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BILLS DIGEST

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Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009

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Portfolio:	Youth Affairs
Select Committee:	Social Services
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Published: 10 December 2009 Prepared by John McSoriley BA LL.B, Barrister Legislative Analyst P: (04) 471-9626 (Ext. 9626) F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Purpose

The aim of this Bill is to amend the Children, Young Persons, and Their Families Act 1989 (the Act) to extend the Youth Court's jurisdiction to cover the most serious 12 and 13 year old offenders, and to allow a wider range of sentencing orders to be made for dealing with offenders. These orders would be tailored to the individual offender, and could include a requirement to attend a rehabilitative or education programme, such as a parenting programme, mentoring programme, or alcohol and drug rehabilitation programme¹.

¹ Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, 2009 No 16-2, As reported from the Social Services Committee, Commentary, pp. 1 and 2.

Main changes to the Bill

Youth Court jurisdiction

The Select Committee has recommended amendments to the provisions regarding the Youth Court's jurisdiction over child offenders " ... to improve their clarity and reflect the policy intent". The Bill as introduced allows a child offender to be defined as a previous offender if he or she admits at a family group conference to offending and the Select Committee considered that that might " ... allow a family group conference to be used to expose 12- and 13-year-olds to the Youth Court's jurisdiction for future offending". The Select Committee considered it " ... preferable to rely only on offending proven before the Family Court or other Court to initiate involvement with the Youth Court". It is also recommended that a "previous offender" also includes cases where a 12- or 13-year-old has previously been convicted of murder or manslaughter in the High Court, or convicted in the High Court or a District Court for offences punishable by a maximum sentence of 14 years in prison.

It is also recommended that provisions of the Act concerning the transfer of charges from the Youth Court prior to a trial should not apply to children aged 12 or 13 years who were charged with a serious offence other than murder or manslaughter, but that:

- regardless of whether the offence was a purely indictable offence, the Youth Court would be required to hear and determine the information unless the child elected trial by jury or the Court discharged the information under Section 282 of the Act;
- certain provisions of the Summary Proceedings Act 1957 would apply to allow a child to elect trial by jury;
- If the child elected trial by jury, he or she could withdraw this choice at any time before committal without leave of the Court
- where the Court was required to or intended to commit the child for trial, or where the child wished to plead guilty at any time before committal to trial, the Court would be required (until it committed the child for trial) to continue to allow the child the opportunity to forego jury trial and elect to have the information heard and determined, or be dealt with, by the Youth Court;
- the Youth Court be empowered to discharge an information charging the child with an offence even if it were a purely indictable offence (*Part 1, Clause 10, amending Section 272 by substituting new subsections (1A) and (1B); amending Clause 11 to clarify the application of Sections 273 to 276 and 282(1) of the Act*).

Intensive supervision orders

The Select Committee has recommended that it be clarified that New Section 289 (which specifies that the Court should impose the least restrictive outcome adequate to the circumstances) applies when the Court considers all the orders (including intensive supervision orders) it may make in response to a breach of a judicially monitored condition of a supervision or a supervision with activity order, and that an intensive supervision order is equivalent to a supervision with activity order in the hierarchy of orders set out in the Bill (*Part 1, Clause 19, amending New Section 289 by inserting new subsection (2)*).

Parenting education programme orders

The Select Committee has recommended that it be specified in the Bill that when a parent of an offender is subject to a parenting order, the young offender may be included in the referral for a family group conference and, that in situations where a young offender is ordered to attend a parenting programme and fails to comply, that although he or she would be subject to the breach conditions proposed in new section 296B, a family group conference referral could still be made in respect of the child of whom the offender is a parent, guardian, or caregiver. It is also recommended that provisions in the Bill relating to varying and cancelling orders apply also to Court-ordered parenting education

programme orders for the parents or guardians of a young person (*Part 1, Clause 22, amending New Section 297A(4); Clause 21, amending New Section 296C(1)*).

Detaining child offenders in Police custody

The Select Committee has recommended that it be specified in the Bill that a child cannot be detained in Police custody by a Youth Court order pending a hearing or determination of charges against them. It is, however, recommended that a child or young person may be detained in the custody of the chief executive or an iwi social service pending the determination of an application for breach (or variation or cancellation) of orders. The Select Committee has recommended that the provision of the Act relating to Police custody and placements in a residence, do not apply to a child as if the child were a young person (*Part 1, inserting New Clause 5A (amending Sections 238(1)(e), 239(2) and 242(2) of the Act) and New Clause 5B (amending Section 239(1) of the Act)*).

Breaching, varying, and cancelling orders

The Select Committee has recommended amendments to the standard provisions (applied by the Bill to young offenders) relating to breach and variation or cancellation of orders to:

- empower the Youth Court to issue arrest warrants for young offenders who fail to appear on breach applications (including offenders who cannot be served with the application or who cannot be located);
- empower the Youth Court to suspend the operation of an order at any time after an application under New Sections 296B or 296C of the Act is made and before the disposal of that application; and
- empower the Youth Court to make bail or custody orders under Section 238 of the Act when an order is suspended;
- empower the Police or a social worker to detain a young offender for the purpose of returning them to the applicable curfew address; and
- empower the Police to arrest without a warrant a young offender who is in breach of curfew (*Part 1, Clause 21, amending New Sections 296A - 296C and inserting New Sections 296BA, 296BB and 296HA*).

Placing child offenders in residences

The Bill as introduced requires the chief executive to consider, before placing a young offender aged 12 or 13 years in a residence, all reasonably practicable less restrictive alternatives.

The Select Committee has recommended that it be specified in the Bill that the provision does in fact relate to placements of 12- and 13-year-olds in youth justice residences only. The Select Committee has also recommended that a definition of "youth justice residence" be placed in the Bill (*Part 1, Clause 39, amending Section 365 of the Act*).

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