



## **Diverted from Counsel: Filling the Rights Gap in New Zealand's Youth Justice Model**

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### **Abstract**

This report provides observation and commentary on the following question: What are the merits of increasing access to Youth Advocates, specialised lawyers for young people facing criminal allegations, within the youth justice sector? The release of the *Youth Crime Action Plan 2013-2023* (YCAP) marks a period of reflection and focus on New Zealand's youth justice sector and the landmark *Children, Young Persons and Their Families Act 1989* (CYPFA). This policy analysis reviews CYPFA, and the implementation of youth justice, from a rights-based perspective.

Despite the well-earned positive international reputation of New Zealand's youth justice model, many young New Zealanders miss out on legal advice. Approximately 80 per cent of youth charges are addressed informally, before court proceedings and the appointment of a lawyer. Drawing on interviews and observations from all phases of youth justice—from apprehension through sentencing—the report argues that increasing young people's meaningful access to trained Youth Advocates can ensure their individual rights when faced with state intervention whilst also promoting youth development. Mindful of budgetary restraints, but also with the need to promote equity, the report recommends five specific actions that can align New Zealand's youth justice sector with principles expressed in CYPFA; the UN Convention on the Rights of Children; and positive youth development:

- Appoint a Youth Advocate to each child or young person within twenty four hours of arrest
- Require the presence of a Youth Advocate for all police interviews with young people
- Provide a legal-advice scheme for young people offered alternatives to prosecution as well as independent oversight of the alternative action programme
- Invite Youth Advocates to each "intention to charge" family group conference
- Update and promulgate practice standards for Youth Advocates

For Massachusetts, the New Zealand experience—with the protections of access to legal advice-- offers three important opportunities to adapt practice:

- In lieu of lawyer-driven courtroom based plea bargaining, use family group conferencing to reach dispositional agreements
- Upon the successful completion of a state intervention plan, empower judges to deem that the charges had never been filed
- Develop state-wide principles that encourage and govern pre-court resolution of charges

**About the author**

Ziyad Hopkins is a Boston, Massachusetts based public defender with the Committee for Public Counsel Services, Youth Advocacy Division.

Ziyad has spent his seven month Ian Axford Fellowship based at the Ministry of Social Development, Youth Policy Team, and been co-hosted with the Ministry of Justice.