

Submission to the Justice Committee: Sentencing (Reinstating Three Strikes) Amendment Bill

Introducing Mana Mokopuna – Children and Young People’s Commission

Mana Mokopuna - Children and Young People’s Commission is the independent Crown entity with the statutory responsibility to advocate for the rights, interests, participation and well-being of all children and young people (mokopuna) under 18 years old in Aotearoa New Zealand, including young persons aged over 18 but under 25 years old years if they are, or have been, in care or custody.

We independently advocate for and with mokopuna within the context of their families, whānau, hapū, iwi and communities, based on evidence, data and research, including direct mokopuna experiences and views.

Our work is grounded in the United Nations Convention on the Rights of the Child (the Children’s Convention), Te Tiriti o Waitangi and other international human rights instruments. We are also a National Preventative Mechanism under the Optional Protocol to the Convention Against Torture, meaning we monitor places where mokopuna are deprived of their liberty, including in the care and protection, youth justice, youth mental health and intellectual disability spaces.

We have a statutory mandate to promote the Children’s Convention and monitor the Government’s implementation of its duties under the Convention, and to work in ways that uphold the rights of mokopuna Māori including under Te Tiriti o Waitangi. We place a focus on advocating for and with mokopuna who are experiencing disadvantage, and we recognise and celebrate the diversity of mokopuna in all its forms.



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Executive Summary

Mana Mokopuna thanks the Justice Committee (the Committee) for the opportunity to submit on the Sentencing (Reinstating Three Strikes) Amendment Bill (the Bill). Mana Mokopuna:

1. **Does not support the Bill** due to the detrimental impact it will very likely have on the rights, interests, well-being and participation of mokopuna.
2. **Is concerned about the discriminatory impact the Bill is likely to have on mokopuna Māori.**¹ We urge the Committee to consider the potential for differential impacts on groups of mokopuna, including mokopuna Māori, and those who are experiencing situations of vulnerability,² particularly due to being care and/or custody-experienced or having parents or whānau in prison.
3. **Acknowledges those who are affected by the offending that has given rise to the Bill, and those, including mokopuna, who are fearful of offending in our communities.** We also acknowledge mokopuna and their whānau and communities who

¹ Ministry of Justice, 2024 “Regulatory Impact Statement: reinstating three strikes sentencing law”: [Regulatory Impact Statement: Reinstating three strikes sentencing law - 5 March 2024 - Ministry of Justice \(treasury.govt.nz\)](https://www.treasury.govt.nz/regulatory-impact-statement/reinstating-three-strikes-sentencing-law-5-march-2024)

² Under the Children and Young People’s Commission Act 2022, Mana Mokopuna must have regard to a range of principles when performing or exercising its functions, duties, or powers under the Act. Under s 5(e), this includes the need to give priority to the children and young people who are disadvantaged, and the issues affecting them. We refer to this group of mokopuna throughout the submission as those in “situations of vulnerability” in alignment with the Children’s Convention.

are experiencing situations such as poverty that we know to be associated with offending,³ and those who are impacted by incarceration.⁴

4. **Advocates for Government investment in effective, evidence-based solutions to addressing reoffending, including addressing the underlying causes of offending, such as poverty.**

Recommendations

5. **We recommend** the Bill does not proceed.
6. **We recommend**, if the Bill does proceed, a clause is inserted requiring official collection and publishing of annual data regarding how many people who are subject to strikes aged 18 - 25 years old (when the offending occurred) had been in care or custody as a child or young person under 18 years old, and data regarding how many of these people have declared that they experienced abuse in care and/or custody as a child under 18 years old.
7. **We recommend** the Committee ensures the rights, interests, well-being and participation of mokopuna are a primary consideration in assessing the Bill, grounded in the State's obligations under the United Nations Convention on the Rights of the Child (Children's Convention), and the Crown's obligations under Te Tiriti o Waitangi the Treaty of Waitangi.
8. **We recommend** the Committee consults with mokopuna who would be impacted by the Bill, particularly mokopuna of parents and whānau in prison, in alignment with their right under Article 12 of the Children's Convention.
9. **We recommend** the Committee supports responses and approaches to reducing offending which are grounded in human rights-based, early intervention, evidence-based prevention. We advocate for a collective commitment across Parliament towards alternative strategies instead of this Bill, in particular, strategies aimed at addressing the root causes of offending, while safeguarding the rights, interests, and well-being of mokopuna, encompassing their families, whānau, hapū, iwi, and communities.

Introduction



However, on every measure, the reintroduction of three strikes will exacerbate existing issues including the overrepresentation of Māori, Pasifika, and young offenders in the justice system.”

(Ministry of Justice, 2024)⁵

10. Mana Mokopuna must have regard to the following matters when carrying out our functions and duties:⁶
 - a. Mokopuna within (without limitation) the context of their family, whānau, hapū, iwi and community;
 - b. The diversity of mokopuna in all forms;

³ Risk factors related to criminal offending include poverty, disadvantage, and trauma such as violence, abuse and neglect: Office of the Prime Minister's Chief Science Advisor, 2018, "It's never too early, never too late: A discussion paper on preventing youth offending in New Zealand": [It's never too early, never too late: A discussion paper on preventing youth offending in New Zealand - June 2018 - Office of the Prime Minister's Chief Science Advisor \(dpmc.govt.nz\)](#)

⁴ Social Policy Evaluation and Research Unit (2015) "What Works: Improving outcomes for children with a parent in prison": [What-Works-Children-of-Prisoners-190615-WEB.pdf \(sia.govt.nz\)](#)

⁵ Ministry of Justice, 2024 "Regulatory Impact Statement: reinstating three strikes sentencing law", at para 79.

⁶ The Children and Young People's Commission Act 2022, s 5.

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- c. The need for high aspirations for the well-being of all children and young people, including responsive systems and structures that support them;
 - d. The need to give priority to the children and young people who are disadvantaged, and the issues affecting them; and
 - e. The need to hear from, and be informed by, mokopuna.
11. We draw the Committee's attention to the Government's obligations as duty-bearer under the Children's Convention. Given the link between this Bill and children's rights, the focus of our submission is on supporting the Committee to meet its responsibilities in relation to the rights, interests, well-being and participation of mokopuna when considering this Bill. We urge the Committee to prioritise consideration of the rights and well-being of mokopuna in relation to this Bill.
 12. Mana Mokopuna draws the Committee's attention to the following groups of mokopuna who we believe are likely to be particularly affected by this Bill:
 - a. Mokopuna with parents or whānau in prison;
 - b. Mokopuna Māori; and
 - c. Care and/or custody-experienced mokopuna (including those over the age of 18 but under the age of 25 years old).
 13. All mokopuna in Aotearoa New Zealand have the right to the experience all their rights, in all circumstances, at all times, under the Children's Convention which New Zealand ratified in 1991. Several of these rights are at risk under the Bill, including the right to non-discrimination (Art 2); the right to have children's best-interests taken as a primary consideration (Art 3); the right to be guided by parents and whānau (Art 5); the right, as far as possible, to know and be cared for by their parents (Art 7); the right to live with (and not be separated from) parents and whānau unless separation is necessary for the best interests of the child (Art 9); the right to be heard and taken seriously on matters which affect them (Art 12); the rights of mokopuna in alternative care (Art 20); the rights of disabled mokopuna (Art 23); the right to a decent standard of living including Government support to meet the material needs of mokopuna (Arts 26-27); and the rights of indigenous and minority mokopuna (Art 30).

This Bill is unlikely to reduce reoffending

14. The Bill's Regulatory Impact Statement (RIS) states:

"of the two approaches, the Ministry of Justice prefers the status quo rather than a new three strikes regime due to: lack of evidence that the proposal would be effective at addressing repeated serious violent offending or sustainably improving public confidence in the justice system, risk of unintended consequences which have been observed in such systems internationally and in New Zealand's own experience with the former regime, known downsides such as cost and issues with consistency of legal obligations, including under the Treaty of Waitangi, the current sentencing system already has the capability to respond to serious repeat offending, and disproportionate impact of a three strikes regime on population groups, particularly disproportionately harmful impacts on Māori."⁷
15. The means by which the Bill seeks to achieve these its aims is through further, lengthier sentences of imprisonment upon reoffending. However, if prison sentences were an

⁷ Above at 1, para 80.

effective means of either deterring (or indeed rehabilitating) offenders from engaging in further offending, the Bill would not be necessary and reoffending would not be an issue needing to be addressed.

16. We believe that in order to effectively address reoffending we need to prioritise interrupting cycles of harm. This includes, for example, through effective rehabilitation and significantly reducing the underlying drivers of offending, such as poverty. We also need to see meaningful investment into preventing offending from the beginning – “getting children off the prison pipeline”⁸ - by addressing the social harms associated with offending by children and young people, such as those we note below at para 29.

We are concerned about the impact of this Bill on mokopuna with parents and whānau in prison



“Our hardship is real. Please - look at us, listen to us.”

(Pillars Ngā Rangatira Mō Apōpō Youth Advisory Panel member, 2023)⁹

17. Around 17,000 mokopuna in Aotearoa New Zealand have a parent in prison.¹⁰ We are concerned the Bill may result in greater numbers of mokopuna being impacted by a parent or whānau member’s incarceration, and for longer periods with the reinstatement of three-strikes.
18. A parent’s involvement in the criminal justice system is a key predictor of children’s later involvement with the justice system, and mokopuna with imprisoned parents are 9.5 times more likely to go on to experience imprisonment themselves.¹¹ Mokopuna with a parent in prison also face an increased risk of being taken into state care, and state care experience is associated with an increased risk of offending.¹²
19. There can be significant and serious consequences for mokopuna when their parents are imprisoned. Impacts can include, for example, breakdown in family relationships; impact on a child’s sense of belonging and identity; a change in the care arrangements for mokopuna; and economic impacts.¹³ At the extreme end, we note the tragedy of five year old Malachi Subecz’s murder, while his mother was in prison.¹⁴
20. Pillars Ka Pou Whakahou data shows that 96% of Pillars mokopuna are struggling emotionally and 85% are struggling at school.¹⁵ Mana Mokopuna is concerned that neither the justice system, nor the wider children’s system, is adequately equipped to support mokopuna impacted by the imprisonment of their parents.¹⁶ Given that this Bill, if passed, will lead to higher numbers of people being incarcerated, this intersection with the rights and well-being of mokopuna must be considered.
21. Mana Mokopuna is deeply concerned about the harms, including the intergenerational harms, mokopuna with parents or whānau in prison experience, and the wide-reaching implications this has for their lifelong well-being. However, these outcomes do not have to be inevitable. Evidence strongly supports our contention that we can prevent this cycle, by supporting evidence-based, early-intervention approaches, and wraparound supports

⁸ Above at 3.

⁹ Pillars Ka Pou Whakahou (2023) “Pillars Ka Pou Whakahou Annual Report 2022-2023”.

¹⁰ Above at 8.

¹¹ Above at 8.

¹² Above at 4; above at 5.

¹³ Mana Mokopuna (2024) “Our Policy Positions: Growing up safe and well”: [Our policy positions | Mana Mokopuna](#)

¹⁴ Dame Karen Poutasi (2022), “Joint Review into the Children’s Sector: Identification and response to suspected abuse.”: [Final-report-Joint-Review-into-the-Childrens-Sector.pdf \(orangatamariki.govt.nz\)](#)

¹⁵ Pillars Ka Pou Whakahou Youth Advisory Panel Ngā Rangatira Mō Apōpō (2023) Open Letter to Government for Children’s Care Plans: [Creating Positive Futures: Why Tamariki Need More Support in our Justice System \(pillars.org.nz\)](#)

¹⁶ Above at 11; above at 12.

for mokopuna of parents and whānau in prison.¹⁷ This includes adopting a children’s rights approach to addressing offending in Aotearoa New Zealand, so that offending cycles are not perpetuated and mokopuna are loved, safe, belonging and flourishing in their families, whānau and communities.¹⁸

22. **Mana Mokopuna calls for Government consultation with mokopuna of imprisoned whānau**, to comprehensively understand the impacts on their rights and wellbeing of increasingly punitive criminal justice measures, as well as to understand the specific needs of these mokopuna.¹⁹ This aligns with their right to be consulted with and taken seriously on issues that affect them under Article 12 of the Children’s Convention. We advocate for their views to inform and shape any policy, practice and legislation that will have an impact on mokopuna with parents and whānau in prison.
23. **In particular, we draw the Committee’s attention to the open letter of Pillars Ka Pou Whakahou Youth Advisory Panel, Ngā Rangatira Mō Apōpō**, who have lived experience as mokopuna of incarcerated whānau.²⁰

We are concerned that mokopuna Māori are likely to be disproportionately impacted by the Bill, to the detriment of their rights, interests and well-being

24. Mokopuna Māori have rights under the Children’s Convention, Te Tiriti o Waitangi and the Treaty of Waitangi that the Government is obligated to protect and uphold. All mokopuna have the right to non-discrimination,²¹ and we believe the Bill risks this right in respect of mokopuna Māori. **We urge the Committee to consider the rights of mokopuna Māori as a central consideration in relation to this Bill.**
25. The Bill’s Regulatory Impact Statement (RIS) states that “data from the previous three strikes regime provides a reliable indication of the likely impact of the planned reinstatement on Māori”.²² Data across the years 2018/19-2019/20 showed “Māori were almost nine times more likely to receive a first strike than those of European/other ethnicity and over 18 times more likely to receive a second strike”.²³ Moreover, of the 21 offenders who received a third strike, 81% were Māori.²⁴
26. A wealth of evidence has established a clear link between the impacts of colonisation and how it relates to criminal offending, reoffending and the overrepresentation of Māori in the criminal justice system. This includes due to colonisation processes such as the dispossession of Māori land and wealth from Māori, and the fracturing of whānau, hapū and iwi structures.²⁵ We note that just last year, the UN Committee on the Rights of the Child stated that it remains “seriously concerned” that “Māori children remain disproportionately represented in the youth justice system and are overrepresented among young people who die by suicide in closed institutions.”²⁶

¹⁷ Above at 4; above at 5; Professor Ian Lambie, Dr Jerome Reil, Judge Andrew Becroft, Dr Ruth Allen (2022) “How we fail children who offend and what to do about it: ‘A breakdown across the whole system’ research and recommendations”: [ACARA Annual Report 2015-16 \(borrinfoundation.nz\)](#)

¹⁸ Mana Mokopuna (2024) “Our Policy Position: Thriving families and whānau”: [Our policy positions | Mana Mokopuna](#)

¹⁹ Mana Mokopuna (2024) “Our Policy Positions: Participating in what matters to me”: [Our policy positions | Mana Mokopuna](#)

²⁰ Above at 13.

²¹ United Nations Convention on the Rights of the Child (1989) art 2.

²² Above at 2, para 55.

²³ Above at 2.

²⁴ Above at 2, para 55-56.

²⁵ [Tū Mai te Rangi! Report on the Crown and Disproportionate Reoffending Rates \(justice.govt.nz\)](#); He Waka Roimata [He-Waka-Roimata-Report.pdf \(justice.govt.nz\)](#)

²⁶ United Nations Committee on the Rights of the Child (2023) “Concluding observations on the sixth periodic review of New Zealand” at para 42(d).

27. We strongly draw the Committee's attention to the impacts of the Bill upon the rights, interests and well-being of mokopuna Māori and whānau Māori. We are deeply concerned about the significantly inequitable and detrimental impacts that this Bill will highly likely have on whānau Māori, and therefore mokopuna Māori and their rights, interests and well-being, should it pass into law. The negative intergenerational impacts for Māori that this Bill will very likely perpetuate must not be underestimated – this Bill passing into law, would be, in our view, inconsistent with an intergenerational approach of upholding the promise of Te Tiriti o Waitangi.

We are concerned that care-experienced mokopuna are likely to be disproportionately impacted by the Bill

28. Mana Mokopuna has a mandate to advocate for the rights, interests, well-being and participation of young people aged over 18 but under the age of 25 if they are, or have been, in care or custody.²⁷ **We are deeply concerned that this cohort of mokopuna will be significantly impacted by the Bill, and about the potential negative impact on all care and/or custody-experienced mokopuna under 18 in the long-term.**²⁸ We note that this will often trace back to failures to uphold their rights, interests and well-being throughout their early lives.
29. The evidence is consistent: offending, including reoffending, particularly as it relates to young people, is often preceded by significant child welfare concerns such as very high levels of abuse, reports of concern to Oranga Tamariki, out-of-home placements, exclusion from school, and other indicators of social deprivation.²⁹ The Waitangi Tribunal states that "gang members, as well as the adult and youth prison populations, are largely a subset of the care and protection populace".³⁰ We note that mokopuna Māori, as well as neurodiverse and disabled mokopuna are overrepresented in care and custody.³¹
30. **Furthermore, we note with deep concern that the RIS states that the Bill will exacerbate the overrepresentation of young offenders in the justice system.**³² **We strongly caution against any legislative approach that will have this effect.** It is not in line with New Zealand's obligations under the UN Convention on the Rights of the Child.
31. We advocate for the Government – and future successive governments – to focus on designing and implementing approaches to youth justice that are consistent with a children's rights approach, reflective of the authoritative guidance issued by the UN Committee on the Rights of the Child and the Committee's specific recommendations to New Zealand regarding child justice,^{33,34} and which uphold the rights of mokopuna Māori including under Te Tiriti o Waitangi and the rights of disabled children including under the UN Convention on the Rights of Persons with Disabilities.³⁵

²⁷ The Children and Young People's Commission, s 7.

²⁸ Royal Commission of Inquiry into Abuse in State Care (2022): [Incarceration rates and State care directly linked according to new research | Abuse in Care - Royal Commission of Inquiry](#)

²⁹ Above at 15; The Social Wellbeing Agency (2022) "Overview of current evaluations of programmes targeted at youth": [PROACTIVE-RELEASE-overview-of-current-evaluations-of-programmes-targeted-at-youth.pdf \(sia.govt.nz\)](#)

³⁰ The Waitangi Tribunal (2021) "Wai 2915 He Pāharakeke, He Rito Whakakīkinga Whāruarua: Oranga Tamariki Urgent Inquiry", at p 185: [He Pāharakeke, he Rito Whakakīkinga Whāruarua \(justice.govt.nz\)](#)

³¹ Aroturuki Tamariki Independent Children's Monitor (2024) "Experiences of Care in Aotearoa 2022-23": [aroturuki.govt.nz/assets/Reports/EOCR2223/EOCR-2022-23.pdf](#)

³² Above at 2.

³³ United Nations Committee on the Rights of the Child (2019) "General Comment No. 24 on children's rights in the child justice system": [General comment No. 24 \(2019\) on children's rights in the child justice system | OHCHR](#)

³⁴ Above at 22, para 42(e): "To develop an effective action plan aimed at eliminating the disparity in the rates of sentencing, incarceration and survival in detention of Māori children by addressing the connections between offending and neuro-disability, alienation from *whānau* (family), school and community, substance abuse, family violence, removal into State care and intergenerational issues."

³⁵ United Nations (2006) Convention on the Rights of Persons with Disabilities, Art 7.

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32. Rather than driving more mokopuna into the criminal justice system, taking this alternative approach would instead focus on preventing offending from occurring in the first place, and investing in early-intervention, wraparound approaches to preventing re-offending, which have already been proven to work, such as Kotahi Te Whakaaro.³⁶ and Mahuru³⁷
 33. Mana Mokopuna is firm in our evidence-based position that upholding the rights, interests and well-being of care and/or custody-experienced mokopuna, through prevention, and through early-intervention, wraparound supports will be the most effective means of addressing reoffending, rather than increasingly punitive approaches once the damage has been done.³⁸

Conclusion

34. Mana Mokopuna is very concerned about the adverse impact the Bill is likely to have on the rights, interests and well-being of mokopuna, including the very likely disproportionate negative impacts on mokopuna Māori and care and custody-experienced mokopuna, including those with disabilities.
35. We strongly advocate for the Committee to consult with mokopuna who have lived experience of the issues we have raised in our submission, including mokopuna Māori and mokopuna with experiences of parents or whānau in prison, as well as those mokopuna who are care and/or custody experienced.
36. We also advocate for the Committee to seek out parents and whānau with lived experience of incarceration to inform its consideration of this Bill and its likely impacts, in relation to the rights, interests and well-being of mokopuna.
37. We call on the Committee and the Government to prioritise evidence-based preventative and early intervention approaches to preventing and addressing reoffending, including mokopuna-centred prevention efforts, and by developing and implementing policies and legislative approaches that are grounded in a children's rights approach and address the root causes of offending, such as poverty.³⁹

³⁶ <https://www.beehive.govt.nz/sites/default/files/2022-12/2022-12-07%20%28002%29%20Better%20Pathways%20Update%20One%20Pager%20%281%29.pdf>

³⁷ <https://ot.govt.nz/assets/Uploads/About-us/Research/Latest-research/Community-based-remand-homes/CBRH-evaluation-final-Dec22.pdf>

³⁸ Above at 4; above at 5; above at 15.

³⁹ Above at 15.