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ACQUISITIONS

STUDY OF YOUNG PERSONS
REMANDED IN CUSTODY
TO A
PENAL INSTITUTION

STUDY SERIES NO. 3

PLANNING AND DEVELOPMENT DIVISION
DEPARTMENT OF JUSTICE
WELLINGTON
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FOREWORD

This report is the third in the study series published by the Planning and Development Division of the Department of Justice. Publications in this series present the results of investigations into various aspects of the administration of the judicial system and other areas of departmental activity.

The operation of the judicial system may be seen as a matter of particular public interest. Programmes established to provide performance measures are necessary to contribute to public knowledge and for policy makers and planners to decide directions for the future. This study, within the limitations referred to in the report, adds to an unfortunately slender body of information about juvenile offending in New Zealand at the point of entry into the criminal justice system.

Since Sir Guy Powles investigated the problem of children and young persons being detained in custody there appears to have been a quite marked increase in the incidence of young persons remanded in custody to a penal institution. Sir Guy's inquiries showed that in 1974 there were 234 such remands rising to 291 in 1975. From the information gained for the present study some 356 young persons were so remanded in 1977. From the information it does not seem that any general increase in juvenile offending can be held responsible - at least not as a sole or even strongly influential reason. What then might be the reasons? Has there been a qualitative change in the young persons who are being brought before the Children and Young Persons Courts? Is the nature of their offending, i.e., the seriousness of crime changing, or is there a higher level of recidivism with young persons appearing more frequently than was previously the case? Have Magistrates interpreted public opinion as demanding a tougher line and accordingly changed their practice resulting in a greater number of the same kind of young persons being remanded in custody to penal institutions?

Pressure of time and the complexity of the problem for research has precluded this study from providing definitive answers. However, although incomplete in itself and therefore unsatisfactory from a research point of view, the study does provide useful information. The experience gained from the project will establish a base for further work.

Whatever the reasons for a custodial remand this study does show that the period which a young person spends on remand in a penal institution is generally relatively brief. This fact should not however obscure the fundamental problem. Whilst recognising the inevitability that there will always be the need to provide secure remand facilities for some young offenders we should work from the premise that custody in a penal institution is a last resort. Consistent with the protection of the public, we should look for a more flexible policy and establish a wider range of complementary provisions.

Obviously practical and fiscal constraints limit what can be done - certainly in the short term. However measures that avoid such constraints can be looked at. The study suggests an examination of the certificate of unrulyness system operating in England. Is there in some cases an initial crisis period that, once overcome, reduces or obviates the need for such secure custodial arrangements? Can some system of on-going review during the remand period be devised?

This research was undertaken by Mrs N. Bennie, an Assistant Research Officer. Our thanks go to the Superintendents and staff of penal institutions and to Registrars and staff of various Magistrates' Courts for their help in providing the necessary files and other information.

M.P. SMITH

Director, Planning and Development Division

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Introduction

This study is concerned to examine the incidence of young persons as defined in the Children and Young Persons Act 1954 who have been brought before the Children and Young Persons Court and have been remanded in custody to a penal institution established under the Penal Institutions Act 1954 either awaiting the hearing of charges or for sentence or other final disposition.

The decision to so remand is a judicial one. It is neither our concern nor our right to comment on individual decisions. In pulling together the individual cases in this study we endeavour to establish a profile of the young person who is remanded in custody to a penal institution, and to examine the procedure and isolate the criteria which the Courts appear to observe in reaching their decision.

Over recent years a good deal of concern has been expressed about the number of young persons who are remanded in custody to a penal institution. In 1977 the former Chief Ombudsman, Sir Guy Powles prepared a draft report covering a variety of matters relating to the custody and control of children and young persons. It is against the backdrop of that report that this study was undertaken.

Many of the matters of concern featured in Sir Guy's report and the recommendations he made fall outside the scope of this study. Nonetheless they are seen as issues relevant to the whole question of the pre-sentence or final disposition status of children and young persons. This study may provide further information and knowledge to enable the wider issues to be pursued later.

For this research Court records of young persons remanded in custody to penal institutions were studied to ascertain what information was given and recorded and therefore available to the Court to enable it to reach a decision on the remand question. It was hoped to analyse this information in order to establish the criteria applied in the decision making process relevant to the order to remand in custody in a penal institution. From an inspection of Court files and discussion with people of experience in the system it was found that information relevant to this issue is hardly ever recorded. Ad hoc information is presented orally, almost invariably by the police, and a decision based on that information is made generally without any material record as to the reasoning.

A decision based on undocumented reasons, particularly when there are statutory criteria that the decision making authority is required to recognise and consider, may prejudice the person affected by that decision in pursuing any right to seek a review or exercise the right of appeal. The Doroughmore Committee¹. (Cmnd. 4060, 1932), although speaking in the context of administrative tribunals, saw the requirement for reasoned decisions as part of the obligations imposed by the principles of natural justice. In its report the Committee said -

".... Any party affected by a decision should be informed of the reasons on which the decision is based; indeed it is generally desirable that the fullest amount of information compatible with public interest should be given"

The 1957 Franks Committee². (Cmnd 218), although again concerned with administrative tribunals, expressed the same view. Within a system of Courts of Record and having regard to the intention manifested by the statutory provisions relating to remand to a penal institution, the virtual absence of any record of the information given to the Court or of reasons for a decision may be seen as a defect.

The statutory provisions governing the procedure and requirements relating to the remand of children and young persons in custody are to be found in section 43 of the Children and Young Persons Act 1974 and section 47 of the Criminal Justice Act 1954. An extract of the relevant sections are included as Appendix 1.

Read together (it should be noted that section 43(7) of the Children and Young Persons Act specifically says that the provisions in section 43 are in addition to and not in substitution for section 47 of the Criminal Justice Act) these sections clearly establish a policy to avoid the detention in custody in a penal institution unless, in the opinion of the Court no other course is desirable having regard to all the circumstances.

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1. Great Britain Home Office, 1932
 2. Great Britain Home Office, 1957

What are "all the circumstances"? This paper isolates factors relevant to the offence and the alleged offender which the Courts appear to consider in this context. However the weight which the judicial officer gives to these various elements will inevitably vary according to his own attitudes and responses. No one element might be adequate to persuade the judicial officer that a remand in custody to a penal institution is desirable in all the circumstances but his judgment of the conglomeration of elements may lead him to that view. We point out again however that, from this research, there is virtually no written record to support the reasoning for such a judgment.

Sir Guy's report referred to the procedure that is to be followed should there be a remand in custody in a penal institution. This research substantiated that it is the general practice of the Courts, where a young person is remanded to a penal institution, to direct that the child or young person be kept apart from adult prisoners. Such a direction is endorsed on the Court record and conveyed to the Superintendent of the Penal Institution with the remand documents.

Such a direction cannot however avoid the reality of the institutional environment and regime. It is seen as inevitable that, in the practical management of an institution, even with the best will in the world, there will be some interaction between remand prisoners and sentenced prisoners irrespective of their status. Regulation 167 of the Penal Institution Regulations 1961 seems to recognise this reality. It reads -

"So far as is practicable, inmates under the age of 21 years, whether they are inmates awaiting trial or inmates detained after conviction, shall be kept apart from inmates of or over that age".

Similarly it is probably unrealistic to expect that institutional staff, particularly those who work in the environment of a security institution, can modify their own practices and attitudes to adapt to the differing conditions that should desirably obtain.

Appendix 2 describes the segregation arrangements available at the different institutions.

Methodology

To examine the issue a list of children and young persons held in custody in penal institutions during a period of remand, at any time during 1977 and up to 31 March 1978, was obtained from each penal institution. Returns, other than nil returns, were received from 11 penal institutions. This included Arohata and Christchurch Women's which were the only institutions submitting a return for female offenders. In fact all the information related only to "young persons" charged with offences. The study is then limited in that way. A search was then made of each young person's offence record in order to link the remand period to the Court of sentence so that Court files could be requested from the appropriate Court. In some instances no information pertaining to the remand in custody could be located.

Because different criteria might well apply, the information has been separately analysed in respect of remands in custody before conviction and remands in custody after conviction or a finding that the charge was proven. The data has been separated accordingly. The analysis proceeds in terms of this dichotomy and explores possible relationships between the remand in custody decision and a number of social and offending factors.

Because deciding factors for a custody decision may differ between males and females, and because the small number of females will contribute little to the overall picture, the information relating to female offenders remanded in custody to a penal institution has not been included in this study beyond the basic information given in table 1.

Total Custodial Remands

In all, only 64% of the 455 custodial remand situations notified for the period 1977 and up to 31 March 1978 were accounted for. This was due to several factors (1) no criminal record of the offender in Justice Department records or in the Police Gazette; (2) from the information available, no offence could be linked to the remand situation; and (3) files not able to be located at the Courts. Reasons (1) and (2) could be because the alleged offence was not proven and subsequently no identifiable record maintained. The information included in this study is then the minimum situation and the report should be read with this in mind.

Table 1 : Custodial Remands

<u>Prison or Institution</u>	<u>Total Notified</u>	<u>Total Located</u>
Arohata	6	4
Christchurch Women's	4	4
Christchurch Prison	64	21
Dunedin	18	8
Invercargill	25	22
Mt Eden	83	64
Napier	33	32
Waikeria	171	94
Wanganui	18	12
Wellington	27	26
New Plymouth	6	3
TOTAL	455	290

Remand Status

Of the 282 male custodial situations accounted for, 84 (30%) were before conviction, 181 (64%) after conviction and 17 were not known. The cut was not straightforward in all instances, so a decision as to actual remand status had to be arrived at. Those who had been remanded in custody both before and after conviction were counted as pre-conviction and not counted a second time under post-conviction. Situations, not straightforward, classified as custody after conviction were (1) three charges to which the defendant pleaded guilty for two, not guilty for one and was subsequently remanded in custody; (2) in custody while waiting for sentence for ten charges, before the first appearance for one more charge and sentenced for all on the same date; (3) after a guilty plea for 11 charges and before a plea for five charges, all having had the same first hearing date; (4) two charges, pleading not guilty for one and guilty for another, then remanded in custody.

The only indecisive situation which resulted in a decision to place a remand in the before conviction classification was where there were 15 charges to which the defendant pleaded guilty to five and had not pleaded to ten, the first hearing date being the same.

Circumstances Relating to the Male Defendant

1. Age

Fourteen, fifteen and sixteen year olds composed 2%, 21% and 77% respectively of the total sample, the proportions remaining relatively the same for pre-conviction and post-conviction. This means that all the offenders in the sample fell within the definition of "young person" under the Childrens and Young Persons Act 1974. There were no "children", i.e., a person under the age of 14 years in the sample. Referring to 1976 national statistics¹, for the age group 14-16 inclusive of males appearing in the Children and Young Persons Court, the relative proportions were 20%, 31% and 49% respectively.

Table 2 : Age Distribution

	<u>Age</u>			<u>Total</u>
	<u>14</u>	<u>15</u>	<u>16</u>	
<u>Remand in custody</u>				
before conviction	3	19	62	84
after conviction	2	39	140	181
not known	-	2	15	17
TOTAL	5	60	217	282

Age, then, may be a criterion which is relevant in the decision of a custodial remand in a penal institution. This study does not however examine the incidence of remands into the custody of the Director-General of Social Welfare nor the offence and social factors relevant to these remands. It may be that younger offenders receive first priority for remand into Social Welfare custody rather than a remand to a penal institution². Other factors more likely to obtain to older offenders, e.g., criminal history, living away from home, may also be determinants.

1. N.Z Justice Statistics, 1976, p.72.

2. Race

Maoris outweigh the representation of any other race in sheer numbers alone. Excluding those for which race is not known, Maoris compose 57% of those remanded in custody before conviction, 67.9% of those after conviction, and an overall 63.1% of those remanded in custody at any stage of the proceedings.

Table 3 : Racial Composition

	<u>Race</u>					<u>Total</u>
	<u>Maori</u>	<u>Caucasian</u>	<u>Pacific Islander</u>	<u>Other</u>	<u>Not Known</u>	
<u>Remand in Custody</u>						
before conviction	45	30	3	1	5	84
after conviction	114	46	7	1	13	181
not known	7	8	1	-	1	17
TOTAL	166	84	11	2	19	282

By comparison, in 1976¹ for males aged 14-16 inclusive, Maoris represented 36.5% of the total persons appearing in the Children and Young Persons Court. In respect of distinct cases (arrest) in the Magistrate's Courts, for the age group 16 years and under, 41% were Maoris². Although this is only a raw analysis it does suggest an imbalance with, all things being equal, more Maoris being remanded in custody than would be expected. Again a comparison with remands into the custody of the Director-General of Social Welfare may reveal counter-balancing features.

The over-representation of Maoris in a custodial remand situation was of concern to the former Chief Ombudsman in his report. Figures given in Sir Guy's report indicate that in 1974 47.43% of those held in custody in a penal institution on remand were non-European. In 1975 the percentage was 52.92 and, as indicated above in the 1977-78 survey which is the basis of this study, 63.1% were Maori.

1. N.Z. Justice Statistics, 1976, p.72.

3. Most Serious OffenceTable 4 : Most Serious Offence

<u>Offence</u>	<u>Remand in Custody</u>						
	<u>Before Conviction</u>		<u>After Conviction</u>		<u>Not Known</u>	<u>Total</u>	
	no.	%	no.	%	no.	no.	%
burglary	41	48.8	82	45.2	7	130	46.0
unlawfully takes, gets into, attempts to take a motor vehicle	12	14.3	40	22.1	5	57	20.2
theft	15	17.9	22	12.1	1	38	13.4
assault	4	4.7	8	4.4	1	13	4.6
unlawfully on building or in enclosed yard	1	1.2	2	1.1	-	3	1.1
receiving	-		1	0.6	-	1	0.3
robbery, attempted robbery	1	1.2	4	2.2	-	5	1.8
false pretences, etc.*	2	2.4	3	1.6	2	7	2.4
minor offences against public order**	4	4.7	2	1.1	-	6	2.1
Narcotics or Misuse Drugs Act	-		2	1.1	-	2	0.8
breach probation	-		4	2.2	1	5	1.8
resist arrest	1	1.2	1	0.6	-	2	0.8
unlawful sexual intercourse 12-16 yrs.	-		2	1.1	-	2	0.8
murder	2	2.4	-		-	2	0.8
wilful damage	1	1.2	1	0.6	-	2	0.8
disqualified driving	-		3	1.6	-	3	1.1
rape	-		1	0.6	-	1	0.3
arms act	-		1	0.6	-	1	0.3
cruelty to animals	-		1	0.6	-	1	0.3
party to unlawful escape	-		1	0.6	-	1	0.3
TOTAL	84	100.0	181	100.0	17	282	100.0
	(29.8%)		(64.2%)		(6.0%)	(100.0%)	

* includes false pretences, fraud, forgery, uttering.

** includes insufficient lawful means of support, idle and disorderly, unlawful assembly, obscene language, underage drinking.

The most serious offence, defined by the maximum sentence associated with the offence, was taken from amongst those for which the offender was remanded in custody.

Within this definition burglary is the most common and the most serious offence for both pre- and post-conviction groups, the percentage being slightly higher for the pre-conviction group. The second most serious offence, unlawfully takes or gets into or attempts to take a motor vehicle and the third most serious offence of the total, theft, retain their relative positions for the post-conviction group only. The positions are reversed for the pre-conviction group, an interesting point when the majority of the offences in both categories have the same maximum sentence (and thus degree of seriousness).

A British study¹ of children remanded in prisons and remand centres found a similar overall picture of offending patterns, with 75% being charged with either burglary, unlawfully taking a motor vehicle or theft. In this study the percentage is slightly higher at 79%. Of the offences represented in Table 4, the three major classifications represent 64% of total distinct cases in New Zealand Children and Young Persons Courts². Given this difference, the seriousness of the offence may be a criterion to which weight is given in the decision to remand in custody to a penal institution.

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1. Pope, Patrick J., "Children in Prisons and Remand Centres", The Howard J. of Penology and Crime Prevention, p.134-143. Vol. XVI, No. 3, 1978.
 2. N.Z. Justice Statistics 1976, p.66.

4. Previous Offending HistoryTable 5 : Previous Offending

	<u>Previous Offending</u>			<u>Total</u>
	<u>Yes</u>	<u>No</u>	<u>Not Known</u>	
<u>Remand in custody</u>				
before conviction	71	9	4	84
after conviction	158	19	4	181
not known	14	3	-	17
TOTAL	243	31	8	282

Of those remanded in custody to a penal institution before conviction (this term being used to clearly define the state of the proceedings) nearly 85% had a history of previous offending. Of those remanded in custody to a penal institution after conviction at least 87% had a previous conviction. Overall at least 86% of those so remanded had a previous offending history. Although figures are unavailable for the total number of offenders of this age group appearing before the Court with a previous offending history, this figure does appear to be high. In 1972¹, a census showed that 82% of all offenders who were either in prison, borstal, detention centre, periodic detention, on probation or parole had made at least one previous Court appearance. From another source², for offenders sentenced to imprisonment, detention centre or borstal in 1976, the same percentage as the above group also had previously offended. For both of these groups the percentage would be expected to be higher than for the total number of people appearing before the Court because the two groups were restricted to persons with a custodial sentence. Thus 86% for the group now under study appears to be relatively high, considering that the group is both younger than the average and not restricted to persons actually receiving custodial sentences.

It appears that previous offending history may be a significant criterion in the decision process.

1. Justice Department Penal Census 1972, Research Section, Justice Department 1975

2. Justice Statistics 1976, Table 61.

5. Escaping Custody or Breaches of Periodic Detention or Probation in Present or Past Offences

Escaping from custody or breaches of periodic detention or probation may lend weight to the decision to remand an offender in custody. If such offences are considered, they would probably appear more frequently for offenders receiving pre-conviction custody than post-conviction custody.

Table 6 : Escape or Breach

		<u>Remand in Custody</u>			
		<u>Before Conviction</u> (distinct cases)	<u>After Conviction</u>	<u>Not Known</u>	<u>Total</u>
present offences:	escape	2	8	-	10
	breach	7	14	2	23
past offences:	escape	3	3	-	6
	breach	4	6	-	10
re-offended on bail					
	previously	1	-	-	1
TOTAL		17	31	2	50

Of the 84 young persons remanded in custody prior to conviction, 20% had either a present or past offence of either an escape or breach, whereas for the second custodial group, only 17% of the 181 had such an offence. In the 1976 Justice Statistics,¹ only 3.9% of distinct cases in the Magistrate's Court and 0.32% in the Children and Young Persons Court (males, 14-16 yrs.) were escapes from penal institutions and custody, or breaches of probation or periodic detention. By comparison, in this sample 11.7% were convicted of either of these offences (considering present offences only). Only one case was definitely known to have re-offended while previously released on bail.

1. N.Z. Justice Statistics 1976, p.47 & 72.

6. Warrant to Arrest Issued Prior to Remand in Custody to Penal Institution

If a defendant fails to appear for a hearing, or breaches bail then a warrant to arrest may be issued and custody may follow. For those remanded in custody before conviction, seven were after a warrant to arrest was issued, that is 8.3% of the group. For those remanded in custody after conviction, eleven were in custody after a warrant to arrest was issued; that is 6.1% of the group. Overall 6.4% were remanded in custody this way.

There were also two instances of a defendant committing an offence while originally bailed on the present charges and then remanded in custody. This included one pre-conviction and one post-conviction defendant.

7. Unable to Meet Bail Requirements

Six offenders in the pre-conviction group (7%) and three in the post-conviction group (2%) were unable to meet bail requirements. Apart from one in each group, this was because the requirement for sureties could not be met. The remaining two offenders' parents refused to have them at home, a provision which was attached as a condition to release in both instances.

Bringing together the information in paragraphs 6 and 7 it is seen that a number of the 282 offenders (27 or 9.6%) were held in custody because they either failed to observe bail or other supervisory provisions or were unable to meet bail conditions. This does not of itself however explain the decision to remand to a penal institution rather than a direction for a remand in the custody of the Director-General of Social Welfare.

8. Length of Remands in Custody

Accepting that in all cases the decision to remand in custody to a penal institution was "desirable having regard to all the circumstances", there is still the issue of the length of time an offender remains in custody once remanded. In this study the remands ranged from 1 to 71 days. The average length of remand was 10.6 days and the median remand fell at 8 days. All but two of the remands were for less than 34 days. Of the remaining two, one was for 44 days and one for 71 days.

Whilst both these longer remands were post-conviction, their length on the face of known information seems unduly long. The Court files gave no indication as to why the remand periods were so long. In the 44 days remand, the defendant pleaded guilty to a burglary charge and was originally remanded in social welfare custody by consent. He escaped, committed further burglaries and was then remanded for two periods in a penal institution for the total of 44 days. He was eventually sentenced to 18 months probation. In the 71 days case, the defendant was charged with a number of offences, including burglary, wilful damage, unlawfully taking a motor vehicle and breach of probation, to which he pleaded guilty in the Magistrate's Court. On these charges he was sentenced to borstal. He was also charged with rape for which he was subsequently acquitted on a date some months after his borstal sentence was imposed.

For children who were first remanded in custody prior to conviction, the average length of their total remand, was 10.9 days. On average 7 of these days were spent in custody before a conviction was entered. For those remanded in custody after conviction only, the average length of stay was 10.5 days, slightly less than the average for the total. Once convicted, those who had been in custody prior to conviction appeared to be dealt with more rapidly than those who were remanded in custody only after conviction.

9. Court of Sentence

If a young person has attained the age of 15, instead of dealing with him under the Children and Young Persons Act 1974 the Court may enter a conviction and order that he be brought before a Magistrate's Court for sentence or decision. This extends the range of sanctions available to the Court to include those provided for under the Criminal Justice Act 1954. The majority of children appearing in the Childrens and Young Persons Court are generally dealt with in that Court and not referred to the Magistrate's Court for sentence. In 1976 a minimum of 13.5% of the young persons appearing for sentence did so in the Magistrate's Court¹.

1. Justice Statistics 1976, p68-69. This table can show how many must have gone to the Magistrate's Court for sentence (taking the penalties that can only be given in the Magistrate's Court), but it is not known how many were sent to the Magistrate's Court for sentence and received a penalty that could have been given in the Childrens and Young Persons Court. It is presumed this would be few.

In this survey the majority of offenders were convicted in the Childrens and Young Persons Court and ordered to be brought before the Magistrate's Court for sentence. This factor of itself might indicate that the offences were of a more serious nature or that the criminal history of the offender called for this stronger procedure. These factors would inevitably be linked with the decision to remand in custody to a penal institution.

Table 7 : Court of Sentence

	<u>Court</u>			<u>Total</u>
	<u>Children's & Young Persons'</u>	<u>Magistrate's</u>	<u>Supreme</u>	
<u>Remand in Custody</u>				
before conviction	19	62	3	84
after conviction	21	159	1	181
Not Known	3	14	-	17
TOTAL	43	235	4	282

10. Legal Representation

This relates to representation at time of conviction. Many defendants were not represented at their first appearance but were before the prosecution was finally disposed of. Legal aid was declined for six defendants; two finally being represented and four not. Five defendants refused legal representation. In at least 37 cases a defendant was not represented when the decision to remand in custody to a penal institution was taken. Section 13A of the Criminal Justice Act 1954 provides that a person shall not be sentenced to any form of detention other than periodic detention unless he has been given the opportunity of legal representation. The decision to remand in custody does not fall within this provision but the principle may be relevant in considering the issue of children and young persons.

Table 8 : Legal Representation

	<u>Yes (Don't Know if Legal Aid)</u>	<u>Representation</u>		<u>Not Known</u>	<u>Total</u>
		<u>Yes (Legal Aid)</u>	<u>No</u>		
<u>Remand in Custody</u>					
before conviction	21	47	9	7	84
after conviction	61	83	28	9	181
not known	2	1	3	11	17
TOTAL	84	131	40	27	282

In all, at least 76% of the defendants were represented with at least 60% of those being on legal aid.

The percentage of those represented and remanded in custody before conviction (81%) is approximately the same as the percentage of those represented and remanded in custody after conviction (80%). The percentage of those on legal aid (out of those who were represented) is higher for those remanded in custody before conviction, than for those remanded in custody after conviction (69% vs. 58%).

11. Ultimate Disposition

Table 9 : Ultimate Disposition

	<u>Remand in Custody</u>			<u>Total</u>
	<u>Before Conviction</u>	<u>After Conviction</u>	<u>Not Known</u>	
imprisonment	2	2	-	4
detention centre	17	49	2	68
borstal	28	50	2	80
D.G.S.W. care	3	1	1	5
periodic detention	14	32	7	53
probation	9	27	4	40
S.W. supervision	3	5	1	9
fine	4	3	-	7
psychiatric hospital	-	2	-	2
conviction and discharge, etc.	2	7	-	9
withdrawn, etc.	2	3	-	5
TOTAL	84	181	17	282

The most common sentence imposed was borstal, followed by detention centre, periodic detention and probation. 56% of the total group received an institutional sentence, i.e. imprisonment, borstal, detention centre or Social Welfare care. A slightly higher percentage in the pre-conviction group (60%) received an institutional sentence than in the post-conviction group (56%).

Justice Statistics 1976 shows that 10% of distinct male cases in the 14-16 years age group charged in the Childrens and Young Persons Court received an institutional sentence. This is significantly lower than the corresponding percentage in our sample.

What this table does show is that 123 (43.6%) young persons were remanded in custody to a penal institution when the sentence finally determined as appropriate was not one involving custody. This figure excludes the two who were committed to a psychiatric hospital. A recent English Study¹ showed that 40% of male young persons who had been remanded in custody were given non-custodial sanctions.

Conclusion

The actual number of male children being remanded in custody to a penal institution seems high at 445 although this is estimated at only 4.5%² of males appearing on an arrestable offence in the Children and Young Persons Court. It may be presumed that the percentage is higher for those remanded in custody to Social Welfare institutions. Following on from this partial study a full scale project directed at the remand process and allowing investigation and comparison of Social Welfare custodies with penal custodies should be undertaken. Until this is done, no well-founded conclusions can be drawn³.

1. Millham, Bullock and Hosie, Locking Up Children, 1978.
2. This estimate is calculated by the following procedures -
 - (i) firstly, the 1977 proportion of remands notified in the 15 months period of this exercise (1 January 1977 to 31 March 1978) is estimated by taking 4/5ths of the total cases, i.e., $445 \times \frac{4}{5} = 356$.
 - (ii) secondly, these 356 cases are taken as a percentage of the 7,908 distinct male appearances in the Children and Young Persons Court for arrestable offences in 1976. 1977 figures are not yet available. (Table 47, Justice Statistics 1976, Department of Statistics).
3. Since this report was written we have received statistical information relating to custodial remands from the Department of Social Welfare. Because of problems of definition, the data are not included here but in Appendix 4.

Because, as we have already commented, there is generally no record made of the reasons for a decision to remand in custody to a penal institution the criteria applied can only be speculated on. Several of the factors covered by this study - seriousness of the offence, the inability to meet bail requirements, a record of escape or breach, and the issue of a warrant to arrest through a non-appearance - all appear to have some bearing on the decision. The domestic and social milieu of the offender may be another variable of influence.

When a decision is made regarding bail in pre-conviction cases, it is arguable whether the previous offence record should be made available to the Court and considered as a factor in the remand decision. The majority (86%) had a previous record, this being substantially higher than the percentage expected for all children appearing in Court. Unless there is some other factor considered that possibly reflects the presence of previous offending, (e.g., degree of seriousness of the offence) then this factor appears to be an important consideration. This analysis assumes that the Court was aware of the offending history in all these cases which may not necessarily have been so.

An area of discrepancy is the nature of the punishment actually administered in relation to the encroachment made on liberty prior to sentence. Fifty-six per cent of the male group received an institutional sentence. Although this may be higher than the average, in this survey there were 157 young persons whose state of liberty prior to sentence was not consistent with their state of liberty after sentence.

Several points of interest and concern arise from the study. One of these is the proportion of Maoris remanded in custody in relation to the number appearing before the Courts. Before any categorical statements can be made regarding the implications of this situation, a deeper study needs to be undertaken to assess the interacting circumstances that result in a decision for custody. We must say however that we cannot envisage a situation where the Court could properly consider race, per se, as the discriminating factor that influences the remand decision.

With regard to the length of time of remands in custody in a penal institution, it is interesting to note that the average number of days was approximately the same for both groups (pre- and post-conviction having 10.9 and 10.5 days respectively). Thus those remanded in custody prior to conviction are probably dealt with more rapidly in respect of sentencing than those remanded in custody after conviction only. Presumably the fact of pre-conviction custody permitted the required pre-sentence report information to be gathered more quickly.

The extent to which young persons were convicted and referred to the Magistrate's Court for sentence was also a noticeable feature of the group studied. This in all probability reflected the seriousness of the offence and the history of the offender. This also opens an area where further study is essential.

The overall picture that emerges as a profile of the young person remanded in custody to a penal institution (there were no children captured in the sample), is a male, more likely to be a Maori, aged 16 years, to be appearing on a charge of burglary, with at least one previous conviction, being convicted in the Children and Young Persons Court and transferred to the Magistrate's Court for sentence, and having counsel at some stage. An escape, breach, non-appearance or failure to meet bail requirements may also feature.

Discussion

The English study¹ by Pope on children remanded in custody to prisons or remand centres found similar characteristics in relation to type of offence only, with 75% of his group being charged with either burglary, theft or unlawfully taking a motor vehicle, compared to 79% for our sample. Age showed a similar trend of increasing percentage with increasing age, but 16 year olds represent only approximately 45% of his group as opposed to 77% of our group. In relation to previous convictions and sentences given, the two studies differ; with 94% having a previous conviction in the English study, 86% in this study; and 75% receiving a custodial sentence of some type, opposed to 56% in this study. This could indicate that children remanded in

1. Pope, Patrick J., "Children in Prison and Remand Centres". The Howard J. of Penology & Crime Prevention, p.134-143. Vol. XVI, No. 3, 1978.

custody in the English study were charged with similar offences but of a more serious nature and had a more detailed history of offending. If this is so, it would also suggest that in New Zealand Courts may be inclined to remand in custody more readily than English ones.

We believe it would be generally accepted that it is not in the best interests of children or young persons to be remanded to penal institutions. Although the magistrate often specified that the defendant was to be kept away from adult prisoners, mixing to some degree can occur. A remand in custody, if necessary, should preferably be made to a Social Welfare institution, but accessibility, lack of room or the character of the child does not always permit this. In one instance it was known that although the magistrate specified that the child be remanded to a Social Welfare home, the child was actually held in a penal institution. Whether this was a result of shortage of room, the young person being too violent or unruly for a Social Welfare home, or some other reason, is not known.

In attempting to find out what information was made available to the Courts to enable them to reach a decision on remand, it was clear that much of the information is given verbally and not recorded. Through concern over the need for control of children being remanded in custody to penal institutions, Great Britain has introduced the Certificates of Unruly Character (Conditions) Order 1977. This order prescribes the conditions which must be satisfied before a Court can commit a young person to a remand centre or prison on the ground that he is of so unruly a character that he cannot safely be committed to the care of the local authority. This appears to have effectively reduced the number of children or young persons committed¹.

Such a system, or similar, developed in New Zealand, would be of value in keeping an eye on trends and would also reveal information submitted to Court when a remand decision is made. At present this valuable information is lost in time through not being recorded. The policy behind the legislative

1. Murray, J.W., Justice of the Peace, 10 December 1977, p.733 'The Week in Parliament'.

imperatives suggests that custody to penal institutions should be a last resort, to be used only when, in all the circumstances, no other course is suitable. Given this presumption, and the estimate that 4.5% of male 14-16 year olds who appear before the Children and Young Persons Court are remanded in custody to penal institutions, there is a need for constant monitoring of the situation plus the means to do this.

APPENDIX 1Statutory Provisions Relating to Remand of Children and Young Personss.43. Children and Young Persons Act 1974

s.43. Custody of child or young person before disposal of complaint or following arrest -

(1) Where any child or young person who is the subject of a complaint under section 27 of this Act appears before a Children and Young Persons Court presided over by a Magistrate or a Justice or where any child is brought, following his arrest, before such a Court under paragraph (a) of subsection (6) of this section, that Court may, at any time and from time to time before the complaint is determined, direct that the child or young person be held in custody pending the disposal of the complaint if, in the opinion of the Court, -

- (a) The child or young person is likely to abscond; or
- (b) The child or young person is in need of care and control for the period of custody; or
- (c) It is desirable in the interests of the child or young person that he be held in custody.

(2) A Children and Young Persons Court presided over by a Magistrate or a Justice or the Supreme Court may from time to time review any direction given under subsection (1) of this section.

(3) A direction given under subsection (1) of this section is sufficient authority for the detention of a child or young person in a residence under this Act or by a Social Worker or any member of the Police:

Provided that a child or young person shall not be held, by virtue of any such direction, in the custody of any member of the Police for more than 24 hours at any one time unless the Court has specifically directed that the child or young person may be held in Police custody.

(4) Where a child is arrested, without warrant under section 315 of the Crimes Act 1961 or any other enactment, for any offence or where a young person is arrested, pursuant to a warrant under any enactment or without warrant under section 315 of the Crimes Act 1961 or any other enactment, for an offence punishable by 3 months imprisonment or less, any member of the Police may -

- (a) Release the child or young person without bail; or
- (b) Deliver him into the custody of his parents or guardian or the person having the care of the child or young person or any other person approved by the member of the Police for the purpose.

(5) If, in the case of a child, it is not, in the view of a member of the Police, practicable or desirable to exercise, in respect of any child who has been arrested for any offence, either of the powers conferred by subsection (4) of this section, the member of the Police shall, as soon as practicable and in any event not later than 24 hours after the arrest of the child, place the child in the custody of the Director-General by delivering the child to a Social Worker.

(6) Placement of a child in the custody of the Director-General under subsection (5) of this section shall be sufficient authority for the detention of the child by a Social Worker or in a residence under this Act until -

- (a) The child is made the subject of a complaint under section 27 of this Act and is brought before a Children and Young Persons Court so that the Court may determine whether he is to be held in custody pending the disposal of the complaint; or
- (b) The expiry of a period of 3 days after the day on which the child was arrested -

whichever first occurs.

(7) The provisions of this section are in addition to and not in substitution for the provisions of section 47 of the Criminal Justice Act 1954.

(8) Subsection (5) of section 316 of the Crimes Act 1961 shall, in respect of children, be read subject to the provisions of this section and of Part II of this Act.

(9) Nothing in this section shall limit the inherent jurisdiction of the Supreme Court or the provisions of any Act under which a young person may be granted bail except that any powers conferred by any such provisions on a Magistrate's Court shall, where the person charged is a young person (other than one charged with murder or manslaughter), be exercised by a Children and Young Persons Court presided over by a Magistrate or a Justice.

s.47 Criminal Justice Act 1954

s.47 Special provision as to young persons remanded or committed for trial or sentence -

(1) Notwithstanding anything in any enactment, where any Court remands or commits for trial or for sentence any person who appears to the Court to be under the age of 21 years, it shall release him on bail or otherwise subject to such conditions as it thinks fit, or, if he is under 17 years of age, may remand him in the custody of (the Director-General of Social Welfare under the Department of Social Welfare Act 1971):

Provided that -

(a) The Court may in any case direct that he be detained in a penal institution if in its opinion no other course is desirable, having regard to all the circumstances:

(b) If he is 17 years of age or more, the Court may remand him in the custody of (the Director-General of Social Welfare) if in its opinion it is desirable to do so by reason of

special circumstances, and if it is satisfied that (the Director-General of Social Welfare) is able and willing to keep him in custody in accordance with this section.

(2) Where any person is remanded in the custody of (the Director-General of Social Welfare) as aforesaid, that person may, until he is brought up for trial or sentence, be placed in any institution under the Child Welfare Act 1925, or under the care of any suitable person pursuant to that Act.

APPENDIX 2Conditions in the Different Institutions
for Children and Young Persons on Remand

The following table shows for each of the institutions in the survey, the conditions in which the children and young persons who are on remand are held. The following questions were directed to each institution -

1. Are children and young persons on remand segregated from adult remands?
2. Are they segregated from sentenced prisoners?
3. Do they share cells?
4. Are the recreation facilities separate from those for adult prisoners?
5. Is visiting separate from other remands?

We also inquired after education facilities. Generally these are not available as the length of time on remand does not warrant it.

Conditions in Penal Institutions for Children and Young Persons
on Remand

Conditions

<u>Institution</u>	segregated from adult remands	segregated from sentenced	separate cells	separate recreation	separate visiting
Arohata	yes	yes	yes	yes	yes
Christchurch Women's	yes	yes	yes	yes	yes
Christchurch	if practicable	if practicable	if practicable if ordered	yes	yes
Dunedin	yes	yes	yes	yes	yes
Invercargill	yes	yes	yes	yes	yes
Mount Eden	yes	yes	yes	yes	no
Napier	no	no	if ordered by Court		no
New Plymouth.	yes	yes	yes	yes	yes
Waikeria	yes	yes	yes	yes	yes
Wanganui	yes	yes	yes	yes	yes
Wellington	yes	yes	no	yes	yes

APPENDIX 3Definitions

- Age:** calculated from date of birth to first day of custody.
- Race:** as specified in probation reports or by the Police. The official definition is that a person of Maori ancestry may classify himself as Maori if he so wishes (section 2 (1) Maori Affairs Amendment Act, 1974).

APPENDIX 4CHILDREN AND YOUNG PERSONS REMANDED TO SOCIAL WELFARE
INSTITUTIONS

The Department of Social Welfare has provided us with basic data on the number of children and young persons remanded to Social Welfare Institutions during the period 1 January 1977 to 31 March 1978. This covers the same period as the penal institution study. Because of the nature of this data, the number of children and young persons remanded by the Courts to Social Welfare custody can be regarded as a minimum only.

When a child or young person enters a Social Welfare institution he is recorded according to his status at that time. He is received either on warrant or on remand. "Warrant" refers to a warrant under s.28 of the Children and Young Persons Act 1974, whereby a Magistrate, Justice of the Peace or Registrar may issue a warrant prior to a court hearing. At a later date, the Court may also order that that person be held in Social Welfare custody on remand. In the data available such changes of status are not indicated and time did not allow us to investigate further. Thus there is an unknown number of persons not recorded in the remand figures. "Remand" refers to person who entered a Social Welfare institution in the first instance by means of a court remand order.

Over the 15 month period there were 285 girls and 359 boys in Social Welfare institutions on warrant. Doubtless, some of these were also eventually in custody on remand. Over the same period there was a minimum of 340 girls and 799 boys in Social Welfare institutions on remand following a court appearance.

Because of these limitations of the data an exact statement as to the proportion of children and young persons remanded to prisons as opposed to Social Welfare institutions cannot be made. However, we know that at least 1,244 children and young persons were remanded in custody by the courts, and that at the most 35.8% (445) of these were to penal institutions. Unfortunately we do not know how many of the "warrants" were later reinforced by court orders and consequently cannot estimate how much smaller the true proportion was.

Table 1 Age of girls in Social Welfare Institutions on remand,
1 January 1977 to 31 March 1978

<u>Institution</u>	<u>Age</u>								<u>Total</u>
	<u>9</u>	<u>10</u>	<u>11</u>	<u>12</u>	<u>13</u>	<u>14</u>	<u>15</u>	<u>16</u>	
Allendale Road	-	-	-	2	3	7	3	-	15
Bollard	-	-	-	-	10	22	17	16	65
Dunedin	-	-	-	1	2	14	7	4	28
Hamilton	-	-	-	3	26	38	24	7	98
Palmerston	-	-	-	2	3	21	13	4	43
Strathmore	1	-	-	2	3	11	8	2	27
Wellington	-	-	-	3	11	22	23	5	64
TOTAL	1	-	-	13	58	135	95	38	340

Table 2 Age of Boys in Social Welfare Institutions on remand,
1 January 1977 to 31 March 1978

<u>Institution</u>	<u>Age</u>												<u>D.K.</u>	<u>Total</u>
	<u>6</u>	<u>8</u>	<u>9</u>	<u>10</u>	<u>11</u>	<u>12</u>	<u>13</u>	<u>14</u>	<u>15</u>	<u>16</u>	<u>17</u>	<u>18</u>		
Christchurch	-	1	-	-	2	3	2	6	12	11	-	-	-	37
Dunedin	-	1	-	2	1	-	7	8	14	10	-	-	-	43
Epuni	-	-	-	-	5	7	26	41	45	35	-	-	1	160
Hamilton	-	-	1	4	5	14	30	85	58	13	-	-	-	210
Owairaka	1	-	-	-	-	3	8	85	122	99	1	1	2	322
Wesleydale	-	1	1	1	5	3	14	1	-	-	1	-	-	27
TOTAL	1	3	2	7	18	30	87	226	251	168	2	1	3	799

The information contained in table 2 and summarised in table 3 confirms the conjecture on page 6 that boys remanded in custody to Social Welfare institutions are a considerably younger group than those remanded to penal institutions.

Table 3 Age comparison of Penal and Social Welfare Institution
remands, males only, 16 years and under

<u>Age</u>	<u>Penal Institution</u>	<u>Social Welfare Institution</u>
	%	%
Under 14	-	18.7
14	1.8	28.5
15	21.3	31.6
16	76.9	21.2
<hr/>		
TOTAL	100.0	100.0

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