New Zealand Police Pre-Charge Warnings Alternative Resolutions

Evaluation Report

A report prepared by

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Purpose

This is the final evaluation report of the pre-charge warning initiative operating across the Auckland Region since November 2009, following a pilot undertaken in Waitematā District.

1 What are pre-charge warnings?

'Alternative Resolutions' refer to action taken by New Zealand Police (Police) to hold offenders accountable for their actions as an alternative to the usual process of charging and prosecution. These can occur at the:

- **pre-arrest stage** where Police can administer informal, verbal warnings (street warnings)
- **pre-charge stage** where Police can arrest a person, take them to the station for processing and then issue a warning as an alternative to charging and prosecution
- **post-charge stage** where at the end of the prosecution process instead of conviction the offender receives Police Adult 'Diversion' on the condition they have admitted guilt and completed set conditions outlined in a Diversion Agreement (and the charge is withdrawn from the court).

This evaluation is of alternative resolutions initiated at the post arrest and pre-charge stage.

The process that ends in a pre-charge warning begins the same as any Police arrest. Police establish that there is good cause to suspect that an offence has occurred and they arrest the offender. The offender is informed of their rights and the reason for arrest, and then taken to the nearest Police station for processing.

At the Police station it is intended that the Custody Supervisor assesses the arrest for evidential sufficiency and decides whether to grant a pre-charge warning. The decision should be made following discussion with the arresting officer. The arresting officer may recommend that a person is given a pre-charge warning as it is not in the public interest to prosecute, for example when the costs to secure a conviction and the negative effects of a conviction are out of proportion with the seriousness of the offending.

2 Why 'alternative resolutions' for low level offending are needed

Over the last 15 years Police use of warnings nationally has declined by about a third, and there has been an increased emphasis on arresting and charging offenders, including when offences are low-level (eg Breach of liquor ban offences, Disorder). From discussions with a range of Police staff for this evaluation, the reduction in warnings occurred following policies that sought to stop crime escalating by focusing on low-level offending ('Broken Windows') and an increased organisational focus on risk management. This period also saw a higher turn-over of longer-serving officers, which may have reduced the transfer of knowledge and oversight in issuing warnings, and lowered awareness or confidence among newer officers on the appropriate exercise of discretion.

Over time the increased emphasis on prosecution has led to high demands being placed on the court system. As a result the demand on the court system is becoming unsustainable, particularly in metropolitan areas and areas with high volumes of minor offences.

The pre-charge warning initiative is part of the Policing Excellence workstream. The initiative responds to calls from Police, the Law Commission and judiciary to develop better alternatives to hold offenders to account for minor offending without having to use the courts.

3 Description of the Auckland Region pre-charge warning initiative

In the Auckland Region a pre-charge warning can be considered if the offender is aged 17 years or over and the offence carries a maximum penalty of six months imprisonment or less. Some offences with a six month penalty threshold are ineligible, for example family violence offences or possession of methamphetamine. Criminal history or previous pre-charge warnings must be taken into consideration but do not exclude an offender from receiving a pre-charge warning. Victim considerations and reparation considerations must also be taken into account, but again do not exclude an offender from receiving a pre-charge warning.

4 Aims of the pre-charge warning initiative

When operating as intended, the main aims of the pre-charge warning initiative are to:

i) reduce low level offences being processed in court

ii) ensure responses and consequences are not out of proportion with the level of offending

iii) improve the quality of decision-making when laying charges, to ensure there is sufficient evidence and that is in the public interest to proceed to prosecution

iv) improve the ratio of cases that are successfully prosecuted, compared to those withdrawn or dismissed due to evidential insufficiency (which in turn increases the credibility of the prosecution process)

v) free up police resources from pursuing low level offences through the courts with little or no probative value, to allowing deployment to frontline policing and crime prevention.

5 Use of pre-charge warnings across the Auckland Region

Since implementation in November 2009 to the end of May 2010 a total of 3,137 charges were resolved by a pre-charge warning across the Auckland Region. The proportion of charges resolved by way of a pre-charge warning was highest in Counties Manukau (11%), followed by 9% in Waitematā and 7% in the Auckland District.

The most common offence type to be resolved by a pre-charge warning across the Auckland Region during the evaluation period was Disorder (26%) followed by Breach of liquor ban offences (21%). Together these two offence types accounted for nearly half (47%) of the pre-charge warnings issued. The next highest offence types were Shoplifting (values under $500) (9%), Fighting in a public place and Procure/possess cannabis (both 6%).

Those receiving a pre-charge warning were most likely to be male and between 20 and 29 years of age. The regional monitoring data showed that, between November 2009 and May 2010, 12% of charges against Pacific offenders, 9% of charges against Asian offenders, 9% of charges against European offenders, and 7% of charges against Māori offenders were resolved by pre-charge warning. The lower proportion for Māori may reflect a misapprehension in the Auckland District that pre-charge warnings could not be granted to those with prior offending histories.

6 Extent to which intended outcomes are occurring

i) Reduced demand on the courts

- The pre-charge warnings initiative recorded an overall reduction of 9% of charges proceeding to court, assuming these would otherwise have been resolved through prosecution.
- Auckland District Court staff interviewed for this evaluation said they had experienced a noticeable reduction in new business, which they attributed to the pre-charge warnings initiative. The Executive Judges for Auckland and Manukau reported that judges in the region are *"...very pleased with what is happening on this project and that they are noticing the benefits for the court*".
- However not all the reduction in new charges proceeding to court can be attributed to the pre-charge warning initiative: court data shows there has been a small reduction in new cases appearing in district courts in the Auckland region and across the country, mainly driven by a reduction in traffic offences and offences under the Tax Act proceeding to court.

ii) Ensure responses are not out of proportion with the level of offending

- **Police views:** In terms of the eligibility criteria, the majority of officers thought the six month penalty threshold was set at the right level. Most officers liked the fact pre-charge warnings could hold offenders to account for their behaviour without criminalising them for low level offences. One officer described it as a useful tool to "...*fill the gap between a street warning and going to court*". A minority of officers reported that while they had initially been sceptical about the use of pre-charge warnings, nearly all now saw the benefits of having an alternative option to charging when responding to less serious offences.
- **Offenders' views:** On face value the responses from a small sample of offenders interviewed are not surprising: several were relieved to have received a warning when they realised the alternative was prosecution. However several of those warned for a Breach of liquor ban offence were indignant (both at the time and later when interviewed) at being arrested and the time taken to process them back at the station and thought a more appropriate response would have been to have warned them at the scene.
- **Victims' views:** Seeking victims' views was a challenge given the small number of eligible victims (as most pre-charge warnings were for victimless offences). A small survey of victims undertaken as part of the Waitematā pilot noted their overall positive feedback. Nearly all were retailers and victims of shoplifting. Retail staff and owners said that it was good to see the Police turn up, arrest the offender and take them to the police station. The pre-charge warning process also meant staff did not have to spend time in court giving evidence. Superette owners reported that often the offenders lived nearby and the opportunity for a pre-charge warning meant that there was much more chance of them rebuilding an amicable relationship.

- As part of this evaluation an independent research company was employed to undertake more research on victims' views. Of the 37 victims surveyed the majority were satisfied overall with the process, thought they had been treated fairly and that their situation mattered to the Police. Most agreed that the Police had considered their views, and that they received adequate information and were satisfied with the outcome. Around a third thought an 'on the spot warning' would have been more effective way of dealing with the offence, alternatively around a third thought the offence could have been more effectively dealt with in court.
- Of the 37 victims interviewed 11 had suffered loss or damage to their property as a result of the offence. Only two agreed Police had arranged reparation to be paid by the offender, and seven reported this had not occurred. Reparation would have been a mandatory consideration if the offender was charged and/or offered diversion.
- A small number of respondents made comments as part of the survey. A key area where improvements could be made is feedback given to victims. For example for one respondent, the lack of feedback made them feel like the offender had 'got away' with the offending and for a retailer the lack of information made them feel the offending was not treated as seriously as they thought it should have been.

iii) Improve the quality of decision-making

- Many of the longer serving officers welcomed the renewed use of police discretion, and thought the current approach had the advantage of providing clearer guidance on eligibility criteria and processes for issuing pre-charge warnings. The role of the Custody Supervisor is of particular importance in ensuring the quality of decision-making in laying charges or deciding to issue a pre-charge warning. Several senior officers thought that having the decision to issue a pre-charge warning made by a senior sergeant at the station provided appropriate levels of oversight, or as one described it, "*supervised discretion*".

iv) Improve the ratio of cases that are successfully prosecuted

- The Auckland Board of Management review of 1,300 prosecution files found that "a significant proportion of all withdrawals are caused by issues relating to the supervision, competency and capacity of frontline staff".
- The pre-charge warning initiative aims to improve the quality of decision-making and to reduce 'wastage' caused by processing cases in the court that are subsequently dismissed or withdrawn. There are other initiatives that also aim to improve the quality of cases proceeding to prosecution: namely Directed File Evaluation (DFE) and Criminal Justice Support Units (CJSU).

v) Free up Police resources – to focus on crime prevention and detection

- **Reduced paperwork:** At the initial paperwork stage, it takes about the same time (around 20 minutes) to process an offender on a pre-charge warning as it does to process an offender Police intend to charge. The main time savings from the pre-charge warning initiative come from not having to prepare files for court. Preparing a file for court was estimated to take an extra hour in associated paperwork. Having over 3,000 charges resolved by a pre-charge warning means over 3,000 Police hours were saved in the Auckland Region over the evaluation period.

- If pre-charge warnings were issued at the same rate in the region, then over 5,000 police hours would be saved across one year. Savings are likely to be greater than this, as if cases went to a defended hearing, officers estimated this could require an additional 8 hours in paperwork and court attendance.
- A senior officer commented that the pre-charge warnings initiative has meant *"...staff are spending less time on files that go nowhere and have no real merit".* Pre-charge warnings reduce the paperwork and time spent on court related activity, freeing officers to return to their core business of crime prevention and detection. As one officer said *"...Less time spent preparing files for court means more time spent on the road".*

7 Extent to which unintended outcomes are occurring

The two main unintended outcomes for the pre-charge warnings initiative are:

- **Warnings being seen as not a strong enough response to offending:** There is a risk that some people will see the use of pre-charge warnings as not a strong enough response to offending. However the offences eligible for pre-charge warnings are less serious offences, and discretion is exercised on whether these can be resolved with a warning or whether there are grounds to lay a charge so the offence is heard in court. The vast majority of all charges are still prosecuted. Between November 2009 and May 2010 around half the arrests for both Disorder and Breach of liquor ban offences and nearly 80% of shoplifting offences had charges laid.
- **Net-widening:** There is a risk Police may issue pre-charge warnings where in the past they would have only verbally warned someone. As background, the Waitematā trial found arrests increased by only 1.4% suggesting net-widening did not occur. Two possible instances of net-widening were identified as part of this evaluation. In the Auckland District there was a spike in the total number of arrests for Breach of liquor ban offences in the first month following the initiative's implementation, which was attributed to an enthusiastic initial application. In Counties Manukau charges for disorder increased in the evaluation period, which may reflect net-widening, but may also reflect the region's concurrent initiatives which saw an increase in staff numbers (Counties 300) and an increased focus on disorder (Public Safety Teams).

8 What helps support delivery?

Having permanent Custody Supervisors helped support the initiative, as did access to rapid scan technology which can check identity without storing fingerprints – noting that storing fingerprints is only allowable when a case proceeds to prosecution.

The pre-charge warning initiative is particularly suited to metro areas with high volumes of minor offences. This is borne out in the data: in the evaluation period only 22 pre-charge warnings were issued in Rodney, the main non-metro area in the Auckland Region. Since implementation, amendments have been made to the practice guides setting out the process for staff in rural/provincial areas to access supervisory input from stations with 24 hour cover.

9 Areas for improvement/development

The key areas identified for improvement/development for the pre-charge warning initiative identified are described below.

More consistent decision-making

- The pre-charge warning initiative has helped reinstate the use of discretion when responding to low level offences. While the initiative has provided clearer guidance on eligibility criteria and processes for issuing pre-charge warnings, there were calls for more scenario-based guides to help inform decision-making and build consistency without restricting discretion.

Making the Custody Supervisor role a permanent position

- The Custody Supervisor role appears to work better when it is a permanent position. The Custody Supervisor role is a permanent position in Counties Manukau, and Auckland District is also looking to make the role permanent. Having permanent staff was also seen as a way to help improve consistency of decision-making.

New monitoring, following IT improvements

Once the new Police case management system is fully implemented (including the e-custody model which allows data to be analysed by arrests, rather than charges), the following data can be routinely analysed:

- the number of arrests, by offence type, to monitor if net-widening is occurring
- the number and type of informal warnings issued at the scene versus those issued as a pre-charge warning at the station
- recidivism rates and patterns of recidivism for different types of offenders receiving pre-charge warnings
- ethnicity of people receiving pre-charge warnings, distinguishing between those with and without prior offending histories
- the impact of reduced prosecutions on court sitting time.

Developing a broader range of performance measures

There could be benefit in developing a broader range of performance measures, for example tracking:

- measures of proactive policing to monitor where time saved in processing low level offences is deployed
- whether time saved contributes to faster response times.

Ongoing monitoring

Areas which need ongoing monitoring are:

- the uptake of the pre-charge warnings initiative outside main metro areas
- the number and rate of cases sent back to Officers in Charge from Directed File Evaluation (DFE) for re-work due to evidential insufficiency, and withdrawn or dismissed from court due to evidential insufficiency
- the impact of the pre-charge warnings initiative on the numbers and types of offences resolved by way of Police Adult Diversion
- reparation arrangements for offences where there was a known victim.

Communication to offenders

- Several of the offenders interviewed as part of this evaluation were unsure of what the pre-charge warning meant. The level of explanations given varied between Districts, as did the explanations on the pre-charge warning sheet. The revised pre-charge warning sheet addresses some of these points.

Communication to victims

- A key area where improvements could be made is feedback given to victims.

10 Concluding comments

The pre-charge warning initiative is helping reduce new business for courts and saves Police time preparing files for court. Proposed changes to Police IT systems will enable ongoing monitoring of possible net-widening (including the use of street warnings) and case outcomes (particularly cases withdrawn or dismissed because of evidential insufficiency).

The pre-charge warnings initiative has helped reinvigorate an alternative to charging and prosecution, with the benefit of having clearer guidelines and processes. Having the process overseen by a senior officer at the station was seen as providing the right level of 'supervised discretion'. Now the application of discretion has been reinstated, there is a need to build consistency in decision-making: this could be supported by having the Custody Supervisor roles made permanent positions and developing more scenario-based guides to support decision-making.

Communication to offenders and victims needs to be more consistent, and processes developed to more actively monitor compliance with victim reparation.

1 Introduction

1.1 Purpose

This is the final evaluation report of the pre-charge warning alternative resolutions initiative. The initiative is part of the Policing Excellence workstream and responds to calls from New Zealand Police (Police), the Law Commission and judiciary to develop better alternatives to hold offenders to account for less serious offending without having to use the courts.

The findings in this report cover Police charge data from regional implementation in November 2009 to the end of May 2010. Data is also drawn from observations, interviews and surveys of police staff, offenders and victims. (See Appendix 1 for the methods used).

1.2 Evaluation aims

The evaluation aims are given in Appendix 2 and the key evaluation questions in Appendix 3. A simplified version of the evaluation aims have been used to shape the structure of this report, which covers the following in turn:

1. what are Police pre-charge warnings?
2. why 'alternative resolutions' for low level offences are needed
3. description of the Auckland Region pre-charge warning initiative
4. aims of the pre-charge warning initiative
5. use of pre-charge warnings across the Auckland Region
6. who received pre-charge warnings?
7. extent to which intended outcomes are occurring
8. extent to which unintended outcomes are occurring
9. what helps support delivery?
10. ideas for improvement/development.

1.3 What are pre-charge warnings?

While the majority of apprehensions result in a prosecution (for example about 80% of adult non-traffic apprehensions result in a prosecution), Police have other alternatives to hold offenders accountable for their actions. These can occur at the:

- **pre-arrest stage** where Police can administer informal, verbal warnings (street warnings)
- **pre-charge stage** where Police can arrest a person, take them to the station for processing and then issue a warning as an alternative to charging and prosecution
- **post-charge stage** where at the end of the prosecution process instead of conviction the offender receives Police Adult 'Diversion' on the condition they have admitted guilt and completed set conditions outlined in a Diversion Agreement (and the charge is withdrawn from the court).

This evaluation focuses on the pre-charge warning stage.

1.4 Why alternative resolutions for low level offences are needed

Over the last 15 years Police use of warnings nationally has declined by about a third, and there has been an increased emphasis on arresting and charging offenders, including when offences are less serious (eg Breach of liquor ban offences, Disorder).[1]

From discussions with a range of Police staff for this evaluation, the reduction in warnings occurred following policies that sought to stop crime escalating by focusing on minor offending ('Broken Windows') and an increased organisational focus on risk management. This period also saw a higher turn-over of longer-serving officers, which may have reduced the transfer of knowledge and oversight in issuing warnings, and lowered awareness or confidence among newer officers on the appropriate exercise of discretion.

Over time the increased emphasis on prosecution has led to high demands being placed on the court system, which slows court throughput and increases the remand period for those in custody. As a result the demand on the court system is becoming unsustainable, particularly in metropolitan areas and areas with high volumes of low level offences.

More Police resource is also required to prepare files and attend court, and this reduces Police capacity to focus on crime prevention and detection.

It is questionable as to the value gained from processing high volume low level offences through the courts as there is evidence that this does little to deter future offending and does not provide the redress victims seek.

There have been several Law Commission reports and calls from the judiciary to develop better alternatives to hold offenders to account for less serious offending without having to use the courts. For example the Law Commission Reports:

- *The infringement system: a framework for review* (2005) noted the increased demand on court resources, and the need to find alternatives outside the court system, particularly for processing offences where the prosecution through the court system was *'...out of proportion with the circumstances of offending'*
- *Delivering Justice for all (*2005) recommended a warning process similar to that used in the pre-charge alternative resolution initiative operating in the Auckland Region
- *Criminal Pre-Trial Processes: Justice through Efficiency* (Report 89, 2005) recommended more rigorous scrutiny to ensure charges are based on sufficient evidence and appropriate public interest, and supported by fair and accurate summary of the alleged acts and information on which charges are based.

The pre-charge alternative resolution initiative has the potential to achieve greater quality control over charging decisions and to reduce the number of low level offences being processed through the courts, while still holding offenders to account.

[1] Superintendent John Van der Heyden, Police, internal analysis, data for the period 1994 to 2008.

2 The Auckland Region pre-charge warning initiative

A pre-charge alternative resolutions initiative was piloted in Waitematā from July 2009, and extended to Auckland City and Counties Manukau in November 2009.

In the Auckland Region the pre-charge warning can be considered only when the offender is aged over 17 and the offence is low level, with a maximum penalty of six months' imprisonment. Some offences with a six month penalty threshold are ineligible, for example family violence offences (see Appendix 4) and possession of methamphetamine.

2.1 Process for giving a pre-charge warning – once a decision to arrest has been made

Arrest and establish evidential sufficiency: Police have good cause to suspect an offence has occurred.

↓

Public interest: Having passed the evidential sufficiency test, a decision is needed on whether it is in the public interest to proceed to prosecution, based on the Solicitor General's Prosecution Guidelines. Examples of reasons when it is not in the public interest to prosecute include the costs to secure a conviction (particularly for minor offences), and the negative effects on the offender being out of proportion with the seriousness of the offending (eg convictions for minor offences which restrict employment or travel options).

↓

Prior offending: Criminal history or previous warnings must be taken into consideration but do not exclude an offender from receiving a second or subsequent pre-charge warning.

↓

Victim considerations and reparation considerations must also be taken into account.

↓

Decision making: The decision to grant a pre-charge warning or to proceed with prosecution is made by the Custody Supervisor, following discussion with the arresting officer.

↓

Giving the warning: the Custody Supervisor, Custody Officer or watch-house constable speak to the offender on release, and explain they are being given a pre-charge warning instead of being prosecuted in the courts. Offenders are informed that a record of the pre-charge warning is held by Police, and can be considered should the person commit subsequent offences. Offenders are given a written pre-charge warning with these key points noted.

↓

Criminal record: A pre-charge warning does not appear on criminal records requested for employment or travel purposes.

An offender can choose not to accept a pre-charge warning, if for example they think they have been wrongfully arrested and/or they want to have their case heard in court.

2.2 Aims of the Auckland pre-charge warning initiative

When operating as intended, the main aims of the pre-charge warning initiative are to:

i) reduce low level offences being processed in court

ii) ensure responses and consequences are not out of proportion with the level of offending

iii) improve the quality of decision-making when laying charges, to ensure there is sufficient evidence and that is in the public interest to proceed to prosecution

iv) improve the ratio of cases that are successfully prosecuted, compared to those withdrawn or dismissed due to evidential insufficiency (which in turn increases the credibility of the prosecution process)

v) free up police resources from pursuing low level offences through the courts with little or no probative value, to allowing deployment to frontline policing and crime prevention.

Other potential benefits of the pre-charge warning initiative are to:

vi) make warnings a more powerful intervention by processing offenders at the station

vii) prevent problems from escalating and/or provide care to people (eg if incapacitated through intoxication), by allowing removal into temporary custody while processing

viii) increase public confidence in Police as interventions (warnings, decisions to charge) are applied appropriately, and decisions are transparent and fair

ix) increase satisfaction of victims of low level offences as their needs are considered before a pre-charge alternative resolution can be agreed

x) increase Police visibility in the community, by freeing up resources to focus on frontline policing.

The range of intended outcomes of the pre-charge warnings initiative, for Police, courts, offenders, victims and the wider community are shown in Figure A5, Appendix 5.

2.3 Use of pre-charge warnings in the Auckland Region

This section describes use of pre-charge warnings using charge data sourced from Police electronic records (NIA). Ideally arrests would be used instead of charges, as one person can be charged for multiple offences. However an earlier evaluation found that people receiving a pre-charge warning had mostly been arrested for one offence, which minimises the disadvantage of using charges instead of arrests.[2]

Total number of pre-charge warnings in the Auckland Region

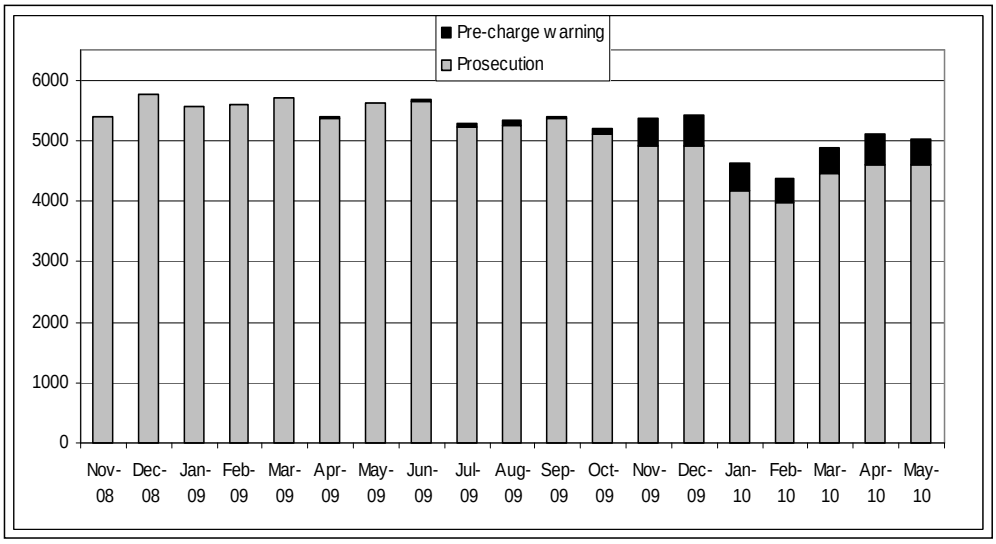
Since implementation in November 2009 to the end of May 2010 a total of 3,137 charges were resolved by a pre-charge warning across the Auckland region. During this evaluation period there were 31,647 charges resolved by prosecution after arrest.

[2] *Waitematā pre-charge pilot: report on evidential sufficiency and the use of formal Police cautions,* Senior Sergeant Gray, October 2009

Figure 1 shows the number of charges resolved by prosecution or by a pre-charge warning by month across the Auckland Region, with a longer time series (back to November 2008, to provide context and capture potential season effects). As Figure 1 shows the vast majority of charges are still resolved by prosecution.

Figure 1 also shows there was a dip in the total number of charges (whether resolved by prosecution or a pre-charge warning) in January and February 2010. The dip did not occur in the same months in the previous year, suggesting seasonality was not a factor.

Figure 1: Total number of charges resolved by prosecution and pre-charge warning across the Auckland Region, Nov 2008 to May 2010



While there is a dip in the total number of charges for January and February across the rest of the country, it is not as marked as it is in the Auckland Region (see Figure A6 in Appendix 6).

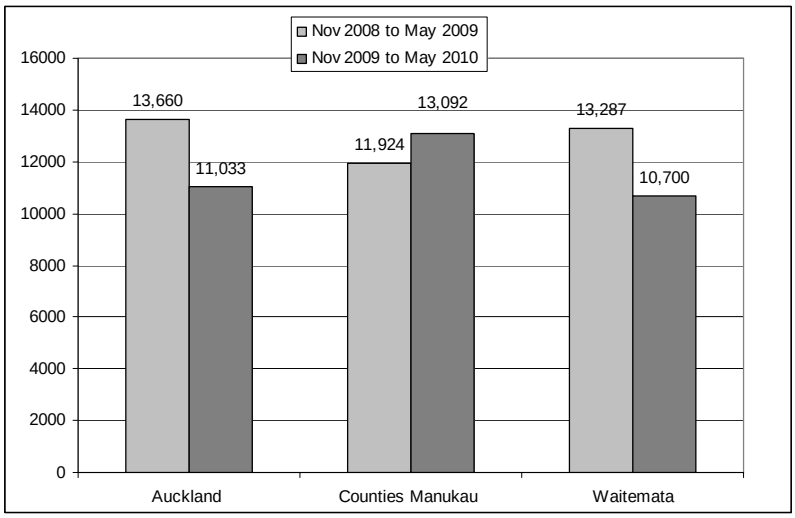
A possible explanation is that the Auckland and Waitematā Districts both appear to have had small drops in the number of full-time equivalent constabulary staff during these summer months than other regions, most likely with staff on annual leave.[3] Having less officers available could have reduced the number of crimes detected.

This explanation is supported by Figure 2 below, which shows the total number of offences resolved by prosecution or by a pre-charge warning in each of the three Auckland Districts, comparing the evaluation period with the equivalent months from the previous year.

The total number of offences resolved by prosecution or by a pre-charge warning fell in both Auckland and Waitematā Districts in the evaluation period compared to the same months from the previous year. In contrast the total number of charges increased in Counties Manukau, most likely reflecting that the pre-charge warning initiative was implemented at the same time as staff increases (Counties 300) and the new Public Safety Teams, which focus on responding to disorder, were introduced in the District. In February 2010 Counties Manukau also introduced 'Rostering to Demand' to deploy more staff to peak offending times.

[3] Management Report, New Zealand Police, May 2010.

Figure 2: District totals for offences resolved by a pre-charge warning or prosecution for Nov 2008 to May 2009 and Nov 2009 to May 2010 (includes traffic offences)



Total number of pre-charge warnings in each Auckland District

Of the total 3,137 charges resolved by a pre-charge warning across the Auckland Region between November 2009 and May 2010, the numbers in each district were:

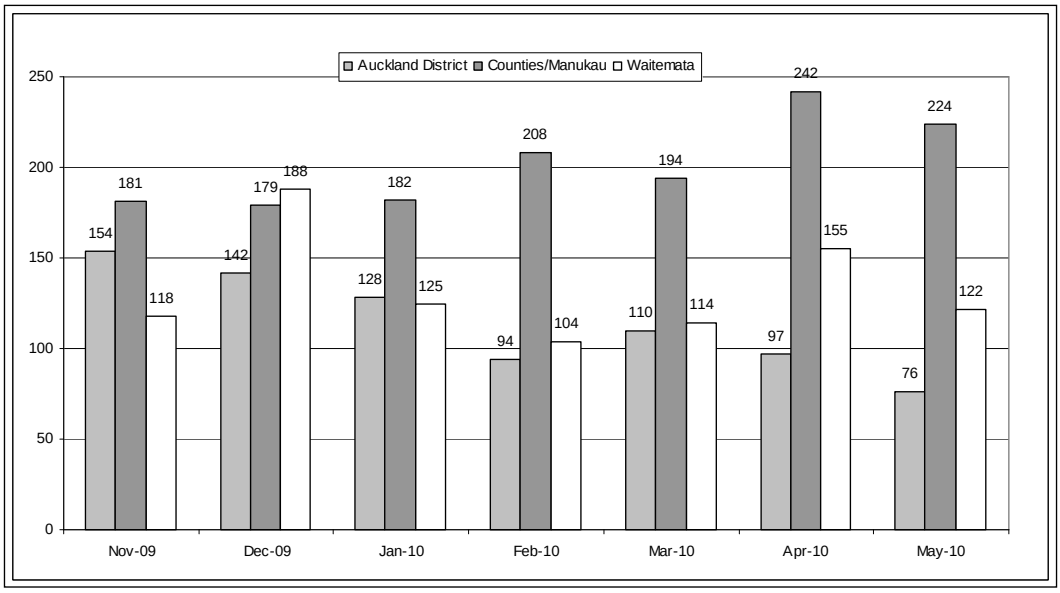
- Auckland District, 801
- Counties Manukau, 1,410
- Waitematā, 926.

The numbers vary between districts due to different volumes of crime generally, and of low level crimes eligible for a pre-charge warning. Between November 2009 and May 2010, 9% of charges were resolved with a pre-charge warning across the region.

The proportion was highest in Counties Manukau (11%), followed by 9% in Waitematā and 7% in the Auckland District (See Figures A7.1–A7.3, Appendix 7 for proportions for each district by month for the evaluation period).

Figure 3 shows the total number of charges resolved with a pre-charge warning by each Auckland District, by month from November 2009 to May 2010. Since implementation there has been a decline in the use of pre-charge warnings in the Auckland District, and an increase in Counties Manukau. The number of pre-charge warnings in Waitematā has remained fairly constant, but variable, across the period. (See later section for possible reasons for district variations).

Figure 3: Total number of charges resolved by pre-charge warning by District, Nov 2009 to May 2010



Main offences resolved with a pre-charge warning, across the region and by district

Between November 2009 and May 2010 the most common offence type to be resolved by a pre-charge warning across the Auckland Region was Disorder (26%) followed by Breach of liquor ban offences (21%). Together these two offence types accounted for nearly half (47%) of the pre-charge warnings issued across the Auckland Region during the evaluation period.

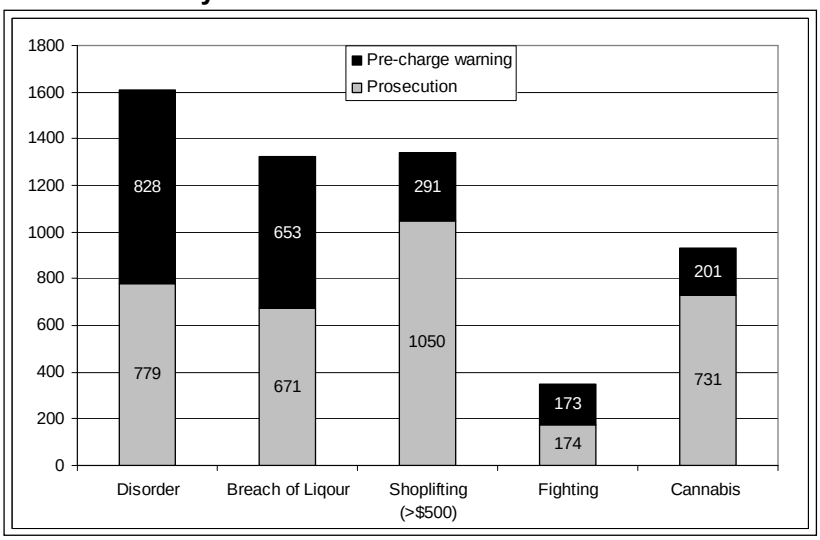
The next highest offence types resolved by pre-charge warnings were Shoplifting (values under $500) 9%, Fighting in a public place and Procure/possess cannabis (both 6%). (See Appendix 8 for the top 19 offences resolved by a pre-charge warning during the evaluation period).[4]

Four of the top five offence types and most of the top 18 offence types resolved by a pre-charge warning result from proactive policing. Of the top five offence types only one – Shoplifting – is initiated by a call for service. Shoplifting is also the only one of the top five offences resolved by a pre-charge warning that has a clear victim. (The other possible offence is Fighting in a public place, but often people are both the victim as well as the perpetrator in this offence).

Figure 4 shows the total number of offences resolved by a pre-charge warning or prosecution for the top five offence types across the Region for the evaluation period. Both Disorder and Breach of liquor ban offences had higher overall charges, and in both cases around half of these offences were resolved by a pre-charge warning and half by prosecution. The other higher volume offence was Shoplifting, but the majority of these offences were resolved by prosecution. Similarly Cannabis had a higher level of charges resolved by prosecution, while around half of the lower volume 'Fighting in a public place' offences were resolved by a pre-charge warning.

[4] The technical appendix also has the full range of offences resolved by a pre-charge warning: in many cases there were only one or two for each of the other offence types in each region across the seven-month evaluation period.

Figure 4: Region totals for offences resolved by a pre-charge warning or prosecution, by main offence types, Nov 2009 to May 2010



The following five charts show the proportion of each of these top five offence types resolved by a pre-charge warning or by prosecution, by the Region and by each district. Across the offence types a similar pattern is observed: the proportion of pre-charge warnings is highest in Counties Manukau, lowest in the Auckland District and similar to the region average in Waitematā. Possible reasons for this are discussed after these five charts.

Figure 5 shows that across the region in the evaluation period just over half (52%) of Disorderly behaviour charges were resolved by a pre-charge warning. The proportion of Disorderly behaviour charges resolved by a pre-charge warning was highest in Counties Manukau (67%), lowest in Auckland (28%) and the same as the region average in Waitematā (52%).

Figure 5: Percentage of Disorderly behaviour charges resolved by a pre-charge warning or prosecution, Auckland Region and each district between Nov 2009 to May 2010

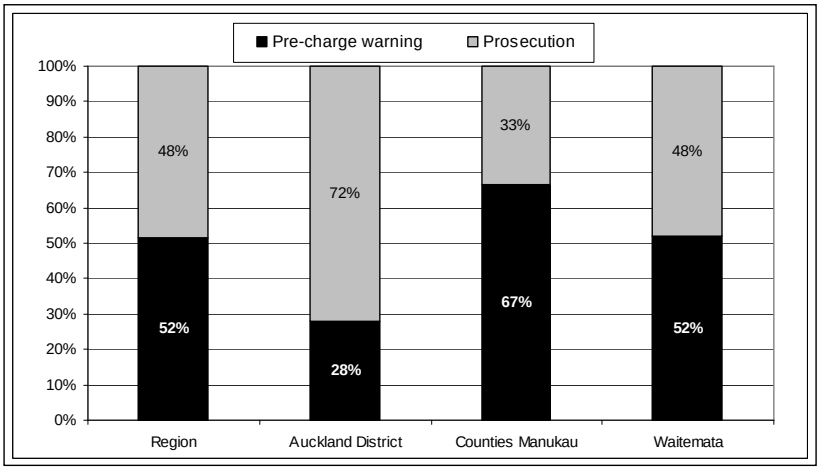


Figure 6 shows that across the Region in the evaluation period just under half (49%) of Breach of liquor ban charges were resolved by a pre-charge warning. The proportion of Breach of liquor ban charges resolved by a pre-charge warning was highest in Counties Manukau (66%), followed by Waitematā (62%) and lowest in Auckland (40%).

Figure 6: Percentage of Breach of liquor ban charges resolved by a pre-charge warning or prosecution, Auckland Region and each district between Nov 2009 to May 2010

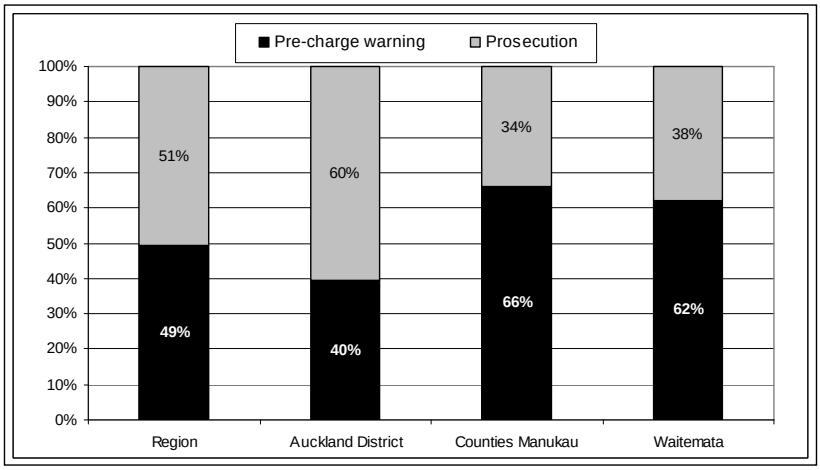


Figure 7 shows that across the Region in the evaluation period just over a fifth (22%) of Shoplifting (under $500) charges were resolved by a pre-charge warning. The proportion of Shoplifting (under $500) charges resolved by a pre-charge warning was highest in Counties Manukau (33%), lowest in Auckland (10%) and the same as the region average in Waitematā (22%).

Figure 7: Percentage of Shoplifting (under $500) charges resolved by a pre-charge warning or prosecution, Auckland Region and each district between Nov 2009 to May 2010

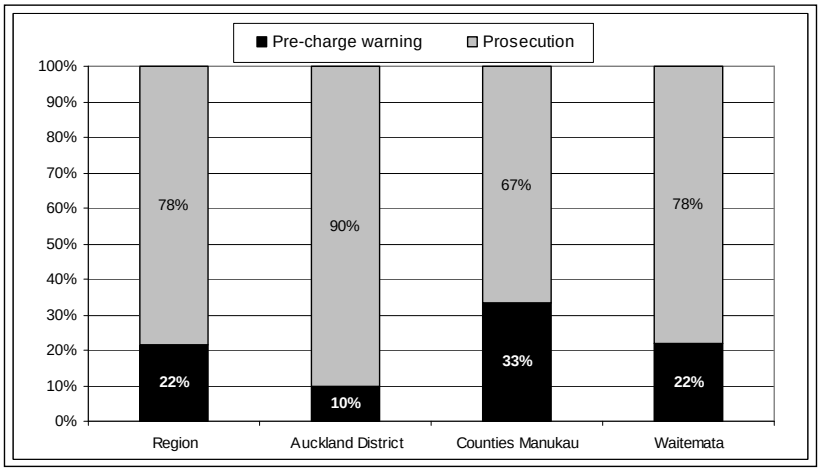


Figure 8 shows that across the Region in the evaluation period half of 'Fighting in a public place' charges were resolved by a pre-charge warning. The proportion of Fighting in a public place charges resolved by a pre-charge warning was highest in Counties Manukau (61%), lowest in Auckland (42%) and close to the region average in Waitematā (53%).

Figure 8: Percentage of Fighting in a public place resolved by a pre-charge warning or prosecution in the Auckland Region and each district between Nov 2009 to May 2010

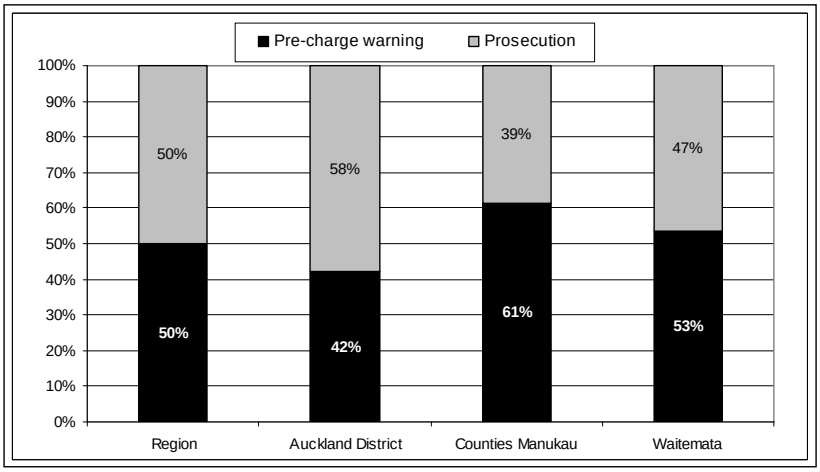
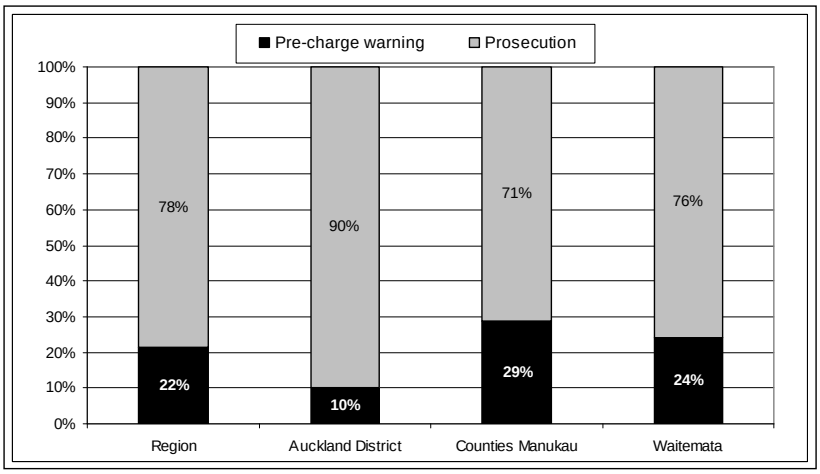


Figure 9 shows that across the Region in the evaluation period just over a fifth (22%) of Procure/ possess cannabis charges were resolved by a pre-charge warning. The proportion of Procure/possess cannabis charges resolved by a pre-charge warning was highest in Counties Manukau (29%), lowest in Auckland (10%) and close to the region average in Waitematā (24%).

Figure 9: Percentage of Procure/possess cannabis charges resolved by a pre-charge warning or prosecution Auckland Region and each district between Nov 2009 to May 2010



Reasons for these district variations

Possible reasons for the higher resolution of charges by way of a pre-charge warning in Counties Manukau and the lower level in the Auckland District appears to be largely driven by the differing practices in granting pre-charge warnings to people with prior offending histories.

Staff in the Auckland District commented that there had been a misapprehension that pre-charge warnings should not be granted to people with prior offending histories, which is borne out in the lower level of charges resolved in this way in this district.

In contrast, data from Counties Manukau showed that the majority (67%) of offenders receiving a pre-charge warning in that District between November 2009 to March 2010 had prior offending histories. (Note this data was accessed via the e-custody module of the new Police Case Management information system, which is available in Counties Manukau, but is not yet in place across the Region, restricting the current ability to quantify differences in practice between districts).

2.4 Who received pre-charge warnings?

This section looks at the age, gender and ethnicity of offenders who received a pre-charge warning across the Auckland Region during the evaluation period.

Age of offenders receiving a pre-charge warning

Across the Auckland Region those most likely to receive a pre-charge warning are aged between 20 to 29 years, followed by those aged between 17 and 20 years. This mirrors the peak offending ages for all levels of criminal offending.

Gender of offenders receiving a pre-charge warning

Overall the majority of offenders receiving a pre-charge warning were male (78%[5]). Males and females received similar proportions of pre-charge warning fairly consistently across each of the top five offence types, and across each of the Districts. (See Technical Appendix for details).

Ethnicity of offenders receiving a pre-charge warning[6]

The majority of offenders receiving a pre-charge warning in Auckland and Waitemata were European (45% and 49% respectively) (see Figure 10).

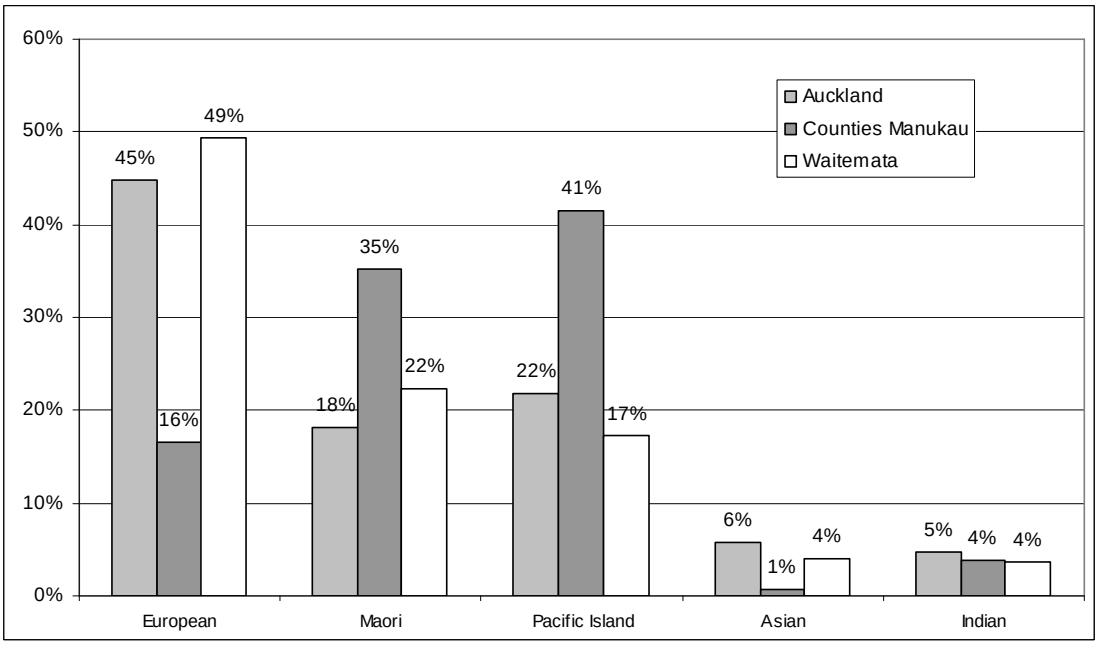
In Counties Manukau the majority of offenders receiving a pre-charge warning were Pacific Island (41%) and Maori (35%). This reflects the differences in ethnic composition of the communities: Counties Manukau has nearly double the proportion of Maori and between two and three times as many Pacific people than the Auckland and Waitemata Districts.[7]

5 This figure was revised in March 2011 to align with the time period for Figures 11 and 12 which follow. The report published in December 2010 stated that 80% of offenders receiving a pre-charge warning were male.

6 Unless stated otherwise, the analysis of ethnicity of offenders is based on the five offences most commonly receiving a pre-charge warning ie disorderly behaviour, breach of liquor ban, shoplifting, procure/possess cannabis, fighting in a public place.

7 The 2006 Census shows 15% of the population in Counties Manukau were Maori, compared with 8% in Auckland and 9% in Waitemata, and 28% were Pacific peoples, compared with 13% in Auckland and 8% in Waitemata.

Figure 10: Offenders receiving a pre-charge warning, by ethnicity, by Auckland District, Nov 2009 to March[8] 2010



Māori and Pacific peoples have a higher proportion of young people in the peak offending ages. Māori and Pacific people on average are also more likely to have offending histories, and have committed more serious offences and this was seen as potential barrier to the use of pre-charge warnings for these groups.

Figures 11 and 12 show the proportion of offenders by ethnicity who had a charge resolved by way of a pre-charge warning for the two most common offence types: Disorder and Breach of liquor ban offences. The proportions show the regional average and the proportions for each District for the three main ethnic groups: European, Māori and Pacific people. (See the Technical Appendix for proportions of charges resolved by a pre-charge warning for shoplifting, Fighting in a public place and Cannabis, and by other ethnic groups).

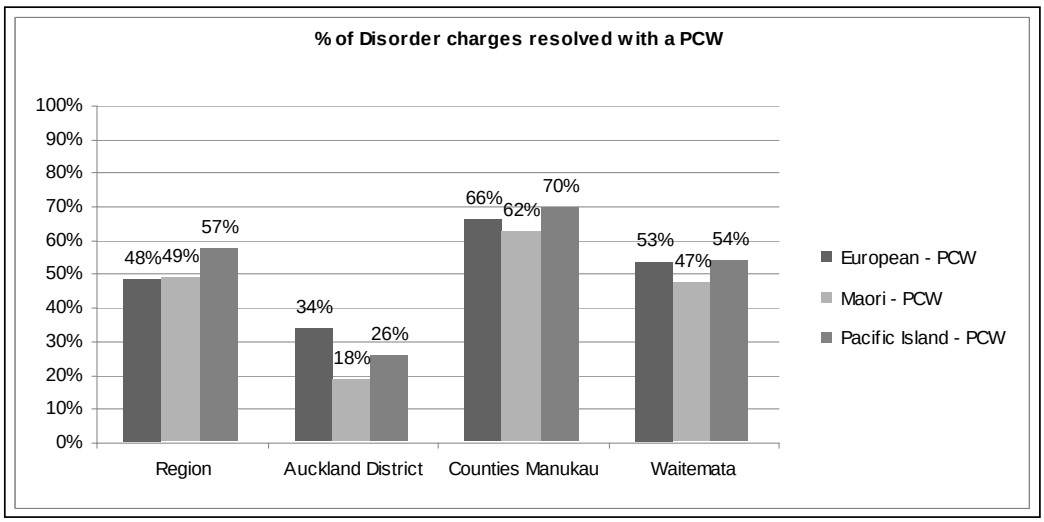
The regional monitoring data[9] showed that, between November 2009 and May 2010, 12% of charges against Pacific Islands offenders, 9% of charges against Asian offenders, 9% of charges against European offenders, and 7% of charges against Māori offenders were resolved by pre-charge warning.

Figure 11 and Figure 12 and the regional monitoring data show what could be interpreted as an ethnic bias against Māori having a Disorder and Breach of liquor ban offence resolved by way of a pre-charge warning, particularly in the Auckland District. However the apparent ethnic bias could reflect the misapprehension in the Auckland District that pre-charge warnings should not be granted to people with prior offending histories, which Māori are on average more likely to have. This area needs to be monitored and once the e-custody module is available across the region it will be possible to analyse the interaction between ethnicity and prior offending in more depth.

8 The report published in December 2010 incorrectly stated the time period as November 2009 to May 2010.

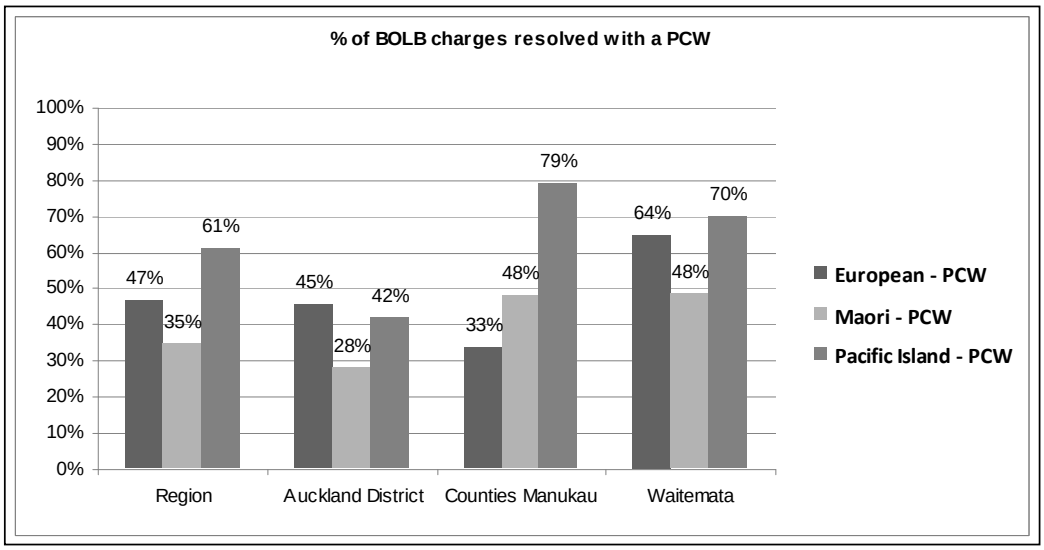
9 The regional monitoring data includes all offence types.

Figure 11: Percentage of arrests for Disorder receiving a pre-charge warning, by main ethnic group by Auckland Region and each District, Nov 2009 to May 2010[10]



There appears to be a possible positive bias towards granting a pre-charge warning to Pacific people arrested for Breach of Liquor offences in Counties Manukau. One possible explanation for this is that expression of remorse is a key 'tipping point' in the decision to grant a pre-charge warning (discussed in more depth in a later section) and Pacific people may either be more willing to express remorse, or be more likely to be perceived as remorseful.

Figure 12: Percentage of arrests for Breach of liquor ban receiving a pre-charge warning, by main ethnic group by Auckland Region and each District, Nov 2009 to May 2010[10]



[10] The percentages in this chart were incorrect in the report published in December 2010, and were revised in March 2011. The relative differences between ethnic groupings remain the same or similar.

3 Extent to which intended outcomes are occurring

This section describes the extent to which the pre-charge warning initiative is achieving its intended outcomes based on data collected during the evaluation period.

3.1 Reduce offences being processed through the courts

Between November 2009 and May 2010 a total of 3,137 charges were resolved by a pre-charge warning across the Auckland Region, representing an overall reduction of 9% of charges, assuming these would otherwise have been resolved through prosecution.

Auckland District Court staff interviewed for this evaluation said they had experienced a noticeable reduction in new business, which they attributed to the pre-charge warnings initiative. The Executive Judges for Auckland and Manukau reported that judges in the region are *"...very pleased with what is happening on this project and that they are noticing the benefits for the court*".

Although there has been a 9% reduction that can be attributed to the pre-charge initiative, in addition there has also been a small reduction in new cases appearing in district courts in the Auckland region and across the country, mainly driven by a reduction in traffic offences and offences under the Tax Act (changes to IRD prosecuting practices) proceeding to court.

3.2 Ensure responses are not out of proportion with offending – Police views

Overall Police views on the pre-charge warnings initiative were positive:

- most longer-serving officers welcomed the pre-charge warnings initiative as a return to the exercise of police discretion when dealing with low level offences
- one officer described it as a useful tool to *"...fill the gap between a street warning and going to court"*
- a Custody Supervisor commented that pre-charge warnings are *"... a brilliant idea, as it doesn't make criminals out of people who have committed a misdemeanour."*

However a minority of front-line staff stated that their preference was to operate on an *'arrest and charge basis, and let the courts decide'*.

Six month penalty threshold

The majority of Police interviewed thought the six month penalty threshold was set at the right level. One Custody Supervisor commented that the setting of the six month penalty threshold was a *'good call'* and offences with higher penalties need to be dealt with by the courts. In contrast several wanted the penalty threshold extended to include offences with a maximum imprisonment of two years. Two officers thought there should be no penalty threshold, which nationally is the current practice (even if not applied frequently).

At the other end of the spectrum two officers thought the penalty threshold should be lowered to sentences with a maximum of 3 month's imprisonment. Similarly one Custody Supervisor thought the criteria were too broad, and that pre-charge warnings should only be considered for Disorderly behaviour and Breach of liquor ban offences (which in practice comprise the majority of offences that are resolved using a pre-charge warning).

Views on pre-charge warnings by offence types

There were differing views expressed on the use of pre-charge warnings for Breach of liquor ban offences and Shoplifting (under $500) and these are described briefly in turn.

Breach of liquor bans

Verbal street warnings can be given for Breach of liquor ban offences, although practice appears to vary between officers and Districts. Based on the interviews with officers, pre-charge warnings tend to be given instead of a verbal street warning if the person attempts to conceal the alcohol or sculls it back.

Some officers thought the Breach of liquor ban was sometimes too heavily enforced, and that in some cases more leniency and discretion could have been exercised. (See the later section on offenders' views on receiving a pre-charge warning for a Breach of liquor ban offence, and also Appendix 9 which looks at policing alcohol related crime and disorder).

Shoplifting

There were differing views expressed by Custody Supervisors and other officers on issuing a pre-charge warning for shoplifting. These differences were not district-specific, but instead seemed to reflect the views and experiences of individual Custody Supervisors and officers.

Some of the Custody Supervisors said they would never issue a pre-charge warning for shoplifting, on the premise that in most cases those caught had shoplifted in the past without being detected. Others had monetary thresholds above which they thought shoplifting should be processed by the courts, either due to the relative seriousness of offending and/or to increased opportunities for victim reparation. Others assessed each case on the circumstances, and looked at the impact on the victim, whether goods had been recovered, as well as offenders' prior offending and current remorse.

Below is an example of a pre-charge warning given for a shoplifting offence. The woman had just been processed before the observation started, and the Custody Supervisor described the circumstances and the reasons for issuing a pre-charge warning for this shoplifting offence.

> *A mother with five children received a pre-charge warning for shoplifting $50 worth of groceries to feed her children. Her offending was driven by desperation and she was remorseful. All the groceries were recovered. She had a prior offence back in the 1980s. She was reported as being grateful to have received a pre-charge warning rather than being sent to court, as apart from the likelihood of receiving a conviction, the subsequent court costs would have exacerbated her financial stress.*

Changes since the initiative was first implemented

Several senior officers commented that initially there had been a couple of instances where pre-charge warnings were issued for assaulting a police officer and that that should not have happened. Likewise possession of methamphetamine ('P') was now no longer an eligible offence for a pre-charge warning.

Reactions from offenders

Most of the officers interviewed thought offenders were generally relieved to have been given a pre-charge warning instead of being charged.

> "*People here are very happy at receiving a pre-charge warning – it's the best way of being dealt with and they don't have to go to court, or pay court costs or pay for a lawyer."* Custody Supervisor

Several officers commented that using a pre-charge warning with some of their more regular offenders had led to some unexpected positive benefits: they were more tractable and friendly in subsequent encounters with Police. A few also noted that for some more seasoned offenders the pre-charge warning did not have much impact.

3.3 Ensure responses are not out of proportion with offending – offender views

During the observations, 11 people who had received a pre-charge warning agreed to be interviewed about their views and experiences.[11] Of the 11 interviewed, five received a pre-charge warning for Disorderly behaviour and six for Breach of liquor ban offences. This is a small sample and those agreeing to be interviewed may not be representative.

Analysis of these interviews shows mixed views on the pre-charge warnings received (noting the small sample and the potential bias). The responses are not surprising: several were relieved to have received a warning when they realised the alternative was prosecution.

Several of those warned for a Breach of liquor ban offence were indignant (both at the time and later when interviewed) at being arrested and the time taken to process them back at the station. They thought a more appropriate response would have been to have warned them at the scene. One commented that the *'whole approach was over-the-top*' and thought the Police should have focused more on *"all the drunken people milling around*".

While there is a likely bias in offenders' views and accounts, there do seem to have been some over-zealous responses to breaches of the liquor ban. For example some of those arrested said they had not realised that Breach of liquor bans were in place as they were either from out of town, or unaware of the ban as they rarely went out at night. Two overseas tourists were also arrested during the observations, and were unaware of the liquor bans. The following example below also illustrates a perhaps over-zealous response to a breach of the liquor ban. Some Police officers approached a car parking at a night club. The occupants thought it was to check that they had a sober driver, which they did. They had

[11] These interviews were undertaken by an independent evaluator on behalf of NZ Police a few days after the warning had been received: the delay was to ensure true informed consent could be obtained, and people's decisions were not influenced either by alcohol or being in Police custody.

bottles in their hands as they got out of the car and were about to leave them in the car when they were told to follow the officers. They were unsure why, and were told that they had breached the liquor ban. Both apologised and said they hadn't realised, as there were no visible signs and both had come from another part of Auckland so were not aware of the Liquor Ban. They were arrested and kept in the cells for two hours.

Several officers also agreed that at times arrests for Breach of liquor ban offences could have been more appropriately dealt with by way of a warning at the scene, and one thought strong vetting, particularly of arrests made by the Team Policing unit were needed.

Policing alcohol related crime and disorder

Breach of liquor bans are one mechanism to control alcohol-related crime and disorder in public places. Alcohol impacts on many aspects of policing, including violent offending in the city and town centres across the country, and a substantial proportion of the annual Police budget is spent responding to alcohol related crime. Appendix 9 summarises some key documents which explore how Police respond to alcohol related crime and disorder including the Law Commission's recent report 'Alcohol in our lives' and the Police submission in response to the Law Commission's report.

3.4 Improve the quality of decision-making

The pre-charge warning initiative aims to support decision-making through the development of guidelines and training on applying appropriate discretion, and increasing the scrutiny applied to assessing evidential sufficiency and ensuring that public interest considerations have been met. Each of these are looked at in turn, followed by the key 'tipping points' in deciding to grant a pre-charge warning (remorse and prior offending), and the pivotal role played by the Custody Supervisor.

Guidelines

Research undertaken as part of another evaluation found UK officers now working in New Zealand[12] wanted greater clarity about when it was appropriate to issue pre-charge warnings.

Some of the longer serving officers commented that the alternative resolutions initiative was helping to reinstate a useful Police practice and that the new incarnation improved on the old by providing clarity on eligibility criteria and processes for issuing a warning. A younger officer interviewed noted he had felt nervous issuing pre-charge warnings in the past as there had not been a clear process to follow, and the initiative had addressed this.

[12] Evaluation of the recruitment of UK Police: induction, experience and impact, B Makwana, 2009.

Training

All officers were aware of the eligibility criteria for the pre-charge warning. North Shore developed a training module. Auckland District modified this and delivered it over a series of briefings. Counties Manukau had a manual setting out business rules.

Across the Region there was a general feeling the training had been adequate: one officer noted that in the scheme of things the initiative did not require much in the way of training (compared to other initiatives, for example the use of Tasers). A few officers said there "*wasn't much in the way of initial training*" or that they "*didn't receive any training*".

Some staff felt the training occurred as part of the job, and mainly rested on the Custody Supervisor understanding the process and communicating and modelling this to others.

Evidential sufficiency and public interest

The process that ends in a pre-charge warning begins the same as any Police arrest: Police establish an offence has occurred and that there is sufficient evidence to support a charge if the case proceeded to court. As noted, the Custody Supervisor is meant to initiate the discussion on whether a case is eligible for a pre-charge warning, although in practice it appeared that it is the arresting officer who recommends a pre-charge warning is granted. The decision to grant a pre-charge warning is still made by the Custody Supervisor.

In all the observations the Custody Supervisor reviewed the recommendation to issue a pre-charge warning, though there were variations in the level of questioning.

On the whole, the process seemed well adhered to during the observations, and seemed to be 'business as usual' rather than staff more assiduously following proper processes knowing they were being observed. A few situations were also observed where the process was not followed, for example an arresting officer was observed checking the requirements to lay a charge, and then commenting that they did not have enough evidence to proceed, so would suggest a pre-charge warning instead. A cursory look through charge sheets from previous nights in one station revealed one case that, on the description provided, did not seem eligible for a pre-charge warning. In another station one officer said he had never been questioned by a Custody Supervisor on recommendations to issue a pre-charge warning to an offender.

The Waitematā pilot also found there had been no recorded instances of arrests being denied due to evidential insufficiency suggesting either this had never occurred or the process was not followed.

'Tipping points' in deciding to grant a pre-charge warning

After evidential sufficiency has been established and public interest considerations made, two key factors determine whether a pre-charge warning is granted: remorse and prior offending.

Tipping point # 1: Remorse

Nearly all officers spoken to agreed that to be eligible for a pre-charge warning, the offender had to admit to the offence and be remorseful. The 'attitude test' was an important factor in determining whether a pre-charge warning was granted.

> "*They need to be polite, remorseful, show respect and acknowledge they stuffed up – and not be arguing the point."* Custody Supervisor

A few officers said that in some circumstances they might consider issuing a pre-charge warning to offenders who did not seem remorseful but that this was unusual. For example nearing the end of one observation, a man arrested for disorder was being considered for a pre-charge warning despite being argumentative: as well as being under the influence of alcohol, he appeared to be either mentally or cognitively impaired. He was put into a cell to sober up.

A lack of remorse can lead to an initial decision to grant a pre-charge warning being revoked. For example a charge sheet at one station showed that a male in his mid-30s had received a pre-charge warning for Disorderly behaviour. This was subsequently revoked as after he had been released it was found that he had deliberately flooded the cell.

Tipping point #2: Prior offending and prior warnings

All of the Custody Supervisors interviewed said they took prior offending and prior warnings into account when deciding whether to grant a pre-charge warning or lay a charge. Both the type of offending and the recency of offending were considered.

During observations Custody Supervisors in several of the stations were asked to describe what they considered when making decisions. Below are some illustrative examples.

- A Custody Supervisor pulled up a record where he had granted a pre-charge warning for a young woman who had been arrested for a Breach of liquor ban offence. She had one previous offence in 2007 for unlicensed driving, so based on the time elapsed and the fact the previous offence was of a different nature, she was given a pre-charge warning.
- A male arrested for Disorderly behaviour was charged rather than receiving a pre-charge warning as he had been charged with another offence within the last few weeks.
- During one observation two young women had been arrested for a Breach of liquor ban offence. Both had been arrested for the same offence the night before, so this time they were being charged. The Custody Supervisor said that he would grant subsequent pre-charge warnings to offenders, but only if a reasonable period of time between offences had elapsed, which was clearly not the case in this instance.

A Custody Supervisor who had previously worked in the UK commented that she preferred the approach used in Auckland as in the UK offenders can only receive a pre-charge warning three times, and the approach here allowed for greater flexibility and the exercise of discretion.

Another Custody Supervisor commented pre-charge warnings could be a good response even for offenders with long offending histories, especially when they were genuinely trying to make a change, and had slipped up. As noted in Counties Manukau just over two-thirds of offenders receiving a pre-charge warning had had a previous conviction.[13] (This proportion may differ from other Districts).

Role of the Custody Supervisor

The role of the Custody Supervisor is of particular importance in ensuring the quality of decision-making in laying charges or deciding to issue a pre-charge warning.

The Auckland Board of Management review of 1,300 prosecution files found that *"a significant proportion of all withdrawals are caused by issues relating to the supervision, competency and capacity of frontline staff".* [14]

A number of factors can make it harder for Custody Supervisors to provide appropriate levels of supervisory oversight. Factors which contribute to this are the Custody Supervisors' expertise, experience, ability to challenge decisions (particularly those made by more seasoned officers) and strategies to manage busy shifts.

A current challenge identified as part of the evaluation is that while the pre-charge warning initiative has helped reinstate the use of discretion when responding to low level offences, there is a perceived lack of consistency in the decisions made, illustrated in the following quotes.

> *"No consistency about when to use it – different custody supervisors have different opinions."*
>
> *"The inconsistency problems are to do with the watch-house and not the initiative."*

There were calls for more scenario-based guides to help inform decision-making and build consistency without restricting discretion.

3.5 Improve case outcomes

The pre-charge warning initiative aims to improve the quality of decision-making and to reduce 'wastage' caused by processing cases in the court that are subsequently dismissed or withdrawn.

There are other initiatives that also aim to improve the quality of decision-making and in supporting the file preparation and management for cases proceeding to prosecution: namely Directed File Evaluation (DFE) and Criminal Justice Support Units (CJSU).

[13] Counties Manukau uses the e-custody module of the new Case Management system which will be used in other Districts nationwide by January 2011.

[14] Auckland Board of Management report *Withdrawals, alternative resolutions and arresting behaviours project,* 2009 page 6.

Court data was not available in a way that allows tracking only case outcomes for minor offences eligible for a pre-charge warning. There are proposed IT changes to improve the quality of data available to track the proportion of cases successfully prosecuted, dismissed or withdrawn. These changes will not be implemented until March 2011.

3.6 Free up Police resource for frontline policing and crime prevention

Many of the staff interviewed thought that the pre-charge warnings process led to a significant reduction in paperwork by removing the need to prepare cases for court, so that rather than "...*spending all night doing paper work*" Police can return to their core business of crime prevention and detection.

Reduced paperwork: At the initial paperwork stage, it takes about the same time (around 20 minutes) to process an offender on a pre-charge warning as it does an offender Police intend to charge. The main time savings come from not having to prepare files for court when arrests are resolved by a pre-charge warning. Preparing a file for court was estimated to take around an extra hour in associated paperwork. Having over 3,000 charges resolved by a pre-charge warning means over 3,000 Police hours were saved in the Auckland Region over the evaluation period. If pre-charge warnings were issued at the same rate in the region, then over 5,000 police hours would be saved across one year. Savings are likely to be greater than this, as if cases went to a defended hearing, officers estimated this could require an additional 8 hours in paperwork and court attendance (and legal aid) for each case.

A senior officer commented that the pre-charge warnings initiative has meant "...*staff are spending less time on files that go nowhere and have no real merit*." This is illustrated in the quote below.

> *"On Team Policing, the majority of our arrests are for low level offences like Disorderly behaviour, Breach of liquor ban and Possession of cannabis. Preparing court files for all of these arrests took considerable time and as a result our day shifts would be entirely devoted to paperwork and sometimes even our late shifts. Now we can assist other squads with warrants or operations as we have more time. In addition, taking less days off for court means we can spend more time on the road as opposed to sometimes spending several days sitting around at court for a Disorderly behaviour defended hearing where they would only get a minimal fine anyway."*

Several others commented that more time could be spent on file preparation for more serious cases, eg serious assault.

Time re-directed to proactive policing: Pre-charge warnings reduce the paperwork and time spent on court related activity, freeing officers up to undertake crime prevention and detection. This is illustrated in the following quotes:

> *"As we operate as a team on the TPU if one person is tied up with paper work everyone else has to stay behind also. This warning process means we can get back out on the street and stay out longer as we don't need to prepare files for court at the end of shift."*

> *"I think it was a very good idea, it has been used well and has helped considerably with workloads. Less time spent preparing files for court means more time spent on the road."*

3.7 Make warnings a more powerful intervention

Pre-charge warnings are meant to provide a more powerful response than a verbal street warning, as the person is arrested and taken back to the nearest police station for processing. Pre-charge warnings are processed at the station so the Custody Supervisor can provide oversight in the decision-making process.

The process of removing people from the situation or dynamic surrounding the offending, and time spent in transit back to the station, can also help people *'sober up and calm down*.'

One officer described that most people given pre-charge warnings were often just *'rarked up by alcohol*.' This officer commented that there was no benefit in having them processed through courts as by time they get back to station, they had often sobered up and most apologise straight away. His views were shared by several others.

An illustration of this is given below.

> *Two arresting officers described how they had just brought in two young males for Disorderly behaviour. The younger of the two had no prior convictions and was very loud and disruptive in the police car, egged on by his older mate. Once he was separated from his friend at the station he became much quieter and very remorseful, so the officers decided to recommend giving him a pre-charge warning. Had the decision be made on the basis of his behaviour on the street and in the police car, they would not have suggested a pre-charge warning. They felt his subsequent remorse was genuine, and reflected who he really was, rather than the way he had been acting up, and the pre-charge warning gave him both a consequence for his behaviour but also a second chance.*

Several of the Custody Supervisors felt that the process of being arrested and taken to a police station was a powerful consequence for people, particularly those with no prior offending. One of the watch house nurses interviewed commented that some people receiving a pre-charge warning appeared upset and emotional, and seemed to have found the process of being in the van and then the cells with other offenders traumatic.

A small number of officers described the arrest and time spent in transit and the cells as part of the 'punishment' for the offending. However one Custody Supervisor commented strongly that this attitude was not acceptable, and Police needed to ensure they maintained a clear distinction between the police role "*to investigate and prosecute"* and that it *"is the court's role to punish".* Several officers questioned whether the pre-charge warning was in itself a sufficient response and thought pre-charge warnings should also incur a fine.

Recidivism

A previous review and work undertaken as part of this evaluation have revealed that research into pre-charge warnings and street warnings is scant, both here and in similar jurisdictions. Most studies of alternative resolutions have typically focused on post-charge disposal (usually Police Adult Diversion or restorative justice initiatives).[15] It was also particularly difficult to find any studies that looked at the effectiveness of pre-charge interventions on recidivism.

[15] See Withdrawals. Alternative Resolutions and Arresting Behaviours: A Scan. Collinson, C. New Zealand Police (2009).

In theory, pre-charge warnings can help reduce the risk of recidivism by:

- stopping first contact with the criminal justice system for first time offenders, which can reduce the risk of later contact
- making warnings a more powerful **intervention,** by taking the offender into the station for processing
- making warnings a more powerful **deterrence**, as warning histories are recorded more systemically and are available to be considered when making charging decisions.

The qualitative data supported this, illustrated by the following quotes:

> *"It is a wake up tool for 90% of the people we warn and I am sure they will not re-offend."*
>
> *"... being handcuffed, placed in a 'paddy wagon', received at a watch house, but then released without a charge and instead with an official police warning **is** deterrent for some."*

From the interviews several officers said they had not observed recidivist behaviour among those receiving a pre-charge formal warning during the evaluation period. Several of the small sample of offenders interviewed said they would never re-offend, and as one commented she would never want to go through such an experience like that again.

The current Police data does not allow recidivism to be easily tracked. Once the IT changes have been made to improve the way warning data is captured and reported it will be possible to look at the effect of pre-charge warnings on repeat offending.

3.8 Prevent problems from escalating and/or provide care to people

Many of the officers and Custody Supervisors interviewed thought pre-charge warnings were a useful tool to remove people from volatile situations or where there were safety concerns. The ability to arrest and then issue a pre-charge warning allows people to be removed from potentially escalating or dangerous situations without having to be charged and face going to court.

One of the watch house nurses interviewed commented she had seen a change in the level of intoxication among people being processed: that in the past people had been grossly intoxicated where as now they were less drunk, suggesting interventions were occurring earlier on.

Several officers commented that the intention is to release offenders receiving a pre-charge warning as quickly as possible, to avoid arbitrary detention. The only time offenders receiving a pre-charge warning are held for longer is when they are drunk and need time to sober up.

3.9 Increase public confidence as decisions are transparent and fair

Having clear eligibility criteria and processes for issuing a pre-charge warning is a key initial step in ensuring decisions are transparent and fair. As noted, greater consistency in practice between Custody Supervisors could also help support fairness in decision-making.

The ability to use pre-charge warnings as a way of resolving low level offences has also largely replaced the use of guilty letters in the Auckland Region. Several people interviewed had strong views against the use of guilty letters, for example saying "*they should not exist*" and "*they should be banned."*

The main objection is that offenders could agree to sign a guilty letter without understanding this meant they now had a conviction and would also still be liable for court costs, even though they were not required to attend court.

One officer commented that *"If what you've done is bad enough, you deserve your day in court; if it's not bad enough then a pre-charge warning is appropriate – and there is no need or place for guilty letters."* (See Appendix 10 for more details).

3.10 Increase satisfaction of victims of low level offences

During the observations undertaken in April there was the intention to interview victims of crimes processed by a pre-charge warning; however none of the offences observed had a known victim, as they were mainly Disorder and Breach of liquor ban offences.

The most common offence with a known victim resolved by a pre-charge warning was shoplifting, which accounted for 9% of the pre-charge warnings given regionally. As noted in the evaluation plan, there was a risk that the hours chosen to undertake the observations meant it was less likely to capture shoplifting offences as the observations occurred outside most normal shop hours. (The observations were undertaken usually from 8pm to 2am, to capture the more common offending: Disorder and Breach of liquor ban offences).

The Waitematā District had already undertaken a survey of stakeholders' views of the pre-charge alternative resolutions approach, which included a small sample of victims.[16]

The Waitematā pilot noted it was difficult finding victims to participate in the survey in the District, as most of the victims were large retailers (victims of shoplifting), and the store staff often felt unauthorised to comment or could not recall the specific details of the case.

The survey undertaken as part of the pilot noted the overall positive feedback from the retailers affected. Retail staff and owners said that it was good to see the Police turn up, arrest the offender and take them to the police station. The pre-charge warning process also meant staff did not have to spend time in court giving evidence. Most of the large retailers reported seeking their own reparation using civil proceedings. Superette owners reported that often the offenders lived nearby and the opportunity for a

[16] See the survey results of stakeholders in the Waitematā District undertaken by Inspector Les Paterson.

pre-charge warning meant that there was much more chance of them rebuilding an amicable relationship.

As part of this evaluation, an independent research company were employed to undertake a larger survey of victims as a follow-up to the earlier survey. Again recruiting victims was a challenge. Using a large sample, the research company managed to survey 37 victims where the offence had been resolved by a pre-charge warning. The key findings are summarised below. (See Appendix 11 for more details).

- **Satisfaction with the process:** The majority of the 37 victims surveyed were satisfied overall with the process (29 or 78%). Most thought they had been treated fairly and that the Police did what they said they would do (in both cases 32 or 87%). Just over three quarters (28 or 76%) felt their situation mattered to the Police.

- **Views on process and information received:** Nearly three-quarters (27 or 73%) of the victims surveyed agreed that the Police had asked for and considered their views before proceeding with the pre-charge warning. Just under two thirds (24 or 65%) of the victims agreed they received adequate information from the Police about the process involved with the case and the same number agreed they were satisfied with the outcome of their case in terms of what happened to the offender.

- A small number of respondents made comments on their overall satisfaction. A key area where improvements could be made is feedback given to victims:

  > *"I thought they [the police] explained it really well, they took me seriously, followed it up promptly, and got reparation sorted out. The only thing that they didn't do was tell me what happened to the offender."*

- Several others echoed this need for more information. For one respondent, the lack of feedback made them feel like the offender had 'got away' with the offending.

  > *"I didn't hear anything back from the police after the incident. They let the man get away with what he did to me."*

- For a retailer the lack of information made them feel the offending was not treated as seriously as they thought it should have been.

  > *"We weren't informed throughout the process of what they were going to do, nor did we know the outcome would be a pre charge warning. If we had known that, then what was the point of taking it to the police in the first place? We consider this [the incident] as gross misconduct and a very serious matter for our company. Yet it wasn't treated by the police as serious as it should have been."*

- **Views on alternatives – an 'on the spot warning' or going to court:** Around a third of victims thought the offence would have been more effectively dealt with by an on the spot warning (11 or 30%), alternatively around a third thought the offence could have been more effectively dealt with in court (13 or 35%).

- From the small number of respondents who made comments, there was a mix of those who supported the pre-charge warning approach and those that did not. For example one respondent commented that that the pre-charge warnings are *"…a good way of dealing with things – rather than*

living with a conviction for the rest of their lives it gives them a chance to move on etc". In contrast anther respondent commented "*Everyone should be charged – people should take accountability for their actions*." Another thought having a case proceed to court would help ensure the offender didn't offend again.

- **Reparation:** Of the 37 victims interviewed 11 (or 30%) had suffered loss or damage to their property as a result of the offence. Only two agreed Police had arranged reparation to be paid by the offender and seven reported this had not occurred. Reparation would have been a mandatory consideration if the offender was charged and/or offered diversion.

3.11 Increase Police visibility in the community and lower crime and fear of crime

Having pre-charge warnings as another way of responding to low level offences helps free up Police resources which can then be directed to crime prevention and detection.

Sherman et al[17] have conducted meta-research on effective policing strategies to prevent crime. The qualitative findings associate two of these, directed patrolling in crime hot-spots and problem oriented policing, with the pre-charge warning initiative.

[17] Evidence-Based Crime Prevention: Revised Edition. (2002). Sherman, L, Farrington, D, Welsh, Layton MacKenzie, D.

4 Extent to which unintended outcomes are occurring

The main unintended outcomes identified for the pre-charge warnings initiative are:

- Police being perceived as not making a strong enough response to offending
- net-widening, where more people are arrested who in the past would have at most received a verbal warning from Police
- Police issuing a pre-charge warning instead of laying a charge, to avoid the paperwork and downstream time associated with the prosecution process
- pre-charge warnings reducing the opportunities for judicial oversight.

4.1 Warnings being seen as not a strong enough response to offending

There is a risk that some people will see the use of pre-charge warnings as Police not making a strong enough response to offending. However the offences eligible for pre-charge warnings are low level offences and discretion is exercised on whether these can be resolved with a pre-charge warning or whether there are grounds to lay a charge so the offence is heard in court. The majority of charges are prosecuted. Between November 2009 and May 2010 around half the arrests for both Disorder and Breach of liquor ban offences and nearly 80% of shoplifting offences had charges laid.

4.2 Net-widening

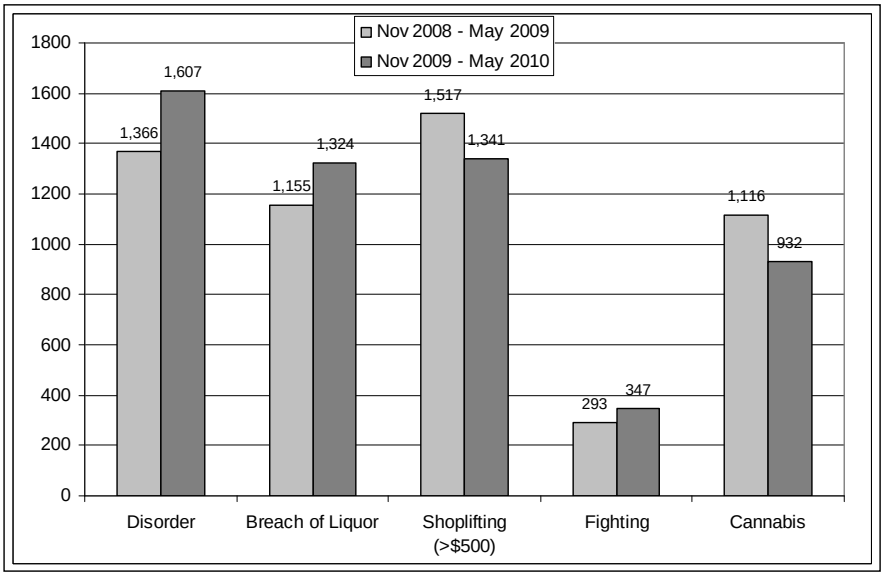
There is a risk that the use of pre-charge warnings may lead to 'net-widening'; with Police issuing pre-charge warnings where in the past they would have only verbally warned someone.

A manual process was used to assess changes in the level of arrests as part of the Waitematā trial, which found arrests only increased by 1.4% (21 more over a three month period), suggesting net-widening did not occur. It was not possible to replicate this analysis for this evaluation, but arresting patterns will be able to be more easily analysed once the new Police Case Management system is fully implemented.

With the data available, it is however possible to identify some possible instances of net-widening occurring. For example Figure 13 shows the total number of offences resolved by either a pre-charge warning or by prosecution for the five main offence types, comparing totals for the evaluation period with the same months from the previous year.

There were increases in the total number of charges for Disorder, Breach of liquor ban offences and Fighting in a public place in the evaluation period. These offences are all reactive, as opposed to calls for service. There were decreases in Procure/possess cannabis, and in Shoplifting (under $500). As noted shoplifting is the only one of these offences that results from a call for service.

Figure 13: Region totals for offences resolved by pre-charge warning or prosecution, by most common offence types, for Nov 2008 to May 2009 with Nov 2009 to May 2010 (includes traffic)



Figures 14 and 15 look at two instances which suggest net-widening may have occurred: the first is Breach of liquor ban offences in Auckland and the second is Disorder offences in Counties Manukau. (See the Technical Appendix for each of the top five offence types resolved by a pre-charge warning for each district during the evaluation period).

As Figure 14 shows, there is a possible instance of net-widening in the Auckland District in the first month following implementation of the pre-charge warning initiative. There was a spike in the total number of arrests for Breach of liquor ban offences (combining charges resolved by a pre-charge warning and those resolved by prosecution). Officers in the Auckland District said there had been an initial 'enthusiastic' use of pre-charge warnings, particularly for Breach of liquor ban offences when the initiative was first implemented but thought that use had tapered off to a more steady state: something that is largely supported by the data.

Figure 14: Breach of liquor ban offences resolved by a pre-charge warning or prosecution in the Auckland District, Nov 2008 to May 2010

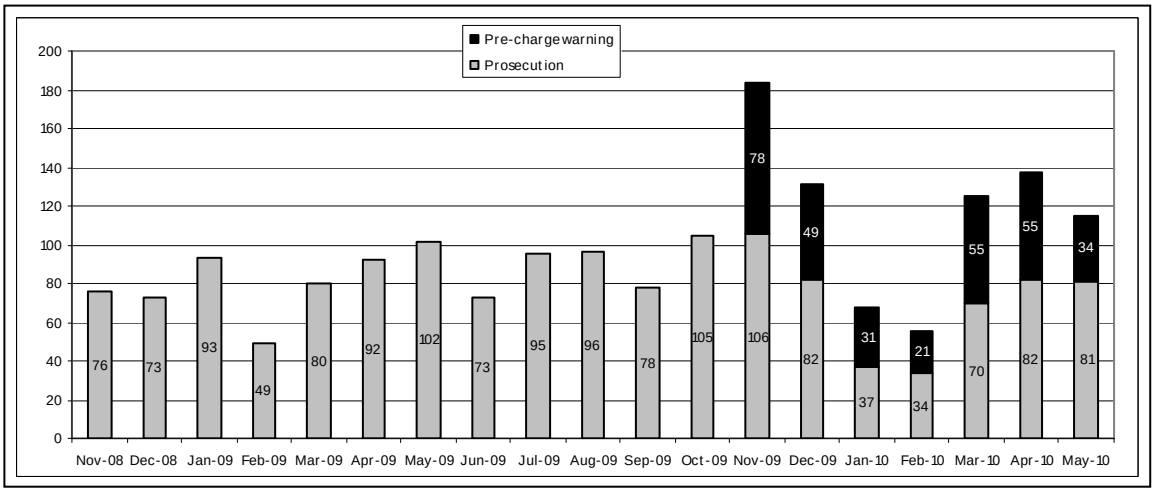
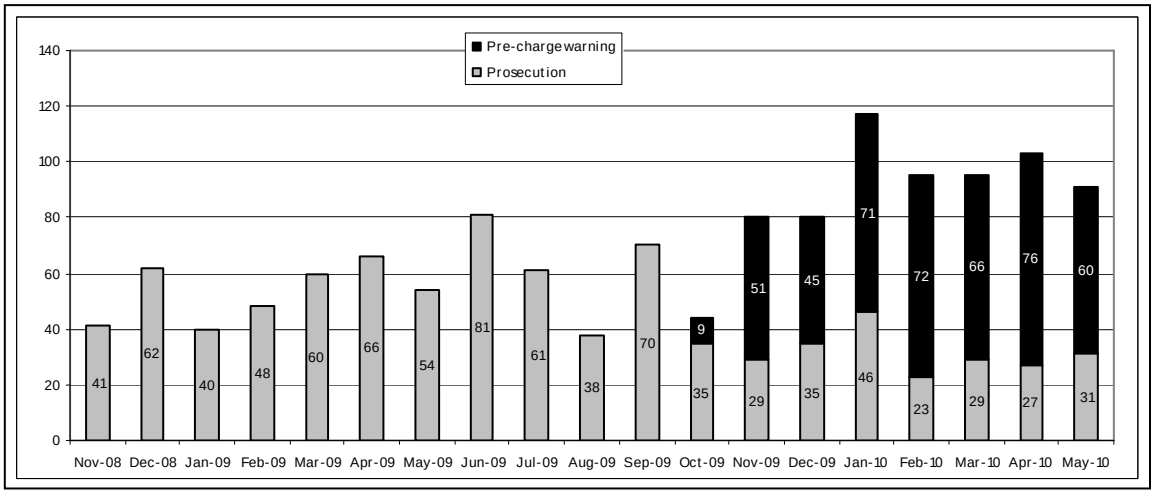


Figure 15 looks at Disorder offences for Counties Manukau. Since the initiative was implemented, there appears to have been a degree of 'substitution', with the number of charges resolved by prosecution decreasing, and charges instead being resolved by way of a pre-charge warning. This is an intended outcome of the initiative. However the total number of charges for Disorder (whether resolved by a pre-charge warning or by prosecution) has increased: an unintended outcome and a possible instance of net-widening.

However it is important to consider the contextual factors, and as noted, the pre-charge warning initiative was implemented at the same time as staff increases (Counties 300) and new Public Safety Teams (which focus on disorder) were introduced in Counties Manukau. In February 2010 Counties Manukau also introduced 'Rostering to Demand', to deploy more staff to peak offending times.

Figure 15: Disorderly behaviour offences resolved by a pre-charge warning or prosecution in Counties Manukau, Nov 2008 to May 2010



To round out the research on possible net-widening, trends in the issuing of informal street warnings would ideally have also been considered. However official data on informal street warnings is not reliable given the current variability in recording practices. As part of the development work undertaken by the National Warnings project, IT changes have been scoped to improve the way warnings (including street warnings) are recorded and reported. The proposed changes will make it possible in the future to track the use of warnings by officer and by location. This will allow oversight and feedback on appropriate use of warnings, and identify possible training or supervisor needs. These improvements should be ready for implementation by the end of 2010.

4.3 Using pre-charge warnings to avoid paperwork

A few officers raised a potential risk that pre-charge warnings could be used instead of charging to avoid the additional paperwork associated with laying a charge. Several of the Custody Supervisors noted this was a potential risk, but they relied on the integrity of the arresting officer. One Custody Supervisor commented that from listening to radio communications and observing interactions on reception he had a good sense of the appropriateness of the charge, and would question the arresting officer if there were any concerns.

In contrast one officer thought that in the past arrests were sometimes not made when they should have been to avoid the paperwork associated with laying a charge. The option of arresting and then issuing a pre-charge warning removes this disincentive, leading in his view to more appropriate arresting behaviour.

4.4 Reduced opportunities for judicial oversight

Another risk identified is that resolving arrests with a pre-charge warning as an alternative to prosecution reduces opportunities for judicial oversight. As mitigation, offenders still have the right to refuse a pre-charge warning and have their case heard in court.

5 What helps support delivery?

This section looks at two elements of local infrastructure which help support the pre-charge warning initiative: having permanent Custody Supervisors and access to rapid scan technology. Application in rural/ metro areas is also considered.

5.1 Benefits of having permanent Custody Supervisors

The Custody Supervisor role appears to work better when it is a permanent position, as it is in Counties Manukau. Several senior staff, including some of the current Custody Supervisors, thought there was merit in actively recruiting people to the role, and making the role permanent. This would help attract people who wanted to be there, and remove the requirement for others to work in a role that was actively disliked by many. Having the positions made permanent was also seen as a key way to help improve consistency, and improve oversight and accountability.

In two of the three Districts staff were rostered on 5 week cycles. Several officers commented that 7 night shifts in a row were hard and a potential risk to good practice and that alternative methods of rostering should be considered.

5.2 Rapid scan

Access to Rapid Scan technology helps when processing offenders who have charges resolved by way of a pre-charge warning. Rapid Scan is currently only available in Counties Manukau. Rapid Scan can check identity without storing fingerprints – noting that storing fingerprints is only allowable when a case proceeds to prosecution.

In the early stages of the initiative there had been some confusion about the fingerprinting and photographing requirements associated with the pre-charge warning approach (and the process for requesting destruction for cases that do not proceed to prosecution).

The interim evaluation also noted that a few staff thought the initial training/ instructions could have provided clearer guidance on fingerprinting and photographing offenders: Appendix 12 has revised guidelines for the pre-charge initiative, including the processes for fingerprinting offenders.

5.3 Application in rural/provincial areas

The pre-charge warning initiative is particularly suited to metro areas with high volumes of low level offences. This is borne out in the data: in the evaluation period only 22 pre-charge warnings were issued in Rodney, the main non-metro area in the Auckland Region.

While supportive of the initiative, staff in Rodney thought the travel times acted as the main disincentive to issuing a pre-charge warning. It could take well over an hour to travel to the station, and by the time a person was processed, half a shift could have been used. Because of this, staff were more likely to either warn at the scene or arrest and charge. Others raised the issue that in areas with only one i-car on a shift, decisions needed to be made on how to best deploy this resource.

Since the initiative was implemented amendments have been made to the practice guides setting out the process for staff in provincial and rural areas to access supervisory input from stations with 24 hour cover (see Appendix 12).

6 Areas for improvement/development

This section describes the areas for improvement for the pre-charge warning initiative identified as part of this evaluation.

6.1 More consistent decision-making

The pre-charge warning initiative has helped reinstate the use of discretion when responding to low level offences. While the initiative has provided clearer guidance on eligibility criteria and processes for issuing pre-charge warnings, there were calls for more scenario-based guides to help inform decision-making and build consistency without restricting discretion.

6.2 Making the Custody Supervisor role a permanent position

The Custody Supervisor role appears to work better when it is a permanent position. The Custody Supervisor role is a permanent position in Counties Manukau, and Auckland District is also looking to make the role permanent. Having permanent staff was also seen as a way to help improve consistency of decision-making.

6.3 Monitoring

Case outcomes

Changes have been proposed to the Police database (NIA) (pending formal approval) which will improve the tracking of case outcomes. Currently Police relies on the Ministry of Justice Courts Management System (CMS) data that does not accurately or robustly reflect Police prosecution case outcomes. The proposed improved reporting from NIA will enable case outcomes to be reported on at a greater level of granularity, including the ability to track case outcomes for low-level offending.

New monitoring, following IT improvements

Once the new Police case management system is fully implemented (including the e-custody model which allows data to be analysed by arrests, rather than charges), the following data can be routinely analysed:

- the number of arrests, by offence type, to monitor if net-widening is occurring
- the number and type of informal warnings issued at scene versus those issued as a pre-charge warning at the station
- recidivism rates and patterns for people receiving pre-charge warnings (to track whether pre-charge warnings stop future offending, or diversification or escalation of offending type or seriousness, and the types of people for whom the intervention is more and less effective)
- ethnicity of people receiving pre-charge warnings, distinguishing between those with and without prior offending histories
- the impact of reduced prosecutions on court sitting time.[18]

[18] While the volume of charges entering the courts may reduce the court may still sit the same amount of hours and have a similar level of throughput.

Developing a broader range of performance measures

There could be benefit in developing a broader range of performance measures, eg tracking:

- measures of proactive policing (eg 3T code, turnover,) to monitor where time is saved in processing low level offences is deployed
- 'create to dispatch' response times, to monitor if time saved in processing low level offences contributes to faster response times.

Ongoing monitoring

Areas which need ongoing monitoring are:

- the uptake of the pre-charge warnings initiative outside main metro areas
- the number and rate of cases sent back to Officers in Charge (OCs) from Directed File Evaluation (DFE) for re-work due to evidential insufficiency, and cases withdrawn or dismissed from court due to evidential insufficiency
- the impact of the initiative on Police Adult Diversion: the earlier Waitematā pilot found the number of charges resolved by way of a post-charge Police Adult Diversion more than halved (from 170 in the three months before to 60 charges during the Waitematā pilot). The impact of the initiative on Police Adult Diversion needs to be monitored, not just in terms of numbers and types of offences resolved by way of diversion but the perceived benefits and risks of having fewer offences resolved this way. For example as part of Police Adult Diversion, offenders make reparation through monetary payments and/or time spent in community service. Bearing in mind that the decision to prosecute should rest on whether or not it is in the public interest to prosecute, reducing opportunities for Police Adult Diversion needs to be considered, from the offender, victim and wider community perspectives.
- reparation arrangements for offences where there was a known victim.

Minor changes to current regional reports

In both the regional level reports and this report, summons and youth summons are removed before Police charge data is analysed. Unlike the regional reports, the data used here has excluded the following clearance categories: diversion, external agency conviction, youth aid, death, infant and mental impairment. While the differences in the resulting figures are very minor, the approach used here removes extraneous items and increases robustness.

Tracking changes in context

There could be benefit in tracking contextual changes which may impact on the outcomes achieved by this initiative, for example the rate of pre-charge warnings by the number of full-time equivalent constabulary staff in each district. This is because most of the high volume offences resolved by a pre-charge warning result from proactive policing, which can be effected by the number of constabulary staff available. The overall number of charges were lower in the two areas where constabulary staff numbers had reduced slightly (Auckland and Waitematā) and higher in the area where constabulary staff numbers had increased (Counties Manukau).

To provide more background context there could also be benefit in tracking:

- the number and proportion of charges for offences with penalty thresholds below and above the six month imprisonment eligibility criteria for pre-charge warnings
- the number of arrests processed per hour, by resolution type.

6.4 Communication to offenders

Several of the offenders interviewed as part of this evaluation were unsure of what the pre-charge warning meant. The level of explanations given varied between Districts, as did the explanations on the pre-charge warning sheet. Based on observations and feedback from the small sample of offenders, some of the key points that need to be communicated both verbally and on the pre-charge warning sheet given to offenders are that:

- they have been arrested
- they have received a pre-charge warning instead of being charged and going to court
- the pre-charge warning is not a criminal conviction
- Police hold records of the pre-charge warning, and these will be considered if the person commits an offence again
- the pre-charge warning will not show up in searches when employers seek information on offending histories.

Appendix 13 has the revised pre-charge warning sheet, which addresses some of these points.

6.5 Concluding comments

The pre-charge warning initiative is helping reduce new business for courts and saves Police time preparing files for court. Proposed changes to Police IT systems will enable ongoing monitoring of possible net-widening (including the use of street warnings) and case outcomes (particularly cases withdrawn or dismissed because of evidential insufficiency).

The pre-charge warnings initiative has helped reinvigorate an alternative to charging and prosecution, with the benefit of having clearer guidelines and processes. Having the process overseen by a senior officer at the station was seen as providing the right level of 'supervised discretion'. Now the application of discretion has been reinstated, there is a need to build consistency in decision-making: this could be supported by having the Custody Supervisor roles made permanent positions and developing more scenario-based guides to support decision-making.

Communication to offenders and victims needs to be more consistent, and processes developed to more actively monitor compliance with victim reparation.

Appendix 1: Evaluation methods

Scoping: February–March 2010

Document review	Key documents were analysed, for example the Waitematā Pilot study, the Auckland Board of Management report *Withdrawals, alternative resolutions and arresting behaviours project,* and the literature scan.
Interviews	Interviews were held with District Commanders and senior staff in the Auckland Region and in relevant business units at Police PNHQ to scope the evaluation.

First phase: observations and interviews, April 2010

Observations	Six station-based observations were undertaken across the Auckland Region during late and night shifts, on Thursday, Friday or Saturday nights, usually from 8pm to 2am. Two observations were undertaken in each of the central processing units in Auckland District and Counties Manukau. One observation was undertaken in the North Shore and one in Waitakere (both part of the Waitematā District).
Interviews with offenders	During the observations 17 people who were issued with a pre-charge warning were invited to participate in the evaluation. Eleven of the people who had received a pre-charge warning agreed to be interviewed about their views and experiences. The interviews were undertaken by an independent evaluator on behalf of NZ Police a few days after the pre-charge warning had been received.
'Opportunistic' interviews with Police & allied staff during observations	During the observations 'opportunistic' interviews were undertaken with staff at the watch house. Staff interviewed included Custody Supervisors, constables assigned to the watch house, shift supervisors, arresting officers, officers in the Team Policing Units, and Custody Officers and two watch house nurses. During observations Custody Supervisors were asked to describe their decision-making processes, using cases just processed or ones recently made. Most nights between 5-10 officers and allied staff were interviewed. Interviews were also undertaken with other police and court staff. In total 61 interviews were undertaken with police and allied staff. Some of the interviews were in-depth, lasting around 20-30 minutes. Interviews undertaken during the observations were sometimes short, lasting less than 5 minutes. Many were conducted intermittently, as officers attended to their core duties.
Reviewing previous charge sheets	During lull periods in the station-based observations, previous charge sheets were reviewed, looking at information and circumstances recorded for pre-charge warnings issued in previous days/weeks.

Second phase: surveys, data analysis and follow-up interviews, May–July 2010

Consultation letter	A consultation letter was sent to the Chief District Court Judge, seeking the views of District Court Judges' (Auckland Region) on the pre-charge warning initiative.
Staff survey	A short email survey was sent to a range of Police staff across the region, focusing on estimating any productivity gains from the initiative. There were only 14 responses and one group response from a TPU, but the information confirmed estimates gained from other interviews and the Policing Excellence business case.
Victim Survey	An independent contractor undertook a survey and interviews with 37 victims where the offender had received a pre-charge warning.
Data analysis	Analysis of charge data sourced from Business Objects was supplemented with arrest data from Counties Manukau. Data was also sourced from Police management reports, and analysis of court data.
Follow-up Interviews	Follow-up interviews were held with senior staff in the Auckland Region to discuss data interpretation and confirm findings for the final evaluation report.

Appendix 2: Evaluation aims

The Evaluation Services Team undertook an evaluation of the pre-charge warnings initiative operating in the Auckland region. With the data available, the evaluation aimed to:

1. assess the extent to which the pre-charge warning initiative is achieving its intended outcomes for Police, the criminal justice system, offenders, victims of crime and the community

2. assess the extent to which any unintended outcomes have occurred (eg net widening)

3. look at take-up across the region and the extent to which the following factors help or hinder the successful implementation of pre-charge warnings: infrastructure (eg IT), capacity, policy and practices, and local policing culture

4. identify improvements that could be made to infrastructure, capacity, policy, practices and local culture, in both the shorter and longer term

5. look at variations between the three Districts in terms of volume crimes, arresting practices, staff turnover, rostering practices and support services available (DFE, CJSU) and the effect these have on outcomes

6. describe what is working well, and areas for improvement, taking account of the different operating contexts

7. identify what is needed to support the successful implementation of the pre-charge warnings initiative in other locations and contexts.

Appendix 3: Summary of key evaluation questions and methods by topic

Table A3 below summaries the key evaluation questions and methods used in the evaluation.

Table A3: Summary of key evaluation questions and methods, by topic

Pre-charge warnings	**Tracking warnings** (data analysis) • how many pre-charge warnings were issued? • who received pre-charge warnings (age, gender, ethnicity, offending histories)? • to what extent did offenders match eligibility criteria (age, offence type)? **Implementation and delivery** (observations, interviews, surveys, document reviews) • levels of clarity and confidence in using discretion/knowing when to use warnings? • extent to which current guidelines, training, supervision and feedback help front-line staff use warnings appropriately - what could be improved and priorities for change? • extent to which current data collection systems and practices support recording and retrieving information on warnings - what could be improved, priorities for change? • how long does it take to process a pre-charge warning? • what contextual factors help or hinder issuing pre-charge warnings appropriately?
Charges	**Tracking charges** (data analysis) • has net-widening occurred? • ratio of successful prosecutions vs cases dismissed or withdrawn? • proportion of cases dismissed or withdrawn? **Implementation and delivery** (observations, interviews, surveys, document reviews) • extent to which processes are followed for recording arrests were denied due to evidential insufficiency • extent to which current guidelines, training, supervision and feedback help front-line staff meet evidential sufficiency and public interests requirements? • extent to custody supervisors understand and exercise their ability to challenge or vet arrest/charging decision? • what routine feedback front line staff and supervisors get on their warnings, arrests and charging decisions and quality of supporting evidence? Who gives this feedback, and how? • what are the systems, policies, practices or support services that **help** ensure evidential sufficiency and public interest considerations have been met? Which ones **hinder** this? • what is needed to ensure good quality scene attendance, evidence collection, use of discretion, charging decisions, prosecution file management? • extent to which these are in place and what could be improved? • what cases are dismissed or withdrawn, and reasons why?
Demand on courts	**Implementation and delivery** (interviews, surveys) • have new charges proceeding to court reduced as hoped? If not, reasons why and what changes are needed? • if new charges proceeding to court has reduced, what are the key benefits?
Police Adult Diversion	**Implementation and delivery** (interviews, surveys) • any unintended consequences of the pre-charge alternative resolutions initiative on the Police adult diversion scheme? If yes, what action is needed?

Recidivism	**Tracking recidivism** (data analysis - to the extent this is possible with current data) • what impact does a pre-charge alternative resolution have on repeat or escalating offending? **Implementation and delivery** (interviews, surveys, literature) • any unintended consequences of the pre-charge alternative resolutions initiative on the Police adult diversion scheme? If yes, what action is needed?
Offenders	**Implementation and delivery** (interviews, literature) • what are the general views of offenders on the use of a pre-charge alternative resolution? Did offenders think the process was fair?
Victims	**Implementation and delivery** (interviews, literature) • to what extent are victims consulted? What are the general views of victims to the use of a pre-charge alternative resolution? • are there any patterns in the types of victims who disagree with the Police decision to use a pre-charge alternative resolution (eg type of offence, type of victim)? • to what extent are issues of reparation considered? Are there any patterns in the types of offences or offenders who have reparation requirements applied? • what improvements consulting with victims and meeting reparation requirements are needed and which are of the greatest priority?
Judiciary	**Implementation and delivery** (consultation letter to Chief District Court Judge) District Court Judges' (Auckland Region) views on the general approach of the pre-charge alternative resolution initiative, including benefits and risks, current implementation and what could be improved.

Appendix 4: Reasons why family violence offences are excluded

The review of 1,300 cases in the Auckland Region[19] noted that some of the family violence cases taken to court were of a very minor level: threatening behaviour, minor assault (pushing, shoving) and language offences.

The review also identified that nearly 30% of all cases in Counties Manukau are family violence offences. There had been requests to review whether some family violence offences could be eligible for pre-charge warnings, but this was rejected as a possibility and the position clarified in the revised eligibility criteria.

A legal opinion[20] found that alternative resolutions contradict the Family Violence Policy, for the following reasons:

- it does not address or challenge underlying causes
- the protection of victims is paramount and a formal warning does not bring offenders into criminal justice system
- accountability, consistent practices and victim protection are all key parts of Family Violence Policy
- Section 19 of the Family Violence Policy requires that offenders are arrested and kept until the next court hearing.

The legal opinion also considered whether family violence offences could be categorised as victim-centric and non-victim centric crimes, for example a non-victim centric crime could include Disorderly behaviour when a domestic dispute occurs in a public place, or an obstruction charge when Police arrive at an address and are refused entry.

The opinion did not support this, and concluded that "*.. a simple intentional damage on its face is a minor matter, but in the context of family violence can be seen as a form of intimidation being a physical and psychological dominance over the victim*."

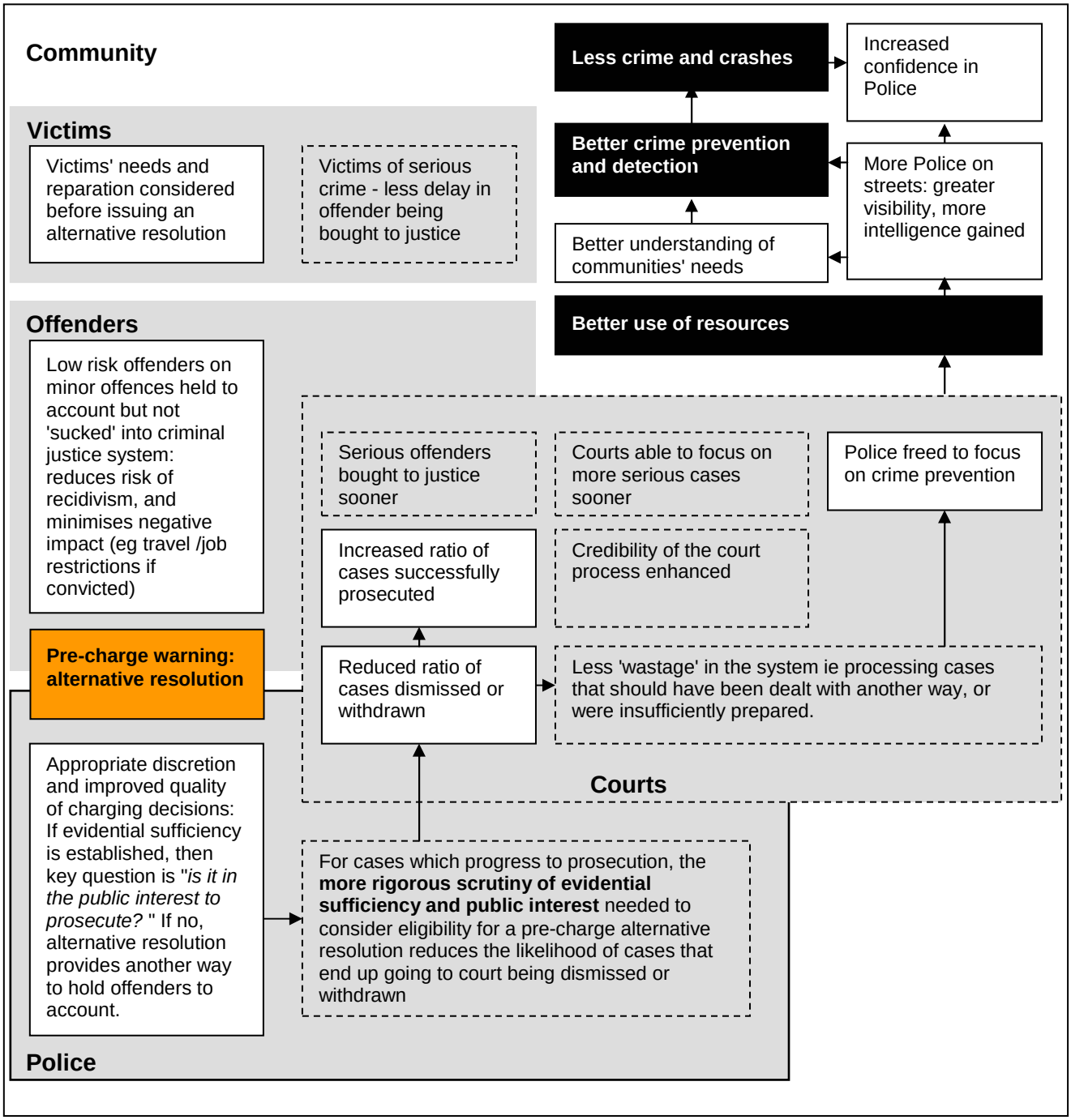
The legal opinion also noted that even if the penalty threshold was increased to two years, this would not reduce the volume of crimes experienced in Counties Manukau, as family crimes sit outside this threshold.

[19] Auckland Board of Management project, *Withdrawals, alternative resolutions and arresting behaviours project,* September 2009

[20] See *Waitematā pre-charge pilot: report on evidential sufficiency and the use of formal police cautions,* Senior Sergeant Gray, October 2009

Appendix 5: Intended outcomes of the pre-charge warnings initiative

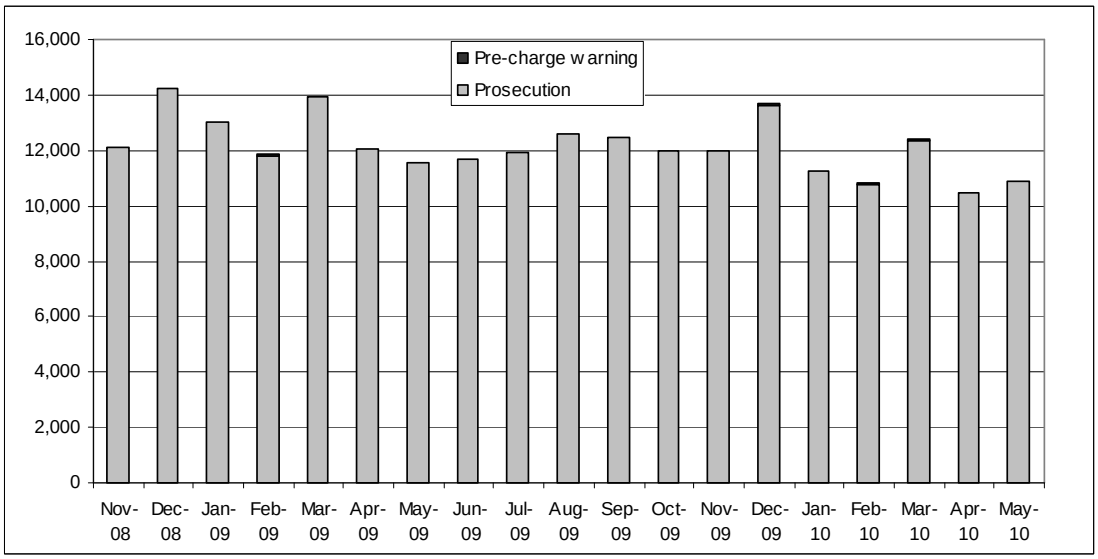
Figure A5: Intended outcomes of the pre-charge warnings initiative



Appendix 6: Total charges – rest of New Zealand (excluding Auckland)

Figure 1 shows the number of charges resolved by prosecution or by a pre-charge warning by month across the rest of New Zealand (excluding the Auckland Region) from November 2008 to May 2010. While there is a dip in the total number of charges in January and February 2010, the dip is not as pronounced as that seen in the Auckland data (Figure 1). There was also a similar dip in the equivalent months from the previous years, suggesting a seasonal effect.

Figure A6: Total number of charges resolved by prosecution and pre-charge warning across the rest of New Zealand (excluding the Auckland Region), Nov 2008 to May 2010



Appendix 7: Proportion of charges resolved by a pre-charge warning

Figure A7.1: % of charges resolved by pre-charge warning in Auckland District, Nov 09 to May 2010

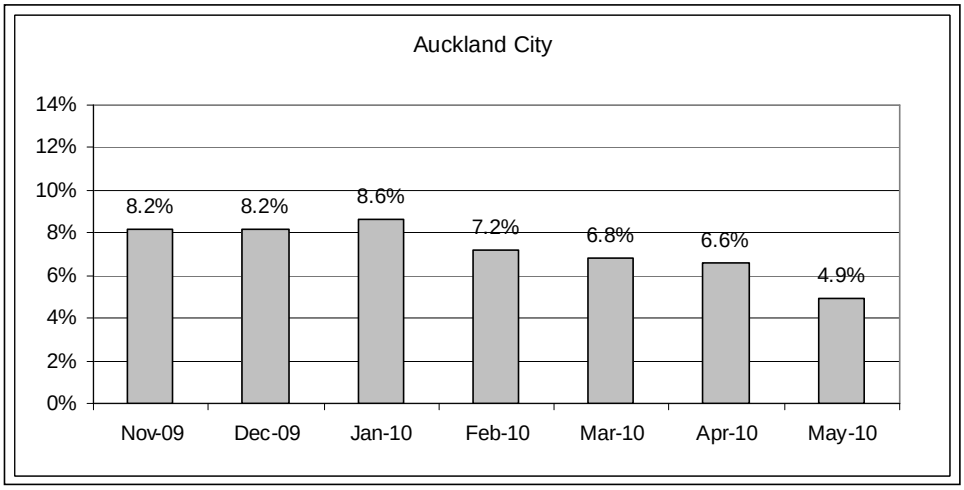


Figure A7.2: % of charges resolved by pre-charge warning in Counties Manukau, Nov 09 to May 2010

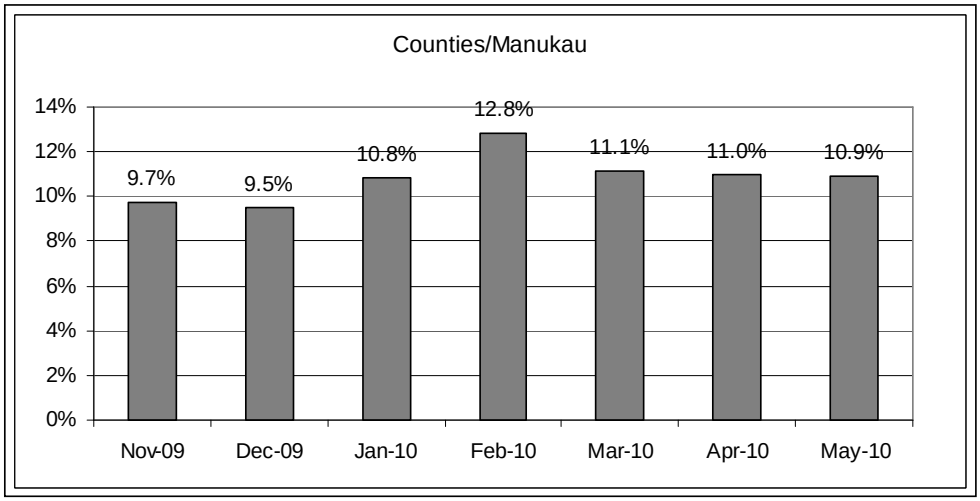
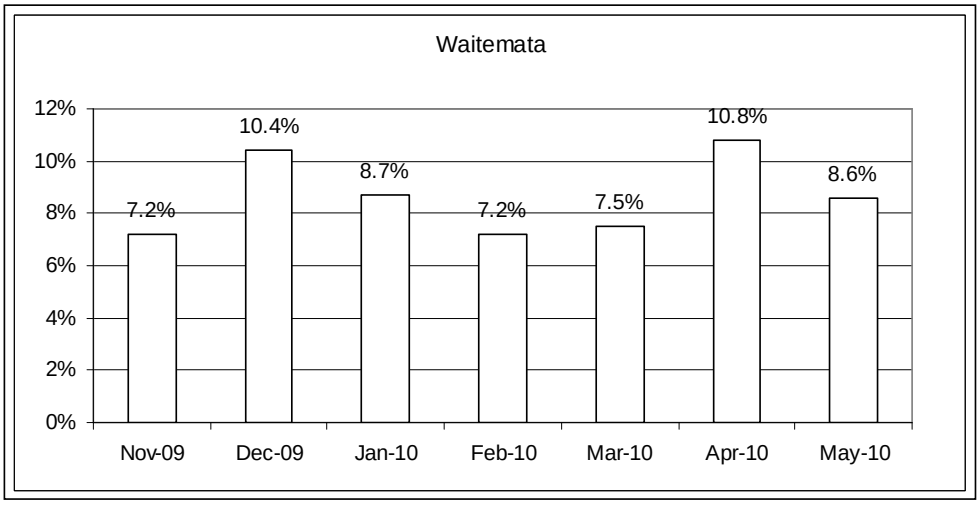


Figure A7.3: % of charges resolved by pre-charge warning in Waitematā, Nov 09 to May 2010



Appendix 8: Top offences resolved by a pre-charge warning

Table A8: Top offences resolved by a pre-charge warning, across the Auckland Region, Nov 2009 to May 2010

Disorderly behaviour S4 S/offences Act	**827**
Breach of liquor ban Local Government	**654**
Shoplifts (Est Val Under $500)	**289**
Procure/possess cannabis Plant	**196**
Fighting in public place	**182**
Disorderly behaviour (Likely To Cause Violence)	112
Obstruct/Hinder Police	104
Offensive Behaviour S4 S/offences Act	100
Wilful Trespass	68
Unlawfully In Enclosed Yard Or Area	62
Possess Needle/ Syringe Etc for Cannabis	55
Wilful Damage	48
Common Assault (Manually)	38
Theft (under $500)	39
Other Common Assault	26
Possess Knife In Public Place (Summary Offences)	23
Resist Police	22
Assaults Police (Manually)[21]	17
Consume/Smoke/Use Cannabis Plant	18

See the Technical Appendix for the remaining range of offences resolved by a pre-charge warning for each District for the evaluation period.

[21] In the early stages of the pilot some pre-charge warnings were given for assaulting an officer, but this offence became ineligible for a pre-charge warning, and guidelines were amended part-way through the evaluation period.

Appendix 9: Policing alcohol related crime and disorder

This appendix has extracts and summaries of three main documents:

- Alcohol related offending: Knowledge profile NIC-KP-100514, National Intelligence Centre, New Zealand Police, June 2010
- New Zealand Police: Submission to the Law Commission's Issues Paper 15 Alcohol in our lives: An issues paper on the reform of New Zealand's Liquor Laws, October 2009
- Alcohol in our lives: an issues paper on the reform of New Zealand's liquor laws. Law Commission, Issues Paper 15, July 2009.

Problem of alcohol related offending

Alcohol impacts on many aspects of policing, including violent offending in the city and town centres of New Zealand, homicides, drink driving, family violence incidents, accommodating intoxicated people in Police cells and incidents or offending involving young people.

Responding to alcohol-related offending costs Police and society a lot:

- Police estimate they spent over $300 million, or about a third of their overall budget on alcohol and drug related offending/issues in 2005/06.
- Responding to alcohol related issues alone accounted for nearly a fifth ($172 million) of the overall Police budget in 2005/06.
- Alcohol was estimated to cause $4.44 billion of social costs of the total annual $6.5 billion social costs associated with alcohol and drug misuse.

At least a third of all Police recorded offences in 2008/09 were committed when the alleged offender had consumed alcohol prior to committing the offence.

Alcohol contributed to 50% of violence offending and 57% of drugs/anti-social offending. Half of all homicides between 1999 and 2008 involved either a suspect or victim being under the influence of alcohol.

Alcohol in public places

The majority of alcohol related offences were committed in public places (40%) on Thursday, Friday and Saturday nights, with peak offending hours of 11 pm to 2 am, generally in or around licensed premises. Most offenders were young males, aged between 16 and 24 years of age.

Data from the Police National Alcohol Assessment showed that in 2007/08 public places were the place of last drink for 18% (14,838) of apprehensions where an alleged offender consumed alcohol prior to offending.

The Law Commission discusses how alcohol misuse also contributes to perceptions of lack of safety in and loss of access to public spaces. There are significant costs to councils and ratepayers as a result of litter, vandalism and associated behaviour. Cleaning up New Zealand's CBD areas the morning after is a significant and expensive activity.

To mitigate this alcohol harm in public places, policies that limit where drinking can take place are fairly common throughout the world. Police see no reason for this to change, and considers that having no restrictions on drinking in a public place would significantly undermine public safety in New Zealand and would increase demands on Police services.

Policing breach of liquor bans

Extracts from Alcohol in our lives: an issues paper on the reform of New Zealand's liquor laws. Law Commission, Issues Paper 15, July 2009.

Police have the powers to ask individuals to tip out the liquor, or leave the area with the liquor, to give warning, or to arrest and charge the individual. Police have a duty to enforce the law, but they also have discretion as to how and when to enforce it, and policing Breach of liquor bans is a key area where discretion is applied. The number of apprehensions made for Breach of liquor bans nationally was 9,359 in 2007/08, but it is more difficult to quantify instances where alternative actions were taken.

Some constables have conservatively estimated that only one in 10 Breach of liquor ban offences detected ends up recorded as an apprehension, with other alternative action preferred. Some police have also suggested that requiring a person in Breach of the liquor ban to tip their evening's proposed consumption down a drain may have a greater deterrent factor than a warning, or a charge.

Across the country at least 80% of people apprehended by police for breach of a liquor ban are prosecuted. The number of liquor bans in place, and subsequent apprehensions, has increased in recent years. Therefore, while the proportion proceeding to court remains relatively stable, the volume impact on the court between 2005 and 2007/08 is over 2,000 additional cases to be determined, which has an impact for police, court staff (including the Collections Unit) and the judiciary.

Most individuals who are charged with Breach of liquor ban and proceed to court plead guilty, and over half are convicted. The 2005 data showed that a quarter of those charged were discharged without conviction, while data for 2007/08 showed that only 4% were discharged without conviction. Between 5-10% of cases were withdrawn. In 2007/08, 10% were withdrawn by leave due to the offender completing Police Adult Diversion.

Fifty percent of those prosecuted in 2007/08 were convicted and received a fine as their sanction, while the remainder of those convicted (12% of prosecutions) received a conviction and discharge. The maximum penalty that can be imposed for a Breach of a liquor ban bylaw is $20,000. The average penalty imposed in 2004 was $257.77, which is similar to the penalty for a liquor infringement notice for under those under 18, but in 2007/08, the average fine imposed for Breach of liquor ban was $231.

Enforcing local liquor bans

Extracts from New Zealand Police: Submission to the Law Commission's Issues Paper 15 Alcohol in our lives: An issues paper on the reform of New Zealand's Liquor Laws, 2009.

The Law Commission notes a number of issues with liquor bans, including the difficultly for people to know what the law is in a particular place, the ever expanding geographical range of liquor bans and the expense of developing them.

Police noted the Law Commission's concerns around the designating of liquor bans under council bylaws, but in the absence of any clear alternatives with obvious advantages, considers that this is the best mechanism to ensure liquor bans are developed locally.

Enforcing local liquor bans consumes a significant amount of Police resources. There were over 11,000 recorded offences for Breach of liquor bans in 2008/09. The number of recorded offences has been increasing by about 1,000 per year since 2005.

Initiating prosecution is a relatively time consuming process. In the case of an arrest situation, the arresting constable is effectively out of action while the offender is transported back to a police station and processed in the watch-house. In some areas the time taken to transport an offender to a place of custody is significant. The arresting constable must then deal with any exhibits (liquor sample) and complete the prosecution file. In the summons situation the constable must still deal with exhibits, complete the prosecution file, and then locate the offender at a later date to serve, or have served, the summons.

Power of arrest

A critical feature of the liquor ban regime is the power of arrest that Police constables have for Breach of liquor ban (BoLB) offences. The ability to apprehend and remove offenders from hotspots, and to physically take them to the local police station for processing, allows them to cool down in an environment which is safer for them and others.

If there was no power to arrest, then those same offenders would likely continue to consume Police resources as either repeat offenders or victims. In fact, the primary consideration for many arrests is the likelihood of future victimisation of the offender. The power of arrest, in respect of BoLB enforcement, is seen by Police as probably the most critical factor for being able to 'nip alcohol-related problems in the bud', before they escalate.

Police also has the ability to deal with intoxicated people under s36 of the Policing Act 2008, which enables them to be driven home or taken to a place of safety.

Use of infringements

Police support the proposal of having the power to issue an infringement notice for BoLB while maintaining a power of arrest. An infringement notice would be an efficient and expedient way of dealing with BoLB.

There are several advantages to this approach. Firstly, it would remove a large number of prosecutions from the court system and Police Prosecution Service file load. Secondly, there would be significant time savings for police constables enforcing the liquor bans. Finally, it would provide ability to arrest offenders and impose a sanction without having to resort to prosecution.

The nearly 9,000 prosecutions taking place under the status quo would immediately be removed from the court system and prosecutions file load. In addition, those currently receiving Police Adult Diversion would be removed from the Police Prosecution Service workload. Follow-up appearances for breach of bail, status hearings, and defended hearings would also be removed. A conviction would not be a consequence of enforcement action taken for BoLB.

Although any infringement notice could be defended and a hearing sought, it is anticipated that, as is currently the case with other infringement regimes, only a very small percentage would be defended. Ultimately far fewer offenders will be inducted into the criminal justice system.

Currently 50% of all infringements issued by Police are collected through payment via the Police Infringement Bureau. The remaining 50% are filed with the Collections Unit as they have not been paid within the allocated timeframe. 68% of those filed with the Collections Unit are collected or subject to arrangement to pay within four months. On current BoLB offence numbers this would equate to less than 1,500 potential court appearances per annum for non-payment of fines.

Frontline staff would not be required to complete prosecution files for first or subsequent appearances. The potential increase in the use of mobile police stations could reduce the need to transport those arrested for BoLB to places of custody and enable frontline staff to spend more time in a visible enforcement role.

Police acknowledges that there is no precedent in New Zealand law where a person can be arrested, and then issued with an infringement notice for the offence for which they were arrested.

A large proportion of current prosecutions for BoLB follow arrest. Certainly arrest is the preferred method for initiating prosecution, as opposed to summons, as it is administratively easier and the arresting constable maintains control of the prosecution from the outset. The proposed option reflects the current situation in that enforcement action is generally only required following arrest. A warning, including tipping out a drink, is sufficient for the remainder of cases. In other words, if arrest is not deemed necessary then a warning will suffice.

Appendix 10: Guilty letters

Guilty letters are an informal process adopted in some Districts to respond to low-level offending. Where this practice is adopted, offenders can agree to sign a 'guilty letter' for offences which are not imprisonable, and the signed guilty letter can then be presented to a judge in court without the offender needing to be present. The expected benefits are:

- Police – less paper work and time needed to process an offence through the courts
- Courts – faster processing time
- Offenders – not having to attend court, with savings in time and costs (eg travel, time off work).

Several people interviewed as part of this evaluation had strong views against the use of guilty letters, for example saying "*they should not exist*" and "*they should be banned".* The main objection is that offenders could agree to sign a guilty letter without understanding this meant they now had a conviction and would also still be liable for court costs, even though they were not required to attend.

Some examples were recounted where offenders had contacted Police after an event to check what the guilty letter meant and were surprised to know that they now had a conviction. Some offenders were thought to have interpreted 'not going to court' as 'not getting a conviction'.

Concerns were also expressed that guilty letters could be issued to people who were still under the influence of drugs or alcohol, which impaired their ability to make an informed decision. Some also questioned the practice of offering guilty letters to people in Police custody, as this could be perceived as a form of coercion.

Another problem raised with the use of guilty letters is that it ruled out the possibility for a person to go to court and then receive Police Adult Diversion, which allows an offender to make reparation (usually through money and/or community service) and avoid a conviction.

Ability to challenge a guilty letter

There was some confusion on whether an offender could still attend court and challenge a guilty letter. Some officers and police staff thought there was no recourse for offenders who had signed a guilty letter and subsequently wanted to have their case heard in court. Other officers and police staff said they informed offenders of the impending court date and their right to attend and challenge their admission of guilt and/or the charge itself, while noting that the earlier admission of guilt could make a challenge problematic.

The Crown Counsel legal opinion confirmed that offenders who had signed a guilty letter can subsequently challenge the charge and their original guilty plea in court, and gave several examples of successful challenges made. Offenders' rights to later challenge a guilty letter in court needs to be more effectively communicated to both police staff and offenders, both before they are offered this option and after they have signed a guilty letter.

Crown Counsel legal opinion: improvements needed to guilty letters

The Crown Counsel legal opinion noted the current practice of suspects signing guilty letters at Police stations needed to be 'overhauled' to address the two key risks of this approach:

- impaired consent due to inebriation
- actual or perceived coercion.

The Crown Counsel legal opinion also noted that *"...the practice of inviting suspects to sign a notice effectively entering their plea of guilty prior to any disclosure, legal advice and full knowledge of the consequences of signing such letters is fraught with problems.*"

This opinion was sought by the Police Prosecution Service, which is currently developing national guidelines around the use of Guilty letters.

Appendix 11: Victims' views on pre-charge warnings

As part of this evaluation, an independent research company were employed to undertake a larger survey of victims as a follow-up to the survey undertaken as part of the Waitematā pilot. Recruiting participants was a challenge, given the small number of eligible victims (as most pre-charge warnings were for crimes without a known victim, or where the public was the 'victim'). The challenge recruiting victims was encountered in both survey rounds and when undertaking the observations.

Using a large sample, the independent research company managed to survey 37 victims where the offence had been resolved by a pre-charge warning. Figures A11.1–A11.3 show the findings from this research, and the findings noted in each figure are described in turn.

Figure A11.1 shows victims' overall satisfaction with the pre-charge warning approach and with how they were treated. Overall the majority of victims surveyed were satisfied with how the process, as out of the 37 respondents:

- 29 (78%) were satisfied overall with the process
- 32 (87%) felt they were treated fairly
- 32 (87%) thought the Police did what they said they would do
- 28 (76%) felt their situation mattered to the Police
- 26 (67%) felt they got what they needed.

The areas where there was the highest level of dissatisfaction reported by the victims surveyed were feeling like their situation mattered to Police and overall getting what they needed, both of which had 8 (22%) victims report dissatisfaction.

Figure A11.1: Victim satisfaction with process (n=37)

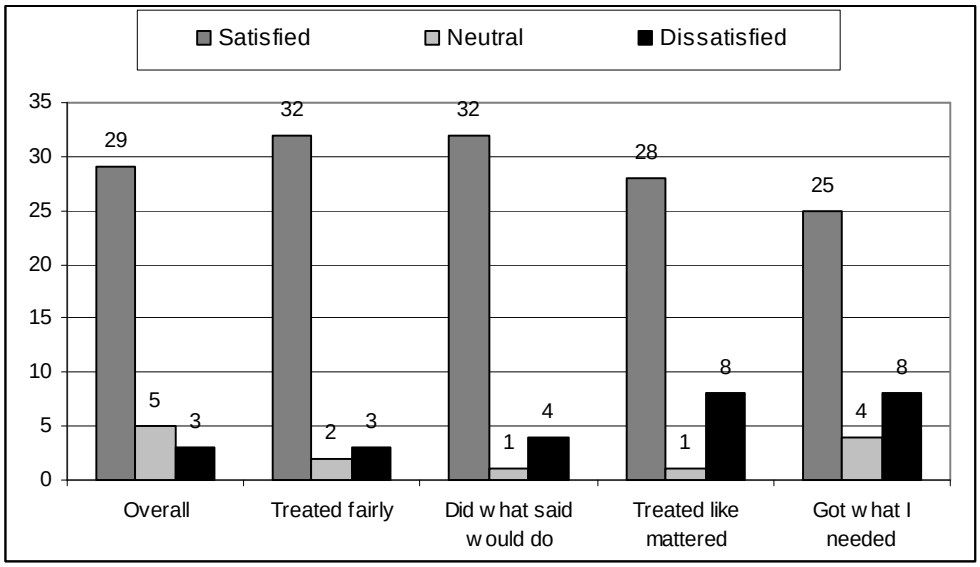


Figure A11.2 shows the number of victims who agreed that they had received adequate information, were satisfied with the outcome of their case and felt their views had been considered by the Police before proceeding with the pre-charge warning. Out of the 37 respondents:

- 24 (65%) agreed they received adequate information from the Police about the process involved with the case (and what would happen to the offender)
- 24 (65%) agreed they were satisfied with the outcome of their case in terms of what happened to the offender
- 27 (73%) agreed the Police asked for and considered their views before proceeding with the pre-charge warning.

Out of the 37 respondents 10 (27%) reported they had not been given adequate information, 9 (24%) felt their views had not been asked for or considered before Police proceeded with a pre-charge warning and 7 were not satisfied with the outcome of the case, in terms of what happened to the offender.

Figure A11.2: Victim satisfaction with information, outcome and consideration of views (n=37)

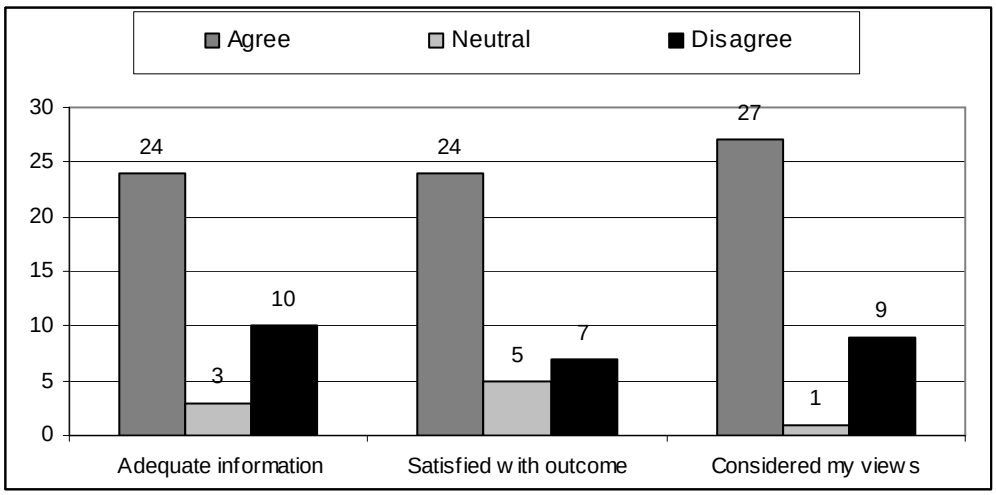


Figure A11.3 shows the number of victims who thought the offence could have been effectively resolved by an 'on the spot' warning or by going to court instead of a pre-charge warning. Out of the 37 respondents:

- 11 (30%) agreed the offence could have been effectively resolved by an 'on the spot' warning
- 13 (35%) agreed the case should have gone to court instead of being resolved by a pre-charge warning.

Out of the 37 respondents 23 (62%) disagreed their offence could have been effectively dealt with by an 'on the spot' warning and 16 (43%) disagreed the case should have gone to court instead of being resolved by a pre-charge warning.

Figure A11.3: Victim views on suitability of an 'on the spot warning' or going to court instead (n=37)

Of the total 37 respondents, 11 had suffered loss or damage to their property as a result of the offence. Of these 11 respondents only 2 agreed that the Police had arranged reparation to be paid by the offender, and 7 reported this had not occurred.

Appendix 12: Revised process steps

Discretion can be exercised in the field on whether to arrest. The key elements of the pre-charge warning concept occur at the Custody Suite and rely on a more rigorous assessment by Custody Supervisors of evidential sufficiency, public interest and the application of discretion for low level offences.

Process steps	Actions and responsibilities
After an arrest, at the Custody Suite	**Arresting officer** • After searching and securing the prisoner at the custody suite, the arresting officer **must** report to the Custody Supervisor and provide a full briefing on grounds for the arrest, and evidence to support the charge(s) if appropriate.
Initial decision-making	**Custody Supervisor** • **Validity of arrest**: The Custody Supervisor is responsible to ensure the validity of the arrest, namely that there is good cause to suspect that the prisoner has committed an arrestable offence, or is being lawfully detained under the Crimes Act 1961, S. 42 (breach of the peace); or Policing Act 2008, S. 36 (care and protection of intoxicated persons). If the arrest is unlawful, the prisoner should be released immediately. • **Evidential sufficiency**: Once it has been ascertained the arrest is lawful, the Custody Supervisor must examine the evidential sufficiency and determine the appropriate course of action. If evidential sufficiency does not exist, the evidential shortfalls must be remedied, or the prisoner must be released immediately. • **Public interest**: If evidential sufficiency is deemed to exist, the Custody Supervisor must then determine whether or not it is in the public interest to prosecute or release with a pre-charge warning (refer Solicitor Generals' Prosecution Guidelines: public interest, Appendix Three).
Finger printing	Prior to the Custody Supervisor making their final decision as to whether a prisoner should be charged or warned the prisoner **must** first be fingerprinted pursuant to section 32, Policing Act 2008.
Final decision-making	**Custody Supervisor** • Once satisfied with the prisoner's identity, the Custody Supervisor can make a final assessment and authorise the prisoner be released on a pre-charge warning. This is to occur at the soonest opportunity after completing the Pre-charge Warning & Release Notice. (Note there may be justification to hold a prisoner for up to 2 hours under S. 42, Crimes Act 1961 or up to 12 hours under S. 36, Policing Act 2008.) • **Provincial and rural application:** If a Custody Supervisor or Field Supervisor is not working (as opposed to not available) the arresting officer **must** assess the prisoner for eligibility and then make phone contact with a supervisor at the nearest 24 hour station for approval. The approving supervisor's name must be recorded on the notice.
Issuing pre-charge warning	From 5 September the Pre-charge Warning & Release Notice will self populate when the warning is entered in NIA. (See NIA Entry and Auditing report). The notice is also available under 'Reports' in Police Forms in Word. The Pre-charge Warning & Release Form is to be completed in **triplicate** and signed by the prisoner and the Custody Supervisor. A copy is given to the prisoner on their release. A second copy is attached to the prisoner's charge sheet along with a copy of the offence and offender report. If the prisoner refuses to sign the document or does not admit their involvement in the alleged offending, the pre-charge warning cannot be issued and prosecution action must continue as normal.
Proceeding with charges	If the decision is made to charge, the arrest and charge process continues as normal.

Appendix 13: Pre-charge warning and release notice used during the Auckland Regional Pilot

PRE-CHARGE WARNING & RELEASE NOTICE

To …… ……/… ../…….
(Full name) (d.o.b.)

You have been arrested without warrant for ……..
(Offence)

……
(Act and section)

You are being released with a warning and will not be charged. You are not required to attend Court.

This warning will not result in a criminal conviction. A record of this warning will be held by Police and may be used to determine your eligibility for any subsequent warnings, and may also be presented to the court during any future court proceedings.

Signed: ……..

QID: _ _ _ _ _ _ Date:…./…./……

Custody Supervisor

I acknowledge receipt of this warning.

Signed: …… Date:…./…./……

1. Copy to prisoner at time of release
2. Copy to charge sheet
3. Original to file

Appendix 14: References

Police reports

- *Alcohol related offending: Knowledge profile NIC-KP-100514*, National Intelligence Centre, New Zealand Police, June 2010.
- *Evaluation of the recruitment of UK Police: induction, experience and impac*t, Bea Makwana, November 2009.
- *Management Report*, New Zealand Police, May 2010.
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- *Waitematā pre-charge pilot: report on evidential sufficiency and the use of formal police cautions,* Senior Supervisor Gray, October 2009.
- *Withdrawals, Alternative Resolutions and Arresting Behaviours: A Scan.* Collinson, C. New Zealand Police, 2009.
- *Withdrawals,* alternative *resolutions and arresting behaviours project,* Auckland Board of Management report, 2009.

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- *Alcohol in our lives: an issues paper on the reform of New Zealand's liquor laws*. Issues Paper 15, July 2009.
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Research

- *Evidence-Based Crime Prevention*: Revised Edition. Sherman, L, Farrington, D, Welsh, Layton MacKenzie, D, 2002.