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**Divergence or Convergence in Models of Youth Justice from legislation to 2023? – A Comparison  
between New Zealand and Ireland.**

**A dissertation submitted in partial fulfilment of the requirements for the degree of  
MA in Comparative Criminology and Criminal Justice**

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### **List of Abbreviations**

<b>CRC</b>	<b>United Nations Convention on the Rights of the Child</b>
<b>JLO</b>	<b>Juvenile Liaison Officer</b>
<b>AOD</b>	<b>Alcohol and other drugs</b>
<b>BOBF</b>	<b>Better Outcomes Brighter Futures</b>
<b>GDP</b>	<b>Garda Diversion Programme</b>
<b>IYJS</b>	<b>Irish Youth Justice System</b>
<b>NZ</b>	<b>New Zealand</b>
<b>FGC</b>	<b>Family Group Conference</b>
<b>2001 Act</b>	<b>Children Act 2001</b>
<b>1989 Act</b>	<b>Oranga Tamariki Act/ The Children, Young Persons and Their Families Act 1989</b>
<b>PYD</b>	<b>Police Youth Diversion</b>
<b>YJS</b>	<b>The Youth Justice Strategy 2021-2027</b>
<b>YCAP</b>	<b>Youth Crime Action Plan 2013-2023</b>
<b>YJAP</b>	<b>Youth Justice Action Plan 2014-2018</b>
<b>DPP</b>	<b>Director of Public Prosecutions</b>

## **Abstract**

Within the context of youth justice being an area of much political and public debate, and with increasing globalisation and policy transfer youth justice is important to analyse and assess in terms of systems functions. Irelands' youth justice legislation, took influence from the innovative youth justice system of New Zealand. This resulted in an altering model of youth justice within Ireland and New Zealand away from a strict welfare model. The focus increased justice-based elements of holding children and young people responsible for their offending behaviour, while maintaining a welfare ethos, including attention to victims needs. Due to this approach being innovative, and attracting significant international attention, this research aims to assess if the models of youth justice have changed in Ireland and New Zealand since the relevant legislation in 1989 in New Zealand and 2001 in Ireland, up to policy in 2023. The examination, guided by the underlying models of justice relevant to these youth justice systems, will highlight the innovative approaches' progress, and journeys in New Zealand and Ireland.

## Chapter 1: Introduction

### 1.1. What is youth justice

In most societies, young people are not held to the same standards as adults before the law (Hartjen, 2008). The expectations of, and treatment of young offenders is usually related generally to biological age, with different ages of criminal responsibility and cut off ages globally (Hartjen, 2008). Youth justice, refers to offending by young people, however the exact ages included in this differ between countries. The youth justice system was initially formed based on the premise that children, due to their developmental immaturity, are less culpable for their actions than adults (Hinton et al., 2007; Steinberg, 2009). These principles highlight the belief that along with a need to protect the public, there is a duty to intervene in the lives of young offenders, or those at risk to promote prosocial and wellbeing for the young people (April et al., 2022). The capabilities of children and young people are generally influenced by impulsivity, (Weijers, 2004), and are less risk averse than adults (Scott & Grisso, 2004). Children and young people usually focus on short term effects of their actions and decisions, with less focus on long term implications of their behaviour (Scott & Grisso, 2004). This immaturity may impact offending behaviour due to limited capacity to make rational decisions, and their interactions with the youth justice system (Grisso et al., 2003). Children involved in the youth justice system are generally predominantly male, live in disadvantaged areas and are members of minority communities (Carroll et al., 2007; Moyle & Tauri, 2016). Those involved in the youth justice system often have histories involving childhood adversity, trauma, poverty, neglect, and family and neighbourhood disruption (Baglivio et al., 2014; Dierkhising et al., 2013), and mental health symptoms (Fite et al., 2020). These factors highlight the vulnerability of many youths involved in the justice system, emphasising the requirement of safeguards throughout their engagement with the justice system (Judge, 2015).

### 1.2. Policy Transfer

Criminal justice policies are converging worldwide, with factors such as , international human rights initiatives, influencing nations forming similar legislation (Fergusson, 2002; Hoberg, 2001; Morris, 2004). Within youth justice, there has been a significant amount of policy transfer internationally (Muncie, 2001). Policy transfer in the context of increased globalisation has resulted in a growing similarity in criminal justice, particularly across western societies (Garland, 2001 in Hamilton et al., 2016; Goldson & Cunneen, 2019). Nation states are commonly looking to other countries to discover ‘what works’ in youth justice, including through Lesson-drawing (Rose, 1991). Through policy transfer with lesson-drawing, elements,

or overall policies from other countries viewed as promising, can be brought to another country to bring the benefits of the policy to the country (Rose, 1991). Youth justice across Europe has been informed by contra-penal trajectories such as from the import of restorative conferencing from New Zealand (Muncie, 2005). It is suggested that smaller countries may be more likely to adapt criminal justice changes from abroad such as restorative conferencing than countries with strong hegemonic power such as England (Karstedt, 2015). Which may in part explain Ireland taking influence from New Zealand. Policy transfer may influence the development of similar policies across countries, however the substance and implementation of policy across countries can have significant differences (Doob & Tonry, 2004). These factors make policy transfer useful for comparative studies, as it provides similarity to use for comparison, with individual nuances in how the policy works in each country. One country may have the benefit of adapting similar policies and taking influence from elsewhere. This adaptation can in turn influence others, both where they have taken influence from and to highlight benefits for countries around them. This process can continue, and collaboratively speed up an evidence base as multiple countries can continue to build upon the basic concepts at the same time. Ireland and New Zealand's youth justice systems can build upon an evidence-base for best practice in youth justice to benefit their systems, and others globally.

### **1.3. Shared Ideological Approach between Ireland and New Zealand**

Policy transfer occurred between Ireland and New Zealand's youth justice systems and the ethos behind youth justice. Children Young People and Their Families Act, later renamed to Oranga Tamariki Act 1989, New Zealand influenced the Children Act, 2001 in Ireland. The Oranga Tamariki Act in 1989 was made up of innovative and unique methods, and ethos behind youth offending (Morris & Maxwell, 1993 in Lynch, 2008). These included diversion, family group conferences (FGCs), and detention as a last resort (Hamilton, 2016) This led to the 1989 Act receiving much attention internationally (Morris, 2004). The introduction of these factors, such as accountability related to the justice model, and a focus on victims related to the restorative model (Hamilton, 2016), aimed to reduce the criticisms of the previous system. These included lack of accountability and due process legal rights, and excessive sanctions to meet a young person's welfare needs (Watt, 2003). The youth justice system in NZ gave influence to the reform of the youth justice system in Ireland that occurred with the Children Act 2001 (2001 Act) (Kilkelly, 2014; Lynch, 2012). Like NZ, Ireland emphasises young peoples' wellbeing, reintegration (Kilkelly, 2014), restoration and family involvement (Lynch, 2012), diversion and Family Group Conferences (FGC) (Kilkelly, 2014).

Ireland has adapted key features of the youth justice system of NZ and looked to research from their use in NZ to base practices on. Principles underpinning the youth justice system in NZ that have transferred to the Irish youth justice system include a focus on diversion, community, detention as a last resort, using the least restrictive intervention possible (Seymour, 2017). Elements of youth justice legislation, especially FGCs from NZ have been influential in several other western nations, including Ireland (Lynch, 2008). Views and needs of the victim are of importance which highlights restorative elements, along with reintegration of the young person into their community, and community involvement which can be an empowering process (Christie, 1977). As these similarities consist of underpinning principles of youth justice this highlights shared views surrounding citizens, including young people that guide the whole youth justice system, rather than just one type of intervention. This makes possible divergence away from these principles significant as it may suggest a move toward a broad ideological change rather than changes strictly to practice. Along with these shared underlying principles and ethos of the systems, Ireland has taken knowledge from NZ to put into specific practice within interventions. Ireland took influence from research on FGCS in NZ to establish the practicalities of using FGCs (McNulty, 2005). Through this research, Ireland concluded on the best manner to prepare for and chair FGCs here (McNulty, 2005) which highlights Ireland adapting both concepts and interventions from NZ, and NZ being influential in Irelands specific practices within these concepts. Although Ireland and NZ have these overarching similarities within their youth justice systems, and penal culture more widely along with some distinctive nuances in implementation and practices (Forde, 2021). These youth justice systems feature key elements under the four models of youth justice of, 'just deserts'/justice, welfare, restorative and actuarial. Due to this and the use of these models throughout much youth justice literature, these models are used for the theoretical basis of this research paper.

#### **1.4. The models that underpin youth justice and the implications of them**

Comprehensive explanations for youth delinquent behaviour are incorporated into models of youth justice through the policy and practice methods that are used in a country (Smith & Gray, 2019). Youth justice debates have traditionally been based around the competing objectives of the welfare versus justice approaches (Hazell, 2008). However, this may be oversimplified, as a vast array of, often competing factors within the context of a particular country, impact policy, and practices (Case & Hampson, 2019). Although there are complex nuances in balancing these objectives, generally all youth justice systems fulfil two competing objectives (McAra, 2012). One objective is to help and support young people to develop to overcome their problems



leading to positive behaviour change which aligns with the welfare model of justice for young people to be discussed (McAra, 2012). The other objective is to deliver appropriate, prompt, and firm responses to youth offending to protect the public from offending behaviour (McAra, 2012). This is more closely related to the justice model (Fionda, 2005), which will be discussed. These objectives are particularly relevant to youth justice, as young people may be viewed as vulnerable and in need of protection and support (Smith & Ecob, 2007), which makes finding a balance between these two objectives important. Despite a goal of justice being to protect the public from offending, within the context of youth justice this needs to be achieved ensuring young people are viewed as vulnerable and in need of support (Forde, 2021). While the need to protect society remains, the vulnerability of young people is generally acknowledged to some extent, as evident from the separate justice systems for young people and adults. In addition to the justice and welfare-based approaches, restorative and actuarial models will be used to encapsulate the nuances and complexities within youth justice systems. Each model that will be discussed in this review provides an approach to balancing these objectives. The use of these models will be linked to both youth justice interventions, and underlying perceptions and views surrounding young people and offending. Despite research and evidence surrounding models of youth justice and best-practice, models of justice used in each country are influenced by the wider political context and through professionals adapting their practices (Fergusson, 2007). Rather than responses to youth offending being evidence-based, they may instead be influenced by politics, public concern, or recent events (Case & Hampson, 2019; Fergusson, 2007).

#### **1.4.1. Just Deserts/Justice**

The belief behind the ‘just deserts’/ justice model is that young people, who are at the age of criminal responsibility, can make a rational choice on engaging in offending behaviour, and therefore have a responsibility for their behaviour and consequences (McAra, 2012). A limitation to the validity of this belief, is the various ages that are deemed to be the age of criminal responsibility in different countries. Due to the focus on the young person’s responsibility and consequences, this model is more related to justice, punishment and meeting the public’s need for protection. Accountability and responsibility are the key focus, with prosecution and sanctioning occurring in court (Kilkelly, 2006). This view of young people making a rational choice to offend, suggests that young people who do offend may be a significant threat to society as despite the possible harm and consequences they have committed the offence. This view, may be linked to labelling the young person as an offender first, rather

than as a young person who is facing vulnerabilities that may impact their decisions. As they may be viewed as an ‘offender first’ their due process and procedural rights are focused on (Forde, 2022; Kilkelly, 2006; Muncie, 2015). This is in line with their offender status, rather than a ‘child first’ view that would focus on their needs as a child before the due process rights of the criminal justice system.

#### **1.4.2. Welfare**

Contrastingly to the just deserts model, The ‘Welfare’ model is underpinned by the belief that the young person cannot be held responsible for their actions of offending in the same way as adults, as young people are at a protected stage of development (McAra, 2012). Rather than the child being viewed primarily as a rights bearer as with the justice model, they are viewed as a bearer of entitlements due to their protected stage of development (McAra, 2012). Interventions within this model aim to ‘rescue’ the vulnerable child (McAra, 2012), contrasting to the justice interventions focus on punishment. This highlights a focus on protecting and meeting the needs of young people in the context of their vulnerability, and incomplete development. Although this is to benefit the young people, and ensure interventions are appropriate for their developmental stage, by increasing holistic welfare outcomes, societies need for protection may be met with these interventions in turn reducing recidivism. However, a strict adherence to best interest of the child and their needs as seen through the ‘child saving era’ of youth justice can lead to limited consideration for the rights of children. Due process rights were seen as unnecessary in the light of the ‘best interest’ objective, as meeting these rights would limit the flexibility needed for individualized intervention and treatment (Kempf-Leonard & Peterson, 2000). This problem between balancing punitive and rehabilitative functions is harmful for the juvenile process (Allen, 1964 in Kempf-Leonard & Peterson, 2000) and has been partly responsible for various reform efforts (Ferdinand, 1991). Further criticism of the welfare-based system included limited attention, and compliance with proportionality, with some children receiving increased levels of intervention than they would through a court-based system (McVie, 2011; Kempf-Leonard & Peterson, 2000).

#### **1.4.3. Restorative**

The restorative model views personhood as being directly shaped by the cultural and community context (Zehr & Mika, 1998). Children in this model have entitlements and rights, whilst being viewed as rational individuals who have capability to accept responsibility for harm caused (McAra, 2012). Advocates of restorative justice, advocate for influence taken from customary practices of Māori, Aboriginal and Native American

Indigenous communities (Muncie, 2005). Restorative processes have potential to restore the control of justice from the state to citizens, and in turn restore harmony based on a sense of justice from these processes (Braithwaite, 2003). Restorative processes, and the restorative model of youth justice has an increased focus on accountability of the young person, with this being related to reparation for the victim, and responds to the needs of those most directly harmed by the offence (Pavelka & Thomas, 2019). Emphasis is on repairing the relational damage caused by the offence (Bouffard et al., 2017), and community involvement and participation in criminal justice practices (Christie, 1977). This then ideally results in reducing recidivism (Bouffard et al., 2017), and successful reintegration into the community with community healing (April et al., 2022). The concept of a restorative model of justice creates opportunity for a system of social justice based on building communities, solidarity, and empowerment (White, 2003).

#### **1.4.4. Actuarial**

Actuarial justice focuses on techniques to identify, classify, and manage groups assorted by their levels of dangerousness (Feeley & Simon, 1994 in Kempf-Leonard & Peterson, 2000). The main aim of this model, is to reduce further offending to protect the public (McAra, 2012), although this is to be achieved with cost-effective measures (Garland, 1996; Kempf-Leonard & Peterson, 2000). The belief within the actuarial model is that young people have the capacity for wrongdoing, and they have needs that require addressing. However unlike the welfare model, the needs are based on the criminogenic risk related to them (McAra, 2012). This means that the actuarial model may address some of the young person's needs, however only the needs that are believed to increase the risk of the young person re-offending or offending for the first time. These needs, may also be defined as 'risk factors' linked to offending. Some key features include efficiency and techniques that streamline case processing and offender supervision replacing traditional goals of rehabilitation, punishment, deterrence and focus on due process or crime control (Packer, 1968 in Kempff-Leonard & Peterson, 2000). This model may include early intervention with those who score highly on the risk assessment to prevent them potentially offending (Case, 2007). A risk factor paradigm, therefore, focuses on the potential for harm, and misbehaviour rather than the crime itself (Muncie, 2005). Established risk factors include poor parental supervision, family disharmony (Farrington, 1996), and living in a violent community (Loeber & Stouthamer-Loeber, 1998). Those considered most at risk, are generally from marginalized and socially excluded groups such as low socio-economic status and ethnic minorities (Muncie, 2005). These groups, despite being referred to within the actuarial model

as a risk for offending and causing harm, may themselves be victims of their situation that may lead to such behaviour. Rehabilitation or due process is replaced with implementing punishments in an efficient, cost-effective manner. In this regard, rather than a focus on outcomes for young people and society, the focus is on outputs and meeting targets (Kempf-Leonard and Peterson, 2000) which is particularly harmful for the 'at risk' groups due to their disadvantage and victimisation previously experienced.

### **1.5. This dissertation**

This paper will consist of a literature review that highlights the background of shared ethos of youth justice between Ireland and New Zealand, highlighting aspects of all four models of justice found in Ireland and New Zealand with benefits and limitation to their use outlined. The methods used throughout this paper will be transparently described to improve research trustworthiness and highlight the use of scientific, systematic research methods. The discussion and findings section will then outline the relevant findings from the thematic analysis and refer to the literature to highlight how the models found in current policy compare to that discussed in the literature review. Findings will answer the research question through answering if Ireland and NZ have diverged or continue convergence with the models of justice from the introduction of the related legislation to recent policy.

## Chapter 2: Literature and Legislation Review

### 2.1. Influences on legislation and policy

Models of justice used are influenced by the wider political context, and by practitioners in practice (Fergusson, 2007; Carr & McAllister, 2014). The overall approach a country uses in response to youth offending may not be directly based on scientific evidence, and instead may be influenced by politics, or public concern and recent events (Case & Hampson, 2019; Fergusson, 2007). In NZ, there have been some calls and attempts to move toward and develop the most tough response to what was claimed to be a spiralling issue of youth offending (ACT, 2005, in Bradley et al., 2006). Other propositions included reducing the age of criminal responsibility from 14 to 12 and reducing the use of diversion (Bradley et al., 2006). Reducing the age of criminal responsibility is significant generally as it widens the number of children who may face justice system interventions which may increase their risks of re-offending in the future (McAra & McVie, 2007) leading to worsened outcomes for the young people, their family and community. Other implications of age of criminal responsibility and its relation to models of justice will be detailed in the next section. In addition, this would represent a significant shift in the model of justice used. This would move towards a justice model with children of a younger age being held accountable for their behaviour. Trends were moving towards increased referrals to the Youth Court by the Police, for moderately serious offences (Maxwell & Popplewell, 2003; Spier and Lash, 2004) which highlights a harsher more punitive justice-based response. Similarly in Ireland, collapse of public confidence in government, financial collapse and fears surrounding certain types of crime and offenders have had a negative impact on the welfare ethos, with focus increasingly based upon addressing public fears (Muncie, 2013 in O'Connor, 2019). These political orientations and views are in contrast with the 'ground-breaking' basis of the 1989 Act, this is significant as NZ were prominent in influencing many countries to move toward their progressive youth justice system based on a more holistic, welfare-based understanding of children and young people. If the country that initiated this type of youth justice system are changing their views in a significant way like this, it brings into question systems that never had as much of a progressive approach becoming ever increasingly punitive. In addition, countries would then be less likely to take influence from NZs progressive system if those within NZ are changing their viewpoints. Public anxieties along with sensationalized media reports can influence politicians to make policy changes to respond to these concerns (Cohen, 2002). This is significant as despite clear evidence on the contrary, assumptions within society have often been that youth crime is an increasing problem

(Pople & Smith, 2012). Moral panics of public fears can impact policy (Cohen, 2002). This can lead to a country holding referendums, campaigning, and changing policy and legislation based on inaccurate perceptions of youth justice. This may lead to ineffective youth justice responses, and reduced focus on children's rights (Cunneen et al., 2018). These factors such as political and public opinion and influence that have occurred after the enactment of the 1989 Act highlight how models of justice used and found in recent policy and amendments to legislation may differ from the basis of the legislation. Despite the evidence for benefits of models of justice based on welfare and restorative approaches, these factors may all lead to increased focus on justice/just deserts models of justice.

## **2.2. New Zealand - Oranga Tamariki Act/ The Children, Young Persons and Their Families Act 1989**

New Zealand passed the Children, Young Persons and Their Families Act (CYPF)/ Oranga Tamariki Act, referred to as the 1989 Act throughout this review, in 1989, which at the time was an innovative, unique and radical way of responding to youth offending (Morris & Maxwell, 1993 in Lynch, 2008). Prior to the 1989 Act New Zealand's (NZ) youth justice system had a strong welfare ethos (Morris, 2004). Welfare-based systems faced criticisms including limited proportionality (Kempf-Leonard & Peterson, 2000). Von Hirsch (1976) proposed that factors including proportionality and protection of due process rights should be at the centre of youth justice interventions in response to criticism of the strict welfare model (Von Hirsch, 1976). This move away from a strictly welfare ethos, did not result in a complete turn to the other end of the scale with a strict justice model (Morris, 2004). Instead, NZ retained a welfare basis (Hamilton, 2016), however incorporated justice, restorative, and actuarial model elements. This legislation was considered as groundbreaking at the time and introduced a regime based on diversion, family group conferences (FGCs) and restrictions on arrest powers of the police (Hamilton, 2016). The ethos behind this act was closer to the justice model than the previous welfare model, however maintained welfarist principles. Young offenders are to be held accountable for their behaviour and take responsibility for this, while receiving rehabilitative interventions and familial support (Hamilton, 2016).

## **2.3. Ireland – The Children Act 2001**

When the Children Act 2001 (2001 Act) was enacted it replaced legislation that was almost 100 years old (Walsh, 2005). The 2001 Act provided for an increase in age of criminal responsibility, restorative and family conferencing and diversion (Carr and McAllister, 2014; Hamilton et al., 2016). As with the 1989 Act in NZ, the 2001 Act in Ireland aimed to avoid

negatives that can occur with a system aligning too strictly to a welfare approach (Dáil Éireann Debate, 2000 in Forde & Swirak, 2023). Whilst the 2001 Act aimed to avoid the opposite approach, of being too strictly a justice approach (Dáil Éireann Debate, 2000 in Forde & Swirak, 2023). In the attempts to avoid strictly adhering to one model, drafters of the legislation preferred informalism which is a key feature of Irish criminal justice policy (Hamilton, 2016). The below discussions highlight the various models of justice through youth justice in Ireland, which achieves this aim of not adhering strictly to one model. While this has benefits in mitigating against negatives related to each model, and benefiting from the positive aspects of using various models the informalism regarding discretion in Ireland has limitations. Some discretion is useful within youth justice based on varying needs of different young people (United Nations General Assembly, 1985). However, this discretion requires accountability of professionals, and for discretion to be based on specialized knowledge and training to make these decisions (United Nations General Assembly, 1985). This limitation highlights a need for professionals with specialist knowledge regarding young people to be involved in youth justice. Below the key features of the 2001 Act will be discussed with how it relates to the models of justice.

#### **2.4. Key Aspects of the Oranga Tamariki Act 1989 and the Children Act 2001 and models of justice.**

##### **2.4.1. Age of Criminal Responsibility**

The youth justice system in both NZ and Ireland covers young people up to the age of 17. The general age of criminal responsibility in Ireland under the 2001 Act is 12 years. Prior to the 2001 Act, under the 1908 Act the age of criminal responsibility in Ireland was 7. This change highlights movement have an increased focus on best interests of the child, with consideration for their welfare, needs and limited culpability compared to a more justice based lower age. The 2001 Act sets out that a child under 12 shall not be charged with an offence (s.52(1)), unless the child aged 10 or 11 is charged with murder, manslaughter, rape, or aggravated assault (s.52(2)). Although the general age of criminal responsibility is 12 in Ireland, Section 52(4) as amended under the Criminal Justice Act 2006 (s.129) of the 2001 Act provides increased protections for those under 14 years. When a child under 14 is charged with an offence, no further proceedings (other than remand in custody or bail) can be taken except with or by consent of the Director of Public Prosecutions (DPP). The general age of criminal responsibility in NZ is 14. However, like with Ireland there are some exceptions to this. Under section 272 of the 1989 Act as amended by section 261 of the District Court Act 2016, there are three situations in which proceedings may commence against a child under the age of 14.

These include for children of or over 10 who have committed murder or manslaughter and 12–13-year-olds for serious offences with certain penalties. The use of penalty length within these criteria may be somewhat of an arbitrary factor for reasons such as sentence lengths may change due to public outcry leading to an offence becoming included under this criteria. As both legislations have a similar ethos, and therefore view of children, this difference in age of general responsibility by two years highlights how even with this similarity's features may differ slightly. During adolescence the brain is still developing, with growth and connections within the brain developing into early adulthood (Paus et al., 2008). Development including that of the frontal lobe which is responsible for behaviour and inhibition can continue through ages 20-30 (Petanjek et al., 2011; Weinberger et al., 2005). This means that adolescents, including those over 17 may lack the brain development to make rational decisions, which may reduce their culpability for any offence. In addition, in high stimuli environments, children's regulatory ability is lower, they aren't influenced by knowledge of negative consequences and are more willing to take risks (McKewen et al., 2019). This suggests that with a stronger welfare ethos, children and young people could not be held responsible or accountable due to these factors, and instead of interventions even that of diversion which holds the child accountable may be inappropriate for the wellbeing of the young person. Although one mitigating factors against this inappropriate accountability is interventions within the youth justice systems is age is a mitigating factor in determining sanctions (1989 Act .208(2e) and 2001 Act s.96(3)). The various factors that affect criminal justice such as culture, public opinion and political factors as discussed in relation to their effect on legislation, have broader effects on the concept and understanding of the nature of childhood. This may have impacts in the day to day lives of children and communities. The age of criminal responsibility in Ireland and NZ highlights features of both welfare, justice/just deserts, and some actuarial focus on reducing risk of further offending. Although the understanding of children and their developmental capabilities may not be accurate within any of these models, a hybrid approach may help mitigate against limitations to each model.

#### **2.4.1.1. Exceptions to this age and young people over seventeen**

The inclusion of the age of ten for certain offences in Ireland and NZ suggests an increased focus on the justice model for these offences. Charging a child of the age of 10 or 11, but only for certain offences highlights how not all children are viewed the same. Children under 12 in Ireland, or 14 years in NZ, who commit a more minor offence are viewed as children first, with a welfare focus and because of their age they cannot be held criminally responsible for these



acts. However other children, or possibly even the same children who have previously committed an act that would be brought into the justice system if they were older, are no longer treated as children first based on the severity of their actions and the consequences. In support of this, research has found Irelands response to children who have committed serious offences is relatively g This suggests that the focus in these cases is not on the child welfare without culpability due to their age, but is based on justice and just deserts, with the key focus on public protection and responsibility in response to the serious offence.

Those aged 15 and over in NZ may be sentenced to an adult prison (Sentencing Act, 2002), and as NZ has a reservation to Article 37(c) of the Convention on the Rights of the Child, children can end up in custody in adult prisons. Despite attempts to place young people in more suitable youth units, being an adult prison may be an added punitive effect in addition to being placed in detention, leaning closer to the ‘just deserts’/justice model. In Ireland, young people whose sentence of detention passes their 18th birthday, will be transferred from the detention prison to an adult facility for the rest of their sentence (2001 Act s.155). This may also occur for children even younger, and so possibly more vulnerable. In Ireland children including those from age 10 who commit serious offences as discussed from section 52 of the 2001 Act charged can be transferred to the adult court (Forde & Swirak, 2023). Despite developmental research finding that development continues into the 20’s, both certain serious offenders, and over 15 in NZ and 17 in Ireland can be placed within or transferred to the adult court and prisons. These adult based systems are not suited to their needs leading to worsening wellbeing (Dyer, 2016; Deuchar & Sapouna, 2016). This highlights a reduced focus on welfare, with an increased just deserts punitive response for certain offences committed by children and young people, and for all young peoples over 17 despite their developmental status.

#### **2.4.2. Youth Court**

Traditional court processes and interventions to juvenile offending have been criticized both for neglecting the victim, and an excessive focus on punishment that may not be directly related to the offending behaviour (Flemming et al., 1992 in McGarrell & Hipple, 2007). Although both NZ and Ireland maintain elements of the justice/just deserts model with the retention of traditional justice agencies such as the courts, they have incorporated welfare, actuarial and restorative model-based elements both into these agencies processes, and the subsequent interventions and sanctions. For example, to adapt the traditional justice court process to be suitable for children and young people, although there are limited separate buildings for youth courts in Ireland, sittings of the District Court for children must sit in a different building or

room from adult sittings or at different times than adult sittings (2001 Act s. 71(1)). This increases protection of identity and the *en camera* requirement for children before the court to be kept anonymous, and limiting their contact with adult offenders before the courts has benefits of reducing possible negative social learning influence. Specialist training for judges that will preside over cases involving children may be required by the President of the District Court for judges appointed on or after 15 December 1995 (2001 Act (s. 72(1)). Although the court may be assisted by the Child and Family agency, this is upon request, and with the judiciary not having mandatory training across the board, may lead to inappropriate processes and outcomes due to lack of awareness of children and young people and inconsistent court processes and resulting sanctions. This decision may be made based on inaccurate assumptions and knowledge, with the decision having significant effects on the young person and their families lives. When the court is exercising its power in relation to youth offending in NZ, they are guided by the principle that reasonable measures or assistance should be given to support the young person to reduce offending or reoffending (1989 Act 208(3a)) which highlights some focus on actuarial risk of further offending. The court or person exercising power for interventions following offending in NZ and Ireland include that if it would benefit the child, they should be referred to care, protection, or well-being services (1989 Act s.208(3b)); 2001 Act s.77(1)). This highlights consideration of overall welfare needs rather than just actuarial risk-based needs related to re-offending. Referral to the appropriate services is beneficial both to meet welfare needs, and involvement of a non-criminal justice agency reduces the criminogenic effect of justice interventions. The referral of cases to other services for welfare needs, and the principle that criminal justice proceedings should not be instituted against a child or young person to provide for welfare needs (1989 Act s.208(2b) and 2001 Act s.96(b), mitigates against a criticism of the welfare model that welfare systems can lead to increased justice sanctions for welfare needs. In addition, welfare needs such as best interest of the child, and negatively interfering with their life are considered. Justice interventions including those by the court use detention as a last resort, with children being kept in the community as much as possible, consideration for the need to ensure public safety (The 1989 Act s. 208(2d) and 208(f)(i); 2001 Act s. 96 (2d)), s. 96 (5). To support this, several community-based sanctions are available (Kilkelly, 2014; Morris, 2004). Determining sentence, requires consideration of the views and interests of any victims of the offending behaviour with proper regard for the needs of any victims and the effects the offence has had on them (1989 Act, s.208(g)). As evident from the above, the principles and sanctions include elements from all four models. Justice model elements are evident from the maintenance of Youth Court systems, along with

other justice agencies as will be further discussed, and interventions considering public safety. Elements of the welfare model are evident within these justice-based agencies and responses with a focus on specialist training, assistance from, or referral to welfare-based agencies, and the use of detention as a last resort. Elements of the actuarial model within NZ include the consideration with sanctions to take reasonable measures to reduce reoffending, which suggests a focus on risk of re-offending being a consideration. The restorative model is seen in NZ and Ireland with the consideration of victims needs and interests.

### **2.4.3. Diversion**

Due to the potential negative effects of involvement in the traditional justice system diversion from the courts is beneficial. However, any involvement with criminal justice system and agencies can increase the likelihood of re-offending (McAra & McVie, 2007). This highlights risks of the diversion programmes that will be discussed in Ireland and NZ, particularly the police/Garda programmes due to involvement with actors in this agency. However, despite this possible risk, the focus on the use of diversion where possible is supported by research (Forde et al., 2021 in Forde & Swirak, 2023; MaAra & McVie, 2007; 2010). The 2001 Act requires that diversion should be considered in all cases of an offence or anti-social behaviour where responsibility is accepted by the child unless the interests of society require otherwise (2001 Act s. 18).

#### **2.4.3.1. Police Youth Diversion**

In NZ, the police can administer a non-statutory diversion scheme, the Police Youth Diversion (PYD). Under section 208(a) of the 1989 Act police must consider a diversionary programme when a warning is seen as an insufficient response. Police have discretion in the details of what is involved in the diversionary programme, however they should consult with the offender, their family and sometimes the victim to make a diversionary programme plan for the child involved. Diversionary plans generally consist of apologies to the victim, reparation, community work, attending programmes, a curfew, or a donation (Maxwell et al., 2002). With diversion from formal judicial processes, and a lack of oversight of the PYD, unfair investigation measures or evidence may fall under the radar, in addition to difficulties for young people and their families to give fully informed consent to participate (Lynch, 2008). This highlights the importance of maintaining elements of different models of justice. Diversion links to the restorative model with inclusion of victims and reparation for them, and to the welfare model with plans containing elements to improve the needs and situation for young

people. However, without inclusion of the rights and protections of the justice model, the benefits from this may be limited.

#### **2.4.3.2. Garda Diversion Programme**

The objective of the Garda Diversion Programme (GDP) is to divert any child who accepts responsibility for their criminal or anti-social behaviour from further offences or antisocial behaviour (2001 Act s. 19(1)). This objective shall be achieved primarily through a caution and where appropriate placing them under the supervision (2001 Act s. 19(2)). Admission to the programme requires the child to accept responsibility for their relevant behaviour, having had a reasonable opportunity to consult their parents or guardian and obtain any legal advice sought and the child consent to being cautioned (2001 Act s. 23). The GDP provides children with an option to be cautioned instead of prosecuted against (Kilkelly, 2011). However, a child aged from 10 to under 18 can be admitted to the programme (2001 Act s. 23(c) as amended). Although through diversion and a caution, the child is not being brought into the formal criminal justice system, without this option of diversion they would not be eligible to be criminally charged. This highlights elements of a move away from welfare toward a more punitive approach. Due to the previously mentioned possible risk of even diversion increasing risks of further offending the impacts of this may be detrimental to public protection and long-term outcomes for the child. This further highlights the need for legal advice. A child or young person is cautioned through the GDP, and when a victim is present it can be known as a 'restorative caution' where they child can apologise to them and offer compensation (Kilkelly, 2011).

Through an amendment under the Criminal Justice Act 2006 s.126 evidence based on the child's involvement in the diversion programme, including their acceptance of responsibility can be put before the court by the prosecution where a court is considering a sentence for an offence committed after the child's admission to the programme (2001 Act s.48). Despite the welfare and restorative ethos of the diversion programme including best interests of the child with diversion from prosecution and restoration for the victim the ability for their participation in the programme to lead to more severe punishment if they were to commit a further offence may in these cases undo the welfare and restorative elements of their time in the programme. The child, their family and the victim's participation were based on agreement that the outcomes of a conference would be what is agreed to in the plan. If consequences were increased due to the conference through its use as evidence, this may be against the views,

needs and interests of the child, their family, and the victim. This further highlights the need for justice-based rights and protections for the young person such as legal advice for them or their parents with diversion programmes, which is provided for under section 23 of the 2001 act, however wording includes the opportunity to obtain legal advice sought by or on behalf of the child may suggest that if families are not aware of the importance and need to seek and get as much legal advice as they can, they may not seek it out. In recognition of this, the youth, and children strategy 2009-2011 aimed to promote better understanding of the Programme for children and their families (An Garda Síochána, 2009).

Legal protections in line with the justice model are necessary for children and young people even within these welfare-based approaches. The Committee on the Rights of the Child responsible for monitoring the Convention of the Rights of the Child which NZ and Ireland should have implemented within their country has highlighted requirements of diversion programmes. Despite the benefits of restorative approaches there is potential lack of meeting procedural rights of young people and increased power imbalances in some restorative justice settings (Lynch, 2010). In Ireland and NZ, the use of diversion and FGCs is related to the lack of a judicial trial reducing strength of evidence required, in NZ children involved in FGCs often lack legal assistance (Morris et al., 1997), especially significant in pre-trial diversionary FGCs (Maxwell et al., 2004). Participation of engagement with the diversion programme in Ireland being admissible as evidence for future offending before the courts highlights an area where Ireland is not meeting children and young peoples' rights. In contrast to this, The Committee states that diversion should only be used when there is sufficient evidence that the child committed the offence, they freely without coercion or pressure admit responsibility and in support of the United Nations General Assembly, that the admission won't be used against them in any future legal proceedings (Committee on the Rights of the Child, 2007; United Nations General Assembly, 1985). Therefore, the committee states that children should have access to legal or other appropriate assistance in relation to their participation in diversion. This highlights the welfare and restorative based approach, may not be as deeply rooted in the best interests of the child as would appear from the concept of diversion and family group conferences. The inclusion of a committee to monitor the effectiveness of the diversion programme in s. 44 of the 2001 Act may be of benefit, however half the members of the committee are members of the Garda Síochána. In addition, the committee is to monitor the effectiveness of the programme, review its operation and monitor training needs of facilitators. Although these factors are important, with the objective of the programme being to reduce

offending, it would require explicit and intentional focus from the committee on rights compliance of the programme.

#### **2.4.4. Family involvement**

Family are considered within guiding principle(s) for the exercise of criminal jurisdiction over children in the 2001 Act s.96(2b & 2c) and the 1989 act s. 208(c),(f). In addition to specific family-based interventions, family are a consideration throughout all justice interventions. With the 1989 Act, the increased focus on family is evident from the name of the legislation, Children, Young People and Their Families Act with the addition of the word family compared to the preceding Children and Young Persons Act 1974. Focus on the family within juvenile delinquency has consistently recognised the significant role that parent-child dynamics can have on youth behaviour (Burgess & Akers, 1966; Steinberg et al., 2006; De Coster, 2012). Research involvement of family is related to a welfare model with research sustaining that parents play a role in protecting their child from engagement in juvenile delinquency through emotional support and attachment, active supervision, and positive socialization (Hoeve et al., 2009; Steinberg et al., 2006; Tyler & Trinkner, 2017). However, literature highlighting the impact of family requires caution as over focusing on this, may have limitations in putting increased responsibilities, and placing blame on the parents without providing adequate support. This highlights discrepancies between FGCs in Ireland and NZ. In the CYPF Act in section 4, there are provisions for appropriate services to be provided for wellbeing, assisting families, and dealing with children and young people in a way that acknowledges their needs and gives them an opportunity to develop well (Morris, 2004). The provision for assisting families is explicit, in comparison to the literature on the 2001 Act not stating an explicit focus on family and wellbeing needs being met. However more recent literature details Ireland are working toward enabling all relevant agencies including welfare-based agencies to provide services for young people who have offended (O'Connor, 2019). This highlights the benefit of looking at research from different time frames to ensure a holistic account of both the history and progress of the youth justice systems. Unlike Ireland who have their family group conferences led by justice agencies, NZ have an officer of the Child Youth and Family agency, which is the state's social agency for children and their family) called a youth justice co-ordinator (Morris, 2004). However, there may be similarities between this and Irelands justice-based facilitators being a specially trained Juvenile Liaison Officers (JLO) and probation workers having social worker qualifications in Ireland.

#### 2.4.4.1. Family Group Conferences

Family group conferences (FGCs) for use with youth offenders generally involves a face-to-face meeting that can include the victim of the offence, the offender, a trained facilitator, a police officer, supporters for the victims and offenders such as family members, or community members (Van Ness et al., 2001). An ideal FGC would include effective, meaningful participation of the child, with family support for the child, healing for the victim and the procedure being culturally appropriate with resulting mutually agreed solution emphasising reintegration of the child into the community (Levine et al., 1998; Maxwell et al., 2004). Studies of FGCs have found that they resulted in feelings of satisfaction, inclusion, respect and procedural fairness (McGarrell & Hipple, 2007; Braithwaite, 2002). FGCs may reduce future offending through processes such as a sense that the intervention has been fair, and reintegrative shaming (McGarrell & Hipple, 2007; Braithwaite, 2002), consisting of the young person feeling some shame for the offence through awareness of its impacts on the victim, however with this, and the restoration, and repairing of harm caused this shaming is part of their reintegration into the community. In NZ, FGCs are a vital, mandatory part of the youth justice system both before or after a charge has been made (Bradley et al., 2006). Some argue that FGCs were a successful process to create a culturally sensitive youth justice system (Olsen et al., 1995), however in practice research has found this is not the case. Research carried out by Moyle and Tauri (2016), examined Māori, *whanau* (family) and community members views on their experiences of FGCs with involvement of Māori throughout all phases, which included Māori practices and language. This research is significant as with FGCs frequently being described as culturally appropriate to Māori, along with their introduction being part of a policy response to reduce Māori offending while increasing their engagement with crime control (Moyle, 2013). Overrepresentation of minority groups can be seen throughout many countries criminal justice systems, including NZs (Tauri, 2016). Indigenous people are over portrayed as a problem population, therefore requiring social intervention (Cunneen, 2014). Māori communities had their own system of justice before colonization, where their practices were taken away, with obligations to follow the legal system of the colonizers. Through research involving Māori throughout, it was found, although there is symbolic use of Māori cultural practice in FGCs, the process has been described as culturally inappropriate by practitioners and whanau (Moyle & Tauri, 2016). This is significant as it leads to barriers to positive outcomes from the process for whanau, which is against the welfare and culturally appropriate ethos underpinning the process. In addition, even professionals who were approved as being

culturally competent in working with Māori often did not value, understand or consider fundamental factors of Māori worldview in their practice (Moyle, 2013). The family conference model in the 2001 Act was based on the NZ model, which is built upon three concepts: restoration not punishment, voluntary not coercive and family not state based (Lynch, 2012). FGCs in Ireland can occur as discussed through the diversion programme and probation service. Within the GYD when the child is placed under supervision, a conference to bring together the child, their family, victim, and others on a voluntary basis to discuss the reason for the offending and ways the family can help prevent re-offending may occur (The Children Act 2001 s.20 & 30-39). The JLO mediates between the child and victim and has specialised training for this. The results of a conference include development of an Action plan, which should be in the best interests of the child or make the child more aware of the impact of their offending through for example reparation to the victim, participation in activities, a curfew, or no contact with certain people (2001 Act s.39(3)). However, in practice, within the GDP, restorative elements of family group conferences dominate over the family aspect (Kilkelly, 2014) as evident through restorative cautions. In addition, FGCs may be court ordered. With these, the action plan is submitted to the court for amendment or approval. Criminal proceedings are adjourned for the duration of the FGC, and for a time to allow the action plan to be carried out (Kilkelly, 2014). If the FGC and action plan are successful in preventing further offending, the court proceedings can be discontinued. This, may have a limitation in these actors being part of the criminal justice system, which may risk the criminogenic effect of the justice system, for example with effects of labelling. However, benefits are that JLOs with specialist training, and probation officers as social workers will have specialist expertise with children and young people and may be able to mitigate against this risk.

## **2.5. Models of Youth Justice in Ireland and New Zealand**

### **2.5.1. Justice elements**

Both NZ and Ireland have elements of a justice-based approach in aims of ensuring the offender be held accountable, with accountability and them accept responsibility for their actions in Ireland, or through not denying the offence in NZ (Morris, 2004; Kilkelly, 2014; Bradley et al., 2006). Although diversion is a focus of both NZ and Irelands youth justice system, they maintain elements of justice/ just deserts-based approach with the retention of the traditional courts system available for some offences, and available to then order some diversionary processes. Although within the justice-based factors, welfare measures are partially maintained, combating limitations to previous limitations of welfare, criminal proceedings are



not to be used for welfare-based needs interventions (Morris, 2004; 2001 Act s. 96(1); 1989 Act s. 208(b)).

This with focus on the response to offending being the least restrictive as possible, maintaining the child's legitimate interests such as school and community connections and responding to some of the related issues to juvenile offending such as family issues suggests a welfare basis within the justice response. Although the meeting of these needs, could have a different aim with a more actuarial focus, the explicit mention in NZ of using measures to improve the child's wellbeing and using detention as a last resort in both Ireland and NZ highlight inclusion of welfare needs, sanctions occurring through diversion of an FGC may not be proportional, which reduces the link to just deserts-based models in both countries, however like the just deserts model, Ireland and NZ base their sanction on being the least restrictive punishment required for the offence being used. However, the models in Ireland and NZ with diversion and FGCs, and a lack of legal aid through these processes are not in line with the benefit of focus on due process rights.

### **2.5.2. Welfare elements**

New Zealand have made adaptation to their youth justice system, moving away from adversarial processes where possible towards a more therapeutic approach (Lynch & Liefwaard, 2020; Richards et al., 2017). Adaptations including prioritizing care and wellbeing of children within the traditional youth justice system, particularly through diversion in both Ireland and NZ highlight a welfare aim whilst maintaining elements of a justice-based courts system for some cases. Even when young people do go through judicial proceedings, there are provisions to promote their successful reintegration through measures including education, care, and services to aid their well-being in Ireland (Forde, 2021; Childrens Act, 2001 s.158).

Both Ireland and NZ use aspects of the welfare model. The welfare model views juvenile offending as being the result of deeper needs of the child, who is not viewed as fully responsible for their action, with them being at a protected developmental stage (McAra, 2012). However, as discussed, the ages of inclusion of young people in the justice system in Ireland and NZ may result in welfare needs of older young people not being met. This is despite research showing they are at a protected stage of development until into their 20's. Risks of the welfare model include indeterminate and disproportionate sanctions based on welfare needs (McAra, 2012). However, both Ireland and NZ have attempted to mitigate against this through stating justice interventions may not be used on a welfare basis, with sanctions needing to be the least

restrictive possible. The welfare model is linked to the model of development where the child is viewed as being at the heart of a supportive family, and the family at the heart of a supportive community (McAra and McVie, 2010). This is seen through Ireland and NZs legislation focusing on community and family interventions.

### **2.5.3. Restorative elements**

Despite the restorative features of the 1989 Act, the architects of the Act had no knowledge of restorative justice when they included Family Group Conferences (FGCs) in the Act (Doolan, 2003 in Suzuki & Wood, 2017). FGCs were introduced as part of the larger diversionary framework, with their design and implementation not being based on introducing restorative justice into the youth justice system (Bradley et al., 2006). FGCs were intended as a diversion intervention for young offenders in the youth justice system, and as a care and protection strategy for use in the child welfare system (MacRae, 2004). FGCs influence and notability as a restorative justice practice coming retrospectively (Suzuki & Wood, 2017). Despite restorative features not being the main aim, elements of the 1989 Act that are restorative include the transfer of state power from the courts to the family and community, group decision making in FGCs and involvement of victims (McElrea, 1994). FGCs within the 2001 Act and 1989 Act, diversion, and restorative cautions in Ireland represent restorative features. In addition, the aims for reintegration into the community further highlight features of the restorative model found in Ireland and NZ.

### **2.5.4. Actuarial elements**

New Zealand have had funding from the Department of Child, Youth and Family Services to develop a strategy to provide better ways to recognize and meet young people's needs who are at high risk of developing criminal lifestyles (Morris, 2004). Programmes include the family start program provides intensive support and early intervention for at risk families at birth (Morris, 2004). In 2002 the Youth Offending Strategy in NZ included endorsing risk identification and assessment tools (Morris, 2004). This focus on risk identification and prevention for those at-risk highlights elements of the actuarial model. In addition, a consideration within all measures in response to offending includes that sanctions should as much as possible aim to address the underlying causes of offending (Section 208(2)(fa) as inserted by section 101(3) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010). The inclusion of this within an amendment in 2010 highlights movement toward an actuarial model focus through legislation. These underlying causes of offending may be referring to risk factors. In addition to these explicit

measures, welfare interventions may impact risk factors indirectly. Use of community measures and interventions being the least restrictive possible may keep young people involved in their protective factors to mitigate against risk factors. The actuarial model is not significantly prevalent in the 2001 Act, however the inclusion of those under 12, below the age of criminal responsibility within the remit of the GDP highlights some consideration of involvement in the criminal justice system based on preventative measures for risk of offending once they are the age of criminal responsibility.

## **2.6. Hybrid models and conclusion**

Like the 1989 Act in NZ, the 2001 Act as mentioned moved some ways closer to the justice model, however maintained welfare principles. Increase emphasis on holding the young person accountable and responsible for their behaviour as seen in both the CYPF Act and 2001 Act demonstrates a move away from welfare based closer towards the justice model. Justice/just deserts concepts of the involvement of traditional justice agencies such as the youth court and the police, proportionality, accountability, and crime control aims are maintained. However, in addition to this justice model basis the processes involved with them taking accountability involve rehabilitative and restorative interventions. Although young people are to be held accountable, this is within a system focused on diversion through interventions such as FGCs with restorative elements for the young person, their families, the victim, and the community. Proportionality, which is a justice-based concept, is used within the context of welfare considerations of the developmental level, culpability, and appropriateness for the young person at their vulnerable life stage. The use of diversion, along with a requirement to use the least restrictive sanction appropriate to maintain the young person's legitimate activities, with detention being used as a last resort maintains welfare elements within both NZ and Ireland's youth justice systems.

## Chapter 3: Methodology

### 3.1. Aims

The aim of this research is to explore two jurisdictions, Ireland and New Zealand, that shared youth justice ideological frameworks with their legislation to critically outline whether they converged or diverged with each other over the proceeding decades.

This was done by 1) conducting a comprehensive literature review around the two jurisdictions, 2) critically exploring the two pieces of legislation with reference to predetermined youth justice models of justice, 3) by identifying comparative contemporary policy documents and conducting a thematic analysis, and 4) identifying convergence and divergence of both jurisdictions ideological and youth justice model alignment over the proceeding decades.

This chapter will outline the scientific steps taken to achieve this.

### 3.2. Methods

The research process began with an interest around youth justice. In preparation to produce a research proposal, ideas, and topics around youth justice were written out, which supported ability to build and expand upon these ideas. To establish feasibility in the potential research topics, a review of related literature was conducted, to establish if there was sufficient literature available, what methods may be needed and if the concept was realistic to conduct within the time constraints. In relation to conducting primary or secondary research, it was decided that due to the constraints of the project, secondary research would be the most appropriate. Although there were several ideas, one of significant interest was chosen for the research proposal. This involved outlining the research area, possible research question, background to the topic and available literature and sources on the topic. This proposal was submitted, to be reviewed and a dissertation supervisor was assigned by the university. After contacting, and meeting with the dissertation supervisor, this allowed for discussion on the area, and development, and refinement of the research that was important, interesting, and realistic within practical constraints. With some general knowledge and research into the topic area, research questions and methods that would be appropriate were established and researched. This ensured that the entire research project would be conducted rigorously. Due to this, notes were kept from the beginning of the research project on steps taken, and decisions made. Methods are guided by research questions, and study objectives, however these questions may continue to be refined throughout the progression of the project (Braun & Clarke, 2006).

Methodology is a strategy that guides the choice of methods and what method is appropriate for use (Crotty, 1989). Different research aims require different methodological approaches. This paper consisted of desk-based research. The aim of this desk-based research included to systematically review the literature surrounding area including models of youth justice and critical exploration of the legislation, the Young People and their Families Act 1989 in New Zealand (NZ), and the Childrens Act, 2001 in Ireland. Following on from this, a Thematic Analysis (TA) was conducted, to analyse the most current youth justice strategies in Ireland and New Zealand, establishing common themes or models of youth justice found within these strategies. The use of both these desk-based approaches of a literature review and a TA, allowed for discussion to answer the overarching research question asking if Ireland and NZ have maintained the models of justice in the current strategies that were found to be prominent within the respective legislation.

### **3.2.1. Literature review**

A literature review is a method providing a comprehensive overview of prior research on a specific topic (Denney & Tewksbury, 2013). It is a critical appraisal of published literature by qualified and accredited scholars and researchers in a field of study (Faryadi, 2018). The purpose of a literature review is to share results of other studies related to the current research topic (Fraenkel & Wallen, 1990 in Denney & Tewksbury, 2013). The use of a literature review fits well into the current research paper, as it allows the study to relate to the larger, ongoing discourse in the literature (Marshall & Rossman, 1989). This allows for the current research study to be related to the previous literature and add to it through its findings and discussion. A literature review is a good method for this research paper as it provided a framework to establish the basis, and importance of the current study (Creswell, 1994 in Denney & Tweksbury, 2013). The literature review provides the background, and justification for the purpose of the current paper, and the methods used. The document goes through changes as more understanding and information is gathered, along with a need for more specific focuses. Through a literature review, theories and previous research are identified which influence the present research topic choice (Ridley, 2008). A comprehensive literature review includes all the main themes and subthemes found within the general topic chosen for the study as an overview (Denney & Tewksbury, 2013). This aspect is particularly beneficial in this research paper, as the literature review provides an overview of themes and subthemes within the topic related to the research question, which leads on effectively to the thematic analysis of the policy.

### **3.2.1.1. Sources**

The most appropriate sources to use in a literature review are academic journals and books (Denney & Tewksbury, 2013). Other sources commonly used include governmental publications, such as the relevant legislation that was used in this review. A literature review requires for both identification and critical discussion of the main findings related to a specific topic (Denney & Tweksbury, 2013). This involves, where possible including classic and the most recent studies on the topic to establish an in-depth understanding of the research topic (Denney & Tweksbury, 2013). As scientific knowledge accumulates quickly, keeping completely up to date on a topic can be challenging.

A key method to find sources is through online databases, such as through a university library website. These databases typically involve search processes using key words relating to the topic, producing results of resources that the university allows the students to have access to. University library websites typically feature academic journals, which are increasingly available for digital download, however some sources such as textbooks may only be available in physical books to loan from the library. Along with universities own database and search options, Maynooth University library website gives access to other databases, such as SCOPUS and JSTOR. This is beneficial, as often different databases return some unique sources, and may filter search results differently. Along with this, for example SCOPUS database on the search results page provides titles, author, and year of publication of sources, along with the abstract or chapter summary and a link to the full text all easily accessible on the search results page. Sources can also be saved on databases, such as on SCOPUS and the Maynooth university website. Although for the literature review in this paper, sources used that were online and had the option available were downloaded and saved to personal folders. Saving the sources in multiple ways ensured that important sources were not lost, and good organisation increased the ability to conduct a systematic literature review. Google scholar was useful particularly in relation to having some journal articles available, that are not available through the university library. When google scholar did not provide access to articles, or books, the search engine had some use in providing different search results to that of the library website. Despite the sources from the search not being open access on google scholar, often these titles were then searched on the library database which may have provided access.

### **3.2.1.2. Search terms**

Creswell (2005) has outlined some important techniques of a literature search. These include to categorize keywords of the topic and search in online scholarly databases. Searches should

begin with general keywords, with the search being slowly narrowed down to be more specific (Creswell, 2005). Prior to the literature review, the purpose, objectives, and research questions for the study were identified, this ensures that the search and use of literature is based on relevant studies (Creswell, 2005). The literature review, in line with the research question required different search terms, ranging from broader, to more narrow specific searches. This would ensure that in line with the structure of a literature review, understanding, and later writing of the review could start off broadly, before detailing down into specific aspects. Search terms used at the beginning of the process included broad key terms such as 'youth justice New Zealand', and 'youth justice Ireland' following this, specific terms for the related legislation were used, with 'Young People and Their Families Act, 1989' and 'The Childrens Act, 2001'.

After finding and reading some literature, search terms began to become more specific based on my research question, rationale, and the justification for this research. To begin with, the same search term was used both for a search for Ireland, and NZ, being 'youth justice in Ireland' and 'youth justice in New Zealand'. However, an interesting finding was under the search of youth justice in Ireland, there were less results than under the search with NZ. This led to questioning methods, limitations, and search terms, if there was just more research available on NZ, or if a different search term was needed. Different terms were used for Ireland, for example using Republic of Ireland to aid the search. A search term 'New Zealand youth justice system influence on Ireland's 2001 Act' came up with almost 70000 results. Some of these results, had already been gathered through previous more basic searches. Despite searching for both New Zealand and Ireland together, most results spoke just about either Ireland or NZ, not both together. Due to a lack of specific results, the search moved from google scholar to the SCOPUS database, with a different search method including the 'and' feature, 'youth justice Ireland and New Zealand was searched, however this found just three results, none of which were suited to the research question. The availability of different databases and websites to search through was beneficial, particularly if one did not find any relevant information. Other search terms did not have as much of a significant difference between databases. The search term 'models of youth justice' was used both on Maynooth University Library website finding 8670 results, some of these were relevant, however from prior learning, one specific author who wrote on the four models of justice used in this research was not coming up. A specific search including the authors name 'models of youth justice McAra' found the relevant result. This highlighted the benefits of a thorough research process, and continuing the process on different databases, with different search terms as some results found differed each time. The

research process was continuous, as with more reading came more ideas and specificity for search terms. Subsequent searches included specific aspects such as ‘welfare youth justice NZ’ ‘restorative justice NZ’ ‘Policy transfer’ ‘family interventions NZ’, with each of these being search replacing NZ with Ireland. ‘Restorative justice NZ’ was not a specific enough term, as it had papers relating to the adult justice system, and restorative justice in different context, this term was refined to have more relevant results, however both this term and ‘restorative youth justice NZ’ had around 20000 results, which may suggest the significant amount of research on restorative youth justice when compared to any mention of restorative justice in NZ having a similar amount of results. The search ‘youth justice in Ireland, family conferences’ found 160000 results, with many results titles using restorative justice wording, and there were results for NZ included in this search despite not being within the search term. This highlighted how Ireland and NZ had complex interactions in youth justice and how NZ has influenced Ireland. An interesting point was an increased difficulty to find detail on family group conferences in Ireland, which was noted to refer to within the literature compared to those in NZ. Within each search, initially the search filter included ‘all years’. After this, the search filter was changed to ‘since 2019’ to ensure more recent literature was included. An example of this, is a google scholar search for ‘policy transfer Ireland and New Zealand youth justice’ which found 44100 results, although many of these results were useful, this number of results could not be gone through to find the most relevant results. The search was refined to filter results ‘from 2019’ which reduced the results by over half with 16600 results. Although this is a significant number of results, it found more recent literature more readily than the previous search. As both older, and more recent literature was required, all searches involved this process of beginning generally, and refining to more recent. As literature was being selected, a conscious effort was made to where possible include a broad range of publication dates. The filter that remained consistent was to sort results within the chosen factors based on ‘by relevance’. Although google scholar was useful in open access to some literature, and in signposting relevant titles, some literature was not open access, despite the abstract showing it was relevant to the study it could not be read. When this occurred, the title of the article was searched through the library website, which yielded results for some articles to access, however others were not on the website, or any of the databases such as the NEXIS database. However, despite this, the search often showed some other literature that was similar, and of use that the searches had not found yet. To have a comprehensive overview consisting of both classic literature on the topic up to the most recent literature, searches initially included a filter for ‘all years’ which allowed for the inclusion of literature that was older. To narrow down the search, and ensure that the most



recent research was considered, the search filter was then narrowed down to include literature ‘from 2019’.

### **3.2.1.3. How literature was chosen**

Selected papers should strengthen the research argument and help outline the objectives, goals, and purposes of your research (Faryadi, 2018). Using the academic libraries, primary and secondary sources were considered, with a focus on primary sources. The search included academic journals, books, theses, and dissertations. Under the search terms, especially with large amounts of search results, the first decisions on what pieces of literature may be relevant to this study involved looking at the titles. Within the titles, words that were looked for included some broad relevance, particularly in early stages of the research. If the title suggested the article, book, or book chapter may be of use, the next decision was based on reading the abstract of the article, or summary of the book chapter. Certain search engines, or databases allowed for more ease in this process with the abstract or summary available under the title on the search page which was beneficial to scan through for key terms and meanings. After reading the abstract, if the paper or chapter remained relevant to the research question, this piece of literature would be saved with systematic organisation as will be discussed in the next paragraph. As the research progressed, and understanding of the topics increased, the titles that were considered were more specific to aspects of the research. Throughout the process of filtering through the saved articles prior to reading, the next part of the paper looked at after the abstract was the findings, as this can provide key information on the relevance of a paper to the study (Denney & Tweksbury, 2013). Reading through each relevant source that was chosen, increased understanding of the topic, which had benefits including providing specific key search terms, and through finding further relevant sources from the bibliography or references section of this article. The literature chosen and read, often referenced other sources that were useful to include in the literature review, adding to the sources used. Read the abstract of the paper first, look for results and conclusion of the article in the abstract. This literature review used mainly primary literature which are sources that are original and documented in international journals and theses based on first hand work. This literature is peer reviewed (Faryadi, 2018). Some secondary literature was included which involves generalization where the information described does not come from the authors own work, but the author refers to work of others (Faryadi, 2018). However, where possible throughout this literature review, sources used in secondary literature, were then searched for, and read through the primary literature for the benefit of a comprehensive understanding from the original source. If the

primary literature was not accessible however had important information, then the secondary literature source was used.

#### **3.2.1.4. Organisation and notes**

Good organization of the literature intended to be read, and those that have been read is essential (Cresswell, 2005). Once relevant literature was identified it was saved to a folder for the literature review to ensure that papers were saved and organised systematically. The folder with literature review papers, or chapters included some sub-folders particularly for the more specific aspects of the topic, sub-folders included a folder for New Zealand, and a folder for Ireland, along with a folder for the models of youth justice. this systematic process of organising the literature was beneficial in ensuring the relevant literature was read and kept a track of including references. Along with the literature being saved in folders, a table was created in Microsoft OneNote to keep track of what literature had been read, and any sources seen in this paper that were relevant to find, add to folders and subsequently read. Rules of a literature review by Marco and Bourne (2013) that were followed include taking notes while reading the different literature sources (Marco & Bourne, 2013 in Faryadi, 2018). While reading the literature, evaluation questions such as does this discuss the heart of the research question, is the argument logical, or persuasive, and assessing if the researcher cited literature that agrees or disagrees with their findings (Faryadi, 2012). The key points, findings, evaluation of the literature and comments were added to the table to have this easily accessible, along with more detailed notes in a word document.

#### **3.2.1.5. Write up**

As this research is based on theory of the four models of justice to provide an idea of how criminal justice systems work, this theory was used to inform the literature review. After introducing the theory briefly, it is important to be reintroduced following a general overview of the topic. This allows for a broad understanding of the research question related to the literature review studies (Denney & Tweksbury, 2013). Following this structure, the literature review with the background comparison of policy transfer between Ireland and NZ, highlighting the benefits of using these countries within the study. In relation to the theory of models of justice, these models were introduced, and referred to in relation to Ireland and NZ later in the literature review. Using the funnelling concept toward a literature review, (Denney & Tweksbury, 2013). The literature review began with an introduction of the overall general idea of models, followed by a general overview of the legislation in Ireland and NZ. This allowed for definition of the topic, and general details around the research topic, before

focusing on specific aspects, and determined the scope of the investigation (Faryadi, 2018). The introduction also includes a preview of each aspect of the topic that will be discussed throughout the remainder of the literature review. Following this, in the main body with a critical evaluation of the literature, each theme/subtopic was placed in a sequential order, that makes logical sense with a smooth flow. This strengthens the discussion and intended argument, demonstrating a clear, comprehensive understanding of the literature and topic (Denney & Tweksbury, 2013). As the end of the literature review is a bridge to the present study, a clear and concise summary of the literature review is required (Denney & Tweksbury, 2013). This was achieved through the conclusion that summarized findings and related the findings to the current research. During the writing process, as suggested by Marco and Bourne (2013) the write up aimed to be critical and consistent, and finding a logical, smooth flowing structure between paragraphs. (Marco & Bourne, 2013 in Faryadi, 2018). These factors improved from the initial draft, through subsequent drafts and following feedback.

#### **3.2.1.6. Referencing**

Referencing for the literature review, and throughout this paper was conducted manually. This required systematic organisation, and records of all references used throughout the research process. This was done through the table of key points from each piece of literature that was read, with a column in the table containing the references, and another column containing sourced cited in this literature that would subsequently be read. Research that was read, and used within this paper contained a star and highlight beside the reference. These references were then added to a word document, and once the write up was completed the word document was checked with the literature review to ensure that all citations had the relevant reference. The referencing style used throughout this paper was Harvard referencing, while using a guide to this style to ensure accurate referencing each reference was double checked to ensure the right format for the type of literature such as journal article, book chapter and legislation. When an article was gathered from an online database, available to read online, a link to where the source was available was included where possible in the relevant references.

#### **3.2.2. Thematic Analysis**

As the literature established themes, based on the models of youth justice, this made a thematic analysis a good research method to follow. Due to its broad and flexible nature, Thematic Analysis (TA) has been used in various fields including psychology (Frith & Gleeson, 2004) and education (Halverson et al., 2014 in Lester et al., 2020 ). Theoretical flexibility of TA allows researchers in various disciplines to engage in theories and perspectives related to their

discipline which may lead to a more relevant and meaningful analysis (Lester et al., 2020). A benefit of this for the current research and supporting the use of TA in this paper is that due to this flexibility, TA can effectively be used through the framework of the four models of youth justice that this research paper is based on. Thematic analysis (TA) is a research method used to identify, analyse, and interpret patterns of meaning, or ‘themes’ within qualitative data (Clarke & Braun, 2017). Within this research, this approach is beneficial as the four models of justice, can be defined as themes seen throughout youth justice systems.

### **3.2.2.1. Thematic Analysis approach**

As the literature established themes through the models of youth justice, this made a thematic analysis a good research method to follow. Within this research paper, the use of TA allowed for the models of youth justice to be used as the themes. TA could identify, analyse, and report patterns of each model of youth justice within the policy strategy documents. Rather than just describing data from the data set, TA allows for various aspects of the research topic to be interpreted (Boyatzis, 1998 in Braun & Clarke, 2006). Due to the qualitative nature of this research that is beneficial for use in discussion and answering the research question drawing meaningful conclusions. The version of TA used in this research paper was developed by Braun and Clarke (2006). This approach was chosen as it has been one of the most widely cited of the various versions of TA that may be used. The benefits of using a widely cited and used approach include the increased reliability and validity of the approach due to much research using the method, and the availability of literature on the basis, and process of the method to ensure this research could follow the approach rigorously. TA as used in this paper provides systematic procedures to generate codes, and themes from qualitative data. Codes, encapsulate interesting features of the qualitative data, including key aspects relevant to the research question, and are the smallest units of analysis (Clarke & Braun, 2017). Themes are larger patterns of meaning, with codes being the building blocks toward the development of this larger meaning found within the qualitative data (Clarke & Braun, 2017). Themes provide for the organization, and reporting of analytic observations made throughout the research process. Within this research, the use of TA following Braun and Clarke (2006) method, resulted in the establishment of codes which were organized through shared core ideas with the theme they were placed under. Rather than the strategies relevant to this study merely being summarized, the use of TA allowed the content of these strategies lead to interpretation of key features of the data, guided by the research question. TA has the benefit of methods including a two-stage review process resulting in rigorous and high-quality analysis (Clarke & Braun, 2017). The two-stage review process

involves initial production of candidate codes within themes, which are then reviewed and refined with changes made as necessary against the coded data, and the entire dataset (Braun & Clarke, 2013). This strengthens the rigorous, scientific process of this research paper, the findings from the analysis, as it has gone through multiple stages of review ensuring accuracy.

#### **3.2.2.2. Data**

The data items used for the TA were three strategies related to youth justice in Ireland and New Zealand (NZ). The strategy from NZ was the Youth Crime Action Plan (YCAP) 2013-2023. The policy strategies used from Ireland were the Youth Justice Action Plan – Tackling Youth Crime (YJAP) 2014-2018 and the Youth Justice Strategy 2021-2027. Two strategies were used from Ireland, to ensure that the year timeframes covered in the TA for both Ireland and NZ covered as close to the same years as possible. This would increase the accuracy of the analysis, and comparability between the strategies. This increases the validity of the analysis, findings and discussion as the strategies are relating to similar time periods in both countries. Due to the research question looking at changes in models of youth justice over time, this is essential in ensuring that changes that occurred were over similar timeframes in both countries. The Youth Justice Strategy (YJS) 2021-2027 in Ireland was chosen after the strategy being cited in literature from the literature review. As the methods were known to the researcher while conducting the literature review, this results in attention being paid to the mention of policies and strategies, to note down and assess if they were suitable for the TA. A google search of the strategy resulted in the first result showing on the google search page a definition of the strategy, which suited the research so the full strategy was searched and found. After finding a PDF of the strategy online, downloading it and saving to a policy analysis folder and looking through it, the researcher concluded it contained the necessary features that would work for the research question. Due to this, a search was completed online to find if there was a similar youth justice strategy from NZ. A search term of ‘New Zealand youth justice strategy’ was used, to have similar wording as the strategy from Ireland. The first result consisted of a Youth Offending Strategy by the Ministry of Social Development, with a definition of the strategy on the search page. However, from this definition, it became clear that this strategy was not comparable with the one from Ireland, as it had a different focus. To ensure that despite this, this strategy was not more appropriate than the one from Ireland, the PDF was viewed, however it did not align with the research question, and was dated April 2002, making it outside of the timeline for the research question to be as current as possible. The second result on the google search page was the Youth Crime Action Plan (YCAP) with a definition that related both to the

research question, and the strategy from Ireland. The first PDF related to the strategy was a factsheet, which detailed that the YCAP was relevant for the years 2013-2023. The PDF of the full strategy was more difficult to locate than the one from Ireland, however after going through several links to the ministry of justice webpage that did not work, the ministry of justice of NZ website was searched through google. However, options on this website, did not lead to the full strategy. Another search put through google was ‘Youth Crime Action Plan New Zealand, which resulted in a link to the full YCAP report. Due to the difference in dates between the YJS 2021-2027 and the YCAP 2013-2023, ‘Youth Crime Action Plan New Zealand 2023’ was searched through google to see if anything more recent had been published. However, the YCAP 2013-2023 covers until the end of 2023, and at the time of this research the next strategy to start had not been published yet. The possible benefits and limitations to this were considered, and upon discussion with the research supervisor, it was decided that to bring the two as close in years as possible, this study would include the YCAP 2013-2023, the YJS 2021-2027, and to include the years from 2013 like the NZ strategy, the analysis from Ireland would also include the Youth Justice Action Plan – Tackling Youth Crime 2014-2018. This brings the years as near as possible between strategies from Ireland and NZ, however the research has a limitation of the strategies not being the same years. This may have some effects on findings, for example with Irelands current strategy being created more recently than NZ’s that was created in 2013 and will only be in use until the end of 2023. This may lead to Ireland strategy containing aspects that are based on more recent contexts and situations than when NZs was created in 2013. However, with NZs strategy having more time to be implemented, the findings of this research could be beneficial in using this to compare to their 2024+ strategy when it is published, and to guide Irelands next strategy.

### **3.2.2.3. Thematic Analysis process**

In line with the steps outlined by Braun and Clarke (2006), in conducting the thematic analysis (TA) the process began at phase one with reading through each of the strategy documents, getting familiar with the content and noticing aspects that may have potential interest to the research question within the data. The entire data set was read through twice before coding began, which was of benefit as it enhanced the identification of patterns upon coding. Now, the second phase was able to be commenced once the data was familiar, and an initial list of ideas about the data were established. The second phase involves producing initial codes from the data (Braun & Clarke, 2006). Codes identify a feature of the data interesting to the analysis and refer to the most basic aspect of the data that can be assessed related to the research topic in a

meaningful way (Boyatzis, 1998 in Braun & Clarke, 2006). This coding process is part of analysis (Miles & Huberman, 1994) with data being organised into meaningful groups (Tuckett, 2005). Given that the analysis was more ‘theory-driven’, the data was approached with specific themes in mind to be coded around. Coding was conducted manually, using a PDF reader, each of the policy documents were read through, with different sentences and wording being highlighted. At this stage, colour coded highlighting was used, with a different colour being used for each theme, or model of justice. Sentences or wording that may have fit into multiple themes, were highlighted under both, to be reviewed at a later stage. The entire data set was worked through systematically, with equal and considerate attention given to each data item. To ensure all data extracts were coded, and then collated together within each code, a separate word document was created containing a table with a coding framework, with columns for theme, code, and the quotes/extracts taken from the document that had been highlighted for each code. There was a significant number of extracts at this stage, with extracts containing some added information either within the quote, or through the comment function on the word document to ensure that the context of where the quote was taken from, and the overall meaning was kept. This was beneficial to mitigate against the common criticism of coding that context can be lost through the process (Bryman, 2001). Many extracts were placed into codes in multiple themes, as certain words, or features of an extract, even of a single sentence were relevant in more than one theme. Through the third stage, themes were searched for (Braun & Clarke, 2006). Although there were four themes known as they were based on the models of justice being used in this research, sub-themes, and a ‘theme’ called miscellaneous were created. Codes were reviewed, going into themes, or sub-themes with some codes being moved, and some being discarded. To keep a track of the process, and how codes, and subthemes emerged, different word documents were created as the codes, and themes/sub themes were defined. This allowed a record of the coding frameworks prior to changes being made, and for the latest version of the framework to be clear. Phase four began with candidate themes established and involved refining of the themes and codes. Some codes were moved, some discarded, and some joint together. Following Patton’s (1990) dual criteria for judging categories, external heterogeneity and internal homogeneity, data within themes fit together meaningfully, while a clear distinction between them remained. All extracts were read over and considered to ensure they fit, and if they did not, they were reworked or discarded. Each of the three strategies was then re-read, to ensure the themes and codes were suitable in relation to the entire data set, and to code any additional extracts that may have previously been missed. This need from re-coding from the data set is expected due to the continuous process of coding

(Braun & Clarke, 2006). Refinement, and re-reading continued several more times, until this process was not adding anything more significant. For the fifth phase, data was defined, and refined identifying the core of each theme. Data extracts for each theme were organised into codes which were reworked and renamed to capture each relevant aspect of the data, while maintaining comments within the word document to keep the accompanying narrative surrounding the data extracts. In line with Braun & Clarke's (2006) guidance, each theme, although distinguishable from other themes, was considered in relation to itself, and to the other themes. Phase six, the final phase was producing the write up on the TA to complete the final analysis. This process that was completed within the discussion section of this dissertation provides the complex story of the data, including some data extracts through providing concise, logical, non-repetitive and interesting account in line with Braun & Clarke's process (Braun & Clarke, 2006). The write up of the data's story related to the research question requires sufficient evidence of the themes within the data (Braun & Clarke, 2006). Due to this, vivid extracts that encapsulate the key features were chosen. In addition to providing extracts of the data, the write up must include an analytic narrative to illustrate the story about the data, moving past description to make an argument in relation to the research question (Braun & Clarke, 2006). Along with this, this dissertation combined the analytic narrative from the TA, with comparisons to the data from the literature review to lead to a robust discussion surrounding the overall research question. The combination of the TA analyst narrative and broadening of the analysis to an interpretative level relating claims to existing literature is in line with a best-practice example of TA detailed by Braun and Clarke (2006) that was published by Frith & Gleeson (2004). Following the guidance on TA, resulted in its use as a method of analysis that was applied rigorously to the data.

Analysis included a continuous movement back and forth between the whole data set, the coded extracts, and the analysis that is being produced, with analysis developing over time (Braun & Clarke, 2006; Ely et al., 1997 in Braun & Clarke, 2006). Writing is a key aspect of analysis that occurs throughout the process, beginning in phase one, noting ideas, and potential coding schemes, through to the completion of the coding process (Braun & Clarke, 2006). The relevant literature was engaged with prior to the TA, due to the deductive method used, and purpose of the TA. This, enhanced analysis as the research was sensitised to more subtle features of the data based on prior reading (Tuckett, 2005). The TA required enough time available to thoroughly work through the steps of the research process, moving back and forth between the stages as needed to refine and strengthen the analysis.



Norwell and colleagues (2017), outlined a step-by-step approach to conduct trustworthy TA, based on the steps set out by Braun and Clarke (2006). Some of these steps set out by Norwell and colleagues (2017) were beyond the possibility within the scope of this paper, however elements were used where possible to increase the trustworthiness of the current research. Steps that were followed throughout the TA include the storing of raw data in well-organised folders, and thoughts surrounding potential codes/themes were documented. Peer debriefing was conducted throughout the coding process through discussion with course colleagues, and with the research supervisor resulting in team consensus of the themes and coding. Summaries of these discussions were kept and referred to when needed. A coding framework was used to document all codes, themes, subthemes, and extracts, with different versions of the document saved as the codes were refined to keep a document trail from the original first framework through to the final refined work. Extracts of the coding framework, with exemplar codes and extracts for each theme is included in Appendix 1. A criticism of TA includes that the flexibility of the process can lead to inconsistencies (Holloway & Todres, 2003). However, consistency can be promoted through making epistemological position that underpins the studies claims explicit (Holloway & Todres, 2003).

#### **3.2.2.4. Write up/analysis**

More instances of the theme across the data set does not necessarily mean that this theme is more important (Braun & Clarke, 2006). Researcher judgement and knowledge is necessary. The importance of a theme may not be measurable through the number of codes found under a given theme (Braun & Clarke, 2006). In this research, the importance of a theme, was not based solely on the number of codes under it, as using researcher judgment and based off existing knowledge relating to the research questions, some codes were of higher significance to the research question than others. Due to the different substance in different codes, the presence of more codes was not the main aspect, rather the qualitative nature of each code, and the meaning this carried related to the research question were a key focus within the discussion. After, and during the TA process, a checklist by Braun & Clarke (2006) was used without inclusion of the elements related to transcription as that is not relevant to this TA. To ensure that the TA was of high standard this concise checklist of criteria to consider when determining whether you have generated a good thematic analysis ensured the TA was of a high standard improving the strength of this study.

## Chapter 4: Discussion

This chapter is going to critically discuss the core themes that arose from the policy documents and their relationship to the models of justice outlined above.

### 4.1. Age of Criminal Responsibility

The Youth Justice Action Plan 2014-2018 from Ireland (YJAP) highlights that there are limitations of justice interventions just including 12–17-year-olds. This is a significant acknowledgment, and highlights a move, even if just a conceptual, ideological movement without action, toward a more welfare view to the culpability of a young person over the age of 17, which in line with empirical research remains reduced until into the 20's up until even 30 years of age. This is mentioned in the YJAP in relation to late onset offending, which is significantly relevant to the age limits of the justice system of 17, as those who do not offend until early adulthood, or over 17 years have been faced into the adult justice system which is not appropriate to their needs. This was highlighted through the literature review. However as noted, this limitation to the age limit of 17 is also relevant to those who first offend under this age. Young people who offend under the age of 17, who receive a period of detention that lasts past 17 years face a transfer to an adult prison from the detention centre.

*“Appropriate interventions for young people with a late onset of offending in early adulthood in line with international evidence on desistance, acknowledging the limitations of looking solely at 12–17-year-olds.” (YCAP, 2014-2018 pg.20).*

Building upon this, the most recent strategy from Ireland takes these acknowledgments of limits of 17 being the oldest young people under the youth justice system and the related considerations with plans to include those up to 24 years within the ethos of the youth justice system rather than the adult system. The Youth Justice Strategy 2021-2027 (YJS) speaks of aims to “pursue enhanced effective services for young adults (18-24 years) on release from prison” (YJS, 2021-2027, pg. 28). Inclusion of those over 17 in the YJS refers to elements such as responding to the needs of young adults aged 18-24 years in the prison system, with the aim of protecting against re-offending, and supporting their rehabilitation and personal development (YJS 2021-2027, pg. 27). Although this is in relation to those in custody within adult prisons, it highlights a move away from the punitive, just deserts approach for this age group toward including them in meeting their welfare needs as they do for those under 18. This is along with their aim to develop general protocols to manage the care of these young adult offenders in the prison system (YJS, 2021-2027, pg. 27). Criticism of those over 17, and certain

young offenders being sent to adult courts, receiving adult sentences, and possibly being placed in an adult prison as seen in the literature, may be improved through aims of the YJS 2021-2027. They aim to increase approaches to effective engagement and diversion for the 18-24 age group (YJS, 2021-2027, pg. 13). This is within the context in Ireland of possible improved approaches to drug and alcohol use, including a Health Diversion approach to drug possession offences. This inclusion of 18–24-year-olds fits into, and compliments other strategic policies, including those related to mental health, the health led response to drug and alcohol use, Community Safety Strategy and Better Outcomes Brighter Futures- the National Policy Framework for Children and Young Adults (BOBF). The YJS 2021-2027 under the welfare theme includes codes of working in collaboration with health and welfare-based agencies and policies, included the BOBF. The BOBF includes 18–24-year-olds which suggests a wider change in Ireland, with the inclusion of children and young adults (18-24), rather than just children up to 17. Although this is a positive move in line with developmental research to include young adults and separate them from fully developed adult approaches the YJS mention of this age group is around aims to *develop* approaches for their inclusion. For example, they aim to develop pilot approaches for diversion for 18–24-year-olds (YJS, 2021-2027, pg. 23). This may take some time to develop, then implement pilot approaches, and based on the success of this the possibility of then rolling out This is rather than actual plans to be implemented, it is in an earlier stage of development. Due to various influences such as changing opinion, public outcry due to moral panics and resource restraints, a drive to continue development and implementation of this may change. This requires monitoring, and perhaps increase evidence based, awareness and public education surrounding the vulnerability of young people up until at least this age to gather public and political support to ensure strategic plans are fully implemented for this age group. These plans to increase welfare supports for this age group includes effective services for young adults upon release from prison. This in turn strengthens and improves the scope of impact of elements of the restorative model to young adults, their family and community. The inclusion of this age group into consideration of the youth justice system strategy highlights a move to further develop and build upon the welfare ethos under the 1989 and 2001 Act. Although this is not changing the overall model used, it expands the scope, and the effects of the models of youth justice.

*“...respond as far as possible to the needs for young adults (18-24 years) in the prison system, to protect against further criminal involvement and support rehabilitation and personal development.”* (YJS, 2021-2027, pg. 27).

In contrast to this, the YJS mentions those under 12 years. This includes for research on, and assessment of the effectiveness of policy including “*effective engagement with under 12’s and appropriate family supports*” pg. 42. The mention of this age group within research on effective engagement and family supports may not suggest a more punitive approach depending on the content and aims of this research. This may involve those between ages 10-12 who are able to be charged with a serious offence through the 2001 Act and aim to improve family-based supports for these children. However, in contrast, it could suggest that the youth justice system is increasing their focus on this age group. This age group under the 2001 Act may be involved in the Diversion Programme, which has significant limitations as discussed in the literature review. Although interventions such as diversion may be welfare based, the involvement of those who cannot be criminally responsible in this programme highlights some signs of a more punitive view of young people. Due to these contrasting mentions of inclusion of 18–24-year-olds and mentioning of under 12-year-olds in the YJS without significant context surrounding the aims of this, monitoring into future policy and practice may be needed to assess, and track any changes that occur in either direction of increased involvement of under 12s in the youth justice system even through diversion, and the inclusion of 18–24-year-olds. These two factors, have opposite effects on prominent models of justice used, as inclusion of 18-24 highlights an increasing use of the welfare approach, whereas inclusion of under 12-year-olds may be more justice based in diversion holding them accountable, or even actuarial if their involvement is based on risk of offending at the age of criminal responsibility.

#### **4.2. Young Peoples Needs**

Although agencies outside of the criminal justice system are mentioned in the legislation in Ireland and NZ, this is based on their assistance for the justice agencies, or referral to these services if there are care and protection needs. In addition to the limited specialised training of those involved in the justice system, along with cultural inappropriateness, improved specialised knowledge can improve the alignment with a welfare approach to youth justice. As a criticism of traditional justice agencies, and actors within the system is the inappropriateness of the interventions for children based on their developmental stage and vulnerability a focus on making these interventions appropriate for their needs may mitigate against some negative effects of the continued reliance on justice agencies. Mention of the needs of young people in the Strategy YJAP 2014-2018 include mental health, health, social needs, transitions toward adulthood, housing, education, reintegration with acknowledgment of their continuing development and vulnerability. Although several of these elements may be known risk factors,

they are mentioned within the welfare theme as the stated purpose of meeting these needs is not stated to be based on reducing crime or is stated to improve personal development and life outcomes for this vulnerable group. Although aims of meeting this needs are stated to be improving life outcomes which fits in with the welfare model, a second aim is to reduce re-offending. This highlights that these needs are a focus both for a welfare, and actuarial risk-factor basis. However, it is possible that reducing re-offending is a secondary aim, that will be the result of improved personal development and life outcomes. This highlights alignment with the welfare model and ethos underlying youth justice with young peoples needs being a key consideration.

*“Improved service provision, including education, health, mental health and social needs, for young people in detention with a view to enhancing their personal development and life outcomes; reducing re-offending; and addressing the needs of those involved in persistent, serious and prolific crime.”* (YJAP 2014-2018, p.24).

### **4.3. Interagency approach**

Awareness of young people’s needs and development leading to more appropriate outcomes would require those within the relevant agencies, and policy makers to be knowledgeable on the various needs specific for young people. The YCAP mentions the array of team members with different skills required who would have this knowledge: *“Skills of team members will include social work, psychology, speech and language therapy, social care and addiction.”* (YJAP, 2014-2018 pg. 24). The development of the YJS was guided by the full range of issues related to children and young people. Interventions are to occur regarding a young person’s sense of time, and rather than a young person being viewed as an offender, they are to *“be treated as children first...”* (YJS 2021-2027, pg. 7). The YJS involves collaboration with other agencies throughout, to produce a holistic, *‘wrap around’ response to the needs of children and young people at risk in the specific family and community context’* (YJS, 2021-2027,pg. 1). The YCAP contains the code of specialist knowledge for needs and vulnerability of young people. Youth court judges, youth advocates and lay advocates are stated in the YCAP 2013-2023 to have specialist training, experience, personality, and cultural understanding (YCAP, 2013-2023, pg. 29 & 30). Other specialist knowledge mentioned includes for people with alcohol and other drugs (AOD) and mental health issues in court, police specialist youth experience and professionals for medical, psychiatric, or psychological, educational, cultural, and social work reports. – cultural benefits. The increased focus of interagency responses, and specialised training for those within the youth justice system, maintains the welfare ethos

underlying youth justice interventions in New Zealand and Ireland. However, it may lead to more holistic welfare outcomes, and reduce the limitations found through the literature review of inappropriate decision making by justice staff with lack of training, and the criminogenic effect of involvement with the criminal justice system. The increased alignment with the welfare model including referrals to the appropriate agencies may mitigate against criticisms of a strict welfare basis however this increase in welfare basis occurring in combination with the features of the justice model that protect young peoples rights is beneficial.

#### **4.4. Diversion**

Within the YJAP and the YJS from Ireland, diversion is mentioned in terms of diversion from the criminal justice system, from conviction and to divert young people from offending behaviour and crime. The strategy states it follows on from the first National Youth Justice Strategy, 2008-2010, and underpins policies and principles of diversion. The Irish Youth Justice System (IYJS) responsibility for driving youth justice reform by focusing on diversion and rehabilitation (YJAP, 2014-2018, pg.3). The Strategy 2021-2027 details strengthening the procedures for “*Diversion to minimise delays and ensure fully informed and transparent decision-making processes.*” (YJS, 2021-2027 pg. 11). This, combined with findings from the literature review surrounding lack of legal advice for young people and their families who participate in diversion is significant, and highlights an increase on justice model elements within diversion. Diversion programmes are to be linked with educational institutions, Drugs Task Force Projects, community development, employment, and training agencies (YJS, 2021-2027, pg. 13). This may be of benefit, as not only does it meet the young people’s needs in these specialised areas, but it may reduce labelling effect of contact with the criminal justice system, as the non-criminal justice agencies will be involved in key areas rather than justice agencies.

*“Protocol to divert young people from conviction agreed and implemented.” Pg. 23*

The 2021-2027 Strategy, building upon this protocol with diversion as a key objective, states that diversion from the formal youth justice system is to be used to the greatest extent possible. The YCAP states that a significant portion of children and young people are dealt with outside the formal justice system (YCAP 2013-2023, pg. 1). This finding is in support of the literature surrounding the use of diversion in New Zealand. In Ireland, along with the 12–17-year-olds upon which diversion was focused on, diversion is mentioned in relation to 18–24-year-olds (YJS, 2021-2027, pg. 13). Necessary steps are to be examined for the establishment of

diversion for those ages 18-24, in line with the development of the Health Diversion approach and community supports (YJS, 2021-2027, pg. 23). This highlights increase in the scope of the welfare model to include more young people. The YJS details that GYD will be rebranded as youth support projects, without altering the involvement of the Gardai in oversight and management. This rebranding may mitigate against the criminogenic effects of the programme containing Garda, increasing the welfare benefits, however the maintenance of the Gardai in oversight and management may limit this.

#### **4.5. Traditional Justice Agencies**

Codes found within all three policy documents include criminal justice agencies and actors, crime control aims, proportionality, due process rights and transparency. These elements with their importance outlined in the literature may improve the sense of fairness of the youth justice system for those involved in it, which may increase their willingness to work with the process. Within the YJS traditional justice professionals and facilities although maintain some similarities within the youth justice system with the traditional adult justice system. This highlights Ireland's preservation of these actors and agencies based within the traditional justice system that keeps the system, and its interventions to the justice model. Similarly, the YCAP mentions traditional justice elements including court processes, ensuring the principles of the legislation are upheld by the court, judges, detention, and remand. Like the mentioning of justice agencies in both strategies in Ireland, the mention of these agencies in the YCAP 2013-2023 in some extracts involves elements relating to bringing these agencies in line with an ethos linked more closely with the other models of youth justice. For example, in a best practice scenario within the YCAP, 2013-2023, upon police apprehension, the officer conducts a background check on the young person on their phone which links the operation of the police with the actuarial model (YCAP, 2013-2023, pg. 21). This highlights elements of the justice model remain, as does the connection of justice aspects within other models.

#### **4.6. FGCs in New Zealand**

Despite FGCs being legislated for in Ireland, there is no mention of FGCs within the most recent policy the YJS. The only mention of FGCs is within Appendix 1 detailing indicative schedule of areas for amendment in the Children Act 2001. Here, it is mentioned that FGCs are not used often in practice. Despite both policies from Ireland not mentioning FGCs, they maintain a focus on family through mention of re-integration of the young person into their family, (YJAP, 2014-2018, pg. 24), within review of Garda Station and Court based processes regard is to be given to the desirability of family friendly processes (YJS, 2021-2027,pg. 30),

within the multi-agency framework to engage with family to support the young person (YJS, 2021-2027, pg. 28) and in relation to Garda Youth Diversion Projects and family support. This highlights that although FGCs are not a feature there is some consideration of the family within interventions, including diversion in place of an FGC. Within the YCAP they outline the necessity for evidence to be of a good standard, and work to determine benefits of legal representation at non-court ordered FGCs. The YCAP details the need for substantive evidence as required by law for the offence to be on file, and to be of a standard that would be sufficient evidence to mount a prosecution before Police can take an Alternative Action. This is significant and brings NZs FGCs in line with the recommendations outlined by the United Nations Assembly and Commission on the Rights of the Child. This maintains the welfare basis of FGCs, with increases to the legal, and justice model protections within FGCs.

*“This action involves work to determine the benefits of legal representation at non-court ordered FGCs.”* (YCAP, 2013-2023, pg. 38).

#### **4.7. Restorative and Victims**

Although victims were mentioned in the legislation in Ireland and NZ with attention to their needs, as identified in the literature review, the restorative justice basis came after the Acts, when it was after identified as having restorative processes despite this not being the direct intention. The explicit mention of restorative practices and principles within the policies show evidence of this, as policy now includes restorative principles explicitly.

The YJAP 2014-2018 mentions a focus on victims of crime and specifies for the inclusion of victims who are children and young people. This is significant due to the disadvantaged mentioned through the literature faced by many within the youth justice system, and the known risk factors that may lead to them being at increased risk of victimisation. The Strategy states the commitment to further developing victim services using restorative interventions, which is an important element to note within this analysis, as it highlights the progression of focus on the victim developing over time.

Although victims are mentioned in the YJS 2021-2027, discussion of restorative practices in this strategy are not significantly victim centred and are referred to as child/family centred approaches. *“..as well as supporting interagency case-management and child/family centred approaches (e.g. Meitheal or restorative practices)...”* (YJS, 2021-2027, pg. 23). The YJS mentions restorative practices in relation to having interventions from professionals working in restorative practices and the promotion of restorative practices. The analysis of the YCAP



found mentions of training of staff in restorative justice and practices. These planned actions are necessary if restorative interventions are to meet the needs of all those involved in the process, as untrained facilitators could lead to negative outcomes. Due to the sensitivity, and vulnerability of both youth offenders and victims specialised skills are essential to ensure harmful shaming or (re)traumatisation do not occur. This explicit mention and focus on restorative practice, increases both youth justice systems explicit relation to the restorative model in addition to the focus on victims, and FGCs that already existed in NZ, and Ireland. These factors suggest an increased purposeful alignment in recent policy with the restorative model compared to the legislation.

#### **4.8. Actuarial**

Elements of the Actuarial model, not significantly seen through the literature review in Ireland and NZ include significant focus on evidence-based practices, data relating to this and the justice system, research and cost-effectiveness. Risk is evident within the policies through indirect mention of known risk factors, explicit mention of risk factors, risk assessments and early intervention for those at risk. These codes found within the policies are not seen in the legislation in Ireland or New Zealand.

An increased understanding of youth crime, allows a more data-driven and evidence informed approach (YJAP, 2014-2018 pg. 4). Along with benefits of an evidence-based approach for more effective, appropriate, and consistent practices, *this leads to better value for money* (YJAP, 2014-2018, pg. 8). The YCAP 2013-2023 included the code of evidence-based programmes, using growing evidence for service provision, and reviewing existing services. To ensure that these evidence-based effective interventions are used, the Strategy 2014-2018 includes the development of policy to inform best practice and ensure young people's rights are met with their voice being heard. These focused and effective interventions are mentioned in relation to GYDPs, and detention facilities. Along with mention of these specific settings, best practice, based on evidence-informed intervention has a broad overarching aim of systemic change in the youth justice system.

*“Innovation and practice excellence encouraged, resulting in improved social outcomes through a significant and systemic change in the youth justice system.”* (The Strategy, 2014-2018, pg.23).

An evidence base requires data, and research with the collected data. The Strategy 2014-2018 notes the ongoing challenge of limited data on youth offending. Data may determine where

resources are focused and can help State agencies identify areas where things are working, and changes needed to be made (YJAP). For example, with the aim of reduced offending, data is needed to assess the levels of actual offending reductions to assess how effective interventions are. Improved data collection can lead to increased understanding of youth crime patterns, consistent robust data, tracking of pathways through the youth justice system and to measure outcomes, assessing how effective measures are. In addition to data sharing throughout Ireland, to keep up with, contribute to and in line with the globalisation of crime data, and research studies across different countries mentioned in The YJAP 2014-2018 are beneficial. Māori are specifically mentioned in the YCAP 2013-2023 in relation to improving NZ evidence of ‘what works’ for this group (YCAP, 2013-2023, pg. 41). Likewise, ethnic minorities, and groups disproportionately represented in the justice system are a focus of data in the YJS. This is particularly relevant with findings in the literature review of the inappropriateness of interventions for Māori communities. Statistics are used within The Strategy 2014-2018 to strengthen their points, however comparisons using statistics and data requires some standard definitions to ensure that like is being compared with like. An added difficulty within youth justice is the various age brackets that are included in different countries. However, with this, data protection legislation needs to be adhered to. Using this data, research can be conducted and used to inform service and policy development which has occurred as part of the development of the Strategy 2021-2027.

## Risk

A code within all three strategies is young people who are at risk, risk factors and risk assessment. Those who are deemed to be at risk, are identified using risk factor informed risk assessments. Young people who are “at risk of getting into trouble” (YJAP, 2014-2018, pg. 2) are mentioned in relation to using early interventions to target these young people. This includes through GYDPs, a Health Service Executive run specialist team providing therapeutic services in the community, services targeting parenting, early attachment, improvements in school and other factors. With knowledge of the actuarial model, and related risk factors as discussed in the literature review, analysis identified some of these risk factors mentioned in the strategy although not defined there as risk factors. These include strategies and services targeting parenting, early attachment, improvements at school, reducing drug and alcohol misuse, mental health, and poverty (YJAP, 2014-2018 pg. 8 and 25). Risk factors are explicitly mentioned in The Strategy 2021-2027, such as naming socio-economic circumstances, child and family welfare issues as having a link to youth offending. Risk assessment tools to identify

those at risk, reducing risk of re-offending and early intervention are a focus within the YCAP. Young people deemed at risk, are aimed to be engaged with prior to entering the justice system (YJS, 2021-2027, pg.1). However, this may not involve justice-based agencies, with the strategy aiming to establish ways to improve the range of positive leisure time and developmental activities available to young people at risk.

These elements highlight alignment with the actuarial model of justice in both Ireland and NZ through recent policy through explicit focus on an evidence base, data and risk.

## Chapter 5: Conclusion and recommendations

This research has a convergence in Ireland and New Zealand with the models of youth justice laid down through legislation with recent policy. Ireland has an added focused on elements of the actuarial model in recent policy compared to that within the legislation. Ireland and New Zealand have converged further with models of justice used within both countries, with Ireland and New Zealand both using a hybrid model containing just deserts, welfare, restorative, and actuarial elements. While there were elements of the actuarial model within the legislation in New Zealand, other features of the actuarial model have emerged in New Zealand policy, with the introduction of actuarial concepts in Ireland. Despite this convergence in models used, specifics within these models have demonstrated some divergence, with policy stating explicitly things that may have been implied previously but did not have as clear a focus withing legislation.

The key features of the just deserts/justice model include accountability and responsibility for the young offender, rational choice and responsibility for the consequences of their actions, punishment, meeting due process rights, and meeting a crime control aim. The features of the just deserts model identified throughout the literature review were accountability for their behaviour, proportionality justice-based agencies involvement and traditional justice processes such as youth courts, and crime control aims. This highlights the continued presence of aims and ethos related to the just deserts model in both Ireland and New Zealand. As within the literature, they are intertwined with these justice elements are features of the welfare models. These include rehabilitative interventions and processes even within these justice-based processes. Features of the restorative model are also apparent even within these justice-based findings, for example with court ordered family group conferences. Elements of the restorative model such as a focus on the victim within all youth justice interventions highlights how this is an underlying principle within the justice systems. Restorative features intertwine into the element of the other models. Although it is noted that restorative principles were not the basis of the legislation, the restorative model is an explicit feature of both the Irish and New Zealand criminal justice system. Elements of different models do not just feature within both youth justice systems, they interact, and add to each other resulting in a hybrid model of youth justice evident in Ireland and New Zealand. The inclusion of consideration of young adults aged 18-24 in Irelands policies, highlights movement toward increasing the scope of the welfare basis, to include young adults. Although this is related more to the inclusion of more young people within the youth justice system than an overall change in the justice system, it may suggest a

changing view in Ireland of the culpability of those into their 20s which is in line with developmental research. In contrast, Ireland mentions a goal to engage with those under 12, which is under the age of criminal responsibility. However, this may not represent a significant change, due to factors such as inclusion of under 12-year-olds in the justice system through diversion, or for certain serious offences. The welfare-based meeting of young people's needs is maintained in current policy, with an increased focus on using an inter-agency approach to better meet the needs of young people. Within both legislations, although child welfare services may be used to assist the courts, the interagency approach was not as significant. This may reduce criminogenic effects, if the young person can be referred to the appropriate service however requires caution as to not increase justice interventions based on welfare needs. The focus on diversion which is based on the welfare model to meet the best interests of the child is maintained in policy in New Zealand and Ireland. In addition, a change in the name, and a rebranding of the Garda Diversion Programme to be a 'Support project' may suggest an increased alignment with a welfare model basis; however, it maintains the traditional justice system with the involvement of the Gardai remaining. Other justice features identified through policy is transparent decision-making processes as this may impact the informed decision making in this process. FGCs remain a key feature within policy in New Zealand, however, have lost their focus within policy in Ireland. Although this may not overall change the hybrid model used in Ireland, a key feature of the original legislation is no longer relevant to the policy which even without a model of youth justice change, highlights a change within youth justice in Ireland. However, this change, may bring policy more in line with what was occurring in practice, with Gardai less focused on FGCs with increased focus on restorative cautions. FGCS in New Zealand faced a limitation of not meeting children's rights. Improving upon this, a focus with FGCS in the New Zealand policy is legal protections. Although elements of the restorative model were within the provisions of legislation in Ireland and NZ indirectly, the recent policy in Ireland and New Zealand maintains a victim focus and introduces explicit aims of restorative practices and processes. Elements of the actuarial model are more evident through recent policy in both Ireland and New Zealand, focus on evidence-based interventions, data and risk are apparent within both countries. Cost-effectiveness related to the actuarial model is seen in policy in Ireland. These changes, and remaining similarities suggest that both Ireland and New Zealand have maintained hybrid models. Although some aspects have changed New Zealand has maintained a hybrid model including just deserts, welfare and restorative and actuarial. Ireland, has maintained just deserts, welfare and restorative and the actuarial model has been introduced into the hybrid model of youth justice in Ireland. As each

model comes with its benefits and limitations, a hybrid model may be able to build upon strengths and mitigate against limitations of the other models. This may lead to a more robust, fair, effective youth justice system with improve holistic outcomes for young people.

From this research it is recommended that hybrid models of youth justice are beneficial. Due to the discussed limitations of each model, the use of multiple models together may mitigate against the limitations of strict adherence to one model. For example, youth justice systems that focus on all four models together results in a system that meets the due process rights of young people, holds them accountable through relational processes that can consider the holistic needs of both the young person and the victim, reducing re-offending and improving the wellbeing of the offender and society with positive reintegration. Risk may be considered however as a secondary measure due to the possible harm that can come with being labelled at risk and related stigma, net widening, and criminogenic effects. The age of criminal responsibility both regarding the youngest and oldest that are included in the youth justice system required further consideration. In line with scientific data related to development and decision-making continuing into the mid 20's, this age group should be considered for inclusion within the youth justice system until their development is that of adults. The ability to convict those under the age of criminal responsibility for certain offences, and some young people to adult prisons or the adult courts requires further exploration due to the criminogenic effects despite protections due to their age for more serious offences and unsuitable conditions for those sent to adult settings. In addition, the inclusion of 'at risk' children who have not offended and/or who are below the age of criminal responsibility in justice interventions even if through diversion programmes may have negative effects on the young persons wellbeing and future offending. This means that the inclusion of at-risk children who have not offended with the aim of preventing offending may be counterproductive. Although evidence-based interventions, data, and research to contribute to this evidence base are beneficial, too much focus on strict procedures based on evidence-based and cost-effective interventions should be used with caution. With the vast array of specific needs and situations of young people, adhering strictly to a 'textbook' intervention may not be in the best interests of all children and young people. With the increased focus on restorative practices over family group conferences in Ireland, consideration may be required for legislative amendments to have provisions for restorative practices, ensuring due process rights, proportionality and transparency in decision-making occurs in practice. Legislative amendments to consider better adherence to international children's rights obligations throughout all stages and avenues within youth justice may be

beneficial. Consideration to the availability of legal advice for children and young people should be considered throughout the diversion programmes rather than just prior to admitting responsibility. In addition, rather than the provision for legal advice to be sought by the child or their family within diversion in Ireland, advice and information may be required on the benefits of seeking legal advice including the possible negative future consequences.

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## Appendix 1

Justice	Justice based	“Widening the jurisdiction of the Youth Court to include 12- and 13-year-olds who commit serious offences.”(YCAP, g.52)
Welfare	Youth needs and wellbeing	“Young people in conflict with the law will be treated as children first...” YJS pg. 7 “ overall strategy for achieving the government’s objective for Māori health, YCAP pg. 55
Restorative	Restorative practices	“Strengthen and extend restorative justice practice...” YJAP Pg. 23
Actuarial	Evidence based	“.. roll out of a range of evidence-based programmes and initiatives” YCAP, pg. 52