

Access to justice for children and young people in Aotearoa New Zealand

Working paper No.6 – Girls and young women

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Introduction

Context

This working paper forms part of an overall research project exploring the extent to which children and young people are able to access to justice in Aotearoa New Zealand. The findings of the research study are presented in three parts:

Part One contains my analysis of data from key informant interviews with adults with expertise in the justice system and/or working with particular groups of children and young people, as well as from a survey of children and young people aged 14 to 24.

Part Two discusses the meaning of access to justice and other related concepts such as legal empowerment as well as the specific meaning of access to justice for children and child-friendly justice. It then discusses the justice problems experienced by children and young people generally, as well as common barriers to accessing justice. The analysis in this report is based on my review of the research and literature in New Zealand and overseas as well as analysis of information obtained from the government and Crown entities.

This report is supported by a series of ten working papers discussing the justice problems and barriers to accessing justice experienced by particular groups of children and young people and is broken up into a series of reports relating to groups identified as likely to experience differing justice problems or barriers to access. These working papers are:

1. Children and young people in care or with care experience;
2. Disabled and neurodiverse children and young people;
3. Tamariki and rangatahi Māori;
4. Pacific children and young people;
5. Rainbow and takatāpui children and young people;
6. Girls and young women;
7. Boys and young men;
8. Poverty and socio-economic disadvantage;
9. Trauma; and
10. Intersectionality.

Part Three explores possible solutions or ways to close the justice gap for children and young people in Aotearoa New Zealand. This part of the study is also supported by a series of working papers in relation to possible solutions. At the time of writing these working papers consider the following topics with additional working papers likely to follow:

11. Strategic litigation;
12. Legal service delivery, non-lawyer services, and integrated services;
13. Data, evidence and measuring change;
14. Technology;
15. Training for professionals;
16. Legal education and continuing professional development for lawyers and judges; and
17. Law-related education for children and young people.

These reports and working papers are available at: <https://www.cypaccesstojusticenz.com/>

Executive Summary

This working paper explores the justice problems and barriers to access experienced by girls and young women followed by some of the possible solutions raised in the research and literature from Aotearoa New Zealand and overseas. Each section is briefly summarised below.

Justice Problems

Education system. The stand-down, suspension, exclusion, and expulsion rates for female students are lower than male students.¹ Girls also experience less bullying than boys, and tend to experience different forms of bullying with slightly more girls than boys experiencing social-relational bullying and far more boys experiencing physical violence, being made fun of, verbal threats and theft or destruction of property.² Some overseas research suggests that the impact of bullying on girls differs with significantly higher rates of self-harm amongst girls who have been bullied.³

Victimisation. Girls and young women experience significantly higher rates of sexual victimisation with one in four females aged 15–19 (28%) and 1 in 9 males of the same age (11%) participating in the New Zealand Crime and Victims Survey reporting that they had been subject to sexual assault in their lifetime.⁴ Other New Zealand and overseas data has identified similarly disproportionate rates of victimisation.⁵

Criminal justice system involvement. Girls and young women are less likely to be involved in criminal offending than boys.⁶ There are also some differences in the characteristics of girls and boys who offend with girls being more likely to have experienced maltreatment and other negative life experiences including mental health problems.⁷ Overseas research and literature identifies an 'abuse to prison' pathway which describes the gendered pathway by which girls enter the justice system for offences relating to being victims of abuse.⁸

¹ Ministry of Education. (2022). [Stand-downs, suspensions exclusions and expulsions from school](#) at 10-11.

² Jang-Jones, A. & McGregor, A. (2019). [PISA2018 New Zealand Students' Wellbeing School climate & student mindsets of 15-year-olds](#). Ministry of Education at 25.

³ Myklestad, I. & Straiton, M. (2021). The relationship between self-harm and bullying behaviour: results from a population based study of adolescents. *BMC Public Health*. 21, 524 <https://doi.org/10.1186/s12889-021-10555-9> at 10-11.

⁴ Ministry of Justice. (2022). [Survey findings - Cycle 4 report Descriptive statistics. June 2022. Results drawn from Cycle 4 \(2020/21\) of the New Zealand Crime and Victims Survey](#) at 139. See also the data tables available at <https://www.justice.govt.nz/justice-sector-policy/research-data/nzcvs/resources-and-results/> The percentage of males 15-19 was suppressed as the numerator and/or denominator of the ratio estimate has a relative sampling error greater than or equal to 50%, which is considered too unreliable for general use.

⁵ Fleming, T., Archer, D., King-Finau, T., Dewhirst, M., Clark T., (2021). [Youth19 Safety and Violence Brief](#). Youth19 and The Adolescent Health Research Group at 4; Fisher, C. M., Waling, A., Kerr, L., Bellamy, R., Ezer, P., Mikolajczak, G., Brown, G., Carman, M. & Lucke, J. (2019). [6th National Survey of Australian Secondary Students and Sexual Health 2018](#), (ARCSHS Monograph Series No. 113), Australian Research Centre in Sex, Health & Society, La Trobe University at 39; Haslam et al., [The prevalence and impact of child maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report](#) at 21.

⁶ Ministry of Justice. (2023). [Youth Justice Indicators Summary Report](#) at 8-13.

⁷ Ibid at 17-19; Best, C., Ioane, J. & Lambie, I. (2021). Young female offenders and the New Zealand Youth Justice System: the need for a gender-specific response. *Psychiatry, Psychology and Law*. DOI: [10.1080/13218719.2021.1894258](https://doi.org/10.1080/13218719.2021.1894258) at 3; Lim, S., Lambie, I. & Van Toledo, A. (2018). Characteristics of Female Youth Offenders in New Zealand. *International Journal of Offender Therapy and Comparative Criminology*, 63(2), 198-217 at 209.

⁸ Fitzpatrick, C., Hunter, K., Staines J. & Shaw, J. (2019). [Exploring the Pathways between Care and Custody for Girls and Women: A Literature Review](#). Lancaster University Centre for Child & Family

Barriers to access

Attitudinal barriers. Research and commentary from children's rights advocates describes how gendered judgements operate to disadvantage including girls being perceived as more difficult to work with than boys and as doubly deviant where they have transgressed both the law and traditional views of how girls should behave.⁹ Gendered judgements about girls and young women can also intersect with other aspects of their identities such as race, ethnicity and care status.¹⁰ The social tolerance of violence against women and girls is also identified as a key factor making girls vulnerable to abuse.¹¹

A fear of what will happen if they disclose or report abuse is a common fear for girls and young women and can operate as a barrier to reporting.¹² This can include feelings of shame or concerns about being blamed for being abused particularly in cases of sexual violence.¹³

Structural / systemic barriers. A key structural barrier for girls and young women in the criminal justice system stems from being a minority in the system with many aspects of the criminal justice system, and research in relation to the criminal justice system being based on boys and young men.¹⁴ This includes risk assessment tools being based on males,¹⁵ and a lack of suitable programmes and supports for girls and young women.¹⁶ Research has also found that girls report much more negative experiences in family group conferences and other restorative justice processes.¹⁷

Research at 17-18; Saar, M.S., Epstein, R., Rosenthal, L. & Vafa, Y. (2015). [Sexual Abuse to Prison Pipeline: A Girl's Story](#), Georgetown University Center for Poverty and Inequality at 8.

⁹ Eivers, F. (2022). ["I am misunderstood": Young women in the youth justice system](#). *New Zealand Women's Law Journal*. 7, 14-20 at 20; Sanders et al., The impact of school exclusion on later justice system involvement: investigating the experiences of male and female students at 398; Fitzpatrick et al., [Exploring the Pathways between Care and Custody for Girls and Women: A Literature Review](#) at 26.

¹⁰ Fitzpatrick et al., [Exploring the Pathways between Care and Custody for Girls and Women: A Literature Review](#) at 26; Vafa, Y., Ferrer, E., Kaleem, M., Hopkins, C. & Feldhake, E. (2018). [Beyond the Walls: A Look at Girls in D.C.'s Juvenile Justice System](#). Rights4Girls & the Georgetown Juvenile Justice Initiative at 3; and Russell et al., It's a Gendered Issue, 100 Per Cent': How Tough Bail Laws Entrench Gender and Racial Inequality and Social Disadvantage.

¹¹ World Health Organization, [INSPIRE: seven strategies for ending violence against children](#) at 16.

¹² Swift, D. (2011). [The Girls' Project. Girl Fighting: An investigation of young women's violent and anti-social behaviour](#). Stopping Violence Services at 83 & 89; Rackley, E., McGlynn, C., Johnson, K. et al. (2021). [Seeking Justice and Redress for Victim-Survivors of Image-Based Sexual Abuse](#). *Feminist Legal Studies*. 29, 293–322 at 301.

¹³ World Health Organization. (2016). [INSPIRE: seven strategies for ending violence against children](#) at 16.

¹⁴ Lynch, N. (2014). ["Girls Behaving Badly?" Young Female Violence in New Zealand](#). *Victoria University of Wellington Law Review*, 45(3), 509–524 at 518 & 523; Swift, [The Girls' Project. Girl Fighting: An investigation of young women's violent and anti-social behaviour](#) at 67; Daly, K. (2008). [Girls, Peer Violence, and Restorative Justice](#). *Australian & New Zealand Journal of Criminology*. 41(109), 109–137 at 109; Justice Committee. (2016). [The treatment of young adults in the criminal justice system](#). House of Commons at 12; Hodgson, J. (2022). Offending Girls and Restorative Justice: A Critical Analysis. *Youth Justice*, 22(2), 166–188 at 166.

¹⁵ Best et al., Young female offenders and the New Zealand Youth Justice System: the need for a gender-specific response at 868.

¹⁶ [New Zealand Police v AN](#) [2020] NZYC 609 at [79], [82].

¹⁷ Best et al., Young female offenders and the New Zealand Youth Justice System: the need for a gender-specific response at 12; Sanders et al., [Young females in the court system: A report prepared for the principal youth court judge \(Technical Report 25\)](#) at 35-36; Hodgson, [Offending Girls and Restorative Justice: A Critical Analysis](#) at 181.

The New Zealand Law Commission's study of women's access to justice published in 1999 found that 'male culture' could also operate as a barrier.¹⁸ However, this report was focused on the experiences of adults and is now close to twenty-five years old meaning further research is needed to determine the extent to which this is a barrier for girls and young women today.

Possible solutions

This section discusses two possible ways of addressing the challenges experienced by girls and young women – the provision of gender responsive services and training for system professionals in relation to the needs and experiences of young women such as training “in matters specific to young females and their common backgrounds, with a particular focus on their maltreatment and trauma experiences and how this may affect the FGC process”¹⁹ as well as how to work with young female offenders.²⁰

This is not a complete analysis, nor an attempt to identify all possible ways to resolve the access to justice challenges experienced by girls and young women. It should be read together with working papers 11-17 which discuss possible ways of increasing access to justice for children and young people more generally.²¹

¹⁸ Te Aka Matua o te Ture / New Zealand Law Commission. (1999). [Women's Access to Legal Services](#) at 44, 49 & 58.

¹⁹ Best et al., Young female offenders and the New Zealand Youth Justice System: the need for a gender-specific response at 12-13.

²⁰ Best et al., Young female offenders and the New Zealand Youth Justice System: the need for a gender-specific response at 12-13.

²¹ Working papers 11-17 discuss Strategic litigation; Legal service delivery, non-lawyer services, and integrated services; Data, evidence and measuring change; Technology; Training for professionals; Legal education and continuing professional development for lawyers and judges; and Law-related education for children and young people.

Justice problems

In the late 1990s the New Zealand Law Commission conducted a study of women's access to justice in Aotearoa New Zealand.²² Although the study is now more than twenty years old, it remains the primary piece of research on gender based differences in access to justice in Aotearoa New Zealand. The Law Commission found that "the predominant focus of the women's concerns about their access to justice was on the barriers which they experienced when seeking to obtain legal services responsive to their diverse needs".²³ However the report does not discuss the legal or justice issues experienced by girls and women (except to the extent that barriers could also be justice issues e.g. the experience of discrimination).

Other legal needs research in Aotearoa New Zealand identifies some gender based differences in relation to the experience of legal or justice issues including the Colmar Brunton survey of low income New Zealanders in 2017 which found that females were more likely to experience impactful money or debt problems,²⁴ and that females' help-seeking behaviour differed from males including that females were both more likely to use five or more sources of help,²⁵ and were also more likely than average to not seek information or advice from others.²⁶

Research in Scotland exploring children and young people's experiences of justice found that gender had an important role in children's experiences of justice.²⁷ The children reported highly gendered experiences ranging from everyday sexism to misogyny and gender based violence.²⁸ Of significant concern, these experiences were generally viewed as an "accepted or expected" part of growing up and therefore were not challenged as robustly as they should have been. Moreover, the children felt that they "as females, experienced the consequences rather than those perpetrators - changing their behaviour rather than the behaviour of others being curtailed."²⁹ Girls also reported being chastised for not confirming to traditional gender roles and teachers treating girls and boys differently for similar behaviour in schools.³⁰

School

Disciplinary issues

In 2021 the stand-down, suspension, exclusion, and expulsion rates for female students were lower than male students:³¹

- The stand-down rate for female students in 2021 was 15.8 per 1,000 students as compared to a rate of 37.3 per 1,000 students for male students. There was a significantly greater disparity in primary schools and kura [Māori medium education] (10.8 as compared with 42.5) than in secondary schools and kura (19.5 as compared with 33.5);

²² Te Aka Matua o te Ture - New Zealand Law Commission. (1999). [Women's Access to Legal Services](#).

²³ Ibid at 22.

²⁴ Colmar Brunton. (2018). *Legal needs among low income New Zealanders*. Ministry of Justice at 34.

²⁵ Ibid at 50.

²⁶ Ibid at 51.

²⁷ Gillon, F. (2022). [Thinking about justice](#). Children and Young People's Centre for Justice at 29.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid at 31. The children described boys not being punished for uniform violations but girls being punished for apparently minor violations such as their skirt not being down to their knees. They also described girls and boys being treated differently if they acted out in class with this behaviour "expected of a boy" but the assumption being that girls will be more mature.

³¹ Ministry of Education. (2022). [Stand-downs, suspensions exclusions and expulsions from school](#) at 10-11.

- The suspension rate for female students in 2021 was 2.1 per 1,000 students as compared to a rate of 4.1 per 1,000 students for male students. This disparity got smaller between 2020 and 2021; and
- Of the suspended female students, the exclusion rate was 0.3 per 1,000 students in primary schools and kura and 0.8 in secondary schools and kura; and the expulsion rate was 0.6 per 1,000 students as compared to an exclusion rate of 1.7 students in primary schools and kura, 1.4 in secondary schools and kura and an expulsion rate of 1.4 per 1,000 students for male students. Gaps between male and female students' exclusion and expulsion rates have also decreased when compared to 2020.

There has been little research in Aotearoa New Zealand that explores the reasons for gender disparities in education discipline. The most recent study I was able to find on the Education Counts website run by the Ministry of Education was published in 2000,³² now more than twenty years ago. Alton-Lee and Praat review the literature relating to the gender differences before concluding that the “arguments boil down to the relative influence of nature and nurture”,³³ but that schools can explicitly or implicitly contribute to the production of various forms of masculinity and femininity and their attending behaviours in a range of ways including the use of disciplinary practices based on intimidating/stand over power, channelling students into ‘gender-appropriate’ subjects, supporting school activities such as sports which are associated with aggressive forms of masculinity, and failing to take sexual harassment and bullying seriously.³⁴

Research by the Agenda Alliance for Women & Girls at Risk in relation to girls at risk of exclusion from mainstream education in England & Wales raised a number of issues in relation to differential treatment of girls and boys:³⁵

[G]irls who act out may be treated more harshly than boys as they are perceived to have not only been disruptive, but to have transgressed the gender norm. Girls expressing their sadness and anger overtly through ‘bad’ behaviour’ may experience inappropriate responses from professionals who misinterpret them as manipulative or delinquent. For girls facing multiple forms of inequality and discrimination, including racism, this can be exacerbated.

Agenda also raise concerns that girls’ responses to harassment can be problematized instead of the boys’ behaviour.³⁶

Bullying

Aotearoa New Zealand has among the highest rates of bullying in the OECD.³⁷ PISA data also shows a number of gender based differences:

³² Alton-Lee, A. & Praat, A. (2000). [Explaining and addressing gender differences in the New Zealand compulsory school sector](#). Ministry of Education. This extensive literature was followed by a shorter report: Alton-Lee, A. & Praat, A. (2001). [Questioning gender: Snapshots from explaining and addressing gender differences in the New Zealand compulsory school sector](#). Ministry of Education.

³³ Alton-Lee & Praat, [Explaining and addressing gender differences in the New Zealand compulsory school sector](#) at 251.

³⁴ Ibid at 268.

³⁵ Agenda Alliance for Women & Girls at Risk. (2021). [Girls at risk of exclusion: Girls speak briefing](#) at 10.

³⁶ Ibid at 14.

³⁷ Jang-Jones & McGregor, [PISA2018 New Zealand Students’ Wellbeing School climate & student mindsets of 15-year-olds](#) at 21.

- Girls are less likely to be frequently bullied than boys (just under 12% for girls and just over 18% for boys). This gap between boys and girls is relatively high internationally and double the OECD average.³⁸
- There are also some differences in the type of bullying experienced with slightly more girls than boys experiencing social-relational bullying and far more boys experiencing physical violence, being made fun of, verbal threats and theft or destruction of property.³⁹
- The proportion of girls experiencing any kind of bullying is comparatively high (28% as compared to the OECD average for girls of 20%). The proportion of boys experiencing any kind of bullying is even higher, 35% as compared to the OECD average for boys of 20%.⁴⁰
- There are also differences in bullying rates between single sex and coeducational schools with girls at single-sex schools experiencing less of all six of the bullying behaviours and boys at single-sex boys' schools experiencing more bullying than those at coeducational schools.⁴¹

Other New Zealand research has found gender based differences in the rate of bullying. For example, Kljakovic et al found that traditional bullying and in-school victimisation were more common in males than females, but there were no differences between the genders for victimisation outside of school.⁴²

Research overseas has also identified other gender based differences including that significantly increased risk of self-harm in girls who had been bullied.⁴³ The authors hypothesised that this may be because girls have a greater susceptibility to stress in social relationships compared to boys or that girls are twice as likely as boys to experience depression during adolescence which is associated with both being bullied and self-harm.⁴⁴

Victimisation

Given low reporting rates, the New Zealand Crime and Victims Survey is a useful source of data in relation to actual rates of victimisation. The most recent survey found that young females were at particularly high risk of sexual assault with around 9% of females aged 15–19 and around 6.7% of females aged 20–29 reporting they had been sexually assaulted in the previous 12 months as compared with 2.5% of males aged 20–29.⁴⁵ Lifetime prevalence was even higher with in four females aged 15–19 (28%) and 1 in 9 males of the same age (11%) reporting that they had been subject to sexual assault in their lifetime.⁴⁶ Overall, almost half of all personal victimisations where the sex of the offender was known to the victim (48%) involved a male offender and a female victim with this proportion increasing to 52% for interpersonal violence,

³⁸ Jang-Jones & McGregor, [PISA2018 New Zealand Students' Wellbeing School climate & student mindsets of 15-year-olds](#) at 25.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid at 26.

⁴² Kljakovic, M., Hunt, C., & Jose, P. (2015). [Incidence of Bullying and Victimisation among Adolescents in New Zealand](#). *New Zealand Journal of Psychology*, 44(2), 57-67 at 64.

⁴³ Myklestad & Straiton, The relationship between self-harm and bullying behaviour: results from a population based study of adolescents at 10-11.

⁴⁴ Ibid.

⁴⁵ Ministry of Justice, [Survey findings - Cycle 4 report Descriptive statistics. June 2022. Results drawn from Cycle 4 \(2020/21\) of the New Zealand Crime and Victims Survey](#) at 139. See also the data tables available at <https://www.justice.govt.nz/justice-sector-policy/research-data/nzcvs/resources-and-results/> The percentage of males 15-19 was suppressed as the numerator and/or denominator of the ratio estimate has a relative sampling error greater than or equal to 50%, which is considered too unreliable for general use.

⁴⁶ Ibid at 138-139.

53% for assaults and robberies, 69% for offences by family members, and 73% for sexual assault.⁴⁷ Proportions of offences where the offender and victim were of the same sex were significantly lower.⁴⁸

However, the New Zealand Crime and Victims Survey only includes participants aged 15 and over meaning it provides an incomplete picture of victimisation of children and young people. The Youth 19 survey helps to fill this gap by including children and young people aged 12 and over,⁴⁹ although the questions relating to victimisation were not as comprehensive as the NZCVS. Youth 19 data shows very similar gender related differences in unwanted sexual experiences with one in four females and almost one in ten males reporting that “they had ever been touched in a sexual way or made to do sexual things that they did not want to do”.⁵⁰ Of those students who were sexually active, 36.8% of females and 15.9% of males reported that they had ever had sex when they didn’t want to.⁵¹ It is important to note that the survey deliberately did not ask about forced or coerced sexual experiences nor did it attempt to assess lack of consent across unwanted sexual experiences.⁵² As such, this data is likely to include some situations that would not constitute a criminal offence however there may still be a question of justice in the broader sense.

Overseas data shows similarly increased rates of victimisation of girls. For example, data from the Australian Child Maltreatment study showed that young women aged 16 to 24 report substantially higher rates of child sexual abuse (35.2% vs 14.5%), higher rates of neglect (12.5% vs 7.2%) and higher rates of emotional abuse (40.5% vs 26.9%).⁵³ Saar reports that “one in four American girls will experience some form of sexual violence by the age of 18...girls between the ages of 16 and 19 are four times more likely than the general population to be victims of rape, attempted rape, or sexual assault.”⁵⁴ Saar also reports that “sexual abuse is one of the primary predictors of girls’ entry into the juvenile justice system.”^{49,55} This pathway from victimisation to criminal justice system involvement is discussed further below.

Some research also suggests that some forms of victimisation and their impact differ by gender. For example, a study by Netsafe discusses the differences between image-based sexual abuse of female and male survivors with female victim survivors more likely to experience relational abuse e.g. an ex-partner using intimate images or video to maintain control, blackmail them, or to ‘punish’ them for leaving a relationship and male victim survivors more likely to experience sextortion scams.⁵⁶ Rackley et al. also argue that the impacts and perpetration of image-based

⁴⁷ Ibid at 185.

⁴⁸ Ibid. 29% were male-against-male offences, and 13% were female-against-female offences. 10% of offences were female-against-male.

⁴⁹ Rivera-Rodriguez, C., Clark, T.C., Fleming, T., Archer, D., Crengle, S., Peiris-John, R. & Lewycka, S. (2021). [National estimates from the Youth '19 Rangatahi smart survey: A survey calibration approach](#). *PLoS ONE* 16(5), e0251177 at 1.

⁵⁰ Fleming et al., [Youth19 Safety and Violence Brief](#) at 4. Youth19 involved 7721 New Zealand adolescents in 49 Auckland, Northland and Waikato schools including four kura kaupapa Māori. Schools were randomly selected and then Year 9–13 students were randomly selected from each school roll.

⁵¹ Fisher et al., [6th National Survey of Australian Secondary Students and Sexual Health 2018](#) at 39.

⁵² Ibid.

⁵³ Haslam, D., Mathews, B., Pacella, R., Scott, J.G., Finkelhor, D., Higgins, D.J., Meinck F., Erskine, H.E., Thomas, H.J., Lawrence, D., & Malacova, E. (2023). [The prevalence and impact of child maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report](#). Australian Child Maltreatment Study, Queensland University of Technology at 21. No gender differences were found for rates of physical abuse and exposure to domestic violence

⁵⁴ Saar et al., [Sexual Abuse to Prison Pipeline: A Girl's Story](#) at 5.

⁵⁵ Ibid.

⁵⁶ Pacheco, E., Melhuish, N. & Fiske, J. (2019). [Image-based sexual abuse: A snapshot of New Zealand adults' experiences](#). Netsafe at 5.

sexual abuse differ with female victim-survivors experiencing significant, often all-encompassing harms due to the social stigma and shame around women's sexuality.⁵⁷

Criminal justice system involvement

Like other jurisdictions, in Aotearoa New Zealand boys outnumber girls in offending rates in all age groups with the offending by children aged 10 to 13 made up of 72% boys and 28% girls,⁵⁸ offending by 14-17(or 18) year olds 74% boys and 25% girls,⁵⁹ and 80% of 18-19 year olds were male and 20% were female.⁶⁰ There are also differences in offending by gender with offending by boys being more likely to be serious enough to lead to an FGC or court action (31% of boys and 24% of girls)⁶¹ and to appear in the Youth Court (26% of boys and 13% of girls).⁶²

Ministry of Justice data also reveals some differences in the characteristics of boys and girls who offend with 94% of boys aged 10-13 and 95% of girls referred for a youth justice FGC having previously been subject to a report of concern to Oranga Tamariki about their care and protection.⁶³ These percentages are 88% and 94% for those aged 14 to 17 (or 18).⁶⁴ Best et al also point to the increased risks of other negative life experiences including mental health disorders and the need for further exploration of the mental health needs of the increasing number of indigenous female offenders in our youth justice system.⁶⁵

Similar differences have also been identified in other jurisdictions. For example, the Agenda Alliance for Women and Girls explain:⁶⁶

Young adult women tend to have a greater number of support needs which can cause or lead to offending than young men. These include:

- *experiences of violence, abuse and exploitation in familial, intimate and peer relationships;*
- *early parenthood;*
- *poverty;*
- *and problems associated with health, particularly mental health and associated coping mechanisms such as alcohol use.*

Crucially, these forms of disadvantage experienced by young adult women frequently co-occur, overlapping and reinforcing each other.

The Washington State Supreme Court Gender and Justice Commission also identify differences in the “ways that girls and boys enter the juvenile justice system, their needs, and the resources available once they enter the system” including being more likely to have experienced

⁵⁷ Rackley, E., McGlynn, C., Johnson, K. et al. (2021). [Seeking Justice and Redress for Victim-Survivors of Image-Based Sexual Abuse](#). *Feminist Legal Studies*. 29, 293–322 at 300.

⁵⁸ Ministry of Justice, [Youth Justice Indicators Summary Report](#) at 8.

⁵⁹ Ibid at 9.

⁶⁰ Ibid at 12.

⁶¹ Ibid at 11.

⁶² Ibid at 19.

⁶³ Ibid at 17.

⁶⁴ Ibid at 18.

⁶⁵ Best et al., Young female offenders and the New Zealand Youth Justice System: the need for a gender-specific response at 869.

⁶⁶ Agenda Alliance for Women & Girls at Risk and Alliance for Youth Justice. (2021). [Young Women's Justice Project Literature Review](#). Alliance for Youth Justice at 26.

maltreatment and child protection system involvement.⁶⁷ Some of the main differences are discussed further below.

Mental health needs

Lim et al's retrospective file audit of 184 female youth offenders in New Zealand found that approximately three quarters had a mental health diagnosis.⁶⁸ Lim et al note that other research has previously suggested a lower rate of around two thirds with the difference in Lim et al's study likely to be because their data was sourced from those referred for a mental health assessment.⁶⁹ Sanders et al's 2016 report for the Principal Youth Court Judge also identified differences in the rates of different types of disorders with more females than males reporting depression and males reporting higher levels of externalising behaviours, particularly violence.⁷⁰ They also found that both males and females reported high levels of alcohol and substance use and for females, there was a clear link between use of substances, engagement in self-harming behaviours and risky sexual activity.⁷¹ Department of Corrections research also found that women in prison are more commonly affected by "mental health issues including high rates of post-traumatic stress disorder, comorbidity, and substance addictions that mask and manage their trauma".⁷²

Other studies overseas have also found both differences in the rates of mental disorder and the types of disorders. For example, Best et al cite research by Shufelt and Cocozza which found that more than 80% of young females met the criteria for at least one disorder compared to 67% of young males with internalising disorders significantly more prevalent for young female offenders.⁷³ Best et al also cite research finding that comorbidity is significantly higher for young female offenders than males and raise concerns that mental health disorders may prevent these young women from participating meaningfully in the justice system.⁷⁴

Victimisation

Lim et al's retrospective study also found very high rates of victimisation with the vast majority (90%) reporting they had experienced at least one form of maltreatment including more than 50% reporting sexual abuse and half having a care and protection history.⁷⁵ Youth Court Judge Tony Fitzgerald also cites gender differences in the victimisation experiences of young women who offend including that "young women who offend are more likely to have experienced sexual

⁶⁷ Washington State Supreme Court Gender and Justice Commission. (2021). [2021: How gender and race affect justice now](#). Washington Courts Administrative Office of the Courts at 427.

⁶⁸ Lim et al., Characteristics of Female Youth Offenders in New Zealand at 209.

⁶⁹ Ibid.

⁷⁰ Sanders, J., Munford, R., Liebenberg, L., Jalota, H., Severinsen, C., Swift, D., Prujean, B., Ballantyne, R., & Henaghan, M. (2016). [The pathways to resilience project young females in the court system: A report prepared for the principal youth court judge \(Technical Report 25\)](#). The Youth Transitions Study, Dalhousie University & Massey University at 10.

⁷¹ Sanders et al., [Young females in the court system: A report prepared for the principal youth court judge \(Technical Report 25\)](#) at 10.

⁷² Department of Corrections. (2021). [Wāhine - E rere ana ki te pae hou: Women's Strategy 2021 – 2025](#) at 6.

⁷³ Best et al., Young female offenders and the New Zealand Youth Justice System: the need for a gender-specific response at 5.

⁷⁴ Ibid at 6.

⁷⁵ Lim et al., Characteristics of Female Youth Offenders in New Zealand. *International Journal of Offender Therapy and Comparative Criminology* at 210.

violence which may be more severe, include more perpetrators and have been more prolonged than that of young men".⁷⁶

New Zealand research in relation to women in prison has also found high victimisation rates. For example, Department of Corrections' research indicates three quarters of women in prison have been victims of family violence, rape and/or sexual assault as a child or adult.⁷⁷ A study of the prevalence of TBI amongst women in prison reported that as many as 94.7% of study participants had suffered at least one traumatic brain injury which, as discussed above, can have significant impacts on behaviour.⁷⁸ Again, this picture is similar in other countries with studies of women in prison finding high levels of prior victimisation.⁷⁹

Baidawi et al's scoping review of the gender differences in the maltreatment-youth offending relationship identifies a series of differences relative to males:⁸⁰

- A greater prevalence of maltreatment exposure;
- More pronounced sexual abuse and multi-type maltreatment;
- Greater child welfare system involvement;
- Females comprise a larger proportion of young people involved in both the child protection and youth justice systems;
- Females are less likely to offend as youth and exhibit violent offending than males who are maltreated; and
- Child welfare system involvement greatly increased the likelihood of youth convictions among females relative to males.

Baidawi et al also identified other differences including justice involved males being more likely to under-report or minimize abuse and neglect experiences as well as variations in maltreatment under-reporting by race/ethnicity and greater maltreatment exposure and child welfare system involvement among racial/ethnic minority females and males.⁸¹ Another Australian study of adverse childhood experiences among young people in detention found females had a higher prevalence of individual ACEs and higher cumulative ACE scores, than males.⁸² The authors suggested that it was possible that ACEs have a greater impact on female offending.⁸³

Research in the United Kingdom also identifies the increased likelihood that young women in contact with the criminal justice system have experienced extensive violence and abuse.⁸⁴

⁷⁶ Fitzgerald, A. (2021). *Ko Te Rongoā, Ko Te Aro, Ko Te Whai Kia Tika Ai, Mo Ngā Rangatahi: Solution-Focused Justice For Young People* (unpublished paper) at 20-21 citing Youth Justice Board. (2009). [Girls and offending – patterns, perceptions and interventions](#). Youth Justice Board for England and Wales at 25-26. See also Swift, D. (2011). [The Girls' Project. Girl Fighting: An investigation of young women's violent and anti-social behaviour](#). Stopping Violence Services at 91-92.

⁷⁷ Department of Corrections, [Wāhine - E rere ana ki te pae hou: Women's Strategy 2021 – 2025](#) at 6.

⁷⁸ Shalev, S. (2021). [First, Do No Harm: Segregation, restraint, and pepper spray use in women's prisons in New Zealand](#). New Zealand Human Rights Commission - Te Kāhui Tika Tangata at 20.

⁷⁹ Caruana, C., Campbell, E., Bissett, T & Ogilvie, K. (2021). [Leaving custody behind: Foundations for safer communities and a gender-informed criminal justice systems](#). Centre for Innovative Justice, RMIT University, Melbourne at 21; Russell, E. K., Carlton, B. & Tyson, D. (2021). ['It's a Gendered Issue, 100 Per Cent': How Tough Bail Laws Entrench Gender and Racial Inequality and Social Disadvantage](#). *International Journal for Crime, Justice and Social Democracy*, 10(3), 107-121 at 109-110.

⁸⁰ Baidawi, S., Papalia, N., & Featherston, R. (2021). Gender Differences in the Maltreatment-Youth Offending Relationship: A Scoping Review. *Trauma, Violence, & Abuse*, 152483802110521 at 11.

⁸¹ Ibid at 6.

⁸² Malvaso, C.G., Delfabbro, P.H., & Day, A. (2019). Adverse childhood experiences in a South Australian sample of young people in detention. *Australian & New Zealand Journal of Criminology*, 52(3), 411-431 at 424.

⁸³ Ibid.

⁸⁴ Bridge, M. (2021). ['I wanted to be heard': Young women in the criminal justice system at risk of violence, abuse and exploitation](#). Agenda Alliance for Woman & Girls at Risk; Alliance for Youth Justice at 8.

Fitzpatrick et al.'s recent research study which involved interviews with 37 care-experienced women from across three prisons and 17 girls and young women across England with both care and youth justice system involvement provides clear evidence of the prevalence of abuse in this cohort:⁸⁵

Of the 54 girls and women interviewed, 29 reported being sexually abused as a child. Of these 29, 12 women discussed being abused whilst in care and nine discussed abuse whilst in care but outside of their care placements. Amongst the 17 girls/young women interviewed, a further two talked about being abused either physically or emotionally by carers whilst in care, and an additional three talked about abuse occurring whilst in care but outside of the care placement. This included criminal exploitation, sexual exploitation and/or sexual assaults.

Fitzpatrick et al conclude by explaining how a failure to deal with past trauma, or the experience of further trauma whilst in care, can leave girls and women vulnerable to crossing over from care into the criminal justice system.⁸⁶

Bridge describes other ways that young women's experiences of victimisation can be connected to their offending including girls and young women experiencing sexual exploitation being charged with public order offences or being pressured by an intimate partner to carry or store weapons or drugs.⁸⁷ Pressure from intimate partners can also affect young women's engagement in justice system processes e.g. a young woman's partner not allowing her to attend appointments with her probation officer.⁸⁸

Saar et al. cite US research that girls' rate of sexual abuse is 4 times higher than boys in juvenile justice (7% vs 31%) and girls' rate of complex trauma (five or more ACEs) is nearly twice as high (45% vs 24%).⁸⁹ Saar et al. also draw connections between the most common crimes for which girls are arrested, running away, substance abuse, and truancy, and symptoms of abuse.⁹⁰ The connections between experience of abuse and criminal justice system involvement have led to the identification of the 'Abuse to Prison' pipeline which describes the gendered pathways by which girls enter the justice system for offenses directly related to their being victims of abuse.⁹¹ These high levels of victimisation and maltreatment also need to be acknowledged because they have the potential to impact on how girls and young women interact with the youth justice system.⁹²

Another area of concern is the victimisation of girls and young women once they are involved in the criminal justice system. Research suggests that justice involved girls and young women are at elevated risk of victimisation, however most studies focus on interventions to address the

⁸⁵ Fitzpatrick et al., [Exploring the Pathways between Care and Custody for Girls and Women: A Literature Review](#) at 17. This study involved interviews with 37 care-experienced women from across three prisons and 17 girls and young women across England who had been in care and had also had youth justice system involvement (see 4-6 for a discussion of the methodology).

⁸⁶ Fitzpatrick et al., [Exploring the Pathways between Care and Custody for Girls and Women: A Literature Review](#) at 18.

⁸⁷ Bridge, ['I wanted to be heard': Young women in the criminal justice system at risk of violence, abuse and exploitation](#) at 11.

⁸⁸ Ibid.

⁸⁹ Saar et al., [Sexual Abuse to Prison Pipeline: A Girl's Story](#) at 8.

⁹⁰ Ibid at 9-12.

⁹¹ Vafa, Y., Ferrer, E., Kaleem, M., Hopkins, C. & Feldhake, E (2018). [Beyond the Walls: A Look at Girls in D.C.'s Juvenile Justice System](#). Rights4Girls & the Georgetown Juvenile Justice Initiative at 4

⁹² Best et al., Young female offenders and the New Zealand Youth Justice System: the need for a gender-specific response at 4.

impacts of prior victimization, rather than the prevention of future harm and the risk factors are not well established.⁹³

Relationships

New Zealand research also identifies the role of relationships in female youth offending. One study found that more than a quarter of their sample had experienced or perpetrated bullying, almost one fifth were involved in a gang, and 40% were identified as having a delinquent partner.⁹⁴ Another identified a relationship between disrupted family relationships with most of the young people in the study identifying either absent or violent fathers as well as intimate involvement with older and often controlling, males.⁹⁵

Barriers

Attitudinal Barriers

Gendered judgements

The Children's Commissioner Judge Eivers, a former Youth Court Judge, described the operation of gendered judgments about girls involved in the youth justice system in a 2022 article for the New Zealand Women's Law Journal:⁹⁶

There are fallacies about all young people who offend, but some of the most pervasive about kōtiro [girls or young women] arise from responses and misinformed concerns that they have subverted expectations that women are nurturing, feminine and maternal. A violent young woman or an angry young woman is somehow "wrong" or "born bad". They are often treated more harshly as a result of this stereotyping, without recognition that the vast majority of these kōtiro were victims themselves long before they began offending. Their trauma forms their responses to the world around them, a world that has never shown itself to be on their side

Some research in New Zealand supports Judge Eivers's comments particularly in the school context.⁹⁷ For example, Sanders et al.'s research using longitudinal data to examine the role being excluded from school plays in later criminal justice involvement for a group of at-risk youth

⁹³ Willoughby, M., Janca, E., Kwon, S., Johnston, B., Collins, T., Kinner, S. A., Johns, D., Gallant, D., Glover-Wright, C., & Borschmann, R. (2023). [Interventions to Prevent and Respond to Violence Against Justice-Involved Young Women: A Scoping Review](#). *Trauma, Violence, & Abuse*, 0(0) at 13.

⁹⁴ Lim et al., Characteristics of Female Youth Offenders in New Zealand at 210. See also Best et al., Young female offenders and the New Zealand Youth Justice System: the need for a gender-specific response at 5.

⁹⁵ Sanders et al, [Young females in the court system: A report prepared for the principal youth court judge \(Technical Report 25\)](#) at 11-13.

⁹⁶ Eivers, "[I am misunderstood](#)": [Young women in the youth justice system](#) at 20. See also Colley, A. (2015). An invisible population?: The needs of young women offenders and why gender deserves consideration in the Aotearoa New Zealand youth justice system. *New Zealand Law Students' Journal*, 3(3), 471-487 at 473.

⁹⁷ Sanders, J., Liebenberg, L. & Munford, R. (2020). The impact of school exclusion on later justice system involvement: investigating the experiences of male and female students. *Educational Review*, 72(3), 386-403; Swift, [The Girls' Project. Girl Fighting: An investigation of young women's violent and anti-social behaviour](#) at 87.

in New Zealand found that females reported lower overall levels of delinquency across the study, but higher rates of school exclusion. The authors concluded:⁹⁸

It appears that schools may have comparatively lower tolerance for behavioural infringements by female students. Others have also observed that institutional responses to females who breach gendered behavioural expectations by acting violently receive exceptionally punitive responses. (Quinn et al., 2005; Swift, 2014).

Swift's research in relation to young women's violent and anti-social behaviour also reported comments from research participants about discriminatory treatment of girls including one young woman commenting: "[s]eems boys can do whatever but as soon as a girl does something they are referred."⁹⁹

Research and literature in the UK, US and internationally also identifies the impact of gendered judgements about girls and young women.¹⁰⁰ For example, Fitzpatrick described how girls are often perceived as more difficult to work with than boys and as doubly deviant where they have transgressed both the law and traditional views of how girls should behave.¹⁰¹ However, other studies have found that girls were judged more leniently because they were perceived to be more vulnerable and being more likely to be placed in care when justice contact occurs than is the case with boys.¹⁰² Gelsthorpe and Sharpe describe these two responses as reflecting:¹⁰³

[A] dual image of girls, who were thought simultaneously to be more vulnerable than boys and to need a lot of care, whilst their delinquent behaviour was seen as 'worse' than that of boys: offending girls were generally considered to be breaking not only the law, but also gender role expectations, with girls conforming to the stereotype of femininity most likely to be dealt with by means of the care system as opposed to the 'criminal justice system' (Gelsthorpe, 1989).

Attitudes towards girls and women can also be a factor in their victimisation. The World Health Organization describe "social tolerance of both victimization of girls and perpetration by boys and men" as a key factor making girls vulnerable to violence.¹⁰⁴ WHO argue that changing these gender norms is a critical part of preventing violence against girls.¹⁰⁵

Intersectional judgements

Research also identifies how gendered judgements can intersect with other aspects of girls' identities including care status with care-experienced girls/women being described as "harder

⁹⁸ Sanders et al., The impact of school exclusion on later justice system involvement: investigating the experiences of male and female students at 398.

⁹⁹ Swift, [The Girls' Project. Girl Fighting: An investigation of young women's violent and anti-social behaviour](#) at 87.

¹⁰⁰ Fitzpatrick et al., [Exploring the Pathways between Care and Custody for Girls and Women: A Literature Review](#) at 26; Russell et al., 'It's a Gendered Issue, 100 Per Cent': How Tough Bail Laws Entrench Gender and Racial Inequality and Social Disadvantage at 3; Khan, L. (2021). [Understanding the needs and what works for girls in the Children and Young People's Secure Estate: Literature Review](#). Centre for Mental Health at 13; and World Health Organization. (2016). [INSPIRE: seven strategies for ending violence against children](#). WHO Press at 16.

¹⁰¹ Fitzpatrick, C., Hunter, K., Shaw, J. & Staines J. (2022). [Disrupting the Routes between Care and Custody for Girls and Women](#). Centre for Child & Family Justice Research at 26.

¹⁰² Khan, L. (2021). [Understanding the needs and what works for girls in the Children and Young People's Secure Estate: Literature Review](#). Centre for Mental Health at 13.

¹⁰³ Gelsthorpe, L. & Sharpe, G. (2006). [Gender, Youth Crime and Justice](#). In B. Goldson & J. Muncie (Eds.) *Youth Crime and Justice: Critical Issues* (pp. 47-61). Sage Publications at 48.

¹⁰⁴ World Health Organization, [INSPIRE: seven strategies for ending violence against children](#) at 16.

¹⁰⁵ Ibid.

to engage”, “disrespectful” or “aggressive”.¹⁰⁶ Research both in New Zealand and overseas also draws the connections between gender, race and sexual or gender expression citing statistics that girls of colour and girls who identify as LGBT/GNC are overrepresented in the juvenile justice system.¹⁰⁷ Studies in the United Kingdom have also identified negative attitudes or judgements about black girls. Bridge talks about a process of ‘adultification’:¹⁰⁸

[W]hereby Black girls are viewed as older than their age and more ‘adult-like’, with professionals assuming that they have greater levels of maturity and less ‘innocence’ than their white peers.⁵⁸ As well as informing more punitive responses to Black girls and young women, this may reduce professionals’ sense of their safeguarding responsibilities, with practitioners highlighting the way in which stereotyping of Black young women as particularly ‘resilient’ can be a barrier to accessing timely support.

Fitzpatrick et al. suggest that the process of adultification of children from some ethnic groups “may go some way to explaining their particularly disproportionate representation in the youth justice system”.¹⁰⁹ Agenda Alliance for Women & Girls at Risk and Alliance for Youth Justice take this one step further arguing that “punitive rather than welfare-based responses to young adult women’s re-offending can push young women further into the criminal justice system.”¹¹⁰

I have not identified any research considering adultification of particular racial or ethnic groups in Aotearoa New Zealand. However, I am anecdotally aware of tamariki Māori and Pacific Island children and young people being perceived to be, and treated as though they are, older than they are. This is a potential avenue for further research.

Concern about what will happen

Girls participating in Swift’s research investigating young women’s violent and anti-social behaviour described a range of concerns about what would happen that inhibit reporting violence both to school staff and the police. In the school context, girls described being concerned that they would be labelled a ‘nark’ or ‘tattle tale’ if they reported abuse, others did not trust that the school would resolve the situation or could even make it worse, and those with a history of poor behaviour thought that they would not be taken seriously or would be blamed for the abuse.¹¹¹ Similar fears were reported in relation to reporting to the police.¹¹²

Rackley et al.’s research with victim-survivors of image-based sexual abuse and stakeholders in the UK, Australia and New Zealand described how a victim’s age at the time of abuse could compound feelings of shame and in turn, affect a victim’s ability to report the abuse and seek

¹⁰⁶ Fitzpatrick et al., [Exploring the Pathways between Care and Custody for Girls and Women: A Literature Review](#) at 26.

¹⁰⁷ Shalev, [First, Do No Harm: Segregation, restraint, and pepper spray use in women’s prisons in New Zealand](#) at 26; Vafa et al., [Beyond the Walls: A Look at Girls in D.C.’s Juvenile Justice System](#) at 3; and Russell et al., ‘It’s a Gendered Issue, 100 Per Cent’: How Tough Bail Laws Entrench Gender and Racial Inequality and Social Disadvantage.

¹⁰⁸ Bridge, [‘I wanted to be heard’: Young women in the criminal justice system at risk of violence, abuse and exploitation](#) at 21.

¹⁰⁹ Fitzpatrick et al., [Exploring the Pathways between Care and Custody for Girls and Women: A Literature Review](#) at 35.

¹¹⁰ Agenda Alliance for Women & Girls at Risk and Alliance for Youth Justice, [Young Women’s Justice Project Literature Review](#) at 26.

¹¹¹ Swift, [The Girls’ Project. Girl Fighting: An investigation of young women’s violent and anti-social behaviour](#) at 89.

¹¹² *Ibid* at 83.

support.¹¹³ For example, one research participant described how she knew that having sex under the age of consent was wrong and that her mother's response of disgust when she told her she had had sex meant that she did not feel comfortable asking her for help around reporting the image-based abuse.¹¹⁴ The World Health Organisation explains that this barrier is common internationally with the perception that abuse is normal and "shame, fear and the belief that no one can help" leading to low levels of girls reporting being abused to authorities.¹¹⁵

Structural / systemic barriers

Focus on males

A significant barrier for girls and young women who are involved in the criminal justice system stems from being a minority in the system. Many aspects of the criminal justice system, and research in relation to the criminal justice system,¹¹⁶ are primarily based on boys and young men and designed to reflect their needs. For example, Best et al. raised concerns about how risk assessment tools primarily based on male offenders are used for female offenders despite the "crucial differences between males and females in the youth justice system" and the "diverse and complex risk factors associated with female youth offenders".¹¹⁷ Youth Court Judge Tony Fitzgerald raised similar concerns about the lack of access to suitable programmes and supports for girls and young women in a 2020 decision relating to the potential transfer of a young woman to the District Court for sentencing citing advice from the Department of Corrections that there were "no rehabilitation programmes specifically tailored to female young persons' age or stage of development, either in prison or in the community following their release"¹¹⁸ before concluding:¹¹⁹

[T]he situation for girls even in the youth justice system is unsatisfactory compared to boys, again due to the low numbers. The number of young women who are subject to supervision with residence orders at any one time is low. Currently there are only two. That of course presents similar challenges to those in the adult Corrections system in terms of designing and delivering programmes and interventions that are suitably crafted to meet the particular needs of young women. This is concerning given that those who are subject to such orders, like [AN], typically have many complex needs, requiring specialised, targeted responses.

Judge Eivers made a similar point in her article for the New Zealand Women's Law Journal pointing to both the lack of targeted services to address girls' needs, as well as how the failure to understand the differences between the way young women and young men present to the Court can sell them short.¹²⁰ She also identified the negative impact of the lack of targeted

¹¹³ Rackley et al., [Seeking Justice and Redress for Victim-Survivors of Image-Based Sexual Abuse](#) at 301.

¹¹⁴ Ibid.

¹¹⁵ World Health Organization, [INSPIRE: seven strategies for ending violence against children](#) at 16.

¹¹⁶ Lynch, N. (2014). "[Girls Behaving Badly?](#)" *Young Female Violence in New Zealand*. *Victoria University of Wellington Law Review*, 45(3), 509–524 at 518 & 523; Swift, [The Girls' Project. Girl Fighting: An investigation of young women's violent and anti-social behaviour](#) at 67; Daly, K. (2008). [Girls, Peer Violence, and Restorative Justice](#). *Australian & New Zealand Journal of Criminology*. 41(109), 109–137 at 109; Justice Committee. (2016). [The treatment of young adults in the criminal justice system](#). House of Commons at 12; Hodgson, J. (2022). *Offending Girls and Restorative Justice: A Critical Analysis*. *Youth Justice*, 22(2), 166–188. <https://doi.org/10.1177/1473225420967751> at 166.

¹¹⁷ Best et al., *Young female offenders and the New Zealand Youth Justice System: the need for a gender-specific response* at 868.

¹¹⁸ [New Zealand Police v AN](#) [2020] NZYC 609 at [79].

¹¹⁹ Ibid at [82].

¹²⁰ Eivers, "[I am misunderstood](#)": *Young women in the youth justice system* at 15.

provision commenting that “the life experience of many kōtiro make mixed-group courses difficult and even retraumatising.”¹²¹

Research in the United Kingdom by Agenda Alliance for Women & Girls at Risk and Alliance for Youth Justice explains the impact of this lack of gender and age specific provision:¹²²

In the community, young adult women can feel intimidated by and face exposure to sexual harassment and violence and sexual and criminal exploitation in male-dominated spaces such as youth offending teams, pupil referral units and unregulated, mixed-gender accommodation. Young adult women also report poor experiences of custody settings which are orientated around the needs of older adult women, with particular gaps in provision for young adult women who are ‘settling in’ to the secure adult estate, as well as in relation to behaviour change programmes, substance use interventions, and education and preparation for work opportunities.

A lack of expertise relating to young adult women’s gendered experiences of multiple disadvantage can mean professionals fail to see the full extent of risk and need facing young adult women or underplay the severity of this when it is identified. Where vulnerabilities are recognised, concerns have been raised about the use of punitive and re-traumatising methods of risk-management. The disproportionate use of restraint against young adult women experiencing mental health crises or emotional distress, as well as stigmatising responses from professionals working with criminalised girls and young adult women with histories of trauma (particularly experiences of child sexual exploitation), are a particular concern.

Research in the United Kingdom in relation to girls at risk of exclusion from school also describes how girls in alternative educational provision can face further harassment and abuse in this male-dominated environment leading to them being criminalised and further marginalised.¹²³

New Zealand research has also found that girls report more negative experiences in family group conferences with a retrospective study on 1,000 youth justice FGCs finding that young females generally reported more negative experiences in the FGC than young males including being less likely to report being consulted about who should attend, being treated with respect, being treated fairly, being treated as trustworthy, and being given another chance and more likely to report that they felt too intimidated to say what they wanted to.¹²⁴ Of particular significance, young females were less likely to feel that they could make up for what they had done and put everything behind them and half as likely to report that having an FGC had helped them to stop or reduce their offending (19% compared to 35%, respectively).¹²⁵ Sanders et al. identify some possible reasons for these differences including the nature of their offences and the risk that conferencing processes may perpetuate gendered power imbalances.¹²⁶ Participants in Swift’s research exploring young women’s violent and anti-social behaviour also

¹²¹ Eivers, [“I am misunderstood”: Young women in the youth justice system](#) at 19.

¹²² Agenda Alliance for Women & Girls at Risk and Alliance for Youth Justice, [Young Women’s Justice Project Literature Review](#) at 26.

¹²³ Agenda Alliance for Women & Girls at Risk, [Girls at risk of exclusion: Girls speak briefing](#) at 13.

¹²⁴ Best et al., Young female offenders and the New Zealand Youth Justice System: the need for a gender-specific response at 12.

¹²⁵ Ibid.

¹²⁶ Sanders et al, [Young females in the court system: A report prepared for the principal youth court judge \(Technical Report 25\)](#) at 35-36.

reported negative experiences of restorative conferencing in both a school context,¹²⁷ and at FGCs.¹²⁸

Research overseas has also explored possible factors behind girls' differing experiences of restorative justice conferencing including the victim-offender binary which fails to recognise many female offenders are also victims, the marginalisation of the girls' narratives, and issues of power and control.¹²⁹ Hodgson argues:¹³⁰

It may be argued that RJ conferencing creates an environment that is hostile, or unforgiving at least, to the socio-structural inequalities that characterise the material and lived realities of girls who enter the youth justice system. Experiences of both victimisation and criminalisation compound the social injustice girls are often subject to. The analysis of girls' interview data indicated that they predominantly internalised their participation in the RJ conference as a negative experience. The data set revealed that the girls felt disempowered, neglected and targeted at various stages of their experience.

Hodgson's research found stark differences between practitioners' predominantly positive attitudes towards restorative justice conferencing and the negative attitudes expressed by the girls.¹³¹ All practitioners interviewed supported the use of restorative justice conferencing believing it provided both victims and offenders with a participatory role through which they could share their own narratives. In contrast, the girls' narratives revealed that this was not always the case and did not share practitioners' enthusiasm.¹³² Hodgson concluded that rather than facilitating girls' opportunity to share their narratives, restorative justice can actually contribute to the silencing of their voices with the girls providing a range of insights which revealed the ways that restorative justice "served to marginalise their subjectivities".¹³³

'Male culture' as a barrier

One overall finding of the New Zealand Law Commission conducted a study of women's access to justice in Aotearoa New Zealand was that "many women feel particularly alienated from the 'average lawyer' and so are dubious of their chances of establishing and maintaining an effective working relationship" particularly where problems related to "personal matters".¹³⁴ Women also criticised what they described as "the 'male culture' of the justice system, especially of the legal profession and judiciary" which was demonstrated by the fact that lawyers, particularly senior lawyers, and judges were mainly men.¹³⁵ The Law Commission concluded:¹³⁶

The overriding message from New Zealand women's accounts of the barriers to their access to justice was that the justice system, and particularly those whose role it is to guide women to and through it, is insufficiently aware of and responsive to the facts which both unite women's life experiences and which make their lives

¹²⁷ Swift, *The Girls' Project. Girl Fighting: An investigation of young women's violent and anti-social behaviour* at 88.

¹²⁸ *Ibid* at 84.

¹²⁹ Hodgson, *Offending Girls and Restorative Justice: A Critical Analysis*; Hodgson, J. (2022). Restorative Justice with Girls Who Offend: Conflicting Perspectives and Alternative Narratives to Dominant Discourses. In: *Gender, Power and Restorative Justice. Critical Criminological Perspectives*. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-030-90827-0_4

¹³⁰ Hodgson, *Offending Girls and Restorative Justice: A Critical Analysis* at 181.

¹³¹ *Ibid* at 172.

¹³² *Ibid* at 173-174.

¹³³ *Ibid* at 180.

¹³⁴ Te Aka Matua o te Ture - New Zealand Law Commission, *Women's Access to Legal Services* at 44.

¹³⁵ *Ibid* at 49.

¹³⁶ *Ibid* at 58.

diverse. Time and again, women described being made to feel “out of place” in their interactions with the justice system. As a result, the majority of the women consulted were openly sceptical about the truth of the notion that it deals fairly with all New Zealanders.

There has been some progress in gender balance in the legal profession in Aotearoa New Zealand but the imbalance at senior levels of the profession remains as explained by the New Zealand Law Society:¹³⁷

Results from the 2021 survey of Gender Equality Charter signatories show that the higher number of female lawyers is reflected in the ratio of men to women at all post-qualifying experience (PQE) levels up to 20 years. Up to 15 years’ PQE, there are approximately 1.5 times as many female lawyers as there are male, with this gap reducing closer to an equal ratio at 15-19 years’ PQE. The survey shows that there is a significant and progressive drop in the proportion of women lawyers from the 15-year PQE plus mark onwards.

The survey showed that only 36% of senior legal roles were held by women in 2021. The proportion of women in the General Counsel/ Chief Legal Advisor role is higher, at 58%, and the percentage of women salaried partners in the survey was just over 50% in 2021. Women made up 47% of directors. However, it remains the case that only around a third of equity partners are women.

A 2016 research study commissioned by the Auckland Woman Lawyers’ Society found that a majority (86%) of female respondents indicated that there were barriers to women’s career progression in law firms as compared to approximately half (53%) of male respondents.¹³⁸ Female participants identified a range of barriers to progression including the existence of an ‘old boys’ network, the expectation of 24/7 availability, lack of flexibility, and the perceived choice between Partnership and child-bearing.¹³⁹ Another striking finding was that almost all of the women who responded (95%) agreed that there was a trend for women to leave the firms or the profession whereas 30% of the men who responded, queried or disagreed that there was a trend for women to leave.¹⁴⁰

Over the last few years the media have also been monitoring the gender and ethnic balance in the Courts with a series of articles by Radio New Zealand journalist Anusha Bradley reporting the ongoing gender imbalance at all levels other than the Supreme Court. In 2021:¹⁴¹

- All courts – 60% male to 40% female
- Supreme Court – 50% male to 50% female
- Appeal court – 80% male to 20% female
- High Court – 59% male to 41% female
- District Court – 59% male to 41% female

¹³⁷ New Zealand Law Society. (n.d.). *By the numbers*. <https://www.lawsociety.org.nz/professional-practice/diversity-and-inclusion/women-in-the-legal-profession/by-the-numbers/>

¹³⁸ Pringle, J., Giddings, L., Harris, C., Jaeger, S., Lin, S., Ravenswood, K. & Ryan, I. (2014). *Women’s career progression in Auckland law firms: Views from the top, views from below*. Gender & Diversity Research Group, AUT University at 8.

¹³⁹ Ibid at 8-9. See also Ashby, N. (2017). *Absent from the top: A critical analysis of women’s underrepresentation in New Zealand’s legal profession*. *New Zealand Women’s Law Journal*, 2, 80-112.

¹⁴⁰ Pringle et al., *Women’s career progression in Auckland law firms: Views from the top, views from below* at 8.

¹⁴¹ Bradley, A. (2021, September 20). 90 percent of High Court, Court of Appeal judges Pākehā. *Radio New Zealand*. <https://www.rnz.co.nz/news/is-this-justice/451867/90-percent-of-high-court-court-of-appeal-judges-pakeha>

Gender disparities were also raised in the recent report of the Independent Review Panel commenting:¹⁴²

For the past 30 years there have been more female law graduates than male, with women accounting for 72 per cent of new admissions to the profession in 2021.³⁵⁰ Despite this trend, the lack of gender equality in senior positions within the profession is striking. The Solicitor-General has observed this issue can be traced back to the culture of the profession.

Possible solutions

In this section I discuss some possible solutions or ways of addressing some of the barriers to access raised in the research and literature from Aotearoa New Zealand and overseas. It is not a complete analysis, nor an attempt to identify ways to resolve all the access to justice challenges experienced by girls and young women and should be read together with working papers 11-17 which discuss possible ways of increasing access to justice for children and young people more generally.¹⁴³

Gender responsive services and practices

In 1999 the Law Commission published its report on women's access to justice.¹⁴⁴ Although more than twenty years has passed since then the set of six principles the Law Commission developed to guide policy and lawmakers as they sought to promote the just treatment of women remain largely relevant today both to access to justice for girls and young women, but also more generally:¹⁴⁵

Diversity – diverse responses must be made to meet the diversity of needs;

User focus – services must be responsive to users' needs;

Informed participation – users of the justice system must be kept informed about the application of the system to their circumstances;

Community participation – the laws, procedures and services of the justice system must be developed with community involvement;

Co-ordination – the range of justice system services must be co-ordinated; and

Accountability – justice system procedures and services must be regularly monitored, evaluated and reviewed.

Much of the literature on the need for gender-responsive practices has focussed on the criminal justice system. However, we can draw parallels to other justice related processes where girls and young women are also a comparatively smaller population and the cohort may share some of the same characteristics e.g. school disciplinary decision making.

¹⁴² Independent Review Panel. (2023). [Regulating Lawyers in Aotearoa New Zealand: Te Pae Whiritahi i te Korowai Rato Ture o Aotearoa](#). New Zealand Law Society at 170.

¹⁴³ Working papers 11-17 discuss Strategic litigation; Legal service delivery, non-lawyer services, and integrated services; Data, evidence and measuring change; Technology; Training for professionals; Legal education and continuing professional development for lawyers and judges; and Law-related education for children and young people.

¹⁴⁴ Te Aka Matua o te Ture / New Zealand Law Commission, [Women's Access to Legal Services](#).

¹⁴⁵ Ibid at 259.

Best et al. argue that the distinct needs of the young female offender population mean that the way we work with them in the youth justice system should also differ: “[a]n approach that addresses the specific needs of young females and that works to their strengths will be far more effective at addressing the causes behind offending and ultimately preventing future offending behaviour”¹⁴⁶ and that in order to cater to young female offenders in the justice system “judges, youth justice coordinators, youth advocates and other relevant professionals need to understand and be trained in how to work with young female offenders”.¹⁴⁷

A literature review by Severinsen et al found that common programme characteristics which are thought to make them more responsive to females include:¹⁴⁸

1. Considering gendered pathways into offending and addressing the specific risks and needs of females relating to that pathway e.g. the impact of sexual abuse and family violence.
2. Using a strengths-based approach, trauma-informed practices and gender-based assessment tools.
3. Services working together to prevent females with high welfare needs going into the youth justice system.
4. Tailoring interventions to each female’s individual risk and need profile.
5. Specifically referring to the needs of females in policies, services and programmes.
6. Recognising the low risk to public safety presented by the offences that young female offenders typically commit.
7. Using diversion to avoid revictimising females whose offending behaviour is a developmentally appropriate response to trauma.

In the United States gender-specific courts have been developed to address females’ specific needs and, in particular, underlying problems that may have led to offending behaviour such as the experience of trauma.¹⁴⁹ For example, the Hawaii Girls’ Court has all female staff and provides direct links to mental health and other services as appropriate to participants’ needs. In Australia and Canada gender-sensitive legal services focussed on girls and women have also been established for example, Your Way Forward in Canada which provides legal services to survivors of sexual abuse and the Wirringa Baiya Women’s Legal Service which provides gender-specific and culturally appropriate legal services for Aboriginal and Torres Strait Islander women and children. Both services are briefly discussed below.

Your Way Forward

As part of the Government of Canada’s strategy to address such gaps and barriers for survivors of gender-based violence, including sexual violence and intimate partner violence, a call for proposals was made by the Department of Justice for organizations who wished to provide holistic legal services (including independent legal advice and representation) to survivors. Justice for Children and Youth in Toronto and eight sister legal clinics were successful in obtaining funding to establish a collaborative project called Your Way Forward.¹⁵⁰

¹⁴⁶ Best et al., Young female offenders and the New Zealand Youth Justice System: the need for a gender-specific response at 14. See also Lim et al., Characteristics of Female Youth Offenders in New Zealand for a more detailed discussion of the needs of female offenders.

¹⁴⁷ Ibid at 13.

¹⁴⁸ Severinsen et al., [Female offending and youth justice interventions: A review of literature. \(Technical Report 24\)](#) at 58-59.

¹⁴⁹ Sanders et al., [The pathways to resilience project young females in the court system: A report prepared for the principal youth court judge \(Technical Report 25\)](#) at 32.

¹⁵⁰ Justice for Children and Youth. (n.d.). *Your Way Forward*. <https://jfcy.org/ywf/>

Wirringa Baiya Women's Legal Service

Wirringa Baiya provides Aboriginal and Torres Strait Islander women and children in NSW with a gender-specific service sensitive to their culturally diverse needs as victims-survivors of violence including access to legal representation, advocacy, advice, and referral.¹⁵¹ The Wirringa Baiya website explains the original rationale for the service:¹⁵²

Aboriginal women faced many barriers such as racism, sexism, discrimination, they were ignored, dismissed, and neglected by many services. Aboriginal women did not want to access generalist services as they were not always culturally appropriate, and they did not understand or comprehend the complex needs that exist for Aboriginal women...Although the Aboriginal Legal Service (ALS) was available for Aboriginal people to access, its primary function was to assist Aboriginal people with criminal matters. Therefore, they would often assist the alleged perpetrator/offender of the violence. As a result, the ALS was in direct conflict with many Aboriginal women within the community who needed their own legal assistance.

In contrast, Wirringa Baiya's area of expertise is Aboriginal women, children and youth victim-survivors of violence.¹⁵³

Training

Research and literature in New Zealand and other jurisdictions raises the need for professionals to receive training in relation to the needs and experiences of young women. For example, Best et al. identify the need for training "in matters specific to young females and their common backgrounds, with a particular focus on their maltreatment and trauma experiences and how this may affect the FGC process"¹⁵⁴ as well as how to work with young female offenders.¹⁵⁵ In the United Kingdom, the Agenda Alliance for Women & Girls at Risk and Alliance for Youth Justice make similar recommendation:¹⁵⁶

[C]riminal justice professionals are trained to understand that young adult women's offending, experiences of trauma, discrimination and inequality are interlinked, as part of an age-, gender- and trauma-informed approach to working with young adult women. This training should be developed in partnership with trauma-informed, gender-sensitive services with expertise in supporting young adult women facing multiple disadvantage.

Training in relation to the impacts of trauma and how to respond to it is discussed in more detail in *Working paper no. 9: Trauma*.

¹⁵¹ Wirringa Baiya Women's Legal Service. (n.d.). *Our Story*. <https://www.wirringabaiya.org.au/about-us>

¹⁵² Ibid.

¹⁵³ Wirringa Baiya Women's Legal Service. (n.d.). *Cultural Awareness Training*. <https://www.wirringabaiya.org.au/cultural-awareness-training>

¹⁵⁴ Best et al., Young female offenders and the New Zealand Youth Justice System: the need for a gender-specific response at 12-13.

¹⁵⁵ Ibid.

¹⁵⁶ Agenda Alliance for Women & Girls at Risk and Alliance for Youth Justice, *Young Women's Justice Project Literature Review* at 65.

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