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# Youth Justice in New Zealand: Principles and Procedures

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## SUMMARY

- ▶ The Children, Young Persons and Their Families Act 1989 sets out the principles and procedures that apply when a child (aged 10 years or over and under the age of 14 years) or a young person (of or over 14 years but under 17 years) is alleged to have committed an offence.
- ▶ The youth justice process consists of the decision to initiate criminal proceedings, the laying of an information and commencement of court proceedings, the trial and sentencing.
- ▶ Court proceedings can commence against a young person only if it is in the public interest and if all alternatives to prosecution have been considered. Proceedings are generally held in the Youth Court.
- ▶ A young person charged with a serious offence (other than murder or manslaughter) may be tried and sentenced in either the District Court or the High Court as if he or she were an adult.
- ▶ A child alleged to have committed a serious offence (other than murder or manslaughter) is dealt with in the Family Court, following a declaration that the child is in need of care and protection. A child charged with murder or manslaughter is brought before the Youth Court.
- ▶ A child or a young person alleged to have committed murder or manslaughter is tried and sentenced as if he or she were an adult. Court proceedings commence in the Youth Court and the trial and sentencing are held in the High Court.

## Introduction

This paper outlines the principles and procedures that apply when a child or a young person is alleged to have committed an offence. These principles and procedures are set out in the Children, Young Persons, and Their Families Act 1989 (CYPFA). For the purposes of the youth justice process, a child is someone aged 10 years of over and under the age of 14 years;<sup>1</sup> a

<sup>1</sup> CYPFA, ss 2 and 272; Crimes Act 1961, ss 21 and 22; and *Child Offenders Manual. A Practical Guide to Successful Intervention with Child Offenders*, ed. by Judge Peter Boshier et al., 3rd ed., Chief Justice Chambers, Wellington, 2002, p. 3.

young person is someone of or over the age of 14 years but under 17 years, who is not married or in a civil union.<sup>2</sup> The procedures differ slightly depending on whether it is a child or a young person who is involved.

CYPFA also sets out the principles and procedures that apply when a child or young person is believed to be in need of care and protection.<sup>3</sup> These are not covered in this paper.

## Principles

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CYPFA sets out a distinct set of principles to guide the administration of youth justice.<sup>4</sup> These principles are:<sup>5</sup>

- A child or young person should be dealt with by other measures than criminal proceedings, unless the public interest requires otherwise. These other measures include warnings, cautions, and diversionary plans.<sup>6</sup>
- The family or whanau of a child or young person should be involved in the process of deciding how the offender should be dealt with. This involvement is facilitated by the institution of a family group conference (FGC), an advisory mechanism convened by a Youth Justice Co-ordinator at various stages of the proceedings. Its purpose is to encourage the family, whanau and victims to contribute to the process of deciding how the offender should be dealt with.<sup>7</sup>
- Criminal proceedings should not be instituted solely to provide assistance to a child or young person believed to be in need of care and protection. When a child or young person is considered to be in need of care and protection the case is not dealt with in the Youth Court, but in the Family Court according to specific principles and procedures.<sup>8</sup>
- A child or young person should, where possible, be kept in the community.<sup>9</sup>
- The age of the offender is a mitigating factor in determining whether or not to impose a sanction and the nature of that sanction.<sup>10</sup>
- Any sanction should take the least restrictive form that is appropriate, and take into account the need to foster the offender's development within his or her family or whanau.<sup>11</sup>
- The vulnerability of a child or young person entitles them to special protection during an investigation of a possible offence.<sup>12</sup> When a child or young person is about to be questioned he or she must be informed of his or her rights.<sup>13</sup> These rights include the right

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2 CYPFA, s 2. If the Children, Young Person and Their Families Amendment Bill (No. 6) is passed the definition of young person will be amended to include 17 year-olds (see clause 4 of the Bill available at: [http://www.parliament.nz/en-NZ/PB/Legislation/Bills/c/7/1/00DBHOH\\_BILL8364\\_1-Children-Young-Persons-and-Their-Families-Amendment.htm](http://www.parliament.nz/en-NZ/PB/Legislation/Bills/c/7/1/00DBHOH_BILL8364_1-Children-Young-Persons-and-Their-Families-Amendment.htm)).

3 CYPFA, Part 2 and Part 3.

4 For a discussion of the historical and theoretical framework of these principles see: New Zealand Parliamentary Debates (NZPD) Vol. 497, *Children and Young Persons Bill - Report of the Social Services Committee*, (20 April 1989), pp. 10105 ff; G. Maxwell et al, *Achieving Effective Outcomes in Youth Justice*. Final report, Ministry of Social Development, February 2004, pp 7-15, and 238; and J. Tolmie and W. Brookbanks, *Criminal Justice in New Zealand*, LexisNexis, 2007, pp 359-363.

5 CYPFA, ss 4 and 208.

6 CYPFA, ss 208(a), 209, 211 and 258(b)(d).

7 CYPFA, ss 208(c), 425, 426(c), and 247 to 271; and NZPD 497, p. 10107. For further information on the FGC see: The Youth Court of New Zealand, *Family group conferences*, available at: <http://www.justice.govt.nz/youth/about-youth/family-group-conference.asp>; and Child, Youth and Family, *Youth Justice Family Group Conference* (2001), available at: [http://www.cyf.govt.nz/documents/CYF\\_33\\_YouthJusticeBrochure.pdf](http://www.cyf.govt.nz/documents/CYF_33_YouthJusticeBrochure.pdf).

8 CYPFA, ss 208(b) and 284(2); and CYPFA, Part 2 and Part 3.

9 CYPFA, s 208(d).

10 CYPFA, s 208(e).

11 CYPFA, ss 208(f), 281 and 288.

12 CYPFA, s 208(h).

13 CYPFA, s 215.

to remain silent, to consult a lawyer, and to be questioned in the presence of an adult nominated in accordance with CYPFA.<sup>14</sup> These rights must be explained to him or her in a manner and language appropriate to his or her age and level of understanding.<sup>15</sup> In addition, a parent or guardian must be notified when a child or young person is arrested.<sup>16</sup> If these safeguards are not observed, any statement made by the child or young person is not admissible as evidence.<sup>17</sup> These safeguards do not, however, limit the powers conferred on an enforcement officer by the Land Transport Act 1998 to deal with intoxicated drivers.<sup>18</sup> Nor do they limit the powers conferred on an immigration officer by the Immigration Act 1987, although a few exceptions apply.<sup>19</sup>

- The interests of the victims should be considered. The victims are entitled to attend an FGC, and the Youth Court must consider their interests when issuing orders.<sup>20</sup>

These principles are consistent with New Zealand's obligations under international human rights law, in particular those arising from the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (The Beijing Rules).<sup>21</sup>

## The youth justice process when a young person is involved

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The youth justice process involving a young person (of or over 14 years but under 17 years), who is alleged to have committed an offence, consists of the decision to initiate criminal proceedings, the laying of an information and commencement of court proceedings, the trial, and sentencing.

## Procedures when a young person is alleged to have committed an offence ([Flow Chart No. 1](#))

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When a young person is alleged to have committed an offence and the enforcement officer decides that action is necessary,<sup>22</sup> he or she may: issue a warning, refer the situation to the Police Youth Aid Section, or arrest the young person without a warrant.

### Warning

An enforcement officer may decide, unless it is clearly inappropriate given the seriousness of the offence, to warn a young person or arrange for any other person to do so.<sup>23</sup> The offence need not be admitted or proved for a warning to be issued.<sup>24</sup> Once a warning has been issued it

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14 CYPFA, ss 215, 221, 222, 227 and 228.

15 CYPFA, ss 215A, 217 to 220.

16 CYPFA, ss 229 to 232.

17 CYPFA, ss 221 to 226; and see *R v Irwin* [1991] 8 FRNZ 1991, pp. 487-497, and Police Complaints Authority, *Report by the Police Complaints Authority on the Complaint by Mr John Slavich into the Circumstances of Discharge of Jason Irwin from the Charge of Murder of Steven Slavich*, Ref: 91/496, pp. 7 ff.

18 CYPFA, s 233; and Land Transport Act 1998, ss 68-72.

19 CYPFA, s 244; and Immigration Act 1987, ss 126(4) and 142.

20 CYPFA, ss 208(g), 251(f) and 284(e)(f).

21 To view the Beijing Rules and commentary see the Office of the High Commissioner for Human Rights website at: [http://www.unhchr.ch/html/menu3/b/h\\_comp48.htm](http://www.unhchr.ch/html/menu3/b/h_comp48.htm).

22 CYPFA, s 2 includes in the definition of enforcement officer a member of the police and "any person acting in the course of his or her official duties".

23 CYPFA, ss 209 and 210.

24 CYPFA, s 210.

is reported on a standard form and recorded in the Youth Aid Section,<sup>25</sup> and a written notice is given to a parent or guardian specifying the offence in respect of which the warning has been issued.<sup>26</sup> When a warning is issued in relation to an offence, the young person cannot be charged for that offence.<sup>27</sup>

If on a later occasion the young person is charged with another offence, information relating to a warning issued for a previous offence cannot be disclosed, unless it is disclosed on behalf of the defence; nor is evidence relating to the offence for which the warning was issued admissible in any future criminal proceedings against that young person.<sup>28</sup>

### Referral to Police Youth Aid Section

When the enforcement officer decides that, given the seriousness of the offence, a warning is inappropriate he or she may refer the situation to the Police Youth Aid Section.<sup>29</sup> The Youth Aid Section may then decide that no further action is necessary, issue a written warning, organise diversionary plans, or refer the case to the Youth Justice Co-ordinator to convene an FGC.<sup>30</sup> The Youth Aid Section is not expressly mentioned in CYPFA.<sup>31</sup>

### Diversionary plans

Diversionary plans put in place by the Police Youth Aid Section may include apologies, work for the victim or the community, reparations or donations, curfews or other restrictions.<sup>32</sup> A 2002 report on Police youth diversion suggests that, to be consistent with the principles of CYPFA, diversionary plans should be: related to the nature of the offending, be achievable in a relatively short amount of time, and focus on repairing harm to victims and preventing further offending. It also suggests that guidelines should be developed to ensure that diversionary plans are appropriate to the severity of the offending.<sup>33</sup>

### Intervention and recommendations of an FGC

The Youth Aid Section must ask the Youth Justice Co-ordinator to convene an FGC when there is an intention to charge a young person in relation to an alleged offence.<sup>34</sup>

Before making any recommendations the FGC must ascertain whether the young person in respect of whom the conference is being held admits the alleged offence. If the young person does not admit the offence, or the FGC is unable to ascertain whether he or she admits it, the FGC must not formulate any recommendations or plans that require the assumption that the offence has been committed. Subject to this provision the FGC may make such

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25 G. Maxwell, J. Robertson and T. Anderson, *Police Youth Diversion. Final Report Prepared for the New Zealand Police & Ministry of Justice*, The Crime and Justice Research Centre Victoria University of Wellington, 2002, p. 1.

26 CYPFA, s 212.

27 CYPFA, s 213.

28 CYPFA, s 213.

29 G. Maxwell, J. Robertson and T. Anderson, *op. cit.*, 2002, p. 1.

30 G. Maxwell, J. Robertson and T. Anderson, *op. cit.*, 2002, p. 1.

31 For information on the background and functioning of the Youth Aid Section see: K. Akester, *Restoring Youth Justice*, JUSTICE, 2000, p. 27; G. Maxwell, J. Robertson and T. Anderson, *op. cit.*, 2002; and New Zealand Police, *National Youth Policing Plan 2005-2006*, available at: <http://www.police.govt.nz/resources/2005/youth-policing-plan/index.html>.

32 G. Maxwell, J. Robertson and T. Anderson, *op. cit.*, 2002, pp. 1-2 and 60 ff.

33 G. Maxwell, J. Robertson and T. Anderson, *op. cit.*, 2002, pp. xvii and xviii.

34 CYPFA, ss 245, 247(b) and 426.

recommendations and formulate such plans as it considers necessary or desirable in relation to the young person in respect of whom the conference has been convened.<sup>35</sup>

The recommendations that an FGC may make include:

- that a formal Police caution should be given to the young person.<sup>36</sup> Information relating to the caution cannot be disclosed in any criminal proceedings instituted against that young person for any future offence, unless it is disclosed on behalf of the defence; nor is evidence of the offence for which the caution was issued admissible in any future criminal proceedings against that young person;<sup>37</sup>
- that the young person should be dealt with via diversionary plans;<sup>38</sup> or
- that the young person should be prosecuted.<sup>39</sup>

If the FGC considers the young person to be in need of care and protection it may, with the prior agreement of a care and protection co-ordinator, recommend the implementation of the necessary plans.<sup>40</sup>

### Arrest without warrant

An enforcement officer may only arrest a young person without warrant if he or she is satisfied on reasonable grounds that the arrest is necessary to prevent the commission of further offences, to prevent the loss or destruction of evidence, or to ensure the young person's appearance before the Court.<sup>41</sup> Nothing, however, prevents an enforcement officer from arresting a young person without warrant if he or she has reasonable cause to suspect that the young person has committed a purely indictable offence (e.g. murder or manslaughter) and that the arrest of the young person is required in the public interest.<sup>42</sup>

### Release of a young person following an arrest without warrant

Following an arrest the young person may be released from Police custody;<sup>43</sup> released on bail;<sup>44</sup> or delivered into the care of a parent, guardian, or other person having care of them.<sup>45</sup> Alternatively, with the young person's agreement, the Police may deliver the young person into the care of an Iwi Social Service or Cultural Social Service,<sup>46</sup> or of any other person or organisation approved by the chief executive<sup>47</sup> or a member of the Police for that purpose.<sup>48</sup>

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35 CYPFA, ss 259, 260(1)(2), and ss 262 to 271.

36 CYPFA, s 260(3)(b).

37 CYPFA, ss 211 to 213.

38 CYPFA, s 258(b).

39 CYPFA, s 258(b).

40 CYPFA, s 261.

41 CYPFA, s 214 (1)(a). A warrant of arrest is issued by a District Court Judge, Justice, Community Magistrate, or any Registrar when an information has been laid (see: Summary Proceedings Act 1957, s 19).

42 CYPFA, s 214(2); *Police v F*, Ross J, YC, DC, (17 October 2007) and *Arresting Young Persons Without Warrant – Assessing the Public Interest*, "Ten One" no. 307, 28 March 2008, p. 16.

43 CYPFA, s 234(a).

44 CYPFA, s 234(b), and Bail Act 2000, s 21.

45 CYPFA, s 234(c)(i).

46 CYPFA, s 234(c)(ii).

47 CYPFA, s 2 defines the chief executive as the "person holding office as the chief executive of the department."

48 CYPFA, s 234(c)(iii).

## Custody of a young person following an arrest without warrant

The young person must be placed in the custody of the chief executive if a member of the Police has reasonable grounds for believing that he or she is not likely to appear before the Court, may commit further offences, or that the placement in custody is necessary to prevent the loss or destruction of evidence, or interference with any witness.<sup>49</sup> The placement must occur within 24 hours of the arrest, and requires the young person to be delivered to a social worker.<sup>50</sup>

A young person may be detained in Police custody if a senior social worker and a member of the Police, being a senior sergeant or commissioned officer, are satisfied on reasonable grounds that the young person is likely to be violent or to abscond, or that suitable facilities for safe custody are not available.<sup>51</sup> In these circumstances the young person may be detained in Police custody for a period exceeding 24 hours and until his or her appearance before the Youth Court.<sup>52</sup>

A young person remanded in custody following an arrest without warrant must be brought before the Youth Court

In the circumstances where a young person is not released from Police custody or is placed in the custody of the chief executive, he or she must be brought before the Youth Court as soon as possible, so that the latter can decide whether the young person should be released or detained pending the determination of the charges.<sup>53</sup> The Youth Court must do one of the following:

- release the young person;<sup>54</sup>
- release the young person on bail;<sup>55</sup>
- order that the young person be delivered into the custody of a parent, guardian, other persons having his or her care, or any other person approved by a social worker for the purpose;<sup>56</sup>
- order that the young person be detained in the custody of the chief executive, an Iwi Social Service or a Cultural Social Service;<sup>57</sup>
- order that the young person be detained in Police custody.<sup>58</sup>

The High Court or the Youth Court may, from time to time, review any of these orders.<sup>59</sup>

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49 CYPFA, s 235(1).

50 CYPFA, s 235(1) and (2).

51 CYPFA, s 236(1)(a)(b).

52 CYPFA, s 236(1).

53 CYPFA, s 237.

54 CYPFA, s 238(1)(a).

55 CYPFA, ss 238(1)(b) and 240.

56 CYPFA, s 238(1)(c).

57 CYPFA, ss 238(1)(d) and 239(1).

58 CYPFA, ss 238(1)(e) and 239(2).

59 CYPFA, s 241.

## Procedures for laying an information and commencing court proceedings against a young person ([Flow Chart No. 2](#))

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Criminal proceedings usually commence with the laying of an information. In general terms, an information is a sworn document, lodged by the prosecution, alleging an offence by the defendant. The information must contain “such particulars as will fairly inform the defendant of the substance of the offence with which he [or she] is charged”.<sup>60</sup>

### Laying an information and commencing court proceedings against a young person

When a young person is alleged to have committed an offence, an information can be laid and court proceedings can commence only if the public interest so requires and if all alternatives to prosecution have been considered. This is consistent with the principles set out in CYPFA.<sup>61</sup> The procedures for exploring these alternatives and for laying an information and commencing proceedings vary depending on the specific circumstances of the case.

If a young person has not been arrested, an information may only be laid, and court proceedings commenced, if the informant believes that the public interest so requires, there has been consultation between the informant and a Youth Justice Co-ordinator, and the matter has been considered by an FGC.<sup>62</sup>

If a young person has been arrested an information can be laid. Court proceedings cannot commence, however, until the young person, provided they are not charged with murder or manslaughter, has had the opportunity to deny the charge before the Youth Court.<sup>63</sup> If the young person does not deny the charge then the Youth Court shall not enter a plea to the charge, but direct that an FGC be convened. The proceedings are adjourned until the FGC has been held.<sup>64</sup> If the young person denies the charge then the Youth Court proceedings will commence,<sup>65</sup> and an FGC will only be convened if the young person is also subject to a detention order pending the determination of the charge.<sup>66</sup>

When a young person is alleged to have committed murder or manslaughter an information can be laid and court proceedings can commence.<sup>67</sup>

### Intervention and recommendations of an FGC

Before making any recommendations the FGC must ascertain whether the young person in respect of whom the conference is being held admits an alleged offence.<sup>68</sup> The recommendations that an FGC may make include:

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60 Summary Proceedings Act 1957, s 17. For further analysis on laying of an information in criminal proceedings involving adults see: Law Commission, *Criminal Prosecution*, Preliminary Paper No. 28, Wellington, 1997, para 152-158, available at: [http://www.lawcom.govt.nz/UploadFiles/Publications/Publication\\_73\\_148\\_PP28.pdf](http://www.lawcom.govt.nz/UploadFiles/Publications/Publication_73_148_PP28.pdf).

61 CYPFA, s 208.

62 CYPFA, ss 245(1), 258 and 259.

63 CYPFA, s 246.

64 CYPFA, ss 246(b) and 247(d).

65 CYPFA, s 246(a).

66 CYPFA, s 247(c).

67 CYPFA, s 246(a).

68 CYPFA, ss 259, 260(1)(2), and ss 262 to 271.

- that a formal Police caution should be given to the young person;<sup>69</sup>
- that the young person should be dealt with via diversionary plans;<sup>70</sup> or
- that the young person should be prosecuted.<sup>71</sup>

If the FGC considers the young person is in need of care and protection it may, with the prior agreement of a Care and Protection Co-ordinator, recommend the implementation of the necessary plans.<sup>72</sup>

The Youth Court must consider any recommendation or plan formulated by the FGC before hearing an information and commencing the proceedings against the young person.<sup>73</sup>

## Trial procedures when a young person is charged ([Flow Chart No. 3](#))

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The trial procedures, and the court hearing the case, vary depending on whether a young person is charged with a purely indictable, indictable or summary offence, or murder or manslaughter.

Generally in New Zealand, criminal offences are categorised as indictable or summary.<sup>74</sup> These are then further broken down into 'purely indictable offences', 'indictable offences which are triable summarily', 'purely summary offences' and 'summary offences which may be tried on indictment'. These categories are based on the severity of the offence. In general, 'purely indictable offences' are the most serious offences and 'purely summary offences' are less serious. The statute setting out the offence will generally indicate what class of offence has been created.<sup>75</sup> Different procedures apply depending on the category.<sup>76</sup>

### Procedures when the charge is a summary or indictable offence (other than a purely indictable offence)

In general, when a young person is charged with a summary or indictable offence (other than a purely indictable offence) the Youth Court has jurisdiction to hear the case, unless the offence is punishable by more than three months imprisonment and the young person elects to be tried by jury in the District Court.<sup>77</sup>

If the young person elects trial by jury the committal proceedings must be conducted in the Youth Court in accordance with the provisions that apply when an adult is charged with an

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69 CYPFA, s 260(3)(b) and ss 211 to 213.

70 CYPFA, s 258(b)(d).

71 CYPFA, s 258(b)(d).

72 CYPFA, s 261.

73 CYPFA, s 279.

74 W.C. Hodge, *Criminal Procedure in New Zealand*, 3rd ed., The Law Book Company, 1991, p. 15.

75 W.C. Hodge, *op. cit.*, pp. 2 ff.

76 J. Tolmie and W. Brookbanks, *op. cit.*, p. 131.

77 CYPFA, s 273.

indictable offence.<sup>78</sup> The trial is conducted in the District Court in the same manner as for an adult.<sup>79</sup>

If the young person does not elect to be tried by jury the proceedings are held in the Youth Court. Youth Court proceedings must be conducted in accordance with the provisions that apply when an adult is charged with a summary offence, with certain modifications.<sup>80</sup> These include:

- neither the hearing nor the records of the hearing are open to the public;<sup>81</sup>
- in addition to the right to a solicitor or barrister, there is the right to have a youth advocate and if desired a lay advocate;<sup>82</sup>
- the defendant, his or her parent or guardian, an FGC representative, and any other person with the leave of the Youth Court, have the right to make representations;<sup>83</sup>
- the Youth Court may at any stage of the proceedings ask for medical, psychiatric or psychological reports;<sup>84</sup> and
- the Youth Court may at any stage of the hearing refer the case to a Care and Protection Co-ordinator, adjourn the proceedings and eventually discharge the information.<sup>85</sup>

### Procedures when the charge is a purely indictable offence

When a young person is charged with a purely indictable offence, committal proceedings must be held in the Youth Court in the same manner as for an adult.<sup>86</sup> If the Youth Court is of the opinion that the evidence is sufficient to put the young person on trial for the offence, or if during the hearing the young person indicates a desire to plead guilty, the Youth Court may give the young person an opportunity to forego the right to be tried by jury, and to elect to have the information heard and determined in the Youth Court.<sup>87</sup> If the young person does not elect to be tried by jury the trial is held in the Youth Court in the manner described in the previous paragraph. If the young person elects to be tried by jury the trial is held in either the High Court or District Court as if the young person were an adult.<sup>88</sup>

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78 CYPFA, ss 274(2), 329 and 438; and Part V of the Summary Proceedings Act 1957. Note that Schedule 3 of the Summary Proceedings Amendment Act (No. 2) 2008, available at: <http://www.legislation.govt.nz/act/public/2008/0041/latest/DLM1379707.html>, amends section 274(2)(a) omitting the phrase "preliminary hearing shall take place in accordance with Part 5 of the Summary Proceedings Act 1957, except that the hearing" and substitutes "committal proceedings must take place in accordance with Part 5 of the Summary Proceedings Act 1957, except that the committal proceedings, (including the standard committal hearing, or committal hearing (if required))". This amendment came into force on 29 June 2009 (Summary Proceedings Amendment Act (No. 2) 2008 Commencement Order 2009). Preliminary hearings for any proceedings commenced before 29 June must continue as if this act had not been enacted (LawTalk, Issue 728, 4 May 2009). For a general overview of committal proceedings see the flowchart in s 12 of the Summary Proceedings Amendment Act (No. 2) 2008. See also: *Practice Note – Committal Procedure in the District Court*, RJ Johnson Chief District Court Judge, June 2009, available at: <http://www.courtsofnz.govt.nz/district/district/practice-directions/DC-PN-on-committal.pdf>; and *Practice Note – Committal Procedure in the Youth Court* (purely indictable offences or where jury trial elected), AJ Becroft Principal Youth Court Judge, June 2009, available at: <http://www.courtsofnz.govt.nz/district/district/practice-directions/YC-Practice-Note-on-Committal.pdf>.

79 CYPFA, s 274; and Summary Proceedings Act 1957, Part V. See also: The Youth Court of New Zealand, *What Can the Judge Do*, available at: <http://www.justice.govt.nz/youth/about-youth/faq.asp>.

80 CYPFA, s 321.

81.CYPFA, ss 329 and 438.

82 CYPFA, ss 323 to 328A. For a discussion on the role of youth advocates see: A. Morris, G. Maxwell and P. Shepherd, *Being a Youth Advocate: An Analysis of their Role and Responsibility*, Institute of Criminology for Victoria Link, 1997.

83 CYPFA, s 330.

84 CYPFA, s 333.

85 CYPFA, s 280.

86 CYPFA, ss 274(2), 329 and 438. Please refer to footnote 78 above to see amendments made to s 274(2)(a) pursuant to Schedule 3 of the Summary Proceedings Amendment Act (No. 2) 2008.

87 CYPFA, ss 274, 275 and 276.

88 Summary Proceedings Act 1957, ss 66, 145, 168A and 168AA; and District Courts Act 1947, s 28A; and see also: The Youth Court of New Zealand, *What can the Judge do*, available at: <http://www.justice.govt.nz/youth/about-youth/faq.asp>.

## Procedures when the charge is murder or manslaughter

When a young person is charged with murder or manslaughter, committal proceedings must be held in the Youth Court.<sup>89</sup> The trial is conducted in the High Court, and the young person is not given the option to have the charges heard in the Youth Court. The procedure in the High Court is the same for a young person as for an adult.<sup>90</sup>

## Sentencing a young person ([Flow Chart No. 4](#))

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A young person may be sentenced in the Youth Court, District Court or High Court depending on the circumstances. The relationship between CYPFA and the Sentencing Act 2002 is not completely clear. In particular, it is a matter for debate whether the principles set out in CYPFA apply only when a young person is being dealt with in the Youth Court, or in the District Court and High Court also.<sup>91</sup>

### Sentencing a young person in the Youth Court

If a charge against a young person is proved before the Youth Court, the Court may discharge the information or make orders.<sup>92</sup>

#### The Youth Court's power to discharge information

If an information is laid charging a young person with a summary or indictable offence (other than a purely indictable offence) the Youth Court has the power to discharge the information.<sup>93</sup> An information so discharged shall be deemed never to have been laid. Nevertheless, if the Youth Court is satisfied that the charge is proved against the young person, it may make orders such as the requirement to pay a sum of money or disqualification from holding a driver's licence.<sup>94</sup>

#### Factors to be taken into account in Youth Court sentencing

Consistently with the principles of CYPFA the orders made by the Youth Court must promote the development of the young person within his or her family or whanau.<sup>95</sup> The Youth Court needs to take the following factors into account:<sup>96</sup>

- the nature and circumstances of the offence and the young person's involvement;<sup>97</sup>

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89 CYPFA, ss 272(2)(4). Note that Schedule 3 of the Summary Proceedings Amendment Act (No. 2) 2008 amends section 272(2)(4), omitting "the preliminary hearing of the charge" and substituting in each case "the committal process of the charge". This amendment came into force on 29 June 2009 (Summary Proceedings Amendment Act (No. 2) 2008 Commencement Order 2009). For further details refer to footnote 78 above.

90 CYPFA, s 275. See also: Ministry of Justice, *Youth Justice: How the System Works*, available at: <http://www.justice.govt.nz/youth-justice/system.html>.

91 *R v Patea – Glendinning* [2006] 22 CRNZ 959 and *X v Police* [2005] 22 CRNZ 58.

92 CYPFA, ss 282 and 283.

93 CYPFA, s 282.

94 CYPFA, s 283(e) to (j).

95 CYPFA, s 208.

96 CYPFA, ss 283 and 284.

97 CYPFA, s 284(1)(a).

- the personal history, social circumstances, and personal characteristics of the offender, so far as those matters are relevant to the offence and to any order the Youth Court is empowered to make in respect of it;<sup>98</sup>
- the attitude of the young person towards the offence;<sup>99</sup>
- the response of his or her family or whanau both to the offending and to the young person as a result of that offending;<sup>100</sup>
- any measures taken or proposed by the young person, or by his or her family or whanau to make reparation or apologise to any victim;<sup>101</sup>
- the effect of the offence on any victim, and the need for reparation to be made to that person;<sup>102</sup>
- any previous offence proved to have been committed by the young person (not being an offence for which the information was discharged under CYPFA), any penalty imposed or order made in relation to that offence, and the effect on the offender of that penalty or order;<sup>103</sup> and
- any decision, recommendation, or plan made by an FGC.<sup>104</sup>

#### Intervention and recommendations of an FGC

In accordance with the principles underlying CYPFA, when charges against a young person are proved before the Youth Court, an FGC must be convened if it has not had the opportunity to consider how the young person should be dealt with.<sup>105</sup> The recommendations that an FGC may make include:

- that a formal Police caution should be given to the young person;<sup>106</sup> or
- that any proceedings commenced against the young person for any offence should be discontinued or proceed.<sup>107</sup>

An FGC may also recommend appropriate penalties that should be imposed on the young person.<sup>108</sup> In addition, with the prior agreement of a Care and Protection Co-ordinator, it may recommend the implementation of plans necessary for the care and protection of the young person.<sup>109</sup>

#### Orders of the Youth Court

Before the Youth Court can make an order, a parent or guardian of the young person must have been informed and given the opportunity to make representations,<sup>110</sup> and an FGC must have

98 CYPFA, s 284(1)(b).

99 CYPFA, s 284(1)(c).

100 CYPFA, s 284(1)(d).

101 CYPFA, s 284(1)(e); and see: *Police v L and C*, (13 March 1992), Otahuhu Youth Court, CRN 1248029243, Harvey J.

102 CYPFA, s 284(1)(f).

103 CYPFA, s 284(1)(g).

104 CYPFA, s 284(1)(h); and see s 260.

105 CYPFA, ss 247(e) and 258(e).

106 CYPFA, s 260(3)(b).

107 CYPFA, s 260(3)(a).

108 CYPFA, s 260(3)(d).

109 CYPFA, s 261.

110 CYPFA, s 288.

considered ways in which to deal with the young person.<sup>111</sup> Before making an order the Youth Court may obtain a report from a social worker.<sup>112</sup>

The Youth Court may make one or more of the following orders:<sup>113</sup>

- Discharge the young person from the proceedings without further order or penalty.<sup>114</sup> With this order, differently from the exercise of the power to discharge an information,<sup>115</sup> the young person will have a recorded Court appearance, which can be drawn to the attention of the Youth Court should the young person appear again.<sup>116</sup>
- Admonish the young person.<sup>117</sup>
- Order the young person to come before the Youth Court, if called upon within 12 months after the making of the order, so that the Youth Court may take further action.<sup>118</sup>
- Impose a fine, such as could have been imposed by a District Court if the young person were an adult.<sup>119</sup> The Youth Court must not impose such a fine, however, unless it is satisfied that the young person has the capacity to pay the fine within a period of 12 months.<sup>120</sup>
- Order the young person or, in the case of a young person under the age of 16, any parent or guardian, to pay a sum towards the cost of the prosecution.<sup>121</sup>
- Order the young person or, in the case of a young person under the age of 16, any parent or guardian, to pay reparation to any person, who because of the offence, suffered any emotional harm, or any loss of or damage to property.<sup>122</sup>
- Order the young person or, in the case of a young person under the age of 16, any parent or guardian, to make restitution of property as provided for in the Crimes Act 1961.<sup>123</sup>
- Order the young person to forfeit property to the Crown, where that forfeiture would have been obligatory or could have been ordered under any applicable enactment if the young person were an adult and had been convicted by a District Court.<sup>124</sup>
- Disqualify the young person from holding or obtaining a driver's licence and/or confiscate the young person's motor vehicle. Such orders may be made as if the offender were an adult and had been convicted of the offence in a Court other than the Youth Court.<sup>125</sup>
- Place the young person under the supervision of the Chief Executive of the Department of Child, Youth, and Family Services or a specified person or organisation for a period of not more than six months.<sup>126</sup>

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111 CYPFA, ss 281, 281A(b) and 248.

112 CYPFA, s 334.

113 CYPFA, s 283. The Children, Young Persons and Their Families Amendment Bill (No. 6) (available at: [http://www.parliament.nz/en-NZ/PB/Legislation/Bills/c/7/1/00DBHOH\\_BILL8364\\_1-Children-Young-Persons-and-Their-Families-Amendment.htm](http://www.parliament.nz/en-NZ/PB/Legislation/Bills/c/7/1/00DBHOH_BILL8364_1-Children-Young-Persons-and-Their-Families-Amendment.htm)), if passed, will introduce longer sentence options for the Youth Court, and enable the latter to make orders when discharging proceedings in a more timely and effective manner.

114 CYPFA, s 283(a).

115 CYPFA, s 282.

116 CYPFA, ss 282 and 284(1)(g).

117 CYPFA, s 283(b).

118 CYPFA, ss 283(c), 285(1), 295 and 296.

119 CYPFA, ss 283(d) and 293; and Summary Proceedings Act 1957, ss 81 and 83.

120 CYPFA, s 285(2).

121 CYPFA, ss 283(e) and 293.

122 CYPFA, ss 283(f), 285(3), 287 and 293.

123 CYPFA, ss 283(g), 285(3) and 293; and Crimes Act 1961, s 404.

124 CYPFA, ss 283(h) and 293.

125 CYPFA, ss 283(j)(i) and 293A; and Sentencing Act 2002, ss 124 to 142.

- Make orders for community work,<sup>127</sup> supervision with activity,<sup>128</sup> or supervision with residence.<sup>129</sup>
- In the case of a young person who is of or over the age of 15 years, enter a conviction and order that the young person be brought before a District Court for sentence or decision.<sup>130</sup> The Youth Court may not make such an order unless it has considered all other alternatives available to it and is satisfied that none of them is appropriate in the circumstances of the particular case.<sup>131</sup>

### Sentencing a young person in the District or High Court

A young person is sentenced in the District Court when the case has been heard by the District Court, or when the Youth Court has ordered the young person to be brought before the District Court for sentencing. In these circumstances the young person is sentenced as if he or she were an adult.<sup>132</sup>

A young person is sentenced in the High Court when he or she has been convicted in the High Court of murder or manslaughter or of any other purely indictable offence. In these circumstances the young person is sentenced as if he or she were an adult.<sup>133</sup>

### The youth justice process when a child is involved ([Flow Chart No. 5](#))

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When a child (aged 10 years or over and under the age of 14 years) is alleged to have committed an offence the initial steps that an enforcement officer may take follow similar procedural stages and rules as for a young person: a warning may be given to the child; the Police Youth Aid Section may put in place diversionary plans; or the child may be arrested without a warrant.<sup>134</sup>

Following these initial steps the procedures vary from when a young person is involved. If the child is charged with murder or manslaughter, committal proceedings must be held in the Youth Court, and the trial and sentencing are conducted in the High Court which deals with the child as if he or she were an adult.<sup>135</sup>

If a child is alleged to have committed a serious offence (other than murder or manslaughter), he or she is dealt with in the Family Court following a declaration that the child is in need of care and protection on the grounds of the alleged offending.<sup>136</sup> Before such a declaration can be

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<sup>126</sup> CYPFA, ss 283(k), 284(2), 286 and 296.

<sup>127</sup> CYPFA, ss 283(l), 284(2), 285(5), 296, and ss 298 to 303.

<sup>128</sup> CYPFA, s 283(m), 284(2), 285(5), 286, 289, 296, and ss 304 to 310.

<sup>129</sup> CYPFA, s 283(n), 284(2), 285(5), 290, 296, and ss 311 to 319.

<sup>130</sup> CYPFA, ss 283(o), 284(2), 285(4)(6), 290 and 291. The Children, Young Persons and Their Families Amendment Bill (No. 6) (available at: [http://www.parliament.nz/en-NZ/PB/Legislation/Bills/c/7/1/00DBHOH\\_BILL8364\\_1-Children-Young-Persons-and-Their-Families-Amendment.htm](http://www.parliament.nz/en-NZ/PB/Legislation/Bills/c/7/1/00DBHOH_BILL8364_1-Children-Young-Persons-and-Their-Families-Amendment.htm)), clauses 35(3) and 36, if passed, will enable the Court to make such an order in respect of a young person who is over the age of 14 years and against whom the charge is a purely indictable offence.

<sup>131</sup> CYPFA, s 290 (2).

<sup>132</sup> The Youth Court of New Zealand, *What Can the Judge Do*, available at: <http://www.justice.govt.nz/youth/about-youth/faq.asp>.

<sup>133</sup> See: *R v Williams* [2005] 2 NZLR 506; and *R v Slade* [2005] 2 NZLR 526; and ss 102 to 104 of the Sentencing Act 2002. See also: Ministry of Justice, *Youth Justice: How the System Works*, available at: <http://www.justice.govt.nz/youth-justice/system.html>.

<sup>134</sup> CYPFA, ss 209 to 214, 234 to 239, 245 to 247, and 258 to 261. Compare with Flow Chart No. 1. See also *Child offenders manual*, op. cit., pp. 5-16.

<sup>135</sup> Crimes Act 196, s 22; and CYPFA, s 272. Please refer to footnote 89 above to see the amendments made to s 272(2)(4) pursuant to Schedule 3 of the Summary Proceedings Amendment Act (No. 2) 2008. See also: Ministry of Justice, *Youth Justice: How the System Works*, available at: <http://www.justice.govt.nz/youth-justice/system.html>.

<sup>136</sup> CYPFA, ss 14(1)(e), 67 and 68.

made, the Police must report the matter to the Youth Justice Co-ordinator and consult on whether an application for a declaration that the child is in need of care and protection should be made. If, after consultation, the Police believe that the child is in need of care and protection the Youth Justice Co-ordinator must convene an FGC to discuss the application.<sup>137</sup> The FGC must ascertain whether the child admits the alleged offence. If the child admits the offence, the FGC may make plans or recommendations, and no application for the declaration may be made.<sup>138</sup> If the child does not admit the alleged offence then the Family Court hears the application and the Judge may require the child to be present at the hearing. Following the hearing the Family Court may make a declaration that the Child is in need of care and protection, and issue orders.<sup>139</sup>

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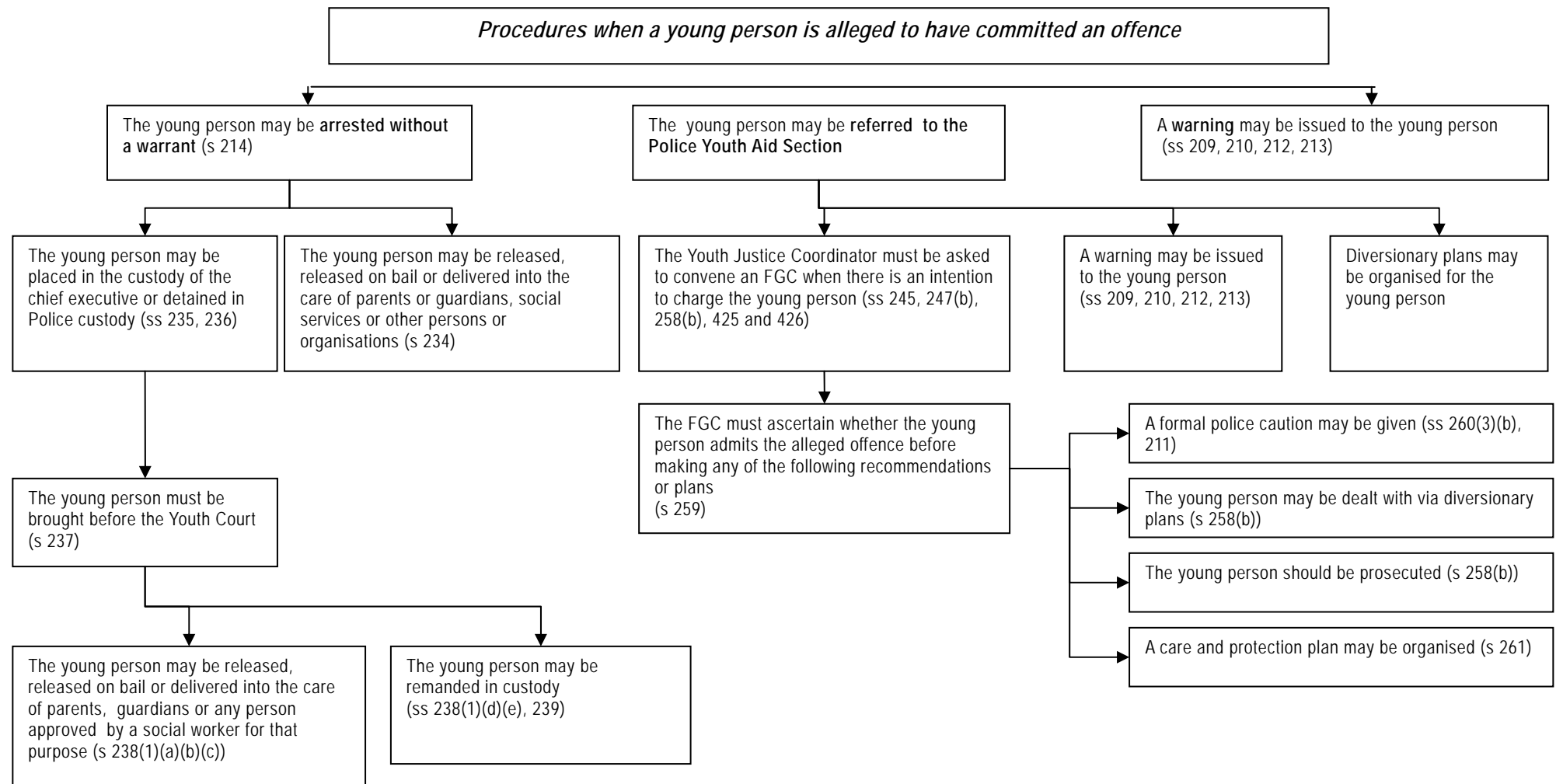
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137 CYPFA, ss 14(1)(e), 18(3), 67 to 72, 247(a) and 426. See also *Child offenders manual, op. cit.*, pp. 16-18.

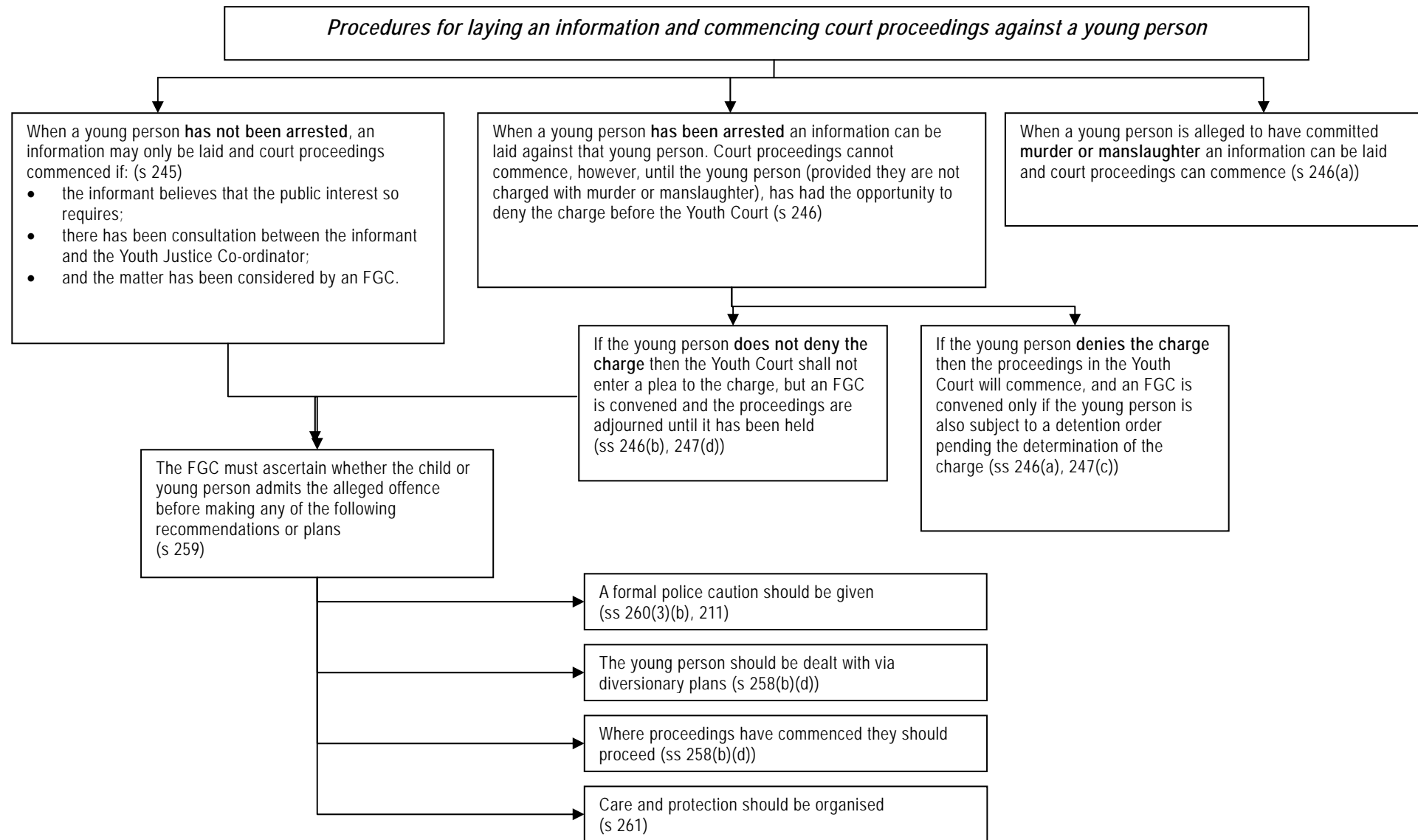
138 CYPFA, ss 14(1)(e), 18(3), 70, 247(a), 258(a), 259(2), 260, and 261. See also *Child offenders manual, op. cit.*, pp. 25 - 32.

139 CYPFA, ss 14(1)(e), 67 to 73, 84, 157 and 198. For an overview see *Child offenders manual, op. cit.*, pp. 32 - 56. The Children, Young Person and their Families Amendment Bill (No. 6), if passed, will insert new sections 73A to 73O in CYPFA which will group and make clearer the provisions that specify or affect the procedures for dealing with child offending (other than murder and manslaughter).

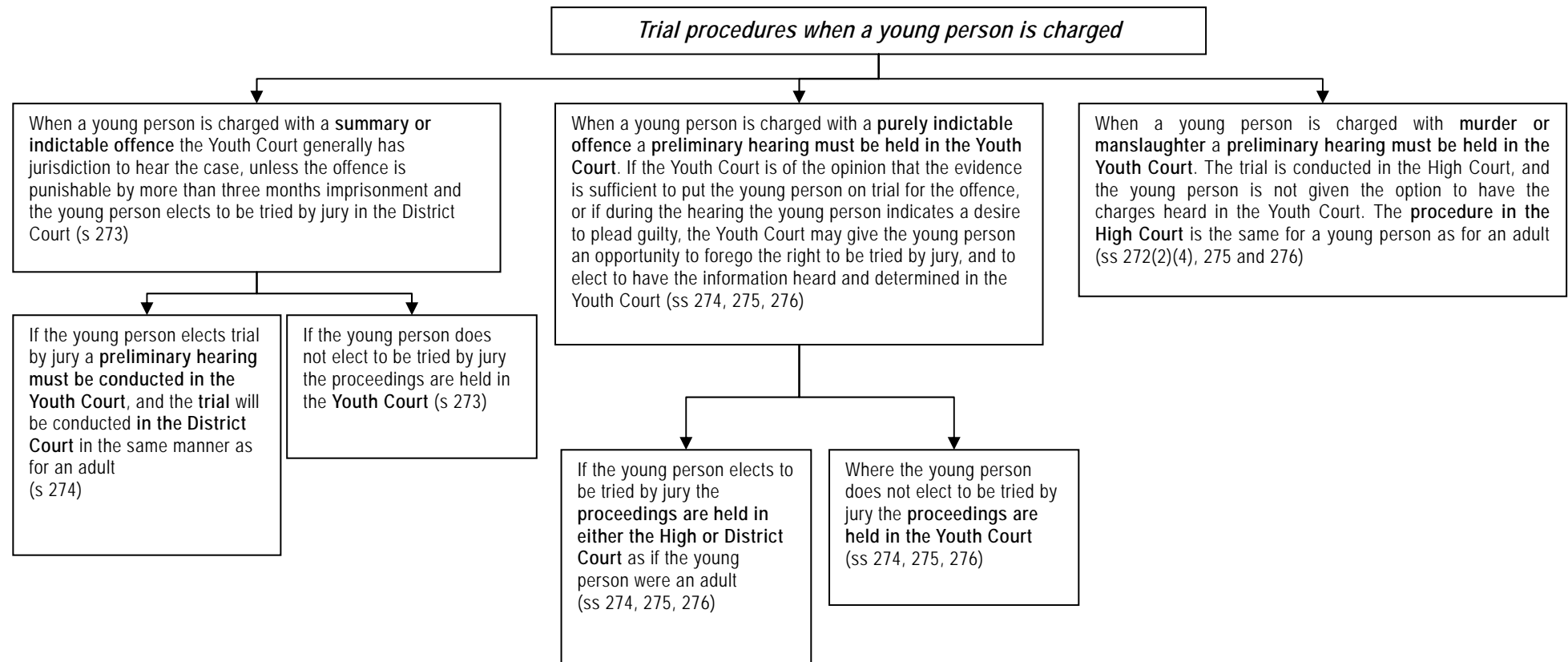
Flow Chart No. 1



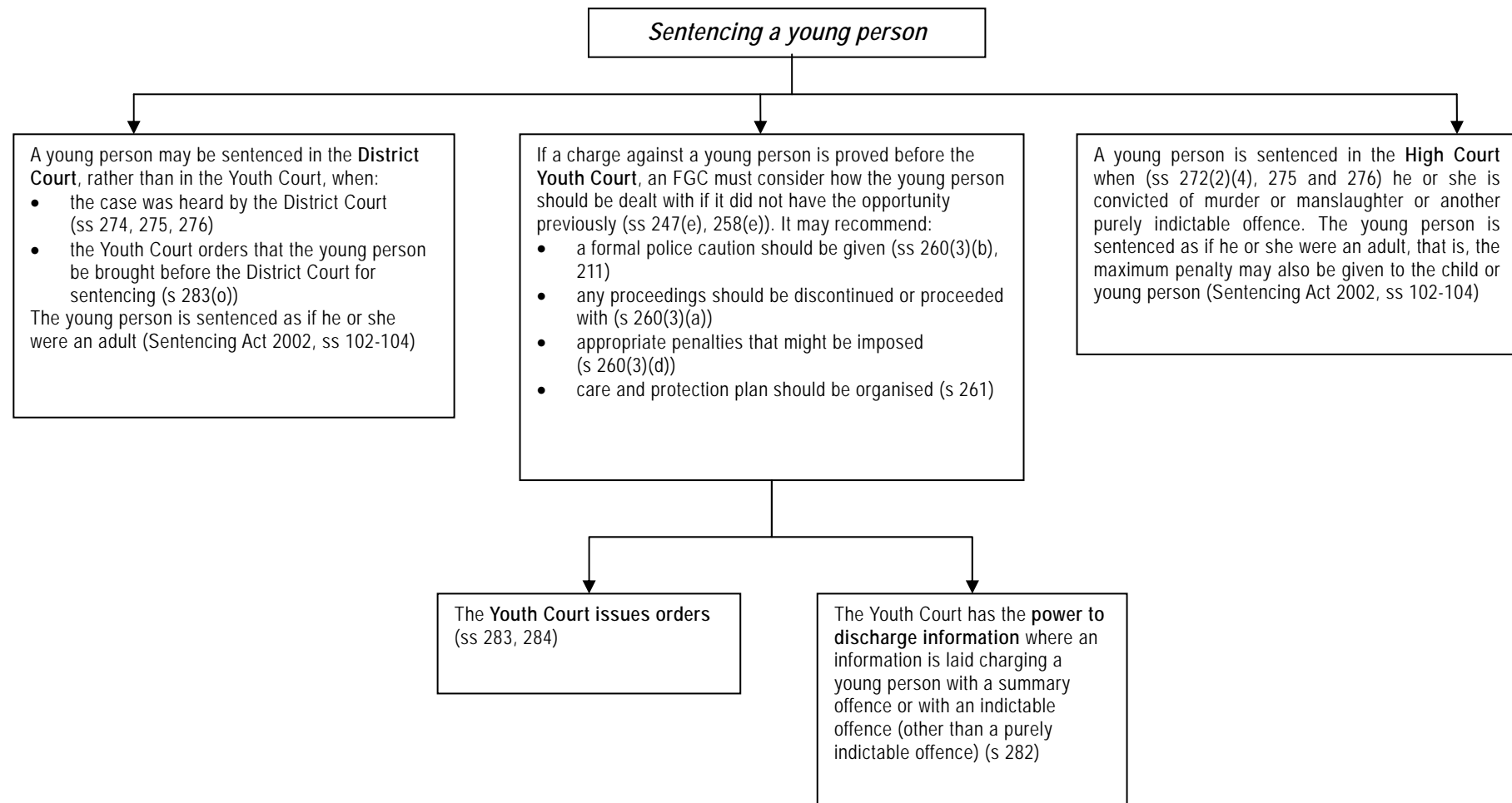
Flow Chart No. 2



Flow Chart No. 3



Flow Chart No. 4



Flow Chart n. 5

