



Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010

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Commencement see section 2

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Families (Youth Courts Jurisdiction and
Orders) Amendment Act 2010**

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010.

- 2 Commencement**
 - (1) This Act comes into force on 1 October 2010, unless it is earlier brought into force on a date appointed by the Governor-General by Order in Council.
 - (2) One or more Orders in Council may be made bringing different provisions into force on different dates before 1 October 2010.

- 3 Principal Act amended**
This Act amends the Children, Young Persons, and Their Families Act 1989.

Part 1

Amendments to principal Act

4 Purpose of Part

- (1) The purpose of this Part is to amend the principal Act to—
 - (a) enable proceedings to be commenced under the Summary Proceedings Act 1957 against—
 - (i) a child aged 12 or 13 years who is alleged to have committed an offence (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or
 - (ii) a child aged 12 or 13 years who is alleged to have committed an offence (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for at least 10 years but less than 14 years and who is a previous offender; and
 - (b) require to be brought before a Youth Court to be dealt with in accordance with the principal Act, and provide certain protections for, a child of that kind against whom proceedings under the Summary Proceedings Act 1957 have been commenced for an offence of that kind; and
 - (c) strengthen and expand the orders available to a Youth Court sentencing or otherwise dealing with a child or young person against whom a charge is proved before it, including by ensuring that measures for dealing with offending address the causes underlying the offending.
- (2) A child aged 12 or 13 years is a previous offender for the purposes of subsection (1)(a)(ii) if, in accordance with section 272(1A) or (1B) of the principal Act (as substituted by section 14(2) of this Act), he or she has been—
 - (a) proved before a Family Court to have committed an offence for which the maximum penalty available is or includes imprisonment for life or for at least 10 years; or
 - (b) convicted by the High Court of murder or manslaughter; or
 - (c) convicted by a District Court or the High Court, as a result of an election of jury trial made in a Youth Court, of

- 1 or more offences (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or
- (d) proved before a Youth Court to have committed 1 or more offences (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years.

5 Interpretation

Paragraph (a) of the definition of **residence** in section 2(1) is amended by inserting “or place” after “or other premises”.

6 Principles

- (1) Section 208 is amended by inserting the following paragraph after paragraph (f):
- “(fa) the principle that any measures for dealing with offending by a child or young person should so far as it is practicable to do so address the causes underlying the child’s or young person’s offending.”.
- (2) Section 208 is amended by repealing paragraph (g) and substituting the following paragraph:
- “(g) the principle that—
- “(i) in the determination of measures for dealing with offending by children or young persons, consideration should be given to the interests and views of any victims of the offending (for example, by encouraging the victims to participate in the processes under this Part for dealing with offending); and
- “(ii) any measures should have proper regard for the interests of any victims of the offending and the impact of the offending on them.”.

7 Custody of child or young person pending hearing

- (1) Section 238(1)(e) is amended by omitting “the child or young person” and substituting “the young person (but cannot under this paragraph order that the child)”.

- (2) Section 239(2) is consequentially amended by omitting “child or” in each place where it appears.
- (3) Section 242(2) is consequentially amended by omitting “child or” in each place where it appears.

8 Restrictions on power of Court to order child or young person to be detained in custody

Section 239(1) is amended by inserting “, or if the order is being considered under section 296F(3), pending the determination of the breach application or variation or cancellation application,” after “pending the determination of the charge”.

9 New section 255 substituted

Section 255 is repealed and the following section substituted:

“255 Youth justice co-ordinator must ensure that relevant information and advice made available to family group conference

- “(1) Every youth justice co-ordinator who convenes a family group conference must take all reasonable steps to ensure that all information and advice the co-ordinator considers is required by the conference to carry out its functions (including information and advice relating to the health and education needs of every child or young person in respect of whom the conference is convened) is made available to the conference.
- “(2) If it is appropriate for any person to attend a family group conference for the purpose of conveying to that conference any information or advice required by that conference to carry out its functions, that person may attend that conference for that purpose, but may otherwise attend the conference only with the agreement of the conference.
- “(3) Subsection (2) is subject to section 251.”

10 Functions of family group conference

Section 258 is amended by inserting the following paragraph after paragraph (b):

- “(ba) if the conference is convened under section 247(b) or (d) in relation to an offence alleged to have been committed by a child, to consider,—

- “(i) if the conference is convened under section 247(b), whether the public interest requires that criminal proceedings should be instituted against the child in accordance with section 272(1)(b) or (c) or, if the conference is convened under section 247(d), whether the public interest requires that criminal proceedings instituted against the child should be continued in accordance with Part 4; and
- “(ii) whether the child is in need of care or protection on the ground specified in section 14(1)(e) and, if so, whether the public interest requires that instead of criminal proceedings being instituted or continued that the matter should be dealt with under Part 2, whether by way of an application for a declaration under section 67 on that ground made in respect of that child, or in some other way.”.

11 New section 259A inserted

The following section is inserted after section 259:

“259A Family group conference must consider attendance at parenting education, mentoring, and alcohol or drug rehabilitation programmes

Every family group conference convened under this Part must, in complying with section 208(fa), consider—

- “(a) whether the young person should be required to attend all or any of the following:
 - “(i) a parenting education programme:
 - “(ii) a mentoring programme:
 - “(iii) an alcohol or drug rehabilitation programme; and
- “(b) whether a parent or guardian or other person having the care of the young person should be required to attend a parenting education programme.”

12 Family group conference may make decisions, recommendations, and plans relating to care or protection of child or young person

Section 261(1) is amended by omitting “, with the prior agreement of a care and protection co-ordinator,” and substituting “, if it has received information and advice on care or protection matters under section 255(1),”.

13 New section 269A inserted

The following section is inserted after section 269:

“269A Chief executive to ascertain whether victims wish to be informed of progress in implementing decisions, recommendations, and plans

“(1) This section applies to any action or steps to be taken or completed by the child or young person in respect of whom a family group conference was convened—

“(a) under any decision, recommendation, or plan made or formulated by the family group conference and to which agreement is obtained under section 263; and

“(b) by way of penalty or reparation for an offence.

“(2) The chief executive must take reasonable steps—

“(a) to ascertain whether the victim of the offence wishes to be notified of the child’s or young person’s progress in taking that action or completing those steps; and

“(b) if so, to ensure that the victim of the offence is notified from time to time of that progress.

“(3) The chief executive’s duty under subsection (2) must be performed by another person if that other person—

“(a) was nominated for the purpose by the family group conference; and

“(b) has agreed to perform that duty.”

14 Jurisdiction of Youth Court

(1) The heading to section 272 is amended by omitting “**Court**” and substituting “**Courts and children’s liability to be prosecuted for criminal offences**”.

(2) Section 272 is amended by repealing subsections (1) and (2) and substituting the following subsections:

- “(1) The following are the only 3 situations in which proceedings may lawfully be commenced under the Summary Proceedings Act 1957 against a child alleged to have committed an offence:
- “(a) where the child is of or over the age of 10 years, and the offence is murder or manslaughter:
 - “(b) where the child is aged 12 or 13 years, and the offence is one (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years:
 - “(c) where the child is aged 12 or 13 years and is a previous offender under subsection (1A) or (1B), and the offence is one (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for at least 10 years but less than 14 years.
- “(1A) A child is a previous offender under this subsection for the purposes of subsection (1)(c) if—
- “(a) an application is made to a Family Court under section 67 for a declaration that the child is in need of care or protection on the ground that the child has committed an offence or offences the number, nature, or magnitude of which is such as to give serious concern for the wellbeing of the child; and
 - “(b) on that application the Family Court, having found 1 or more of the offences alleged in the application (the **earlier offences**) to be proved in accordance with section 198(1)(a) and (b), either—
 - “(i) declares the child to be in need of care or protection on that ground; or
 - “(ii) indicates clearly that, but for section 73 (on the child’s need for care or protection being able to be met by other means), it would have made a declaration that the child is in need of care or protection on that ground; and
 - “(c) for 1 or more of the earlier offences the maximum penalty available is or includes imprisonment for life or for at least 10 years.
- “(1B) A child is a previous offender under this subsection for the purposes of subsection (1)(c) if—

- “(a) the child has been convicted by the High Court of murder or manslaughter; or
 - “(b) the child, as a result of an election of jury trial made by the child in a Youth Court in accordance with section 66 of the Summary Proceedings Act 1957 (as applied by section 272A), has been convicted by a District Court or the High Court of 1 or more offences (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or
 - “(c) the child has been charged with, and a Youth Court has found proved before it the charge against the child for, 1 or more offences (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years.”
- “(2) If a child of or over the age of 10 years is charged with murder or manslaughter,—
- “(a) the committal process for the charge must, subject to section 274, take place before a Youth Court; and
 - “(b) the provisions of this Act (other than sections 236, 238(1)(e), 239(2), 242(2), 275, 276, and 365(1)), and of any regulations made under this Act, apply accordingly as if that child were a young person.
- “(2A) If a child aged 12 or 13 years is charged with an offence specified in subsection (1)(b) or (c) and proceedings under the Summary Proceedings Act 1957 are commenced against the child for the offence,—
- “(a) the child must be brought before a Youth Court to be dealt with in accordance with the provisions of this Act; and
 - “(b) the provisions of this Act, and of any regulations made under this Act, apply accordingly as if that child were a young person but subject to the modifications in section 272A.”

15 New section 272A inserted

The following section is inserted after section 272:

**“272A Modifications and procedure for child aged 12 or 13
years charged with offence in section 272(1)(b) or (c)**

- “(1) The modifications referred to in section 272(2A)(b) in respect of a child aged 12 or 13 years charged with an offence specified in section 272(1)(b) or (c) are as follows:
- “(a) sections 236, 238(1)(e), 239(2), 242(2), and 365(1) (on Police custody and placements in residences) do not, despite those sections referring to a young person and section 272(2A)(b), extend or apply to the child as if the child were a young person; and
 - “(b) sections 273 to 276 (which specify procedures for dealing with offences) do not apply, and subsections (2) to (6) apply instead; and
 - “(c) section 282(1) applies as if it empowers a Youth Court to discharge an information charging the child with the offence even if it is a purely indictable offence; and
 - “(d) a reference in this Act or regulations under it to the charge against the child being proved before a Youth Court must be treated as including a requirement that the Youth Court is satisfied that the child knew either—
 - “(i) that the act or omission constituting the offence charged was wrong; or
 - “(ii) that it was contrary to law.
- “(2) The Youth Court must hear and determine the information charging the child with the offence (whether it is a summary offence or an indictable offence (including a purely indictable offence)) unless—
- “(a) the child under this section elects trial by jury and is committed for trial; or
 - “(b) the Court discharges the information under section 282.
- “(3) The child may under this section elect to be tried by a jury for the offence (whether it is a summary offence or an indictable offence (including a purely indictable offence)) and, if the child does so, the child’s election must be made and dealt with in accordance with section 66 of the Summary Proceedings Act 1957, which applies with all necessary modifications.
- “(4) If the child elects trial by jury, the committal proceedings (including the standard committal, or committal hearing (if re-

quired)) must take place in accordance with Part 5 or 5A of the Summary Proceedings Act 1957, except that—

“(a) the committal proceedings must take place in a Youth Court which, for that purpose,—

“(i) has all the powers of a District Court; and

“(ii) must be presided over by a Youth Court Judge; and

“(b) sections 329 and 438 of this Act, and not section 138 of the Criminal Justice Act 1985, apply in respect of the committal proceedings.

“(5) If the child elects trial by jury, the child may, without leave of the Court, withdraw the election at any time before the child is committed for trial and, if the child does so, the proceedings continue in the Youth Court as if the child had not made the election.

“(6) If the child elects trial by jury and the Youth Court is required or proposes to commit the child for trial for the offence, or the child elects trial by jury and at any time before committal for trial indicates to the Court that the child wishes to plead guilty to the offence,—

“(a) the Youth Court must give the child the opportunity of forgoing the right to trial by jury and of electing to have the information heard and determined in a Youth Court by a Youth Court Judge; and

“(b) if the child accepts that opportunity and elects to have the information heard and determined in a Youth Court by a Youth Court Judge, the Youth Court has the jurisdiction to hear and determine the information and otherwise deal with the child in accordance with this Act as if he or she were a young person (but subject to subsection (1)(a), (c), and (d)).”

16 Manner of dealing with purely indictable offences or where person elects jury trial

(1) Section 274 is amended by repealing subsection (2) and substituting the following subsections:

“(2) The committal proceedings (including the standard committal, or committal hearing (if required)) must take place in accord-

ance with Part 5 or 5A of the Summary Proceedings Act 1957, except that—

- “(a) the committal proceedings must take place in a Youth Court which, for that purpose,—
 - “(i) has all the powers of a District Court; and
 - “(ii) must be presided over by a Youth Court Judge or, in the absence of a Youth Court Judge, by a District Court Judge or by 2 or more Justices or by one or more Community Magistrates; and
- “(b) sections 329 and 438 of this Act, and not section 138 of the Criminal Justice Act 1985, apply in respect of the committal proceedings.

“(3) This section is subject to sections 275 and 276.”

- (2) The following are consequentially amended by repealing the items relating to section 274(2)(a) of the Children, Young Persons, and their Families Act 1989:
 - (a) the Schedule of the District Courts Amendment Act 1998;
 - (b) Schedule 3 of the Summary Proceedings Amendment Act (No 2) 2008.

17 Young person may forego right to jury trial and elect to have proceedings determined by Youth Court

The heading to section 275 is amended by omitting “forego” and substituting “forgo”.

18 Young person may plead guilty and elect to be dealt with by Youth Court

Section 276(1) is amended by omitting “foregoing ” and substituting “forgoing”.

19 Provisions applicable where young person charged jointly with person who is not a young person

Section 277 is amended by adding the following subsection:

- “(6) This section is subject to sections 272A and 274.”

20 New section 280A inserted

The following section is inserted after section 280:

“280A Court may refer case to informant to be dealt with as child offending care or protection proceeding under Part 2

- “(1) This section applies to proceedings under this Part in respect of a child aged 12 or 13 years who is charged with an offence of the kind specified in section 272(1)(b) or (c) if, at any stage of the proceedings before an order is made under section 282 or 283, it appears to the Court that—
- “(a) the child may be in need of care or protection on the ground specified in section 14(1)(e); and
 - “(b) the making of an application for a declaration under section 67 on that ground in respect of the child and the offence would serve the public interest better than the continuation of the proceedings under this Part.
- “(2) The Court—
- “(a) may refer the matter to the informant in the proceedings to consider whether to make an application for a declaration under section 67 on that ground in respect of the child and the offence or to deal with the matter in some other way; and
 - “(b) must, on making a referral under paragraph (a), adjourn the proceedings pending the outcome of that referral.
- “(3) If the proceedings are in respect of an information laid against the child for an offence, and are adjourned under subsection (2),—
- “(a) the Court may, at any time, discharge the information under section 282; but
 - “(b) if not discharged earlier, the information is deemed to be discharged if, and when, an application for a declaration under section 67 on that ground in respect of the child and the offence first comes before a Family Court Judge.
- “(4) An informant to whom a matter in respect of a child is referred under subsection (2) must—
- “(a) consider whether to make an application for a declaration under section 67 on that ground in respect of the child and offence or to deal with the matter in some other way; and
 - “(b) give effect to his or her decision under paragraph (a), and ensure the Youth Court is advised promptly of the outcome of the referral.

- “(5) Before referring a matter to the informant in the proceedings under subsection (2), the Court may—
- “(a) direct a youth justice co-ordinator to convene a family group conference for the purpose of considering whether the making of an application for a declaration under section 67 on that ground in respect of the child and the offence would serve the public interest better than the continuation of the proceedings under this Part (in which case sections 250 to 259 apply to the conference with all necessary modifications); and
 - “(b) adjourn the proceedings until the conference has been held.
- “(6) Nothing in this section limits or affects the application to a child, in accordance with section 272(2A), of section 280, insofar as the child may be in need of care or protection on a ground other than that specified in section 14(1)(e).”

21 Court not to make orders unless family group conference held

Section 281(2) is amended by repealing paragraphs (a) to (d) and substituting the following paragraphs:

- “(a) if a young person appears before the Court on a summons issued under section 295, exercise any of the powers conferred on it by section 295(2); or
- “(b) if the Court under section 296B cancels a mentoring programme order, an alcohol or drug rehabilitation programme order, a supervision order, a community work order, a supervision with activity order, or an intensive supervision order under section 296G, substitute any other order in place of that order; or
- “(c) if the Court under section 316 cancels a supervision with residence order, substitute any other order in place of that order,—”.

22 Power of Court to discharge information

Section 282 is amended by repealing subsection (3) and substituting the following subsections:

- “(3) If it is satisfied that the charge against the young person is proved, the Court may make an order under any of the provisions of paragraphs (e) to (j) of section 283—
- “(a) when it discharges the information; or
 - “(b) at any earlier time after it completes the inquiry referred to in subsection (1).
- “(4) The Court must not exercise the power in subsection (3)(b) unless section 281(1) is complied with.”

23 New section 283 substituted

Section 283 is repealed and the following section substituted:

“283 Hierarchy of Court’s responses if charge against young person proved

A Youth Court before which a charge against a young person is proved may, subject to sections 284 to 290, make 1 or more of the following responses (grouped in levels of equal restrictiveness, the groups ranging from least restrictive to most restrictive):

“Group 1 responses

- “(a) discharge the young person from the proceedings without further order or penalty:
- “(b) admonish the young person:

“Group 2 responses

- “(c) order that the young person come before the Court, if called upon within 12 months after the order is made, so that the Court may take further action under this section:
- “(d) impose a fine that could have been imposed by a District Court if the young person were an adult and had been convicted of the offence following a summary hearing in a District Court, and exercise any of the powers conferred on a District Court by sections 81 and 83 of the Summary Proceedings Act 1957 (other than the power to impose a period of imprisonment in default of payment):
- “(e) order the young person or, in the case of a young person who is under the age of 16 years, any parent or guardian of the young person to pay a sum towards the cost of the prosecution:

- “(f) order the young person or, in the case of a young person who is under the age of 16 years, any parent or guardian of the young person to pay to the person who suffered the emotional harm or the loss of, or damage to, property such sum as it thinks fit by way of reparation if the Court is satisfied that any person (other than the young person) suffered, through or by means of the offence, either or both of the following:
 - “(i) emotional harm:
 - “(ii) loss of, or damage to, property:
- “(g) order the young person or, in the case of a young person who is under the age of 16 years, a parent or guardian of the young person to make restitution in accordance with section 404 of the Crimes Act 1961:
- “(h) make an order for the forfeiture of property to the Crown if the forfeiture of that property would have been obligatory or could have been ordered under an enactment applicable to the offence if the young person were an adult and had been convicted of that offence by a District Court:
- “(i) make an order under section 293A (which relates to disqualification from driving):
- “(j) make an order that could have been made by a court other than a Youth Court under section 128 or 129 of the Sentencing Act 2002 (which relate to confiscation of motor vehicles) if the young person were an adult and had been convicted of the offence in a court other than a Youth Court; and if the Court makes such an order, the following sections of that Act apply accordingly:
 - “(i) sections 127 and 130 to 142:
 - “(ii) section 128 or 129 (as the case may be):
- “(ja) make an order requiring the young person (if he or she is, or is soon to be, a parent or guardian or other person having the care of a child), or a parent or guardian or other person having the care of the young person, or both, to attend, in a manner specified by the Court, and for a specified period of not more than 6 months, a specified parenting education programme:

- “(jb) make an order requiring the young person to attend, in a manner specified by the Court, and for a specified period of not more than 12 months, a specified mentoring programme:
- “(jc) make an order requiring the young person to attend, in a manner specified by the Court, and for a specified period of not more than 12 months, a specified alcohol or drug rehabilitation programme:
- “*Group 4 responses*
- “(k) make an order placing the young person under the supervision of the chief executive, or any person or organisation specified in the order, for a period not exceeding 6 months:
- “(l) make a community work order under section 298:
- “*Group 5 response*
- “(m) make a supervision with activity order under section 307:
- “*Group 6 response*
- “(n) make a supervision with residence order under section 311:
- “*Group 7 response*
- “(o) enter a conviction and order that the young person be brought before a District Court for sentence or decision, in which case the Sentencing Act 2002 applies accordingly if—
- “(i) the young person is of or over the age of 15 years; or
- “(ii) the young person is of or over the age of 14 years and under the age of 15 years and the charge proved against him or her is a charge in respect of a purely indictable offence.
- “Compare: 1974 No 72 s 36(1); 1977 No 126 s 10; 1983 No 129 s 8(1)”.

24 Factors to be taken into account on sentencing

Section 284(1) is amended by adding the following paragraph:

- “(i) the causes underlying the young person’s offending, and the measures available for addressing those causes, so far as it is practicable to do so.”

25 Restrictions on power of Court to make certain orders under section 283

Section 285 is amended by repealing subsection (6) and substituting the following subsection:

- “(6) The Court may make an order under section 283(o) (that the young person be brought before a District Court for sentence or decision) despite section 289 if,—
- “(a) but for subsection (5)(b), (ba), or (c), the Court would have made an order under any of the following:
 - “(i) section 283(l) (community work order under section 298):
 - “(ii) section 283(m) (supervision with activity order under section 307):
 - “(iii) section 283(n) (supervision with residence order under section 311); and
 - “(b) the Court considers that it would not be appropriate to make an order under any of paragraphs (a) to (k) of section 283 as an alternative to such an order; and
 - “(c) the order is made in respect of a young person—
 - “(i) who is of or over the age of 15 years; or
 - “(ii) who is of or over the age of 14 years and under the age of 15 years and against whom the charge proved is a purely indictable offence.”

26 Person or organisation not to be required to supervise young person without consent

Section 286 is amended by inserting “, or under section 296G,” after “section 283”.

27 New section 286A inserted

The following section is inserted after section 286:

“286A Parenting education, mentoring, or alcohol or drug rehabilitation programme order: general requirement for provider to have first agreed to provide programme concerned, and making of order subject to conditions

- “(1) This section applies to an order if it is—
- “(a) a parenting education programme order under section 283(ja); or
 - “(b) a mentoring programme order under section 283(jb); or

- “(c) an alcohol or drug rehabilitation programme order under section 283(jc).
- “(2) If the programme to be specified in an order to which this section applies is to be provided other than by the chief executive, that order may be made only if the provider of that programme has first agreed to provide that programme to the person to be required by the order to attend that programme.
- “(3) An order to which this section applies may be made subject to any conditions the Court thinks fit and specifies in the order.”

28 New sections 288 to 290A substituted

Sections 288 to 290 are repealed and the following sections substituted:

“288 Order in respect of parent or guardian or other person having care not to be made without first informing of proposal to make order and giving opportunity to make representations

No order may be made under section 283 in respect of a parent or guardian or other person having the care of a young person unless that parent or guardian or other person has been—

- “(a) informed by the Court of the proposal to make the order; and
- “(b) given an opportunity to make representations to the Court.

“Compare: 1974 No 72 s 36(5)

“289 Court must impose least restrictive outcome adequate in circumstances

- “(1) A Court making a response or a permitted combination of responses under section 283 (including, without limitation, under section 297(a) or (b)) must—
- “(a) assess the restrictiveness of that outcome in accordance with the hierarchy set out in section 283; and
- “(b) not impose that outcome unless satisfied that a less restrictive outcome would, in the circumstances and having regard to the principles in section 208 and factors in section 284, be clearly inadequate.

- “(2) Subsection (1)(a) and (b) also apply to any outcome imposed by a Court that on an application under section 296B(1)—
- “(a) declares that a young person has without reasonable excuse failed to comply satisfactorily with a requirement of an order to which section 296B applies; and
 - “(b) substitutes or otherwise makes under section 296B(3)(a), (b), or (c)—
 - “(i) any other order under section 283; or
 - “(ii) an intensive supervision order under section 296G (which for the purposes of subsection (1)(a) must be treated as if it were a group 5 response under section 283); or
 - “(iii) any order it is empowered to make under section 296E.
- “(3) Subsection (1)(a) and (b) also apply to any outcome imposed by a Court that on an application under section 316(1)—
- “(a) cancels a supervision with residence order made under section 311 in respect of a young person who the Court is satisfied has, at any time while that order is in force, absconded from the custody of the chief executive; and
 - “(b) substitutes under section 316(2)(b) any other order under section 283 that it could have made when the supervision with residence order was made.

“Compare: 2002 No 9 s 8(g)

“290 Judge must record in writing reasons for supervision with residence or transfer order

A Judge exercising the jurisdiction of the Court to make an order under section 283(n) or (o) must when making the order record in writing his or her reasons for doing so.

“290A Restriction on who may provide residential component of specified programme or activity

- “(1) This section applies to a Court considering whether to impose under section 307(1)(b) or 311(2) a condition that a young person undertake a specified programme or activity as a condition of—
- “(a) a supervision with activity order under section 307; or
 - “(b) a supervision with residence order under section 311.

- “(2) The Court must not impose the condition unless the residential component of the specified programme or activity is to be provided by—
- “(a) the chief executive; or
 - “(b) a body or organisation approved under section 396.
- “(3) The **residential component** of a specified programme or activity means any component of the programme or activity that cannot be undertaken satisfactorily by a young person unless he or she resides—
- “(a) where that component is provided; and
 - “(b) with, and under the control of, the provider.”

29 New headings and sections 296 to 296M substituted

Section 296 is repealed and the following headings and sections are substituted:

“296 Expiry of orders

- “(1) This section applies to an order that is—
- “(a) an order under section 283(c) (to come before the Court, if called upon within 12 months after the order is made, so that the Court may take further action under section 283); or
 - “(b) a parenting education programme order under section 283(ja); or
 - “(c) a mentoring programme order under section 283(jb); or
 - “(d) an alcohol or drug rehabilitation programme order under section 283(jc); or
 - “(e) an order under section 283(k) (placing the young person under the supervision of the chief executive or a specified person or organisation); or
 - “(f) an order under section 283(l) (a community work order under section 298); or
 - “(g) an order under section 283(m) (a supervision with activity order under section 307); or
 - “(h) an order under section 283(n) (a supervision with residence order under section 311); or
 - “(i) an intensive supervision order under section 296G.
- “(2) If it is made after the commencement of this section, and does not expire sooner, the order expires when the young person in respect of whom it is made attains the age of 18 years.

- “(3) If it is made before the commencement of this section, and does not expire sooner, the order expires 6 months after the young person in respect of whom it is made attains the age of 17 years.

*“Failure to comply with, and variation and
cancellation of, specified orders*

“296A Orders to which sections 296B and 296E apply

- “(1) Sections 296B and 296E apply to the following orders:
- “(a) a parenting education programme order under section 283(ja) requiring the young person in respect of whom the order is made to attend a specified parenting education programme:
 - “(b) a mentoring programme order under section 283(jb):
 - “(c) an alcohol or drug rehabilitation programme order under section 283(jc):
 - “(d) a supervision order under section 283(k):
 - “(e) a community work order under section 298:
 - “(f) a supervision with activity order under section 307:
 - “(g) an intensive supervision order under section 296G.
- “(2) Section 296E also applies to a parenting education programme order under section 283(ja) requiring the parent or guardian or other person having the care of the young person in respect of whom the order is made to attend a specified parenting education programme.

“296B Failure to comply

- “(1) If the young person has without reasonable excuse failed to comply satisfactorily with a term, condition, or other requirement of an order specified in section 296A(1), an application for a declaration to that effect may be made by—
- “(a) a social worker, if the order is one under section 283(ja), (jb), or (jc); or
 - “(b) the chief executive or, as the case may be, the person or organisation specified in the order under whose supervision the young person has been placed, if the order is one under section 283(k), 296G, or 307; or

- “(c) a constable, if the order is one under section 296G and the failure to comply is with a curfew condition imposed under section 296J(1); or
 - “(d) a social worker or the person or organisation supervising the order, if the order is one under section 298.
- “(2) Every application under subsection (1) must be served on the young person to whom the order relates and on any parent or guardian or other person having the care of the young person.
- “(3) If satisfied on an application under subsection (1) that the young person has without reasonable excuse failed to comply satisfactorily with a term, condition, or other requirement of an order to which this section applies, the Court may make a declaration to that effect and may—
- “(a) cancel the order, and in substitution for that order make any other order under section 283 the Court thinks fit; or
 - “(b) make any order the Court is empowered to make under section 296E as if an application had been made under that section in relation to that order; or
 - “(c) if the condition concerned is one the young person’s compliance with which is the subject of judicial monitoring in accordance with a direction under section 308A, cancel the order, and in substitution for that order make an intensive supervision order under section 296G.
- “(4) On or after making or varying under subsection (3)(a) or (b) a supervision order or supervision with activity order in respect of a young person, the Court may in accordance with section 308A(1)(a) direct that the young person’s compliance with 1 or more specified conditions of the order is to be monitored judicially.
- “(5) Subsection (3) is subject to section 289(2) (on the Court imposing the least restrictive outcome that is adequate in the circumstances).

“296C Warrant to have young person arrested and brought before Court

- “(1) This section applies if a person has made an application under section 296B(1) for a declaration that a young person has with-

out reasonable excuse failed to comply satisfactorily with a requirement of an order specified in section 296A(1) (a **breach application**).

“(2) The person may make, to the Court dealing with the breach application, an application in writing and on oath for a warrant to arrest, and to bring before that Court, the young person to whom the breach application relates if the person believes on reasonable grounds that—

“(a) all reasonable efforts have been made to locate or, as the case requires, to serve the breach application on, that young person, but those efforts have failed; or

“(b) the breach application has been served on that young person, but he or she has failed to appear before that Court.

“(3) The Court dealing with the breach application may, on an application under subsection (2), issue a warrant to arrest, and to bring before that Court, the young person to whom the breach application relates if satisfied that—

“(a) all reasonable efforts have been made to locate or, as the case requires, to serve the breach application on, that young person, but those efforts have failed; or

“(b) the breach application has been served on that young person, but he or she has failed to appear before that Court.

“Compare: 2002 No 9 s 72(3)

“**296D Execution of warrant under section 296C**

“(1) A warrant under section 296C may be executed only by a constable.

“(2) The warrant must be directed to a constable by name or generally to every constable, but in either case may be executed by any constable.

“(3) For the purpose of executing the warrant, the constable executing it may at any time enter on to any premises, by force if necessary, if he or she has reasonable grounds to believe that the young person against whom it is issued is on those premises.

“(4) Sections 445A (person executing warrant to produce evidence of authority and identity) and 445B (authority to use facsimile copy of warrant) apply to the warrant.

“Compare: 2000 No 38 s 36(2)–(4); 2002 No 9 s 72(4)

“**296E Variation and cancellation**

“(1) If an order specified in section 296A(1) or (2) has been made in respect of a young person or in respect of a parent or guardian or other person having the care of a young person, on an application for the purpose the Court may—

“(a) cancel the order:

“(b) suspend the order for a period specified by the Court:

“(c) suspend a condition of the order for a period specified by the Court:

“(d) impose a further condition of the order:

“(e) vary a condition of the order.

“(2) The application may be made only by 1 or more of the following persons or organisations:

“(a) the young person, or any parent or guardian or other person having the care of the young person:

“(b) the provider of the parenting education, mentoring, or alcohol or drug rehabilitation programme concerned, or a social worker, if the order is one under section 283(ja), (jb), or (jc):

“(c) the chief executive or, as the case may be, the person or organisation specified in the order under whose supervision the young person has been placed, if the order is one under section 283(k), 296G, or 307:

“(d) a social worker or the person or organisation supervising the order, if the order is one under section 298.

“(3) The application must be served on—

“(a) every other person or organisation specified in subsection (2) who could also have made the application; and

“(b) the barrister or solicitor or youth advocate representing the young person.

“(4) Every person or organisation on whom the application must be served is entitled to appear and be heard at the hearing of the application.

“(5) If the application is for the suspension or variation of a condition of an order under section 283(k), 296G, or 307, the chief executive (if the order places the young person under the supervision of the chief executive), or (in any other case) the person or organisation specified in the order, may suspend the condition until the application has been heard and disposed of by the Court.

“**296F Interim suspension order**

- “(1) This section applies if a person has made—
- “(a) an application under section 296B(1) for a declaration that a young person has without reasonable excuse failed to comply satisfactorily with a requirement of an order specified in section 296A(1) (a **breach application**); or
 - “(b) an application under section 296E in respect of an order specified in section 296A(1) or (2) (a **variation or cancellation application**).
- “(2) The Court to which the breach application or, as the case may be, the variation or cancellation application has been made may, on the application of a party to the proceedings or the youth advocate, or of its own motion, make an interim suspension order that suspends the operation of the order specified in section 296A(1) or (2) until the Court disposes of the breach application or, as the case may be, the variation or cancellation application.
- “(3) If the Court makes an interim suspension order under this section in respect of an order specified in section 296A(1) or (2), the Court may also exercise, in respect of the young person, any power conferred by section 238(1)(a) to (e).

“Intensive supervision orders

- “**296G Intensive supervision order in response to young person’s non-compliance with judicially monitored condition of supervision or supervision with activity order**
In the situation specified in section 296B(3)(c), the Court may make an order placing the young person under the supervision of the chief executive or such person or organisation as may

be specified in the order for a period specified in the order and of not more than 12 months.

“296H Duty of chief executive to provide for supervision under intensive supervision order

If, under section 296G, a young person is placed under the supervision of the chief executive, the chief executive must from time to time appoint a social worker to supervise the young person on behalf of the chief executive.

“296I Conditions of intensive supervision order

An order under section 296G is subject to—

- “(a) the conditions specified in section 305 (except paragraph (b)):
- “(b) a condition that the young person must report to the social worker or person or organisation—
 - “(i) at least once each week during the first 3 months of the order, and at least once each month after the first 3 months of the order:
 - “(ii) as and when the young person is required to do so at other times by the social worker or person or a representative of the organisation:
- “(c) any additional conditions under section 306 the Court imposes:
- “(d) any additional conditions (imposing a curfew, with or without electronic monitoring of compliance with that curfew) the Court imposes under section 296J:
- “(e) a condition (if the Court under this paragraph imposes one) that the young person attend and remain at, for any weekday, evening, and weekend hours each week and for any number of months the Court thinks fit, any specified centre approved by the department, and take part in any activity required by the person in charge of the centre:
- “(f) a condition (if the Court under this paragraph imposes one) that the young person undertake any specified programme or activity.

“296J Additional conditions imposing curfew with or without electronic monitoring of compliance

- “(1) On or after making an order under section 296G, the Court may impose, and make the order also subject to, a condition (a **curfew condition**) that the young person must, for a duration no longer than the duration of the order (the **curfew duration**), comply with a curfew requiring the young person to remain, for 1 or more specified periods of each day (the **daily curfew period**), at a specified address (the **curfew address**).
- “(2) On imposing, and making an order under section 296G also subject to, a curfew condition, the Court must specify in that condition the curfew duration, the daily curfew period, and the curfew address.
- “(3) Every daily curfew period specified under subsection (2) must not be for a period of less than 2 hours, and the daily curfew periods for any week must not be more than 84 hours.
- “(4) The young person is not in custody during the daily curfew period; but—
- “(a) during the daily curfew period, the young person must not, at any time, leave the curfew address except in the circumstances set out in subsection (5):
- “(b) during the curfew duration, the young person must co-operate with the chief executive, and must comply with any lawful direction (for example, one for the purpose of implementing an electronic monitoring condition under subsection (6)) given by the chief executive for the purpose of implementing the relevant curfew condition:
- “(c) the young person must, when required to do so by the chief executive and for the purpose of implementing an electronic monitoring condition under subsection (6), submit to the electronic monitoring of compliance with the relevant curfew condition, which may require the young person to be connected to electronic monitoring equipment throughout the period of the order under section 296G and not just throughout the curfew duration.
- “(5) A young person may leave the curfew address during the daily curfew period only—
- “(a) to seek urgent medical or dental treatment; or

- “(b) to avoid or minimise a serious risk of death or injury to the young person or any other person; or
 - “(c) with the approval of the chief executive,—
 - “(i) to seek or engage in employment; or
 - “(ii) to attend educational, training, or other rehabilitative or reintegrative activities or programmes; or
 - “(iii) to attend a family group conference or other process relating to the young person’s offending; or
 - “(iv) to carry out any undertaking, or implement a decision, recommendation, or plan, arising from a family group conference or other process relating to the young person’s offending; or
 - “(d) with the approval of the chief executive and subject to any conditions imposed by the chief executive, on humanitarian grounds.
- “(6) On or after imposing, and making an order under section 296G also subject to, a curfew condition, the Court may, if satisfied that other conditions of the order are likely to be insufficient to secure the young person’s compliance with the order, make the order also subject to a condition that the young person must for a specified period not exceeding 6 months submit to electronic monitoring of his or her compliance with the curfew condition.
- “(7) A Judge exercising the jurisdiction of the Court to impose an electronic monitoring condition under subsection (6) must when imposing the condition record in writing his or her reasons for doing so.

“Compare: 2002 No 9 ss 69B(3)–(5), 69E(1)(a), (1)(e), (2)

“296K Electronic monitoring

- “(1) The purposes of an electronic monitoring condition imposed under section 296J(6) are to—
- “(a) deter the young person from breaching the requirement of the relevant curfew condition that the young person remain at the curfew address during the daily curfew period; and
 - “(b) monitor the young person’s compliance with that requirement.

- “(2) Information about a young person that is obtained through electronic monitoring may be used only for the purposes referred to in subsection (1) and for the following purposes:
- “(a) to verify compliance with the requirement of the relevant curfew condition that the young person remain at the curfew address during the daily curfew period:
 - “(b) to detect non-compliance with that requirement:
 - “(c) to provide evidence of non-compliance with that requirement:
 - “(d) to verify that the young person has not tampered or otherwise interfered with the ability of the electronic monitoring equipment to operate effectively and accurately.
- “(3) Information may be collected during the whole of the period of the order under section 296G but may be used only if it was collected for 1 or more of the purposes set out in this section and, except for information collected for the purpose in subsection (2)(d), was collected during the curfew duration.
- “(4) Any information obtained by electronic monitoring outside the curfew duration must be destroyed as soon as practicable.
- “(5) The chief executive may from time to time, either generally or particularly, with the agreement of the Commissioner of Police delegate to that Commissioner all or any of the chief executive’s functions or powers under this Act relating to implementation of electronic monitoring conditions imposed under section 296J(6).
- “(6) Section 41(3), (5), and (7) of the State Sector Act 1988 apply with all necessary modifications to a delegation under subsection (5); but nothing in this section limits or affects section 41 of that Act or its application to the functions or powers that may be delegated under subsection (5).
- “(7) Functions or powers delegated under subsection (5) must be regarded as functions or powers of the Commissioner of Police for the purposes of section 17(1) of the Policing Act 2008.

“Compare: 2002 No 9 s 69F

“296L Powers to detain and return, and arrest, young person breaching curfew condition

- “(1) A constable or social worker may (using such reasonable force as may be necessary) detain without warrant and return to the curfew address a young person subject to a curfew condition under section 296J and found at a place other than the curfew address if the constable or social worker believes on reasonable grounds that the young person has failed to comply with the curfew condition by—
- “(a) leaving, or being taken without authority, from the curfew address; or
 - “(b) refusing or neglecting to return to the curfew address.
- “(2) A constable may (using such reasonable force as may be necessary) arrest without warrant a young person subject to a curfew condition under section 296J and found at a place other than the curfew address if the constable believes on reasonable grounds that the young person has failed to comply with the curfew condition by—
- “(a) leaving, or being taken without authority, from the curfew address; or
 - “(b) refusing or neglecting to return to the curfew address.
- “(3) A young person to whom this section applies does not, by reason only of an act or omission referred to in subsection (1) or (2), commit an offence against section 120 of the Crimes Act 1961.

“296M Review of intensive supervision order

- “(1) After making an order under section 296G, the Court—
- “(a) must fix promptly dates (which must be not later than 3 months after the date on which the order is made, and at least once every 3 months after that date, but before the order expires) for review of the plan that was prepared in respect of the order in accordance with section 335 (the **plan**); and
 - “(b) may direct who is to review the plan (and if it does not make a direction, the person who prepared the plan is deemed to have been directed to review it under this paragraph); and

- “(c) may, at any time, and either on its own initiative or on the application of a party to the proceedings or a barrister or solicitor or youth advocate representing the young person, amend a direction made or deemed to be made under paragraph (b), or revoke it and substitute another direction.
- “(2) On or before each of the dates fixed under subsection (1)(a), the person who is directed to review the plan must review the plan and furnish to the Court—
 - “(a) a report setting out the results of the review; and
 - “(b) a revised plan in respect of the young person.
- “(3) The report furnished to the Court under subsection (2) must—
 - “(a) state which of the objectives set out in the plan have been achieved and which of those objectives are yet to be achieved;
 - “(b) state, in respect of those objectives that are yet to be achieved, what action is required to achieve those objectives;
 - “(c) recommend, in respect of any order made by the Court under this Part in relation to the young person to whom the plan relates, whether that order should continue in force, or be varied, suspended, or discharged, and whether any condition of that order should be continued in force, or be varied, suspended, or discharged, and the reasons for those recommendations;
 - “(d) state, in respect of those persons who were required to be given a copy of the plan pursuant to section 191 (as applied by section 339), whether each of those persons agrees with the recommendations contained in the report.
- “(4) The Court must consider a report furnished to it pursuant to subsection (2) and the accompanying revised plan, and, after giving such persons (if any) as it thinks fit an opportunity to be heard, may do either or both of the following things:
 - “(a) exercise, in relation to the order (if it remains in force), any of the powers set out in section 296E as if an application had been made in relation to the order under that section;

- “(b) if the Court considers the report furnished under subsection (2), or the revised plan, or both, to be inadequate, direct the person who prepared the report to furnish to the Court a further report, or a further revised plan, or both, ensuring that the direction to that person indicates any specific matter that it requires to be dealt with in that report or plan.”

30 New headings and sections 297A and 297B inserted

The following headings and sections are inserted after section 297:

“Parenting education programme orders

“297A Written statements of terms, and how Court may respond to failures to comply

- “(1) If an order under section 283(ja) is made requiring a young person who is, or is soon to be, a parent or guardian or other person having the care of a child to attend a parenting education programme, a written statement of the terms of the order must be supplied to that young person in accordance with section 340.
- “(2) If an order under section 283(ja) is made requiring a parent or guardian or other person having the care of a young person to attend a parenting education programme, the Court must as soon as is reasonably practicable cause to be supplied to the parent or guardian or other person a written statement specifying—
- “(a) the terms and conditions of the order:
 - “(b) possible consequences of a failure to comply with the order:
 - “(c) provisions for variation of the order:
 - “(d) rights of appeal against the order.
- “(3) Subsection (4) applies if the Court is at any time satisfied in the light of a report under section 320 or of other information available to it that a person required to attend a parenting education programme by an order under section 283(ja) has failed to comply with the order.
- “(4) The Court may direct a care and protection co-ordinator to convene a family group conference under Part 2 for the pur-

pose of considering matters relating to the care or protection of every child or young person in the care of the person required by the order under section 283(ja) to attend the parenting education programme.

- “(5) The care and protection co-ordinator must comply with, and Part 2 applies with all necessary modifications to a conference convened in accordance with, a direction under subsection (4).

“Alcohol or drug rehabilitation programme orders

“297B Nature of programmes, who may consent to medical treatment, and related custody orders

- “(1) **Programme**, for the purposes of section 283(jc) and this section, means a programme that is or includes all or any of the following (whether residential or non-residential in nature):
- “(a) psychiatric, psychological, or similar counselling or therapy;
 - “(b) a medical, psychiatric, psychological, social, therapeutic, rehabilitative, or reintegrative programme with a focus on alcohol or drug issues.
- “(2) No young person may receive or undergo any medical, psychiatric, or psychological examination or treatment that forms part of a programme that the young person is required by an order under section 283(jc) to attend unless consent to the young person’s receiving or undergoing the examination or treatment has been given by or on behalf of the young person.
- “(3) The consent required by subsection (2) may be given, in the case of a young person of or over the age of 16 years, by that young person and, in any other case,—
- “(a) by a parent or guardian (not being the chief executive) of the young person; or
 - “(b) if there is no such parent or guardian in New Zealand or no such parent or guardian can be found with reasonable diligence or is capable of giving consent, by a person in New Zealand who has been acting in the place of a parent; or

- “(c) if there is no person in New Zealand who has been so acting, or if no such person can be found with reasonable diligence or is capable of giving consent, by a District Court Judge or the chief executive.
- “(4) This subsection applies if the Court is satisfied that a programme that a young person is required by an order under section 283(jc) to attend is unable to be provided to the young person while he or she lives with the parents or guardians or other persons having the care of the young person.
- “(5) If subsection (4) applies, the Court may, to enable the programme referred to in subsection (4) to be provided to the young person, make an order placing the young person in the custody of the chief executive, an iwi social service, a cultural social service, or the director of a child and family support service.
- “(6) The Court must not make an order under subsection (5) placing a young person in the custody of a person (other than the chief executive) or organisation unless that person or organisation consents to the making of the order.
- “(7) A custody order under subsection (5) has the same effect as if the young person had been placed in the custody of the relevant person or organisation under an order under section 101, except that section 365 (which would empower the chief executive to place the young person in a residence established under section 364) does not apply to the young person.”

31 Community work order

Section 298(1) is amended by omitting “, with the consent of the young person,”.

32 Sections 299 to 301 repealed

Sections 299 to 301 are repealed.

33 New section 307 substituted

Section 307 is repealed and the following section substituted:

“307 Supervision with activity order

- “(1) If a charge against a young person is proved before a Youth Court, the Court may make an order placing the young person

under the supervision of the chief executive, or of any person or organisation specified in the order, for a period not exceeding 6 months, and (subject to section 290A) imposing either or both of the following conditions:

- “(a) that the young person attend and remain at, for any weekday, evening, and weekend hours each week and for any number of months the Court thinks fit, any specified centre approved by the department, and take part in any activity required by the person in charge of the centre:
 - “(b) that the young person undertake any specified programme or activity.
- “(2) If the Court makes an order under subsection (1) in respect of a young person, it may at the same time or before that order expires make an order under section 283(k)—
- “(a) placing that young person under the supervision of the chief executive or such person or organisation as is specified in the order for such period (not exceeding 6 months) as the Court may specify; and
 - “(b) that must come into force on the expiry of the order made under subsection (1).
- “(3) This subsection applies if the Court is satisfied that a programme or activity that a young person is required by a condition of an order under subsection (1) to take part in or undertake is unable to be provided to the young person while he or she lives with the parents or guardians or other persons having the care of the young person.
- “(4) If subsection (3) applies, the Court may, to enable the programme or activity referred to in subsection (3) to be provided to the young person, make an order placing the young person in the custody of the chief executive, an iwi social service, a cultural social service, or the director of a child and family support service.
- “(5) The Court must not make an order under subsection (4) placing a young person in the custody of a person (other than the chief executive) or organisation unless that person consents to the making of the order.
- “(6) A custody order under subsection (4) has the same effect as if the young person had been placed in the custody of the rele-

vant person or organisation under an order under section 101, except that section 365 (which would empower the chief executive to place the young person in a residence established under section 364) does not apply to the young person.”

34 New sections 308A to 308C inserted

The following sections are inserted after section 308:

“308A Judicial monitoring of compliance with conditions of supervision or supervision with activity order

“(1) The Court may direct that a young person’s compliance with 1 or more specified conditions of a supervision or supervision with activity order made in respect of a young person is to be monitored judicially at the times specified in the direction (or at any other replacement monitoring times the Court specifies) if—

“(a) the order is one made or varied by the Court after declaring under section 296B(3) that the young person has without reasonable excuse failed to comply satisfactorily with a term, condition, or other requirement of a supervision or supervision with activity order made in respect of the young person; or

“(b) the order is one made by the Court under section 283 after a charge against the young person in respect of an offence is proved before the Court and the young person has previously been the subject of an order under section 283 made in respect of another offence and that previous order is, or is an order more restrictive than, a supervision order under section 283(k); or

“(c) the young person has previously been convicted of an offence in a District Court or the High Court and, as a result of the conviction, sentenced by a District Court or by the High Court to—

“(i) a community-based sentence (as defined in section 4(1) of the Sentencing Act 2002); or

“(ii) a sentence of home detention imposed under section 80A of the Sentencing Act 2002; or

“(iii) a sentence of imprisonment (as so defined).

“(2) The times specified in a direction under subsection (1) (and any replacement monitoring times the Court specifies) must

require monitoring of the young person's compliance with the conditions specified in the direction—

- “(a) at a time not later than 3 months after the date on which the direction was given; and
 - “(b) at least once every 3 months after that time.
- “(3) The young person must be—
- “(a) given or supplied the terms of the direction by a written statement under section 340; and
 - “(b) given reasonable written notice of any replacement times the Court specifies.

“308B Effect of judicial monitoring direction

- “(1) A direction under section 308A requires the young person to whom it relates to appear before the Court at the times specified in the direction (or at any replacement times the Court specifies) so that the Court may—
- “(a) monitor the young person's compliance with the conditions that are the subject of the direction; and
 - “(b) review the young person's progress in achieving the goals of the plan prepared under section 335 in respect of the order the conditions of which are the subject of the direction.
- “(2) The Court may, at any time during the duration of a direction under section 308A, direct, on the application of a social worker or constable, that the young person in respect of whom the direction under section 308A was given be issued with a summons, in a form prescribed by rules of Court, to appear before the Court.
- “(3) If a young person does not appear in answer to a summons that has been served under this section, a Youth Court Judge or District Court Judge may direct that a warrant to arrest that young person and bring that young person before the Court be issued.

“308C Progress reports

- “(1) If the Court has given a direction under section 308A in respect of a young person and in respect of specified conditions of an order, a social worker must prepare and furnish to the Court a

written progress report on the young person's compliance with those conditions.

- “(2) The written progress report must be furnished to the Court before the young person's compliance with those conditions is monitored judicially for the first time.
- “(3) The progress report—
- “(a) must contain information on the young person's compliance with those conditions and on his or her progress in achieving the goals of the plan prepared under section 335 in respect of the order the conditions of which are the subject of the direction; and
 - “(b) may contain any other information that the social worker considers relevant to the judicial monitoring of the young person's compliance with those conditions.
- “(4) The social worker must prepare and furnish to the Court further progress reports at specified intervals of not less than 3 months if directed to do so by the Court.

“Compare: 2002 No 9 s 80ZJ”.

35 Sections 309 and 310 repealed

Sections 309 and 310 are repealed.

36 New section 311 substituted

Section 311 is repealed and the following section substituted:

“311 Supervision with residence order

- “(1) If a charge against a young person is proved before a Youth Court, the Court may make an order placing the young person in the custody of the chief executive for a period of not less than 3 months and not more than 6 months.
- “(2) If a Youth Court makes an order under subsection (1) in respect of a young person, the order may (subject to section 290A) be made subject to the condition that the young person undertake any specified programme or activity.
- “(2A) If a Youth Court makes an order under subsection (1) in respect of a young person, the Court must—
- “(a) adjourn the proceedings to a date before two-thirds of the period of the order under subsection (1) will have elapsed and on which it will consider early release; and

- “(b) make an order under section 283(k) placing that young person under the supervision of the chief executive for a period of not less than 6 months and not more than 12 months.
- “(3) The order required by subsection (2A)(b) must be made either at the same time as the order made under subsection (1) or after that time but before the earlier of the following:
 - “(a) the expiry of the order made under subsection (1):
 - “(b) the date on which the young person is released from the custody of the chief executive under section 314.
- “(4) The order required by subsection (2A)(b) must come into force on the earlier of the expiry specified in subsection (3)(a) and the date specified in subsection (3)(b), and may be made subject to all or any of the following conditions (which, if imposed by the Court, apply in addition to the conditions required by section 305 and to any conditions the Court imposes under section 306):
 - “(a) that the young person attend and remain at, for any weekday, evening, and weekend hours each week and for any number of months the Court thinks fit, any specified centre approved by the department, and take part in any activity required by the person in charge of the centre:
 - “(b) that the young person undertake any specified programme or activity:
 - “(c) that the young person reside at an address specified by the Court.”

37 Effect of supervision with residence order

Section 312(3) is amended by omitting “under this Act” in each place where it appears.

38 New section 314 substituted

Section 314 is repealed and the following section substituted:

“314 Court must in certain cases release young person from custody before expiry of supervision with residence order

- “(1) The Court must release a young person from the custody of the chief executive pursuant to an order under section 311 if the young person has been in that custody for at least two-thirds of

the period of that order (as fixed under section 311(1)) and the Court is satisfied that during the period that the young person has been in that custody—

- “(a) the young person has neither absconded nor committed any further offences; and
- “(b) either the young person’s behaviour and compliance with any obligations placed on the young person by the plan prepared under section 335 in respect of the order have been satisfactory or any misbehaviour and non-compliance of the young person have been minor; and
- “(c) the young person has complied satisfactorily with any condition of the order that the young person undertake any specified programme or activity.

“(2) The chief executive must, as soon as practicable before the expiry of two-thirds of the period of that order, prepare for, and furnish to, the Court a report addressing the matters specified in subsection (1)(a) to (c).”

39 Court may cancel supervision with residence order if young person absconds

- (1) Section 316(2)(a) is amended by omitting “311(2)” and substituting “311(2A)”.
- (2) Section 316 is amended by adding the following subsection:
- “(4) Subsection (2) is subject to section 289(3) (on the Court imposing the least restrictive outcome that is adequate in the circumstances).”

40 New heading and section 319A inserted

The following heading and section are inserted after section 319:

*“Review of orders for periods of at least
8 months*

“319A Orders must be reviewed

- “(1) This section applies to an order only if the order is—
 - “(a) a mentoring programme order under section 283(jb) requiring the young person to attend in a specified manner

- for a period of at least 8 months a specified mentoring programme; or
- “(b) an alcohol or drug rehabilitation programme order under section 283(jc) requiring the young person to attend in a specified manner for a period of at least 8 months a specified alcohol or drug rehabilitation programme; or
 - “(c) a supervision order under section 311(2A) that accompanies a supervision with residence order and places the young person under the supervision of the chief executive for a period of at least 8 months.
- “(2) After making an order to which this section applies, the Court—
- “(a) must fix promptly a date (which must be not later than 6 months after the order comes into force, and before it expires) for review of the plan that was prepared in respect of the order in accordance with section 335 (the **plan**); and
 - “(b) may direct who is to review the plan (and if it does not make a direction, the person who prepared the plan is deemed to have been directed to review it under this paragraph); and
 - “(c) may, at any time, and either on its own initiative or on the application of a party to the proceedings or a barrister or solicitor or youth advocate representing the young person, amend a direction made or deemed to be made under paragraph (b), or revoke it and substitute another direction.
- “(3) On or before the date fixed under subsection (2)(a), the person who is directed to review the plan must review the plan and furnish to the Court—
- “(a) a report setting out the results of the review; and
 - “(b) a revised plan in respect of the young person.
- “(4) The report furnished to the Court under subsection (3) must—
- “(a) state which of the objectives set out in the plan have been achieved and which of those objectives are yet to be achieved:

- “(b) state, in respect of those objectives that are yet to be achieved, what action is required to achieve those objectives:
 - “(c) recommend, in respect of any order made by the Court under this Part in relation to the young person to whom the plan relates, whether that order should continue in force, or be varied, suspended, or discharged, and whether any condition of that order should be continued in force, or be varied, suspended, or discharged, and the reasons for those recommendations:
 - “(d) state, in respect of those persons who were required to be given a copy of the plan pursuant to section 191 (as applied by section 339), whether each of those persons agrees with the recommendations contained in the report.
- “(5) The Court must consider a report furnished to it pursuant to subsection (3) and the accompanying revised plan, and, after giving such persons (if any) as it thinks fit an opportunity to be heard, the Court may do either or both of the following things:
- “(a) exercise, in relation to the order (if it remains in force), any of the powers set out in section 296E as if an application had been made in relation to the order under that section:
 - “(b) if the Court considers the report furnished under subsection (3), or the revised plan, or both, to be inadequate, direct the person who prepared the report to furnish to the Court a further report, or a further revised plan, or both, ensuring that the direction to that person indicates any specific matter that it requires to be dealt with in that report or plan.”

41 Report to be made to Court on effectiveness of certain orders

- (1) Section 320 is amended by inserting the following subsection after subsection (1):
- “(1A) If the Court makes a parenting education programme order under section 283(ja), a mentoring programme order under section 283(jb), or an alcohol or drug rehabilitation programme order under section 283(jc), the person or organ-

isation providing the programme specified in the order must, on the expiry of the order, furnish to the Court a report in writing.”

- (2) Section 320(2) is amended by inserting “section 296G or” after “section 283(k) or”.
- (3) Section 320(2) is amended by omitting “311(2)” and substituting “311(2A)”.
- (4) Section 320 is amended by repealing subsection (4) and substituting the following subsection:
“(4) Every report required by this section to be furnished to the Court in relation to an order must contain—
 - “(a) an assessment of the effectiveness of the order:
 - “(b) an assessment of the response to the order of the young person or, if the order is a parenting education programme order made under section 283(ja), of—
 - “(i) the responses to the order of the person in respect of whom the order was made; and
 - “(ii) if it is reasonably practicable to ascertain them, the responses to the order of every child or young person affected by the order (other than any young person in respect of whom the order was made):
 - “(c) if the order is a parenting education programme order made under section 283(ja) and the person in respect of whom the order was made appears to have failed to comply with it, a recommendation whether the Court under section 297A(4) should direct a care and protection co-ordinator to convene a family group conference under Part 2 for the purpose of considering matters relating to the care or protection of every child or young person affected by the order (other than any young person in respect of whom the order was made):
 - “(d) any other information the person who is required to furnish the report considers relevant.”

42 Report by social worker

Section 334(2) is amended—

- (a) by inserting “paragraph (ja) or paragraph (jb) or paragraph (jc) or” after “make an order under”; and

- (b) by inserting “, or under section 296G,” after “section 283”.

43 Report to be accompanied by plan

Section 335(1) is amended—

- (a) by inserting “paragraph (ja) or paragraph (jb) or paragraph (jc) or” after “any order proposed to be made under”; and
- (b) by inserting “, or under section 296G,” after “section 283”.

44 Privilege for reports

Section 338 is amended by inserting “section 308C or section 319A or” before “section 333”.

45 Access to reports and plans under this Part of this Act

- (1) Section 339(a) is amended by inserting “section 308C or section 319A or” before “section 333”.
- (2) Section 339(b) is amended by inserting “section 319A or” before “section 335”.

46 New section 340 substituted

Section 340 is repealed and the following section substituted:

“340 Written statement of terms of certain orders to be given to young person

- “(1) After making an order under paragraph (ja), (jb), (jc), (k), (l), (m), (n), or (o) of section 283 or under section 296G, the Court must, before the young person leaves the Court, cause a written statement to be supplied to the young person to whom the order relates, and to the barrister or solicitor or youth advocate representing the young person, specifying—
- “(a) the terms and conditions of the order (for example, in the case of an intensive supervision order under section 296G, any additional curfew and electronic monitoring conditions under section 296J):
- “(b) if the young person’s compliance with any of the conditions of the order is to be monitored judicially in ac-

cordance with a direction under section 308A, the terms of that direction:

- “(c) in the case of an order under section 283(n) or (o), the reasons for the making of that order:
- “(d) in the case of an intensive supervision order under section 296G that is subject to additional curfew and electronic monitoring conditions under section 296J, the reasons for the imposition of that additional electronic monitoring condition:
- “(e) possible consequences of a failure to comply with the order:
- “(f) provisions for variation of the order:
- “(g) rights of appeal against the order or the finding on which the order was based.

- “(2) However, subsection (1) applies to an order made under section 283(ja) only if that order is made in respect of, and requires attendance at a parenting education programme by, a young person who is, or is soon to be, a parent or guardian or other person having the care of a child.
- “(3) The Court may for the purposes of subsection (1) direct that the young person must remain at the Court for a period, not exceeding 1 hour, that may be necessary to enable the statement to be supplied to the young person.
- “(4) If it is not practicable to supply a written statement to the young person before the young person leaves the Court, the statement must be supplied to the young person, and to the barrister or solicitor or youth advocate representing that young person, as soon as practicable.

“Compare: 1985 No 120 s 58”.

47 Appeals from decisions of Youth Court by young person

Section 351 is amended by inserting the following subsection after subsection (1):

- “(1A) For the purposes of subsection (1), an order made by the Court based on that finding includes, without limitation, an order varying, or made in substitution for, an earlier order made by the Court based on that finding.”

48 Appeal by parents or guardians or other persons having care of young person

(1) Section 352 is amended by inserting the following paragraphs after paragraph (a):

“(ab) an order made under section 297B(5) placing that young person in the custody of the chief executive, an iwi social service, a cultural social service, or the director of a child and family support service to enable the provision to that young person of a programme that that young person is required by an order under section 283(jc) to attend:

“(ac) an order made under section 307(4) placing that young person in the custody of the chief executive, an iwi social service, a cultural social service, or the director of a child and family support service to enable the provision to that young person of a programme or activity that that young person is required by a condition of an order under section 307(1) to take part in or undertake:

“(ad) an intensive supervision order made under section 296G in respect of that young person:”.

(2) Section 352 is amended by adding the following paragraph:

“(e) an order made under section 283(ja) requiring that parent or guardian or other person having the care of that young person to attend a parenting education programme.”

49 Chief executive may place children and young persons in residences

Section 365 is amended by adding the following subsections:

“(3) The chief executive must consider all reasonably practicable less restrictive alternative placements that may be available and appropriate for the child before exercising the power conferred by subsection (1) to place in a youth justice residence (as defined in subsection (4)) a child—

“(a) aged 12 or 13 years; and

“(b) charged with an offence of the kind specified in section 272(1)(b) or (c); and

“(c) in respect of whom there is in force an order under section 238(1)(d) or 283(n).

“(4) **Youth justice residence** in subsection (3) means a residence established and maintained under section 364 for purposes that are or include remand, the provision of custody under supervision with residence orders made under section 283(n), or both.

“(5) This section is subject to section 312 (which requires the Court’s approval for the placement in a residence, and for the transfer between residences, of a young person placed in the chief executive’s custody by an order under section 311).”

50 Closing of residences and transfer of residents

Section 366 is amended by adding the following subsection as subsection (2):

“(2) This section is subject to section 312 (which requires the Court’s approval for the placement in a residence, and for the transfer between residences, of a young person placed in the chief executive’s custody by an order under section 311).”

51 Person executing warrant to produce evidence of authority and identity

Section 445A is consequentially amended by inserting “or section 296C” after “or section 205(2)(b)”.

52 Authority to use facsimile copy of warrant

Section 445B(2) is consequentially amended by inserting “296C,” after “205(2)(b),”.

53 Regulations

Section 447 is amended by inserting the following paragraph after paragraph (ac):

“(ad) regulating the administration, management, and control of the residential component (within the meaning of section 290A) of a specified programme or activity.”

54 New heading and section 456A inserted

The following heading and section are inserted after section 456:

*“2010 Amendment Act***“456A Purpose and application**

- “(1) The purpose of Part 1 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 is to amend this Act to—
- “(a) enable proceedings to be commenced under the Summary Proceedings Act 1957 against—
 - “(i) a child aged 12 or 13 years who is alleged to have committed an offence (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or
 - “(ii) a child aged 12 or 13 years who is alleged to have committed an offence (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for at least 10 years but less than 14 years and who is a previous offender; and
 - “(b) require to be brought before a Youth Court to be dealt with in accordance with this Act, and provide certain protections for, a child of that kind against whom proceedings under the Summary Proceedings Act 1957 have been commenced for an offence of that kind; and
 - “(c) strengthen and expand the orders available to a Youth Court sentencing or otherwise dealing with a child or young person against whom a charge is proved before a Youth Court, including by ensuring that measures for dealing with offending address the causes underlying the offending.
- “(2) A child aged 12 or 13 years is a previous offender for the purposes of subsection (1)(a)(ii) if, in accordance with section 272(1A) or (1B) (as substituted by section 14(2) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010), he or she has been—
- “(a) proved before a Family Court to have committed an offence for which the maximum penalty available is or includes imprisonment for life or for at least 10 years; or

- “(b) convicted by the High Court of murder or manslaughter;
or
 - “(c) convicted by a District Court or the High Court, as a result of an election of jury trial made in a Youth Court, of 1 or more offences (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or
 - “(d) proved before a Youth Court to have committed 1 or more offences (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years.
- “(3) The amendments made by a provision of that Part apply only—
- “(a) in respect of an offence committed or alleged to have been committed after the commencement of that provision; and
 - “(b) in accordance with subsection (4) in respect of an offence committed or alleged to have been committed before the commencement of that provision.
- “(4) If the child or young person gives consent to its doing so, the Court may make an order, or exercise or perform any other authority, power, or function, under an amendment made by a provision of that Part in respect of an offence committed or alleged to have been committed before the commencement of that provision.
- “(5) A reference in subsection (3) or (4) to an offence committed or alleged to have been committed includes a reference to each of the child’s 1 or more earlier offences referred to in section 272(1A)(b) or (1B)(a), (b), or (c) if—
- “(a) the offence is one of the kind specified in section 272(1)(c) and one committed or alleged to have been committed by a child aged 12 or 13 years; and
 - “(b) proceedings under the Summary Proceedings Act 1957 against the child for the offence have been or are to be commenced in accordance with section 272(1)(c).”

Part 2
Amendments to other enactments

55 Amendments to Criminal Investigations (Bodily Samples) Act 1995

- (1) This section amends the Criminal Investigations (Bodily Samples) Act 1995.
- (2) Section 8 is amended by repealing subsection (1A) and substituting the following subsection:

“(1A) However, a suspect may, in relation to an indictable offence, consent to the taking of a buccal sample as a result of a Part 2A request if the suspect is a child, or was a child, at the time the offence is alleged to have been committed, and cannot lawfully be prosecuted in relation to the offence because it is not an offence of any of the following kinds:

 - “(a) the offence of murder or manslaughter:
 - “(b) an indictable offence (other than murder or manslaughter)—
 - “(i) that is alleged to have been committed when the suspect was aged 12 or 13 years; and
 - “(ii) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years:
 - “(c) an indictable offence (other than murder or manslaughter)—
 - “(i) that is alleged to have been committed when the suspect was aged 12 or 13 years, and was for the purposes of section 272(1)(c) of the Children, Young Persons, and Their Families Act 1989 a previous offender under section 272(1A) or (1B) of that Act; and
 - “(ii) for which the maximum penalty available is or includes imprisonment for at least 10 years but less than 14 years.”
- (3) Section 18(1) is amended by repealing paragraph (b) and substituting the following paragraph:

“(b) the suspect may lawfully be prosecuted for that offence (being, in the case of a suspect who is a child or was

a child at the time the offence is alleged to have been committed,—

- “(i) the offence of murder or manslaughter; or
- “(ii) an offence (other than murder or manslaughter)—
 - “(A) that is alleged to have been committed when the suspect was aged 12 or 13 years; and
 - “(B) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or
- “(iii) an offence (other than murder or manslaughter)—
 - “(A) that is alleged to have been committed when the suspect was aged 12 or 13 years, and was for the purposes of section 272(1)(c) of the Children, Young Persons, and Their Families Act 1989 a previous offender under section 272(1A) or (1B) of that Act; and
 - “(B) for which the maximum penalty available is or includes imprisonment for at least 10 years but less than 14 years); and”.

(4) Section 23(1) is amended by repealing paragraph (b) and substituting the following paragraph:

- “(b) the respondent may lawfully be prosecuted for that offence (being, in the case of a suspect who is a child or was a child at the time the offence is alleged to have been committed,—
 - “(i) the offence of murder or manslaughter; or
 - “(ii) an offence (other than murder or manslaughter)—
 - “(A) that is alleged to have been committed when the respondent was aged 12 or 13 years; and
 - “(B) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or

- “(iii) an offence (other than murder or manslaughter)—
 - “(A) that is alleged to have been committed when the respondent was aged 12 or 13 years, and was for the purposes of section 272(1)(c) of the Children, Young Persons, and Their Families Act 1989 a previous offender under section 272(1A) or (1B) of that Act; and
 - “(B) for which the maximum penalty available is or includes imprisonment for at least 10 years but less than 14 years); and”.
- (5) Section 24C is amended by repealing subsection (2) and substituting the following subsection:
 - “(2) Every reference in this Part to an indictable offence for which a suspect who is or was a child at the time the offence was committed may not be lawfully prosecuted is a reference to an indictable offence other than—
 - “(a) the offence of murder or manslaughter; or
 - “(b) an offence (other than murder or manslaughter)—
 - “(i) that is alleged to have been committed when the suspect was aged 12 or 13 years; and
 - “(ii) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or
 - “(c) an offence (other than murder or manslaughter)—
 - “(i) that is alleged to have been committed when the suspect was aged 12 or 13 years, and was for the purposes of section 272(1)(c) of the Children, Young Persons, and Their Families Act 1989 a previous offender under section 272(1A) or (1B) of that Act; and
 - “(ii) for which the maximum penalty available is or includes imprisonment for at least 10 years but less than 14 years.”

56 Amendment to Criminal Justice Act 1985

- (1) This section amends the Criminal Justice Act 1985.

**Children, Young Persons, and Their
Families (Youth Courts Jurisdiction and
Orders) Amendment Act 2010**

2010 No 2

Part 2 s 56

(2) Section 142A is amended by inserting the following subsections after subsection (1):

“(1A) However, a child who is serving a sentence of imprisonment imposed before or after the commencement of this subsection may be detained under that sentence after that commencement only in any such residence.

“(1B) Subsection (1A) overrides subsection (1) and the Corrections Act 2004.”

Legislative history

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16, 17 February 2010	Committee of the whole House
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This Act is administered by the Ministry of Social Development.
