



Oranga Tamariki (Youth Justice Demerit Points) Amendment Bill

Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Oranga Tamariki (Youth Justice Demerit Points) Amendment Bill

229—1

Report of the Social Services and Community
Committee

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Angie Warren-Clark
Chairperson

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Oranga Tamariki (Youth Justice Demerit Points) Amendment Bill and Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Oranga Tamariki (Youth Justice Demerit Points) Amendment Bill

Recommendation

The Social Services and Community Committee has examined the Oranga Tamariki (Youth Justice Demerit Points) Amendment Bill and recommends that this bill not proceed.

Introduction

This is a Member's bill that seeks to reduce repeat offending by young people by introducing a demerit points system, based on the seriousness of the offence. It was introduced in the 52nd Parliament by former MP Darroch Ball, and reinstated in the 53rd Parliament with Hon Mark Mitchell as the member in charge.

Request for the bill's withdrawal

The member in charge of the bill, Hon Mark Mitchell, has asked that the bill be withdrawn. In light of this, and in line with our findings from the select committee process, we are recommending that the bill not proceed.

Hon Mark Mitchell provided the following statement:

I would like to thank and acknowledge the work the committee has done on the Oranga Tamariki (Youth Justice Demerits Points) Amendment Bill.

I was asked to pick this bill up by the original author and sponsor of the bill, Darroch Ball, of the New Zealand First Party.

It was clear that his policy intent was to put forward a bill that would trigger earlier support and intervention for young people entering or inside the youth justice system.

After speaking with stakeholders and reading and listening to submissions through the select committee process it was apparent that although the intent of the bill was good the demerit system was not the right mechanism to use.

After consulting with my caucus, and having spoken with Mr Ball, the decision was made to withdraw the bill.

I indicated this to the committee as early as I could to ensure that officials and advisors supporting the committee could focus in other areas.

Legislative scrutiny

As part of our consideration of the bill we received advice from the Office of the Clerk about the bill's legislative quality. The advice raised a number of issues and recommended that various matters should be investigated further. We have not gone into detail about these matters in this report, given our recommendation that the bill not proceed. However, the detailed advice will be publicly available on the Parliament website once the bill has been reported back to the House.

The existing youth justice system

Underlying principles of the youth justice system

In considering this bill, we conducted an overview of the youth justice system and how it works for the betterment of youth. This allowed us to look at the principles that the current system is based on, as specified in the Oranga Tamariki Act 1989. The Act focuses on recognising the potential of young people and understanding that a young person's wellbeing is central to later growth and development in life. It acknowledges that each young person has a unique background which significantly affects their reasons for offending or reoffending. Together with the general principles in sections 4A and 5 of the Act, section 208 sets out the principles for youth justice, focusing on:

- dealing with matters through alternative means in preference to criminal proceedings
- advancing the wellbeing of children and young people
- strengthening family, whānau, hapū, iwi, and family groups to deal with offending
- keeping young offenders in the community if compatible with public safety.

These principles allow for flexibility and discretion in the approach to individual cases because they recognise that young offenders each have their own complex needs. They acknowledge that a broad and simple approach to all young offenders will not reduce youth offending.

We kept these principles in mind when carrying out our consideration of the bill. We came to the view that implementing the bill as proposed would significantly contradict the principles.

How flexibility in the youth justice system works

Most youth offending is dealt with outside formal court processes. This allows the Police to determine what sort of response may be most appropriate given the offence, the individual, and the circumstances of the offending. Various Police responses may be taken. They include:

- a warning by an enforcement officer
- developing an alternative action plan with Police Youth Aid
- holding a family group conference
- criminal justice proceedings.

Alternative action plans are wide-ranging and can vary depending on the needs of the young person. Police Youth Aid officers are specialist police who work with young people involved

in crime or who may be in need of care. They use alternative action plans to address how a young person can make up for their wrongdoing. Some examples include written apologies, making reparations, undertaking community work, and participating in programmes or courses.

Intention-to-charge family group conferences (FGCs) are convened mainly in instances where a young person has committed a serious crime or is a repeat offender. In these cases the Police believe that criminal proceedings are required in the public interest. FGCs can also be ordered by a Youth Court judge if the offender has been arrested, charged, and appeared before the Youth Court. If the young person admits to the offence at the FGC, the parties can then form a plan to address the offending. If the agreed plan is completed within the set time frame, the Police will close the case and no further action will be taken. The main purpose of an FGC is for the young person to take responsibility for their offending and put things right. It also allows the interested parties to work together to address the underlying causes of offending to prevent further offending.

Criminal justice proceedings are only undertaken for the most serious offending or repeated offending. This may be when a young person before the court denies the offending or where an FGC plan is not completed and the Police decide to file charges. This is the most punitive response in the youth justice system. However, the system still promotes judgement and discretion for cases in front of the Youth Court. Judges have discretion to discharge the case if they see fit. There is also a hierarchy of responses which a judge can choose from to address the offending. The responses are grouped together ranging in levels of restrictiveness. The most punitive response is to convict and transfer the case to the District Court for sentencing. It is then in the adult jurisdiction and up to the adult courts to decide what happens. Where available, young offenders have the option to undertake proceedings in Rangatahi or Pasifika Youth Courts. These courts are held in marae or Pasifika churches or community centres and follow Māori or Pasifika cultural practices.

How the bill would change this system

The bill would introduce a youth justice demerit points system. Young offenders would receive demerit points according to the seriousness of their offending. The points would be scaled based on the gravity of the offending. The scale sets out the number of points a young person could acquire before certain actions must be taken. The bands are as follows:

- low offending: between 1 and 40 points
- low-medium offending: between 41 and 60 points
- medium offending: between 61 and 80 points
- medium-high offending: between 81 and 99 points
- high offending: 100 points or more.

This approach would remove discretion from the process and create a standard to be applied to any individual in any situation. Individuals would accumulate demerit points by reoffending, with the consequences becoming more serious the higher the band.

Consequences of varying levels of demerit points

Up to 80 youth demerit points, the consequences would be similar to current approaches. However, a police officer would be required to take a particular action at specified points, rather than being allowed to judge each situation individually.

Demerit points in the low offending range would require that the police give a warning to the young person. Low-medium offending would require Police Youth Aid to form an alternative action plan. Both would entail referring the young person to Oranga Tamariki if deemed necessary by the police. Medium offending would require that an FGC be convened. All three bands of offending would also require that the enforcement officer offer the Limited Service Volunteer (LSV) programme to the young offender. (We discuss this programme later in more detail.)

Medium-high offending and high offending would result in more punitive consequences. Between 81 and 99 points would require that the charge or charges are brought before the Youth Court, and subsequent charges are brought before the District Court. The court could offer one of the restorative programmes when the young person initially appears before the court. High offending (100 points or more) would mean that a charge would be filed in the District Court. No programmes are offered for a young person in this category.

Clearing demerit points

The bill would provide an opportunity for young offenders to clear their existing demerit points by entering into either the Limited Service Volunteer programme or the Youth Employment Training programme. We note that the latter programme does not exist, as the bill that would have created it did not pass its first reading in 2017.¹

The LSV programme is a six-week training course run by the New Zealand Defence Force. It is targeted at 18 to 24 year olds, but 17 year olds are able to attend on a case-by-case basis. It is unclear whether offenders younger than 17 would be able to participate in this programme. The bill proposes that an enforcement officer must offer a young person who has accumulated between 1 and 80 points the opportunity to join the LSV programme. For young people who accumulated between 81 and 99 demerit points, it would be at the court's discretion to offer the LSV programme or the Youth Employment Training and Education programme.

If a young person with between 1 and 80 demerit points were to complete the LSV programme, their demerit points would be cleared. This could only happen once. A young person with 81 to 99 demerit points who completed the course would have their charges withdrawn but their demerit points would not be cleared. If the young person reoffended, the new demerit points would be added on top of the existing points and the Police will need to bring charges before the Court. If a young person participates in, but does not complete, an LSV programme, accumulating any more points would result in charges being brought before the District Court regardless of the seriousness of the offence. There is no process to withdraw a charge or clear demerit points when 100 points have been accumulated and a charge filed.

¹ The Youth Employment Training and Education Bill.

The consequences of changing the system would be significant

The demerit point system would lead to more young people entering the youth justice system and being subject to formal court processes. The number of young people subject to the adult court system might also increase, as the number of offenders referred to the District Court or the High Court is also likely to increase.

These outcomes are contrary to the principles of the youth justice system. The adult system is not designed to take into account the needs or level of understanding of young people. It could also result in a disproportionate effect on Māori given their overrepresentation in the justice system. Similarly, it could have a negative effect on Pasifika, people with disabilities, and young people who have experience in care.

The bill is inconsistent with the New Zealand Bill of Rights Act and international conventions

The Attorney-General provided a report to the committee under section 7 of the New Zealand Bill of Rights Act 1990 (NZBORA). In the Attorney-General's view, the bill is inconsistent with three sections of the Act:

- Section 19 – freedom from discrimination.
- Section 25(i) – right of the child to be treated in a manner that takes account of age.
- Section 27 – natural justice.

It is clear that making the bill consistent with the NZBORA would require fundamental changes to the core provisions of the bill.

It was also made clear through our consideration that the bill is inconsistent with a number of international conventions. We were advised that the bill would contravene both the United Nations Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. We discuss these issues in more detail in the following section.

Issues raised by submitters

Submitters raised a variety of points regarding this bill. We group them below thematically to provide a more comprehensive overview of the submissions we received.

Lack of supporting evidence for the bill

Many submitters stated that there is not enough evidence that the bill would reduce youth offending. They said that a punitive approach would fail to address the complex needs of young people and the underlying contributors to youth offending. Many submitters maintained that the most successful approaches take a holistic view of offending and establish support structures to prevent further offending. The proposed system in the bill would reduce the options available for young offenders. Submitters stressed that, in some cases, responses that consider the principles of kaupapa Māori and other cultural considerations may be more useful in preventing youth offending. The bill would take away these options despite a lack of evidence to support its approach.

Submitters commented that the system generally works well already. We heard that reducing the number of young offenders in the court system should be viewed positively rather than as a failure of the system. Submitters noted that youth offending has decreased in the past 20 years, supporting the view that the current approach has been largely successful.

Disproportionate effect on minority groups

Submitters stated that the bill does not consider the effects of its new system on groups like Māori, Pasifika, disabled people, and youth in state care.

Submitters said that Māori are already over-represented in the criminal justice system and the bill would increase the interaction of Māori youth with the court system. Restricting the discretion to use different cultural approaches would likely do more harm than good for Māori in the criminal justice system. They believed the effect on Pasifika youth could be similar. Submitters were concerned that the effectiveness of the Rangatahi and Pasifika Youth Courts would be disregarded should the bill proceed.

Submitters commented that disabled youth would also be disproportionately affected. Many young people in the youth justice system suffer from a range of cognitive and communication issues which can include traumatic brain injury, fetal alcohol spectrum disorder, attention-deficit or hyperactivity disorder, and dyslexia. The proposed system would not acknowledge the effect of disabilities on young offenders and the influence this may have on their offending.

Similarly, submitters said that the bill would fail to address instances where young people may have been referred to Oranga Tamariki for their care and protection. They noted that individually determined programmes help to identify other factors that contribute to offending, such as previous experience in care or an individual's home life.

Inconsistencies with the Treaty of Waitangi

As addressed in the Attorney-General's report, the bill would be inconsistent with NZBORA and some international conventions. Many submitters thought that removing flexibility in youth justice would also go against the principles of the Treaty of Waitangi. It was noted that the Treaty is referred to in section 7AA of the Oranga Tamariki Act. It requires that the chief executive recognise the principles of the Treaty and provide a practical commitment to adhering to them. It focuses on improving the outcomes for Māori children and young people by working with iwi and Māori organisations to develop strategic partnerships to improve outcomes for Māori children, young people, and their whānau youth. Submitters said that the bill would contradict these aims by failing to consider the Treaty principles.

Increased use of courts and prisons

Submitters also said that the bill would result in more young people engaging with the adult court and prison system. Most stated that this would have several negative consequences for young people. Young offenders may have an increased risk of harm in environments with adult offenders. Entering into an adult system through the District Court process would not provide the support that the Youth Court does. Submitters said that some young offenders

may view entering the adult court system with pride or as a way of increasing social status among peers.

Views of submitters who support the bill

We received five submissions that supported the bill. They mainly focus on the bill providing a high level of accountability and clarity to youth offending, leading to a reduction in offending. Submitters also noted that the bill would provide better support to families and young people by connecting them with prevention and early intervention initiatives.

Our conclusions

We would like to thank all of the submitters on this bill. Our scrutiny of the youth justice system during the select committee process has enabled us to gain a wider understanding and appreciation of the system. We have learnt numerous things about New Zealand's approach to youth justice.

It is our view that to change the youth justice system as the bill suggests would not be reasonable. The committee considers it would not reduce rates of offending and reoffending among youth. We believe that having 80 percent of youth offenders avoid the Youth Court shows that New Zealand's current approach is successful rather than failing.

As we have learnt, an underlying principle of New Zealand's youth justice system has been to maintain a level of discretion that allows for a tailored approach to be taken for each offender. While still recognising the severity of youth crime, the system allows for judgement to be made after considering the underlying factors of why a young person may offend. A standard approach that can be applied consistently without room for discretion would not be an effective approach. Each young person's circumstances are different and those circumstances can significantly influence the actions they may take. That is why we believe it is important to uphold a system that allows for discretion based on the best interests of the young person.

Improvements can be made to the existing system

We believe that the youth justice system can continue to be improved. We learnt that there are various improvements being made to the system and we encourage Oranga Tamariki to continue to pursue improvement.

Prevention and early intervention

It is clear to us that a more preventative approach to youth justice would be beneficial. We also consider that wrap-around services could be put in place earlier for young people in the youth justice system. The select committee process highlighted that support for young people in their homes and communities is the most effective way to prevent future offending. We received advice that the effects of state care, or a negative home life, can dramatically increase the likelihood of youth offending.

We heard that Oranga Tamariki has committed to developing a system that aims to prevent the need for young people to enter state care. Its Intensive Response model will work with iwi, Māori, and Pacific organisations, and the wider community, to identify the best way to provide support to families at risk of having their children taken into care. The programme

will initially focus on Oranga Tamariki sites in Christchurch East, Tokoroa, Horowhenua, and Ōtāhuhu.

Earlier identification of neuro-disabilities would make a difference to the number of young people entering the youth justice system. Neuro-disability refers to the impairments an individual can experience when they have been affected by a brain injury. This may be during the development process or through sustained brain damage. One submitter, Talking Trouble Aotearoa New Zealand, noted the importance of effective communication and understanding in the youth justice system. Youth may have complex needs regarding speech, language, or communication difficulties and it is important that addressing these disabilities becomes an established aspect of the youth justice process. We believe it is important to ensure that an appropriately qualified Communication Assistant is used effectively throughout the Youth Court, District Court, High Court, and FGCs to help youth understand the justice system and the consequences of their actions.

Working with iwi and hapū to strengthen Rangatahi Courts

We received advice that Oranga Tamariki is working on increasing community engagement with the Rangatahi Courts. The influence of communities and families can be significant in reducing youth offending, and the growth of the Rangatahi Courts has been an important development in fostering that development. There are now 15 Rangatahi Courts in New Zealand. We were pleased to hear that Oranga Tamariki is working with a number of parties to develop the programme including The Henwood Trust, the Ministry of Justice, and Tuhaka Global Consulting.

Working with the Police on more mentoring programmes

Mentoring programmes that work to reduce offending and reoffending are important in the current system. We were pleased to hear that work is being done to improve the programmes on offer from the Police.

One programme that the Police are considering expanding is “Hooks for Change”, which started in January 2020 in Tauranga. This programme aims to reduce escalation in the youth justice system. It is targeted at young offenders who are appearing in a Youth Court for the first time. It works with offenders and families over a nine-month period to try to prevent any future escalation in the system.

A second programme is “Social Bonds”, being delivered by Genesis Youth Trust. The programme is in its fourth year of a six-year contract. It focuses on aspects of mentoring, counselling, parenting, and social work to reduce reoffending. Youth attend the programme for up to two years and Oranga Tamariki is currently considering expanding the programme into West Auckland.

The Oranga Rangatahi programme was launched in 2017 in Huntly and is a community-led approach focusing on rangatahi Māori. Young people who have been assessed as at-risk of offending receive wrap-around support to prevent them from entering the youth justice system. Iwi, Police, the Ministry of Education, the local secondary school, and the district health board all work together in this programme. The programme is being adapted and implemented throughout the central North Island.

Improving the family group conference process

We heard that improvements could be made to the FGC process by providing more resourcing to them and using them more often. We acknowledge that the FGC process is a valuable part of the youth justice system and we would like to ensure that it continues to be an effective resource.

Appendix

Committee procedure

The Oranga Tamariki (Youth Justice Demerit Points) Amendment Bill was referred to the Social Services and Community Committee of the 52nd Parliament on 21 July 2020. It was reinstated with this committee in the 53rd Parliament on 26 November 2020.

We called for submissions with a closing date of 3 February 2021. We received and considered 114 submissions from interested groups and individuals. We heard oral evidence from 20 submitters.

We received advice on the bill from Oranga Tamariki and the New Zealand Police. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

The Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Oranga Tamariki (Youth Justice Demerit Points) Amendment Bill was referred to the Social Services and Community Committee on 5 February 2021. We met between 10 February and 19 May 2021 to consider it.

Committee members

Angie Warren-Clark (Chairperson)
Glen Bennett
Karen Chhour
Emily Henderson
Anahila Kanongata'a-Suisuiki
Ricardo Menéndez-March
Terisa Ngobi
Maureen Pugh
Hon Louise Upston

Hon Mark Mitchell participated in our consideration of these items of business.

Advice and evidence received

The documents that we received as advice and evidence are available on the Parliament website, www.parliament.nz.