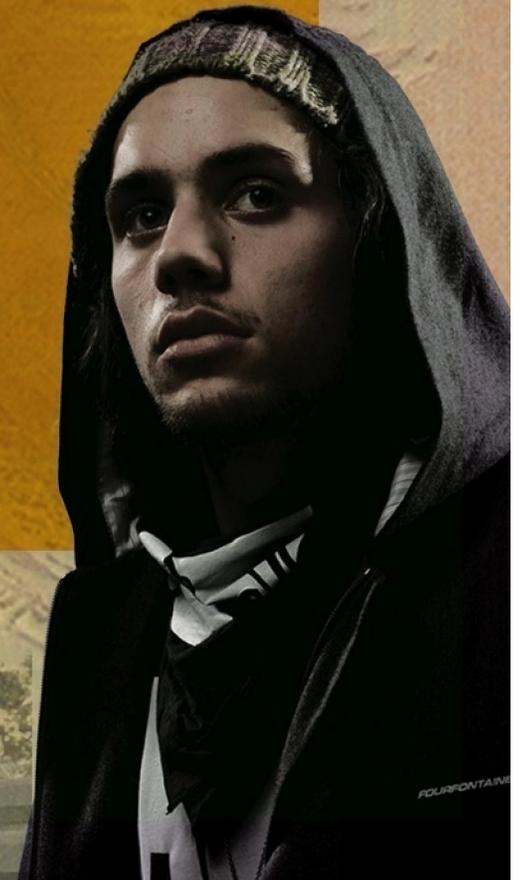


Out of Court (And Sometimes In) – Playing to Win: Restorative Practices & Processes of the New Zealand Youth Justice System

Restorative Practices in Action: A Conference for School and Justice Practitioners - 1 May 2015
John Jay College of Criminal Justice, New York

Judge Andrew Becroft
Principal Youth Court Judge for New Zealand
Te Kaiwhakawā Matua o Te Kooti Taiohi



THE YOUTH COURT OF NEW ZEALAND | TE KOOTI TAIOHI O AOTEAROA

A Short Quiz for you....?

- 44 million
- 4.6 million
- 6,000
- 5,000
- 200
- 39
- 1
- Sheep
- People
- Lawyers
- Juvenile Justice Family Group Conferences (annually)
- Judges
- Judges who do (some) Youth Court work
- Rugby World Cup

= New Zealand /Aotearoa



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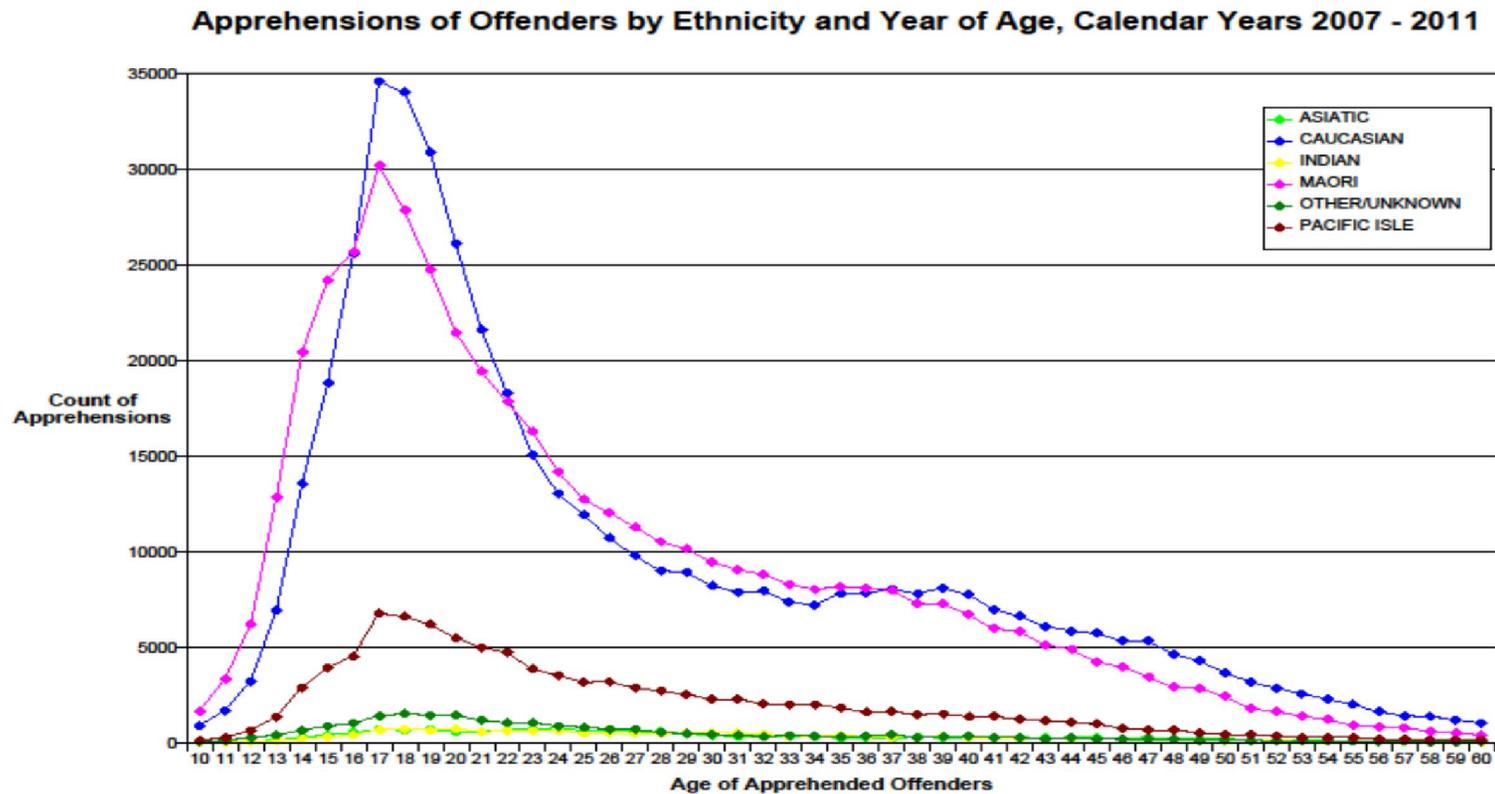
Where... in the world... are we?



We are down here!

**17 hours
flying time**

The pivotal importance of focusing on juvenile crime



Outline

1. The bad old days. What was wrong with Juvenile Justice in New Zealand in the 1980s?
2. Features of a “new paradigm” of dealing with young offenders.
3. Juvenile Family Group Conferences under the microscope – (with more to come later today).
4. Conclusion.



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“The Bad Old Days” (or, What Not to Do)

1. Arrest all juvenile offenders, no matter the circumstances.
2. Charge all juvenile offenders and bring them to Court, often adult Courts.
3. Prioritise “professional” social work input and decision making which marginalises and disempowers families.
4. Rely on Court-based, judicial decision making because Judges know best!
5. Have high rates of institutionalisation: offenders in juvenile prisons and “homes”, often to address abuse/neglect/care needs.
 - A mono-cultural, failing system, with increasing juvenile crime.
 - A gathering storm!



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1. Arrest all juvenile offenders, no matter the circumstances



2. Charge all juvenile offenders and bring them to Court, often adult Courts



3. Prioritise “professional” social work input and decision making



4. Rely on Court-based, judicial decision making because Judges know best (and always impose convictions!)



5. High rates of institutionalisation of juvenile offenders in prisons and “homes”, often to address abuse/neglect/care needs — often totally disproportionate to the original offending



The “New Paradigm”

- Specialist (almost self-contained) Juvenile Court; division of District Court.
- Specialist Judges (but who also sit in adult Courts), lawyers, police, social workers, mental health professionals, education officers, youth workers.
- Jurisdiction refined:
 - Ages 10 – 11 : only murder/manslaughter – must be dealt with in adults courts.
 - Ages 12-13 : only very serious offences (small numbers). All other offending dealt with as a “care and protection” issue in the Family Court.
 - Age 14, 15, 16 : all offences (except murder/manslaughter – must be dealt with in adults courts)
 - Juvenile has the right to elect adult jury trial (virtually never) or, after charge proved, the Youth Court can convict and transfer to the adult Court (14-16 year olds) for sentencing (only 22 last year).



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The “New Paradigm” (cont)

1. Restrictions on arrest of juveniles without prior warrant. (Usually to stop further offending). Otherwise apprehend, obtain details, release, and deal with as soon as possible in the community.
2. Don't charge if alternative means of dealing with the matter are available, unless the public interest requires it.
 - The “don't charge” provision is thought to be the first in world at the time and was considered revolutionary in NZ.
 - Specialist youth-focused division of NZ Police force established to make these decisions. Significant police expertise required – and trust in Police integrity.



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The “New Paradigm” (cont)

The “don’t charge” provision has resulted in 80% of juvenile offenders not being charged or brought to Juvenile Court.

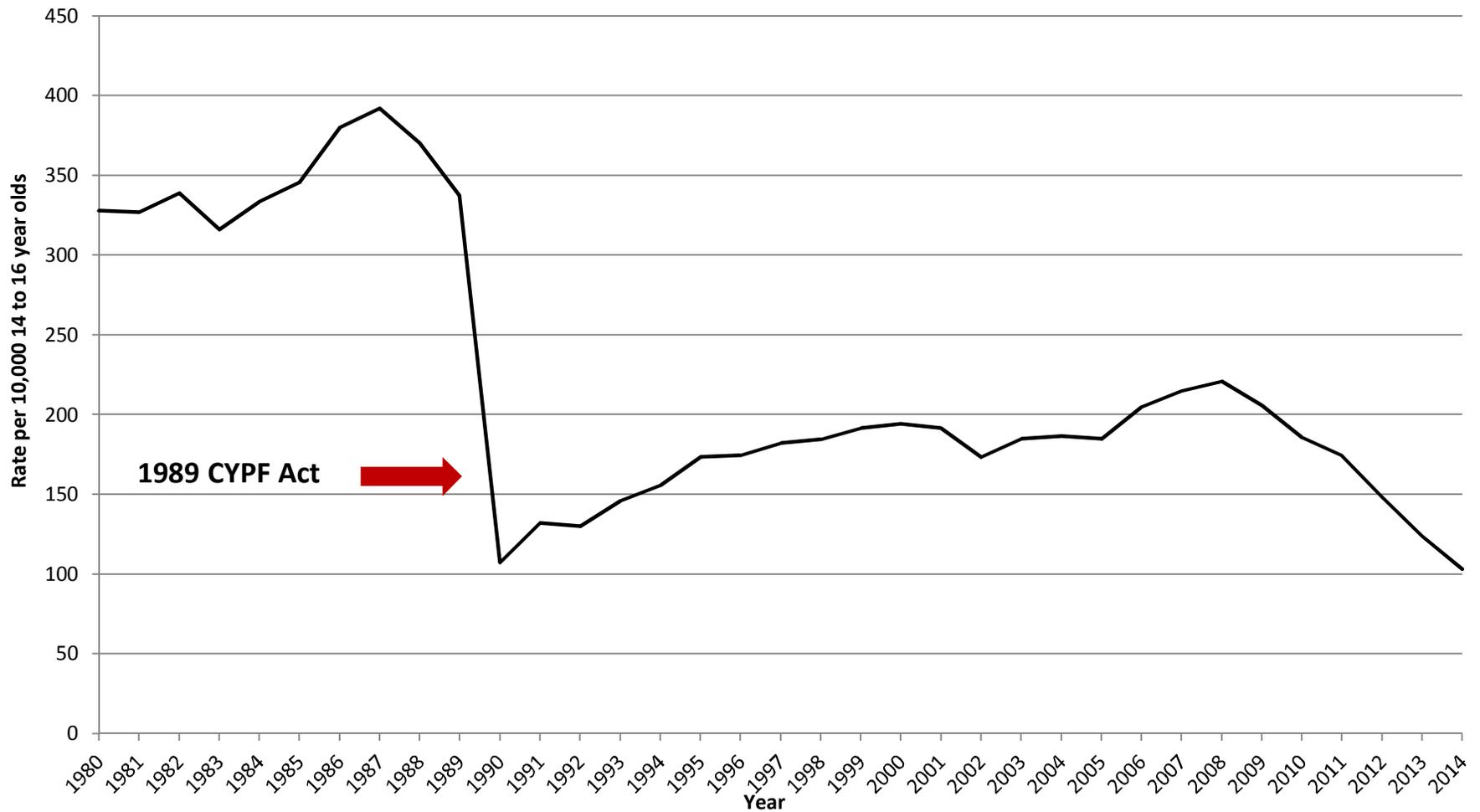
- These are “adolescent only” offenders.
- Usually from relatively stable and co-operative families.
- Will “age out” of offending with prompt family based intervention.
- Also, consistent with the “brain science”: a developing frontal lobe.
- Specialist “Youth Aid” division of NZ Police enlists family participation in “alternative resolutions” and involves victims.
- Charging these young people is counter productive and detrimental. Aggregation of offenders in Court. A badge of honour? Live up to the label.
- Families are usually “up for the task” with these young offenders.



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Rate per 10,000 population of 14-16 year olds, appearing in the NZ Youth Court



The “New Paradigm” (cont)

3. Introduction of delegated decision-making to Family Group Conferences (FGCs), for the 20 % who are the most serious offenders

- When Police apprehend a juvenile and wish to charge him/her, but are not able to arrest (because powers to arrest young people are limited), an “Intention to Charge” FGC must be convened. Its purpose:-
 - to determine whether charges should be laid in Juvenile Court; or,
 - whether a plan addressing the offending and the underlying causes of offending can be formulated, which if completed, will result in no charge being laid.
- If young person is charged, and appears in Court, and “does not deny the charge”, or if charge subsequently proved after a not guilty plea – a FGC is mandatory. Every time.



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The “New Paradigm” (cont)

3. Introduction of delegated decision making to Family Group Conferences (FGCs), for the 20 % who are the most serious offenders (cont)

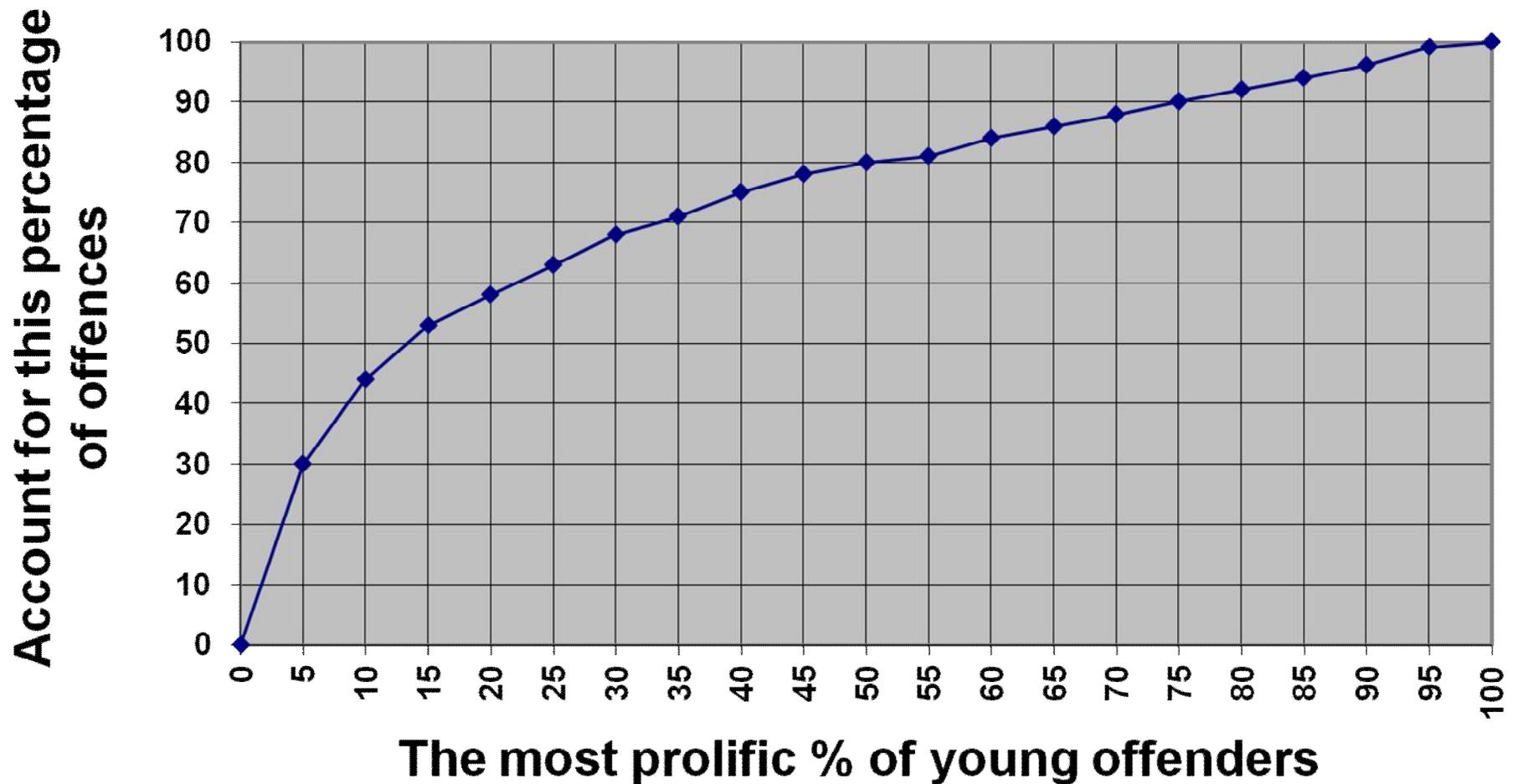
- FGC determines if the charge is admitted. If so, a plan to hold the juvenile offender to account and to address causes of offending is formulated and brought to Court for judicial approval/modification.
- If the plan (which can last for long periods – plans of 3-12 months are typical and up to 18 months not unheard of) is successfully completed, an absolute discharge usually results. No record; the young person has “earned” a clean slate for life.
- If offending is very serious, or if no agreement possible at the FGC (seldom), or if FGC plan is deliberately not completed, the Youth Court will impose formal orders - which included prison in 10 cases in 2013. Sometimes an FGC accepts prison or custodial sentences as inevitable.
- 20% of cases in Juvenile Court result in formal orders/sentence with a record.



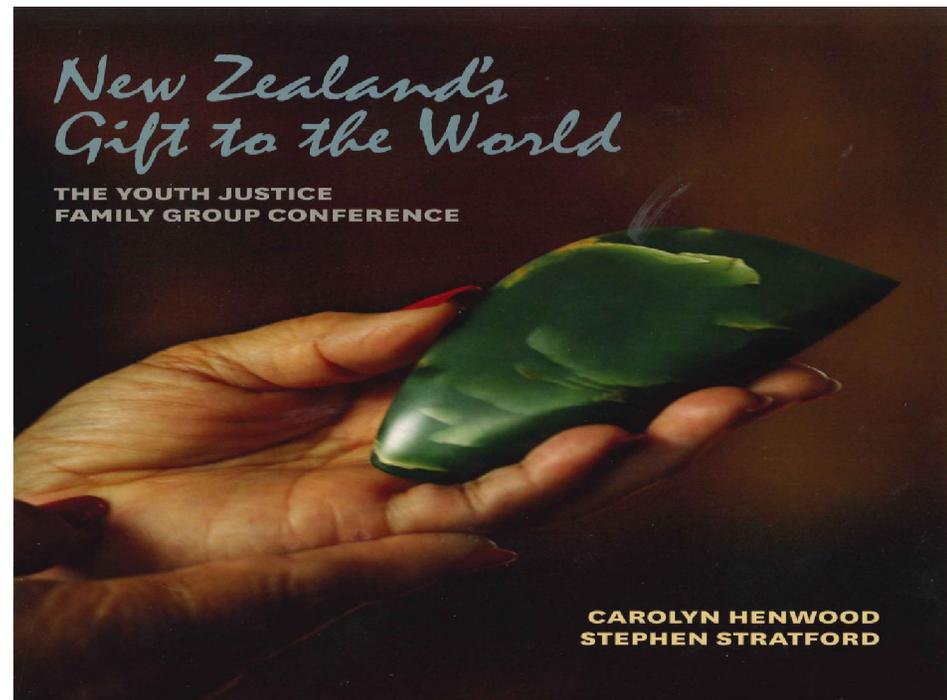
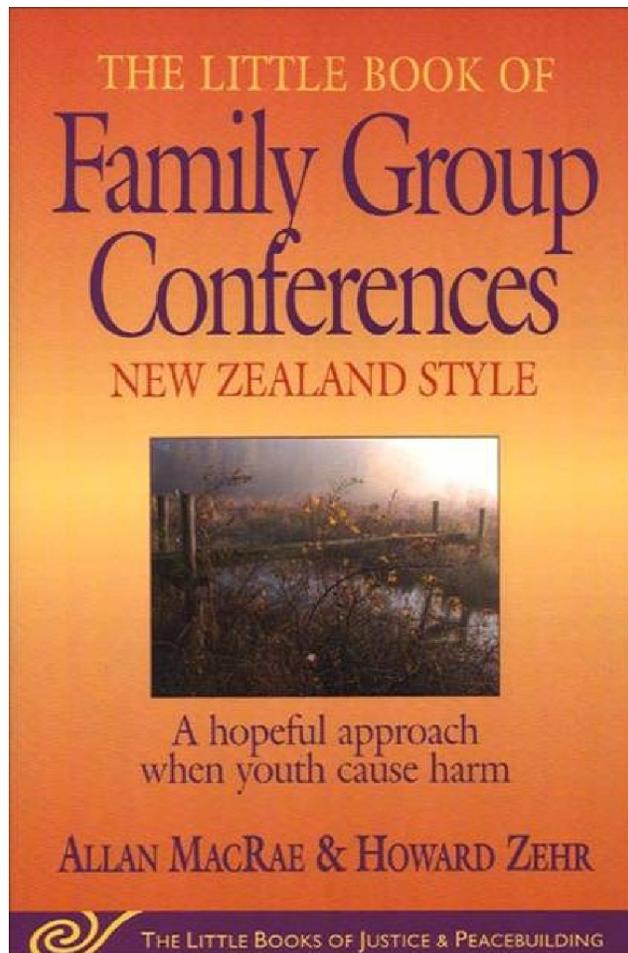
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FGCs focus on the most serious/ prolific 20% of juvenile offenders...they cause the most damage and are very influential



Family Group Conferences



Family Group Conferences

- (Partial) delegated decision-making from the state to families and victims, in all cases except murder and manslaughter. Less reliance on professional decision-making.
- The challenge lies in preparing for and running an excellent Family Group Conference.
- An FGC is “overkill” for more minor to moderate offending.
- FGCs are not explicitly a statutory prescription for restorative justice. But they came to be practiced according to restorative justice principles. Originally FGCs were conceived as a family decision-making mechanism.
- Not an indigenous, Māori model – but parts of the process are consistent with Māori cultural approaches.
- Family members who can contribute can always be found... somewhere.
- Not expensive. Requires good facilitators and good information provided – but primarily requires the presence of (relatively) willing human beings.



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Why is (Family) Participation in Juvenile Justice so Hard to Achieve?

- Most families of serious youth offenders are hard to reach and live on the margins of the community. These families are fractured and disadvantaged.
- We too readily think there is little point in involving the families of recidivist offenders ... they are the problem, not the solution!
- Hard work is required to find wider family members who can become involved – but they can almost always be found.
- “Professionals” think they know best and still too easily take over.
- Families feel alienated – with “state” solutions imposed upon them.
- Working with families of serious young offenders is usually very hard and time consuming work!
- Victims need careful preparation and support

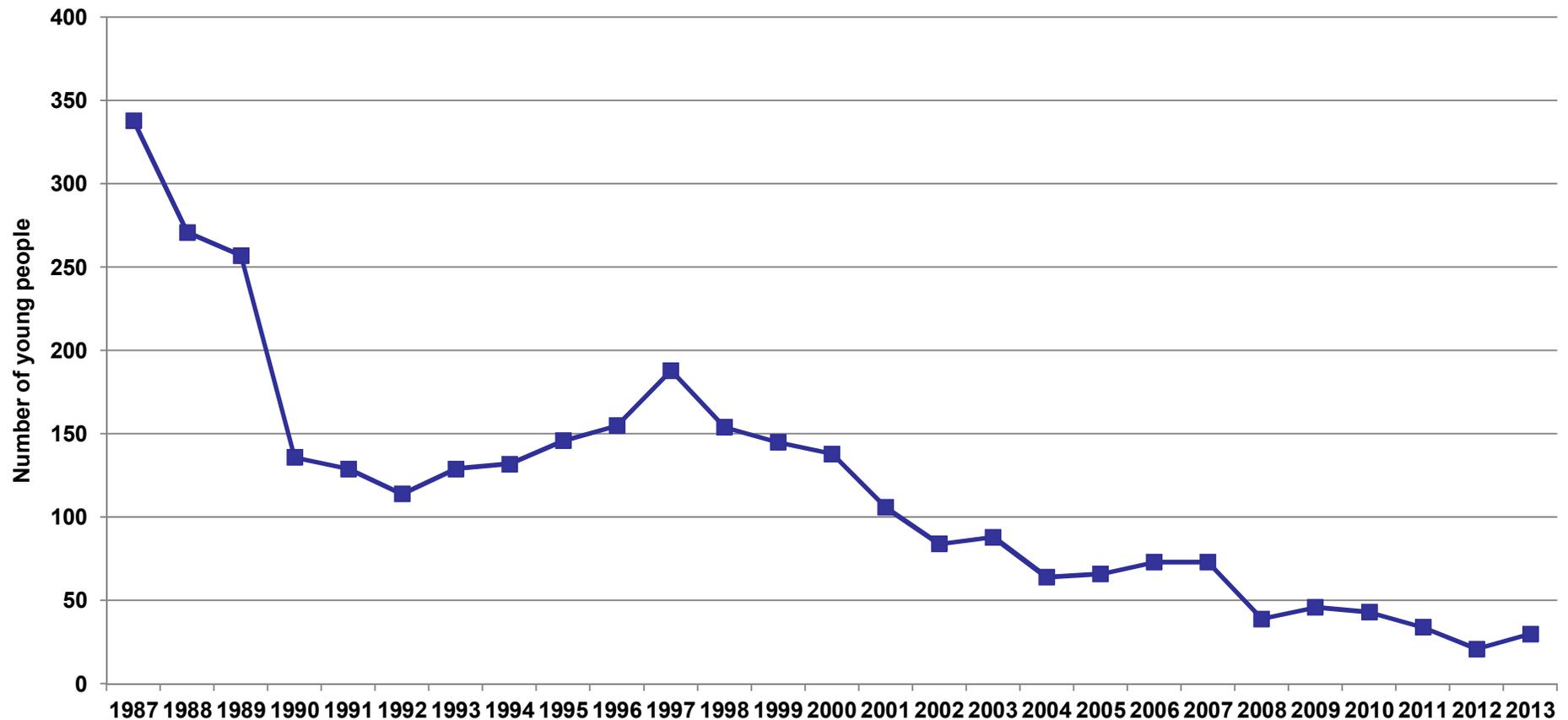


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4. The New Paradigm (cont). Reduced Custodial Responses/Institutionalisation

Number of young offenders who were sentenced to corrective training or imprisonment, 1987 to 2013



Custodial sentences relied upon as a genuine last resort



And... boot camps were ditched!



By the way, does this “new paradigm” work?



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Hemi's Song

I'm sorry for all the pain that I caused
Putting your family through something I could never have stopped
And now I'm staring at the stars thinking of what i have done
Something stupid of course what was I thinking of
Looking for my mentality but that was lost
Back in the days BC id be pinned to a cross
But instead I'm writing this rhyme because you gave me a chance
So in the words that I write
You should know that they came from my heart
You opened my eyes despising what I had done
Look above and find the strength to carry on....



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Hemi's Song, verse 2

The stupid things I've done in my life
Creating enemies that want to bring a lot of strife
We'd fight
On the streets
Is probably where you would see me
Drugged out struggling to breath
But now I'm down on my knees
With a million apologies
Please time freeze wish I could turn back the time
Rewind but its all over and done
A new era begun
The sun has risen
And its shining through
This song I compose is dedicated to you.



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