

# **Restorative justice for young people in New Zealand: Lessons from research<sup>1</sup>**

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## **Abstract**

The New Zealand system of youth justice is unique in being the first and currently the only complete system of youth justice built around principles and practices consistent with a restorative justice philosophy. This paper describes briefly these key principles and practices.

It then describes and reports on research that examines the extent to whether legislative goals of diversion, participation, empowerment, repair and reintegration have been met. It reports results that examine the question of the extent to which restorative practices are able to achieve desired outcomes.

Finally it discusses the implications of the data for policy and practice and it suggests standards against which effective practice can be benchmarked and key elements of best practice.

The results demonstrate that restorative principles, policies and practices have the potential to improve outcomes for children, young people and their families. But at the same time, the data suggests that simply introducing family group conferences is not enough to change youth justice outcomes. There are lessons in this for us all.

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<sup>1</sup> An earlier version of this paper has been delivered at previous conferences and published elsewhere (Maxwell, 2005). However, this version has been revised and updated to incorporate recently released data on the outcomes of police youth diversionary practices.

<sup>2</sup> This research was funded and supported from a number of government sources. The Ministry of Social Development was the lead agency for research on achieving effective outcomes and the New Zealand Police were the lead agency for research on police practices. Other key researchers on the projects were Venezia Kingi, Jeremy Robertson, Allison Morris. Chris Cunningham Judy Paulin and Prue Vincent but our thanks are also due to many others involved in interviewing, data analysis, consultation, review and editing. Our thanks, as always, go to the generous contributions from the young people families, victims and professionals involved in the processes we have studied.

## **Introduction**

In 1989, new legislation resulted in a new youth justice system for New Zealand that we now recognize as the first formal adoption by the legal system in any country of a system of justice based on restorative principles and practice. It introduced too, the family group conference, which has since become the prototype for the introduction of restorative conferencing processes prior to or as an alternative to sentencing in the criminal courts in many different countries throughout the world. In 1990, Allison Morris and I were privileged to be given the task of researching and evaluating this system and we, together with a number of collaborators, have continued to collect data, conduct research and write about it since then.

In this paper, I want to briefly describe the New Zealand system, its principles: and its processes. I will then discuss the research we undertook, in collaboration with others, from 1999 to 2003. I then present key findings from the research and examine the factors that we identified as relevant to predicting outcomes for young people. Finally, I examine the implications of this research for policy and practice and suggest conclusions that are relevant for New Zealand and for other countries who are seeking to find restorative ways of responding to young people who offend.

## **The New Zealand System of Youth Justice**

### *Goals and values*

The youth justice system in New Zealand is set out in the Children, Young Persons and Their Families Act 1989 (the Act) and the goals and values underpinning the system are explicitly described in its objects and principles. These emphasise a number of established values relating to the protection of rights, welfare and justice considerations:

- Protection of rights - Children and young people must be informed of their rights, strict and limited conditions govern police powers of arrest, a parent or nominated person is required to be present any at interview, children and young people are not required to make a statement, they are entitled to legal representation, and they must be fully informed of their rights in language and a manner that they can understand.
- Welfare – Rehabilitative options and support for families should be provided, children cannot be prosecuted in the Youth Court until they reach the age of 14 years and time frames for resolving matters must be appropriate to their age.
- Justice – Diversion from courts & custody is to be preferred as are least restrictive sanctions. There is an emphasis on accountability and a separation of welfare and justice matters.

There is also an emphasis on newer and restorative values of empowerment of children and families, repair of harm and the reintegration of offenders into society:

- Repair – Young offenders are expected to attempt to repair the harm they have done and this may happen through the genuine feelings of remorse, expressions of apology, making restitution or reparation, and undertaking

- work for the victim or in the community.
- Empowerment of victims, families and offenders is to be achieved through practice and processes that emphasize the meeting together of those involved in or affected by the offending, their participation in the process, and their involvement in reaching consensus decisions
  - Reintegration can be achieved through forgiveness, restoring connectedness among those involved, and putting in place plans for the young person that will be rehabilitative and build skills.

### ***Key innovative processes***

The new youth justice system has adopted a number of new processes which are key to achieving the goals outlined above:

- Police warnings, either informal verbal warnings or more formal written warnings sent to the young person and their family, are used to indicate the inappropriateness of the offending behaviour and to warn of the consequences of future offending<sup>3</sup>. Currently about 45% of young offenders coming to police attention are dealt with in this way.
- Police youth diversion (or as it is sometimes referred to – alternative actions) is used for about a third of all children and young people who come to notice. These will involve a Police Youth Aid officer developing a plan with the young person and their family (and sometimes in consultation with the victim), which can include actions intended to repair, harm and plans to prevent further offending by referring the young person and/or the family to suitable services or negotiating about schooling problems.
- Family group conferences (FGCs) are at the heart of the new system for the more serious offenders. About 8% will be referred to them directly by the police and the Youth Court will refer the remaining 17% (who have been formally charged) for a FGC before any decision is made about the court's response. FGCs have been described more fully elsewhere (Maxwell & Morris, 1993, Maxwell et al, 2003) but it should be noted that they are intended to provide an opportunity to those most affected by the offending (the young person, their family and the victims) to play a full part in the process of discussing possible outcomes and reaching a consensus decision about recommendations and plans for repair of harm and prevention of future re-offending.
- The Youth Court itself is required to manage matters in ways that enhance the understanding of procedures by participants, involve families and young people, consider the recommendations of the family group conference and follow them unless there is no agreement or there are good reasons under law for modifying them. It too is required under the Act to follow principles that are diversionary, involve least restrictive sanctions and minimise the time taken to process cases and complete tasks.

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<sup>3</sup> There is provision for a formal police caution but, in practice, this is not used.

- Youth offending teams are currently being set up throughout the country (Ministry of Justice and Ministry of Social Development, 2002). These teams comprise all the professionals involved in youth justice in each area including youth justice coordinators; youth aid police, youth justice social workers, judges, lawyers, court staff and service providers from the areas of health, education and community services. Their role is to ensure that practice is in line with principles, that day-to-day problems are resolved, that interagency co-operation proceeds smoothly and that the needed services and backup are provided to children, young people and families.
- Community response options are the final key to implementing the system. Suitable services and strategies need to be available to ensure that families receive the support they need in caring for their children and young people, the children and young people's needs in the areas of health, education and leisure are provided for.<sup>4</sup> Suitable arrangements also need to be made when the young person is ordered by the court to undertake tasks in the community as an alternative to custody<sup>5</sup>.

## **Research outcomes**

In this section, results of research are reported in relation to two topics: meeting objectives and predicting outcomes. The data come from samples of young people coming to notice in 1998 and 1999 and followed up in 2000-2002. Unless otherwise stated the results reported for FGCs and the police diversion come from the Achieving Effective Outcomes (Maxwell et al 2004) and Police Youth Diversion (Maxwell and Paulin, 2006) research respectively. The FGC sample involved file data on 1003 young people who had FGCs of whom 521 were interviewed and 438 files of young people for whom the police arranged diversionary plans of whom 76 were interviewed. Other relevant research from our team has also contributed to the results and conclusions reported here (Maxwell & Morris, 1993, Morris & Maxwell, 1997; Maxwell & Morris, 1999).

## **Meeting objectives**

### ***Accountability, repair and wellbeing***

The goal of achieving accountability for young people is being achieved almost universally through three key processes:

- Diversionary plans arranged through the police (99% of plans included accountability measures),
- Plans agreed at the family group conference (97% of conferences plans include measures intended to ensure accountability) and

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<sup>4</sup> Ideally one would add victim support services to this list but although these are increasingly available in New Zealand, the provision for and management of these has been the responsibility of other players in the justice sector.

<sup>5</sup> The top tariffs in the Youth Court are orders for: supervision; for supervision with activity (where the young person remains in the community but carries out a plan which involves supervised activities and 24 hour a day, seven day a week monitoring); supervision with residence (in a residential youth centre for up to three months followed by six months supervision); and transfer to the District or High Court for sentence (usually this will be followed by a prison sentence or other adult penalty).

- Orders of the Youth Court.

Although there no information is available on the completion of diversionary plans agreed with police or at the FGC, information from the young people indicates that in at least 88% of cases the required tasks are satisfactorily completed. These data indicate that all the above processes are making young people accountable in one way or another.

When data on the accountability elements of plans is further broken down, the results show that

- Responses intended to repair harm is part of police diversionary plans for nearly 58% of cases and for four out of five of the young people who had FGCs (84%).
- Elements that are fundamentally restrictive were present for only 11% of police plans but for nearly 60% of the FGC plans although it is doubtful that these will have always been necessary for public safety or consistent with the goals of the Act.

These results suggest a greater emphasis on repair in FGCs compared to police plans. However, it is more likely that the difference largely reflects the relatively trivial nature of many of cases dealt with by the police. In contrast, the FGCs appear to have been more retributive although again, this may in part reflect the difference in the nature of the cases. As the police are involved in the decisions about outcomes in both the diversionary and FGC cases, it is unlikely to reflect a fundamental difference in the overall philosophy with respect to diversionary and FGC cases and there is certainly no evidence from interviews with the police that this is the case.

Measures to enhance wellbeing were included in the plans for about one in ten of the young people dealt with by the police plans and for about half the young people who had an FGC. Again this is likely to reflect at least in part the different backgrounds of the two samples: other evidence shows that the police are more likely to refer matters to an FGC when social service support is needed for either the young person or their family. Perhaps it is more surprising that police are arranging programmes for as many as 10% of cases that are being dealt with through their plans.

Further analysis of data on those referred from an FGC showed that 39% had some type of reintegrative element and 31% had a rehabilitative element in their plan. However, the elements of plans intended to promote wellbeing are not necessarily being fully implemented and this is especially true of the rehabilitative aspects of plans. Further analysis also shows that both reintegrative and rehabilitative options are too rarely available for the young people who need them and those that are available are not necessarily effective.<sup>6</sup>

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<sup>6</sup> Some increase in the proportion referred to programmes or training courses was, however, noted for the 2000/2001 sample compared to the 1998 sample and since that time, additional resources have been made available to improve services.

### *Empowerment*

The main process goals of the family group conference - ensuring that the appropriate people participate, that victims and families are involved and that there is consensus decision making - appear to be being largely achieved. Not all victims attended but this was mainly because they did not choose to do so. More young people were reporting feeling involved than in the years immediately after the Act (Maxwell & Morris, 1993), but as this was still only reported by about half of them, there is room for improvement if the FGC is to reach its full potential. Decision-making did not always reflect a true consensus and there was evidence that, at times, professionals dominated decision-making.

A scale comprising items derived from these same items assessing participation and involvement in decisions was used to assess empowerment in the police youth diversion study and the results are very similar: over half those interviewed reported both participating and being involved in decisions and another 30% reported participating in decisions but not feeling involved.

### *Cultural responsiveness*

The data on the experiences of Maori and Pacific family group conferences shows that they can be successful in engaging families and arriving at successful outcomes. Success appears to be facilitated when the process treats the family members with respect and acknowledges them and their role in a manner, which goes beyond token gestures. The participants need to feel validated and central to the process rather than merely being provided with an opportunity to participate. They need to be left to take charge of decisions rather than have professionals suggest or make decisions for them. They need to be spoken to in a language and a manner they understand by people who understand and can respond to them in ways that are affirming and respectful. They may need encouragement to provide their young people in turn with the support, affirmation and forgiveness that the young person will need if they too are to become part of a solution that sets wrongs right and builds towards a constructive future. In addition, speakers of English as a second language must always be enabled to understand the process.

There is clearly room for improvement in the way family group conferences are managed in these respects. Best practice would be for the convenor to ascertain the specific cultural expectations of the participants prior to the conference and to clearly explain the use of any culture-specific processes to all participants at the beginning. In particular it is important that the convenor ensure that all participants in the family group conference are introduced to each other. When interpreters are not able to be present, any non-English speakers should be identified and encouraged to seek clarification (perhaps from a family translator) throughout the conference.

Although we do not have similar data in relation to police processes, it is certain that same principles will be crucial to the effectiveness of police in engaging and preventing crime among the young Maori and the young people belonging to minority ethnic groups with whom they work directly.

### ***Time frames***

Appropriate time frames in convening and completing family group conferences are, for the most part, being met within CYFS, but time frames for police and the Youth Court in making referrals to a family group conference seem unnecessarily long. Considerable delays can occur in the Youth Court, especially where sittings are infrequent, where administrative problems arise and, less frequently, when there is repeat offending before a case is completed. Other contributing problems appeared at that time to be the lack of monitoring of time frames and of progress towards the completion of plans.

Time frame data was not available for reaching decisions for those involved in police youth diversion. However, data on the completion of plans came from interviews with the young people. About half said that matters were completed in the same week and another 20% said that tasks were completed within six weeks after the plan was agreed. Some took between six months to a year to complete because of the length of programmes that were arranged or because of breakdowns in arrangements and renegotiation over suitable alternatives. Questions can be raised about the appropriateness of the plans being arranged by the police that are not able to be completed in six weeks, or at the most, three months in cases where social service arrangements have been made.

### ***Protecting rights***

Information on the extent to which young people's rights were being protected was not available. Procedures for recording actions of the police in arresting and interviewing young people were in place during the early years of the Act (Maxwell and Morris 1993) but these appear to have been discontinued.

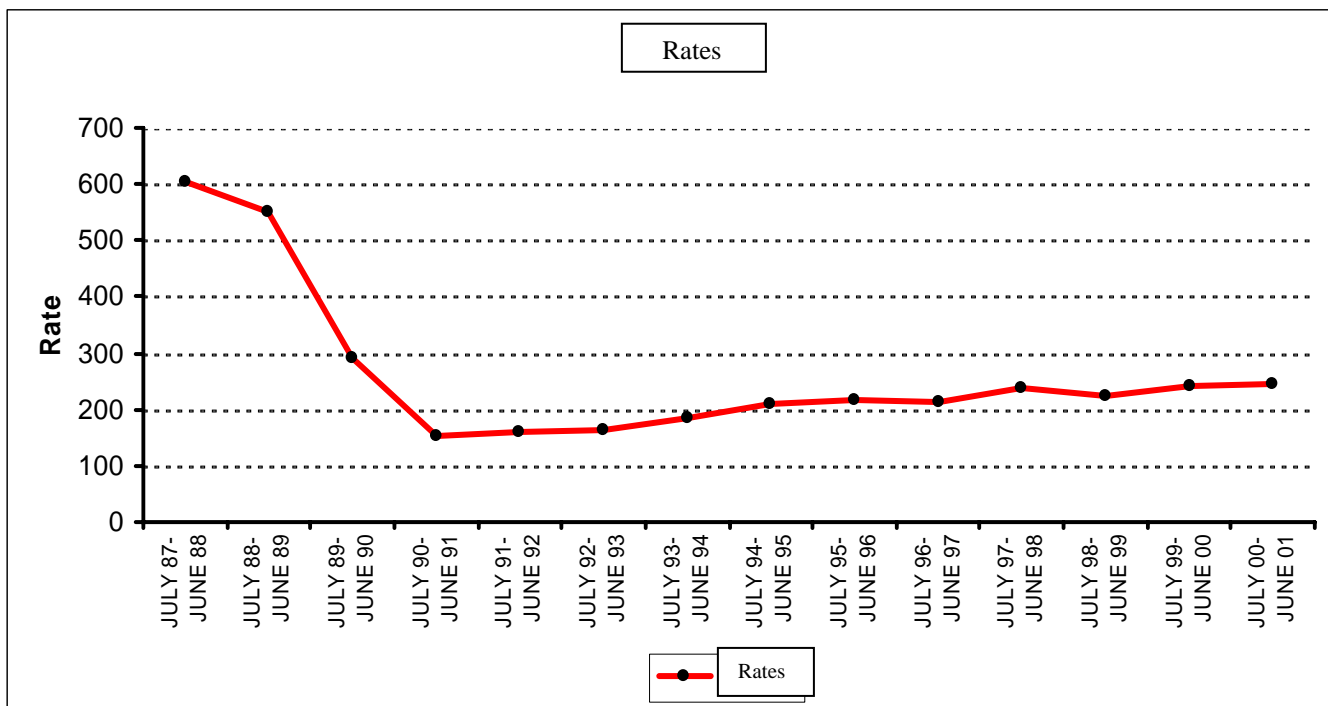
In addition, records have not been kept on whether or not the young person was asked if he or she agreed with the summary of facts and, if not, what processes were followed to either correct the allegations of police or to arrange a defended hearing. All young people who were charged in the Youth Court had a youth advocate appointed to represent them. However, there are no formal arrangements for monitoring the performance of youth advocates.

### ***Diversion and decarceration***

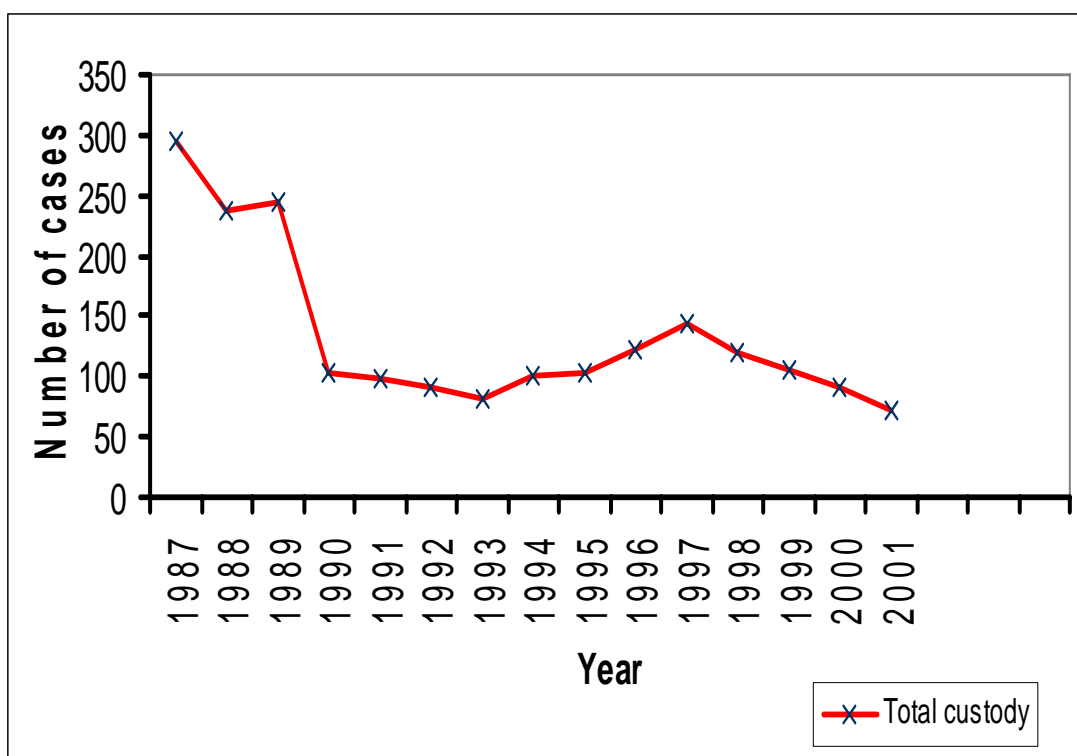
Achieving diversion and decarceration are integral objectives of the 1989 Act. The increased use of diversionary practices and the decreased use of incarceration are some of the most dramatic consequences that have occurred with the introduction of the Act and they have continued over recent years. Since 1990/91, the use of police warnings remains much the same; there has been an increased use of police youth diversion with fewer being sent for family group conferences. While police warnings have remained fairly similar over the last ten years (dropping slightly from 48% to 44%), there has been a dramatic increase in the number for whom police diversionary plans are arranged and a corresponding decline in direct referrals for an FGC (an increase from 10% to 32% of all cases coming to notice).

In part this reflects the limited resources available for FGCs but in part it reflects the growing confidence of the Youth Aid police in their own ability to use the principles of the Act to arrange appropriate plans in more minor cases. The evaluation of the way this has been managed suggests that this increase in police responsibility for not only arrest and charge but also outcomes is not being abused and has led to an increase in the constructive use of diversionary responses. However, increased monitoring and better guidelines are needed to ensure accountability with respect to these increased powers.

With respect to court actions, there has been a slight decline in the numbers of convictions and transfer to the adult courts; and, over recent years, fewer young people have been given prison sentences. Figure 1 below indicates the decline that has occurred in the number of youth court appearance since prior to the introduction of the Act and Figure 2 indicates the decline in custodial outcomes.



**Figure 1 Rates per 10,000 distinct cases in the Youth Court aged 10-16  
Years: 1987 to 2001**



**Figure 2** Numbers of cases of young people receiving custodial sentences aged 10-16 Years: 1987 to 2001

There are, however, two areas where there has been an increase in the use of criminal proceedings in ways that do not appear to be related to the increased seriousness of offending or to the increased severity of the outcomes decided upon. The first is that police are, compared with 1990/91, referring a greater proportion of cases to the Youth Court (17% in this study compared to 10% reported by Maxwell and Morris in 1993). The second is the somewhat greater use of Youth Court orders, although this may be a consequence of the greater number of referrals for which the police is recommending a court order. These findings may be related in part to limited resources for managing family group conferences and in part to a lack of commitment to the importance of diversion from the Youth Court among some police officers. Better resources, better training and more consultation among professionals could lead to a reduction in Youth Court loads and in the need for Youth Court appearances for relatively minor matters, without compromising the need to ensure appropriate outcomes. The new Youth Offending Teams may prove to be useful in this respect.

**Summary**

Overall, these data present a convincing picture ten years later of the effective transformation of a system, which, like most of those in the Western world, relied primarily on courts to make decisions and outcomes designed around welfare and/or punishment. The youth justice system in New Zealand is now undeniably based instead on new forms of accountability through acknowledgement of responsibility and apology, diversion from formal procedures and custodial outcomes and a focus on

repair and reintegration rather than punishment. On the other hand, it is my view that there are still more cases that could be handled effectively at a lower level in the system, improvement in the services that could be provided and a increased emphasis on constructive rather than restrictive responses and data that confirms this view is presented in the next section.

### **Predicting outcomes**

Considerable data was available from the Achieving Effective Outcomes study that could be used to examine what happened to the young people after their conference with ns of at least 500 available for multivariate analyses on all variables including the views of the young people themselves.

Similar data was available for the Police Youth Diversion study. Data were available on 1438 cases that could be compared in terms of the nature of the response and re-offending. Re-offending data could also be analysed in more detail from 464 young people who had diversionary plans. But data on life outcomes and responses to the process were only available from the 76 young people who were interviewed.

### ***Re-offending and response level***

Data on re-offending for all 1438 cases in the police sample enabled analyses to be made of re-offending rates in relation to the level of the system that they were dealt with. Of those who had been charged in the Youth Court, just over half re-offended within 18 months, the figure for the cases referred to FGC was 37%, for Police diversion was 16%, and only 9% for those warned. In a large part, these outcomes reflect the differences among these groups with respect to traditional predictors of re-offending such as being males, prior history of offending, truancy and age. Although the data were not available for this sample, it is likely that prior and contact with child welfare and family background would also have been factors<sup>7</sup>. However, there is evidence from multivariate analyses that the way they are dealt with in the system is also a factor in re-offending outcomes. In this analysis of all cases coming to police notice, the most significant factor in order of importance was the police response to their offending: in other words the level of the system at which they were handled. This provides compelling evidence of the importance of diversionary responses and suggests that New Zealand can continue to improve outcomes by diverting even more cases to the less intrusive strategies of warnings, police diversion and direct referral from FGC.

### ***Life outcomes***

But for many reasons (compare Maxwell and Morris, 1999) it is important not to rely on re-offending as the sole or even perhaps the primary criteria of success of a system. We therefore also asked those interviewed about life outcomes in general.

Since the family group conference, most of the young people in both samples were able to develop positive goals and achieve successes. Most of those followed up reported that they had been constructively employed in the last six months (70% of

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<sup>7</sup> These factors are significant predictors within the FGC sample.

FGCs and 60% of police diversion cases) and over 80% in both samples reported close personal relationships. For FGC cases, about 60% or more do not want any further involvement in crime, feel life has gone well for them, and have positive views about the future and these figures are over 75% in the police diversion study. Thirty percent of FGC and sixty three percent of police cases had not been detected in any offending.

The more positive results for the police diversion cases undoubtedly reflect the factors that led to them being dealt with by the police rather than referred to an FGC. Interviews with Youth Aid officers indicated that those factors included being seen as coming from a good family, not having a history of coming to notice and having committed minor offences.

However, negative life events and risk factors were also recorded for over 60% of the FGC sample. About a third said they had been involved in further detected offending and this figure agrees with court records. Data on convictions for offences committed as an adult showed that nearly half appeared before the courts in the first year after they turned 17 years, and after three years this figure had risen to 69%. Offences most often involved property, followed by traffic and violence. Within three years, 22% had received a prison sentence. Among the police diversion cases, these figures were all considerably lower.

### *Predicting life outcomes*

In the case of the overall regression analysis based on police data and other more in depth analyses that included the views of young people interviewed in the FGC and police diversion cases, the results of attempting to predict re-offending and positive life outcomes were clear and consistent, both internally and with previous studies that examined similar issues (Fergusson et al; 1994, Zamble and Quinsy; 1997, Farrington, 1994; Andrews et al, 1999).

The data from these various analyses viewed both individually and collectively provide strong support for the model described in the Achieving Outcomes study (Maxwell et al, 2004) that explains both re-offending and positive life outcomes from a variety of earlier life events. Family background factors had an impact on the young people's lives - but so too did the responses of the youth justice system, including having experienced a restorative family group conference. Events subsequent to the conference also affected young people's future. Phrased like this, the conclusions seem to be common sense.

Yet, it is important to underline the fact that there is no support for those who call for stronger justice system responses based on punishment and retribution as methods of protecting communities rather than on repair and reintegration. These data demonstrate that, if re-offending is to be reduced and the breach in the social harmony is to be repaired, diversion and decarceration are critical and so too are constructive processes and responses. The findings here are a strong validation of restorative justice theory: repair, reintegration, fairness and respect, participation and empowerment, and forgiveness are key elements in effective outcomes while punitive and restrictive sanctions and stigmatic shaming are counterproductive. The analyses reported here validate that:

- Early action is important and is likely to be effective in preventing re-offending and ensuring positive life outcomes;
- The focus of early intervention needs to be on building positive relationships in both the school and the family environment, rather than on simply reacting by denunciation or punishment to early indicators of anti-social behaviour;
- Using diversionary strategies, least restrictive sanctions and avoiding charges in the Youth Court wherever possible is likely to lead to more positive outcomes;
- A constructive police diversion or family group conference can make an important contribution to preventing further offending despite negative background factors and irrespective of the nature of the offending; and
- Life events subsequent to the conference also matter: taking advantage of the opportunity to responding to psychological problems, alcohol and drug misuse, educational failure and lack of employment opportunities are all important options that could reduce re-offending and increase positive life outcomes.

The data describe a number of different aspects of police diversions and family group conference that are important in making re-offending less likely. Police youth diversions are more effective when there is information about family background available, when the young person is fully involved, treated with fairness and respect, able to repair the harm, supportive programmes are provided, remorse is felt and stigma avoided, and plans avoid punitive responses, are and are achievable in short time frames. At the end of the diversion, the young person needs to be able to feel forgiven and able to put matters behind them.

The results for family group conferences are remarkably consistent. There should be good preparation before the conference. At the conference, the young person should feel supported, understand what is happening, participate and not feel stigmatised or excluded. A conference that generates feelings of remorse, of being able to repair harm, and of feeling forgiven, and to form the intention not to reoffend, is likely to reduce the chances of further offending. Processes that are diversionary, sanctions that are the least restrictive and outcomes that are constructive are associated with positive life outcomes. These findings provide a validation for the objects and the principles underlying the 1989 Act and of the features that those close to the youth justice system in New Zealand have identified as being important to good practice (Levine et al, 1998), and for the main tenets of restorative justice theory.

However, few of the young people in the FGC study appear to have participated in positive and effective programmes. The results of research (Sherman, 1997; Farrington, 1994; Andrews and Bonta, 1998; Andrews et al 1999) would strongly suggest that, if the restorative process were followed up with appropriate programmes of good quality, the outcomes would be even more positive.

The findings in the FGC study also indicate that there are different types of young people. While most either experience positive life outcomes or fail to re-offend or experience negative life outcomes and reoffend, there is another group who have a more mixed experience as young adults. This group were identified as reporting positive life outcomes but also being involved in further re-offending. Further work

needs to be undertaken to describe these differences more fully. There are also puzzles around why it is that having matters resolved in court and relatively severe sanctions are linked to negative adult life outcomes. The direction of causation is by no means clear and further analysis may provide additional information.

Nevertheless, the findings identified clearly the most important precursors of good outcomes in respect of backgrounds and criminal justice events. They also identified critical factors in building on positive youth justice system experiences by:

- Providing appropriate and effective mental health services,
- Making employment a realistic possibility and
- Avoiding placing the young people in situations where they form close bonds with others involved in offending.

## **Further implications for policy and practice**

### **Crime prevention**

An analysis of the background factors most likely to be associated with conviction as an adult has a number of implications for crime prevention strategies:

- Family background: as in other research, a number of factors can be identified in the backgrounds of young people which place them at risk; potentially these can be addressed by early intervention programmes aimed at such children and young people.
- Early involvement with CYFS, either for reasons of care and protection or because of earlier offending is an important predictor of negative life outcomes. This finding suggests the importance of ensuring the quality and effectiveness of interventions when a child or young person first comes to notice of CYFS.
- A lack of school qualifications is another major factor in poor outcomes indicating the critical impact of effective management of problems that lead to school drop out and failure.

The level at which a young person is dealt with in the youth justice system emerges as an important factor in life outcomes. This finding underlines the importance of compliance with the diversionary principles of the Act by ensuring that children and young people are always dealt with at the lowest possible level in the youth justice system.

### **Recording data**

Currently there is a lack of consistency in recording systems across agencies is a major impediment to both research and policy development. In addition, much of the data that is desirable, such as data on residential admissions and lengths of stay and data on re-offending are not available. If practice is to improved, information on performance needs to be readily accessible from reporting systems based on a well defined, clear and comprehensive database which has the following features

- Consistent identification numbers for individuals used by police, CYFS and Courts;
- A case based approach to recording rather than an offence or incident based approach;
- Key data on processes of police warnings and diversion, conferencing and court appearances including dates of referrals and other actions;
- Complete data on outcomes of cases;
- Consistent criteria for performance of key tasks such as time frames for referral, decision making and completions of cases;
- Data on monitoring of key elements associated with effective practice;
- Information on re-offending.
- Standard use of self-reported ethnicity.

### **Monitoring**

A number of key points were identified at which the monitoring of practice is necessary if best practice is to be achieved. These include:

- Monitoring of protection of rights when a young person is arrested or interviewed;
- Monitoring of police practice in deciding to take no further action, warn, divert, refer to family group conference or charge in the Youth Court;
- Monitoring of young persons' admissions of responsibility and agreement with proposed plans at the family group conference;
- Monitoring of completion of elements of the plan after the family group conference;
- Monitoring of programme provision in terms of availability and effectiveness;
- Monitoring of follow up reporting to victims.

### **Standards**

A number of criteria were identified in the research that can be used in setting standards to determine the extent to which optimal outcomes have been achieved (cf Braithwaite, 2002). Inevitably achieving such standards will never be possible in all cases. However, designing practice to maximize the chance of optimal outcomes is likely to be helpful providing the indicators selected and the process of assessment does not lead practitioners to achieve positive outcomes through the way they evaluate and record events. Important process features associated with optimal outcomes include whether or not:

- Constructive support is provided to the young person both during and following the youth justice process;
- The young person accepts responsibility for wrongdoing;
- The young person genuinely feels remorseful
- Conference or diversionary outcomes include appropriate restitution and repair of harm to victims
- A genuine apology is made;
- Reintegrative measures are put in place for the young person where this is appropriate;

- The young person is forgiven both by the victim and his or her own family or whanau;
- Stigmatisation and labelling of the young person has been avoided.
- The young person forms an intention not to reoffend

## **Effective practice**

The analysis of data has identified a number of best practice features for both police diversion and family group conferences. For the family group conference the following aspects are key:

- Ensuring that and Youth Justice Coordinators receive professional support and backup in an office where morale is high and their contribution is valued.
- Effective preparation of core professionals involved in FGCs. It seems crucial for all professionals who may be called upon to take part in a family group conference to receive training in their role. Training should include identification of key tasks and knowledge of best practice guidelines. The use of simulated role play situations involving co-coordinators and other local professionals under the guidance of a skilled trainer can allow rehearsal and discussion of options that would optimize the chance of constructive and effective outcomes consistent with best practice.
- Ensuring the right participants are invited take part in the FGC. These include fathers, as well as mothers and other people who will be able to support the young person. It also means ensuring that the numbers of professionals are limited to those who are essential for the process.
- Effective preparation of other participants. For families, young people, victims and professionals unaccustomed to attending conferences, preparation appears to be best achieved at a face to face meeting with the co-coordinator, where information is given on the purposes of a conference, the order in which things are likely to occur, the role that each will be expected to play and possible options for outcomes.
- Consulting FGC participants about preferences with respect to time, place and process. The Act requires that participating families and victims be asked about preferences with respect to process prior to the conference and that these wishes are responded to whenever that is possible and the other key participants agree.
- Greeting participants on arrival, introducing the victim to others, ensuring appropriate seating arrangements and beginning with formal introductions.
- Explaining any culturally responsive processes that may be used, such as karakia and prayers, and the language that will be used.
- An early discussion in the conference of the facts of the offence and checking to determine whether or not the young person denies or substantially accepts these facts. It is important that there should be no suggestion of either the family or the professionals coercing the young person into agreeing with the facts set out by the Police.
- An opportunity for any victims' views to be fully expressed elaborated on and heard with respect and without interruption at an FGC.

- An opportunity at the FGC, and if need be, active encouragement for the young person and their family to respond to the victim without interruption or additions by other participants at this time.
- An opportunity at the FGC for all to be fully involved in a discussion of options for responding to the offending before the family and young people deliberate privately.
- Ensuring that the young person and family are given time to deliberate privately.
- Listening to and considering the proposals of the family and the young person.
- Encouraging an open discussion to ensure that all participants can express their views on the proposals and negotiate modifications where there is agreement.
- Avoiding domination by one or more parties of any part of the proceedings, especially by the professionals.
- Ensuring that all are treated fairly and with respect and encouraged to contribute at all key phases, including prior to the private family time and after the young person and family have made their proposals.
- Ensuring that all are in full agreement with the final plan, but, if this is not the case, recording details of the non-agreement.

The research has focused on identifying a number of desirable outcomes of practice from the perspective of the young person. Many of these have already been noted above. The outcomes include:

- Being well prepared for the conference, i.e. consulted about arrangements and informed about what will happen
- Having people present that support and care about him or her
- Understanding what happened
- Be treated fairly and with respect
- Not being stigmatised and excluded
- Participating fully through presenting views and being involved in decisions
- Feeling remorse, including understanding the victims' views and feeling genuine regret for what happened
- Feeling able to repair the harm that was done
- Feeling that others forgave the young person and gave him or her another chance
- Deciding to keep out of trouble in future.

When young people responded to the conference in these ways, they were more likely not to reoffend and more likely to experience positive outcomes as young adults. Similarly, family and victims responded positively when they were:

- Prepared for what would happen;
- Greeted, introduced and enabled to participate fully;
- Understood what was happening;
- Treated with fairness and respect;
- Involved in the decision about outcomes; and
- Felt that the young person was genuinely remorseful and had attempted to make up for what he or she had done and made a resolution not to reoffend.

In addition, there will doubtless be aspects of practice that are important but have not been identified here because of the type of data collected and the questions that were asked. For example, the need for professional supervision, regular conferences and meetings with other co-coordinators in the area, and the use of regular team meetings of all local professionals<sup>8</sup> have been identified as important by Youth Justice co-coordinators and others in both this and previous research (Levine et al, 1998; Maxwell and Morris, 1993; Maxwell et al, 1997; Morris and Maxwell, 1999). Further information about programmes that are effective in rehabilitating and reintegrating young people is still needed. The hoped for opportunity to undertake an analysis of the impact of programmes on re-offending and reintegration has been limited by the relatively low numbers for whom programmes were provided in the retrospective sample and the limited time frame for data collection in the prospective sample. The impact on outcomes of receiving support from effective youth justice social workers has not been able to be assessed because they were rarely involved with the young people in the 1998 sample. And only minimal information on Youth Court processes has been collected owing to limits on budgets and on the records that are available.

The general tenor of the guidelines in relation to FGCs is equally important when arranging Police diversions. Further details are available in the full report of the police diversion study as are more detailed recommendations about other issues in relation to policy and practice within the New Zealand Police.

- Youth Aid officers need training, professional support and backup in an office where morale is high and their contribution is valued.
- Background information and community support is vital: For Police diversion, key factors were obtaining information about the background circumstances from families and schools and having quality programmes available for the families or young people who needed them. This can only be done if officers have sufficient time to spend in gathering information and working with local communities in building resources.
- Involving all who are relevant to providing a network of support for the young person is important.
- Ensuring that all, including the young person, are involved in decisions and agree with the plan.
- In all cases of Police diversion it is important to have contacted the victim and include their views in the process of deciding on a plan.
- Short time frames, appropriate and manageable sanctions and responses involving the least intrusion in the life of the young person and their family given the relevant circumstances are key.
- Shaming and restrictive and punitive sanctions are to be avoided.

## **Restorative justice for young offenders in New Zealand**

Parallel to the development of the youth justice system in New Zealand has been the development of restorative justice theory and practice in the adult system here and

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<sup>8</sup> Including Youth Court, Police, Child Youth and Family Service and community agency personnel is currently being set up under the Youth Offending Strategy (Ministry of Justice, 2003).

throughout the world. The New Zealand youth justice system continues to attract great interest because it is the only national system anywhere in the world, and because, it has now been in operation nationally for over 12 years, judgements can be made about its ability to deliver what it promised in its early years. What then is the verdict today?

In some respects, the youth justice system has continued to grow in strength and become more restorative in its philosophy and practice. The sanctions adopted by family group conferences remain at least as restorative in 2002 as they were in 1990. The way in which Police have developed their own diversionary practices reflects restorative philosophies rather than the punitive philosophies that underpin much Police action in response to young people in other jurisdictions. The Youth Court appears to have become even more inclusive than it was in 1990/91, if the views of young people and families are to be relied upon. Victims more often appear to feel positively about their experiences than in the early years. Reintegrative and rehabilitative programmes were offered more often in 1998 than in 1990/91 and current policies aim to strengthen this aspect of the youth justice system. Meanwhile, both community and government sponsored models of providing restorative justice options in the adult justice system are flourishing.

On the other hand, restrictive sanctions are still being used in cases where these do not appear to be necessary for public safety. And the practice of laying charges in the Youth Court has increased in cases where relatively minor offending is involved and where relatively minimal sanctions are arrived at.

Furthermore, there remain considerable areas where improvement in practice is both needed and possible. Enhancing the wellbeing of the young people remains a major area where their needs are not being met. Victims and young people are not always being effectively included in decision-making at the family group conference or in the decisions about police diversionary plans. Professionals do not always manage the decision-making in ways that optimises involvement, encourages consensus decisions and provides an opportunity for remorse and healing. The use of the Youth Court for making decisions could be reduced. And improvements in both monitoring and the keeping of records on key processes and outcomes could allow a youth justice system to be built around optimising effective practice that should achieve greater satisfaction for participants, repair harm better and reintegrate more of the young people into the wider society.

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## Summary of guidelines on Best Practice and Practitioner Effectiveness

### 1 *Effective practice*

Effective practice means:

- Treating all young people fairly irrespective of their ethnic group especially when deciding who to prosecute;
- Avoiding bringing matters before the Youth Court when they are unlikely to require Youth Court orders, especially for Māori young people;
- Arranging family group conferences that ensure that;
  - All participants are well prepared and consulted about who will attend, and about the venue, the processes and the time;
  - All who attend are greeted and introduced: victims as well as families;
  - All who attend understand what is happening and have support;
  - Victims, families and young people participate fully – they are able to say what they feel and are involved in decisions;
  - Professionals do not dominate the conference and the decision making, and as few professionals are present as is possible;
  - Young people are treated with fairness and respect and feelings of stigma and exclusion are avoided;
  - Cultural practices used are appropriate to the setting and situation; and who will be the host and the location of the venue are matters agreed to by all the key participants;
  - Expressions of remorse, the repair of harm, including the use of restorative sanctions, and the option of forgiveness are facilitated;
  - Punitive and restrictive sanctions are avoided whenever possible;
  - Reintegrative and rehabilitative options are arranged as appropriate plans are monitored and victims are kept informed.
- Minimising the delays in processing at all levels and minimizing the use of lengthy remands in custody;
- Ensuring that young people have options for gaining educational qualifications, vocational skills and suitable employment;
- Avoiding arrangements that bring together young offenders and develop friendships that can focus on anti-social activities;
- Providing programmes that respond to psychological problems, and that help them learn how to develop positive relationships with others as well as to deal with issues of anger and drug and alcohol misuse.

### 2 *Practitioner effectiveness*

A number of factors affecting practitioners were identified:

- Youth Justice co-ordinators identified the need for support through professional supervision, back up and training; and for resources to fund conferences, to arrange programmes and to make appropriate placements;
- Good relationships and effective team work among youth justice professionals is necessary and all need more training in relation to the Act and best practice;
- The skills of the co-ordinator were undoubtedly an important factor, but generalizations are not possible and it appears that, at the time of the research, some co-ordinators related better to some young people than did others.

Appendix: *Further details about the research on which these conclusions are based:*

## **Describing the research**

From 1990 to 1991, Allison Morris and I carried out research to evaluate the effectiveness of the new system and the results of that research were published in 1993 (Maxwell & Morris, 1993). At that time, the focus of our research was primarily on the extent to which the new Act achieved its objectives and it was too soon to collect data on the longer-term outcomes for those children and young people who became involved with it.

Later work on understanding re-offending (Morris & Maxwell, 1997; Maxwell & Morris, 1999) followed up those who participated in the earlier research. Reconvictions records were obtained and, in the 1999 study, interviews were carried out with a sample of approximately 100 young people who had been through a family group conference in 1990-91. These data indicated that re-offending and more positive life outcomes depended were significantly more likely when the processes were restorative. However, these data came from a relatively small sample and larger numbers were needed to enable the key factors to be identified more reliably.

In 1998 and 1999 we obtained funding for two new studies. One, achieving effective outcomes (AEO, Maxwell et al 2003) was designed to provide more reliable answers to questions about the impact of the key new restorative youth justice processes and the factors involved in best practice. The goals of this study have been to:

- Examine the extent the goals of the youth justice legislation are being met;
- Examine the extent that restorative aspects of process are achieved; and
- Identify best practice by:
  - Identifying practice factors associated with re-offending
  - Identifying factors related to positive outcomes

Parallel to this study have been a series of studies of Police responses to young people when they come to notice. This work has focussed on the overall pattern of responses but has also looked in greater depth at the way in which Police manage the diversionary plans that are the way of responding to a third of the young people they see. The final one of these studies is currently being prepared for publication (Maxwell and Paulin, 2006).

## **Methodology**

### ***The data***

*The retrospective study* Twenty-four Youth Justice co-ordinators were selected as a sample that varied with respect to age, ethnicity, sex and practice. A sample of 1003 young people who were at least 15 years and 9 months of age at the time they had a family group conference facilitated by the selected co-ordinators over a period around the calendar year 1998 was drawn from the files of the Department of Child,

Youth and Family Services (CYFS) to provide a retrospective sample. In 2000/2001, 520 of these young people were interviewed and data were obtained on their history in the adult justice system, if any, since they reached the age of 17 years. Except with respect to age, this sample was judged to be representative of the 1998 period and comprised over a third of all the older cases nationwide at that time. Around a third was Maori, fifteen percent of them were female and fifteen percent were Pacific young people.

*The prospective study* A sample of 115 family group conferences was obtained in 2001/2002. These comprise a prospective sample that will be followed up in 2003/04. These conferences were facilitated by 18 of the same 24 co-ordinators whose cases made up the retrospective sample or by an additional Pacific co-ordinator especially recruited for the prospective study. Interviews were conducted with at least 100 young people, families and victims after the conclusion of the conference and Youth Court as appropriate. Second follow up interviews with victims were also conducted at when any actions that the young person had promised to perform for the victim should have been completed.

*Police Youth Diversion study* These data come from a study of 1794 cases involving young people apprehended by the Police in 2000/01 and from CYFS files on the entire 6309 cases referred for a family group conference in 1998. An initial report describing the processes operated by the NZ Police Service has already been published (Maxwell et al, 2002) and a report on the follow up of the outcomes for 1458 of these cases is currently being prepared for publication (Maxwell and Paulin 2006).

*Additional sources* The Police, the Ministry of Justice, CYFS and the Department for Courts have all supplied additional relevant data from 1987 to the present on young people who have offended.