

EVIDENCE CENTRE
TE POKAPŪ TAUNAKITANGA

**YOUNG PEOPLE REMANDED INTO
YOUTH JUSTICE RESIDENCES –
WHAT ARE THE DRIVING FACTORS?**
Research study

December 2018

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The Oranga Tamariki Evidence Team works to build the evidence base that helps us better understand wellbeing and what works to improve outcomes for New Zealand's children, young people and their whānau.

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Executive summary

Purpose

This report provides findings from an Oranga Tamariki Evidence Centre study on what drives remand recommendations made for young people in the youth justice system. This research was commissioned to help inform the design and delivery of new youth justice services in Oranga Tamariki–Ministry for Children.

Background to the research

Minimising the use of custodial detention to remand young people as far as practicable is a key focus for Oranga Tamariki. Furthermore, the 2016 report by the expert panel on Modernising Child, Youth and Family recommended minimising the number of young people remanded in youth justice residences. And yet a recent report on youth remand trends shows that the number of young people remanded in custodial detention has increased over the last five years. As part of understanding the drivers behind the increases, our research was guided by the following research questions.

1. Who are the people involved in formulating remand recommendations to the Judge and what key factors affect those remand recommendations?
2. What alternatives can safely minimise the number of young people being remanded in youth justice residences?

The findings from this qualitative research are informed by information collected in Christchurch and Auckland during August to December 2017 using focus groups with youth justice professionals, interviews with young people who were remanded in custodial detention in two youth justice residence, and direct observations of court hearings in Christchurch and Manukau Youth Courts.

Key findings

Who are the people involved in formulating remand recommendations to the Judge and what key factors affect those remand recommendations?

Various professionals are involved in the process of remand decision-making with varying levels of input. Ultimately it is the judge who makes the final decision, having considered the various positions put forward in court.

- The key contributors to remand recommendations in court are police and youth advocates.
- Police play an important role in a young person's first appearance in court. This is where bail may be "opposed", or "unopposed" by Police.
- Youth advocates are the 'voice' of the young people in court. Their ability to advocate for young people in their first court appearance will depend on how familiar the youth advocates are with the young people's circumstances.
- Oranga Tamariki is represented in court to provide clarifying information; however, where their role seems to be most active is the part they play outside of court.

- In court, the role of representatives Ministries of Health and Education, and community service providers is mostly limited to providing information as requested by the judge.
- Social workers can better inform remand recommendations when they are allocated to young people's cases earlier in the process.

A range of factors that influence remand recommendations were identified

- The nature and seriousness of the charge facing the young person are key factors for police opposing bail and for the likelihood that a young person will be remanded in a secure residence.
- Having a youth justice history of multiple bail breaches, absconding, and reoffending contribute to stricter remand decisions, such as custodial detention. However, professionals and young people believe that not all breaches of bail should influence remand recommendations.
- Whānau support, including their attendance in court and willingness to provide a placement, positively influences bail decisions.
- While youth justice professionals understand the impact secure residences can have on young people, resource-related constraints mean that young people may be remanded in youth justice residences due to a lack of suitable alternative options. Such constraints include placement unavailability with whānau and community providers, insufficient staff numbers and high caseloads, and limited funding including the availability of court-ordered services for young people, for example Supported Bail.
- Because of placement unavailability in the community for some of these young people, those with mental health needs and Care and Protection histories are more likely to be remanded in custodial detention in secure residences.
- Variability in the practices among professionals influence remand processes.
- Remand recommendations are affected by timeframes for court processes.

What alternatives can safely minimise the number of young people being remanded in youth justice residences?

Professionals suggest removing existing barriers on a range of current community-based alternatives to remand in residences

- Supported Bail is highly preferred as an alternative to remand in custodial detention. However, it needs greater resource and wrap-around support for the young people after their Supported Bail period is over.
- Community-based homes need better resourcing – adequate funding and support to caregivers, skilled and trained staff and programmes to keep young people engaged – to work as an alternative to secure remand in residences.
- The conditions of bail need to be realistic and not too difficult to comply with.

Professionals suggest the following to help minimise the number of young people remanded to youth justice residences

- Effective collaboration, better communication and information-sharing among agencies, to help reduce the time pressure on each agency to deliver reports.
- An early follow-up for young people by agencies to provide the support that the young people and their whānau need.
- The impact of remanding young people into youth justice residences to be given higher consideration and weight in remand recommendations.
- Engaging community providers and extending the role of lay advocates to improve whānau engagement in the youth justice system; identifying community-based bail alternatives and whānau placements; and helping with planning and decision-making to support the young person and their whānau.
- Improved processes and communications within Oranga Tamariki, such as efficient processes for caregiver assessment and young people's placement allocation, and 'joined-up' Care and Protection and youth justice teams.
- Training for youth justice professionals on working with young people in the youth justice system, and on interpretation of the Oranga Tamariki Act – to maintain consistency in decision-making processes and the professionals' practice.

Glossary of key terms

Term	Definition
Abscond/Absconding	Section 385 of the Oranga Tamariki Act ("the Act") determines absconding as an escape from legal detention.
Bail breach certification	When a young person breaches bail, Police may ask for the breach to be certified by a judicial officer and officially recorded in accordance with section 39 of the Bail Act 2000.
Bail condition	A requirement that must be fulfilled by the young person in order to remain on bail.
Breach of bail	In the context of our research, a breach of bail is when the Police have caught a young person who has failed to observe/obey a condition of their bail.
Care and Protection (C&P)	Where a child/tamariki is identified as being at risk of being harmed or neglected as defined in section 14 of the Act, they are deemed as being in need of care and protection. Oranga Tamariki has the power to place a child/tamariki into C&P custody under section 43 of the Act.
Charge	A formal Police accusation of an alleged offence that is laid on the young person, which may then involve Youth Court processes.
Child-centred	A focus on children's/young people's needs, care, safety, and wellbeing, and that their voices and views are a consideration for decision-making.
Community-based placement	A placement into a home or residence in a residential community under the care of Oranga Tamariki, and as an alternative to detention in residence under s238(1)(d) or provided as a home placement under s238(1)(c).
Court hearing	A legal proceeding before the Youth Court where the Judge, Community Magistrate or Justice of the Peace presides.
Curfew	A bail condition of hours set where the young person is not allowed out of their designated home. Typical curfews are '24-hour' and 7 pm to 7 am (or '7-7').
Custody family group conference (Custody FGC)	A meeting convened by Oranga Tamariki between the young person, their whānau, Police, and other important influencers after the young person has been held in custody in the care of the Chief Executive of Oranga Tamariki under s238(1)(d). It provides a platform to discuss alternative options to continued custody.
Detention in custody	Holding a young person on remand in either the care of the Chief Executive of Oranga Tamariki [s238(1)(d)] or in Police Cells [s238(1)(e)].
Direct court observations	Where the researchers observed and recorded their observations of Youth Court hearings by attending the hearings.
District Court	An adult court within which the Youth Court is a division. Where a young person is charged with murder or manslaughter, the case will automatically be transferred to the District Court or High Court. In the case of other serious offending, there is a discretion to convict and transfer the young person's case to the District or High Court for sentencing.
Electronic Monitoring/EM Bail	A bail option with a special condition of being remanded in their home environment while being monitored through an electronic ankle by Corrections.
Family group conference (FGC)	Youth Justice family group conferences (FGC) are held to give the child or young person a chance to help find solutions when they have offended. The conferences include the young person with their whānau, victims and professionals.
Engagement	The informal process of involving people in the Youth Court processes, especially the young people and their whānau.

Term	Definition
Flexi-bail	A type of 'supported bail' option called 'flexi-bail' that operated in weekends and nights outside of the supported bail week and day-time hours.
Focus groups	The researchers conducted facilitated discussion with a varied number of professionals from the same profession in a group.
Intention to charge FGC (ITC FGC)	An ITC FGC is convened by Oranga Tamariki following a referral from Police when they intend to place formal charges against the young person to discuss whether the charges should be laid in court or whether a plan can be agreed to without involving the court.
Justice of the Peace (JP)	They carry out a number of judicial functions, and have limited powers in the Youth Court. JPs are appointed by the Ministry of Justice, and undergo training in judicial studies in order to be able to preside over certain court hearings.
Lay advocate	People with mana or standing in the young person's community who support the young person in court. They are not lawyers and are appointed by the court. They make sure the court knows about all relevant cultural matters.
Multi-systemic therapy (MST)	An intensive, family-focused and community-based treatment programme for chronically violent youth, administered by a professional MST therapist. MST is focused on the known causes and correlates of antisocial behaviour. MST uses empirically supported interventions such as cognitive behavioural therapy (CBT), behavioural parenting, and structured family therapies (Russell, 2008).
Non-association	A bail condition where the young person is not allowed to be in contact with particular individuals – usually co-offenders, victims, and witnesses.
Opposition to Bail	The document prepared by police to oppose bail in favour of remanding in custodial detention, usually in cases of serious offending or history of bail breaches/abscondment.
Police prosecutor	The person who represents the Police in a Youth Court hearing.
Police youth aid officer	A youth aid officer works in the Police Youth Aid section and deals with youth offenders and acts as a liaison with social workers, community groups and victims and witnesses, and sometimes other youth justice professionals. They investigate youth files, attend FGCs, and may conduct bail checks.
Remand decision/outcome	The decision made by the Youth Court or District Court Judge to release or detain the young person in custody until the next court hearing. Where a Judge is not available a Community Magistrate or Justice of the Peace may exercise these powers in limited circumstances.
s234(c)(iii)	Section 234 of The Oranga Tamariki Act relates to the custody of the child or young person following arrest. Section 234(c)(iii) states that if a child or young person is arrested with or without warrant, a constable may deliver the child or young person into the custody of, with the agreement of the child or young person, a person or organisation approved by the chief executive or a constable for the purpose.
s235	Section 235 of The Oranga Tamariki Act relates to where the child or young person who is arrested may be placed in custody of chief executive.
s238(1)(d)	The section of The Oranga Tamariki Act that defines the remand decision to detain the young person in the custody of the chief executive of Oranga Tamariki.
s239(1), (2)	Section 239 of The Oranga Tamariki Act relates to restrictions on the power of the court to order a child or young person to be detained in custody under s238(1)(d). For s239(1), this section lists the reasons, such as risk of absconding or further offending, that must be apparent to the court before it places a young person in detention. Section 239(2) relates to when the young person may be violent or that there aren't sufficient placement options available to Oranga Tamariki.
s311	Section 311 of The Oranga Tamariki Act relates to supervision with residence orders, where the Youth Court makes an order that the young person be detained in a youth justice residence facility.

Term	Definition
s333	Section 333 of the Oranga Tamariki Act refers to an order for a medical, psychiatric, and/or psychological assessment and report on the young person.
Sentence	Sentencing refers to the final court decision whereby the young person is either released or receives an 'order' or sentence. Typical sentences include supervision orders with residence, community work, Supervision with Activity, Intensive Supervision and education/rehabilitation orders.
Supervision with Residence	Supervision with residence is a sentence or order under section 333 of the Act (see sentence and s311 above).
Supported Bail	A community-based bail alternative for young people who would otherwise be detained on remand. Supported Bail provides intensive support and mentoring for the young person for a defined period of time.
The Act	The Oranga Tamariki Act (1989 and revisions)
Whānau	In this report, whānau refers to the family or family member of the young person of any culture and can mean their parents, the immediate family and/or the extended family.
Wrap-around service/support	A wrap-around service describes a collection of services that agree to support a child or young person, or a service that provides multiple professionals and caregivers to provide a broad range of services.
Young person/people	By the youth justice definition, a 'young person' is aged between 14 and 17 years at the time they allegedly committed an offence. In this research, young person/young people also includes those who are under 14 years of age and in the youth justice system.
Youth advocate	A barrister/solicitor specialised in the Youth Court and in working with young people, appointed to a young person throughout the youth justice process.
Youth Justice co-ordinator	Oranga Tamariki employees who are responsible for managing and organising FGCs. Youth Justice co-ordinators are required to exercise their statutory functions and powers (under the Act), which include receiving reports, exploring alternatives to criminal proceedings, convening the FGC.
Youth justice process	For the purposes of this research, any of the processes that the young person experiences or is subjected to. This starts with arrest through to remand decisions while they await disposition for a final court outcome (release or sentence).
Youth justice residence/residence	An Oranga Tamariki secure facility used to hold young people on remand or keep young people for a sentenced term.
Youth justice professionals	In the context of this research, youth justice professionals include the professionals in the youth justice system that have a direct or indirect role in formulating remand recommendations to the judge.
Youth justice system	Any part of the justice system in New Zealand relating to children and young people's offending to hold them to account for their offending behaviour, but also to provide rehabilitative measures with a goal of preventing reoffending.

Introduction

This report discusses research findings from a study undertaken by Oranga Tamariki Evidence Centre to understand better what drives remand recommendations made for young people in the youth justice system. The research was commissioned to help inform ways to reduce the number of young people remanded to secure residences in the design and delivery of new Oranga Tamariki youth justice services.

Minimising the use of custodial detention to remand young people as far as practicable is a key focus for Oranga Tamariki. To achieve this, Oranga Tamariki needs to understand the drivers behind the decisions to remand young people in youth justice residences and explore potential alternative options for young people who would otherwise be remanded into the residences.

A recent report on youth remand trends between 2011/12 and 2015/16 (Oranga Tamariki Evidence Centre, 2018) shows that the number of court cases decreased considerably between 2011/12 and 2013/14 (from 2,705 to 1,876) before stabilising in subsequent years. In contrast, the number of remand in custodial detention episodes increased over the period examined (916 in 2011/12 to 1,014 in 2015/16). It is widely documented in the youth justice literature that custodial detention of young people has detrimental effects, in particular on their behaviour, mental health, and further offending (for example in O’Leary, 2017; Richards and Renshaw, 2013; Edwards, 2017). The United Nations Convention on the Rights of the Child (UNCROC) and the Beijing Rules¹ advocate that detaining children² who are awaiting trial should be a measure of last resort and be for as short a period as possible. The Modernising Child, Youth and Family Expert Panel report (2016) also recommended minimising the number of young people remanded in youth justice residences.

The findings presented in this report were guided by the following research questions:

- Who are the people involved in formulating remand recommendations to the Judge and what key factors affect those remand recommendations?
- What alternatives can safely minimise the number of young people being remanded in youth justice residences?

A separate report from this research on young people’s involvement in remand decisions is also available, and the authors recommend reading this report. That report takes a child-centred approach and covers young people’s insights of their role in remand decision-making processes, their understanding of how remand decisions are made; the challenges in engaging young people, and suggestions for improving their engagement.

Research methods and limitations

The findings from this qualitative research are informed by the data that Oranga Tamariki Evidence Centre collected during August to December 2017 using the following methods:

¹ The United Nations Standard Minimum Rules for the Administration of Juvenile Justice – often referred to as the Beijing Rules.

² The Convention defines a child as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger. This is currently the case in New Zealand, where it applies to those below the age of 17 years.

- Focus groups with professionals who have key roles in remand decision-making processes in Christchurch and Counties Manukau. This included representatives from New Zealand Police and Oranga Tamariki, and youth advocates (specialist youth lawyers). Twenty-three focus groups and/or interviews were conducted with a total of 70 participants.
- Direct observations of court hearings in the Christchurch and Manukau Youth Courts. A total of 144 cases were observed, of which 106 had a remand status discussed and/or decided or reviewed, and were in scope for the research.
- Interviews with young people in youth justice residences in Korowai Manaaki in Auckland, and Te Puna Wai ō Tuhinapo in Christchurch. Eight young people who were remanded in the residences were interviewed.

The Evidence Centre research team analysed the qualitative data from focus groups, interviews and court observations. Themes were identified from the analyses, which were then synthesised to draw key findings. In court observations, the hearing information that was available to the researchers' observing the hearings was limited to the details that were discussed by the participants in the courtroom. Other supplementary information and/or reports which the courtroom participants did not discuss were unavailable. As a result, the key findings are mainly based on perspectives of the professionals that participated in focus groups, and supplemented by court observations findings. Young people experiences were used to support the findings from focus groups with professionals, where possible. This report uses the term 'research data' whenever there was a consistent theme from all three data sources.

In court observations, the hearing information that was available to the researchers' observing the hearings was limited to the details that were discussed by the participants in the courtroom. Furthermore, seeking informed consent from young people and their whānau to observe the proceedings was found to be challenging.

Interviews and focus groups with all key stakeholder groups were out of scope for this research, namely Youth Court judges and other court staff, and the whānau of young people. Furthermore, research sites were limited to Christchurch and Counties Manukau and therefore the findings should not be generalised to other areas especially non-urban areas. These two large urban sites are distinct from other areas, such as rural and smaller towns, especially in terms of the roles of professionals and the number of Youth Court cases, and the type of offences committed. Counties Manukau was recommended by the Principal Youth Court Judge (Judge John Walker) as a research site because of the highest volume of cases, type of offences, and the frequency of court hearings held. The Youth Crime Action Plan (YCAP)³ steering group recommended Christchurch as an equivalent site to represent the South Island. Both sites have the volume and type of cases to support court observations, and the qualitative work from interviews and focus groups was designed to take place in the same sites to align with the court observation data.

This report does not examine elements of the youth justice system that are underpinned by Treaty-based relationships with Iwi and other culturally appropriate responses, such as Te Kooti Rangatahi, Pasifika Youth Courts, the Iwi-led FGC process, or marae-based restorative justice remand alternatives for young people.

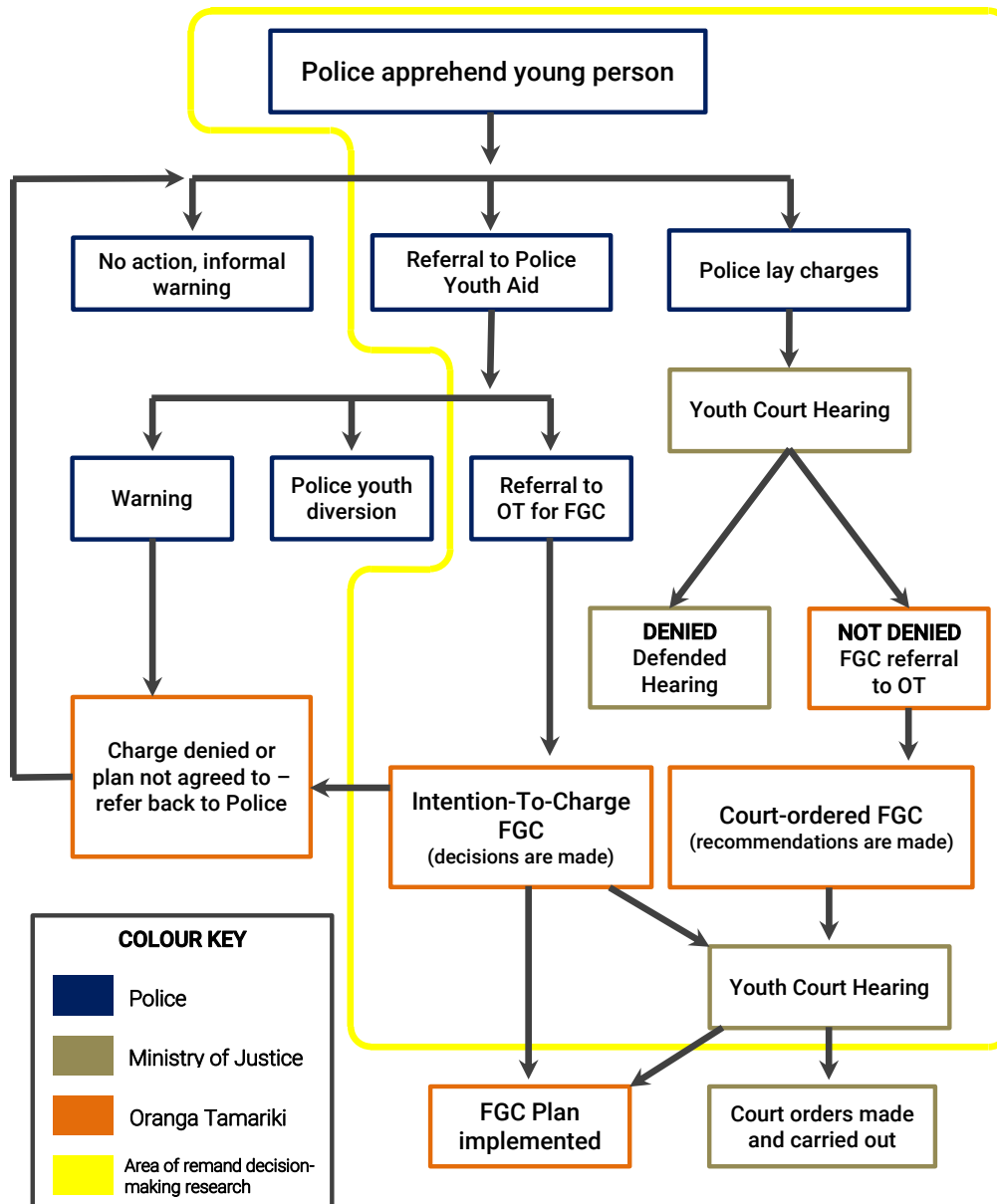
More information about the study method and limitations can be found in Appendix 1.

³ YCAP is a cross-sector steering group established to reduce youth re-offending. <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/cross-government/youth-crime-action-plan/>

Remand decision-making overview

Figure 1 provides an overview of remand decision-making processes in the youth justice system and the scope of our research.⁴

Figure 1: Youth Justice process flow⁵ starting from arrest



⁴ Even though the diagram depicts a linear pathway from one stage of the youth justice process to the next, young peoples' journey along the process is likely to be non-linear. For instance, young people may exit the youth justice system at each stage in the process.

⁵ Adapted from a diagram originally presented in a Ministry of Justice (2018) report.

Young people appear in court primarily through two paths – prosecution or Family Group Conference

In New Zealand, the youth justice process is guided by the Oranga Tamariki Act 1989 (the Act). In this report, the term ‘youth justice process’ refers to the stages young people go through following their arrest for an offence through to remand decisions⁶ made in Youth Court. The youth justice process in this context also includes the wider court process following a court remand decision, such as a court-ordered FGC. Police-referred Intention to Charge FGCs are also included in this research when they lead to a Youth Court prosecution.

In general, there are two main pathways by which a young person could have their first appearance in court to receive a remand decision.

1. Police arrest a young person and lay charges against them, which requires them to appear in court in the next available court hearing.
2. Police direct a young person to the Police Youth Aid team if the alleged offence is considered low risk. The Police Youth Aid team decide how to proceed, and may refer the young person to Oranga Tamariki for a youth justice Intention to Charge FGC. The FGC decides to charge the young person for a court prosecution.

If the young person is prosecuted, they appear in Youth Court for a court hearing where the judge makes a decision about their charges. If the case is not resolved in the initial hearing, the judge makes a remand decision. The Act⁷ sets out the five possible remand arrangements for young people between court hearings, as presented in Box 1.

Box 1: The legislation that underpins the remand decision

The remand options available to the court under s238(1) of the Act are:

- (a) **release** (with no conditions)
- (b) **release** on bail with specified conditions
- (c) **order** that the child or young person be delivered into the custody of the parents, guardians or other persons having their care, or any person approved by the Chief Executive for this purpose
- (d) **detention** in the custody of the Chief Executive, an iwi social service or a cultural social service
- (e) **detention** in Police custody (only applies to a young person aged between 14-17 years of age. A child under 14 year cannot be detained under subsection (e)).

Source: Interpretation of the Act as presented in Oranga Tamariki Evidence Centre, 2018.

⁶ ‘Remand decisions’ as used in this report also include subsequent hearings where remand-related aspects or reviews are done while the young person is waiting for a youth court outcome for their offence.

⁷ The Oranga Tamariki Act is the primary legislation that applies for children and young people when bail is being considered, and once a decision has been made. However, the provisions in Part 3 of the Bail Act 2000 also apply, with modifications by Schedule 1 of the Oranga Tamariki Act.

Typically, Youth Court hearings are held for young people aged between 14 and 17 years

The type of proceeding to take against a child or young person is determined by their age on the date they allegedly committed the offence (Box 2).

From 1 July 2019 the youth court jurisdiction will be extended to include most low-risk 17 year olds as required by the recent amendment (July 2017) to The Act. 17 year olds who are charged with more serious offences will be automatically transferred to the District or High Court.

Box 2: The ages of children and young people and the proceedings that can be taken

- Children aged less than 10 years cannot be prosecuted for any offence.
- Children aged 10 or 11 years can only be prosecuted for murder or manslaughter.
- Children aged 12 or 13 years can only be prosecuted for serious or persistent offending, as defined in s272 of the Oranga Tamariki Act.
- Young people aged 14 to 16 years can be prosecuted for any offence.
- Young people who have reached 17 years of age can still fall within the jurisdiction of the youth justice system, as defined above, if their offending occurred before the age of 17.

Source: Interpretation of the Act as presented in Oranga Tamariki Evidence Centre, 2018.

In our research, most of the young people affected by the youth justice process were 14 to 16 years old.

Findings: roles of youth justice professionals

The role of social workers sits mostly outside of court

The analysis of the information from focus groups suggests that the role social workers have in the youth justice process occurs mostly when an FGC is required. A youth justice coordinator from Oranga Tamariki is responsible for convening and facilitating FGCs – referred either by the Police Youth Aid team for an Intention to Charge FGC, or as ordered by court after an initial hearing.⁸ Both types of FGCs can recommend a suitable remand option for the court to consider. Focus group participants noted that FGC recommendations for a young person can include a suitable remand placement option, suitable bail conditions if they are bailed, or a plan for the young person.

Our research data suggests that in court the role of Oranga Tamariki representatives is mostly limited to providing or clarifying information as requested by the judge. From our court observations, an Oranga Tamariki representative is always present in court hearings. However, their communication role is limited and they often do not comment on placement concerns and remand options, unless asked.⁹ In focus groups, Oranga Tamariki staff stated they are not, in principle, mandated to speak in court unless the young person is in Oranga Tamariki custody before arrest, or unless the judge specifically asks them to respond. Oranga Tamariki staff noted that they sometimes relied on youth advocates to speak on their behalf because they perceived that youth advocates had more influence and ‘voice’ in court hearings. Court observations also showed that youth advocates presented alternatives to the judge based on discussions with Oranga Tamariki staff and police prosecutors before the hearing.¹⁰

‘But they [Oranga Tamariki court officers] can’t get up and say, “Actually the Ministry opposes that, we don’t think that’s the right decision”, because we’re not mandated to – that’s not our role in the Court, unless we have a social work report and plan and there’s orders in place.’ (Oranga Tamariki manager)

Recommendations to the court at first appearance of the young person are driven by the Police

While most young people apprehended by Police are diverted from youth justice pathways,¹¹ some still enter the youth justice system and appear in court for remand decisions. For example, in 2013/14, a total of 18,182 police apprehensions of young people (between 14-16 years of age)

⁸ In the context of the youth justice process in the scope of our research, an Intention to Charge FGC is only relevant in remand decision-making processes if the FGC leads to charges being laid in court.

⁹ There were examples of cases in court observations where Oranga Tamariki raised concerns regarding a residential placement for the judge to address. For example, in one case Oranga Tamariki had concerns about the young person’s mother and noted her offending. Similarly, in two custody cases Oranga Tamariki proposed bail (with support) options, in response to the issues raised by Police and the judge.

¹⁰ At the time of writing of this report, the youth justice operational work in Oranga Tamariki included reviewing the learning and development needs of Oranga Tamariki youth court supervisors, and ensuring access to legal advice in advance of any hearing where a remand status was an issue.

¹¹ Such as via diversion, warning, and ‘alternative action’.

were recorded. Almost two-thirds (64 per cent) were diverted by Police warnings or alternative actions, and less than one-third (31 per cent) resulted in prosecution.¹² Our research data show that for the young people who first appear in court, Police have the key role in driving remand recommendations by either 'opposing' or 'not opposing' bail.

In the context of young people appearing in court, the analysis of information from focus groups suggests that whether the young person initially appears in court is primarily driven by Police, either after arrests or via an Intention to Charge FGC. In principle, the FGC process seeks an agreement from all of the stakeholders including the professionals, the young person and their whānau, and the victim. However, Oranga Tamariki participants in focus groups suggested that the police youth aid officer would have to decide on whether or not to lay charges. Professionals reflected that if Police decided to lay charges after an Intention to Charge FGC, those young people would not have a youth advocate allocated to them until charges were laid in court. Also, a social worker may not be available, informed, or allocated to a young person to advocate on their behalf, as noted in the focus groups with Oranga Tamariki staff. See Figure 2 for a diagram showing the stages where the various professionals are involved.

Youth advocates are not always familiar with young people's circumstances in their first court appearance

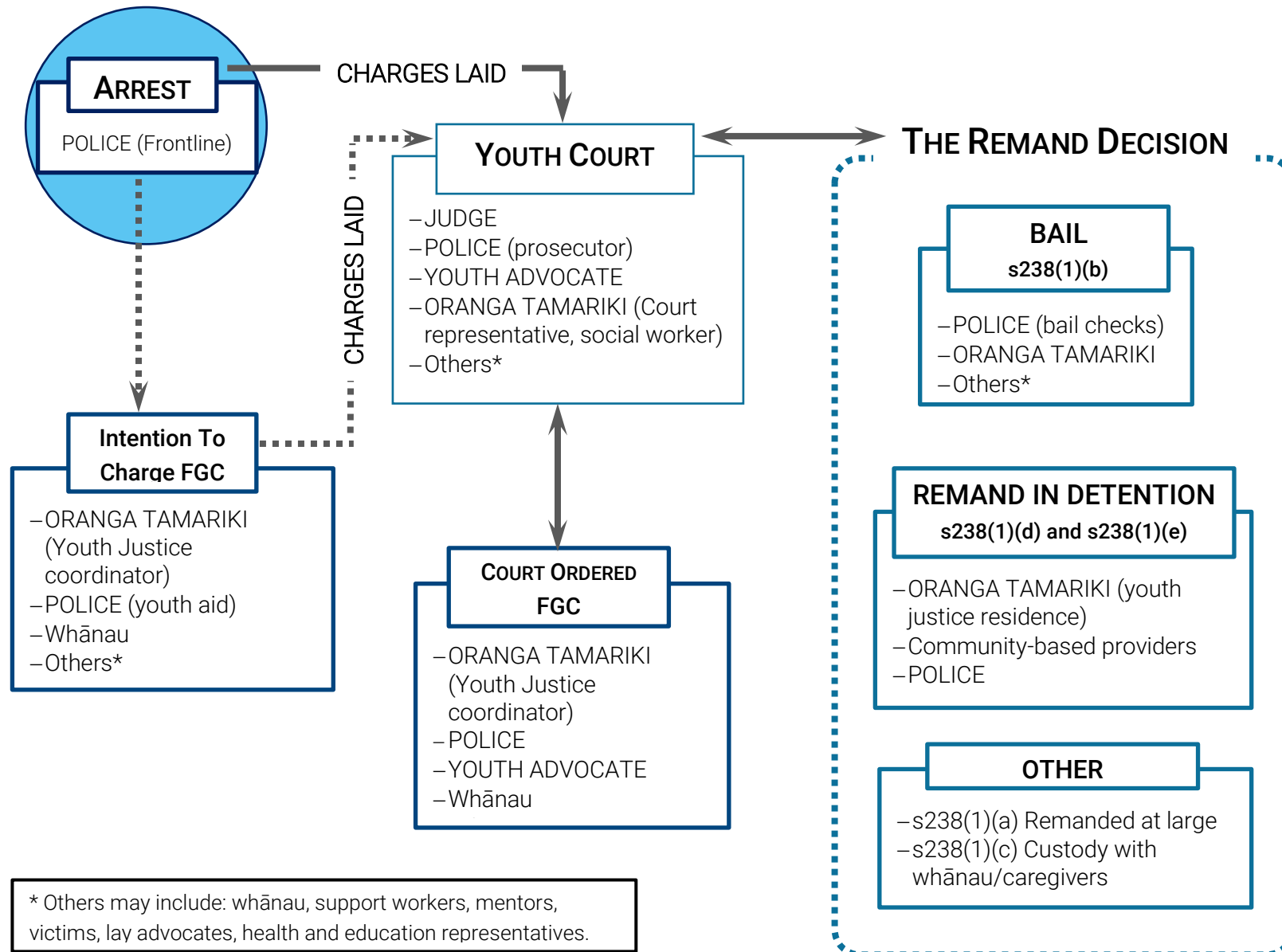
Key professionals who recommend remand options in court are the police prosecutor and the youth advocate – with the judge making the final decision in the hearing. As reflected by professionals in focus groups, the remand options that Police likely recommended would have a focus on ensuring the safety of the community as well as the security and/or stability of young people. Professionals in focus groups emphasised the role of youth advocates as the 'voice' of the young person in court. From the analysis of court observations, youth advocates' role includes the following:

- representing young people's views, plea, and reasons or explanations for offending
- explaining elements of the court process to young people
- organising a lay advocate
- noting young people's compliance to bail conditions
- recommending remand options.

In court, young people would usually have a youth advocate allocated to represent them, as noted by professionals in the majority of the 23 focus groups. However, youth advocates pointed out that their ability to advocate for a young person or rebut concerns raised by police is limited by how familiar they are with the circumstances of the arrest and the wider context surrounding the young person (see Appendix 4 for factors influencing youth advocates' capacity to support young people, as noted by the youth advocates who participated in focus groups).

¹² Source: Police crime figures, NZ.Stat, Statistics New Zealand, retrieved on 13 May 2018 from <https://www.stats.govt.nz/>

Figure 2: Key professionals that young people come into contact with in the process of remand decision-making



Social workers can better inform remand recommendations when allocated to young people earlier in the youth justice process

The information from focus groups suggests that the role of Oranga Tamariki youth justice social workers involves preparing a plan for a young person, engaging with them and their whānau, and providing the support they need, such as transporting young people home directly after bail is granted in court. Some social workers in focus groups stated that they had an indirect role in remand processes in proposing better placement options. However, other social workers stressed that they were not necessarily involved in the process from an initial stage, limiting their ability to proactively advocate for young people prior to and in court, and ensure other professionals understood the context around the young people and their whānau. With early engagement, social workers were considered as being better placed to identify and implement the support to bail young people.

‘..If the social workers do their assessments very well, identify what are the risk factors and able to put plans in place to support that and reduce the risk, it is highly likely that police would reconsider their decision in opposing their bail.’ (Oranga Tamariki participant)

Based on our interviews with young people in residences, young people expect more engagement with their social workers. While some young people experienced a good relationship with their social workers, others expressed confusion over their social workers’ role.¹³ Most professionals in focus groups also believed that the active role of Oranga Tamariki frontline workers could better inform remand decisions, and support the young people and their whānau. This view is also supported by the expert panel report on Modernising Child Youth and Family (2016). Furthermore, the Oranga Tamariki ‘Core Practice Standards’ for social workers highlights the importance of quality engagement with young people and building greater trust (Oranga Tamariki, 2018).

Remand decision-making processes need an active role from key stakeholders

Our research data suggest that the youth justice process would benefit from a more joined-up approach across key stakeholders and agencies. A consistent theme from focus groups was that not all key stakeholders are sufficiently engaged in the youth justice process. Focus group participants perceived that the lack of effective collaboration among agencies and their lack of early follow-up with young people affected remand decisions. They suggested that effective collaboration could also help reduce the length of young people’s stay in residences. Agencies early follow up would help put interventions and support in place and make bail with whānau and/or community as a better option. Professionals also pointed out the need for better support from and linkage with community service providers. For example, placing a ‘must attend school’ as a bail condition would not likely work unless there were also supports put in place to facilitate it.

Based on court observations, a number of professionals have a supplementary role in court. The role of professionals representing the Ministries of Education and Health and community service providers is mostly limited to providing clarifying information, when they are present. In some cases lay advocates are also present to support young people or to give information as requested by the judge.¹⁴ The level of input from these professionals varied based on how much the judge sought their input.

¹³ Further details on young people’s perspectives and the support they received from professionals is provided in the report on *Young people’s engagement in remand decisions*.

¹⁴ From court observations, examples of support from lay advocates to young people included: providing transport to attend the hearing; providing cultural and language support; and acting as an adult guardian and just attending the hearing.

Findings: what factors influence youth remand recommendations?

The remand decision-making processes are complex, often with several changeable factors in play

Our research data suggests that several factors contribute directly or indirectly to the remand recommendations put forward in the court. Professionals in many focus groups emphasised that youth justice professionals were guided by the Act and the remand recommendations were driven by aspects as laid out in the Act (see Appendix 3 for the grounds for detaining a young person in custody under the Act). However, in court observations, it was often unclear what the weighting of different considerations or factors were.¹⁵ Furthermore, focus groups participants reflected that a remand decision for a young person could be very different from the outcomes for co-offenders within the same case, or for another young person on similar charges. In general, information from focus groups suggests the seriousness of charges, the young person's offending history, and their history of absconding and breach of bail, may influence stricter remand recommendations that lean towards detention in a youth justice residence. However, there is no consistent approach across the board.

From our research, we have grouped the factors that contribute to a decision to remand in custodial detention into the following themes, and described in the paragraphs that follow.

1. The seriousness of the offence.
2. Young people's youth justice-related history.
3. Whānau support and engagement.
4. Resource-related factors.
5. Professionals' practices.
6. The needs of young people.
7. The impact of youth justice residences on young people.

1. The seriousness of the offence

The information from focus groups suggests that the nature and seriousness of an offence are key factors in Police opposing bail. Professionals said that the seriousness of offences may be a factor in being remanded in custodial detention for many young people, including those who are 14 years of age or less. The number of charges may further contribute to being detained in custody, according to youth advocates. Furthermore, professionals noted that young people may be remanded in Police detention if the offence is considered serious and a bed in an Oranga Tamariki youth justice residence was not available.¹⁶

¹⁵ In court observations, the information available to the researchers was limited to what were discussed in the court hearings. Any written information or the reports that were available to the judge prior to a court hearing were not available to the researchers. Furthermore, interviewing the youth court professionals and judges who were part of the court observations was not in scope for this research.

¹⁶ Some examples of serious charges from court observations include aggravated robbery and high-speed car chases, where the young person is considered a risk to community.

Analysis of the Ministry of Justice data used for the youth remand trends (2018) report shows that a lot of young people with high 'seriousness of offending' are remanded into the community, however, there is a strong relationship between the 'seriousness of offending' and the initial remand decision made, ie release versus detention (see Table 1).

Table 1: Seriousness of offending by the initial remand decision during the fiscal year 2015/16

Seriousness of offending ¹	Community release ² (n = 1,577)	Detention in custody ³ (n = 251)
Low	95.8%	4.2%
Low-Medium	93.8%	6.2%
Medium	90.2%	9.8%
Medium-High	87.3%	12.7%
High	80.0%	20.0%
Total of all offences 2015/16	86.3%	13.7%

Notes:

¹ The most serious offending in each case was identified as that with the highest seriousness score according to the Justice Sector Seriousness Scale. The highest seriousness scores in each case were grouped into seriousness levels as outlined below:

- Low: seriousness scores of 14 or less
- Low to medium: seriousness scores of over 14 and up to 30
- Medium: seriousness scores of over 30 and up to 160
- Medium to high: seriousness scores of over 160 and up to 380
- High: seriousness scores of over 380.

² Includes release with no conditions, bail with conditions, and delivery into the custody of a named person

³ Includes with Oranga Tamariki, and Police.

Source: Ministry of Justice data analysed by the Oranga Tamariki Evidence Centre.

In focus groups, Police said that more young people were being remanded into police custody because of increased serious offending. In contrast, the youth remand trends (2018) report shows that over the period 2011/12 to 2015/16, there was an overall decrease of 32 per cent (2705 down to 1828 cases) in the total number of cases appearing in court. However, the decrease was smaller (25 per cent, (820 down to 615 cases) for high-seriousness cases compared to overall offending (Oranga Tamariki Evidence Centre, 2018).

Professionals perceive inconsistencies in how serious offences are dealt with across geographical areas

The youth remand trends (2018) report shows a large increase in the use of detention in custody between 2011/12 and 2015/16 in Counties Manukau (Oranga Tamariki Evidence Centre, 2018). Despite this, professionals in focus groups perceived that the level of youth offending in South Auckland was to such a high extent that many young people with serious offending may have received a less strict remand decision compared to similar level offending in Christchurch.

Oranga Tamariki staff noted that in Counties Manukau, there were typically many young people with serious types of offending being bailed or remanded to community placements in addition to the increase in the number of young people in custodial detention. Professionals in youth justice residences also perceived variations between courts from different geographic regions in responding to serious offending.

'... the further down the country you get, the less tolerance for any kind of that behaviour, and they will come into our residence. That's how they'll end up coming to us, because Invercargill's tolerance compared to Auckland's tolerance – there's a huge disparity about that.' (Oranga Tamariki participant)

2. Having a youth justice history

Multiple bail breaches and absconding can lead to remand in custodial detention

Our research data suggest that decisions to remand young people in secure custody are often influenced by offending history of the young person, including adherence to bail conditions, prior tendency to abscond from community-based placements and previous custody spells in residence. Professionals in focus groups commented that first time offenders were more likely to get bail if the charge was not high-risk. The data from Ministry of Justice that was used to analyse youth remand trends between 2011/12 and 2015/16 (Oranga Tamariki Evidence Centre, 2018) also show that first-time offenders are more likely than previous offenders to be remanded in the community for all levels of offence seriousness (Table 2).

Table 2: Initial remand decision during the fiscal year 2015/16 by offence seriousness and history of offending

Seriousness of offence ¹	Community release ²		Detention in custody ³	
	First time offenders ⁴ (n = 1,144)	Previous offenders ⁵ (n = 433)	First time offenders (n = 89)	Previous offenders (n = 162)
Low	97.0%	93.1%	3.0%	6.9%
Low-Medium	96.4%	90.5%	3.6%	9.5%
Medium	95.4%	80.4%	4.6%	19.6%
Medium-High	93.4%	73.1%	6.6%	26.9%
High	89.4%	60.5%	10.6%	39.5%
Total of all offences	92.8%	72.8%	7.2%	27.2%

Notes:

¹ Seriousness of offending categorisation, as shown in Table 1.

² Includes release with no conditions, bail with conditions, and delivery into the custody of a named person.

³ Includes Oranga Tamariki and Police custody.

⁴ First time offenders are defined as cases where the young person has had no prior recorded case in the last four years.

⁵ 'Previous offenders' is defined as cases where the young person has at least one case in the last four years.

Source: Ministry of Justice data analysed by the Oranga Tamariki Evidence Centre.

The analysis of court observations suggests that the risk of further offending is assessed based on the young person's past offending while on bail. Sometimes the judge warned young people that if they breached bail they could be placed in a youth justice residence. Literature from other jurisdictions highlights similar findings. For instance, Freeman (2008) found that 'non-compliance' of bail conditions was a common route to being remanded in custodial detention.

Professionals in focus groups noted situations when they needed to remand young people into secure custody in order to complete court processes. For example, FGC co-ordinators noted that professionals sometimes requested young people be remanded to youth justice residence so that FGCs could be facilitated, such as in cases where the young person had an absconding history, or a history of not attending FGCs. Our court observations also reflected this.

The information from focus groups suggests that young people with current or historical Care and Protection statuses are likely to be remanded in a residence and for longer periods of time. One of the reasons, as stressed by participants in many focus groups, was that these young people would likely have a history of absconding and/or re-offending, and Police would prefer them to be in a secure residential placement.

Professionals recommended that not all breaches of bail should influence further stricter remand decisions

Professionals in focus groups noted that young people needed bail conditions that were enforceable by Police. However, they varied in their opinion on how breaches of bail conditions should be treated. Youth advocates and staff from Oranga Tamariki pointed out that many young people went into youth justice residences for breaches of bail and that the professionals would often oppose Police seeking certification of bail breaches. Professionals also noted that young people could breach bail conditions under varying circumstances, and not necessarily with an intention to reoffend. The young people that we interviewed also reflected this view.

'I'd say they're [professionals are] thinking we're out there causing havoc all the time, you know.' (Young person)

The youth remand trends (2018) report shows the percentage of young people's bail episodes that had one or more Police recorded breaches of a bail condition increased from 49 per cent to 69 per cent between 2011/12 and 2015/16, with most of this increase occurring in bail episodes involving three or more breaches (Oranga Tamariki Evidence Centre, 2018). One possible factor behind the increase in multiple bail breaches, as suggested in the youth remand trends (2018) report, is new Police practices following changes to the Act in September 2013 around bail. These changes gave Police greater powers to arrest young people without a warrant when they have breached their bail conditions after two subsequent breaches. However, it is unclear from our research whether bail conditions that are imposed on young people are monitored to secure compliance as set out in the Bail Act¹⁷, or to provide an evidential case for bail enforcement.

Police youth aid officers in focus groups stated that two subsequent bail breaches were allowed before an arrest could be made. They said that Police had to focus more on proving whether a young

¹⁷ Section 30(4) of the Bail Act outlines that bail conditions are imposed to prevent non-appearance in court, to prevent interference with any witness or other evidences, and to prevent further offending while on bail.

person had 'complied' or 'breached' their bail conditions rather than making the young person accountable for their breaches.

'... the onus is on us [Police] to prove two or more breaches, confirmed breaches –' (Police participant)

At the time of writing of this report, Oranga Tamariki was developing a programme of work aimed at increasing the success of young people on bail. This programme of work is likely to include implementing operational improvement to better understand whānau ability to support their young people during bail processes by appointing an Oranga Tamariki worker as soon as charges are laid; working with behavioural insights professionals to explore ways of encouraging positive responses to bail from young people; providing further support (such as mentoring) to young people on bail, and working across the youth justice sector to have a shared approach to supporting bail.

3. Whānau support and engagement

Whānau support can positively influence remand decisions

The analysis of focus groups suggests that whānau support for their young person can encourage the granting of a bail decision. Professionals commented that whānau support in court was indicated by their attendance, the way they present themselves, and their willingness to provide a placement. Professionals reflected that when whānau didn't attend a court hearing, it would not improve the likelihood of a successful bail application. The court observations confirm this finding.

'You get the rare case where the family will actually help you out... they've already escaped custody and a lot of these times they are high-risk offenders, so they'd be arrested and charged with that. However, we wouldn't oppose their bail.' (Police participant)

Court observations also show that efforts from whānau to supervise and monitor their young person can be used as an argument for bail. In focus groups, professionals consistently reflected on their perception that whānau had a lack of ability to monitor and supervise young people, which contributed to the young people coming into court. Some whānau were also perceived as being unsupportive to Police and/or Oranga Tamariki by not monitoring their young people on bail, actively covering-up bail breaches, or not participating in FGCs – contributing to the young people being remanded in detention in youth justice residences.

Professionals emphasise that whānau need support to engage in the youth justice process

Professionals in focus groups suggested that efforts to reduce the number of young people being remanded to secure residences needed to be holistic and include whānau. Professionals felt that in many cases, whānau lacked information and the means to engage, and stressed the need for a consistent process to encourage their engagement. For example, Oranga Tamariki participants said that court-initiated parental involvement could positively help the agency's effort to engage whānau in the process. They noted that currently there was no formal process to invite whānau to a court hearing and it was up to individual professionals to keep whānau informed. Furthermore, court observations showed that in the cases where whānau were present in court, their participation could be limited to being introduced by the young person and being asked questions with a 'yes' or 'no' response.

'...The families can be supportive, but we've got to enable them to be supportive about keeping that young person.' (Police participant)

Based on the information from focus groups, there are too few options that can be offered to support whānau to bail young people, and the support usually starts after the young person appears in court. An FGC can sometimes refer whānau to support services. However, professionals perceived that the whānau do not always engage with the services, which are usually informal, non-binding and/or take much longer to be available. In this regard, some Oranga Tamariki professionals felt that in some cases community providers would be more effective in supporting and engaging whānau than the direct involvement of government agencies. Professionals emphasised the need for formal partnerships between Oranga Tamariki and community providers. Professionals also stressed that Iwi providers and other culturally appropriate groups could facilitate better engagement with whānau and track them for the support they need. Some focus groups also noted that lay advocates were useful as cultural advisors to young people and their whānau.¹⁸

At the time of writing of this report, the youth justice operational work in Oranga Tamariki included programmes to improve whānau engagement by using whānau searching resources, such as utilising prior information from young people and their whānau engagement with Oranga Tamariki and rolling out Kairaranga role¹⁹ more widely.

4. Resource and process related factors

Many young people are remanded in custodial detention because of a lack of suitable alternative placements

The analysis of focus groups and court observations suggests that custodial detention is sometimes used as a short-term solution while suitable whānau placement options are investigated to assist bail applications. In cases where there is no suitable placement option, young people are remanded in custodial detention for longer periods.

Examples of situations where whānau bail placement were considered unsuitable by professionals taking part in focus groups included:

- history of the whānau, for example Care and Protection issues with other siblings and criminal histories
- history of the young person, such as youth justice, Care and Protection, and history with Police
- professionals not having the information of other potential bail options for placement, such as with extended whānau
- overcrowded homes with already too many children to look after.

Oranga Tamariki professionals stated that the number of placement options outside of whānau available to bail young people back to their communities is limited.²⁰ For those young people that are

¹⁸ Interviewing lay advocates was out of scope for this research.

¹⁹ The Kairaranga role includes working alongside children and young people to ensure that they have the support they need and are linked to their whakapapa.

²⁰ For example, in Auckland young people can be sent to either the Youth Horizons Lighthouse homes or the Reconnect Kaitiaki Residential homes. Christchurch also has only two homes: Lester Girls home and Highsted Boys family homes.

remanded into custodial detention,²¹ Oranga Tamariki community-based placement options are also limited, according to the professionals. This means that the young people are remanded into youth justice residences depending on a bed being available. In this regard, professionals have the following suggestions to help reduce the number of young people being remanded to youth justice residences:

- exploring culturally appropriate community-based placement options that could include local marae and Iwi groups and other cultural groups²²
- extending the role of lay advocates to also support Oranga Tamariki in identifying community-bail alternatives, and planning and decision-making to support the young person and whānau.

A lack of suitable placement options may lead to young females being remanded into residences which do not sufficiently cater for their specific needs

In general, professionals in focus groups perceived that the level and seriousness of offending by young females were increasing, but professionals did not perceive an increase of young females being remanded into custodial detention. However, the youth remand trends (2018) report shows that the number of females being remanded in detention gradually increased between 2011/12 and 2015/16 along with their average seriousness of offending. The increase in seriousness by young females remained considerably lower than that by young males, however, the use of detention in custody for females during the period was close to that for males (Oranga Tamariki Evidence Centre, 2018). This suggests that the rate of custodial detention for young females is potentially higher when compared to the level of seriousness of offending by young males.

Professionals in focus groups with Oranga Tamariki expressed similar views. They perceived that a lack of community-based placement alternatives and whānau placements were a likely contributing factor for remanding young females in custodial detention.²³ They further reflected that services for young people coming into the youth justice system were typically targeted towards the needs of young males. For example, residence staff noted that residences were designed for young males, and the vulnerability and risk of ‘criminal contamination’ in young females compared to young males were perceived as being much higher because of their placement into a single female unit with no flexibility to move them around, if needed.

Unavailability of beds in residences can mean that the court has no alternative other than to use options that may not be ideal

While a lack of suitable placement options may have resulted in some ‘lower risk’ young people being remanded into residences, our court observations also suggest that remand outcomes may vary between young people when bed availability in residences is the issue. The unavailability of beds can lead the court to make a bail decision, deliver the young person to their guardians,²⁴ or remand them in police custody until a bed becomes available. Professionals in focus groups provided examples where young people were remanded on bail because of bed unavailability in residences. Some cautioned that such situations potentially can have serious consequences, such as when the young person is a serious offender.

²¹ Under section 238(1)(d) of the Act.

²² Oranga Tamariki, as part of the new youth service operating model, is looking into ways to partner with community providers to expand culturally appropriate community-based capacity. This includes partnership with Iwi groups.

²³ For example, in Auckland there is only one community-based group home for young females with five beds.

²⁴ Under section 238(1)(c), which was noted very infrequently in our court observations.

'I have two kids who are over 17, we have additional guardianship. They're still being dealt with in the Youth Court and they're in our custody under s238(1)(d). Now, I have had residential admissions flatly refused to give them a bed, so those kids have stayed in police cells. I think after about two weeks the judge got so frustrated with the Ministry he bailed the kid...'
(Oranga Tamariki participant)

Remand recommendations can be affected by timeframes for court processes, professionals' caseloads and capacity, and availability of services

The information from focus groups suggests that the timeframes between two court hearings can influence remand recommendations and the decisions that are made. For example, some focus groups noted that if the period between two remand decision-related hearings was excessively long, the court could decide not to remand a young person in custody, even though the charge was considered serious.²⁵ Professionals also noted that decisions that are made in Christchurch Youth Court can be further affected as the court did not sit every day.

Based on the analysis of focus groups and court observations, young people are sometimes remanded in custodial detention while professionals wait for education reports and health assessments to be completed. Focus group participants reflected that insufficient professional resource within agencies delayed the assessments and the timeliness of reports, which in turn would affect remand decisions and the young people's length of stay in custodial detention. Social workers' reports could also be delayed in several circumstances. As noted by participants in focus groups with Oranga Tamariki, this delay happened when social workers had a very large caseload with competing priorities.

Some professionals in focus groups pointed out that the fast paced scheduling of the Youth Court hearings with 15-20 minutes slot was a barrier to effective remand decision-making, particularly for when Police presented an Opposition to Bail. For example, youth advocates in focus groups noted that the Opposition to Bail documentation was sometimes very long and they often did not have enough time to go through all of the documentation for all of the remand cases on the day.

'I can be in the District Court advancing a bail application for someone who's in custody and be easily in that for 40 minutes. But in the Youth Court on duty, you're expected to kind of roll through an opposition to bail, 15 minutes, 20 minutes.' (Youth advocate)

Professionals in focus groups identified issues with other required supports or activities (for example, education, drug and alcohol counselling) not being organised on time which affected young people's remand. They perceived that such delays were partly because of a lack of sufficient funding.

²⁵ For example, when a young person pleads 'denied' to a charge, the processes can take longer than for charges 'not denied' because these cases include additional steps.

Furthermore, professionals stated that in some cases there was a lag between the court hearing date for the remand decision and when a suitable service provider (such as for Supported Bail) had a placement available. They pointed out that this time lag could result in the young person being remanded into custody and in many cases for a relatively longer period, or their bail period being extended. Based on our research data, some examples of cases where young people are remanded in detention in secure residences for longer periods than ideal are presented in Box 3.

Box 3: Examples of cases from court observations where young people were remanded in detention for a long period

- Issues with FGC, such as not being held, needing to be reconvened, report being incomplete, not fully capturing the discussion or new issues being raised in the hearing which had not been discussed at the FGC.
- When the youth advocate needed more time for them to meet the young person.
- Professionals not being available or present on the court dates.
- Delays with Police disclosures.²⁶
- Delays with reports (such as s333 reports and social workers reports).
- Cases that go to the District Court.

Oranga Tamariki processes and communications may need further streamlining

The information from focus groups suggests that processes within Oranga Tamariki sometimes can pose a barrier to bailing young people. The lack of ‘joined-up’ approach between Care and Protection and youth justice teams in Oranga Tamariki sites was a consistent theme from focus groups.

Social workers from Oranga Tamariki reflected that when they were allocated cases, they may not have the information about the young people – even for those already known to Oranga Tamariki. They noted that Care and Protection cases would ‘close’ when the young people entered the youth justice system. Residence staff in focus groups stressed that the workload of site social workers was so high that their priorities would shift away as soon as their young people were remanded in residential custody.

‘Sometimes I feel like... – the YJ branch of Oranga Tamariki saying, “Well, you guys in Care and Protection should be doing it”, and then Care and Protection going, “Well, you guys, this is YJ”.’ (Youth advocate)

The young people that we interviewed also noted that their social workers did not engage with them as much as they would have liked.²⁷

Some professionals in focus groups – from both within and outside of Oranga Tamariki – criticised the agency’s caregiver assessment process as contributing to young people being remanded in residences, and for longer periods. They believed that the assessment process needed to be practical and not lengthy. For them, the Oranga Tamariki process currently posed a barrier to bailing young people to their communities, particularly in situations when the bail address was considered by the professionals as the only suitable address.

²⁶ After the young person’s first appearance in the Youth Court, the Police prosecutor must, upon request by defendants, disclose information relating to the arrests and charges that are laid on the young person.

²⁷ For more detail on this subject, see the report ‘Young people’s engagement in Remand decisions’.

Professionals in focus groups also described processes for placement allocation following arrests and/or remand in custody of Oranga Tamariki as inefficient. For example in Auckland, social workers refer young people to the 'Hub' for a community placement. Youth advocates perceived that such referrals generally would not result in a community placement being available, particularly when young people had Care and Protection statuses and were remanded in custodial detention. Professionals from Oranga Tamariki in focus groups also noted that the Oranga Tamariki National Call Centre would often make placement recommendations following a young person's arrest. The professionals expressed concerns that Call Centre staff making decisions on placements after arrest could wrongly lead to a placement into police cells. The professionals viewed that Call Centre staff might be less able to assess the context surrounding the young person than an experienced social worker on the ground.

Professionals highlight the need for better and timely communication between government agencies

Our research data suggest that youth justice processes may need better communication flow within and between agencies as this may help reduce the time pressures on each agency to deliver reports, go through documentation, and enable earlier engagement with a young person and their whānau. For example, while legally mandated to be informed immediately, some Oranga Tamariki social workers pointed out that they did not know about all relevant arrests by Police, particularly if the period was less than 24 hours.

'You'll often get the police saying, "Parents won't have them back"... Then you find out there's a grown up sister who lives two streets away who's quite happy to have them and it wouldn't be a problem. But we don't get that information. The police don't do that type of work so you end up in remand [in detention] because people don't know that there was an alternative.' (Oranga Tamariki participant)

Professionals also criticised a lack of information sharing between agencies which they considered likely to be associated with policies, limited staff, and funding-related constraints. Youth advocates in focus groups noted that the lack of information on hand, such as health reports and police disclosures could influence remand recommendations to court.

5. The variability in professionals practice

Variability in practices between professionals can have an effect on remand decisions

Professionals in focus groups emphasised that the variability in professionals' practices could affect remand recommendations and the decisions made. The young people we interviewed reflected this variability through their preferences for some professionals over others.

Some aspects of the variability that professionals reflected on included the following:

- Practices among social workers and youth advocates – some being more child-centric and proactive.
- Variability in judges' approaches to dealing with bail breaches, FGC recommendations, and young people's behaviour in court.

- Practices among Justices of the Peace²⁸, who were perceived by professionals as being more risk adverse and leaning towards custodial detention.
- Within agencies, variability in viewpoints between different 'business' groups and hierarchies.

...And I've actually heard the police prosecutor say, "Oh, that's quite a new youth aid officer, he shouldn't have agreed to that. Police position remains keep them locked up".' (Oranga Tamariki participant)

Professionals may need training on interpreting the Oranga Tamariki Act

The information from focus groups suggests that the interpretation of the Act by some professionals in relation to remand decision-making and the placement of young people may not be consistent.

Focus group participants were clear about Oranga Tamariki being responsible for deciding a placement option for the young people remanded in the custody of the Chief Executive.²⁹ Many professionals, however, indicated that not all professionals understood various clauses of the Act in relation to arrests and/or remand including what remanding in the custody of the Chief Executive meant. For example, some Police participants noted that there was confusion among professionals, including Police, around guidance for dealing with bail breaches.

'There hasn't really been any proper guidance that I've ever seen come out to definitively say, "These are the definitive rules around [s.214A] and this is the intent of it and how it should be applied". It gets interpreted in many different ways by many different people, and that's really obvious and that is a big issue for us.'
(Police participant)

Youth justice social workers recommend the need for training on youth justice processes

Social workers in focus groups pointed out that they would benefit from receiving common training on youth justice processes. They noted that social workers frequently attended court hearings to support young people, advocate for them, or to provide information/reports as requested by the court. At times, they also fulfilled the role of an Oranga Tamariki representative in court. However, without having training that was common to all who attended court hearings, there was considerable variability in their understanding and practice handling cases, as reflected by the professionals. They felt that social workers also needed specialised training to be able to work with specific groups of young people in the youth justice system.

'.. I think a lot of us, we tend to learn by experience so it does differ quite radically between different sites how you do that role in court.' (Oranga Tamariki participant)

²⁸ When a judge is unavailable, such as on weekends or on days when the Youth Court is not usually in session, a young person's first appearance in the Youth Court may be before a Justice of the Peace (Source: Oranga Tamariki Practice centre, retrieved from <https://practice-internal.orangatamariki.govt.nz/service-pathways/youth-justice/yj-custody-pathway/> on 24 May 2018).

²⁹ Under section 238(1)(d).

6. The needs and circumstances of young people

Mental health needs are often not factored in remand placement options

The analysis of focus groups and court observations suggests that young people's needs, such as mental health needs, may be discussed by professionals in court, but may not be factored into the recommendations on whether to remand in custody or find an alternative.

In focus groups with Police, participants noted that Police made arrests based on the offence and the young person's offending history more than the factors leading to the offence. They noted that if young people's needs were brought forward after the decision to arrest and to lay charges, FGCs would likely deal with such needs and referrals made to relevant service providers, if necessary. FGCs could also recommend that the court consider options that the FGC considered suitable to address the need, or suggest mental health assessments, according to the professionals.

Professionals in focus groups pointed out that mental health needs, foetal alcohol spectrum disorder (FASD), alcohol and drug dependencies, and non-engagement in formal education were increasingly common among young people in the youth justice system. Examples from New Zealand and Australian literature also highlight mental health, intellectual disability, FASD, substance abuse, poor health, and disengagement from school as being common in young people in the youth justice system (Ministry of Social Development, 2013; Richards and Renshaw, 2013; Jesuit Social Services Report, 2013). Australian youth justice statistics from 2011 shows that more than one-third of the young people in custody had mental health needs (Jesuit Social Services Report, 2013).

Many Oranga Tamariki professionals from focus groups pointed out that because of a limited number of alternative placements to cater for mental health needs, young people with such needs were likely to be remanded into residences. Waiting for court-ordered medical, psychiatric, and/or psychological assessments (s333 reports), can lengthen the time on remand in a residence and sometimes beyond the standard six week turnaround for these reports, according to the professionals. Youth justice residence staff also noted that many young people remanded in residences would have mental health issues. The Richards and Renshaw (2013) study from Australia found that complex needs, including mental health needs, potentially lead young people to be refused bail.

'There has to be something that fills that gap for the ones that don't fit the criteria that mental health have and don't fit us either. There's got to be some something in the middle for those because we're not the right place for them to be.' (Youth Justice Residence staff)

Some young people are remanded in residences to get assessments

Professionals in focus groups noted that in some cases, they recommended young people to be remanded to secure residences for their own safety and public safety, or to ensure their presence for court processes (as discussed earlier). Many professionals also noted that sometimes court would decide to remand young people to a residence when the young person did not engage with the services for assessments ordered by the court, such as s333 reports.

Residence staff also believed that professionals sometimes recommended residential placements to ensure young people got required assessments, such as for health and education. However, they didn't always agree that residence was the right place for these young people, who weren't always there long enough to get the assessments completed. The 2013 Australian study by Richards and

Renshaw also highlighted the perception that young people, particularly those with substance abuse problems, are remanded into residences to 'dry out' and/or attend programmes that are only available to young people in detention (Richards and Renshaw, 2013).

Young people with Care and Protection histories are at risk of being remanded in residences

Professionals in focus groups pointed out that Care and Protection social workers would mostly object to young people in the youth justice system being bailed to the address where they were originally uplifted from. They noted that whānau members to whom the young person could potentially be bailed would need to undergo a caregiver assessment process, and the young person would generally be remanded in a residence during that period.

'Often I think the [Care and Protection] kids... seem to spend significantly longer in [youth justice residence] than young people who are not in our custody and who have whānau that they can go home to... It's about that whānau member or group or family passing caregiver assessment which can take months and then often the family [fail] particularly if they've had a colourful past.' (Oranga Tamariki participant)

Many Oranga Tamariki staff noted that Care and Protection placements were usually considered unfit for the young people with Care and Protection needs that enter into the youth justice system. The professionals stated that these young people would have very limited placement options and were likely to be remanded into youth justice residences or even sent for rehabilitation programmes despite them not reaching the threshold.

7. The impact of youth justice residences

Professionals acknowledge the detrimental impact remanding young people in detention has

From court observations, we found some examples where professionals considered the likely impact of secure detention when making remand recommendations. For example, in one case of a 14 year old, the age of that young person and the potential impact of detention in custody in secure residence was a factor for a decision to bail with an electronic monitoring (or EM Bail). In another example of a 14 year-old, the judge considered the negative impact but still remanded the young person in custodial detention because of the high seriousness of the offence. Many professionals in our focus groups also acknowledged the potential harm of remanding young people in youth justice residences (see Appendix 4 for professionals' perspectives of the negative impacts of youth justice residences on young people).

'...you're in an environment where you are needing to ask to go to the toilet and have it unlocked and you're in bed at 8 o'clock at night and actually the only decisions you make on a daily basis are, are you going to do what you're told to do or are you not?...And you are being cared for by between 10 and 14 different people on a daily basis...' (Oranga Tamariki participant)

Professionals perceive that the impact of youth justice residences needs more weight in placement decisions

Professionals in focus groups pointed out that the impact of remand in custodial detention in youth justice residences was not a key factor for remand placement recommendations despite their

acknowledgement of the negative impacts of residences on young people, and the preference to bail them with their whānau. The youth remand trends (2018) report also shows that youth residences are used frequently to remand young people (Oranga Tamariki Evidence Centre, 2018). In focus groups, professionals frequently reflected upon a lack of options to remand some young people who were being remanded in residences (also discussed later). Youth justice residence staff stressed that the activities and support available in residences were mainly for 'sentenced' young people as opposed to young people on remand. They recommended that a 'pre-placement meeting' was needed for youth justice professionals to consider all appropriate placement options, in order to most effectively make recommendations to the judge. This is to avoid residence being the only remand option put forward. At the time of this research, Oranga Tamariki was trialling a tool, called Remand Option Investigation Tool, to support this type of information sharing prior to the court hearing. This tool is expected to factor in the impact of youth justice residences into remand recommendations put forward by youth justice professionals.

Findings: alternatives to remand in residence

This section discusses our findings on professionals' preferred alternatives to recommending remand of young people in custodial detention in youth justice residences. Professionals in focus groups identified barriers to successfully using the alternatives needed and recommended that these barriers be addressed to help minimise the number of young people being remanded into youth justice residences. The youth justice literature widely documents that alternatives to remanding young people in secure detention facilities are preferable for their wellbeing. New Zealand literature also strongly recommends the use of alternatives (Modernising Child Youth and Family Expert Panel, 2016; Becroft, 2014; Lambie, 2016).

The professionals in focus groups discussed the following current alternatives to remanding young people in residences.

1. Supported Bail.
2. Standard bail.
3. Community-based homes.

1. Supported Bail

Keeping young people engaged and monitored is a key feature of Supported Bail

Professionals in almost all focus groups preferred the Supported Bail programme as a community-based alternative to remanding young people in youth justice residences. Professionals noted the following features of Supported Bail:

- delivered by community providers, NGO organisations, and/or mentors
- a provision of intensive support and monitoring during daytime for young people on bail
- one-on-one mentoring, and engagement in activities for young people.

'...what kind of happens as well at times is we might have a young person who's placed in the community and they abscond. They might go back to another community home and they abscond again and then all of a sudden they're saying they now need to go into secure care. Whereas if there was supportive bail possibly available at that first opportunity, they would not even have to be in community custody and they could be on supported bail.' (Oranga Tamariki participant)

Professionals mostly agreed that young people on Supported Bail were less likely to breach bail, abscond and reoffend. They said that Supported Bail provided respite for young people and their whānau at a difficult time. The analysis of court observations suggests that Supported Bail is used to address issues with breaches and non-appearances in court, and to address needs, such as mental health, learning difficulties, and Care and Protection history. Provisions similar to Supported Bail are also favoured in overseas jurisdictions, such as in the UK, US, and Australia, according to examples from the literature (Lambie, 2016; UnitedCare Burnside, 2009; Jodie O'Leary, 2017; Richards and Renshaw, 2013).

While professionals in our research highlighted a lot of advantages of Supported Bail, the research did not extend to assessing the effectiveness of Supported Bail or the support programmes that are used.

The following barriers need addressing to successfully use Supported Bail as an alternative

Professionals in focus groups pointed out the following barriers to getting young people on Supported Bail and successfully using it as an alternative remand option to minimise custodial detention in youth justice residences.

- **Supported Bail needs more places and a less complicated process:** There are a limited number of places available at any one time with only a few services providers available for Supported Bail. Professionals noted that this often led to Supported Bail being granted to high absconders or young people already in residences. Often young people go to a residence while waiting for the court processes for Supported Bail, which professionals perceived as taking a long time and limiting its use for those young people who were awaiting assessment reports, such as an s333 report.
- **The quality of the Supported Bail provider varies:** Professionals generally considered the quality of Supported Bail providers as very high. However, professionals discussed that occasionally Supported Bail did break down, and that better quality providers would make Supported Bail to be successful. Suggestions included finding a better cultural fit between providers and young people, and the role that social workers could have in their communities to help find providers with the right skills and cultural fit.
- **Providing evidence-based programmes could further improve Supported Bail:** Some professionals suggested that multi-faceted community-based and therapeutic approaches could improve the quality of Supported Bail. The participants noted that a provision of multi-systemic therapy in advance of court outcomes, such as young people on Supported Bail, could be useful for some to address their offending behaviours. Such therapeutic approaches for youth justice population are also supported by the literature, such as Lambie & Randall (2013), Mendel (2011) and O’Leary (2017).
- **Supported Bail, Electronic Monitoring Bail and/or Flexi-Bail might work well together:** Supported Bail currently covers day-time and week-day activity and monitoring. Professionals suggested that Supported Bail combined with EM Bail during the evenings and weekends, could work well and be more effective than EM Bail alone.³⁰
- **Young people need wraparound support even after their Supported Bail is over:** Supported Bail is only for six weeks in Auckland and three weeks in Christchurch, which professionals felt wasn’t long enough to support young people between court hearings. Professionals reflected that young people returned to previous offending patterns of behaviour because their Supported Bail ended abruptly even when FGCs might have identified the need for on-going support.

³⁰ Professionals also noted that Flexi Bail (not currently available) could be a ‘Supported Bail’ provision for nights and weekends where providers would engage young people in pro-social behaviours.

2. Standard Bail

Standard bail works for the young people that have good support

The youth remand trends (2018) report shows that in 2015/16, 80 per cent of a total of 1,828 first hearings resulted in bail (Oranga Tamariki Evidence Centre, 2018). Professionals in focus groups also emphasised that bail with whānau would be their preferred remand option for young people. They mostly agreed that the conditions of a bail were imposed depending on the type and number of offences young people committed. They believed that the success of bail depended on each individual young person and their needs, and the level of support they had – including from their whānau.

Unrealistic conditions and concurrent charges in two jurisdictions can reduce the effectiveness of bail

Many focus group participants stressed that bail breaches were likely if the imposed conditions were unrealistic. The following points summarise the aspects of standard bail conditions that professionals in focus groups identified as contributory to bail being ineffective.

- **Bail conditions need to be flexible and realistic, and supported by effective monitoring:** Many professionals suggested that court-imposed bail conditions were sometimes unrealistic and difficult for young people to comply with.³¹ Professionals reflected that using flexibility around bail conditions to make them realistic and effective for young people needed effective supervision behind it. Police noted that such supervision should also include support from the whānau and community providers along with professional resource to monitor it.
- **Twenty-four hour curfew can be unrealistic if imposed over a long period of time without activities to engage young people:** Professionals in focus groups pointed out that a 24-hour curfew was very common and enforceable by Police. However, many supported shorter curfew hours and hours that worked around support services. Young people who participated in the interviews noted that a 24-hour curfew would not be achievable for many young people, and may 'set them up for failure'. From both professionals and young people in our research, a lack of engagement in activities is one of the main reasons for young people breaching 24-hour curfews. Professionals emphasised that any plan for the young person on curfew would need to look into engaging them in youth-friendly activities.
- **An alignment of bail conditions is needed when charges are laid concurrently in Youth and District courts:** The analysis of court observations shows that some young people have conflicting remand statuses, such as when different charges were being processed in two different jurisdictions or when sentenced to 'supervision with residence' on an existing charge but released on bail for new charges. Professionals in focus group noted that young people with concurrent but different statuses were likely to breach bail and potentially reoffend. Professionals suggested that aligning bail conditions from multiple courts and/or jurisdictions would help reduce bail breaches. They emphasised such alignment being crucial, particularly when young people 17 years of age would come into the youth justice system, which could see an increase in concurrent court charges.

³¹ Two examples of common unrealistic bail conditions that professionals pointed out were: (a) asking to attend school for the young people that had been disengaged from school for a long time; and (b) asking young people not to engage in illegal activities (such as illicit drug use) that constituted another offence.

The issues regarding bail conditions and their likely breaches are similar to findings from other countries. As an example, the Richards and Renshaw (2013) study from Australia found that an inappropriately high number of bail conditions; school attendance regardless of whether or not it is practical or relevant; and, curfew when it is not relevant were the issues with their bail conditions. These issues with bail conditions were also related to bail breaches and subsequent remand in detention outcomes (Richards and Renshaw, 2013).

This research supports the development of programmes aimed to reduce bail breaches by young people. Such programmes of work could include supporting young people and their whānau in understanding bail conditions, engaging with sector partners to ensure consistency of practice, and promoting quality practice of staff to improve young people's experience of the service/support they receive.

3. Community-based homes

Remanding young people in community-based homes helps them to stay closer to their whānau

Placements in community-based homes can be used for Oranga Tamariki remand in detention orders from the Youth Court.³² Community-based placements that Oranga Tamariki currently provides are typically small group homes situated in residential communities. Professionals in focus groups noted the following positive aspects of remanding young people in community-based placements, as opposed to in youth justice residences:

- allow young people to stay within their communities and closer to their whānau
- have access to more culturally appropriate support and other programmes, for example marae-based and Iwi-based programmes
- create less 'criminal contamination' for young people compared to youth justice residences.

'You'd do a much more holistic practice in the community opposed to in here [in residence] where there's so much around... because you're not doing it behind four walls.' [Oranga Tamariki participant]

Community-based homes need better resourcing for them to work as an alternative

Professionals had diverse views on whether the currently available community-based homes were effective. Below are some challenges and barriers that professionals suggested addressing for the existing community-based homes to be an effective alternative to remand in youth justice residences.

- **Community homes are not secure, which is concerning to courts and Police:** Police mentioned the lack of 'powers to detain' in community-based homes. They emphasised that young people in community-based homes were more likely to escape custody and reoffend, creating a resource-intensive task for professionals and Police in particular. The youth remand trends (2018) report found that during 2015/16, one-in-five young people remanded into a community-based home were re-remanded in a residence because of absconding and/or reoffending (Oranga Tamariki Evidence Centre, 2018). However, Oranga Tamariki professionals perceived that reoffending while

³² Remanded in the custody of the chief executive [under s238(1)(d) of the Oranga Tamariki Act].

in community-based homes in most cases was just a continuation of their offending patterns prior to remand. One focus group reflected that such reoffending was actually not worse than from young people who come out of secure residences without further support.

'...[Oranga Tamariki] powers to detain people and especially if it's for the care and safety for our youth, it needs to be looked at. Because in my personal opinion they're in [Oranga Tamariki] custody.' (Police participant)

- **Community-based homes need education and youth-friendly programmes for young people:** Professionals in focus groups identified a lack of activities and programmes for young people in community-based homes as a key barrier to their successful use. The professionals noted that they did not offer the same activity and education opportunities that either Supported Bail or youth justice residences offered, and the young people had very little to do and to stop them from leaving.
- **Community-based homes need better resourcing as an alternative to a residence:** Professionals highlighted issues relating to insufficient funding, inadequately trained staff, and onerous and time consuming Oranga Tamariki processes to find placement availability. For the community-based group homes to work as an alternative to remand in youth justice residences, professionals suggested the following:
 - sufficiently paid caregivers and staff members
 - adequate and culturally aware staff resource to work with young people and linkage to support services for the young people as needed
 - provision of evidence-based interventions for young people and activities to engage them
 - sufficient training to caregivers and staff of the family homes on dealing with and supervising youth-specific challenging behaviours
 - support to the caregivers to enhance their ability to monitor and have control over young people's behaviours.

'The family group home caregivers are well-meaning people and generally very nice people but they can't really extend life-change over these young people, because they're just there to provide a roof and food.' (Police participant)

At the time of writing of this report, Oranga Tamariki was developing a national specification for community remand homes to address some of the above challenges of the existing community-based homes. Furthermore, culturally appropriate Iwi-based options for Māori young people, (for example working with Ngapui in Te Tai Tokerau) were also being established.

Some professionals were of the opinion that community-based homes, even though the above barriers were met, would still not an effective alternative to a youth justice residence. They noted that young people would still be exposed to an anti-social peer group with young people of various ages and having committed various types of offences. Some professionals suggested that semi-secure types of specialist remand homes, potentially connected to secure residences, could be an option so that young people could be supervised and monitored better. Further research is needed to gain insights on the effectiveness of specialist remand-type homes, as well as community-based homes in general.

Conclusion

Our research explored how youth remand recommendations are made and what factors influence them. The findings suggest that remand decision-making, which extends to processes prior to the courtroom hearing, requires an interagency approach. To minimise the number of young people remanded under custodial detention in youth justice residences, professionals from government agencies and community groups have a role to play in supporting the young people and their whānau, providing insights that influence alternative remand recommendations and enabling all to feel confident in the ultimate decision.

Our findings suggest that social workers should have more opportunity and ability to support for better remand options that include whānau and community placements. Currently, increasing the community-based placement capacity is a key focus for Oranga Tamariki, and our research findings support the need for this work. Such options should consider placements for young people that also have Care and Protection statuses/histories, a lack of whānau support, and/or mental health needs. To ensure the wellbeing of the young people, as mandated by the principles of the Act, Oranga Tamariki professionals, including social workers, should be encouraged to voice their concerns in remand decision-making processes in and outside of court. Furthermore, operational processes within Oranga Tamariki and communication between agencies need to be more joined-up and efficient so that young people are not remanded into youth justice residences for an extended period of time.

Our research highlights several factors that may contribute to young people being remanded to youth justice residences. Based on the findings, the impact of a youth justice residence on the young person may not be a key consideration in placement decisions for the young people that are remanded in custodial detention. At the time of this research, Oranga Tamariki and Police were trialling a tool called the Remand Option Investigation Tool, to gather information about young people's circumstances and present that information in court, which aims to reduce unnecessary remand in detention decisions. Our research findings also support this approach.

Professionals in our research support better bail provisions with intensive support, such as Supported Bail as a potential current alternative to remand in residences. However, young people and their whānau need further wrap-around support that continues after the intensive support is over. Furthermore, the conditions of bail may need to be more realistic and not too difficult for young people to adhere to, which can lead to an escalated remand decision. Social workers can provide objective and professional support to young people and their whānau, to help them engage in the youth justice process and keep them from breaching bail conditions.

This research also highlights some challenges in the community-based group homes that are currently available as a remand placement alternative. Adequate funding and support to caregivers, skilled and trained staff, and activities and education to keep young people engaged can help such placements become a more effective alternative to residences.

Finally, we recommend that further research on the use of custodial detention to adopt kaupapa Māori methodologies and other culturally appropriate methodologies. In the context of Māori as Tangata Whenua and their overrepresentation in the youth justice system, it is important that further research incorporate a Te Ao Māori worldview.

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Appendix 1: detailed methods and limitations

The research team used a qualitative approach in gathering evidence to explore the key evaluation questions, which included conducting focus groups, individual interviews, and court observations. This approach allowed the research team flexibility to gather information about the overall remand decision-making processes, while allowing participants to identify what factors they considered most important in that process. A quantitative approach was initially considered for court observations through a structured observation coding frame. However, due to the dynamic and fast-paced nature of court hearings, the approach was unable to provide high quality data collection.

Research methodology

Research site selection

Christchurch and Counties Manukau areas were selected as sites for the research by representatives from Oranga Tamariki National Office Youth Justice Services, the Youth Crime Action Plan (YCAP) steering group³³, and by Principal Youth Court Judge John Walker. Counties Manukau was prioritised for site selection by the Principal Youth Court Judge John Walker because the nature of offending in that area differs from the rest of New Zealand. Christchurch was selected by YCAP as a major urban area representing the South Island. In addition, Christchurch has limited alternative community provisions in the region, and has a number of current local initiatives that could influence remand decision making. Other factors considered in the selecting of these two sites included the number of remand to custody cases and the nature of offending, other geographic and demographic factors, the frequency with which Youth Court hearings were held, and the expected case flow in each Youth Court.

Primarily, the case flows and frequency of court hearings were important factors in the site selection to support court observations. The qualitative work (interviews and focus groups) was conducted in the same sites to support the findings from court observations data. Judge John Walker approved the research to conduct court observations (see below) in selected sites.

Data collection

The research team collected data using the following:

1. Interviews with young people in youth justice residences
2. Focus groups with youth justice professionals
3. Direct observations of court hearings in the Manukau and Christchurch Youth Courts.

³³ YCAP is a steering group established to promote cross-sector collaboration among government agencies, and to partner with Māori, communities, whānau, schools and others to reduce youth re-offending and address some of the key factors that cause young people to begin offending. <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/cross-government/youth-crime-action-plan/>

1. Interviews with young people in youth justice residences

The research team interviewed a total of eight young people who were remanded in Korowai Manaaki (Auckland), and Te Puna Wai ō Tuhinapo (Christchurch).³⁴ The interviews were carried out in November and December 2017.

The research team consulted with the Tamariki Advocate/Voices of Children team in Oranga Tamariki to make sure that the research incorporated young peoples' views in an ethical and meaningful way. Accordingly, conducting individual interviews with young people in youth justice residences as opposed focus groups was decided. In advance of the interview dates, the research team sent a research overview and informed consent document to youth justice residence staff asking them to share the documents with young people. On the interview day, two researchers went to the residences and explained the research to the young people that were selected by the residence staff for the interviews. The importance of their input into the youth justice system was also explained to them. The researchers completed a verbal and written informed consent (see appendix 2) directly with the young people prior to beginning each interview. Each interview lasted approximately 20 to 30 minutes in the residences. Kai was provided in all interviews to reflect the research team's appreciation for participants' feedback and time.

2. Focus groups with youth justice professionals

The research team interviewed youth justice professionals who have direct or indirect roles in remand decision-making processes. Overall, 23 focus groups and/or interviews were conducted with 70 individuals in Christchurch and Auckland. Key stakeholder groups included staff from New Zealand Police and Oranga Tamariki, and youth advocates. Two research team members conducted the focus groups in October and November 2017. The researchers completed a verbal informed consent process directly with participants prior to beginning each focus group or interview. Kai was provided in all focus groups and interviews to reflect the research team's appreciation for participants' willingness to share their time and feedback. Information about participant selection and recruitment strategies for each group of youth justice professionals is included below.

New Zealand police: A member of the New Zealand Police, who was on secondment to Youth Justice Services in Oranga Tamariki National Office during the research period, helped identify the roles within New Zealand Police. The staff member also connected the research team to individuals within New Zealand Police, who identified participants and set up focus groups. A total of nine focus groups and/or interviews were conducted. The participants included police prosecutors, youth aid officers, and other personnel from management team, district command, intelligence and frontline.

Oranga Tamariki: The research team worked with Oranga Tamariki youth justice site managers to identify the staff most appropriate to interview. A total of twelve focus groups and/or interviews were conducted. The participants included FGC coordinators, youth justice social workers, youth justice site managers, supervisors, court officers and residence staff.

Youth advocates: In Manukau, the research team reached out directly to a youth advocate who had been involved in a national-level, cross-sector youth justice workshop. This individual agreed to

³⁴ Remanded in the custody of the chief executive [under s238(1)(d) of the Oranga Tamariki Act]

provide information about the research to youth advocates in their own practice, as well as to other youth advocates whose offices were located nearby. In Christchurch, the research team reached out to Oranga Tamariki staff for a list of youth advocates in the area. The researchers then contacted youth advocates directly to seek their interest in participating in the research. One focus group each was organised in Manukau and Christchurch.

3. Direct observations of court hearings in the Manukau and Christchurch Youth Courts

The court observations were carried out in August and September 2017 and followed procedures laid out by the presiding judge and the Principal Youth Court Judge, John Walker. The research team observed 144 cases, with 84 from Manukau and 60 from Christchurch. Of the 144 cases, 106 (74%) cases had a discussion on a remand status. This sample included cases where a remand status was decided by the court at first appearance, the court was remanding the young person following an FGC, or at other points in the process where the court reviewed the remand status. Cases where no remand decision was under consideration were excluded. Adult co-offenders were also excluded from the analysis.

Table 3: Number of cases included in the court observation data collection

Case type	Manukau	Christchurch	Total
Custody considered	31	16	47
Alternative to custody considered	28	31	59
Out of scope	24	14	38
Total	84	60	144

A minimum of two observers were present for all court observations. Observers wrote detailed notes on each court hearing. All notes were compared and merged by a third research team member who did not participate in court observations. Discrepancies in notes were flagged for review. Where an agreement could be reached on a discrepancy, the agreed decision was included in court notes. If agreement could not be reached, that information was excluded from the analysis.

Informing Youth Court participants about the research

Professionals in court: To inform individual courts and youth justice professionals about the research, the research team provided the Principal Youth Court Judge with a research overview that could be shared with all professionals involved in proceedings. The Principal Youth Court Judge first shared this overview with presiding judges in the Youth Courts where observations would occur, and requested that each of the presiding judges determine whether they would provide permission for observations to occur. All judges agreed to the court observations. The research team coordinated with the Youth Court Registrar to select observation dates. As part of the scheduling process, the research team asked the Registrar to share the research overview with all youth justice professionals who would be present in court during observations. When possible the research team also provided a verbal overview to Youth Court professionals in the morning prior to observations occurring and asked participants if they had any concerns or questions.

Young people with cases before the court: The research team created an information sheet on the research that could be shared with young people and whānau if requested. The information sheet explained the purpose of the research and the roles of the observers (see Appendix 2).

Study limitations

The study findings are limited by the research methods, the Youth Court regions included in the data collection, the stakeholder groups that participated in focus groups and/or interviews, ethical considerations, and the challenges to collecting observational court data.

There were ethical limitations to the court observations

During pilot observations, the research team tested a consent process with young people with cases before the court. The process raised concerns about young people's privacy and confidentiality, difficulty identifying the research population in advance, and the possibility the research would exclude some key sub-populations, such as young people in police or Oranga Tamariki custody prior to their hearing.³⁵ An ethical peer review of potential risks was done by the interim ethics panel within Oranga Tamariki. Based on the review, the researchers took a pragmatic approach of not seeking informed consent, as the potential harm to young people through the presence of court observers was perceived as minimal when compared to the wider potential benefits of the research for young people. The researchers did not have direct contact with any court participants during hearings as the researcher's role was observational only, and obtaining informed consent from the young person would likely place them under additional and unnecessary duress. The team also did not document identifying information on data collection forms, such as the young person's name or date of birth and has only reported aggregate/thematic findings and trends. Cases were assigned numbers.

Limited number of young people in youth justice residences were interviewed

Only a small number of young people were included in the research compared with a much larger group of youth justice professionals. Furthermore, the research included only young people that were remanded to youth justice residences. The selection of young people for interviews in the heavily controlled residence environment was done by youth justice residence staff. Only those young people on remand that did not have significant cognitive and language issues were selected. On the interview day, the researchers explained the research and sought verbal and written informed consent from each young person before starting the interview.

Using focus groups limited the ability to explore some topics in depth and there was a varying representation of views

The research team had to rely on key contacts within stakeholder groups to recruit participants. This along with their limited time availability resulted in a varying number of focus groups in the two study sites. Focus group discussions allowed incorporating views of a lot of participants within a short timeframe. However, in-depth understanding of a particular issue could not be done. Discussions on some of the research areas/topics were very light. There were also multiple Oranga Tamariki initiatives occurring at the time of the fieldwork, which may have influenced participants' perspectives that could not be accounted for.

Only two Youth Court regions were selected as research sites

Christchurch and Counties Manukau were chosen for this research because they are large urban areas representing the South Island and the North Island respectively. The findings cannot be generalised to other urban areas or to smaller and/or rural areas.

³⁵ The research team was not allowed access to the holding cells where young people in custody must wait prior to their hearing. A requirement for active informed consent would universally exclude a group of young people for whom the research is most relevant.

Youth Court hearings are held more frequently in the research sites than in rural areas and smaller cities, and often involve a larger number of cases each time court convenes. For example, the Manukau Youth Court convenes four days a week, yet in some rural areas the Youth Court convenes only once a month. Such a difference in frequency will have a significant impact on timelines and processes.

In addition, locations such as Christchurch and Manukau have a larger youth justice workforce, and roles within each location may be more distinct and specialised. In Manukau for example, the youth aid officer and police prosecutor roles may be filled by different people. In a rural area one individual may be responsible for both roles. It is also more likely that young people will be unknown to members of the youth justice workforce, at least initially, than in much smaller communities where there may be pre-existing relationships.

Interviews or focus groups with some key stakeholders were out of scope of this research

Because of the timeframes of the research and the available resources, interviews with key youth justice professionals were limited to Police, Oranga Tamariki and youth advocates. Findings may be biased by the role of key stakeholder in the youth justice process. The findings cannot be generalised to key stakeholder groups who were not interviewed, including: Youth Court judges; whānau members; lay advocates; health and education key stakeholders/experts; and, community-based services providers, mentors and Iwi, hapu and other cultural groups. Some key stakeholder groups that were beyond the scope of this research are critical to decision-making processes. For example, judges are the final decision makers during Youth Court proceedings and may have a different perspective of what influences remand decision-making. Interviews with young people were limited to young people currently in custody of the Chief Executive at youth justice residence. Young people not confined to a youth justice residence may have a different perspective and experience on the youth justice process.

There were challenges to collecting observational court data

Court hearings are dynamic and fast-paced processes, with multiple participants contributing to proceedings and sometimes multiple cases and decisions under consideration. Many young people may also have Care and Protection concerns before the Family Court that are relevant to Youth Court matters. The research team did not observe crossover court, which is a court held for Care and Protection youth crossing over to the Youth Court. In addition, court cases are rarely disposed of within one court hearing, so often the observed proceedings represented only a snapshot of one decision-making point within a much broader process. These factors introduce the following limitations to using observational data:

- Observational data might have been influenced by the researchers' presence in the courtroom.
- The hearing information available to researchers' was limited to the details that were discussed by the professionals in the courtroom. Other supplementary information and/or reports which were available but not discussed in the courtroom were inaccessible. For example, professionals sometimes referenced specific reports or disclosures, but did not verbally convey the content.
- The purpose of the hearing or a young person's legal status was sometimes unclear. For example, sometimes it was unclear whether a hearing was sentencing only (and out of scope of the research) or a mixture of sentencing and addressing active charges.
- The information available about the purpose of each hearing varied across days. The research team was dependent upon information the court note-taker or Oranga Tamariki administrative

staff made available to them. The court also uses different lists for different purposes and these lists contain different information or sometimes conflicted with each other.

- Activities which happen outside of formal court hearings may influence remand recommendations that professionals make. For example, youth advocates, police, and Oranga Tamariki court administrators often discussed cases informally, shared information and agreed to recommendations to propose to the judge at the start of the day and between hearings. Where possible, discussions between hearings were noted and linked to the relevant case. However, the team was not able to do this in all instances, and it was not always clear if and how these activities influenced decisions.

Analysis

Focus groups and interviews

Almost all focus groups and interviews were digitally recorded.³⁶ These recordings were later transcribed and then coded using NVivo qualitative data analysis software. Analysis was done to identify key themes.

Court observations

Individual cases were coded and themes drawn from across the cases. The custody cases were prioritised in the analysis and themes were drawn separately from the bail cases. Custody cases include those where:

- remand in detention is considered but not selected
- remand in detention is selected or continued
- there is a shift from remand in detention to another remand option, eg supported bail
- there is a shift from an alternative to custody e.g. bail to custody.

The themes were also contrasted between cases where custody was considered or only alternatives were considered. Location of the case was not a main focus of the analysis.

Reporting

Thematic analyses of the information from all sources were synthesised to draw key findings. Because of the limitation of court observations data as noted in the limitations section, the key findings are based heavily on perspectives of the professionals that participated in focus groups, and supported by experiences of the young people that were interviewed. The report was peer reviewed by two Oranga Tamariki researchers and an external reviewer. We acknowledge the assistance of Principal Youth Court Judge John Walker and his Clerk, Nadine Ward, in reviewing this report for legal and technical accuracy.

³⁶ Two young people did not want their interviews to be recorded. Notes were hand written in these cases and later typed into word documents.

Appendix 2: information sheet and consent form for interviews with young people



Date: 6 November 2017

Do you want to talk to Oranga Tamariki about remand decision-making?

We're from **Oranga Tamariki**, and we want to talk to you to know how remand decisions are made for children and young people. You can decide whether you want to talk to us or not. This information sheet will help you make this choice.

Why do we want to talk to you?

Oranga Tamariki is doing a study. We want to understand how remand-related decisions are made for young people (including you) before or after they are sent to a youth justice residence. We also want to know if anything could be done better for young people and their families/whānau.

How do we talk to you?

Two people from Oranga Tamariki will come to **Te Puna Wai**. They will meet you in a private room and ask you some questions, and listen to what you have to say. The residence staff will help organise the meeting, but will not be present in the meeting.

What will we talk about?

If you decide to take part, we will ask you to share what you found most helpful and what you found challenging while you've been involved with police and youth court. You will also be asked to tell us your ideas about what could be done better so that young people like yourself don't have to spend a long time in residence.

What will happen if you say yes to talking to us?

We need your permission. This means, we will ask you to sign a consent form to say – yes, you want to talk to us. We will give you the form when we see you.

Once we start talking to you, even if you sign your form, you can still decide to not talk with us.

We will also ask you if we can voice record the talk. This will help us to make sure that we remember what you said. We will delete the recording once we know that we've got your views and ideas all right.

What happens to the information you give?

Everything you tell us will be kept confidential. This means your name will not be shared, so no one will know who said what, except the people who you are in the room during the interview.

What we learn from young people we talk to (including you) will go into a report, which will help Oranga Tamariki with their work.

Have you got more thoughts or questions?

If you have any questions about the study, and what you can or cannot do in the interview, you can talk to the residence staff who handed in this information sheet to you.

Consent form: Remand decision-making research for children and young people

We invite you to take part in an interview that Oranga Tamariki is carrying out to understand the remand decision-making processes for children and young people in New Zealand.

I understand the information sheet called – *Do you want to talk to Oranga Tamariki about remand decision making?*

I know who to talk to if I have any questions about the research.

I understand that:

- I don't have to take part in the interview if I don't want to.
- I can stop the interview at any time.
- The interview will be voice recorded.
- The researchers will use some of my quotes but not my name. My name will not be in any report, so no one will know what I said. But, if I say anything that makes them really worried about my safety, or someone else's, they would have to report it to the right professionals.
- The researchers will keep all information safe, so that only the researchers working on the project will see it.
- The information will be destroyed when the researchers don't need it anymore.

I (insert name) _____ in Te Puna Wai, Christchurch,
consent to take part in this research.

Signed _____

Date _____

Appendix 3: grounds for detaining a young person in custody under the Oranga Tamariki Act

The Act [under s239(1)] lists grounds for detaining a young person in the custody of the Chief Executive of Oranga Tamariki as being:

- they are likely to abscond
- they may commit further offences
- to prevent the loss or destruction of evidence relating to the offence with which they are charged, or to prevent interference with any witness in respect of any such offence.

Similarly, the Act [under s239(2)] lists grounds for detaining a young person (but never a child under 14 years of age) in police custody as being:

- (a) they are likely to abscond or be violent
- (b) suitable facilities for the detention in safe custody are not available to the Chief Executive of Oranga Tamariki.

Similarly, the Act [under s235] allows police to place a child or young person that has been arrested into detention under the custody of the Chief Executive of Oranga Tamariki if the police believes that:

- (a) the child or young person is not likely to appear before the court, or
- (b) the child or young person may commit further offences; or
- it is necessary to prevent the loss or destruction of evidence relating to the offence with which they are charged, or to prevent interference with any witness in respect of any such offence, or
- (c) interference with any witness in respect of any such offence
- (d) the child or young person that has been arrested is likely to continue to breach any condition of bail.

Appendix 4: additional findings from focus groups

Box 4: Youth advocates perspectives of factors affecting their ability to advocate for a young person or rebut concerns raised by police in court:

- The timeframe in between a charge being laid by Police and the young person’s appearance in court – shorter timeframes mean that youth advocates have less time to be familiar about the case.
- Youth advocates’ workload or number of cases on the day – more cases mean less time to be able to spend with the young people before the court sessions.
- The number of Opposition to Bail by Police – the high number of such lengthy documents on a particular day reduces the time available for the young person.
- Whether or not youth advocates have access to Opposition to Bail documents in good time prior to a hearing.
- Whether or not youth advocates are available or allocated to the young person for a court hearing.

Box 5: Professionals’ perspectives of the impact of youth justice residences

- Youth justice residences provide a ground for young people to network with other offenders. The issue of ‘criminal contamination’ is particularly high for those being held in custody for the first time and girls.
- Youth justice residences impact on their psychological well-being because of: their vulnerabilities, such as, the need to adapt to the level of violence in the residence, the uncertainty in their length of stay, and the types of young people they come across.
- Remanding young people in a residence can result in difficulty re-engaging with or lost contact with support networks in the community because the community providers do not provide services in the residence for young people on remand, including those staying in for a longer period.
- They provide a punitive environment for young people irrespective of the types and seriousness of offences, and whether or not they are guilty.
- They provide an ‘unnatural’ environment and may create ‘dependency’. This was also reflected by one young person who we interviewed that they would usually reoffend back in community because the residence environment was not normal for them.
- Remanding young people in residences may result in lost whānau connections and/or support – young people would be detained wherever in the country a bed is available.

