

Oranga Tamariki (Youth Justice Demerit Points) Amendment Bill

Member's Bill

Explanatory note

General policy statement

This Bill introduces structured interventions for youth offending intended to improve behaviours and increase accountability and transparency within the youth justice system.

A youth justice demerit points system will deal with a pervasive lack of responsibility whereby many youth continue to re-offend knowing they can avoid serious sentences or a criminal record. They are continuously recycled through a complex and largely ambiguous system. Two identical cases may be treated entirely differently depending on various moving factors and the subjectivity of those making decisions. Under existing diversion practices:

- 60% of youth offenders re-offend;
- 40% of youth offenders re-offend 3 or more times;
- 14% of youth offenders re-offend 6 or more times; and
- 80% of youth offenders do not set foot in the Youth Court.

The proposed demerit points scheme has weighted interventions at each offence, based on the existing Justice Seriousness Scale. Accumulated demerit points will identify offenders before they become habitual, and ensure more intensive intervention at every stage to modify their behaviour.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that the bill amends the Oranga Tamariki Act 1989 (the **principal Act**).

Clause 4 amends section 2(1) of the principal Act by inserting 4 new definitions, of justice sector seriousness score scale, Limited Service Volunteer programme, Youth Employment Training and Education programme, and youth justice demerit points.

Clause 5 consequentially amends the cross-heading above section 209.

Clauses 6 and 7 amend sections 209 and 210, respectively, by removing references to young persons.

Clause 8 inserts *new sections 210A to 210I*, which relate to introducing a system of youth justice demerit points.

Clause 9 consequentially amends the cross-heading above section 211.

Clauses 10 to 15 make amendments to the principal Act that are necessary as a result of *new sections 210A to 210I* (inserted by *clause 8*).

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Oranga Tamariki (Youth Justice Demerit Points) Amendment Act **2020**.
- 2 Commencement** 5
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act**
This Act amends the Oranga Tamariki 1989 (the **principal Act**).
- 4 Section 2 amended (Interpretation)** 10
In section 2(1), insert in their appropriate alphabetical order:
- alternative action** means action taken by a member of Police youth aid working with the young person and his or her family to establish a plan to deal with that young person's offending
- justice sector seriousness score scale** means the scale held by the Ministry of Justice that assigns a numeric score for every criminal offence in New Zealand 15

	Limited Service Volunteer programme means the programme, designed to meet the motivational and training needs of New Zealanders aged from 17 to 25 years who are receiving a benefit from the Ministry of Social Development, that is situated in the New Zealand Defence Force and linked with and monitored by the Ministry of Social Development	5
	Police youth aid means the section of the New Zealand Police that is responsible for managing Police services for young persons who have committed offences or who are at risk of committing offences or who may be in need of care and protection	
	Youth Employment Training and Education programme means the programme, designed to meet the vocational needs of New Zealanders aged from 15 to 17 years, that is situated in the New Zealand Defence Force and linked with and monitored by the Ministry of Social Development, the Ministry of Education, and the New Zealand Qualifications Authority	10
	youth justice demerit points means the youth justice demerit points referred to in section 210B	15
5	Cross-heading above section 209 amended In the cross-heading above section 209, delete “ <i>and formal Police cautions</i> ”.	
6	Section 209 amended (Consideration of warning as alternative to prosecution) In section 209, delete “or young person” in each place.	20
7	Section 210 amended (Administration of warning) In section 210, delete “or young person” in each place.	
8	Sections 210A to 210I and cross-heading inserted After section 210, insert:	25
	<i>Youth justice demerit points system</i>	
	210A Purpose The purpose of the youth justice demerit points system is to provide for a consistent system of intervention for young persons who have accepted full responsibility for committing an offence or who are charged with committing an offence, in order to—	30
	(a) identify, deter, and penalise repeat offending by young persons; and	
	(b) increase accountability and transparency within the youth justice system.	
	210B Enforcement officer to allocate youth justice demerit points	
(1)	An enforcement officer must—	35
(a)	allocate youth justice demerit points to a young person who has—	

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- (i) accepted full responsibility for committing an offence; or
 - (ii) been convicted of an offence; and
 - (b) clear youth justice demerit points from a young person's record in accordance with **section 210D(3)**; and
 - (c) use any youth justice demerit points accumulated by a young person as evidence and consideration for any subsequent proceedings taken against the young person for any offence committed prior to the young person attaining the age of 17 years. 5
- (2) The enforcement agency must maintain a record of all the youth justice demerit points that a young person has accumulated and any youth justice demerit points that a young person has had cleared, until the young person attains the age of 17 years. 10
- (3) An enforcement officer must allocate youth justice demerit points within the following bands:
- (a) low offending: between 1 and 40 youth justice demerit points: 15
 - (b) low-medium offending: between 41 and 60 youth justice demerit points:
 - (c) medium offending: between 61 and 80 youth justice demerit points:
 - (d) medium-high offending: between 81 and 99 youth justice demerit points:
 - (e) high offending: 100 youth justice demerit points.
- (4) An enforcement officer must determine which band is applicable as follows: 20
- (a) **low offending** means an offence that has a score of 14 or below on the justice sector seriousness score scale:
 - (b) **low-medium offending** means an offence that has a score between 15 and 30 on the justice sector seriousness score scale:
 - (c) **medium offending** means an offence that has a score between 31 and 120 on the justice sector seriousness score scale: 25
 - (d) **medium-high offending** means an offence that has a score between 121 and 365 on the justice sector seriousness score scale:
 - (e) **high offending** means an offence that has a score of 365 or above on the justice sector seriousness score scale. 30
- (5) If a young person is found to have committed 2 or more offences arising out of the same set of circumstances, an enforcement officer must allocate youth justice demerit points only in respect of the offence that carries the greater or greatest number of points.
- (6) Youth justice demerit points allocated under **subsection (1)(a)** have effect on and from the date of the commission of the offence for which the points are allocated. 35

210C Actions required if youth justice demerit points are accumulated

- (1) An enforcement officer must take the actions specified in **subsections (2) and (3)** when a young person has accumulated 1 or more youth justice demerit points.
- (2) If a young person has accumulated—
 - (a) between 1 and 40 youth justice demerit points, an enforcement officer must—
 - (i) warn the young person; and
 - (ii) refer the young person to the department if the officer deems it necessary; or
 - (b) between 41 and 60 youth justice demerit points, an enforcement officer must—
 - (i) arrange for Police youth aid to take alternative action; and
 - (ii) refer the young person to the department if the officer deems it necessary; or
 - (c) between 61 and 80 youth justice demerit points, a care and protection co-ordinator must convene a family group conference under section 20; or
 - (d) between 81 and 99 youth justice demerit points, an enforcement officer must—
 - (i) arrange for 1 or more charges to be brought in court; and
 - (ii) arrange for 1 or more charges relating to any subsequent offending to be brought in the District Court; or
 - (e) 100 or more youth justice demerit points, an enforcement officer must arrange for formal charges to be brought in the District Court.
- (3) An enforcement officer must provide a notice in the terms described in **sections 210F and 210G**.
- (4) **Subsection (2)(d)** must be read in conjunction with **section 210E**.

210D Programme available where a young person has accumulated between 1 and 80 youth justice demerit points

- (1) An enforcement officer must offer a young person who has accumulated between 1 and 80 youth justice demerit points an option to participate in the Limited Service Volunteer programme.
- (2) A young person who successfully completes the Limited Service Volunteer programme as a consequence of an offer made to them under **subsection (1)** must provide the enforcement agency with evidence that verifies that the person has successfully completed the programme.

- (3) An enforcement officer must clear any accumulated youth justice demerit points as soon as reasonably practicable from the record of a young person who has provided the evidence specified in **subsection (2)**.
- (4) A young person may have his or her record cleared of accumulated youth justice demerit points in accordance with **subsection (3)** only once. 5
- (5) A young person who has had his or her record cleared of accumulated youth justice demerit points in accordance with **subsection (3)** may still accumulate youth justice demerit points in accordance with **section 210B**.
- 210E Programmes available where a young person has accumulated between 81 and 99 youth justice demerit points** 10
- (1) This section applies if:
- (a) 1 or more charges have been brought against a young person in accordance with the requirements of **section 210C(2)(d)(i)**; and
- (b) the young person is appearing at an initial hearing to enter a plea to the charge or charges. 15
- (2) The court may, in its discretion, offer a young person an option to apply to participate in either—
- (a) the Limited Service Volunteer programme; or
- (b) the Youth Employment Training and Education programme.
- (3) A young person who successfully completes one of the programmes referred to in **subsection (2)** as a consequence of an offer made to them under **subsection (2)** must provide the court with evidence that verifies that the person has successfully completed the programme. 20
- (4) An enforcement officer must withdraw all charges that are before the court as soon as reasonably practicable if the young person to whom the charges apply has provided the evidence specified in **subsection (3)**. 25
- (5) The court must proceed to a hearing of the charge or charges that are before the court if, as a consequence of an offer made in accordance with **subsection (2)**, a young person chooses to participate in one of the programmes referred to in **subsection (2)** and does not subsequently successfully complete that programme. 30
- (6) An enforcement officer must arrange for 1 or more charges to be brought in court if a young person who has previously completed one of the programmes referred to in **subsection (2)** as a consequence of an offer made by the court in accordance with **subsection (2)** subsequently accumulates 1 or more youth justice demerit points. 35
- (7) An enforcement officer must arrange for 1 or more charges to be brought in the District Court if a young person who has previously participated in, but not completed, one of the programmes referred to in **subsection (2)** as a conse-

quence of an offer made by the court in accordance with **subsection (2)** subsequently accumulates 1 or more youth justice demerit points.

210F Notice of 1 or more accumulated youth justice demerit points

- (1) An enforcement officer must provide a notice of the matters specified in **subsection (3)** to— 5
- (a) a young person who has accumulated 1 or more youth justice demerit points; and
 - (b) the young person’s parent or guardian.
- (2) The notice must be provided as soon as reasonably practicable after the enforcement officer has allocated youth justice demerit points to the young person. 10
- (3) The notice must refer to the following matters:
- (a) the purpose of the youth justice demerits point system, as specified in **section 210A**;
 - (b) the offence that the young person has accepted full responsibility for committing or has been convicted of committing: 15
 - (c) the number of youth justice demerit points that have been allocated to the young person for that offence:
 - (d) the actions that will be taken as a consequence of the number of youth justice demerit points allocated, as provided for in **sections 210C to 210E**: 20
 - (e) the consequences of further youth justice demerit points being allocated to the young person:
 - (f) the rights of appeal against any youth justice demerit points applied:
 - (g) where applicable, the provision in **section 210D** for a young person’s record to be cleared of youth justice demerit points. 25

210G Notice of 41 or more accumulated youth justice demerit points

- (1) An enforcement officer must provide a notice of the matters specified in **subsection (3)** to—
- (a) a young person who has accumulated 41 or more youth justice demerit points subsequent to having previously been provided with a notice under **section 210G(1)** for having accumulated between 1 and 40 youth justice demerit points; and 30
 - (b) the young person’s parent or guardian.
- (2) The notice must be provided as soon as reasonably practicable after the enforcement officer has allocated youth justice demerit points to the young person. 35
- (3) The notice must refer to the following matters:

(a)	the offence that the young person has accepted full responsibility for committing or has been convicted of committing:	
(b)	the number of youth justice demerit points that have been allocated to the young person for that offence:	
(c)	the actions that will be taken as a consequence of the number of youth justice demerit points allocated, as provided for in sections 210C to 210E :	5
(d)	the consequences of further youth justice demerit points being allocated to the young person:	
(e)	the rights of appeal against any youth justice demerit points applied:	10
(f)	where applicable, the provision in section 210D for a young person's record to be cleared of youth justice demerit points.	
210H Validity of notice		
(1)	This section applies to a notice provided under section 210F(1) or section 210G(1) .	15
(2)	No allocation of youth justice demerit points accrual is invalid merely because—	
(a)	a notice was not provided to the young person or the young person's parent or guardian; or	
(b)	a notice was not received by the young person or the young person's parent or guardian.	20
(3)	If a notice is sent by ordinary post addressed to the young person and the young person's parent's or guardian's last known place of residence or business or postal address, then, unless the contrary is shown, the notice is provided when the notice would have been delivered in the ordinary course of post, and in proving service it is sufficient to prove that the notice was properly addressed and posted.	25
210I Requirement to visit young person's residence		
(1)	An enforcement officer must take all reasonable steps to visit the place of residence of a young person who has accumulated 1 or more youth justice demerit points, in order to—	30
(a)	orally inform the young person and the young person's parent or guardian of the matters specified in section 210F(3)(b) to (d) ; and	
(b)	discuss with the young person and the young person's parent or guardian the young person's education, employment, living arrangements, and any other matter that an enforcement officer may reasonably consider to be relevant to identifying any factors that may have contributed to the young person's offending.	35

- (2) The visit must be undertaken within 10 working days of the notice referred to in **section 210F(1)** being provided.
- 9 New cross-heading above section 211 inserted**
Above section 211, insert:
- Formal Police cautions* 5
- 10 Section 245 amended (Proceedings not to be instituted against young person unless youth justice co-ordinator consulted and family group conference held)**
In section 245(1), after “may be filed unless”, insert “the young person has accumulated 81 to 99 youth justice demerit points or”. 10
- 11 Section 246 amended (Procedure where young person arrested and brought before court)**
In section 246(a), replace “denies the charge” with “either denies the charge or has a total of 81 to 99 demerit points”.
- 12 Section 272 amended (Jurisdiction of Youth Court and children’s liability to be prosecuted for criminal offences)** 15
- (1) In section 272(3), replace “Any young person” with “Subject to **subsection (3A)**, any young person”.
- (2) In section 272, after subsection (3), insert:
- (3A) If a young person who commits an offence has had 1 or more charges relating to a previous offence heard in the Youth Court, any charges relating to the new offence must be heard in the District Court. 20
- 13 New section 279A inserted (Court to consider youth justice demerit points)**
After section 279, insert:
- 279A Court to consider youth justice demerit points** 25
Before hearing the charge, a court must consider a young person’s record of youth justice demerit points, in proceedings under this Part in respect of a charging document filed against the young person for an offence.
- 14 Section 294 (Demerit points)**
Replace the heading to section 294 with “**Traffic demerit points**”. 30
- 15 New section 340A and cross-heading inserted**
After section 340, insert:

Youth justice demerit points system

340A Registrar to notify enforcement officer of youth justice demerit points

The Registrar of the Youth Court must notify the enforcement agency of all convictions arising from matters before the court.