

How we fail children who offend and what to do about it: 'A breakdown across the whole system'

Brief summary of research
Updated recommendations

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The research summarised in this report would not have been possible without the generosity and support of many (see <https://www.borrinfoundation.nz/report-how-we-fail-children/> for the full report). First of all, we would like to express our sincere gratitude to the whānau participants, who opened their hearts (and sometimes their homes) and allowed us the privilege of hearing and writing about their stories, which were often filled with immense sorrow and pain. We hope that our account of these stories did you justice and that the findings of this research will contribute to increased wellbeing of children and families across Aotearoa. We would like to acknowledge the children and whānau whose case files we were granted access to. Although anonymous, we appreciate that each case file represented the experiences of a child, a whānau, and their interactions with the child welfare system. Thank you to Oranga Tamariki for granting us the rare privilege of accessing these case files.

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IDI disclaimer

The results summarised in this report are not official statistics. They have been created for research purposes from the Integrated Data Infrastructure (IDI), managed by Stats NZ.

The opinions, findings, recommendations, and conclusions expressed in this report are those of the authors, not Stats NZ or individual data suppliers.

Access to the anonymised data used in this study was provided by Stats NZ under the security and confidentiality provisions of the Statistics Act 1975. Only people authorised by the Statistics Act 1975 are allowed to see data about a particular person, household, business, or organisation, and the results in this report have been confidentialised to protect these groups from identification and to keep their data safe.

Careful consideration has been given to the privacy, security, and confidentiality issues associated with using administrative and survey data in the IDI. Further detail can be found in the Privacy impact assessment for the Integrated Data Infrastructure available from www.stats.govt.nz.

All I see is this little boy

The first thing that comes to mind are the faces. I'm not very good at names but I remember the faces. I just went yesterday to a sentencing, an 18-year-old, I didn't go in my capacity as lawyer for child, I just went to support him because he was my client when he was 13.

I visited him in [remand prison], this 18-year-old, and I sat opposite him and all I could see was the 13-year-old when I first started acting for him. He's up for sentencing for aggravated robbery.

He didn't get sentenced yesterday because the Judge didn't have all the information. He was sitting with three other co-defendants, all the same age, all similar histories. My guy that I first acted for was uplifted from care of mother and stepfather due to physical abuse by both parents at 13.

I acted for him and the youngest sibling, who at the time was 3 and he was already displaying behavioural issues at school. But 13 to 18, in the five years that I've acted for him...

I'm looking at him and all I see is this little boy and he's saying, 'Talia*, the longer I'm in here, I'm really scared that I'm going to get really hardened and it's worrying because all around me are these bad people and I feel like they're taking me down with them.'

So, he's in there because the sentencing's been put off and that will make it 10 months in custody at [adult prison].

He's scared and to me ... when I saw that, I just thought, the first thing I see is these children's faces, they are real kids ... each file I have are separate children with histories ...

I'm looking at him and all I see is this little boy and he's saying, 'Talia (lawyer), the longer I'm in here, I'm really scared that I'm going to get really hardened and it's worrying because all around me are these bad people and I feel like they're taking me down with them.'

* Talia is a pseudonym. This is a story that has been anonymised that she told in her interview as a stakeholder participant.



Preface

This summary outlines the key findings of a comprehensive research report on opportunities to improve child welfare and Family Court proceedings to more effectively address and reduce child offending. It incorporates feedback we have received from a variety of stakeholders regarding the main report and is designed to more readily provide policymakers with a snapshot of the key issues and deliverable action points to enact change.

The research summarised here was about children, aged 10 to 13 years, who had offended, as well as those at risk of offending. Often labelled 'child offenders', these children are dealt with through the care and protection legal provisions and, if necessary, the Family Court. (The public might assume 'child offenders' go to the Youth Court; rather, they are primarily engaged with the Family Court. To be clear, however, we note that some very serious child offenders can be charged directly in the Youth Court, bypassing the care and protection provisions completely. But this is very rare, applying to fewer than 30 children annually.) Many of these children go on to become 'youth offenders' in the Youth Court, when they turn 14 (through to age 17), and some eventually enter the adult criminal justice system at age 18 and beyond.

They are children who have often endured physical, sexual or emotional abuse, constant transience or intergenerational disconnection from their whānau, whenua and culture. Often known to social service agencies, many children will have experienced some sort of state intervention—that, according to our research, often failed to adequately help. The consequences for tamariki Māori of generations of Te Tiriti breaches are evident in the overrepresentation of Māori in the justice system. Pasifika are also overrepresented.

While the personal, social and economic harm these children have caused by their offending should not be minimised, it is critical to remember that these children were victims first. In the words of one of the lawyers interviewed in this research, 'Offending does not occur in a vacuum'. Most would have never escalated to engage in offending if they and their families had not experienced significant harm themselves—all too often, intergenerationally—or had received timely, effective help that addressed their needs.

The full report (April 2022) provided up-to-date information on the characteristics, backgrounds and trajectories of children who have offended; in this summary report, key data are summarised in the Appendix tables (see full report at <https://www.borrinfoundation.nz/report-how-we-fail-children/>). In addition, the research considered how it is possible that, in a developed country often heralded for its 'world-class' youth justice system, children grow up to commit crime despite their concerning experiences and circumstances being well-known to state services—sometimes for years before offending starts. To prevent some of these children joining gangs (and becoming what have been described as 'life-course persistent offenders'), we must better address their needs.

The importance of focusing on children is further highlighted by a recently released police report indicating that 17 percent of ram raids involved children under the age of 13.

Opportunities for improvement in current child welfare and Family Court practices in relation to children at risk of (re)offending were explored in the full report and are updated here. This research does not presume to speak from a Te Ao Māori worldview; clearly, enacting real future change should adhere to a 'by Māori for Māori' approach. Nevertheless, it is hoped that this work will contribute to improved outcomes for children, whānau and communities across Aotearoa NZ.

1. Background

Children who have offended (between the ages of 10 and 13 years) are at increased risk of long-term offending and a range of adverse outcomes. The vast majority of these children are engaged with the child welfare system and Family Court, and Māori children are overrepresented.

Effective responses to the needs of children at risk of offending and their families within the child welfare and Family Court system (where these children must be dealt with) are therefore needed to better support children's wellbeing, significantly reduce future crime and harm to communities, and reduce social injustice and inequity.

Despite youth justice reforms since the late 1980s in Aotearoa New Zealand, law and practice about children who offend aged 10 to 13 years has been often overlooked. This limits the child welfare system's and Family Court's ability to use evidence-based resources to improve outcomes, and hampers systemic improvement. We therefore sought scientific and up-to-date information on the characteristics and backgrounds of children who have offended, the trajectory they often follow, and opportunities for improvement in child welfare and Family Court practices to assist children and their families more effectively. The New Zealand Law Foundation and the Michael & Suzanne Borrin Foundation (in association with the University of Auckland) provided support for the research.

1.1. Study method

This was a mixed methods study exploring quantitative, qualitative and case-file data on the children's backgrounds and experiences, and the systems responsible for child welfare and child offending:

- Integrated Data Infrastructure (IDI) data on 48,989 children from their birth in 2000 until June 2019 were used to explore significant associations between different offending groups (no offending, child offending only, youth offending only, and child *and* youth offending) and a range of background factors.
- Oranga Tamariki case files on all children nationwide who had offended over a one-year period (from 1 July 2019 to 30 June 2020) and were flagged to have significant care and protection needs (under Section 14(1)(e) of the Oranga Tamariki Act 1989) were reviewed—a total of 108 children. The case-file data were analysed to explore children's histories in action.
- Key stakeholder interviews were held with child welfare, Family Court and other professionals (lawyers, police, social workers, school leaders, psychologists, iwi representatives, lay advocates), and whānau members with lived experience of proceedings in relation to child offending (N = 33). Interviews were analysed to establish the day-to-day experiences and challenges of the system's responses to children offending (and at risk of reoffending), and frontline recommendations for change.

2. Findings

2.1. Child offending does not occur in a vacuum

Child offending does not occur in a vacuum but, in most cases, was preceded by significant child welfare concerns. IDI data showed very high levels of abuse, reports of concern to Oranga Tamariki, out-of-home placements, stand-downs and suspensions from school, and indicators of social deprivation among children who offended. These were significantly worse relative to their non-offending peers.

CHILD WELFARE ISSUES

Abuse and neglect

Abuse & neglect significantly increases risk of offending

Thousands of reports of concern before offending started

FGCs

Majority of children who offended had prior FGCs

FGCs for under-5s take longer to be held than for older children

Out-of-home placements

Children experiencing out-of-home placements and state care were more likely to engage in child offending

Self-harm/suicidal behaviour

Children who self-harmed were more likely to reoffend

Justice-involved parents

Risks of offending increased for children with a justice-involved parent

OFFENDING

Almost two-thirds of children who offended before age 14 continued to offend up to age 18

They were likely to offend more frequently than those starting to offend in adolescence

Māori children were more than 3x more likely to offend than non-Māori



EDUCATION ISSUES

Suspensions

Children stood down or suspended before age 10 were more likely to offend

Expulsions

Nearly half of those expelled from school before age 14 offended as both a child and young person

Multiple school enrolments

Repeatedly changing schools was significantly associated with child offending

SOCIOECONOMIC ISSUES

Receiving a benefit

Children whose parent received income support when they were aged 5, 10 or 14 were more at risk of offending and reoffending

School decile

Children at low decile schools were more likely to offend than those at higher decile schools

If we're talking about that wide-ranging dysfunctional background, you'd have to say that the majority of child offenders come from that and a number of other issues. I can't honestly say that there's any that haven't had that element of intergenerational dysfunction. *(Police officer, Nikau*)*

My daughter, when she was in the family group home, she wrote a letter. She wanted to die. She was 8-years-old and she just wanted to die. Today was a bad day, a girl had hopped into her bed, an older girl, laid on top of her and started rubbing herself up against her, and she wanted to die. All my kids have actually told me that they feel like suiciding it, they felt when they've been in cars with social workers and been driven to places that it's, grab the steering wheel and go off the road and die. *(Whānau, Kourtney)*

IDI data highlights

- The data showed that for nearly two-thirds of children (63%), offending in childhood was a stepping stone to continued offending in adolescence. Also, the frequency of offending increased with age, highlighting the importance of preventing offending in the first place.
- The odds of Māori children and young people offending were almost three times more than for their non-Māori peers.
- The IDI data showed that there were thousands of reports of concern about children who were offending, significantly more than there were for non-offending children (Appendix Table A).
- Education service data showed the children who offended were also more likely to be stood-down or suspended (even before the age of 10 years).
- Children were living in households with complex needs, which meant that they were known to child welfare services, schools and police.
- There had often been years of reports of concern and notifications from infancy, incidents of offending by older siblings, justice-involved parents, many failed placements, and issues with school suspension and disengagement. Yet, despite their needs being known to services, the children had proceeded to offending before age 14.

It is therefore critical that efforts to improve systemic responses to child offending are not restricted to interventions focused only on offending behaviour; we must seek to prevent, or at least better address, the welfare concerns of children and their families that underlie the development of offending. A summary of more findings can be seen in the appendix (**Table A**).

Key stakeholders described a child welfare system that is currently reactive, not proactive, and fails to effectively address the needs of children, even though these are often well-known to services.

Access to resources needs to be made easier so that we can provide the support at a much earlier age. Currently many of the supports available take time to access and often there is a shortage of supports when needed. *(School principal, Stuart)*

It's too late by the time I see them. I've seen it in kids as young as three, in preschool, the ones that step on the kittens' heads, who whack other children and I'm thinking wow, okay, that's one that I can identify straight away unless there are some supports, even at early childhood, that ECE [early childhood education] level, then I will see that child again. *(Lawyer, Talia)*

* All names are pseudonyms

2.2. Child welfare and child offending proceedings are full of missed opportunities

Child welfare and child offending proceedings are full of missed opportunities to effectively support the wellbeing of children and families. According to the research participants, shortages of resources across child welfare and education led to high thresholds for assistance. This meant only a very small proportion of children and whānau were reported as receiving the support they needed. When intervention was planned, stakeholders said that engagement by child welfare professionals was often poor and inconsistent, exacerbating difficulties. Similarly, support tended to be piecemeal and focused on one aspect of a child's or family's needs, rather than being holistic and systemic. A shortage in specialist community programmes, placements, and caregivers further impeded effective help.

Stakeholders described child welfare and Family Court processes as having significant delays, poor collaboration, and minimal oversight of cases. Agencies rarely worked together in a coordinated fashion, despite children's needs spanning a range of services. Moreover, the provision of effective assistance to children and families often relied on the dedication and availability of the particular professionals involved in a case, rather than systemic processes to ensure this occurred. Family Group Conferences (FGCs), once children had offended, were of variable quality, could be overly focused on offending (instead of wider welfare concerns) and produced plans that were often not well-implemented nor adhered to. Intergenerational poverty and social disadvantage underpinned, compounded and contributed to the challenges children and families faced. A comprehensive summary of these findings can be found in the appendix.

Example of narratives of inadequate child welfare engagement leading to child offending

Hundreds of pages of case notes

Oranga Tamariki have been involved in 95% of cases. They know the mum, they know the dad, they know the older sibling, they've been working with them since they've been at a young age, they've been engaged, not engaged, taken steps or taken little steps, made referrals. Nine out of ten times they'll have two or three hundred pages of case notes and that's from a report of concern to interventions to what steps have been taken to closing the file to another report of concern to, it just builds up. *(Lawyer, Colin)*

Too often support is ineffective

[There's a] lack of follow-through that tends to happen. I think when you look at care and protection there's clear early signs, you know, through the notification of concerns and so forth but we seem to just miss the implementation of 'OK, how do we respond to that?'. By the time they come to Youth Court, there's a clear care and protection history but nothing has been done. *(Psychologist, Pania)*

The cycle continues

When he was 6-, 7-years-old, we knew it was coming. CYFS [former name of Oranga Tamariki] did nothing and so he comes, and here's his younger brother come along. Guess what? They did nothing until the police made a 14(1)(e) application for him too and now he's in CYFS custody and he's in the Youth Court as well. You could see it coming and guess what? He's got two younger siblings, much younger, and they're hardly ever at school. They're not even in CYFS custody. CYFS are doing nothing and they're coming. I see them outside court all the time. Mother's a piece of work. They're feral, running around eating chocolate and stuff and just shit for breakfast and you just know that they're coming too. What will they do? Nothing. They'll come in too, brother, they'll come in, too. *(Lawyer, Shane)*

Support is required earlier

I can think of an example of a child who has been in the Family Court for 5 years, maybe longer, and as soon as he turned about 10, he started offending but of course didn't get taken into Youth Court because of his age and he's now in Youth Court in a major way and resources are just being started to apply to him at age 14. He needed it when he was 5, not 14. *(Lawyer, Julie)*

2.3. Changes can be made—from early intervention to reducing structural social harm

Recommendations based on the data and analysis, and discussed in sector hui and with advisory groups, are summarised in Table 1. They emphasise opportunities for change in child welfare and Family Court proceedings, both prior to and following the onset of child offending. The study also invites us to consider, as a society, the structural and organisational factors of racism, social disadvantage and harm that need to be addressed, to allow these children and their families to flourish. It is no accident that children with offending behaviour typically do not grow up in New Zealand's more affluent suburbs. It also highlights that children with such behaviours are a subset of those experiencing suffering and harm. Effective, systemic change would not only reduce that suffering, but it would also reduce the likelihood of offending, and reduce the number of victims their offending will go on to create.

3. Recommendations

The recommendations arising out of the IDI data analysis, Oranga Tamariki case-file analysis, and stakeholder interviews were then also discussed in sector hui and across the research group following release of the main report in April 2022. This has resulted in the following list of recommendations for action to improve systems.¹

Overall, this research shows an urgent need for the government to develop a strategic plan and vision to:

- a) more effectively identify and address the needs of children (i.e., from birth to 14 years old) and families with significant child welfare concerns at the earliest opportunity, and
- b) better respond to the needs of those aged 10-13 years who have engaged in serious offending (i.e., s14(1)e).

Early intervention is critical, to identify and provide effective, early resourcing and targeted support to children and their families who have high and complex needs.

Specific recommendations are outlined below.

Table 1. The child offending system: Opportunities for change

1. Government includes action on children who offend in its Child and Youth Wellbeing Strategy

- Children who offend are acknowledged as experiencing poor wellbeing in other areas of their life. Action to address this needs to be reported on and monitored (as per www.chilyouthwellbeing.govt.nz/measuring-success/indicators/criminal-offending).

2. Address sociostructural factors

- Implement the recommendations from the Welfare Expert Advisory Group, 3 May 2019. www.weag.govt.nz/weag-report/whakamana-tangata/key-recommendations/

3. Assistance must be early, coordinated and collaborative

- Ensure earlier and more holistic assessment of children's and families' needs.
 - For example, require a comprehensive assessment of a child's welfare, cultural, educational and physical health needs, as well as the needs of the family more generally, following a certain number of child welfare notifications (e.g., 5 notifications).
 - This may promote families getting support sooner and getting the help they need (e.g., in cases where a full assessment has not already been done at first notification, a child receiving their 3rd report of concern should trigger a comprehensive assessment).
 - It may also require Oranga Tamariki to lower its threshold for offering assistance and support to families (e.g., via increased use of s18AAA FGCs), as high thresholds were seen as a key barrier.
- Improve coordination and collaboration between agencies, ministries and community and iwi leadership to provide effective and culturally appropriate assistance to families when child welfare concerns first come to notice, to reduce the risk of these escalating (e.g., strengthening parenting through support, addressing health and education issues and supporting socioeconomic needs).

¹ It may be argued that child welfare and Family Court systems need to be extinguished, not 'improved'. The focus of this research was to explore current systems and immediate improvements possible, from the perspective of stakeholders currently trying to make these systems work. Their experiences may highlight the lessons to be learned as any new approaches are established.

4. Address resource shortages

- **Increase funding for the education system** to ensure children's needs can be effectively addressed (e.g., via increased and earlier access to learning supports, such as teacher aides/learning assistants; access to assistive technology where appropriate; and targeted education services like wraparound support or Te Tupu Managed Moves in Napier primary schools).
- **Increase child welfare system funding** for more social workers, FGC coordinators, lawyers, psychologists, youth workers, mentors, specialist caregivers, particularly given that NZ's welfare system was recently determined to be "no longer fit for purpose".²
 - More social workers may reduce individual caseloads, thus allowing more comprehensive support of the needs of children and families, alongside a commitment to funding iwi-based and other more appropriate initiatives to transition away from Oranga Tamariki involvement.
 - Similarly, an increase in psychologists working for Oranga Tamariki may support more effective responses to children and whānau.

In the current system, there is no-one to refer these kids to. The waiting lists for professional assistance are horrendous and outrageous and so kids slip between the cracks. If there's a kid who just isn't coping but is regressive rather than aggressive, they would be left. I mean to try and get a social worker to deal with something which is not absolutely critical is lengthy. To get kids into the assessment at [a CAMHS] is next to impossible unless you've got a kid who's really acting out. (Lawyer, Julie)

- **Prioritise early intervention** instead of reactive practices within Oranga Tamariki (e.g., ensuring smaller caseloads for care and protection social workers and balancing resources to care and protection work, relative to youth justice work).
- **Simplify access to resources** to meet care and protection needs, both within and beyond Oranga Tamariki (e.g., pool of money more readily available for evidence-based interventions for children).
- **Increase access to programmes** and initiatives supporting the systemic needs of children and families. Increased funding and resourcing of 'parenting/behaviour support for all'.
 - It is critical that such programmes are available to children and families whose needs have not (yet) escalated to the statutory threshold.
 - Programmes mentioned by participants included Triple P, Incredible Years Parenting, Functional Family Therapy (FFT), Multi-Systemic Therapy (MST) and locally developed programmes.
 - FFT and MST generally cater to young people at risk of (re)offending aged over 10 years but adaptations for younger children have been developed and found to be effective.
 - It is particularly important that programmes are evaluated locally and, where shown to be effective, are also available in non-urban regions.
- **Support community placements.** According to participants, greater investment is needed into community placements, such as iwi-led supports or supervised group homes, in which children can be supported while still living in their community and being able to see their families.

5. Address trauma

- **Emphasise the importance of trauma-informed care** in social work curricula and ongoing social work practice. For example, at least one social work school in New Zealand needs to start a Clinical Therapeutic Training (similar to those in the USA and Canada) that trains SWs to be able to provide clinical interventions to children and families.
- **Apply evidence-based and culturally appropriate understandings of trauma** and recovery, including kaupapa Māori and Pasifika-based approaches to intergenerational trauma.

² Welfare Expert Advisory Group. (2019). *Whakamana tāngata restoring dignity to social security in New Zealand*. <http://www.weag.govt.nz/assets/documents/WEAG-report/aed960c3ce/WEAG-Report.pdf>

6. Better uphold Te Tiriti o Waitangi principles

- Fully implement sections 4, 5, and 13 of the Act that mandate involvement and strengthening of whānau, hapū and iwi initiatives. Increase funding from ministries to allow this to occur.
- Comprehensively implement section 7AA of the Act.
- Ensure culturally safe practice, which is structured by tikanga Māori (e.g., whakawhanaungatanga) and actively adheres to Te Tiriti o Waitangi obligations (e.g., by ensuring participation, partnership, protection in all child welfare proceedings).
- Ensure local by Māori for Māori approaches allow for whānau/hapū/iwi to provide their own solutions for their own children's needs.
- Provide increased training to child welfare professionals, including those working in the Family Court, to be able to more effectively engage with children and families, and particularly those of Māori descent, and to more effectively support, rather than get in the way of, by Māori for Māori approaches.
- Increase the emphasis on culturally safe practice in social work training, legal competencies, and professional practice; such pursuits should consider the recommendations of [Walker \(2012\)](#).
- Increase the number of Māori Judges and kaupapa Māori processes in the Family Court.

7. Resource early assessment and therapy

- Consider provision of full cultural, health and educational assessments (e.g., Gateway assessments) and – more importantly - subsequent assistance (e.g., via the provision of evidence-based therapy approaches) to children in the Family Court whose families do not meet the statutory care and protection threshold, yet appear to have clear needs (e.g., child stood down multiple times).
- Prioritise adequate and ongoing funding for children to receive therapy (as previously provided in the Care of Children legislation) – currently, the Family Court can recommend therapy for parents/carers but not for children.

8. Have time to understand what's happening and do something

Ensure the Family Court is more adequately resourced:

- More child welfare professionals and available court time may reduce delays for children and families.
- This may also result in more comprehensive assessment of children's needs (i.e., via a more diverse range of the right people getting alongside the child and family) – and, more importantly, a requirement for effective, sustained assistance and intervention to be promptly made available.
- Judges may benefit from being able to spend more time familiarising themselves with cases, thus gaining greater understanding of children's and families' needs, or from information being presented in more coherent forms.

9. Conduct legislative review

- Introduce more stringent timeframes in care and protection legislation (e.g., stipulate FGCs to be held within 21 days, as opposed to the many months it is currently taking).
- Consider amending legislation to require more regular reviews of care and protection cases. This may increase oversight of children's wellbeing and serve to hold professionals to account for implementation and continuity of plans. This may also ensure the continuity of plans in cases of frequently changing social workers.
- Consider increased legislative powers for the Family Court to hold responsible agencies or ministries to account for the implementation of FGC plans.

10. Commit to whānau/family participation and decision-making

- Involve lay advocates and communication assistants to support informed whānau participation and decision-making.
- Provide training to Judges and lawyers to more effectively communicate with families in the Family Court and include them in decision-making.

11. Make changes to the Family Court

- Roll out across NZ the judicially initiated ‘crossover’ courts (for youth offenders with care and protection issues and Family Court proceedings). Also, use the crossover approach in the Family Court for all children in that court with offending issues. At the very least, implement/trial a separate list for these children in the Family Court, so that appropriate plans and interventions can be developed, resourced, delivered and monitored. All stages must include whānau and community.
- Consider the suggestions for change (e.g., Family Court proceedings able to be held on Saturdays once a month to enable whānau to attend; ability to hold proceedings on marae) in the [Boulton et al. \(2020\)](#) report on whānau experiences in the Family Court.
- Implement the detailed recommendations in the Office of the Children’s Commissioner’s [Children with offending behaviour \(2020\)](#) report.
- A recommendation arising from these findings may be to implement a specialised child welfare court, which may emulate the therapeutic Youth Court model. In other words, such a court may:
 - Involve Judges with a special interest in these cases and who are skilled to effectively engage with children and whānau.
 - Hold hearings more regularly than seems to be currently possible in the Family Court.
 - Have the same Judge presiding over cases and require all professionals involved in cases to regularly attend court hearings. This is likely to ensure greater oversight and accountability over the implementation of plans.
 - Emphasise the routine involvement of lay advocates and communication assistants to support families and ensure informed participation.
 - Emphasise the specialist assessment of the needs of children, for example, having a youth forensic nurse for initial evaluations; a clinical or behavioural psychologist present to provide clinical input or counselling plans; educational advisors etc.
 - Be embedded in culturally appropriate practices.
 - Have the same resources as available in the Youth Court (e.g., ready access to assessments, therapy, mentors).
 - Consider legislative tools to increase accountability of Oranga Tamariki if child welfare practices and plans are not sufficiently adhered to.

Differences between the Family Court and Youth Court/solutions-focused Courts in NZ

Resource	Family Court	Youth Court
Time to make informed decisions	X	√
Solution-focused model <ul style="list-style-type: none"> • Smaller caseloads • Same Judge presiding over cases • Hearings with the child, family, and professionals involved • More regular reviews 	X	√
Culturally responsive (e.g., Rangatahi courts)	X	√
Ease of access to specialist assessments	X	√
Communication assistance	X	√
Mentors	Not readily available	√
Lay advocates	Not readily available	√
Counselling or therapy for children	X	√

12. Enhance child offending referrals

- Provide training to professionals (who come into contact with children who have offended) to:
 - understand child offending processes
 - which response may best support children’s needs
 - roles and responsibilities of professionals and agencies involved.

This may increase professionals’ willingness to work together and reduce interagency conflict (e.g., between Oranga Tamariki and police).
- Update the *Child Offender Manual* so recommended actions align with current law and are clearer for staff.
- Simplify/streamline Family Court paperwork (e.g., s14(1)(e) applications).
- Consider the development of an evidence-based assessment tool that allows frontline police officers to determine how best to respond to children who have offended.

Two tables of research data are included in the Appendix. To see the [full report](#), go to the Borrin Foundation website; it is freely available to download and distribute.

Concluding comments

This research shows that focusing on children’s wellbeing is the best crime prevention tool we have. Rather than talk of ‘getting tough on crime’, this comprehensive, independent study shows that it is about getting in early—children can start on the path to offending very young. The systems that should help them and their families to get off that pathway are too often failing to do so soon enough or effectively.

This is not a historical report. It shows that, right up to 2020, there were children in state care or being suspended from school or with families in chaos or with untreated trauma who were offending and not getting the help they needed from the services and communities that were supposed to provide it. It is time to change that.

Appendix

IDI findings

Integrated Data Infrastructure (IDI) data for all children born in 2000 were analysed to identify i) those with no recorded offending histories, ii) those who had offending records as children (aged <14 years), iii) those who had youth offending records (aged 14-18), and iv) those with offending records as both children and adolescents. Following demographic analyses, we examined to what extent various variables were associated with these groups—and may differentiate between them—in order to gain understanding regarding which factors may be particularly associated with child offending. In particular, we sought to investigate to what extent the backgrounds of children who offend may differ from those with no offending histories or with adolescent offending histories only.

The IDI is a large research database holding integrated, de-identified microdata about people and households. Data can be linked from various sources (e.g., justice, health, income, education), thus enabling researchers to gain insight into complex social and economic issues.

Table A. IDI data on 48,989 children, from 2000 to 2019

Area of analysis	IDI findings
<p>OFFENDING</p> <p>Almost two-thirds of children who offended before age 14 continued to offend up to the age of 18.</p>	<ul style="list-style-type: none"> Of the children who offended ($n = 2022$) when they were younger than 14, the majority (63%)³ also offended as a youth (aged 14-18). Of the children who did not offend as a child, 10% offended as a youth. This difference is statistically significant and demonstrates that, for more than half of children, offending in childhood was a stepping stone to continued offending in adolescence, highlighting the consistency of such behaviour as children grow older.
<p>Frequency</p> <p>Most offended only once as a child, but went on to offend significantly more often as a youth.</p>	<ul style="list-style-type: none"> The frequency of offending increased with age. While some children had repeated recorded offences, the majority of children who offended had only one recorded offence. Those who had offended as a child and as a youth offended significantly more times than did those who only offended as a youth.
<p>Demographics</p> <p>More males and more Māori appear in child offending statistics.</p>	<ul style="list-style-type: none"> Males were around twice as likely to offend as were females; 924 males and 348 females engaged in both child and youth offending (3.7% and 1.5% of the cohort respectively). Māori children and young people who offended were significantly overrepresented in offending statistics, relative to non-Māori. The odds of offending were almost 3 times higher for Māori compared to non-Māori.

³ Percentages are rounded in this table; in the text of the full report, percentages are given to 1 decimal point. Thus, 62.9% here is rounded to 63% and 9.6% is rounded to 10%.

Area of analysis	IDI findings
<p>CHILD WELFARE ISSUES</p> <p>Abuse and neglect</p> <p>A child abused under the age of 5 was six times more likely to offend as a child and youth, than was a child who had not been abused.</p> <p>Reports of concern/ notifications to Oranga Tamariki</p> <p>In their early lives, there were 1000s of reports of concern about children who went on to offend.</p>	<ul style="list-style-type: none"> Abuse and neglect were all associated with significantly increased risk of offending and reoffending at all age groups. Data showed that a child abused under the age of 5 was six times more likely to offend as a child and youth, than was a child who had not been abused. Neglect reported before a child was 5 was significantly associated with offending as a child and going on to offend as a young person; this was so also for those neglected before age 10 and age 14. For those who were physically abused under age 14 and also offended under 14, 77% went on to offend in adolescence, compared to 23% who had such abuse recorded but offended only as children. Sexual abuse data show clear links between being sexually abused under age 14 and offending. Emotional abuse is a debated concept, but Oranga Tamariki social worker reports showed the more emotional abuse 'events' occurred in a child's life, the more likely they were to offend or reoffend. Data on abuse and neglect are based on Oranga Tamariki social worker reports and are likely underestimated, especially rates of sexual abuse. Having a report of concern (ROC) before age 5, 10 or 14 was significantly associated with offending as a child, a youth or both. Higher numbers of reports of concern/notifications to Oranga Tamariki were associated with increased risk of child offending as well as combined child and youth offending (the 'both' group). There were thousands of reports of concern about children who were offending. In the 'both' group, there were 1151 ROCs before age 5; 2888 ages 5 to 10; and 3223 from age 10 to 14. Children in the 'both' group had an average of 2.18 ROCs before they were only 5 years old, 3.82 between aged 5 and 10, and 3.77 aged 10-14. Those who had a report of concern before age 5 and offended as a child were more likely to reoffend as a youth (73%) compared to 57% without an ROC. This pattern persisted for those who had offended as children and had reports of concern between the ages of 5 and 10 (70% vs 55%), and between 10 and 14 (72% vs 50%).
<p>Out-of-home placements and state care</p> <p>Children born in 2000 who had been in state care or placed out of home were significantly more likely to offend than those who had not had an out-of-home placement.</p>	<ul style="list-style-type: none"> Children who had an out-of-home placement before their 5th birthday were more likely to offend (across all age groups) compared to those who did not have a placement before their 5th birthday. Those who had offended as a child and had had a placement before age 5 were significantly more likely to also offend as a youth (82%). Being in state care before age 5 was associated with repeat offending, with 82% of children who had offended then going on to offend as an adolescent, compared to 62% who offended as children but had not been in state care by age 5. These high rates persisted: 87% of those who had been in state care aged 5 to < 10 offended as both a child and as a youth, as did 85% of those in state care aged 10 to < 14.

Area of analysis	IDI findings
<p>Family Group Conferences</p> <p>An FGC to help a 5-year-old took an average of 5 months from referral to it being held.</p>	<ul style="list-style-type: none"> • Most children who were offending had at least one Family Group Conference (FGC); a few had as many as 4 FGCs before age 14. • Months passed from a referral for an FGC, to the FGC being held e.g., the average length of time it took from referral of an under-5-year-old to the FGC being held was 5 months (159.5 days). For 10- to 14-year-olds, the average time from referral to FGC was lower, at 57.5 days. • Children who had an FGC before the age of 5 (147 children) and offended as a child were more likely to reoffend aged 14-18 (78%) compared to those who did not have an FGC before age 5 (62% of whom continued to offend). Similarly, 76% who had an FGC before aged 10 kept offending vs 61% without an FGC; and 78% of FGC before 14 continued, vs 58%.
<p>Self-harm and suicide indicators</p> <p>Rates of reoffending were higher in those who had had self-harm or suicide indicators reported.</p>	<ul style="list-style-type: none"> • Self-harm and suicide indicators up to age 19 in the cohort showed significant associations with offending. The rate of offending as both a child and as a young person in the whole cohort was around 2.6%; however, in those who had had self-harm or suicide indicators reported, it was 16.2%. Similarly, the rate of youth-only offending in the whole cohort was around 9.6%; among those who had had self-harm or suicide indicators reported, it was 32.4%. • However, numbers remain extremely small, compared to qualitative reports of much self-harm and suicidality amongst children and young people who offend. Data on self-harm and suicide indicators are based on Oranga Tamariki social worker reports and are likely underestimated.
<p>Justice-involved parents</p> <p>Offending could be intergenerational with risks of offending increased with a justice-involved parent.</p>	<ul style="list-style-type: none"> • Those who offended as both a child and youth were more likely to have a justice-involved parent than not (5% vs under 1%); for youth-only offenders (aged 14+), there were 14% who had a justice-involved parent compared to 6% who did not. • These rates increased if both parents had had justice involvement, with 9% of children who offended as a child and young person having two justice-involved parents, in contrast to 1.6% who did not. • A charge laid against at least one parent before the child was born was significantly associated with a child's repeat offending: 68% of those children went on to offend as both a child and a youth, relative to 53% of others who reoffended.
<p>EDUCATION ISSUES</p> <p>Suspensions</p> <p>Children who were stood down or suspended from school before age 10 were significantly more likely to offend at all age groups.</p>	<ul style="list-style-type: none"> • Children who were stood down or suspended from school before age 10 were significantly more likely to offend at all age groups. • For example, 29% of those who had offended as both a child and young person had been suspended, vs. 2.2% who had not. • For children who had offended, those who had been suspended or stood down between age 5 and 10 were also significantly more likely to reoffend: 81% also offended while aged 14-18, compared to 61% of those who offended as a child but had not been suspended age 5-10.

Area of analysis	IDI findings
<p>Expulsions</p> <p>Nearly half of those expelled from school before age 14 offended as both a child and young person.</p> <p>Multiple school enrolments</p> <p>The odds of offending increased 1.6 times for each extra school enrolment. Nearly a quarter of those who had been to 7 or more schools by age 14 had offended.</p>	<ul style="list-style-type: none"> Few children had been expelled from primary school, but those who had been expelled from any school by age 14 were significantly more likely to reoffend—85% of those who had offended as a child and had been expelled before age 14 offended again from age 14-18. Those expelled before age 14 comprised just 0.4% of the overall cohort (216 children); nearly half (47%) of these (102 children) had offended as both a child and as an adolescent, a statistically significant difference from those who had not been expelled before age 14 but who had offended (2%). Repeatedly changing schools was significantly associated with offending. For each additional school enrolment by age 10, the odds of offending as a child increased by a factor of 1.58. Rates of reoffending were significantly associated with increased number of school enrolments, with each additional enrolment increasing the odds of repeat offending by a factor of 1.21. Almost a quarter (24%) of those who had been to 7 or more schools by age 14 had also offended by that age. Not attending school at age 16 was significantly associated with repeat offending, with those who offended as a child and went on to offend as a youth significantly less likely to have been enrolled at school at 16.
<p>SOCIOECONOMIC ISSUES</p> <p>School decile</p> <p>Nine-year-olds at a decile 1 school were 2.1 times more likely to offend than their peers at a decile 10 school. Risk of offending decreased as decile increased.</p> <p>Receiving a benefit</p> <p>Children whose parent received income support when they were aged 5, 10 or 14 were more at risk of offending and reoffending.</p>	<ul style="list-style-type: none"> Lower school decile (as an indicator of socioeconomic deprivation) at ages 6 and 9 was associated with increased offending across all offending groups. Also, of the children who offended, those who attended a lower decile school were significantly more likely to reoffend than those who did not. The odds of offending for those who were in a decile 1 school at age 9 were, on average, 2.1 times higher than for those in a decile 10 school at age 9. Looking at the probability of repeat offending, it was 1.3 times greater for those in decile 1 schools at age 9, compared to those in decile 10 schools. An indicator of financial hardship is having a parent who is entitled to receive an income support payment. Benefit entitlement for a parent before a child was aged 5, 10 or 14 were all associated with risks of offending. Two-thirds (66%) of children who offended and whose primary caregiver was entitled to receive income support (when the child was under 14), continued to offend in adolescence.

Stakeholder findings

Interviews were conducted with child welfare and Family Court professionals, police, kuia, school staff, lay advocates, as well as whānau members with lived experience of these proceedings in relation to child offending.

Participants called for earlier help across the board, whether from the first time a child and whānau felt overwhelmed, or a call to Oranga Tamariki was made, to the first time there was involvement with the Family Court or police. They spoke of many missed opportunities to act to ensure better engagement with whānau, better coordination between services and better outcomes for all.

Table B. The failings of the child welfare and child offending systems

Themes	Findings
<p>1. SHORTAGE OF RESOURCES ACROSS THE CHILD WELFARE SYSTEM</p> <p>With respect to offending, that's all concentrated at Corrections in the adult population, right, so Corrections have got 250 psychologists, we have got probably on a good day with the sun shining, 10... three of those are in head office (<i>Oranga Tamariki advisor, Patrick*</i>)</p> <p>What do I do with this 6-year-old? I don't think they've got sufficient resources to do what he needs.... (<i>Lawyer, Mary</i>)</p> <p><i>* All names are pseudonyms</i></p>	<ul style="list-style-type: none"> • Lack of staff (e.g., social workers, FGC coordinators, psychologists, lawyers, mentors) mean risks for offending are not managed early • Shortage of community programmes • Specialist teams or programmes not available consistently or nationwide • Overworked professionals (e.g., social workers, police officers) are unable to sufficiently cater to the needs of children • Services tend to be targeted toward older youth • Lack of specialist caregivers/placements, leading to further instability
<p>2. HIGH THRESHOLDS FOR INTERVENTION</p> <p>These kids often start off in the Family Court, and there's no resources until they offend or until someone gets desperate and Oranga Tamariki is forced to take them on as clients. (<i>Lawyer, Julie</i>)</p> <p>There's a number of care and protection cases over the years that you could point to that they wait until they offend and then end up in the youth justice system rather than deliver intervention. Yeah, I've seen numerous cases of that over the years. (<i>Police officer, Nikau</i>)</p>	<ul style="list-style-type: none"> • Only children and families with the most significant and immediate needs seem to receive child welfare intervention • Many children and families do not receive support despite the known presence of child welfare concerns • High thresholds for support are also present in the education system • The lack of early intervention allows for the escalation of needs, leading to statutory intervention, such as s14(1)(e) applications • It should never get to the point of police filing s14(1)(e) applications where children's needs were long known to the child welfare system • Children may not receive effective support until older age or continued offending leads to entry into the youth justice system

Themes	Findings
<p>3. POOR COORDINATION AND INADEQUATE OVERSIGHT OF CHILD WELFARE CASES</p> <p>I think there's been far too narrow a focus on health delivering health, education delivering education, police trying to stop crime and Oranga Tamariki trying to stop children from being abused. <i>(Lawyer, Robert)</i></p> <p>Those families have sometimes got seven, eight agencies involved independently. There's no collaboration. There's a big gap, it's very siloed. <i>(School principal, Stuart)</i></p> <p>There are cases where I've said to the Court, I want my appointment to continue for this period of the review because there are these three things that need to happen and I basically don't trust anyone to keep an eye on it. <i>(Lawyer, Andrea)</i></p>	<ul style="list-style-type: none"> • Agencies operate in silos, preventing coordination and leading to children falling through the cracks • Social workers are often unable to keep oversight of cases due to high caseloads • Poor communication between professionals and frequent changes of social workers further impede oversight • Police involvement in s14(1)(e) cases can increase oversight • More regular reviews of cases may improve oversight • Poor coordination between agencies increases difficulties for families • Collaborative, wraparound approaches were perceived as more effectively responding to children's and families' needs • Extended monitoring by the Family Court may increase oversight of cases and ensure accountability of professionals • The wellbeing of children often depends on dedicated professionals rather than coordinated systemic responses
<p>4. INSUFFICIENT RESOURCING OF THE FAMILY COURT</p> <p>The Family Court has some barriers, [it's] a very, very busy court. One of the chief complaints of Family Court Judges is the lack of time to make informed and meaningful decisions. ... they are literally given minutes to make their mind up whether a child should be removed or not. <i>(Lawyer, Robert)</i></p> <p>I used to try and get care and protection kids into a Crossover Court so that they are regularly monitored because it's easy for people to stop monitoring progress and services fall off. <i>(Social worker, Hamuera)</i></p>	<ul style="list-style-type: none"> • The Family Court is under-resourced, impacting on professionals' ability to make meaningful child welfare decisions • There is a particular lack of resources in the Family Court relative to the Youth Court • There are crossover courts (court time allocated for children and young people with both child welfare matters in the Family Court and offending matters in the Youth Court) in both Auckland and Waitakere that are reportedly underutilised; participants reported that elsewhere in the North Island, crossover time is limited due to lack of dual-warranted judges (for example, no crossover time for a year; or a large region with crossover time only once a fortnight)

Themes	Findings
<p>5. SYSTEMIC SHORTFALLS CONTINUE ONCE CHILDREN HAVE OFFENDED</p> <p>The issue is that [serious child offending] doesn't happen very often but it's very complex, so the odd time it comes up, most people have no idea - what are we talking about here? ...how does an ordinary kind of Youth Aid Officer who hasn't really come across it before approach the system and make the right decision? <i>(Legal counsel, Sophie)</i></p> <p>The first-time offender, so they've been caught and so let's consider warnings or alternative action before we go to FGC but sometimes when you dig deeper you see that okay, yeah, it is a first-time offence that they've come into contact with police but there's all this underneath stuff going on that can't be addressed by a warning or an alternative action plan. <i>(Police officer, Vicky)</i></p>	<ul style="list-style-type: none"> • Police may be unsure how to respond to children who offend, meaning opportunities to assess children's needs can be missed • Separate Oranga Tamariki care and protection and youth justice divisions hinder more effective coordination of child offending cases • Complicated and inconsistent paperwork in relation to child offending impede efficient proceedings • There is limited expertise of how to file child offending paperwork in relation to the Family Court • Potential conflict with Oranga Tamariki may further discourage police from filing s14(1)(e) applications • The roles and responsibilities of particular agencies regarding child offending are perceived as unclear and the only available reference tool (the Child Offender Manual) was last updated in 2002 – hopelessly out of date
<p>6. CHRONIC DELAYS</p> <p>So, I've got an FGC today. Police referred him under 14(1) (e) because OT weren't taking any action. Police referred him in September last year for an FGC, we're getting it today [11 months later]. So, what's the problem there? Delay. It's the same with the Family Court, delay, delay, delay, not in the child's sense of time, not the action needed when it needs to be. <i>(Lawyer, Jasmine)</i></p> <p>Youth Court is structured, it's written into the legislation that these reports have to be before the court within a certain timeframe. So, it's rare in the Youth Court that a case will be adjourned for longer than two weeks. That is unheard of in the Family Court. I mean you know the timeframes are just pushed right out. <i>(Lawyer, Samantha)</i></p>	<ul style="list-style-type: none"> • Chronic delays and inefficiencies in child welfare and Family Court proceedings impede better outcomes for children with welfare and offending concerns • Delays apply to FGCs, court hearings, reports and assessments, finding placements, forming plans and implementing recommendations • Delays are particularly detrimental to children
<p>7. VARIABLE FGC PROCEEDINGS</p> <p>[Children who offend] are seen more under the youth justice lens as opposed to the need for them to be seen under care and protection. So, the behaviour gets looked at first as opposed to looking at what has happened to this child that has led to this behaviour. <i>(Psychologist, Pania)</i></p> <p>I didn't understand all the legal or jargon talks and expectations that they wanted, I didn't understand anything [laughter]. I wanted to know what the hell was a 333, what the hell was a 101, what does that mean, what's a court order, you know. <i>(Whānau, Maria)</i></p>	<ul style="list-style-type: none"> • FGCs can be excellent though vary in quality • Offending matters often take precedence over child welfare concerns • Children and families are not sufficiently informed of statutory proceedings or included in decision-making • The collaborative approach in the Youth Court was perceived as more favourable • Lay advocates, communication assistants & cultural leaders are invaluable to support children and whānau, but there aren't enough of them

Themes	Findings
<p>8. POORLY IMPLEMENTED FGC PLANS</p> <p>It's amazing how a great social worker will make a lot of things happen where another social worker might not make things happen. So, the personal responsibility is really important but also the resources. <i>(Lawyer, Andrew)</i></p>	<ul style="list-style-type: none"> Plans are often not implemented nor adhered to Children and families appear to be set up to fail by the system Professionals are frustrated and want more accountability and oversight of plans
<p>9. EFFECTIVE ENGAGEMENT WITH WHĀNAU IS CRITICAL</p> <p>The ones that work well are where you have got a social worker who's got on side with the family and have got the trust of the family and the family realises Oranga Tamariki's not out to get them, Oranga Tamariki wants to help them <i>(Lawyer, Jasmine)</i></p> <p>We see Youth Aid staff coming in and out, social workers changing, all that does is really reinforce for this child that everyone, anytime anything good happens, people leave. Consistency is really important. <i>(Police officer, Nikau)</i></p>	<ul style="list-style-type: none"> Intensive engagement and relationship building are fundamental to supporting children and whānau and bringing about positive change Effective engagement was perceived as supportive, non-judgmental, and consistent A strengths-based, Treaty approach and "the right match" are critical
<p>10. EARLY INTERVENTION IS CRITICAL</p> <p>If a doctor had listened to me back when she was smaller, I reckon, if she had gotten the help when she was two, I believe it would have been different, everything would have been different for my daughter. <i>(Whānau, Ana)</i></p> <p>We always talk about prevention but I'm not sure we actually do it that well. I think there are opportunities. If we're talking about risks of offending, we're talking about siblings of known offenders, we're talking about behaviours that are evident in small children at early childhood, at kindy, at early primary school years. <i>(Police officer, Nikau)</i></p>	<ul style="list-style-type: none"> Effective assistance is required at the earliest opportunity Such assistance must be responsive to the needs of children and families, be at a systemic, wraparound level, culturally embedded and evidence-based
<p>11. SOCIOSTRUCTURAL FACTORS MUST BE ADDRESSED</p> <p>How can child offending be prevented in New Zealand? Probably through addressing those key issues that are causative factors in offending ... to raise these people out of the poverty blights that they're in. There's the historical nature that goes back to colonisation cause obviously Māori particularly are overly represented in criminal figures. <i>(Police officer, Dave)</i></p>	<ul style="list-style-type: none"> Structural issues, such as poverty, income inequality and racism, underlying child welfare concerns, must be addressed

