District Court of New Zealand
Te Kōti-ā-Rohe o Aotearoa

TE AO MĀRAMA
Best Practice Framework

"Enhancing justice for all"

Contents

Foreword

Te Ao Mārama literally means the world of light. It is a judicial initiative intended to enhance justice for all people affected by the business of the family, youth and criminal jurisdictions of the District Court.[1] Te Ao Mārama aims to ensure that court participants, including defendants, victims and whānau, feel seen, heard, understood and able to meaningfully participate in matters that affect them.

The 'Te Ao Mārama Best Practice Framework' sets out how Te Ao Mārama will operate in practice in the Family Court, Youth Court and criminal jurisdiction of the District Court. It is an easy-to-use resource, primarily intended for District Court judicial officers. It will also be useful to court staff, lawyers, relevant government agencies and the local communities the District Court serves.

Te Ao Mārama builds on the evidence and lessons learned over decades in the solution-focused, therapeutic and mainstream jurisdictions of the District Court. Solution-focused judging began in the Family Court in the early 1980s and was enshrined in the Youth Court legislation in 1989. Since then, other solution-focused and therapeutic courts have been established in a small number of District Court locations. This raises the concern of postcode justice where outcomes can be different depending on where you live.

To address this concern, for the first time we have brought together in one document the best practices and processes learned from frontline experience and development over four decades. **This framework sets the standards for best practices and processes in the mainstream work of the District Court**.[2]

Te Ao Mārama does not change the substantive law or process protections, but it does call for new behaviours, new information, new services and new processes. This framework encourages judicial officers, court staff, lawyers, regional justice agencies and local communities to work together to establish Te Ao Mārama in each court. We have already started this in three locations (Hamilton, Gisborne and Kaitāia) and are engaging with other locations. This new way of working together respects judicial independence, and the separation of powers and is consistent with the 2018 statement of principles.[3]

Timely justice is a central principle of Te Ao Mārama. The District Court has significant case backlogs and Te Ao Mārama is intended to be introduced in a way that does not increase delays. The District Court has a strategy in place to address the backlog and allow room for Te Ao Mārama best practices to flourish.

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1 "Mai te Pō ki Te Ao Mārama: The Transition from Night to the Enlightened World: Calls for Transformative Change and the District Court Response" (speech delivered at the Norris Ward McKinnon Annual Lecture, 2020).

2 District Court Act 2016, s 24(3)(i).

3 Statement of Principles observed by Judiciary and Ministry of Justice in the Administration of the Courts.

The Te Ao Mārama initiative is ambitious but necessary. At the heart of it, it involves enhancing the court's connection to the community, inviting the strength of the community into our courtrooms, adopting solution-focused and therapeutic approaches (where appropriate), and ensuring that people are heard and understood and feel that they have had a fair hearing.

Heemi Taumaunu
Chief District Court Judge
20 December 2023

Purpose of this framework

[1] The Te Ao Mārama Best Practice Framework has been developed over the past two years. It outlines eight best practice approaches, developed from 40 years of solution-focused judging in our courts.

[2] The first section of the framework gives an overview of these approaches – their benefits, and some examples of how they look in action. The second section of the framework sets out in more detail how they are applied in the Family Court, Youth Court, and criminal jurisdiction of the District Court.

Te Ao Mārama eight best practice approaches

[3] This section explains the eight best practice approaches for District Court judicial officers[4], court staff, lawyers, relevant government agencies and service providers.

[4] Some of these approaches may require resourcing – for example, wrap-around therapeutic services in the courtroom, alternative courtroom layouts and where new roles are expected to be established as part of this framework.

[5] This framework gives a clear mandate for the best practice approaches that do not require additional resourcing to be adopted across the District Court. To this extent, those Te Ao Mārama approaches apply in all District Court locations.

1. *Enhance connections with local communities*

(a) An essential component of Te Ao Mārama (including solution-focused judging) is a close connection between the court and the community it serves. Community-based organisations bring the strength of the community into the courthouses and courtrooms. They provide a hub of knowledge and information and offer social services and support for those who need them most (which may be defendants, complainants, victims or whānau).

(b) Judicial officers have the opportunity to welcome relevant service providers into the Family Court, Youth Court and criminal jurisdiction of the District Court so they can offer to provide alcohol and other drug counselling and treatment, non-violence and safety programmes, and comprehensive wrap-around therapeutic support services.

2. *Improve the quality of information judicial officers receive to inform their decisions*

(a) Better information helps judicial officers make better decisions. An information-sharing protocol[5] will provide judicial officers with access to relevant and legally obtainable reports and information from the Family Court, the Youth Court and the criminal jurisdiction of the District Court. This protocol should enable justice

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4 Judicial officers refer to District Court judges, acting warranted judges, Community Magistrates, Family Court Associates, Judicial Justices of the Peace and registrars where appropriate.

5 Including: Sharing of Information between the Family and Youth Courts Protocol.

sector agencies and community organisations to share relevant information about parties. It should also outline when a judicial officer may access certain information to ensure natural justice is preserved and that information sharing does not prejudice to a party.

3. Improve processes for victims and complainants

(a) Te Ao Mārama seeks to ensure that all court participants are seen, heard, understood and able to meaningfully participate in the proceedings that relate to them. This applies equally to victims[6], complainants, witnesses and defendants.

(b) There are particular considerations required to safeguard participation for victims of sexual and family violence. The District Court should be a place where victims of sexual and family violence can meaningfully express their views and have those views acknowledged and taken into account in the Family Court, Youth Court and criminal jurisdiction of the District Court. They may provide input on:

  (i) the nature of the harm alleged to have been suffered

  (ii) the underlying causes

  (iii) the impact caused to themselves, children and wider whānau

  (iv) the supports they need in the court process

  (v) the supports they need to recover

  (vi) any other matter relevant to keeping victims safe from violence, particularly sexual and family violence, and preventing the defendant from inflicting violence in the future.

(c) All victims and affected whānau are treated with courtesy and compassion, and their dignity and privacy respected.[7]

(d) Victims and whānau affected by sexual and family violence are treated with respect and sensitivity towards the trauma they have experienced.

(e) The District Court recognises the complex dynamics between parties, the particular risk of lasting harm to children exposed to sexual and family violence, and the courage it takes to progress sexual and family violence cases through the Family Court, Youth Court and criminal jurisdiction of the District Court.

(f) The comfort and safety of victims is provided for during the court process. Some examples of best practice include:

  (i) Taking steps to eliminate the chance of defendants and victims being present in the courtroom together where this is not the victim's expectation or wish.

  (ii) Offering victims and whānau alternative means to address the court (s 22A of the Victims' Rights Act 2002). They may wish to read their victim

6 "Victims" are defined in the Victims' Rights Act 2002.

7 Victims' Rights Act 2002, Part 2.

impact statement through an audio-visual link or provide pre-recorded video statements, subject to approval by the presiding judge.

(iii) Acknowledging, where it is safe to do so, the presence of victims and/or their whānau in the courtroom.

(iv) Safely separating the victim from the defendant and making the victim aware of victim facilities (such as separate entrances, where available), and support services if they are available in the courtroom.

(g) The District Court will observe the rights of victims contained in the Victims' Rights Act 2002.

4. Encourage people to feel heard in the courtroom

(a) When judicial officers actively listen to what those in the courtroom are saying, defendants, whānau, complainants, victims, and parties to proceedings are more likely to feel they have been heard and understood and have received a fair hearing. Judicial officers and court staff can do this by, for example:

(i) Establishing eye contact and other non-verbal cues, where they would be well received, with complainants, victims and parties to proceedings and acknowledging their presence in court.

(ii) Greeting somebody by their preferred name, pronouncing their name correctly, using the correct pronouns[8], acknowledging them and their whānau respectfully, and continuing to refer back to them.

(iii) Providing participants with the opportunity to tell their side of the story and voice their perspective, where this can be done without prejudicing their position.

5. Establish alternative courtroom layouts

(a) Alternative courtroom layouts have been used with good effect in the therapeutic courts to help make it easier for all parties to engage. Examples of alternative layouts are:

(i) a boardroom-style table formation (as in the Matariki Court and Alcohol and Other Drug Treatment Court)

(ii) a 'horseshoe'-style formation (as in Te Kōti Rangatahi/Rangatahi Court and many Youth Court locations)

(iii) the judge sitting at the registrar's bench (as in the New Beginnings Court and many Youth Court locations)

(iv) any other formation the judicial officer believes would facilitate meaningful participation.

(b) The design and use of alternative courtroom layouts requires a risk assessment to ensure the safety of all participants, including defendants, complainants,

[8] This may help break barriers for LGBTQIA+, MVPFAFF (an acronym to describe Pasifika identities), Rainbow or Queer people, who experience significant barriers in access to justice. This simple acknowledgement can make a huge difference to the individual and their whānau.

victims, parties to proceedings, court staff, service providers, lawyers and whānau during the proceedings of the case.

6. Use plain language

(a) The language used in court is often complicated and can be meaningless to those unfamiliar with it.

(b) In addition, many people appearing before a judicial officer in court will have at least one form of neurodiversity that will mean they have unique requirements to be able to fully understand what is happening and meaningfully participate.

(c) Using plain language in court helps Family Court parties, criminal court and Youth Court defendants, complainants, victims, whānau, other participants and members of the public understand what is happening and being said. This means people can more meaningfully participate in proceedings that relate to them. If legal jargon must be used, an explanation of the term should be provided.

(d) If available, court information should be provided in alternative formats such as Easy Read, Braille, audio, large print and New Zealand Sign Language video resources.

7. Tone down formalities

(a) Although the mana and solemnity of the court must be maintained, formalities can be a barrier to participation. Under Te Ao Mārama, judicial officers can agree with court staff, lawyers, relevant justice sector agencies and service providers on a consistent approach to toned-down formalities.

(b) Where appropriate, at the start of a court hearing or conference, judicial officers can invite Family Court parties, defendants, complainants, victims, whānau and other people present to introduce themselves. This empowers parties to have direct engagement and participation in the proceedings that relate to them.

8. Adopt solution-focused judging approaches

(a) A solution-focused judging approach asks, "What has caused this person to come to court? What has happened to this person to bring them to this point in their life?" Once that question is answered, a response can be developed to address those causes. Solution-focused judging supports the use of pre-sentence plans in the criminal jurisdiction.

(b) Specific guidance in relation to solution-focused judging in the Family Court and solution-focused judging and judicial monitoring of approved pre-sentence plans in the criminal jurisdiction is provided later in this framework.

(c) Below are some examples of existing solution-focused judging practices already embedded in court processes:

(i) The Youth Court has adopted a solution-focused approach since 1989: judges engage with children and young people and their whānau, encouraging and helping them to participate, while ensuring the approaches taken recognise the particular adversities of the child or young person. The solution-focused approach facilitates inter-agency cooperation.

(ii) The Family Group Conference is a cornerstone of the Youth Court process and provides for the involvement of victims in restorative justice processes. The focus is on meeting the needs of the child or young person in a highly personalised way, by identifying and addressing the underlying causes of their offending.

(iii) A similar solution-focused approach has been adopted in the Young Adult List (for defendants aged 18 to 25 years). A multidisciplinary team provides the young adults with wrap-around specialist support. This includes services such as Bail Support Officers, Adolescent Specialist Probation Officers, Adolescent Mental Health Nurses and Māori, Pacific and Ethnic Services.

(iv) In the Young Adult List, the set-up of the courtroom allows the defendant to be closer to their lawyer. Only plain and simple language is used, and information-sharing protocols are in place. To create a connection between the young adult and the judge, the same judge presides where possible. To a large part, the Young Adult List mirrors practices in the Youth Court.

Te Ao Mārama List courts and processes

[6] The court lists and processes identified below **will be** designed, developed and implemented in District Court locations as authorised by the Chief District Court Judge in consultation with the Principal Judges:

(a) Family jurisdiction

(i) Care and Protection List

(ii) Family Violence List

(b) Youth jurisdiction

(i) Te Kōti Rangatahi

(ii) Pasifika Court

(c) Criminal jurisdiction

(i) Young Adult List

(ii) Family Violence List

(iii) Adult List

[7] The sequencing and order of establishing these list courts and processes will take into account relevant local priorities.

[8] The additional list courts and processes identified below **may be** designed, developed and implemented in District Court locations as approved by the Chief District Court Judge in consultation with the Principal Judges:

(a) Youth jurisdiction

(i) Crossover courts for youth and family

(ii) Youth Drug Court

(b) Criminal jurisdiction

(i) Matariki List

(ii) Criminal Procedure (Mentally Impaired Persons) List

(iii) Alcohol and Other Drug Treatment Court (a mainstream model to be developed)

(iv) Special Circumstances Court

(v) New Beginnings Court

(vi) Personal Individual Needs Court

(vii) Family Violence Intervention Court

[9] The sequencing and order of establishing these list courts and processes will take into account relevant local priorities.

Lead judges

[10] From time to time, lead judges will be assigned by the Chief District Court Judge to provide local judicial leadership for the development, implementation and ongoing operation of local Te Ao Mārama court lists and processes.

[11] Lead judges will be responsible for convening and holding local stakeholder meetings and workshops at regular intervals. This provides a forum to identify concerns and discuss potential solutions or improvements.

[12] Lead judges will also be responsible for providing quarterly written progress reports to their respective executive judges, with copies to the Chief District Court Judge. They should also share these reports with the local judicial common room to identify strengths, concerns, areas for improvement and any local or national assistance that may help address identified concerns and areas for improvement.

Te Ao Mārama in the **FAMILY COURT**

What will it take for Te Ao Mārama to be a success in the Family Court?

[13] When Te Ao Mārama is fully realised in the Family Court, it will be a place where people feel seen, heard and supported. Judicial officers will be enabled to make quality decisions, and address applications in an appropriate, equitable and timely way.

[14] There is existing practice that aligns with the Te Ao Mārama approach already happening across New Zealand in many Family Courts. This next stage of Te Ao Mārama is intended to learn from that, build on it and enhance it.

[15] There are many different strands that will come together to embed Te Ao Mārama in the Family Court. Some important factors will include:

(a) judicial officers receiving high quality information, using the relevant statutory levers and applying the relevant case law to support quality decision making

(b) welcoming local communities into the courtroom and ensuring they are properly resourced by relevant justice and social sector agencies to provide early wrap-around support services for children and their whānau

(c) supporting meaningful participation of children, parties, and their wider support networks in court processes.

[16] Te Ao Mārama will begin in Care and Protection and Family Violence proceedings. In due course, it can be developed in other areas of the Family Court.

[17] The participation of children, young persons, and their families, whānau, hapū, iwi and family groups in proceedings is an important consideration for judicial officers. There have been recent developments in legislation, in both the Oranga Tamariki Act 1989 and the Care of Children Act 2004, regarding participation. Judicial officers are encouraged to consider this in their court and their approach[9].

[18] In all matters relating to the administration or application of the Oranga Tamariki Act 1989[10], judicial officers need to consider the wellbeing and best interests of the child or young person as the first and paramount consideration[11]. The principles of the Oranga Tamariki Act[12] support judicial officers to take a holistic approach to that assessment of wellbeing and best interests, including consideration of children and young people's rights, needs, participation in decisions, and the recognition of their place within their family, whānau, hapū, iwi, family group and community.[13] The principle of mana tamaiti (tamariki)[14] and the child's or young person's wellbeing should be protected by recognising their whakapapa and the whanaungatanga responsibilities of their family,

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9 Including: s5(g) Care of Children Act 2004, s6 Care of Children Act 2004, s11 Oranga Tamariki Act 1989.

10 Other than Parts 4 and 5 and ss 351 to 360.

11 Section 4A.

12 Sections 5 and 13.

13 Section 5.

14 See glossary for te reo terms used in this report.

whānau, hapū, iwi, and family group[15] will contribute to taking a Te Ao Mārama approach.

[19] Judicial officers should also consider the additional principles in s 13 of the Act that the court or person must be guided by. For example, s 13(1)(b)(i) explores how early support and services should strengthen and support the child's and young person's family, whānau, hapū, iwi, and family group to enable them to care for and nurture the child or young person and reduce the likelihood of future harm to them.

[20] The provisions of the Oranga Tamariki Act relating to Te Tiriti o Waitangi – Treaty of Waitangi also contribute to Te Ao Mārama in the Family Court.[16] These provisions require judicial officers to consider whether the actions of Oranga Tamariki uphold the principles of Te Tiriti.[17] Although the provision does not impose these duties on the court, the role of the court is to hold Oranga Tamariki to account where the court has found these duties have not been met.

Consistency of judicial officer

[21] In courts where there are sufficient judicial officers and rostering and scheduling permits, the goal of consistency of judicial officers is encouraged. This will mean that, where possible, the same judicial officer will preside over a case throughout its time in the Family Court, allowing judicial officers to build a rapport with parties and their whānau. This will help parties and their whānau meaningfully participate in the court process. The result will be a judicial officer becoming familiar with the parties and the issues, and will help them to make the best possible decisions for the parties and/or their children. In some courts, where rostering and scheduling allow, the same judicial officer should also preside over concurrent matters involving the same parties in the District Court or Youth Court. In appropriate cases, this may involve the judicial officer hearing criminal matters in the Family Violence List.

Atmosphere and tone

[22] In all Family Court proceedings, the court should be a space where parties feel safe and comfortable to raise and address the sensitive issues that invariably come up. Throughout the course of the proceedings, judicial officers and court staff should therefore seek to engage in conversations with those in the courtroom in a manner that ensures all feel seen, heard and understood.

[23] Although the mana and solemnity of the court must be maintained, formalities can be a barrier to participation. Where appropriate, judicial officers should use language that is easily understood by parties and refrain from using legal jargon wherever possible. If legal jargon must be used, clearly explain the term. Some examples of ways to reduce formalities are:

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15 Section 5 (1)(iv).

16 Section 7AA.

17 Section 7AA (2)(b).

(a) refer to the parties by their preferred name, both in court and in any judgment given, and avoid using "applicant/respondent" or "mother/father" when addressing or referring to parties

(b) introduce any support people attending with parties

(c) check parties understand what is happening at each step of the court process.

[24] Judicial officers and court staff should be particularly mindful of the issues faced by unrepresented parties.

Te reo and tikanga Māori, and other relevant cultural practices

[25] When relevant to a particular case, each judicial officer can incorporate te reo and tikanga Māori, or any other relevant cultural practices where appropriate.

[26] Specific processes may be designed and implemented for use in each Family Court courtroom. Such processes may be developed and refined at a local level by working together with local iwi and wider communities.

[27] In areas where the Family Court deals with high proportions of Māori children and their whānau, hapū and iwi, alternative venues may be explored, designed and implemented. For example, venues might include marae-based hearings for any types of Family Court proceedings. This would be achieved by working with local iwi and iwi organisations.

[28] In considering an alternative and appropriate venue, safety concerns for everyone present should be a primary consideration, especially where family violence is alleged or where parties are particularly vulnerable.

Kaiārahi (Family Court Navigators)

[29] Kaiārahi play an important role in the Family Court.[18] They are appointed to form solid connections between the local community and the court. Kaiārahi help children, young persons, and their families, whānau, hapū, iwi and family groups with information, guidance and support on their journey through the Family Court.

[30] Judicial officers can engage with their local Kaiārahi (where available) to obtain quality information. Kaiārahi will have knowledge and understanding of their communities and iwi assistance to support children, young persons, and their families, whānau and the court.

Adopt solution-focused judging

[31] Judicial officers should adopt a solution-focused approach, identifying any underlying causes of the dispute. Judicial officers can engage with their local Kaiārahi (where available) to obtain information about what local resources may be accessed by

[18] In June 2023, there were 50 Kaiārahi based in 31 court locations.

parties. They can also help them address underlying issues such as addiction, anger management, unemployment, housing and cultural disconnection.

[32] Judicial officers are also encouraged to seek relevant information and evidence about the parties' culture to support appropriate processes and decision-making. This is to be especially considered and implemented for Māori in recognition of the principles of Te Tiriti o Waitangi – Treaty of Waitangi.

Establish alternative courtroom layout

[33] Alternative courtroom layouts have been used with good effect in the therapeutic courts to help make it easier for all parties to engage. Safety concerns for everyone present should be a primary consideration, especially where family violence is alleged or where parties are particularly vulnerable. Examples of alternative layouts are:

(a) a boardroom-style table formation (as in the Matariki Court and Alcohol and Other Drug Treatment Court)

(b) a 'horseshoe'-style formation (as in Te Kōti Rangatahi)

(c) the judicial officer sitting at the registrar's bench (as in the New Beginnings Court)

(d) any other formation the judicial officer considers would facilitate active participation.

Evidence

[34] Judicial officers should, where appropriate, consider a witness giving evidence in an alternative way. This could be either on the application of a party or on their own initiative. Alternatives may include the use of protective visual screens, an audio-visual link or pre-recorded evidence.[19]

Improve the quality of information

[35] Where legislation permits, an information-sharing protocol[20] will provide judicial officers with access to relevant and legally obtainable reports and information from the family, youth and criminal jurisdictions. This protocol should allow relevant justice sector agencies and community organisations to proactively share relevant information about parties. It should also outline when a judicial officer may access certain information to ensure natural justice is preserved and that information sharing does not result in prejudice to a party.

[19] Evidence Act 2006, ss 103, 105 and 106A.

[20] Sharing of Information between the Family and Youth Courts Protocol.

Whānau and other support people

[36] A Family Court-warranted judicial officer has the power to permit anybody to attend any Family Court proceedings.[21] Encouraging whānau, hapū, iwi and other support people to attend and participate in proceedings may help participants feel more comfortable, and judicial officers get the best available information to make well-informed decisions.

Counsel

[37] Counsel are encouraged to use plain language, adopt a solution-focused approach and ensure parties are properly informed as proceedings unfold.

[21] Family Court Act 1980, s 11A(g).

Family Court – Care and Protection proceedings

Background

[38] The process for Family Court – Care and Protection proceedings is on **page 20.**

[39] If it is believed a child or young person is "in need of care and protection",[22] an application for a Care and Protection Order can be initiated by Oranga Tamariki, Police or any other person (with leave of the court).[23]

[40] In all Care and Protection proceedings, judicial officers should encourage the attendance and participation of a child's parents, family, whānau, hapū, iwi and family group, as well as the participation of the child if appropriate. Kaiārahi (where available) are encouraged to contact a child's parents, family, whānau, hapū, iwi and family group to encourage their participation in the court process. It is expected that in most cases, if not all, review hearings are to be conducted in court before a judicial officer, and the parents, family, whānau, hapū, iwi and family group are encouraged to attend.

Scheduling

[41] The scheduling of Care and Protection proceedings will vary, depending on the size and make-up of each court and the communities they serve. However, to the extent applicable, Care and Protection proceedings should be conducted as follows:

(a) Care and Protection under the Oranga Tamariki Act 1989 and Youth Court proceedings should be scheduled on dedicated days of the week or, for satellite courts, at designated times on their Family Court days.

(b) Care and Protection Lists should be scheduled on dedicated days of the week or, for satellite courts, at designated times on their Family Court days.

(c) Family Court/Youth Court Crossover Courts (where appropriate) should be scheduled on dedicated days of the week or, for satellite courts, at designated times on their Family Court days as part of the Youth Court.

(d) Family Court/Te Kōti Rangatahi Crossover Courts (where considered appropriate by the presiding judicial officers) should be scheduled on dedicated days of the week or, for satellite courts, at designated times on their Family Court days as part of Te Kōti Rangatahi. They may be held at a marae or at another appropriate venue.

(e) Family Court/Pasifika Court Crossover Courts (where considered appropriate by the presiding judicial officers) should be scheduled on dedicated days or, for satellite courts, at designated times on their Family Court days as part of the Pasifika Court. They may be held at an appropriate alternative venue.

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[22] Oranga Tamariki Act 1989, s 14.

[23] As defined in the Oranga Tamariki Act 1989, s 14 and 14AA.

[42] Judicial officers should strive to ensure all proceedings are dealt with promptly to meet the statutory timeframe.[24]

[43] In all instances, Care and Protection review hearings cannot be further adjourned without allocating a future date.

Improve the quality of information

[44] Judicial officers should have access to the best information at the earliest opportunity. In appropriate cases, the parent who is a party to the Care and Protection proceeding should be given the option to undergo a voluntary screening process, if resourced in the court. This will aim to identify any barriers to meaningful participation, including:

(a) addiction

(b) mental health concerns

(c) physical health concerns

(d) communication capabilities

(e) cognitive ability

(f) cultural disconnection

(g) family violence

(h) experiencing family violence, or a history of experiencing family violence

(i) deprivation such as lacking access to transport or childcare.

[45] The registry will ensure judicial officers have files that include all reports and evidence at least three days before a court date.

Support service providers and community engagement

[46] If resourced in the court, service providers should be present in the courtroom during Care and Protection proceedings. If any barriers to meaningful participation are identified by the screening tool or other means, the Kaiārahi (where available) can help facilitate support between the service provider and the parent.

Lay advocate appointments

[47] To encourage family, whānau, hapū, iwi and community attendance and meaningful participation, the court should consider appointing a lay advocate (where available and resourced in the local court) in appropriate Care and Protection proceedings as early as possible. This could be done through a direction in chambers before the first court attendance.

[24] Including: Oranga Tamariki Act 1989, s 200.

Family Court: Care and Protection process map

TE AO MĀRAMA
Enhancing Justice for All

This process map will be developed over time as Te Ao Mārama embeds.

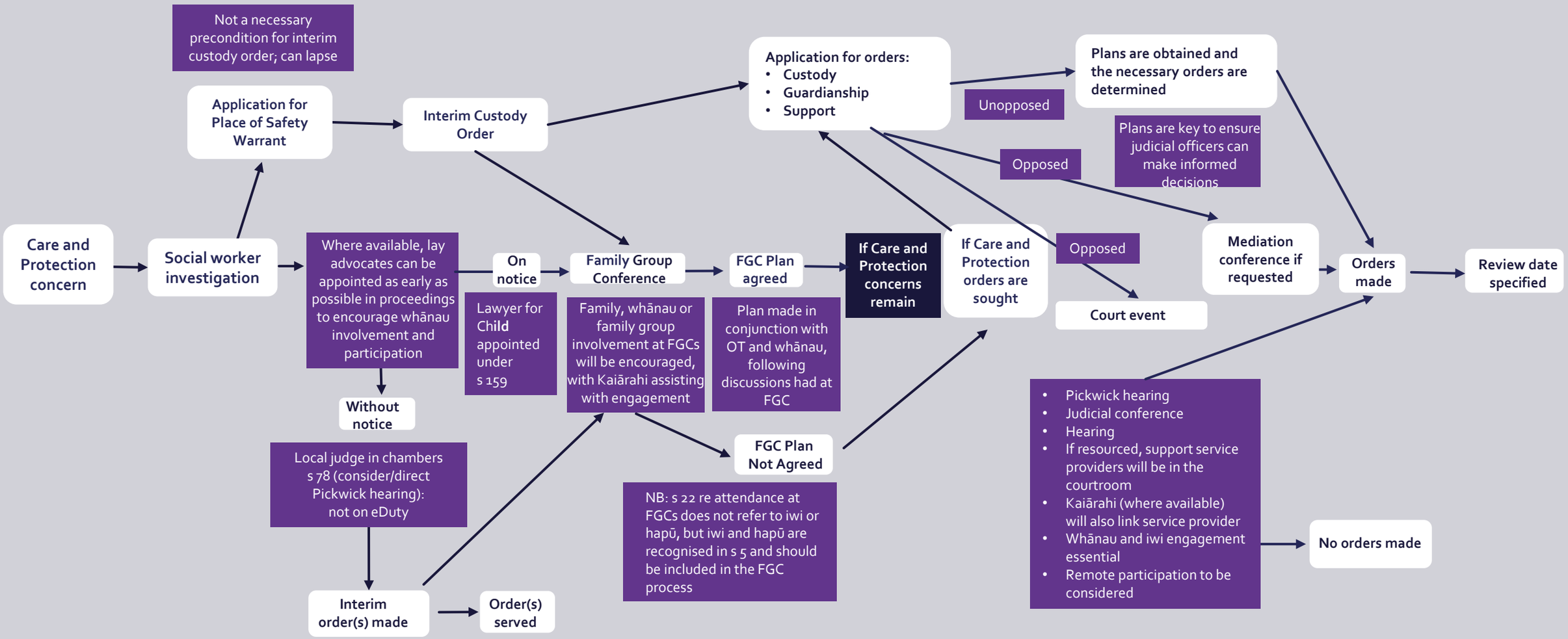
Mainstreaming best practice features:

- Plain language and improved access to information.
- Consistent judicial personnel where possible.
- Solution-focused judging adopted where appropriate.
- Meaningful participation of children, young persons and their families, whānau, hapū, iwi and family groups.
- Tikanga and te reo Māori incorporated where appropriate.
- Other cultures and ethnicities incorporated, where practical, to reflect local communities.
- Alternative hearing options considered, including marae-based hearings, designed and implemented in partnership with local iwi and iwi organisations.
- Early identification of barriers to meaningful participation in the court process.
- Alternative courtroom layouts where appropriate.
- Improved information sharing between the family, youth and criminal jurisdictions.
- Whānau and family encouraged to play a central role in Family Court proceedings.
- Local solutions for local issues recognised – one size does not fit all.
- Iwi and community engagement.

Care and Protection-specific support practices under Te Ao Mārama:

- Te Ao Mārama considered in scheduling, consistency of judicial personnel and accountability of social workers.
- More detail around the expectations of reviews and specific review dates to be available.
- Where appropriate, include hapū and iwi in the Family Group Conference process.
- Consider remote participation.

Kaiārahi (Family Court Navigator):
As court navigators, Kaiārahi (where available) help participants understand court processes and access relevant services.



Family Court – Family Violence proceedings

Process guide

[48] The process for Family Court – Family Violence proceedings is on **page 23.**

[49] The process is used when a person obtains a protection order against a person who is part of their immediate family or wider whānau through Family Violence proceedings in the Family Court.[25]

[50] In all Family Violence proceedings, judicial officers should primarily consider the physical and psychological safety of the protected person/s, balanced with the rights of a respondent to a fair hearing.

[51] Security officers must be available at all Family Violence list and hearing days.

[52] Kaiārahi (where available) should contact self-represented parties at the earliest opportunity, to provide information about how to engage with the court and how to access relevant services.

Scheduling

[53] The scheduling of Family Violence proceedings will vary, depending on the size and make-up of each court and the communities they serve. However, to the extent applicable, Family Violence proceedings should be conducted as follows:

(a) All 'without notice' applications should be determined on eDuty. However, if a judicial officer is case managing a related file, reasonable effort should be made to enable that judicial officer to consider the application.

(b) If a 'without notice' application is determined to be not urgent and required to be put 'on notice', the applicant must first be notified. The applicant must be given the option to withdraw the application or continue with an 'on notice' protection order, and offered a referral to a safety programme.

(c) All opposed applications should be allocated a judicial conference or pre-hearing conference in a Family Violence List on dedicated days of the month or, for satellite courts, at designated times on their Family Court days.

(d) Family Violence hearings should be scheduled in a way that ensures the safety of the parties. Remote participation (where available) may be used. Teleconference callovers before the hearing date are encouraged.

(e) If a summons is issued as a result of someone not attending a programme, the summons should be scheduled, wherever possible, on a Family Violence List day (not a hearing day).

[25] This can be accompanied by an application for occupation and ancillary furniture orders.

Evidence

[54] Judicial officers should, where appropriate, consider a party or witness giving evidence in an alternative way. This can be either on the application of a party or on their own initiative. This may include the use of protective visual screens, an audio-visual link or pre-recorded evidence.[26]

[55] Judicial officers must be particularly mindful of the dynamics of family violence and family relationships and the obligation to control the questioning of vulnerable witnesses.[27] The judicial officer must disallow unacceptable questions, as per the amendments made to s 85 of the Evidence Act 2006.

Improve the quality of information

[56] Judicial officers should have access to the best information. Where there are relevant processes in the criminal court, the registry should carry out requests for transfer of information immediately, including a victim video statement.

[57] The registry will ensure judicial officers have files that include all reports and evidence for every event at least three days before a court date. This includes Family Violence proceedings.

[58] Judicial officers should be kept updated about non-violence programmes in their area that are approved by the Ministry of Justice.[28]

Community engagement

[59] Kaiārahi (where available) are encouraged to engage with parties to provide support and help them engage in non-violence programmes for respondents, and safety programmes for applicants and children.

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[26] Evidence Act 2006, ss 103, 105 and 106A.

[27] Evidence Act 2006, s 85(2)(a), (d) and (f)

[28] Pursuant to s 188 of the Family Violence Act 2018, judges must direct a respondent to attend a non-violence programme, unless there is good reason not to.

Family Court: Family Violence process map

TE AO MĀRAMA
Enhancing Justice for All

This process map will be developed over time as Te Ao Mārama embeds.

Mainstreaming best practice features:

- Plain language and improved access to information.
- Consistent judicial personnel where possible.
- Solution-focused judging adopted where appropriate.
- Tikanga and te reo Māori incorporated where appropriate.
- Other cultures and ethnicities incorporated, where practical, to reflect local communities.
- Subject to safety issues, alternative hearing options considered, including marae-based hearings, designed and implemented in partnership with local iwi and iwi organisations..

Family Violence-specific supportive practices:

- The physical and emotional safety of all court users is paramount, and scheduling practices, modes of evidence available and security measures must reflect this.
- Information sharing with the criminal jurisdiction.
- Specific supports are needed for self-represented parties (applicants in particular).
- Information packs available (ie from the Ministry of Justice) regarding both the court process and availability of programmes.

Kaiārahi (Family Court Navigator):
As court navigators, Kaiārahi (where available) help participants understand court processes and access relevant services.

Te Ao Mārama approach to hearing – eg VVS used, screens available, whānau support in courtroom

S 108: variation
S 109: discharge process as per on notice

Application (S 60)

Is protection needed urgently?

Yes → 'Without notice' process (eDuty) (S 75) → Judge grants temporary protection order (in chambers same day)

No → On notice process, respondent served

If not urgent, proceeds on notice

If child involved as a party, possible s 66 report from Oranga Tamariki

If s 67 or 69 application (people unable to apply personally), are there additional supports available under Te Ao Mārama?

Support needed for applicant to arrange service

Order immediately served on respondent (by police/bailiff)

Includes direction to attend stopping violence programme

Notice of intention to appear / objection to attend programme

Plain language required – eg in notice of response form and court notice

Pre-hearing conference (remote hearing encouraged) Or Formal Proof hearing

Consider location, s 95 Evidence Act Transfer of information Mode of evidence Safety requirements

Hearing scheduled within 42 days (unless the parties agree otherwise to enable completion of SVP or alternative resolution)

May include:
- Block scheduling
- lawyer to assist (s 166)
- Kaiārahi (where available)
- communication assistants
- lawyer for the child where appropriate

If no response filed after three months → Final PO granted automatically by registrar and served (s 76, ss 148–156)

Final order granted → Final order served on respondent

Order may include directions, conditions and referrals (ss 188, 191 and 192)

Respondent undertakes assessment for, and likely attends, non-violence programme (s 188). Safety programmes available for protected people (s 187)

Programme completed

Ongoing community supports post-programme completion

Order not granted → Application dismissed (and TPO discharged), withdrawn, discontinued or struck out

Breach → Programme completed

Breach → Court attendance to answer summons

Ss 112 and 113: offence and power of arrest for breach – refer to Family Violence criminal process map

Note: This process does not include/consider concurrent Care of Children Act 2004 proceedings.

Family Court – Care of Children proceedings

Background

[60] The Te Ao Mārama best practice approaches apply across the Family Court, including in Care of Children proceedings.

[61] Care and Protection issues are increasingly present within Care of Children proceedings. Judicial officers should be aware of that as we develop Te Ao Mārama in the Family Court.

[62] Areas within Care of Children proceedings include out of court dispute resolution, the role of Kaiārahi, and requirements that, when considering a child's welfare and best interests, a child must be given reasonable opportunities to participate in any decision affecting them.[29]

[63] These areas, alongside others, present significant opportunities for future development in due course.

Section 78 applications

[64] Since 1 July 2019, s 78 applications under the Oranga Tamariki Act 1989 have been taken off the eDuty platform and dealt with by a judicial officer in the region or circuit from which the application originated. This enables the judicial officer to have access to the file and make directions on the application, such as the allocation of a 'Pickwick' hearing, which he or she could preside over either in court or possibly via telephone conference or remote participation.

[65] Where an application is being made without notice, the respondent/s may be provided with the papers on a 'Pickwick' basis. That means that the application is technically without notice, but the respondents are provided with the documents and both parties are in attendance (either in person or remotely). It provides an opportunity for a respondent to assist the court to the extent that they could, or would, given the absence of notice to them. It ensures that the judicial officer is more fully informed of the care options available to them before the making or declining a without notice application.

[29] Care of Children Act 2004, s 5(g).

Family Court – Conclusion

[66] The Family Court is a priority area for Te Ao Mārama. The information presented in this section has been developed to strengthen existing practice, build on and develop new approaches and processes within the Family Court.

Te Ao Mārama in the **YOUTH COURT**

How will Te Ao Mārama work best in the Youth Court?

[67] The Youth Court has heavily influenced and informed the ongoing development of solution-focused judging in the criminal jurisdiction of the District Court since the Oranga Tamariki Act came into force in 1989. Many of the best practices in this framework arise from lessons learned over many decades in the Youth Court.

[68] The Youth Court has adopted a solution-focused approach since 1989. Judges engage with young people and their whānau and family, encouraging and helping them to participate. They ensure the approach taken recognises the particular adversities faced, and the strengths and potential of the young person to overcome them. The approach facilitates inter-agency cooperation.

[69] The Family Group Conference (FGC) is a cornerstone of the Youth Court process. It enables victims to be involved in restorative justice. The focus is on ensuring young people are held accountable and responsible for their offending, while also meeting their needs in a highly personalised way and through a whole-of-whānau/family approach. This is done by identifying and addressing the underlying causes of their offending.

[70] It is important to recognise the principle in s 208 of the Oranga Tamariki Act 1989, that criminal proceedings in the Youth Court are to be a matter of last resort. Around 75% to 80% of all young offenders are diverted away from the Youth Court and are dealt with by alternative action.

[71] Te Ao Mārama will work best in the Youth Court when the court is highly connected with the community it serves. Te Ao Mārama may require government agencies to resource and otherwise support community- and iwi-based social service providers to design and deliver relevant programmes and services. The programmes and services will help young people and their whānau and family address the underlying causes of their offending.

[72] Given the over-representation of Māori in the Youth Court, there is an ongoing need to resource tikanga-based programmes. These would be available for all young people but particularly relevant to young people and their whānau who are of Māori descent and are disconnected with their cultural heritage. An evaluation of Te Kōti Rangatahi Court in 2012 reported that it has been successful in engaging young people, facilitating positive behaviour and connecting young people with their cultural identity through tikanga-based programmes.

[73] As an extension of what has been learned from Te Kōti Rangatahi and the Pasifika Court, Te Ao Mārama will also establish community and/or iwi panels to operate in our courthouses to help with these initiatives. While the court welcomes greater participation of family, whānau, hapū, iwi and communities, everyone participating in proceedings is subject to s 438 of the Oranga Tamariki Act 1989.

[74] Further drawing on its experience and success in establishing courts held in other venues (ie Te Kōti Rangatahi and Pasifika Court hearings), the Youth Court is exploring

sitting in alternative hearing centres established for that purpose. This ensures an ongoing commitment to enhance community engagement and the flexibility to use available and appropriate community venues. Further, it facilitates direct access to services and builds sustainable supports for whānau well after court proceedings end.

Te Ao Mārama and Youth Court best practice

[75] The solution-focused approach, central to Te Ao Mārama and the best practice of the Youth Court, relies on screening the child or young person at their first appearance in court. The benefits of initial screening are twofold.

[76] First, it allows early identification of barriers to meaningful participation in the court process. It is essential to identify such barriers as soon as possible. It is likely that a child or young person facing charges in the Youth Court experiences at least one form of neurodiversity, such as autism spectrum disorder, foetal alcohol spectrum disorder, attention deficit hyperactivity disorder, acquired brain injury, dyslexia, communication disorder and intellectual disability. Other barriers may also hinder their full and effective participation in court.[30]

[77] Screening allows the court to make an informed decision to appoint Communication Assistants where necessary. Where more serious concerns are identified, the court can direct medical, psychiatric and psychological reports under s 333 of the Oranga Tamariki Act and reports under s 38 of the Criminal Procedure (Mentally Impaired Persons) Act 2003, to explore any issues regarding the child or young person's fitness to stand trial.

[78] Second, initial screening allows for the early identification of the underlying drivers of offending. Effective screening will assess a range of factors, including the child or young person's education needs, housing and other basic needs, mental health concerns, alcohol and other drug dependency, cultural needs, and risk of harm to themselves or someone else.

[79] Information from the initial screening assessment will support the court and the FGC to make plans and decisions throughout the court process, aimed at addressing the underlying causes of the offending. This may be supplemented by s 333 reports and/or s 336 cultural reports, where relevant issues are identified in initial screening. Screening at first appearance allows such reports to be ordered as early as practicable to avoid delays in the court process.

[80] Te Ao Mārama will see family, whānau, hapū, iwi and community engagement take place at all stages throughout the Youth Court process. This includes:

- participation in discussions at first appearance regarding remand options, particularly the option of bail and any supports that are required
- attendance and participation at FGCs

[30] "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others" (United Nations Convention on the Rights of Persons with Disabilities, Article 1).

- engagement at monitoring hearings throughout completion of the FGC plan
- input and inclusion in final disposition and any plans to support Youth Court orders.

[81] Innovative approaches are encouraged and accommodated throughout the Youth Court process. For example, iwi approaches to the timing, nature and number of FGCs and restorative justice measures.

[82] Victims are entitled to participate in Youth Court proceedings, including in bail decisions, FGCs, restorative justice processes and at final disposition of the case. Successful outcomes are more likely to be reached where victims are engaged in reaching those outcomes. It is accordingly equally important to understand and remove the barriers to participation in the court process faced by victims and their whānau and family. Victim engagement is one area where tikanga Māori processes will be particularly beneficial in the Te Ao Mārama approach.[31]

[83] The principles of the Oranga Tamariki Act relating to tikanga concepts, Te Tiriti o Waitangi – Treaty of Waitangi and international standards (including the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities[32]) will be central to the Youth Court's role in Te Ao Mārama. The Youth Court's role will be to safeguard these rights, as set out in the Oranga Tamariki Act, at all stages of proceedings.

[84] For example, at first appearance this may involve making inquiries into whether:

- these rights were considered and upheld in the process of police apprehension, questioning and arrest
- alternative ways of dealing with the offending were fully explored and exhausted before bringing the child or young person to court
- all the available remand options were fully explored, particularly the possibility of supported bail to maintain connections between the child or young person and their whānau and family.

[85] A key responsibility of the court will also be assessing whether proposed FGC plans and plans to support final orders fulfil the principles above.

[31] Kaupapa Māori Resolutions Pathway, August 2022, Chief Victims Advisor to Government.

[32] Including Article 12 - Equal recognition before the law, United Nations Convention on the Rights of Persons with Disabilities.

Youth Court – Te Kōti Rangatahi

Process guide

[86] The process for Te Kōti Rangatahi is on **page 32.**

[87] The Youth Court also hears and determines cases at Te Kōti Rangatahi – Rangatahi Courts. These were established in 2008, to provide a more culturally responsive and appropriate process for the disproportionate number of Māori appearing before the Youth Court. The overall vision is to promote better engagement and increase respect for the youth justice process. Te Kōti Rangatahi provide an opportunity to draw upon the resources of local marae communities and, in this way, operate consistently with the principles of the Oranga Tamariki Act 1989.

[88] Te Kōti Rangatahi sit at marae. Their process incorporates the use of te reo Māori, tikanga and kawa such as whanaungatanga, pōwhiri, karakia, waiata, hongi and pepeha. The process encourages the involvement of kaumātua who provide valuable insights and advice from a traditional Māori perspective to the young person and their whānau. There are currently 16 Te Kōti Rangatahi.

[89] Te Kōti Rangatahi is not a separate legal process to the Youth Court. It applies the principles of the Oranga Tamariki Act as in the ordinary Youth Court. Te Kōti Rangatahi operates after a young person has appeared in the Youth Court, admitted the charge or had a charge proved after a FGC has taken place (as is required by statute in every case) and after a FGC plan has been formulated. The FGC plan will record any agreement that the plan be monitored at Te Kōti Rangatahi. In essence, Te Kōti Rangatahi monitor the performance of FGC plans and, when appropriate, will apply sentencing options available to the Youth Court.

Te Kōti Rangatahi: Overview and goals

[90] The focus of Te Kōti Rangatahi is to develop a more culturally appropriate process and to increase respect for the rule of law. The primary goal is to provide rangatahi with an exit from the justice highway,[33] which largely depends on the quality of the FGC plan and the resources enlisted, as well as increasing cultural connectedness. An evaluation of Te Kōti Rangatahi in 2012 reported that they have been successful in engaging young people, facilitating positive behaviour and connecting young people with their cultural identity. This has supported long-term rehabilitative goals and other positive life outcomes. While reducing reoffending remains important to the wider criminal justice system, it is beyond the function and responsibility of the Youth Court alone. The increased engagement and better participation of whānau are important aspects of reducing reoffending. Te Kōti Rangatahi is primarily designed to deal with young Māori. However, all young people, regardless of race or ethnicity, are eligible to attend.

[33] The justice highway is a metaphor. The "highway" begins with state intervention as children (and for some before birth), then moves on through the Youth Court, to the adult criminal court, and then prison. A 2018 report found 83 percent of prisoners aged 18-20 were in state care as children.

[91] Te Kōti Rangatahi was designed to provide, and foster the development of, a comprehensive suite of culturally appropriate programmes. They would be accessed by the FGC forum and run in conjunction with the Youth Court. The programmes need to perform a combination of tasks:

- provide accountability and responsibility components
- deal with alcohol and drug issues, anger management issues, anti-social attitudes and personal therapy needs
- provide educational or training opportunities
- provide support to the young person, whānau and community to deal with the underlying causes of the offending
- provide a successful transition for the young person when the programme is completed.

[92] From the outset, it was always the vision that tikanga wānanga must be available at every Te Kōti Rangatahi, to provide specialist kaupapa Māori interventions and opportunities for young people. They would include te reo Māori, tikanga, kapa haka, waka ama, mau rākau and noho marae. Programme providers could work with the whānau and community of the young person at the same time as working with the young person individually. This is because the underlying causes of the offending will often involve dynamics within the whānau and community. The underlying causes are rarely confined to the young person individually.

[93] It is envisaged that Te Ao Mārama will see an enhancing of the programmes on offer as a result of greater engagement with local iwi and communities. It will also provide the opportunity for further Te Kōti Rangatahi to be established where local iwi consider them necessary, and where they can be supported by relevant justice sector agencies such as Police and Ara Poutama Aotearoa – Department of Corrections.

Te Kōti Rangatahi process map

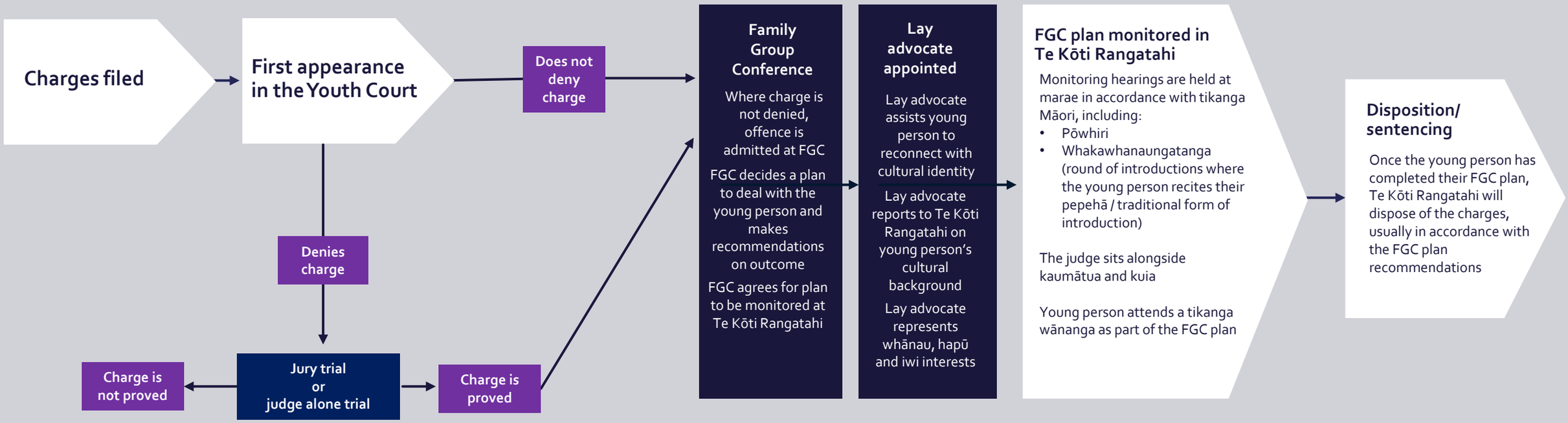
TE AO MĀRAMA
Enhancing Justice for All

Eligibility for Te Kōti Rangatahi:

- Family Group Conference agrees to monitoring the plan at Te Kōti Rangatahi.
- Primarily designed to deal with young Māori. However, all young people, regardless of race or ethnicity, are eligible to attend.

Key elements:

- Recognition that a high percentage of young people in the Youth Court suffer from cultural disconnection.
- A referral pathway or tailored plan, with a focus on cultural engagement.
- Use of tikanga and te reo Māori.
- Iwi engagement and wider community involvement / participation.
- Whānau encouraged to play a central role in Youth Court proceedings.
- Marae-based hearings are designed and implemented in partnership with local iwi and iwi organisations.



Youth Court – Pasifika Court

Process guide

[94] The process for Pasifika Courts is on **page 35**.

[95] Based on the Te Kōti Rangatahi concept, Pasifika Courts were established in 2010 with the same primary goal. That is to provide young people with alternative pathways and increase cultural connectedness, and therefore overall positive life outcomes, and to develop a partnership between the Youth Court and Pacific communities. Similarly, Pasifika Court operate within the Youth Court legal structure but are held at a community venue rather than marae. They follow Pasifika cultural processes and uphold Pasifika values: reciprocity, collective responsibility, service and faith. There are currently two Pasifika Courts, operating in South Auckland and West Auckland.

[96] Pasifika Court sittings are conducted in a similar way to Te Kōti Rangatahi, but with important differences:

(a) for each case, two elders from the relevant Pacific community are part of the formal court process

(a) a briefing involving the judicial officer and the elders occurs at the start of the day

(b) the elders open and close each case with a prayer accompanied by words of welcome, farewell, and encouragement or advice for the young person and their family.

[97] The Pasifika Court is not a separate legal process to the Youth Court. Pasifika Court apply the principles of the Oranga Tamariki Act as in the ordinary Youth Court. Pasifika Court operate after a young person has appeared in the Youth Court, admitted the charge or had a charge proved after a FGC has taken place (as required by statute, in every case) and after a FGC plan has been formulated. The FGC plan will record any agreement that the plan be monitored at the Pasifika Court. In essence, Pasifika Courts monitor the performance of FGC plans and, where appropriate, will apply sentencing options available to the Youth Court.

Pasifika Court: Overview and goals

[98] The focus of the Pasifika Courts is to develop a more culturally appropriate process and to increase respect for the rule of law. A primary goal is to provide Pasifika young people with an exit from the justice highway, which largely depends on the quality of the FGC plan and the resources enlisted. While reducing reoffending is of importance to the wider criminal justice system, it is beyond the function and responsibility of the Youth Court alone. The increased engagement, from cultural connectedness and better family participation, are important aspects of reducing reoffending and laying the foundation for long-lasting transformative change. Pasifika Courts are primarily designed to deal with Pasifika young people. However, all young people, regardless of race or ethnicity, are eligible to attend.

[99] Pasifika Courts were designed to provide, and foster the development of, a comprehensive suite of culturally appropriate programmes. They would be accessed by the FGC forum and run in conjunction with the Youth Court. The programmes need to perform a combination of tasks:

- provide accountability and responsibility components
- deal with alcohol and drug issues, anger management issues, anti-social attitudes and personal therapy needs
- provide educational or training opportunities
- provide support to the young person, family and community to deal with the underlying causes of the offending
- provide a successful transition for the young person when the programme is completed.

[100] It is envisaged that Te Ao Mārama will see an enhancing of the programmes on offer as a result of greater engagement with local Pasifika communities and iwi. It will also provide the opportunity for further Pasifika Courts to be established where local Pasifika communities consider them necessary, and where they can be supported by relevant justice sector agencies such as Police and Ara Poutama Aotearoa – Department of Corrections.

Pasifika Court process map

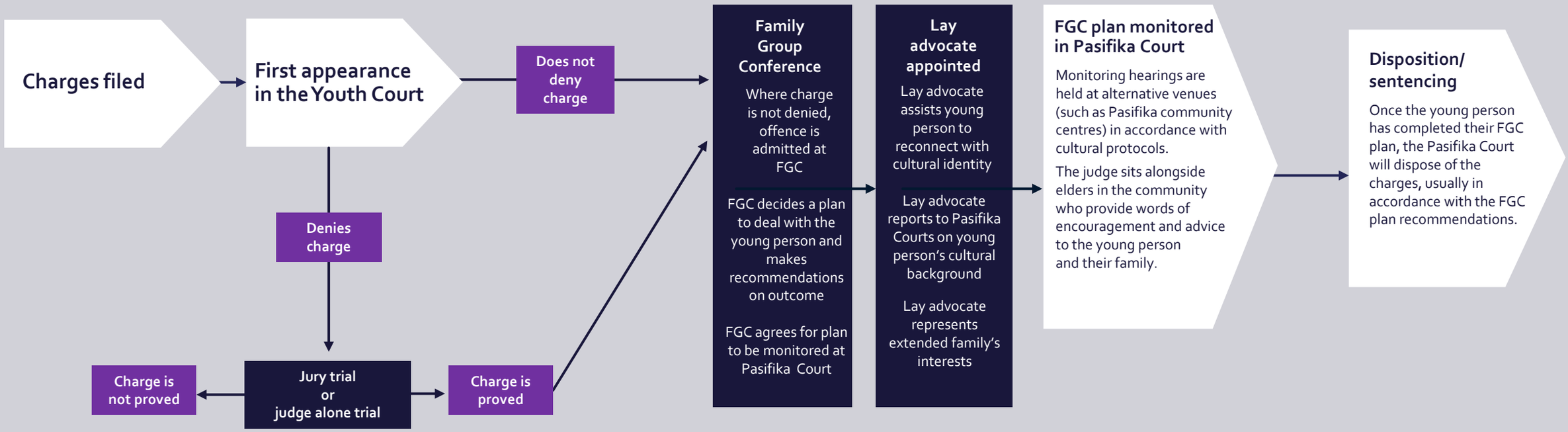
TE AO MĀRAMA
Enhancing Justice for All

Eligibility for Pasifika Court:

- Family Group Conference agrees to monitoring the plan at the Pasifika Court.
- Pasifika Courts are primarily designed to deal with Pasifika young people. However, all young people, regardless of race or ethnicity, are eligible to attend.

Key elements:

- Recognition that a high percentage of young people in the Youth Court suffer from cultural disconnection.
- A referral pathway or tailored plan, with a focus on cultural engagement.
- Use of Pasifika languages, cultural protocols and values.
- Wider community involvement/participation.
- Family encouraged to play a central role in Youth Court proceedings.
- Alternative venue hearings are designed and implemented in partnership with local community.



Te Ao Mārama in the **CRIMINAL COURT**

How will Te Ao Mārama work best in the criminal jurisdiction?

[101] Te Ao Mārama envisages justice will be delivered in a timely manner in the District Court. In the criminal jurisdiction, Te Ao Mārama will work best when there is prompt disclosure. This can help the court meet the timeliness requirements of other participants. When that occurs, advice to defendants is not delayed and can facilitate prompt pleas.

[102] For those who plead guilty, this allows for early consideration of pre-sentence plans and timely completion of plans and sentencing. This will require views of victims to be obtained and made available to the court at the time pre-sentence plans are presented for approval. Te Ao Mārama will also work best where complainants and victims of crime receive prompt support.

[103] We acknowledge such measures are a necessary part of doing things better, and they will likely have implications for resourcing and the work of judicial officers, registrars, lawyers, Police, Ara Poutama Aotearoa – Department of Corrections officers, and court victim advisors. This framework acknowledges that relevant justice sector agencies must work together to design, develop and implement Te Ao Mārama List courts and processes.

Fair trial rights

[104] Nothing in this framework document is intended to infringe upon fair trial or other rights protected by the New Zealand Bill of Rights Act 1990 or any other statute. Judicial officers must continue to apply the law and all relevant legal principles and must continue to provide reasons for their decisions.

[105] A solution-focused judging approach only becomes available in criminal proceedings if a defendant pleads guilty (or is found guilty and accepts responsibility for their offending). If a defendant pleads not guilty, existing fair trial rights apply. These guidelines are only relevant if they might enhance procedural and substantive fairness and help defendants, complainants and other witnesses to be seen, heard, understood and meaningfully participate in proceedings that relate to them.

[106] Sexual Violence Trials, either judge alone or by jury, reflect Te Ao Mārama approaches. Much of this is no longer new. This is because of the provisions of the Evidence Act 2006, the Chief District Court Judge-directed scheduling priority, and the experience of the sexual violence pilot courts in Whangārei and Auckland. Those approaches are directed to a fair trial for a defendant, where the defendant fully understands what is happening in the trial and feels seen and heard. The same applies to complainants and other witnesses, who are given the opportunity to give their best evidence.

[107] Consistent with Te Ao Mārama, plain language is critical, as is respect for all participants. To help trial judges, there is a dedicated Sexual Violence Trials Bench

Book. The approach to Sexual Violence Trials is now a nationwide, mainstream approach encompassing everything learned in the pilot courts.[34]

Self-represented litigants

[108] The existing due process rights and fair trial rights will continue to be observed for self-represented litigants in the criminal jurisdiction. If the defendant is not represented by a lawyer, the court must be satisfied that they have been informed of their right to engage (or be assigned) legal representation, have fully understood those rights and have had a reasonable opportunity to exercise those rights: s 37(3) Criminal Procedure Act 2011. However, where self-represented litigants enter guilty pleas (or are found guilty and accept responsibility for their offending), they would be eligible to engage in a solution-focused judging approach and pre-sentence plans, in a similar manner to represented defendants, on a case-by-case basis.

Kaiārahi

[109] Kaiārahi (court navigators) currently play an important role by connecting local communities with the Family Court. They also help parties to proceedings to understand court processes and to connect with relevant service providers in the local community.

[110] Kaiārahi can and should play a similar role in the criminal jurisdiction of the District Court. These roles may be established as resourcing permits.

Approved pre-sentence plans

[111] Solution-focused judging approaches in the criminal jurisdiction routinely use pre-sentence plans. Judicial officers exercise judicial discretion on a case-by-case basis when approving pre-sentence plans. Not all cases will be suitable for a solution-focused approach. Ideally, the judicial officer who approves a pre-sentence plan should also be the judicial officer who imposes sentence.

[112] A solution-focused approach might involve a judicial officer acting as an authority figure and motivator. Judicial officers would take an interest in the life of a defendant as would others in the community who are supporting the defendant's pre-sentence plan. Not all approved pre-sentence plans will require judicial monitoring of the completion of the plan. This means the plan could be approved and the next appearance could be for sentence.

[113] Any defendant may seek approval to complete a judicially monitored pre-sentence plan. Although each court may establish local arrangements, defendants could be helped by various people to prepare and submit proposed pre-sentence plans for approval by judicial officers. Those who might help include:

- counsel for the defendant
- criminal jurisdiction Kaiārahi (if one has been established)
- designated court staff (if such a role exists)

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34 See the **Sexual Violence Trials Bench Book**.

- lead government agency
- organisation contracted by the Ministry of Justice
- non-government organisation representative (which may include iwi and the community).

[114] Pre-sentence plans should clearly explain the purpose of the plan and the sentence that will be imposed upon completion. They should include measures designed to hold defendants accountable and responsible for their offending. They should identify and attempt to address relevant risks and needs, and underlying drivers of offending, to reduce the risk of the defendant reoffending in a similar manner. Such plans will frequently include bail conditions designed to reduce the risk of similar offending, while at the same time holding the defendant accountable and responsible.

[115] For example, if a s 106 discharge has been indicated for a young adult who is charged with a first offence of driving with excess breath alcohol they may be required to:

- attend alcohol counselling
- complete a defensive driving course
- complete voluntary community work or donate to a charity
- submit to bail conditions not to drink alcohol and not to drive a vehicle unless for work purposes (ie limited licence-type conditions).

[116] All pre-sentence plans must be signed by the defendant. Of course, all cases must be dealt with on their own merits, and relevant legal tests must still be applied.

[117] If a defendant has outstanding fines and/or reparation, the pre-sentence plan should also address how these sums could be resolved and whether remittance and/or review[35] is being sought. If remittance and/or review is being sought, the pre-sentence plan should also address any proposed substitute sentence. The court can only cancel a sentence of reparation (and substitute another sentence) if the victim has been informed and given an opportunity to be heard or is unable to be found despite reasonable efforts being made.

[118] Proposed pre-sentence plans can include, where appropriate, requests for adjournments to enable referrals to Te Pae Oranga Iwi Panels or other related Community Panels, with an end outcome of Police seeking withdrawal of the charge(s) under Police diversion schemes.

Monitoring of pre-sentence plans

[119] Even when adopting a solution-focused judging approach, there is no expectation judicial officers will engage in monitoring any pre-sentence plan. This will be determined through a case-by-case assessment.

[120] A judicial officer should consider whether it is appropriate to grant an adjournment before imposing a sentence in accordance with a relevant purpose set out in s 25 of the Sentencing Act 2002.

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35 Sentencing Act 2002, s 38A.

[121] In such circumstances, a judicial officer should always consider whether it is appropriate to:

(a) approve a pre-sentence plan and adjourn for sentence at the next appearance

(b) approve a pre-sentence plan and adjourn for judicial monitoring

(c) simply move to sentence.

[122] It is impracticable to accurately prescribe the exact amount of time and number of appearances a defendant might need to complete a pre-sentence plan. However, it is important to establish clear expectations about judicial monitoring. Guidance for judicial monitoring of pre-sentence plans is outlined below.

[123] In determining how many appearances that pre-sentencing monitoring might require, it is important to note that each case will be different. However, solution-focused judging and pre-sentence monitoring in the mainstream must be approached in a disciplined manner that does not add to backlogs but actively reduces them. To achieve this outcome, it requires a disciplined and deliberate minimisation of the number of monitoring appearances during the sentencing stage.

[124] As a guiding principle, after a guilty plea is entered, the number of monitoring appearances should be limited to two appearances. The first monitoring appearance should be three months after the plea is entered. In many cases, that should be sufficient time to complete a pre-sentence plan. If the plan is not complete and there is a good reason to grant a further adjournment, a further and final adjournment should be granted for another three months. Sentencing should normally proceed at the second monitoring appearance even if the plan is not complete at that stage. Any additional adjournments for monitoring should be rarely granted.

[125] Exception reporting may be built into each plan to ensure that the court receives timely advice when a defendant has failed to engage or comply with their pre-sentence plan to enable the defendant to be brought back before the court as soon as practicable.

[126] When presenting pre-sentence monitoring plans to judicial officers for approval, defendants (or, if represented, counsel) **must** clearly identify the reasons why monitoring a pre-sentence plan would be the preferable option. The most common reasons for pre-sentence monitoring include:

(a) where a person would otherwise receive a sentence of two years' imprisonment or less, and the successful completion of a judicially approved pre-sentence plan is likely to result in a non-custodial sentence being imposed

(b) where a judicial officer has indicated successful completion of the pre-sentence plan may result in a discharge without conviction

(c) in any other case where a judicial officer considers it appropriate, in the interests of justice, to monitor a judicially approved pre-sentence plan, provided the plan is intended to reduce the risk of reoffending and a non-custodial outcome has been indicated on successful completion of the plan.

Sentencing indications and pre-sentence plans

[127] Approval to complete a pre-sentence plan (including a monitored pre-sentence plan) can be included in a sentencing indication given under the relevant provisions of the Criminal Procedure Act 2011.[36] As discussed above, in any other case where a judicial officer has approved a pre-sentence plan that includes a sentencing outcome, ideally that judicial officer should impose a sentence. If that judicial officer is unavailable, any judicial officer can impose a sentence. However, if the sentencing judicial officer is not prepared to impose the sentencing outcome in the pre-sentence plan, the matter must be referred to the judicial officer who approved the plan.[37]

[128] Any agency delivering interventions under a pre-sentence plan may refer non-compliance or a need for amendment to a plan to a judicial officer. In such a case, a judicial officer may, on their own or at the request of the prosecutor or defence counsel, direct that the matter be brought forward to an earlier date from the date originally set for the non-compliance or amendment to the plan to be addressed.

[129] Where it is appropriate and safe to do so, court victim advisors must attempt to provide updated victims' views about proposed pre-sentence plans before the plans are considered for approval. Where it is appropriate and safe to do so, a victim may request to see a pre-sentence plan and be able to make comments.

[36] Criminal Procedure Act 2011, ss 60-65 and 116.

[37] Sentencing Act 2002, s 25

Criminal – Young Adult List

Process guide

[130] The process map for the Young Adult List is on **page 43**.

[131] A Young Adult List court is a special group of court cases to deal with all types of offending allegedly committed by anyone aged 18–25 years inclusive. The aim is to improve their understanding of, and participation in, the court process, and overall to improve access to justice and procedural fairness.

[132] Registrars will provide defendants with appointment times for all appearances in Young Adult List courts.

[133] Hearing cases for individuals in this age group separate to the normal District Court lists enables better support for defendants and meaningful engagement. There are several good reasons to provide a separate list for this age group, including:

(a) the adult brain does not fully develop until the age of 25 years

(b) a high percentage of young adult offenders also have some form of neurodiversity such as dyslexia, acquired brain injury and foetal-alcohol spectrum disorder, and have other significant barriers to their participation in proceedings

(c) they are more likely to be facing their first charge and/or a relatively minor charge

(d) they are more open to solution-focused approaches and there is a greater chance of getting them off the criminal justice highway

(e) they are usually facing additional adversity factors

(f) there is value in dealing with them separately and away from the influence of adult offenders.

[134] The fundamental aim of the Young Adult List is to enhance procedural fairness by ensuring all people affected by the business of the court leave court knowing they have:

(a) been seen (their presence acknowledged) and heard (either personally or through professionals and/or whānau and family)

(b) been understood, because the court had adequate information about them

(c) been enabled to meaningfully participate in the proceedings that relate to them.

These objectives, over time, are likely to contribute to reduced reoffending among young adults. This is the long-term objective of the Young Adult List.

Young Adult List process map

TE AO MĀRAMA
Enhancing Justice for All

Mainstreaming best practice features:

- Plain language and improved access to information.
- Better and earlier intervention.
- A referral pathway or tailored pre-sentence plan.
- Access to referral programmes.
- Iwi engagement and wider community involvement/participation.
- Agency collaboration/participation.
- Alternative courtroom layouts where appropriate.
- Better information sharing.
- Local solutions for local issues recognised – one size does not fit all.

Kaiārahi (Criminal Court Navigator):

The Kaiārahi (where available) will act as a court navigator and help participants understand the court processes and access relevant services.

Key elements:

- Recognition that the brain does not fully develop until around age 25.
- Recognition that a high percentage of young adult offenders suffer from neuro-disabilities.
- Early identification of barriers to meaningful participation in the court process.
- All court participants leave the court feeling that they have been heard and understood.
- Collaboration in the court process – including health, social services, community and iwi.
- Focus on social, psychological/emotional and material outcomes for individuals, whānau, families and communities.
- Victim participation and engagement.
- Tikanga and te reo Māori incorporated where appropriate.
- Other cultures, ethnicities, and languages recognised where appropriate.

Eligibility for Young Adult List:

- Defendant aged 18–25 years inclusive.

First appearance activities include but not restricted to:

- In appropriate cases, scheduling screening to identify barriers to participation and underlying issues.
- Early and comprehensive disclosure.
- Engaging with other agency initiatives (e.g. bail support – HIIP, forensic nurses).
- Information sharing between Family Court, Youth Court and District Court.

Recommended best practices:

- Bilingual announcements.
- Community voice in the court.
- Justice sector agency best practices available for all court participants.
- Other relevant agency best practices also made available – eg Whānau Ora, CLIC, and counselling for alcohol and drug, anger management, victims and children.
- If appropriate:
  - incorporation of tikanga and te reo Māori
  - recognition of all relevant cultures, ethnicities and languages.

Sentencing :

- Pre-sentence monitoring tailored on a case-by-case basis.
- Where appropriate, defendant signs a pre-sentence monitoring plan.
- Judge who approves plan also monitors performances and imposes final sentence.
- The number of monitoring appearances should be kept to a minimum.
- Community voice in the courtroom is encouraged – eg s 27 speakers.

Arrest

First appearance activities and triage

Second appearance in court

Guilty plea

Same-day sentencing if community-based sentence is to be imposed.

If community-based sentence is not to be imposed, matter adjourned and pre-sentence report directed.

Young Adult List Plan

Collaboratively prepared with input from defendant, counsel, Police, Corrections, CLIC, victim/advocate, hapū, Iwi, community representative and other stakeholders and presented for approval by the relevant judicial officer.

If available, the Kaiārahi will coordinate with relevant stakeholders.

This may require the defendant to complete restorative justice conferences or relevant rehabilitation programmes before sentencing.

Sentenced in the Young Adult List.

Monitored in the Young Adult List

If available, monitored at Te Kōti Rangatahi sessions time blocked for 18- to 25-year-olds

Final sentence imposed

Not guilty plea

Case Review Hearing / Crown Case Review Hearing

Jury trial or judge alone trial

Not guilty outcome

Guilty outcome

DIVERSIONARY PANELS

Judicial officer may adjourn suitable cases for the defendant to complete a diversionary plan, including Te Pae Oranga Iwi Panel plans or other Community Panel plans.
After successful completion of the plan, Police may, in appropriate cases, seek to withdraw the charges or defendant may apply for s106 discharge or other sentence previously imposed by judge.

Criminal – Adult List

Process guide

[135] The process map for the Adult List is on **page 45**.

[136] The Adult List is a separate, time-blocked criminal list for those aged 26 years or over.

[137] Registrars will provide defendants with appointment times for all appearances in Adult List courts.

[138] Adult List courts operate in a similar manner to Young Adult List courts. They incorporate enhanced procedural and substantive fairness for all participants. They adopt a solution-focused approach and are more closely connected to the communities they serve. This is achieved by:

(a) using plain language

(b) checking the defendant understands what is happening during the court process

(c) involving the defendant in discussions about them and not talking past them

(d) if available, using screening tools to identify any barriers to the defendant's participation as early as practicable

(e) if available, providing court information through a booklet (using dyslexia-friendly font styles) and an informational video

(f) using judicial information-sharing protocols that enable any significant historic information gathered from the Family, Youth or District Courts to be made available to the District Court judicial officer where appropriate

(g) changing the courtroom layout to be more inclusive

(h) using a team approach, with community- and iwi-based wrap-around therapeutic service providers supporting participants to overcome barriers, identify and deal with underlying issues, and have access to services.

[139] The main aim of Adult List courts is to ensure all people affected by the business of the court leave court feeling they have:

(a) been seen and heard (either personally or through professionals and/or whānau and family)

(b) been understood because the court had adequate information about them

(c) been able to meaningfully participate in the proceedings that relate to them.

Adult List process map

TE AO MĀRAMA
Enhancing Justice for All

Mainstreaming best practice features:

- Plain language and improved access to information.
- Better and earlier intervention.
- A referral pathway or tailored pre-sentence plan.
- Access to referral programmes.
- Iwi engagement and wider community involvement/participation.
- Agency collaboration/participation.
- Alternative courtroom layouts where appropriate.
- Better information sharing.
- Local solutions for local issues recognised – one size does not fit all.

Kaiārahi (Criminal Court Navigator):

The Kaiārahi (where available) will act as a court navigator and help participants understand the court processes and access relevant services.

Key elements:

- Early identification of barriers to meaningful participation in the court process.
- All court participants should leave the court feeling that they have been heard and understood.
- Collaboration in the court process – including health, social services, community and iwi.
- Focus on social, psychological/emotional and physical outcomes for individuals, whānau, families and communities.
- Victim participation and engagement.
- Tikanga and te reo Māori incorporated where appropriate.
- Other cultures, ethnicities and languages recognised where appropriate.

Eligibility for Adult List:

- Defendant aged 26 years or over.

First appearance activities include but not restricted to:

- Screening to identify any barriers to participation.
- Early and comprehensive disclosure.
- Engaging with other agency initiatives – eg bail support, forensic nurses.
- Defendant can expect copies of documents held by the judicial officer (eg fines, reports, past s 27 reports, sentencing notes, etc).

Recommended best practices:

- Bilingual announcements.
- Community voice in the court.
- Justice sector agency best practices available for all court participants.
- Other relevant agency best practices also made available – eg Whānau Ora, CLIC, and counselling for alcohol and drug, anger management, victims and children.
- If appropriate:
  - incorporation of tikanga and te reo Māori
  - respect for all cultures, ethnicities and languages.

Sentencing :

- Pre-sentence monitoring tailored on a case-by-case basis.
- Where appropriate, defendant signs a pre-sentence monitoring plan.
- Judge who approves plan also monitors performances and imposes
- final sentence.
- The number of monitoring appearances should be kept to a minimum.
- Community voice in the courtroom is encouraged, e.g. s 27 speakers.

Arrest

First appearance activities and triage

Second appearance in court

Guilty plea

Same-day sentencing if community-based sentence is to be imposed.

If community-based sentence is not to be imposed, matter adjourned and pre-sentence report directed.

Adult List Plan

Collaboratively prepared with input from defendant, counsel, Police, Corrections, CLIC, victim/advocate, hapū, iwi, community representative and other stakeholders and presented for approval by the relevant judicial officer.

If available, the Kaiārahi will coordinate with relevant stakeholders.

This may require the defendant to complete restorative justice conferences or relevant rehabilitation programmes before sentencing.

Sentenced in the Adult List

Monitored in the Adult List

If available, monitored at marae-based Matariki Court

Final sentence imposed

Not guilty plea

Case Review Hearing / Crown Case Review Hearing

Jury trial or judge alone trial

Not guilty outcome

Guilty outcome

DIVERSIONARY PANELS

Judicial officer may adjourn suitable cases for the defendant to complete a diversionary plan, including Te Pae Oranga Iwi Panel plans or other Community Panel plans. After successful completion of the plan, Police may, in appropriate cases, seek to withdraw the charges or defendant may apply for s106 discharge or other sentence previously imposed by judge.

Criminal – Family Violence List

Process guide

[140] The process for the Criminal – Family Violence List is on **page 50**.

[141] Family Violence List courts deal with adults charged with a Family Violence offence, by allocating appointment times for Family Violence cases. This is called time blocking and, together with appropriate funding, enables the necessary agencies and organisation representatives to be at court at a predictable time. It also enables participants and the judicial officer to bring the necessary Family Violence focus to the case. It clearly signals this is a case requiring a special approach.

[142] Registrars will provide defendants with appointment times for all appearances in Family Violence List courts.

[143] Anyone arrested and charged with a Family Violence offence will be brought before the court at the earliest practicable time for consideration of bail. Any adjournment after that first appearance is to be to the earliest available Family Violence List.

[144] Delay in concluding Family Violence cases can have substantial adverse consequences for defendants, complainants and children. The expectation is that a plea will be entered as soon as it is appropriate to do so in the Family Violence List. To enable this to happen, the prosecutor is expected to supply full disclosure in a timely way.

[145] If a defendant enters a plea of not guilty and there is to be a judge alone trial, the next appearance will be a case review hearing to identify issues, estimate time required for hearing and set a date for the hearing of the case. The prosecutor and defence counsel are expected to be able to engage in the case review hearing process in a meaningful way.

[146] If a defendant elects trial by jury, a case review hearing will be conducted at the next appearance and the identification of issues, estimate of time and a date for trial call-over will be set. The prosecutor and defence counsel are expected to be able to engage in the case review hearing process in a meaningful way.

[147] Where a defendant enters a plea of guilty, the court will decide whether the case requires a sentencing date to be fixed, same-day sentencing to be considered, or the adoption of a solution-focused approach is appropriate.

The guidelines below apply where a defendant has pleaded guilty.

Risk and needs assessment

[148] In appropriate cases, judicial officers are encouraged to engage in a solution-focused approach. This will help identify and address the underlying drivers and contributing factors of the offending. In such cases, defendants who consent may undergo a risk and needs assessment by a non-violence programme assessor to help the court and agencies formulate a pre-sentence plan. Such a plan would address the use of violence, generally with a non-violence programme. It can also help address other

things, such as harmful use of alcohol and drugs, mental health concerns, and housing, literacy and employment issues. This approach should include providing appropriate support for the victim and children to meet safety, wellbeing and recovery needs.

[149] The assessment of risk and needs should include gathering information from or about the following:

(a) if they choose to, the victim(s) and the whānau and family

(b) in accordance with law, the Family Court in relation to any current proceedings involving the defendant and victim(s)

(c) alcohol and other drug screening

(d) available screening tools to assess mental health, physical health, cognitive abilities, neurodiversity, cultural disconnection, risk of further Family Violence occurring and other relevant factors

(e) housing, employment and literacy issues

(f) any other relevant information relating to the circumstances that contributed to Family Violence occurring.

Pre-sentence plans

[150] Following the risk and needs assessment, judicial officers may direct that a pre-sentence plan be filed for approval. The aim of the pre-sentence plan is to put solutions in place that address the identified underlying causes of offending and to support the victims and whānau affected by Family Violence.

[151] A pre-sentence plan should focus on steps taken by the offender to stop the occurrence of Family Violence. Where appropriate, a pre-sentence plan may also include options that are offered to victims and children to support them with safety, wellbeing and recovery needs. The pre-sentence plan must be clear that the focus is on stopping the offender's Family Violence behaviour, as this is the best way to create safety for victims. It should also be clear that support services for victims are completely optional as they are not responsible for the offending. We need to avoid victims believing they have no choice about engaging with referred services.

[152] A coordinator will liaise with the defendant, victim and their whānau or family group to develop a pre-sentence plan in coordination with relevant agencies and services. These might include:

(a) non-violence programme providers

(b) Work and Income New Zealand

(c) Kāinga Ora – Homes and Communities

(d) alcohol and other drug treatment providers

(e) counselling services for defendants

(f) counselling and support services for victims and children while keeping them safe and protecting their privacy

(g) any other relevant government agency and iwi or community service provider.

[153] Family Violence restorative justice should generally only be considered as an option after an offender has pleaded guilty or been found guilty, accepted responsibility, and completed a non-violence programme. This is to help ensure that the process can be safe for victims and that the offender is prepared to take meaningful steps to ensure long-term safety.

[154] The court may, after considering relevant information (for example, previous sentencing notes and s 27 reports), approve and monitor the completion of any pre-sentence plan in the manner outlined in this framework. There may be instances when more regular monitoring in person by a judicial officer is seen as necessary to achieve the purpose of the plan and that of the Family Violence Court.

[155] Any agency delivering interventions under a pre-sentence plan may refer non-compliance or a need for amendment to a plan to a judicial officer. In such a case, a judicial officer may, on their own or at the request of the prosecutor or defence counsel, direct that the matter be brought forward to an earlier date from the original date set for the non-compliance or amendment to the plan to be addressed.

[156] If the court accepts a pre-sentence plan is appropriate, and the defendant agrees to undertake the plan, the court may defer sentence under s 25 of the Sentencing Act 2002 to enable completion of the plan. The court may make it a condition of bail that the defendant comply with the terms of the plan.[38]

Restorative justice

[157] Judicial officers presiding over cases in the Family Violence List should ensure victims and affected whānau and family are offered support measures in any pre-sentence plan approved by the court.

[158] The restorative justice process in relation to Sexual and Family Violence presents several challenges and risks. The dynamics of relationships affected by such violence can make attendance at a restorative justice conference unsafe for a victim. A power imbalance can mean a victim is participating because they feel an obligation, or perceived or actual coercion. A restorative justice process should only take place when the victim agrees to this process, and the restorative justice provider considers it is safe for the victim to do so. The provider will have consulted with those engaged in the delivery of a pre-sentence plan or a non-violence programme for the offender or safety programme for the victim where that is the only intervention.

[159] Section 24A of the Sentencing Act 2002 provides a basis for inquiries to establish if a restorative justice process appropriate for a Sexual or Family Violence case is available. Section 24A(1) provides for a registrar to advise the court if a suitable restorative justice process is available. Section 24A(2)(a) allows for inquiries "by a

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[38] **Bail Act 2000, s 30AAA Conditions of bail granted to defendant charged with Family Violence offence**

A judicial officer or registrar who grants bail to a defendant charged with a Family Violence offence may impose as a condition of the bail (in addition to the condition or conditions imposed under section 30) any condition that the judicial officer or registrar considers reasonably necessary to protect:

(a) the victim of the alleged offence

(b) any person residing, or in a family relationship, with the victim.

suitable person to determine whether a restorative justice process is appropriate in the circumstances of the case". In this context, a suitable person will be a person who has been accredited by a third-party provider for the Ministry of Justice.

[160] It is best practice for:

- the court to refer Family Violence cases to the restorative justice provider to consider whether it is a suitable case
- the accredited Family Violence facilitator to determine when, if at all, it will be a safe time for a conference to be considered. The facilitator will be expected to consult with any Family Violence programme provider engaged in the case in making that assessment.

Family Violence List process map

TE AO MĀRAMA
Enhancing Justice for All

Mainstreaming best practice features:

- Plain language and improved access to information.
- Better and earlier intervention.
- A referral pathway or tailored pre-sentence plan.
- Access to referral programmes.
- Iwi engagement and wider community involvement/participation.
- Agency collaboration/participation.
- Alternative courtroom layouts where appropriate.
- Better information sharing.
- Local solutions for local issues recognised – one size does not fit all.

Kaiārahi (Criminal Court Navigator):
The Kaiārahi (where available) will act as a court navigator and help participants understand the court processes and access relevant services.

Key elements:

- Early identification of barriers to meaningful participation in the court process.
- Ensuring that all court participants leave the court feeling that they have been heard and understood.
- Collaboration in the court process – including health, social services, community and iwi.
- Focus on social, psychological/emotional and physical outcomes for individuals, whānau, families and communities.
- Victim participation and engagement.
- Tikanga and te reo Māori incorporated where appropriate.
- Other cultures, ethnicities and languages recognised where appropriate.

Eligibility for Family Violence List:

- Defendant has pleaded or been found guilty of a Family Violence offence (as defined in s 9 of the Family Violence Act 2018).
- Defendant aged 26 years or older.

First appearance activities include but not restricted to:

- Screening to identify any barriers to participation.
- Early and comprehensive disclosure.
- Engaging with other agency initiatives (eg bail support – HIIP, forensic nurses).

Recommended best practices:

- Bilingual announcements.
- Community voice in the court.
- Justice sector agency best practices available for all court participants.
- Other relevant agency best practices also made available – eg Whānau Ora, CLIC, and counselling for alcohol and drug, anger management, victims and children.
- If appropriate:
  - incorporation of tikanga and te reo Māori
  - recognition of all relevant cultures, ethnicities and languages.

Sentencing :

- Pre-sentence monitoring tailored on a case-by-case basis.
- Where appropriate, defendant signs a pre-sentence monitoring plan.
- Judge who approves plan also monitors performances and imposes final sentence.
- Number of pre-sentence monitoring appearances should be kept to a minimum.
- Community voice in the courtroom is encouraged – eg s 27 speakers.

Arrest

First appearance activities and triage

Second appearance in Family Violence Court

Guilty plea

Not guilty plea

Case Review Hearing

Jury trial or judge alone trial

Not guilty outcome

Guilty outcome

Same-day sentencing if community-based sentence is to be imposed.

If community-based sentence is not to be imposed, matter adjourned for restorative justice conference, and pre-sentence report directed.

Risk and needs assessment

Should include gathering information from or about the following:

- The victim and whānau and family.
- The Family Court in relation to any current proceeds involving the defendant and victim.
- Alcohol and other drug screening.
- Available screening tools to assess mental health, physical health, cognitive abilities, neuro-diversities, cultural disconnection, risk of further family harm occurring or other relevant factors.
- Housing, employment and literacy issues.
- Any other relevant information relating to the circumstances that contributed to family harm occurring.

Pre-sentence plan

Collaboratively prepared with input from defendant, counsel, Police, Corrections, CLIC, victim/advocate, hapū, iwi, community representative and other stakeholders and presented for approval by the relevant judicial officer. If available, the Kaiārahi will coordinate with relevant stakeholders. This may require the defendant to complete restorative justice conferences or relevant rehabilitation programmes before sentencing.

Sentenced in the Family Violence List

Monitored in the Family Violence List

If available, monitored at marae-based Matariki Court

Final sentence imposed

DIVERSIONARY PANELS

Judicial officer may adjourn suitable cases for the defendant to complete a diversionary plan, including Te Pae Oranga Iwi Panel plans or other Community Panel plans.

After successful completion of the plan, Police may, in appropriate cases, seek to withdraw the charges.

Criminal – Matariki List

Process guide

[161] The process for the Matariki List is on **page 52.**

[162] Although the Matariki List is open to all defendants who wish to be dealt with in that court, it is especially aimed at defendants of Māori descent.

[163] A Matariki List is held on a set day or part of a day (time-blocked). It is convened in either a courtroom or on a marae for the purpose of monitoring the completion of approved pre-sentence plans by defendants. Victims' views must be obtained before a referral is made to the court. If a victim is unwilling to attend Matariki Court, the judicial officer should decline the referral.

[164] Among other things, Matariki Lists incorporate te reo Māori and tikanga Māori customs and protocols. They also involve the participation of kaumātua, who play key ceremonial and supportive roles in monitoring hearings.

[165] The completion by a defendant of any pre-sentence plan approved by a judicial officer may be monitored, with the agreement of all parties, at a Matariki List.

[166] Any person, including defendants, who attend Matariki List courts convened at marae will be advised of the protocols and expectations of the marae and be expected to behave accordingly.

Matariki Court process map

TE AO MĀRAMA
Enhancing Justice for All

Mainstreaming best practice features:

- Plain language and improved access to information.
- Better and earlier intervention.
- A referral pathway or tailored plan.
- Access to referral programmes.
- Iwi engagement and wider community involvement/participation.
- Agency collaboration/participation.
- Better information sharing.
- Local solutions for local issues recognised – one size does not fit all.

Kaiārahi (Criminal Court Navigator):

The Kaiārahi (where available) will act as a court navigator and help participants understand the court processes and access relevant services.

Key elements:

- Court venue for the Matariki Court may be marae-based.
- Ensuring that all court participants leave the court feeling that they have been heard and understood.
- Collaboration in the court process – including health, social services, community and iwi.
- Focus on social, psychological/emotional and physical outcomes for individuals, whānau, families and communities.
- Victim participation and engagement.
- Tikanga and te reo Māori incorporated.
- Other cultures, ethnicities and languages recognised where appropriate.

Eligibility for Matariki List:

- Defendant has pleaded guilty.
- Open to all defendants but especially aimed at defendants of Māori descent.

Sentencing:

- Pre-sentence monitoring tailored on a case-by-case basis.
- Where appropriate, defendant signs a pre-sentence monitoring plan.
- Judge who approves plan also monitors performances and imposes final sentence.
- Number of pre-sentence monitoring appearances should be limited to the greatest extent possible.
- Community voice in the courtroom is encouraged – eg s 27 speakers.

Adult List

Judge alone trial or jury trial court

Family Violence List

If the judicial officer indicates a community-based sentence, a defendant may be remanded to the Matariki List for judicial monitoring.

First appearance in Matariki List

Second appearance in Matariki List

Third appearance in Matariki List (sentencing)

Community-based sentence

Custodial sentence

A custodial sentence of two years imprisonment or less may only be imposed if it is the least restrictive outcome that is appropriate in the circumstances.
(Sentencing Act 2002, s 8(g)).

Criminal – Criminal Procedure (Mentally Impaired Persons) List

[167] The process for the Criminal Procedure (Mentally Impaired Persons) List is on **page 56.**

[168] CP(MIP) Lists are only intended to be established in large courts with high volumes of relevant cases. In small courts with low numbers, CP(MIP) cases should simply be allocated appointment times (time-blocked).

[169] CP(MIP) List courts are designed to:

(a) reduce the number of defendants subjected to lengthy Criminal Procedure (Mentally Impaired Persons) Act 2003 processes

(b) deal with defendants in a sensitive and appropriate manner

(c) provide a streamlined approach for defendants who are subject to fitness to stand trial processes

(d) help health professionals attend court at predictable times to assist in the efficient use of their time.

Fitness to stand trial

[170] If any party raises the issue of the defendant's fitness to stand trial, the defendant should be assessed by a health assessor[39].

[171] In considering whether the fitness to stand trial process is triggered, judicial officers must apply the applicable legal test. If there is a disagreement between the assessment provided by the health assessor and counsel, counsel may still be obligated to request a s 38 assessment, even if the health assessor does not believe it is necessary (see the recent decision of *Tooman v R* [2023] NZCA 350).

[172] It is worth noting that the outcome of the health assessor's assessment is not determinative and is information that can be taken into account by the presiding judicial officer when considering the issue of fitness to stand trial.

[173] If the presiding judicial officer considers fitness to be an issue that needs to be further explored, the defendant would be remanded to the next CP(MIP) List court date for more in-depth consideration. The judicial officer will carefully consider whether to trigger the fitness to stand trial process.

[174] If the judicial officer concludes the fitness to stand trial process ought to be triggered, the defendant will remain in the CP(MIP) List court. If not, the defendant would proceed in the usual manner under the Criminal Procedure Act.

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39 Includes a practising psychiatrist who is registered as a medical practitioner, a psychologist, and a specialist assessor.

Section 38 reports

[175] Section 38 of the Criminal Procedure (Mentally Impaired Procedure) Act enables a judicial officer to order a health assessor to prepare a report (known as a "s 38 report") to help the court determine, among other things:

(a) whether the defendant is unfit to stand trial

(b) the type and length of sentence that might be imposed

(c) the nature of a requirement the court may impose as part of a sentence.

[176] Section 38 reports relating to fitness would generally be ordered in the CP(MIP) List and not at first appearance.

[177] The CP(MIP) List court includes a range of matters, such as:

(a) "call over" of defendants referred to the CP(MIP) List

(b) review hearings

(c) fitness, involvement and disposition hearings.

[178] On first appearance in the CP(MIP) List, defendants are assessed by the health assessor, who provides recommendations as to whether fitness to stand trial processes should be triggered, depending on how they present on the day.

[179] If a decision is made to trigger the fitness to stand trial process, two s 38 reports are ordered, and the defendant is remanded to the next available CP(MIP) List date. If not, the defendant would proceed in the usual manner under the Criminal Procedure Act.

[180] When both reports have been filed, the judicial officer will determine whether court health assessors will be required to give evidence at future fitness hearings. The judicial officer will also determine whether it is an appropriate case to proceed directly to an involvement hearing immediately after the fitness hearing, or whether directions and arrangements would be required for the involvement hearing.

Fitness hearings

[181] After triggering the fitness to stand trial process, the judicial officer would hear and determine whether the defendant is fit to stand trial.

[182] If the judicial officer finds the defendant is fit to stand trial, they would be remanded to the appropriate criminal list. If the defendant is considered unfit to stand trial, the judicial officer would schedule an involvement hearing.

Involvement hearings

[183] In some instances, an involvement hearing would be conducted immediately. However, where the charges are more serious and the issues more complex, the defendant would be remanded to a further hearing to discuss the specific requirements of the involvement hearings. The involvement hearing would then be allocated a date in the CP(MIP) List.

[184] If the defendant is found to be involved, a disposition report would be ordered and the defendant would be remanded for a disposition hearing.

Disposition hearings

[185] If the defendant is found unfit to stand trial and to have been involved in the offence, the matter would proceed to a disposition hearing.

Victims

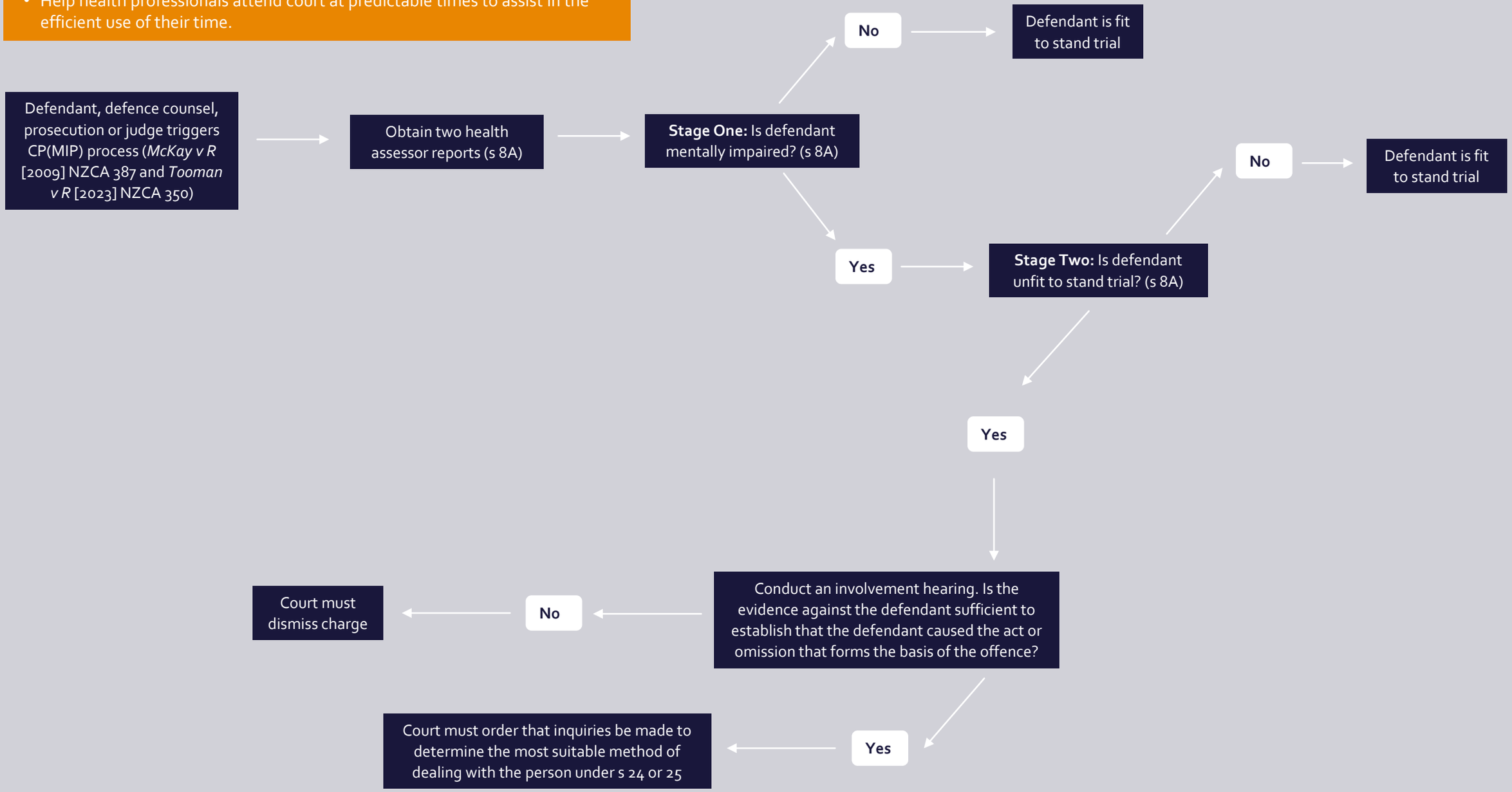
[186] A victim may ask the judicial officer sentencing the offender or making an order under s 24(1) or 25(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 in relation to a defendant who is acquitted on account of insanity to have all, or any part of a victim impact statement submitted under s 21 of the Victims' Rights Act 2022 read to the court.

Criminal Procedure (Mentally Impaired Persons) List process map

TE AO MĀRAMA
Enhancing Justice for All

CP(MIP) List courts are designed to:

- Reduce the number of defendants being subject to lengthy Criminal Procedure (Mentally Impaired Persons) Act 2003 processes.
- Deal with defendants in a sensitive and appropriate manner.
- Streamline those defendants who are subject to fitness to stand trial process.
- Help health professionals attend court at predictable times to assist in the efficient use of their time.



Glossary and te reo terms

Term	Definition
Call-over	A call-over is a meeting where the judge and the lawyers for both sides discuss any pre-trial issues.
Case review hearing	A case review hearing is held to examine whether a charge can be resolved without the need for a trial. For example, if the prosecution withdraws the charges, or if the defendant pleads guilty to the charges, there would be no trial. If a trial is to occur, the case review hearing is also an opportunity for either party to highlight any matters that need to be resolved before the trial takes place.
eDuty	eDuty (or the National eDuty – NeD) is an electronic platform. It is currently used for all 'without notice' applications. Judges are rostered on nationally to manage these applications.
Hapū	Sub-tribe.
Hongi	To press noses in greeting.
Justice highway	The justice highway is a metaphor. The 'highway' begins with state intervention as children (and for some before birth), then moves on through the Youth Court, to the adult criminal court, and then prison. A 2018 report found 83% of prisoners aged 18-20 were in state care as children.
Kapa haka	Māori cultural group, Māori performing group.
Karakia	Incantations.
Kaumātua	Elders.
Kaupapa	Purpose; principles; plans.
Kawa	A process or a way of organising tikanga into a certain pattern or order.
Kuia	Elderly woman; grandmother; female elder.
Mana tamaiti (tamariki)	The intrinsic value and inherent dignity derived from a child's or young person's whakapapa (genealogy) and their belonging to a whānau, hapū, iwi, or family group, in accordance with tikanga Māori or its equivalent in the culture of the child or young person.
Mau rākau	Māori martial arts.
Noho marae	Overnight marae stay.
Pepeha	Tribal saying or motto.
Pickwick hearing	A court hearing with respect to a 'without notice' application but where both parties are in attendance. It provides an opportunity for a respondent to appear and assist the court to the extent they could or would, given the absence of notice to them.
Pōwhiri	Formal welcome; a sequence of practices to formally welcome guests on to a marae.

Tikanga	Practices, protocols and behaviours and the values and principles they express.
Time-blocked	Allocating appointment times to hear certain cases together.
Waiata	Song; chant.
Waka ama	Outrigger canoeing.
Wānanga	Discussion; meeting; seminar; conference.
Whakapapa	Genealogy.
Whanaungatanga	Kinship; the source of the rights and obligations of kinship.
Without notice	An application that is not served on the person to be affected by it (the respondent) and therefore they do not take part in the hearing of the application.

For further information, please contact the Chief District Court Judge's Chambers at **chiefjudges.chambers@courts.govt.nz** or visit www.districtcourt.govt.nz