

Issues paper:

Women's prisons in the spotlight

There is currently significant impetus for 'major improvement' in prison services for both women and men, and perhaps specifically women¹. There are perhaps four main reasons for this impetus which can be considered here:

1. Failure of the system to ensure that women's prisons are "administered in a safe, secure, humane, and effective manner"²;
2. Failure of women's prisons to operate within rules based on "the United Nations Standard Minimum Rules for the Treatment of Prisoners"³;
3. Failure to adequately assist "in the rehabilitation of offenders and their reintegration into the community, where appropriate, and so far as is reasonable and practicable in the circumstances and within the resources available, through the provision of programmes and other interventions"⁴; and
4. The effects of policies and practices which have led to the significant over-representation of wāhine Māori in New Zealand women's prisons, to the detriment of the women themselves, their tamariki, whānau and communities⁵.

Reform to date

The context of high wāhine Māori imprisonment has been a theme throughout the Hokai Rangi reform process, commencing with the first paper of the Working Party, entitled He Waka Roimata:

For more than a decade, we have seen a huge increase in the number of wāhine Māori who have been imprisoned. While Māori men make up over half of the male prison population, Māori women make up around 63 percent of the women's prison population⁶.

In a November 2019 Cabinet Paper, the Minister of Corrections sought the support of Cabinet for the Hokai Nuku Change Programme, intended to deliver changes in the system of Corrections "and, in particular, to do better by Māori"⁷.

The paper makes several specific points about women in prison, as follows:

Over 50 percent of the prison population identify as Māori, and the proportion is even higher for women and young people under 20⁸.

Many people in the care and management of Ara Poutama Aotearoa have been victimised themselves. For example almost 70 percent of women in prison have been victims of family violence⁹.

There are approximately 700 women in prison and 6,000 on community sentences and orders. Wāhine Māori are overrepresented among these groups, making up approximately 60 percent of women in prison and 54 percent of women on community sentences and orders¹⁰.

Many women are also impacted by having a family or whānau member in the care and management of Ara Poutama Aotearoa. This places a significant burden on women and negatively impacts children. There are approximately 23,000 children with a parent in Ara Poutama Aotearoa's care and management, which can perpetuate intergenerational harm¹¹.

The 'Next Steps' Cabinet paper outlines a five-year plan to achieve "major improvement to the Corrections system, setting the platform for long-term transformation articulated in Hōkai Rangī". These changes will address the high representation of Māori in the prison system, the need for a "more normalised" environment to improve connections to the community and whānau and significant improvement to rehabilitation and transition support for vulnerable people and their whānau¹².

Finally, the Cabinet paper notes:

Over the full 15 years, Ara Poutama Aotearoa will, in partnership with Māori, work towards transformation. This will be driven by the detailed future design, and lessons learned from the first five years¹³.

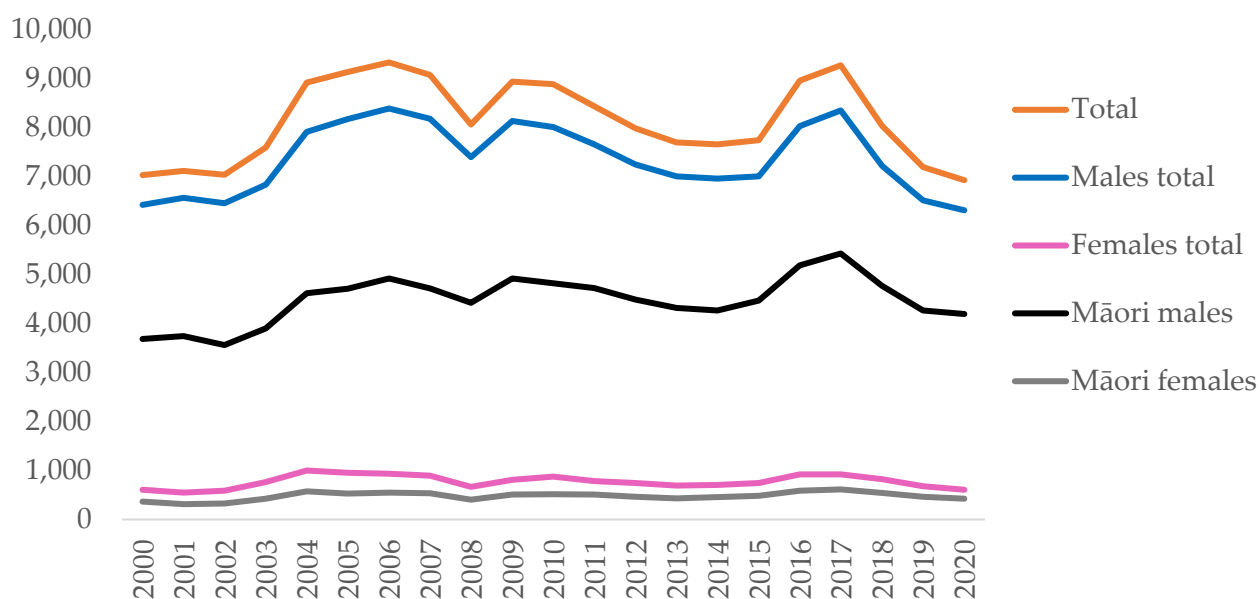
While the goal for transformation is very clear, the pathway to achieve it, and what the transformed justice system will look like, is not yet clearly laid out. It is also of concern that the plan is so long-term that, in the contested area of Corrections, it is likely that a subsequent government will seek to alter or even overthrow such plans.

Women in prison: statistical overview

In our reviews of existing literature and research, we found no recent overview of women in prison. This report therefore provides a basic overview of recent and long-term data around women's imprisonment in Aotearoa. At times we contrast the position of women with that of men, to investigate the basic view that women have a very different profile to men in prison. As well, the overview focuses on the position of wāhine Māori within the prison system, and changes over time.

Looking back over the past twenty plus years, it is clear that there have been huge changes in the number of people serving custodial terms in prison in Aotearoa. The number of sentenced prisoners has been on a roller coaster ride over that period, as shown in Figure 1 below.

Figure 1. Number of sentenced prisoners by gender, including Māori ethnicity 2000-2020



Source: Stats NZ

Dealing first with sentenced prisoners, there are some clear trends. Sentenced prisoner numbers increased significantly for all groups over the period, in a series of 'peaks', and then declined to approximately the same levels as in 2000 by 2020. All groups featured in Figure 1 followed the same trends.

For women prisoners, the trend matches that of men, although the numbers are much smaller. One notable trend is that the proportion of women prisoners who are Māori has changed over time. In 2000 there were 366 Māori females in prison and 606 women overall. By 2020, the number of Māori was 423, although the overall number of women was again 606. The percentage of Māori to all women increased from 60% in 2000 to 69% in 2020.

As the overall number was the same in both years (606 sentenced prisoners), the implication is that around sixty more wāhine Māori, and sixty fewer non-Māori women, were serving prison sentences in 2020 compared to 2000¹⁴. We were unable to find any other literature that had noticed this significant change over the past twenty years. This may be linked to population changes, with the proportion of young Māori growing slightly.

Age of prisoners

The modal (most common) age of sentenced women prisoners in 2000 and 2020 is 30-39. This is the case whether the person is Māori or other, and despite significant other differences between the two dates. Looking at all women sentenced prisoners, there has been a significant shift from the imprisonment of under-19s to higher numbers for those aged 25 to 40. This was driven by policy and is saving around 80 young women per year from adult prison.

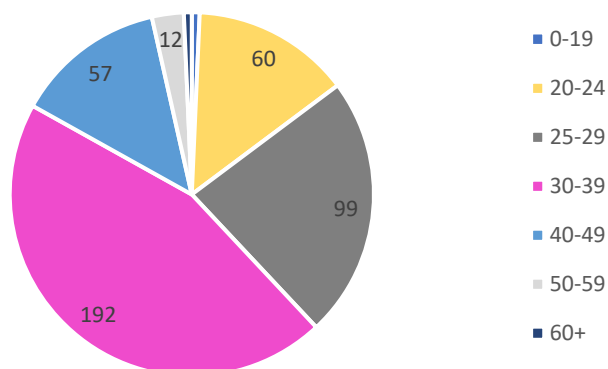
Figure 2 displays the age distribution of sentenced women prisoners in 2000 and 2020.

Figure 2. Nos. in prison by age, women sentenced prisoners, 2000 and 2020



The distribution for Māori sentenced prisoners is very similar – if anything, the shift towards older prisoners is slightly more marked for wāhine Māori. The 2020 distribution of sentenced wāhine Māori in prisons is shown in the following graphic. More than two-thirds of the wāhine are between 25 and 40 years of age.

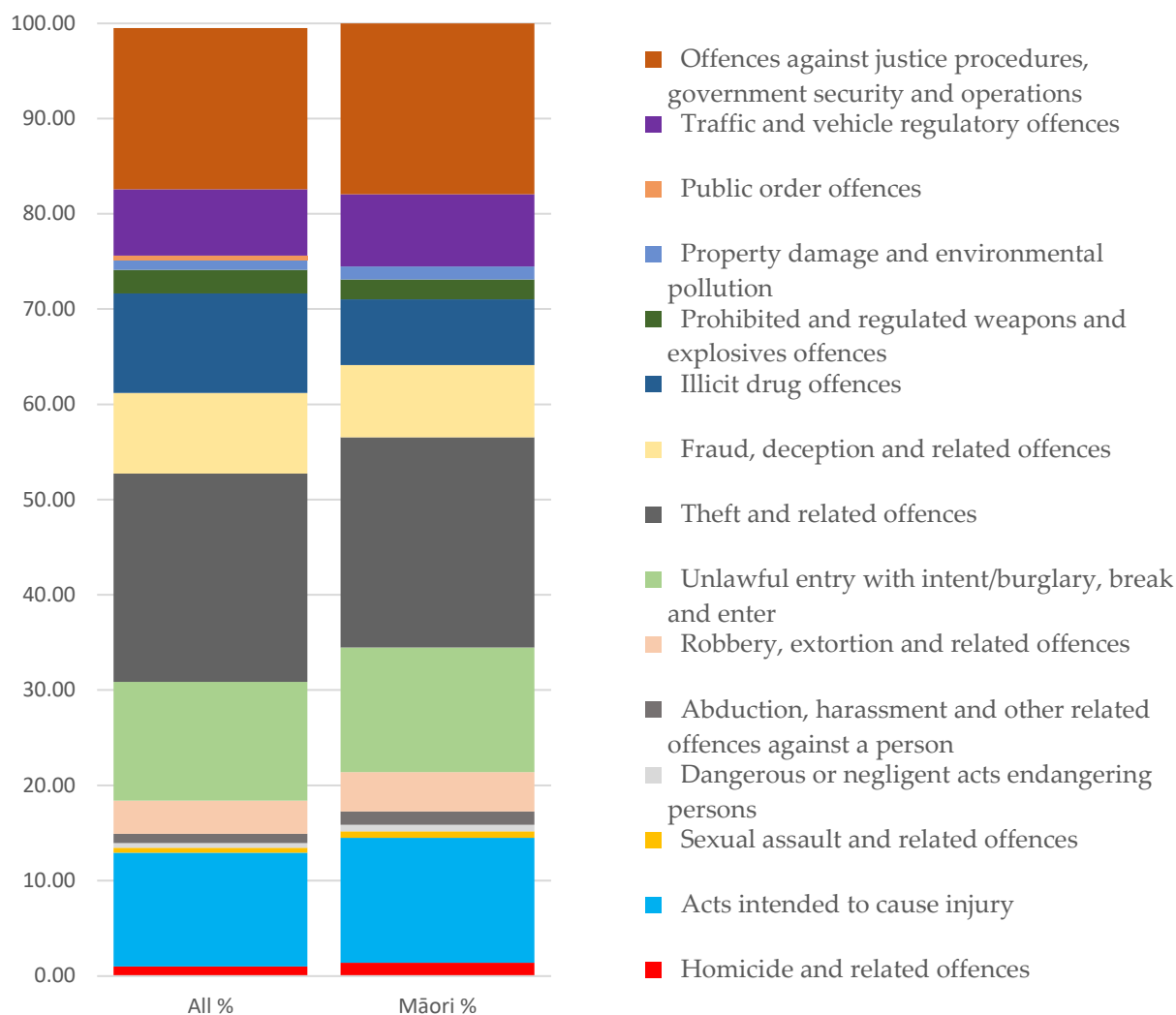
Figure 3. Age distribution Māori women sentenced prisoners in 2020



What do women go to prison for?

The short answer to this question is that women, whether wāhine Māori or other, tend to go to prison for a particular pattern of offending which is quite different from that of men. This pattern has been relatively stable over time, and there is little difference across different groups.

Figure 4. Sentenced women prisoners by worst offences, 2020, all and Māori %

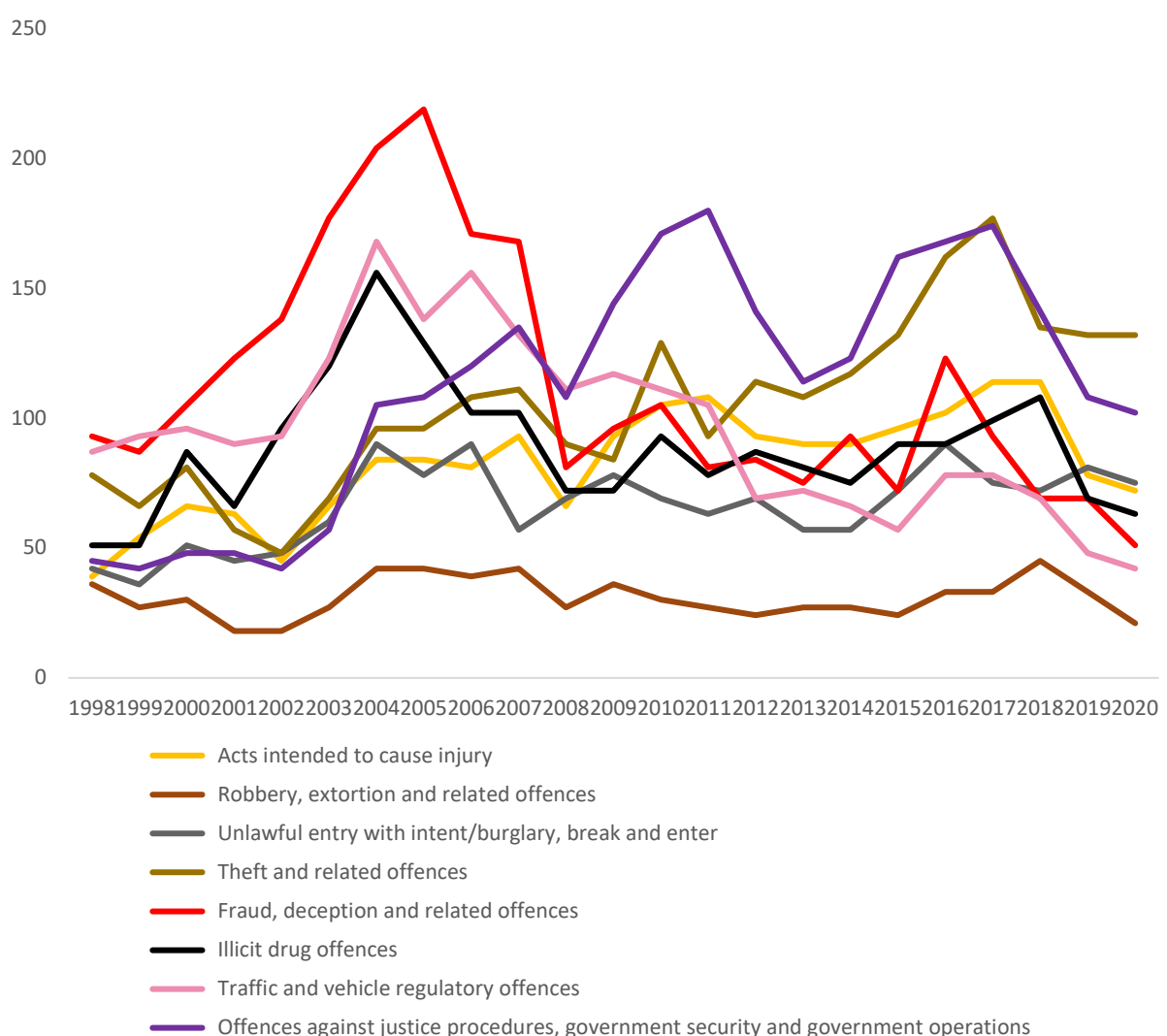


In summary, women are most likely to go to prison for theft, offences against justice (often breaching community sentences), burglary, intent to injure and drug offences. Number of fraud offences have fallen since 2000, due to a large (90%) reduction in prosecution for benefit fraud¹⁵. Wahine Māori are less likely to be in prison for drug offences.

Compared to women, men are more likely to be imprisoned for acts intended to cause injury and offences against justice, while women are more likely than men to be in prison for drugs, fraud and theft¹⁶.

While there has been relative stability over a longer period (with the exception of changes in benefit fraud figures), an analysis of year-on-year offence data for women in prison shows some trends and changes over time, including fluctuations. Using raw figures rather than percentages highlights the changes: showing both changes in numbers over time, and changes in offence types.

Figure 5. offences by year, 1998-2020, all women sentenced prisoners



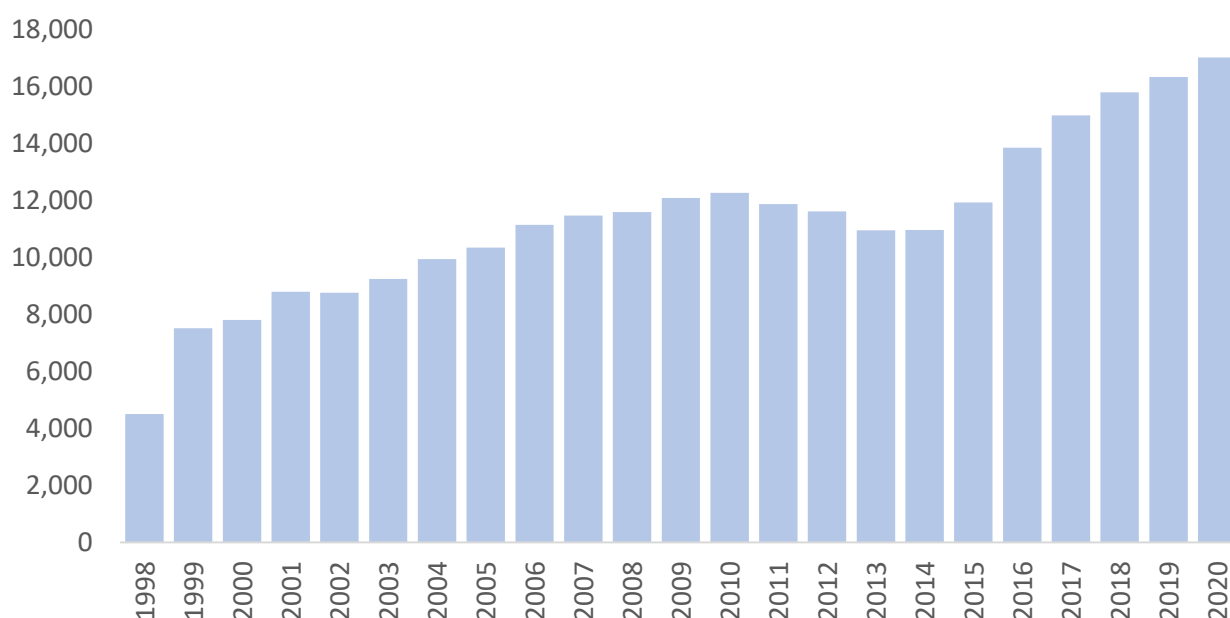
Headlining these changes is the large rise, then even larger drop, in fraud offences over the period, which appears driven by prosecution policies and practices relating to benefit fraud. Two areas: offences against justice and theft have gradually increased over the period, to be the first and second largest number of offences for which imprisonment was ordered.

Remand prisoners

It is well known that the number of people in prison on remand has risen significantly over the past two decades, for all prisoners. The main reason given for this is the 2013 Bail Amendment Act (Christie's Law) which aimed to make it harder to get bail. But, as a summary of Crown evidence in the Mita Waitangi Tribunal Claim relating to the Bail Amendment Act notes (WAI 3008), this seems to have led to an ongoing rise in the numbers of people on remand, including across all types of offences¹⁷.

Figure 6 below provides a brief overview of total numbers on remand from 1998 to 2020.

Figure 6. Numbers on remand in years 1998-2020 (December numbers)



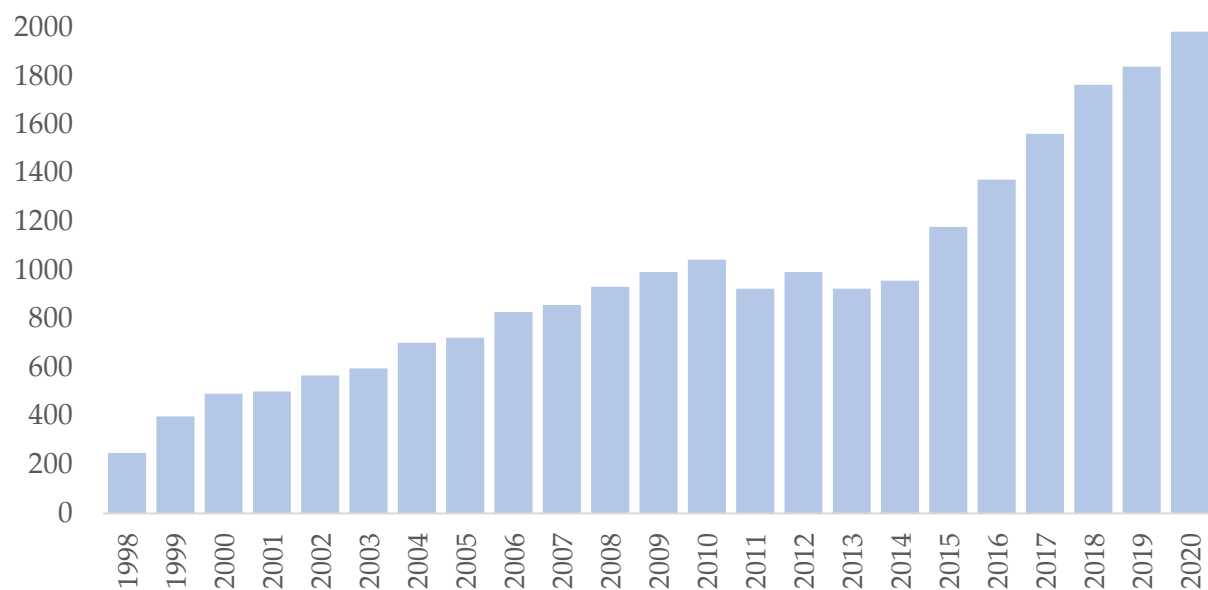
Prior to 2012, the rise in numbers was driven primarily by increases in the number of prosecutions (and imprisonment). Since then, the cumulative increment appears to be the result of the influence of the Bail Act being much larger than intended:

The Act was only intended to keep people charged with serious violent crimes from being bailed. Projections by the Ministry of Justice claimed the new Bill would increase the number of prisoners on remand by less than 60. However, the Ministry of Justice consistently underestimates the impact of new laws on the number of offenders who will be affected. In this case their projections were way off mark. Three years later, there were 1,500 additional prisoners on remand – exactly the same number as the capacity of the new prison planned for Waikeria¹⁸.

There are some cyclical issues that keep the increases coming. In particular, Judges use a system of comparisons with other judgments to make their decisions on remand v. bail. Thus increases tend to be incremental. Also, the growing queues for hearings in Court (including the large number of hearings needed to ensure that people were being held on remand with good cause) increased numbers further.

The increase in number of women on remand was proportionately much greater than for the overall population, as Figure 7 shows:

Figure 7. Women on remand in years 1998-2020 (December numbers)

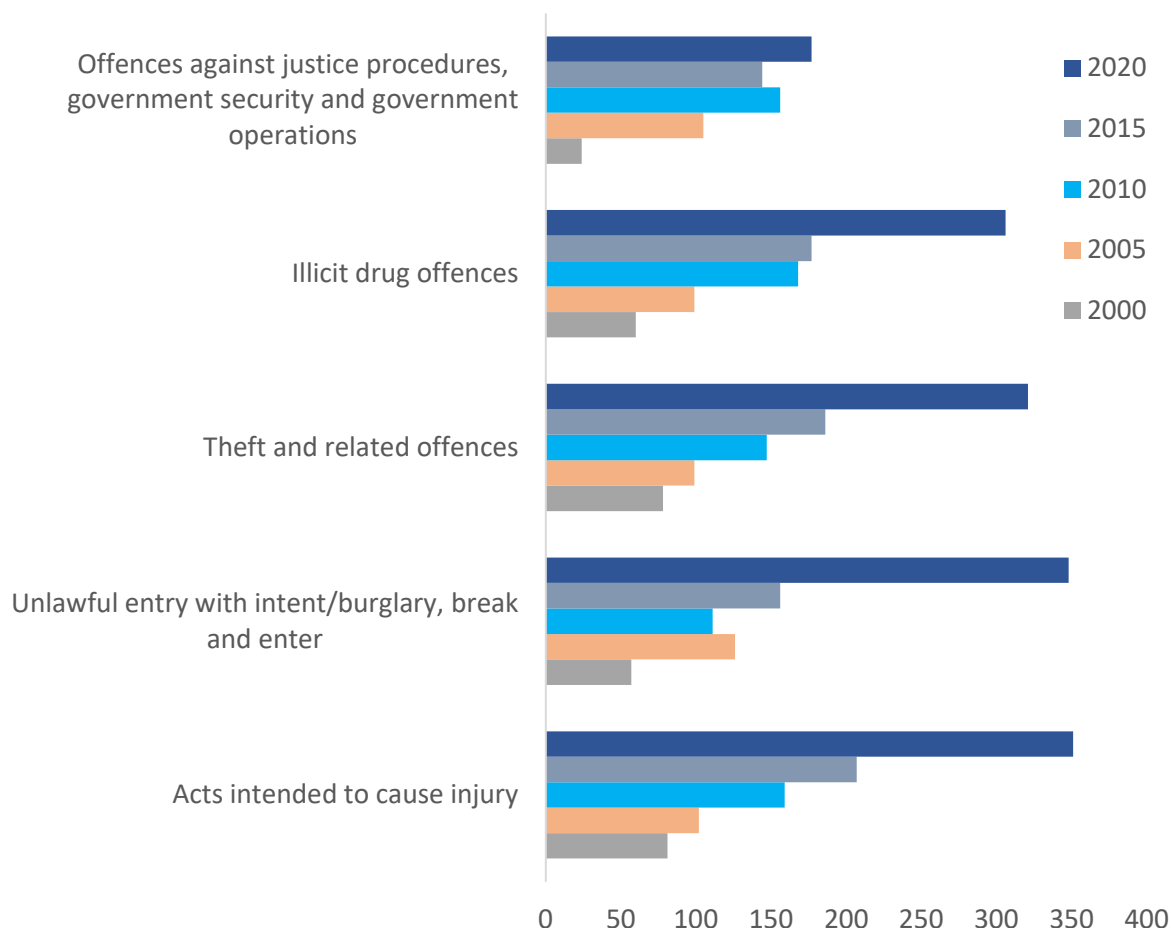


The number of people on remand in total rose by 378% between 1998 and 2020. For women, the growth was 796%. As can be seen from Figure 7, the numbers of women on remand climbed extremely steeply from 2013 onwards, indicating a strong effect emanating from the 2013 Act. Yet that Act was aimed at keeping people in prison who had committed violent crimes, which is not an offence generally associated with women. The number of women on remand, and the pattern of increase, is therefore something of a mystery.

Awatea Mita’s Waitangi Tribunal claim argues that the Bail Amendment Act discriminates against wāhine Māori. This is clearly the case. The number of wāhine Māori on remand increased by 807% between 1998 and 2020. As the number of women held on remand rose, so too did the proportion of wāhine Māori among them. In 2013, wāhine Māori made up 59% of remanded prisoners but by 2020 this was around 65%. While not as high as the proportion of sentenced women prisoners, wāhine Māori were significantly more likely to be held on remand after 2013.

Figure 8 traces the growth in numbers of women on remand by offence type, and simplifies the data by looking at five date-points and the five offences with the largest increases.

Figure 8. Growth in numbers of women on remand 2000-2020, by offence type (selected offences)



Seen in graphic form, there are several observations that can be made:

- Few women were remanded for justice-related offences (such as breaches of bail) in 2000.
- There was a large jump in remands for four key areas: drug offences, theft, burglary and acts intended to cause injury between 2015 and 2020, which together explain most of the increase between those periods. Only the final category falls within the Christie’s Law area of influence.
- Remand did not lead to sentencing. The big jump in remand prisoners 2015-2020 was not accompanied by a big jump in women in prison.
- It is difficult to perceive any logic in the increase in women on remand during the periods highlighted here.

How long do remand and sentenced prisoners spend in prison?

The number of women prisoners on remand increased from 492 in December 2000 to 1983 in December 2020. The next question to be considered is how much, if any, of this increase has been driven by longer stays on remand. This is important for a number of reasons. The most important of these is that pre-trial detention always includes a potential for infringement of human rights. Even where rights are not necessarily infringed, women are often at the centre of their whanau, caring for young and old alike. Pulling them in large numbers into custodial care can be damaging for whanau.

Also, staying longer in prison on remand drives up the count in itself. The count takes place in a snapshot period (December each year) and is thus not a count of the total numbers on remand in a year, but in a month. If women spend longer on remand, it increases the daily count.

There are two issues to be highlighted in terms of sentence length. The first, outlined in Table 1 below, is the actual numbers at the two dates (2000 and 2020) on remand, by sentence length.

Table 1. Number on remand by length of time on remand, women prisoners, December 2000 and 2020

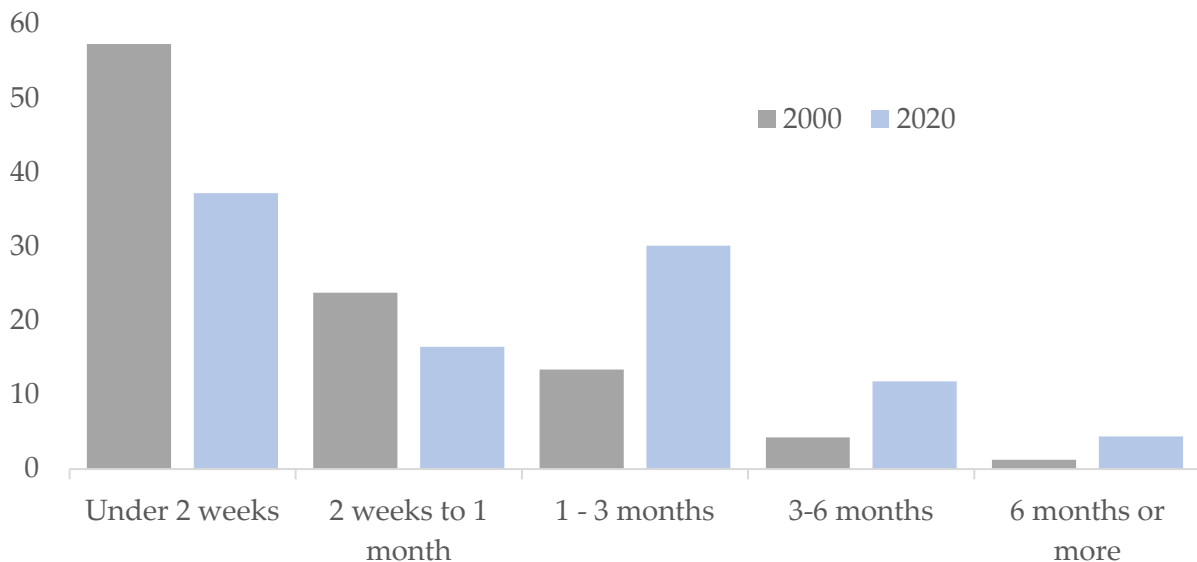
| Length on remand | 2000 | 2020 |
|---------------------------|-------------|-------------|
| Under 2 weeks | 282 | 738 |
| 2 weeks to 1 month | 117 | 327 |
| 1 - 3 months | 66 | 597 |
| 3-6 months | 21 | 234 |
| 6 months or more | 6 | 87 |
| Total | 492 | 1983 |

Table 1 breaks down the large increase of women on remand by sentence length. Two things become clear: the sheer volume of the increase and the large increase of women remanded for longer periods of time. Not only are far more women on remand, but they are staying there for longer and longer periods.

The increase in numbers is highlighted in the table above, but to highlight the increased length of stay it is important to compare the periods on an equitable basis. Figure 9 below compares the length of stay across the two periods on the percentage of each cohort remaining on remand for different periods. The results demonstrate a large shift in length of stay. In 2000, more than half (575) of women on remand were

there for less than two weeks. By 2020, that figure was 37%. In 2000, 81% of women on remand were there less than a month. By 2020, that figure was 53%. It is therefore not surprising that a large increase is shown in the proportion of women spending much longer periods on remand.

Figure 9. Percentage of women on remand by length of stay, 2000 and 2020

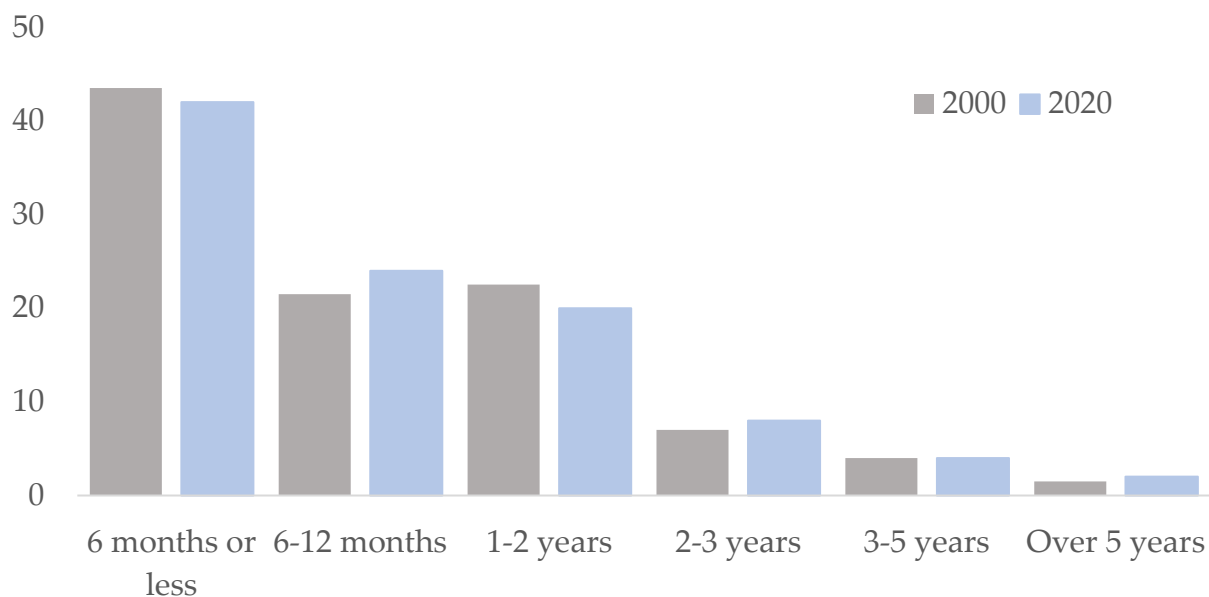


The previous Justice Minister noted that around 40% of people held on remand did not eventually get sentenced to prison. In addition, many others were eventually sentenced to ‘time served’, indicating that they had spent as long, or longer, on remand than any prison sentence that might be given¹⁹. There is significant evidence that the remand system is broken, but as yet, little moves towards reform. The large increases in women on remand tends to be dwarfed by the huge number of men in the remand system, but the pattern and implications of women’s remand demands analysis of its own.

In previous sections this report examined changes over the years in the age, ethnicity and offence type of sentenced prisoners. The clear pattern was a steady increase through the 2000s of sentenced prisoners, followed by a fall back in the 2010s. In December 2000 and 2020, the numbers in women’s prisons were the same - 606 persons. This is in contrast with those on remand which have continued to grow.

The key question is whether there have been any notable changes of the type revealed in the analysis of prisoners on remand. Figure 10 compares the sentence lengths of sentenced women prisoners in 2000 and 2020 in percent terms and finds there is virtually no difference in the length of sentence profile in the two periods. Women are not spending longer in prison, even though they are spending much longer on remand.

Figure 10. Percentage of women by length of sentence, 2000 and 2020



The difference between the length of stay statistics for remand prisoners over 20 years and for sentenced prisoners over the same period indicates that the remand statistics are an artefact of ‘the system’ in operation rather something inherent in the offences. In effect, a greater likelihood of being remanded, and greatly increased periods on remand, means women prisoners are spending much more of their time in incarceration on remand rather than as a sentenced prisoner.

Also, given the very high numbers, it is likely that many women are spending time on remand but not subsequently being sentenced to a custodial term. Some will be found not guilty and others will serve non-custodial terms. The question of the damage, if any, caused to women in terms of the additional time spent in prison on remand, is unable to be answered here.

There is another way to view the expanded time spend on remand for women in 2020. Looking at the median number of days spent on remand, by the additional number of women on remand, women in 2020 spent 55507 more days on remand in 2020 than 2000²⁰. As the prison inspector’s reports from 2020 and 2021 note, remand prisoners are treated like high security prisoners and rarely have access to rehabilitative programmes.

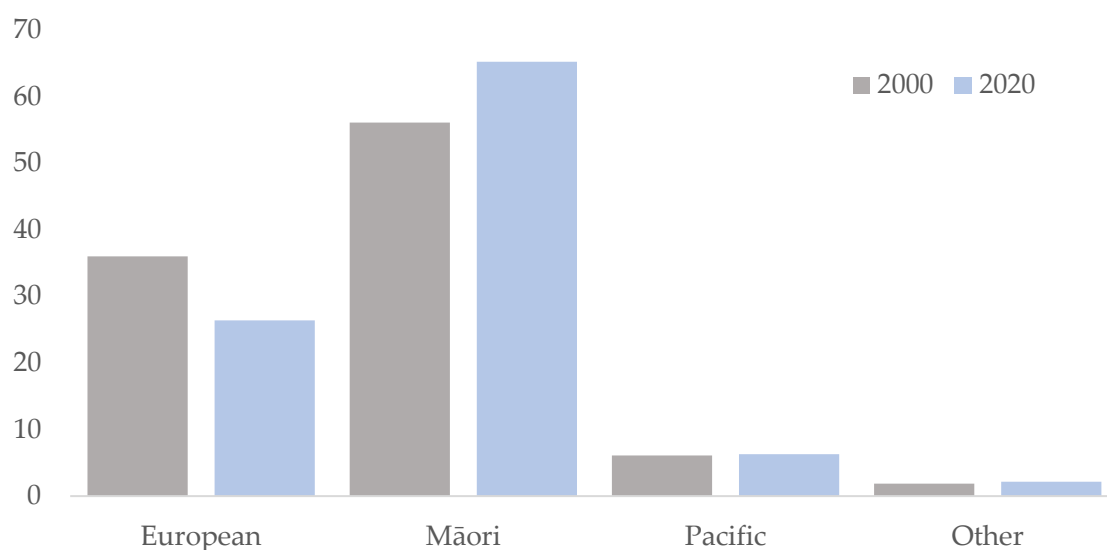
Our question is whether women prisoners now spend far more time locked up, and in the harsh conditions of remand, than is necessary. There are enormous implications of this for the women themselves, their whanau, tamariki, work, home and life.

Ethnicity

The final statistic relating to women on remand to be considered here is that of ethnicity. Again comparing the two periods 2000 and 2020, the main question that needs to be considered is whether remand prisoners follow the pattern of sentenced prisoners, with wāhine Māori increasingly represented in the figures.

The results are shown in Figure 11 below. In 2000 Māori women made up 55% of women on remand, but by 2020 this had grown to 65%. While still lower than the proportion of wāhine Māori sentenced prisoners (which reached just under 70% in 2020), it is still extremely high.

Figure 11. Women on remand by ethnicity %, December 2000 and 2020



There is a significant unanswered question about what is causing the surging number of wāhine Māori on remand and among sentenced prisoners, notable even above the huge wave of remand prisoners that now inhabit our prisons. Significant research needs to be done on the burden of harm caused by these numbers to the wāhine themselves and their whanau.

Further statistics

Various requests are currently (October 2021) in with the Department of Corrections and the Ministry of Justice for further statistics and information regarding women prisoners. Material will be added as it comes to hand.

Summary of spotlight on policy and sentences

This report has provided an overview of current policy and statistics around women's imprisonment. Key points are:

1. This study is underway at a time when the shortcomings of the current system of imprisonment for women is very evident: the system is not safe; it does not meet UN standards; and it is not rehabilitation-focussed.
2. There is a significant over-representation of wāhine Maori within the prison system.
3. There are a number of plans in place to achieve major improvements to the Corrections system, including to women's imprisonment, and especially to transform the imprisonment of wāhine Māori.
4. The overall plan has an expected length of 15 years, and is very unclear on detail. It is likely that over time it will be politically contested and changed.
5. Women make up only a small proportion of the overall sentenced prison population. Numbers rose significantly through the 2000s but have now reduced back to around 2000 levels.
6. The proportion of sentenced prisoners that are wāhine Māori rose from 60% in 2000 to 69% in 2020.
7. The number of young (under 20) women prisoners has fallen dramatically due to policy changes since 2000, and the number of those aged 20-24 has also fallen. However, there were a much higher number of older women (25-40 and older) in prison in 2020.
8. Around two thirds of wāhine Māori sentenced prisoners in 2020 are aged 25-40.
9. There have only been small changes in the pattern of offences for sentenced women prisoners. Compared to 2000, in 2020 they are slightly more likely to be in prison for causing injury or burglary, less likely to be there for fraud and much less likely to be convicted of drug offences.
10. The number of all prisoners on remand has increased enormously since 2000.
11. That increase has been significantly notable for women, with a growth rate in remand numbers of nearly 800% over 20 years.
12. Large increases in women held on remand for burglary, theft, drug and justice offences occurred over the whole period.
13. It is hard to see any logic in the increase in women on remand during the periods highlighted here. There was no corresponding increase in the number of sentenced prisoners. This appears to indicate that the pathway between remand and later imprisonment has been broken.

14. In terms of length of time on remand, two factors are in play: the high numbers of women on remand congesting the system, and the tendency for women to stay much longer on remand in 2020 compared to 2000. The proportion of women on remand for one month or less has fallen by a third, while it has more than doubled for those on remand for a month or more.
15. For sentenced prisoners, there is very little evident difference in length of sentence between 2000 and 2020.
16. The proportion of pakeha on remand has fallen from 35 to 25% between 2000 and 2020, while the proportion of Māori has increased from 56 to 65%.
17. Other statistics will be added to this report as they come to hand.

¹ Cabinet Minute (2019) The next step towards a future for Ara Poutama Aotearoa. It: “directed Ara Poutama Aotearoa to report on its progress towards major improvement by the end of 2020, and present SWC with options for the last three years of this change programme by the end of 2021”.

² s. 5(1)(a) Corrections Act 2004

³ s. 5(1)(b) Corrections Act 2004

⁴ s. 5(1)(c) Corrections Act 2004

⁵ Hon Kelvin Davis, Minister of Corrections, The Next Step Towards a New Future for Ara Poutama Aotearoa, issued 28/1/20. Retrieved at:

[https://www.corrections.govt.nz/_data/assets/pdf_file/0009/39186/Cabinet_CBC_Paper -
The Next Step Towards a New Future for Ara Poutama Aotearoa.pdf](https://www.corrections.govt.nz/_data/assets/pdf_file/0009/39186/Cabinet_CBC_Paper_-_The_Next_Step_Towards_a_New_Future_for_Ara_Poutama_Aotearoa.pdf)

⁶ Te Uepū Hāpai te Ora – safe and effective justice advisory group. He Waka Roimata (ND). Retrieved at: <https://www.justice.govt.nz/assets/Documents/Publications/he-waka-roimata.pdf>

⁷ The Next Step....op cit at [1].

⁸ Ibid at [28].

⁹ Ibid at [29].

¹⁰ Ibid at [64].

¹¹ Ibid at [65].

¹² Ibid at [35] to [37].

¹³ Ibid at [38].

¹⁴ Providing an in-depth analysis of male prison statistics is beyond the scope of this spotlight document, but it should be noted that the same trend is evident for Māori men. Among sentenced prisoner, Māori male numbers were 57% in 2000 and 66% in 2000.

¹⁵ <https://www.odt.co.nz/opinion/editorial/approach-means-fewer-fraud-charges> See also the following documents from an OIA request: <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/official-information-responses/2020/june/r-20200625-request-to-know-how-many-people-have-been-prosecuted-of-benefit-fraud-since-2014-to-date-and-what-cost-benefit-fraud-has-every-financial-year.pdf>

¹⁶ Comparative male data has been analysed and is available on demand.

¹⁷ Summary of response provided by the Crown to the application for urgency: In the matter of the Bail Amendment Act (Mita) claim WAI 3008 #3.1.5.

¹⁸ <http://cutthepriisonpop.nz/how-the-murder-of-christie-marceau-led-to-1500-more-people-in-prison/>

¹⁹ <https://www.newsroom.co.nz/three-years-waiting-in-prison>

²⁰ This has been estimated conservatively. The final category, 6 months or more, is interpreted in the model as 150 days, which is probably significantly lower than the actual term spent on remand for this group.