

# **RESTORATIVE JUSTICE**

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## **A BRIDGE BETWEEN**

## **PRACTICE AND RESEARCH**

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# Children, Young Persons, and Their Families Act 1989

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- Repealed the Children, Young Persons Act 1974
- High numbers of Maori in residences
- This Act had been amended in the early 80's to include family/whanau in the decision making process
- Engagement did not occur hence the need for an FGC type process
- Act became law 1 November 1989

# Children, Young Persons, and Their Families Act 1989

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- There was wide consultation to develop this Act
- “Families” was inserted in the Act title
- The “term” Restorative Justice (RJ) was not used during the;
  - Consultation process
  - Policy Development
  - Development of the Act
  - Not used as the Bill progressed through Parliament

# Objects and Principles (summarised)

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## If the family/whanau

- Is capable of dealing with the offending, let them
- If they want to deal with offending but lack the skill and/or resources (*extended whanau and/or community*) then assist them
- If they are unable or it is inappropriate that they deal with the offending then formal intervention is required.

## Ensuring that where children or young persons commit offences

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- (i) They are held accountable, and encouraged to accept responsibility, for their behaviour; and
- (ii) They are dealt with in a way that acknowledges their needs and that will give them the opportunity to develop in responsible, beneficial, and socially acceptable ways:

s4(f) CYP& Act

# Youth Justice Principle

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The principle 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:

s208(a) CYP&F Act

# Youth Justice Principle

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The principle that a child or young person who commits an offence should be kept in the community so far as that is practicable and consonant with the need to ensure the safety of the public:

s208(d) CYP&F Act

# Youth Justice Principle

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The principle that any measures for dealing with offending by children or young persons should have due regard to the interests of any victims of that offending:

s208(g) CYP&F Act

# Consideration of warning as “alternative” to prosecution-

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Where considering whether to institute criminal proceedings against a child or young person, that officer shall consider;

- whether it would be sufficient to warn, unless
- a warning is clearly inappropriate having regard to the;
- seriousness of the offence; and
- the nature and number of previous offences committed

# LEVELS OF INTERVENTION

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- The four levels of intervention that can occur are;
  - **Warning** - this is often given by the attending officer and followed up by a letter from the Youth Aid Officer acknowledging the warning;
  - **Alternative Action** - this is a Diversion plan carried out by the Youth Aid Officer;
  - **Family Group Conference** - offending that cannot be dealt with by way of warning or alternative action; and,
  - **Youth Court** - the young person has been arrested and brought before the Court or the offending cannot be dealt with by way of Family Group Conference.

# Decisions of Note

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The Act has led to FGC law being reviewed

- R v N – Court of Appeal held an agreed FGC is a “special circumstance” for the purpose of sentencing
- What occurs when a young person does not attend an FGC?
- Is the FGC outcome binding if the matter goes to Court?
- What is an agreed FGC?

# Positive Outcomes

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- Victims participation
- Family/whanau involved in the decision making
- Police Alternative Action is now considered the first approach
- Drop in Court numbers
- Fewer Defended hearings
- Court provided with good information

# Natural Justice

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- People have a great sense of “fairness”
- Reparation for loss is important to a victim
- The “person” feels they have been treated fairly and have been heard
- Practices must be consistent Natural Justice (*evidence, admits offence etc*)
- BE OBJECTIVE!!

# Some Elements of Success

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- File is of a good standard
- Good timeframes (*sooner the better*)
- Participants are well prepared
- Facilitator does just that!! (*less is best*)
- Good Plans
- Good Monitoring of the Plan
- Non compliance is promptly dealt with