

YOUTH REMAND TRENDS: 2011/12 TO 2015/16

Executive Summary

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This report examines the types of remand used for youth whose cases commenced in the Youth Court between 2011/12 and 2015/16. The term 'remand' is used here to describe the use of the custody and release options available to the court under s238(1) of the Oranga Tamariki Act 1989 (OT Act). This report also examines the extent to which breaching bail conditions and reoffending while on bail may contribute to bail ending and youth instead being detained in custody. Minimising the use of custodial remand as far as is practicable is a key focus area for Oranga Tamariki—Ministry for Children.

REMAND DECISIONS

Between 2011/12 and 2015/16, just over 10,000 court cases involving youth commenced in the Youth Court and involved more than one hearing (ie, they required a remand decision to be made). In two-thirds of these cases, the youth remained on the same type of remand (eg, bail) throughout the court case, while in the remaining one-third of cases, the remand being used changed (eg, bail followed by custodial remand). Periods of remand can occur while matters are being considered by the court, and also while young people carry out plans agreed to at a court-ordered family group conference.

Bail is the most common remand decision used in the youth justice system

Across the five-years examined, bail remained the most common remand decision used in the youth justice system. Around 80% of youth were granted bail at their initial hearing. In total, around 90% of all court cases included a period on bail.

Detention in custody at the initial court hearing doubled in use between 2011/12 and 2015/16

The use of detention in custody at the initial hearing doubled from 7% of cases in 2011/12 to 14% in 2015/16. Most often, this was detention in the custody of the Chief Executive (CE) of the Ministry of Social Development (now Oranga Tamariki), with smaller numbers being detained in police custody.

The proportion of cases where the youth was detained in the custody of the CE at the initial hearing increased from 5% of cases in 2011/12 to 12% of cases in 2014/15, and then dropped slightly to 11% in 2015/16. However, the proportion of youth detained in police custody at the initial hearing increased from 1% in 2014/15 to 3% in 2015/16. This higher police custody figure in 2015/16 was likely in part due to reduced capacity in the Christchurch youth justice residence from early-2016, with more youth being detained in police custody until a bed became available in a residence.

The use of detention in custody varies considerably on a regional basis

There is large variation in the proportion of youth initially detained in custody in different regions, with particularly high figures occurring in Counties Manukau (28%) and Auckland City (26%) in 2015/16. This compares to a low figure of only 2% of cases in Tasman in the same year.

Other remand options are used relatively infrequently

The two other non-detention remand provisions are used much less often than bail. In 2015/16, 5% of youth were released with no conditions at their initial court appearance and less than 1% were delivered into the custody of their parents, guardians or other persons having their care, or any person approved by the CE for the purpose. Release with no conditions was used less in the last two years than in the three earlier years.

Court cases involving youth are taking longer on average to finalise

The average case duration (from the first court appearance until final disposition) remained fairly stable between 2011/12 and 2013/14 at around 164 days, but then increased to 176 days (nearly six months) in 2015/16. The data shows that case duration generally increases with increased seriousness of the offending being dealt with. Therefore, this recent increase in average disposal time may be related to an increase in the last two years in the average seriousness of the offences for which youth were appearing in court.

BAIL CONDITIONS, BREACHES AND REOFFENDING

Bail conditions can be imposed by the court to help ensure the youth appears in court when required, does not interfere with any evidence or witness, and does not offend while on bail. For example, according to Ministry of Justice data, almost all youth cases involving bail had the condition of residing at a specified address imposed, around three-quarters had a curfew imposed, and around 70% had an order not to associate with co-offenders or contact victims. The number of bail conditions imposed per case averaged between four and five between 2011/12 and 2014/15, but increased to six in 2015/16.

Nearly 70% of all custodial remands occur after the youth has been on bail

Non-compliance with bail requirements can lead to the court revisiting whether bail should continue, and possibly instead detaining the youth in custody. The analysis here showed that over the five-years examined, nearly 70% of all custodial remands occurred following the youth being on bail in the same case. The findings described below show that bail condition breaches and/or reoffending almost always occurred in these periods of bail that preceded detention in custody.

There may be potential for a large number of custodial remands to be avoided if, for example, improved supports were in place to help youth comply with their bail conditions and not reoffend.

The likelihood of multiple bail breaches being recorded increased considerably over the period examined

The proportion of bail episodes for which there was a recorded breach of conditions increased from 49% to 69% over the period examined. Youth with three or more bail breaches became much more common over time (from 22% of bail episodes in 2011/12 to 41% in 2015/16). With changes to the Bail Act 2000 in late-2013, this increase could be due to a change in police practice (eg, carrying out more checks of compliance with curfews), rather than an increase in the extent of breaching by youth.

The exact nature of the bail conditions that were breached in each case was not readily available. This would have been useful to understand if there are particular bail conditions youth find difficult to comply with. Further work could usefully be undertaken to better understand compliance issues with particular bail conditions, and what supports could assist improved compliance.

The majority of youth did not reoffend while on bail, however, four out of every ten did

Over half of the youth on bail did not reoffend. However, reoffending on bail did occur in 44% of cases. Theft-related offences and burglary accounted for the majority of offences committed while on bail. Violent offences while on bail are less common. In 2015/16, injury causing acts were committed in 4% of bail episodes, and robbery-related offences occurred in a further 4%. This 2015/16 figure for robbery-related offences was the highest recorded in the five-year period examined.

In the total 12,604 bail episodes between 2011/12 and 2015/16, 69% of youth either breached their bail conditions or reoffended, including 34% who did both.

Breaches or reoffending while on bail occurred for nearly all youth subsequently remanded in custody

Not all youth who breach their bail conditions or reoffend while on bail will be subsequently detained in custody. However, youth who were remanded in custody after being on bail were much more likely to have both breached their bail conditions *and* reoffended than youth who remained on bail.

Focusing on the 1,517 cases where the youth was bailed at their initial court appearance, but was subsequently remanded in custody in the same case, 94% either breached their bail conditions or reoffended, including 61% who did both. For the 6% of cases there were no recorded bail condition breaches or reoffending, a manual review of CYRAS showed that bail breaches had occurred in the majority of cases, but these were not recorded in the Police data.

CUSTODIAL REMAND

Over the five years examined, there were 2,855 court cases that included a total of 4,692 distinct custodial remand episodes. The number of custodial remands was 11% greater in 2015/16 than 2011/12. This is in contrast to the total number of court cases, which was 32% lower in 2015/16 than 2011/12.

Youth spend an average of around 40 days remanded in custody

The average duration of all custodial remand episodes in the five-years examined was 40 days, with the figure being marginally longer in 2014/15 and 2015/16 than in the three previous years.

Not all youth remanded in custody are placed in a youth justice residence

The decision as to where a youth remanded in custody will be placed rests with the CE as custodian. In 2015/16, 63% of youth on custodial remand were placed in a youth justice residence. This is down from a peak of 72% in 2013/14. (Note: placement details were not available in all cases.)

Over the five-years examined, one-fifth of all custodial remands were placed in the community in the Boys or Girls Lighthouse or KaitiakiLink in Auckland. The proportion of youth in such placements increased from 17% in 2012/13 to 23% in 2015/16. These placements are, however, not always

sustained, with the youth being arrested and instead placed in a youth justice residence in just under 20% of cases. This may be because of issues with absconding or reoffending.

Youth are rarely detained in custody for their entire court case

Only a small proportion (4%) of youth are detained in custody at the beginning of their court case and then remain in custody for the remainder of the case. Instead, the vast majority of youth initially remanded in custody are later released, usually on bail.

Only a minority of youth remanded in custody receive a custodial sentence at case finalisation

There is interest in the extent to which cases involving a remand in custody result in custodial sentences at case finalisation. Of the total 2,855 cases between 2011/12 and 2015/16 which included custodial remands, 20% resulted in a custodial sentence. Other types of sentence were imposed in 28% of cases, while 45% of cases resulted in admonishment, a s283(a) discharge without order or penalty, or a s282 discharge of the charge.

For the total 367 cases between 2011/12 and 2015/16 where the youth was detained in custody for the entire case, a custodial sentence was much more likely on case finalisation, with 51% of these cases having such an outcome. These cases tended to involve more serious offences than cases that included a custodial remand for only part of the case.

CONCLUSIONS

This research shows that bail is used in the vast majority of court cases involving youth. However, these periods on bail are not always sustained. Whether it is bail breaches, offending while on bail, or other factors, considerable numbers of youth are ending up being subsequently remanded in custody. Changing this pattern has the potential to avoid many custodial remands.

While this research answers some questions, it raises others that need attention. Qualitative research on remand decision-making recently undertaken by the Oranga Tamariki Evidence Centre will provide further useful insights into this issue.

Work is currently underway in Oranga Tamariki to identify ways to better support youth to be successful on bail.

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The Oranga Tamariki Evidence Centre 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.