

EVIDENCE CENTRE
TE POKAPŪ TAUNAKITANGA

YOUNG PEOPLE'S ENGAGEMENT IN REMAND DECISIONS

Findings from a research study into
remand decision-making in the youth
justice system

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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

This report presents perspectives on young people's participation and engagement in youth justice remand decisions. The Evidence Centre in Oranga Tamariki—Ministry for Children carried out the research to understand better the factors that drive remand recommendations made for young people in the youth justice system. The research findings are expected to support the design and delivery of new youth justice services in Oranga Tamariki.

The findings are informed by qualitative data collected from interviews with eight young people in two youth justice residences; 23 focus groups and/or interviews with staff from Police and Oranga Tamariki and youth advocates; and, direct observations of 144 court cases in two Youth Courts. The research sites include Christchurch and Counties Manukau. Key themes from the research include the following.

- 1. Young people need encouragement and support to engage in the youth justice process**
 - Young people often have limited engagement opportunities in Youth Court hearings.
 - There is variation in when and how professionals engage with young people. Young people rely mostly on their youth advocates for communication and support because young people do not always get the support they need from other professionals.
 - Many professionals suggest that social workers can have a more active role in supporting and engaging with young people. Furthermore, family group conferences could be better utilised to encourage young people's engagement in youth justice processes.
- 2. Communication with young people must be clear and in a way they understand**
 - Many young people lack clarity on why a particular decision is made and what happens next. Several factors influence their lack of understanding, including a mismatch between the young people's cognitive ability and the way decisions are communicated to them, and the 'big words' and jargon used in the justice system.
 - There is a variation in what and how much is explained by professionals to young people. There are also inconsistencies in the efforts to check and support their understanding.
 - Professionals identify time limitations, policies, and procedures as affecting their ability to communicate with young people and support them at the level they need.
 - Professionals suggest using communication support professionals to improve communication with young people.
- 3. A relational experience with skilled professionals the key to quality engagement**
 - Young people perceive a lack of support from some professionals, and have a lack of trust in them.
 - Young people value having continuity in the professionals that support them.
 - Professionals suggest they need on-going training to build professional and cultural competencies.
- 4. Young people's whānau must be part of the youth justice process to support engagement**
 - Some young people rely on their whānau to understand remand decisions.
 - Many professionals also expect whānau to support their young person and help them to understand the process and decisions. Whānau engagement can have a positive influence on remand decision-making.
 - Professionals suggest having a formal and consistent process to encourage whānau to engage in court.

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 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.
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.
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 unless accompanied by a specified adult. 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.
Direct court observations	Where the researchers observed and recorded their observations of Youth Court hearings by attending the hearings.
Engagement	The informal process of involving people in the Youth Court processes, especially the young people and their whānau.
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.
Focus groups	The researchers conducted facilitated discussion with a varied number of professionals from the same profession in a group.
Intention to charge family group conference (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.
Lay advocate	People with mana or standing in the young person's community who supports 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.
Non-association	Non-association is a bail condition where the young person is not allowed to be in contact with particular individuals – usually co-offenders, victims, and witnesses.
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.

Term	Definition
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.
s11	The section of the Oranga Tamariki Act that relates to children and young people's participation on the matters that affect them, and their views to be taken into account.
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.
s333	Section 333 of the Oranga Tamariki Act that refers to an order for a medical, psychiatric, and/or psychological assessment and report on the young person.
The Act	The Oranga Tamariki Act 1989
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.
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 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 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 residence	An Oranga Tamariki youth justice secure facility used to hold young people on remand or keep young people for a sentenced term.
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 presents key findings from research on young people's participation and engagement with the youth justice system in relation to remand decisions. The report also presents findings on young people's understanding of how remand decisions are made, the challenges in engaging young people, and suggestions for improving engagement. The findings in this report are a subset of a broader Oranga Tamariki Evidence Centre study to understand better the factors that drive remand recommendations made for young people in the youth justice system. The research was commissioned to help inform design and delivery of new youth justice services in Oranga Tamariki.

A recent report on youth remand trends (Oranga Tamariki Evidence Centre, 2018) shows that the number of court cases decreased considerably up until 2013/14 before levelling off in subsequent years. In contrast, the number of custodial detention episodes increased over the period examined. The United Nations Convention on the Rights of the Child (UNCROC) and the Beijing Rules¹ advocate that the detention in custody of children² who are awaiting trial should be a measure of last resort, and be for as short a period as possible. Modernising Child, Youth and Family Expert Panel (2016) also recommends minimising custodial remand in youth justice residences to improve outcomes for New Zealand's children and young people. Furthermore, the youth justice principles as stipulated in the Oranga Tamariki Act (the Act) state that a young person who commits an offence should be kept in the community as far as practical and consonant with the need to ensure public safety. The Act outlines that any decision made should maintain and promote the young person's development within their whānau and community using the least restrictive form.³

Minimising the use of custodial detention to remand young people as far as practicable is a key focus for Oranga Tamariki. Furthermore, Oranga Tamariki is committed to creating a child-centred system that embeds children and young people's participation rights and includes their views and experiences. Given these, there is value in better understanding how children and young people participate and engage in remand decision-making. The findings in this report are informed by young people's perspectives on and experiences with youth justice processes, as well as by the views of youth justice professionals who are involved in those processes.

Research methods and limitations

Our research methods and limitations are explained in detail in Appendix Two. The following briefly outlines the methods of data collection and analysis, and some key limitations.

The data collection involved the following:

- Interviews with eight young people in youth justice residences in Korowai Manaaki in Auckland, and Te Puna Wai ō Tuhinapo in Christchurch.
- Focus groups with professionals who have key roles in youth justice remand decision-making processes in Christchurch and Counties Manukau, specifically New Zealand Police,

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.

³ Section 208 of the Act.

representatives from 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.

Data was gathered from August to December 2017. Court observations were conducted to observe remand decision-making, and as part of this the researchers noted how young people were engaged or communicated with in the courtroom. The Evidence Centre research team analysed the data from court observations, and interviews and focus groups to identify themes on participation and engagement,⁴ which were then synthesised to draw key findings.

It is important to note that our research does not examine elements of the youth justice system that are underpinned by Treaty-based relationships with Iwi or other responses, such as: Te Kooti Rangatahi, Pasifika Youth Courts, the Iwi-led FGC process, or marae-based restorative justice remand alternatives, and the impact of culture on young people's participation and engagement.

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 extremely challenging.

Interviews and focus groups with some key stakeholders, such as Youth Court judges and other court staff, and the whānau of young people were out of scope for this research because of time constraints. Furthermore, the findings cannot be generalised to areas other than Christchurch and Counties Manukau. 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.

The broader research also focuses on the following: youth justice professionals' roles in remand decision making, factors that influence remand decisions, and potential opportunities to using alternatives to secure remand in youth justice residences. A second report that covers these findings is also available, and the authors recommend reading this report to understand the wider context and findings from this work.

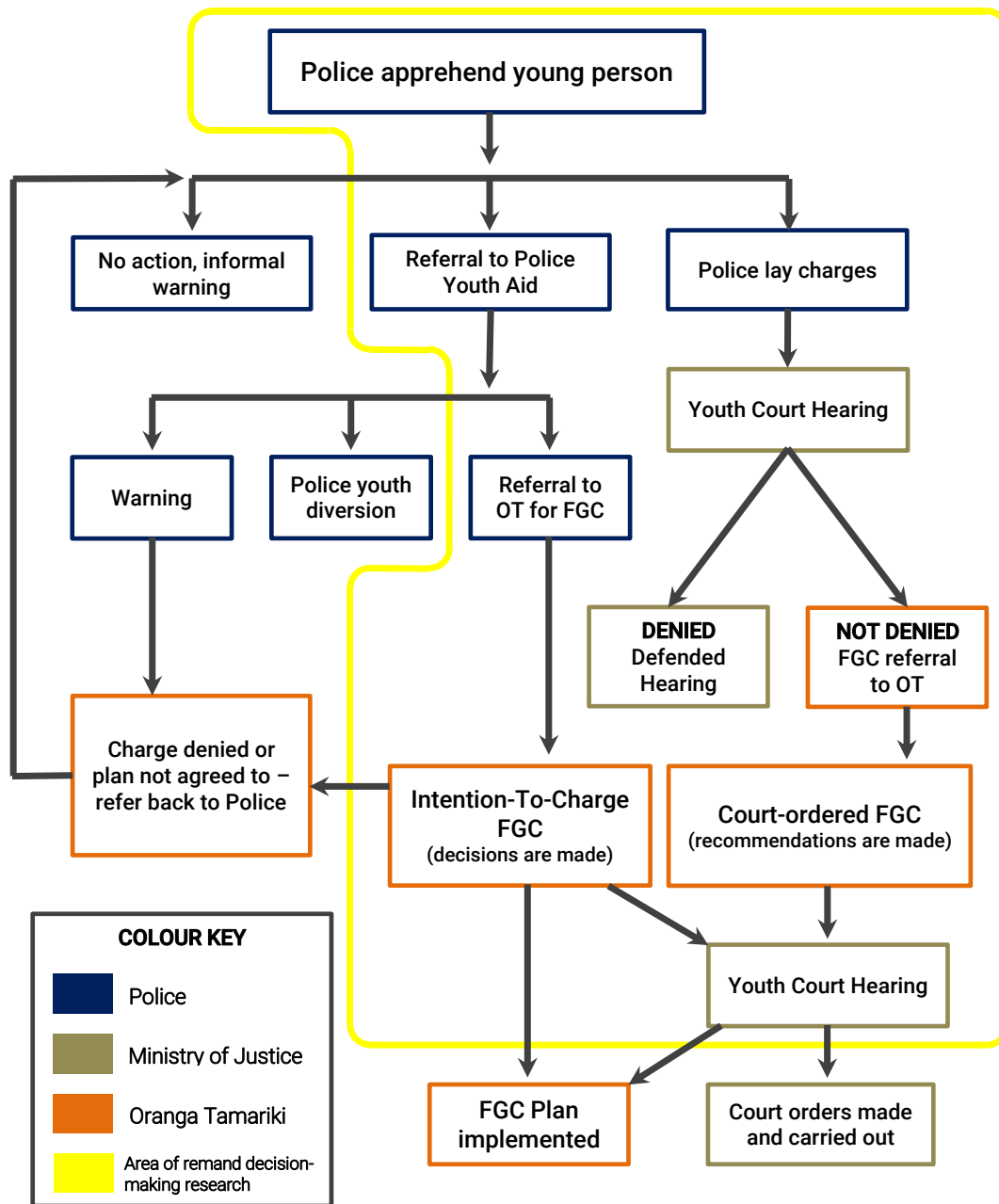
The youth justice process in scope for this research

The term 'youth justice process' is used in this report to refer to the stages of the youth justice system that young people go through following their arrest for any offence, through to remand decisions in Youth Court (see Figure 1).⁵ The youth justice process in this context also includes the wider court process that follows after a remand decision is made in court, such as court-ordered family group conferences (FGC). The Police-referred FGC with an intention to lay charges is also included in this research as part of the 'youth justice process' when the FGC leads to a Youth Court prosecution.

⁴ In this research, the terms 'participation' and 'engagement' are used synonymously to describe the nature of young people's involvement in remand decisions. Literature identifies a number of ways to conceptualise participation (see Vis & Thomas, 2009; Lundy, 2007; Bessell, 2011; Kennan et al., 2017)

⁵ Even though Figure 1 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.

Figure 1: Youth Justice process flow starting from arrest⁶



⁶ Adapted from figure originally presented in a Ministry of Justice (2018) report.

Key Findings

In this section we discuss the key findings of our research. Four key themes emerged from the analysis of our qualitative data. We expand on each of these themes below and include examples from the literature⁷ and key messages and quotes from our research participants. The key themes are as below:

1. Young people need encouragement and support to engage in the youth justice process.
2. Communication with young people must be clear and in a way they understand.
3. A relational experience with skilled professionals the key to quality engagement.
4. Young people's whānau must be part of the youth justice process to support engagement.

1. Young people need encouragement and support to engage in the youth justice process

The Act requires that children and young people in the youth justice system are provided opportunities to express their views—and are encouraged or assisted to participate—on matters that affect them (Oranga Tamariki Act 1989, s11). The latest reforms to the Act in 2017 strengthen the role of young people in decision-making and are intended to give full effect to children's rights in the youth justice system, as set out in the United Nations Convention on the Rights of the Child (UNCROC).⁸ The Act stipulates that the views of the child or young person must be taken into account and applied in court proceedings, as well as in wider youth justice processes, such as FGCs. As discussed by Judge Andrew Becroft, Principal Youth Court Judge 2001 to 2016, in '10 Suggested Characteristics of a Good Youth Justice System' (Becroft, 2014), encouraging the young person's engagement is important for a number of reasons, including:

- supporting their understanding
- encouraging them to take ownership of their actions
- increasing their awareness of the human impact of their behaviour
- empowering young people and making them feel a part of the process
- assisting their reintegration back into society.

Lundy (2007) suggests four steps to realise children and young people's right to participate:

1. space: children must be provided with the opportunity to express a view in a space that is safe and inclusive
2. voice: children must be facilitated to express their view
3. audience: the view must be listened to
4. influence: the view must be acted upon as appropriate and the reasons for the decision taken must be communicated to the child.

⁷ This research did not include an extensive review of literature. The literature references used in the report may not be up to date.

⁸ The UNCROC outlines the rights that children and young people have to participate and encourages professionals to involve them in decision-making. See Article 12 - Respect for the views of the child, Fact Sheet: A summary of the rights under the Convention on the Rights of the Child, unicef. Retrieved from https://www.unicef.org/crc/files/Rights_overview.pdf on 6 July 2018.

Below, we highlight our findings on the level of young people's engagement in the youth justice process, factors influencing their participation and potential opportunities to encourage the young people to have their voice in the process.

There are some positive examples where young people are supported to express their views

Our analysis of the interviews and focus groups showed that young people are sometimes given opportunities to express their views in the decision-making process, such as in the Youth Court and at FGCs. Based on our interviews with young people, some said they were able to express their views in court, mainly through their youth advocates. Young people spoke about how they could tell their youth advocates about the context of their offending and discuss what could work best for them. Youth advocates and Oranga Tamariki staff also provided examples of young people's participation in FGCs and court hearings, including instances where the judges incorporated young people's views in the remand decision.

Our court observations showed various ways that the judges acknowledged young people's views, for instance

- following up on what the young person said
- noting their views
- disagreeing with them
- disregarding their views in favour of other court professionals, such as the police prosecutor.

I had one young person the other day -- the social worker and everybody else and his parents, wanted him to stay on a curfew and he [young person] said, "Well, last time I was in court, you said that you would look at -- reconsider my curfew and I did really well, I went to the course every day, I haven't breached and I don't think it's fair that you don't ... delete my curfew". And the judge accepted that..."I'm going to give you a chance".

Youth Advocate

Young people's level of engagement varies

Our research suggests that, overall, young people have limited engagement in the youth justice process, particularly in court. Even when asked open-ended questions by the judge, young people often responded with limited 'yes or no' or one word answers. However, some exceptions were noted in court, including when young people participated unprompted, or gave more complete answers in the form of expressing remorse, or trying to explain their offending.

I don't want to talk just in case I might stuff something up.

Young person

Interviews with young people also suggest that despite efforts from professionals, some may not be comfortable or may not want to engage, particularly in court. Some young people also noted that if asked a question directly in court, they would say what they thought professionals wanted to hear. Based on the interviews, several factors contribute to their non-engagement, including:

- a dislike, fear or anxiety of the court process and the courtroom – having to 'face' the professionals in the courtroom
- being under the influence of drugs or alcohol when brought into the court after arrest
- a lack of confidence and the feeling that their view would count against them

- a perception that judges would refer to the police prosecutor’s opinion, and their voice would not count or could not influence the decision.

Similar to our own findings, a recent 2017 New Zealand study, which used semi-structured interviews with eight males from a youth justice residence, found that the young people perceived having no control or ‘voice’ in court (Lount, Hand, Purdy, & France, 2017b).

Young people’s level of participation depends on how professionals engage with them

Our interviews with young people and focus groups with professionals suggest that in the youth justice process, different professionals are intended to engage with young people at different stages. Judges have the primary role in court, and youth advocates have a key role both inside and outside of court. The roles of other professionals, such as social workers, youth justice co-ordinators, and Police youth aid officers are largely outside of court, such as at FGCs.

Our research shows that young people’s level of participation depends on how professionals engage with them. In court, the level of participation can depend on the extent to which the judge involves and encourages them in the hearings. In our court observations, sometimes when judges directed an FGC to be convened, they also encouraged the young person to attend and engage. This finding is supported by examples in the literature, which highlight variation between presiding judges in encouraging young people to meaningfully participate (Becroft & Norrie, 2014; Ministry of Justice, 2011).

An example of the three levels of the judges’ engagement with young people in regards to complying with bail conditions:

1. Asking closed questions: the judge asks the young person if they will comply with their bail conditions using a question with a ‘yes or no’ answer.
2. Explaining the young person on what to do with limited discussion: the judge gives advice on how the young person can adhere to their bail conditions.
3. Meaningful engagement/participation: the judge discusses with the young person and asks the young person about how they would comply with bail conditions.

Court observations

Our interviews with young people also reflected that their own engagement with professionals throughout the youth justice process was mixed. Some felt motivated by the way judges encouraged them. Young people gave some examples of good engagement in the court, including having discussions on what activities would help them, why they should be bailed, and what they would need to do to avoid being remanded in custody.

From our focus groups, we learnt that youth advocates adopt various strategies to engage with young people throughout the process. Some strategies that youth advocates considered helpful included: being open and honest with them; going as slow as the young person needed; taking the time to build rapport; encouraging them to have a conversation; and, using visuals, cultural examples and metaphors to simplify concepts.

Professionals suggest social workers could play a more active role in supporting and engaging with young people

Professionals, such as youth advocates and police, argued that social workers could take a more active role in engaging with and following-up with young people before and after court to ensure that their communication needs are addressed in decisions and in social worker's plans. This suggestion aligns with the recommendation from the Expert Panel (2016) report that social workers' should provide young people with the services they need at the earliest opportunity to address the underlying factors that contributed to their offending (Modernising Child Youth and Family Expert Panel, 2016).

We do our best to try and highlight some of the things which are important to our young people and their whānau and especially the Māori whānau... but there's only so much you can do on that front before you turn into a social worker.

Youth advocate

In contrast, social workers expressed that for them to engage with young people and to understand their needs, a social worker's allocation to young people should always be at an early stage – before court.⁹ Some social workers stated that while Oranga Tamariki is not mandated to have an active role in the courtroom, they needed to be proactive in court hearings and the youth justice process, for the best interests of young people.

Family group conferences could be better utilised to further encourage young people's participation

FGCs are intended to be family-led and less intimidating than the Youth Court for young people (Becroft, 2014). The Act also stipulates that the FGC process should encourage, assist and support their participation. However, some professionals and young people in our interviews said that not all young people would have the confidence to talk and address the FGC. Professionals also considered that the whānau in many youth justice cases were hard to engage. They reflected on the importance of taking the time to prepare and support young people and whānau, and noted that this effort would empower young people to express their views at FGCs. Professionals also stressed on the importance of preparing young people in FGCs for court hearings, if the FGC process didn't come to a solution.

2. Communication with young people must be clear and in a way they understand

Examples from research literature suggest that effective communication with young people supports their understanding and participation in decision-making (Gillingham, 2011; Weijers, 2004 as cited in Seymour & Butler, 2008). In a courtroom environment, some examples of effective communication include strategies to:

- explain what is going on in the hearing
- involve the young person in the hearing and listen to their perspective
- firmly disapprove of their actions and outline an expectation for better behaviour
- support them to reflect on the consequences of their wrongdoing (Weijers, 2004 as cited in Seymour & Butler, 2008).

⁹ There were site-specific variations in how Oranga Tamariki social workers explained their allocation to youth justice cases, or how much involvement they had in court.

However, recent New Zealand studies have documented issues communicating with young people, particularly in court, and have highlighted their limited understanding of what is happening in the hearing (Lount et al., 2017b; Ministry of Justice, 2011). Young people's capacity to understand and professionals' limited time and resource to ensure young people's understanding are both identified as relevant challenges (Ministry of Justice, 2011; Kilkelly, 2006 as cited in Seymour & Butler, 2008; Lount et al., 2017b). Our own research findings in this area are discussed below.

Many young people lack clarity on why a particular decision is made and what happens next

Our interviews with young people suggest that many young people may not fully understand the decision-making process, particularly the link between their offence, why the decision is made, and what happens next.

...you get four warnings, but they use long words that you can't understand... What are you supposed to do when you can't understand the police?

Young person

In our court observations, the questions that young people asked were often related to either where they were going, or when their next hearing was, suggesting that they may not have understood the court decision-making. Professionals within the hearing also sometimes noted issues with young people's understanding of the process. This was further reflected in our focus groups, particularly with Oranga Tamariki staff and youth advocates, where it was commented that many young people didn't understand the process, even after efforts to explain it were made by the professionals.

The cognitive ability of young people influences their understanding

Our research suggests that impaired cognitive ability among young people could be a factor contributing to their difficulty in understanding the decision-making processes and outcomes. New Zealand and international research widely highlights language and cognitive impairments being prevalent among the youth justice population (Lount et al. 2017a; NSW Department of Juvenile Justice, 2003 as cited in Lambie, 2016; Hughes, Williams, Chitsabesan, Davies, & Mounce, 2012).

Professionals in focus groups pointed out that they came across a lot of young people with diagnosed and undiagnosed cognitive impairment. Foetal alcohol spectrum disorder (FASD), non-engagement in formal education, mental health issues, and alcohol and drug dependencies were noted as being common and associated with youth offending. They noted that in many instances, the court requested assessments of young people's fitness to plea based on an assumption of undiagnosed cognitive impairments. In our court observations, professionals sometimes noted young people's disengagement from education or any cognitive issues such as those associated with FASD. In some cases, an s333 (examining medical,

More often, what we've found out is a lot of these kids keep reoffending or they keep breaching. One, for example, kept breaching his bail conditions but wasn't reoffending. I'm like, "Why is this kid doing that?" I thought, "Okay, let's look at the care and protection history"... This kid has foetal alcohol spectrum disorder, and anything you say to him, he is only catching the last bit of what you just said, so everything goes over his head.

Oranga Tamariki participant

psychiatric or psychological issues) was ordered, if there were indications of underlying and undiagnosed cognitive issues.

In our interviews with young people, some noted that prior to being placed in the youth justice residence, they dropped out of their schools or didn't like going to school.¹⁰ One young person also indicated that he had a language-related issue and could not pronounce words.

'Big words' and legal jargon, among other factors, contribute to young people's limited understanding

Our research strongly suggests that the language professionals' use contributes substantially to young people's often limited understanding of the youth justice process. In court, we often noted the use of jargon to discuss key concepts in the hearing, such as 'abscond', 'non-association', 'custody of the CE on an s238(1)(d)', 's333'¹¹, etc. What these terms meant were often not explained to the young people. Young people also confirmed that the use of 'big words' in court was a barrier to their understanding.

This is consistent with research conducted in New Zealand and overseas, which reports that language is an area of significant difficulty for young people in understanding what is happening in court (Peters et al., 2002; Lount et al., 2017b; Ministry of Justice, 2011).

Like back in school you never used to be able to know what these words were.

Young person

Based on our interviews with young people and professionals, the following factors also influence young people's understanding:

- the length of time they spend on bail or in custody – which creates a disconnect between the offence and their appearance in court, for example cases that are delayed due to the s333 medical, psychiatric or psychological report timeframe of six to eight weeks
- whether or not they have a prior experience in the youth justice system – which means they already have some understanding of the language used and the process
- the young person's pathway into the youth justice system and who communicated with them throughout that process.

Various studies have also identified the above factors having a role in young people's understanding of the youth justice process. Examples of such studies include papers from the Ministry of Justice (2011), Lount et al. (2017b), and Hopkins et al. (2016) as cited in Lount et al. (2017b).

There is variation in what and how much is explained to the young person

A key component of meaningful participation of young people is that they have sufficient and appropriate information to take part in the decision-making process (Bessell, 2011). Our research suggests that there are opportunities to communicate information to young people throughout the youth justice process, and the young people have the opportunity to hear about their remand

¹⁰ Nearly all young people we interviewed noted that they currently attended school in their youth justice residence.

¹¹ s333 of the Oranga Tamariki Act relates to court orders for medical, psychiatric, or psychological reports.

decisions – sometimes more than once. However, such communications happen mostly after remand decisions are made for them to have any meaningful participation. Many focus group participants from Police pointed out that judges would read out court decisions to young people at the end of court hearings. If they were bailed, they would get a notice outlining the conditions of their bail, which they needed to sign. Some young people we interviewed confirmed that they would likely hear the decision and what was going to happen again outside of court from their youth advocates and in some cases from social workers and police officers. However, the findings in previous sections suggest that the young people may not understand what those decisions mean in practice, unless professionals explain the decisions sufficiently and in a way the young people understand.

What was explained to the young person in court could depend on the type of decision that was made. Sometimes, the remand decision itself was not clearly stated, particularly for custodial remands where an s238(1)(d) status was selected. Also, it was not always clear where the young person was being placed. In contrast, telling the young person where they were going to live was often stated as part of listing bail conditions.

Court observations

In our court observations, judges sometimes discussed with young people some of the consequences of their offending. For instance, sometimes judges discussed the impact of the young person's offending behaviour on themselves, their family, and the victim. Judges also sometimes discussed what was going on in the hearing, such as the reasons for pauses or delays. However, in many cases, the judges summarised decisions to young people at the end of the hearing, as opposed to providing them with sufficient information and opportunities to contribute to decision-making. The way judges' decisions were summarised in court hearings ranged from relatively detailed explanations to very brief statements.

Based on court observations, key points that judges sometimes summarised to the young person, mostly at the end of the hearing, included:

- the charges
- what factors were being considered as part of the decision (for example: characteristics of the offending, concerns regarding a placement, the young person's needs)
- the remand outcome and why it was selected
- next steps in the court process, which could include the purpose of the FGC that was ordered by the court
- information about the next hearing.

Efforts to check and support young people's understanding are inconsistent

Our court observations indicate a lack of consistency around whether, and how, someone checks young people's understanding of the court proceeding and/or decisions. In many court hearings, checking understanding was minimal. In some cases, the judge asked the young person if they understood, and tested this by asking questions, for example 'what happens if you breach?', 'what are your bail conditions?', or by asking them to explain the remand decision back to the judge. The judges sometimes asked closed 'yes or no' questions – the response most frequently being 'yes'. The judges also asked if they had any questions to which young people usually said 'no'. It was generally unclear from our court observations whether young people did or didn't understand the decisions made at the hearing. However, our interviews with young people and comments from Oranga Tamariki staff in

focus groups suggest that young people may not have understood. As noted earlier, literature examples also suggest that young people often do not understand court decisions (Peters et al., 2002; Lount et al., 2017b; Ministry of Justice, 2011).

Professionals in court sometimes noted issues with young people's understanding of the court decision. However, the way this was addressed varied. For example:

- In a few cases, translators or communication assistants were organised to be present.
- In some other cases, lay advocates were requested to be appointed to support the young person.
- There were cases where the young people asked questions about the case, for example where they would be placed, which were answered by the judge or youth advocate.
- In some cases, young people made statements in court that suggested they misunderstood the hearing. The judge or youth advocate corrected the young person and explained what was happening in the hearing.
- In other cases, despite comprehension issues being identified (for example FASD, cognitive issues) there were no efforts to support the young people to understand.

In focus groups, some youth advocates and social workers said that they would make a particular effort to ensure young people understood the processes and decisions, before and after court. They provided examples, such as using cultural analogies, to break down complex statements into smaller parts and explaining each part separately, along with asking the young person to explain this content back. However, the information from focus group suggests that professionals' perceptions and beliefs of what young people need to know, the time available, and skill-level in working with young people all influence how much they are able to support young people to understand.

An informal discussion prior to the young person appearing for a hearing contributes to their limited understanding

Our court observations suggest that cases are often informally discussed by professionals before and after the actual hearing – when the young person is not present. Professionals in focus groups also noted that in many instances, a likely outcome would be informally discussed, and/or agreed by professionals before the court hearing.¹²

Discussion before the hearing may be beneficial to the decision-making process, as it allows time for effective communication between the agencies/professionals prior to a court appearance, for example, addressing objections to bail (Roberts, 2012).

However, as stipulated in the Act (Oranga Tamariki Act 1989, s11), and also discussed in Becroft (2014), professionals have a duty to encourage young people to express their voices and take their views into account in decision-making, particularly in the context of rapidly moving and busy court hearings. UNCROC Article 12 also encourages professionals to involve young people in decision-making. If the young person is not present for the discussion prior to the hearing, this may minimise their input into the decision. This issue may also contribute to young people's lack of understanding of why particular decisions are made.

¹² These are in reference to cases that may not have been through an FGC process.

Professionals' capacity to support young people's understanding is affected by time limitations, policies and procedures

The data from all sources suggest that professionals are limited by the time available to communicate with young people and engage them in the process. Our court observations indicated that professionals may not have time to speak with young people prior to the hearing, or may not have met them before. This was particularly evident when young people were detained in police custody after an arrest and brought into the court. Social workers in focus groups noted that they may not have been engaged by then. Youth advocates also confirmed that their ability to present the young person's views depended upon the time available before their appearance in court. Youth advocates pointed out that the time pressure increased further when there were oppositions to bail from police. Verifying the facts in 'opposition to bail' documentation needed more time – often at the cost of the time needed to communicate with young people, and to build relationship and trust with them.

The professionals also identified that their capacity to support young people was affected by a lack of timely communication between the government agencies involved, especially around delays in reports and/or information. For example, some professionals noted that reports relating to a young person that may have been requested by court were not always available to the professionals when needed, or for a planned FGC. The professionals emphasised that this could be because of resource-related constraints, such as staff and funding, which are faced by many government agencies. In these cases, professionals felt that despite their efforts to explain, young people didn't necessarily understand what was 'going on'.

And sometimes the length [of time in remand] is because Health doesn't have the capacity to complete an assessment [for an s333 report] within a six-week period. It's automatically six weeks – sometimes it can go out to three months based on the capacity of Health to do that assessment.

Oranga Tamariki participant

Professionals further noted that policies and procedures affected their ability to support young people. For example, some social workers expressed dissatisfaction about the timeliness of when they were notified of and/or allocated a young person in the process. For them, it was crucial to be part of the process at an early stage so that they had more time available for the young person.

Communication support professionals can help address the gap in young people's understanding

Participants in many focus groups stressed that young people could benefit from regularly accessing a dedicated communication support professional, such as speech language therapists in court and FGCs. Some youth advocates noted that the Manukau Youth Court recently started using 'communication assistants' for some young people with identified communication needs. The youth advocates that worked with the additional resource considered that their involvement improved the youth advocates own communication with young people in addition to helping the young people better understand the communication. Relevant research examples also emphasise that a dedicated communication support professional may improve the young people's understanding of the process (Seymour & Butler, 2008; Lount et. al., 2017b).

3. A relational experience with skilled professionals in the key to quality engagement

New Zealand justice policy states that professionals involved in the youth justice sector—Youth Court judges, youth advocates, and police youth aid officers for instance—are trained to work with young people (Becroft & Norrie, 2014). There is also an expectation that Oranga Tamariki practitioners, such as youth justice social workers, follow a child-centred quality practice when supporting young people and their whānau. As stated in the Oranga Tamariki '*Core Practice Standards*'¹³, one of the objectives for social workers is to improve young people's experience of the support they receive through quality engagement and building greater trust (Oranga Tamariki, 2018).

Furthermore, literature widely highlights a trusting relationship between professionals and young people as significant for engagement (Schrader-McMillan & Barlow, 2017; Kennan et al., 2018; Lount et al. 2017b). For example, Lount et al. (2017b) report that young people's relationships, familiarity, and trust with professionals (for instance social workers and youth advocates) are important to facilitate communication. Schrader-McMillan & Barlow (2017) in their comprehensive review of recent literature report that engagement with children/young people is enhanced by:

- taking the time to build relationships
- listening to and respecting young people
- giving young people information
- providing support for young people to understand records or reports
- offering young people choices, whenever possible.

Our findings on young people's views about the professionals they work with, factors contributing to quality engagement between young people and professionals, and opportunities for better engagement are presented in the following paragraphs.

Young people perceive varied support from professionals

Our interviews with young people suggest that professionals' engagement efforts contribute to whether they are trusted by young people. Young people perceived having more communication and support from their youth advocates, compared to other professionals. Many professionals in focus groups considered youth advocates as the 'voice' of the young person in court. This also corresponded with what young people noted about relying on youth advocates to speak on their behalf. Most young people found their current youth advocates helpful in explaining the court processes, discussing their stories, understanding their concerns, and talking about potential options – before or after court. This finding is consistent with New Zealand and overseas research, which identifies youth advocates as being the key source of information for young people (Ministry of Justice, 2011; Office of the Children's Commissioner, 2012; Seymour & Butler, 2008).

As described earlier, young people had mixed views about their engagement with professionals in court hearings. Young people provided examples of non-participation in the court because of a perception that judges and police officers did not support them. While some young people spoke highly about their social workers, others perceived their social worker as being unsupportive and sometimes unreliable in court hearings.

¹³ The *Core Practice Standards* provide a benchmark of practice while working with children, young people and their whānau.

My social worker has said I've got a 50/50 of getting bail... That's what he always says.

Young person

Outside of the court hearings, young people mostly noted that they did not get much support from their social workers. One young person was unclear about their social worker's role. Many expressed having limited access to and/or limited interaction with social workers, and perceived a lack of inaction or difficulty contacting them.¹⁴

Young people value having continuity in the professionals they work with

Our analysis suggests that having continuity of professionals is important for young people to build relationship. One young person we interviewed, who had been in and out of the youth justice system from an early age, highlighted the importance of having a consistent relationship with their family lawyer. Becroft and Norrie (2014) also highlight the importance of having continuity in the judge presiding over a young person's case as it aids in understanding their circumstances.

I'd just turn up [in Court] and they're like, "You've got a new lawyer now".

Young person

About half of the young people we spoke to noted that their youth advocate or social worker changed several times in a short period. Often, they would know about the change just before a court hearing, and had to repeat their stories several times. As Schrader-McMillan & Barlow (2017) suggest, having to work with new young people is likely to be a barrier also for the professional in building rapport and providing continuity.

Professionals suggest they need on-going training to build professional and cultural competencies

Many professionals stressed that they needed on-going professional and cultural training, focused on working with young people in the youth justice system. They also noted a lack of skills among professionals to engage young people. Some professionals appreciated the opportunity to receive training from speech language therapists in how to overcome communication barriers with young people and their whānau. They recommended similar training for all professionals working in the sector. In line with the Oranga Tamariki core practice standards, all Oranga Tamariki youth justice staff at sites and residences are receiving training from Talking Trouble Aotearoa NZ¹⁵ to help them communicate better with young people. Seymour & Butler (2008) also recommend that training in awareness and communication skills is provided to the judiciary and other members of the legal profession, in order to facilitate more effective communication with young people. Such training may

¹⁴ All young people that we interviewed were remanded in detention in a youth justice residence. As such, our research cannot be generalised to young people on other remand options such as bail.

¹⁵ Talking Trouble Aotearoa NZ provides training to professionals working in the field of children and youth involved with care and protection, youth justice, mental health and behaviour service. <http://talkingtroublenz.org/>

also help Oranga Tamariki practitioners to achieve the quality practice standards. The standards state that practitioners must understand, engage and communicate in 'age and developmentally appropriate ways' with young people. Understanding the cultural needs and diverse backgrounds of young people is one of the 'measures' of a quality practice (Oranga Tamariki, 2018).

4. Young people's whānau must be part of the youth justice process to be able to support engagement

Examples from current literature highlight the relationship between involving whānau and positive outcomes for young people in the youth justice system (Ministry of Justice, 2011; Varma, 2007; Roberts, 2012; Burke, Mulvey, Schubert, and Garbin, 2014). Also, Harvell et al. (2004) emphasise the importance of family support for successful rehabilitation and reintegration of young people into the community. The literature shows that whānau can be advocates for young people in court (Harvell et al., 2004; Burke, 2014), and can facilitate information sharing and understanding (Ministry of Justice, 2011). However, whānau may not understand the decision-making process and decisions enough to fully support their child (Seymour & Butler, 2008; Ministry of Justice, 2011; Harvell et al., 2004).

Findings from our research on the role of whānau in engaging young people, including barriers to their involvement and suggestions for seeking their support, are discussed in the following paragraphs.

Some young people rely on their whānau to understand remand decisions

The young people we interviewed generally highlighted the role their parent(s) and/or a close whānau member played in their journey. While some had negative perceptions about their parent(s) or whānau, many talked about the support they received from them during the process. One young person noted that they needed their mother to explain the court process and decisions. Some young people knew about the court and the justice system from the experience of their whānau. This finding in particular is consistent with Ministry of Justice (2011) about whānau often being an information source.

They read this list of my rights....I can't understand Court. I have to have my mum to be beside me to explain.

Young person

Professionals expect whānau to support young people's understanding of the processes and decisions

Our analysis suggests that some professionals expect whānau to communicate with young people, including communicating their obligations in regards to decisions. This could be the reason why the judges explained court outcomes directly to whānau rather than young people, as found in a small number of court observations. Police prosecutors also emphasised that they liked to see the whānau of young people in court hearings. Professionals perceived that whānau who attended court hearings were more engaged with the process. Police youth aid officers also noted that they found it easier to speak to whānau about the potential options for the young person, especially if they had a prior relationship with the whānau.

Whānau engagement can have a positive influence on remand decision-making

Our research findings suggest that, in addition to the important role that whānau have in FGCs, their engagement in remand decision-making can be an important source of support for young people.

Many professionals in focus groups believed that the judges expected whānau to be present in court hearings. The professionals noted that when whānau supported their young person in court, bail was seen as a more credible option to the judges. There are examples in the overseas literature that also support the notion that judges see parental/family involvement and presence in court as an indicator of their continued engagement (Harvell et al., 2004).

In our court observations, there were some examples where whānau engagement appeared to be less constructive with them focussing only on negative aspects of the young person's behaviour. However, in other cases, whānau supported the young person by 'backing up' (confirming) their statements, answering the judge's questions about young people's needs, or just being present. There were also examples where the judge suggested whānau help the young person write an apology letter to the victim, and assist them in adhering to bail conditions.

Not all whānau are engaged to the extent professionals would like

Our focus groups with professionals suggest that not all whānau are engaged to the extent professionals would like, and that there are many perceived barriers to whānau participation. For example, professionals pointed out that young people with care and protection and multiple placement issues generally had very different and often complex family connections. Professionals noted that some whānau showed a lack of interest, or were not well resourced (such as finances, time, or are too far away) in supporting their young person through the process, or didn't want their young person to come home. Furthermore, some young people were remanded or were living outside of their home town, which could make it difficult for their whānau to engage in the court process, according to the young people that were interviewed and the professionals in focus groups.

Professionals suggest having a formal and consistent process to encourage whānau engagement in court

From the focus groups, many professionals stressed that the justice system as a whole could do more to engage whānau in the decision-making process. For instance, youth justice could have a formal and consistent engagement process.

Our court observations showed that in many cases, whānau involvement could be limited to being introduced by the young person or being asked a question with a 'yes or no' response. Also, in a focus group with Oranga Tamariki staff, participants commented that there was no formal court process to invite whānau to the hearings, and it was up to individual professionals to keep them informed. Some youth advocates noted that they sent separate letters to parents or caregivers if young people consented to them doing so, as young people did not always want their whānau to be involved.

...The court seems to treat these young people as individuals. They [the court] get upset when they [young people] don't have their parents there, but they're not taking responsibility for formally inviting someone.

Oranga Tamariki participant

Some Oranga Tamariki staff thought that court-initiated parental involvement could positively influence some whānau to engage with their children. In Harvell et al. (2004), similar recommendations are made. In their research on parental involvement in the United States, they recommended that courts should use innovative methods to improve parental engagement in court and in the wider youth justice process.

CONCLUSION

This report highlights the extent to which young people participate and engage in youth justice remand decision-making. A key factor that influences young people's participation and engagement is their understanding of the decision-making process and the remand decisions that ensue. Remand decisions that are made in Youth Court are influenced by processes before and after the young person appears in court. To this end, various professionals, including the presiding judge in court, youth advocates, and staff from Police and Oranga Tamariki, have a role in making sure that young people get the encouragement and support they need to have their voice heard, and views taken into consideration throughout the decision-making process.

Our findings suggest that there are opportunities to improve young people's participation and engagement. The youth justice system could consider how to effectively provide consistent communication with young people that ensures they understand. This requires having professionals who are trained and skilled in working with young people in the justice system, and with whom young people are able to build rapport and trust through consistent and proactive support. In order to build rapport and trust, these professionals will need to be well resourced, and have appropriate time allocation. These findings are supported by the objectives of the Oranga Tamariki *Core Practice Standards*, which highlight the need for good communication, engagement, and trust from Oranga Tamariki youth justice practitioners.

Furthermore, our research highlights the important role whānau play in supporting young people. One of the Oranga Tamariki core values states that tamariki are seen as being part of a whānau and a community. Whānau can often communicate better with their young people and explain the remand decisions in ways they can relate to and understand. Furthermore, professionals' often prefer to talk to whānau first hand, which helps whānau advocate for their young people and explain their obligations. The justice system could look into ways to further engage young people's whānau in remand decision-making. In this regard, future research should include the views of whānau as well as judges in the decision-making.

Finally, any further research on young people's engagement and role in decision-making should include a more systematic examination of how current practice upholds young people's right to participate, in a way that is informed by theory and best practice. Lundy (2007)'s conceptualisation of four steps that make up children's right to participation could be used as a framework for further work. Furthermore, we strongly recommend any future research to examine young people's participation and engagement to incorporate a Te Ao Māori worldview.

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APPENDIX ONE – LEGISLATION UNDERPINNING REMAND DECISIONS

The Oranga Tamariki Act 1989 (the Act) sets out a restorative approach whereby a child or young person is given the opportunity to accept responsibility for their behaviour, when they offend. The Act is the primary legislation that applies for children and young people when remand decisions are made in Youth Court. As summarised in Oranga Tamariki Evidence Centre (2018) report, 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) **deliver** the youth into the custody of the parents, guardians or other persons having their care, or any person approved by the Chief Executive of Oranga Tamariki for this purpose
- (d) **detention** in the custody of the Chief Executive of Oranga Tamariki, an iwi social service or a cultural social service
- (e) **detention** in Police custody.

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

- (a) they are likely to abscond
- (b) they may commit further offences
- (c) 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.

Similarly, the Act [under s239(2)] lists grounds for detaining a youth 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.

APPENDIX TWO – METHODS AND LIMITATIONS

This report provides interim findings on young people’s participation and engagement in youth justice remand decisions. The findings in this report are a subset of a broader Oranga Tamariki Evidence Centre research that was commissioned to understand better how remand decisions are made in the youth justice system. The research findings are expected to inform design and delivery of new youth justice services in Oranga Tamariki. The research was guided by the following key 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?

The research will produce a more comprehensive report that covers:

- the youth justice professionals’ roles in remand processes
- the factors that influence remand recommendations, and
- the potential opportunities for using alternatives to secure remand in youth justice residences.

Readers are encouraged to read the comprehensive report to understand the wider context and findings from this research.

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, 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 group¹⁶, 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.

¹⁶ 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/>

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.

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).¹⁷ 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 Three) 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. 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

¹⁷ Remanded in the custody of the chief executive [under s238(1)(d) of the Oranga Tamariki Act]

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 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. 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 1: 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 Three).

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, 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.¹⁸ 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 to observe court proceedings, 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 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. The impact of culture on young people's participation and engagement was not within the research scope and was not considered in the research design and participant selection.

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

¹⁸ 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.

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.

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 the decision-making process. 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 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 decision making. 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.¹⁹ 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

The themes that were identified from the analyses (focus groups/interviews and court observations) 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 mainly on the experiences of the young people that were interviewed and supported by professionals perspectives. 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.

¹⁹ 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 THREE – INFORMATION SHEETS AND CONSENT FORM FOR YOUNG PEOPLE

Remand Decision Making Research

Some people are in the court today to gather information on how decisions about remand are made. Gathering information on your case will help them understand what is going on.

- The team are researchers from Oranga Tamariki.
- They are interested in bigger patterns in how decisions are made in court.
- They are not collecting information like your name or date of birth.
- They have agreed never to report details about your specific case and to protect your information.
- They also will not report information about your family/whānau/caregivers.

Principal Youth Court Judge John Walker and the Judge sitting in Court today have agreed to let the team gather information on every case.

- You will not experience any benefits or consequences from this team being in the courtroom. The team will not be part of the hearing, and they will not affect or change your case in any way.
- They are only watching and collecting information about what goes on.

If you happen to know one of the observers in the court, or have any concerns with this, please let your youth advocate know and they can notify the researchers.

If you have more questions or concerns about the project later contact Kelly Marzano, lead researcher from Oranga Tamariki at 04 914 2473 or kelly.marzano@mvcot.govt.nz

Will they make recommendations to the police/judge about my case?
No. They will not be a part of this hearing or a part of your case at all. They are only collecting information to learn what police and courts talk about and consider when they make

Can I see the information they collect about me?
No. They won't be able to review the information they collect about your case with you, but your youth advocate can show you the form they are using to collect

Will anyone know that I was part of this research? How will they make sure no one recognises my information?
The research team will never report information on your specific case: not about you/your young person or familv/whānau/caregivers. They have

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 _____

