

**Over-representation of Māori in the criminal justice system**  
**An exploratory report**

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## **Executive Summary**

Māori are disproportionately represented in criminal justice statistics to an alarming degree. This paper attempts to shed light on why this is so. It examines the issue by considering the evidence for two different (though not mutually exclusive) explanatory approaches:

- that bias operates within the criminal justice system, such that any suspected or actual offending by Māori has harsher consequences for those Māori, resulting in an accumulation of individuals within the system; and
- that a range of adverse early-life social and environmental factors result in Māori being at greater risk of ending up in patterns of adult criminal conduct.

These approaches are examined in the light of criminal justice data and research findings. Key conclusions with respect to the first approach can be summarised as follows:

- Disproportionality shows up strongly in Police apprehension figures, and a number of studies indicate that ethnicity in and of itself could have an influence in this area;
- Similar levels of disproportionality are recorded in prosecutions, convictions, sentencing and reconviction figures, but most of the disproportionality relates to known risk factors rather than ethnicity.

With respect to the second approach, a range of developmental and early-age risk factors are discussed, each of which is known to be associated with a developmental pathway that increases the risk of (among other things) criminal involvement. These factors include:

- family structure, context, and processes (being born to young mothers, a lack of family stability, a family environment in which conflict and violence is common, and being exposed to harsh punishment);
- individual characteristics and experiences of the developing child and adolescent (factors affecting the child's neurological development, and psychological temperament);
- educational participation, engagement and achievement (school absence, early leaving age and failure to achieve qualifications);
- the emergence of developmental disorders (childhood conduct disorder, early onset of antisocial behaviour, and use/abuse of alcohol and other substances).

Evidence for the extent to which Māori young people were disproportionately represented in these sub-groups was then reviewed. The conclusion of this part of the report was that, as a consequence of being exposed to a range of risk factors in social, economic and family circumstances, the over-representation of Māori in criminal justice statistics reasonably accurately mirrors the extent of criminal involvement amongst Māori, particularly younger Māori males. Those life circumstances most often associated with offending are, for a range of reasons, more likely to affect Māori families.

As noted, the two perspectives are by no means mutually exclusive, and both approaches appear to offer part of the explanation for the current state of affairs. The evidence points to an interaction between the two processes, where the operation of one set makes the other more likely. For example, early environmental influences may predispose individuals towards certain types of illegal or anti-social behaviour, which in turn raises the risk of Police involvement. Additionally, the risk of apprehension is “amplified” because of formal and informal “profiling” by official agencies, as well as society generally.

There are indications of a degree of over-representation related solely to ethnicity, rather than any other expected factor, at key points in the criminal justice system. Although mostly small at each point, the cumulative effect is likely to be sufficient to justify closer examination and investigation of options to reduce disproportionate representation of Māori. Nevertheless, the primary domain for government intervention to address disproportionality is argued to reside in the areas of health, social support and education, in order to reduce disadvantage and the problems it confers. Criminal justice sector agencies could contribute to improving outcomes through early intervention strategies.

## 1.0 Introduction

Relative to their numbers in the general population, Māori are over-represented at every stage of the criminal justice process. Though forming just 12.5% of the general population aged 15 and over<sup>1</sup>, 42% of all criminal apprehensions involve a person identifying as Māori, as do 50% of all persons in prison. For Māori women, the picture is even more acute: they comprise around 60% of the female prison population.

The true scale of Māori over-representation is greater than a superficial reading of such figures tends to convey. For example, with respect to the prison population, the rate of imprisonment for this country's non-Māori population is around 100 per 100,000. If that rate applied to Māori also, the number of Māori in prison at any one time would be no more than 650. There are however currently 4000 Māori in prison - *six times* the number one might otherwise expect<sup>2</sup>.

Further, a recent extraction of court criminal history data indicated that over 16,000 Māori males currently between the ages of 20 and 29 years have a record of serving one or more sentences administered by the Department of Corrections<sup>3</sup>. This equates to more than 30% of all Māori males in that age band; the corresponding figure for non-Māori appears to be around 10%. At any given point in time throughout the last decade, fully 3% of all Māori males between the ages of 20 and 29 years were in prison, either on remand or as sentenced prisoners; again, the corresponding figure for non-Māori is less than one sixth of that.

Over-representation in offender statistics is mirrored also by over-representation of Māori as victims of crime, a result of the fact that much crime occurs within families, social networks or immediate neighbourhoods.

This state of affairs represents a catastrophe both for Māori as a people and, given the position of Māori as *tangata whenua*, for New Zealand as a whole. Far too many Māori, during what might otherwise be the most productive years of their lives (and, in terms of raising the next generation, some of the most critically important), end up enmeshed in the harsh, conflict-ridden and potentially alienating sphere of the criminal justice process.

The effects on racial harmony are also pernicious. The figures lend themselves to extremist interpretations: at one end, some accuse the criminal justice system of being brutally racist, as either intentionally or unintentionally destructive to the interests and well-being of Māori as a people. At the other, there are those who dismiss the entire Māori race as constitutionally "criminally inclined".

### 1.1 Purpose and structure of this report

This report examines the over-representation of Māori in various points of the criminal justice system in order to answer the question of why the numbers of Māori are so high.

The purpose of asking the question is to provide a basis upon which options to address the problem can best be formulated. However the report itself does not attempt to raise or examine possible options other than to illustrate the potential

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<sup>1</sup> Statistics New Zealand, 2004; 2006 Census data indicate that Māori of all ages form 14.6% of the general population.

<sup>2</sup> Even moderate success in addressing the issue of Māori over-representation could therefore reduce the size of the prison estate by over 30%, or 2000+ beds.

<sup>3</sup> This includes imprisonment or community sentences such as Supervision and Community Work.

significance of various approaches. Neither does this report set out to be a comprehensive examination of the complex issues surrounding the question. There are many critical conceptual issues surrounding the cultural and political nature of crime which have not been comprehensively addressed, but which will be relevant to the interpretation of material presented here. It is focused on available empirical work, which is likely to be of more immediate use in policy development.

The report approaches the issue by exploring in some detail two possible causal processes, which are expressed in the following explanatory approaches:

- 1 *Justice system bias and amplification*: that systemic factors operate at one or more steps of the criminal justice process which make it more likely for Māori to be apprehended, arrested, charged, convicted or imprisoned, with the result that Māori “accumulate” in the system in greater numbers. The amplification explanation posits that, whatever the real rate of criminal behaviour, any crime committed (or indeed suspected) is subject to systemic processes that make it more likely that Māori will be apprehended, and then dealt with more severely. These processes have variously been described as “unintended consequences of discretion”, “unevenness of decision-making”, “bias” and “institutional racism”. This possibility is explored through an examination of relevant justice sector data and related information, which are examined with reference to potential explanations for observed disparities (the absence of which might suggest - though not confirm - the operation of bias).
- 2 *Early life environmental influence*: that Māori over-representation in criminal justice statistics is a consequence of high numbers of Māori proceeding along a pathway that commences with adverse early-life disadvantage, and results in involvement, during adolescence or adulthood, in criminal activity. The approach taken in exploring this explanation may be explained simply as follows: it is well-known that children who experience developmental circumstances of certain types during childhood, and/or who display certain behavioural characteristics, are at higher risk of engaging subsequently in criminal conduct during late adolescence and adulthood. If over-representation of Māori children in these at-risk sub-groups is similar in scale to that which is found in current criminal justice statistics, then it might reasonably be inferred that the latter phenomenon is a consequence of the former.

The possibility that these two processes in fact operate in tandem, in a mutually reinforcing manner, is also considered. Insofar as the evidence for either perspective justifies it, the report attempts to determine the relative contribution of each. This report has been structured in two strands in order to disaggregate a range of influences in a way that highlights particular issues which might need to be addressed by the government agencies accountable for the criminal justice sector.

## **1.2 Previous work on over-representation**

The attempt to understand Māori over-representation in criminal justice statistics has a substantial history. A great deal of work on this topic has been undertaken in New Zealand, particularly during the 1970s and 1980s. These attempts have resulted in a range of hypotheses being explored and put forward as explaining disparities in apprehensions or convictions.

Based on a thesis analysing records of arrests and charges amongst Māori and Pacific people in Auckland in 1966, Duncan (1971)<sup>4</sup> concluded that higher rates of offending resulted from effect of migration (Māori from rural areas to urban, Pacific from their home island nations to New Zealand). His expectation was that that the differences would disappear in the next generation as “assimilation” occurred, a view which now seems sadly optimistic. In 1972, his chapter in “Racial Issues in New Zealand” sets out a comprehensive picture of the mechanisms by which racial differences in criminal behaviour might occur, in ways that seem more relevant to contemporary New Zealand. He offers clear arguments for the effect of biased criminal justice processes, and outlines social mechanisms which would reinforce and increase these effects.

*“A continuing cycle of negative evaluation of a minority, that minority’s reaction to such an evaluation, and the subsequent reinforcement of that evaluation, all combine to make a Police ideal of impartiality almost impossible to maintain ... it is a small wonder that a disproportionate number of Polynesians appear in the courts and penal institutions.”<sup>5</sup>*

Work by O’Malley presented a conceptual approach informed by his small but thorough examination of Magistrates’ Court data; this showed higher conviction rates for Māori compared to “Europeans”. His 1973 paper discussed a number of contextual factors (culture conflict, recent urbanization, low socio-economic status, high-risk mores, selective processing by control agencies) which he argued culminate in high[er] crime rates.<sup>6</sup> He noted that Māori were disadvantaged in comparison to Europeans in court experiences - almost half as likely to have legal representation, possibly more likely to “appear” guilty (through a demeanour of fear and uncertainty that was liable to be interpreted as guilt by Pakeha), and less likely to appeal a guilty verdict. Delinquent behaviour was likely amongst young people recently arrived in the city and less subject to parental control and community sanctions on delinquent behaviour. Many of these factors still seem plausible.

Several of the research papers from the Joint Committee on Young Offenders (JCYO) address ethnicity.<sup>7</sup> Report 2, from 1975, was based on a cohort of males born in 1957, examining the extent to which high rates of delinquency and offending amongst Māori could be explained by reference to socio-economic status. It concluded that high rates of offending amongst Māori were only partially explained by SES - accounting for 16 - 33% of the variance, and suggested that cultural values towards property, and the effects of urban dislocation, may be important factors

A later report from the JCYO (1980)<sup>8</sup>, based on empirical analysis of court data, showed a dramatic increase in Māori youth offending relative to non-Māori from the late 1960s to early 1970s. It is almost entirely focused on socio-economic

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<sup>4</sup> Duncan, L. S. W. (1971) Explanations for Polynesian Crime Rates in Auckland. *Recent Law*, October 1971, pp. 283-288.

<sup>5</sup> Duncan, L. S. W. (1972) Racial Considerations in Polynesian Crime. In: Vaughan, G. (ed.) (1972) *Racial Issues in New Zealand*. Auckland: Akarana Press. Quotation from pp. 39 – 40.

<sup>6</sup> O’Malley, P. (1973b) The Influence of Cultural Factors on Maori Crime Rates. In: Webb, S. D. & Collette, J. (eds.) (1973) *New Zealand Society - Contemporary Perspectives*. Sydney: John Wiley & Sons Australasia Pty Ltd.

<sup>7</sup> Fergusson, D. M., Donnell, A. & Slater, S. W. (1975) *The Effects of Race and Socio-Economic Status on Juvenile Offending Statistics*. Joint Committee on Young Offenders, Research Report No. 2. Wellington, NZ.

<sup>8</sup> Fifield, J. & Donnell, A. (1980) Socio-Economic Status, Race, and Offending in New Zealand. *An Examination of Trends in Officially Collected Statistics for the Maori and Non-Maori Populations*. Joint Committee on Young Offenders, Research Report No. 6. Wellington, NZ.



explanations, with any distortions from 'bias' thought to be minimal, despite evidence that Māori were shown to be more likely to be reported, apprehended, sent to court, and convicted.

Moana Jackson's influential 1988 paper<sup>9</sup> articulated a Māori research perspective which critiqued earlier work, particularly orthodox western empirical research based on scientific/quantitative methods requiring data based on individuals, and isolating factors in order to assess relative effects. This paper was something of a watershed: Jackson argued, on the basis of a Māori worldview, for greater recognition of the impacts of historical and cultural factors in Māori offending. He also noted that, within Māoridom, a communal rather than individualistic approach prevailed, and concluded that a parallel system was necessary to ensure justice for Māori.

The potentially anti-empirical approach represented by Jackson illustrates what has become somewhat of a chasm, between advocates and researchers with a political or policy agenda, and researchers who endeavour to gather and analyse data, at times with insufficient regard to social or political context. Tensions also arise from methodological differences between research focused on individuals, and approaches which try to take into account collective and structural dimensions.

There is however a good deal of statistically-based data now available which demonstrates correlations between ethnicity and outcomes. There is also much writing based on conceptual and socio-political perspectives (including of the effects of history and contemporary institutions), but there is very little synthesis between these approaches.

### **1.3 Cautionary comments about statistical data**

#### **1.3.1 Youthfulness of Māori population**

Before discussing the range of possible explanations for different rates of Māori involvement, a simple source of disproportionality needs to be described. This is the younger age structure of the Māori population: Statistics New Zealand (SNZ) figures (2004) indicate that around 25% of all Māori are aged between 15-29 years, while just 20% of the non-Māori population are. Given that most people caught up in the criminal justice system are in that age bracket, this demographic fact undoubtedly accounts for some of the disproportionality in numbers of Māori offenders; the likely relative contribution is discussed further below. This factor also underlies some of the differences described in Section 3 of numbers of children of various ethnicities affected by risk factors in childhood.

#### **1.3.2 Differences in definitions and attribution of ethnicity**

An issue creating added complexity within this field is the range of ways in which ethnicity is conceptualised, defined and measured. It has been suggested that ethnicity can be identified in three main ways<sup>10</sup>:

- on the basis of lineage, or whakapapa
- through descent because of some Māori ancestry
- self-identification, on the basis of cultural identification.

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<sup>9</sup> Jackson, M. (1988) *The Maori and the Criminal Justice System: He Whaipanga Hou - A New Perspective, Part 2*. Wellington: Department of Justice.

<sup>10</sup> Fergusson, D, (2003c) "Ethnicity and Interpersonal Violence in a New Zealand Birth Cohort" in *Violent Crime: Assessing Race and Ethnic Differences*, (Ed.) Hawkins, DF, Cambridge University Press, pp. 138 – 153.

In the criminal justice system another approach to definition is sometimes adopted - ethnicity as judged by the observer/recorder, based on the physical appearance of the subject. This approach occurs when information is recorded from victims or witnesses to crimes, and occasionally by police officers on patrol or making arrests. In practice, many situations arise where it is impossible, or impractical, to assess ethnicity according to statistically standard processes, and the field on the form is left blank, or filled in by a "best guess".

The Official Statistical Standard for Ethnicity in New Zealand utilises one or other of the first three definitions listed above, sometimes both. A further complexity arises however in the use of self-reported definitions, in that individuals may vary their self-reported ethnicity, subject to the specific question they have been asked, whether options are given, and the context. Self-attribution of ethnicity can also change over an individual's life span. For instance, an obvious transition point may occur between the ethnicity reported for a child by their parent, and their own view as they become old enough to have an independent view. These issues are especially pertinent for longitudinal studies, and when individuals are studied within family/whanau or community context.

Issues also arise from the degree of ethnic intermarriage in New Zealand. More than 60% of pre-schoolers of Māori ethnicity have at least one more ethnicity.<sup>11</sup> Census statistics for 2006 show 14.6% of the total population as having Māori ethnicity, but 42.2 % of this group stated that they identified with European ethnic groups as well, 7.0 percent with Pacific peoples ethnic groups, and 1.5 percent with Asian ethnic groups. 2.3 percent also gave 'New Zealander' as one of their ethnic groups. This is a longer standing issue than often acknowledged – a detailed examination of marriages by Māori in Auckland in 1960 indicated almost half were to Pakeha.<sup>12</sup> Given the ethnic diversity of New Zealand society, it is always important to consider when, and why, someone is being described as Māori, rather than non-Māori, when they are of mixed ancestry.<sup>13</sup>

Many issues arise from these differences in perceived and recorded definitions of ethnicity which are highly relevant to the issues covered in this report.<sup>14</sup> The significance of different collection methods is problematic especially when calculating population-based rates, where there is reason to think the ethnicity of the individuals being described has been assessed differently from the population based definition. However these problems are beyond the scope of this present report, and we can do no more than acknowledge the need to exercise care over definitions used, particularly when data from different sources or time periods is being compared.

### **1.3.3 Uncertainty about crime rates**

A further caution must be raised about crime statistics. From surveys of victims of crime it is known that reporting rates are relatively low for some types of crimes. The

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<sup>11</sup> Statistics NZ, 2001 census figures.

<sup>12</sup> Research by John Harre, published in 1966 and 1972, cited by Pool I, Dharmalingham a and Sceats J (2007) *The New Zealand Family from 1840: A Demographic History* p205.

<sup>13</sup> Kukutai, T. (2004) 'The problem of defining an ethnic group for public policy: Who is Māori and does it matter?' *Social Policy Journal of New Zealand* 23:86–108.

<http://www.msd.govt.nz/publications/journal/23-december-2004/23-pages86-108.html>

<sup>14</sup> Simone Bull (2001) *The land of murder, cannibalism, and all kinds of atrocious crimes? An overview of "Māori crime" from pre-colonial times to the present day*, PhD thesis, Victoria University of Wellington. Difficulties relating to ethnic identification and changing definitions, in criminal justice statistics are well covered; see particularly the first and last chapters.

New Zealand Crime and Safety Survey 2006 found that just one third of the offences experienced by survey respondents in 2005 were made known to the Police<sup>15</sup>, with rates varying from 84% for vehicle theft, to 9% for sexual offences<sup>16</sup>. Reporting rates for Māori and European were very similar (31% and 32% respectively for all crimes)<sup>17</sup>, although Māori were more likely to have been victims of crime – 47% of Māori compared to 37% of European had been victims of crime during 2005.<sup>18</sup> Pacific peoples' reporting rates were slightly lower – 27%, and Asian rates 30%. Rates varied for types of crime – reporting rates were lowest for violence and threats – for this category, Māori were most likely to have reported being a victim of a crime (29% of incidents) compared to 26% of incidents experienced by Europeans, 22% of Pacific peoples, and only 13% of Asians. Studies involving individuals being asked about their own criminal activity confirm that a great many crimes are never detected or linked to a perpetrator<sup>19</sup>. As with ethnic data, any analysis must allow for uncertainty as to actual crime rates underlying reported rates. It is also important to be specific as to what is being discussed at a given point – whether it is self-reported crime, crime known to official agencies, or crime that has been confirmed by a conviction.

## **2.0 Criminal justice system bias and amplification**

It is generally understood that each stage in the criminal justice system, from apprehension through to sentencing, contains a significant degree of built-in discretion with respect to decision-making. Police officers “on the beat” exercise judgement about whether or not to detain an individual for questioning. If someone is apprehended for a possible offence, Police must also decide whether or not to arrest the person, and then later whether to proceed to prosecution. Once prosecuted, the court may or may not convict; once convicted, judges decide on appropriate sentencing options. The contents of reports, prepared by probation officers and psychologists, can also be influential in such decisions.

Once a sentence has been imposed, there still remains allowance for the exercise of discretion with respect to individuals. Parole Boards make decisions, with respect to those imprisoned, about whether part of the sentence can be served on Home Detention, or whether the offender should be granted early release. These decisions are also influenced by advice from reports prepared by officials. Probation Officers supervising community-based sentences and orders also exercise some discretion in notifying breaches of conditions, and whether recall-to-prison proceedings should be initiated. Decision-making within the custodial environment, such as security classification and programme referral, tends to be more constrained by more objective criteria such as behavioural marker events, or actuarial risk estimates.

The explanation inherent to justice system “amplification” is that systemic factors exist at one or more of these steps in the process, which serve to increase the

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<sup>15</sup> An example of compelling personal descriptions of the dynamics of why violence might not be reported is found in Glover, M. (1993) *Maori Women's Experience of Male Partner Violence: Seven Case Studies*. Master of Social Science Thesis, University of Waikato. Case studies of seven women – all Maori, who had experienced substantial domestic violence. Ethnicity of the partners – 5 Pakeha, 3 Maori, 1 Tongan.

<sup>16</sup> *New Zealand Crime & Safety Survey 2006 (CASS)*, Ministry of Justice; p35.

<sup>17</sup> CASS op cit, p113.

<sup>18</sup> CASS op cit, p106 Maori women were most likely to have been crime victims - 51% compared to 43% of Maori men; the rates for European were 36% for women, and 38% for men.

<sup>19</sup> Fergusson, D (1993a) self and parental reported criminal behaviour (2003a) self reported Cannabis use.

likelihood that, relative to non-Māori, Māori will progress further into the justice system, and be dealt with more severely. Thus the amplification explanation suggests that Māori who offend (or initially are suspected of offending) are, relative to non-Māori, subject to different probabilities of discharge from, or continuation within the criminal justice system. The result of such influences would be that Māori “accumulate” in the system in disproportionate numbers.

Quantifying the degree to which bias functions as a possible influence is however highly problematic. A range of factors can influence decisions at each of the stages listed above: for example, more serious offences, a history of previous offending, responses to previous sentences, and the social circumstances of the offender, can at times be very influential. Given that there is potential for some degree of correlation between offender ethnicity and certain of these variables, reasonably sophisticated statistical analysis is required in order to understand the relative contributions made by diverse factors to outcomes. In the absence of such analysis, interpretations of apparent differences must be made with great caution.

This section therefore compares the outcomes for Māori and non-Māori offenders in apprehension, prosecution, conviction and sentencing. Data from Statistics New Zealand, New Zealand Police, Ministry of Justice, Department of Corrections and two New Zealand longitudinal cohort studies are used.

Before proceeding to review the research, it is appropriate to comment more fully on the possible contribution of population-based differences between Māori and non-Māori as a possible explanation of higher levels of participation in crime amongst Māori. As outlined in the statistical issues section (1.1) above, the relative youthfulness of the Māori population must increase the numbers of Māori in the age groups of higher risk of criminal behaviour. Statistics New Zealand figures for 2004 record 77,000 Māori males, and 350,000 non-Māori, in the 15-29 years age bracket. However, this age group constitutes 25% of the total Māori male population, but just 20% of the non-Māori male population. This occurs partly because of the relative youthfulness of Māori arising from higher fertility rates, and shorter life expectancies (there are proportionally fewer older Māori than there are non-Māori). Thus, population-based characteristics of Māori men, with proportionally more of them in the age group most at risk of criminal behaviour, undoubtedly accounts for part of the higher rate of criminal behaviour.

New Zealand’s imprisonment rate currently is approximately 180 per 100,000. The rate that applies specifically to Māori however is approximately 700 per 100,000. Age-standardisation of these figures changes these rates: the rate for all New Zealanders becomes 152 per 100,000, and 514 per 100,000 for Māori.<sup>20</sup> Age-standardisation nevertheless shows that Māori men are 3.5 times more likely to be sentenced to imprisonment.

To get a sense of the magnitude of the age-cohort effect, using the 2004 figures above, if the portion of Māori men aged 15-29 was reduced to be the same as non-Māori (20%), there would be around 15,000 less Māori men. If all else stayed equal, that would mean approximately 20% less Māori males in each stage of the criminal justice system (currently for example, around 450 fewer men in prison). So this factor explains some of the disproportionate number of Māori men in prison, but the disproportionality is still much greater than age factors can account for.

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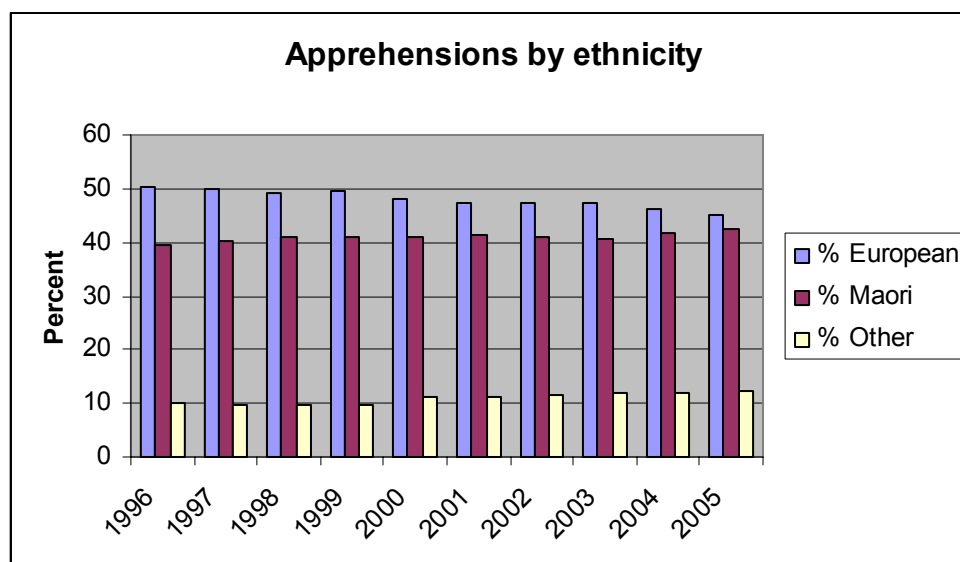
<sup>20</sup> Nadesu, Arul (2003), *A way of measuring social inequality by age standardised imprisonment rates* unpublished paper, Department of Corrections, Wellington, NZ.

## 2.1 Apprehensions

Statistics New Zealand publishes data gathered by the New Zealand Police on apprehensions. An “apprehension” means that a person has been dealt with by the Police in some manner in order to resolve a reported or observed offence. In some circumstances “dealt with by the Police” may result in no further action being taken, other than documenting the offence (for example, an offender may be found to have a mental health condition, or be already in custody). Apprehension numbers do not represent distinct individuals, as a person apprehended for multiple offences will be counted multiple times in the data.

Figure 1 below shows that while Māori comprised about 14-15% of New Zealand's population from 1996 to 2005, they accounted for about 40% of all apprehensions in each of those years. Europeans who made up about 70% of the population, accounted for between 45-50% of apprehensions

Figure 1: Apprehensions 1996-2005 by ethnicity (%)



[www.stats.govt.nz](http://www.stats.govt.nz).

Examination of different categories of offences (see Appendix: Figures 1.1 to 1.7) also indicate that Māori were most over-represented in apprehensions for crimes of violence, dishonesty and administrative offences, though less markedly over-represented in apprehensions for sexual offences and property abuse.

Research by Fergusson and his colleagues<sup>21</sup> examined rates of self-reported histories of offending among New Zealand young people up to the age of 14, and then compared this to frequency of Police contact. They found that Māori had rates of Police contact that were nearly three times higher than rates for non-Māori. However, this disparity was only partly explained by recorded differences in offending. When self-reported offending (and social background) was held constant, Māori offenders appeared still to be twice as likely to be subject to Police attention, relative to non-Māori offenders.

<sup>21</sup> Fergusson, D.M., Horwood, L.J., & Lynskey, M.T. (1993). Ethnicity and bias in Police contact statistics. *Australian and New Zealand Journal of Criminology*, 26, 193-206.

A more recent analysis<sup>22</sup> of the same sample, now aged 21, indicated a smaller but similar effect related to arrest and conviction for cannabis use. This study examined the associations between the self-reported use of cannabis, and arrest and conviction for cannabis related offences. Independently of self-declared cannabis use, Māori were more likely to be arrested and convicted for cannabis use. Previous police record, self-reported crime, and being male also increased the likelihood of arrest and conviction. Fergusson *et al* found this “consistent with a labelling theory perspective”<sup>23</sup>.

### **2.1.1 Comment**

Ethnic disparities in apprehension figures are of course consistent with both explanatory approaches discussed in this paper. However, the possibility that certain sub-groups of the population are more susceptible to Police stopping and checking is a reasonably well-researched issue. A considerable number of arrests follow from Police stopping and questioning individuals in public places. From the perspective of “amplification”, differences in apprehension could therefore result from some bias in policing practice.

Younger age, certain styles of clothing and headgear, hairstyles, type of car driven, and incongruity of person with time or location are all known to trigger Police suspicion. Research conducted in the UK indicated that ethnicity also influenced Police officers’ decisions to stop and question potential offenders<sup>24</sup>. One US study<sup>25</sup> found that African American male drivers were more likely than other groups to be stopped by the Police. Similar findings emerged in some UK studies<sup>26</sup>, although one<sup>27</sup> found no such effect. Its authors commented that this may not be surprising, given that many stops are made at night when the appearance of the driver might not be necessarily be visible to Police.

Interestingly, traffic offending (excess breath/blood alcohol, disqualified driving, dangerous driving, etc) here in New Zealand, as well as drug offending, are classes of offending in which the vast majority of offenders are apprehended directly as a result of Police activity, rather than by way of crimes being reported by the public. Were Police bias an important influence affecting number of offenders arrested, then arguably Māori disproportionality should be more pronounced in traffic and drug offence figures. However, according to Ministry of Justice data, while still making up a significant number of those arrested, the actual proportions made up by Māori of all offenders convicted for both traffic (37%)<sup>28</sup> and drugs (40%) offences are in fact the lowest across the main offence classes (e.g., comparable figures for violence are 47%, and dishonesty offences 48%). This does still beg the question as to what the relative detection rates of different types of underlying crime are, however. Ferguson’s 2003 study cited above suggests that Māori are more likely to be

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<sup>22</sup> Fergusson D.M., Swain-Campbell N.R., Horwood L.J. (2003) Arrests and convictions for cannabis related offences in a New Zealand birth cohort. *Drug and Alcohol Dependence*, 70 (2003) 53-63.

<sup>23</sup> Op cit, p60 – 61.

<sup>24</sup> Quinton Paul, Bland Nick, & Miller Joel (2000) *Police Stops, Decision-making and Practice*. RDS Home Office, London, UK.

<sup>25</sup> Lundman Richard J & Kaufman Robert L (2003) Driving while black: effects of race, ethnicity, and gender on citizen self-reports of traffic stops and Police actions. *Criminology* 41 (1) 195-219.

<sup>26</sup> See for example, The Stephen Lawrence Inquiry (1999) <http://www.archive.official-documents.co.uk/document/cm42/4262/sli-06.htm>.

<sup>27</sup> Quinton, *ibid*.

<sup>28</sup> It is acknowledged that ethnic differences in ownership and use of private motor vehicles may be a factor here.

apprehended for cannabis use than non-Māori, but we are not aware of comparable work on other types of offences.

Responses of suspects stopped by the Police similarly may cue officers to search suspects and/or their vehicle. Again, research has shown that certain behaviours – facial expression, gaze aversion, speech disruptions and hand gestures – are liable to be interpreted by Police officers as “suspicious”<sup>29</sup>. Some behaviours of this type may however be culturally influenced. In a naturalistic study in the USA, African American and Hispanic people showed significantly higher levels than Europeans of behaviours that were interpreted as suspicious<sup>30</sup>. Cultural differences in degree of eye contact have been found in New Zealand<sup>31</sup>.

The extent to which the detained person cooperates with the Police officer may also be important. A 1998 study suggested that Māori held relatively negative attitudes towards the Police generally: perceptions of bias were common amongst both Māori and Police officers themselves.<sup>32</sup> It is conceivable that this negativity may motivate hostile and uncooperative responses when in direct contact with the Police. Such behaviour could in turn increase the likelihood that the Police took the matter further<sup>33</sup>. Family experience and circumstances can also bear on this, underlining the complexity of interactions between official agencies and suspected offenders. Work by Canadian criminologists based on research with youth living on the streets of Toronto and Vancouver, suggested that, for youth who had suffered from abuse within their family, subsequent police sanctions “more often result in criminal acts of defiance than in deterrence”.<sup>34</sup>

Further, Police engage in offender “profiling”, both explicitly and consciously as an aid to crime resolution, and implicitly (even unconsciously) as they individually go about their work. Given the salience of ethnicity as a personal characteristic, successes achieved (at least in part) as a result of ethnicity-based profiling inevitably reinforce the tendency to pay closer attention to that characteristic in future. Similarly, the attention of individual officers inevitably is drawn towards specific individuals already known to them, from which the same circularity of cause and effect can ensue: Police become acquainted with significant numbers of Māori offenders through their arrest and prosecution, which inevitably influences subsequent Police attentiveness to those same individuals. This may partly explain a consistent finding from the Department’s annual recidivism analyses, which reveal rates of reconviction for Māori that are around 20% higher than those of NZ Europeans<sup>35</sup>.

Apprehension rates will also be affected by the extent to which crime is reported – and those reporting crime may be strangers, passers-by, teachers, social service agency officials, victims or family and friends. A subsequent exercise of discretion

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<sup>29</sup> Johnson Richard R (2006) Confounding influences on Police detection of suspiciousness. *Journal of Criminal Justice* 34 (2006) 435-442.

<sup>30</sup> Ibid.

<sup>31</sup> Metge Joan & Kinloch Patricia (1984) *Talking Past Each Other: Problems of Cross-Cultural Communication* Victoria University Press, Wellington, N.Z.

<sup>32</sup> Te Whaiti P & Roguski M (1998) *Maori perceptions of the Police* He Parekeke/ Victoria Link, September 1998. <http://www.police.govt.nz/resources/1998/maori-perceptions-of-police/>

<sup>33</sup> James, Bev (2000) *Challenging perspectives: Police and Maori attitudes toward one another*. Te Puni Kokiri & New Zealand Police.

<sup>34</sup> Bill McCarthy and John Hagan, ‘Sanction Effects, Violence, and Native North American Street Youth’ in *Violent Crime: Assessing Race and Ethnic Difference*, Cambridge University Press, 2003, p123.

<sup>35</sup> Department of Corrections *Annual Report 2005-2006*, p.51.

may occur as to whether a report proceeds to be recorded as an official complaint, and then onto subsequent arrest and charges. A large number of factors can affect the discretion being exercised at each point by the various parties involved.

One obvious perspective that has not yet been explored - which would shed light on the key perspectives examined in this report - is the victim survey, with respect to victims' report of offender ethnicity. For example, if court data indicated that 50% of all persons convicted of aggravated robbery were Māori, but that just 30% of those victimised in this manner reported that the offender was Māori, then it might reasonably be inferred that some form of bias was intruding at the arrest or prosecution stages. Of course, such an analysis is problematic, given the uncertainty which surrounds crime victims' ability to identify the ethnicity of someone with whom they interact only fleetingly, who may be masked, and in a situation involving extremes of emotion. Further, given the frequency of media reports of crimes where the offender was described by witnesses simply as "Polynesian", the problems are compounded. The difficulties outlined in section 1.1.3 above in having a consistent definition of ethnicity would also be significant.

In any case, such data is not yet available in New Zealand. However, studies of this nature have been undertaken in the United States (US), where similar problems of over-representation apply to black Americans. In the US, African Americans constitute about 12.8% of the population, but in year 2000 accounted for 38% of the arrests for violent crimes, and 31% of the arrests for property crimes<sup>36</sup>. Two reasonably comprehensive studies, one in 1978, and a more recent one in 2003, have addressed the question of difference in ethnic involvement between actual crime, and official crime statistics<sup>37,38</sup>. The first study used official crime data (Uniform Crime Rates<sup>39</sup>) which were analysed in conjunction with annual crime victim survey data. The second used the more modern National Incident-Based Reporting System (NIBRS), which gathers information from individual crime reports recorded by Police officers at the time of the crime incident. A wide range of different criminal offenses are reported on, with information collected on victim and offender demographics, victim/offender relationship, time and place of occurrence, weapon use, and victim injuries.

Both of these studies set out to determine whether the over-representation of African Americans in criminal arrest data was a consequence of their differential involvement in crime, or whether it reflected racially biased reporting of crime, or Police practice. Significantly, both studies reached the same conclusion - that there was no basis to conclude that the disproportionate representation of African Americans in crime statistics was a consequence of anything other than their unusually high rates of participation in crime.

Finally, a recent Australian study is also worth mentioning<sup>40</sup>. The researchers addressed a very similar question to that which is part of the focus of the current paper - is over-representation of Aboriginal people in prison the result of systemic bias in policing, the law, and/or the operation of the criminal justice system, or is it the

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<sup>36</sup> (Federal Bureau of Investigation, 2001; US Census Bureau 2001).

<sup>37</sup> D'Alessio S & Stolzenberg L (2003) Race and the probability of arrest. *Social Forces*, June 2003 v8 i4 p 1381.

<sup>38</sup> Pope CE & Snyder HN (2003) Race as a factor in juvenile arrests *Juvenile Justice Bulletin* April 2003. Department of Justice, US.

<sup>39</sup> The Uniform Crime Reporting (UCR) Program produces uniform crime statistics for the US, with 17,000 law enforcement agencies providing data which is collected and archiving by the FBI.

<sup>40</sup> Weatherburn, D., Fitzgerald, J & Hua, J. (2003). Reducing aboriginal over-representation in prison. *Australian Journal of Public Administration* 62 (3), 65-73.



result of high rates of Aboriginal involvement in crime? The report traverses data similar to the type covered in the first half of this report, such as disproportionality in arrests, convictions, etc. They also present data which reveals that, on average, Aboriginal offenders tend to have longer criminal histories. However, the authors of this report had access to a unique form of information, data jointly gathered by the NSW Bureau of Crime and NSW Health Department, which are derived from periodic representative sample surveys of secondary school students. These surveys seek to ascertain self-reported involvement in crime. The survey data clearly indicate that the prevalence of self-reported involvement is considerably higher amongst Aboriginal juveniles than non-Aboriginals. There were particularly striking differences in the self-reported *frequency* of crime - across most crime categories, the percentage of Aboriginal respondents who report having committed more than five offences in the previous 12 months is more than double that of the non-Aboriginal respondents. The authors conclude therefore that arrest and conviction rate differences are simply reflective of real differences in rates and patterns of involvement in crime.

It should be noted that there have been important critiques made of aspects of this study, particularly in terms of the policy claims and prescriptions made by Weatherburn *et al*, and the risk of adopting a simplistic view that over-representation must be a result of either justice system bias or actual offending levels.<sup>41</sup>

In summary, this brief review of apprehensions figures, and relevant research, offers a mixed picture. Evidence does exist to indicate that apprehension rates do not simply reflect actual offending behaviour of persons in the community. Instead there is some support for the notion that the interactions between Police and Māori on the “front-line”, as well as social interactions within families or communities, lead to an increased probability of Māori offenders being subject to criminal apprehension, independently of rates of actual offending. Some form of bias appears to be occurring – the precise magnitude of the effect, however, is less clear.

## **2.2 Prosecutions and convictions**

Once an individual has been apprehended for an offence (alleged or suspected), Police must decide on whether to initiate a formal criminal prosecution. Such decisions are based on a number of considerations: the seriousness of the offence, the adequacy of evidence to be presented to the court, the number and type of associated offences for which the person may also have been arrested on that occasion, previous offending history, and so on. In some cases, evidence may be more than adequate for prosecution, but the remaining considerations militate against prosecution, and the offender is subjected to Police Diversion<sup>42</sup>. When prosecution proceeds, the resulting criminal justice processes typically lead either to conviction<sup>43</sup> or acquittal.

Some important research in the 1970s illustrated significant differences in Māori experience in court proceedings. O'Malley's (1973) analysis of Magistrates' Court data found similar rates of granting of bail and “demand for surety” for Māori and

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<sup>41</sup> Chris Cunneen, ‘Racism, Discrimination and Over-representation of Indigenous People in the Criminal Justice System: Some Conceptual and Explanatory Issues.’ in *Current Issues in Criminal Justice*, March 2006, Volume 17, No 3. Weatherburn responded in a later issue of *Current Issues in Criminal Justice*, November 2006, Volume 18, No 2, illustrating how complex and controversial analysis in this area can be.

<sup>42</sup> As is noted later, Maori are less likely to receive Diversion - see Paulin, J. (2002) Ministerial Correspondence, Ministry of Justice.

<sup>43</sup> Some offenders are convicted but subsequently “discharged without conviction”.

non-Māori, but experience then diverged: Māori were less likely to arrange surety for bail (possibly for financial reasons) and this reduced their ability to obtain legal advice. They were only half as likely to have legal representation, and more likely to plead guilty - which O'Malley attributed to different attitudes and, again, lack of legal representation<sup>44</sup>.

Between 1981 and 1999, 24.6% of all charges against Europeans in the lower (Magistrates, District) courts were acquitted, while the figure for Māori was 20.4%. The high rates of conviction for Māori are almost certainly influenced by Māori being more likely to plead guilty if prosecuted, which may in turn reflect some systemic problem with the availability or quality of legal representation.

Based on an analysis of all cases prosecuted in 2001, Paulin<sup>45</sup> claimed that 80% of Māori pleaded guilty, compared to 73% of non-Māori. Not-guilty pleas were entered by 9% of Māori, and 10% of non-Māori. Of those who entered not guilty pleas, 24% of Māori, and 21% of non-Māori, were nevertheless convicted. The outcome of all the cases were that 79% of Māori were convicted, compared to 70% on non-Māori.

The initial plea was the factor most strongly related to eventual conviction. Paulin's analysis also identified additional factors that were significantly related to the likelihood of conviction: the type of offence (particularly traffic offences), number of previous convictions, and the age of the defendant. Of those who pleaded guilty, considerably fewer Māori were first offenders (17%, vs. 29% of all non-Māori). Also, importantly, more Māori (37%) than non-Māori (31%) were apprehended for offences of medium to high seriousness.

Her conclusion was that there was little evidence of a significant difference in the probability of conviction, once prosecution proceeds, which could be attributed to ethnicity alone. This does leave open a question as to the significant differences in initial pleadings. The underlying analysis on which this unpublished note was based was not available for the present report, but one detail given by Paulin (but not commented on) is that no plea was recorded for 11% of Māori, but 18% of non-Māori. This difference again quite possibly reflects differing access to, or quality of, legal advice available to Māori accused or defendants.

Table 1<sup>46</sup> below shows the percentage of Māori and Europeans whose apprehension for criminal offences then led on to a formal prosecution by Police. Across each of the last ten years, and over most offence classes, Māori were subjected to a moderately higher rate of prosecution than were Europeans - usually by about six - seven percentage points.

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<sup>44</sup> O'Malley, P. (1973a) *The Amplification of Maori Crime: Cultural and Economic Barriers to Equal Justice in New Zealand*. *Race*, Vol. 15, No. 1, July, pp. 47-57.

<sup>45</sup> Paulin, Judy (2002) Ministerial Correspondence, Ministry of Justice

<sup>46</sup> The Ministry of Justice (MoJ) Case Management System (CMS) has its own nomenclature, so there is some difficulty in attempting to compare apprehensions and prosecutions (Police data) with convictions. MoJ reports on cases by offender whereas NZ Police statistics are based on offences. Once offences go to prosecution, they become 'cases'. Generally, charges for which proceedings against the person start or finish on the same day(s) are combined to form a case. Police data does capture some demographic information, but the number of apprehensions per person is not given. In comparing prosecution figures to conviction figures the analysis is limited by these differences. Ministry of Justice published data will be used in this section, with some reference back to apprehensions data where this is useful.

Table 1: Apprehensions resulting in prosecution 1996-2005 by ethnicity (%) <sup>47</sup>

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
European	54.1	53.5	55.3	56.6	55.0	55.6	55.3	57.3	58.2	61.6
Māori	59.8	61.3	62.7	62.6	61.7	62.0	61.4	62.6	64.9	67.0

[www.stats.govt.nz](http://www.stats.govt.nz)

When different categories of offence are examined over the same time period, pronounced differences can be observed between Māori and European New Zealanders, as seen in Table 2 below.

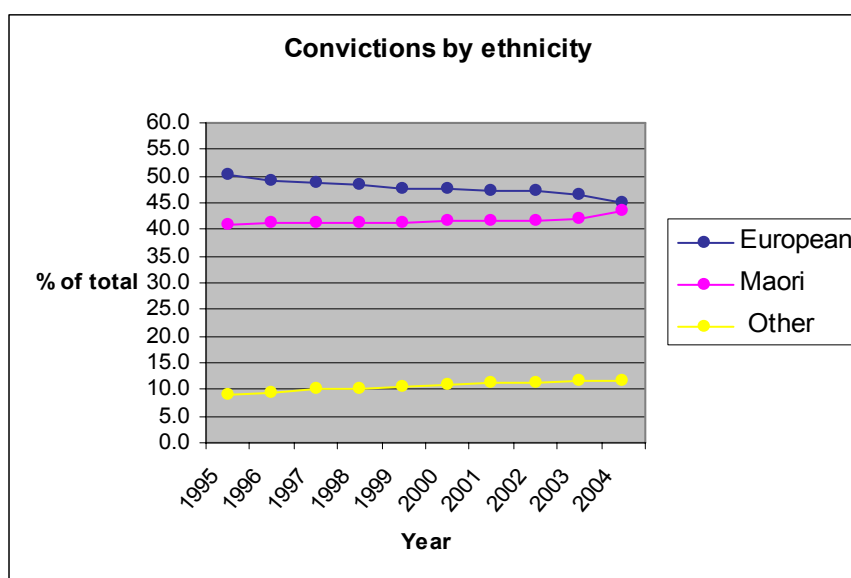
Table 2: Prosecutions undertaken in 2004 by offence class and ethnicity (% of all prosecutions) <sup>48</sup>

	Violence	Sex	Drugs, antisocial	Dishonesty	Property	Admin
European	38	48	48	43	47	38
Māori	45	31	35	46	42	50

[www.stats.govt.nz](http://www.stats.govt.nz)

A similar degree of the ethnic skewing of proportions that is evident in the prosecutions data is apparent also in the numbers of offenders convicted of the offences for which they were charged.

Figure 2: Convictions 1996-2004 by ethnicity (%)



Ministry of Justice (2006) *Conviction and Sentencing of Offenders in New Zealand: 1995-2004*.

<sup>47</sup> Chi square analysis indicates differences are statistically significant for each of the ten years analysed.

<sup>48</sup> Appendices 2.1 - 2.7 give the rates of prosecution by offence class for each of the last ten years.

Total convictions of Māori rose from 1996 to 2004. Convictions of Māori accounted for between 41% and 43% of all convictions in the period, on average about five percent less than convictions of Europeans over the same time. This is a smaller difference than for apprehensions. When offence categories are examined some variations emerge.

- *Violent offences.* Although there are more apprehensions (in absolute numbers) of Europeans than Māori for violent offences, more Māori (again in absolute numbers) are convicted, and they make up the greatest proportion of convictions of this type (47% of convictions were of Māori and 38% are of Europeans in 2004; Appendix: Figure 3.1). The importance of this is that while violence is not the largest offence category, the sentences imposed are more likely to be custodial, and longer than for other offences, resulting in impacts on the prison muster.
- *Dishonesty.* Though there are similar numbers of apprehensions of Māori and Europeans, more Māori are prosecuted than are Europeans.
- *Property damage and property abuse.* Although Police apprehensions for property damage and property abuse offences are higher for Europeans than Māori, Māori are convicted in greater numbers (Appendix: Figure 3.2).
- *Drug offences.* While outnumbered by Europeans in convictions for drug offences, at 40% of convictions, Māori are over-represented throughout the period (Appendix: Figure 3.3).
- *Traffic offences.* While Europeans make up the greatest proportion of traffic convictions, Māori are still over-represented in this category of offence (Appendix: Figure 3.4).
- *Offences against good order.* Convictions in this category show a steeper rise for Māori than Europeans and others from 1998-2003, when there is a sharp reduction for all groups. Māori are over-represented throughout the decade (Appendix: Figure 3.5).
- *Offences against justice*<sup>49</sup>. Māori outnumber Europeans and comprise the greatest proportion of convictions for offences against justice (Appendix: Figure 3.6).

To summarise, arrested Māori are moderately more likely than Europeans to be prosecuted. Māori defendants are prosecuted in greater numbers also than the numbers of apprehensions might suggest.

With respect to the decision to prosecute, already noted above are the range of considerations that affect such decisions<sup>50</sup>. Perhaps the most important are the seriousness of the current offence, and any offending history. Unusually high numbers of prosecutions of Māori offenders could of course be a consequence of those processes, rather than ethnic bias *per se*.

Data from the Christchurch longitudinal study has been analysed with respect to this issue. Fergusson and his colleagues analysed officially recorded convictions and self-reported offending data<sup>51</sup>. They found apparent bias in the arrest and conviction process for Māori relative to non-Māori offenders with a similar offending history and

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<sup>49</sup> Includes failure to answer bail.

<sup>50</sup> Determining whether Police are more likely to decide to prosecute when the suspected offender is Maori, has not been possible from the available data.

<sup>51</sup> Fergusson DM, Horwood LJ, & Swain-Campbell N (2003b) Ethnicity and criminal convictions: results of a 21-year longitudinal study. *The Australian and New Zealand Journal of Criminology*, 36 (3) 354-367.

socio-economic background. However, an acknowledged limitation of this analysis was that seriousness of offending – potentially an important variable – was not taken into account. A Ministry of Social Development report however indicated that Māori young people were more likely to come to the attention of the justice system even when the offences were of low seriousness; once identified by the Police, they were also more likely to be referred to the Youth Court than to family group conferences<sup>52</sup>.

### **2.3 Sentencing**

Similarly as for Police decisions to prosecute, a range of factors are taken into consideration, in this case by judges, when imposing sentence on convicted offenders. Most important perhaps are the seriousness of the current offence(s), the total volume of current offences for which the person stands convicted, previous offending history, responses to previous sentences, amenability to rehabilitation, and perceived risk to the community.

Analysis of the Ministry of Justice published figures on convictions and sentencing shows a consistent pattern of differences between the types of sentencing outcomes for all New Zealanders, for Europeans, and for Māori.

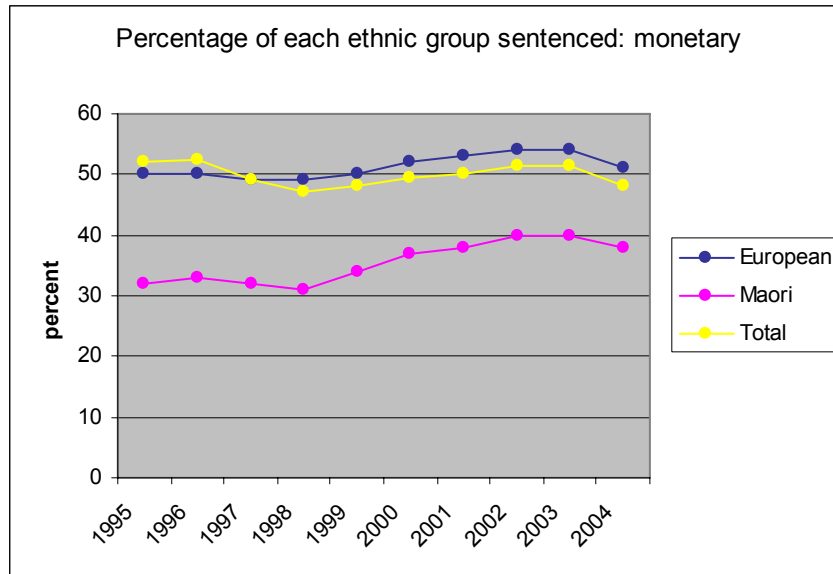
The sentence most frequently imposed by criminal courts in New Zealand is a monetary penalty. On the scale of sentence severity, fines are typically regarded as at the less severe end. Of all persons sentenced between 1996 and 2004, Māori typically received this sentence less frequently than did Europeans or other sections of the total population. It seems likely, however, that ability to pay, an obvious consideration in whether a fine is imposed, reduces the probability that Māori would receive monetary penalties, given the well-documented disparities in annual income between Māori and non-Māori<sup>53</sup>.

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<sup>52</sup> Maxwell Gabriel, Robertson Jeremy, Kingi Venezia, Morris Allison & Cunningham Chris (2004) *Achieving Effective Outcomes in Youth Justice: an Overview of Findings* Ministry of Social Development, Wellington.

<sup>53</sup> From 2006 Census: Median annual income for Europeans was \$25,400, and for Maori \$20,900. <http://www.stats.govt.nz/NR/rdonlyres/FC6F9795-A534-45BC-97DF-F95FBE2C26E9/0/quickstatsaboutincomes.pdf>. As well as lower median incomes, more Maori fall into the lower income groups – see figure 1, <http://www.tpk.govt.nz/maori/work/personal.asp>.

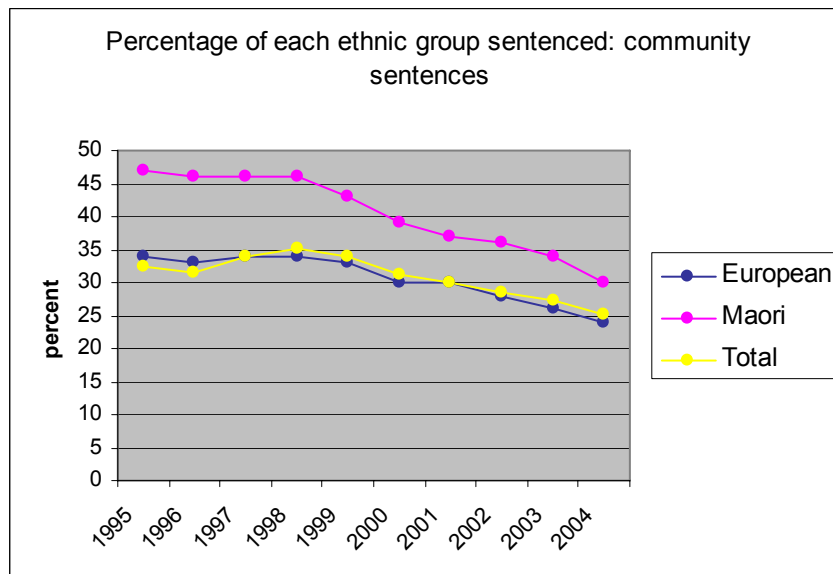
Figure 3: Monetary sentences 1996-2004 by ethnicity (%)



Ministry of Justice (2006) *Conviction and Sentencing of Offenders in New Zealand: 1995-2004*.

As the sentence severity scale is ascended however, the probabilities appear to reverse. Figure 4 shows that a greater percentage of Māori received some form of community-based sentence than did Europeans or others.

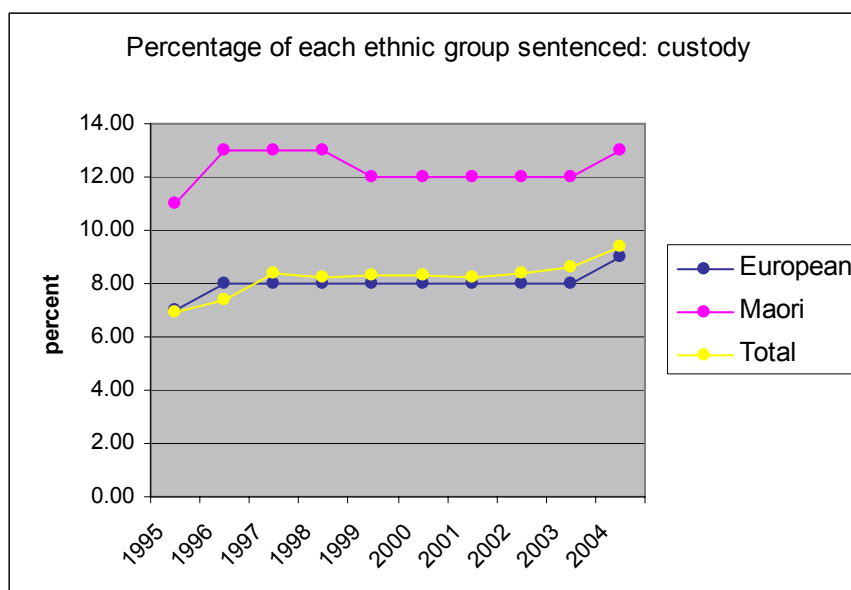
Figure 4: Community sentences 1996-2004 by ethnicity (%)



Ministry of Justice (2006) *Conviction and Sentencing of Offenders in New Zealand: 1995-2004*.

A similar difference occurs with the most severe penalty, imprisonment. Figure 5 below shows that, when sentenced, Māori were more likely to receive a prison sentence. Between 11% and 13% of convicted Māori receive sentences of imprisonment, as opposed to 7 - 9% of Europeans, a statistically significant difference.

Figure 5: Custodial sentences 1996-2004 by ethnicity (%)



Ministry of Justice (2006) *Conviction and Sentencing of Offenders in New Zealand: 1995-2004*.

As noted in the introduction above, as a result of being sentenced in such numbers, Māori go on to make up 50% of the prison population at any one time. Figures on the types of offences for which Māori and non-Māori were imprisoned in 2005-2006 can be found in the Appendix (Figures 4.2, 4.3, and 4.4).

It is important to keep in mind that the preceding figures represent an analysis simply on the basis of ethnicity. More sophisticated multivariate analysis is required to control for other important factors such as seriousness of offence or offenders' previous history, which then isolates the difference (if any) related solely to ethnicity, or some other unidentified factor associated with ethnicity. The Home Detention investigation reported in 2.4 below illustrates that much of what initially appears to be ethnic difference may be explained by other factors.

## 2.4 Post-sentencing processes

As described above, the kind of discretionary decision-making which might play a role in criminal justice outcomes does not cease at the point of sentencing, but features at a number of points thereafter. Initial sentencing may be modified subsequently by judicial and Parole Board decisions on whether to grant leave to apply for Home Detention, or to grant Parole. These decisions are potentially a source of disparity.

Once a sentence has been handed down, in the case of monetary penalties it is enforced by the Courts, while custodial and community-based sentences and orders are enforced by the Department of Corrections. The process of managing sentences is a complex process, with numerous points where some discretion and personal judgement must be exercised. However, decision making within the custodial system, for example in terms of security classification and programme referrals, is much more constrained by explicit and objective criteria such as risk scores based on previous history of offending.

In contrast to earlier stages of the criminal justice process, the ethnicity of the sentenced person can become a central focus of decisions as to their management, on the basis of the need to reduce re-offending by Māori. Many planned interventions and programmes are 'culturally targeted', in the expectation that

culturally appropriate services will be more successful than so-called 'mainstream' services.

Aspects of this process were called into question in 2002 when a claim was taken to the Waitangi Tribunal<sup>54</sup>, alleging that Māori were disadvantaged in terms of the type and length of sentence by two of the assessment tools used by the Department, namely the Risk of Reconviction and Risk of Re-imprisonment (ROC\*ROI), and the Criminogenic Needs Inventory (CNI). The Tribunal concluded that there was insufficient evidence to establish that any prejudice had been or was being caused to Māori offenders. The Tribunal also accepted that the Department had acted in good faith to reduce re-offending and believed that some aspects of the assessment tools were ground-breaking. Nevertheless, it believed that the 'MaCRNs' tool (Māori Culture-related Needs Assessment, a component of the CNI), which focused on Māori offenders' cultural responsiveness, required more testing and independent evaluation.

The impetus for evaluations of the effects of particular tools and programmes on Māori was given further weight by the 2005 Ministerial Review Unit Review of Culturally Targeted Services. That Review noted that the Department's services targeted at Māori and Pacific peoples were based on a clear need to reduce re-offending by Māori and Pacific peoples, but that there was insufficient evidence supporting the value and effectiveness of these services.

An initial investigation of the MaCRNs tool (June 2007) concluded that the MaCRNs tool seemed to have a useful motivational effect with some offenders, but was not working effectively in practice, in that assessments did not necessarily lead to further action. The future of the tool is being addressed in the context of a full scale reconsideration of the CNI process. Evaluations of other specialist services for Māori are also underway, but not complete.

#### **2.4.1 Home Detention**

The Department of Corrections recently undertook analysis of Home Detention (HD) statistics, in order to clarify the extent to which Māori were disadvantaged with respect to HD, and the possible reasons for this. HD muster figures consistently reveal that, while Māori constitute around half of the offenders who *potentially* are eligible for HD (on the basis of receiving a sentence of imprisonment of two years or less), they nevertheless comprise less than 40% of the HD population at any given point in time<sup>55</sup>. In a careful analysis of all cases receiving a sentence of imprisonment of two years or less in a twelve-month period (2004/05) Māori were found to be less likely to obtain leave to apply and, amongst those who did apply, Māori were less likely to be granted approval. Thirty-nine percent of New Zealand Europeans were granted leave to apply for HD at the point on sentencing, while only 29.1% of Māori were granted leave to apply. Similarly, 19.3% of Europeans were granted HD at a Parole Board hearing, compared to only 10.7% of Māori .

However, when subjected to statistical analysis, it became apparent that Māori offenders potentially eligible for HD tended to present with more extensive offending histories, including failure to comply with previous sentences and orders. Such

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<sup>54</sup> Waitangi tribunal claim WAI 1024, *The Offender Assessment Policies Report*. The judgement was issued in October 2005

<http://www.waitangitribunal.govt.nz/reports2005/summary.asp?reportid={A9E5DCD5-98ED-4F5E-B194-CA20C753E74C}>

<sup>55</sup> In contrast Pacific offenders made up 11% of those eligible for HD, and 11.5% of those actually on HD.



characteristics largely explained the lower rates with which Māori obtained access to HD. However, there remained evidence of some residual bias against Māori: 3.6% fewer Māori were given leave to apply, and 2% fewer Māori offenders were granted HD, than would have been expected for a corresponding group of New Zealand European offenders with similar characteristics (for the year analysed, this was equivalent to deficits of 145 Māori being given leave to apply, and approximately 96 Māori being granted HD).

The report does acknowledge that some of the ethnic difference might relate to factors which could not be analysed from the data available, such as the demeanor of the prisoner at the hearing. Another puzzling feature was the significantly larger proportion of Māori than European who had been given leave to apply for HD, but did not in fact make an application (22% of Māori, compared to 13% of European offenders). Again, this may well relate to a common factor which has not been identified.

The statistician responsible for the data analysis utilised in this study concluded as follows:

*Collectively, these findings would suggest that any ethnic bias in the judicial processes related to access to HD is likely to be small. Nevertheless, to the extent that Māori constitute the majority of the prison population any evidence of bias against Māori in access to HD should be a source of concern. For this reason it would be prudent to continue to monitor the system for evidence of bias.<sup>56</sup>*

The results of this study support the proposition that much of the differences in outcomes experienced by Māori and non-Māori offenders, such as those discussed above in relation to apprehensions, prosecutions and sentencing, can reflect real differences in those groups and do not necessarily indicate bias as such.

A similar exercise could be undertaken in relation to parole – the extent to which Māori are required to spend greater proportion of the imposed sentence in prison as a result of Parole Board decisions. Such an exercise has not been completed to date<sup>57</sup>, but given the findings for Home Detention, it seems unlikely that the results of such an exercise would be dissimilar.

## **2.5 Findings from Reconviction/Re-imprisonment Analysis**

The extent to which ethnically-based bias may be a factor in judicial sentencing decisions can also be inferred from the Department's own risk assessment methodology ("RoC\*RoI"<sup>58</sup>). A statistically-based formula based on the conviction and sentencing outcomes of many tens of thousands of offenders, RoC\*RoI was introduced to enable estimation of individual offenders' likelihood of being reconvicted or re-imprisoned. It was developed through exhaustively analysing the relative contribution of a range of offender-related factors in influencing reconviction and sentencing outcomes.

To achieve this capability, the developers used the reconviction histories of tens of thousands of offenders who were convicted of at least one criminal offence in the 1980s. The characteristics of those who were reconvicted within a five-year period

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<sup>56</sup> Horwood, J. 2007 *Ethnic Bias in Rates of Access to Home Detention*, unpublished paper for Department of Corrections

<sup>57</sup> Such a study is however being planned by MoJ personnel as part of an "Unintended Consequences of Discretion Research Programme".

<sup>58</sup> "RoC\*RoI" stands for "Risk of Reconviction, Risk of Re-Imprisonment"

were then closely examined. A wide range of possible “predictors” of subsequent reconviction was selected, and then either singly, or in combination with others, run through sophisticated statistical analyses to measure the extent of their predictive power. This extremely laborious, trial-and-error process occurred over many months, and progressively served to identify a set of specific factors that either singly, or in various combinations, could be used to predict the likelihood of future outcomes.

To illustrate the process of factor selection, well-known correlates of risk in convicted offenders include age (younger), gender (male) and number of previous convictions (higher number). Each of these is strongly associated with higher risk of reconviction. These factors showed up as important predictors in the RoC\*RoI model, and were incorporated into the final design. However, more subtle factors were also found to be predictive: for example, length of time spent in custody proved to be strongly predictive. Further, unique combinations of factors were similarly important: for example, the effect of offender age was shown to be mediated by the amount of time spent in custody. A 22 year old offender who had already spent five years in custody might have the same (high) risk as an 18 year old who had spent only one year in prison.

Having completed the statistical analyses of factors, the final algorithm has subsequently been tested against new sets of reconviction data, and shown to be accurate. More recently, the reconviction and re-imprisonment rates of offenders released from prison or commencing new community sentences in 2003/04 were analysed with reference to offenders’ risk scores, and almost perfect correlation was found: very low rates of reconviction or re-imprisonment were found amongst offenders with very low scores, and very high rates amongst high-score offenders (see Table 10, p. 40 of the Department of Corrections 2004/05 Annual Report).

The developers of RoC\*RoI examined ethnicity as a potential predictor of reconviction, and initially found it to contribute an additional, though small, degree of predictive power. This was demonstrated when, for testing purposes, ethnicity was set to “0” in the model, but overall accuracy reduced by just 2%. However, the model was subsequently updated, using more recent reconviction history data, to ensure that risk scores for reconviction and re-imprisonment were aligned to current conviction and sentencing frequencies. When this was done, it was found that removing ethnicity entirely from the model could be done without any measurable loss in accuracy.

Findings from this recent re-calibration of RoC\*RoI have important implications for the current question of whether disproportionate representation of Māori within criminal justice statistics is reflective of bias. On the basis of the RoC\*RoI data it can reasonably be deduced that, following a reconviction, the likelihood that an offender will be sentenced to a term of imprisonment, rather than a community-based sentence, is not significantly affected by the offender’s ethnicity. That is, in the case of offenders of different ethnicity, where all else is equal (for example, seriousness of current offence, number of previous convictions, number of previous prison terms, etc), equivalent sentencing outcomes can be expected.

## **2.6 Summary and Conclusion**

In the volume of individuals initially apprehended for criminal offending, and consequently serving community and prison sentences, Māori feature in greater numbers than could be expected from their numbers in the general population. Much of this apparent ethnic difference is able to be shown to be related to other factors which validly apply, equally, to all ethnicities – factors such as previous offending history.

However, as described in Section 2 of this report, a number of studies have shown evidence of some of greater likelihood, associated only with ethnicity, for Māori offenders to:

- have police contact
- be charged
- lack legal representation
- not be granted bail
- plead guilty
- be convicted
- be sentenced to non-monetary penalties
- be denied release to Home Detention.

Compelling evidence of bias has not been identified at every step of the criminal justice decision-making process, and much of the disparity is small and open to other possible explanations. Māori disproportionality in criminal justice statistics may, to some extent at least, be a cumulative effect, whereby the interactions of relatively small individual effects produce significant disparities at the national level. In other words, relatively minor biasing influences may successfully combine to produce, at the end point, quite substantial effects. However, it cannot realistically be suggested that current differences in the rate of imprisonment could arise solely from such effects.

There appears to be sufficient evidence to conclude that ethnicity, in and of itself, plays some small but tangible role at key decision making points, in ways that are not intended by the justice system. Bias can, however, potentially be a misleading term: as commentators who have extensively researched this area argued, bias “often results, not from deliberate discrimination, but from unconscious prejudice and stereotyping and as an unintended consequence of *prima facie* reasonable attitudes, practices, and decisions”<sup>59</sup>.

It is appropriate also to repeat Horwood’s conclusion cited above on disparity in Home Detention outcomes, that even small “bias” effects might have significant impacts, and should at least be monitored. At some points in the system, more thorough and up-to-date investigation is likely to be required, and may well suggest useful changes to policy or practice.

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<sup>59</sup> Cavadino, Michael and Dignan, James. 1992. *The Penal System: An Introduction*. London: SAGE Publications, p.225.

## **3.0 Early life environmental influences**

### **3.1 Introduction**

The ethnic disparities discussed above, either singly or in combination, are unlikely to be sufficiently large to account for the scale of over-representation of Māori in the criminal justice system. Were Māori on average no more or less likely to engage in criminal behaviour than their fellow (non-Māori) citizens, the degree of bias operating in criminal justice processes would have to be on an extraordinary scale. The following section of this report will examine the evidence for the notion that Māori over-representation in criminal justice statistics results from disproportionately high exposure to early influences and social-economic factors which in turn raise the risk of later involvement in criminal activity.

The approach taken in exploring this explanation may be summarised as follows: a great deal of research evidence supports the conclusion that children who experience certain types of developmental circumstances during childhood, or display certain behavioural characteristics, are at higher risk of going on to behave criminally during adolescence and adulthood. It is of interest therefore to review evidence which reveals the extent of differences in such characteristics when analysed by ethnicity. If over-representation of Māori children in these at-risk sub-groups is similar in scale to that which is found in current criminal justice statistics, then it might reasonably be inferred that the latter is related to the former.

#### **3.1.1 Early risk factors**

Research over the last three decades has resulted in a wealth of knowledge explaining why it is that some young people commence on a pathway that leads to persistent offending, while most do not do so, or do so only trivially.

The childhood antecedents of chronic adult offending include the following key factors:

- *Family structure, context, and processes*: examples include being born to young mothers, a lack of family stability, a family environment in which conflict and violence is common, and being exposed to harsh punishment.
- *Individual characteristics of the developing child and adolescent*: these include factors affecting the child's neurological development, and psychological temperament.
- *Educational participation, engagement and achievement*: factors here include school absence, early leaving age and failure to achieve qualifications.
- *The emergence of developmental disorders*: included here are childhood conduct disorder, early onset of antisocial behaviour, and abuse of alcohol and other substances during adolescence.

In this section, each of these factors is examined in turn along with available data on the extent to which Māori are disproportionately represented.

## **3.2 Family structure, context and processes**

### **3.2.1 Very young parents**

A great many studies<sup>60</sup> indicate that births to mothers under the age of 18 are associated with poorer long-term outcomes for those infants. While this factor in and

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<sup>60</sup> Summaries of such work can be found in *Children and Young People: Indicators of Wellbeing in New Zealand* (2004) Ministry of Social Development, Wellington. An international summary can be found in the Oxford Handbook of Criminology (1997).

of itself is not necessarily “criminogenic”, it appears to be so strongly when associated with other social disadvantage factors. Arguably, traditional models of Māori family which were not solely focused on the biological parents alone may well have been better able to support young mothers.<sup>61</sup> Nevertheless, in contemporary New Zealand society the social circumstances of young mothers tend to feature poor educational attainment, reliance on welfare support, exclusion from paid employment, and disrupted home environments. These in turn contribute to a chain of adversities which can affect the child’s development, resulting in behavioural and learning problems, and ultimately delinquency and crime. Infants born to young mothers are also likely to have low birth weight - itself a risk factor for future disadvantage (see below).

Māori are over-represented in the figures for young motherhood: Table 3 below shows that in each year from 1996 to 2003, the rate of births to young Māori women was at least four times higher than that for non-Māori.

**Table 3: Births to mothers under 18 years 1996-2003 by ethnicity (rate)**

Year	Number	Rate <sup>a</sup>	Number	Rate <sup>a</sup>
	Māori	Māori	Non-Māori	Non-Māori
1996	811	48.3	620	9.9
1997	869	52.9	546	8.6
1998	744	46	501	7.9
1999	714	44.3	510	8.0
2000	670	40.3	505	7.9
2001	669	38.7	500	7.7
2002	638	35.3	507	7.7
2003	744	39.4	536	7.9

<sup>a</sup>Per 1,000 females aged 15-17

Ministry of Social Development (2004) *Children and Young People: Indicators of Wellbeing in New Zealand*

The interaction between the individual and his or her environment begins well before birth, with the developing foetus significantly affected by the circumstances and lifestyles of the parent(s).

Foetal neurological development can be disrupted during pregnancy through poor nutrition and exposure to toxins (e.g., via maternal smoking or substance abuse). Factors such as these can also result in complications during delivery, which may in turn result in brain injuries. Subsequently, neural development after birth is affected by the degree of nutrition, stimulation, and affection. Children with poor neurological development tend to exhibit difficulties in listening and attention, language, problem solving and memory, problems in organisation of behaviour, and impulsivity.

Although not exclusively associated with young age of mother, low birth weight is associated with adverse outcomes. Similarly as for young motherhood, risk factors associated with low birth weight include low maternal educational status, being a

<sup>61</sup> A detailed discussion of traditional models, as well as some of processes which have weakened them, can be found at <http://www.justice.govt.nz/pubs/reports/2002/guardianship-custody-access-maori/chapter-7b.html>.

single mother or living with an abusive partner, maternal smoking and/or alcohol use, poor maternal nutrition before and during pregnancy, and lack of pre-natal care.

Māori experience a relatively high percentage of low birth-weight babies<sup>62</sup>. In 1999, almost one-third of all low birth-weight infants were Māori, with a rate of 75 per 1,000 live births, compared to 49 for Europeans and “others”<sup>63</sup>. In 2001/02 the rate of low birth weight for babies born to Māori mothers had increased slightly (to 79%) while the rate overall was reducing.

In summary, the over-representation of Māori in teenage births, low birth-weight statistics, maternal smoking, and socio-economic deprivation, means that Māori infants are likely to be subject to higher risks of neuro-developmental difficulties.

### 3.2.2 Childhood economic disadvantage

The relationship between socio-economic disadvantage and increased risk of later persistent offending is also well-established<sup>64</sup>. Table 4 below shows a greater proportion of Māori than non-Māori suffer socio-economic disadvantage, based on the presence of indicators such as low income, receipt of state benefit, crowding, lack of access to a car, and lack of telephone access.

**Table 4: Socioeconomic indicators by ethnic group (%)**

Indicator	Māori	non-Māori
School completion (6th form cert. or higher)	32.5	50.8
Unemployed, age 15+ years	11.4	4.0
Total personal income less than \$10,000, 15+ years	30.1	24.1
Receiving means-tested benefit 15+ years	30.7	11.5
Living in household without telephone access, 15+ years	12.5	6.1
Living in household without motor vehicle access, 15+ years	11.9	5.6
Not living in own home, 15+ years	64.8	39.1
Household crowding, all age groups	21	6.9

Ministry of Health. <http://www.Māorihealth.govt.nz/moh.nsf/indexma/socioeconomic-indicators>

### 3.2.3 Family characteristics

Factors such as parents having a criminal history or being criminally active<sup>65</sup>, low standards of care and supervision of children<sup>66</sup>, home environments in which there is

<sup>62</sup> *Child, Youth & Health Toolkit* (2004) Ministry of Health, Wellington (p.56).

<sup>63</sup> *Children in New Zealand: report on cross-sectoral outcome measures and targets*. Ministry of Health 2001, Wellington. <http://www.msd.govt.nz/documents/publications/sector-policy/childreninnz.pdf>.

<sup>64</sup> Boyle Michael H & Lipman Ellen I (2002) Do places matter? Socioeconomic disadvantage and behavioural problems of children in Canada. *Journal of Consulting & Clinical Psychology*, Vol. 70, No. 2, 378-389.

<sup>65</sup> See, for example, Farrington David P (1996), ‘Individual, family and peer factors in the development of delinquency’. in Hollin C R & Howells K (eds.) *Clinical Approaches to Working with Young Offenders*. John Wiley & Sons Ltd.

<sup>66</sup> *Ibid.*

a high level of interpersonal conflict,<sup>67</sup> frequent changes of mother's partner, and domestic violence, have similarly been identified as contributing to the emergence of persistent offending in the children raised in such environments.<sup>68</sup>

Another factor for which the link to later criminality in children is particularly well-established by research is harsh and inconsistent discipline<sup>69,70</sup>.

Some children, not victims themselves of severe physical punishment or violence, may nevertheless be affected by witnessing violence in the home. Fergusson and colleagues examined the effects of childhood exposure to violence between their parents<sup>71</sup>. They found that children exposed to inter-parental violence are at increased risk of mental health problems, substance abuse, and criminal offending.

Although data is not available on all of these factors, what data exists suggests that Māori children are indeed over-represented on these kinds of variables. Key findings include the following:

- surveys of crime victims in New Zealand have found that Māori women are significantly more likely to be repeat victims of domestic violence than were women from other ethnic groups<sup>72</sup>;
- Māori children are disproportionately represented in national statistics for maltreatment and injury. The rate of hospital admissions for intentional injury for Māori children aged under five between 1994 and 2004 was consistently about twice the rate than that of children of other ethnic groups<sup>73</sup>. Death from intentional injury also occurs at a significantly higher rate among Māori than non-Māori<sup>74</sup>;
- Child, Youth and Family rates of substantiated notifications of child abuse or neglect are considerably higher for Māori than non-Māori (Figure 6 below);
- Māori children are more exposed to the risk of fatal child maltreatment associated with having a step-parent, as Māori children are twice as likely as New Zealand European to be raised in a family situation where unrelated persons - such as a new partner to the mother - are resident<sup>75</sup>. In the five years from 1999 to 2003, Māori children died from maltreatment at an average annual

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<sup>67</sup> Ibid.

<sup>68</sup> Lewis, Dorothy Otnow, Yeager Catherine A, Lovely Richard, Stein Abby & Cobham-Portorreal (1994) A clinical follow-up of delinquent males: ignored vulnerabilities, unmet needs, and the perpetuation of violence. *Journal of the American Academy of Child and Adolescent Psychiatry*, 33, 4: 518-528.

<sup>69</sup> Caspi Avashalom, Moffitt Terrie E, Silva Phil, Stouthamer-Loeber, Magda, Kreuger Robert F, & Schmutte Pamela S (1994). Are some people crime-prone? Replications of the personality-crime relationship across countries, genders, races, and methods. *Criminology* Vol. 32 No. 2 pp 163- 195.

<sup>70</sup> Stewart Anna, Dennison Susan, & Waterson, Elissa. (2002) Pathways from child maltreatment to juvenile offending. *Trends & Issues in Crime & Criminal Justice*, No. 241, Australian Institute of Criminology.

<sup>71</sup> Fergusson David M & Horwood L John (1998) Exposure to interparental violence in childhood and psychosocial adjustment in young adulthood. *Child Abuse & Neglect*, Vol. 22, No. 5, 339-357.

<sup>72</sup> Morris A & Reilly J (2003) *New Zealand National Survey of Crime Victims 2001*. Ministry of Justice, Wellington.

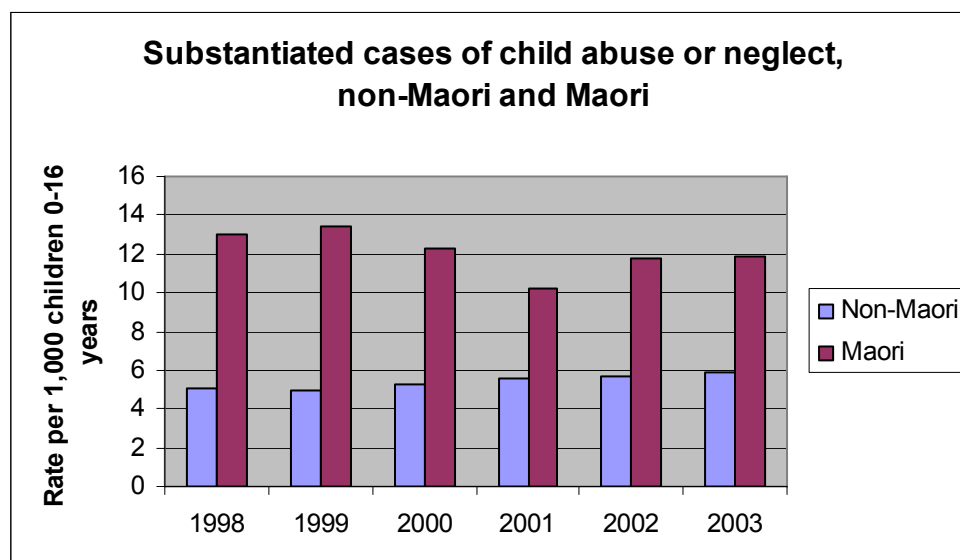
<sup>73</sup> *Children at increased risk of death from maltreatment and strategies for prevention*. (2006) Report of Child, Youth & Family, Wellington.

<sup>74</sup> Ibid.

<sup>75</sup> Children living in households with an adult unrelated to them were almost 50 times as likely to die of an inflicted injury as children living in households with two biological parents.

rate of 1.5 per 100,000 children, more than twice the rate for children of other ethnicities<sup>76</sup>.

Figure 6: Substantiated cases of child abuse or neglect, by ethnicity<sup>77</sup>



Ministry of Social Development. *The Social Report 2004*

### 3.3 Individual characteristics of the child

#### 3.3.1 Conduct disorder

Conduct disorder is the term for a cluster of antisocial behaviours in which the key features are repetitive and persistent violation of age-appropriate social norms and the rights of others, and typically results in illegal behaviour<sup>78</sup>. Factors associated with the emergence of conduct disorder include parental history of criminality, substance abuse, and/or psychiatric disorder, marital discord, “hostile rejecting parenting”, and a lack of supervision of the child. Conduct disorder is highly predictive of later criminality, particularly for males<sup>79,80</sup>.

About five percent of 11 year olds meet the diagnostic criteria for conduct disorder. While an ethnic breakdown of that statistic is not available, among 16-18 year olds in New Zealand, the rate among Māori is 11.3% and in non-Māori, 4%<sup>81</sup>.

### 3.4 Educational participation, engagement and achievement

#### 3.4.1 Participation

Poor educational outcomes are known to be linked to later criminality, although the evidence suggests these factors to be parts of a wider process, rather than a discrete causal factor. Nevertheless, the evidence is sufficient to suggest an increased risk. For example, an unusually high proportion of sentenced prisoners are found to have

<sup>76</sup> Child, Youth & Family (2006) Wellington. *op.cit.* p.5.

<sup>77</sup> *The Social Report 2004*, Ministry of Social Development, Wellington.

<sup>78</sup> *Working with children and young people with mental health problems, and their families and whanau* (2002) Child, Youth and Family, Wellington.

<sup>79</sup> Fergusson David M & Horwood L John (2002) Male and female offending trajectories *Development and Psychopathology, 2002: 14: 159-177*.

<sup>80</sup> White Jennifer L, Moffitt Terrie E, Earls Felton, Robins lee & Silva Phil A. (1990) How early can we tell? Predictors of child conduct disorder and adolescent delinquency. *Criminology*, Vol. 28, No.4 pp 507-533.

<sup>81</sup> Child, Youth & Family (2002), *op.cit.*



left school at a young age. Studies of prisoners (e.g., the 2003 prison census<sup>82</sup>) recorded that 45% of sentenced prisoners had left school before reaching Year 11, which is three times the rate for the general population<sup>83</sup>. Similarly, only 16% of prisoners had a school qualification such as School Certificate or higher<sup>84</sup>, which is considerably lower than the general population figure.

A recent review of evidence about retention in school indicated that this factor led to reduced delinquency in young people<sup>85</sup>. Retention rates for age 16 students have decreased, from 86% in 1998 to 80.5% in 2005; for age 17, rates have decreased from 63% in 1999 to 60% in 2005. Rates of retention of Māori students are typically twenty percentage points lower than those of other students at ages 16 and 17<sup>86</sup> (see Appendix: Figures 5.1, 5.2, 5.3). Similarly, the rates for school exemption<sup>87</sup> for Māori students are much higher than for other groups, although rates are rising for all ethnic groups (Figure 7 below).

Figure 7: Early leaving exemption rates by ethnic group (per 1,000 students)

	Māori	Pacific	Asian	NZ European	Total
2000	135.6	53.9	5.5	49.2	64.1
2001	141.8	50.1	5.1	54.5	67.4
2002	154.6	54.2	5.7	55.9	70.8
2003	159	62.8	3.9	55.4	71.4
2004	142.3	55.9	5.8	57	69
2005	158.4	62.4	3.9	54.8	71.4

Ministry of Education, *Early leaving exemptions data cube*.  
[www.educationcounts.edcentre.govt.nz](http://www.educationcounts.edcentre.govt.nz). Accessed 25 October 2006

<sup>82</sup> Harpham David (2004) *Census of Prison Inmates and Home Detainee 2003*. Department of Corrections, Wellington.

<sup>83</sup> Ministry of Education, *Student Participation: retention of students in senior secondary schools*. [www.educationcounts.edcentre.govt.nz](http://www.educationcounts.edcentre.govt.nz) Accessed 25 October 2005.

<sup>84</sup> *Census of Prison Inmates and Home Detainee 2003*.

<sup>85</sup> McLaren Kaye (2000) *Tough is not enough – Getting smart about youth crime* Ministry of Youth Affairs, Wellington.

<sup>86</sup> Ministry of Education, *Student Participation*, op.cit.

<sup>87</sup> School attendance is compulsory for children and young people aged between six and 16, but an exemption can be sought from the Ministry of Education once a student turns 15.

### 3.4.2 Achievement

Leaving school by age 15 inevitably means that the adolescent has no school qualifications. As in most countries, New Zealanders with no qualifications tend towards both unemployment and low median incomes.<sup>88</sup> Research shows that Māori males are over-represented amongst unqualified school leavers<sup>89</sup>. The table below illustrates that low educational achievement is associated with low socioeconomic status (SES) across all ethnicities. Māori are greatly over-represented in the lowest SES group, as are Pacific and Asian, while NZ Europeans are under-represented.

**Table 5: School leavers with little or no formal attainment, by ethnic group and SES, 2005 (%)**

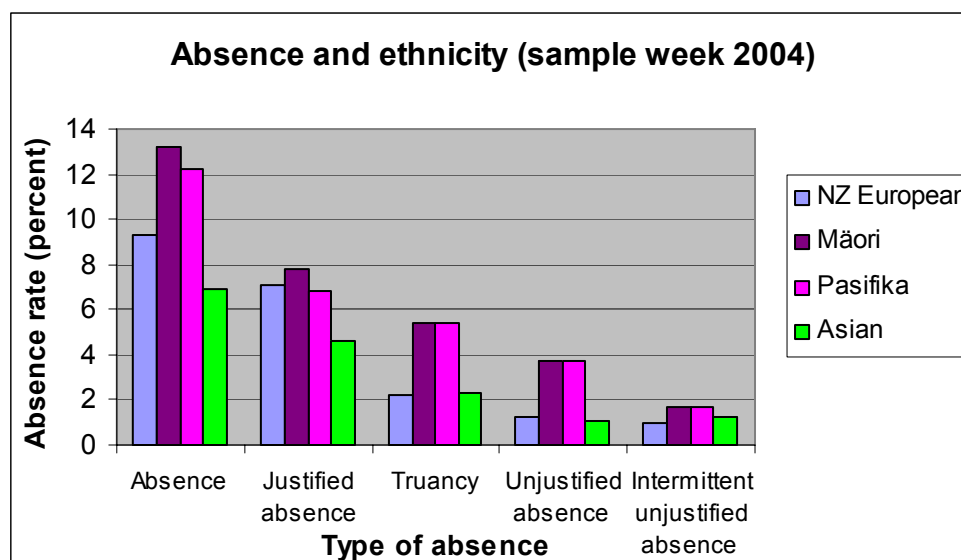
	Māori	Pacific	Asian	European	Total
1 (low SES)	28.2	16.7	17.3	20.4	22.9
2	26.1	16.5	6.7	13.9	17.2
3	22.3	12.9	6.3	11.1	13.2
4	22.1	13.2	5.0	9.5	11.0
5 (High SES)	12.4	9.1	1.9	4.8	5.1

Ministry of Education, [www.educationcounts.edcentre.govt.nz](http://www.educationcounts.edcentre.govt.nz), School leavers with no qualifications

### 3.4.3 Engagement with schooling

The link between schooling performance and later criminality is particularly pronounced in the areas of student truancy, suspensions and expulsion. The following figures again indicate that Māori are unusually likely to feature in such statistics.

Figure 8: School absence by ethnicity (sample week 2004)<sup>90</sup>



Truancy not only means students miss out on education but it also creates opportunities for unoccupied and unsupervised time, often with peers. Māori are

<sup>88</sup> Ministry of Education, Early Leaving Exemptions. [www.educationcounts.edcentre.govt.nz](http://www.educationcounts.edcentre.govt.nz) Accessed 25 October 2005.

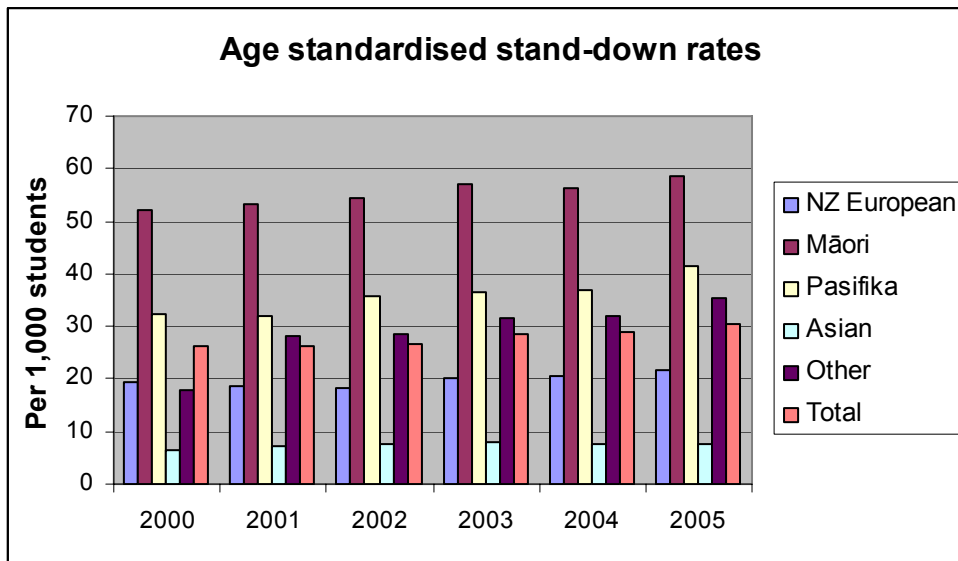
<sup>89</sup> Hill, J. (2003) *Young People not in Education, Training or Employment: Key Indicators*. Ministry of Social Development Youth Transitions Report Series, Wellington.

<sup>90</sup> Ministry of Education Research Division (2005) *Attendance, absence and truancy in New Zealand schools in 2004*.

more than twice as likely to be referred to truancy services as students from any other ethnic group. A consistent finding in the truancy surveys is that low-decile schools, which are most commonly located in socioeconomically disadvantaged areas, have the highest truancy rates<sup>91</sup>.

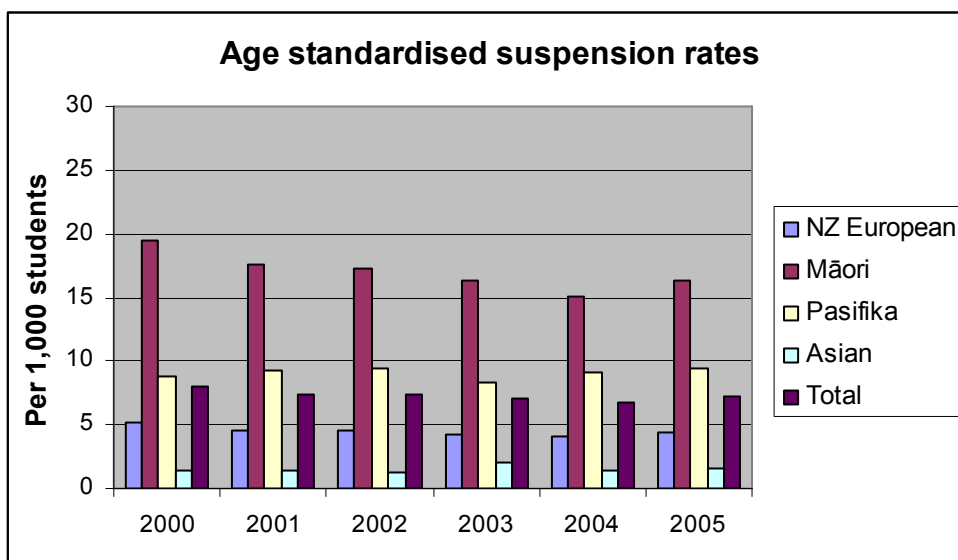
Stand-downs and suspensions are forms of temporary removal of students from school for disciplinary reasons. Stand-downs are time-limited, with right of return to school a given. Suspensions on the other hand may result in permanent exclusion from school, or return under special conditions. The figures below show that these measures are applied more frequently to Māori students.

Figure 9: Stand-down rates 2000-2005 by ethnic group (per 1,000 students)



Student Engagement 2005. Ministry of Education, [www.educationcounts.edcentre.govt.nz](http://www.educationcounts.edcentre.govt.nz)

Figure 10: Suspension rates 2000-2005 by ethnic group (per 1,000 students)



Student Engagement 2005, Ministry of Education, [www.educationcounts.edcentre.govt.nz](http://www.educationcounts.edcentre.govt.nz)

<sup>91</sup> Fergusson, Swain-Campbell & Horwood (2004), *op.cit.*

Commonly reported reasons (from school staff) for stand-downs and suspensions of students are verbal abuse of teachers, refusal to follow instructions or requests, assaults on other students and, especially for suspensions, use of drugs.

### **3.5 Alcohol and substance abuse**

Estimates of the proportion of prisoners with a diagnosis or history of substance abuse are in the order of 80–90%.<sup>92</sup>

Certain patterns of alcohol or drug use during adolescence are strongly associated with adverse outcomes. These include road traffic injuries, suicide, violence, foetal alcohol syndrome, and a range of serious health problems<sup>93</sup>. A health survey carried out in 2002-2003 showed that Māori adults were more likely to engage in “hazardous drinking” patterns (defined as “... *drinking that carries a high risk of future damage to physical or mental health*”)<sup>94</sup>. Similar findings have been obtained with Māori youth: when they drink, they tend to drink very heavily<sup>95</sup>. Regular marijuana use is also significantly more prevalent among Māori adults than among non-Māori adults.<sup>96</sup>

### **3.6 Other findings from longitudinal studies**

In seeking to understand the trajectory that leads to adult criminality, the longitudinal studies referred to above offer important additional insights. These studies, along with a large amount of overseas research, reveal a distinct pathway or “trajectory” that consistently increases the risk of offending by young people. Both studies followed large cohorts of children - over 1000 children - born within a certain area during a set time period. It is acknowledged that these studies can be criticised because Māori were to an extent under-represented in each (12% of the Christchurch study, and 11.3% of the Dunedin study) and the local social context is not necessarily typical of New Zealand as a whole. However, their value with respect to illuminating childhood and adolescent development, with respect to offending behaviour, is unique.

These two studies have had different but complementary emphases. The Dunedin study tends to examine the psychology of the person, and the Christchurch study tends to focus on the environment. This complementarity is useful for considering the range of outcomes from the interactions of individuals with their environments.

A unique strength of longitudinal studies of this type is their capacity to identify causal relationships, rather than simple correlations or associations. This requires sophisticated statistical analysis, whereby the influence of various factors, which might potentially bear a causal relationship to an outcome, can be selectively “controlled for”, allowing the genuinely causal influences to emerge (similarly as is described above in relation to the Department’s Home Detention study).

A good illustration of this process emerges from the data from the Christchurch study, in relation to Māori involvement with violent offending. Analysis shows that what can at first appear to be a clear and significant relationship between violent offending and being Māori, is in fact more complex, and inseparable from the family background factors described earlier. Table 6 below shows that Māori in the Christchurch longitudinal study were more likely than non-Māori to have committed a

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<sup>92</sup> *Ombudsmen’s Investigation of the Department of Corrections in Relation to the Detention and Treatment of Prisoners*, Dec 2005, p40.

<sup>93</sup> Ministry of Health (2004) *An Indication of New Zealanders’ Health 2004*.

<sup>94</sup> *Ibid*.

<sup>95</sup> Alcohol & Liquor Advisory Council (2005) *New Zealand Drinking Trends*, <http://www.alac.org.nz/NZStatistic.aspx?PostingID=1187>.

<sup>96</sup> Ministry of Health (2004). *An Indication of New Zealanders’ Health 2004*.

single violent offence, or repeated violent offending, and/or to have a Police record for violence. Statistical analysis showed that the probability of these differences happening by chance is extremely low, and Māori appeared to be involved in violent offending at two to three times the rate of non-Māori.

**Table 6: Violent offending and involvement in violence among Māori and non-Māori study participants at age 18 (%)**

	Māori (n=96)	Non-Māori (n=929)	Relative risk	p
Any violent offence (17-18 years)	33.3%	17.6%	1.9	<.001
Repeated (3+) violent offences (17-18 years)	19.8%	8.4%	2.4	<.001
Police record for violence (ever)	7.9%	2.8%	2.9	<.05

*Source: Christchurch Health and Development Study*

However, when the specific influences of social and family factors were examined, ethnicity of the young person *ceased to function as a significant explanatory variable*. In other words, family circumstances (parents' history of problems with alcohol, family history of offending, multiple family problems) and parenting behaviours (use of physical punishment, level of parental care) emerged as the key factors which accounted for the violence in these adolescents<sup>97</sup>. Wherever such factors were recorded in a family - irrespective of ethnicity, or indeed even socioeconomic status - the risk of offending amongst children in those families increased sharply. Such adverse factors often occur together and have a cumulative effect. Section 6 of the Appendix reproduces graphs from analysis of the Christchurch study which illustrate some of the interactions between socioeconomic factors and deviant and criminal behaviour.

The Christchurch study concluded that ethnic differences in violent behaviour were not significant when family and developmental factors were accounted for. The problem appears to be that, for a range of reasons, many Māori young people appear more likely to be exposed to such adversity in their home environments. While Māori are certainly more likely to face disadvantage in terms of socioeconomic status, housing, and education, disadvantages of this type, in and of themselves, do not seem to account for differences in outcomes. What these studies indicate therefore is that many contemporary Māori families are beset by higher levels of family dysfunction and difficulties than are non-Māori<sup>98</sup>. In other words, those life circumstances most often associated with offending are, for a range of reasons, more likely to affect Māori families.

Fergusson's own summary is as follows:

*(I)n broad outline it seems likely that the difficulties and disadvantages faced by contemporary Māori families are likely to represent the end of a long term historical process that has involved many components, including: the pressures faced by, and change in Māori culture and*

<sup>97</sup> Fergusson DM. Ethnicity and interpersonal violence in a New Zealand birth cohort. (2003c) in Hawkins, Darnell F. (Ed.) *Violent Crimes: Assessing Race and Ethnic Differences*. Cambridge; Cambridge University Press, 138-153.

<sup>98</sup> Fergusson (2003c) *op. cit.*

*language following colonisation, the loss of land and economic power base experienced by Māori, increasing urbanisation of Māori and the general reduction of status and prestige (mana) of Māori people within the context of New Zealand society.*

#### **4.0 Overall summary and conclusions**

As stated initially, this report has focused generally on empirically based research. The reason for this arguably narrow approach was to maintain an evidence based approach, focused for policy development purposes. The limitations of this approach are acknowledged, and at various places the discussion has noted the possibility of wider contextual aspects which should be taken into account. Much of the weight of that context concerns cultural differences, in particular a distinctly Māori approach which seeks, demands even, the need to look beyond the individual to social and cultural circumstances and surroundings. The preface from a Te Puni Kokiri report on Māori Family Violence describes this well:

*When we embarked on this project we thought that its direction would be relatively clear. As we progressed, issues became more complex and divergent than anticipated. We discovered that there are elements of truth to be found in all the theories about men's use of violence. However, most of these theories, developed outside a Māori context, focused on the rehabilitation of individual men. Every person we interviewed, and our own experience in the field, challenged the appropriateness of an individualised response for Māori to the battering of women.<sup>99</sup>*

This is a methodology which does not relate readily to most empirical research techniques, which focus on individuals in order to be precise and isolate elements of a situation. In particular, it does not sit well in the research context of a western criminal justice system that is based on a fundamental principle of individual responsibility and which, in assessing guilt, deliberately seeks to be “blind” to much of the accused person’s personal and social circumstances.

Therein may lie some of the answer to the problem of Māori over-representation in the criminal justice system. The strength of the argument for a less individualised approach comes from the multifaceted nature of the issues involved, which go well beyond individuals, to their context and their history. This approach demands attention, even if it does not give answers in a form recognizable or readily usable within current justice sector processes. It would also demand a response well beyond the ability of government agencies alone to deliver.

This report has endeavoured to answer the question: when Māori make up just 14% of the national population, why do they feature so disproportionately in criminal justice statistics - 42% of all Police apprehensions, and 50% of the prison population?

The greatest weight of the answer is quite straightforward: when a range of measures of social and economic disadvantage are taken into account, Māori ethnicity recedes as an explanation for over-representation. The level of Māori over-representation in the criminal justice system is very much what could be predicted given the combination of individuals’ life experiences and circumstances, regardless of ethnicity. In this sense, Māori over-representation is not a “Māori” problem at all.

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<sup>99</sup> Balzer R, Haimmona D, Henare M, Matchitt V. 1997. *Maori Family Violence in Aotearoa*. Te Puni Kokiri, Wellington.

This raises a question far beyond the scope of the criminal justice system: why do Māori so disproportionately experience adverse life experiences and circumstances?

For a range of social and historical reasons, many Māori appear to be unusually prone to experiencing such circumstances. This does not imply that ethnicity in and of itself is the key to preventing and managing offending behaviour. Rather, it implies that the access of Māori to the key services of health, social support and education, and the effectiveness of those services for Māori, is of crucial importance in reducing disadvantage and the problems it confers, including heightened risk of criminality.

It is acknowledged that Pacific people also face social disadvantage in New Zealand yet, while over-represented in criminal justice statistics, do not appear to be so to the same extent as Māori. There are several considerations relevant to this point. While Pacific people are indeed likely to feature disproportionately on a number of measures of social deprivation, this is less so in relation to certain specific predictors of offending risk, such as early school leaving. Pacific people also tend to demonstrate different patterns of offending from both European and Māori offender groups. Then too, their history of settlement in New Zealand, the particular family and community dynamics that ensue, as well as the fluidity of movement between their island states and this country<sup>100</sup>, make them a distinct social group, and affects the relationship between actual and recorded offending in different ways. To attempt an analysis that essentially conflates two distinct social and ethnic groups runs the risk of masking patterns and trends.

The focus here, in analyzing Māori over-representation as a priority, arises because of the urgency created by the sheer volume of Māori offenders. When an ethnic group comprising under 15% of the population is over-represented in crime to the extent found, a very large effect is registered on community sentence and prison numbers, and on the communities from which the offenders have come. An analysis of Pacific offending would indeed be worthwhile but was not within the scope of the present work, for the reasons given.

Māori have, historically, not been well-served by the policy “settings” of Government, resulting in high levels of exposure to the risk factors described above. Despite subsequent efforts of public sector agencies to align their services with the needs of Māori over the last two decades, clear disparities remain. Nonetheless, the continuation of policy targeting the needs of disadvantaged and dysfunctional families is vital. Co-ordination and collaboration is required – within government and with communities and community based organisations.

Nevertheless, there remains a proportion of the question of Māori over-representation that the criminal justice system must address as its own. Analysis of data from apprehension through prosecution to conviction and finally sentencing confirms that Māori are more likely to be apprehended and more severely punished than non-Māori. As stated above, much of this difference is explicable for reasons that relate to disadvantage rather than ethnicity – but at key stages there is evidence of a degree of over-representation that relates to ethnicity.

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<sup>100</sup> It is sometimes argued that the relatively low rates of reconviction and re-imprisonment observed amongst Pacific offenders in part may result from the practice of families sending young Pacific offenders home to their island of origin “to straighten them out”. Commentary on the recent riots in Tonga supported this possibility – many rioters are alleged to belong to a street gang known as the ‘Deportees’ – people who have been sent back to Tonga after having been deported from prisons in the United States, Australia, and New Zealand. Simon Manning (2006) *State of It: Tonga faces Crossroad*, <http://www.scoop.co.nz/stories/HL0611/S00412.htm>.

Analysis of apprehensions statistics and consideration of the processes leading to apprehension and arrest suggests that apprehension statistics do not directly reflect actual offending behaviour of Māori in the community. Instead there is evidence of a higher probability of Māori offenders being subject to criminal apprehension, and at a younger age. With respect to the conviction and sentencing data however, the available evidence indicates that other factors - particularly seriousness and history of offending - account for most of the observed ethnicity-related differences in the data. However there are signs of small effects at key points, which may well accumulate into a significant effect. There appears to be an issue around the higher than average rates at which Māori appear to plead guilty to offences, as well as lower levels of diversion and entries of “no plea”, which raise questions surrounding access to adequate legal representation at key stages.

As has been repeatedly stressed above, the two perspectives (justice system bias and social disadvantage/dysfunction) are by no means mutually exclusive, and it must be accepted that both offer important explanations for the current state of affairs, and suggest viable directions for policy development. Indeed, it would seem highly likely that an interaction between the two does in fact occur, where the operation of one set of processes makes the other more likely. For example, early environmental influences may predispose individuals towards certain types of behaviour, which in turn raises the risk of Police involvement. The “profiling” effect discussed in section 2.1.1 above then increases the likelihood that any individual instance of offending will be detected, resulting in the more rapid accumulation of an official offending history than someone else who is offending to the same extent but has not yet come to official attention.

With respect to options for policy intervention to address the over-representation of Māori in social groups at high risk of later offending, the material above describes a distinct “pathway”, in which multiple risk factors, including individual characteristics, family experiences, social disadvantage, educational underachievement, and use of alcohol and drugs, combine to raise the risk of later criminal involvement. These policy areas are the context, rather than the primary focus, of the criminal justice sector agencies. As this report has shown, a trajectory towards offending can begin early in life, and it is this point at which intervention is most likely to be effective in reducing the risk of offending for the most vulnerable.

With respect to early intervention, the agencies primarily concerned with the criminal justice sector do have a key role to play in preventing re-offending through rehabilitation and re-integration of youth and adult offenders. There is also an important contribution to be made by criminal justice agencies in recognising that the suspects, offenders, and inmates being dealt with are also family and community members – sons and daughters, siblings, whanau and – critically – often parents themselves. Greater recognition of these relationships and responsibilities by criminal justice sector agencies, and co-operation and collaboration with Māori communities and the government and non-government agencies primarily responsible for early intervention activities, could help to reduce the reinforcing of disadvantage which can occur as an unintended consequence of criminal justice policy and practice.



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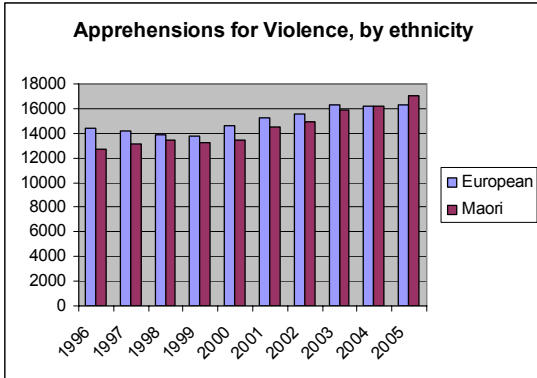
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## Appendix of statistics

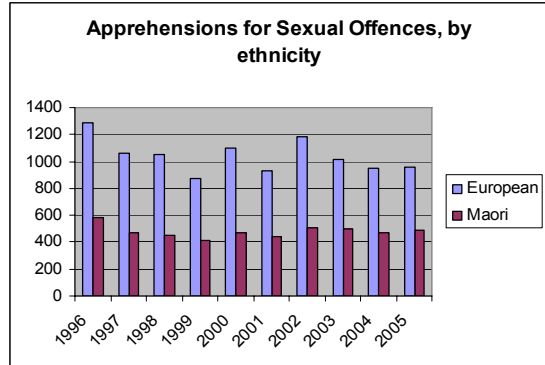
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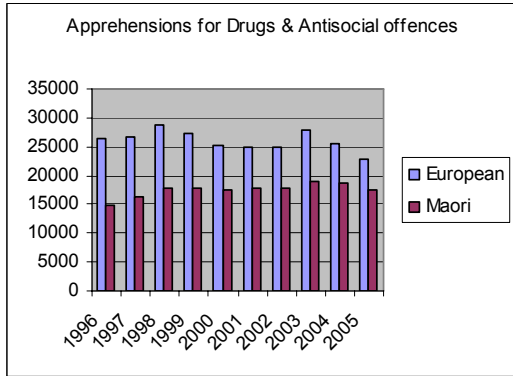
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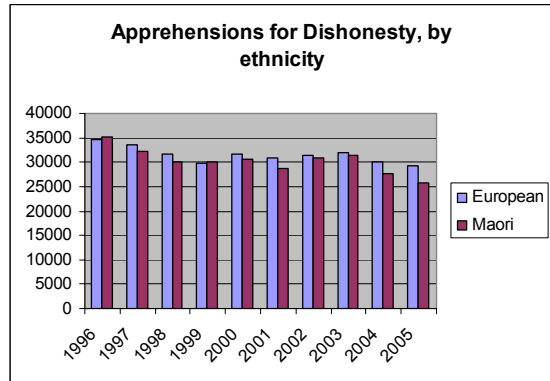
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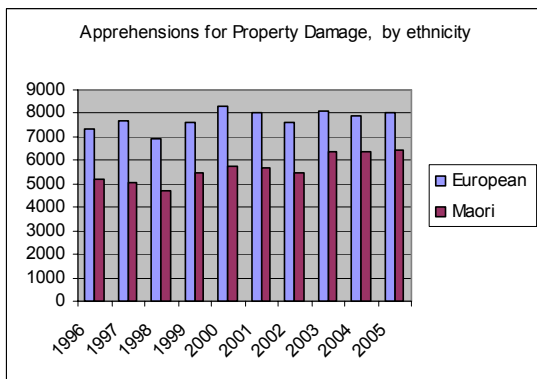
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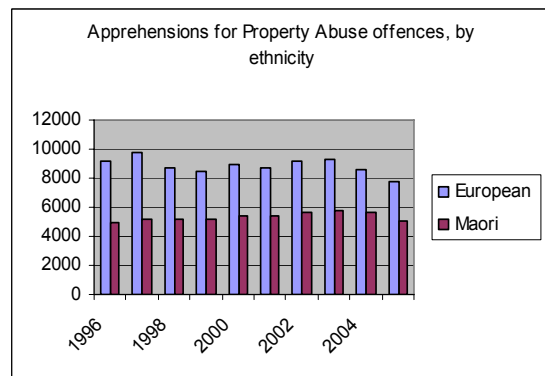
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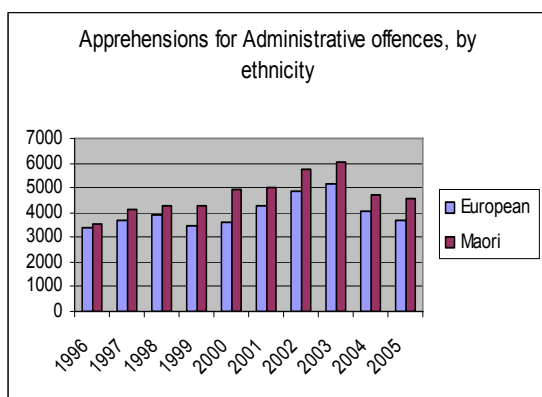
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#### 1.6 Property abuse



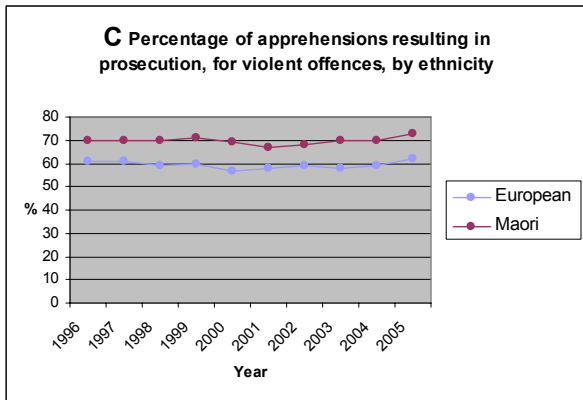
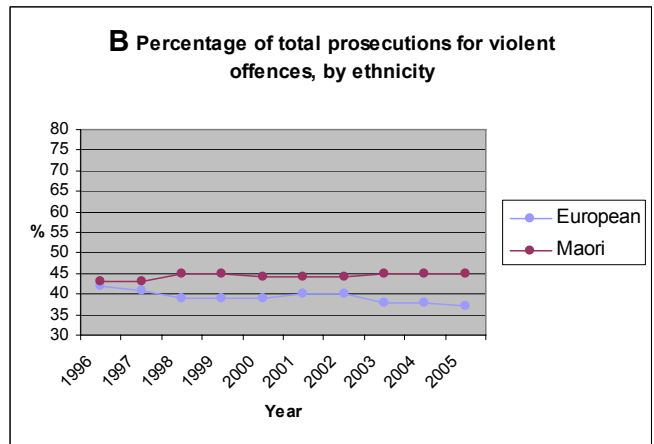
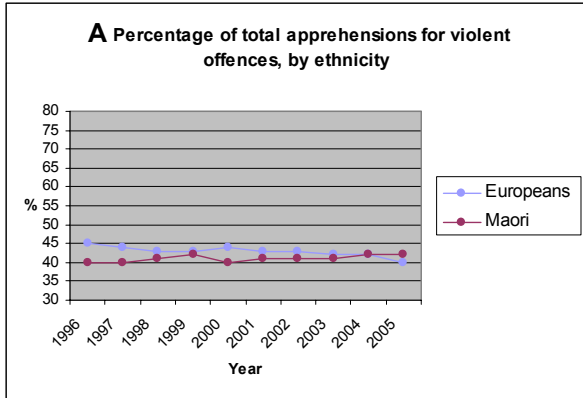
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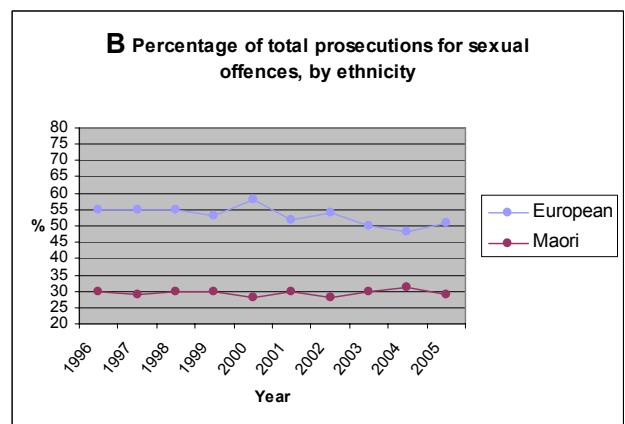
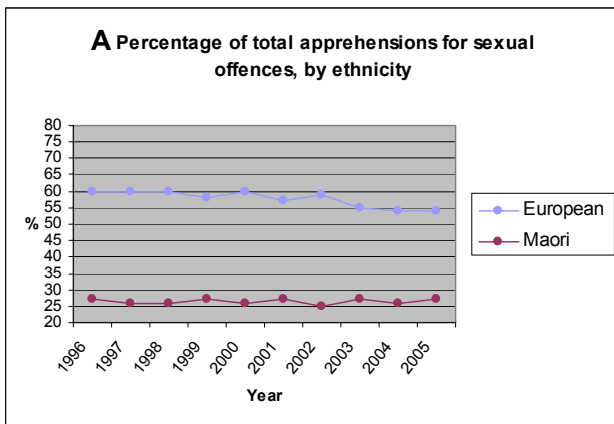
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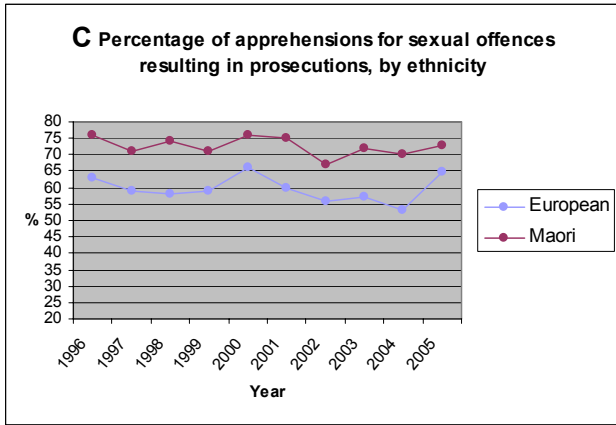
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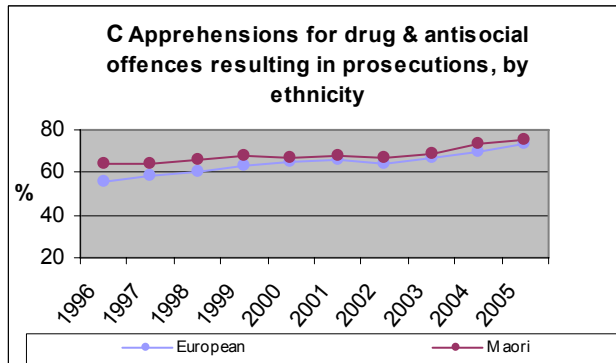
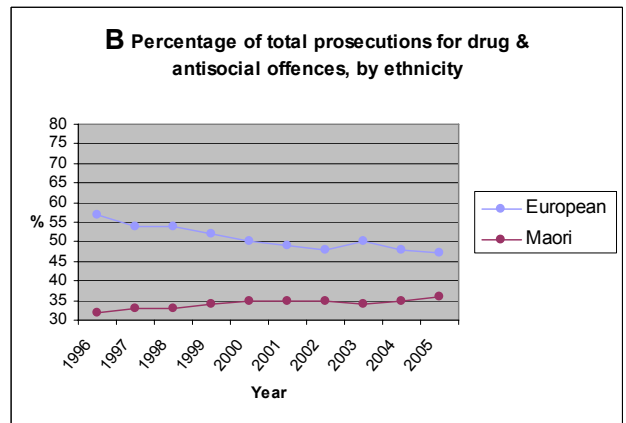
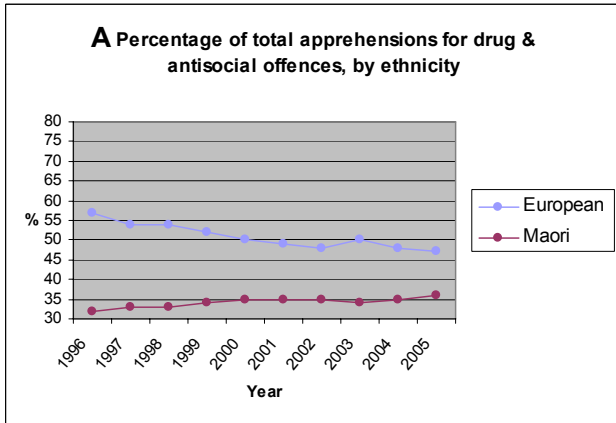


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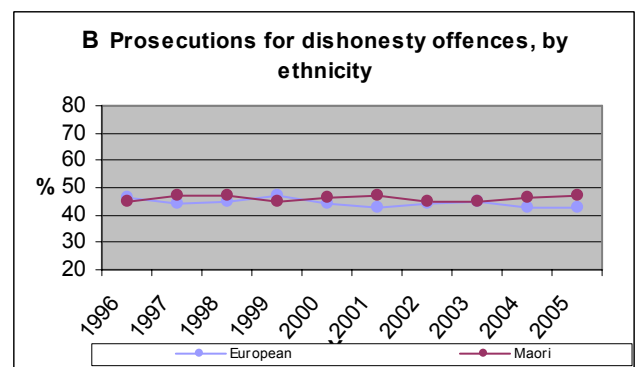
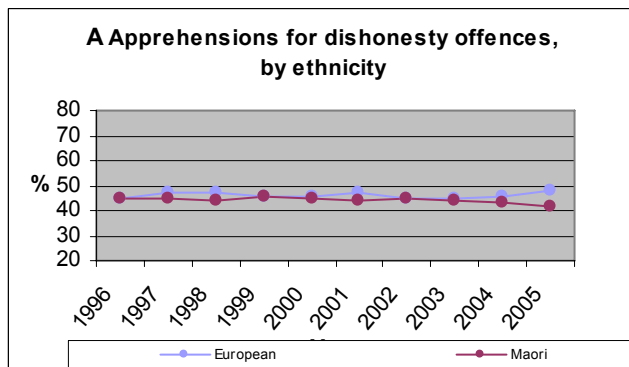




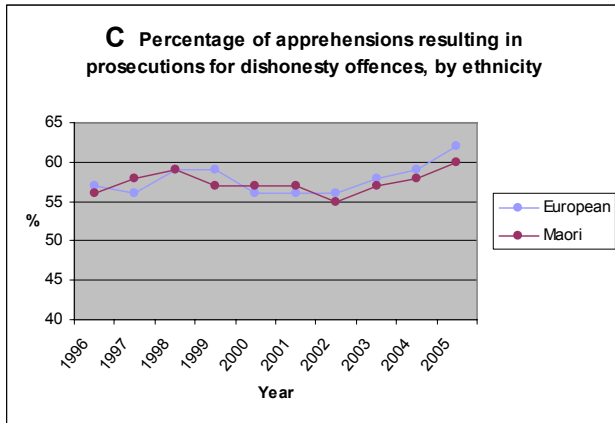
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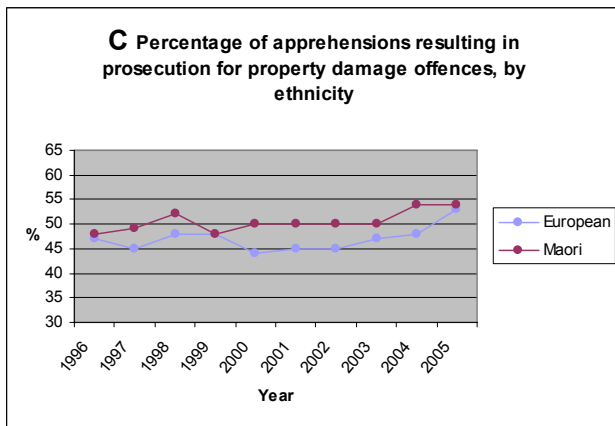
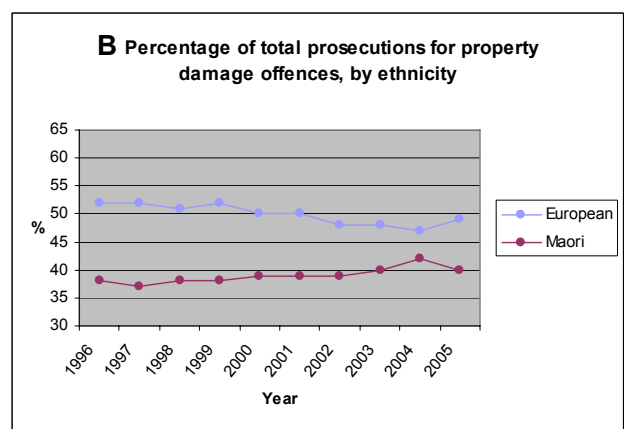
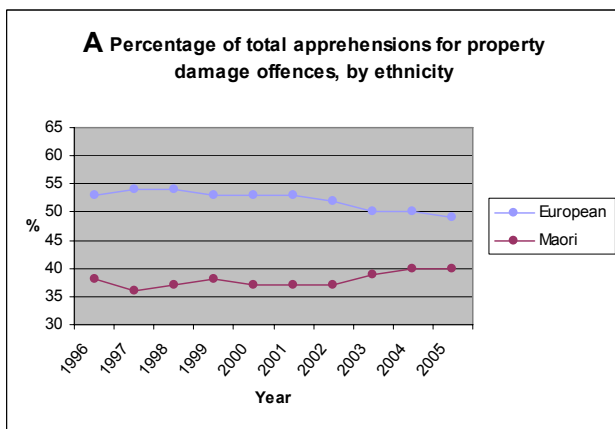
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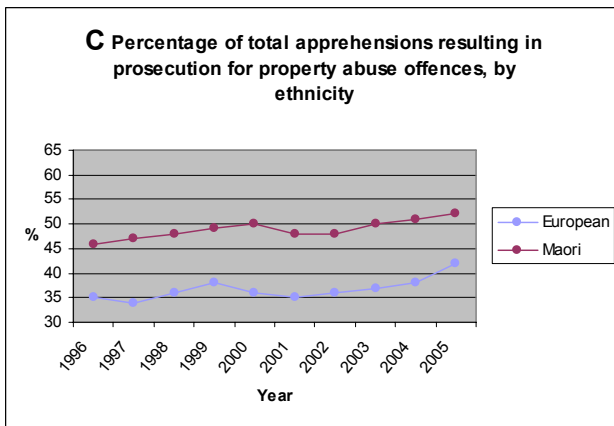
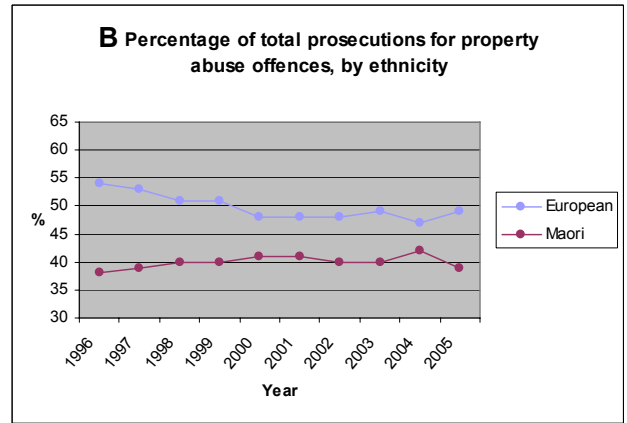
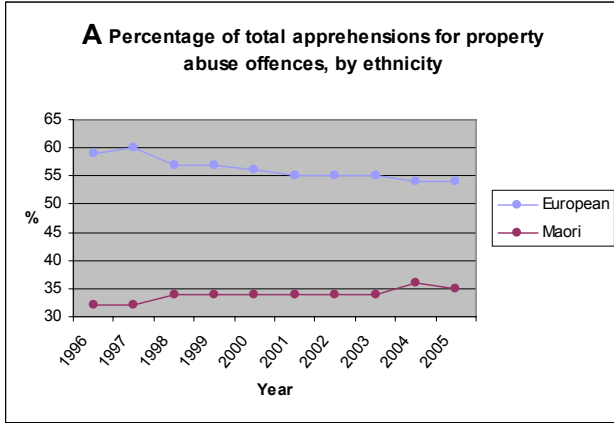




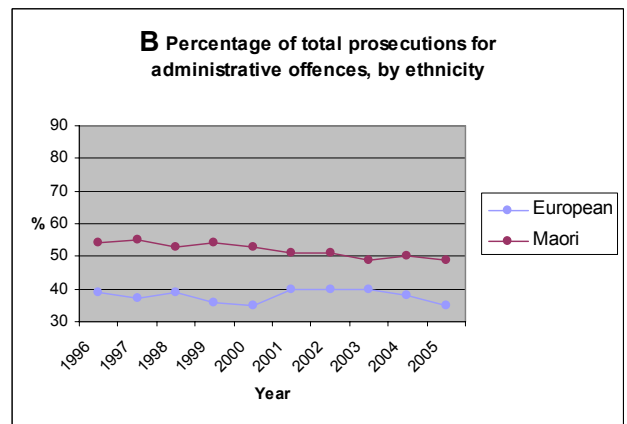
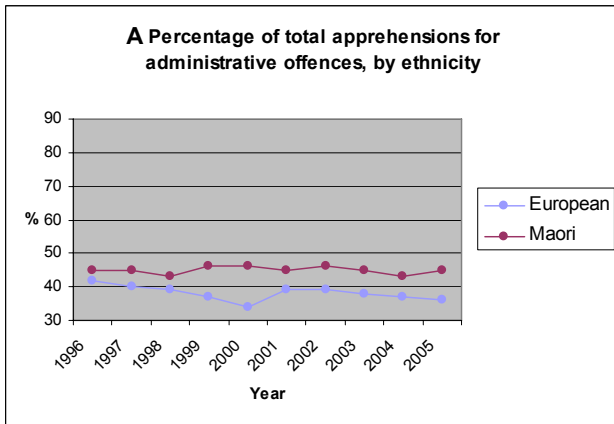
### 2.5 Property damage

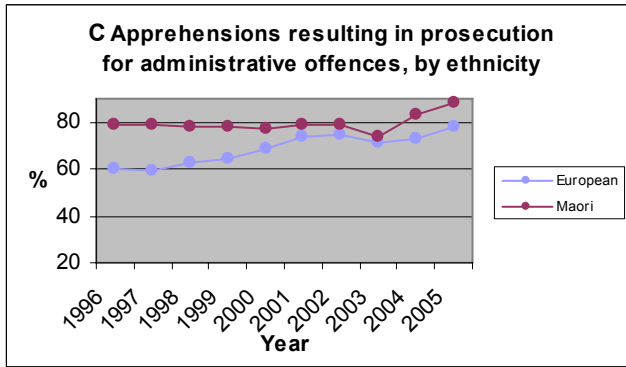


2.6 Property abuse



2.7 Administrative offences

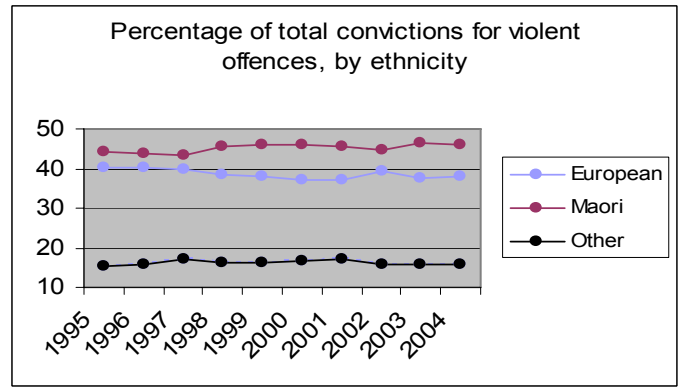
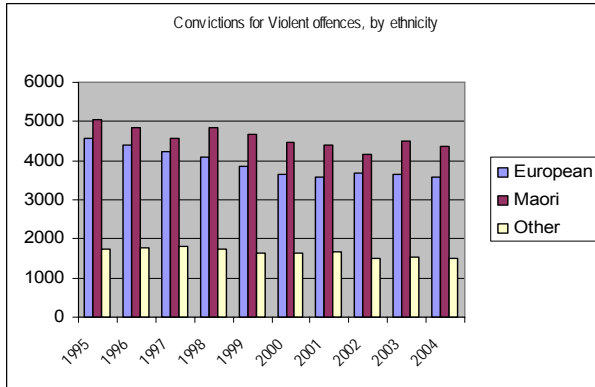




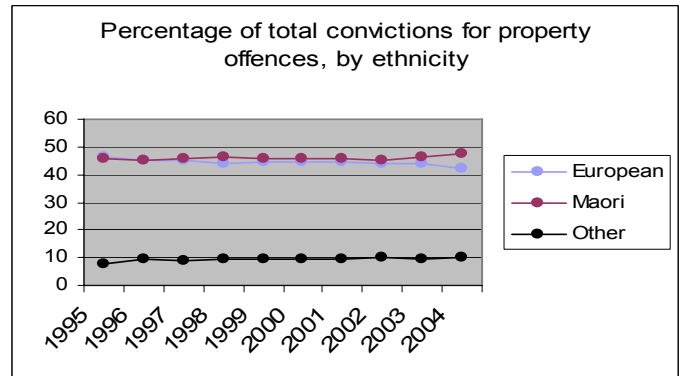
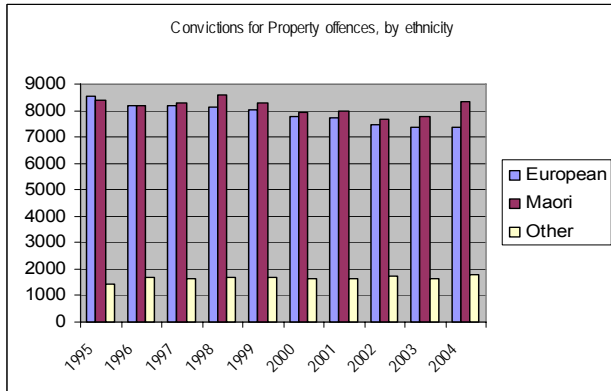
### 3.0 Convictions by offence category

Ministry of Justice (2006) Conviction and Sentencing of Offenders in New Zealand: 1995-2004.

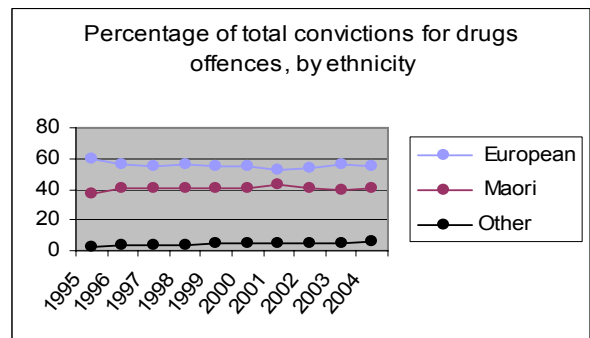
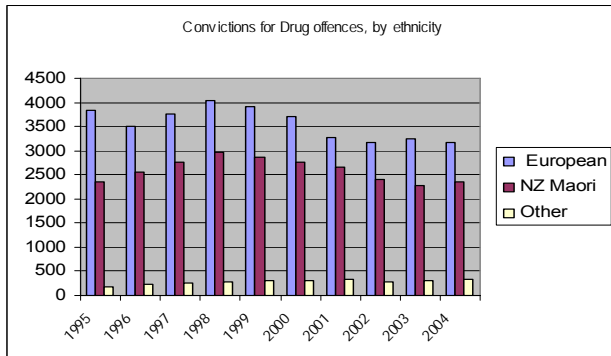
#### 3.1 Violent offences



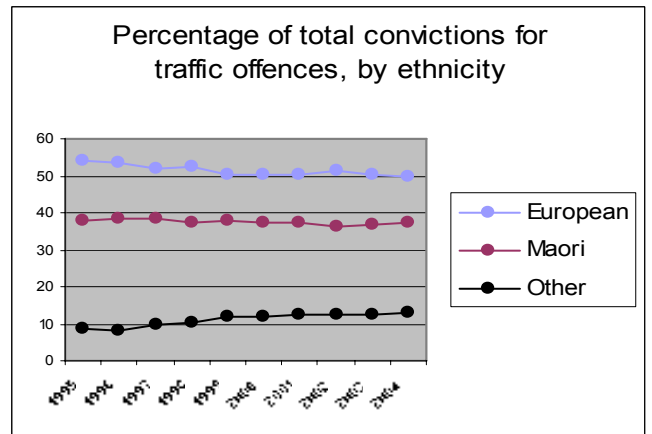
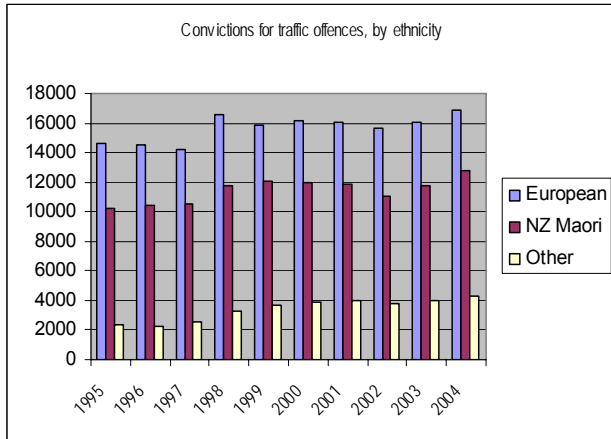
#### 3.2 All property offences



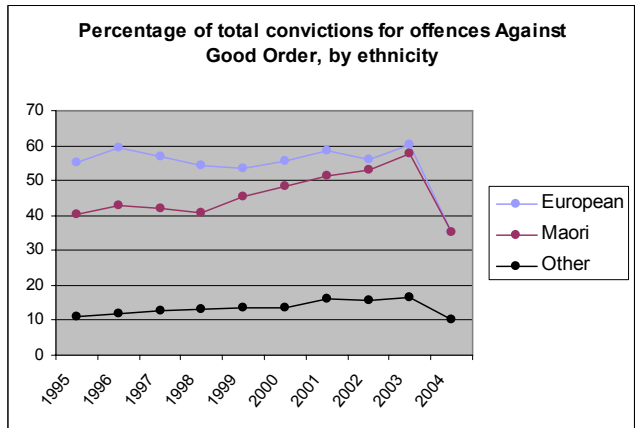
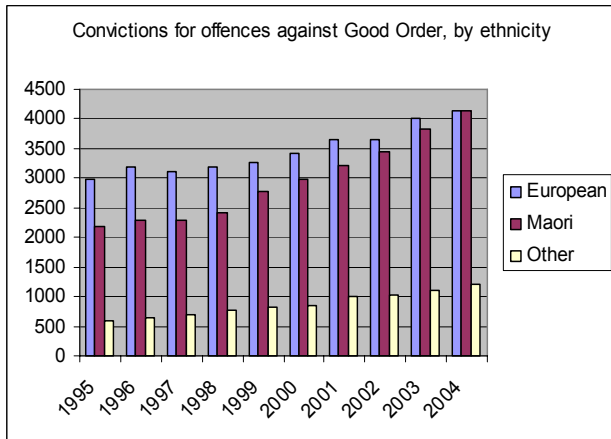
#### 3.3 Drug offences



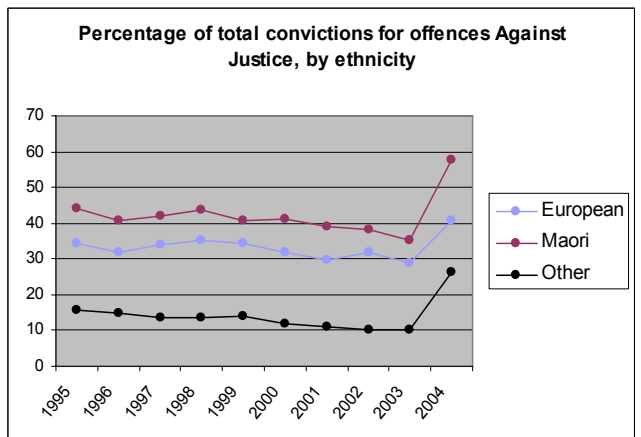
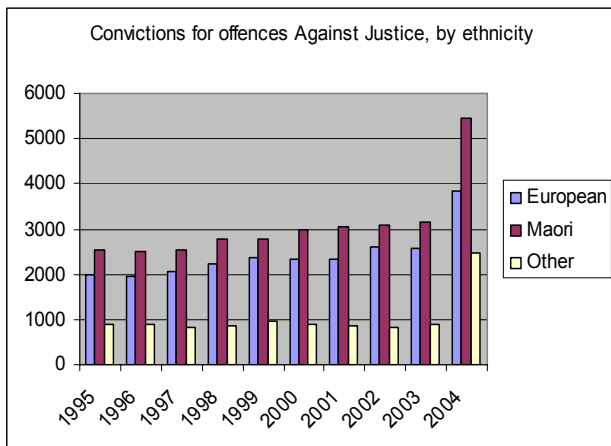
### 3.4 Traffic offences



### 3.5 Offences against good order



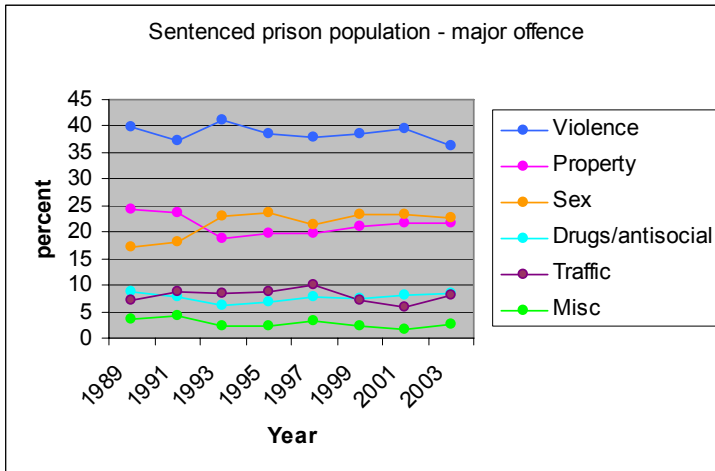
### 3.6 Offences against justice



#### 4.0 Prison population 2005-2006

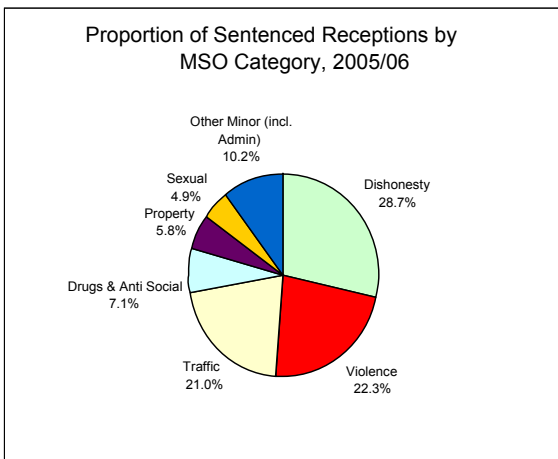
Figure 4.1 shows a snapshot of the prison population classed by major offence – what people are in prison for. The data are from the Prison Censuses produced by the Ministry of Justice and, later, the Department of Corrections. Persons convicted of violent, sexual and property offences make up a high proportion of the people in prison at any given time, because they tend to have the longest sentences.

##### 4.1 Sentenced prison population by most serious offence

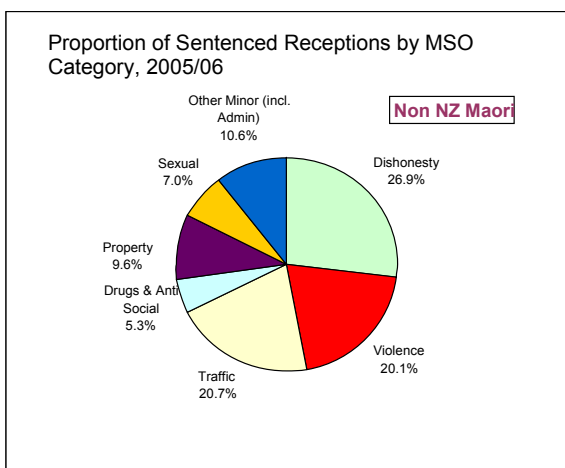


Figures 4.2 – 4.4 show the proportions of various major offences people are sentenced to prison for during the course of a year – why people go to prison. The dominant categories in this analysis (dishonesty, violence and traffic offences) are the ones where many people receive shorter sentences.

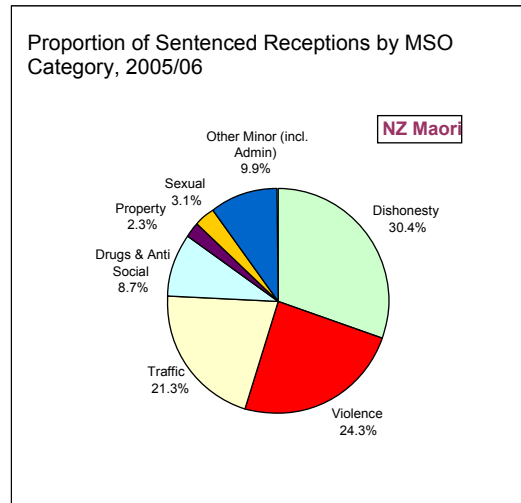
##### 4.4 All receptions by most serious offence



#### 4.2 Receptions of non-Māori

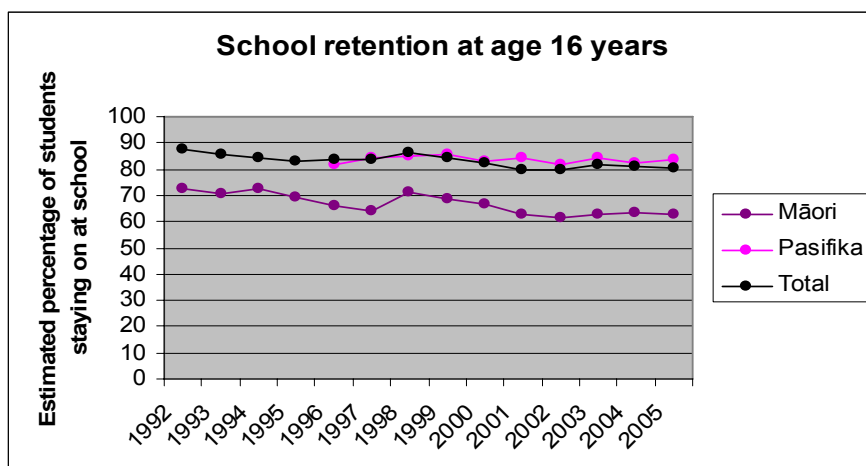


#### 4.3 Receptions of Māori

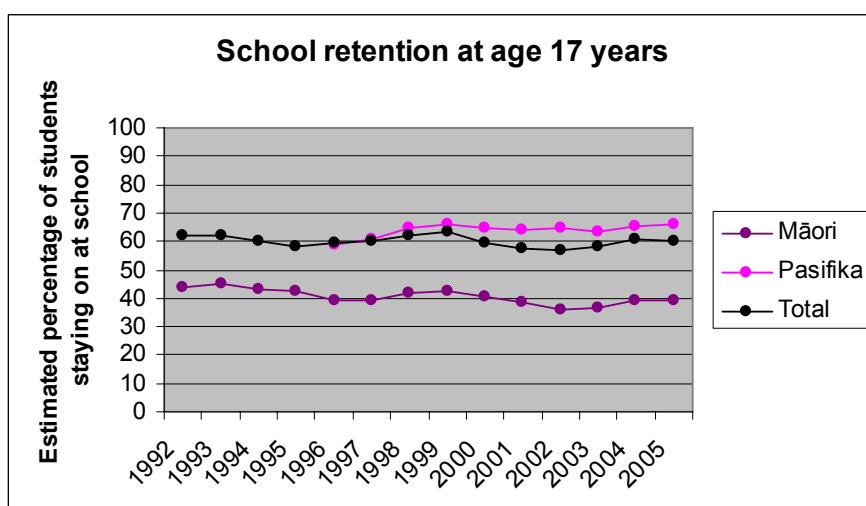


## 5.0 School retention rates by ethnicity

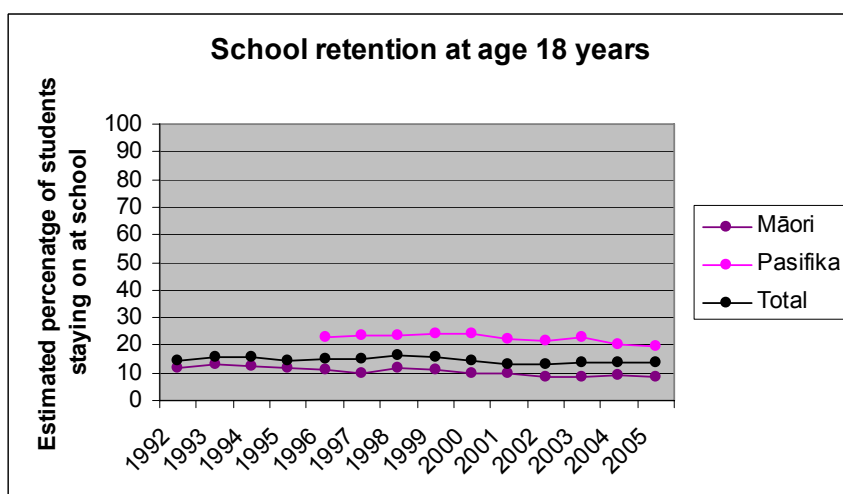
### 5.1 School retention at 16 years



### 5.2 School retention at 17 years



### 5.3 School retention at 18 years



Ministry of Education (2005) Student participation: retention of students in secondary schools. [www.educationcounts.edcentre.govt.nz](http://www.educationcounts.edcentre.govt.nz) Accessed 25 October 2006



5.4 Percentage of school leavers qualified to attend university by ethnic group, 1993-2005

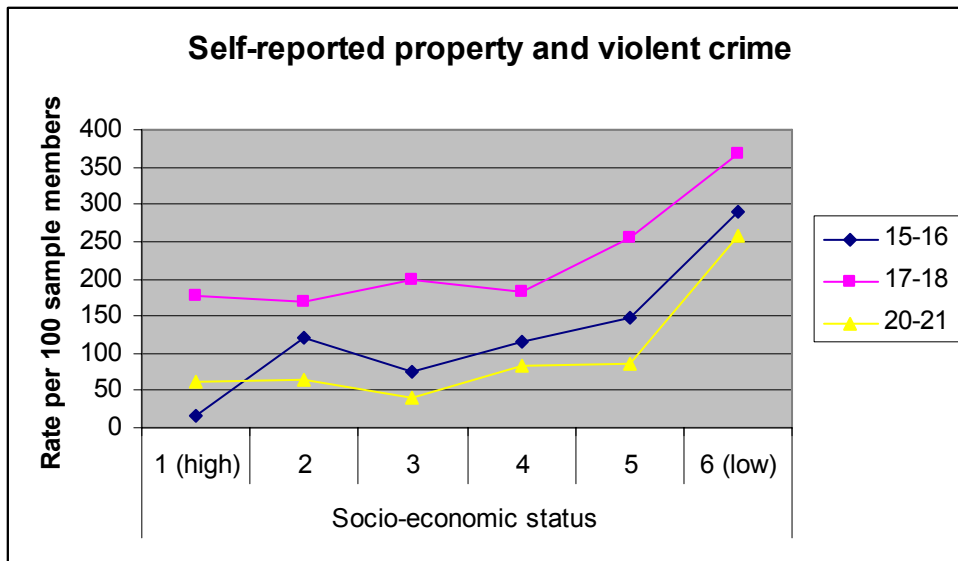
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Māori	7.5	7.9	7.5	7.9	8.2	8.9	8.5	7.3	7.4	7.7	8.9	11.7	11.9
Pacific	9.1	10	11	9.9	10.3	11	9.1	9.5	9.7	8.5	9.4	14	14.5
Asian	46.8	48.1	46.9	52.2	54	56.3	54.1	52.2	53.6	52.2	54.1	56.2	58.5
Other	28	32.1	25.5	26.4	37.2	35.6	30.4	30.4	25.1	30.1	27.7	30.2	31.5
NZ													
Euro	29.8	31.3	31.4	32.7	34	33.8	31.5	30.4	29.9	31.2	33.2	37.1	38.1
<b>Total</b>	<b>25.1</b>	<b>26.6</b>	<b>26.4</b>	<b>27.7</b>	<b>29.3</b>	<b>29.3</b>	<b>27.5</b>	<b>26.7</b>	<b>26</b>	<b>27</b>	<b>28.7</b>	<b>32.1</b>	<b>32.9</b>

Ministry of Education, *School leavers with a university entrance standard qualification.*

[www.educationcounts.edcentre.govt.nz](http://www.educationcounts.edcentre.govt.nz) Accessed 26 October 2006

## 6.0 Socioeconomic Status and factors related with offending

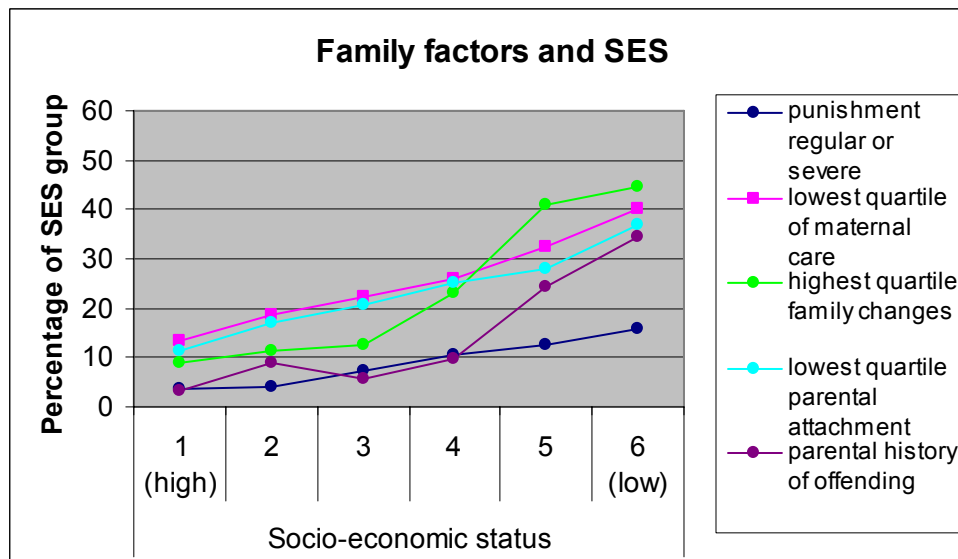
Figure 6.1: Self-reported offending and SES (rate per 100 sample members)



Source: Fergusson et al, 2004

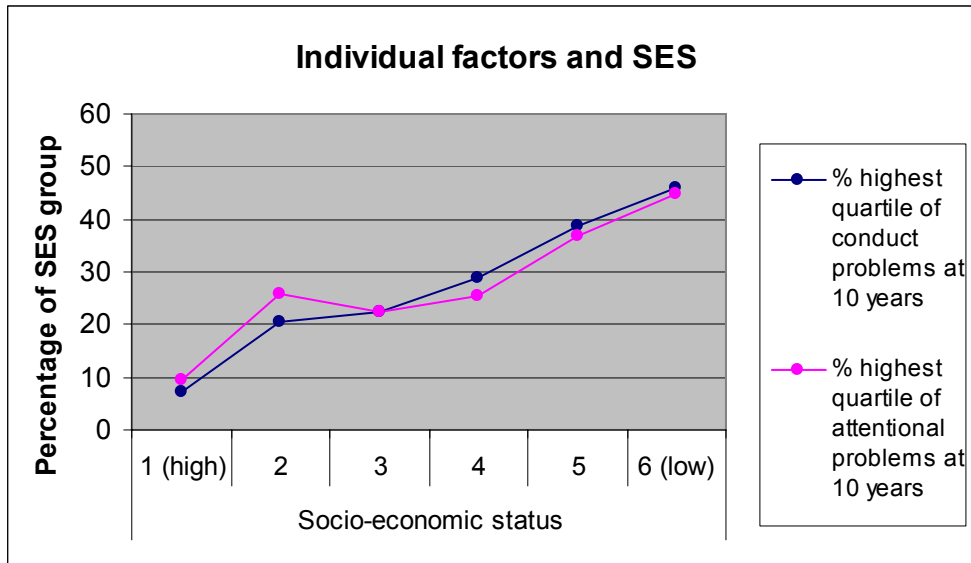
Fergusson DM, Swain-Campbell NR & Horwood LJ (2004) How does childhood economic disadvantage lead to crime? *Journal of Child Psychology & Psychiatry*, 2004; 45 (5) 956-966.

Figure 6.2: Family factors and SES

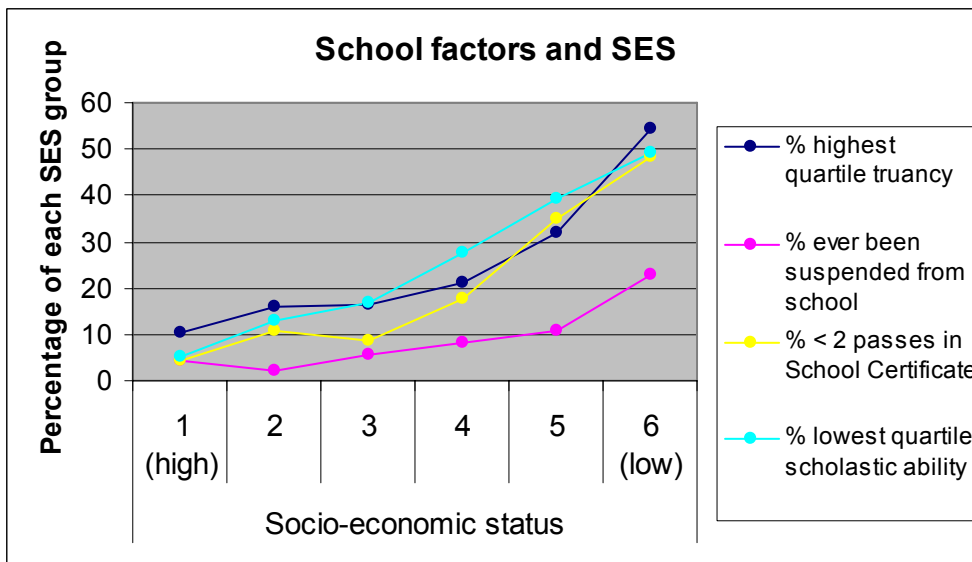


Source: Fergusson et al, 2004

**Figure 6.3: Individual characteristics and SES**

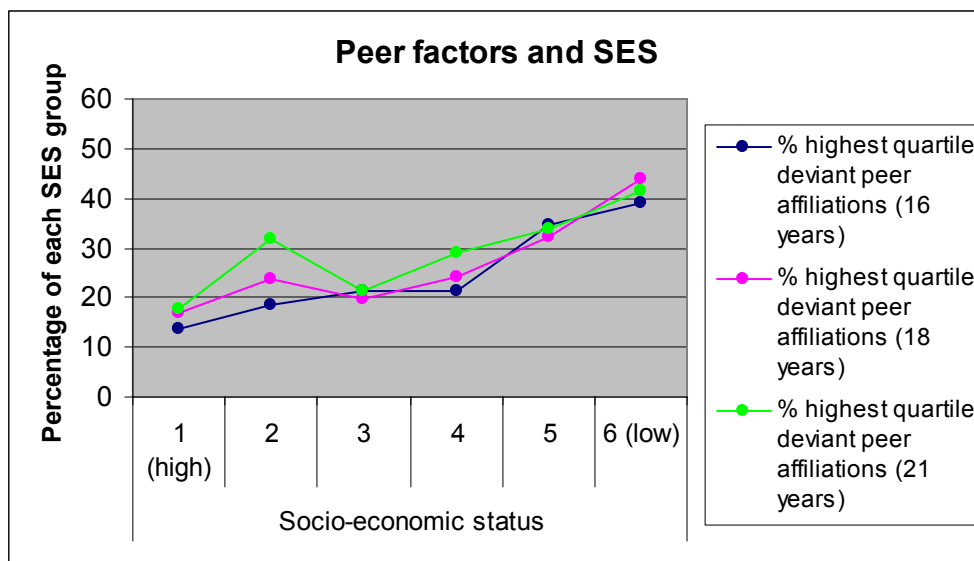


**Figure 6.4: School engagement and achievement and SES**



Source: Fergusson et al, 2004

Figure 6.5: Deviant peers and SES



Source: Fergusson et al, 2004