

RESEARCH REPORT

# The Waitakere and Manukau Family Violence Courts: An evaluation summary



MINISTRY OF  
**JUSTICE**  
*Tāhū o te Ture*



# **The Waitakere and Manukau Family Violence Courts: An evaluation summary**

**Trish Knaggs  
Felicity Leahy  
Nataliya Soboleva  
Su-Wuen Ong**

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# Executive Summary

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This document summarises major findings from recently completed reports on the Manukau and Waitakere Family Violence Courts<sup>1</sup>. Information for these reports was collected using both qualitative and quantitative methods.

The findings, although subject to limitations, will help improve processes at both Family Violence Courts, and inform the development and implementation of additional Family Violence Courts.

## **Establishment of Family Violence Courts in New Zealand**

Family Violence (FV) Courts in New Zealand are a judicial initiative, and incorporate some aspects of problem-solving courts. Therapeutic jurisprudence is also reflected in the Waitakere FV Court process.

The Waitakere FV Court began in 2001. The Manukau FV Court was implemented in 2005 after long-standing collaboration with community organisations that had previously introduced fast-tracking and victim advocacy within the Henderson District Court. These courts aim to provide a more holistic response to family violence than that currently available in the conventional court setting. FV Courts also seek to provide a more timely response to family violence, enhance safety for victims and families experiencing family violence, and encourage accountability among offenders. The Waitakere FV Court has an additional aim to provide specialist services to victims, offenders and those involved in the operation of this court.

This research indicates Waitakere and Manukau FV Courts are doing much to provide this type of response. Alongside a desire to process family violence matters swiftly, FV Courts seek to do everything possible to maintain the safety of victims and families. These courts also focus on encouraging offenders to attend programmes, not only because they are seen as an opportunity for offenders to accept they are accountable for their offending, but also because in the longer term the safety of victims will be enhanced. Operationalising and maintaining such an approach requires considerable commitment and the findings describe how this is being achieved at both courts.

## **Timely resolution**

FV Courts aim to resolve family violence matters quickly. This is considered advantageous to victims because it increases the likelihood they will remain engaged with the court process. These evaluations suggest offenders benefit by rapid disposal because they are more likely

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<sup>1</sup> The Manukau Family Violence Court: An Evaluation of the Family Violence Court Process (Knaggs, Leahy & Soboleva 2007); Responding Together: An Integrated Report Evaluating the Aims of the Waitakere Family Violence Court Protocols (Coombes et al. 2008); The Waitakere Family Violence Court: Outcome, sentencing and reconviction analysis (Soboleva and Ong Su-Wuen 2008 - unpublished).

to be receptive to a programme if they engage with the FV Court process sooner rather than later.

In order to provide this timely response, each FV Court sits on a specific day or days each week. Additional days are scheduled for defended hearings, and other days are allocated to deal solely with sentencing matters. Not asking for a plea when a person appears in the list court<sup>2</sup> is considered to reduce the number of not guilty pleas, and thus enable faster resolution.

Alongside this, processes have been developed to deal with family violence matters as quickly as possible, protocols and guidelines exist for streamlining processes, and additional days are scheduled when backlogs begin to develop.

Both courts believed their operation is smoothed significantly because of the long-standing involvement of various people including judges, court staff, police prosecutors, probation officers, and, in the case of the Waitakere FV Court, programme providers and community victim advocates. Communication processes have therefore been well honed, and there is wide support for the philosophy of the FV Court.

The extent to which FV Courts can respond in a timely fashion to family violence matters depends largely on resources. Increasing courtroom availability as well as more judges and court staff, would enhance the ability of these courts to provide this speedy response to family violence matters. Similarly, programme provision and monitoring requires additional resources so that issues experienced by 'self referrals' do not continue to impact on the court time and programme completion. The increasing numbers of not guilty pleas are not particularly resource-related, but need to be addressed if these courts are expected to respond more quickly than is currently possible in the conventional court setting.

## **Safety**

The evaluations identified ways in which FV Court processes protect victims and their families. The Waitakere FV Court, for example, allows for Community Victim Advocates to provide considerable support for victims and their families during their involvement with the court, as well as support in the longer term. Victim Advocates also allow for significant exchange of information between the FV Court, community organisations and programme providers, which ensures the court is fully aware of issues relating to victim safety and an offender's programme attendance. Although not advocates, Ministry of Justice Victim Advisers at both courts also provide information to victims about the court process and Protection Orders, for example, and provide information to the court on behalf of victims.

The research has identified, however, that victim safety may be compromised by some processes at these courts. Safety might be enhanced if programmes were more closely monitored, 'self referrals' were not required to pay for programmes, and Protection Orders were encouraged. The research also described how the delays due to not guilty pleas and defended hearings impact on the safety of victims and families.

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<sup>2</sup> District Court hearings (almost daily in most places) where the defendant makes a first appearance. Sometimes known as the 'police court' or 'first call court'.

## **Accountability**

Both FV Courts seek to hold offenders accountable for their behaviour. The assumption being that promoting their accountability will result in fewer reconvictions and a safer environment for victims and families. Encouraging guilty pleas, offenders attending a programme or some other intervention, and requiring they report back on progress are some of the ways in which these courts encourage accountability and responsibility in offenders.

Insufficient funding for providers, participants failing to complete a programme, the inability of participants to pay, and lack of monitoring, were identified as obstacles to these FV Courts enhancing accountability and holding offenders accountable. Other factors possibly bearing on accountability include the court's use of s106 discharges without conviction, particularly as these may be conveying the impression that family violence is not serious. Replacing charges with ones which are less serious may also risk creating the wrong impression.

Reconviction analysis findings provide further information about the potential for FV Courts to enhance accountability, but should be treated with considerable caution. On the basis of one-year reconviction rates, the introduction of the Waitakere FV Court has not had any significant effect on family violence reconvictions. The overall family violence reconviction rate rose by 4 percentage points after the FV Court was established in Manukau.

Further research, such as programme evaluation, interviews with offenders, and another reconviction analysis at some point in the future would broaden our understanding of accountability and FV Courts in New Zealand.

## **Concentrating specialist services**

The Waitakere FV Court also aims to ensure that a specialist service is available for this court. This specialisation involves extensive collaboration between this court and community organisations, and is considered an important part of this court. Proponents believed this specialisation is possible because of the collaboration with community agencies, and by individuals with a thorough understanding of family violence dynamics. Such an approach recognises that family violence frequently requires responses which are holistic in nature, and usually beyond those available within the criminal justice sector. The Waitakere report (Coombes et al. 2008) further identifies how this specialist service operates at the Waitakere FV Court, and discusses the overall benefits of this approach, such as increasing safety for victims and families, providing the court with more information, and increased monitoring.

## **Summary and implications for policy and practice**

Positive aspects of the operation of these two FV Courts have been identified in these evaluations. Clearly proponents of FV Courts are doing much to improve the way in which courts respond to family violence. The research has also identified ways in which the operation of these courts can be improved. Implications for policy and practice arising from these evaluations include:

- addressing the need for more courtrooms, judge-time and court staff

- increasing funding available for programmes attended by people who ‘self refer’ from the FV Courts
- improving programme availability, and capacity and capability of local programme providers
- monitoring of programme attendance and completion for people who ‘self refer’
- providing family violence training for those involved in the operation of FV Courts
- enhancing safety for victims and families by, for example, improving victim advocacy
- consolidating relationships with the Family Court
- encouraging use of Protection Orders
- developing collaborative relationships with community organisations
- addressing FV Court data issues.

Responding quickly to family violence, protecting victims and their families, encouraging accountability and providing a specialist service are clearly important to the operation of these courts. Findings from all the research summarised here will help refine processes and practices at current and future FV Courts.

# 1 Introduction

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This report summarises major findings from recent evaluative work focusing on the court processes of the Manukau and Waitakere Family Violence (FV) Courts<sup>3</sup>. Determining what should be included in this summary given the diversity of these reports and the technical nature of the statistical analysis has been a challenge. Nevertheless, the findings described in this summary, together with those provided in the original reports, will contribute to the refinement of these two courts, and identify good practice for the establishment of additional FV Courts in New Zealand.

## 1.1 Background

Two FV Courts existed in New Zealand at the time these evaluations commenced. The Waitakere Family Violence Court began in 2001 and the Manukau FV Court in 2005. Another four have recently been established in Lower Hutt, Porirua, Wairarapa and Auckland, and others are planned.

FV Courts in this country are a judicial initiative. The Waitakere and Manukau FV Courts were established so that the court could respond more rapidly to offending, encourage offender accountability, and enhance victim safety. The FV Courts also sought to deal with family violence in a more holistic way than was possible in the traditional court setting.

Evaluations of the two FV Courts were required as further FV Courts were to be established. The Ministry of Justice's Research, Evaluation and Modelling Unit subsequently conducted an evaluation of the Manukau FV Court processes during 2007<sup>4</sup>. Objectives for this evaluation were to:

- Describe the operation of the Manukau Family Violence Court.
- Assess the extent to which the Manukau FV Court process enables complainants to be more involved in the court process.
- Assess the extent to which the Manukau FV Court enables more rapid disposal of family violence matters.
- Describe how complainants and defendants perceive the Manukau FV Court, and extent to which they feel safer as a result of this involvement.
- Examine outcomes and sentences given at the Manukau FV Court.
- Assess the extent to which Manukau FV Court offenders are reconvicted.

Massey University researchers undertook an evaluation of the Waitakere FV Court protocols during 2006 and 2007, and interviews with victims and stakeholders in 2007 (Coombes et al. 2008). Objectives for this evaluative work were to:

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<sup>3</sup> See Footnote 1.

<sup>4</sup> See Footnote 1.

- Describe the operation of the Waitakere FV Court.
- Discuss the role of non-government organisations in the Waitakere FV Court, assess the level of support they provide, and at what cost.
- Describe programmes provided by non-government organisations to both victims and offenders who have been involved with the Waitakere FV Court.
- Describe the perceptions of some victims who have been involved with the Waitakere FV Court, including the degree to which they feel safer as a result of this involvement.

The objectives of the sentences and outcomes study and reconviction analysis which was conducted by the Ministry of Justice were to:

- Examine outcomes and sentences imposed at the Waitakere FV Court.
- Assess the extent to which Waitakere FV Court offenders are reconvicted.

## **1.2 Outline of this report**

Chapter 1, the Introduction, is followed by a description of the establishment of the two FV Courts in Chapter 2. Chapter 3 summarises methodologies used in the evaluations. Chapter 4 sets out findings relating to various parts of the FV Court process. Results from the outcome, sentence and reconviction analyses conducted for both courts are presented in Chapter 5. Chapter 6 summarises findings and identifies some implications for policy and practice.

## 2 Establishment of Family Violence Courts in New Zealand

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Family Violence Courts in New Zealand are a judicial initiative operating within the criminal jurisdiction, and follow an international trend to implement problem-solving courts for specific social problems. Domestic violence problem-solving courts, for example, generally respond to the underlying issues which have led to the domestic violence, by providing some form of programme or intervention to reduce the likelihood of future offending. Common elements of problem-solving courts include voluntary participation, judicial monitoring, hearings to determine progress, and a less adversarial approach (Brookbanks & Woodward 2007). Extensive commentary on problem-solving courts is available, for example, Berman and Feinblatt (2001), Freiberg (2001), Payne (2006), Davis, Smith & Rabbitt (2001), and Vallely, et al. (2005).

New Zealand Family Violence Courts incorporate some aspects of problem-solving courts. At the Waitakere FV Court, therapeutic jurisprudence provides opportunities to use court sanctions and programmes to effect a reduction in reoffending. The extent to which the New Zealand FV Court processes were intended to replicate overseas models is not clear, and this needs to be borne in mind when reading this report.

### 2.1 Waitakere FV Court

FV Court proponents in Waitakere believed the District Court could provide a more holistic and rapid response to family violence offending if a separate FV Court was established. The Waitakere Family Violence Court subsequently began operation in 2001, and adopted an innovative approach which included use of Victim Advocates, judicial monitoring, and community organisations providing specialist services to the Waitakere FV Court.

The Waitakere Domestic Violence Project was established in 1992, and the later Waitakere Anti-Violence Essential Services (WAVES) led to the creation of the Waitakere FV Court in 2001. WAVES became a family violence network organisation operating on the principle of network collaboration similar to the coordinated response to domestic violence and 'fast tracking' system derived from the Duluth Abuse Intervention Project model. WAVES includes representatives from government and non-government with a commitment to reducing family violence, and working in consultation with the judiciary. This collaboration initially focused on victim advocacy, and programmes for offenders became available later (Morgan et al. 2007).

The objectives of the Waitakere FV Court, and its 2005 protocols, are to:

- overcome systemic delays in the court process
- minimise damage to families by delay
- concentrate specialist services within the court process
- protect victims of family violence consistent with the rights of defendants

- promote a holistic approach in the court response to family violence
- hold offenders accountable for their actions.

## 2.2 Manukau FV Court

The second FV Court in New Zealand was established at the Manukau District Court in 2005. Judge Russell Johnson (now Chief District Court Judge) was influential in setting up the Waitakere Family Violence Court, and believed a similar initiative could be successful in Manukau. A working group was subsequently established to develop the Manukau Family Violence Court.

Like Waitakere, Manukau proponents believed quicker case disposal would result in safer and more satisfactory outcomes for victims, reduce the risk of further violence while cases are waiting to be heard, and thus contribute to the overall aim of reducing family violence in Manukau.

The objectives<sup>5</sup> of the Manukau FV Court are to:

- minimise delays in the resolution of family violence cases
- promote the accountability of perpetrators of family violence
- enhance the safety of victims

## 2.3 FV Court guiding documents

Evaluative work at both these FV Courts revealed that their processes were guided and informed by various documents.

### Practice Note

Processes at the two FV Courts are informed by the 2004 Practice Note on Domestic Violence Prosecutions issued by the Chief District Court Judge (Appendix 1). This Practice Note introduced a standard procedure for management of domestic violence prosecutions, and gave priority to domestic violence cases so they can be 'heard and finalised with the least possible delay'. Time limits for cases prescribed in this note are:

- A plea to a domestic violence charge is to be heard within 2 weeks of the defendant's first appearance.
- A status hearing (if held) for defendants pleading not guilty is to be within 4 weeks of the plea.
- A defended hearing is to be held within 6 weeks of a not guilty plea or status hearing (if held).
- Domestic violence charges are to be heard and determined within 13 weeks.

<sup>5</sup> The objectives of the Manukau Family Violence Court were outlined in a speech by Judge Phil Recordon at the 'Towards a Restorative Society Symposium', Wellington, October 2005.



## **Process document**

Manukau FV Court procedures are described in the Process document, established when the court was implemented (Appendix 2).

## **Protocols**

The protocols (Appendix 3) describe the level of community involvement, and reflect the importance of community advocacy and collaboration with the court, victim support, programmes for offenders, and timely response to family violence matters. The first Waitakere FV Court protocol was developed in 2001. The 2005 revised document, 'Protocols Relating to the Family Violence Court at Waitakere District Court' addressed the introduction of Court Victim Advisers and represented the outcome of negotiations between Waitakere Anti-Violence Essential Services network (WAVES), the judiciary and other stakeholders (Coombes et al. 2008).

The 2005 revised protocols are likely to have affected the operation of the Waitakere FV Court. Possible changes include the use of particular types of sentences, number of not guilty pleas, and offenders' engagement with programmes or some other intervention. It is also possible the level of information available to the court and others would have changed, as well as the ability of victims to contribute to the process<sup>6</sup>.

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<sup>6</sup> Two samples, pre- and post-2005 protocols, are included for comparison in the Waitakere FV Court reconviction analysis because of the possibility the 2005 protocols would have affected the operation of this court in these ways.



## 3 Methodology

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Qualitative and quantitative methods were used to collect information about the operation of these two FV Courts.

### 3.1 Interviews

Thirty-one key stakeholder interviews were undertaken between late-2006 and mid-2007, and the operation of the Manukau FV Court was observed.<sup>7</sup> Perceptions of victims' and offenders' experiences with this court were sought from programme providers.

With regard to the Waitakere FV Court, Interpretative Phenomenological Analysis<sup>8</sup> (Smith & Osborn 2003) was used to analyse interviews with 23 key informants from government and non-government organisations (Morgan et al. 2008). In addition, nine women victims whose partners received the sentence, 'to come up for sentence if called on' at the Waitakere FV Court, and three victim advocates were interviewed (Coombes et al. 2008).<sup>9</sup>

### 3.2 Outcome and sentencing study, and reconviction analysis

Statistical analysis identified the outcomes and sentences given to defendants in each FV Court and compared these with those given in other courts. Main outcomes and sentences for FV cases were examined. These were defined as the most serious final disposition of family violence charges within a case and as the most serious sentence given for family violence offences within each case. Information on all types of imposed sentences was analysed as well. Appendix 4 provides further detail of this analysis for each court.

The reconviction analysis described the extent to which people who were convicted or discharged without conviction in each FV Court had been reconvicted, either for reoffending in general or for family violence-related reoffending, and then compared these reconviction patterns with offenders from other courts. A reconviction was defined as a proved charge (i.e. a charge that resulted in a conviction or in a discharge without conviction) for an offence where the offence date occurred within one year from the date when the original conviction was finalised. See Appendix 5 for further detail of this analysis.

### 3.3 Limitations

One of the limitations of these evaluations is that no victims or offenders were interviewed for the Manukau FV Court evaluation. Rather, information on how these groups might have perceived their experiences with this court were provided by stakeholders. Although some

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<sup>7</sup> Key stakeholders interviewed were FV Court judges, court staff, police, community probations, programme providers, and defence counsel.

<sup>8</sup> Exploring how participants are making sense of their social world (Smith & Osborn 2003).

<sup>9</sup> 'To come up for sentence if called on' is an order whereby, if the offender is convicted of a subsequent offence within a fixed term, he or she may be re-sentenced for the original offence (s110 Sentencing Act 2002).

Waitakere FV Court victims were interviewed the number was small (nine) and all were women whose partners had pleaded guilty before the court. No offenders were interviewed. Further research would significantly enhance our understanding of the experiences of victims and offenders with FV Courts.

The outcomes and sentencing analysis results are subject to limitations. These include changes to sentencing practices as a result of the Sentencing Act 2002. Offences used in the analysis do not represent all possible family violence offences. Also, matching cannot take into account all of the circumstances of each case. Finally, cases involving FV offences may also include other offences that have an influence on sentencing. It was not possible to reduce this influence entirely. See Appendix 6 for further detail.

The reconviction analysis is also subject to limitations. For example, offences used to select the samples of offenders represent just some of all possible family violence offences, reconviction rates do not necessarily represent actual reoffending, and some offences committed within the one year follow-up period may not have been dealt with within the one year follow-up period. In addition, the analysis has not accounted for factors, other than the FV Court, such as personal circumstances, age and motivation, which may influence reconviction. Appendix 7 describes these limitations in more detail.

### **3.4 Ethics and Safety**

The Manukau FV Court evaluation was conducted in accordance with ethical principles set out in the Australasian Evaluation Society Code of Ethics, and strategies were developed to ensure these principles were put into practice. The Justice Sector Research Group reviewed this proposal and commented on the various documents, including interview schedules and participant information sheets. Changes were made as a result of this review.

The Waitakere FV Court evaluation was approved by the Massey University Human Ethics Committee in early 2006 and mid-2007.

## 4 Operation of the Waitakere and Manukau Family Violence Courts

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This section focuses on specific aspects of the Waitakere and Manukau FV Courts processes – hearings, victim advocacy, Protection Orders, programmes, collaboration, resources, case numbers, disposal time, pleas, and charge seriousness.

### 4.1 Hearings

Both Family Violence Courts are open to the public, sit on specific days each week, and deal with family violence cases. Channelling these matters into a different court process should allow the court to provide a holistic and quicker response, and in the case of Waitakere, enables more efficient use of specialist services (Coombes et al. 2008).

Defendants are not asked to plead at their first appearance in the list court. This ‘cooling down’ period is intended to reduce the ‘not guilty’ pleas, which usually occurred previously when defendants were asked to plead at the arrest court. Instead, defendants are required to appear as soon as possible in the FV Court at which time a plea is sought. Prior to the FV Court hearing, the Police Prosecutor and defence counsel exchange information about the case. Community organisations may also be involved in information exchange at the Waitakere FV Court.

The time frames for the prosecution of domestic violence cases are specified in the Domestic Violence Prosecutions Practice Note issued by the Chief District Court Judge in 2004, and both FV Courts aim to dispose of these matters within these timeframes. A key component of the FV Court process is to enhance victims’ safety through rapid disposal of family violence matters.

FV Court judges and others involved in the process are required to adopt a less formal and more cooperative approach than would be the case in the conventional court setting. At hearings sentence indications are given, and the judge and other parties discuss how the issues leading to the offending might be resolved.

The Manukau FV Court deals with family violence matters after they have been through the list court. Cases identified as family violence are diverted into a list to be heard at the next available FV Court sitting. The Manukau FV Court sits every Thursday in a courtroom set aside for this court, and additional sitting days are scheduled as required. Defended hearings take place every Monday, and the court tries to ensure these hearings occur no later than six weeks after not guilty pleas have been entered.

The Waitakere FV Court sits each Wednesday and deals solely with family violence matters, and sentence indications are provided. Victim Advocates ensure the court is aware of victims’ circumstances. Currently defended hearings occur on Fridays.

Consistency in both the operation of each FV Court and the people involved is important for each court. On the whole, the same key people have been involved with the Manukau FV Court since it began. Participants believed this consistency, together with good communication processes and a shared understanding of how the court should operate, assisted the court's day-to-day operation. Key informants commented that the court ran less smoothly when it included people who were unfamiliar with the operation and principles of the FV Court. They also suggested that at these times there were perhaps more adjournments and defended hearings, and that some Manukau FV Court defence counsel decided whether or not to proceed depending on what judge was presiding on a particular day.

A Community Probation Officer is present at every Family Violence Court list day in the Manukau FV Court. Their role, as in other criminal summary hearings, is to be on hand to provide input in the event a defendant pleads guilty and a judge is required to sentence an offender. They also contribute if a community order has been breached and a prosecution is possible. Manukau FV Court Probation Officers also provide oral stand down reports to judges on list days.<sup>10</sup>

Operational consistency in the Waitakere FV Court is determined by the protocols. Research found this was achieved by consistent staff, information exchange, and providing a coordinated specialist service (Coombes et al. 2008).

## **4.2 Defended hearings**

FV Court defended hearings take place every Monday at the Manukau District Court, and on Fridays at the Waitakere District Court. They are open to the public, and follow a similar process to other defended hearings in the District Court, and are expected to take place as soon as possible. At Manukau FV Court, defended hearings are likely to be in front of a judge who is not regularly involved with FV Court cases. At Waitakere FV Court, defended hearings will probably be heard by a FV Court judge, and processes for these hearings are set out in the 2005 Protocols.

## **4.3 Victim advocacy**

Victim advocacy is a major point of difference between the two FV Courts.

At the Waitakere FV Court, Community Victim Advocates support and advocate for victims and can speak at the court on their behalf. Stakeholders at Waitakere FV Court believed this considerably enhanced victim safety. This victim advocacy arose out of long-standing collaboration between the Waitakere FV Court and Waitakere Anti-Violence Essential Services (WAVES), a network of community service organisations responding to family violence in the Waitakere district (Coombes et al. 2008). This type of victim advocacy provides victims with opportunities to provide input into the proceedings, and enables them to receive ongoing support and referral services from people who are knowledgeable about the dynamics of family violence.

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<sup>10</sup> Oral reports provided by a Probation Officer after the matter has been 'stood down' for a few hours.

Although Victim Advisers (VAs) are available at the Waitakere FV Court, they do not advocate on behalf of victims, nor do they sit in the FV Court. Their role is to provide victims with information about their case, advise them about their rights in the court process, and help them participate in the court system.

At the Manukau FV Court, the situation is somewhat different. Victim Advisers provide support and information to FV Court victims, but do not advocate on behalf of victims. Prior to the court appearance, VAs explain the FV Court process to victims, encourage them to attend the hearing, and keep them informed of progress of their case. A VA is present at every FV Court hearing, and provides the judge with a written statement incorporating a victim's view, and which has been drafted with input from victims. This statement indicates whether the complainant will be in the FV Court and if they are willing to be identified. In addition, VAs at the Manukau FV Court provide information about Protection Orders, programmes, community support and local refuge services

## **4.4 Protection Orders**

Protection Orders can be granted for parties going through the FV Court, but are processed by the Family Court. Protection Orders were frequently granted when the Manukau FV Court began but are now very much less frequent. The Process document (Appendix 2) states that Final Protection Orders will be encouraged.

Reasons suggested at Manukau for the marked decrease in current usage of Protection Orders at the FV Court, included the lack of familiarity with the Domestic Violence Act 1995 of those involved with the FV Court, or current FV Court judges favouring other alternatives. Defence counsel indicated they actively discouraged clients from consenting to Protection Orders in the Family Violence Court because of implications for clients under the Care of Children Act 2004 and the Bail Act 2000, and penalties for breaching Protection Orders.

When the FV Court is advised a Protection Order application is to be made, the matter is stood down for two hours. This allows the Family Court Coordinator to assist with the Protection Order application and for it to be considered by a Family Court judge. This occurs in both FV Courts, but at Waitakere FV Court the Victim Advocate would provide assistance and immediate and long-term support for victims. This process includes recommending programme referral for defendants, providing victims with programme information, and preparing draft orders and certificates of service. Before the defendant leaves the FV Court, the Protection Order is served together with a direction to attend a programme.

## **4.5 Programmes, counselling and referrals**

The FV Court seeks to achieve another of its objectives, enhancing accountability, by encouraging defendants to accept responsibility for their offending through attending voluntary or compulsory programmes. FV Court proponents believed encouragement and discussion at the hearing, together with the FV Court's overall holistic approach and input from others where required, can provide opportunities for offenders to accept responsibility for their behaviour, and additional ways of holding offenders accountable.

Both FV Courts encourage defendants to accept responsibility by holding them accountable for their offending, and encouraging them to complete a programme or counselling. Stakeholders also indicated the court needed to ensure defendants understood what the court expected of them after they left the court. For example, they should leave the court with a clear understanding that they may need to find and complete a programme, that they may have to pay for it, and return to the court at a later date. Particular effort may be required for those offenders whose first language is not English. In the longer term any misunderstanding has implications for offenders, their families, and for the operation of the FV Courts.

### **Referral through Supervision or Protection Order**

Manukau FV Court defendants can access free Ministry of Justice-approved programmes<sup>11</sup> if attendance is included as part of a defendant's sentence of Supervision. In this case, monitoring is undertaken by the Community Probation Service and progress is reported to the FV Court.

A second means of attending a free programme occurs when a Protection Order is granted. Once granted they require respondents to attend a programme under the Domestic Violence Act 1995, and also provide free voluntary programmes to victims and their children.

### **Relationship counselling, s9 Family Proceedings Act 1980**

Up until recently, the FV Court has also referred people to approved counselling under s9 of the Family Proceedings Act 1980. This counselling is available through the Family Court, and helps couples resolve disagreement or conflict in their relationship. Because of safety concerns such referrals are now no longer made.

### **'Self referral' to programme**

Programmes can also be accessed if FV Court defendants 'volunteer' to attend a programme. This 'voluntary' component is what makes this programme component different to those mentioned above. After pleading guilty, these defendants indicate they will voluntarily complete a programme, or some other intervention. Once the FV Court has accepted the offer to 'self refer', a date is set three months later to allow time for offenders to complete the course, and to report on their progress to the court. Stakeholders acknowledged the advantages of providing offenders, particularly first time offenders, with the opportunity to complete a programme to stop their violence or, for example, address their substance abuse, and thus avoid a conviction.

'Self referrals' have become a concern for the Manukau FV Court for a number of reasons. Their growing numbers are creating financial pressure so that some providers are now requesting payment from participants. Many 'self referrals' cannot pay and so cannot complete the programme. This non-completion has had a significant 'snowball' effect on the Manukau FV Court to the extent that additional days have recently been scheduled to deal

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<sup>11</sup> These group and individual programmes have been approved by a statutory panel to ensure programmes are of a high standard, staff are qualified, and providers are credible.



solely with 'self referrals'. Sometimes the only response available to FV Court judges is to convict an offender thus providing access to a free programme. Unfortunately, this creates situations where those who cannot pay are more likely to receive a conviction. Those who can pay, on the other hand, are less likely to be convicted even though they may have committed a similar offence, and have a similar history. Other concerns about 'self referrals' include insufficient monitoring of attendance, lack of information about 'self referrals' available to providers and the potential safety risks each of these may create.

Some informants were doubtful about the potential for the FV Court, or programmes, to increase responsibility and accountability in offenders. There was concern that holding offenders accountable was less likely given the slippage in time frames, and insufficient monitoring of 'self referrals' at the Manukau FV Court.

## **4.6 Monitoring programme attendance**

When defendants attend programmes as a result of a Protection Order or because it is part of their sentence, monitoring is provided by the programme providers or by the Probation Service, and information about programme attendance is passed on to the FV Courts.

When people 'self refer' to programmes at the Manukau FV Court, however, monitoring consists solely of the FV Court setting a date three months in advance for the defendant to reappear, report on progress and for the court to dispose of the matter in some way. At the Waitakere FV Court monitoring of 'self referrals' appears to be more intensive. Offenders make more court appearances to report on progress, and additional input from Victim Advocates is provided to the court on, for example, safety issues. Although this higher level of monitoring accords with a therapeutic jurisprudence approach, the research noted this is resource-intensive, and likely to contribute to delays. In response, the court has reduced the number of times these defendants reappear in court. This will probably reduce some of the demand for courtrooms, court days and judges but may impact on programme completion in the longer term.

At this next scheduled appearance in the FV Court, defendants report on their progress with the programme, and provide written evidence if they have completed it. The judge may also ask the defendant to describe what they have learned and if present and willing to be identified, the victim may also be asked whether the situation has improved. If the programme has been completed satisfactorily, a s106 discharge without conviction is likely.

A range of options are available if a programme has not been completed. The court may consider that the defendant has completed a programme if they have attended perhaps 16 of the 18 sessions. If cost or a lack of motivation is relevant, a pre-sentence report is usually requested. Further discussion as to how the situation might be addressed, and alternatives such as their suitability for other types of programmes, may also be raised at this point. In the case of more serious offending, a pre-sentence report is requested so that a person can be directed to undertake a programme as part of their sentence. A further remand to another FV Court date is also likely.

## **4.7 Collaboration with community organisations**

The level of collaboration between the two FV Courts and their local community organisations is another key point of difference between each and appears to have been determined by the environments that existed at the time of their establishment.

There is significant collaboration between the Waitakere FV Court and community agencies. Historically, the community has had significant involvement with the Waitakere FV Court. In brief, this began in 1992 with Waitakere Anti-Violence Essential Services (WAVES), a network of community service organisations responding to family violence in the Waitakere area. As well as providing victim advocacy, this collaboration has resulted in the development of various protocols. The 2005 protocols document the processes of the Waitakere FV Court and for working with WAVES.

The Manukau FV Court, on the other hand, has traditionally had minimal contact with local community organisations. The court has recently resumed contact with the South Auckland Family Violence Prevention Network (SAFVPN). This network, set up during the establishment of this court, is an umbrella group encompassing 360 different agencies and community organisations in the Manukau area, and provides a forum for community groups to air concerns about the FV Court.

## **4.8 Resources**

Both Family Violence Courts are currently resourced from within existing District Court resources, and research participants from both courts believed this had led to operational difficulties. Processing existing volumes within the time frames and available hearing days, and limited judge numbers and court staff have contributed to slippages in time frames. The subsequent backlog has created significant pressures for all those involved in the operation of the FV Court, particularly at Manukau. Limited resources have also meant community organisations cannot be funded for providing programmes to 'self referrals', which has created considerable financial pressure for these organisations.

## **4.9 Case numbers**

Between 1 July 2005 and 30 June 2007, Waitakere FV Court finalised 912 cases. This was considerably fewer than Manukau FV Court where 857 cases were finalised in 2005 (February to December 2005), and 862 in 2006 (January to November 2006).

These figures indicate the greater volumes encountered by the Manukau FV Court. Stakeholders indicated this court frequently deals with up to 60 cases per list day, and sometimes more than 70 at other peak times, such as after the summer holidays. Adjournments and the proportion of not guilty pleas have also increased. Research participants were concerned this situation had reduced the Manukau FV Court's ability to provide rapid case resolution, reduced time available for judges to engage in discussion during the hearing, and created some dissatisfaction in some quarters with the current Manukau FV Court system.

Explanations for time frame pressures included the high level of family violence in the Manukau area, increased family violence reporting, and greater Police focus on family violence. Defendants returning to the FV court for sentencing after 'self-referral' to a programme may also add to case numbers on list day. Defence counsel waiting until before the hearing to contact the Police Prosecutor, instead of several days in advance, was also suggested as an explanation for increasing adjournments.

Additional days have now been scheduled at both FV Courts in an attempt to reduce this backlog. At Manukau FV Court the number of cases scheduled for one sitting of the FV Court has been capped. Another solution offered was that offenders should make their first appearance in the FV Court, rather than in the list court.

#### **4.10 Disposal time**

Informants considered that resolving matters quickly was helpful for both victims and offenders because they are then more likely to remain engaged with the court process. Stakeholders also believed offenders benefited from earlier disposal, rather than later, because they were more likely to be more receptive to attending a programme at this time.

The Practice Note (Appendix 1, Clause 10) states '...any domestic violence charge is to be heard and determined, with the exception of any sentencing, within 13 weeks (i.e. three months) after the defendant's first appearance'. Meeting this time frame, however, is obviously dependent on factors such as court caseload, resources, complexity of individual cases, and the timeframe should not be prioritised over the provision of information on victim safety to the court.

At the Manukau FV Court, between February 2005 and November 2006, 70% of cases were finalised within 13 weeks. The percentage of cases finalised in this time was higher, however, in 2005 (76%) than 2006 (61%). Forty-one per cent of cases at Waitakere FV Court during 1 July 2005 to 30 June 2007 were finalised within 13 weeks.

#### **4.11 Charges by plea type**

At the FV Court defendants are discouraged from entering a plea on their first appearance in the list court. Instead, a 'cooling off' period is allowed and the defendant is not asked to plead until their appearance in the FV Court, typically two to three weeks later. This period provides offenders with some time to consider the consequences of their behaviour, and seek legal advice before entering a plea.

Between February 2005 and November 2006, 21% of family violence offence charges resulted in a not guilty plea at the Manukau FV Court. In 2005, 14% of charges resulted in a not guilty plea compared to 27% in 2006. The reason for this change is not clear but the greater proportion of not guilty pleas in 2006 is likely to have impacted on the court's ability to dispose of cases quickly as not guilty pleas usually result in defended hearings, and typically require longer disposal time.

Eighteen per cent of charges resulted in a not guilty plea for both sample periods at the Waitakere FV Court (1 July 2005 – 30 June 2006; 1 July 2006 – 30 June 2007). For all other

courts, except Waitakere and Manukau FV Courts, the proportion of not guilty pleas was 29% for the same period.

These findings indicate some differences in the proportions of not guilty pleas recorded at both FV Courts, and provide a further measure of the extent to which both courts may be achieving the objective of holding offenders accountable.

## **4.12 Reduction in charge seriousness**

This analysis was undertaken to examine the extent to which both FV Courts are replacing charges during a case with less serious ones, in order to provide some further insight into the extent to which these courts are achieving their objectives.

Thirty-seven per cent of proved charges for 'traditional' family violence offences in the Manukau FV Court between February 2005 and November 2006 had a change in the original charge, as opposed to 11% for other courts.<sup>12</sup> At Waitakere, only 4% of charges were changed (July 2005 to June 2007), compared to 12% nationally.

In the Manukau FV Court, and indeed all other courts (except Waitakere), almost all of these were replaced with a less serious charge.<sup>13</sup> Offences most often replaced with another of lower seriousness were Assault by Male on Female, and Assault with Intent to Injure. Fifty-three per cent (220 charges) of Assault by Male on Female were replaced by a Crimes Act Common Assault identified as Domestic.

These findings indicate that both FV Courts, like all the other courts, do replace original charges with less serious ones. The appropriateness of this practice for FV Courts, however, might require further consideration given the objectives of these courts, and in particular their aim of encouraging offender accountability.

## **4.13 Conclusion**

This section has summarised particular aspects of the operation of the Waitakere and Manukau FV Courts. Both courts seek to dispose of family violence matters rapidly, but factors such as resource limitations, increases in proportion of not guilty pleas at Manukau, and programme issues appear to be impacting on the extent to which this is possible.

While the safety of victims and families appears to be enhanced through various components of the Manukau and Waitakere FV Courts the infrequent use of Protection Orders is a concern. Waitakere FV Court stakeholders considered Victim Advocacy enhanced protection for victims and families, as well as providing greater opportunity for victims to contribute to

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<sup>12</sup> 'Traditional' includes assault by male on female, common assault identified as 'Domestic' under the Crimes Act 1961, common assault identified as 'Domestic' under the Summary Offences Act 1981, and breach of Protection Order.

<sup>13</sup> The seriousness scale is based on court sentencing data for the period 2000 to 2004. The seriousness score assigned to each offence is the average number of days of imprisonment imposed on every offender convicted of that offence between 2000 and 2004, where the average is taken over both imprisoned and non-imprisoned offenders. For more details see 'Conviction and Sentencing of Offenders in New Zealand: 1996 to 2005' (Ministry of Justice 2006).

hearings. Lower percentages of not guilty pleas at the Waitakere FV Court enhance victim safety by avoiding the risks associated with defended hearings and improve opportunities to hold offenders' accountable. Encouraging accountability among offenders, and holding them accountable, are key components of both FV Courts, but issues currently impacting on people who 'self refer' to programmes, such as lack of funding and monitoring, need to be addressed.

Consistency of approach and personnel, and collaboration with community organisations, were also considered important to the smooth running of these Courts.



## 5 Statistical analysis – Waitakere and Manukau Family Violence Courts

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### 5.1 Waitakere Family Violence Court – Outcome and sentencing analysis

This section provides an analysis of the outcome and sentencing statistics from the Waitakere Family Violence Court for the period from 1 November 2001 to 30 June 2007 in comparison with Waitakere District Court before the FV Court implementation and other courts nationwide. A summary of the methodology used for the analysis, including limitations, can be found in Appendices 4 and 6.

The main objective of this analysis was to see what the effects were of the FV Court on court outcomes and sentences in Waitakere. Thus the analysis is mainly about comparing how figures from Waitakere differ, pre-FV Court and post-FV Court introduction. There were two distinct phases in the implementation of the FVC at Waitakere, as the court protocol changed in June 2005. Consequently the statistics for the FV Court are divided into two separate samples. Figures from the other courts in New Zealand (national samples) are also presented. Given the emphasis on the effect of the FV Court at Waitakere, the national samples, which were matched to the Waitakere FV Court samples, are there to provide context as to the ‘underlying’ trend that may be influencing results in Waitakere.

#### Main outcomes

Table 1 shows the main outcomes of family violence cases recorded for the six comparison samples.

The results of the significance test (last row of Table 1) show that the difference in distribution of main outcomes between the Waitakere FV Court 2005–07 sample and each of the other five samples was highly significant.

How to make sense of the Waitakere figures shown in Table 1? The underlying national pattern – 1998–01, 2001–05 and 2005–07 – shows a steady decrease in the proportion of convictions, from 70% to 56%. Conversely, the proportion of the other outcome categories rose. This is most noticeable in the withdrawn category where the proportion rose from 15% to 23%, but the number of discharge without conviction outcomes also increased.

We now look at the three samples recorded at Waitakere. The Waitakere 1998–01 sample has an outcome distribution that is not dissimilar to that of the national 1998–01 sample. None of the four proportions of the two samples differ by more than 1.5 percentage points. This suggests that prior to 2001, the Waitakere Court operated in a way similar to the rest of the country.

When we compare the Waitakere 1998–01 and 2001–05 samples, we see that there is a big difference in the proportions of all outcomes except ‘other not proved’. Convictions fell from

67% to 47%. Conversely, the 'withdrawn', and 'discharge without conviction' outcomes almost doubled in their respective proportions.

**Table 1: Main outcomes<sup>1</sup>: percentages**

Main outcome	Waitakere FVC 2005–07 sample (n=790)	Waitakere FVC 2001–05 sample (n=1212)	Waitakere 1998–01 sample (n=874)	National 2005–07 sample (n=2002)	National 2001–05 sample (n=2002)	National 1998–01 sample (n=2002)
Convicted	58.9	47.0	67.4	56.0	60.8	69.9
Discharge without conviction	10.3	10.5	5.5	6.2	5.9	4.5
Withdrawn	17.9	33.6	16.5	23.1	22.9	15.2
Other not proved <sup>2</sup>	13.0	8.9	10.6	14.7	10.4	10.4
Total	100.0	100.0	100.0	100.0	100.0	100.0
Significance of the difference between the distribution of main outcomes <sup>3</sup>		$p<.0001$	$p=0.0002$	$p<.0001$	$p<.0001$	$p<.0001$

<sup>1</sup> The main outcome is the most serious outcome imposed in the case for family violence offences.

<sup>2</sup> Includes dismissed, discharged, acquitted, other not proved, and other outcomes.

<sup>3</sup> Chi-square test of the significance of the difference between the distribution of main outcomes for the Waitakere FVC 2005–07 sample and other samples. Note that the overall distribution of outcomes was compared, but not individual percentages. Probability (p) less than 0.05 indicates that the difference between the distributions is significant at the overall distribution level, but not necessarily for individual outcomes.

These changes in proportions are a magnification of the same pattern of difference exhibited in the two national samples. Where the Waitakere convictions fell by 20 percentage points, the corresponding change in the national samples was only 10 percentage points. Similarly, the rise in the national proportions for withdrawn outcomes (eight percentage points) is about half the 17 percentage point rise seen in the Waitakere samples.

After the implementation of a new protocol at the Waitakere FV Court the distribution of outcomes has changed. Comparison between the Waitakere 2001–05 and Waitakere 2005–07 samples shows that after the June 2005 protocol the proportion of convictions rose by 12 percentage points, withdrawn outcomes decreased by 16 percentage points, but there was a slight increase in 'other not proved' outcomes by four percentage points.

We now consider the Waitakere 2005–07 sample against the national 2005–07 sample. The 'other not proved' proportions are quite close (13% against 15%). Similarly, the convicted proportions are also quite similar (59% to 56%). What really differs are the proportions of discharge without conviction (10% to 6%) and withdrawn (18% to 23%) categories.

In summary, the nationwide trend was a decline in convictions, matched by the rise in the discharge without conviction and withdrawn categories. In the period 2001–05, the Waitakere FV Court also followed this trend to fewer convictions and more discharge without convictions and withdrawn outcomes, but to a greater degree. This pattern has now been moderated whereby the convictions now match the national proportions. The main difference between the current Waitakere and national samples is the greater use of discharge without conviction instead of withdrawn outcome.



## Main sentences imposed

When an offender is convicted of an offence, the offender can receive one or more sentences. Table 2 shows the distribution of main (i.e. the most severe) sentences imposed for each sample.

**Table 2: Main sentence imposed<sup>1</sup>: percentages**

Main sentence	Waitakere FVC 2005–07 sample (n=465) <sup>2</sup>	Waitakere FVC 2001–05 sample (n=570) <sup>2</sup>	Waitakere 1998–01 sample (n=589) <sup>2</sup>	National 2005–07 sample (n=1121) <sup>2</sup>	National 2001–05 sample (n=1217) <sup>2</sup>	National 1998–01 sample (n=1399) <sup>2</sup>
Custodial	9.7	8.8	11.4	13.7	12.5	12.0
Community work <sup>3</sup>	25.2	31.2	25.6	35.9	35.1	31.3
Supervision, community programme	23.7	12.6	31.6	10.9	11.8	23.5
<i>Sub-total Community sentences</i>	<i>48.8</i>	<i>43.9</i>	<i>57.2</i>	<i>46.7</i>	<i>46.9</i>	<i>54.8</i>
Reparation	0.9	3.7	1.2	4.1	4.4	0.6
Fine	4.5	11.6	6.5	15.3	15.9	15.1
<i>Sub-total monetary sentences</i>	<i>5.4</i>	<i>15.3</i>	<i>7.6</i>	<i>19.4</i>	<i>20.2</i>	<i>15.7</i>
Deferment <sup>4</sup>	31.2	23.7	19.5	15.1	16.5	13.2
Conviction & discharge	5.0	8.4	4.2	5.0	3.9	4.3
Total convicted	100.0	100.0	100.0	100.0	100.0	100.0

<sup>1</sup> The main sentence is the most serious sentence imposed in the case for the family violence offences.

<sup>2</sup> Number of individuals who were convicted.

<sup>3</sup> Includes periodic detention and community service, which prior to the Sentencing Act 2002 were equivalents to the current community work sentence.

<sup>4</sup> To come up for sentence if called upon' and suspended sentences prior to the Sentencing Act 2002.

In many ways, the patterns shown in the outcomes are repeated in the most severe sentence categories handed down. The underlying national trend is of apparent fairly smooth increases and decreases. Specifically:

- custodial sentence proportion rose from 12% to 14%;
- community sentence proportion fell from 55% to 47%;
- monetary sentences proportion rose from 16% to 19%;
- the 'no sentence' proportion (deferment and conviction & discharge) rose from 18% to 20%.

This then provides the 'baseline' to assess the effect of the Waitakere FV Court. Looking at custodial sentences first – the Waitakere Court had a similar level to the national sample in 1998–01. However, the first FV Court sample (2001–05) saw a 2.6 percentage point drop, in contrast to the national increase. Subsequently in 2005–07 there was a 0.9 percentage point increase in the use of custodial sentences in Waitakere FV Court, although this may partly reflect the more serious type of cases in 2005–07.

The Waitakere 1998–01 sample had a slightly higher use of community sentences relative to the national 1998–01 sample, but far fewer monetary sentences were handed down in Waitakere and more ‘no sentences’ decisions were given. It is possible that the economic situation of the offenders has a bearing on this situation.

How has the FV Court altered the Waitakere sentences? Looking at custodial sentences, the ratios of imprisonment for both FV Court phases (2001–05 and 2005–07) are lower than for pre-FV Court period. This is against a backdrop of increased incarceration for the national samples. The first FV Court phase (2001–05) had a lower custodial rate than the second phase.

The situation is somewhat similar for ‘community work’ sentences. The national sample showed increasing use of community work. Supervision/community programme, however, declined and overall ‘community sentences’ declined eight percentage points. Between the first and second Waitakere samples, the use of ‘community work’ sentences also increased, by 5.6 percentage points. However, the use of these community sentences decreased again in the second FV Court phase.

The discussion thus far is on mutually exclusive sentences, i.e. an offender is either sentenced to imprisonment, or to a work-related community sentence. The remaining sentences (non-work community sentence, fines and reparations) are not mutually exclusive. They can be given in conjunction with other sentences, or they can be given on their own. This means that for each sentence, the data can be presented for when the sentence is given as the primary (or sole) sentence only (as in Table 2), or whenever it is given (irrespective of primacy) (as in Table 3).

However, the analysis of the data shows that the patterns are quite similar for both perspectives of the sentence, i.e. all occasions or only when it is the primary one. They will therefore be discussed together, for each sentence type.

The distribution of all sentences imposed on offenders from each sample is shown in Table 3.

Nationally, the use of non-work community sentences (Supervision and, before 2002 the rarely used Community Programme sentence) fell by 15.3 percentage points between the national samples from 1998–01 to 2005–07<sup>14</sup>. In the Waitakere samples, the drop is about half that – only 7.1 percentage point drop from 1998–01 to 2005–07. However, there was a much larger fall between the pre-FV Court and the first FV Court phase – by over 20 percentage points.

Fines and reparations make up a relatively small proportion of sentences for the crimes considered here. Nationally, the use of fines and reparations rose by 1.5 and 5.2 percentage points respectively, over the 1998–01 to 2005–07 period. However, the use of fines in Waitakere fell by 1.6 percentage points. But once again, there was a marked difference in the use of monetary sentences in the first and second FV Court phases. The first FV Court phase saw both forms of monetary sentence rise before falling in the next phase.

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<sup>14</sup> 12.6 percentage point drop when considering the sentence as the main or only one.

**Table 3: All types of sentences imposed: percentages**

Sentence type	Waitakere FVC 2005–07 sample (n=465) <sup>1</sup>	Waitakere FVC 2001–05 sample (n=570) <sup>1</sup>	Waitakere 1998–01 sample (n=589) <sup>1</sup>	National 2005–07 sample (n=1121) <sup>1</sup>	National 2001–05 sample (n=1217) <sup>1</sup>	National 1998–01 sample (n=1399) <sup>1</sup>
Custodial	9.7	8.8	11.4	13.7	12.5	12.0
Community work <sup>2</sup>	25.2	31.2	25.6	36.0	35.1	31.5
Supervision, community programme	33.8	19.5	40.9	23.5	22.6	38.8
Reparation	3.4	5.1	3.2	7.1	8.1	1.9
Fine	5.2	14.0	7.6	19.0	20.7	17.5
Deferment <sup>3</sup>	35.1	28.4	23.3	20.6	20.3	19.2
Other	0.0	0.0	0.2	0.2	0.2	0.1
Conviction & discharge	9.5	36.0	50.3	19.6	29.7	46.3
Average number of sentence types	1.2	1.4	1.6	1.4	1.5	1.7

<sup>1</sup> Number of individuals who were convicted.

<sup>2</sup> Includes periodic detention and community service, which prior to the Sentencing Act 2002 were equivalents to the current community work sentence.

<sup>3</sup> To come up for sentence if called upon<sup>1</sup> and suspended sentences prior to the Sentencing Act 2002.

Finally, the use of deferred sentences has risen steadily in both FV Court phases. Nationally, the proportion is fairly constant across the three samples. However, the Waitakere figures show a rise of 11.8 percentage points between the 1998–01 and 2005–07 samples.

The average number of sentences given to offenders showed little difference between the samples. In contrast, the average length of custodial sentences did not appear to be very similar across the six samples (see Table 4). Between the 1998–01 and the 2005–07 time periods, the Waitakere values rose whilst the national ones fell. Curiously the longest average sentence across the 3 time periods occurred in the 2001–2005 period both in Waitakere and nationally.

**Table 4: Average length of custodial sentences, days**

	Waitakere FVC 2005–07 sample (n=45) <sup>1</sup>	Waitakere FVC 2001–05 sample (n=50) <sup>1</sup>	Waitakere 1998–01 sample (n=67) <sup>1</sup>	National 2005–07 sample (n=154) <sup>1</sup>	National 2001–05 sample (n=152) <sup>1</sup>	National 1998–01 sample (n=168) <sup>1</sup>
Average custodial sentence length	179	195	135	158	205	179
Significance <sup>2</sup>		<i>ns</i>	<i>ns</i>	<i>ns</i>	<i>ns</i>	<i>ns</i>

<sup>1</sup> Number of offenders who received a custodial sentence.

<sup>2</sup> Wilcoxon–Mann–Whitney test of significance of differences between the Waitakere FVC 2005–07 sample and other samples: *ns* = not significant.

## 5.2 Waitakere Family Violence Court – Reconviction analysis

As with the analysis of court outcomes and sentences, the main objective of the reconviction analysis is to see what the effects of the FV Court are in Waitakere. Thus the analysis is mainly about comparing the three Waitakere samples amongst themselves. The national samples that were matched to the Waitakere FV Court samples, are there to provide context as to the ‘underlying’ trend that may be influencing results in Waitakere. See Appendices 5 and 7 for further methodological detail and analysis limitations.

### One-year reconviction rates

Table 5 shows the reconviction rates for family violence offences within one year. While the reconviction rate changes slightly across the samples between 8% and 13%, none of the six samples differ significantly in their rate of reconviction for family violence offences.

**Table 5: Reconviction for family violence offences within one year: percentages**

	Waitakere FVC 2005–06 sample (n=274)	Waitakere FVC 2001–05 sample (n=835)	Waitakere 1998–01 sample (n=719)	National 2005–06 sample (n=1109)	National 2001–05 sample (n=1109)	National 1998–01 sample (n=1109)
Actual reconviction rate (%)	9	11	12	13	9	8
Significance <sup>1</sup>		ns	ns	ns	ns	ns
<b>Number of subsequent reconvictions</b>						
0	91	89	88	87	91	92
1	7	6	8	7	6	5
2–4	2	4	4	6	3	3
5+	1	1	1	0	0	0

<sup>1</sup> Chi-square test of the significance of the difference between the actual reconviction rates for the Waitakere FVC 2005–06 sample and other samples: ns = not significant.

Table 6 shows the one-year reconviction rates for any kind of offending. As with the previous table, most of the differences between the samples were not statistically significant – with the exception of the earliest national sample.

**Table 6: Reconviction within one year: percentages**

	Waitakere FVC 2005–06 sample (n=274)	Waitakere FVC 2001–05 sample (n=835)	Waitakere 1998–01 sample (n=719)	National 2005–06 sample (n=1109)	National 2001–05 sample (n=1109)	National 1998–01 sample (n=1109)
Actual reconviction rate	40	39	39	38	37	34
Predicted reconviction rate	37	36	39	36	36	36
Significance <sup>1</sup>		ns	ns	ns	ns	p=0.049
<b>Number of subsequent reconvictions</b>						
0	60	61	61	62	63	66
1	18	13	14	13	13	14
2–4	14	15	15	17	18	13
5–7	3	6	5	5	3	4
8–10	2	2	2	2	2	1
10+	3	2	3	1	1	2

<sup>1</sup> Chi-square test of the significance of the difference between the actual reconviction rates for the Waitakere FVC 2005–06 sample and other samples: ns = not significant.

Figure 1 graphically shows the reconviction trend in the follow-up year. All the samples have a similar pattern of reconviction across the year. This is to be expected as the differences in one-year reconviction rates between all six samples were quite small.

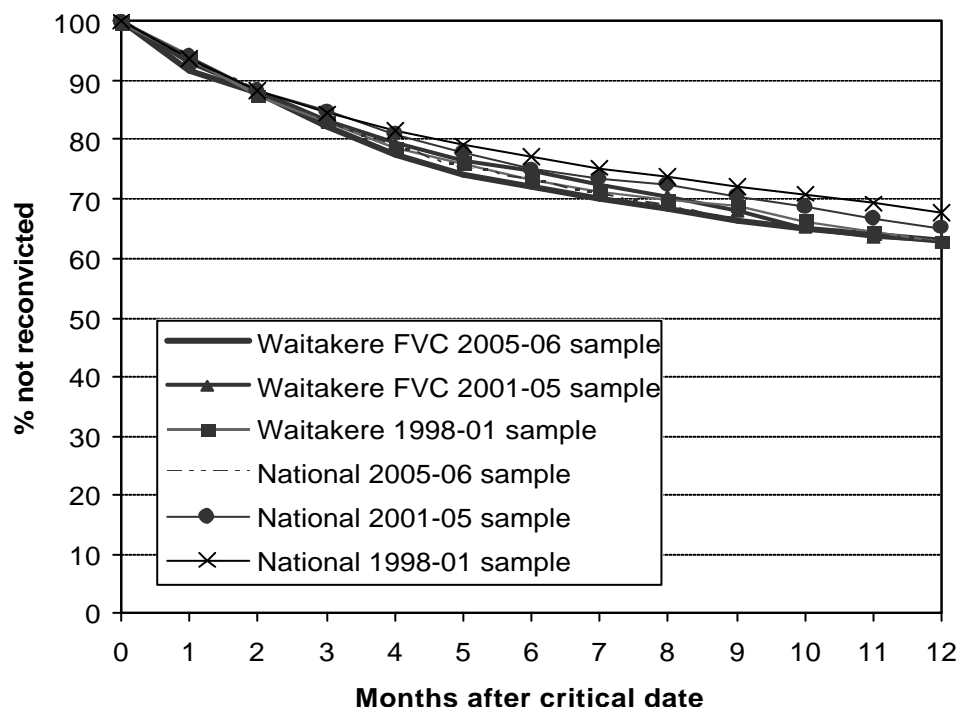
**Figure 1: Percentage of offenders not yet reconvicted up to one year, by sample**

Table 7 examines the seriousness of the subsequent reoffending for the six samples. The Ministry of Justice ‘Seriousness of offence’ scale was used to measure the seriousness of offences committed within the one year follow-up period.<sup>15</sup>

The average seriousness score of subsequent offending did not differ significantly between any of the samples. However, there was a tendency for the two FV Court samples to have a greater proportion of subsequent offences within the lower seriousness groups, compared to the pre-FV Court Waitakere sample.

In summary, we conclude that the introduction of the FV Court in Waitakere has not had any significant effect on reoffending, as measured by one-year reconvictions.

**Table 7: Distribution of the seriousness of subsequent offending<sup>1</sup> (percentages) and average seriousness**

Seriousness score	Waitakere FVC 2005–06 sample (n=274)	Waitakere FVC 2001–05 sample (n=835)	Waitakere 1998–01 sample (n=719)	National 2005–06 sample (n=1109)	National 2001–05 sample (n=1109)	National 1998–01 sample (n=1109)
No reoffence	60	61	61	62	63	66
0–5	16	14	11	14	13	13
>5–10	8	7	4	6	7	6
>10–30	10	10	9	10	8	6
>30–100	5	6	11	6	7	7
>100	1	2	4	2	2	1
Significance <sup>2</sup>		ns	p=0.001	ns	ns	ns
Average (median) seriousness	6	8	16	9	9	8
Significance <sup>3</sup>		ns	ns	ns	ns	ns

<sup>1</sup> Percentage of offenders whose average seriousness of all reoffences fell into each category.

<sup>2</sup> Chi-square test of the significance of the difference between the distribution of seriousness score for the Waitakere FVC 2005–06 sample and other samples: ns = not significant.

<sup>3</sup> Wilcoxon–Mann–Whitney test of significance of differences.

Table 8 shows that the subsequent imprisonment rate did not differ significantly between any of the samples.

**Table 8: One year subsequent imprisonment rates: percentages**

	Waitakere FVC 2005–06 sample (n=274)	Waitakere FVC 2001–05 sample (n=835)	Waitakere 1998–01 sample (n=719)	National 2005–06 sample (n=1109)	National 2001–05 sample (n=1109)	National 1998–01 sample (n=1109)
Subsequent imprisonment rate	11	9	12	10	12	10
Significance <sup>1</sup>		ns	ns	ns	ns	ns

<sup>1</sup> Chi-square test of the significance of the difference between the subsequent imprisonment rates for the Waitakere FVC 2005–06 sample and other samples: ns = not significant.

<sup>15</sup> Refer to Footnote 12.

### 5.3 Manukau FV Court – Outcome and sentencing analysis

The purpose of this analysis is to see what the effects were of the FV Court on court outcomes and sentences in Manukau. Therefore, this analysis is mainly about comparing pre-FV Court and post-FV Court figures. The Manukau FV Court began in 2005. To do this, we have to consider what the courts are generally doing. Thus there is always a comparison national sample. Unlike the Waitakere court, the Manukau had only one FV Court phase. This somewhat simplifies the interpretation of the results. See Appendices 4 and 6 for further methodological detail and analysis limitations.

#### Main outcomes

This chapter presents the full results of sentencing and outcome analysis of the Manukau FV Court. All the charts and tables show five sets of results. Four sets are matching pairs – the pair of national samples (2003–04 and 2005–06) and the Manukau samples (pre and post FVC). As with the Waitakere analysis, only the ‘traditional family violence’ offences could be used as comparisons in the four matching pairs. The fifth set of results, consisting of individuals prosecuted at the Manukau FV Court for all FV offences, is shown but not used in any comparison.

Table 9 presents the information on the main outcomes of prosecutions. Normally we would start the discussion with convictions. But this time, the pattern is set with the ‘other not proved’ outcome. The Manukau pair show a 5 percentage point decline in the ‘other not proved’ outcome. In contrast, in the rest of the country this outcome has increased by four percentage points.

This result is significant because the ‘other not proved’ category is the closest to a ‘not guilty’ finding. The introduction of the FV Court and its processes has probably meant that fewer Manukau FV offenders proportionally are receiving ‘not guilty’ outcomes. These findings are significant. Statistical tests show that it is unlikely to be mere random behaviour.

The ‘withdrawn’ category declined by 6.3 percentage points in Manukau. Nationally that category was also decreasing by an even greater margin – 9.2 percentage points. This category includes charges withdrawn after Police Diversion. Police Diversion involves the offender admitting guilt.

It would seem the major reason for the decrease in Manukau of the ‘withdrawn’ outcome was the big increase in the ‘discharge without conviction / other proved’ outcomes. Pre-FV Court, it was only used in 1.5 % of charges. Now, with the FV Court, its use has increased by nearly 15 percentage points. This is much larger than the national increase of 4.3 percentage points.

Lastly, the convicted outcome has shown a relatively small decrease of 3.5 percentage points. Nationally, the finding for this outcome has remained static.

**Table 9: Main outcomes<sup>1</sup>: percentages**

Main outcome	Manukau FVC sample (n=1514)	Manukau FVC sub-sample (n=1132)	Manukau 2003–04 sample (n=1026)	National 2005–06 sample (n=1132)	National 2003–04 sample (n=1132)
Convicted	59.2	59.7	63.3	63.3	63.0
Discharge without conviction / other proved	15.9	16.3	1.5	9.8	5.5
Withdrawn	14.7	11.7	18.0	14.6	23.8
Other not proved <sup>2</sup>	10.2	12.3	17.3	12.4	7.8
Total	100.0	100.0	100.0	100.0	100.0
Significance of the difference between the distribution of main outcomes <sup>3</sup>			<i>p&lt;.0001</i>	<i>p&lt;.0001</i>	<i>p&lt;.0001</i>

<sup>1</sup> The main outcome is the most serious outcome imposed in the case for family violence offences.

<sup>2</sup> Includes dismissed, discharged, acquitted, other not proved, and other outcomes.

<sup>3</sup> Chi-square test of the significance of the difference between the distribution of main outcomes for the Manukau FVC sub-sample and each of the comparison samples. Note that the overall distribution of outcomes was compared, but not individual percentages. Probability (p) of less than 0.05 indicates that the difference between the distributions is significant at the overall distribution level, but not necessarily for individual outcomes.

## Main sentences imposed

Table 10 shows the distribution of main (most serious) sentences received by the offenders who were convicted.

**Table 10: Main sentence imposed<sup>1</sup>: percentages**

Main sentence	Manukau FVC sample (n=896) <sup>2</sup>	Manukau FVC sub-sample (n=676) <sup>2</sup>	Manukau 2003–04 sample (n=649) <sup>2</sup>	National 2005–06 sample (n=716) <sup>2</sup>	National 2003–04 sample (n=713) <sup>2</sup>
Custodial	5.1	5.3	13.6	10.3	10.7
Community work	26.9	28.6	44.7	34.6	32.4
Supervision	26.0	29.4	12.6	9.2	10.5
Sub-total Community sentences	52.9	58.0	57.3	43.9	42.9
Reparation	3.1	0.7	4.2	5.3	5.3
Fine	8.7	7.1	9.1	18.9	16.1
Sub-total monetary sentences	11.8	7.8	13.3	24.2	21.5
Deferment <sup>3</sup> / other <sup>4</sup>	22.6	24.3	12.8	15.9	21.2
Conviction & discharge	7.5	4.6	3.1	5.7	3.8
Total convicted	100.0	100.0	100.0	100.0	100.0
Significance of the difference between the distribution of main sentences <sup>5</sup>			<i>p&lt;.0001</i>	<i>p&lt;.0001</i>	<i>p&lt;.0001</i>

<sup>1</sup> The main sentence is the most serious sentence imposed in the case of the family violence offences.

<sup>2</sup> Number of individuals who were convicted.

<sup>3</sup> To come up for sentence if called upon.

<sup>4</sup> Other sentences were given to 0.1% of offenders from the Manukau FVC sample.

<sup>5</sup> Chi-square test of the significance of the difference between the distribution of main sentences for the Manukau FVC sub-sample and each of the comparison samples. Note that the overall distributions of sentences were compared, but not individual percentages. Probability (p) less than 0.05 indicates that difference between the distributions is significant at the overall distribution level, but not necessarily for individual outcomes.



Nationally, the pattern of sentences imposed for 2003–04 and 2005–06 is very similar. This observation is especially true for the more serious sentences, e.g. custodial and community sentences. There is a somewhat greater change in the use of ‘no sentence’ type sentences such as deferment and ‘conviction and discharge’. This is particularly so when it is averaged across the country.

Looking at the Manukau results, in no sentence type is its proportionate use similar pre- and post-FV Court. In other words, the introduction of the FV Court appears to have heralded a major change in sentencing patterns. Starting with custodial sentence, its use declined by 8.3 percentage points. Where previously its use in Manukau was higher than the national average, its use in 2005–06 was only half the national rate.

A similarly dramatic decline in use was recorded for community work. Its imposition fell by 16.1 percentage points. Like custodial sentences, pre-FV Court, Manukau’s use of community work sentences was above the national average. With the introduction of the FV Court, its use has fallen below the national average.

While the use of custodial and community work sentences has fallen in Manukau, Supervision has risen significantly – more than doubling with a 16.8 percentage point rise. Supervision was previously imposed less than one-third as often as community work sentences, and about as often as custodial sentences. In the FV Court, its use was the same as community work and more than five times as often as custodial sentences.

The changes in the monetary sentences are not as dramatic. If anything, the introduction of the FV Court has merely emphasised its relative rarity in Manukau. Pre-FV Court, its use in Manukau was below the national average. In 2005–06, its use was even rarer. The most striking result is the almost total absence of reparation as a main sentence in the Manukau FVC.

Another ‘sentence’ increasingly used in Manukau is deferment. Its use has almost doubled, rising by 11.3 percentage points. In comparison, the national average use of this sentence fell by 6.3 percentage points.

Table 11 shows the average length of custodial sentences imposed. The average length of most custodial sentences is not statistically different to the 143-day average of the Manukau FV Court sub-sample. The only one that is different is the pre-FV Court Manukau average of 212 days.

The distribution of sentences given to offenders from the Manukau FV Court sub-sample was similar to the Manukau FV Court sample.

**Table 11: Average length of custodial sentences, days**

	Manukau FVC sample (n=46) <sup>1</sup>	Manukau FVC sub-sample (n=36) <sup>1</sup>	Manukau 2003–04 sample (n=88) <sup>1</sup>	National 2005–06 sample (n=74) <sup>1</sup>	National 2003–04 sample (n=76) <sup>1</sup>
Average custodial sentence length	152	143	212	162	187
Significance <sup>2</sup>			<i>p=0.01</i>	<i>ns</i>	<i>ns</i>

<sup>1</sup> Number of offenders who received a custodial sentence.

<sup>2</sup> Wilcoxon–Mann–Whitney test of significance of differences from the Manukau FVC sub-sample: ns = not significant.

### All types of sentences imposed

Table 10 described the most severe sentence given to offenders, where more than one sentence was imposed. Table 12 shows the statistics when all types of sentences imposed are counted. Because it is possible to impose multiple sentences, the sum of the percentages exceeds 100%.

As before, the change in the pattern of use nationally is relatively small. Custodial and community work sentences, if imposed, are always the most severe sentences. Therefore the figures here are no different to that in Table 10.

The total use of Supervision at Manukau has increased, but only by 8.5 percentage points. This increase is much less than its increased use as a primary sentence. Nevertheless, its increased use in Manukau is against a decrease in use nationally.

The use of monetary sentences (both reparation and fines) and deferment as secondary sentences is relatively rare. This can be deduced from the similarity of figures for both these sentences as shown in Tables 10 and 12. Consequently all the comments about reparation as a main sentence also apply here.

Both Manukau and national percentages for Conviction and Discharge show a decrease, albeit larger at Manukau. In relation to Table 10, the figures here show its use for less serious charges where more severe sentences are imposed for other charges. Therefore its reduction in Manukau suggests that FV Court judges are tending to consider sentencing for the case as a whole, rather than individual charges.

The average number of sentences in Manukau decreased from 1.4 to 1.2. This decrease is roughly similar to that nationally. This could mean that the introduction of the FV Court has not really affected the popularity of secondary sentences in Manukau.

**Table 12: All types of sentences imposed: percentages**

Sentence type	Manukau FVC Sample (n=896) <sup>1</sup>	Manukau FVC sub-sample (n=676) <sup>1</sup>	Manukau 2003–04 sample (n=649) <sup>1</sup>	National 2005–06 sample (n=716) <sup>1</sup>	National 2003–04 sample (n=713) <sup>1</sup>
Custodial	5.1	5.3	13.6	10.3	10.7
Community work	26.9	28.6	44.7	34.6	32.4
Supervision	40.3	43.2	34.7	18.9	21.2
Reparation	5.2	0.9	4.8	6.0	6.2
Fine	9.9	7.4	10.6	21.2	19.4
Deferment	23.9	24.4	13.1	16.2	21.9
Other	1.6	0.0	0.0	0.1	0.0
Conviction & discharge	15.4	6.1	17.1	6.0	12.2
Average number of sentence types	1.3	1.2	1.4	1.1	1.2

<sup>1</sup> Number of individuals who were convicted.

<sup>2</sup> Conviction & discharge figures reflect its use in less serious charges within individual cases.

## 5.4 Manukau FV Court – Reconviction analysis

Like the earlier outcome and sentencing analysis, this reconviction analysis mainly compares changing percentages in Manukau and nationally. As with the Waitakere analysis, only offenders who had a complete one-year period to reoffend were selected for the analysis. See Appendices 5 and 7 for further detail about the methodology and limitations of this analysis.

### One-year reconviction rates

Table 13 shows the one-year reconviction rates (in percentages) for any sort of offending. The strict statistical test used to determine reconviction patterns suggests that the differences in numbers are mere random variations. Given that test result, the differences cannot be treated as definitive.

The actual reconviction rate for Manukau fell by one percentage point. This appears to be rather less than the national decline of 5 percentage points, although the difference was not statistically significant.

We now look at the breakdown of the number of convictions. The category showing the biggest difference between Manukau and nationally is the two–four reconvictions. The Manukau samples recorded a one percentage point rise, whilst it fell five percentage points nationally. There are smaller differences in the other categories.

Table 13 and the analysis commentary were for all types of reconvictions. Does the picture change markedly if we restrict the reconvictions to only FV offences? Table 14 shows the same reconviction results for family violence offences and, yes, the picture is somewhat different.

The first point to consider is that the statistical test used to determine whether a pattern difference is ‘significant’ showed the pre-FV Court Manukau one to be so. Thus we should consider the increase between pre-FV Court Manukau and the Manukau FV Court to be real.

**Table 13: Reconviction for any crime within one year: percentages**

	Manukau FVC sample (n=659)	Manukau FVC sub-sample (n=493)	Manukau 2001–04 sample (n=1474)	National 2005 sample (n=493)	National 2001–04 sample (n=493)
Actual reconviction rate	35	36	37	36	41
Significance			ns <sup>2</sup>	ns <sup>3</sup>	ns <sup>3</sup>
<b>Number of subsequent reconvictions</b>					
0	65	65	63	64	59
1	12	11	13	14	17
2–4	17	18	17	13	18
5–7	4	4	4	5	5
8–10	1	2	1	3	0
10+	1	1	1	1	1

<sup>1</sup> The predicted reconviction rate was derived from a logistic regression model, based on factors such as age, characteristics of current case, and prior criminal history of the offender (refer to Appendix 5 for details).

<sup>2</sup> Chi-square test of the significance of the difference between the actual reconviction rates for the Manukau FVC sub-sample and Manukau 2001–04 sample: ns = not significant.

<sup>3</sup> McNemar test of the significance of the difference between the actual reconviction rates for the Manukau FVC sub-sample and national sample: ns = not significant.

The overall FV reconviction rate rose by 4 percentage points with the introduction of FVC in Manukau. The national samples only recorded a 1 percentage point rise.

This 4 percentage point rise in reconvictions is equally divided between the 1 reconviction and 2–4 reconvictions categories. Each of the categories recorded a 2 percentage point rise. Nationally the respective rise was 0 and 1 percentage point.

**Table 14: Reconviction for family violence offences within one year: percentages**

	Manukau FVC sample (n=659)	Manukau FVC sub-sample (n=493)	Manukau 2001–04 sample (n=1474)	National 2005 sample (n=493)	National 2001–04 sample (n=493)
Actual reconviction rate	10	11	7	12	11
Significance			$p=0.003^1$	ns <sup>2</sup>	ns <sup>2</sup>
<b>Number of subsequent reconvictions</b>					
0	90	89	93	88	89
1	6	6	4	8	8
2–4	4	4	2	4	3
5+	0	0	0	1	0

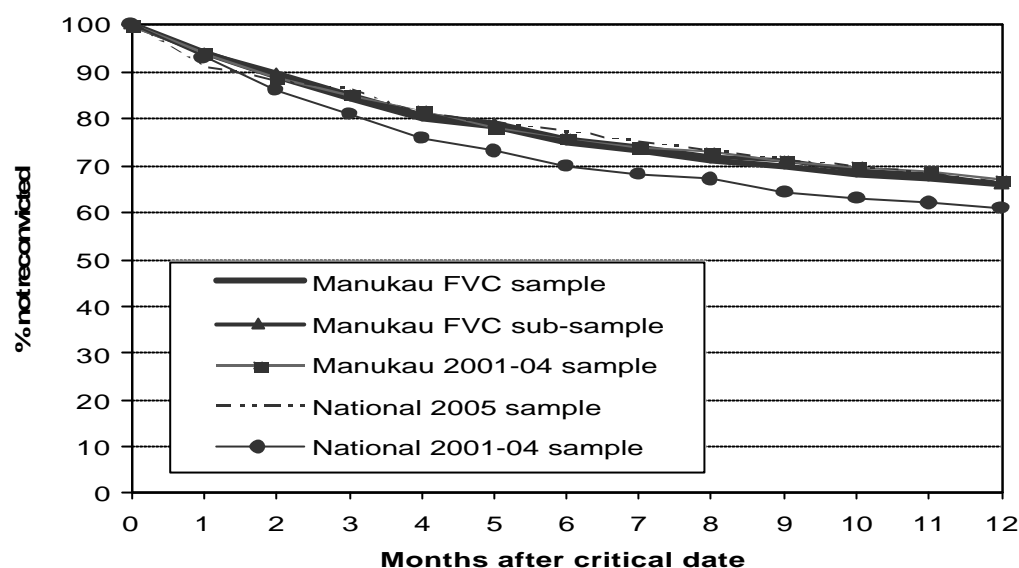
<sup>1</sup> Chi-square test of the significance of the difference between the actual reconviction rates for the Manukau FVC sub-sample and Manukau 2001–04 sample.

<sup>2</sup> McNemar test of the significance of the difference between the actual reconviction rates for the Manukau FVC sub-sample and National sample: ns = not significant.

### Time to date of reoffending

For all samples, Figure 2 shows that there was little difference in the length of time between the original conviction and any subsequent reconviction. The survival curves were very similar for the two national and two Manukau samples.

**Figure 2: Percentage of offenders not yet reconvicted up to one year, by sample**



### Seriousness of subsequent offending

Table 14 showed proportions reconvicted. What it did not show was whether the reconviction was for serious or less serious offences. We now use the Ministry of Justice's 'Seriousness of offence' scale to measure the seriousness of the reoffending.<sup>16</sup> This is shown in Table 15.

**Table 15: Distribution of the seriousness of subsequent offending<sup>1</sup> (percentages) and average seriousness**

Seriousness score	Manukau FVC sample (n=659)	Manukau FVC sub-sample (n=493)	Manukau 2001-04 sample (n=1474)	National 2005 sample (n=493)	National 2001-04 sample (n=493)
No reoffence	65	65	63	64	59
0-5	12	11	14	12	16
>5-10	7	8	9	7	8
>10-30	8	9	7	8	7
>30-100	7	6	6	7	9
>100	2	2	2	3	2
Significance <sup>2</sup>			ns	ns	ns
Average (median) seriousness	8	8	7	9	8
Significance <sup>3</sup>			ns	ns	ns

<sup>1</sup> Percentage of offenders whose average seriousness of all reoffences fell into each category.

<sup>2</sup> Chi-square test of the significance of the difference between the distribution of seriousness score for the Manukau FVC sub-sample and comparison samples: ns = not significant.

<sup>3</sup> Wilcoxon-Mann-Whitney test of significance of differences.

<sup>16</sup> Refer to Footnote 12.

As with Table 13, the statistical test shows that the results are quite likely to be due to random variations. Thus any differences may not be real.

The overall pattern for all samples is broadly similar. In Manukau and nationally, the average seriousness (as measured by the median) increased by one.

### Subsequent imprisonment rate

The subsequent imprisonment rates of all four samples were very similar. Statistical tests show that differences revealed were not significant.

**Table 16: One year subsequent imprisonment rates: percentages**

	Manukau FVC sample (n = 659)	Manukau FVC sub-sample (n = 493)	Manukau 2001–04 sample (n = 1474)	National 2005 sample (n = 493)	National 2001–04 sample (n = 493)
Subsequent imprisonment rate	10	10	8	10	9
Significance			ns <sup>1</sup>	ns <sup>2</sup>	ns <sup>2</sup>

<sup>1</sup> Chi-square test of the significance of the difference between the subsequent imprisonment rates for the Manukau FVC sub-sample and Manukau 2001–04 sample: ns = not significant.

<sup>2</sup> McNemar test of the significance of the difference between the subsequent imprisonment rates for the Manukau FVC sub-sample and national sample: ns = not significant.

## 5.5 A summary of the outcome, sentencing and reconviction analyses for Waitakere and Manukau Family Violence Courts

For the latest period analysed, the two FV Courts had similar percentages of convictions, but differed in their use of discharge without conviction and withdrawn outcomes. At Waitakere, cases were more likely to be withdrawn than discharged without conviction. The opposite was true for the Manukau FV Court.

Recent sentencing patterns which were similar for the two FV Courts included a tendency towards fewer custodial sentences, more even distribution of Supervision and community work sentences as a main sentence, and increased use of Supervision as a secondary sentence. There were also differences in sentencing practices. The Waitakere FV Court used a higher proportion of deferment sentences compared to the Manukau FV Court, while the latter used Supervision sentences more often.

The two FV Courts had different patterns in terms of reconviction for family violence offences. The Waitakere FV Court reconviction analysis revealed no significant statistical differences in family violence reconviction rates. At Manukau FV Court, however, the family violence reconviction rate rose by 4 percentage points with the introduction of the FV Court in Manukau. This finding was statistically significant when compared with the reconviction rate prior to the FV Court being established.

## 6 Summary of findings and implications for policy and practice

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This report describes the operation of the Manukau and Waitakere Family Violence Courts, and identifies some policy and practice implications.

Both FV Courts were set up to achieve the overarching objectives of minimising delays in responding to family violence matters, protecting victims and families, and encouraging family violence offenders to accept accountability for their behaviour. The Waitakere FV Court also endeavours to develop specialist skills and knowledge among people involved with this court, in order to provide a more informed response to family violence offending.

In terms of process, guidance is provided by the 2004 Practice Note, the Process Document of the Manukau FV Court, and the 2005 protocols for Waitakere. FV Courts tend to practice somewhat differently to conventional court processes. For example, they are held on specific days each week and they require a flexible and collaborative approach by all those involved in its operation. Time is also set aside at each hearing for discussion, and victim input is encouraged. First-time offenders and others, where appropriate, are encouraged to plead guilty and undertake a programme voluntarily. Sentences imposed generally reflect the intentions of this court to provide opportunities for changing behaviour, and along with practices described earlier, illustrate the holistic approach the FV Courts attempt to achieve.

The evaluations clearly indicate that community organisations and programme providers contribute immensely to the operation of the FV Courts. Good quality programmes and other interventions for offenders are particularly important given the emphasis the FV Court places on these programmes. Victim safety is enhanced through community organisations providing victim advocates. Adequate funding for the community organisations and programme providers involved with the FV Courts is crucial if their ongoing support is expected.

### 6.1 Minimising delays

One of the aims of FV Courts is to minimise delays in responding to family violence. At Waitakere, the 2001 protocols were revised because the 'fast track' process was not working as well as it might, and delays with defended hearings were thought to be affecting victims' safety. The research suggests, however, that the Waitakere FV Court has not been entirely successful in its aim to 'fast track'.

Delays were reduced initially at Manukau but this has not been sustained despite capping numbers at each FV Court list day and scheduling additional days. Current delays at this court are affecting its ability to provide the more rapid response it was set up to provide. Disposal times are lengthening because of factors, such as high case numbers, limited court- and judge-time, programme issues increasing not guilty pleas and defended hearings. Under these circumstances the court's ability to promote accountability will be considerably diminished.

Policy and practice implications include:

- Providing additional judges, courtrooms, and court staff so that more cases can be heard by the FV Court.
- Addressing programme issues, particularly those relating to 'self referrals', is likely to reduce programme non-completion, and need for additional hearings.
- Developing effective and timely responses to delays in order to reduce their impact when establishing additional Family Violence Courts.

## **6.2 Enhancing victim safety**

Participants acknowledged the importance of protecting victims and their families, and including measures to enhance their safety in the practice of each of the FV Courts.

Proponents of the Waitakere FV Court believed Community Victim Services greatly enhanced victim safety, because of advocates' ability to speak in court on behalf of victims, and to provide follow-up support.

Some Waitakere FV Court victims indicated their safety was at risk if charges or arrests did not occur despite breaches. Crowded waiting areas, expecting victims to speak in an open court, lengthening disposal times and delays in completing programmes may also be increasing opportunities for offenders to threaten victims to the extent they withdraw the charges.

Stakeholders also believed the safety of victims and families may be at risk because some of those involved with the FV Courts are unaware of the dynamics of family violence. The research suggests that FV Court responses will be more appropriate and safer if all parties are familiar with family violence dynamics, the relevant legislation and the FV Court's application of this legislation.

Policy and practice implications include:

- Addressing lengthening disposal times will increase the likelihood that victims will want to proceed with the case, and reduce opportunities for them to be coerced by their partners or husbands.
- Implementing victim advocates will allow for greater victim advocacy, ensure victims are fully informed about programmes, and that victims are aware of support services available to them in the longer term.
- Responding to programme-related issues, such as programme completion, payment, safety of victims while programmes are being undertaken, and general programme monitoring concerns.
- Providing training in dynamics of family violence to all those involved in the FV Court will help ensure victim safety is to the fore in its response to offending.
- Reducing crowds in waiting areas outside Family Violence Courts.



- Ensuring additional FV Courts have resources and processes in place to enhance safety of victims and their families.

### **6.3 Encouraging accountability**

Both FV Courts seek to increase offender accountability and responsibility for their behaviour. Accountability involves offenders pleading guilty and accepting whatever sentence or other outcome is imposed by the court. The research indicates both courts have a higher proportion of guilty pleas when compared to other courts.

Stakeholders indicated that sentences used by these FV Courts may not be encouraging accountability, nor providing the means for the courts to hold offenders accountable. The frequent use of a 'Discharge without conviction', for example, indicates that FV Courts may be treating family violence less seriously than other offending, and that offenders are not being held accountable.

Encouraging Protection Order applications, or imposing more sentencing orders supervised by the Community Probation Service, were identified by stakeholders as avenues for promoting accountability because they offer a greater level of monitoring. Enhanced monitoring helps determine offenders' motivation, and the extent to which they are likely to adhere to bail conditions and Protection Orders. Waitakere FV Court informants suggested, however, the extent to which the court could realistically encourage accountability and hold offenders accountable, depended on offenders' respect for the court and, for example, the extent to which the court responded to breaches of bail conditions and offenders were closely monitored.

Providing suitable programmes are available, monitoring helps ensure offenders are placed in programmes best suited to their needs, and provides opportunities to penalise for non-attendance. In the longer term monitoring helps the FV Courts hold offenders accountable and can increase the likelihood of offenders accepting responsibility for their offending and whatever outcome is imposed by the court.

Policy and practice implications include:

- Improve monitoring of programme attendance, particularly for 'self referrals', and establishing processes for the FV Court to receive information about programme attendance.
- Ensure FV Courts can access programmes where providers have the capacity and capability to respond to the needs of people engaged with the FV Court.
- Encourage Protection Order applications, and ensure the Family Court has the necessary staff and procedures in place to respond to these applications and other matters arising out of the Family Violence Court.
- Allocate a FV Court code in the Case Management System to provide more accurate identification of all matters dealt with by FV Courts, and assist in future evaluation of the FV Courts.

## **6.4 Concentrating specialist services and promoting a holistic approach to family violence**

The Waitakere FV Court endeavours to concentrate specialist services and promote a holistic approach to family violence through its collaboration with community agencies, and the range of services for offenders, victims and families provided through, for example, WAVES and Man Alive. Research participants generally acknowledged staff within these organisations, particularly those advocating on behalf of victims, needed to be professionally credible and highly qualified given the vulnerability of victims and families experiencing family violence. Highly qualified staff is important because the judiciary places considerable value on reports provided by these organisations, and the trust that currently exists between the Judges and victim advocates at Waitakere contributes much to the smooth operation of this court.

Differences in levels of collaboration with community organisations between the two FV Courts appears to have been determined when they were first established. The Waitakere FV Court's collaboration with community organisations is considered very important for victim advocacy and programme provision. The research identified that a less collaborative approach has been adopted by Manukau, although recent meetings should provide opportunities to air concerns and develop relationships.

Policy and practice implications include:

- Ensure sufficient funding is provided to community organisations involved with the FV Courts.
- Develop and maintain collaborative relationships with local community organisations before and after the establishment of FV Courts.
- Implementation of training in family violence dynamics for all those involved with FV Courts.

## **6.5 Conclusion**

The Manukau and Waitakere FV Courts have had some success in meeting their objectives in spite of considerable difficulties. Victim safety is being enhanced by keeping victims' informed of developments with their case, and by providing opportunities for victims to contribute to the hearing. Bail conditions are set with safety in mind, and additional information is sought from Police and the Probation Service. The specialist service provided at Waitakere FV Court helps ensure victim safety at that court. Offenders are encouraged to change their behaviour and accept accountability through undertaking a programme or some other intervention. In addition, sentences used by these courts tend to be ones which demonstrate a holistic approach, and which take into account the many factors in a person's life which may be contributing to their offending.

The extent to which these courts can develop further depends on addressing issues impacting on the effectiveness of their operation. These include providing additional resources, enhancing programme monitoring, developing more collaborative approaches with community organisations, and implementing training in family violence dynamics. Potential delays should be identified quickly and reasons for these addressed, so that these FV Courts

can actually achieve the more rapid response to family violence which they were established to provide. The potential for the FV Court to convey messages to communities about family violence through their use of particular types of sentences might also be considered. The extent to which it is realistic, however, for FV Courts to encourage accountability and to hold offenders accountable to the level required to reduce reoffending in the longer term warrants further thought.



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# Appendix 1: Practice Note – Domestic Violence Prosecutions (issued by the Chief District Court Judge)

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1. This practice note applies to all summary domestic violence prosecutions in the District Court.
2. The purpose of this practice note is to introduce a standard procedure for the management of domestic violence prosecutions, so that such cases are given priority and are heard and finalised with the least possible delay which is consistent with the rights and interests of all parties, including defendants and complainants.
3. In this practice note "domestic violence charge" includes any charge which alleges conduct of a nature within the definition of "domestic violence" in section 3 of the Domestic Violence Act 1995.
4. The time limits which are prescribed in paragraphs 5, 7 and 8 of this practice note, but not the overall time limit which is prescribed in paragraph 10, are subject to compliance by the Police with all disclosure obligations. However, any disclosure issue must be raised without delay and must not be left until the defendant's next appearance.
5. A plea to a domestic violence charge is to be entered not more than two weeks after the defendant's first appearance.
6. If the defendant pleads guilty, he or she is to be sentenced or remanded for sentence in the usual way.
7. If the defendant pleads not guilty, and if status hearings are held for domestic violence cases at the court where the charge is to be heard, the following timetable is to apply:
  - a) The status hearing is to be not more than four weeks after the plea is entered.
  - b) If the charge is not resolved at the status hearing, the defended hearing is to be not more than six weeks after the status hearing (if practicable, the date for the defended hearing should be allocated, on an "if required" basis, when the status hearing date is allocated).
8. If the defendant pleads not guilty, and if status hearings are not held for domestic violence cases at the court where the charge is to be heard, the defended hearing is to be not more than six weeks after the plea is entered.
9. The time limits which are prescribed in this practice note may be extended to the minimum extent necessary in circuit courts which sit less frequently than fortnightly. However, consideration should then be given to whether a case should be transferred to the nearest court where sittings are more frequent.

10. Notwithstanding the preceding paragraphs, but subject to paragraph 11, any domestic violence charge is to be heard and determined, with the exception of any sentencing, within 13 weeks (i.e. three months) after the defendant's first appearance. If such a charge is replaced by another domestic violence charge, that time limit relates to the first appearance on the original charge.
11. The time limits which are prescribed in this practice note may be extended by not more than a total of four weeks if the defendant's first appearance is between 10 November and 10 January, both inclusive.
12. This practice note takes effect on 1 February 2005. In respect of any case which was commenced prior to that date, it is to apply to all steps in the proceeding which occur on or after 1 February 2005.

22 December 2004



## Appendix 2: Process – Family Violence Court, Manukau District Court<sup>17</sup>

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### 1. Family Violence Days

Family Violence Court days will be run for 2 days in each week. One day will be allocated to Family Violence List Court (Thursday) and the other to Family Violence Defended Hearings (Monday).

### 2. Identification of Cases

#### 2.1 Cases already in the system

Existing cases at the time of implementation of the Family Violence Court will continue along their current course until identified by the Family Violence CRO on the day that they are scheduled for hearing. Those cases will be identified and marked for the presiding judge to determine whether that file should be adjourned to the next Family Violence Court. Where the case is a defended matter that must be adjourned, it may be adjourned to the next available Family Violence defended hearing day but this will be at the discretion of the presiding judge.

#### 2.2 New cases of Family Violence

Those matters that are identified as Family Violence cases will be called in the Criminal List Court. Currently the only matters which can be certainly identified as Domestic or Family Violence related matters are those which relate to a breach of a protection order. These will automatically proceed to the Family Violence Court. The Family Violence CRO may identify any other matter that appears to be family violence related and bring that to the attention of the presiding criminal list court judge. Referral of the matter to the Family Violence Court will then be at the discretion of that judge.

#### 2.3 Cases of non Family Violence related matters

The decision to deal with the matters of a defendant who has both family violence and non family violence matters in the Family Court will be at the discretion of the presiding judge.

#### 2.4 Indictable matters

Indictable matters will be referred to the Family Violence list court.

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<sup>17</sup> This is the appendix to 'The Evolution of Family Violence Criminal Courts in New Zealand' a speech by Chief District Court Judge R Johnson to Police Executive Conference, Nelson, 8 November 2005, and is available at: - <http://www.police.govt.nz/events/2005/ngakia-kia-puawai/johnson-on-evolution-of-family-violence-courts-in-nz.pdf#search=%22The%20evolution%20of%20Family%20Violence%20Criminal%20Courts%20in%20New%20Zealand%22>

### 3. First Appearance - Criminal List Court

#### 3.1 Plea

When the defendant makes a first appearance in the List Court, there would either be a guilty plea or a remand without plea to a Family Violence Day. No not-guilty pleas will be accepted at first appearance.

#### 3.2 Legal Aid

Legal aid should be assigned immediately at the first appearance

#### 3.3 Discovery

A discovery package (including the police officer's notebook) will be provided and will contain

- Summary of facts
- Any notes made by the attending police officer(s)
- Any medical evidence.

The discovery package should be made available to the court upon filing of the information together with the receipt document completed by the police detailing what the package contains.

Counsel shall obtain the discovery package from the Family Violence CRO who will obtain signed receipt from counsel. The discovery package will be released directly to defendants who are not represented. This ensures confidentiality of the documents, and that the court is made aware of who counsel is.

#### 3.4 Information sharing

Information sharing will occur prior to the Family Violence Day and will be the joint responsibility of the Victim Advisor and the Family Domestic Violence CRO. In accordance with Courts Circular FAM 02/05 and CRIM 02/16 the following information will be supplied

- . Existing protection order
- . Past protection orders
- . Compliance with programmes.

The Family Violence CRO will ensure that the information is received prior to the first Family Violence Court.

#### 3.5 Bail

Standard bail terms will be prepared. Police currently provide this in form 258.

### 4. Family Violence List Court

All identified family violence matters will be adjourned to a family violence list day. Where a guilty plea has been entered a probation officers report may be called for or where a report is not required, the matter may be disposed of that day. Where a not guilty plea is indicated, a

status hearing will occur. Where a not guilty plea is maintained the matter will be adjourned to a defended hearing date not longer than four weeks from the Family Violence List Court.

#### 4.1 Adjournments

With the exception of those matters where it is specifically provided for, adjournments will not generally be entertained.

#### 4.2 Sentencing

Probation reports will be made available to judge by 3pm day prior to sentencing. Where a domestic violence programme referral through corrections is considered, information exchange should occur as per the draft Family Violence SLA with corrections.

#### 4.3 Protection Orders

Final protection orders would be encouraged. An application must be made for a protection order. Forms will be made available by the Family Court. Assistance can be provided by the Family Court staff or Family Court Co-ordinator where that is required but advice cannot be provided to the applicant regarding the content of the application by any court staff member. If not by consent then a without notice application must be made. In those instances the application will be referred to a Family Court judge in the usual fashion.

Programme referrals for the applicant and any children should be promoted and encouraged but may not be ordered. All applications for protection orders must be filed with the Family Court office. The process where a protection order is required is as follows:

- judge identifies that a protection order will be consented to
- judge indicates whether or not a programme for the respondent is required as a result of a protection order
- The matter is stood down for a period of 2 hours
- VA escorts victim to the Family Court Co-ordinator to complete the application. The FCC will:
  1. assist with the application,
  2. make a recommendation for a programme referral for the defendant,
  3. provide the victim with programme information
  4. ensure entry of the application into CMS and creation of Family Court file
  5. prepare draft orders and a certificate of service.
- Family file will accompany criminal file at recall.
- judge will make protection order and referral to programme
- Court taker will sign and serve protection order and direction to attend programme before the defendant leaves the courtroom
- The file will be returned to the Family Court.

## 5. Family Violence Defended Hearings

Case management of defended family violence matters will occur as for other defended matters in the summary jurisdiction. Family Violence deposition matters may be heard on the Family Violence Defended Hearing day. Generally non-family violence defended matters will not be dealt with but where that occurs, family violence matter will take priority.

## 6. Depositions

Indictable Family Violence matters will be included as part of this initiative up to the point of call over. Indictable family violence matters will be adjourned from the Criminal List directly to a Family Violence Defended Hearing Day 6 weeks later when a deposition will be held. Depositions will be presided over by a judge.

## 7. Role of Victim Advisor

The victim adviser will be present in the court. Where any victim indicates that they would like to seek a protection order, the VA will refer the victim to the FCC. The victim adviser should provide information to victims on:

- . Process
- . Protection orders
- . Counselling
- . Programmes
- . Community support
- . Refuges

## 8. Role of Family Court Co-ordinator

Where a protection order is sought the FCC will assist the victim as outlined under 4.3.

## 9. Community Involvement

Creation of community advisory group including:

- CYFS
- Court staff.
- Police
- Bar
- Probation
- SAFVPN.

The community advisory group will provide a forum for stakeholders to provide feedback about the Family Violence Court and make suggestions for ways in which the process can develop. Terms of reference will be developed.

## **Appendix 3: Waitakere District Court Family Violence Court Protocol – June 2005**

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### **AIMS**

1. To overcome systemic delays in Court process
2. To minimise damage to families by delay
3. To concentrate specialist services within the Court Process
4. To protect the victims of family violence consistent with the rights of defendants
5. To promote a holistic approach in the Court response to family violence
6. To hold offenders accountable for their actions

### **STRUCTURE**

Each week, on Wednesdays, a “Family Violence Court” (FVC) will be held, to the exclusion of any other criminal work, to deal with all charges where family violence is involved. Apart from custody arrests, all summonses and remands will be to a Wednesday. The FVC will deal with pleas, sentence indications, sentencing, and (where time allows) defended hearings. Other defended hearings will be allocated early trial dates on ordinary defended days, or hearing days rostered for the purpose. As far as possible, sentencing process will be conducted on a same day basis.

### **PROCESS**

#### **A. On first appearance**

1. Except when a defendant indicates an intention to plead guilty at first call, the Registrar will adjourn the matter on standard bail conditions to a FVC in the following week; or by consent in custody to the nearest FVC. Where bail is sought and opposed, the matter will go before a judge in the usual way.
2. Duty Solicitors are to facilitate legal aid applications, and assignments are, where possible, to be made that day.
3. Pleas of guilty at first appearance are encouraged, and attract the maximum sentencing credit. Not guilty pleas will not be entered (to discourage the belief that not guilty pleas are necessary to get discovery or time to take instructions).
4. Police basic disclosure packs are to be available promptly for all defendants, wherever possible at first call from the prosecutor.
5. The complainant's views about bail are to be conveyed to the Court either by a Victim Impact Statement or by memorandum from Community Victim Services or the Victim Advisers (Victims Rights Act s30). For the rules as to access by defendants and counsel to Victim Impact Statements, and their use and return, see Victims Rights Act ss21-27.

#### B. Between first appearance and next FVC

1. Counsel and the officer in charge of the case are expected to discuss caption summary and plea.
2. Police to obtain the views of the victim (from Community Victim Services or the Victim Advisers) before the next FVC.
3. A plea is expected at the second appearance, although a further remand for in-custody offenders may be appropriate.
4. Any adjournments for plea beyond FVC only with Court approval.

Note: In this Court objection will be taken to contact between complainants and counsel, whether by counsel approaching complainants or vice versa, except through and in the presence of Community Victim Services or the Victim Advisor, who must be given reasonable notice of such intentions.

#### C. Family Violence Court day (FVC)

1. Sentence indications may be sought, and discussion about best process to follow for the family concerned may be entered into where appropriate. Not guilty pleas before disclosure, or before proper consideration of the charges, will be resisted. Defendants may be asked to confirm not guilty pleas entered through counsel.

##### *On guilty plea*

2. Stand-down reports to consider sentencing options, including the defendant undertaking an anger management, drug/alcohol or other programme, may be sought, to assist with same day sentencing.
3. The up to date views of the victim must be put to the Court, by way of Victim Impact Statement or through Community Victim Services or the Victim Advisers.
4. Same day sentencing unless:
  - (i) further remand for full pre-sentence report
  - (ii) the defendant is to voluntarily undertake a programme before sentence is passed
  - (iii) the Court is considering a discharge without conviction after steps have been taken to address appropriately the family issues
5. Any variation to the charges laid, or amendments to police caption sheet, will be accepted only for principled reasons which are openly canvassed and recorded. Wherever possible victim input will be required, particularly where significant changes to the caption sheet are proposed.
6. Discharges without conviction will be limited to the rare circumstances envisaged by ss.106 & 107 of the Sentencing Act.

### *On a not guilty plea*

7. There will be no status hearing. The charge(s) will be adjourned to the earliest available date for hearing, having particular regard to the situation of a defendant in custody.
8. If a defendant wishes to change his/her plea before the hearing date, the defendant or counsel should arrange for the case to be called in the next FVC. This is consistent with the desirability of helping families to repair as soon as possible and to earn any sentencing concession in line with national sentencing policy for pleas of guilty.
9. Changes of plea on the defended hearing date, while more favourable for a defendant than conviction following defended hearing, will not earn the same sentencing credits given for early plea.
10. Counsel and prosecutors are expected to communicate in good time before defended hearings to resolve any issue which might upset the matter proceeding on that day.
11. Police and defence counsel are to complete the Family Violence Not Guilty Checklist (copy attached) on the day a not guilty plea is entered (that is at FVC).

### D. Available sentences

Parties should be aware that all the available sentences in the Sentencing Act may of course be applied but special consideration will be given under this pilot to the following outcomes, singularly or in combination, depending on the fact situation established, rather than necessarily the particular charge laid:

- (a) Imprisonment
- (b) Imprisonment with special release conditions to undertake a programme, extending if appropriate beyond sentence expiry date.
- (c) Community work and supervision
- (d) Community work
- (e) Supervision with special conditions involving anger management and/or drug/alcohol programmes
- (f) Section 112 Sentencing Act non-association order
- (g) Conviction and discharge
- (h) Convicted and ordered to come up for sentence if called upon
- (i) Section 106 discharge without conviction, in truly minor cases particularly where voluntary anger management is completed
- (j) In appropriate cases resolution may include the making of a protection order under the Domestic Violence Act, and if necessary final disposition delayed pending completion of the attendant programmes

#### E. Bail issues

Standard conditions of bail will be imposed unless other conditions are agreed following input from the police and/or Community Victim Services or Victim Advisers. Likewise conditions of any bail variation should involve input on behalf of victims.

#### F. Involvement of Community Victim Services

Community Victim Services is a term incorporating the various community organisations involved in victim support in family violence cases in Waitakere. Their involvement in the Family Violence Court is in accordance with the Protocol for Family Violence Victim Services at Waitakere District Court that was developed for this purpose. Their wish to speak should, when necessary, be made known to the presiding judge by the prosecutor.

This practice proceeds on the expectation that there will be common agreement between all interested groups, including counsel for defendants, with the philosophy that healing of the family is a paramount consideration and that it is damaging to proceed on a not guilty basis except in cases where there is a clear denial.

## **Protocol for Family Violence Victim Services at Waitakere District Court – October 2004**

### **Principles**

1. To provide the best possible level of service to victims of family violence, in accordance with the Victims Rights Act 2002.
2. To recognise the long-standing partnership between the Waitakere Court and Community Victim Services.
3. To recognise the statutory obligations of Court staff and the Police under the Victims Rights Act.
4. To avoid confusion among victims in relation to the available support and advisory services.
5. To harness the experience and commitment of Community Victim Services in Waitakere.
6. To reinstate the high level of co-operation and mutual recognition among all victim services at Waitakere.
7. To support the effective operation of the Waitakere Family Violence Court in accordance with its protocol.
8. To re-establish formal understandings, following the termination of the 1999 Service Level Agreement between the Court and WAVES.



## **Resources and Realities**

1. The Court must operate within the parameters of the Victims Rights Act 2002.
2. Procedures should reflect the reality of information about cases routinely being disclosed to the public in open Court.
3. The POL 400 Family Violence forms completed by the Police in every family violence case are made available routinely to the three main Community Victim Services namely Victim Support, Viviana and Tika Maranga (collectively referred to hereafter as CVS), in accordance with the Memoranda of Understanding between the Police and CVS.
4. As a result of their receiving the POL 400 forms CVS will be aware of all family violence cases and victims which result in a Court prosecution.

## **Procedures**

1. CVS will continue their call-out service to victims
2. The first letter sent out to victims by the Victim Advisor (VA) will outline the services available through the VA, and include a leaflet outlining the services available through CVS
3. In their first contact with victims CVS will outline their services as well as the services available through the VA.
4. All CVS groups, and the VAs, will follow up contact from victims, either by telephone or in person, as requested by victims.
5. Offenders bailed by the Deputy Registrar at first appearance will receive standard bail conditions i.e. non-association with complainant and residential condition, except at the express request of the victim conveyed through the VA or CVS.
6. A VA will not be present in the Family Violence Court (FVC), but will be available to the Court on other days. CVS will be present throughout FVC days. Both VAs and CVS will be available to appear in Court if or when a Police Prosecutor or judge requires attendance.
7. The VAs and CVS will liaise to try and ensure there is no unnecessary duplication. Memoranda will be provided as early as possible to the judge, Police, Defence Counsel and victims.
8. If a victim contacts a VA saying they need support the VA will refer the victim to CVS for support. The VAs will continue to provide information and advice to victims at Court when requested or approached.
9. The Police and CVS will liaise over appropriate and relevant bail conditions for Police bail hearings and first Court appearances. Where appropriate memoranda will be submitted to the Court.
10. At the time of filing an information sheet Police and Court staff will identify Family Violence cases by using a red "FV" stamp.

11. On all Court days all files stamped "FV" will be placed in a tray by the Court taker after the case is heard, to be accessed by CVS in Court during adjournments.
12. A copy of the Court list will be made available to CVS on request at the Criminal Court counter when they sign for security cards etc.
13. All VAs and CVS staff will wear identifying name badges at Court.
14. Court files are not to be removed from Court unless Criminal Manager gives permission.
15. Court files removed from the courtroom must be returned promptly to ensure data entry and security of the court record is maintained.
16. In the layout of the FVC courtroom there will a place for CVS to be positioned in the area designated for Community Groups/Probation/Collections/Media. When necessary CVS can be seated beside the prosecutor to ensure the victims views are conveyed to the Court.
17. A lockable room in the Court building will be equipped with a desk and chair and be made available for CVS during business hours. CVS will, together with the VAs, also have the use of the victim suite.
18. A phone will be provided for CVS, together with a logbook for recording cellphone usage on a monthly basis. The phone will be used for victim related matters stemming from a Court appearance. The Court administration will monitor the logbook on a monthly basis to ensure costs to the business are relative.
19. Access to photocopying facilities will be made available in the Criminal Office to CVS for court business related matters only, provided that CVS nominate two designated staff and submit the names to the Criminal Caseload Manager. In the interest of security and safety of Court staff, the Criminal team should be familiar with CVS designated staff.
20. CVS may attend Court on non-FVC days, to support family violence victims when appropriate. On those days the same arrangements as set out above will apply.
21. CVS will make their services available to all family violence victims, and the VAs will encourage victims to make use of those services during and after the Court process.
22. All those present in Court must observe standard Court protocols and procedures, and minimise movement around the body of the Court while the Court is sitting.
23. This protocol will commence in August 2005 and be reviewed in December 2005.

## Appendix 4: Methodology – Outcome and sentencing analysis

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### *Manukau FV Court*

This analysis included five samples.

1. Manukau FV Court (FVC) sample (1514 individuals).

The Manukau FVC sample comprised individuals prosecuted in the Manukau FV Court within the period February 2005 to November 2006 and was used to determine the overall distribution of outcomes and sentences for the court.

The additional four groups were selected for comparison purposes from individuals who were charged with at least one of the following offences widely known as ‘family violence’ offences: assault by male on female, common assault identified as ‘Domestic’ under the Crimes Act 1961, common assault identified as ‘Domestic’ under the Summary Offences Act 1981, and breach of a protection order. These four additional comparison groups are listed below:

2. Manukau FVC sub-sample (1026 individuals);
3. Manukau 2003–04 sample (1132 individuals);
4. National 2005–06 sample (1132 individuals);
5. National 2003–04 sample (1132 individuals).

The Manukau FVC sub-sample was selected as a subset of individuals prosecuted in the Manukau FV Court for comparison purposes. The Manukau 2003–04 sample includes individuals who were prosecuted in the Manukau District Court before the FV Court started. Two national samples were selected from all courts, except Manukau and Waitakere, based on one-to-one matching with the Manukau FVC sub-sample.

### *Waitakere FV Court*

This analysis involved six samples.

1. Waitakere FVC 2005–07 sample (790 individuals);
2. Waitakere FVC 2001–05 sample (1212 individuals).

The Waitakere FVC 2005–07 and Waitakere FVC 2001–05 samples comprised individuals prosecuted in the Waitakere FV Court for the FV offences within the periods from 1 July 2005 to 30 June 2007 and from 1 November 2001 to 30 June 2005 respectively.

Two separate samples for the Waitakere FVC were selected to take into account any differences resulting from changes arising from the June 2005 Waitakere FVC Protocols.

The following four additional samples were selected for comparison purposes from individuals who were charged with family violence offences:

3. Waitakere 1998–01 sample (874 individuals);
4. National 2005–07 sample (2002 individuals);
5. National 2001–05 sample (2002 individuals);
6. National 1998–01 sample (2002 individuals).

The Waitakere 1998–01 sample comprised individuals who were prosecuted in the Waitakere District Court before the FV Court started. Three national samples were selected from all courts nationwide, except Manukau and Waitakere, based on one-to-one matching with the combined group of two Waitakere FVC samples.

## Appendix 5: Methodology – Reconviction analysis

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### *Manukau FV Court*

This analysis involved five samples.

1. Manukau FV Court (FVC) sample (659 individuals).

The individuals who were convicted or discharged without conviction in the Manukau FV Court within the period February 2005 to January 2006 were selected into the Manukau FVC sample, which was used to determine overall reconviction rates.

The additional four groups were selected for the comparison purpose from individuals who had a proved charge for at least one of the following offences widely known as ‘family violence’ offences: assault by male on female, common assault identified as ‘Domestic’ under the Crimes Act 1961, common assault identified as ‘Domestic’ under the Summary Offences Act 1981, and breach of a protection order. The comparison groups are listed below:

2. Manukau FVC sub-sample (493 individuals);
3. Manukau 2001–04 sample (1474 individuals);
4. National 2005 sample (493 individuals);
5. National 2001–04 sample (493 individuals).

The Manukau FVC sub-sample was selected as a subset of offenders from the Manukau FV Court. The Manukau 2001–04 sample includes offenders who were convicted or discharged without conviction in the Manukau District Court prior to the operation of the FV Court. Two national samples were selected from all courts nationwide based on one-to-one matching with the Manukau FVC sub-sample.

### *Waitakere FV Court*

Six samples were included in this analysis:

1. Waitakere FVC 2005–06 sample (274 individuals);
2. Waitakere FVC 2001–05 sample (835 individuals).

The Waitakere FVC 2005–06 and Waitakere FVC 2001–05 samples comprised individuals convicted or discharged without conviction in the Waitakere FV Court for the FV offences within the periods from 1 July 2005 to 30 June 2006 and from 1 November 2001 to 30 June 2005 respectively.

Two separate samples for the Waitakere FVC were selected to take into account any differences resulting from changes set out in the June 2005 Waitakere FVC Protocols.

The following four additional samples were selected for comparison purposes:

1. Waitakere 1998–01 sample (719 individuals);
2. National 2005–06 sample (1109 individuals);
3. National 2001–05 sample (1109 individuals);
4. National 1998–01 sample (1109 individuals).

The Waitakere 1998–01 sample comprised individuals who were convicted or discharged without conviction in the Waitakere District Court before the FV Court started. Three national samples were selected from all courts nationwide based on one-to-one matching with the combined group of two Waitakere FVC samples.

## Appendix 6: Limitations of outcomes and sentencing analysis

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The results of the outcomes and sentencing analysis are subject to limitations:

- The Sentencing Act 2002 changed both the range of available sentences and sentencing practice, therefore it was not possible to clearly distinguish between the effects of the new sentencing legislation and the impact of the FV Court.
- Offences used to select the samples of offenders for the analysis represent just a part of all possible family violence offences, so the results of the analysis should not be taken as an exact representation of sentencing patterns for all family violence.
- Selection of the comparison offenders for the sentencing study was based on matching by available characteristics (e.g. seriousness of the current case, plea type, previous criminal history, gender, etc.). However even individuals who were perfectly matched by these characteristics can receive a different outcome and sentence because of the particular circumstances of each case, which cannot be taken into account with the available statistical data.
- Cases involving family violence offences may also include other offences that have an influence on sentencing. It was not possible to eliminate this influence from the analysis, but it was reduced by using the total number of charges within the current case as one of the matching criteria for selecting national samples.





## Appendix 7: Limitations of reconviction analysis

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The results of the reconviction analysis are subject to the following limitations:

- The offences used to select the samples of offenders represent just a part of all possible family violence offences, so these results should not be taken as an exact representation of family violence.
- Reconviction rates under-represent actual reoffending. Some offences, particularly those involving family violence, will not be reported or, if reported, may not necessarily result in a charge being proved in court.
- Some offences committed within the one-year follow-up period may not have been dealt with by the courts within the follow-up period, and so will not be counted as reconvictions. The resulting possible underestimation of reconviction rates can be more of an issue for the recent Family Violence Court sample and national samples, and could be addressed in future analysis (e.g. two year follow-up study) by recalculating the one year reoffending rates.
- Selection of comparison offenders for national samples was based on matching by available characteristics (e.g. gender, age, previous history, etc.). However, there are other factors (e.g. personal circumstances, motivation, etc.) that can influence the offender's behaviour with respect to reoffending, but could not be included in the analysis because this information is not recorded in the data set used for the analysis. Thus, it is possible that differences in reconviction rates between the FV Court and other District Courts are due to factors other than the effect of the FV Court.

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