

Bail in New Zealand: reviewing aspects of the bail system Public Consultation, 16 May 2011

Submitted by:

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Introduction.

Thank you for the opportunity to present a submission on the Bail in New Zealand; reviewing aspects of the bail system discussion document.

WAVES Trust is an interagency family violence network organisation. The membership is primarily government and non-government service providers who work in the area of family violence. There are also members who are not specifically family violence agencies, but their work complements or supports efforts to reduce violence in Waitakere.

We are sending this submission from the perspective of agencies who respond to domestic and sexual violence against women and children. Therefore the submission is concerned with the provision of bail to people who have abused their partners, children, family members or others they are in a domestic relationship with.

We would be happy to speak to this submission, or call together a meeting of our network for consultation purposes, if this would be useful to your investigation.

We have consulted with:

- the Police
- the Waitakere Community Law Office
- the WAVES Family Violence Network. We called a consultation meeting and then sent drafts out for comment to the entire network. There are over 50 agencies in our network.

WAVES Trust

WAVES Trust is a charitable trust which provides:

- Links to other organisations through the interagency network
- A networking forum to encourage and support statutory and community services to provide integrated and collaborative services to reduce family violence
- Community advocacy and representation on initiatives that target family violence
- Information about best practice in family violence intervention and support for the implementation of best practice

- Primary prevention, capacity building, and education opportunities for those working to reduce family violence
- Contract management of interagency projects and contracts
- Access to current, relevant research
- Monitoring of community initiatives such as the Waitakere Family Violence Court
- An overview of information deficits and initiation of local research

Structure and Management

WAVES Trust is a charitable trust. Governance is vested in the Board, which is chaired by a Family Court Judge and comprises representatives from the family violence sector in Waitakere. There are four staff — a manager, two part-time coordinators, and an administrator.

Our Submission:

WAVES Trust and the WAVES network generally supports the intention of the review to broaden the range of charges under which a reverse burden of proof (“RBP”) applies. However, we can foresee some adverse consequences of such actions. In the following submission we wish to draw attention to the possible ramifications for defendants, their victims and families who are the subject of charges relating to family violence (“FV”).

FV is a major concern for the communities in Waitakere and our Police. Around 50% of police callouts in Waitakere relate to concerns about FV but we believe that most FV incidents are not reported to the police. FV affects the whole family and extends to others living in a domestic relationship. FV is covered under the Domestic Violence Act 1995, and applies to people in a domestic relationship. It is characterised by a pattern of behaviours used by one party to gain power and control over the other. These behaviours include physical, sexual, emotional, financial, and psychological abuse of adults and/or children. The Act does not define these behaviours as criminal per se but sets out how victims and family members can apply to the court for protection and consequences for those who breach protection orders.

Most commonly FV defendants coming before the courts will be charged in relation to physical or sexual assault, or threats to harm under the Crimes Act and Summary Offences Act. Although we do not have figures to hand, we understand from agencies in our network that a high proportion of these defendants face serious charges such as wounding or injuring with intent, causing grievous bodily harm, or sexual violation when the matter of bail is first considered by the courts. FV is often a matter of power and control, over the victim, their family and the court system. Defendants using the bail process to further exercise their control dynamic on the victim is one of the chief concerns of the WAVES network. Therefore this Bail Review is of particular pertinence to the FV sector and its clients.

Answers to Questions in the Bail Review:

Q1: This question is outside our expertise therefore we do not express an opinion.

Q2: We do not support the use of electronically monitored bail (“EM Bail”) for defendants charged with methamphetamine offences, where that person is addicted or has a history of substance abuse and there are children residing in the home proposed. Adults with drug addiction issues are a major risk factor for child abuse, therefore we suggest that EM Bail is inappropriate in these circumstances. Any advantages to the court system of EM Bail will be

offset by the risk of serious detriment to any children involved, and we are deeply concerned that this option has the potential to increase risk of harm to children.

Q3: We expect that defendants on murder charges would be the subject of rigorous risk assessment procedures in the course of any decision-making about bail. We believe that those charged with murder should not have an automatic presumption in favour of bail. In cases where murder charges relate to FV we believe that RBP should apply.

Q4: In cases where murder charges relate to FV, we strongly support a presumption of RBP.

Q5: We support the use of RBP in cases of sexual offending or attempts at offending against children and young people. We would also like to see less serious FV offences such as ‘male assaults female’ and breaches of protection orders added to the list of offences considered for RBP where the defendant has previous convictions for the same or similar offences. Less serious offences take on new meaning when viewed as part of a history of offending because FV is a pattern of behaviours aimed at intimidation and control. Viewed with this in mind, even reasonably minor offences can have a serious impact on the victim, out of all proportion to the offence. Therefore ongoing police action against a defendant indicates that minor offences should be taken seriously, even if by themselves these do not technically warrant such a category in law.

Q6: We do not support the use of EM bail for defendants charged with serious or sexual offences against family members even if the bail address is different from that where the offence took place and/or is not the victim’s residence. In cases of FV the primary goal of abuse is control over others. Agencies tell us that remand in custody is an effective way of reducing FV recidivism. This is because the offender is taken out of an environment in which he can exercise power and control over the victim. It also allows the victim time to come to terms with the situation, time to work with agencies towards improving their safety, and increases their feelings of empowerment and motivation to actively pursue the FV charges. EM bail does not sufficiently limit or monitor the defendant’s activities or contacts to keep victims safe from further abuse. For example, a person on EM bail is free to associate with family members without supervision and may enlist their support to pressure the victim to retract statements to the police or return to the relationship. There is also the issue of unmonitored time for travel to work, which can be used by defendants to harass or intimidate their victims.

Q7:-Extreme caution should be exercised when considering bail for further charges for young people between the ages of 17 and 19 years old who have already served a prison sentence. We recognise that recidivism may already be a serious factor even at this young age. FV is still prevalent for those in this age bracket, and is possibly under reported. Therefore, we agree that the presumption should be removed, particularly for those with FV offences. However, it is inappropriate to have a presumption particular to this group, and we would prefer a blanket approach to FV offences.

Q8: We agree that defendants under the age of 17 years who breach bail conditions should be subject to arrest without warrant. However, we urge the government to consider carefully how such young people would be housed while under arrest or when remanded in custody and suggest that CYF might be best placed to provide appropriate accommodation.

Q9: We support the addition to legislation to prevent the trading of bail for information. The primary concern of bail hearings must be the seriousness of the offence in question and risk the defendant presents to his/her victims and the public.

Q10 – Q12: We do not offer opinions on these questions.

Q13: We do not support the use of monetary bonds and sureties. Monetary bonds are discriminatory, and tend to advantage wealthier defendants. Not only would this disadvantage the poor, it would allow the wealthy to ‘buy’ the right to continued freedom and ability to abuse their victims. The poorer defendants have historically turned to loan sharks and organised crime to provide money for bail. It is also a bad option from a pure policy perspective. As stated above, bail must be granted or denied based on individual assessment of the crime and the defendant’s risk to the public.

Q14: We do not support monetary sureties for Police bail.

Q15: Whilst we do not oppose EM bail in theory, we believe that its use should be limited. We recognise its advantages in administration of justice, but this must be weighed up with the defendant’s risk to the public. As stated in Q6 above EM bail is not appropriate for serious offences related to FV because of the relative lack of control of the defendant’s day to day interactions and the risks these pose to victims.

Q16: EM bail allows defendants to do things they would not be able to do while on remand in custody, such as to interact socially and maintain employment. Breaches of EM bail must be viewed seriously as not only a breach of bail conditions but also a breach of the privilege of being able to remain in the community. We believe that for these reasons breach of EM bail should be an offence and be a factor requiring RBP for future offences.

Other issues:

We recommend that cases should proceed in the absence of the defendant, but only to deal with a Warrant to Arrest and discuss/impose further bail conditions provided that the victim’s views are sought and presented to the court as part of this process.

We recognise that imposing RBP on particular categories of offending may increase the numbers of defendants remanded in custody. We recognise also that remanding a defendant in custody is a serious action for a defendant who has not been proven to have committed the alleged crime. However, this must be tempered to public safety. This is a particular concern for FV offences. We believe that remand in custody must remain a response to the level of risk the offender poses to the public, including their own family. Therefore, we would withdraw our agreement to RBP if this measure reduced the space available on remand for high risk defendants on less serious charges. In short, we would not want to see low-risk defendants on serious charges remanded in custody whilst high risk defendants on lesser charges are released on bail because there is insufficient custodial accommodation available for them. We suggest that the government consider how it will increase the capacity of remand facilities to meet the increased demand caused by these changes.