

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

Position brief: April 2017

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.

Under the Children, Young Persons, and Their Families Act, 1989, Police cells are one of five options available to Youth Court judges when deciding where to remand a young person. This option should be removed as part of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill currently before Parliament.

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

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

Young people held in Police cells are likely to experience poor hygiene facilities, inadequate food, round-the-clock lighting, and limited access to appropriate support. Being held in a Police cell for extended periods can quickly lead to physical, mental, and emotional harm. For these reasons, we don't usually hold adults in Police custody following their first court appearance.

Using Police cells to remand young people breaches our international obligations

The conditions in Police cells are a breach of young people's rights under the UN Convention on the Rights of the Child to be held in an appropriate custodial environment. Furthermore, young people held in Police cells are often required to mix with adult prisoners during movement from cell to showering and washing facilities, and sometimes during transport to and from court. This breaches the UN Convention's specific provisions about age mixing in detention.

Where it is absolutely necessary to hold a young person in a Police cell, there are existing legal provisions allowing that

Two other sections in the Act allow young people to be held in Police cells for short periods if they are likely to abscond or be violent and there are no other suitable facilities available to safely detain them.

1. Following their arrest, young people who meet these criteria can be held in Police custody until their first court appearance under section 236(1).
2. After a court appearance, section 242(1) allows for a young person who has been remanded into the custody of Oranga Tamariki by a judge under section 238(1)(d) to be held in a Police cell for up to 24 hours at any one time if senior Police and social workers agree there are no suitable alternatives available.

We are not proposing that these provisions be changed.

The current remand options:

Under section 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:

- a) Release the child or young person;
- b) Release the child or young person on bail (this means their release depends on them obeying certain conditions);
- c) Order the child or young person into the custody of their parents, caregivers, or other approved adults;
- d) 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
- e) 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.



Children's Commissioner Judge Andrew Becroft represents the 1.1 million people in Aotearoa New Zealand under the age of 18, who make up 24 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.

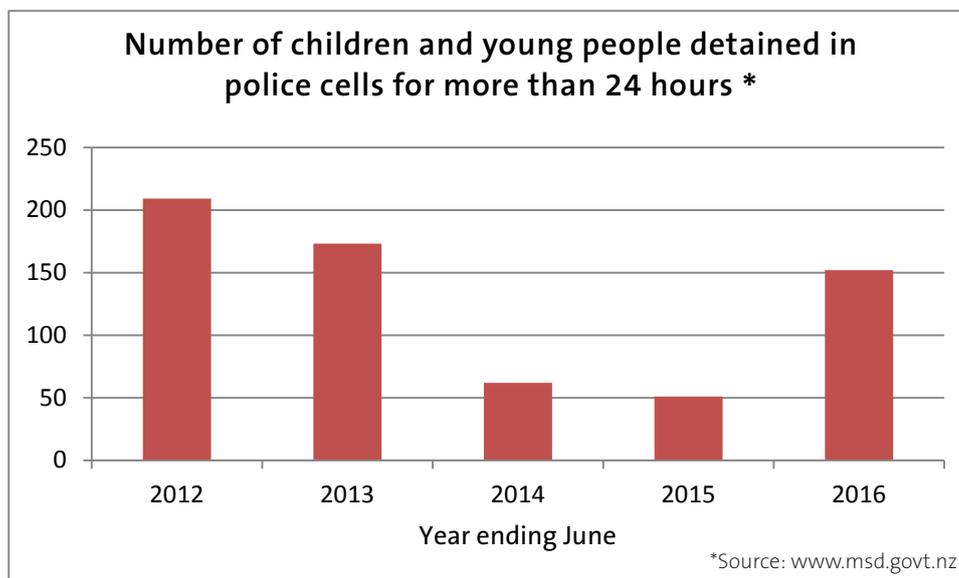
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How many children and young people are being held in Police cells?



Remand to Police cells disproportionately affects rangatahi Māori

We understand that up to 70 percent of young people held in Police cells are Māori. It would particularly benefit rangatahi Māori if this provision was removed.

What should happen in the future?

Young people shouldn't be held in Police cells for extended periods. Some use of Police cells to hold young people for short periods (both before and after their first Court appearance) is unfortunately inevitable, and there is legal provision to do this.

However, it is not appropriate for young people to be remanded in Police custody with no time limit after their first court appearance. This is in breach of their rights and likely to cause considerable harm.

It may take time to develop alternatives to Police cells. At present there are not sufficient alternative options (such as dedicated remand foster carers, secure group homes, and iwi and other social service providers) available to safely place young people who are being remanded into Police custody. Removal of section 238(1)(e) will provide a powerful incentive to invest in and prioritise the development of alternatives.

Our recommendation is that the new legislation does not include the option for the Youth Court to remand young people into Police custody.

We do recognise that it may take time to develop the alternatives. For that reason, we propose that the existing section could be repealed with a "sunset clause" – that is, it remains in place for one year while the alternatives are developed, and expires in December 2018.

Removing this option is a child-centred and transformational course of action. It would clearly demonstrate that the young person's safety and best interests are primary considerations, and would bring us back into line with our international obligations.