

IV Children's Court and Te Koro Akaau

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1. The Children's Court

1.1 Jurisdiction and legislation

Convention on the Rights of the Child (CRC):

- [Art 37](#): Right to freedom from torture, degrading treatment or punishment, no capital punishment or life imprisonment for those under 18 years; no detention or imprisonment of those under 18 years except as a matter of last resort and for the shortest possible time. Where a person under 18 years is detained or imprisoned, they must be held in a facility separated from adults and with access to age-appropriate services and supports, including family visits. Detained children must be provided with free access to legal representation and be able to challenge the lawfulness of their detention/imprisonment.
- [Art 40](#): Any person under 18 years accused of a crime has the same legal rights as adults (right to silence, presumed innocence, right to a swift trial before a competent independent tribunal, right to non-self-incrimination and to examine witnesses etc) and additionally, the right to be diverted from the criminal justice system wherever possible, and where not, the right to be tried through a process that takes into account the child's age, to have parents/guardian present during justice processes, right to free interpreter if needed, right to privacy being protected throughout the legal process, right to legal representation.

Convention on the Rights of People with Disabilities (CRPD):

- [Art 5](#): (non-discrimination), [Art 12](#) (equality before the law), [Art 13](#) (access to justice, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages), [Art 14](#), (prohibition on unlawful or arbitrary detention, existence of a disability shall in no case justify a deprivation of liberty. Reasonable accommodations must be provided to any people with disabilities who are detained or imprisoned).

Parts [II](#) and [III](#), [Prevention of Juvenile Crime Act 1968](#) (PJCA); [Prevention of Juvenile Crime Amendment Act 2000](#) (PJCAA/2000); [Prevention of Juvenile Crime Amendment Act](#) (PJCAA/2007).

Children may come to the Children's Court either as a "child in need" or if they have allegedly committed a crime. However, a criminal offence against a child by an adult is heard in the criminal division of the High Court, not the Children's Court.

Both types of child-related matters go initially to the Juvenile Crime Prevention Committee (the Committee), established under [s 4](#) PJCA (see below).

The Children's Court is a division of the High Court and a judge of the High Court has jurisdiction in the Children's Court: [s 20](#) PJCA; [s 20](#) PJCAA (2000).

The Children's Court deals with all criminal offences committed by children except for murder or manslaughter, and matters relating primarily to children: [s 21](#) PJCA.

Only a judge or justice who has been appointed under s [20](#) PJCA and s [20A](#) PJCAA (2000) may exercise jurisdiction in the Children's Court. But any judge or justice may do all necessary acts preliminary to the hearing such as adjourning, remanding the defendant or granting bail within a closed court as s [24](#) (closed court proceedings) applies: s [20](#) PJCA.

Children are defined as a boy or girl under the age of 16 years: s [2](#) PJCA. If the child committed the offence whilst under 16 years but has since turned 16 years, the matter is still dealt with in the Children's Court: s [26](#) PJCA.

A young person is anyone under the age of 17 years: ss [30](#), [36](#) PJCA. It has been earlier noted that the provisions providing for children aged 16 and 17 (ie under the age of 18) to be treated as adults, are likely to breach the Cook Islands' obligations under the CRC and so courts should exercise their discretions to the maximum degree to take into consideration a 16 or 17 year old defendant's CRC rights at all stages of the case, including opportunities for diversion and ensuring:

- they are granted bail and not detained;
- their privacy to maintained through closed court hearings and removal of identifying information from the public listings and judgment;
- they have access to free legal representation throughout;
- they are able to understand and participate in the proceeding; and
- tailored community-based sentences are provided to maximise rehabilitation opportunities.

There is caselaw supporting reference and use of the [Convention on the Rights of the Child](#) outside of the context of the [Family Protection and Support Act 2017](#), for sentencing a young offender. See [Police v Vakatini \[2017\] CKHC 34; CR49.2017 \(22 September 2017\)](#). The defendant was 15 years old at the time of the alleged burglaries but after he turned 16 his case was transferred to the High Court for him to be sentenced as an adult offender. The Crown prosecutor and the defendant's lawyer submitted he be provided with a non-custodial sentence in accordance with the Convention on the Rights of the Child, and the Court decided to do so, sentencing him to two years' probation and other conditions.

If you are unsure of the age of any child or youth, in the absence of sufficient evidence you may fix their age, which will then be deemed to be the true age of such child or young person for any matters under this Act: s [41](#) PJCA.

1.2 The powers of the Children's Court for young offenders

ss [21](#), [26](#) PJCA.

The Children's Court (the Court) does not have power to convict a child of an offence and sentence them. Rather, when a charge against a child is proven, the Court may – after considering their parents, their environment, history, education, mental state, disposition, and any other relevant matters – place the child under the supervision of a community youth officer: s [26\(1\)](#) PJCA.

Where a charge of murder or manslaughter is brought against a child or young person it must be dealt with in the High Court. The Children's Court has no jurisdiction in such cases: s [21\(2\)](#) PJCA. When dealing with such a child, the Children's Court may order their parents or guardians to pay any costs or damages incurred by or through the offence and this may be enforced as if it were a fine: s [26\(2\)](#) PJCA.

Where the child is charged with any offence, at any time before a final decision has been given, having regard to the gravity of the offence and the public interest, the Children's Court may decline to deal with the offence: s [26\(4\)](#) PJCA. The Court must note this on the Information with their reasons. Courts should exercise this discretion sparingly given the notable gaps in the rights of 16 and 17 year old children between the CRC and the provisions of the PJCA.

In that case, the Court will adjourn the Information for hearing "de novo" (as if the same had not previously been heard or otherwise dealt with) by the High Court under its criminal jurisdiction: s [26\(4\)-\(6\)](#) PJCA.

1.3 Children's Court is closed to the public

s [24](#) PJCA.

All hearings in the Children's Court are closed to the public, and only the following people may attend:

- any officer or member of the Court;
- the persons immediately concerned with the proceedings, such as the parents or guardians;
- or any other person whom the Court admits as the personal representative of the child, any community youth officer, any person representing a social welfare agency engaged in work for the benefit of children;
- any other person specially permitted or required by the Court to be present.

Unless you consent, no one can publish a report of any proceedings taken before a Children's Court and it is illegal to publish the name of any child, or any other name or particulars likely to lead to the identification of the child. This includes public court listings and any information which could identify the defendant or any child witness in the judgment.

1.4 Community youth worker's report

s [23](#) PJCA.

A community youth officer must have an opportunity to first investigate the circumstances of the case and to report to the Court before any case is heard or determined in the Court.

1.5 Sitting as a justice in the Children's Court

s [20A Prevention of Juvenile Crime Act 1968 \(as inserted by PJCAA 2000\)](#).

As a justice, you may only sit in the Children's Court if appointed to do so by the King's Representative acting on the advice of the Minister.

But you may exercise jurisdiction to do all necessary acts preliminary to the hearing, including adjournment, releasing the young persons on bail or remanding them in custody.

See "[Bail applications](#)" to find out more about bail.

1.6 Conducting the Children's Court

ss [22](#), [37](#) PJCA.

You need to run the court in a way that is sensitive to the situation of the child. This includes:

- Prioritising cases and preventing delays in cases involving children, as delays have a disproportionately harmful impact on children.
- Adapting your tone, manner, language and being conscious of your height so that the child can best understand and participate in the proceeding.
- Consider whether hearing the case from the bar table rather than the bench or re-arranging the court room might help to create a less formal environment to enhance the understanding and participation of the child.
- Ensure that children coming to court are accompanied by a support person.
- Ensure arrangements are made for them to be met by court staff, shown the court room where the hearing will take place, have what will happen explained, and then accompanied to a separate waiting area away from others attending court.
- Ensure that any publicly displayed listing of the case does not include the child's name or other identifying information, including the judgment.

You should insist on the parents or guardians being present. If the parents are not there, ask why, and if the reason given is not sufficient – for example, that the parent is at work or has not bothered to attend – you should adjourn and require the parents or guardians to attend by issuing a summons.

Any parent, guardian or custodian or other person who is summoned to appear in the Children's Court may at the hearing be examined in respect of the upbringing and control of the child: ss [22\(1\)](#), [\(5\)](#) PJCA.

In any proceedings before the Court, children should not be required to give evidence on oath under s [37](#). Instead, they must declare:

"I promise to speak the truth, the whole truth, and nothing but the truth."

1.7 Trivial offences

s [25](#) PJCA.

You can decide, after considering the community youth officer's report, that the matter is trivial and dismiss the Information, in which case it is treated as if it had never been laid.

2. Criminal justice for young offenders who have acknowledged their offending: Te Koro Akaau

2.1 Introduction

ss [22](#), [36](#) PJCA.

If an Information is laid against a child in respect of any offence, you may issue a summons addressed to any parent, guardian or custodian of the child requiring them to appear before the Children's Court with the child at a time to be named in the summons: s [22\(1\)](#) PJCA.

If any young person who has attained 16 years of age but is not more than 17 years of age appears before the High Court charged with any offence, the High Court may either:

- refer the case to the Children's Court. The Children's Court has the power to deal with the case, and may deal with the person as charged in the manner provided by s 26 of the Act as if they were a child: s [36\(1\)](#) PJCA; or
- make any order that could be made by a Children's Court if the case were referred the Children's Court: s [36\(2\)](#) PJCA.

If the offender **acknowledges their offence(s)**, the justice sitting in the Children's Court or the High Court judge, may refer the child or youth offender to Te Koro Akaau or the Children's Community Court: cl [1](#), MOU.

If not, then the child or youth offender is dealt with in the Children's Court or the High Court. As noted earlier, all efforts should be made by courts to take into account the age of any child, including 16- and 17-year-olds and to apply to them the most beneficial procedures available in the criminal justice process. This approach of avoiding punitive measures which will continue to impact their future life opportunities (such as criminal convictions), helps to maximise opportunities for their rehabilitation and a 'fresh start' to get back on track as a law-abiding person. The Te Koro Akaau Children's Community Court is a progressive model of justice which should be applied as widely as possible to all children, including those aged 16 or 17 who have committed minor offences.

2.2 Te Koro Akaau Children's Community Court

Since 2014, the Te Koro Akaau operative and procedures have been adopted in the Children's Court under the "[Memorandum of Understanding Te Koro Akaau](#)" (MOU) dated 24/9/2014 (MOU). This is set out in the Quick guides.

The Te Koro Akaau operates within the legal framework of the High Court and the Children's Court: cl [8](#) MOU.

The Ministry of Justice administers Te Koro Akaau which offers a more inclusive, restorative and community justice approach to dealing with juvenile and youth offenders: cl [1](#), Background, cl [7](#) MOU.

The Children's Court is still the primary court for dealing with child and youth offenders referred to it by the High Court: cl [2](#), Background, MOU.

2.3 Diversionary process

[Schedule A](#) MOU.

The aim of the Te Koro Akaau process is to see if the child or youth offender appearing before the Children's Court may receive a discharge without conviction if they have performed all aspects of a diversionary plan (kaveinga): cl [3](#), Background, MOU.

Clause [13](#) and [Schedule A](#) of the MOU sets out the following process:

- Te Koro Akaau remands the case to the community youth officer to commence the process.
- An Uipaanga Kopu Tangata (family group conference) is then organised and held before the next court date. The community youth officer will chair the conference and record any agreed recommendations.
- A kaveinga or diversionary plan (based on the best interests of the child and the public interest) is prepared and tabled at the Uipaanga Kopu Tangata.
- The child or young person and their family or support group plus others (see below) consider and agree to the kaveinga.
- The kaveinga is then presented to Te Koro Akaau who either accept or reject the kaveinga.
- If rejected, Te Koro Akaau may order another Uipaanga Kopu Tangata to be convened; or deal with the case by way of sentencing.
- If accepted, the kaveinga is monitored by Te Koro Akaau, and dates are set for review and completion of the kaveinga.
- Te Koro Akaau is given monthly progress updates until completion of the kaveinga.
- At the completion court date Te Koro Akaau may either discharge the child or young person or further sentence them.

2.4 People who may attend the Uipaanga Kopu Tangata

A family-based approach is an important part of the process, so the child or young person and their family or support group attend the Uipaanga Kopu Tangata. Other people who may attend the Uipaanga Kopu Tangata include:

- victims of offences,
- social worker(s), police officer(s), probation officer(s),
- the young person, their family and any family supporters,
- a youth advocate – either lay or professional or both,
- community (village, oire, tapere, or suchlike) support through aronga mana and religious leaders: cl [14\(a\)](#) MOU.

Note: A case may be referred back to the Children's Court at any stage if it is no longer appropriate to use this process.

2.5 Purposes of Uipaanga Kopu Tangata

The purposes of the Uipaanga Kopu Tangata are to:

- discuss the circumstances of the offending;
- seek the views of those in attendance;
- consider whether a reconciliation or other outcome may be arrived at by the parties affected: cl [9\(a\)](#) MOU.

A recommended outcome may include payment to any victims for reparation, property loss, medical expenses incurred, or any other reasonable loss suffered by the victim due to the young offender's actions: cl [9\(b\)](#) MOU.

2.6 Kaveinga principles

The kaveinga and any recommendations must consider the following principles under cl [11](#) MOU:

- Accountability by the young offender for the wrong that has been done.
- Rehabilitation of the young offender and assessing the suitability of their current living arrangements.
- The involvement of the young offender's family, church, chief, and village.
- The public interest in protecting the community.
- An acknowledgement of the views of the victim, and to restoring the position of the victim according to Cook Islands custom and tradition.
- The putting in place of a plan to rehabilitate the young offender that:
 - fosters responsibility by the young offender; and
 - promotes their self-esteem, cultural awareness and understanding.

3. Sentencing young offenders

You may choose between the following sentencing options for children and young offenders:

- supervision orders;
- community service orders;
- probation orders.

3.1 Supervision orders

ss [27–29](#) PJCA.

You may make a supervision order placing a child under the supervision of a community youth officer for a term up to 3 years in total (using [Form No. 4](#) in the Schedule). You may also include any conditions for the child to follow during their supervision as you think necessary to ensure their good conduct or to prevent future offending and/or to pay any costs or damages incurred by or through the offence (if any) committed by the child. It is not necessary to specify any community youth officer in the supervision order: s [27](#) PJCA.

The community youth officer may bring the child back before the Children's Court if either:

- a child fails to follow any instructions of the community youth officer or any condition(s) imposed by that officer or the Court; or
- they are not satisfied with the conduct of the child or with the conditions under which they are living.

You may, as appropriate:

- direct that the child be sentenced by the High Court for the initial offence for which the supervision order was made; or
- make such further order for the maintenance, care and control of the child as necessary in the circumstances: s [28](#) PJCA.

The community youth officer, or the child's parents, guardian or others supervising the child, may apply to the Court to review the supervision order. You may:

- cancel the order if it has been 12 months since order was made and subject to such conditions you think fit to impose; or
- refuse the application: s [29](#) PJCA.

No further application may be made within 6 months after the date of the refusal, except by a community youth officer.

3.2 Community service orders

ss [8–9](#), [13](#) Criminal Justice Amendment Act 1976 (CJAA).

You may make a community service order for a term up to 12 months, if the offender is not less than 13 years of age and has been found guilty of an offence that carries a prison sentence (even if not convicted); or is liable to imprisonment for non-payment of any fine imposed on them previously: ss [8–9](#) CJAA.

You must first consider the report of a probation officer (on the offender's character, personal history, and any other relevant circumstances) before you may order community service: s [13\(1\)](#) CJAA.

If you do not consider the probation officer's report, although the community service sentence is not invalidated, the defendant or the prosecutor may at any time apply to have the sentence reviewed: s [13\(2\) – \(3\)](#) CJAA.

You may also impose any fine or other legal penalty, but no other sentence: s [8\(3\)](#) CJAA.

You may suspend, vary or cancel the community service order on application by the young offender within 7 days of the service of the order: s [9\(5\)](#) CJAA.

3.3 Probation orders

ss [30](#), [31](#) PJCA; ss [10](#), [13](#) Criminal Justice Amendment Act 1976 (CJAA).

You may make an order for probation at the same time as:

- a community service order, for an offender over the age of 13 years, for a period of up to 1 year after the expiry of their term of community service: ss [10\(1\)–\(2\)](#), [12–13\(1\)](#) CJAA; or
- a supervision order, so that when the young person reaches 17 years of age, the supervision is to be replaced by probation for up to 2 years: s [30\(1\)](#) PJCA.

The registrar must notify the Secretary for Justice and the probation officer in whose district the Court office is situated of this order. The community youth officer who is supervising must notify the probation officer in whose district that person then resides when the youth reaches 17 years of age: s [30](#) PJCA; s [10\(3\)](#) CJAA.

A supervision order may still be reviewed under s [29](#) while that child is still under the supervision of a community youth officer, even with a probation order in force. If on review the supervision order is cancelled, then the order for probation is also cancelled: s [30](#) PJCA.

The supervising community youth officer may apply to the Children's Court to cancel the supervision order and substitute a probation order for a period between 1–2 years as the Court specifies. You may grant or refuse the probation order, having regard to the youth's behaviour while under the supervision of the community youth officer and any other circumstances of the case: s [31](#) PJCA.

3.4 Conditions of probation

s 32 PJCA; ss 7–10, ss 12–13 Criminal Justice Act 1967 (CJA); s 11 Criminal Justice Amendment Act 1976 (CJAA).

The conditions of probation in s 7 of the CJA (except subs 7(a)), apply to any probation order made in the Children's Court: s 32 PJCA.

In addition, the person on probation must report to a probation officer in the district in which they live, within 48 hours after beginning probation.

The probation officer who is responsible for that person must issue a probationary licence with the conditions to follow during the term of probation.

You may also order all or any of the additional conditions specified in ss 8(1)(e) and (i) of the CJA: s 33 PJCA.

See "[Sentencing](#)" to find out more about probation conditions.

3.5 Other provisions of the Criminal Justice Act

s 34 PJCA.

The following sections of the Criminal Justice Act apply to a youth probation order:

- s 9 (variation or discharge of probation);
- s 10 (breach of probation conditions);
- s 12 (effect of subsequent sentence on probation); and
- s 13 (discharge on expiry of probation).

Any necessary changes apply as if the youth had been released on probation on the day on which the term of probation began, including:

- every application must be made to the High Court in its criminal jurisdiction or a Children's Court, as the age of the person may require;
- the term of probation must not be extended beyond the end of 2 years from the date on which the term began: s 34 PJCA.

See "[Sentencing](#)" to find more about probation orders.

4. Child in need

4.1 Juvenile Crime Prevention Committee

[Part II](#) PJCA; s [5](#) Prevention of Juvenile Crime Amendment (No. 2) Act 2007 (PJCAA(No 2)/2007).

Where any police officer, community youth officer, school inspector, visiting teacher, head teacher, or chairperson of a village committee has reason to believe that any child is delinquent, neglected, not under proper control, is persistently truanting or otherwise engaged in troublesome or mischievous behaviour, or is living in an environment that is detrimental to their physical or moral well-being, they may notify the Secretary of their belief and reasons for that opinion. They must supply details of:

- the name of the child,
- the names of the parents or guardians of the child or the person in whose custody the child is currently,
- the home address of the child and their parents, guardians or custodians,
- details of the complaint: s [8](#) PJCA.

The Committee is made up of three members: the Chairperson, who is appointed by the Solicitor-General, and two members appointed by the Minister of Internal Affairs (the Minister). The quorum (enough members to hold a meeting) for meetings is two: s [5](#) PJCA; s [5](#) PJCAA (No. 2)/2007).

The Committee has extensive powers and most matters about children are settled by the committee. To find out more about the Committee please refer to [Part II](#) of PJCA.

4.2 Child in need and the Children's Court

ss [22–23](#), [26](#) PJCA.

Although a child in need is usually dealt with by the Juvenile Crime Prevention Committee, there is also power to bring the child immediately before the Children's Court, where a complaint is made in the Court by a constable or a community youth officer that a child is neglected, delinquent, is not under proper control, or is living in an environment detrimental to their physical or moral well-being (using [Form No. 3](#) in the Schedule to PJCA).

The Family Protection and Support Act is a piece of legislation that aims to protect family members including children from violence and safeguard the welfare of children. Part 5 of this Act specifically addresses the care and protection of children by ensuring that they are not exposed to any harm, abuse, or neglect, and that their best interests are given utmost priority.

On the other hand, Section 22 of the PJCA serves as a mechanism to protect the best interests of the child in cases of neglect. This provision allows for a complaint to be filed against a parent who is neglecting their child, which will then require the parent to appear in court. The court will then determine the best course of action to ensure the well-being of the child.