

ACHIEVING THE DIVERSION AND DECARCERATION OF YOUNG OFFENDERS IN NEW ZEALAND

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Abstract

The diversion of young people from criminal proceedings and the decreased use of custody are key goals of the youth justice system introduced in the Children, Young Persons, and Their Families Act 1989. This paper uses data from studies of 1003 young people who had family group conferences in 1998 and 1794 young people dealt with by the police in 2000/01 to examine the extent to which these goals are being achieved. In addition, national statistics supplied by the Ministry of Justice are used to compare patterns of youth offending and responses to it from before the Act to 2001. The data show that young people are being diverted and custodial options are less common than before the Act. At the same time, more young people are being made accountable for their offending than in the past. Furthermore, the seriousness of offending has not increased. These findings indicate that even greater use could be made of diversionary options through the police and direct referrals for family group conferences without compromising the extent to which young people are made accountable. Such changes would decrease both the stigmatisation associated with criminal proceedings for young people and the costs of Youth Court proceedings. Savings could be used to provide more programmes for young offenders and better support for families.

INTRODUCTION

The goals of the Children, Young Persons and Their Families Act 1989 (the Act) focus on diverting young people from criminal proceedings and reducing the extent to which they are placed in residential institutions or given custodial sentences. This paper sets out to examine the extent to which this has been achieved in the years following the introduction of the 1989 legislation.

Diversion and decarceration in criminal justice processes have a range of meanings. The Act gives definition to these principles in the context of youth justice in New Zealand by de-emphasising the use of formal court proceedings. The first of the youth justice principles in

the Act (s208(a)) states that “unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter”. This implies that arrest and the laying of charges in the Youth Court should be avoided wherever possible. This section also has implications for the outcomes: in particular, it signifies that Youth Court orders should only be used when necessary and a conviction and transfer to the adult courts should be used even more sparingly.

Section 4(f) of the Act requires that children and young people be dealt with in ways that “give(s) them the opportunity to develop in responsible and socially beneficial ways”. This has implications for the selection of responses to offending and the type of sanctions that are adopted. It shifts the emphasis from punitive and custodial responses to responses that keep the child or young person in the community. This is made even more explicit in the youth justice principles. Section 208(d) states that “a child or young person who commits an offence should be kept in the community so far that is practicable and consistent with the need to ensure the safety of the public”. It also places an emphasis on rehabilitative and reintegrative responses provided within the community context. Section 208(f) states that “any sanction must take the form most likely to promote the development of the child or young person within his or her family, whānau, hapū or Iwi and must take the least restrictive form that is appropriate in the circumstances”.

To determine the extent to which diversion and decarceration have been achieved in the new system, data have been analysed as part of a major study of the youth justice system to examine:

- the use of arrest: how often it occurs and to what extent it is followed by the laying of charges or not;
- the laying of charges in the Youth Court: in particular, how this is related to the seriousness of offending and to what extent it appears justified in order to achieve the desired outcomes;
- the use by the police of informal diversionary procedures and family group conference referrals;
- the use of Youth Court orders: the extent to which recommendations for orders relates to seriousness of offending and whether there is any evidence that informal sanctions could achieve similar results;
- the use of Supervision with Residence;
- the recording of a conviction and transfer to the District or High Court: the frequency with which this occurs in relation to the seriousness of the offending and the extent to which there is evidence that alternative options have been considered; and
- the use of penal custody.

Each of these is discussed in turn, but first the background to the Achieving Effective Outcomes study from which most of these data are drawn is briefly described.¹

THE ACHIEVING EFFECTIVE OUTCOMES STUDY

The Achieving Effective Outcomes study was undertaken over the period 1999 to 2002.² The primary goals of the research were to:

- determine the extent to which the goals of the Children Young Persons and their Families Act 1989 are being met;
- determine the extent to which the restorative aspects of the youth justice process are achieved; and to
- identify best practice in the youth justice system.

The research consists of two main studies built around a sample of 24 youth justice coordinators, who are responsible for convening family group conferences:

- The *retrospective study* collected data from files on 1,003 cases of young people who had a family group conference in 1998 and who had been eligible to appear in the adult courts for at least one year. Over half (520) of the young people involved were interviewed about what happened at the family group conference, their early life and subsequent events.
- The *prospective study* observed the practice in 2001/2002 of the coordinators who conducted conferences that were part of the retrospective study. This study obtained information on 115 cases, including first-hand observation of the family group conference and, wherever possible, obtained interviews close to the time of the conference with the young people, families and victims involved in each case.

In addition, data were supplied by the Ministry of Justice on the conviction records of 999 of the 1,003 cases in the retrospective sample. The Department of Child, Youth and Family Services (CYFS) supplied national data on 6,309 cases referred for youth justice family group conferences in 1998. The New Zealand Police and the Ministry of Justice also supplied relevant national data on offending and the outcomes of police and court decisions for the years prior to and since the Act. Other data have been drawn from a parallel study of police

¹ Maxwell and Morris (1993) were able to examine the extent to which use was made of remands in custody and presented details of the number of appearances in the Youth Court. Unfortunately these types of data, which came from the intensive focus on a relatively small number of cases as they proceeded through the system, were not available in the records on which we have had to rely on this occasion. The absence of this critical information from the records is a concern, and this information should be a part of routine information collection if the effectiveness of the system is to be critically examined from ongoing records.

² The project was undertaken with support from the Ministry of Social Development, the Ministry of Justice, the Department of Child Youth and Family Services, the Department for Courts, the Department of Corrections, the New Zealand Police, the Ministry of Pacific Island Affairs, the Ministry of Research Science and Technology, and Te Puni Kōkiri. The final report of this research is currently being prepared for publication.

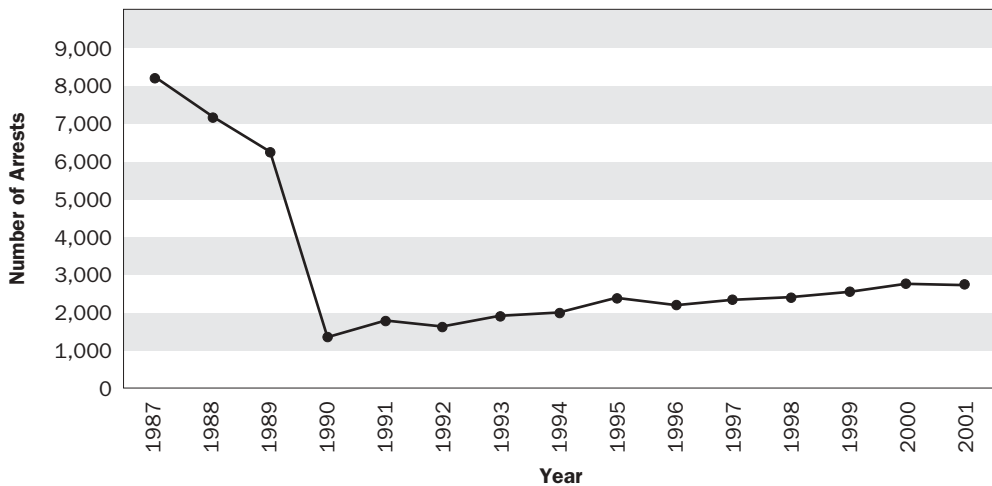
youth diversion (Maxwell, Robertson and Anderson 2002) sponsored by the New Zealand Police and the Ministry of Justice, which reports on police responses to 1,794 young people in 2000/01.

THE USE OF ARREST

The 1989 Act, in order to avoid both the unnecessary detention of young people and the use of the Youth Court, redefined the situations in which a young person could be arrested. The clear preference under the Act is to deal with young people less formally. Since the Act, there has been a considerable reduction in the arrest rate, from approximately one-third of those coming to the attention of the police prior to the Act, to 10–12% in the following years. This, at first sight, seems to confirm that practice has changed in line with the new provisions. However, 1990/91 data (Maxwell and Morris 1993) suggest that, despite the changes in the law and the reduction in the number being arrested, the reasons for arrest were, in practice, not dissimilar to those that emerged from a study conducted prior to the Act (Morris and Young 1987). The most common grounds for arrest were to prevent the young person's re-offending or to ensure the appearance of the young person in court, but it was apparent that these were being interpreted very broadly (and differently in different areas).

Data on the number of arrests of young people for 1987–2001 were supplied by the Ministry of Justice and are depicted in Figure 1.

Figure 1 Number of Arrests of Young People (age 14-16 years) appearing in Youth Court, 1987–2001



Source: Ministry of Justice.

The data in Figure 1 show that there has been a major decline in the number of arrests since the 1989 Act, from over 8,000 per annum to less than 2,000 per annum. However, in the years 1990 to 2001 there was a trend for the number of arrests to increase. Data on the numbers of young people offending are not available, but data on the number of offences committed by young people can be used as a proxy to provide a baseline for calculating the percentage of arrests in each of the years for which data are available. These calculations show that arrests occurred in only 5% of offences in 1990 but that they occurred in 12% of offences in 2001. This makes it clear that the rise in arrests cannot be accounted for by increases in offences, and data presented elsewhere in this paper indicate that there is no massive increase in more serious and violent offences that can account for this change. Rather, it appears that the changes are evidence of a more hard line being taken by front-line police officers in response to offending by young people. Table 1 compares reasons for arrests in 1990 and 2001.

Table 1 Reasons for Arrests of Young People in 1998 and 2001

Reasons	Arrests Made (%)	
	1998	2001
To prevent further offending	53	64
To ensure appearance	31	19
To prevent interference with evidence*	7	8
To prevent interference with witnesses	-	6
Warrant for arrest	3	1
Wrong age given	3	0
Purely indictable offence	2	1

Source: data supplied by the New Zealand Police.

** In 1998 data on arrest to prevent interference with evidence were amalgamated with data on arrest to prevent interference with witnesses.*

The data on reasons for arrest show that there have been some changes over time. More of the arrests in 2001 were said to be to prevent further offending and proportionately fewer were said to be to ensure the appearance of the young person in court. These data are difficult to interpret, especially as the choice of reason does not necessarily relate to clear differences in the circumstances under which the young person was apprehended. It may mean little more than an increased preference for the most common category. There is certainly no obvious indication of differences in the nature of the offending patterns over the period being examined that would explain these changes.

Other recent data come from the study of police youth diversion based on a sample of young people coming to the attention of the police in 2000/01 (Maxwell, Robertson and Anderson 2002). Fifteen per cent of the young people were recorded as having been arrested, which is reasonably consistent with the 12% of arrests nationally in 2001. More importantly, there was considerable variation in the percentage depending on the area: it ranged from 6% to

26%. This variability in arrest rate seems quite unrelated to the seriousness of offending or to the type of area. Rather, it appears that police officers in some areas are routinely arresting many young people who would not be arrested had they been apprehended in another area. For the most part, the areas using arrest most frequently were also most likely to be laying charges in the Youth Court. An examination of Youth Court charging practice can, therefore, provide additional information on arrest practice.

THE LAYING OF CHARGES

Section 208(a) of the Children, Young Persons and Their Families Act 1989 states that, unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter. Even when an arrest has been made, the police are still able to release the young person without laying a charge in the Youth Court. Maxwell and Morris (1993) presented 1990/91 data showing that, out of a total of 75 police arrests, only five cases (12%) involved release without a charge and the remaining 70 cases (88%) proceeded to a Youth Court appearance. The eventual outcome in approximately half of these Youth Court cases was that the charges were withdrawn or the case was discharged after the Youth Court had received the recommendations agreed to at the family group conference. Maxwell and Morris (1993) commented, at that time, that the practice of almost automatically laying a charge upon arrest was questionable.

Subsequently, new police instructions emphasised the need to review matters before laying a charge in the Youth Court after an arrest. This appears to have had an effect on practice. The data from the Police Youth Diversion study (Maxwell, Robertson and Anderson 2002) show how the picture has changed. These data are presented in Table 2.

Table 2 Police Decisions for Cases Arrested and Not Arrested, 2000/01 (n=1,692)

Police Decision	Arrested (%)	Not Arrested (%)
Youth Court	78	6
Family group conference referral	6	8
Diversion	7	35
Warn or other	9	51

Source: data from Police Youth Diversion study.

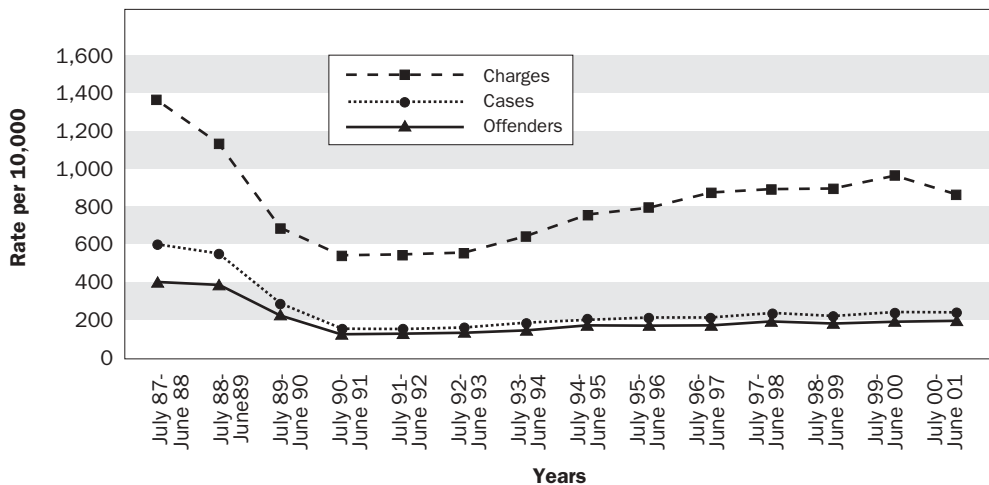
The data in Table 2 show that in 2000/01, nearly one in four of those arrested did not appear in the Youth Court but were eventually dealt with in a diversionary manner. These data suggest that there may have been a more judicious approach to laying charges in 1998 (the relevant time for the retrospective sample of the Achieving Effective Outcomes study),

compared to the 1990/91 findings. On the other hand, in the great majority of cases where an arrest is made, charges are being laid in the Youth Court. As the data already presented show that most Youth Court cases do not result in orders but are resolved along the lines of a family group conference plan (Maxwell, Kingi et al. 2002), it could still be the case that the use of arrest is a factor leading to the escalation of the level at which offending is dealt with. This interpretation is reinforced by the finding in Table 2 that it is very uncommon for a non-arrest case to appear in the Youth Court: only 6% of non-arrests are charged.

THE USE OF “POLICE DIVERSION” AND FAMILY GROUP CONFERENCES

Police practice is definitely more diversionary than it was before the 1989 Act. Official statistics (Department of Statistics 1991) recorded a Youth Court appearance rate for 1990 of 16 per 1,000 young people aged 14–16. This can be compared with an average rate of 63 per 1,000 in the three calendar years prior to the introduction of the Act. Figure 2 describes the changing rates of Youth Court appearances from before the 1989 Act up to the present for the age group 10-16 years.

Figure 2 Charges, Distinct Cases and Distinct Offenders* in the Youth Court; Rates per 10,000 aged 10–16 years - June/July Years 1987–2001



Source: derived from data supplied by the Ministry of Justice and Statistics New Zealand.

* A case refers to the appearance of a young person in the Youth Court, where one or more charges are dealt with. It is also possible for a young person to have more than one case in any year, i.e. to appear for separate sets of charges.

Data in Figure 2 confirm the marked drop in the number of young people (distinct offenders) appearing before the Youth Court each year, from 400 per 10,000 in 1987 to less than 200 per 10,000 in 1990. By 1998, this rate of Youth Court appearances by distinct offenders had gradually risen again to 230 per 10,000 and the latest figure for 2000/01 is 240 per 10,000.

Table 3 Police Clearance Modes, 1990 to 2001

Year	Clearance Rate (%)				
	Youth Court	Family Group Conference	YC + Family Group Conference	Youth Aid	Warning
1990	5	9	16	71	15
1991	8	9	17	61	22
1992	9	10	19	54	28
1993	8	9	17	58	25
1994	9	8	17	58	26
1995	10	8	18	58	24
1996	10	8	18	57	15
1997	10	7	17	56	26
1998	12	7	19	58	23
1999	12	5	17	60	23
2000	12	4	16	61	24
2001	13	3	16	59	25

Source: Data supplied by the New Zealand Police.

However, despite the increased rate of charging in the Youth Court, it is clear that the use of diversionary options is still considerably greater than it was in the past. What now needs to be examined is how this impressive change in the amount of diversion has been achieved.

Data on police clearance modes throughout the period have been provided by the Police and are presented in Table 3.

The data in Table 3 suggest that the proportions being charged in the Youth Court have tended to increase relative to direct family group conference referrals, but that the combined proportion of Youth Court and family group conference cases has remained relatively stable. Overall, these two methods of responding to young people account for 16–19% of young offenders. However, police-referred family group conferences have declined steadily and Youth Court charges have risen since the early days after the 1989 Act. They are now only a third the number of Youth Court referrals. Yet in 1990 the number of family group conferences referred by the police was about the same as the number referred by the Youth Court (Maxwell and Morris 1993).

Over the years, the records suggest that about a quarter of offences cleared by the police have been dealt with by police warning and that between 55% and 60% have been dealt with by Police Youth Aid. The assumption has often been made that those referred to Youth Aid are all being dealt with by police youth diversion (or alternative actions, as they are sometimes known). However, research data indicate that this is not a correct interpretation. Table 4 compares the clearance code data from the Police with data from research samples based on official files or checklists supplied by the Police (Maxwell, Robertson and Anderson 2002).

Table 4 Comparison of Police Clearance Code Data for All Offences with Research Data Collected Directly from Police on Offenders, 1990/91 and 2000/01

Source and Year	Clearance Type (%)			
	Youth Court	Family Group Conference	Youth Aid	Warning
Maxwell and Morris study 1990/91	10	28	11	51
Clearance code data 1991	8	9	61	22
Police Youth Diversion study 2000/01	17	8	32	43
Clearance code data 2000	12	4	61	24

Sources: data provided by Police; Maxwell and Morris 1993; Maxwell, Robertson and Anderson 2002.

The above data show that the overall pattern of distribution across the four categories in both sets of research findings is different from the pattern that emerges from the statistics on police clearance codes. Firstly, the research findings at both points report more Youth Court and family group conference referrals. Secondly, police clearance codes appear to underestimate warnings and overestimate the proportion dealt with by Youth Aid.

The main reason for the discrepancies undoubtedly lies in the fact that, in practice, the cases referred to Police Youth Aid are not all dealt with by Youth Aid diversion. What often happens is that, on receiving a case, a Police Youth Aid officer will make a decision about whether the case will be dealt with by warning, by Youth Aid diversion or by referral to a family group conference. However, the clearance code originally entered by the officer in charge of the case when the matter was referred onward is not necessarily changed after the Youth Aid officer has reviewed the case and made a decision among these three alternatives. Thus, the police clearance codes must be treated with caution, as they are not likely to be accurate indicators of the final disposal of individual cases.

In fact it is possible to separate out Youth Aid warnings for the 2000/01 research sample. When these are added to the Youth Aid diversion cases the percentage of cases dealt with by Youth Aid (diversion or warning) is 59%, which is close to the police clearance figure of 61% in 2000. As there is a difference in degree of response associated with these two actions by Youth Aid it is desirable that the Police clearance codes be changed so that Youth Aid diversion cases can be distinguished from Youth Aid warnings.

What the research data indicate is that, over the years, the use of referrals for a family group conference has decreased while the use of police youth diversion and charging in the Youth Court has increased. These findings are consistent with the changes in the rates of offenders appearing in the Youth Court. They are also consistent with reports from Youth Aid of their increased use of in-house diversionary programmes and, in many areas, their reduced reliance on direct referrals for a family group conference. Youth Aid officers in some areas reported that they tended to prefer Youth Court referrals to direct family group conference referrals in

order to ensure rapid processing of the relatively serious offenders. However, other data from Maxwell, Kingi et al. (2002) on the time taken to process direct referrals for family group conferences compared to cases processed through the Youth Court in 1998 cast doubt on the accuracy of this assumption. These same officers often also reported preferring to put in place diversionary actions themselves for the more minor offenders.

Thus, changes in referral practice appear to be a result of two separate factors, the first of which is the growing confidence of police in the use of youth diversion. The second factor is their recognition of the limited capacity of Youth Justice Coordinators to respond to increases in work loads over years in which funding for CYFS has been held constant and, in some instances, where youth justice funding appears to have actually declined. Thus, it is not surprising to find that there are large differences in the responses by police to young people's offending from one locality to another (Maxwell, Robertson and Anderson 2002).

MAKING SENSE OF SANCTIONS AND MODES OF RESPONSE

There are other questions to consider:

- To what extent is diversion by the police or referral to a family group conference "real" in the sense that sanctions have, indeed, been minimised compared to those that might have been expected had they been made by the Youth Court?
- To what extent have the changes in resolution modes over the years been an appropriate response to changes in the seriousness of offences?
- Are cases being handled at a higher level (for example Youth Court), which could have been effectively handled by family group conference or police youth diversion?
- What is the impact of the charges on the sanctions being used when young people offend?

Do Lower-Level Options Involve Lesser Sanctions?

Ideally, comparisons would be made with data from the years before the 1989 Act, but the lack of suitable data on past practice makes comparisons between then and now difficult. Maxwell and Morris (1993) attempted to compare data from 1990/91 with data collected by Morris and Young (1987) on practice prior to the 1989 Act. They came to the conclusion that the proportion of offenders who appeared in court and those referred by police for a family group conference in 1990/91 were, together, approximately equivalent to the court appearance rate reported in the years prior to the 1989 Act. This meant that over two-thirds of the young people who would previously have gone to court were, in 1990/91, being dealt with by police-referred family group conferences. Data on Youth Court appearances reported in Maxwell and Morris (1993:134 Figure 8.1) confirm that about three times as many young people were appearing in the Youth Court in 1987 and 1988 as in 1990/91. However, the data on the use of police-referred family group conferences over recent years show that there

were only half to a third as many family group conferences as Youth Court cases. When this is compared to the pre-Act data, it is clear that young people are now being diverted from criminal proceedings in the Youth Court, not only through family group conferences but also by the use of police youth diversion.

Looking at the sanctions imposed, we find that prior to the 1989 Act, only about three out of five (Ministry of Justice statistics) of those who appeared in court received any formal penalty. In Maxwell and Morris's 1990/91 sample, about 95% of those who attended family group conferences or who appeared in court were made accountable for their offence either by receiving a penalty or making an apology. In addition, 11% of the total sample had some form of informal sanction arranged through the Youth Aid section. Thus, the total number who received some form of penalty since the Act is almost certainly greater than before it. When the same comparison is made for the present sample, not only are 95% of the Youth Court and family group conference cases made accountable in some way, but also an increasing proportion of cases are being dealt with by Youth Aid diversion.

The data in Table 4 demonstrate that both police diversion and the Youth Court have become a much more common method of responding to youth offending than in 1990/91, when there was a considerably greater proportion of direct referrals for a family group conference and a somewhat greater use of warnings. The police youth diversion data also show that 35% of the 32% of cases dealt with by Youth Aid diversion received some form of informal sanction, resulting in 11% of the young people being made accountable. Together with the 25% being referred for family group conference or Youth Court in this sample, this suggests that in 2000/01 a total of 36% of young offenders were made accountable. Presently the proportion receiving sanctions is about the same as it was before the 1989 Act, but in addition, more young people are being made accountable in other ways through restorative outcomes or rehabilitative referrals (Maxwell, Kingi et al. 2002). In other words, the net has been widened in the sense that an increased number are now receiving some sort of sanction. But much of the widening is due to increasing restorative and reintegrative or rehabilitative outcomes rather than to the use of restrictive sanctions.

Are the Changes in the Mode of Resolution a Response to Increased Seriousness of Offences?

Nevertheless, there has been a rise in the number and rate of young people appearing in the Youth Court since 1990/91. This is undoubtedly attributable to the pattern already noted of referring cases to the Youth Court rather than directly to the Youth Justice Coordinator for a family group conference (see Table 3). To explore this issue, data on the seriousness of the most serious offence have been compared for the Maxwell and Morris (1993) sample from 1990/91, the 1998 retrospective sample (Maxwell, Kingi et al. 2002) and the Police Youth

Aid sample from 2000 (Maxwell, Robertson and Anderson 2002). These data are presented separately for all family group conferences and all Youth Court cases in Table 5.

Table 5 Seriousness of Youth Offending for Family Group Conference and Youth Court Cases and for All Youth Offenders in Three Study Samples

Seriousness of offence level*	Data source (%)		
	1990/91	1998	2000
Family group conference cases	n = 187	n = 1,003	n = 366
Minimum	16	7	17
Minimum/medium	11	29	28
Medium	66	45	35
Medium/maximum	5	14	17
Maximum	2	6	3
All Youth Court cases	n=599		n=1,646
Minimum	53		51
Minimum/medium	10		27
Medium	34		16
Medium/maximum	12		5
Maximum	1		1

Source: 1990/91 sample from Maxwell and Morris (1993), 1998 retrospective sample (Maxwell, Kingi et al. 2002) and the 2000 Police Youth Aid sample from (Maxwell, Robertson and Anderson 2002).

* The seriousness categories used in these studies derive from Maxwell and Morris (1993).

The data in Table 5 show that there are some differences in the samples in the seriousness of offences committed by offenders referred to Youth Justice Coordinators for family group conferences by police or the Youth Court. The main difference appears to be that the two later samples have more offenders with minimum/medium offences and fewer with medium offences. Differences at the medium/maximum and maximum level are not significant given the small number involved in the earliest sample, and the percentages in the two highest categories (20%) are identical for both the later samples.

It is not possible to be certain if these findings reflect a real change in the number of relatively minor offenders coming to notice or if they reflect sampling differences. Neither of the more recent samples was intended to be nationally representative,³ and between-area differences in the patterns of offending were noted in both of them.⁴ Furthermore, the 1998 sample consisted of older offenders than were in the other two samples.⁵ However, there is no evidence of major changes in the seriousness of the most serious offence being committed by

³ However, the 1998 and 2000 samples come from the same areas (all North Island districts except for the Far North, Bay of Plenty and East Coast areas, together with Christchurch and Otago in the South Island) and the 1990/91 sample comes from a subset of four of these areas: Auckland, Christchurch, Wellington and Masterton.

⁴ In addition, although all these research projects used the same instructions for coding seriousness, researchers made the judgement in the 1990/91 and 1998 samples, while Police Youth Aid classified the 2000 cases.

⁵ This would have resulted in more relatively serious offenders in the former sample and indeed, there are fewer minimum and more medium offences recorded for the retrospective sample.

young offenders apprehended over the 10 years separating the two studies. In summary, the evidence suggests that it is not changes in the pattern of offending that are the primary reason for changes in responses. The reasons for changes in responses lie in police practice.

Are Cases Being Dealt With at a Higher Level Than Necessary?

However, as well as the ways in which the decision is taken, the nature of the outcomes needs to be examined. Data in Table 6 on the severity of penalties in 1990/91 (Maxwell and Morris 1993) and in 1998 from the retrospective sample provide additional information for family group conference and Youth Court cases.

Table 6 Severity of Outcomes of Family Group Conference and Youth Court Decisions, 1990/91 and 1998

Outcome*	1990/91 % (n = 199)	1998 % (n = 1,003)
0. Nothing	5	3
1. Apologies, warnings	11	2
2. Curfews, restriction, other minor	14	11
3. Community work < 50 hours; money < \$500	32	30
4. Community work 50–100 hours; money \$500–1000	13	23
5. Community work 100–150 hrs; money \$1,000–1500	13	9
6. Community work 150hrs+; money \$1,500 +	5	7
7. Supervision	0	7
8. Supervision with activity	4	3
9. Supervision with residence	2	2
10. Prison or corrective training	1	3

Source: 1990/91 sample from Maxwell and Morris (1993), 1998 retrospective sample (Maxwell, Kingi et al. 2002).

** The categories used in this table combine data from family group conference and Youth Court cases in a way that ranks the severity of outcomes. Court orders were made for categories 7–10 but it was often not clear from files whether or not the less severe sanctions were arranged through family group conference plans or Youth Court orders.*

The data in Table 6 show a remarkable similarity between the severity of penalties that were recorded for the 1990/91 and 1998 samples. Summing the three main groups of penalties in the categories (0–2, 3–6, 7–10), it can be seen that:

- minor penalties were recorded for 30% in 1990/91 and for 16% in 1998;
- moderate penalties were recorded for 63% in 1990/91 and for 69% in 1998; and
- the most severe penalties were recorded for 7% in 1990/91 and for 15% in 1998.

The main difference is that the 1998 sample tended to have more of the most severe penalties and the earlier sample, studied in the period immediately after the 1989 Act, had more of the less severe penalties. We think this is explained by the age differences between the samples: the 1990/91 sample included a variety of ages and the 1998 sample was limited to those around 16 years of age. Because of this, we consider the outcomes to be remarkably similar.

We believe the data reinforce the need to question whether or not it is necessary to deal with so many young people through the Youth Court, with its potential to stigmatise young people, rather than through family group conferences.

What is the Impact of the Changes Since the 1989 Act on the Sanctions Being Used?

A further issue with respect to whether or not the introduction of family group conferences can properly be described as diversionary is the relative severity of the sanctions that have been imposed since the 1989 Act compared to before it. Comparisons are made difficult by the changes in the tariffs used by the court before and after the Act. However, it could be argued that the cases now being dealt with by a family group conference and receiving penalties through community work, monetary sanctions and other restrictions are being more severely treated than they would have been if they had been admonished and discharged in the earlier court system. On the other hand, custodial penalties have certainly been vastly reduced, with fewer than half the numbers receiving these penalties since the Act than prior to it.

Are These Patterns of Responding to Offending Consistent with the Diversionary Object of the Act?

The next question to be considered is the appropriateness of these patterns in relation to the objects of the 1989 Act that stress the importance of handling cases at the lowest possible level. The increased handling of matters by Police Youth Aid diversionary procedures rather than by referral to family group conference would be consistent with this diversionary principle. However, neither the increased use of police youth diversion for young people previously warned nor the increased use of the Youth Court for cases that would previously have been referred directly for a family group conference are in line with this principle. Data on the relative seriousness of offences dealt with in different ways and data on the outcomes of the various methods of handling the offences provide a basis for examining this question.

Comparisons of the relative seriousness of offending dealt with in the four different ways are presented in Table 7.

Table 7 Seriousness of Offences and Mode of Resolution, 2000 (Police Youth Diversion Study) and 1998 (the AEO Retrospective Sample)

Source of Data and Mode of Resolution (% down)						
Seriousness Level*	2000 Police Youth Diversion Study				AEO Study: 1998 Retrospective Sample	
	Warning	Police Youth Diversion	Family Group Conference	Youth Court	Family Group Conference	Youth Court
Minimum	73	44	19	16	9	6
Minimum/medium	22	32	20	32	28	29
Medium	4	19	41	32	48	44
Medium/maximum	1	4	17	17	13	14
Maximum	-	1	2	4	3	7

Source: 1998 retrospective sample (Maxwell, Kingi et al. 2002) and the 2000 Police Youth Diversion sample (Maxwell, Robertson and Anderson 2002).

* The seriousness categories used in these studies derive from Maxwell and Morris (1993).

Data from both the Police Youth Diversion study and the retrospective sample show reasonable agreement about the seriousness of offences dealt with in different ways. Overall, the Police Youth Diversion study found that the bulk of the young people with minor offences are being dealt with by warning or police youth diversion. As we see from Table 7, some offences of medium or higher seriousness are also diverted at police level.

Table 7 also shows that the pattern of seriousness being dealt with by family group conferences or the Youth Court is very similar. This confirms the data on severity of outcomes that suggest that many of the cases charged in the Youth Court might be effectively dealt with at lower levels. Data on severity of outcomes are set out in Table 8.

The data in Table 8 provide confirmation of the overlap in responses for matters dealt with by police youth diversion, police referrals for a family group conference and Youth Court cases. However, the data also indicate the most common outcomes as a result of each different method of processing cases, and these data could be used to benchmark the appropriateness of referrals to various parts of the system in future. Police youth diversion is mostly being used in cases where apologies, minor restrictions, fewer than 21 hours of community work or monetary sanctions of less than \$50 are involved. However, about a quarter of these cases received more community work or greater monetary sanctions so it might be appropriate to consider guidelines recommending usual responses of no more than 50 hours community work or \$100 in monetary sanctions at this level.

Family group conferences are mostly responding in the middle range of community work (21–100 hours) and monetary sanctions (\$50–\$500), although on occasion the hours of community work and monetary sanctions were set higher.⁶ Sanctions at these levels seem

⁶ Family group conference plans rarely seemed to be offering options for the equivalent of a supervision order or a supervision with activity order in 1998, although an earlier study suggested that this was possible and could be encouraged (Levine and Wyn 1991b, 1991a, Coshan 1991).

Table 8 Severity of Outcomes and Mode of Resolution, Police Youth Diversion (PYD) Study Sample and the AEO Retrospective Sample

Severity of Outcome	Data Source and Mode of Resolution		
	PYD Study	AEO Retrospective	
	Police Diversion	Police-Referred Conference	Youth Court*
Apology/warning/no action	37	6	5
Curfew and other restrictions, community work <21 hours, monetary <\$50	41	13	7
Fine/ disqualification/ suspended sentence**		6	4
Community work 21-100 hours, monetary \$50-500	20	62	49
Community work 101+ hours, monetary \$501+	2	12	13
Supervision***			11
Supervision with activity			4
Periodic detention			1
Supervision with residence			3
Prison or corrective training			5

Source: 1998 retrospective sample (Maxwell, Kingi et al. 2002) and the 2000 Police Youth Diversion sample (Maxwell, Robertson and Anderson 2002).

* Not all these cases will have been dealt with by Youth Court orders. Most of them involving community work, monetary penalties or curfews etc. will have been arranged through the family group conference plan.

** These court orders were made in some instances for police-referred family group conferences when matters were sent on to the Youth Court.

*** This includes Youth Court orders (10%) and District Court orders for community probation (1%).

more suited to police-referred family group conferences that involve a consensus with family and victims. Family group conferences also have the advantage that a face-to-face meeting may lead to a more effective apology and reparative response to victims, as well as help to put in place measures to enhance well-being with the full involvement of family or whānau.

In none of the cases in our sample where there was a direct referral for a family group conference, and in only just over a quarter of the court-ordered family group conferences, did the family group conference recommend that matters be resolved by an order from the court. Thus, police-referred family group conferences are responding to offending in a way that obviates the need for a court order.

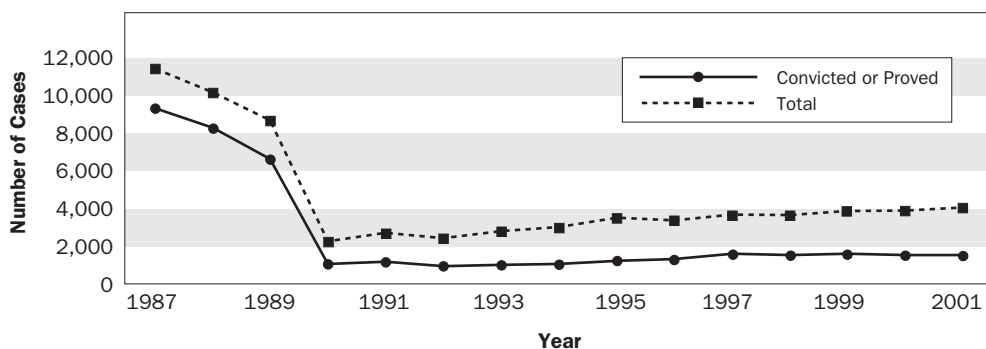
The Youth Court dealt with many cases at exactly the same level as the family group conference. In fact, fewer than a third of Youth Court cases appeared to have received formal court orders, and the maximum level of sanction for 65% was no more than 100 hours community work and/or \$500. It is undoubtedly appropriate for there to be some cases coming to Youth Court which result in relatively minor sanctions in order to ensure the integrity of the system. At least a third of the 1998 cases dealt with in the Youth Court were dealt with in the same ways as the police-referred family group conferences. Thus, a greater use of police-referred family group conferences would seem more consistent with the intentions of the Act. Such a goal would seem achievable, especially if procedures for monitoring outcomes were improved

in ways that provided reassurances to all those involved in the family group conference and to the wider public.

THE USE OF YOUTH COURT ORDERS

The Youth Court itself is more successful than the former Children and Young Persons Court was in avoiding the use of court orders. National data for the years 1987 to 2001 are set out in Figure 3.

Figure 3 Youth Court Cases Showing Total Cases and Cases Convicted or Proved, 1987–2001

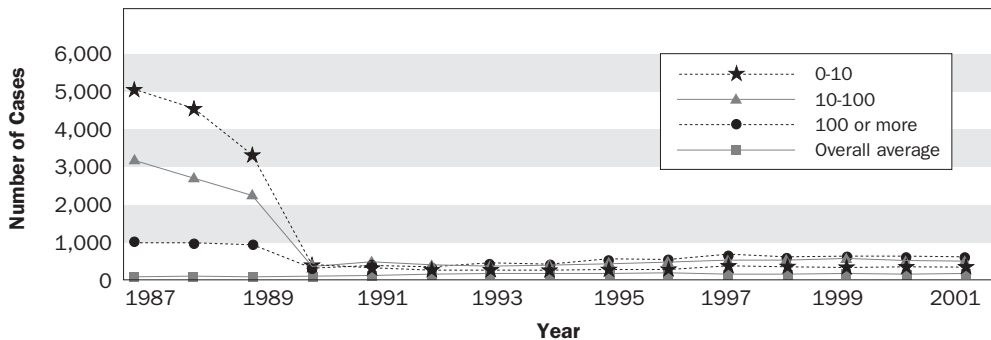


Source: Data were provided by Ministry of Justice.

The data in Figure 3 show that the number of cases being prosecuted in the Youth Court dropped from 11,327 in 1987 to only 2,249 in 1990 – less than a fifth of the 1987 number. Since that time the number has risen steadily to 4,046 in 2001. This figure is 1.8 times the 1990 figure but is still little more than a third of the figure before the 1989 Act.

Furthermore, of the total cases prosecuted in the Youth Court, a smaller portion in 1998 were being dealt with by the use of Youth Court orders (being “proved” or “convicted”). In 1987, 82% of all the cases charged in the Youth Court resulted in an order. By 1990 this was true of fewer than half the cases referred to the Youth Court and this despite the drop in the total number of cases being referred. Almost all the remaining cases were dealt with by way of a discharge or the withdrawal of charges after the completion of family group conference plans. By 2001 the absolute number of cases being dealt with by way of a Youth Court order had risen much less than the total number of cases being dealt with by the Youth Court, so that only 39% of the Youth Court cases were receiving an order. National data can also be used to examine the extent to which the increased number of referrals to the Youth Court is an indication of more serious crime. Figure 4 presents data on seriousness of offending in the Youth Court over the period 1987–2001.

Figure 4 Seriousness* of Cases Dealt With in the Youth Court, 1987–2001



* The seriousness scale used here was developed for the Ministry of Justice (Spier 2001). It is based on the average days of imprisonment received by offenders sentenced in the adult courts for particular offences.

The data in Figure 4 are based on the Ministry of Justice seriousness scale. They show that appearances in the Youth Court for offences that were in the least serious categories dropped the most after the introduction of the 1989 Act, but that from about 1992 the relative seriousness of the offences remained much the same. This interpretation is reinforced by an examination of the overall average seriousness of offences in each year. The average fluctuated considerably as a few very serious offences can cause quite major changes, but, on the whole, despite changes in sentencing practice (which are likely to have increased seriousness scores for more serious offences), the average seriousness rating is remarkably similar. Thus these data reinforce the research findings indicating that the changes in the number of cases being charged in the Youth Court cannot be explained by the increased seriousness of youth offending.

There are two very important points to make on the basis of these data. The first is that the rise in Youth Court appearances is not being mirrored in an increased use of orders as a response. Furthermore, the numbers of cases involving serious offending is not increasing. These findings contradict claims made by political candidates, prior to the 2002 election, that Youth Court data showed large increases in serious youth offending.

The second point is that it is difficult, on the basis of these data, to justify the increased number of police prosecutions of young people. The clear intention of the 1989 Act was to limit the use of criminal proceedings as a method of responding to youth crime. Such a goal is not being met when well over half the cases being prosecuted in the Youth Court are being resolved through family group conference plans without court orders. If police were to refer a greater number of cases directly for a family group conference, the outcomes in terms of accountability would not be changed, but it would be possible to avoid the unnecessary use of criminal proceedings. This finding of an unnecessary emphasis on prosecution by the police is consistent with the data in the report on Police Youth Diversion (Maxwell, Robertson

and Anderson 2002), which demonstrated that many of those committing relatively minor offences were being charged in the Youth Court, especially in some areas of the country, when at other times and in other places similar offences were being dealt with by direct referral to a family group conference or even by police diversion.

The Use of Supervision with Residence and Remands in Custody

Nationally, there has been a decline in the absolute numbers of young offenders being placed in a CYFS residence. The number of cases resulting in sentences of Supervision with Residence in 1990 was less than half the average number for the previous three years (Maxwell and Morris 1993). Data supplied by the Ministry of Justice for 2000 indicate that there were an estimated 115 Supervision with Residence Orders in that year, which translates into 3.5% of the total young people appearing before the Youth Court. This is an increase on the figures for 1990 quoted in Table 6, but still represents a relatively small proportion of offenders.

The goal of reducing residential placements was achieved both through a reduction in the use of Supervision with Residence Orders by the court and through changes in practice by CYFS. Residential staff were given the role of “gatekeeper” to ensure that admissions occurred only when:

- there was a Supervision with Residence Order by the court; or
- the young person had been remanded by the court to the custody of the Director-General of Social Welfare and there was no other suitable placement option; or
- there was a need for an emergency temporary placement after an arrest and prior to a court hearing in order to provide protection for the public or young person and there was no other suitable placement option.

There have, not surprisingly, been difficulties in limiting admissions to residences, given the expectations built up over the years when they were a commonly used option for young people who had offended, been neglected, been abused or were just difficult to manage. There has, however, been ongoing pressure for increases in the availability of beds for youth justice placements, and over the late 1990s this pressure increased when young people were often held in police custody because placements in residence were not available. In 1997 the Office of the Commissioner for Children released a report (Ludbrook 1997) expressing strong disapproval of “the practice of holding young people for other than brief periods in police cells and is disturbed to learn that a number of young people have been so held for a period of up to 21 days.” The report went on to criticise the conditions under which young people were being held and to present the view that such actions were in breach of the New Zealand Bill of Rights Act 1990 and New Zealand’s obligations under international human rights instruments. It also made a number of recommendations for change. Since that time, processes have been put in place for monitoring placement of children and young people in Police custody and the lengthy remands of young people in residences.

In 1999 a new Residential Services Strategy was announced that led to the building of new youth units in three areas and an increase in youth justice residential beds from 76 to 90 by 2002/03 (Polaschek 1999). However, building new units has not been a speedy process. One factor that slowed the process of obtaining resource consents for the units was growing concern about siting residences in suburban communities that felt threatened when young people absconded. Presently, the number of beds for youth justice has not increased. One new unit has been built near Palmerston North (the Lower North Youth Justice Residential Centre) and this replaces the youth justice beds previously available at Epuni. The new unit has a secure perimeter fence and many of the other features of a medium-security prison, including central surveillance of cells and leisure areas. The atmosphere seems much more like that of a prison compared to the more open surroundings of the older residences. Together with the new physical structures, provision has been made for more specialised programmes which aim at targeting the needs associated with an increased probability of re-offending by young offenders placed in residence. No information is available to assess the impact of these new facilities on young people and no independent research has been commissioned to do so.

Placements in residences have been recorded as varying from a few days up to one year and occasionally longer.⁷ The variation in length of stay reflects the varying lengths of the placements of young offenders on remand. At one of the three main residences taking up to 25 young offenders, data showed that the number of Supervision with Residence placements varied between 40 and 50 over the last few years, while up to 300 additional placements of young people on remand were recorded for the same years. The other two residences can take up to 50 young offenders at any one time: if the pattern of remands is similar across residences, one would expect them to take another 80–100 remand cases per year. This suggests that Supervision with Residence Orders are being given to 110–150 young people annually over recent years and accords with the estimate for 2000 of 115 noted by Spier (2001).

It seems, therefore, that the pressure on youth justice beds that leads to young people being held in police custody will continue to come from remands until such time as the new units are completed. Improved and publicly available national data on the use of beds in residences, which details numbers of Supervision with Residence and remand cases and reports lengths and reasons for remand, are necessary for monitoring and public scrutiny of the process. This is of particular importance because when remand periods are longer than the period

⁷ Unfortunately, data on residential admissions, reasons for admission and lengths of stay are not published. Nor are they collected in a systematic form by CYFSs. Some information was supplied to us by each residence, but the data were kept in different forms by each so it was not possible to obtain any overall picture of the reasons for admission and the lengths of stay, or to make comparisons over time.

normally served by a young person who has received a sentence of Supervision with Residence through a Youth Court order, there appears to be some conflict here with the principles of the 1989 Act. Furthermore, lengthy remands of young people without the option of this period being deducted from any eventual custodial sentence is in conflict with practice in relation to adult offenders, and could be considered a breach of more fundamental rights under United Nations conventions.

Conviction and Transfer to the District or High Court

The most severe sanction available to the Youth Court is to record a conviction and transfer the case to the District or High Court for sentence. National data show that in 1990 the number of cases being convicted and transferred to higher courts was reduced, both in proportion and numerically, compared with the previous three years. In 1987 the number was 1,318 and this dropped to 269 in 1990. Since then it has risen to a high of 340 in 1997 but had fallen back to 234 in 2001. Figure 5 shows the pattern over time.

Figure 5 Number of Convictions in the Youth Court for 1987 to 2001

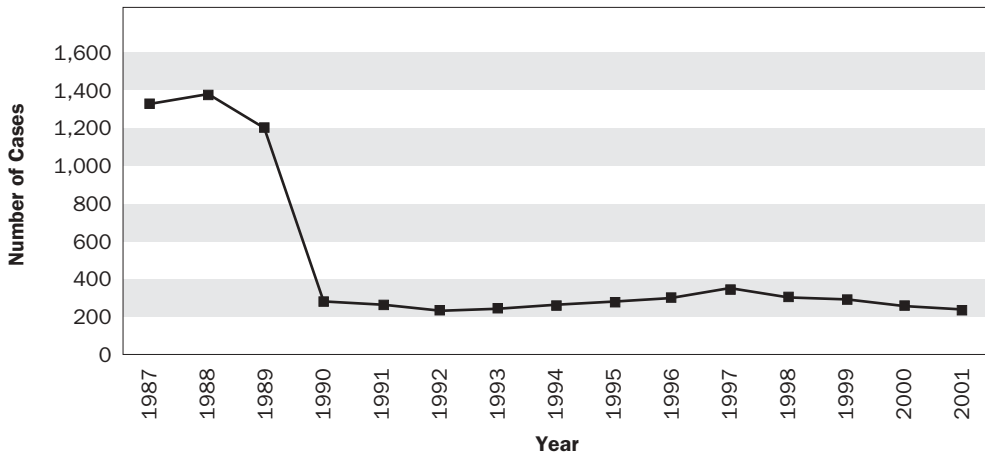
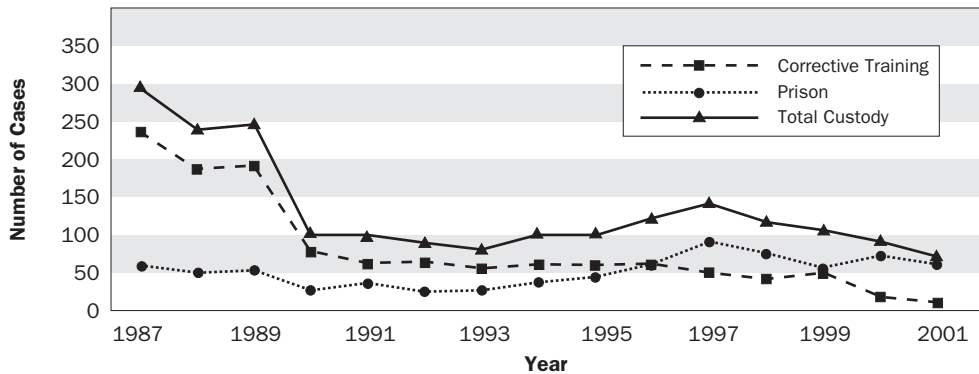


Figure 5 shows clearly that one consequence of the Act has been a large drop in convictions. They are now less than one-fifth of what they were prior to the Act, despite increases in the numbers of young people in the population. This indicates an increased preference for community-based sentences, which is in line both with the principles of the Act and with the growing body of research evidence on the limited effectiveness of custody in preventing the re-offending of young people (Andrews 1994, Andrews and Bonta 1998, Dowden and Andrews 1999).

Figure 6 Custodial Sentences for Youth Court Cases, 1987–2001



The Use of Penal Custody

National data shows that in 1990 cases involving young people receiving a custodial sentence in the adult courts reduced both in proportion and numerically compared with previous years. In 1987 the number was 295, and this dropped to 104 in 1990. It then rose to a high of 143 in 1997, but decreased again so that by 2001 there were only 73 cases. These data are shown in Figure 6.

Figure 6 also shows the type of custodial sentence imposed. From 1987 to 1996 the bulk of custodial sentences were corrective training. However, evaluations have shown little evidence of positive outcomes from these “short sharp” boot-camp-style sentences (Walters and Morris 1995). Indeed, the recidivism rates for corrective training were alarmingly high. This resulted in a reduction in the use of this sentence and the eventual dropping of it from the range of sentencing options for young people. This fall-off in the use of corrective training is the principal reason for the increased use of prison sentences from 1997, but there is also an overall decrease in the use of prison from 1997 to 2001. The decrease in custodial sentencing is also in part the result of a decline in the number of young people in the Youth Court being convicted and transferred to the District or High Court. These data indicate that even at the most serious levels of offending, the new youth justice system is able to respond to an increased number of young people through the use of non-custodial sentences. New research data on the impact of these changes on the future offending of young people is currently being examined (Maxwell, Kingi et al. 2002). However, earlier data indicate that higher rates of re-offending are not associated with the increased use of non-custodial options (Maxwell and Morris 1999).

SUMMARY

The data reported here indicate that in 2000/01 the police were increasingly using arrest and laying charges in the Youth Court in circumstances that do not appear to be consistent with the principles and objects of the Act or with police practice in 1990/91. Data on the police practice in referring for family group conferences or using their own youth diversion process also indicate that there have been changes in recent years. Referrals for family group conferences have declined while both police youth diversion and Youth Court charges have increased. Comparisons of data on the seriousness of offences over time indicate that changes in responses cannot be explained by changes in seriousness of offending. Rather, the reasons lie in changes in police practice. These changes appear to reflect limits on the resources available to manage family group conferences in CYFS and the need for improved communication and coordination between CYFS and Police in some areas. Both are problems that current strategies are attempting to change (Ministry of Justice and Ministry of Social Development 2002).

The increased use of diversion within the Police can be seen as a constructive and appropriate response that is consistent with the objectives of the Children, Young Persons, and Their Families Act 1989. The nature of the diversionary plans arranged by the police, for the most part, confirms this. There are two caveats here. First, in some instances the amounts of monetary sanctions and work in the community being arranged were sometimes greater than would seem appropriate without external scrutiny. Second, the *Police Youth Diversion* report (Maxwell, Robertson and Anderson 2002) noted considerable diversity in police practice across areas, and this does not seem consistent with fair and just delivery of sanctions.

Despite these changes over the last 12 years where matters are being resolved, the number of cases being dealt with by Youth Court orders remains at a third of the level of 1987.

Information on the use of CYFS residences is, unfortunately, sparse. The details are difficult to document as there appear to be no national data on the number of sentences of Supervision with Residence, the number of remands to residences, the lengths of time served or the type of admission. The Principal Youth Court Judge and CYFS are presently setting in place new procedures for improving the monitoring of remands and the use of Police cells for young people. Concerns about bed shortages have already led to the building of one new young justice unit and plans are in place for two more. Action to expedite the two additional units is currently a priority. However, more fundamental issues about lengthy remands without corresponding sentence remission deserve consideration. And annual data on the use of Supervision with Residence Orders should be readily available if institutional sentences for young people are to be monitored.

Since the introduction of the 1989 Act relatively few young people are being dealt with by the use of convictions in the District and High Court and sentences of penal custody. Indeed, figures both for convictions and for sentences of penal custody for young people have declined slightly over recent years.

What then can we say about changes in the frequency and severity of penalties over the years prior to the Act and up to 1998? The answer is that, although there appears to have been relatively little change in the seriousness of offences being dealt with, fewer young people are being sent to court and fewer young people are receiving custodial penalties now than before the Act. However, since the Act, more young people are receiving moderate penalties through the family group conference and police diversionary processes. In other words, more young people are being made accountable for their offending through the use of processes that keep the young people in the community and avoid the use of criminal proceedings. The data reported here suggest that even more gains could be made if financial savings through reducing Youth Court appearances in more of the minor cases were used to increase the capacity of CYFS to deal with more cases by direct referrals for a family group conference. Such increases in diversion and decarceration are likely to have real advantages for young people, for families and for victims, by way of more young people taking responsibility for their offending, increased access to programmes for young people and support for their families, increased responsiveness to victims and less costly solutions.

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