5) If the child elects trial by jury, the child may, without leave of the Court, withdraw the election at any time before the child is committed for trial and, if the child does so, the proceedings continue in the Youth Court as if the child had not made the election.

"(6) If the child elects trial by jury and the Youth Court is required or proposes to commit the child for trial for the offence, or the child elects trial by jury and at any time before committal for trial indicates to the Court that the child wishes to plead guilty to the offence,—

"(a) the Youth Court must give the child the opportunity of forgoing the right to trial by jury and of electing to have the information heard and determined in a Youth Court by a Youth Court Judge; and

"(b) if the child accepts that opportunity and elects to have the information heard and determined in a Youth Court by a Youth Court Judge, the Youth Court has the jurisdiction to hear and determine the information and otherwise deal with the child in accordance with this Act as if he or she were a young person (but subject to **subsection (1)(a), (ba), and (c)**)."

**12 Manner of dealing with purely indictable offences or where person elects jury trial**

~~Section 274(2)(a) is amended by omitting "Part 5" and substituting "Parts 5 and 5A".~~

(1) Section 274 is amended by repealing subsection (2) and substituting the following subsections: 5

"(2) The committal proceedings (including the standard committal, or committal hearing (if required)) must take place in accordance with Part 5 or 5A of the Summary Proceedings Act 1957, except that— 10

"(a) the committal proceedings must take place in a Youth Court which, for that purpose,—

"(i) has all the powers of a District Court; and

"(ii) must be presided over by a Youth Court Judge or, in the absence of a Youth Court Judge, by a 15 District Court Judge or by 2 or more Justices or by one or more Community Magistrates; and

"(b) sections 329 and 438 of this Act, and not section 138 of the Criminal Justice Act 1985, apply in respect of the committal proceedings. 20

"(3) This section is subject to sections 275 and 276."

(2) The following are consequentially amended by repealing the items relating to section 274(2)(a) of the Children, Young Persons, and their Families Act 1989:

(a) the Schedule of the District Courts Amendment Act 25 1998:

(b) Schedule 3 of the Summary Proceedings Amendment Act (No 2) 2008.

**12A Young person may forego right to jury trial and elect to have proceedings determined by Youth Court** 30

The heading to section 275 is amended by omitting "**forego**" and substituting "**forgo**".

**12B Young person may plead guilty and elect to be dealt with by Youth Court**

Section 276(1) is amended by omitting "foregoing " and substituting "forgoing". 35

**12C Provisions applicable where young person charged jointly with person who is not a young person**

Section 277 is amended by adding the following subsection:

"(6) This section is subject to sections **272A** and 274."

**13 New section 280A inserted**

The following section is inserted after section 280:

**"280A Court may refer case to informant to be dealt with as child offending care or protection proceeding under Part 2**

"(1) This section applies to proceedings under this Part in respect of a child aged 12 or 13 years who is charged with an offence of the kind specified in **section 272(1)(b) or (c)** if, at any stage of the proceedings before an order is made under section 282 or **283**, it appears to the Court that—

"(a) the child may be in need of care or protection on the ground specified in section 14(1)(e); and

"(b) the making of an application for a declaration under section 67 on that ground in respect of the child and the offence would serve the public interest better than the continuation of the proceedings under this Part.

"(2) The Court—

"(a) may refer the matter to the informant in the proceedings to consider whether ~~the making of~~ to make an application for a declaration under section 67 on that ground in respect of the child and the offence ~~would serve the public interest better than the continuation of the proceedings under this Part~~ or to deal with the matter in some other way; and

"(b) must, on making a referral under **paragraph (a)**, adjourn the proceedings pending the outcome of that referral.

"(3) If the proceedings are in respect of an information laid against the child for an offence, and are adjourned under **subsection (2)**,—

"(a) the Court may, at any time, discharge the information under section 282; but

"(b) if not discharged earlier, the information is deemed to be discharged if, and when, an application for a declaration

under section 67 on that ground in respect of the child and the offence first comes before a Family Court Judge.

“(4) An informant to whom a matter in respect of a child is referred under **subsection (2)** must—

“(a) consider whether ~~the making of~~ to make an application for a declaration under section 67 on that ground in respect of the child and offence ~~would serve the public interest better than the continuation of the proceedings under this Part, and, if so, make such an application~~ or to deal with the matter in some other way; and

“(b) give effect to his or her decision under **paragraph (a)**, and ensure the Youth Court is advised promptly of the outcome of the referral.

“(5) Before referring a matter to the informant in the proceedings under **subsection (2)**, the Court may—

“(a) direct a youth justice co-ordinator to convene a family group conference for the purpose of considering whether the making of an application for a declaration under section 67 on that ground in respect of the child and the offence would serve the public interest better than the continuation of the proceedings under this Part (in which case sections 250 to 259 apply to the conference with all necessary modifications); and

“(b) adjourn the proceedings until the conference has been held.

“(6) Nothing in this section limits or affects the application to a child, in accordance with **section 272(2A)**, of section 280, insofar as the child may be in need of care or protection on a ground other than that specified in section 14(1)(e).”

**14 Court not to make orders unless family group conference held**

Section 281(2) is amended by repealing paragraphs (a) to (d) and substituting the following paragraphs:

“(a) if a young person appears before the Court on a summons issued under section 295, exercise any of the powers conferred on it by section 295(2); or

“(b) if the Court under **section 296B** cancels a mentoring programme order, an alcohol or drug rehabilitation pro-

gramme order, a supervision order, a community work order, a supervision with activity order, or an intensive supervision order under **section 296D**, substitute any other order in place of that order; or

“(c) if the Court under section 316 cancels a supervision with residence order, substitute any other order in place of that order,—”. 5

**14A Power of Court to discharge information**

Section 282 is amended by repealing subsection (3) and substituting the following subsections: 10

“(3) If it is satisfied that the charge against the young person is proved, the Court may make an order under any of the provisions of **paragraphs (e) to (j) of section 283**—

“(a) when it discharges the information; or

“(b) at any earlier time after it completes the inquiry referred to in subsection (1). 15

“(4) The Court must not exercise the power in **subsection (3)(b)** unless section 281(1) is complied with.”

**15 New section 283 substituted**

Section 283 is repealed and the following section substituted: 20

**“283 Hierarchy of Court’s responses if charge against young person proved**

A Youth Court before which a charge against a young person is proved may, subject to sections 284 to 290, make 1 or more of the following responses (grouped in levels of equal restrictiveness, the groups ranging from least restrictive to most restrictive): 25

“*Group 1 responses*

“(a) discharge the young person from the proceedings without further order or penalty: 30

“(b) admonish the young person:

“*Group 2 responses*

“(c) order that the young person come before the Court, if called upon within 12 months after the order is made, so that the Court may take further action under this section: 35

“(d) impose a fine that could have been imposed by a District Court if the young person were an adult and had been convicted of the offence following a summary hearing in a District Court, and exercise any of the powers conferred on a District Court by sections 81 and 83 of the Summary Proceedings Act 1957 (other than the power to impose a period of imprisonment in default of payment):

“(e) order the young person or, in the case of a young person who is under the age of 16 years, any parent or guardian of the young person to pay a sum towards the cost of the prosecution:

“(f) order the young person or, in the case of a young person who is under the age of 16 years, any parent or guardian of the young person to pay to the person who suffered the emotional harm or the loss of, or damage to, property such sum as it thinks fit by way of reparation if the Court is satisfied that any person (other than the young person) suffered, through or by means of the offence, either or both of the following:

“(i) emotional harm:

“(ii) loss of, or damage to, property:

“(g) order the young person or, in the case of a young person who is under the age of 16 years, a parent or guardian of the young person to make restitution in accordance with section 404 of the Crimes Act 1961:

“(h) make an order for the forfeiture of property to the Crown if the forfeiture of that property would have been obligatory or could have been ordered under an enactment applicable to the offence if the young person were an adult and had been convicted of that offence by a District Court:

“(i) make an order under section 293A (which relates to disqualification from driving):

“(j) make an order that could have been made by a court other than a Youth Court under section 128 or 129 of the Sentencing Act 2002 (which relate to confiscation of motor vehicles) if the young person were an adult and had been convicted of the offence in a court other than a

Youth Court; and if the Court makes such an order, the following sections of that Act apply accordingly:
"(i) sections 127 and 130 to 142:
"(ii) section 128 or 129 (as the case may be):

"*Group 3 responses* 5

"(ja) make an order requiring the young person (if he or she is, or is soon to be, a parent or guardian or other person having the care of a child), or a parent or guardian or other person having the care of the young person, or both, to attend, in a manner specified by the Court, and 10 for a specified period of not more than 6 months, a specified parenting education programme:

"(jb) make an order requiring the young person to attend, in a manner specified by the Court, and for a specified period of not more than 12 months, a specified mentoring pro- 15 gramme:

"(jc) make an order requiring the young person to attend, in a manner specified by the Court, and for a specified period of not more than 12 months, a specified alcohol or drug rehabilitation programme: 20

"*Group 4 responses*

"(k) make an order placing the young person under the supervision of the chief executive, or any person or organisation specified in the order, for a period not exceeding 6 months: 25

"(l) make a community work order under section 298:

"*Group 5 response*

"(m) make a supervision with activity order under **section 307**:

"*Group 6 response* 30

"(n) make a supervision with residence order under **section 311**:

"*Group 7 response*

"(o) enter a conviction and order that the young person be brought before a District Court for sentence or decision, 35 in which case the Sentencing Act 2002 applies accordingly if—

"(i) the young person is of or over the age of 15 years; or

"(ii) the young person is of or over the age of 14 years and under the age of 15 years and the charge proved against him or her is a charge in respect of a purely indictable offence. 5

"Compare: 1974 No 72 s 36(1); 1977 No 126 s 10; 1983 No 129 s 8(1)".

**16 Factors to be taken into account on sentencing**

Section 284(1) is amended by adding the following paragraph:

"(i) the causes underlying the young person's offending, and the measures available for addressing those causes, so far as it is practicable to do so." 10

**17 Restrictions on power of Court to make certain orders under section 283**

Section 285 is amended by repealing subsection (6) and substituting the following subsection: 15

"(6) The Court may make an order under **section 283(o)** (that the young person be brought before a District Court for sentence or decision) despite **section 289** if,—

"(a) but for subsection (5)(b) or (c), the Court would have made an order under any of the following: 20

"(i) **section 283(l)** (community work order under section 298):

"(ii) **section 283(m)** (supervision with activity order under **section 307**): 25

"(iii) **section 283(n)** (supervision with residence order under **section 311**); and

"(b) the Court considers that it would not be appropriate to make an order under any of **paragraphs (a) to (k) of section 283** as an alternative to such an order; and 30

"(c) the order is made in respect of a young person—

"(i) who is of or over the age of 15 years; or

"(ii) who is of or over the age of 14 years and under the age of 15 years and against whom the charge proved is a purely indictable offence." 35

**18 Person or organisation not to be required to supervise young person without consent**

Section 286 is amended by inserting “, or under **section 296D**,” after “section 283”.

**19 New section 286A inserted**

The following section is inserted after section 286:

**“286A Parenting education, mentoring, or alcohol or drug rehabilitation programme order: general requirement for provider to have first agreed to provide programme concerned, and making of order subject to conditions**

“(1) This section applies to an order if it is—

“(a) a parenting education programme order under **section 283(ja)**; or

“(b) a mentoring programme order under **section 283(jb)**; or

“(c) an alcohol or drug rehabilitation programme order under **section 283(jc)**.

“(2) If the programme to be specified in an order to which this section applies is to be provided other than by the chief executive, that order may be made only if the provider of that programme has first agreed to provide that programme to the person to be required by the order to attend that programme.

“(3) An order to which this section applies may be made subject to any conditions the Court thinks fit and specifies in the order.”

**20 New sections 288 to ~~290~~ 290A substituted**

Sections 288 to 290 are repealed and the following sections substituted:

**“288 Order in respect of parent or guardian or other person having care not to be made without first informing of proposal to make order and giving opportunity to make representations**

No order may be made under **section 283** in respect of a parent or guardian or other person having the care of a young person unless that parent or guardian or other person has been—

“(a) informed by the Court of the proposal to make the order; and

“(b) given an opportunity to make representations to the Court.

“Compare: 1974 No 72 s 36(5)

**“289 Court must impose least restrictive outcome adequate in circumstances** 5

“(1) A Court making a response or a permitted combination of responses under **section 283** (including, without limitation, under section 297(a) or (b)) must—

“(a) assess the restrictiveness of that outcome in accordance with the hierarchy set out in **section 283**; and 10

“(b) not impose that outcome unless satisfied that a less restrictive outcome would, in the circumstances and having regard to the principles in section 208 and factors in section 284, be clearly inadequate.

“(2) **Subsection (1)(a) and (b)** also apply to any outcome imposed by a Court that on an application under **section 296B(1)**— 15

“(a) declares that a young person has without reasonable excuse failed to comply satisfactorily with a requirement of an order to which **section 296B** applies; and 20

“(b) substitutes or otherwise makes under **section 296B(3)(a), (b), or (c)**—

“(i) any other order under **section 283**; or

“(ii) an intensive supervision order under **section 296D** (which for the purposes of **subsection (1)(a)** must be treated as if it were a group 5 response under **section 283**); or 25

“(iii) any order it is empowered to make under **section 296C**.

“(3) **Subsection (1)(a) and (b)** also apply to any outcome imposed by a Court that on an application under section 316(1)— 30

“(a) cancels a supervision with residence order made under **section 311** in respect of a young person who the Court is satisfied has, at any time while that order is in force, absconded from the custody of the chief executive; and 35

"(b) substitutes under section 316(2)(b) any other order under **section 283** that it could have made when the supervision with residence order was made.

"Compare: 2002 No 9 s 8(g)

**"290 Judge must record in writing reasons for supervision with residence or transfer order** 5

A Judge exercising the jurisdiction of the Court to make an order under **section 283(n) or (o)** must when making the order record in writing his or her reasons for doing so.

**"290A Restriction on who may provide residential component of specified programme or activity** 10

"(1) This section applies to a Court considering whether to impose under **section 307(1)(b) or 311(2)** a condition that a young person undertake a specified programme or activity as a condition of— 15

"(a) a supervision with activity order under **section 307**; or

"(b) a supervision with residence order under **section 311**.

"(2) The Court must not impose the condition unless the residential component of the specified programme or activity is to be provided by— 20

"(a) the chief executive; or

"(b) a body or organisation approved under section 396.

"(3) The **residential component** of a specified programme or activity means any component of the programme or activity that cannot be undertaken satisfactorily by a young person unless he or she resides— 25

"(a) where that component is provided; and

"(b) with, and under the control of, the provider."

**21 New headings and sections 296 to 296I substituted**

Section 296 is repealed and the following headings and sections are substituted: 30

**"296 Expiry of orders**

"(1) This section applies to an order that is—

"(a) an order under **section 283(c)** (to come before the Court, if called upon within 12 months after the order 35

is made, so that the Court may take further action under **section 283**); or

“(b) a parenting education programme order under **section 283(ja)**; or

“(c) a mentoring programme order under **section 283(jb)**; or 5

“(d) an alcohol or drug rehabilitation programme order under **section 283(jc)**; or

“(e) an order under **section 283(k)** (placing the young person under the supervision of the chief executive or a 10 specified person or organisation); or

“(f) an order under **section 283(l)** (a community work order under section 298); or

“(g) an order under **section 283(m)** (a supervision with activity order under **section 307**); or 15

“(h) an order under **section 283(n)** (a supervision with residence order under **section 311**); or

“(i) an intensive supervision order under **section 296D**.

“(2) If it is made after the commencement of this section, and does not expire sooner, the order expires when the young person in 20 respect of whom it is made attains the age of 18 years.

“(3) If it is made before the commencement of this section, and does not expire sooner, the order expires 6 months after the young person in respect of whom it is made attains the age of 17 years. 25

*“Failure to comply with, and variation and cancellation of, specified orders*

### “296A Orders to which sections 296B and 296C apply

“(1) **Sections 296B and 296C** apply to the following orders:

“(aa) a parenting education programme order under **section 283(ja)** requiring the young person in respect of 30 whom the order is made to attend a specified parenting education programme:

“(a) a mentoring programme order under **section 283(jb)**:

“(b) an alcohol or drug rehabilitation programme order under **section 283(jc)**: 35

“(c) a supervision order under **section 283(k)**:

“(d) a community work order under section 298:

“(e) a supervision with activity order under **section 307**:

“(f) an intensive supervision order under **section 296D**.

“(2) **Section 296C** also applies to a parenting education programme order under **section 283(ja)** requiring the parent or guardian or other person having the care of the young person in respect of whom the order is made to attend a specified parenting education programme.

### “296B Failure to comply

“(1) If the young person has without reasonable excuse failed to comply satisfactorily with a term, condition, or other requirement of an order specified in **section 296A(1)**, an application for a declaration to that effect may be made by—

“(a) a social worker, if the order is one under **section 283(ja), (jb), or (jc)**; or

“(b) the chief executive or, as the case may be, the person or organisation specified in the order under whose supervision the young person has been placed, if the order is one under **section 283(k), 296D, or 307**; or

“(ba) a constable, if the order is one under **section 296D** and the failure to comply is with a curfew condition imposed under **section 296G(1)**; or

“(c) a social worker or the person or organisation supervising the order, if the order is one under section 298.

“(2) Every application under **subsection (1)** must be served on the young person to whom the order relates and on any parent or guardian or other person having the care of the young person.

“(3) If satisfied on an application under **subsection (1)** that the young person has without reasonable excuse failed to comply satisfactorily with a term, condition, or other requirement of an order to which this section applies, the Court may make a declaration to that effect and may—

“(a) cancel the order, and in substitution for that order make any other order under **section 283** the Court thinks fit; or

“(b) make any order the Court is empowered to make under **section 296C** as if an application had been made under that section in relation to that order; or

"(c) if the condition concerned is one the young person's compliance with which is the subject of judicial monitoring in accordance with a direction under **section 308A**, cancel the order, and in substitution for that order make an intensive supervision order under **section 296D**. 5

"(4) On or after making or varying under **subsection (3)(a) or (b)** a supervision order or supervision with activity order in respect of a young person, the Court may in accordance with **section 308A(1)(a)** direct that the young person's compliance with 1 or more specified conditions of the order is to be monitored judicially. 10

"(5) **Subsection (3)** is subject to **section 289(2)** (on the Court imposing the least restrictive outcome that is adequate in the circumstances). 15

### "296BA Warrant to have young person arrested and brought before Court

"(1) This section applies if a person has made an application under **section 296B(1)** for a declaration that a young person has without reasonable excuse failed to comply satisfactorily with a requirement of an order specified in **section 296A(1)** (a **breach application**). 20

"(2) The person may make, to the Court dealing with the breach application, an application in writing and on oath for a warrant to arrest, and to bring before that Court, the young person to whom the breach application relates if the person believes on reasonable grounds that— 25

"(a) all reasonable efforts have been made to locate or, as the case requires, to serve the breach application on, that young person, but those efforts have failed; or 30

"(b) the breach application has been served on that young person, but he or she has failed to appear before that Court.

"(3) The Court dealing with the breach application may, on an application under **subsection (2)**, issue a warrant to arrest, and to bring before that Court, the young person to whom the breach application relates if satisfied that— 35

"(a) all reasonable efforts have been made to locate or, as the case requires, to serve the breach application on, that young person, but those efforts have failed; or

"(b) the breach application has been served on that young person, but he or she has failed to appear before that Court. 5

"Compare: 2002 No 9 s 72(3)

**"296BB Execution of warrant under section 296BA**

"(1) A warrant under **section 296BA** may be executed only by a constable. 10

"(2) The warrant must be directed to a constable by name or generally to every constable, but in either case may be executed by any constable.

"(3) For the purpose of executing the warrant, the constable executing it may at any time enter on to any premises, by force if necessary, if he or she has reasonable grounds to believe that the young person against whom it is issued is on those premises. 15

"(4) Sections 445A (person executing warrant to produce evidence of authority and identity) and 445B (authority to use facsimile copy of warrant) apply to the warrant. 20

"Compare: 2000 No 38 s 36(2)–(4); 2002 No 9 s 72(4)

**"296C Variation and cancellation**

"(1) If an order specified in **section 296A(1) or (2)** has been made in respect of a young person or in respect of a parent or guardian or other person having the care of a young person, 25 on an application for the purpose the Court may—

"(a) cancel the order:

"(b) suspend the order for a period specified by the Court:

"(c) suspend a condition of the order for a period specified by the Court: 30

"(d) impose a further condition of the order:

"(e) vary a condition of the order.

"(2) The application may be made only by 1 or more of the following persons or organisations:

"(a) the young person, or any parent or guardian or other 35 person having the care of the young person:

"(b) the provider of the parenting education, mentoring, or alcohol or drug rehabilitation programme concerned, or a social worker, if the order is one under **section 283(ja), (jb), or (jc)**:

"(c) the chief executive or, as the case may be, the person or organisation specified in the order under whose supervision the young person has been placed, if the order is one under **section 283(k), 296D, or 307**: 5

"(d) a social worker or the person or organisation supervising the order, if the order is one under section 298. 10

"(3) The application must be served on—

"(a) every other person or organisation specified in **subsection (2)** who could also have made the application; and

"(b) the barrister or solicitor or youth advocate representing the young person. 15

"(4) Every person or organisation on whom the application must be served is entitled to appear and be heard at the hearing of the application.

"(5) If the application is for the suspension or variation of a condition of an order under **section 283(k), 296D, or 307**, the 20 chief executive (if the order places the young person under the supervision of the chief executive), or (in any other case) the person or organisation specified in the order, may suspend the condition until the application has been heard and disposed of by the Court. 25

**"296CA Interim suspension order**

"(1) This section applies if a person has made—

"(a) an application under **section 296B(1)** for a declaration that a young person has without reasonable excuse failed to comply satisfactorily with a requirement of an 30 order specified in **section 296A(1)** (a **breach application**); or

"(b) an application under **section 296C** in respect of an order specified in **section 296A(1) or (2)** (a **variation or cancellation application**). 35

"(2) The Court to which the breach application or, as the case may be, the variation or cancellation application has been made may, on the application of a party to the proceedings or the

youth advocate, or of its own motion, make an interim suspension order that suspends the operation of the order specified in **section 296A(1) or (2)** until the Court disposes of the breach application or, as the case may be, the variation or cancellation application. 5

"(3) If the Court makes an interim suspension order under this section in respect of an order specified in **section 296A(1) or (2)**, the Court may also exercise, in respect of the young person, any power conferred by section 238(1)(a) to (e).

"*Intensive supervision orders* 10

**"296D Intensive supervision order in response to young person's non-compliance with judicially monitored condition of supervision or supervision with activity order**

In the situation specified in **section 296B(3)(c)**, the Court may make an order placing the young person under the supervision of the chief executive or such person or organisation as may be specified in the order for a period specified in the order and of not more than 12 months. 15

**"296E Duty of chief executive to provide for supervision under intensive supervision order** 20

If, under **section 296D**, a young person is placed under the supervision of the chief executive, the chief executive must from time to time appoint a social worker to supervise the young person on behalf of the chief executive.

**"296F Conditions of intensive supervision order** 25

An order under **section 296D** is subject to—

"(a) the conditions specified in section 305 (except paragraph (b)):

"(b) a condition that the young person must report to the social worker or person or organisation— 30

"(i) at least once each week during the first 3 months of the order, and at least once each month after the first 3 months of the order:

"(ii) as and when the young person is required to do so at other times by the social worker or person or a representative of the organisation:

"(c) any additional conditions under section 306 the Court imposes: 5

"(d) any additional conditions (imposing a curfew, with or without electronic monitoring of compliance with that curfew) the Court imposes under **section 296G**:

"(e) a condition (if the Court under this paragraph imposes one) that the young person attend and remain at, for 10 any weekday, evening, and weekend hours each week and for any number of months the Court thinks fit, any specified centre approved by the department, and take part in any activity required by the person in charge of the centre: 15

"(f) a condition (if the Court under this paragraph imposes one) that the young person undertake any specified programme or activity.

**"296G Additional conditions imposing curfew with or without electronic monitoring of compliance** 20

"(1) On or after making an order under **section 296D**, the Court may impose, and make the order also subject to, a condition (a **curfew condition**) that the young person must, for a duration no longer than the duration of the order (the **curfew duration**), comply with a curfew requiring the young person to remain, 25 for 1 or more specified periods of each day (the **daily curfew period**), at a specified address (the **curfew address**).

"(2) On imposing, and making an order under **section 296D** also subject to, a curfew condition, the Court must specify in that condition the curfew duration, the daily curfew period, and the 30 curfew address.

"(3) Every daily curfew period specified under **subsection (2)** must not be for a period of less than 2 hours, and the daily curfew periods for any week must not be more than 84 hours.

"(4) The young person is not in custody during the daily curfew 35 period; but—

“(a) during the daily curfew period, the young person must not, at any time, leave the curfew address except in the circumstances set out in **subsection (5)**:

“(b) during the curfew duration, the young person must co-operate with the chief executive, and must comply with any lawful direction (for example, one for the purpose of implementing an electronic monitoring condition under **subsection (6)**) given by the chief executive for the purpose of implementing the relevant curfew condition:

“(c) the young person must, when required to do so by the chief executive and for the purpose of implementing an electronic monitoring condition under **subsection (6)**, submit to the electronic monitoring of compliance with the relevant curfew condition, which may require the young person to be connected to electronic monitoring equipment throughout the period of the order under **section 296D** and not just throughout the curfew duration.

“(5) A young person may leave the curfew address during the daily curfew period only—

“(a) to seek urgent medical or dental treatment; or

“(b) to avoid or minimise a serious risk of death or injury to the young person or any other person; or

“(c) with the approval of the chief executive,—

“(i) to seek or engage in employment; or

“(ii) to attend educational, training, or other rehabilitative or reintegrative activities or programmes; or

“(iii) to attend a family group conference or other process relating to the young person’s offending; or

“(iv) to carry out any undertaking, or implement a decision, recommendation, or plan, arising from a family group conference or other process relating to the young person’s offending; or

“(d) with the approval of the chief executive and subject to any conditions imposed by the chief executive, on humanitarian grounds.

“(6) On or after imposing, and making an order under **section 296D** also subject to, a curfew condition, the Court may, if satisfied that other conditions of the order are likely to be insufficient to secure the young person’s compliance with the order, make the order also subject to a condition that the young person must for a specified period not exceeding 6 months submit to electronic monitoring of his or her compliance with the curfew condition. 5

“(7) A Judge exercising the jurisdiction of the Court to impose an electronic monitoring condition under **subsection (6)** must when imposing the condition record in writing his or her reasons for doing so. 10

“Compare: 2002 No 9 ss 69B(3)–(5), 69E(1)(a), (1)(e), (2)

**“296H Electronic monitoring**

“(1) The purposes of an electronic monitoring condition imposed under **section 296G(6)** are to— 15

“(a) deter the young person from breaching the requirement of the relevant curfew condition that the young person remain at the curfew address during the daily curfew period; and 20

“(b) monitor the young person’s compliance with that requirement.

“(2) Information about a young person that is obtained through electronic monitoring may be used only for the purposes referred to in **subsection (1)** and for the following purposes: 25

“(a) to verify compliance with the requirement of the relevant curfew condition that the young person remain at the curfew address during the daily curfew period:

“(b) to detect non-compliance with that requirement:

“(c) to provide evidence of non-compliance with that requirement: 30

“(d) to verify that the young person has not tampered or otherwise interfered with the ability of the electronic monitoring equipment to operate effectively and accurately. 35

“(3) Information may be collected during the whole of the period of the order under **section 296D** but may be used only if it was collected for 1 or more of the purposes set out in this

section and, except for information collected for the purpose in **subsection (2)(d)**, was collected during the curfew duration.

"(4) Any information obtained by electronic monitoring outside the curfew duration must be destroyed as soon as practicable.

"(5) The chief executive may from time to time, either generally or particularly, with the agreement of the Commissioner of Police delegate to that Commissioner all or any of the chief executive's functions or powers under this Act relating to implementation of electronic monitoring conditions imposed under **section 296G(6)**.

"(6) Section 41(3), (5), and (7) of the State Sector Act 1988 apply with all necessary modifications to a delegation under **subsection (5)**; but nothing in this section limits or affects section 41 of that Act or its application to the functions or powers that may be delegated under **subsection (5)**.

"(7) Functions or powers delegated under **subsection (5)** must be regarded as functions or powers of the Commissioner of Police for the purposes of section 17(1) of the Policing Act 2008.

"Compare: 2002 No 9 s 69F

**"296HA Powers to detain and return, and arrest, young person breaching curfew condition**

"(1) A constable or social worker may (using such reasonable force as may be necessary) detain without warrant and return to the curfew address a young person subject to a curfew condition under **section 296G** and found at a place other than the curfew address if the constable or social worker believes on reasonable grounds that the young person has failed to comply with the curfew condition by—

"(a) leaving, or being taken without authority, from the curfew address; or

"(b) refusing or neglecting to return to the curfew address.

"(2) A constable may (using such reasonable force as may be necessary) arrest without warrant a young person subject to a curfew condition under **section 296G** and found at a place other than the curfew address if the constable believes on reasonable grounds that the young person has failed to comply with the curfew condition by—

"(a) leaving, or being taken without authority, from the curfew address; or

"(b) refusing or neglecting to return to the curfew address.

"(3) A young person to whom this section applies does not, by reason only of an act or omission referred to in **subsection (1) or (2)**, commit an offence against section 120 of the Crimes Act 1961.

**"296I Review of intensive supervision order**

"(1) After making an order under **section 296D**, the Court—

"(a) must fix promptly dates (which must be not later than 3 months after the date on which the order is made, and at least once every 3 months after that date, but before the order expires) for review of the plan that was prepared in respect of the order in accordance with section 335 (the **plan**); and

"(b) may direct who is to review the plan (and if it does not make a direction, the person who prepared the plan is deemed to have been directed to review it under this paragraph); and

"(c) may, at any time, and either on its own initiative or on the application of a party to the proceedings or a barrister or solicitor or youth advocate representing the young person, amend a direction made or deemed to be made under **paragraph (b)**, or revoke it and substitute another direction.

"(2) On or before each of the dates fixed under **subsection (1)(a)**, the person who is directed to review the plan must review the plan and furnish to the Court—

"(a) a report setting out the results of the review; and

"(b) a revised plan in respect of the young person.

"(3) The report furnished to the Court under **subsection (2)** must—

"(a) state which of the objectives set out in the plan have been achieved and which of those objectives are yet to be achieved:

"(b) state, in respect of those objectives that are yet to be achieved, what action is required to achieve those objectives:

"(c) recommend, in respect of any order made by the Court under this Part in relation to the young person to whom the plan relates, whether that order should continue in force, or be varied, suspended, or discharged, and whether any condition of that order should be continued in force, or be varied, suspended, or discharged, and the reasons for those recommendations:

"(d) state, in respect of those persons who were required to be given a copy of the plan pursuant to section 191 (as applied by section 339), whether each of those persons agrees with the recommendations contained in the report.

"(4) The Court must consider a report furnished to it pursuant to **subsection (2)** and the accompanying revised plan, and, after giving such persons (if any) as it thinks fit an opportunity to be heard, may do either or both of the following things:

"(a) exercise, in relation to the order (if it remains in force), any of the powers set out in **section 296C** as if an application had been made in relation to the order under that section:

"(b) if the Court considers ~~that~~ the report furnished under **subsection (2)**, or the revised plan, or both, ~~are~~ to be inadequate, direct the person who prepared the report to furnish to the Court a further report, or a further revised plan, or both, ~~with or without indicating~~ ensuring that the direction to that person indicates any specific matter that it requires to be dealt with in that report or plan."

**22 New headings and sections 297A and 297B inserted**

The following headings and sections are inserted after section 297:

"*Parenting education programme orders*

**"297A Written statements of terms, and how Court may respond to failures to comply**

"(1) If an order under **section 283(ja)** is made ~~in respect of~~ requiring a young person who is, or is soon to be, a parent or guardian or other person having the care of a child to attend a parenting education programme, a written statement of the

terms of the order must be supplied to that young person in accordance with **section 340**.

“(2) If an order under **section 283(ja)** is made ~~in respect of~~ requiring a parent or guardian or other person having the care of ~~the~~ a young person to attend a parenting education programme, the Court must as soon as is reasonably practicable cause to be supplied to the parent or guardian or other person a written statement specifying—

“(a) the terms and conditions of the order:

“(b) possible consequences of a failure to comply with the order:

“(c) provisions for variation of the order:

“(d) rights of appeal against the order.

“(3) **Subsection (4)** applies if the Court is at any time satisfied in the light of a report under section 320 or of other information available to it that a person ~~in respect of whom~~ required to attend a parenting education programme by an order under **section 283(ja)** ~~is made~~ has failed to comply with the order.

“(4) The Court may direct a care and protection co-ordinator to convene a family group conference under Part 2 for the purpose of considering matters relating to the care or protection of every child or young person ~~affected by the order (other than any young person in respect of whom the order was made)~~ in the care of the person required by the order under **section 283(ja)** to attend the parenting education programme.

“(5) The care and protection co-ordinator must comply with, and Part 2 applies with all necessary modifications to a conference convened in accordance with, a direction under **subsection (4)**.

*“Alcohol or drug rehabilitation programme orders*

### “297B Nature of programmes, who may consent to medical treatment, and related custody orders

“(1) **Programme**, for the purposes of **section 283(jc)** and this section, means a programme that is or includes all or any of the following (whether residential or non-residential in nature):

“(a) psychiatric, psychological, or similar counselling or therapy:

"(b) a medical, psychiatric, psychological, social, therapeutic, rehabilitative, or reintegrative programme with a focus on alcohol or drug issues.

"(2) No young person may receive or undergo any medical, psychiatric, or psychological examination or treatment that forms part of a programme that the young person is required by an order under **section 283(jc)** to attend unless consent to the young person's receiving or undergoing the examination or treatment has been given by or on behalf of the young person.

"(3) The consent required by **subsection (2)** may be given, in the case of a young person of or over the age of 16 years, by that young person and, in any other case,—

"(a) by a parent or guardian (not being the chief executive) of the young person; or

"(b) if there is no such parent or guardian in New Zealand or no such parent or guardian can be found with reasonable diligence or is capable of giving consent, by a person in New Zealand who has been acting in the place of a parent; or

"(c) if there is no person in New Zealand who has been so acting, or if no such person can be found with reasonable diligence or is capable of giving consent, by a District Court Judge or the chief executive.

"(4) This subsection applies if the Court is satisfied that a programme that a young person is required by an order under **section 283(jc)** to attend is unable to be provided to the young person while he or she lives with the parents or guardians or other persons having the care of the young person.

"(5) If **subsection (4)** applies, the Court may, to enable the programme referred to in **subsection (4)** to be provided to the young person, make an order placing the young person in the custody of the chief executive, an iwi social service, a cultural social service, or the director of a child and family support service.

"(6) The Court must not make an order under **subsection (5)** placing a young person in the custody of a person (other than the chief executive) or organisation unless that person or organisation consents to the making of the order.

“(7) A custody order under **subsection (5)** has the same effect as if the young person had been placed in the custody of the relevant person or organisation under an order under section 101, except that section 365 (which would empower the chief executive to place the young person in a residence established under section 364) does not apply to the young person.” 5

**23 Community work order**

Section 298(1) is amended by omitting “, with the consent of the young person,”.

**24 Sections 299 to 301 repealed** 10

Sections 299 to 301 are repealed.

**25 New section 307 substituted**

Section 307 is repealed and the following section substituted:

**“307 Supervision with activity order**

“(1) If a charge against a young person is proved before a Youth Court, the Court may make an order placing the young person under the supervision of the chief executive, or of any person or organisation specified in the order, for a period not exceeding 6 months, and (subject to **section 290A**) imposing either or both of the following conditions: 15 20

“(a) that the young person attend and remain at, for any weekday, evening, and weekend hours each week and for any number of months the Court thinks fit, any specified centre approved by the department, and take part in any activity required by the person in charge of the centre: 25

“(b) that the young person undertake any specified programme or activity.

“(2) If the Court makes an order under **subsection (1)** in respect of a young person, it may at the same time or before that order expires make an order under **section 283(k)**— 30

“(a) placing that young person under the supervision of the chief executive or such person or organisation as is specified in the order for such period (not exceeding 6 months) as the Court may specify; and 35

"(b) that must come into force on the expiry of the order made under **subsection (1)**.

"(3) This subsection applies if the Court is satisfied that a programme or activity that a young person is required by a condition of an order under **subsection (1)** to take part in or undertake is unable to be provided to the young person while he or she lives with the parents or guardians or other persons having the care of the young person. 5

"(4) If **subsection (3)** applies, the Court may, to enable the programme or activity referred to in **subsection (3)** to be provided to the young person, make an order placing the young person in the custody of the chief executive, an iwi social service, a cultural social service, or the director of a child and family support service. 10

"(5) The Court must not make an order under **subsection (4)** placing a young person in the custody of a person (other than the chief executive) or organisation unless that person consents to the making of the order. 15

"(6) A custody order under **subsection (4)** has the same effect as if the young person had been placed in the custody of the relevant person or organisation under an order under section 101, except that section 365 (which would empower the chief executive to place the young person in a residence established under section 364) does not apply to the young person." 20

**26 New sections 308A to 308C inserted** 25

The following sections are inserted after section 308:

**"308A Judicial monitoring of compliance with conditions of supervision or supervision with activity order**

"(1) The Court may direct that a young person's compliance with 1 or more specified conditions of a supervision or supervision with activity order made in respect of a young person is to be monitored judicially at the times specified in the direction (or at any other replacement monitoring times the Court specifies) if— 30

"(a) the order is one made or varied by the Court after declaring under **section 296B(3)** that the young person has without reasonable excuse failed to comply satisfactorily with a term, condition, or other requirement of a 35

supervision or supervision with activity order made in respect of the young person; or

"(b) the order is one made by the Court under **section 283** after a charge against the young person in respect of an offence is proved before the Court and the young person has previously been the subject of an order under **section 283** made in respect of another offence and that previous order is, or is an order more restrictive than, a supervision order under **section 283(k)**; or

"(c) the young person has previously been convicted of an offence in a District Court or the High Court and, as a result of the conviction, sentenced by a District Court or by the High Court to—

"(i) a community-based sentence (as defined in section 4(1) of the Sentencing Act 2002); or

"(ii) a sentence of home detention imposed under section 80A of the Sentencing Act 2002; or

"(iii) a sentence of imprisonment (as so defined).

"(2) The times specified in a direction under **subsection (1)** (and any replacement monitoring times the Court specifies) must require monitoring of the young person's compliance with the conditions specified in the direction—

"(a) at a time not later than 3 months after the date on which the direction was given; and

"(b) at least once every 3 months after that time.

"(3) The young person must be—

"(a) given or supplied the terms of the direction by a written statement under **section 340**; and

"(b) given reasonable written notice of any replacement times the Court specifies.

**"308B Effect of judicial monitoring direction**

"(1) A direction under **section 308A** requires the young person to whom it relates to appear before the Court at the times specified in the direction (or at any replacement times the Court specifies) so that the Court may—

"(a) monitor the young person's compliance with the conditions that are the subject of the direction; and

"(b) review the young person's progress in achieving the goals of the plan prepared under section 335 in respect of the order the conditions of which are the subject of the direction.

"(2) The Court may, at any time during the duration of a direction under **section 308A**, direct, on the application of a social worker or constable, that the young person in respect of whom the direction under **section 308A** was given be issued with a summons, in a form prescribed by rules of Court, to appear before the Court.

"(3) If a young person does not appear in answer to a summons that has been served under this section, a Youth Court Judge or District Court Judge may direct that a warrant to arrest that young person and bring that young person before the Court be issued.

### "308C Progress reports

"(1) If the Court has given a direction under **section 308A** in respect of a young person and in respect of specified conditions of an order, a social worker must prepare and furnish to the Court a written progress report on the young person's compliance with those conditions.

"(2) The written progress report must be furnished to the Court before the young person's compliance with those conditions is monitored judicially for the first time.

"(3) The progress report—

"(a) must contain information on the young person's compliance with those conditions and on his or her progress in achieving the goals of the plan prepared under section 335 in respect of the order the conditions of which are the subject of the direction; and

"(b) may contain any other information that the social worker considers relevant to the judicial monitoring of the young person's compliance with those conditions.

"(4) The social worker must prepare and furnish to the Court further progress reports at specified intervals of not less than 3 months if directed to do so by the Court.

"Compare: 2002 No 9 s 80ZJ".

**27 Sections 309 and 310 repealed**

Sections 309 and 310 are repealed.

**28 New section 311 substituted**

Section 311 is repealed and the following section substituted:

**“311 Supervision with residence order**

“(1) If a charge against a young person is proved before a Youth Court, the Court may make an order placing the young person in the custody of the chief executive for a period of not less than 3 months and not more than 6 months.

“(2) If a Youth Court makes an order under **subsection (1)** in respect of a young person, the order may (subject to **section 290A**) be made subject to the condition that the young person undertake any specified programme or activity.~~; and the Court must—~~

~~“(a) adjourn the proceedings to a date before two thirds of the period of the order under **subsection (1)** will have elapsed and on which it will consider early release; and~~

~~“(b) make an order under **section 283(k)** placing that young person under the supervision of the chief executive for a period of not less than 6 months and not more than 12 months.~~

“(2A) If a Youth Court makes an order under **subsection (1)** in respect of a young person, the Court must—

“(a) adjourn the proceedings to a date before two-thirds of the period of the order under **subsection (1)** will have elapsed and on which it will consider early release; and

“(b) make an order under **section 283(k)** placing that young person under the supervision of the chief executive for a period of not less than 6 months and not more than 12 months.

“(3) The order required by **subsection (2A)(b)** must be made either at the same time as the order made under **subsection (1)** or after that time but before the earlier of the following:

“(a) the expiry of the order made under **subsection (1)**:

“(b) the date on which the young person is released from the custody of the chief executive under **section 314**.

“(4) The order required by **subsection (2A)(b)** must come into force on the earlier of the expiry specified in **subsection**

**(3)(a)** and the date specified in **subsection (3)(b)**, and may be made subject to all or any of the following conditions (which, if imposed by the Court, apply in addition to the conditions required by section 305 and to any conditions the Court imposes under section 306): 5

"(a) that the young person attend and remain at, for any weekday, evening, and weekend hours each week and for any number of months the Court thinks fit, any specified centre approved by the department, and take part in any activity required by the person in charge of the centre: 10

"(b) that the young person undertake any specified programme or activity:

"(c) that the young person reside at an address specified by the Court." 15

**28A Effect of supervision with residence order**

Section 312(3) is amended by omitting "under this Act" in each place where it appears.

**29 New section 314 substituted**

Section 314 is repealed and the following section substituted: 20

**"314 Court must in certain cases release young person from custody before expiry of supervision with residence order**

"(1) The Court must release a young person from the custody of the chief executive pursuant to an order under **section 311** if the young person has been in that custody for at least two-thirds 25 of the period of that order (as fixed under **section 311(1)**) and the Court is satisfied that during the period that the young person has been in that custody—

"(a) the young person has neither absconded nor committed any further offences; and 30

"(b) either the young person's behaviour and compliance with any obligations placed on the young person by the plan prepared under section 335 in respect of the order have been satisfactory or any misbehaviour and non-compliance of the young person have been minor; 35 and

"(c) the young person has complied satisfactorily with any condition of the order that the young person undertake any specified programme or activity.

"(2) The chief executive must, as soon as practicable before the expiry of two-thirds of the period of that order, prepare for, and furnish to, the Court a report addressing the matters specified in **subsection (1)(a) to (c)**." 5

**29A Court may cancel supervision with residence order if young person absconds**

Section 316 is amended by adding the following subsection: 10

"(4) Subsection (2) is subject to **section 289(3)** (on the Court imposing the least restrictive outcome that is adequate in the circumstances)."

**30 New heading and section 319A inserted**

The following heading and section are inserted after section 319: 15

"*Review of orders for periods of at least 8 months*

**"319A Orders must be reviewed**

"(1) This section applies to an order only if the order is— 20

"(a) a mentoring programme order under **section 283(jb)** requiring the young person to attend in a specified manner for a period of at least 8 months a specified mentoring programme; or

"(b) an alcohol or drug rehabilitation programme order under **section 283(jc)** requiring the young person to attend in a specified manner for a period of at least 8 months a specified alcohol or drug rehabilitation programme; or 25

"(c) a supervision order under **section 311(2)** that accompanies a supervision with residence order and places the young person under the supervision of the chief executive for a period of at least 8 months. 30

"(2) After making an order to which this section applies, the Court— 35

"(a) must fix promptly a date (which must be not later than 6 months after the order comes into force, and before

it expires) for review of the plan that was prepared in respect of the order in accordance with section 335 (the **plan**); and

“(b) may direct who is to review the plan (and if it does not make a direction, the person who prepared the plan is deemed to have been directed to review it under this paragraph); and 5

“(c) may, at any time, and either on its own initiative or on the application of a party to the proceedings or a barrister or solicitor or youth advocate representing the young person, amend a direction made or deemed to be made under **paragraph (b)**, or revoke it and substitute another direction. 10

“(3) On or before the date fixed under **subsection (2)(a)**, the person who is directed to review the plan must review the plan and furnish to the Court— 15

“(a) a report setting out the results of the review; and

“(b) a revised plan in respect of the young person.

“(4) The report furnished to the Court under **subsection (3)** must— 20

“(a) state which of the objectives set out in the plan have been achieved and which of those objectives are yet to be achieved:

“(b) state, in respect of those objectives that are yet to be achieved, what action is required to achieve those objectives: 25

“(c) recommend, in respect of any order made by the Court under this Part in relation to the young person to whom the plan relates, whether that order should continue in force, or be varied, suspended, or discharged, and whether any condition of that order should be continued in force, or be varied, suspended, or discharged, and the reasons for those recommendations: 30

“(d) state, in respect of those persons who were required to be given a copy of the plan pursuant to section 191 (as applied by section 339), whether each of those persons agrees with the recommendations contained in the report. 35

"(5) The Court must consider a report furnished to it pursuant to **subsection (3)** and the accompanying revised plan, and, after giving such persons (if any) as it thinks fit an opportunity to be heard, the Court may do either or both of the following things:

"(a) exercise, in relation to the order (if it remains in force), any of the powers set out in **section 296C** as if an application had been made in relation to the order under that section:

"(b) if the Court considers ~~that~~ the report furnished under **subsection (3)**, or the revised plan, or both, ~~are~~ to be inadequate, direct the person who prepared the report to furnish to the Court a further report, or a further revised plan, or both, ~~with or without indicating~~ ensuring that the direction to that person indicates any specific matter that it requires to be dealt with in that report or plan."

### 31 Report to be made to Court on effectiveness of certain orders

(1) Section 320 is amended by inserting the following subsection after subsection (1):

"(1A) If the Court makes a parenting education programme order under **section 283(ja)**, a mentoring programme order under **section 283(jb)**, or an alcohol or drug rehabilitation programme order under **section 283(jc)**, the person or organisation providing the programme specified in the order must, on the expiry of the order, furnish to the Court a report in writing."

(2) Section 320(2) is amended by inserting "**section 296D** or" after "section 283(k) or".

(3) Section 320 is amended by repealing subsection (4) and substituting the following subsection:

"(4) Every report required by this section to be furnished to the Court in relation to an order must contain—

"(a) an assessment of the effectiveness of the order:

"(b) an assessment of the response to the order of the young person or, if the order is a parenting education programme order made under **section 283(ja)**, of—

"(i) the responses to the order of the person in respect of whom the order was made; and

"(ii) if it is reasonably practicable to ascertain them, the responses to the order of every child or young person affected by the order (other than any young person in respect of whom the order was made): 5

"(c) if the order is a parenting education programme order made under **section 283(ja)** and the person in respect of whom the order was made appears to have failed to comply with it, a recommendation whether the Court under **section 297A(4)** should direct a care and protection co-ordinator to convene a family group conference under Part 2 for the purpose of considering matters relating to the care or protection of every child or young person affected by the order (other than any young person in respect of whom the order was made): 10 15

"(d) any other information the person who is required to furnish the report considers relevant."

### 32 Report by social worker

Section 334(2) is amended—

(a) by inserting "**paragraph (ja) or paragraph (jb) or paragraph (jc)**" after "make an order under"; and 20

(b) by inserting ", or under **section 296D**," after "section 283".

### 33 Report to be accompanied by plan

Section 335(1) is amended— 25

(a) by inserting "**paragraph (ja) or paragraph (jb) or paragraph (jc)**" after "any order proposed to be made under"; and

(b) by inserting ", or under **section 296D**," after "section 283". 30

### 34 Privilege for reports

Section 338 is amended by inserting "**section 308C** or **section 319A** or" before "section 333".

**35 Access to reports and plans under this Part of this Act**

(1) Section 339(a) is amended by inserting "**section 308C** or **section 319A** or" before "section 333".

(2) Section 339(b) is amended by inserting "**section 319A** or" before "section 335". 5

**36 New section 340 substituted**

Section 340 is repealed and the following section substituted:

**"340 Written statement of terms of certain orders to be given to young person**

"(1) After making an order under paragraph **(ja), (jb), (jc), (k), (l), (m), (n), or (o) of section 283** or under **section 296D**, the Court must, before the young person leaves the Court, cause a written statement to be supplied to the young person to whom the order relates, and to the barrister or solicitor or youth advocate representing the young person, specifying— 10 15

"(a) the terms and conditions of the order (for example, in the case of an intensive supervision order under **section 296D**, any additional curfew and electronic monitoring conditions under **section 296G**):

"(b) if the young person's compliance with any of the conditions of the order is to be monitored judicially in accordance with a direction under **section 308A**, the terms of that direction: 20

"(c) in the case of an order under **section 283(n) or (o)**, the reasons for the making of that order: 25

"(d) in the case of an intensive supervision order under **section 296D** that is subject to additional curfew and electronic monitoring conditions under **section 296G**, the reasons for the imposition of that additional electronic monitoring condition: 30

"(e) possible consequences of a failure to comply with the order:

"(f) provisions for variation of the order:

"(g) rights of appeal against the order or the finding on which the order was based. 35

"(2) However, **subsection (1)** applies to an order made under **section 283(ja)** only if that order is made in respect of, and requires attendance at a parenting education programme by, a

young person who is, or is soon to be, a parent or guardian or other person having the care of a child.

"(3) The Court may for the purposes of **subsection (1)** direct that the young person must remain at the Court for a period, not exceeding 1 hour, that may be necessary to enable the statement to be supplied to the young person. 5

"(4) If it is not practicable to supply a written statement to the young person before the young person leaves the Court, the statement must be supplied to the young person, and to the barrister or solicitor or youth advocate representing that young person, as soon as practicable. 10

"Compare: 1985 No 120 s 58".

**37 Appeals from decisions of Youth Court by young person**

Section 351 is amended by inserting the following subsection after subsection (1): 15

"(1A) For the purposes of subsection (1), an order made by the Court based on that finding includes, without limitation, an order varying, or made in substitution for, an earlier order made by the Court based on that finding."

**38 Appeal by parents or guardians or other persons having care of young person** 20

(1) Section 352 is amended by inserting the following paragraphs after paragraph (a):

"(ab) an order made under **section 297B(5)** placing that young person in the custody of the chief executive, an iwi social service, a cultural social service, or the director of a child and family support service to enable the provision to that young person of a programme that that young person is required by an order under **section 283(jc)** to attend: 25 30

"(ac) an order made under **section 307(4)** placing that young person in the custody of the chief executive, an iwi social service, a cultural social service, or the director of a child and family support service to enable the provision to that young person of a programme or activity that that young person is required by a condition of an order under **section 307(1)** to take part in or undertake: 35

"(ad) an intensive supervision order made under **section 296D** in respect of that young person:".

(2) Section 352 is amended by adding the following paragraph:

"(e) an order made under **section 283(ja)** requiring that parent or guardian or other person having the care of that young person to attend a parenting education programme." 5

**39 Chief executive may place children and young persons in residences**

Section 365 is amended by adding the following subsections: 10

"(3) The chief executive must consider all reasonably practicable less restrictive alternative placements that may be available and appropriate for the child before exercising the power conferred by subsection (1) ~~in respect of~~ to place in a youth justice residence (as defined in **subsection (4)**) a child— 15

"(a) aged 12 or 13 years; and

"(b) charged with an offence of the kind specified in **section 272(1)(b) or (c)**; and

"(c) in respect of whom there is in force an order under section 238(1)(d) or **283(n)**. 20

"(4) **Youth justice residence** in **subsection (3)** means a residence established and maintained under section 364 for purposes that are or include remand, the provision of custody under supervision with residence orders made under **section 283(n)**, or both. 25

"(5) This section is subject to section 312 (which requires the Court's approval for the placement in a residence, and for the transfer between residences, of a young person placed in the chief executive's custody by an order under **section 311**)."

**39A Closing of residences and transfer of residents** 30

Section 366 is amended by adding the following subsection as subsection (2):

"(2) This section is subject to section 312 (which requires the Court's approval for the placement in a residence, and for the transfer between residences, of a young person placed in the 35 chief executive's custody by an order under **section 311**)."

**39B Person executing warrant to produce evidence of authority and identity**

Section 445A is consequentially amended by inserting "or **section 296BA**" after "or section 205(2)(b)".

**39C Authority to use facsimile copy of warrant** 5

Section 445B is consequentially amended by inserting "**296BA**," after "205(2)(b),".

**39D Regulations**

Section 447 is amended by inserting the following paragraph after paragraph (ac): 10

"(ad) regulating the administration, management, and control of the residential component (within the meaning of **section 290A**) of a specified programme or activity:".

**40 New heading and section 456A inserted**

The following heading and section are inserted after section 456: 15

"*2009 Amendment Act*

"**456A Purpose and application**

"(1) The purpose of **Part 1 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2009** is to amend this Act to— 20

"(a) enable proceedings to be commenced under the Summary Proceedings Act 1957 against—

"(i) a child aged 12 or 13 years who is alleged to have committed an offence (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or 25

"(ii) a child aged 12 or 13 years who is alleged to have committed an offence (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for at least 10 years but less than 14 years and who ~~has previously committed an offence (other than murder or manslaughter) for which the maximum penalty~~ 30 35

~~available is or includes imprisonment for at least 10 years~~ is a previous offender; and

“(b) require to be brought before a Youth Court to be dealt with in accordance with the principal Act, and provide certain protections for, a child of that kind against whom proceedings under the Summary Proceedings Act 1957 have been commenced for an offence of that kind; and

“(c) strengthen and expand the orders available to a Youth Court sentencing or otherwise dealing with a child or young person against whom a charge is proved before a Youth Court, including by ensuring that measures for dealing with offending address the causes underlying the offending.

“(1A) A child aged 12 or 13 years is a previous offender for the purposes of **subsection (1)(a)(ii)** if, in accordance with **section 272(1A) or (1B)** (as substituted by **section 10(2)** of the **Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2009**), he or she has been—

“(a) proved before a Family Court to have committed an offence for which the maximum penalty available is or includes imprisonment for life or for at least 10 years; or

“(b) convicted by the High Court of murder or manslaughter; or

“(c) convicted by a District Court or the High Court, as a result of an election of jury trial made in a Youth Court, of 1 or more offences (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or

“(d) proved before a Youth Court to have committed 1 or more offences (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years.

“(2) The amendments made by a provision of that Part apply only—

“(a) in respect of an offence committed or alleged to have been committed after the commencement of that provision; and

“(b) in accordance with **subsection (3)** in respect of an offence committed or alleged to have been committed before the commencement of that provision.

“(3) If the child or young person gives consent to its doing so, the Court may make an order, or exercise or perform any other authority, power, or function, under an amendment made by a provision of that Part in respect of an offence committed or alleged to have been committed before the commencement of that provision.

“(4) A reference in **subsection (2) or (3)** to an offence committed or alleged to have been committed includes a reference to each of the child’s 1 or more earlier offences referred to in **section 272(1A)~~(a)~~(b) or (1B)(a), (b), or (c)** if—

“(a) the offence is one of the kind specified in **section 272(1)(c)** and one committed or alleged to have been committed by a child aged 12 or 13 years; and

“(b) proceedings under the Summary Proceedings Act 1957 against the child for the offence have been or are to be commenced in accordance with **section 272(1)(c)**.”

## Part 2
## Amendments to other enactments

### 41 Amendments to Criminal Investigations (Bodily Samples) Act 1995

(1) This section amends the Criminal Investigations (Bodily Samples) Act 1995.

(2) Section 8 is amended by repealing subsection (1A) and substituting the following subsection:

“(1A) However, a suspect may, in relation to an indictable offence, consent to the taking of a buccal sample as a result of a Part 2A request if the suspect is a child, or was a child, at the time the offence is alleged to have been committed, and cannot lawfully be prosecuted in relation to the offence because it is not an offence of any of the following kinds:

“(a) the offence of murder or manslaughter:

“(b) an indictable offence (other than murder or manslaughter)—

"(i) that is alleged to have been committed when the suspect was aged 12 or 13 years; and

"(ii) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years: 5

"(c) an indictable offence (other than murder or manslaughter)—

"(i) that is alleged to have been committed when the suspect was aged 12 or 13 years, and was for the purposes of **section 272(1)(c)** of the Children, 10 Young Persons, and Their Families Act 1989 a previous offender under **section 272(1A) or (1B)** of that Act; and

"(ii) for which the maximum penalty available is or includes imprisonment for at least 10 years but 15 less than 14 years."

(3) Section 18(1) is amended by repealing paragraph (b) and substituting the following paragraph:

"(b) the suspect may lawfully be prosecuted for that offence (being, in the case of a suspect who is a child or was 20 a child at the time the offence is alleged to have been committed,—

"(i) the offence of murder or manslaughter; or

"(ii) an offence (other than murder or manslaughter)— 25

"(A) that is alleged to have been committed when the suspect was aged 12 or 13 years; and

"(B) for which the maximum penalty available is or includes imprisonment for life or for 30 at least 14 years; or

"(iii) an offence (other than murder or manslaughter)—

"(A) that is alleged to have been committed when the suspect was aged 12 or 13 years, 35 and was for the purposes of **section 272(1)(c)** of the Children, Young Persons, and Their Families Act 1989 a previous

offender under **section 272(1A) or (1B)** of that Act; and

"(B) for which the maximum penalty available is or includes imprisonment for at least 10 years but less than 14 years); and". 5

(4) Section 23(1) is amended by repealing paragraph (b) and substituting the following paragraph:

"(b) the respondent may lawfully be prosecuted for that offence (being, in the case of a suspect who is a child or was a child at the time the offence is alleged to have been committed,— 10

"(i) the offence of murder or manslaughter; or

"(ii) an offence (other than murder or manslaughter)—

"(A) that is alleged to have been committed when the respondent was aged 12 or 13 years; and 15

"(B) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or 20

"(iii) an offence (other than murder or manslaughter)—

"(A) that is alleged to have been committed when the respondent was aged 12 or 13 years, and was for the purposes of **section 272(1)(c)** of the Children, Young Persons, and Their Families Act 1989 a previous offender under **section 272(1A) or (1B)** of that Act; and 25

"(B) for which the maximum penalty available is or includes imprisonment for at least 10 years but less than 14 years); and". 30

(5) Section 24C is amended by repealing subsection (2) and substituting the following subsection:

"(2) Every reference in this Part to an indictable offence for which a suspect who is or was a child at the time the offence was committed may not be lawfully prosecuted is a reference to an indictable offence other than— 35

"(a) the offence of murder or manslaughter; or

"(b) an offence (other than murder or manslaughter)—
"(i) that is alleged to have been committed when the suspect was aged 12 or 13 years; and
"(ii) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or 5
"(c) an offence (other than murder or manslaughter)—
"(i) that is alleged to have been committed when the suspect was aged 12 or 13 years, and was for the purposes of **section 272(1)(c)** of the Children, Young Persons, and Their Families Act 1989 a previous offender under **section 272(1A) or (1B)** of that Act; and 10
"(ii) for which the maximum penalty available is or includes imprisonment for at least 10 years but less than 14 years." 15

**42 Amendment to Criminal Justice Act 1985**

(1) This section amends the Criminal Justice Act 1985.

(2) Section 142A is amended by inserting the following subsections after subsection (1): 20

"(1A) However, a child who is serving a sentence of imprisonment imposed before or after the commencement of this subsection may be detained under that sentence after that commencement only in any such residence.

"(1B) **Subsection (1A)** overrides subsection (1) and the Corrections Act 2004." 25

**~~43 Amendment to Summary Proceedings Amendment Act (No 2) 2008 consequential on amendment to section 274(2)(a) of principal Act (committal proceedings in Youth Courts)~~** 30

~~(1) This section amends the Summary Proceedings Amendment Act (No 2) 2008.~~

~~(2) Part 1 of Schedule 3 is amended by omitting "Part 5" in each place where it appears in the first item amending section~~

~~274(2)(a) of the principal Act and substituting in each case "Parts 5 and 5A".~~

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## Legislative history

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