

**Submission to** **Social Services Committee**

**Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill**

**YouthLaw Aotearoa**

Level 1, Westfield Shopping Centre

5 Leyton Way

Manukau City Centrre

Auckland

0800 UTHLAW

(0800 884 529)

[www.youthlaw.co.nz](http://www.youthlaw.co.nz)

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# WHO WE ARE

YouthLaw Aotearoa is a Community Law Centre vested under the Legal Services Act 2000. We are a charity and part of the nationwide network of twenty-four community law centres throughout Aotearoa. We are a specialist law centre focussing on the legal needs and interests of children and young people under 25 years of age.

This submission is informed by YouthLaw Aotearoa’s insights from working with children and young people across New Zealand for over thirty years.

**Contact:**

Darryn Aitchison

General Manager

YouthLaw Aotearoa

[darryn@youthlaw.co.nz](mailto:darryn@youthlaw.co.nz)

# YOUTHLAW AOTEAROA’S SUBMISSION

## INTRODUCTION

YouthLaw Aotearoa strongly opposes the Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill. There are three principle reasons why:

1. The policy problem it is designed to address has been significantly overstated. Youth offending has been steadily trending down for at least 10 years. The exception is a post-Covid spike, which has already turned back towards the historical trends without any intervention.
2. The Bill is looking for solutions in the wrong place. The drivers of youth offending happen several years before they turn 14. The Bill does nothing to stop these drivers and will do little to prevent the onset of offending. There are much better intervention points on the pathway to youth offending that can be leveraged.
3. There are better solutions available to address offending upon its onset.

We have also read the analysis and submission of VOYCE Whakarongo Mai – which we support and endorse.

In short, we think this Bill is both poor policy and not needed.

We would like to make an oral submission in support.

## THE IMAGINED POLICY PROBLEM

We understand where this Bill has come from. The Minister of Justice spoke to Community Law Centres at our national hui in November 2024. He explained youth offending is one of the priorities for this Government. The priority was decided on the basis of National Party polling, where constituents said their main justice concerns were youth offending. However, research into both youth offending and justiciable issues faced by the community indicate the concerns of constituents are overstated.

We acknowledge there was a spike in youth offending post-Covid. However, Ministry of Justice [*Youth Justice Indicators Summary Report*](https://www.justice.govt.nz/assets/Documents/Publications/Youth-Justice-Indicators-Summary-Report-December-2024_v1.0.pdf)*[[1]](#footnote-2)* shows that, across the board, youth offending is steadily decreasing in New Zealand and there is less reoffending by young people. **This includes the number of young people with serious and persistent offending behaviour** (i.e. the subject population of the Bill).

With regards to the most recent years, the report shows the post-Covid spike has passed, and the spike has already turned around without any changes to the policy or legislative settings.

The only reasonable conclusion to draw is that the Bill is a policy response to a problem that no longer exists (and probably never did).

Justice policy should focus on other issues. The cost of unresolved legal problems on the community ranges from 0.5% to 3% of the GDP (i.e $1.2billion to $8.4billion).[[2]](#footnote-3) This takes the form of both direct costs (lawyer and court fees, transport, etc.) and the cost of adverse consequences on people’s health, income and employment situation.

## THE REAL POLICY PROBLEM

Internationally, the past 20 years have seen an explosion of research into access to justice and legal need. We know more than ever about what access to justice is and why people face barriers. With regards to children and young people, we know that:

* Socioeconomic disadvantage is the main driver of legal need and legal harm within communities.[[3]](#footnote-4)
* There is a bi-directional link between unmet legal need and social problems – legal problems make social problems worse and social problems make legal problems worse.[[4]](#footnote-5)
* Young people are one of groups with the highest risk of legal harm.[[5]](#footnote-6)

This research provides extremely rich insights into the nature of legal problems, and where to focus policy interventions.

With regards to serious youth offending, the seeds are sown many years before young people start offending. Research shows almost every person entering the youth justice system has a prior care and protection notification.[[6]](#footnote-7) This is supported by treasury data, which shows a key indicator of poor outcomes in later life is having an Oranga Tamariki finding of abuse or neglect.[[7]](#footnote-8)

This picture of childhood harm causing poor outcomes is reinforced by research into legal needs of children and young people. The key drivers of legal problems for young people are:

* Being Māori
* Experience of homelessness
* Experience of disability
* Having lived in out-of-home care
* Experience of poverty.[[8]](#footnote-9)

This Bill tries to address the issue *after* the offending has occurred, and many years after the young person was put on the path to offending. It is an illogical policy response and will do little (if anything) to prevent youth offending – it targets the symptom not the cause.

The first and best opportunity we have for effective intervention is when the child comes to the attention of authorities through the care and protection regime. Policy interventions should be focused on the 8-year-old child who has experienced family violence, food insecurity and who is living in a car.

## BETTER SOLUTIONS

While the best policy response is to address the root causes of youth offending, there is still the question of what to do about children whose offending has already started, including those engaged in serious and persistent offending.

At its core, the Bill proposes to:

* deter offenders with the threat of harsher sentences
* break the cycle of offending through longer incarceration and the use of militarised methodologies

This is the wrong approach to take. The prevailing view amongst researchers in this field is that punitive approaches to offending do not work. In fact, they increase recidivism.[[9]](#footnote-10)

The Bill also characterises children (as defined by United Nations Convention of the Rights of the Child) as Young Serious Offenders and endorses militarised methodologies of behaviour correction. We strongly reject this characterisation and endorsement. They are not appropriate in the context of our international commitment to uphold children’s rights and our modern democracy.

There are other approaches to youth offenders we can take which are consistent with international research into best practice and which align with children’s rights approaches.

Oranga Tamariki know this – which is why they designed the military academy pilot as a trauma-informed, therapeutic intervention – yet the Bill masks this reality. Its endorsement of punitive, harsher and militaristic approaches to children risks repeating the mistakes outlined in graphic detail in the Royal Commission of Inquiry in to Abuse in State Care.

In particular, the Bill delegates to the Minister of Children the power to create regulations, approve programmes, and approve providers. However, it does nothing to ensure those programmes are consistent with international best practice, and does not provide adequate safeguards to ensure providers will meet those standards.

This is a crucial omission which greatly increases the probability of abuse. This is not fear mongering. Research shows children and young people are the least likely of all groups to complain and take steps to address legal problems when they arise. They are dependent on adults to take steps for them and face significant barriers.[[10]](#footnote-11) If a provider of a MSA programme does breach its obligations – and a child is abused in state care – there will be no practical remedy. And where there is no remedy, there will be breaches.

Ultimately, the best solutions lie elsewhere. The problem of youth offending is complex. As outlined above, it is linked to socioeconomic disadvantage and located within specific communities. There are better intervention points and better approaches available.

Resolving complex and wicked problems like this requires complex thinking, a range of voices talking about solutions, and careful implementation of agreed responses.

Unfortunately, this Bill has been rushed. Its genesis is in the political polling of the National Party. By rushing this Bill, we not only make bad law, we miss opportunities that could meet both the policy goals of good law and the political goals of the Government.

For example, the cost of this Bill could put a further 125 Police on the street. This is a known deterrent to all forms of offending, which would have collateral advantages to simply targeting persistent young offenders. Done well – think community constables playing basketball with kids – this approach has the potential to build community cohesion and unlock other policy benefits, such as reducing family violence and alcohol related harm.

The rush to get this in place also shows a lack of an overall plan for youth justice. This is one of several legislative steps promised in coalition agreements that do not engage with the recommendations from the Royal Commission, and the Bill is introduced before the pilot has even been evaluated. These concerns and others are outlined in the Open Letter sent to the PM sent 16 December 2024.[[11]](#footnote-12)

Our position is clear – this Bill should be withdrawn. However, we acknowledge the politics cannot be taken out of democratic law making. If the Bill is to progress it should be amended:

* A first simple step is to remove the characterisation of children as serious young offenders and reference to militarised approaches. This will reduce the risks outlined above and is consistent with international law.
* Beyond that, any Bill should explicitly endorse the use of international best practice (which include restorative, age appropriate and trauma-informed therapeutic approaches) and limit the power of the Minister to make only regulations that align with these approaches.
* The Bill should also provide that the power of judges to sentence children to longer periods of incarceration is subject to Cabinet having provided adequate funds to ensure child rights are upheld and the therapeutic nature of the pilot is retained. These are expensive endeavours, as is the cost of making sure this new regime protects children from adults who know their abuse will not be reported or proven. If these amendments are not made the lessons of the Royal Commission will have been lost.

## OUR RECOMMENDATION

**We urge Parliament to withdraw this Bill.** It targets a problem that is dramatically overstated, looks in the wrong place for solutions, and overlooks greater opportunities to achieve policy objectives.



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1. <https://www.justice.govt.nz/assets/Documents/Publications/Youth-Justice-Indicators-Summary-Report-December-2024_v1.0.pdf> [↑](#footnote-ref-2)
2. See OECD, *Building A Business Case for Access to Justice*, <https://blog.kleros.io/content/files/gov/building-a-business-case-for-access-to-justice.pdf> [↑](#footnote-ref-3)
3. See, for example, *The Legal Australia-Wide Survey (LAW Survey)*, Executive Summary, [http://www.nationallegalaid.org/resources/legal-australia-wide-survey/#](http://www.nationallegalaid.org/resources/legal-australia-wide-survey/), [↑](#footnote-ref-4)
4. For example, see Ibid. p28 [↑](#footnote-ref-5)
5. See Justice Project, Law Council of Australia, <https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/Children%20and%20Young%20People%20%28Part%201%29.pdf> [↑](#footnote-ref-6)
6. For example, see *The Crossover Between Youth*

   *Justice and Care and Protection*, Judge Fitzgerald, August 2024, Youth Advocates Conference, p 4. [↑](#footnote-ref-7)
7. <https://www.treasury.govt.nz/sites/default/files/2016-02/ap16-01-infographic.pdf> [↑](#footnote-ref-8)
8. *Justice Project* [↑](#footnote-ref-9)
9. See, for example <https://www.auckland.ac.nz/en/news/2023/09/21/being-tough-on-crime-is-easy-but-doesnt-work.html> [↑](#footnote-ref-10)
10. See *Justice Project* [↑](#footnote-ref-11)
11. <https://community.scoop.co.nz/2024/12/dear-prime-minister-our-kids-need-new-boots-not-boot-camps-this-xmas/> [↑](#footnote-ref-12)