

# Limiting the use of Police cells to hold young people on remand

Position brief | June 2018

The Children's Commissioner is advocating that young people should no longer be able to be remanded into Police cells by the Youth Court after their first court appearance.

We recommend that the Oranga Tamariki Act 1989 be changed to remove the option for the Youth Court to remand young people into Police custody.

Under the Oranga Tamariki Act 1989 [the Act], Police cells are one of five options available to the Youth Court when deciding where to remand a young person pending their court hearing. This option should be removed as part of future amendments to the Act.

"Solitary – depressed, going crazy, feel like you want to cry and flip out at the same time – just go nuts."\*

## Why shouldn't young people be remanded into Police cells?

Young people held in adult Police cells will almost certainly experience solitary confinement, and are likely to experience poor hygiene facilities, inadequate food, round-the-clock lighting to maintain line of sight, and limited access to appropriate support. Being held in a Police cell for extended periods can quickly lead to physical, mental, and emotional harm, and a real risk of self-harm.

"I was waiting for a bed [in a residence] – I had to wait for 7 days in the cells."\*

Police cells are not an appropriate custodial environment for anyone for more than very short periods. There is no limit on the amount of time a young person can be held in Police custody under section 238(1)(e) of the Act.

While in practice this is reviewed every 24 hours, it is not uncommon for young people to be held in Police cells for several days at a time.

## Using Police cells to remand young people breaches our international obligations

Under the United Nations Convention on the Rights of the Child ("the Children's Convention"), children and young people have the right to be held in an appropriate custodial environment. The conditions in Police cells are a breach of young people's rights under the Children's Convention and United Nations juvenile detention rules.

Young people held in Police cells are often required to walk past adult prisoners in cells when going between their own cells and facilities for showering and washing. On trips to and from court, they are sometimes transported in the same vans as adults (although there is a barrier to prevent physical harm to young people). This breaches United Nations rules about keeping children and young people separated from the influence of adults in custody.

## There are some circumstances where it is necessary to hold a young person in a Police cell

Young people who are likely to abscond or be violent may be held in Police cells under two other sections in the Act, if there are no suitable alternative facilities available to safely detain them as agreed by senior Police and social workers. These detentions can only be for short periods.

1. Following their arrest, they may be held in Police custody until their first court appearance under s 236(1).
2. After a court appearance, under s 242(1) a young person who has been remanded into the custody of Oranga Tamariki by a judge under s 238(1)(d) may be held in a Police cell for up to 24 hours at any one time.

We are not proposing that these provisions be changed.



Children's Commissioner Judge Andrew Becroft represents the 1.1 million people in Aotearoa New Zealand under the age of 18, who make up 23 percent of the total population. He advocates for their interests, ensures their rights are upheld, and helps them have a say on issues that affect them.

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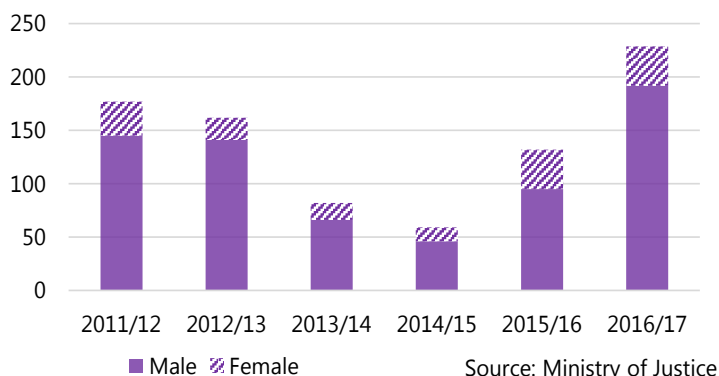


[children@occ.org.nz](mailto:children@occ.org.nz)



@childrenscommnz

## Number of young people remanded to Police cells by year and gender



## Too many young people are being remanded to Police cells

The lack of suitable community-based, safe and secure placements and the pressure this places on the limited capacity of residences contribute to the number of young people remanded to Police cells. We have not seen the drop in the number of remands that we would hope for.

## Remand to Police cells disproportionately affects rangatahi Māori

We understand that 70 percent or more of young people held in Police cells are Māori. Rangatahi Māori would particularly benefit if this provision were removed.

### The current remand options

Under s 238(1) of the Act, a Youth Court Judge has five options when deciding where a child or young person should be placed while they wait for their next court appearance:

- Release the child or young person;
- Release the child or young person on bail (this means their release depends on them obeying certain conditions);
- Order the child or young person into the custody of their parents, caregivers, or other approved adults;
- Order the child or young person into the custody of Oranga Tamariki, who must decide where to place a young person (for example into a youth justice residence) or an iwi or cultural service provider; or
- Order the young person into Police custody (meaning they will be held in a Police cell). This is only possible if the young person is over 14, likely to abscond or be violent, and there are no other suitable facilities available to safely detain them.

### What should happen in the future?

Young people shouldn't be held in Police cells for extended periods. Sometimes young people will be held in Police cells for short periods (both before and after their first Court appearance), and there is legal provision to do this. However, young people should not be remanded in Police custody with no time limit after their first court appearance. This breaches their rights and is likely to cause considerable harm.

It may take time to develop alternatives to Police cells, such as dedicated remand foster carers, secure group homes, and iwi and other social service providers. At present there are not enough alternative options available to safely place young people who are being remanded into Police custody. Removing s 238(1)(e) would create a strong incentive to invest in and prioritise the development of community-based alternatives.

**"Need more family homes. We need homes out there that trust us... and wanna help."\***

Removing this option would be the child-centred and transformational thing to do. It would clearly demonstrate that the young person's safety and best interests are primary considerations, and would bring remand options for young people into line with those of children under 14, helping us to comply with our international obligations.

\* Quotes are from young people who spoke to the Office of the Children's Commissioner about their experiences in Police cells in 2017.