

Joint Children's Sector Submission to the Justice Select Committee:

Ram Raid Offending and Related Measures Amendment Bill

19th October 2023

We collectively stand in strong opposition to this Bill on the grounds that:

- ❖ This Bill is driven by penal populism
- ❖ The evidence tells us that harsh punishments don't work
- ❖ The proposed legislation isn't reasonable or ethical
- ❖ There are effective evidence-based alternatives to the Bill

This submission is supported by the following individuals and organisations:

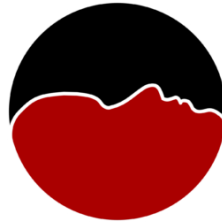
- Amnesty International Aotearoa New Zealand
- Aotearoa New Zealand Association of Social Workers (ANZASW)
- Ara Taiohi
- Community Law Centres Aotearoa
- Dr. Enys Delmage, Consultant in Adolescent Forensic Psychiatry
- Family for Every Child
- Kick Back
- New Zealand Council of Christian Social Services (NZCCSS)
- People Against Prisons Aotearoa (PAPA)
- Pillars Ka Pou Whakahou
- Save the Children
- START
- VOYCE – Whakarongo Mai
- YouthLaw Aotearoa



Aotearoa New Zealand
Association of Social Workers
Te Rōpū Tauwhiro i Aotearoa



New Zealand Council of
Christian Social Services



Pillars
Ka Pou Whakahou



Save the Children



YouthLaw
Free legal help throughout Aotearoa

The key points raised in opposition to this Bill are outlined below with supporting evidence.

See our individual submissions for further details.

1 The unhelpful factors driving this Bill

1.1 Framing of youth crime not always informed by evidence based solutions

- “In New Zealand, the number of children aged 10 to 13 who offended and came to the attention of Police decreased by 61% between the 2010/11 and 2020/21 fiscal years (from 4,760 to 1,860).” (Spier, 2022, p.3)
- The number of ram raid incidents has been falling, since a peak in August 2022. (Police, 2023, p.4). “65 percent fall in Ram Raids over six months” (Beehive, 2023)
- “Evidence indicates that internationally, the increasing number of those in prison has been driven largely by ‘tough on crime’ policies from governments on both sides of the political divide. Such policies are favoured by small but vocal interest groups who push for harsher punishments and longer sentences. Tough on crime dogma is widely known as ‘penal populism’ where politicians promise vote-winning, overly simplistic solutions for a narrow set of carefully chosen law-and-order problems... Knee jerk policies that lack any evidence-base have resulted in an increased financial burden for the tax payer with no increase in the public’s sense of safety.” (Lambie, 2022, p.33)

2 The reasons this Bill won’t work

2.1 Harsh punishments don’t work

- Research shows that harsher punishments are not an effective deterrent. Data on programs designed to deter crime shows that these programs can have harmful effects and even increase crime, relative to doing nothing at all (Petrosino et al, 2002). “Boot camps do not work and “scared straight” programmes have been shown to increase crime. Young offenders can find the “thrill”, or emotional “high” of violent offending, and the social rewards (such as admiration from their peers), more important to them than concerns about being caught or facing social disapproval. Youth need alternative, prosocial ways to achieve engagement and social approval.” (Gluckman, 2018, p.7).
- Research shows that harsh conditions of detention do not work for children. The deprivation of liberty of children as well as harsh conditions of detention have a major negative impact on the physical and mental health and development of children. Detention of children, therefore, constitutes a form of “structural violence” and “deprives children of their childhood” (UN Global Study, 2019).

2.2 The youth justice system is already beyond capacity

- “Total current theoretical capacity for Youth Justice placement, as of August 2023, is 171 places, although under current staffing residences can be staffed only to a total of 133 places. Forecast demand is expected to rise to 174 by the end of 2023 and to 225 in the 2024 year, given current justice sector pipeline trends... At present, these pressures on the overall system of care and Youth Justice placements, when combined with current staff vacancy rates, and offline facilities, make it impossible to... cohort children in groups with similar needs and pathways to ensure effective and efficient targeting of therapeutic interventions and treatments...[or] locate children in their home region and close to their long-term carers, including whānau, schools, social workers and primary care medical professionals... [or] systematically address undesirable attachments by separating children in residences from gang affiliates, more serious offenders and other adverse influences.” (Francis, D. & Vlaanderen, 2023, p.42)

3 The reasons this Bill isn't fair

3.1 Children's brains are still developing, especially the parts that regulate judgement, decision-making and impulse control.

- “Documented evidence in the fields of child development and neuroscience indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing.” (UN, 2019, p.6)

3.2 Tamariki who offend have often experienced trauma and disadvantage

- “Most children who offend come from backgrounds of trauma and disadvantage. Frequently they have violent and damaging backgrounds. They have complex needs. A criminal response simply does not work. It is wrong in principle and inappropriate for children so young.” (OCC, 2020, p.5)
- “Child offending does not occur in a vacuum but, in the vast majority of cases, was preceded by significant child welfare concerns. IDI data showed very high levels of abuse, reports of concern to Oranga Tamariki, out-of-home placements, stand-downs and suspensions from school, and indicators of social deprivation among children who offended.” (Lambie, 2022, p.4)

4 The reasons this Bill isn't ethical

4.1 The minimum age of criminal responsibility should be at least 14 years old

- “The minimum age of criminal responsibility should be at least 14 years old... Indeed, (apart from murder or manslaughter) that always used to be the case until 2010... This change was based on thin policy grounds and no evidence. Indeed, offending by children was already decreasing. In my view it was a backwards step. It was unnecessary and has done no good. All it achieved was to criminalise young

children and risk enmeshing them in the wider criminal justice system.” (OCC, 2020, p.6)

- “CRC [United Nations Committee on the Rights of the Child], in its concluding observations on the sixth periodic report of New Zealand, published in February 2023, said it was ‘seriously concerned’ that ‘the minimum age of criminal responsibility is below international standards and is offence-based rather than child-centred’... The CRC has also said states should ‘not take any retrogressive steps’ in the field of child justice. It has expressed concern about practices that permit lowering the minimum age of criminal responsibility in cases where children are accused of serious offending. The CRC strongly favours a standardised approach to the age below which a child cannot be held criminally responsible, without exceptions.” (Attorney General, 2023, p.6)

4.2 Collection of children and young people’s DNA needs reforming

- “We conclude that new DNA legislation is needed. The CIBS Act is no longer fit for purpose, constitutionally sound or accessible to users.” (p.2) “There is no recognition in the CIBS Act of the need to accommodate human rights values, including privacy and bodily integrity... We are also concerned that... the power to require a DNA sample from a young person or an adult when arrested or intended to be charged with a qualifying offence appears inconsistent with the right to be secure against unreasonable search and seizure under section 21 of the New Zealand Bill of Rights Act 1990...” (Law Commission, 2020, p.4)

4.3 Responses to child offending should be welfare-based and reduce escalation

- “Most children and young people who offend are also experiencing poor wellbeing in other areas of their life... When a child or young person breaks the law, the youth justice system carefully considers the age and any family issues that may be affecting their safety and behaviour. The aim is to work with them in a way that provides an opportunity to change their lives for the better without getting a criminal record, and to make positive strides forward.” (Child and Youth Wellbeing Strategy, 2019)
- “The idea that children and young people should be dealt with outside the formal justice system is central to New Zealand’s legislation. It is also recognised internationally by United Nations guidelines, conventions, and rules. Research on New Zealand Police Alternative Actions also shows that diverting children and young people away from the formal justice system can reduce their chances of re-offending (McLaren, 2011). Delivering interventions that are fair and proportionate to the nature and seriousness of the young person’s offending is therefore a central strategy. Reducing escalation – dealing with a young person at the lowest appropriate level.” (Ministry of Justice, 2013, p.13)
- “The age-appropriate treatment of offenders aged under 14 years old requires a welfare-based approach rather than a criminal law approach... For this group evidence suggests that measures should principally be designed to promote the welfare of the child, their family and address difficulties underlying the offending... The evidence indicates formal criminal justice involvement is often associated with adverse consequences for the child and society, in particular by potentially increasing chances of reoffending” (Attorney General, 2023, p.5-8)

5 The existing responses and systems

5.1 The existing system isn't always adequately supporting children and families

- “Too many of these children who offend are not getting the support and interventions that would stop their offending... It doesn't have to be this way. We could do much better. I believe our system provides a critical window of opportunity to divert these children from a life of crime. Currently this golden opportunity is not being fully grasped.” (OCC, 2020, p.4)
- “The IDI data showed... there had often been years of reports of concern and notifications from infancy, incidents of offending by older siblings, justice-involved parents, many failed placements, and issues with school suspension and disengagement. Yet, despite their needs being known to services, the children had proceeded to offending before age 14... Shortages of resources across child welfare and education led to high thresholds for assistance. This meant only a very small proportion of children and whānau were reported as receiving the support they needed.” (Lambie et al, 2022, p.4)

5.2 Some promising initiatives are already having an impact

- “82 Percent of children referred to Kotahi te Whakaaro programme have not reoffended... In August 2022, there were 116 reported ram raids. Six months after the expansion of Kotahi te Whakaaro there were 40... “Locking up children under the age of 15 does not work in the overwhelming number of cases, it just creates more hardened criminals who will reoffend once they are released from custody. We need intensive interventions that address the causes of offending and what we are doing is working” [Minister for Children Kelvin Davis]... “Youth crime has been trending down for 10 years. We have then seen a spike since the pandemic – that's why we've taken action. The drop in Ram Raids shows that our approach is working. Police are using their improved resources to target the offenders, get them into the support systems provided by our social services and stop more crimes from occurring.” (Beehive, 2023)

6 The evidence-based alternatives to this Bill

6.1 Prevention through supporting equity and intergenerational wellbeing

- “The justice system must support fairness and equity, accountability, and restoration. It must also address the socio-economic conditions that contribute to offending and re-offending. To that end, changes are also needed in New Zealand's health, education, housing and social services.” (Te Uepū Hāpai I te Ora, 2019, p.7)
- “The courts and the Tribunal have found that the Crown's duties under te Tiriti / the Treaty are not merely passive, but extend to an obligation to actively protect Māori rights and interests guaranteed under te Tiriti / the Treaty (p.16) ...Active protection does not mean intervening forcefully in the lives of whānau only when the cumulative effect of stress meets the threshold for State rescue of a child or children... in ways that are arbitrary or inconsistent, or the result of poor practice, or reflect institutional or personal racism.” (Waitangi Tribunal, 2021, p.20)

6.2 Early intervention through greater supports for whānau and education

- “A large body of scientific evidence concerns the impact of life-course factors on youth offending and highlights the importance of focusing on early developmental life course stages and intergenerational interventions if we are to truly address the prison pipeline. Family and extended family are at the heart of a child’s world and need to be nurtured to help every child flourish. Effective interventions address cultural, psychosocial, educational and environmental factors that have a proven impact on the pathway to offending. Scientific evidence clearly indicates that severely challenging behaviour in a child’s earliest years may develop into lifelong offending.” (Lambie, 2022, p.33)

6.3 Investment in community-led responses to child offending

- “We recommend that the Government... transfer power and resources to Māori communities so they can design and develop Māori-led responses to offending, and to tamariki and whānau well-being; make tikanga Māori and te ao Māori values central to the operation of the justice system... [and] prioritise investment in community-led transformative justice.” (Te Uepū Hāpai I te Ora, 2019, p.8)
- “Therapeutic, “systemic” approaches address the integrated “system” of the child, family/caregivers, and wider community for those identified as being of concern... The following interventions have been shown internationally to be efficacious: Multisystemic therapy (MST)... Functional family therapy (FFT)... Multidimensional treatment foster care (MTFC)... [and] Keeping Foster and Kin Parents Supported and Trained (KEEP) (Gluckman, 2018, p.21/22)
- An abundance of evidence from Aotearoa New Zealand and overseas identifies things that work to prevent youth crime... They include... positive youth development programmes... restorative justice... strong community partnerships... [and] providing positive education and employment opportunities to young people – including giving them a sense of purpose and a confident future outlook” (Social Wellbeing Agency, 2023, p.9)

References

- Attorney General (2023) Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Ram Raid Offending and Related Measures Amendment Bill. Retrieved from: <https://bills.parliament.nz/download/Paper/d355fc64-28d1-4364-797a-08dba4f3ca4a>
- Beehive (2022) Circuit breaker introduced to stop children re-offending. Retrieved from: <https://www.beehive.govt.nz/release/circuit-breaker-introduced-stop-children-re-offending>
- Beehive (2023) Government Action on Youth Crime making a difference. Retrieved from: <https://www.beehive.govt.nz/release/government-action-youth-crime-making-difference>
- Child and Youth Wellbeing Strategy (2019) Criminal Offending. Retrieved from: <https://www.childyouthwellbeing.govt.nz/measuring-success/indicators/criminal-offending>
- Francis, D. & Vlaanderen (2023) Oranga Tamariki Secure Residences & a Sample of Community Homes: Independent, External Rapid Review. Retrieved from: <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Performance-and-monitoring/Reviews-and-Inquiries/Rapid-residence-review/Secure-residence-review.pdf>
- Gluckman (2018) It's never too early, never too late: A discussion paper on preventing youth offending in New Zealand. Retrieved from: <https://www.dpmc.govt.nz/sites/default/files/2021-10/pmcsa-Its-never-too-early-Discussion-paper-on-preventing-youth-offending-in-NZ.pdf>
- Hagen, P. et al (2021) Designing for equity and intergenerational wellbeing: Te Tokotoru. Retrieved from: <https://www.aucklandco-lab.nz/reports-summary/te-tokotoru>
- Lambie, I. (2022) The prison pipeline. Retrieved from: <https://www.justice.govt.nz/assets/Preventing-the-prison-pipeline-Professor-Ian-Lambie-report.pdf>
- Law Commission (2020) The Use of DNA in Criminal Investigations: Te Whakamahi i te Ira Tangata i ngā Mātai Taihara - Executive Summary & Recommendations. Retrieved from: <https://www.lawcom.govt.nz/our-projects/use-dna-criminal-investigations?id=1627>
- McLaren, KL. (2011). Alternative actions that work: A review of the research on Police warnings and alternative action. Police Youth Services Group, NZ Police: Wellington, New Zealand.
- Ministry of Justice (2013) Youth Crime Action Plan 2013-2023 Report. Retrieved from: <https://www.justice.govt.nz/assets/YCAP-full-report.pdf>
- Ministry of Social Development (2018). Child Impact Assessment: Best Practice Guideline. Retrieved from: <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/monitoring/uncroc/uncroc-guideline-a3-.pdf>
- Office of the Children's Commissioner (2020) State of Care: Children with Offending Behaviour. Retrieved from: <https://www.manamokopuna.org.nz/publications/reports/children-with-offending-behaviour/>
- Oranga Tamariki. (2023). Reducing Youth Reoffending in South Auckland Social Bond Pilot: Qualitative Outcomes Evaluation. Retrieved from:

<https://www.orangatamariki.govt.nz/about-us/research/our-research/reducing-youth-offending-social-bond-pilot-evaluation/>

Petrosino, A et al (2002) "Scared Straight' and other juvenile awareness programs for preventing juvenile delinquency". Retrieved from: <https://pubmed.ncbi.nlm.nih.gov/23862186/>

Police (2023) Text Mined Operational Offence Statistics - As of 15 August 2023. Retrieved from: <https://www.police.govt.nz/sites/default/files/publications/ram-raid-text-mined-operational-offence-statistics-as-at-15-august.pdf>

Social Wellbeing Agency (2023) Te Atatū – Insights: Wellbeing of children and young people who offend. <https://swa.govt.nz/assets/Document-Library/Wellbeing-of-children-and-young-people-who-offend.pdf>

Spier, P. (2022). Children arrested by Police in 2020/21. Wellington, New Zealand. Retrieved from: <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Research/Latest-research/Children-arrested-by-Police-in-2020/21/Children-arrested-by-Police-in-F2021.pdf>

Te Uepū Hāpai i te Ora, (2019). Turuki! Turuki! Move together! Transforming our criminal justice system. Retrieved from: <https://www.justice.govt.nz/assets/turuki-turuki.pdf>

United Nations (2019). The United Nations Global Study on Children Deprived of Liberty. Retrieved from: <https://omnibook.com/global-study-2019/liberty/page-001.html>

United Nations (2019). Committee on the Rights of the Child: General comment No. 24 (2019) on children's rights in the child justice system. Retrieved from: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsqIkirKQZLK2M58RF%2F5F0vEnG3QGKUxFivhToQfjGxYjV05tUAlgpOwHQJsFPdJXCvIPDmeQ6GNHkvDShn%2B9q%2FAU8slpDcDhK6MpaRN6iP0I>

Waitangi Tribunal (2021) He Pāharakeke. he rito whakakīkīnga whāruarua. Retrieved from: https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_171027305/He%20Paharakeke%20W.pdf