

## **Regulatory Impact Statement – Addendum**

### **Including 17 year-olds, and non-imprisonable traffic offences that can result in a conviction, in the youth justice system**

#### *Agency disclosure statement*

This regulatory impact statement is an addendum to the Regulatory Impact Statement (RIS) *Including 17 year-olds, and non-imprisonable traffic offence that can result in a conviction, in the youth justice system.*

This addendum should be read in conjunction with that RIS. In particular, the paper compares the likely outcomes, costs, benefits and risks of new proposals against the likely outcomes, costs, benefits and risks of the proposal to include all 17 year olds in the YJ system. Proposals in this paper are not being compared against a decision to keep the affected 17 year-olds in the adult justice system.

This addendum addresses a number of proposals that have been developed in response to direction from the Cabinet Social Policy Committee (SOC).

SOC requested proposals that generate a greater distinction between 17 year-olds and other young people (i.e. 14 – 16 year-olds), particularly for those 17 year olds who are serious and recidivist offenders.

Each of these options is assessed against the option of including all 17 year-olds in the youth system under the existing youth justice settings (i.e. against the option of treating 17 year-olds the same way 14 – 16 year-olds are currently treated). This was the joint Ministries' preferred option in the original RIS.

The primary limitation to the following analyses has been the lack of sufficient time to fully analyse the refined proposals against a range of options, and to carry out a detailed assessment of the impact of the proposals on the cost-benefit of including all 17 year-olds in the youth system (as was carried out in the original RIS).

While additional proposals have been developed, original proposals aimed at all young people (i.e. 14 – 17 year-olds) are also being retained. That is, a strengthened judicial discretion for all serious and recidivist offenders is still proposed, as is a decision to include non-imprisonable traffic offences that can result in a conviction. Both of these proposals are assessed in the original RIS.

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## *Introduction*

On 9 November 2015, the Minister of Justice and the Minister for Social Development took a proposal to SOC to include 17 year-olds in the youth justice system. In doing so, the Ministers recommended that the existing legislative discretion for Youth Court Judges to transfer all young offenders (i.e. 14 – 17 year-olds) to adult courts for sentencing be strengthened. This is to ensure serious or recidivist young offenders are more consistently sentenced in an adult court (i.e. the District or the High Court) when doing so is deemed more appropriate to apply sanctions.

SOC requested additional proposals that generate a greater distinction between 17 year-olds and other young people (i.e. 14 – 16 year-olds) particularly those who are serious and recidivist offenders.

To address SOC's concerns, additional proposals have been developed, and are assessed in this addendum to the original RIS.

The primary proposal is to:

- Include all 17 year-olds in the youth system, but 17 year-olds charged with an offence with a maximum penalty of at least 14 years imprisonment would be transferred – immediately on their first appearance in the Youth Court – to the relevant adult court;

Further proposals have been developed to address the potential risk that 17 year-olds present to the safety of other young people in the youth justice system, due to the simple fact that they may be significantly older than other young people (i.e. 14 year-olds).

- 17 year-olds deemed a risk to the safety of others in youth justice facilities will be eligible to be remanded in an adult facility – upon a joint application to the Youth Court by the Department of Corrections and MVCOT;
- 17 year-olds who receive a custodial order from the Youth Court will be subject to a joint psychological assessment, by the Department of Corrections and MVCOT, to determine if they should serve their order in an adult or youth facility – to ensure that the safety of other young people in youth facilities is not put at risk;
- the Youth Court, for any 17 year-old, should be able to cancel a Supervision with Residence order and substitute another order (including an order for conviction and transfer to the District Court if available) for failure to comply with the terms of the order or their youth justice plan.

<b>New Proposal</b>	Include all 17 year-olds in the youth system, but 17 year-olds charged with an offence with a maximum penalty of at least 14 years imprisonment would be transferred – immediately on their first appearance in the Youth Court – to the relevant adult court.
<b>Description</b>	<p>All 17 year-olds charged with offences such as aggravated robbery, rape, and wounding with intent to cause grievous bodily harm would be dealt with in the relevant adult court (this process is the same as for murder or manslaughter charges). This group will receive minimal Police youth aid involvement once charged. The majority will be arrested and promptly charged because of the seriousness of these offences. A very small number of cases with this level of offending may not be charged, and will be referred to youth aid (in line with s208(a), such as historic offences).</p> <p>In 2019 88 cases involving 17 year olds charged with an offence with a maximum penalty of at least 14 years imprisonment would be captured by this decision. This is 88 cases that under the original proposal would have been dealt with in the Youth Court – it is in addition to 20 cases involving 17 year-olds charged with offences at this level that would always have been dealt with in the adult system (i.e. under existing settings as currently applied to 14 – 16 year-olds).</p>

<b>Assessment criteria</b>	<b>Positive</b>	<b>Negative</b>
<b>Impact on assumed reduction in reoffending</b>		As the estimated 15% reduction in reoffending would be foregone among these 17 year-olds
<b>Impact on cost-benefit analysis</b>	Benefits and costs will offset each other to an unknown degree. This proposal would improve the average cost-benefit ratio because the benefits from reduced reoffending among this cohort of 17 year-olds is below average (due to their likelihood of incarceration over the next 10 years), while their costs – if dealt with in the Youth Court – would be among the highest. The loss of the benefit of a 15% reduction in reoffending may therefore be more than offset by the cost savings of not dealing with them in the Youth Court. However, for every additional 17 year-old who receives a prison sentence the CAPA protocol will need to be used, which may offset the cost savings from not dealing with them in the Youth Court.	
<b>Impact on Māori</b>		Because they are over-represented in the justice system, this proposal will disproportionately affect Māori. It also will not reduce over-representation of Māori in the justice system by as much as a decision to include all 17 year-olds would have.
<b>Impact on public safety</b>		As the estimated 15% reduction in reoffending would be foregone among these 17 year-olds – which means more reoffending will impact the community in the future than would otherwise occur. However, this impact is minimised by this cohort’s limited size.
<b>Impact on integrity of justice system</b>	This approach – i.e. continuing to treat some serious offending by 17 year-olds in the adult system - is likely to help retain public confidence in the justice system while significant change is implemented.	This proposal could create a risk to public confidence in the justice system and Police. Police charging decisions could result in significantly different consequences for 17 year-olds for similar offences and situations (e.g. 6 years imprisonment vs no conviction). Guidelines to support consistent charging behaviour will be important.
<b>Impact on agencies (practicality)</b>	This proposal will have limited practicality issues for agencies, as this approach is already established for all young people charged with murder or manslaughter. Furthermore, these 17 year-olds are already dealt with in the adult system, so divergence from how other 17 year-olds would be treated	
<b>Alignment with child-centred IIC reforms</b>		This proposal does not align with the child-centred reforms as it is promoting children (as defined by UNCROC) to be treated as adults.
<b>Conclusion</b>	The Ministries of Justice and Social Development are comfortable with this proposal. Given the importance of retaining public confidence in the justice system while implementing such a significant change, the Ministry considers including 17 year-olds in the youth system while transferring this small number of 17 year-olds to the adult system represents a justifiable trade-off. While the estimated reduction in reoffending for this cohort will be foregone, the impact of reoffending by this group is already circumscribed by its small size.	

<b>New Proposal</b>	<b>17 year-olds deemed a risk to the safety of others in youth justice facilities will be eligible to be remanded in an adult facility – upon a joint application by the Department of Corrections and MVCOT to the Youth Court</b>
<b>Description</b>	<p>Currently, all young persons in the youth justice system can only be detained in youth facilities (or, in limited circumstances, Police cells) on remand. This decision would allow 17 year-olds only to be detained in an adult facility (i.e. youth wing or unit of a prison) if they present a significant risk to the safety of others also housed in those facilities.</p> <p>If MVCOT and Corrections jointly determine a 17 year-old should be housed in a youth unit of an adult facility to ensure the safety of other young people housed in a youth justice residence, they would be able to jointly apply to the Youth Court for this to happen – on either the young persons’ first appearance, or on subsequent appearances.</p> <p>In cases where there are no suitable options in Corrections or MVCOT facilities, remand in Police custody will remain an option under s238(1)(e) of the Children, Young Persons and their Families Act.</p> <p>However, youth justice residences remain the default place of detention for young people.</p>

<b>Assessment criteria</b>	<b>Positive</b>	<b>Negative</b>
<b>Impact on assumed reduction in reoffending</b>	Minimal to none. It is only to apply in extreme circumstances, and young people impacted will still receive youth system services while only being remanded in youth wings of adult facilities.	
<b>Impact on cost-benefit analysis</b>		Marginal – there may be some additional costs associated with applications to the Youth Court.
<b>Impact on Māori</b>	Likely limited impact on Māori as small numbers predicted.	
<b>Impact on public safety</b>	Improved. The safety of young people housed in youth facilities will not be jeopardised by 17 year-olds included in the youth system. As adult facilities are more secure, there will be less chance of 17 year-olds who present a serious risk to the safety of others absconding.	
<b>Impact on integrity of justice system</b>	Improved as a result of more secure options for 17 year-olds who are potentially more dangerous than 14 – 16 year-olds. Furthermore, as it is decided by the Youth Court, will ensure is only used when appropriate.	
<b>Impact on agencies (practicality)</b>	This proposal will reduce some demand for use of youth justice residences by MVCOT as those 17 year olds would remand in youth unit operated by Corrections.	<p>Some resource implications for the Department of Corrections, MVCOT and the Youth Court, as a result of the application process – both in agreeing a process for making a joint application, carrying out a joint application, and assessing a joint application.</p> <p>While Corrections may be required to house more remanded 17 year-olds than would otherwise be the case, resource implications are nil as they currently already manage more 17 year-olds than they would under proposed new settings.</p>
<b>Alignment with child-centred IIC reforms</b>		This proposal does not align with the child-centred reforms as it is promoting children (as defined by UNCROC) to be treated as adults.
<b>Conclusion</b>	The Ministries of Justice and Social Development support this proposal. We consider the proposal presents an appropriately targeted approach to the custody of a 17 year-old who presents a serious risk to the safety of others in the youth justice residence (especially noting the difference in age and maturity between a 14 year-olds and a 17 year-old). Furthermore, considering the decision to remand in an adult facility ultimately rests with the Youth Court, any risk that a 17 year-old is remanded inappropriately is minimised.	

<b>New Proposal</b>	All 17 year-olds who receive a custodial order from the Youth Court will be subject to a joint psychological assessment, by the Department of Corrections and MVCOT, to determine if they should serve their order in an adult or youth facility – to ensure that the safety of other young people in youth facilities is not put at risk
<b>Description</b>	<p>Currently, only young people who receive a prison sentence from an adult court are eligible to serve that sentence in an adult facility (i.e. if a young person receives a custodial order from the Youth Court, they cannot serve that order in an adult facility). To determine where young people who receive a prison sentence from an adult court serve that sentence, the Corrections Placements for Young People (CAPA) 2014 Protocol is used. This means that a joint CYF – Corrections psychological assessment of the young person is carried out to determine whether a young person should serve their custodial sentence in a CYF or Corrections facility.</p> <p>This decision would allow for 17 year-olds only who receive a Youth Court custodial order to be considered eligible to serve that order in an adult facility - if they present a significant risk to the safety of others also housed in a youth justice residence. This would also be determined by a revised CAPA protocol (revised to account for this new function). Youth justice residences remain the default place of detention for young people.</p>

Assessment criteria	Positive	Negative
<b>Impact on assumed reduction in reoffending</b>		Potential for a lower reduction in reoffending among those 17 year-olds receiving Youth Court orders who are placed in an adult facility – as they may not rehabilitate as much as if they were placed in a youth justice residence. However, this impact will be minimised by the fact that it is expected only in extreme circumstances will 17 year-olds be placed in an adult facility – youth justice residences remain the default place of detention for all young people.
<b>Impact on cost-benefit analysis</b>		Marginal – MVCOT and Corrections will need to carry out more CAPA assessments, but this is minimised by fewer 17 year-olds receiving Youth Court custodial orders due to automatic transfer of 17 year-olds charged with serious offences (i.e. offences with 14 year + penalty) to an adult court.
<b>Impact on Māori</b>	Likely limited impact on Maori given likely small volumes.	
<b>Impact on public safety</b>	Improved. The safety of young people housed in youth facilities will not be jeopardised by 17 year-olds included in the youth system. As adult facilities are more secure, there will be less chance of 17 year-olds who present a serious risk to the safety of others absconding.	
<b>Impact on integrity of justice system</b>	Improved as a result of more secure options for 17 year-olds who are considered dangerous. Furthermore, as it is based on an existing mechanism which is currently applied to 14 - 16 year-olds, it does not represent a significant change to existing measures.	
<b>Impact on agencies (practicality)</b>		<p>Implementation - some resource implications for Corrections and MVCOT as the CAPA protocol is revised.</p> <p>Application – minimal - the CAPA protocol is already used for all 17 year-olds receiving custodial sentences.</p>
<b>Alignment with child-centred IIC reforms</b>		This proposal does not align with the child-centred reforms as it is promoting children (as defined by UNCROC) to be treated as adults.
<b>Conclusion</b>	The Ministries of Justice and Social Development support this proposal – noting that it is a continuation of the way 17 year-olds who receive adult sentences are currently assessed for placement. As these 17 year-olds are currently housed in adult prisons, it is appropriate to consider if they should continue to be housed in them even though they are dealt with in the youth system – noting that the assessment will be focused only on the risk they present to the safety of others in youth facilities.	

<b>New Proposal</b>	The Youth Court, for any 17 year-old, would be able to cancel a Supervision with Residence order and substitute another order (such as an order for conviction and transfer to the District Court) for failure to comply with the terms of the order or their youth justice plan
<b>Description</b>	<p>Currently, there is already the ability for the Youth Court to substitute a Supervision with Residence order for another order (including an order for conviction and transfer to the District Court for sentencing) if the young person absconds. A new District Court sentence may be appropriate in these circumstances because by absconding the young person has demonstrated that a more secure facility is necessary.</p> <p>Under this proposal, this ability to transfer to the District Court for sentencing would be extended to include 17 year-olds who do not comply with the terms of their plan. However, in addition to absconding, a District Court sentence is likely to only be appropriate if the 17 year-old is violent.</p>

<b>Assessment criteria</b>	<b>Positive</b>	<b>Negative</b>
<b>Impact on assumed reduction in reoffending</b>	Negligible – anticipated to only apply in extreme circumstances	
<b>Impact on cost-benefit analysis</b>	As above	
<b>Impact on Māori</b>	Limited impact given likely small numbers predicted.	
<b>Impact on public safety</b>	Improved. The safety of young people housed in youth facilities will not be jeopardised by 17 year-olds included in the youth system.	
<b>Impact on integrity of justice system</b>	Improved as a result of more secure options for 17 year-olds who are potentially more dangerous than 14 – 16 year-olds. Furthermore, as it is based on an existing mechanism which is currently applied to 17 year-olds, it does not represent a significant change to existing measures.	
<b>Impact on agencies (practicality)</b>	Minimal – is already an established mechanism, and anticipated to only apply in extreme circumstances	
<b>Alignment with child-centred IIC reforms</b>		This proposal does not align with the child-centred reforms as it is promoting children (as defined by UNCROC) to be treated as adults.
<b>Conclusion</b>	The Ministries of Justice and Social Development support this proposal. The proposal essentially tweaks an existing mechanism to ensure that any justifiable reason can lead to an order being substituted for an adult court sentence, especially if a 17 year-old carries is unmanageably violent in a youth justice facility. As the decision ultimately rests with the Youth Court, any possibility that this occurs when not appropriate is adequately minimised.	

## Conclusions and recommendations

The Ministries of Justice and Social Development support implementation of all of the proposals discussed in this paper. We note that all of these proposals are put forward in the context of a decision to include 17 year-olds in the youth justice system generally, and only apply to 17 year-olds. These proposals have only a marginal impact on the benefit, including the cost-benefit, of that decision:

- 17 year-olds generally will still overwhelmingly benefit from the decision;
- those 17 year-olds impacted by decisions relating to the safety of others in youth justice will still receive much of the benefit of the youth justice system; and
- the threshold for the immediate transfer of 17 year-olds to an adult court is set at a justifiably level (in the context of the older age of 17 year-olds), and will apply to approximately only 4% of the total population of 17 year-olds who have actions taken against them by Police.

As well as having only a marginal impact on the benefit of including 17 year-olds in the youth justice system generally, these decisions are expected to contribute to public confidence in the overall decision to include 17 year-olds in the youth justice system. Given the importance of maintaining confidence in the justice system, the proposals assessed in this paper are deemed to be reasonable and proportionate.

We also note that the three options relating to the detention of 17 year-olds are complementary. They all relate to the appropriate detention of 17 year-olds who present a risk to the safety of other young people in youth justice facilities. Each option allows for more secure detention of 17 year-olds in the youth wing or unit of an adult facility, at different stages of detention (i.e. remand, sentencing and once in custody). Furthermore, youth justice residences will remain the default place of detention for young people.

Having an option for more secure detention of 17 year-olds at the various stages of detention will help to ensure that 17 year-olds are detained in youth justice facilities as often as possible consistent with the safety of others. By knowing that there are further options for more secure detention at sentencing and during custody, agencies will not have to make assumptions about a 17 year-olds future behaviour.

## Consultation

The Ministry of Social Development (including Child Youth, and Family and the Investing in Children Programme), the Department of Corrections, the Treasury, and New Zealand Police have been consulted on, and are comfortable with, these proposals.