



Changes Impacting Referrals to Man Alive Stopping Violence Programmes between January 2009 and June 2012

Produced for the Waitakere Taskforce on Family Violence by WAVES Trust

10 October 2012

Contact:

WAVES Trust

PO Box 12-1450, Henderson 0650

coordinator@waves.org.nz

www.waves.org.nz

Changes Impacting Referrals to Man Alive Stopping Violence Programmes between January 2009 and June 2012

Produced for the Waitakere Taskforce on Family Violence by WAVES Trust, 10 October 2012

Executive Summary

This study has been undertaken as a result of concerns raised by Man Alive with the Waitakere Taskforce on Family Violence that the numbers of referrals received to stopping violence programmes (SVPs) had dropped substantially over the last two years. It is recognised that some of the decline to Man Alive programmes is the result of referrals to other providers such as Te Whanau o Waipareira Trust. However, the decline was evident well before Waipareira began receiving referrals from the Courts suggesting that there are other contributing factors.

The following report focuses on men's access to Man Alive SVPs through the pathway initiated by police FV callouts and mandated by the Waitakere Family Violence (FV) Court. We explore evidence of the impact of two changes in police policies occurring in 2010: the introduction of a new arrest policy from 1 January 2010 and the introduction of Police Safety Orders (PSOs) from 1 July 2010.

Key Findings:

1. Since implementation of the new arrest policy:
 - a. The arrest rate to June 2012 (number of arrests as a percentage of all callouts) has declined by 42% of 2009 levels and has yet to plateau.
 - b. After adjusting for delays in court processing, the average number of cases heard by Waitakere FV Court has declined by 34% from 2008/9 averages and by 38% in 2012.
 - c. Referrals received by Man Alive prior to the introduction of a new provider have averaged 48% of arrests. Up to the end of 2011 referrals received from the FV Court had declined by 30%.
2. Within the FV Court:
 - a. The quantity of cases finalised has declined by 38% to end June 2012.
 - b. But the proportion of successful cases (73%) and unsuccessful cases (27%) has not changed.
 - c. The lack of change in the proportions of successful and unsuccessful cases means that for the reduction in every one unsuccessful case there has been a corresponding loss of three successful cases that may have referred to an SVP.
3. Further investigation is needed to determine whether:
 - a. The new arrest policy has the same impact across all criminal jurisdictions of the District Court as the Waitakere FV Court.
 - b. To what extent the FV Court protocols and delays may be undoing the policy's influence.
 - c. The influence of other social factors on increased reporting and declining arrests rates.
4. In relation to concerns about the impact of PSOs on arrest rates, we could not find evidence to substantiate these concerns but PSOs may have had an unintended consequence of preventing offences occurring. It is important to note that there is a lack of information available to assess these concerns. We recommend better monitoring by police and the family violence sector going forward.

1.0 Background

WAVES Trust was asked to produce this report by the Waitakere Taskforce on Family Violence following Man Alive raising concerns with Taskforce that court-mandated referrals of men to their SVPs have been declining since two changes to police powers: the tightening of arrest criteria to meet the new Prosecution Guidelines issued by the Solicitor-General from 1 January 2010 and police empowerment to issue and enforce Police Safety Orders (PSOs) at family violence (FV) callouts from 1 July 2010.

In order to assess the extent of any decline and explore whether there may be any apparent relationship to the changes in policing, WAVES Trust has requested information about numbers and types of referrals in six-monthly periods to allow discussion of the impact of changes occurring in January and July 2010. We requested information across three domains: Waitakere Police FV activities, Waitakere FV Court cases, and referrals received by Man Alive SVPs. Additional information was requested from other FV service providers but did not result in any significant data collection apart from information received from the former Western Refuge Society Inc.

The following sub-sections provide background information necessary to understand the information discussed in this report beginning by outlining the pathway to court-mandated SVP referrals and Waitakere FV Court protocols, followed by the new police policies and procedures for arrests at FV callouts and the issuance of PSOs.

1.1 Men's Pathways to SVPs: Waitakere Family Violence Court

There are multiple pathways to SVPs. Men may be required to attend programmes by statutory bodies like the courts or probation services and their attendance may be subjected to various levels of monitoring. Men may also self-refer to programmes voluntarily or as a result of non-statutory interventions such as Family Court counselling. The pathway discussed in this report is the one mandated by the 2005 Waitakere Family Violence (FV) Court Protocol, which was introduced in June 2005 augmenting an earlier version implemented in 2001. The aims of the current protocol are:

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.¹

The pathway to SVPs followed by men through the Waitakere FV Court can be summarised as:

¹ Ministry of Justice, *The Waitakere and Manukau Family Violence Courts: An Evaluation Summary*, Wellington, 2008, pp.13–4. The full report is available online at <http://www.justice.govt.nz/publications/global-publications/t/the-waitakere-and-manukau-family-violence-courts-an-evaluation-summary-august-2008> (Accessed 4 September 2012).

1. Police receive a callout relating to FV which is acted upon resulting in the arrest of an alleged offender on the basis that sufficient evidence of an offence has been found either at the scene at the time or during subsequent investigations by the police FV and/or Problem-Solving teams.
2. Once arrested, the alleged offender is usually held overnight by police and the next working day arraigned by a Court Registrar with automatic bail conditions stating no contact is to be made with the alleged victim(s) for two weeks and a hearing date set with the Waitakere FV Court (charges relating to serious offences dealt with by the High Court are outside the scope of this report).
3. The accused attends the FV Court hearing represented by legal counsel if any and is asked to plead to the charges, if pleading:
 - Guilty, may be offered the opportunity to self-refer to an SVP and after monitoring progress the Court may grant a discharge without conviction (s.106).
 - Not guilty, will proceed to a defended hearing before a Judge under the same or revised bail conditions.
4. At the defended hearing the evidence is assessed by the Judge who may find the accused:
 - Not guilty on the basis that the evidence does not prove guilt beyond reasonable doubt and the accused is free to go
 - Guilty, resulting in sentencing:
 - Non-custodial sentence, which may include referral to an SVP and monitoring
 - Custodial sentence in which case programme attendance may occur post-release if requested by the Probation Service.

Steps 1. and 2. are relatively quick with arraignment occurring as soon as possible after arrest, usually the next working day. Court process timeframes are guided by the 2004 Practice Note which stipulates that matters should be resolved within three months using the following process:

- Pleas should be heard within two weeks of arraignment.
- A status hearings should be held within four weeks of a not guilty plea.
- A defended hearing should be held within six weeks of a not guilty plea or status hearing.
- Charges are to be heard and determined within 13 weeks.²

It must be noted that the 2008 Evaluation of Waitakere and Manukau FV Courts found that only 41% of Waitakere cases conducted between 1 July 2005 and 30 June 2007 were finalised within 13 weeks.³ Despite recommendations in 2008 that the Ministry provide additional judges, courtrooms, staff in order to meet the terms of the *Practice Note*,⁴ delays of up to six months for defended hearings continue to be an issue at the Waitakere FV Court.

The Waitakere FV Court Protocol encourages guilty pleas through a combination of timing, by asking defendants to plead after a 'cooling down' period of two weeks instead of at arraignment, and by offering incentives to 'self-refer' to an SVP in return for avoiding a conviction.⁵ It is important to note that the opportunity to plead guilty is made to all presenting defendants regardless of whether there is sufficient evidence to proceed to trial or succeed at a defended hearing. Therefore this

² MoJ, *Evaluation Summary*, p.14. See also Mandy Morgan, Leigh Coombes, and Sarah McGray, *An Evaluation of the Waitakere Family Violence Court Protocols*, Palmerston North, 2007, p.33.

³ MoJ, *Evaluation Summary*, p.25.

⁴ MoJ, *Evaluation Summary*, p.46.

⁵ MoJ, *Evaluation Summary*, pp.19, 22.

pathway to an SVP relies upon police making an arrest at a FV callout and charges being presented to the Waitakere FV Court regardless of the quality, durability, or reliability of evidence.

1.2 Policing Changes: New Solicitor General Prosecution Guidelines from 1 January 2010

New prosecution guidelines impacting all police arrest policies were implemented on 1 January 2010. The guidelines were a response to concerns raised by District Court Judges about the high volume of cases being heard within the criminal jurisdiction of the District Court and the fact that around one third of cases were being withdrawn before trial or failing to succeed at a defended hearing.⁶

From 1 January 2010 New Zealand Police *FV Policy and Procedures* (v.11.0) state that:

If there is sufficient evidence of an offence, offenders who are responsible for family violence related offences or breaches of protection orders should, except in exceptional circumstances, be arrested.

In cases where offending is disclosed and actions other than arrest are contemplated ... you must consult with your supervisor before proceeding.⁷

In deciding whether to make an arrest police must consider whether the evidence meets the Solicitor-General's new tests for prosecution, which lifted the threshold from a 'prima facie' case to one where there is a 'reasonable prospect of conviction'.⁸ The NZ Police *FV Policy and Procedures* states that:

The Solicitor General's Prosecution guidelines require that prosecutions are only brought where there is a reasonable prospect of conviction (the 'evidential test') and where a prosecution is in the public interest.

The evidential test considers whether:

- there has been the commission of an offence
- there is an identifiable individual (offender)
- credible evidence exists
- that evidence will be accepted by the court
- likelihood of conviction (defences to be put forward)
- finding - beyond a reasonable doubt⁹

At the WAVES Interagency meeting held on 13 April 2010 Sergeant Iain Chapman, head of the FV Team based at Henderson Police Station, presented on the potential impact of the changes to the Solicitor-General's prosecution guidelines. He acknowledged that the new arrest policy may reduce arrests where the allegation is historical, or where the evidence is uncorroborated or limited to 'he said/she said'. Chapman's view, however, was that the new arrest policy was an incentive for police to work harder to obtain evidence and would reduce the number of court cases that failed to secure a conviction, which he put at that time at around 1/3 of court cases.¹⁰ A 2008 evaluation of the

⁶ Appendix A.

⁷ NZ Police, *Family Violence Policy and Procedures*, Version 11.0, 2010, <http://www.ppdvp.org.nz/wp-content/media/2010/07/NZPol-Family-Violence-Policy-Procedures.pdf> (Accessed 2 July 2012), p.34.

⁸ Appendix A.

⁹ NZ Police, *Family Violence*, p.55.

¹⁰ See Appendix A.

Waitakere FV Court protocols supported this figure finding that during the two years from 1 July 2005 to 30 June 2007 31% of cases were either withdrawn or not proven.¹¹

1.3 Police Safety Orders available from 1 July 2010

Following changes to the Domestic Violence Act from 1 July 2010 New Zealand Police can issue a 'Police Safety Order' (PSO) to individuals at FV callouts. A PSO is a temporary non-contact order that requires the recipient (bound person) to leave the family property and make no contact with the protected persons (and any children in the household) for a specified period of not more than five days.¹² A national review of the implementation and efficacy of the PSO has been completed for New Zealand Police in 2011.¹³

Police *FV Policy and Procedures* state that a PSO may be issued if police:

- [do] not arrest the [alleged perpetrator] of an offence involving use of violence against the person at risk (a family violence offence), but
- [have] reasonable grounds to believe (when taking specific matters into account ...) that the issuing of an order is necessary to ensure the immediate safety of the person at risk.¹⁴

A PSO contains similar provisions to a Protection Order (PO) in terms of non-contact and requirement to relinquish firearms and it suspends all current parenting orders for its duration. The PSO differs from a PO in that the protected person has no power to 'activate' or 'deactivate' the order and there is no funded access to programmes via the Family Court for protected or bound persons or their children.¹⁵

When setting the duration of a PSO the Police *FV Policy and Procedures* state that police staff should take into account how long it would take the protected person to seek help from services or the courts as well as the impact of the order on the family considering factors such as hardship.¹⁶ In practise, the national review found that issuance of PSOs for longer periods generally occurs on Thursdays or Fridays, weekends or public holidays. The reviewers noted that some protected persons have complained that when they wanted time to consider their options the duration of the PSO was insufficient to allow them to consult with lawyers, services or the courts before the bound person returned.¹⁷

¹¹ MoJ, *The Waitakere and Manukau Family Courts*, Appendix 3 Table 1.

¹² The PSO resulted from changes to the Domestic Violence (DV) Act (S124) initiated by the Domestic Violence (Enhancing Safety) Bill in 2009.

¹³ Venezia Kingi, Michael Roguski, and Elaine Mossman, *Police Safety Orders Formative Evaluation: Summary Report*, Wellington, 2011. This report available online at <http://www.police.govt.nz/sites/default/files/resources/evaluation/police-safety-orders-formative-evaluation-2011.pdf> (Accessed 3 August 2012).

¹⁴ NZ Police, *Family Violence*, p.38.

¹⁵ Letter from Justine Cornwall, Ministry of Justice to Chester Burrows MP, Chairperson of the Justice and Electoral Select Committee, 'Briefing on Domestic Violence (Enhancing Safety) Bill', 2 March 2009, http://www.parliament.nz/NR/rdonlyres/FFE4A150-5C6A-4B1F-A7D7-BA7956A9429A/120377/49SCJE_ADV_00DBHOH_BILL8993_1_A29597_Initialbriefi.pdf (Accessed 2 July 2012), paragraphs 20–2.

¹⁶ NZ Police, p.40.

¹⁷ Kingi et al., p.28.

Attending police may deliver information about local services to bound and protected persons along with information about the PSO. The national review of PSOs raised concerns about the lack of resources giving contact details for available services to bound and protected persons, arguing this was a significant barrier to their getting help.¹⁸ Only 34% of frontline officers surveyed for the review ‘always or usually’ gave information about available services to bound persons and most gave information verbally rather than distributing the police-issued PSO pamphlet.¹⁹ Proportionately more protected persons received information and 78% were told about crisis services. Because police are required to submit a POL400 form following all FV callouts, protected persons would also receive follow up from crisis services in the days following the callout.²⁰

The PSO operates to remove an individual from the scene at the time of the callout, allowing an immediate but short term ‘cooling off’ period.²¹ A key finding of the national review of PSOs is that police felt these orders ‘stopped the escalation of violence’ and reduced ‘the burden on police resources because officers do not have to return to the same address on multiple occasions on the same day’.²² If this is case and if it occurs more than occasionally then we could argue that the PSO has had an unintended consequence of reducing arrests. However, we have not found any information to confirm if PSOs are making a significant impact on numbers of arrests.

¹⁸ Kingi et al., p.28.

¹⁹ Kingi et al., pp.22–3.

²⁰ Note Kingi et al. suggest that this may not always be happening in some areas of NZ. Kingi et al., pp.13–14.

²¹ Kingi et al., p.5.

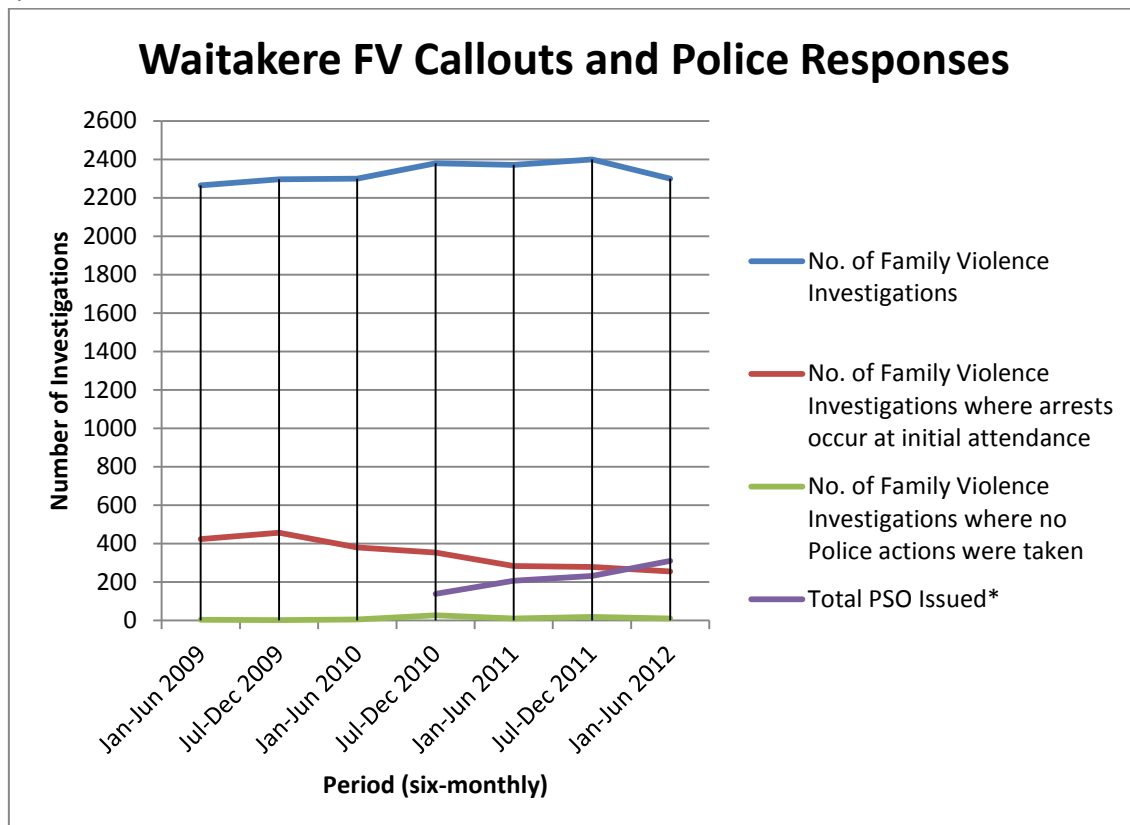
²² Kingi et al., p.36.

2.0 Police FV Callouts, Waitakere FV Court and SVP Referral Data

2.1 Waitakere Police FV Callout Data

Waitakere Police have provided us with the following police family violence statistics for six-monthly periods from 1 January 2009 to 30 June 2012 for the Waitakere policing area.²³ The raw data is contained in Appendix B with national figures for the same periods.

Graph 1:



*The new arrest policy came into force from 1 January 2010 and PSOs were available to police to issue from 1 July 2010.

Because of difficulties obtaining the relevant information we have not examined arrests conducted in the days after the initial callout as a result of on-going investigations by the Police Family Violence or Problem Solving Teams. Whilst the new arrest policy could lead to investigations becoming more complex and resulting in arrests occurring after the initial callout we have not had any anecdotal evidence to suggest that substantial numbers of arrests are now being made in the days/weeks following a FV callout.

The information provided by police is the total arrests of, and PSOs issued to, males and females during these periods. Because police are not able to identify the gender of alleged victims and perpetrators of family violence callouts for ease of comparison we have not asked the police for information on only men's arrests, receiving instead the total of all arrests. It is important to note however that nationally, in 2005–2006, 14% of arrested offenders were female compared to 86%

²³ The raw data is provided in Appendix B.

male.²⁴ In our discussions with Police and victims' services there has been no indication that the gender ratio of arrested offenders has changed significantly. Therefore we do not believe that the decline in men's referrals to SVPs is related to proportionately fewer men being arrested than in the past.

2.1.1 Police Family Violence Investigations

Graph 1 indicates that over the period from 1 July 2010 to 31 December 2010 total police callouts to family violence incidents increased by approximately 3–4 calls per week and maintained that level until 31 December 2011 after which time callouts dropped by an average of 3–4 calls per week. One explanation may be that this is the impact of 'It's Not OK' advertising campaigns occurring in 2010 and 2011, as a similar increase is shown in the national figures.²⁵ Increased community awareness of FV has been acknowledged by Sergeant Wendy Pickering from Waitakere Police who states that police have been receiving more calls from concerned members of the public about families with severe long-term abuse issues with whom police have not had prior contact. Increased community awareness may also be responsible for the rising incidence of 'false positives': the average number of callouts at which no police actions were taken increased from 4 per six-month period (between January 2009 and 30 June 2010) to 16 per six-month period (between 1 July 2010 and 30 June 2012).²⁶

Police National Headquarters staff identified another possible contributing factor: that after the implementation of PSOs police may be categorising more situations as domestic disputes in order to make use of a PSO.²⁷ For example to remove an individual whose behaviour is problematic (e.g. a drunken person locked outside by the family) from a family context where it is unclear whether there is a risk of FV.²⁸

2.1.2 Trends in Arrest Rate following 1 January 2010 and PSO Issuance from 1 July 2010

The combined effect of the new arrest policy and the introduction of PSOs has resulted in a 31% increase in the proportion of FV callouts (not including those identified as false positives) at which they take some form of action to ensure the immediate safety of family members: increasing from 19% of callouts for the six-months to June 2009, to 25% of callouts for the period to June 2012, although it should be noted that the percentage increase shown in the final period is inflated by a drop in the overall number of callouts (see the table below).

²⁴ Leigh Coombes, Mandy Morgan, Sarah McGray, *Counting on Protection: A Statistical Description of the Waitakere Family Violence Court*, Palmerston North, 2007, p.7.

²⁵ New advertising campaign for It's not OK began in 2010. See also Appendix B for national figures.

²⁶ See Appendix B.

²⁷ Pauline Gulliver and Janet Fanslow, *Measurement of Family Violence at a Population Level: What might be needed to develop reliable and valid family violence indicators?*, Auckland, 2012, pp.18–9.

²⁸ Kingi et al. discuss the issue of using PSOs to prevent further callouts rather than in response to risk as an issue for police to address. See Kingi et al., p.38.

Table 1:

Waitakere FV Callouts and Police Responses	Jan-Jun 2009	Jul-Dec 2009	Jan-Jun 2010	Jul-Dec 2010	Jan-Jun 2011	Jul-Dec 2011	Jan-Jun 2012
Total Family Violence Investigations less 'false positives'	2261	2295	2293	2352	2362	2380	2289
No. of Family Violence Investigations where arrests occur at initial attendance	424	457	380	354	284	279	255
<i>Arrest Rate (arrests as % of FV Investigations less false +vs)</i>	<i>18.8%</i>	<i>19.9%</i>	<i>16.6%</i>	<i>15.1%</i>	<i>12.0%</i>	<i>11.7%</i>	<i>11.1%</i>
Total PSO Issued				139	208	233	310
<i>PSO Issuance Rate</i>				<i>5.9%</i>	<i>8.8%</i>	<i>9.8%</i>	<i>13.5%</i>
<i>Combined PSO & Arrests as % Total Investigations</i>	<i>19%</i>	<i>20%</i>	<i>17%</i>	<i>21%</i>	<i>21%</i>	<i>22%</i>	<i>25%</i>

The trend shown on Graph 1 and Table 1 indicates declining numbers and rates of arrest (rate of arrest is the number of arrests as a proportion of all callouts) that have not yet stabilised. The proportion of callouts now subject to an arrest at attendance has declined by more than two fifths of those in 2009 (a drop of 42%), down from 18.8%–19.9% of callouts in 2009 to 11.1% of callouts for the six months' ended June 2012.

Since police began issuing PSOs from 1 July 2010 the numbers of these orders issued every six months has increased. The ongoing growth in use of the PSO may indicate that some time was needed to embed the order into police practice. The increasing trend in use of PSOs has not yet plateaued and now exceeds arrests in the most recent period examined here, both numerically and proportionately: 310 PSOs were issued in the first six months of 2012 (an issuance rate of 13.5% of all callouts) compared to 255 arrests (11.1% of callouts).

Our investigations did not find any clear explanation for the trend towards increasing use of PSOs in Waitakere. This trend could be indicative of two practices identified by the national review as problematic:

1. The use of PSOs to prevent further callouts in situations not relevant to FV.
2. Blurring of the boundaries between the criteria for arrests and issuance of PSOs; the national review authors found that nationally 28% of POL400 documents noted issuance of a PSO where violence had occurred and 11% indicated evidence of injuries.²⁹

However, we have found no evidence in the information collected for this report indicating that either of these issues is occurring in Waitakere to any great extent.

²⁹ Kingi et al., p.20.

2.2 Waitakere Family Violence Court Data

In the context of falling numbers of police arrests, how have these changes flowed on to impact the Waitakere FV Court? For the purposes of this report we are interested in exploring the changes in particular categories of court cases that are likely to result in timely referrals of men to Man Alive SVPs, namely guilty pleas and verdicts at defended hearings, and cases withdrawn or found not guilty at defended hearings. We requested the following information from the Ministry of Justice relating to cases finalised at the Waitakere FV Court from 1 January 2008 to 30 June 2012 in six-monthly totals under the following categories:

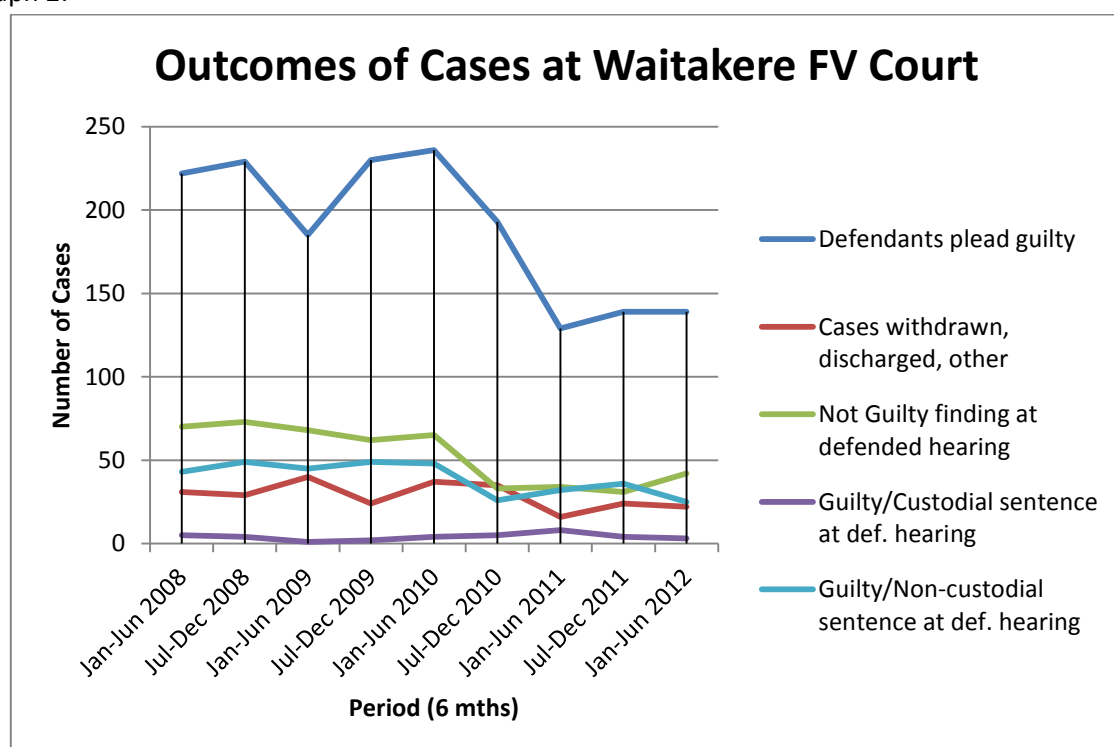
- Numbers of cases where defendants plead guilty
- Numbers of cases dropped or withdrawn
- Numbers of cases to defended hearing according to outcomes:
 - Acquittals
 - Guilty
 - divided into non-custodial sentences and custodial sentences

The Ministry supplied the information requested according to the following disposal methods (categories):

- Cases where the defendant pleads guilty
- Cases withdrawn, discharged, or other not proven
- Cases finalised at a defended hearing, divided by the following outcomes:
 - Not Guilty verdict
 - Guilty verdict with a custodial sentence
 - Guilty verdict with a non-custodial sentence³⁰

The Ministry confirmed that these cases total all Waitakere FV Court cases finalised for each period.

Graph 2:



³⁰ Raw data received from the Ministry is appended in Appendix D.

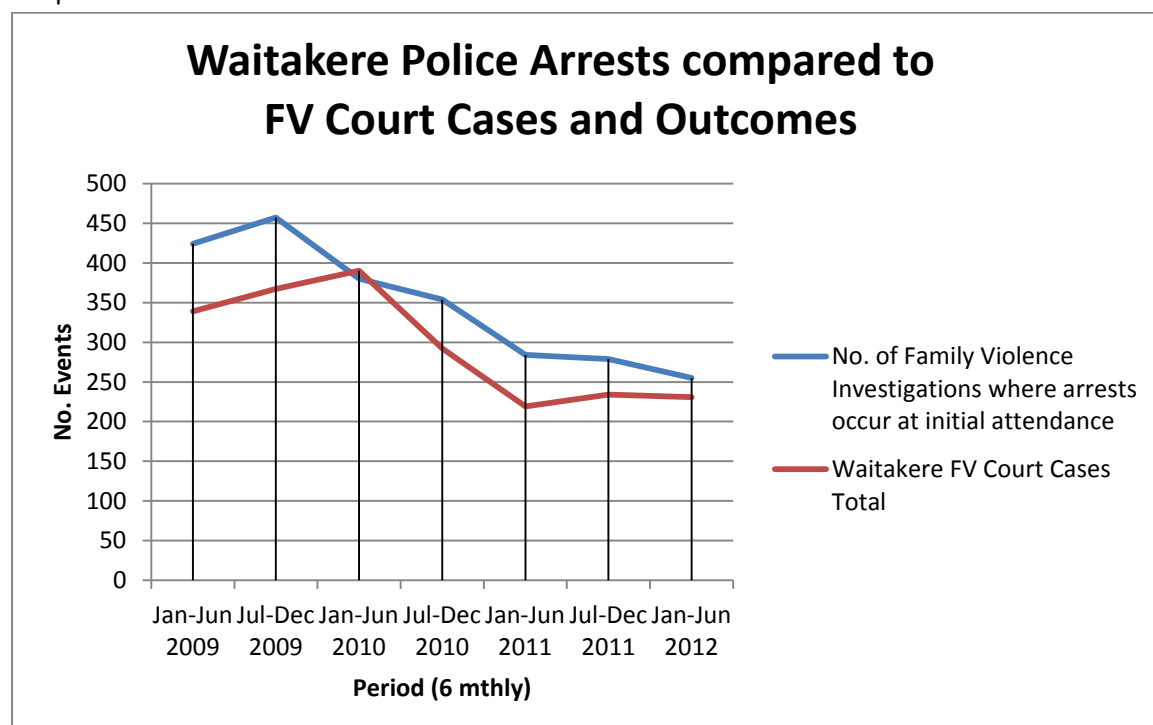
2.2.1 Complications in Comparing Arrest and Court Data

The figures provided by the court include both male and female defendants as do the figures provided by police. We must note that sometimes the court will hear a case consisting of charges related to multiple arrests of the same defendant on different days. In a minority of cases charges relating to FV callout arrests may be heard in the High Court for serious offences, such as attempted murder or manslaughter.

If taken at face value Graph 2 appears to indicate that the new arrest policy did not impact the numbers of cases reaching FV Court until combined with introduction of PSOs from 1 July 2010. However, information received from FV Court Judge David Mather (also WAVES Chairperson) suggests that existing long delays in court processing functions meant that falling numbers of arrests took some time to be reflected in court figures. Declining numbers of accused entered the Waitakere FV Court system under the new arrest policy from 1 January 2010 but delays may have resulted in more time given over to clearing backlogged cases. This point is illustrated in Graph 3 below: during January to June 2010 more FV Court Cases (390) were finalised than arrests were made (380). Our suggestion is further supported by the trends on Graph 3 showing greater consistency between total FV Court cases and numbers of arrests beginning from December 2010.

Outside of unsubstantiated concerns that PSOs might be issued in place of arrests or may operate to prevent the commitment of offences there is no reason to suggest that the decline in court outcomes from 1 July 2010 is the result of the implementation of PSOs.

Graph 3:



The impact of long delays to finalising cases complicates the analysis of FV Court information. In our analysis below we have accommodated the likelihood that the impact of the new arrest policy on the court was not completely manifested until at least six months following implementation of the policy by adjusting the raw information in two ways:

1. We extended data collection back to January 2008 and calculated six-monthly averages for each type of court outcome to use as a comparison rather than using 2009 data alone.
2. We used 1 July 2010 as the date that we expect to see the impact of the new arrest policy on the courts thereby including the first half of 2010 in the pre-arrest policy average calculations.

By extending the information collected back to 2008 and using a six-monthly average for comparison helps to smooth out the inconsistencies between time periods caused by court processing delays. However, we recognise that these decisions do not completely account for the issue of court processing delays as defendants making guilty pleas will not be subject to the same length of delay as those proceeding to defended hearings.

In Table 2 below the six-monthly averages in court outcomes between 1 January 2008 and 30 June 2010 are compared with six-monthly averages for 1 July 2010 to 30 June 2012 in two ways. Firstly, by outlining the changes in outcomes as a percentage of total court cases for each period and secondly showing the increase or decline (negative) in six-monthly average for each category between the two periods.

Table 2:

Waitakere FV Court Case Categories	January 2008 – June 2010		July 2010 – June 2012		Change in no.s between periods -ve = decline	
	6 monthly average	Percentage total cases	6 monthly average	Percentage total cases		
Defendants pled guilty	220	59.5%	150	61.5%	-32%	n=-70
Guilty verdict/Custodial sentence	3	0.8%	5	2%	+66%	+2
Guilty verdict/Non-custodial sentence	47	12.7%	30	12.3%	-36%	-17
Total Successful Outcomes	270	73.0%	185	75.8%	-31%	-85
Not Guilty verdict	68	18.4%	35	14.3%	-49%	-33
Withdrawn, discharged, other	32	8.6%	24	9.8%	-25%	-8
Total Unsuccessful Outcomes	100	27.0%	59	24.2%	-41%	-41
Total Cases	370	100%	244	100%	-34%	-126

2.2.2 Impact of New Arrest Policy on Court Outcomes

The new police arrest policy was intended to reduce the numbers of unsuccessful cases (those withdrawn, discharged or not proven) to a minimum while having as little impact as possible on the numbers of successful outcomes (those who plead or are found guilty). However, as Table 2 indicates, this does not appear to have been the case in the Waitakere FV Court.

Comparing six-month average contributions of each outcome category to the overall total finalised cases within the periods under review, January 2008 to June 2010 and July 2010 to June 2012, shows only minor changes in the distribution of outcomes (Table 2 columns 3 and 5). Following the new arrest policy, the proportion of unsuccessful case outcomes has dropped from an average of 27% of

all cases to 24%. There has been a correspondingly small increase in the number of successful cases up from an average of 73% of all cases to 76%.

More significantly, however, the quantity of cases being finalised every six months has dropped substantially following implementation of the new arrest policy as a result of fewer arrests being made (see Table 2 columns 6 and 7). From 1 July 2010 the FV Court has heard on average 126 fewer cases every six months, a decline of 34% on the average numbers heard every six months prior to the change in arrest policy. The largest numerical decline has occurred in successful cases, with 85 fewer overall made up of 70 fewer defendants pleading guilty and 17 fewer guilty verdicts with non-custodial sentences, there has also been a very small increase in the numbers of guilty verdicts with custodial sentences, up from an average of 3 per six month period to an average of 5.

The numbers of unsuccessful cases have declined to the greatest extent percentage-wise, down 41%, but numerically the reduction is less than half that of successful cases: 41 defendants in all. The high percentage change for unsuccessful cases is an artefact of the small numbers in this category (as stated above these make up about one quarter of all cases). Because defendants can only be counted in whole numbers, the loss of one person from a small group creates a larger percentage change than does their loss from a larger group. The loss of one defendant from 100 unsuccessful cases will have almost three times the effect on the percentage change compared to the loss of one defendant from 270 successful cases.

Looking at the change in six-monthly averages for case outcomes only tells part of the story. The decline in arrests has been ongoing and although apparently slowing for the first six months of 2012, has not yet reached a plateau, and Graph 3 shows a similar trend in total FV Court cases finalised. The following Table compares the six-monthly average for January 2008 to June 2010 with the actual figures for the most recent period investigated in this report to give a sense of the present day impact.

Table 3:

Waitakere FV Court Case Categories	January 2008 – June 2010		January – June 2012		Change in no.s between periods -ve = decline	
	6 monthly average	Percentage Total Cases	Total	Percentage Total Cases		
Defendants pled guilty	220	59.5%	139	60.2%	-37%	n=81
Guilty verdict/Custodial sentence	3	0.8%	3	1.3%	0	0
Guilty verdict/Non-custodial sentence	47	12.7%	25	10.8%	-47%	-22
Total for Guilty pleas/verdicts	270	73.0%	167	72.3%	-38%	-103
Not Guilty verdict	68	18.4%	42	18.2%	-38%	-26
Withdrawn, discharged, other	32	8.6%	22	9.5%	-31%	-10
Total Not Guilty/Withdrawn	100	27.0%	64	27.7%	-36%	-36
Total Cases	370	100%	231	100%	-38%	-139

Table 3 shows that for January to June 2012 the proportions of unsuccessful and successful cases as a percentage of total cases are more or less the same as those up to June 2010 (Table 3 columns 3 and 5). The numbers of successful cases have declined by a total of 103 (a decline of 38%) and the total unsuccessful cases has declined by a total of 36 cases (a drop of 36%) (Table 3 columns 6 and

7). Whilst the percentage decline is similar across the two categories of cases the numerical decline is substantially higher for successful cases because this is the largest category of outcomes.

If the goal of the new arrest policy was to reduce the numbers of cases overall then this has been achieved with 139 fewer cases proceeding in January to June 2012. If, however, the goal has been to reduce only unsuccessful cases then this has come at a high price: under the new arrest policy the reduction in every one defendant with an unsuccessful outcome has potentially come at the price of three successful cases, which defendants would have had a high likelihood of being referred to an SVP.

2.3 Family Violence Service Provider Data

2.3.1 Referrals to Man Alive SVPs

Man Alive provide SVPs in Waitakere, Auckland Central and South receiving referrals from Waitakere and Auckland Family Courts, FV Court, and Corrections services. Waitakere FV Court referrals are mostly made to Waitakere-based programmes. But it should be noted that the boundaries between court districts are not firm, for example Auckland residents may be referred to Waitakere SVPs by Auckland Central courts for the sake of convenience: for example if they live in suburbs neighbouring Waitakere.

Man Alive programme referrals are made from the Waitakere FV Court in relation to the pathway investigated by this report, as are referrals from Corrections albeit much later as most of their referrals are initiated after time served. However, referrals from Corrections relating to time served for FV offences are expected to be relatively small as indicated by the very small numbers of Waitakere FV Court defendants receiving custodial sentences. These defendants make up around 2% of all defendants and are in the range of 3 to 5 defendants every six months.³¹ It is likely that referrals received from Corrections will also include individuals emerging from custodial sentences applied by the criminal jurisdiction of the District Court and the High Court in relation to a broader range of offences than FV. Family Court referrals mainly relate to protection order respondents who are mandated to attend programmes upon the granting of a final protection order. Our discussion here concentrates only on referrals received by Man Alive direct from the Waitakere FV Court.

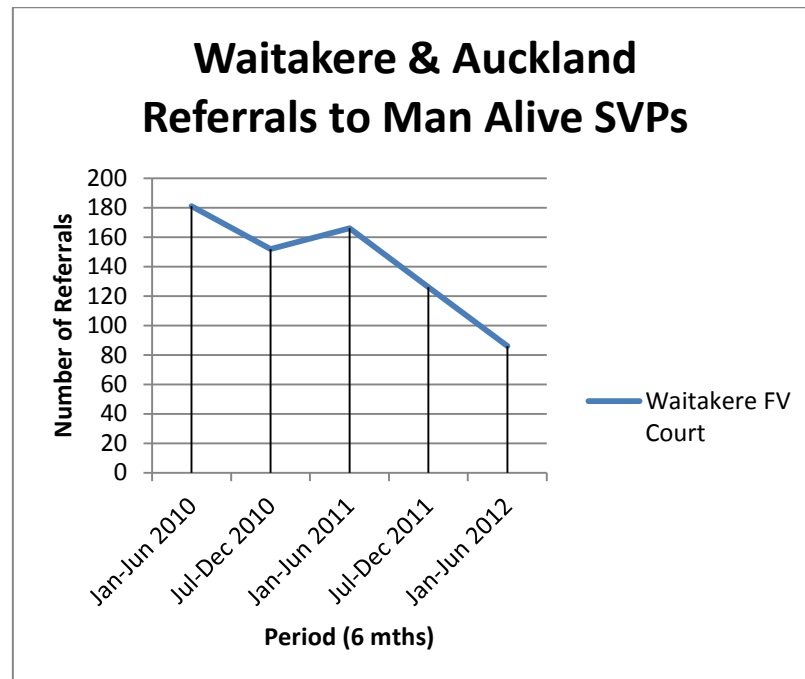
Man Alive has supplied information from their records from January 2009 to June 2012. But because the organisation implemented a new recording system partway through 2009 they consider the information recorded for the first three quarters of 2009 to be unreliable. Therefore we have decided to use figures from January 2010 to June 2012 as the basis for discussion.

It is also important to remind readers that during the period January to June 2012 Te Whanau o Waipareira Trust was introduced as a Ministry of Justice mandated programme provider, working primarily with Maori men. Without information from Waipareira about how many referrals they received from the Waitakere FV Court during this period we cannot use Man Alive referral figures for that period as a comparator.

In the following discussion we have focused on changes occurring during the period up to December 2011, and have ensured any discussion about January to June 2012 is qualified by mention of the impact of Waipareira Trust.

³¹ See Table 2 and Table 3 above.

Graph 4:

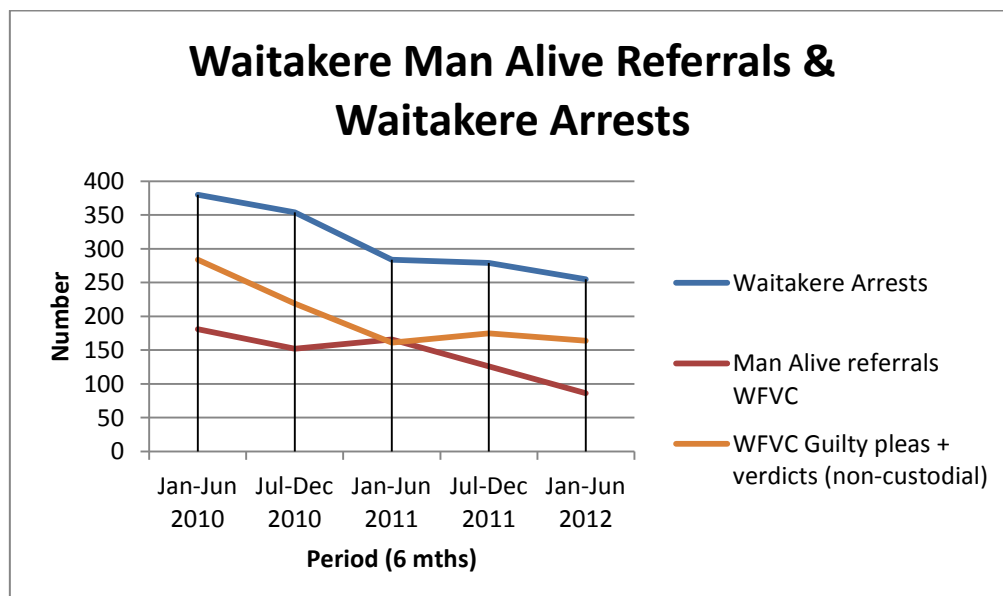


As Graph 4 indicates Man Alive has experienced significant reduction in referrals from Waitakere FV Court for the period from 1 January 2010 to 31 December 2011 dropping by 30%. This trend has also been confirmed anecdotally by another provider of programmes in Waitakere.

2.3.2 Trends in Man Alive Referrals

Comparing the numbers of arrests in Waitakere alongside Waitakere FV Court guilty pleas or verdicts with non-custodial sentences and referrals to Man Alive shows a correlation between falling numbers of referrals, successful court outcomes, and falling arrest numbers.

Graph 5:



Man Alive referrals from the Waitakere FV Court have shown some volatility and do not exactly correlate with arrest and court trends. This is possibly due to the reduction of court backlogs

extending to SVP referrals as well as hearings; Man Alive received more referrals from the court for January to June 2011 than there were guilty pleas and verdicts with non-custodial sentences (103%).

Table 5 below shows that Man Alive has received 30% fewer referrals for July to December 2011 compared to the first half of 2010, and referrals have dropped further for first half of 2012 when Waipareira began providing SVPs showing a cumulative decline of 52%. The last column on Table 5 shows that Man Alive have received referrals from Waitakere FV Court in the range of between 43% to 58% of total Waitakere arrests, receiving an average of 48% of all arrests prior to the introduction of a new provider.

Table 5:

Period	Waitakere FV Court Referrals	Change from previous period -ve=decline	Cumulative change -ve=decline	Waitakere Arrests	Referrals as % of Arrests*
Jan-Jun 2010	181	0		380	48%
Jul-Dec 2010	152	-16%	-16%	354	43%
Jan-Jun 2011	166	9%	-8%	284	58%
Jul-Dec 2011	126	-24%	-30%	279	45%
Subtotal	625			1297	48%
Jan-Jun 2012	86	-32%	-52%	255	34%
Total	711			1552	46%

3.0 Discussion

3.1 Impact of the New Arrest Policy on FV Court and Referrals to SVPs

The implementation of the Solicitor-General's new prosecution guidelines (1 January 2010) were expected to reduce the numbers of arrests by up to one third, thereby eliminating as far as possible unsuccessful cases from the criminal jurisdictions of the District Court, including FV Courts.³² Since 1 January 2010 the numbers of Police FV Callouts have increased slightly but the proportion of callouts resulting in arrest declined. By the end of June 2012 the decline was larger than the expected one third: the arrest rate had declined by 42% and the downward trend has yet to plateau. There has been a corresponding impact on Waitakere FV Court. The quantity of finalised cases has declined by an average of 34% for each six month period following the impact of the new arrest policy, and reached 38% for the first half of 2012. These two trends are echoed in the referrals from the Court to Man Alive which declined by 30% prior to the introduction of another provider in 2012.

Despite the FV Court processing fewer cases proportionately unsuccessful cases have not changed significantly. Tables 1 and 2 indicate that there may have been a very large unintended consequence of the new arrest policy: for the reduction in every one defendant having an unsuccessful outcome in court there has been a corresponding loss of three successful cases. Graph 5 demonstrates that there are similar trends in the decline of numbers of arrests alongside successful outcomes in court and referrals to Man Alive SVPs. It seems clear from this information that the new arrest policy has not resulted in the anticipated improvement in case outcomes for the Waitakere FV Court.

There are many possible reasons for these trends that are likely to be of a social and policy nature, which are not adequately conveyed by examination of numerical data. We discuss below some possible reasons including changes in the nature of FV reporting, societal responses to changes in policing, the specificities of FV offending and the design of FV Court protocols, which may all have contributed to the reduction of men's referrals to Man Alive SVPs.

A combination of factors may be contributing to the falling arrest rate by increasing the numbers of callouts and decreasing the numbers of arrests. Total FV callouts have increased since 2009. Violence awareness campaigns aimed at bystanders may have increased the numbers of police callouts or increased families' use of police as a preventive measure before violence occurs. Likewise PSOs may also unintentionally act as a preventative measure, allowing police to intervene earlier by separating family members before an offence occurs circumventing a subsequent arrest. As the public learn and understand the value of the PSO as an early intervention tool we might expect to see some families call the police earlier to avoid the on-going hardship, distress and conflict associated with criminal proceedings. Furthermore the rising rate of PSO issuance may indicate that as PSOs have become embedded into police practices personnel are increasingly finding these orders a useful response to situations that would in the past have received no action or not been recorded as FV.

FV offenders have some of the highest recidivism rates in criminal offending and it is well recognised that men's offending is often driven by a strong sense of entitlement, making them difficult to hold to account. The Waitakere FV Court protocols are designed to address these issues by structuring pleading opportunities to allow a 'cool down' period following arrest and incentivise guilty pleas,

³² Appendix A.

particularly for less serious offending.³³ The high rates of guilty pleas in the FV Court (around 60%) suggests that for many defendants the benefits gained from compliance outweighs the social cost of a conviction or carries the promise of discharge without conviction. It is possible that the new arrest policy has produced a decline in the numbers of guilty pleas by weeding out some men who would otherwise have been incentivised to plead guilty in spite of their case being borderline insofar as evidence is concerned.

In the Waitakere FV Court only a minority of cases actually get to a defended hearing: in January to June 2012 there were 67 defended hearings for a total of 231 defendants (29%). But cases proceeding to a defended hearing may well be the least likely to take the incentive to plead guilty. These cases may be the most difficult to prove or those least affected by the costs of mounting a defence. The fact that often witnesses, victims, and offenders are in on-going relationships may be a significant contributing factor to unsuccessful outcomes in court, for example victims and witnesses may be pressured by offenders or wider family members to minimise the extent of the offending in order to defeat charges. Long delays between arrest and hearing cases may also degrade the perceived reliability of evidence and increase the likelihood that the family will want to 'move on' from the incident in question.

3.2 Impact of PSOs on FV Court and SVP Referrals

The introduction of PSOs was not expected to replace arrests but rather to extend the range of tools available to police to respond to families perceived to be at risk of harm but where an arrest is not possible. The national review of PSOs raised concerns about two unintended consequences of PSOs that may have contributed to declining numbers of arrests nationally. Firstly, the reviewers documented evidence that a minority of PSOs might be being issued where an arrest was warranted. They recommended improving the clarity of guidelines outlining appropriate use for PSOs to ensure there was no confusion about when a PSO could be issued. Secondly, the reviewers were clear that PSOs should not be used solely to reduce the burden on police resources through attending repeat callouts. Rather PSOs should always be issued in response to concerns about the risk of FV offences occurring after police attendance.³⁴ We recognise that issuance of a PSO might have the unintended (although very laudable) consequence of preventing tensions overflowing into violence resulting in further callouts and eventually an arrest. Assessing whether either of these unintended consequences of PSOs is actually occurring here in Waitakere will require further and different forms of investigation.

The original brief for this study raised concerns about the lack of limits on the numbers of PSOs that may be issued to one individual. We asked victims' service providers whether in their experience many clients had had partners receive more than one PSO in the last year but they were unable to supply reliable data. At this stage we have not found evidence to confirm fears that repeat PSO issuance to high risk/high recidivist individuals is a problem in Waitakere. Because PSOs have only been available to police for two years on-going monitoring of patterns of PSO issuance may reveal whether these fears are manifesting in reality. Achieving this will require a greater commitment on the part of service agencies collecting POL400s to recording information about PSOs on databases. But we have found what appears to be a lack of safeguards both in policy and in legislation aimed at

³³ MoJ, *Evaluation Summary*, pp.19, 22.

³⁴ Kingi et al., p.39.

identifying such individuals and ensuring they have access to funded programmes. This issue needs to be addressed by both police and the family violence sector.

4.0 Conclusions

This report examines information relating to mandated pathway to SVPs using statistical information from the following domains: the police, Waitakere FV Court, and Man Alive. We can reasonably conclude from the data examined here that there is a relationship between falling numbers and rates of arrest, falling numbers of successful court outcomes, and falling numbers of referrals to Man Alive. The question remains, why?

As we understand it the intention of the new arrest policy was to minimise the numbers of unsuccessful cases appearing before the courts. Following implementation of the policy, in the Waitakere FV Court there has been a large reduction in the quantity of cases overall but little change to the proportions of successful and unsuccessful cases. We have outlined some social and procedural factors that may be contributing to this phenomenon in the Waitakere FV Court, but further research is necessary to confirm whether the problems lie within the structure of the policy itself or are unique to FV-related crimes. Within the FV sector we have identified the following factors that may be worth investigating further:

- Local changes in the reporting of FV and police responses.
- The impact of familial relationships on FV Court outcomes.
- The impact of the therapeutic approach of the FV Court, which prioritises and incentivises guilty pleas and defers assessment of the value and quantum of evidence.
- Ongoing issues of hearing delays in court.

This study highlights some weakness in police policies for PSO issuance. There are no policies for identifying and facilitating serial PSO recipients into SVPs, particularly in cases where there are high numbers of callouts but little available evidence of offending. We recommend that the FV sector work with police to explore ways to support these individuals' access into SVPs and thereby improve family safety for the long term.

It is worth asking whether the new arrest policy is working as intended in the criminal jurisdiction of the District Court. If the policy has not substantially reduced the proportion of unsuccessful cases there then we might well be justified in arguing that the unintended costs of the policy (in denying justice to victims) are too high and lobbying for change.

Appendix A

Summary of Sergeant Iain Chapman's Presentation To the WAVES Inter-Agency Meeting

April 13th, 2010 – The Church, Corbans Estate Art Centre

Iain Chapman described the Solicitor-General's new prosecution guidelines for police which increase the evidential requirements for arrests and charges, and discussed the implications of these new guidelines for police callouts to family violence incidents and subsequent legal action. This directive from the Solicitor-General overrides all existing police procedures from 1st January 2010.

The new guidelines affect police abilities to lay charges in relation to all criminal matters. The guidelines raise the standard required of evidence from simply forming a *prima facie* case, which is a relatively low standard of proof, to **a reasonable belief that the evidence will gain a conviction**. This standard is a much higher and requires that police collect more evidence to build a case that is likely to meet the test of 'beyond reasonable doubt'.

Iain acknowledged concerns expressed by many agencies working in the field of family violence that the new guidelines will mean fewer arrests/charges, leaving offenders free to continue perpetrating violence on their families. Iain stated that this eventuality is most likely to occur where evidence of violence is limited to 'he said/she said' for example if there is no direct evidence of physical assault or evidence from witnesses to the altercation, and will probably also have an impact on the outcomes of complaints about historic abuse.

However, Iain believes that better police work will ensure that court appearances will not decline, arguing that the guidelines create incentives for the police to work harder at collecting sufficient evidence to meet the test of a *reasonable belief*. He stated that the new guidelines were a response to the fact that 1/3 of all cases taken to court fail to gain a conviction and pushes police to collect more and better evidence at the outset. The advantages of such an approach can be seen in Japan with its 99% conviction rate attributed to vetting of the evidence before it goes to court. In Iain's view, if the police lift their game we could potentially see more convictions.

Iain gave some examples of how the new guidelines might work in practice:

- Breach of Protection Order (PO) cases are subject to the new guidelines. But because the evidence of a breach is not weighted, it can be as small as a txt or phone call, the guidelines will not affect enforcement of PO breaches in terms of arrests and charges as long as there is evidence.
- From 1 July, police can implement and enforce Police Safety Orders (PSO), prohibiting individuals accused of violent behaviour from engaging with their victims for a period of up to five days. Breach of a PSO is the same as breaching a PO and results in arrest and charges.
- In court, police can argue for the admission of evidence showing a 'propensity' to behave violently, e.g. previous charges/convictions and old POL400 forms, albeit it is hard to have admitted so in the past they haven't bothered going this far, they may well go down this path more often in the future.
- The guidelines do not affect police powers to take individuals into custody if they are drunk or behaving aggressively. Police can still take them into custody overnight for breach of the peace or disorderly conduct and give agencies time to work with the family.

- Guidelines do not affect the FVIARS inter-agency processes, which discuss 90% of POL400 cases regardless of the legal outcome.
- Guidelines do not affect the standard of evidence required for a PO, because there is a lower evidentiary threshold for a PO than a criminal court case.

Other issues of relevance that were discussed included:

- The Police cannot act to enforce a breach of a legal undertaking between parties and such agreements should be discouraged in family violence situations.
- The popularity of PO's is declining, however Iain suggests that these remain the best way for victims to ensure their safety because any complaint to the police with evidence of a breach, no matter how minor, is able to be followed up with arrest and incarceration.

Appendix B

Statistics from Waitakere Police

FAMILY VIOLENCE STATISTICS WAITAKERE AREA

	Jan-Jun 2009	Jul-Dec 2009	Jan-Jun 2010	Jul-Dec 2010	Jan-Jun 2011	Jul-Dec 2011	Jan-Jun 2012
No. of Family Violence Investigations	2,265	2,297	2,299	2,379	2,372	2,399	2,300
No. of Family Violence Investigations where arrests occur at initial attendance	424	457	380	354	284	279	255
No. of Family Violence Investigations where no Police actions were taken	4	2	6	27	10	19	11
Total PSO Issued*				139	208	233	310

***Commenced operation on Jul 2010**

Family Violence Investigation are jobs Police deal with as family violence. A given Family Violence Investigation may relate to one or more offences and/or non-offence incidents. Only one of these (usually the most severe) is used to categorise the investigation. Family Violence Investigation data are provisional and drawn from a dynamic operational database. They are subject to change as new information is continually recorded.

Many factors influence Police decisions to undertake Family Violence investigations and these change over time. Police statistics for Family Violence Investigations should therefore not be used to make inferences about trends in the incidence of Family Violence over time.

NATIONAL FAMILY VIOLENCE FIGURES

	Jan-Jun 2009	Jul-Dec 2009	Jan-Jun 2010	Jul-Dec 2010	Jan-Jun 2011	Jul-Dec 2011	Jan-Jun 2012
No. of Family Violence Investigations	37,448	40,413	41,570	43,047	43,599	43,115	41,189
No. of Family Violence Investigations where arrests occur at initial attendance	8,513	8,899	8,340	8,662	8,012	7,510	6,455
No. of Family Violence Investigations where no Police actions were taken	911	679	470	432	425	368	371
Total PSO Issued*				2,261	2,981	4,152	4,665

***Commenced operation on Jul 2010**

Appendix C

Man Alive Referrals

	Jan-Jun 2010	Jul-Dec 2010	Jan-Jun 2011	Jul-Dec 2011	Jan-Jun 2012
Waitakere FV Court	181	152	166	126	86

Man Alive Referrals and Police Arrest Information

	Jan-Jun 2010	Jul-Dec 2010	Jan-Jun 2011	Jul-Dec 2011	Jan-Jun 2012
Waitakere Arrests	380	354	284	279	255
Man Alive referrals WFVC	181	152	166	126	86
WFVC % Wtkr Arrests	48%	43%	58%	45%	34%
Waitakere FV Callouts	2299	2379	2372	2399	2300
WFVC % Wtkr Callouts	7.9%	6.4%	7.0%	5.3%	3.7%

Appendix D:

Waitakere Family Violence Court Finalised Cases

Table 1: Waitakere Family Violence Court data for the period 1 January 2008 to 30 June 2012

Disposal Method	Outcome	Sentence Type	Jan-08 - Jun-08	Jul-08 - Dec-08	Jan-09 - Jun-09	Jul-09 - Dec-09	Jan-10 - Jun-10	Jul-10 - Dec-10	Jan-11 - Jun-11	Jul-11 - Dec-11	Jan-12 - Jun-12	Jan-08 - Jun-12 Total
1. Numbers of cases where a defendant pleads guilty			222	229	185	230	236	193	129	139	139	1,702
2. Number of cases withdrawn, discharged, other			31	29	40	24	37	35	16	24	22	258
3. Number of defended hearing cases	Not Guilty		70	73	68	62	65	33	34	31	42	478
Number of defended hearing cases	Guilty	Custodial	5	4	1	2	4	5	8	4	3	36
Number of defended hearing cases	Guilty	Non-Custodial	43	49	45	49	48	26	32	36	25	353