UNLOCKING PRISONS
HOW WE CAN IMPROVE NEW ZEALAND’S PRISON SYSTEM
ACKNOWLEDGEMENTS

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## CONTENTS

**At a glance**

001 Overview
003 Recommendations

007 **Introduction**

013 **Part 1: The purpose of prison**
014 Examining the statutory purposes of imprisonment
025 Alternatives to imprisonment: types of sentences
031 Determining what sentence should be imposed
034 Conclusion and recommendations

045 **Part 2: Life in prison**
045 The history of prisons
050 Prisons in New Zealand
050 Private prisons in New Zealand
053 Who goes to prison in New Zealand?
059 Life in prison in New Zealand
073 Impact of prison on the wider community
074 Conclusion and recommendations
Part 3: Alternative and improvement

079 Preventative measures against entry into the criminal justice system
080 Police policy in withholding or dismissing formal charges
081 Solutions before imprisonment
081 Problem-solving courts
086 Restorative justice approaches
089 Rehabilitation: community-based, or in prisons
096 Community involvement
104 Children and family involvement
109 Post-release
112 Conclusion and recommendations
117 Conclusion
123 Bibliography
137 Endnotes
AT A GLANCE
OVERVIEW AND RECOMMENDATIONS
OVERVIEW

This report provides an evidence-based examination of the prison system in New Zealand and sets out JustSpeak’s recommendations for reforming it.

Part 1

Part One of the report looks at why we send offenders to prison and whether sending offenders to prison achieves these legislative purposes. Prison is generally intended to be used as a measure of last resort for dealing with an offender, after all community-based sentences have been exhausted. However, this report suggests that too often people are sent to prison when it will not achieve the purposes of sentencing.

JustSpeak recommends that judges more thoroughly assess whether sending the particular offender to prison will actually accomplish the stated sentencing purposes. JustSpeak also recommends an increasing in the use of other sentencing options such as home detention. Compared to imprisonment, other sentencing options have been shown to reduce certain types of re-offending, are significantly cheaper, and, overall, make communities safer. To expand their use, JustSpeak recommends that the threshold for a “short term of imprisonment” be extended to three years and that the Sentencing Council, originally recommended by the Law Commission, be established.

Part 2

Part Two sets out the evolution of prisons from the late 1700s to present, with a focus on Anglo-American experiences. In recent decades private prisons have become commonplace, raising important ethical questions about balancing the state’s monopoly on the use of force over citizens against the potential fiscal gains to be made in privatising prisons. International research suggests that inmates and staff in private prisons are more likely to experience degrading prison conditions, increased misuse of force, decreased security, and inadequate health, education and work programmes.

Part Two goes on to analyse the make-up of our prison population and offers insights into the life of a prisoner, from the procedure of processing a new inmate to visitor rights and the accessibility of hobbies for prisoners. Healthcare in New Zealand prisons is particularly concerning. A 2012 Ombudsman’s investigation revealed several issues,
such as a failure to record prisoner requests for medical appointments, lengthy waiting times for prisoners seeking medical advice and, more generally, unsatisfactory standards of dental and mental health services. The prison health budget is not ring-fenced, meaning it may be diverted to other costs at any time.

**Part 3**

Part Three looks at the future direction of prisons in New Zealand, while also considering some successful initiatives that are currently in operation within our prison system. Part Three recommends better publicity, support and further rollout of these positive initiatives, which are often restricted to the regions where they began or were piloted. To achieve the goal of reducing re-offending, we need better data on which programmes are working and more universal implementation of those programmes.
RECOMMENDATIONS

PART 1

1.1 Require the purposes of imprisonment to be tailored to each offender.
1.2 Raise the threshold for considering sentences of home detention to an end sentence of three years’ imprisonment.
1.3 Repeal the “three-strikes” law.
1.4 Establish the Sentencing Council.

Part 2

2.1 Require full information from private prisons on achievement of contractual targets, and make budgets publicly and easily accessible.
2.2 Imprison young people (aged 18 and younger) on remand or sentence only as a last resort.
2.3 Raise the age of the Youth Court’s jurisdiction to 18.
2.4 Increase the number of mother-child units and introduce father-child units.
2.5 Implement the Ombudsman’s recommendations for healthcare in prisons.
2.6 Balance staffing levels within the Department of Corrections between prison and probation workers so that the numbers of community-based staff are proportionate to the benefits they bring.

Part 3

3.1 Increase the availability of specialist, problem-solving courts in New Zealand.
3.2 Develop and implement other solution-focused courts such as a Family Treatment Court, Domestic Violence Court, and Mental Health Court.
3.3 Extend the practices of the Rangatahi Court to all adult courts.
3.4 Make restorative justice processes an integral part of New Zealand’s criminal justice system, and commit to investing long-term resources in restorative justice providers.
3.5 Make Specialist Treatment Units and training opportunities available to all prisoners who wish to participate in them: this will require changes to the entry requirements for rehabilitative programmes, as well as increasing their funding.
3.6 Support relationships between prisoners and their whānau by housing prisoners near to their family, and removing barriers to communication and prison visits.

3.7 Expand the inclusion of whānau in existing rehabilitation programmes in prisons, as already occurs in the Māori Focus Units.

3.8 Actively invite employers in the community to join the “release to work” scheme.

3.9 Create a database of volunteer programmes within prisons or regions, with details on their implementation within the Department of Corrections’ security regime.

3.10 Implement successful strategies for rehabilitation and reintegration across the country.
INTRODUCTION
INTRODUCTION

New Zealand has one of the highest imprisonment rates in the developed world, locking up 188 people out of every 100,000. This imprisonment rate is the second highest among Western countries, outperformed only by the United States. It is 25 per cent higher than the United Kingdom’s imprisonment rate, and almost a third higher than that of Australia. This is not a fact that we as New Zealanders should be proud of. Locking a person up in prison can have long-term negative impacts on the prisoner, their whānau (especially their children), and society as a whole. Rather than protecting society, imprisoning people can increase the risk they pose to society in the long-term. However, there are concerns beyond the social and moral cost of prison. Keeping a person incarcerated costs New Zealanders approximately $97,090 a year. This spending diverts money away from other socially-beneficial facilities or programmes.

Unfortunately, this extremely high imprisonment rate is expected to decline only slightly, if at all. Since 1983, New Zealand’s prison population has increased almost 300 per cent (see Figure 1), even though the number of people being convicted and sentenced has returned to below the level it was at in 1983. Despite the reforms introduced by the Sentencing Act 2002 and Parole Act 2002, our prison population has increased from 5,891 in 2003 to 8,223 in 2013 – a 40 per cent increase – while the general population grew by ten per cent.

This increase has not gone unnoticed by successive governments. In 2006, the then Labour-led Government recognised that there had been a “sharp increase in the prison population in recent years”, and that this “increase was no longer sustainable, neither financially nor socially”. More recently, the Hon Bill English declared that New Zealand’s prison system was a “moral and fiscal failure”.

Despite the political recognition that locking so many people up in prison is neither socially nor economically responsible, there is no widespread political will to change the present system. Instead there is the opposite tendency to tinker with the prison system in response to a particular event or perceived problem. This tendency prevents the considered and evidence-based debate necessary to create good public policy. In his report to the Prime Minister following an investigation into issues involving the criminal justice sector, the then-Ombudsman Mel Smith stated that:

“It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.”

- Nelson Mandela
... issues of crime and criminal justice have become highly politicised and often the subject of uninformed and superficial public and media comment. There has been and continues to be a lack of constructive and clear headed public debate about the issues. As a consequence there is an absence of rational decision making based on any critical examination of the issues. This tends to act as an impediment to constructive change.

This view is echoed by Dr Warren Young, formerly of the Law Commission, who explains that debates about criminal justice in New Zealand are “invariably conducted on the basis of misinformation” and are driven by vocal minorities, rather than evidence.\textsuperscript{18} This distorts the debate. To overcome this, Dr Young states that “[w]hat is required is a more rational debate, and a mechanism that distances the debate from the political arena.”\textsuperscript{19}

In this report we critically examine why we send people to prison, what happens when they are there, and whether the reasons for sending them to prison are borne out in reality. In Part One we focus on the legal framework and theories that explain how and why New Zealand society imprisons people. We question whether the theoretical ideals enshrined in our law are satisfied in practice. We then advance our own framework for when prison is an appropriate response to criminal activity: a framework based on evidence.

\textbf{Figure 1: Prison population 1983 - 2013}
From this evidence-based foundation, we then turn to examine the realities of living in prison. This examination includes a snapshot of the current programmes and facilities available to prisoners, many of which are designed to encourage prisoners to take responsibility for their offending as a means of successfully rehabilitating and reintegrating individuals upon release. Some of the current programmes, we argue, are successful; others less so. We consider that the efficacy of the programmes should be taken into account as a key determinant when allocating funding.

We then consider post-release programmes that are currently in place. The nature of programmes discussed illustrates the importance of community involvement during an offender’s reintegrations into society. We also explore accommodation and employment opportunities upon release. Although there is some level of support available to offenders, more needs to be done to extend the availability of these opportunities.

We intend this evidence-based examination to assist the much needed “constructive and clear headed public debate” surrounding parts of our criminal justice system. How New Zealand deals with offenders and uses the prison system is an important discussion that should not be left to politicians and vocal minorities to contest. It is an ongoing discussion that all New Zealanders need to be engaged in. As Sir Winston Churchill commented, “the mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country”.20 We hope that, regardless of whether you agree or disagree with our recommendations, this report assists you with engaging in this discussion that is of fundamental importance to all New Zealanders.
PART 1: THE PURPOSE OF PRISONS

WHY DO WE IMPRISON PEOPLE AND DOES PRISON WORK?
PART 1: THE PURPOSE OF PRISONS

Why do we imprison people and does prison work?

Short of the death penalty or torture, sending a person to prison is the most severe punishment a court can impose. Imprisonment forcibly removes a person from society for a period of time and curtails certain rights. Imprisonment restricts the person’s freedom, their privacy, employment, their right to vote, and their contact with family/whānau and friends.¹

The Sentencing Act 2002 recognises that imprisonment is the most severe response to criminal offending in New Zealand, and that it has a significant impact on the offender, the offender’s family, and society as a whole. Before sentencing a person to imprisonment, the Sentencing Act 2002 requires the sentencing judge to “have regard to the desirability of keeping offenders in the community as far as that is practicable and consonant with the safety of the community”.² Sending a person to prison must be, in the judge’s eyes, necessary to:³

1. Hold the offender accountable for the harm done to the victim and the community;
2. Promote responsibility and acknowledgment of the harm;
3. Provide for the interests of the victim;
4. Denounce the offending;
5. Deter the offender and others from committing other similar offending; or
6. Protect the community from the offender.

These purposes are naturally intertwined and overlap with each other.⁴ Notably, however, punishing or rehabilitating an offender are not reasons to send an offender to prison, at least not officially.⁵

As well as being satisfied that imprisonment is necessary to satisfy one or more of the statutory purposes set out above, the sentencing judge must be satisfied that no other type of sentence would satisfy the principles of sentencing set out in s 8 of the Sentencing Act 2002.⁶ These principles require the court to, among other things, consider the seriousness of the offending and the effects of the offending on the victim, as well as ensure consistency with other sentences for similar offending and impose the maximum or near-maximum penalty if the offending is among the most serious cases of its type.
After considering these purposes and principles, only if the sentencing judge is satisfied that no other less restrictive sentence is appropriate in the circumstances, or that the offender is unlikely to comply with any other sentence, can a sentencing judge sentence a person to a period of imprisonment. This statutory threshold is a recognition by Parliament that “prison is a measure of last resort” for dealing with a person who has committed a crime.

Examining the statutory purposes of imprisonment

It is often assumed that imprisoning a person satisfies the statutory sentencing purposes, in particular accountability, deterrence and denunciation. However, is this really the case? And if imprisonment does not serve these purposes – or if it only satisfies some of them, some of the time – do we need to reconsider the reasons why our society sends offenders to prison? We now turn to look at each statutory purpose and whether prison actually achieves them.

1. Holding the offender accountable and promoting responsibility: s 7(1)(a) and (b) of the Sentencing Act 2002

Holding an offender accountable for his or her crime recognises that crime harms people: both the victim who suffered the crime and the wider community. For example, when an offender assaults another person, the victim is directly harmed. The whole community is also indirectly harmed by the loss of public order and the feeling that the community is less safe.

The core concept of accountability is the process of being called to account to some authority for one’s actions. It requires social interaction between the offender and some external authority figure who holds the offender to account for falling below the external societal standards by censuring the offender. In relation to sentencing, holding an offender accountable involves a judge censuring the offender for their transgressions by imposing a consequence that is proportionate to the gravity of the crime (the breach of the law, which is the external standard) and the offender’s culpability. In this sense, accountability is distinguished from retribution or revenge. Rather than exacting some form of retribution, holding an offender accountable is intended as a moral communication of society’s condemnation of the offender’s wrongdoing.
The punishment conveys to the [offender] a certain critical normative message concerning his conduct: for example, that he has culpably harmed or risked harming someone, and is disapproved of for having done so.

In doing so, the offender is treated as a moral agent: someone capable of moral deliberation, and therefore also capable of responding to moral condemnation for their actions.\textsuperscript{13}

Because the punishment seeks to convey a normative message, holding someone to account requires a more nuanced approach which takes into account both the external standard that has been breached as well as the offender’s personal characteristics and circumstances that impact on the culpability of the offender.\textsuperscript{14} This necessary nuance makes determining what consequence is proportionate to the crime and moral culpability of the offender difficult. It is made even more difficult when there is a public outcry from society, including many victims, who seek vindication for the wrong the offender has committed and the harm the victims have suffered.\textsuperscript{15}

A further, and perhaps even more fundamental, difficulty with the purpose of accountability is in the concept of a “proportional consequence” to a crime. This concept presupposes that there is an appropriate consequence for breaking the law that is somehow externally justified and yet proportionate. Determining the amount of punishment that an offender “deserves” as a consequence of committing a crime is difficult, if not impossible, because it rests largely on society’s attitude, which is often focussed not just on condemnation but also exacting retribution.

In contrast with holding the offender to account, which is an external matter, promoting responsibility in the offender is an inward-looking exercise, where the offender holds himself to account for his or her actions. Accepting responsibility for one’s actions is the first step towards feeling remorseful for having committed them. While the courts cannot make the offender take responsibility, the courts can promote responsibility by providing a public opportunity for the offender to acknowledge their wrongdoing and understand the impact that their offending has had on the victim and the community as a whole, while also assisting the offender to address the causes of their own offending.\textsuperscript{16}

2. Providing for the interests of the victim: s 7(1)(c) of the Sentencing Act 2002

Providing for the interests of victims can be difficult in an at times bare and impersonal criminal justice system. A police prosecutor or Crown lawyer stands in for the state, while a judge who has read the facts of the offending and a report on the offender’s
personal circumstances will decide whether the offender must go to prison or remain in the community. The only real opportunity for a victim to be involved in the sentencing process is by speaking with the prosecutor and by providing a Victim Impact Statement, which they can read out in court. This statement cannot request any particular sentence from the judge; instead it details the personal effects of the offending on the victim. This often includes information about the impact on their self-identity and emotional and financial wellbeing, and effect on their families.

While the impact of the offending on the victims is taken into account in sentencing, judges will not impose heavier sentences just so that victims feel personally vindicated. This does not mean, however, that the victim’s views are ignored. The interests of the victim may favour imposing a sterner penalty like imprisonment, as sending an offender to prison means the offender is kept away from the victim and the wider community. Knowing that the offender is not on the streets may be important to a victim, especially when the victim has suffered a sexual or violent assault. While a heavier sentence should not be imposed at the victim’s request, the harm caused to the victim is an aggravating factor which means a longer sentence may be appropriate. To this extent the length of the sentence reflects the impact of the offending on the victim. It may also provide the victim with a sense of justice that the offender is getting punished for the wrong they have committed against the victim. Prison could provide opportunities for the offender to participate in rehabilitative programmes, and the victim may find solace in the fact that the offender will be forced to learn from his or her mistakes.

3. Denunciation: s 7(1)(e) of the Sentencing Act 2002

Denunciation is closely related to accountability. Both purposes require an external judgment to be passed upon the offender. Denunciation goes beyond holding the offender to account to the symbolic reason for punishment. Underlying the criminal law are moral values that bind society – primarily the protection of personal autonomy, bodily integrity, and property rights. Criminal law protects those values, and establishes the boundaries between acceptable and unacceptable behaviour.

Offending contravenes these boundaries, weakening the normative force of the rules and their underlying moral values. Without the continual reaffirmation of these values, the force of these boundaries drawn by the criminal law would begin to weaken. Imposing a sentence represents society’s condemnation of the offending. Because all sentences denounce the offending to different degrees, denunciation as a purpose does not intrinsically point to any particular form of sentence or favour increasing the severity of sentence. Rather the judge must consider the type of offending and whether a sterner
sentence is needed to achieve denunciation, without necessarily being overly swayed by public opinion. As the courts have put it:18

Society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass. The courts do not have to reflect public opinion. On the other hand the courts must not disregard it. Perhaps the main duty of the court is to lead public opinion.

Increasing the severity of the punishment is the obvious way to express a greater degree of condemnation, and vice versa: 19

... the sentence the court imposes will at least in part be seen to reflect the value which the Court, acting as the voice of the community, places on the right in question. If compared with previous attitudes or trends the Court is perceived to undervalue the right ... the right will be seen as devalued accordingly.

For example, the courts take a strong view against sexual offending involving children, or bribery and corruption due to their wider effects on social values and trust.20 Even where the risk of re-offending is low, meaning there is little need for deterrence of or protection from the offender, the need to send a message that the offending behaviour is unacceptable to New Zealand society may require imprisonment.

4. Deterrence: s 7(1)(f) of the Sentencing Act 2002

By imposing a harsher penalty and making an example of an offender, it is hoped that future crime by that offender or others will to be prevented. The fear of a threatened criminal sanction, or actually experiencing a criminal sanction, should make an offender think twice before they commit a similar crime.21

Deterrence in sentencing operates at two levels. The first is the individual level. A sentence is imposed on an offender with the aim of deterring him or her from re-offending. Because the focus is on a specific individual, this type of deterrence is labelled “specific deterrence”. The second level of deterrence, labelled “general deterrence”, focuses on deterring society in general from similar types of offending. A longer sentence is imposed on a specific offender so that other people who have not yet committed a similar crime are deterred from committing it due to the threatened sentence.

At first glance, this seems like common sense. Of course people want to avoid prison, so of course they would be less likely to commit a crime if they had previously been
imprisoned for the same offending or knew of others who had. This has been treated as a fact within most criminal justice systems for centuries. In the 1950s the New Zealand Court of Appeal even said it was a “cogent fact that the fear of severe punishment does, and will, prevent the commission of many that would have been committed if it was thought that the offender could escape without punishment, or with only a light punishment”.22

The rational act model

But is it a cogent fact? The idea that punishment acts as a deterrent is based on the classical economic theory of rational choice. This theory assumes that people weigh up the costs and benefits of a particular course of action whenever they make a decision.23 In relation to specific deterrence, it assumes that the offender’s direct experience of punishment will outweigh the benefits he or she expects to obtain through committing similar offending. General deterrence assumes that potential offenders know how severe a criminal sanction is likely to be imposed for their offending, and on this fact alone will make the rational choice not to commit the crime.24

In order to be deterred by a criminal sanction under this rational act model, a potential offender must:25

- Realise that there is a criminal sanction for the act being contemplated;
- Take into account the risk of incurring that sanction when deciding to offend;
- Believe that there is a high likelihood of being caught;
- Believe that the sanction will be applied if he or she is caught; and
- Be willing and able to alter his or her choice to offend in light of the criminal sanction.

However, that level of knowledge and rational thought is not actually common among all potential offenders. In the American context, it has been found that up to 76 per cent of active criminals and 89 per cent of the most violent offenders (who are most likely to receive a sentence of imprisonment) do not believe they will ever be caught, or do not know what the possible punishment is if they are caught.26 Under those conditions, the rational act model predicts that they will offend.

Secondly, the rational act model mistakenly assumes that everyone makes a rational and carefully considered choice to commit a crime.27 While some offenders may have made a rational choice to commit a crime, for example many burglars or fraudsters, this

“It is the certainty of being punished and not the horrifying spectacle of public punishment that must discourage a crime.”

Source: Michel Foucault Discipline and Punish: the Birth of the Prison.
is not true of all or even many offenders. Often offenders have reacted immediately to a situation (particularly common in violent offending), or have limited rational control over their decision to offend. Many offenders are under the influence of alcohol or other drugs at the time of the offending. Being under the influence of alcohol alone “disrupts cognitive functioning ... creating a ‘myopic’ or narrowing effect on attentional capacity”. This means that the offender is often focused on the situation and does not even consider the possibility of punishment when committing an offence. People addicted to drugs do not have a choice, in the classical rational act sense of the word, to continue to take drugs – the nature of addiction means that they have limited choice while the addiction persists. There is also a growing field of evidence that shows young people’s brains are still developing into their early 20s and this often means young people are more likely to engage in risk-taking behaviour. Therefore, for many offenders, the “cogent fact” that offenders will be deterred by the possibility of punishment is based on an assumption that is not always correct. The incorrectness in this assumption is borne out in reality, as the possibility of punishment seems to exercise little if any specific or general deterrence.

Specific deterrence

Prison exerts little if any deterrent effect on future offending by released inmates. In New Zealand, the re-imprisonment rate is 28 per cent for men and 18.4 per cent for women, while the re-conviction rate is around 45 per cent. Simply put, sending someone to prison seems to have little effect on deterring that person from further offending. Indeed, sending someone to prison might actually increase the likelihood that he or she will re-offend. The amalgamation of several Canadian studies on this matter showed that imprisonment caused a slight increase in the risk of re-offending, compared to community-based sanctions. Longer terms of imprisonment, which should deter offenders more, were also associated with slightly higher rates of re-offending.

But why would people who have experienced prison for themselves keep making choices that send them back there? There are three main reasons why imprisonment can lead to greater re-offending upon release:

a. Prisons provide a criminal learning environment:

Prisons can encourage and reinforce criminal behaviour. Being surrounded by many other people who are proud of their criminal activities and see it as a normal part of life (or say that they do) can shape one’s own attitude towards crime. As George puts it in the movie Blow: “Danbury wasn’t a prison, it was a crime school. I went in with a Bachelor of marijuana, came out with a Doctorate of cocaine.”
b. Prisons create a stigmatising or labelling effect:

Being sent to prison can label a person a “criminal” and stigmatise them long after they leave. This label, while reflecting the person’s criminal offending, can reinforce the person’s criminal identity and often denies the person future opportunities (for example, employment) that can provide alternatives to crime. Combined with the offender’s absence from the community while in prison, it can mean that other people sever their social ties with the offender. This in turn can reduce the offender’s desire to conform to social expectations and lessens the consequences of returning to prison in future.39

Once a person has been to prison their life opportunities diminish considerably in terms of employment, housing, insurance and travel.

c. Prisons often fail to address the underlying causes of offending:

While criminal offending is a personal choice, often it is influenced by underlying factors, such as unemployment, addiction to alcohol or drugs, and one’s family background. Imprisonment often fails to address the circumstances or underlying causes of criminal behaviour, and may instead exacerbate them. For example, unemployment often contributes to offending, but sending an offender to prison will make it harder to find a job in future. Sometimes the offender’s lack of life skills (for example, knowing how to cook or budget) means they become dependent upon prison, where difficult decisions are made by other people, and he or she will re-offend just to go back inside. Failing to address these underlying causes “can have a criminogenic effect on low-risk offenders, transforming those with low chances of [reoffending] into those destined to offend again”.40

These three reasons explain why sending a person to prison, rather than decreasing the risk of re-offending (as the rational act model of deterrence assumes), actually tends to increase a person’s risk of re-offending.

General deterrence

While it is clear that the criminal justice system as a whole exerts a significant general deterrent effect on criminal offending,41 that does not mean that imprisonment itself contributes much of a deterrent effect. Empirical studies on deterrence suggest that the threat of imprisonment generates only a small deterrent effect. Interestingly, increasing the length of sentences of imprisonment does not produce a corresponding increase in deterrence: there tends to be a small increase in re-offending whether a long or short sentence is imposed.42

“Yeah, and why would they want to come and bust their **** for 10 hours a day when it was easy for them to do nothing? I find that hard to come to terms with.”

Source: Murray Wardrop "Gordon Ramsay: 'I can’t believe how easy life is in British prisons’", The Telegraph, 9 June 2012
Rather than the threat of prison, research indicates that the certainty of punishment creates the most deterrent effect on offending. Measures that increase the likelihood of apprehension (by raising the number or visibility of police) or the certainty of punishment have a significant deterrent effect. For example, research in Australia found that an increase in random breath tests being conducted on motorists resulted in a significant decrease in the number of serious road crashes caused by alcohol.

However, even the increase in the likelihood of apprehension and punishment only exercises a deterrent effect on those that know about the consequences and actively weigh them up before committing an offence. As discussed above, this is not always the case. Many offences are committed by people who have not thought through the consequences, are spontaneous or thrill-seeking, or are committed while a person is under the influence of alcohol or other drugs. Offenders seldom think about the risk of being caught, or the consequences if they are caught. For some daily life conditions are so intolerable in the community, prison actually provides them with welcome benefits of warmth, food, water, stability and shelter. In such circumstances, the threat of prison exerts little or no deterrent effect.

While deterrence is a valid purpose of sentencing, and in some instances the fear of punishment does deter people, the purpose should not be wheeled out for all offenders and should not be seen as necessarily requiring imposing a sentence of imprisonment. Indeed, from the research discussed above, it seems that sometimes to actually deter a person from committing a crime, sending a person to prison might be the wrong thing to do.

5. Protection of the community: s 7(1)(g) of the Sentencing Act 2002

The final purpose of prison, and a purpose that is often pointed to in justifying sending a person to prison, is the need to protect society from an individual. There is no doubt that imprisonment does protect society from further offending due to the incapacitation of offenders during their prison terms. Prison is a confined area where it is difficult (but not impossible) to commit further offences against the rest of the community.

However, the actual protection provided during the period of imprisonment is debatable. Just because someone has committed a crime does not mean that he or she will continue to offend in prison or on release. This makes it difficult to assess how protective prison is. Some criminologists have attempted to estimate the effectiveness of prisons in preventing offending during a period of incarceration by examining individual offending rates, or by using cross-sectional data at a national level to capture the impact of incarceration on...
aggregate crime rates. Using these methods, criminologists have derived estimates of the average reduction in crime due to incarceration ranging from three to fourteen crimes per person per year.

This variance in estimates is caused by various factors and estimates used in each study. Some of these factors relate to sample selection, reporting, and other estimates. However, other factors also impact the reliability of such estimates. First, the rate of recidivism used to provide a reference point is not constant, as the number of offences committed decreases as an offender gets older. The highest level of offending tends to occur when a person is between 16 and 30 years old and there is some evidence that after a certain age (around 70), the offender is unlikely to commit any further offending. This suggests that the continued incarceration of offenders over 70 years of age no longer protects society; it only increases the costs.

Estimates of reduction in offending vary by the type of crime as well. For example, burglaries are often committed in sprees, so imprisoning a burglar may mean that many burglaries are prevented. On the other hand, manslaughter and murder are seldom committed en masse, so imprisoning those offenders is less likely to reduce the rate of unlawful deaths overall. Yet, as this example illustrates, the numbers of crimes prevented do not necessarily reflect the degree of harm or threat that society is protected from. So these estimates need to be treated with caution in determining the protective effects of imprisonment.

Further, not all crime is detected or reported. Research in the United Kingdom suggests that reported crime represents only around 45 per cent of actual crime. Therefore reconviction rates are a poor indicator of actual risk of re-offending. This is a further reason why such estimates need to be treated with caution.

Outside of the limitations of the factors involved in making such an estimate, focussing exclusively on the protective effects of incapacitating a particular offender does not take into account the reality that for certain offences the offender will simply be replaced or substituted by another. For some crimes, particularly those based on a market like drugs, the offences committed by the person who is imprisoned are simply committed by another person who steps into the vacuum created when they are sent away. Most importantly, because of the factors discussed above prison can increase re-offending. Rather than protect the community, imprisonment may undermine its safety in the long-term.

“I’d watched too many schoolmates graduate into mental institutions, into group homes and jails, and I knew that locking people up was paranormal – against normal, not beside it. Locks didn’t cure; they strangled.”

Source: Schott Westerfeld The Last Days (Penguin, New York, 2007)
Part 1: The purpose of prison

6. Non-purposes: rehabilitation and reintegration: s 7(1)(h) of the Sentencing Act 2002

While rehabilitating the offender is an overall purpose of sentencing, it is not a purpose for which people can be sent to prison. This accords with our intuitive ideas about what prison is: a place of hardship and isolation, not renewal and redemption. However, it does not reflect current practice: several of the rehabilitative programmes which will be discussed in Part Two of this report are available only in prisons. Nor does it take into account what happens after release from prison. If the offender has not been rehabilitated, where will he or she go? Should there be a place in our thinking about prison for rehabilitation?

Rehabilitation is directed at ensuring that the offender addresses the underlying causes of their offending, such as a substance addiction or anger management issues. In some situations, sending a person to prison may, in itself, assist with rehabilitating an offender because it removes the offender from a group of associates that might further the offender’s criminal offending. If addiction programmes are available for the offender, a period of imprisonment might also provide the offender with time to address addictions and develop abilities to deal with their causes of offending. It was for this reason that the Court of Appeal in R v Accused stated that it should not be assumed that “imprisonment and rehabilitation are incompatible”.58

While prison may assist with rehabilitation in some situations, having rehabilitation as a purpose for imprisoning someone would assume that prison is a better place for rehabilitation than the community. This assumption often fails to recognise the true realities of prison. While in prison the offender might be separated from their associates that assisted their offending, the offender is often surrounded by people that often have a criminal mindset. If an offender does a programme while in prison, the offender is often returned back to the general prison where the mainstream culture exists. Dr Paul Wood has described this practice as “polishing a piglet and then returning it to the pigsty”.59

Do these purposes stack up?

When sentencing an offender, judges must do more than simply recite the purposes of “accountability, denunciation, and deterrence” as reasons for why a sentence of imprisonment should be imposed. Section 16(2) of the Sentencing Act 2002 requires the sentencing judge to only impose a sentence of imprisonment if the sentencing Judge is “satisfied” that a sentence of imprisonment achieves one or more of the sentencing purposes. While most judges try to determine whether sending a person to prison will

Imagine all the worst bullies you came across at school. Now you are in with all of those people, but there’s no home time, it’s 24/7. That’s what prison is like.”

Source: Dr Paul Wood quoted in Phil Taylor “Killer becomes a coach of transforming lives” NZ Herald, 25 January 2014.
achieve the stated sentencing purposes, more can be done to assess on an evidential basis whether imprisonment will satisfy the purposes for the particular offender. As the above discussion shows, sending someone to prison is often unlikely to achieve any of these purposes, apart from some form of “accountability” and “denunciation”.

Figure 2: Hierarchy of Sentences

**Least restrictive**

- **Discharge without conviction**
  - no sentence

- **Conviction and discharge**
  - no sentence

- **Community work**
  - Time spent working with Corrections work groups in the community or learning “life skills”

- **Community detention**
  - Electronically-monitered curfew

**Most restrictive**

- **Imprisonment**
  - Near-total restrictions on liberty

- **Intensive supervision**
  - Lifestyle supervised more closely

- **Supervision**
  - Lifestyle supervised by Corrections

- **Fine (or reparation)**
  - Monetary penalty

- **Home detention**
  - Electronically-monitered 24-hour curfew (may be subject to limited exceptions for work, medical appointments, etc.)
Alternatives to imprisonment: Types of sentences

In addition to having to be satisfied that imprisonment satisfies one or more of these purposes, the sentencing judge can still only sentence someone to imprisonment if he or she is satisfied that no less restrictive sentence is appropriate in the circumstances, or that the offender is unlikely to comply with any other sentence.60 This statutory threshold is a recognition by Parliament that “prison is a measure of last resort” for dealing with a person who has committed a crime.61

The Sentencing Act 2002 provides a range of other alternative sentences that are less restrictive than prison, as shown in Figure 2. These are:

1. Discharge without conviction;
2. Conviction and discharge;
3. Suspended sentence;
4. Fine (or reparation);
5. Community work;
6. Supervision;
7. Intensive supervision;
8. Community detention; and

Some of these have long been sentencing options: fines and imprisonment are among the oldest known sentences; sentences similar to community work have been available since the 1960s62, and supervision has been available since 198563. Others such as intensive supervision, community detention and home detention were introduced as recently as 2007.64 These alternative sentencing options are in a hierarchy from least restrictive to most restrictive as shown in Figure 2.

In order to explore the ability and limitations of each alternative sentence in satisfying sentencing purposes, it is necessary to explain what each sentence type entails and the common situations in which they are imposed.

1. **Discharge or suspended sentence**

The court may decide that a sentence is not required to satisfy the purposes and principles of sentencing set out in the Sentencing Act 2002 and discharge the offender with or without sentence.65 In cases where the direct and indirect consequences of being convicted at all would be out of all proportion to the gravity of the offending, the court
may discharge the offender without entering a conviction. This is a high threshold, usually reached where the offending was very minor (such as drunken student hijinks, where there is clear remorse), and the consequences dire (like the loss of employment).

In most cases, the offending does warrant a conviction. However, the court may consider that the conviction is sufficient penalty in itself and discharge the offender without imposing any sentence. Convicting and discharging an offender will generally only be appropriate when the offending is at the low end of a minor type of offending, does not require a minimum sentence, and the offender is genuinely remorseful. For example, in one case a young man crashed a van carrying friends. The driver had been going too quickly on a gravel road and had fishtailed going around a corner. The Judge held that the offender was remorseful, had taken full and immediate responsibility, had tried to make amends, and was unlikely to re-offend and so found that a conviction was penalty enough. In such circumstances, the conviction itself satisfies the sentencing purposes and principles.

In some cases no sentence is required by the purposes and principles of sentencing, but discharging an offender might not sufficiently deter further offending. In such circumstances the court can impose a suspended sentence, which will only take effect if the offender commits a further offence during a specified period (up to one year from the date of sentencing). If the offender does not commit any further crimes within that period, no sentence is imposed and the offender is discharged.

2. **Imposing a fine or ordering reparation**

Courts can also impose fines or order reparation, in isolation or in combination with other sentences. While a fine may be seen as a soft option, especially when the offender has more than enough money to pay it, fining a person has several advantages over other forms of sentences. As the leading textbook on sentencing in New Zealand explains:

[A fine] may be imposed as an alternative to a sentence of imprisonment, thus avoiding the placing of a burden on penal resources and the problems of social dislocation and stigma attached to imprisonment. It is flexible: it may be readily tailored to fit both the offence and the offender. It is adaptable: the burden – the period over which and the rate at which the offender is to pay – may be adjusted by the Registrar of the Court. It is remissible: it can be repaid in the event of injustice. It is economical: it costs the State very little to impose and is revenue producing.

(references omitted)
Perhaps because of these advantages, the Sentencing Act 2002 makes a fine the default sentence unless it would fail to satisfy the applicable purposes and principles of sentencing or would be clearly inadequate.\textsuperscript{71}

While a fine has a primarily punitive function, reparation provides a means of compensating the victims of a crime. Unless it would cause undue hardship to the offender or the offender’s dependants (or if there are special circumstances which make it inappropriate), a court must order the offender to pay reparation wherever the offender has caused an identifiable person to suffer loss of or damage to property, or emotional harm.\textsuperscript{72} For example, if a motorist hit someone on a bicycle, damaging their bike and breaking their arm, reparation might include repairing or replacing the bicycle, paying for the difference between any lost wages and ACC’s cover, and an additional payment for any emotional harm. Ordering the offender to pay reparation as part of the offender’s sentence is “a simple and speedy means of compensating those who suffer loss from criminal activities” and avoids the burden a victim would otherwise face of seeking civil damages for the material loss or emotional harm.\textsuperscript{73}

3. Community work and supervision

For more serious offending, where a fine would not satisfy the sentencing purposes, or if the offender lacks the means to pay a fine, a court may order the offender to perform community work and/or be supervised.

Community work requires the offender to give up a specified amount of his or her time (between 40 and 400 hours)\textsuperscript{74} to do work that benefits the community. The Department of Corrections, rather than the court, decides where the community work will be performed. Community work is intended to assist the offender to acknowledge his or her wrongdoing, develop a sense of community responsibility, and provide a form of reparation to the community for the offending. It also has a punitive element, since the offender must give up his or her own time without any reward.\textsuperscript{75}

Community work is not an appropriate sentence if the offender is unlikely to complete it: for instance, if the offender is aggressively anti-authoritarian, lacks motivation, or has certain addictions or intellectual impairments.\textsuperscript{76} Care needs to be taken when choosing where the offender will undertake his or her community work to minimise any risk to the community. For example, it might not be appropriate to place a person convicted of dishonesty offences to assist with running a charitable op-shop, like the Salvation Army. If it is clear to the court that an offender needs assistance, it can direct that up to 20 per cent of the community work hours be done as work training or life skills education.\textsuperscript{77}
While community work is aimed at punishing the offender and providing some form of reparation to the community, a sentence of supervision is primarily aimed at protecting the community or specific people from further offending through the supervised rehabilitation and reintegration of the offender. The person is supervised by a probation officer for six to twelve months. They must report to the officer as and when required to do so (usually once a week at the start of the sentence), must not move house or change their employment without the officer’s approval, and must not associate with anyone the officer tells them not to associate with. If the offender poses a significant risk of re-offending, the court may also require him or her to take counselling, attend education or training courses, or anything else the court thinks fit to reduce the likelihood of re-offending.

4. Intensive supervision and community detention

As the name implies, intensive supervision is a more restrictive form of supervision. It may only be imposed when supervision is likely to reduce re-offending, but more stringent or longer-lasting conditions are needed than those available under an ordinary sentence of supervision which can last up to two years. Under a sentence of intensive supervision an offender is required to comply with standard supervision conditions, but must report into the probation officer more regularly and, depending on a needs assessment, may be required to participate in residential treatment or training programmes. The sentencing judge may even direct that the offender appear before him or her in court at regular intervals, to check up on the offender’s progress.

Community detention is a step up from intensive supervision. Under a sentence of community detention, an offender is under an electronically-monitored curfew. This curfew can be as low as two hours a week up to twelve hours a day, for up to six months. While serving the sentence, the offender must reside at the curfew address and commits an offence if they breach the curfew without a reasonable excuse.

Community detention can be imposed for the purposes of holding the offender to account, promote responsibility, to denounce the conduct, and/or to deter further offending. It is particularly appropriate when imposing a curfew reduces the likelihood of further offender by restricting the offender’s movements during specific periods of time. If the person’s offending tends to occur during or after the offender has been drinking and/or taking other drugs with friends during the weekend, the court might decide that the offender should be under a curfew during the whole weekend. Alternatively, if the offender has been convicted of dishonesty offences that occurred at night, the court might decide to impose a curfew each night to reduce the likelihood of
further offending. Because a sentence of community detention is largely protective in function (although it is also punitive)\(^8^6\) it is often combined with supervision or intensive supervision.

5. **Home detention**

Home detention is similar to community detention in that the offender is usually electronically-monitored and prevented from leaving a certain address.\(^8^7\) However, rather than remaining at home for a limited curfew period, the offender must stay at home 24 hours a day, seven days a week for up to a year. If the offender wants to leave the address for work, study, to attend rehabilitation programmes, or to go to the doctor (unless urgent), he or she must first have this leave approved by the probation officer.\(^8^8\) If the offender leaves the address without approval and without a reasonable excuse, the offender commits an offence. The consequences for this breach can be a warning, variation of the conditions, or substitution of the sentence of imprisonment.\(^8^9\)

As well as restricting the offender’s movements, offenders on home detention must also comply with the same conditions as if serving a sentence of intensive supervision – such as not drinking alcohol, avoiding association with certain people, or engaging in rehabilitation programmes.\(^9^0\) These conditions are not imposed to punish the offender, but to help the offender’s rehabilitation and reduce future undesirable conduct. Post-detention conditions may be imposed as part of the sentence, to extend the probation officer’s control over the offender for up to a year after the electronic monitoring ends.\(^9^1\)

Home detention is a custodial sentence, not a soft option. It imposes very real restrictions both during and after the sentence period. It also places significant pressure on family/whānau and support people of the offender. Nevertheless it assists with making communities safer by reducing the rate of recidivism.\(^9^2\)

6. **Imprisonment**

Imprisonment is the ultimate sanction, taking away a person’s freedom and removing them from their family, friends and community. While in prison, a person lives a highly-regimented life. Part 2 of this report discusses what happens during a sentence of imprisonment.

While imprisonment is the most severe sanction available to courts, there are some variations in how long an offender will be in prison. An offender sentenced to a short term of imprisonment (less than two years) will be released after serving half their
sentence. For terms of imprisonment longer than two years, if the person is eligible for parole, they can be released after serving a third of their sentence. Normally a person who is eligible for parole will be released after serving between 60 to 70 per cent of their sentence.

A judge may place restrictions on the ability of the offender to be released. A judge may impose a minimum non-parole period (a MPI) for certain offenders where it is necessary to hold that offender to account, denounce the conduct, deter the offender or protect the community from the offender and the normal non-parole period will not achieve this. Only once the offender has completed the MPI is the offender eligible for parole. Another exception to the general rule that a person is eligible for parole after serving a third of their sentence is if the offender has been convicted of a third serious violent offence (with associated warnings).

Finally, if the offender has been convicted of a qualifying sexual or violent offence and poses a real risk of committing a further qualifying sexual or violent offence once

**Figure 2: Hierarchy of Sentences**

- Imprisonment 9%
- Convicted and discharged 7%
- Reparation 5%
- Fine 32%
- Community work 25%
- Supervision 4%
- Intense supervision 2%
- Community detention 7%
- Home detention 4%
- Other 5%
released, a judge may sentence the offender to preventive detention. A sentence of preventive detention is always coupled with a MPI and means that the offender will remain in prison until the Parole Board is satisfied the offender does not pose such a risk.

In 2012/2013, about nine per cent of offenders were sentenced to a term of imprisonment, as shown in Figure 3. Less restrictive sentencing options, such as supervision, intensive supervision, community detention, and home detention accounted for 17 per cent of outcomes. However, individually, none of the restrictive options was used more than prison were. This is somewhat surprising because the whole purpose of these restrictive community-based sentences is to provide an alternative to prison. From the above graphic, as well as the continued rise in the number of prisoners, it seems that these alternatives are not being utilised to as widely as intended.

**Determining what sentence should be imposed**

*The sentencing process*

This limited utilisation of the alternative sentencing options is largely due to the sentencing process, rather than judges being unwilling to adapt to these alternative sentencing options. Determining which of the sentences should be imposed on an offender for committing a crime is not an arbitrary process: judges follow a mandated three-stage approach to ensure consistency in sentencing levels, as shown in Figure 4.

First, the judge must set a starting point for the sentence. The starting point places the particular offending within the spectrum of that type of offending, with reference to the maximum sentence set by Parliament and any aggravating or mitigating features of the particular case. For example, the maximum sentence for aggravated robbery is 14 years’ imprisonment. The spectrum of possible sentences ranges from a discharge without conviction to 14 years’ imprisonment. However, the judge does not have free choice within that range. He or she will be guided by previous sentencing decisions, and by the “tariff” or “guideline” Court of Appeal decision on sentencing of aggravated robberies.

For instance, the Court of Appeal has said if a dairy is robbed by an offender with a weapon, but there is no actual violence against the shopkeeper, four years’ imprisonment is an appropriate starting point. This provides the sentencing judge with guidance in determining a starting point for the case in front of him or her. If there are more aggravating features, like bringing a loaded gun or staking out the dairy for a week to plan the robbery, the starting point would be higher. There are similar guideline
judgments for most of the main types of serious offending, like causing grievous bodily harm,104 sexual violation,105 or methamphetamine manufacture and supply.106 For less common types of offending, or types where the facts can vary hugely (like fraud, manslaughter, or arson), there is no guideline case and the sentencing judge must look to other particular cases where offenders have been sentenced for relatively similar offending, with some of the same aggravating features. Aggravating features might include the use of a weapon, particular cruelty, unlawful entry into a home, or abusing a position of trust.107 Mitigating features may be the offender’s limited involvement in committing the offence or the use of excessive self-defence.108

After setting the starting point, the judge then takes into account aggravating and mitigating features that are personal to the offender. The starting point is increased for aggravating features like previous convictions for similar offending, or offending while on bail.109 It is decreased for mitigating features like an offender’s genuine remorse, reduced intellectual capacity, or previous good character.110 After this adjustment of the starting point, a discount of up to 25 per cent may be given if the offender has pleaded guilty.111 This discount recognises that a guilty plea,
especially if made early in the proceedings, spares the victim from enduring a trial, often shows that the offender has accepted responsibility, and also saves the state significant expense. Determining the level of discount to give depends upon an “evaluation of all the circumstances in which the plea is entered”.¹¹² This evaluation will include looking at the time that the plea was entered,¹¹³ the strength of the prosecution’s case,¹¹⁴ and the extent to which the plea involves an acceptance of responsibility.¹¹⁵

The “choice” of sentence

While the sentencing process might not appear to shed much light on the question of how a court determines what type of sentence is appropriate, in many instances, at least where imprisonment is considered, it does for three reasons:

1. The primary reason is that in many cases the sentence can only be imprisonment. If the end sentence is more than two years once all adjustments have been made, the end sentence must be imprisonment, regardless of whether it is the least restrictive outcome or best satisfies the purposes of sentencing.¹¹⁶ If a starting point over four years is taken, it is almost impossible for the mitigating factors to reduce the sentence to a short-term where a community-based option is available.

2. Some judges seem to apply the sentencing process from a negative perspective. Despite the indications in the Sentencing Act 2002 that imprisonment is to be a sentence of last resort, it is assumed by some judges that imprisonment can and will satisfy some or all of the purposes of sentencing. The sentencing methodology set out above, which presumes that a starting point in terms of years of imprisonment can be taken, reinforces this bias. From this default position, judges must be convinced that an alternative sentence would satisfy the stated purposes to the same degree as imprisonment.

3. Finally, consistency requires that like offenders be treated alike.¹¹⁷ Sentencing judges should generally impose a similar sentence for similar offending in order to achieve consistency.¹¹⁸ While this is ordinarily a sound principle, if case law sets a high sentence requiring imprisonment, this makes it more difficult (although not impossible) for other judges to then not impose a similar sentence – even if they are not satisfied that imprisonment is the least restrictive sentence necessary to satisfy the purposes of sentencing.

These three factors, either in combination or alone, often mean that offenders are sent to prison even if a judge is not satisfied that sending a person to prison is the only sentencing option that can achieve any or all of the sentencing purposes the judge has
identified. This is perhaps one of the reasons why home detention and community detention are still not as widely utilised as Parliament intended. In many cases where home detention or community detention might be considered, judges are hamstrung by the two year maximum and also by the need to impose consistent sentences.

**Conclusion and recommendations**

JustSpeak considers that in some cases people are being sent to prison despite prison not being the least restrictive outcome that will achieve the one or more of the sentencing purposes of accountability; promoting responsibility, providing for victims’ interests; denunciation; deterrence; protecting the community; and rehabilitation and reintegration. This occurs because of limitations inherent to the Sentencing Act 2002 regarding when imprisonment must be imposed; it also occurs because some judges do not conduct an evidence-based assessments of whether prison will achieve stated sentencing purposes.

*Taking a more individual approach to determining the purposes of prison*

As JustSpeak has argued above, imprisonment often fails to satisfy many of the purposes for which a person may be sentenced. For example, while the stated purpose of “deterrence” is frequently used when imposing a sentence of imprisonment, in many cases it is unlikely that prison will actually deter either the specific offender or members of the public from committing that type of offending. Studies indicate that rather than deter an offender, depending on the offender’s circumstances, prison often has the opposite effect of increasing the risk of that person offending further. While prison may protect society from the offender for the duration of the imprisonment, studies show that without programmes that actively address the underlying causes of the offending, such as alcohol or other drug abuse or the limited ability to manage the person’s emotions, a person is at a higher risk of re-offending following release from prison. In the long-term, sending a person to prison without offering such programmes can often increase the risk that the offender poses to society. JustSpeak considers that judges need to consider whether prison will achieve the sentencing purposes in relation to the particular offender, taking into account that offender’s personal characteristics, rather than simply assuming that prison will achieve the purposes of deterrence or protecting society.

JustSpeak also questions the interpretation of the sentencing purpose of holding the offender to account for his or her offending. As argued above, accountability does not mean to exacting retribution against the offender. Instead, holding an offender
to account involves censuring that offender by imposing a consequence that is proportionate to the gravity of the crime to mark the fact that in committing the crime the offender has breached society’s standards. This is not eye-for-an-eye or tooth-for-a-tooth justice; instead, holding an offender accountable is intended as a moral communication of society’s condemnation of the offender’s wrongdoing. In doing so, it is necessary to take into account the crime the offender committed as well as the offender’s personal characteristics and circumstances that impact on the culpability of the offender. Therefore, when a judge determines that it is necessary to hold the person to account for their crimes, it is necessary to consider what this means in the particular circumstances and to the particular person. The answer is not always a more severe punishment such as prison.

JustSpeak would like to see judges carry out evidence-based assessment of sentencing options to arrive at the least restrictive outcome while achieving stated sentencing purposes. This requires judges to have sufficient information to make a full assessment. We recommend that the pre-sentence reports on the offender’s circumstances more carefully evaluate how the statutory purposes apply to the offender: in particular whether an offender may be deterred from further offending, will accept responsibility through other sentences, and what sentences would best lead to the rehabilitation and reintegration of the offender. While a judge then has to consider this information, and come to his or her own conclusion about what sentence will achieve the stated sentencing purposes, we consider that this information will better assist the judge in properly assessing sentencing purposes in relation to the individual offender.

Repealing the three-strikes legislation

When sentencing an offender, the judge must take into account the “gravity of the offending in the particular case, including the degree of culpability of the offender”. This principle reflects the fact that there are varying degrees of gravity of offending and that a person’s culpability may differ. If the offending is serious and the culpability is high, this may justify imposing the maximum or near-maximum sentence. In other cases where the seriousness of the type of offending is less serious or where the culpability of the offender may be lower, a judge will have to determine what the appropriate sentence is in accordance with the purposes and principles set out in the Sentencing Act 2002.

However, under what is known as the “three strikes” legislation, this ability to create a sentence that reflects the gravity of the offending and the offender’s culpability is removed in relation to certain serious violent offending. Upon the offender being
convicted of their second qualifying serious violent offence – their second “strike” – the offender must serve their sentence in full and the offender is not being eligible for parole or early release. If after serving that sentence, the offender commits a third serious violent offence – their “third strike” – a judge is required to impose the maximum sentence. The offender must serve the maximum sentence without being eligible for parole unless the court is satisfied that it would be manifestly unjust to make the order.

The “three strikes” legislation is based on the concept of deterrence. It is for this reason that the offender is given two warnings. These warnings are intended to discourage the person from committing further serious violent offending. However, as discussed earlier, many offenders are not deterred by the threat of punishment. Deterrence assumes the offender makes a rational decision to offend and carefully weighs the pros and cons of committing the offence. As discussed above, this assumption is often not borne out in reality. Various factors such as being under the influence of alcohol or other drugs may mean that the decision to offend is neither thought through nor rationally made.

Making this incorrect assumption could be costly. As mentioned earlier, keeping a person in prison costs the state approximately $97,090 per year. Rather than address the cause of the person’s offending, prison is unlikely to alter the offender’s behaviour. As a result requiring the person to stay in prison longer and without parole accomplishes little but for pouring taxpayer’s money down the drain.

While no offender has received their “third strike” yet in New Zealand, 37 people are on their second warning. It is only a matter of time before someone is convicted of their third strike and the sentencing judge will have to impose the maximum sentence without parole. JustSpeak considers that the “three strikes” legislation should be repealed; the sentencing judge’s discretion to impose a sentence that reflects the gravity of the serious violent offending and the culpability of the offender should be restored.

**Increasing the period where a sentence of home detention can be imposed**

JustSpeak also considers that the period when a sentence of imprisonment must be imposed is too low. Despite the apparently high threshold set in s 16 of the Sentencing Act 2002, and its requirement of an individual assessment of whether prison is the best option for dealing with an offender, in many cases the judge has to impose a term of imprisonment. If the end sentence a judge imposes is more than two years’ imprisonment, the judge must sentence the person to a term of imprisonment even if the judge does not believe that imprisoning the offender satisfies the sentencing purposes.
Determining the end sentence for a particular offence is not an arbitrary process: judges follow a mandated process. The judge first sets a starting point for the sentence. From this starting point, the judge then gives an uplift or a discount for any aggravating or mitigating personal features of the offender. Finally, if the offender has pleaded guilty, the judge may give a discount for this guilty plea. In order to provide consistency in what sentences are imposed for similar offending, at each step of the sentencing process a judge is guided by comparable case law. Although a judge retains sentencing discretion, he or she may feel restrained by precedent in determining the end sentence that should be imposed for particular offending. Where a sentence of two years or more is reached, the judge has no option but to impose a sentence of imprisonment – regardless of whether sending a person to prison best achieves the purposes of sentencing or not.

JustSpeak considers that this artificial limit of two years unduly restricts the judge’s ability to determine the appropriate sentence and prevents the judge from actively considering what type of sentence is the least restrictive outcome that would achieve the sentencing purposes. JustSpeak would like to see this time limit increased so that judges could consider other forms of sentences where the end sentence is three years or less. After three years, the offending is significantly more serious and it is perhaps implicit that prison is the only sentencing option that can achieve certain purposes such as accountability, denunciation and protection of society.

To make this happen, JustSpeak recommends amending s 15A(1)(b) of the Sentencing Act 2002 to refer to a period of three years rather than a short-term sentence of imprisonment.

Expanding the use of community detention and home detention

Tied to the expanded period where a judge could consider alternative sentences to imprisonment, JustSpeak also recommends that the use of alternative sentences, like home detention and community detention, should be expanded. While some might consider home detention to be an easy option where a person simply remains at home and lives a life of leisure, this is not the reality of home detention. Home detention still involves a serious restriction on a person’s liberty and they are not free to do what they want while on home detention. A probation officer can place restrictions on who can visit the person and require the offender to attend programmes. Further, the offender cannot leave the house, even to go to work unless the probation officer gives permission, which is not common. These are still real restrictions on the person’s liberty. For these reasons, the Court of Appeal in R v Iosefa stated that home detention “carries with it in considerable measure, the principles of deterrence and denunciation.”
At the same time as fulfilling the purposes of denunciation and deterrence and being a “real alternative to prison”,\textsuperscript{139} home detention provides several other benefits:\textsuperscript{140}

1. Low rates of re-conviction and re-imprisonment
   Despite the difficulty of comparing people on home detention with those sentenced to prison, the Ministry of Justice has concluded that home detention “is a very successful sentence in terms of reducing the likelihood of reconviction and imprisonment”.\textsuperscript{141} The proportion of offenders sentenced to home detention and who are reconvicted in the next 12 months is less than half that of those offenders who are released from a short-term prison sentence.\textsuperscript{142} Further, the proportion of offenders sentenced to home detention who are imprisoned within the next 12 months of release, is four times lower than those offenders who are released from a short-term sentence of imprisonment.\textsuperscript{143}

2. High compliance rates
   Over 80 per cent of home detention sentences are completed successfully.\textsuperscript{144} This means that the offender has not breached the conditions of home detention and therefore avoids having a breach action brought against them. This high compliance rate is higher than most other community-based sentences, with the exception of community detention.

   While some offenders on home detention do offend, this rate is low. Most offending is a breach of a condition, like leaving the home or associating with prohibited people. Only approximately 3.6 per cent of offenders on home detention commit criminal offences such as assaulting someone or using drugs.\textsuperscript{145}

3. Positive support for offender’s reintegration and rehabilitation
   Offenders who complete a term of home detention are then under standard post-release supervision for generally up to six months, although this can be up to twelve months if a court considers it necessary.

4. Low cost compared to prison
   Home detention is considerably cheaper than sending a person to prison, as shown below. The cost of sending a person to prison is approximately four times as expensive as managing that offender on home detention, as shown in Figure 5.

   With these advantages over prison, it is no wonder that the courts have stated that “society’s interests are better served in some cases by the imposition of restrictions on liberty through home detention rather than through imprisonment”.\textsuperscript{146}
JustSpeak agrees and would like to see the use of home detention expanded. Between 2007 and 2011, in relation to short-term sentences (sentences of two years or less), a much greater proportion of offenders (76 per cent) received a short-term sentence of imprisonment compared to those who received home detention (24 per cent).\(^\text{147}\) Of these people, a large proportion of those people sent to prison rather than serving home detention are Māori and also younger people (aged 20 to 29 years), while offenders who were Pākehā/European or older (over 40 years) were more likely to be given home detention.\(^\text{148}\) There is still significant scope for more offenders, especially Māori, facing a short-term of imprisonment to receive home detention rather imprisonment. As the evidence shows, there are real advantages for the offender, their community and New Zealand as a whole.

**Figure 5: Cost of sentencing options per person per year**

<table>
<thead>
<tr>
<th>Sentence Option</th>
<th>Cost per Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Work</td>
<td>$2,484</td>
</tr>
<tr>
<td>Supervision</td>
<td>$4,486</td>
</tr>
<tr>
<td>Intensive Supervision</td>
<td>$6,232</td>
</tr>
<tr>
<td>Community Detention</td>
<td>$6,092</td>
</tr>
<tr>
<td>Home Detention</td>
<td>$20,972</td>
</tr>
<tr>
<td>Imprisonment</td>
<td>$90,000</td>
</tr>
</tbody>
</table>

*Establish the Sentencing Council*

Standing in the way of an expanded use of home detention and other sentencing options are legislation and previous sentencing decisions. JustSpeak has already argued for the
term of what is a “short-term sentence of imprisonment” to be increased to three years. However, JustSpeak recognises that simply expanding the term will not by itself achieve the increased use of alternative sentences that have many benefits. Previous sentences handed down also colour the decision whether to grant home detention or not. However, it is not just that previous sentences reduce the use of alternative sentences to prison that JustSpeak is concerned about.

As mentioned above, sentencing is not an exact science. Sentencing a person involves trying to determine what consequence is proportionate to the crime and the moral culpability of the offender. Determining what amounts to a proportionate consequence, especially when the victim and the community are understandably seeking some form of retribution, can be difficult. It is made even more so by trying to set a level commensurate with society’s own level of denunciation of the crime while avoiding exacting revenge on the offender. As JustSpeak has explained earlier in this report, determining the appropriate sentence involves two aspects: society decides the range of the available sentence (for example, with assault a range of up to two years is available) and then a judge determines where the particular offending fits within this range (for example, perhaps a sentence of eight months is appropriate).

Because sentencing is a form of the community censuring the offender by sending them a message that their breaking the law is not tolerated, JustSpeak considers that the community needs to be more involved in the sentencing process. At present the community has only a very limited means of altering sentencing levels: by simply changing the maximum penalty available. However, this is a blunt tool because it cannot be predicted how this change will impact the sentencing levels and how judges determine the appropriate sentence within this sentencing range.

The Law Commission addressed this problem and other issues in their report, Sentencing Guidelines and Parole Reform. The Law Commission noted that sentencing practices in New Zealand are inconsistent with different courts and different judges sentencing people inconsistently, especially in the District Court. Further, sentencing policy development lacks transparency, as it is developed by judges responding to submissions from the prosecution and defence, without the ability for the public to have a say in what levels are appropriate. Finally, the Law Commission noted that sentencing is a public policy matter and it is necessary to take into account the effectiveness of sentencing options and also the resources available to fund sentencing options.
To address these concerns, the Law Commission recommended the creation of a Sentencing Council.\textsuperscript{155} The Sentencing Council would be able to consult extensively and do so publicly. In doing so, the Sentencing Council could also take into account research done by experts in relation to the best measures to address offending and the resources available for different sentencing options when coming up with sentencing guidelines. Most importantly, the Sentencing Council’s guidelines could also be scrutinised by Parliament.\textsuperscript{156} This would provide a mechanism of further community oversight in the sentencing process which would enhance transparency.

JustSpeak agrees with the reasons put forward by the Law Commission. Sentencing is a social policy issue, involving society censuring an offender for their breaking the law and there should be more community input into sentencing levels. The Sentencing Council, as provided for under the Sentencing Council Act 2007, would be made up of five judges, including the Chair of the Parole Board,\textsuperscript{157} and five others with specified expertise. The Council would have the ability to issue sentencing guidelines, akin to the guideline judgments the Court of Appeal issues. These guidelines would promote sentencing consistency, while retaining the necessary discretion to tailor the individual sentence to the offender.

On this basis, JustSpeak would like to see New Zealand activate the Sentencing Council to provide an independent and considered voice in penal policy. This would not be difficult in that the Sentencing Council Act 2007 has already been enacted by Parliament. The Act has created the necessary framework for establishing the Sentencing Council and inserted the necessary statutory provisions that would give the Sentencing Council the power to create sentencing guidelines. However these provisions are not in force, awaiting the Governor-General making an Order in Council to bring them into force. This will only happen if the Government recommends that such an Order be made. As yet the Government has chosen not to do so. JustSpeak recommends that the Government consider recommending to the Governor-General that an Order in Council be made to activate the Sentencing Council.
PART 2: LIFE IN PRISON
WHAT IS IT LIKE ON THE INSIDE?
PART 2: LIFE IN PRISON

What is it like on the inside?

Part One looked at the rationale of prison sentences, asked why we have prisons, and considered whether or not they achieve what we think they should. The second part of this report examines who goes to prison and what life is like for those in prison.

The history of prisons

To understand contemporary prisons in New Zealand, we must look at the prisons of the past. A country's history of imprisonment is a history of how its government has maintained social order. In a postcolonial country like New Zealand, that history stretches back across oceans as well as time.

In order to conceive of a future where fewer people are incarcerated, and for different reasons, we must understand that prisons are only one possible solution amongst many to the problem of what society should do with individuals who break societal norms. Punishing people by separating them from the rest of society for a period of time is now seen as intuitive, but that has not always been the case.

This section will provide a brief and necessarily selective history of prisons. The focus is on Anglo-American experiences, since they are the main influences on criminal justice and incarceration here in New Zealand.

The rise of the prison

Between the late 1700s and early 1800s, imprisonment became the primary response to crime in the United Kingdom: from being imposed in only 2.3 per cent of cases disposed of in the central criminal court, it rose to 68.5 per cent of sentences by 1836.

Corporal punishment (such as branding, whipping, or being placed in the stocks) and transportation had previously been the most frequently imposed sanctions. However, after the American War of Independence closed off the American colonies (and before Australia was established as a penal colony), transportation was no longer the easy option it had been. Its use diminished significantly after 1853, and it was abolished in 1868. At the same time, enthusiasm for public spectacles of execution and torture decreased. As Enlightenment values spread, the legitimacy of government rested less upon instilling fear and awe in the masses, and more upon the authority of law.
Jails at the beginning of this period were very different from the regimented places we know today. There was no central authority overseeing them, so conditions varied widely. Jails were privately-run, and jailors lived off the fees paid by inmates for food, bedding and even beer. Debtors in jail mingled with petty offenders who were headed to the workhouse. Inmates’ friends and family could come and go with relative freedom. All of this was to change at the end of the 18th Century.

The change to sequestration and solitude

As imprisonment became more common in Britain, the government realised that the chaotic nature of its prisons had to change. The Gaols Act 1823 and Prisons Act 1835 attempted to create some consistency in the administration of custodial sentences by imposing reporting requirements on the Magistrates in control of the prisons. Manacles were outlawed, jailors were paid by the state rather than their prisoners, and prison inspectors were employed to enforce the new regulations.

New ideas about what prisons should accomplish required this centralisation and enforcement of uniform conditions. Prison became a place of punishment in itself, rather than merely the temporary deprivation of liberty until their actual punishment was metered out.

Prisoners were not to be more comfortable than the worst-off members of the community, because their offending had disentitled them from the same standard of living as law-abiding citizens. Suffering as a consequence of crime, and the deterrent fear of future suffering, were considered the most effective reforming influences. If life in prison was in any respect more desirable than the lot of the most disadvantaged people living outside of prison, it was thought there would be an incentive to commit further crimes upon release and no incentive to obey the law.

Solitude, silence, and hard labour became key components of life inside prisons – quite the reverse of the chaotic and unregulated prisons that had existed previously. The social reformist ideas of the late 18th Century contributed to this change, and in particular Jeremy Bentham’s Panopticon design for a modern prison. According to that design, each prisoner was to be kept, for the most part, in solitary confinement, the guards housed in a central surveillance tower. Removing the prisoner’s ability to communicate with others and placing him under the total control of the authorities would guarantee the efficient keeping of order.

“The whip inflicts immediate pain, but solitude inspires permanent terror. The former degrades while it humiliates; the latter subdues but does not debase. ... The one contributes to harden, the other to soften the affections.”

State prisons like Millbank and Pentonville were built with Bentham's design in mind (though they ultimately bore little resemblance to the Panopticon). Prisoners were kept isolated from each other and in total silence. At Pentonville prison, the prisoners would work from 6 am to 7 pm every day, attend chapel and exercise wearing masks to prevent communication with each other, and were fed in their cells through a trap door. Prisoners were entitled to one visit and one letter every six months. Prisons became places of solitude and isolation. Social isolation was supposed to promote remorseful introspection; inmates were intended to reflect upon their crimes and the Bible (which was usually provided in each solitary cell).

Some prison labour was productive, including activities such as rope-making and treadwheels. Tread-wheels were huge revolving cylinders turned by the footsteps of inmates and could be used to grind corn or raise water. But more often, the tasks were pointless, involving the turning of enormous machines for hours on end with no purpose:

... Its sheer uselessness was meant to enhance the convicts’ awe of such a punishment and deter them from committing further crimes ... it was not any disciplinary training that the prison might offer which made it a popular sanction – but the fact that its regime would deprive inmates of everything they had known previously. Prison would thus be the greatest possible waste of one’s life: even its labour was designed to produce nothing at all.

Over the course of the 19th Century the use of solitary confinement reduced. In the main British prisons, inmates would serve six months in solitude and then the rest of their sentences doing hard labour. After serving their sentence, they would be paroled, This involved reporting regularly to police stations, maintaining gainful employment, and not associating with other ex-convicts.

“Upon release [from Pentonville], convicts were set off by the visible signs of their confinement – the liberty clothing, the shaven head, and the pallor of their skin. Then there were the marks inside. ... [M]any suffered from bouts of hysteria or crying. Others found the sounds of the street deafening and asked for cotton wool to stop up their ears.”

These reforms deprived prisoners of their individuality, reducing them to interchangeable units to be processed by the system. Each prisoner was categorised “as one more individual to be subjected to the uniform and universal regime”. Greater central control of penal institutions was required to ensure all inmates suffered in equal amounts, and to guarantee the supposed deterrent effect that the prospect of suffering was supposed to have. In 1877, the British central government finally gained full control of the remaining prisons that had been locally controlled. The result was greater uniformity and more efficiency in the penal system, including more reliable recording and reporting requirements. As Foucault put it:

... The crowd, a compact mass, a locus of multiple exchanges, individualities merging together, a collective effect, is abolished and replaced by a collection of separated individualities. From the point of view of the guardian, it is replaced by a multiplicity that can be numbered and supervised; from the point of view of the inmates, be a sequestered and observed solitude.

A shift away from incarceration

From the late 1800s, the criminal justice system gradually moved away from imposing custodial sentences. In 1896, just over half of offenders sentenced for serious (“indictable”) crimes were imprisoned. By 1913, around a third were imprisoned.

This trend may be linked to the Gladstone Report, provided to the government in 1895. That report distinguished between offenders who were capable of reform and whom it was worth trying to rehabilitate on the one hand, and irredeemable recidivists on the other. Therefore, prisons ought to not only deter, but also to reform and treat, the former category of prisoner. The latter group of prisoners could be neither deterred nor reformed, and ought to be imprisoned indefinitely.

The Probation Act 1907 reflected this new approach, expanding the courts’ discretion to impose probation where appropriate for an individual offender. Similarly, the Prevention of Crime Act 1908 allowed for the indefinite (preventative) detention of offenders who could not be reformed and established borstals for the reform of juvenile offenders.

This re-individualisation of offenders saw a shift from standardised sanctions based on the offending alone, to penalties tailored to fit the individual offender. A corollary of this shift was the increasing intervention of the state in the lives of offenders. More and more information was gathered and control exercised over offenders’ lives for the purpose of rehabilitation.
More recent developments

Attitudes began to swing back again in the 1960s and 1970s, with greater emphasis on sentences imposed in response to the crime committed, rather than in response to the needs of the offender. A combination of political opportunism, ideological zeal for being “tough on crime”, and broader social trends created a “carceral state” in the United States.24 In the early 1970s in the United States, around one in every 625 adults was incarcerated – a rate considered shameful at the time.25 By 2008, it had increased to one in 100 adults.26

Other Western countries followed suit, as the political benefits of “penal populism” became obvious.27 New Zealand was an enthusiastic adopter: as we saw in Part One, New Zealand’s imprisonment rate is now among the highest in the world.

Figure 6: Prison work gang constructing the Milford Track

Source: Alexander Turnbull Library, F. G. Radcliffe Collection (PAColl-4950)
Prisons in New Zealand

New Zealand’s history of incarceration has largely been a natural progression of the British experience, the roots of which were transplanted here by the British Empire. Māori ideas of justice were marginalised, if not entirely supplanted, during the initial colonisation period. Just as the prison system was intended to cultivate “good citizens” in Britain, it was intended to bring both Māori and Pākehā in far-flung New Zealand into line with Eurocentric moral standards.

Jails were initially administered at the local or provincial level. As with the early, localised, prisons in Britain, standards varied widely. New Plymouth in the early 1850s had two cells, which held an average of seven or eight prisoners per night. There were no jailors on night duty, and the peg securing the prison door could easily be unlocked by friends from the outside.

A standardised prison system with regular centralised inspections developed from 1876. Many new prisons were opened, including the first facility for maximum security prisoners at Mt Eden in 1888. Work camps kept prisoners productive, like “Humeville” in Milford Sound where prisoners were set to building a road through the mud and sandflies to Te Anau (see Figure 6). This prison camp and project was abandoned in 1892.

As in Britain, the reformist project promoted rehabilitation over deterrence from the turn of the 20th Century. The Crimes Amendment Act 1910 created new reformative sentences, and allowed the Prison Board to release offenders on probation if they could were considered reformable. School teachers were appointed to teach basic skills to prisoners.

Reforms slowly continued throughout the 20th Century, but were stymied by the increase in the prison population from the 1960s. Although there were calls to close the antiquated Mt Eden Prison from the 1950s, prisoner numbers kept it open until 2011. At this time, a private company, Serco, took over the running of the re-named Mt Eden Corrections Facility (MECF).

Private prisons in New Zealand

Although legislation in New Zealand has allowed for private prisons since 1995, it was not until 2000 that the first private prison, Auckland Central Remand Prison (ACRP) opened under a five-year contract with Australasian Correctional Management. In July
2005, under a Labour-led Government which had repealed the private prison legislation, ACRP returned to state operation. However, the re-elected National Government reintroduced private prison legislation in March 2009. In 2011, the renamed MECF was opened, under a contract with the British security company Serco. In September 2012, Serco was engaged to build and run a 960-bed prison in Wiri, South Auckland: it is due to open in 2015.

Serco is required to meet 37 performance measures to receive full funding from the government. For example, 80 per cent of prisoners must begin and complete rehabilitation and reintegration programmes, and all prisoners must have an initial health screen on arrival. In its first nine months of operating MECF, Serco was fined $400,000 for a prisoner escape, three wrongful detentions, three wrongful releases, and various administrative errors. However, Serco’s management of MECF has steadily improved and it is now “exceeding” its performance targets. The prison operated at a $370,000 profit in the 2011-2012 financial year.

However, facilities operated by Serco in New Zealand, Australia, and the United Kingdom have faced controversy, including allegations of physical violence, unsafe work practices and fraud.

Theory and practice

Private prisons are premised on the belief that the private sector can manage enterprises more efficiently than the public sector, and that competition will allow for innovation. If private contractors can run prisons for less money without compromising quality and safety, then why not privatise them? Counter to that runs the ethical question of whether imprisonment (that is, the forceful restriction of liberty) should be reserved for the state or allowed to become a source of profit. Further, the benefits of greater accountability and transparency are associated with state entities, and it is feared that the reduced costs associated with privatisation will mean poorer working conditions for prison staff.

Cost-effectiveness is the primary objective of private prisons. Figures setting out Serco’s expenditure per prisoner are not publicly available; however, its 10-year contract at MECF is said to be worth $300 million. Assuming that MECF runs at its full capacity of 966 prisoners for those 10 years, the state is effectively paying Serco around $31,000 per prisoner per annum – roughly a third of the cost of a male prisoner in a state-run facility. The state also hopes that building the Wiri prison will save the state 10 to 20 per cent over the 25- to 35-year life of the proposed contract. It does not, however, always follow that privatisation is less expensive. According to some when ACRP was
Part 2: Life (and issues) in prison

privately run it cost $11,000 more per remand prisoner than state-run remand prisons, and US-based meta-analyses have found that private prisons are no more cost effective than public prisons. Other studies show that where savings have been made through the privatisation of a prison, it has come at the expense of services delivered, staff safety and prison management accountability to communities and taxpayers. International evidence shows that inmates in private prisons are subjected to degrading and unsafe prison conditions, the increased misuse of force, and are not provided with inadequate healthcare, education and work programmes.

JustSpeak spoke to a former inmate who had spent time in MECF under private management, before being transferred to a state-run prison. At MECF, he was held in a segregated unit, away from the daily violence that characterised the mainstream units. He said that understaffing put staff at risk and made it difficult for them to stop the violence. After six months, he was shifted to a Department of Corrections prison, which was “superior in every way, meaning humane, sensible, predictable”.

**Figure 7: Prison work gang constructing the Milford Track**

![Pie Chart showing prison work gang activities](image)
Who Goes to Prison in New Zealand?

Before analysing life in prison in New Zealand, it is important to first question who goes to prison in New Zealand. This part will examine the process that leads a person into the prison system, and the characteristics of the prison population.

Fewer than 10 per cent of offenders go to prison, and in 2013 83 per cent of them were imprisoned for just six categories of offences: sexual assaults, intentional violence, burglary, robbery, drug offences and homicide. This is illustrated in Figure 7 below.

What is the makeup of the prison population?

Figure 8: Men and women in prison

[Diagram showing 94% Male, 6% Female]

Figure 9: Prisoner's ethnicity

[Bar chart showing: Maori 50.7%, European 33.1%, Pacific peoples 11.7%, Asian 2.8%, Other 0.9%]
As at 31 March 2014, New Zealand’s total prison population sat at 8,520 people. As mentioned in the introduction, there has been a significant rise in the prison population over the last 20 years which has forced the Department of Corrections to build more prisons. In 2014, there was capacity for around 9,600 prisoners in New Zealand.

Of the prison population at March 2014:

- 6% was female, 94% were male (Figure 8);
- 50.7% were Māori, 33.1% European, 11.7% Pacific peoples, 2.8% Asian, and 0.9% Other (Figure 9); and
- The most represented age group in the prison population was 20–24-year-olds, who constituted 17 per cent of the prison population (Figure 10).
Recidivism

A report in 2009 analysed the reconviction rates of prisoners in the five years after their release:57

- 52% of those released from prison were convicted of a new offence and were returned to prison at least once within 60 months of being released.58 Within this group, 51% had re-offended in the first 12 months, 72% in the first 24 months, 85% within the first 26 months, and 94% within the first 48 months.59

- The rates for reconviction (without being imprisoned) by ethnicity within 60 months of release were: Māori: 77%, European: 66.2%, Pacific people: 61.6%, Asian: 25%, Other: 46.7%, Unknown: 36.4%.60

- The rates for re-imprisonment by ethnicity within 60 months of release were:
  Māori: 58%, European: 47.3%, Pacific people: 39.9%, Asian: 15.5%, Other: 40%, Unknown: 18.2%.61

- The most common offence resulting in re-imprisonment was burglary, followed closely by car conversion and theft.62

Māori and Pacific peoples in prison

Māori constitute almost 51 per cent of the prison population, despite being only 14 per cent of the overall population aged 15 and over.63 It is important to note that Māori in prison are still only a small percentage of the total Māori population (approximately one per cent).64

Principal Youth Court Judge Andrew Becroft (writing in the context of the youth justice system, where a similar disproportionality exists) notes that:65

Much has been written and discussed about the reason for this tragic disproportion ...
Many researchers point to a combination of long-term disadvantage, dating its roots back to colonial settlement of New Zealand, combined with current socio-economic disadvantage in which Māori are disproportionately represented in all relevant measurements. Also, systemic bias cannot be excluded. All these factors work together to create the current disproportion.

JustSpeak’s 2012 report addresses this disparity in greater detail. It suggests that attention be paid to the interconnectedness of problems faced by Māori and the criminal justice system, the possibly endemic nature of systemic problems, and proposes solutions to these challenges.66
Pacific peoples are also over-represented, making up 11.4 per cent of prisoners though only 7.4 per cent of the general population. Over half of the foreign citizens imprisoned in New Zealand are Pacific Islanders.

Women in Prison

Women make up only six per cent of the prison population, but their rate of imprisonment is increasing more quickly than that of their male counterparts.

Female prisoners’ needs are often different to those of male prisoners: in particular, they are more likely to be involved parents before coming to prison. While imprisoned, their children are more likely to be cared for by extended family/whānau or friends, or placed in foster care. By contrast, male prisoners’ children are likely to be cared for by their mother or father’s partner. When mothers are imprisoned, their children are at a higher risk of being separated from both parents and even their whole family.

In other ways, women prisoners’ backgrounds are very similar to that of the typical male prisoner: they are likely to have been victimised themselves; to suffer financial, health, and addiction problems, and are overwhelmingly likely to be Māori.
There are only three women’s prisons in New Zealand: Auckland Region Women’s Correctional Facility in Wiri, Arohata Women’s Prison north of Wellington, and Christchurch Women’s Prison (the first women’s prison was opened at Addington in Christchurch in 1913). None has a youth facility to separate young women from adult prisoners (a fact which has attracted criticism from the UN Committee on the Rights of the Child). Because there are fewer women in prison, the cost of keeping them is much higher: $372 per day in 2011, compared to $248 for the average male prisoner.

Research consistently shows that mother-with-baby units in prisons supports the child’s development while increasing the mother’s parenting skills and maternal sensitivity. There is also a correlation with reduced re-offending. Since the Corrections (Mothers with Babies) Amendment Act 2008 came into force, women have been allowed to keep children up to the age of two years with them in prison. All three women’s prisons provide “Self Care Units” and “Feeding and Bonding Facilities” to address the needs of mothers in prison. The “Self Care Unit” allows a mother to live with her child in an independent unit, with the freedom to structure her own living arrangements. “Feeding and Bonding Facilities” allow women whose child is being cared for in the community up to 12 hours’ contact a day with the child in a separate area with a kitchenette, bathroom and sleeping room for the baby. However, there is only capacity for 10 women to keep their children with them in a Self-Care Unit across the whole country.

Young offenders in prison

Currently, 10 to 13-year-olds are considered “children” in the criminal justice system. The vast majority of children who offend do not come into contact with the formal youth or criminal justice system, but have their care and protection needs met through the police
or Family Court. However, since 2010 12 to 13-year-olds who commit serious or repeat offences may be referred to the Youth Court.78

Fourteen to 16 year olds are considered “young people”. All young people are dealt with by the youth justice system.79 Around 72 per cent of offences committed by young people do not end up in the Youth Court. Police Youth Aid (New Zealand’s specialist division of the police, trained to work with young people) instead gives warnings (approximately 22 per cent) or “alternative action” (plans created and monitored in the community to address offending behaviour (42 per cent). A further five per cent of young people are referred to Child, Youth and Family for what are called “intention to charge Family Group Conferences” (some of which result in prosecution in the Youth Court). Around 23 per cent of offences end up in the Youth Court.80

Children and young people can be sentenced to imprisonment only in very limited circumstances, and only if they are dealt with in the District or High Courts. The Youth Court cannot impose a sentence of imprisonment.81

Those aged 17 and upwards are dealt with by the District or High Court rather than the Youth Court. However, they are considered young offenders in prison until they turn 21, and may be treated differently from adult offenders.

Youth Units in Prison

There are currently four prisons with specialist youth units in New Zealand: Waikeria (near Te Awamutu), Hawke’s Bay Regional Prison (near Hastings), Rimutaka Prison (north of Wellington), and Christchurch Prison. They cater to young men aged 17 and

STATISTICS FOR YOUTH OFFENDERS

92 per cent – learning disability
53 per cent – ADHD symptoms
83 per cent – have a CYFS record, indicating previous interventions
88 per cent – will be reconvicted within 60 months
71 per cent – will be reimprisoned within 60 months.

Source: Maria Ludbrook Youth Therapeutic Programmes: A Literature Review (Psychological Services, Department of Corrections, 2012)
below, and some 18 and 19-year-olds who are assessed as being vulnerable or ‘at risk’ (and thus requiring separation from the bulk of the prison population and specialised support). The fact that there are only four youth units can mean that family and whānau may need to travel long distances to visit their young relatives.

The rationale for separating young people from adults in prison is clear. There is evidence to suggest that detaining young people from adults (and thus not exposing them to adults with criminal behaviour) impacts positively on the safety, mental health, and rehabilitative potential of the young people. The Ministry of Youth Development has reported that youth units cater for the specific needs of young prisoners, “providing a structured and supportive environment”.

There are, of course, limitations to this: a 1996 study in New Zealand prisons suggested that young offenders, staff, and older inmates considered youth units in general more violent than others, and staff concluded that youth units were only useful if specially-designed and purpose-built, and run as rehabilitation rather than punishment units. They need to offer many treatment options, involve family and community, and employ specially trained staff.

Ultimately, research suggests that imprisonment is unlikely to ever meet the needs of or rehabilitate young people, and that ongoing negative behavioural and mental health consequences can result from imprisonment of young people, irrespective of whether they are held in separate, specialised youth units.

Life in Prison in New Zealand

As was noted above, New Zealand prisons house around 8,500 people a year. We now look at what life is like for those who are imprisoned. This section firstly examines the daily life of those in prison, and secondly considers the programmes that are available to them. Finally, it looks briefly at the impact imprisonment has on the family members, and particularly the children, of prisoners.

Arriving in Prison

People are in prison in New Zealand either while waiting for trial or sentence (“remanded in custody”), because they were denied bail, or after being sentenced to a term of imprisonment. If they have been sentenced in court, or had their bail revoked, they are usually held in the court cells until the end of the day, and then transported to prison.
Once in prison, they are identity-checked and searched.88 Any money is taken from them and placed in a trust account (up to $200). Prisoners can use this to purchase from a list of approved grocery items, to hire a television, or to make phone calls. They cannot spend more than $70 per week.89

Standardised prison clothing is issued: one pair of trousers, one pair of shorts, one tracksuit, one t-shirt or shirt, and underwear and socks on request.90 Once sentenced, prisoners may supplement this set of clothes with some of their own items. Women are permitted to bring five bras of their own; if they do not, they are not guaranteed one in their own size.

Initial health assessments are done, as well as assessments to determine in which unit a prisoner should be placed (based on factors such as his or her individual security classification).91 Remand prisoners are kept separate from sentenced prisoners.

Security and searches

Searches, musters, prisoner location checks, and drug testing are all used to maintain the security and efficient management of prisons in New Zealand.

“Prisons run on respect and they reward all the negative traits. The more violent you are – the more fear you get which equates to more respect. The more criminal you are, the more respect you get. The more anti-authority you are, the more respect you get. You see, when you lock someone up, you simply throw them straight into this culture and they have no choice but to adhere because it is the dominant discourse. The convicts maintain and enforce this environment, not the guards, they go home at night, prison is our home. And because these traits also function on the outside to make a good criminal, prison is a finishing school for any upcoming criminal.”

Source: David, a former prisoner, http://justspeak.org.nz/within-the-walls/
Drug tests (for illicit drugs or alcohol) are carried out randomly. At any reasonable time, a prisoner who has served over 30 days in prison and not be within 10 days of release may be required to provide a urine sample.\textsuperscript{92} If the test is positive, the prisoner will face disciplinary action.

Searches may be conducted at any reasonable time to detect unauthorised items.\textsuperscript{93} Pat-down searches, scanner searches and cell searches can be executed, at any time, for the purposes of detecting unauthorised items. Strip-searches may be administered where there are reasonable grounds to believe an unauthorised item is being hidden on the prisoner’s body, or whenever a prisoner leaves or enters the prison (including appearances before a visiting justice, court, or parole board).

Strip-searches require a prisoner to allow a prison officer to examine their mouth, nose, ears, anal, and genital areas.\textsuperscript{94} Prisoners being searched may be required to open their mouths, lift or raise any part of their bodies, or spread their legs and bend their knees. An X-ray may be conducted if the prison officer has grounds to believe an object may be concealed internally.

Officers conducting a pat-down or strip-search must be the same sex as the prisoner being searched, and must be accompanied by a second officer of the same sex. They must not conduct the search within sight of any person of the opposite sex.\textsuperscript{95} Officers are urged to conduct searches with sensitivity and decency, and to aim to maintain a high degree of privacy and dignity.

Food in prison

Around $4.50 per day is spent feeding each prisoner in New Zealand. Menus are developed in consultation with a qualified dietician to ensure they conform with legislation and the Ministry of Health’s food and nutrition guidelines.\textsuperscript{96}

Prisoners may purchase food from the prison as part of their weekly grocery shopping opportunity. Visitors may bring prisoners food only if they have the written permission of the prison manager. After a serious riot at Spring Hill Prison in 2012, reportedly fuelled by homebrew alcohol, prisoners are issued with only two pieces of fruit per day and are only permitted to purchase up to seven pieces of fruit per week.\textsuperscript{97}

Prisoners may complain to the Chief Executive of the Department of Corrections with their concerns about the food available. Judith Collins, Minister of Corrections, gave the following response to one such complaint in 2011:\textsuperscript{98}
If this prisoner was so worried about the food in prison, he had choices in his life. One of them was to not commit crime to end up in prison for long stretches. Hopefully before committing any other crimes, he would like to remember the food he found so boring and tasteless.

From 2008 to 2012, around 1,300 complaints were made to the Department of Corrections (a surprisingly low percentage considering the 24,000 meals served every day). Only four were upheld by the Prison Inspectorate. Complaints may be escalated to the Ombudsman.

Vegetable gardens are becoming more common in prisons. Surplus vegetables grown by prisoners are given back to the community.

**Possessions, phone calls, and hobbies**

There is a strict list of “authorised property” allowed in prison cells. For instance, prisoners may have two ballpoint pens, three plastic containers, one electric fan, and up to 50 personal photos (subject to a maximum size limit). Up to 200 pages of writing paper are allowed, and three postage-paid letters may be sent per week.

### FOOD PRISONERS CAN PURCHASE (AS AT SEPTEMBER 2011)

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<thead>
<tr>
<th>Item</th>
<th>Cost</th>
<th>Item</th>
<th>Cost</th>
</tr>
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<td>Barley sugars, 110g</td>
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<td>Tim Tams, 200g</td>
<td>$2.41</td>
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<tr>
<td>Party Pack, 225g</td>
<td>$1.71</td>
<td>Chocolate Chip, 250g</td>
<td>$1.73</td>
</tr>
<tr>
<td>Pineapple Bites, 250g</td>
<td>$1.84</td>
<td>Gingernuts, 250g</td>
<td>$1.16</td>
</tr>
<tr>
<td>Strong Mints, 200g</td>
<td>$2.51</td>
<td>Creams, 375g</td>
<td>$2.04</td>
</tr>
<tr>
<td>Crunchie, 50g</td>
<td>$1.03</td>
<td>Fruit, all each:</td>
<td></td>
</tr>
<tr>
<td>Moro, 60g</td>
<td>$2.69</td>
<td>Apples</td>
<td>$0.26</td>
</tr>
<tr>
<td>Peanut Slab, 50g</td>
<td>$1.24</td>
<td>Oranges</td>
<td>$0.41</td>
</tr>
</tbody>
</table>

Over the course of 2014, the rules around televisions will tighten: only televisions hired from the prison for a $2 weekly fee will be permitted. These have a transparent casing to ensure that nothing can be hidden inside, and no transmitting or data storage functions.

Prison-issued clothing is laundered at least twice a week, and bed linen once a week. Items are laundered all together in the prison laundry: prisoners cannot do personal washes of their underwear.

Phone calls may be made to ten pre-approved phone numbers at a cost of 40 cents per minute for national or cellphone calls. Telecom payphones are located in common areas, shared by all inmates. All calls are monitored, and each one is prefaced with an automated message reminding the inmates of that fact.

Hobbies are permitted, subject to the approval of the prison manager. However, they must be undertaken in a hobby room, the materials must fit within a 60 litre plastic container, and any “completed hobbies” must be removed from the prison before the next may be begun (unless special permission is granted to store them).

Visitors in prison

Each prisoner is entitled to a minimum of one 30-minute visit per week; individual prisons may decide how many visits above that an individual prisoner may have, and how many visitors may attend each visit.

An application must be made well in advance of the visit. Visitors’ cars and persons may be searched. Visits could be in a visiting room with staff present, or in a booth. Visitors are allowed to make some contact with the prisoner in the visiting room (they may give the prisoner a hug and kiss when greeting them, and before leaving), but not if it is a booth visit. A positive drug test might mean a prisoner is allowed only the more restrictive booth visit.

Healthcare in prison

Poor health is rife in the prison population. Addiction, mental health issues, and head injuries are suffered by most prisoners. In 2010:

- 89 per cent of prisoners had suffered from substance abuse sometime in their lives;
- 60 per cent of prisoners had a personality disorder;
• 54 per cent of women had experienced head injury, and 64 per cent for men;
• 52 per cent experienced anxiety and psychotic mood disorders; and
• 20 per cent stated they had been thinking a lot about committing suicide. The suicide rate amongst prisoners is eleven times higher than that of the general public.105

Prisoners are given a health-needs assessment when they arrive in prison to determine what on-going care and treatment may be required. Since New Zealand prisons are now smoke-free, nicotine replacement therapy is available to all smoking prisoners.

Prisoners who have been receiving opioid substitution medication (usually methadone) will continue to receive that medication in prison. The health-needs assessment normally picks up an opiate addiction which makes that medication appropriate. An Australian study found that rates of death in prison reduced by over 85 per cent when opioid substitution medication was given to prisoners who needed it.106

International and New Zealand law requires that prisoners receive access to medical services.107 A Memorandum of Understanding (MOU) between the Department of Corrections and the Ministry of Health provides that:108

The health services to be provided to prison inmates will be the same standard as is provided to the general population of New Zealand.

The Department of Corrections itself provides primary healthcare to prisoners: nurses are employed at the health centre within each prison, and GPs and dentists are contracted in to provide basic care.109 Specialist care for particular prisoners is the responsibility of the local District Health Board. Prisoners are referred by prison health services under the same eligibility criteria as any other member of the public.

There are now over 1,100 prisoners aged 50 years and older, with almost 100 over the age of 70.110 With their common histories of drug and alcohol use, violence, and inadequate medical care, prisoners’ health needs increase sharply with age. In 2013, a 20-bed High Dependency Unit was established at Rimutaka Prison in conjunction with the Hutt Valley DHB to cater for people with physical disabilities and neurological disorders. So far, most of the 18 men in the unit are aged in their seventies or eighties.111
In 2012, the Ombudsman’s investigation into the healthcare of prisoners raised several issues of considerable concern:112

- In some cases, there were no records of prisoner requests for a medical appointment;
- No record was kept of how long a prisoner had to wait to see a nurse or doctor;
- There is no way of distinguishing between health-related and custodial complaints;
- The prison health budget is not ring-fenced, and can be used for other purposes;
- Prisons are under-resourced and therefore unable to provide a satisfactory dental service;
- Seriously unwell prisoners are sometimes transferred from one prison to another, even when they are clearly unfit to travel;
- Mental healthcare is either inadequate or unsuitable;
- The practice of managing prisoners at risk of self-harm by restricting their access to amenities and by isolating them could contribute to a further deterioration of their mental state and behaviour in the long term. Some prisoners can be kept in isolation cells for months;
- There is no external regulatory body responsible for the accreditation of the prison health service; and
- Health services for prisoners should be funded and delivered by an agency whose primary focus is health and therapeutic support, not custodial.

The Ombudsman also raised a specific question about the health and safety of transgender prisoners.113 As a result of a recommendation contained in the Report, the government has changed its policy on the transition of transgender prisoners between prisons. Transgender prisoners can now apply to be moved into a prison with their identified gender, regardless of the sex on their birth certificate.114

The most recent report available is from 2008, when the Auditor-General issued a report on the quality of mental health services provided by the Department of Corrections. The 2008 report noted limitations in the services provided in the following areas:115

- Timely access of services to prisoners: 58 per cent of prisoners are treated within 40 days, with 17 per cent waiting over 100 days for treatment;
- In-patient services for women;
• Services for those with mild to moderate illnesses: services such as counselling are not provided by the Department, because it maintains that its responsibilities are primarily custodial rather than therapeutic;

• Services targeted at prisoners with personality disorders; and

• Service receptiveness to Māori.

Case management and plans

Prisoners are assigned case managers, who work to support them in prison and on transition out of prison. They complete a comprehensive assessment of the prisoner and develop a phased rehabilitation and reintegration plan for him or her. They then manage this plan during the prisoner’s time in prison.116

Where an offender’s rehabilitative needs are high, they will be referred to the Prison Psychological Service. The criteria for referral include a certain risk of recidivism, or having received a sentence longer than five years for serious violence or sexual offending.117

Right Track programme

“Right Track” is a new initiative introduced in 2013 by the Department of Corrections to promote the structured and “active” management of prisoners. It aims to shift corrections officers’ attitudes and prison culture from punitive- to prisoner-centric. With engagement from staff, their daily interaction with offenders should improve, offenders will feel supported to make progress, and re-offending rates should reduce.118 The staff act as “change agents” and use positive interaction and communication to motivate inmates to change depending on what stage they are at of the “change model” (shown in Figure 11).119

Each inmate will be assessed to determine what stage they are at (based on the model called “stages of change”), and then encouraged towards making positive changes. Active management stems from strategies intended to have a positive influence on offenders. These include:

1. pro-social modelling;
2. personal feedback;
3. positive reinforcement;
4. collaborative problem solving; and
5. motivational enhancement.
All staff members have been educated on how to deal with the different stages of change. As at December 2013, Corrections reported “Right Track” as having “mostly good support from staff”.

*Education in prison*

Educating prisoners results in higher post-prison employment levels and lower recidivism rates. It also improves relations between prisoners and prison staff. It is estimated that approximately 90 per cent of prisoners cannot read or write properly, and the vast majority do not have secondary or tertiary qualifications.

Every prisoner is entitled to access further education that will assist in his or her rehabilitation, reduce re-offending, or assist his or her reintegration into the community. However, that education will only be provided free of charge if the prisoner was already entitled to receive that education, or if the course is designed to improve poor literacy skills.
As at December 2012, 3,000 prisoners (both those on remand and sentenced prisoners) were involved in education programmes. That is less than half of all prisoners. All prisoners under the age of 16 years old must be involved in full-time education (usually via The Correspondence School). Prisoners under the age of 19 may voluntarily enrol with The Correspondence School.

Training and work skills in prison

Over 59 per cent of prisoners participate in employment or industry training, on a voluntary basis. The government aims to have all prisoners working 40-hour weeks (in employment, or at training or rehabilitative programmes). So far three prisons have achieved that aim: Auckland Women’s Prison, Tongariro/Rangipo Prison and Rolleston Prison in Christchurch. Many of the prisoners in Rolleston are contracted to Housing New Zealand to refurbish properties affected by the earthquakes.

Employment may mean working for the prison itself, or in providing goods or services for the outside world. “Prison-based industries” include working in one of the 14 central kitchens to prepare meals under a catering instructor, in the prison laundry (which may service private businesses as well as the prison itself), or gardening within the prison grounds. Over 500 prisoners are kept employed by these internal services.

Corrections also operates three light engineering workshops, two concrete yards, one light assembly workshop, and three vehicle repair garages. Two-hundred and eighty five prisoners receive employment training to work in these facilities. The workshops produce rubbish bins, fences, steel trailers, concrete water tanks, and lighting components for retailers and the general public.

As well as steel and concrete, prisoners may work with timber in one of four joinery workshops, three timber processing workshops, or nine training workshops. Over 600 prisoners are employed here, carrying out tasks such as crafting rimu bedroom furniture or maintaining the 4,500 hectare Tongariro/Rangipo forest. At Rimutaka prison, there is a fully functioning printing press (in fact, this Report was printed there).

Four hundred prisoners work on the eight farms (which run dairy operations, and farm pigs and sheep) and six nurseries operated by the Department of Corrections. The Otago dairy farm alone has 370 cows and produces 130,000 kg of milk solids a year (which is sold to Fonterra). The SPCA-accredited free range piggery at Christchurch Men’s Prison fattens up to 17,000 pigs a year, and keeps another 800 sows for breeding. The Tongariro/Rangipo sheep farm covers 2,500 hectares of land.
Low-security prisoners at Northland Region Corrections Facility, Hawkes Bay, Manawatu, Rimutaka, Christchurch, and Invercargill Prisons may be placed in “work parties”. These are contracted to local and regional councils, communities, or businesses to work outside of the prison: for example by maintaining parks, planting native plants for local iwi, or splitting firewood.

Some of these prison industries offer formal qualifications through the New Zealand Qualifications Framework.137

Prisoners approaching the end of their prison sentence who have proven they can be trusted may be “released to work” in the community with an approved employer.138 They are paid market wages, but after paying their expenses (including outstanding fines or reparation, and travel costs to and from work) the balance is placed into a trust account which they may only access upon their release.

Rehabilitative programmes in prison

While in prison, inmates can access a range of programmes, depending of course on their needs and the programme requirements. These include:139

1. “Motivational programmes” such as:
   • The “short motivational programme” designed to “improve offenders’ motivation to understand their offending and increase their interest in engaging with other interventions that will reduce their likelihood of re-offending”.
   • Tikanga Māori programmes, which aim to foster the regeneration of Māori identity and values to encourage motivation to address offending needs; and
   • Parenting skills programmes.
“Whero had a long history with a prominent NZ gang and a long history of offending from drugs to serious violence.

Despite his many stints in prison, Whero first met the eligibility criteria in late 2004, and entered a Māori Focus Unit.

Though Whero indicated that his immediate family were gang associates, and chronically unemployed, whānau liaison workers identified members of his extended whānau on his mother’s side who were not associated with gangs. Through a series of facilitated hui this whānau grouping successfully connected with Whero and gave him an opportunity to relocate himself, his partner and his tamariki to an area where he would have no contact with his old peers or the high risk situations that he often found himself in.

Whero joined his extended whānau in the forestry industry on his release. He still works in the forestry industry, now managing his own team of workers. He has been offence free since his release in 2005.”

Source: Neil Campbell and Uarnie More "Working Effectively with Maori" (1013) 1 Practice at 31.
2. “Offence-focused programmes” such as:
   • A short (12 week) intervention programme for low-risk child sex offenders (with higher risk offenders receiving treatment in the specialist units below);
   • Psychological treatment (which is a one-on-one intervention) primarily dealing with high-risk sexual and violent offenders;
   • The young offenders’ programme;
   • Kowhiritanga (for female offenders): a group-based programme that targets attitudes and behaviours behind offending;
   • Mauri Tu Pae: a programme delivered in specialist Māori focus units for male prisoners with a range of offending needs. This teaches prisoners skills to alter the thoughts, attitudes and behaviours that led to their offending;
   • Saili Matagi: a group-based programme delivered in the Pacific focus unit, which targets male prisoners of Pasifika descent serving a sentence for violent offences. Family and community groups are involved in the prisoner’s rehabilitation and reintegration;
   • The Medium-Intensity Rehabilitation Programme for male offenders with a medium risk of re-offending. This programme teaches new skills to alter the thoughts, attitudes and behaviour that led to offending, and assists to develop strategies for maintaining positive changes; and
   • Maintenance programmes for offenders who have completed their rehabilitation programme, to allow practice of new skills and attitudes.

3. “Specialist units” separate prisoners with particular needs from the general prison population:
   • Māori Focus Units in five locations.
   • A Pacific Focus Unit, Vaka Fa’aola (Spring Hill).
   • Kia Marama, a 60-bed medium-security unit at Rolleston for child sex offenders established in 1989. It is based upon treatment in groups of eight prisoners, who meet three times a week for two-and-a-half hour sessions over the 31-week programme. Participants must volunteer to join the programme.
   • Te Piriti Special Treatment Unit for offenders imprisoned for child sex offending at Auckland Prison. This was established in 1994, employing the core cognitive behavioural/social learning theory components used at Kia Mārama, but adding
processes that are culturally appropriate for Māori.\textsuperscript{141} Both Māori and non-Māori participants have been shown to benefit from the focus on tikanga values during the nine-month programme. However, the perception that this small group of sexual offenders receive “special treatment” can cause tension with the rest of the prison population.\textsuperscript{142}

- Four “High Risk Special Treatment Units” (HRSTUs) at Te Whare Manaakitanga, Waikeria Prison (Karaka), Spring Hill Corrections Facility (Puna Tatari), and Christchurch Men’s Prison (Matapuna), at which two rehabilitation programmes are offered: Special Treatment Unit Rehabilitation Programme (STURP) and the Adult Sex Offender Treatment Programme (ASOTP).\textsuperscript{143} Around 100 men per year take part in programmes at the four HRSTUs.

- Whare Oranga Ake units just outside the secure perimeter of two prisons (Hawkes Bay and Spring Hill), for Māori prisoners nearing release.\textsuperscript{144}

- Self-Care Units, where up to 20 prisoners have a degree of autonomy outside the prison perimeter and learn those life skills (such as budgeting, cooking and cleaning) necessary for reintegration.

4. Around two-thirds of prisoners have alcohol and substance abuse issues.\textsuperscript{145} It is unsurprising that a wide range of alcohol and other drug interventions are offered:\textsuperscript{146}

- The Alcohol and Other Drugs Brief and Intermediate Support Programmes are aimed at prisoners who are ambivalent about changing drug use patterns, or who want to change but are not in prison for long enough to engage in more intensive treatment.

- Intensive treatment programmes, which last three or six months, are directed at prisoners with chronic alcohol or other drug problems. These build participants’ skills in preventing their own relapses, minimising harm, and improving their support networks.

- Eight Drug Treatment Units (DTUs), which like the special units above are separated from the mainstream prison. Established in 1997, the DTUs are jointly managed by Care NZ and Department of Corrections to work intensively on inmates’ alcohol and drug issues.\textsuperscript{147} Around 1,000 prisoners take part in the Units each year.

Part Three of this report goes on to look at some of these programmes in more depth, and to consider their effectiveness.
Impact of prison on the wider community

Part Three of this report looks at the impact of prison on the whānau of prisoners. In this part, the impact of prisons on the wider community is discussed.

First, the sheer quantity of our resources that go into maintaining prisons cannot be ignored. In 2012/2013, the Department of Corrections spent $742,859 million on “prison-based custodial services”. This figure includes only the day-to-day costs of prison, and does not factor in the capital cost of the prison buildings, or the administration costs of running the Department of Corrections. By comparison, the Department of Corrections spent $145,923 million on rehabilitation and reintegration, and $203,233 million on enforcing community sentences and orders. That year there were on average 8,614 prisoners at any given time, who were guarded and managed by 3,112 custodial staff and 1,539 support staff. In the same year, 2012/2013, there were 3,527 offenders serving home detention sentences, and a total of 54,561 serving community-based sentences or orders. The latter are serviced by 2,734 probation officers and community corrections support staff, working from 144 community corrections sites as well as other support offices.

That same pattern plays out up and down the country. We spend more on prisons and employ far more staff to look after far fewer offenders, than we do for community-based sentences. As suggested in Part One, some offenders have committed offences requiring the great expenditure involved in imprisonment. But for many offenders, imprisonment is a waste of resources.

Secondly, our use of prisons impacts our culture. Ordinary people are misinformed about the criminal justice system and our need for it, often receiving their information from media or biased groups’ reporting on how prisons are used and when their

In 2012, New Zealand spent:

- $164,752,000 keeping prisoners on remand (that is, before their trial or sentencing)
- $589,050,000 keeping sentenced prisoners
use is justified. Many New Zealanders have negative views about recidivism that are not justified on the evidence: for example, a 2003 survey found that nearly half of respondents believed that 60 per cent or more of offenders would be reconvicted within two years (and almost 10 per cent of respondents believed 90 per cent would be reconvicted). The real figure was half of offenders. New Zealanders also over-estimated the rates of offending on bail: almost 60 per cent of respondents believed that 30 per cent or more of people on bail will offend while on bail. The correct figure is approximately 20 per cent of bailees.

Segregating part of the community inevitably breeds distrust and prejudice. Prisons are not pleasant places. That is their nature. But the attitude of those on the outside means their effects last long after an inmate is released. Upon their release, prisoners are frequently ostracised because of the public’s misconceptions about offenders; this is the lasting harm that prisons cause society.

**Conclusion and recommendations**

JustSpeak recommends:

**Private prisons** should be closely reviewed, by both the government and the public. Full information on all aspects of their functioning and cost, provided in an easily accessible format, is essential to ensure that contractual goals are met and are seen to be met. If private companies are to take over one of the most essentially public functions of our state, they must be scrutinised for both cost-effectiveness and compliance with the human rights and quality obligations that apply to state-run prisons.

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In 2011/2012, there were 683 prison staff working at Spring Hill Corrections Facility and Waikeria Prison in the Waikato managing 1,758 prisoners; but only 189 probation staff working across the Waikato region managing 3,759 community-based offenders on sentence or parole (with a further 259 rehabilitation and employment staff)

Source: Department of Corrections Waikato District Plan 2013 (accessed 9 February 2014)
**Young people** should be not be imprisoned, whether on remand or on sentence. Given the effects imprisonment is proven to have upon young people – even those who appear hardened to the criminal justice system – it will almost always be preferable in the long-term to impose non-custodial sentences than to achieve the immediate benefit of community protection (however, JustSpeak recognises in rare cases there may be some exceptions to this rule). As JustSpeak has raised earlier, the age threshold determining the Youth Court’s jurisdiction should be raised to 18 so that therapeutic rather than punitive measures are available for all young offenders.

**Family members** of prisoners need more support so that they can, in turn, support their whānau in prison. Prisoners should be consistently housed as close as possible to their whānau. As will be seen in Part Three of this report, visits to prisons are not often pleasant experiences for the family of offenders. While JustSpeak recognises the importance of security within a controlled prison environment, anything which discourages family members from attending prison visits should be closely examined. Community support for families left without a parent is also needed.

**Mother-child units** should be available at all women’s prisons in sufficient numbers to make keeping a child an available option for any inmate who wishes to do so. Demand for father-child units should also be surveyed, and equivalent units introduced within the men’s prison system as needed.

**Healthcare** in prisons must improve. At the very minimum the Ombudsman’s recommendations should be implemented. In particular, the Department of Corrections’ budget for healthcare should be ring-fenced so that funding is guaranteed from year to year.

**Specialist Treatment Units and training opportunities** should be available to all prisoners who wish to participate in them. These opportunities are currently limited to inmates who are fortunate enough to be placed in a regional institution which offers them. Rehabilitation and reintegration opportunities are too important to leave to chance.
Employers in the community should be actively educated about the release to work scheme, and invited to join. Links between prisons and opportunities for successful post-release reintegration must be improved.

Staffing levels between prisons and probations should reflect the benefits that those staff bring. Community-based sentences should be seen as the preventive measure to imprisonment that they are, and take up a commensurate proportion of the Department of Corrections' budget.
PART 3: ALTERNATIVES AND IMPROVEMENTS

HOW DO WE IMPROVE
THE CURRENT SITUATION
PART 3 : ALTERNATIVES AND IMPROVEMENTS

How do we improve the current situation?

The first two sections of this report critically evaluated the process in which someone is incarcerated, and what it is like for someone living “behind the wire”. Both sections raised legitimate questions about the legal framework relating to imprisonment and the way our prisons are run.

The final part of the report explores the future direction for prisons in New Zealand. What measures are currently in place to reduce New Zealand’s high rates of incarceration and re-offending? What can we improve on to assist in offender rehabilitation and reintegration? Are there any alternatives to the current systems and services in place? Part Three highlights some valuable initiatives already in place, which deserve greater publicity, and looks to what improvements or changes might be made.

Preventative measures against entry into the criminal justice system

An important consideration when looking at reducing reliance upon imprisonment are the processes that lead to a sentence of imprisonment. Research indicates that the majority of offenders who receive a sentence of imprisonment have had previous contact with the criminal justice system.¹ An individual’s first contact can therefore be construed as a valuable opportunity for criminal justice professionals, particularly the police, to prevent further immersion in the criminal justice system.² Preventative measures and other interventions aimed at reducing the risk of re-offending should be implemented at the earliest possible stage of the criminal justice process.³

The first contact most offenders have with the criminal justice system is the police. Police policy on the process of making an arrest and laying charges plays a crucial part in determining the outcome of this initial contact. For some offenders, prosecution will be inevitable. For others, however, there may be alternatives to entering the formal criminal justice system. The police have the discretion to warn an offender, to lay charges but later offer diversion, or to follow through with a full prosecution. Participation in restorative justice or rehabilitative community programmes is an important factor in whether diversion is suitable for the offender.
Police policy in withholding or dismissing formal charges

Research suggests constructive contact with the police can reduce the likelihood of future offending. For example, if the police decide to charge an individual upon apprehending them on a minor offence, that individual is labelled an “offender”. This may cause the individual to view himself or herself as a criminal, and subsequently act in a manner consistent with that label.

In recent years, the New Zealand Police have re-introduced pre-charge warnings as an alternative to the charging and prosecution processes. After an offender is arrested for certain types of minor offending, the arresting officer and a supervisor will consider whether it is in the public interest to lay charges. Warnings still hold offenders accountable for their actions: although they do not appear on the individual’s criminal history, the Police National Intelligence Database keeps records of all warnings issued. These records can affect decisions about how to deal with any future offending.

In 2010, a pilot study of this pre-charge warning initiative was carried out in Auckland. An evaluation of the pilot study revealed a number of benefits, including a reduction in court time spent on minor offences and greater ability for police to focus on more serious crime. The evaluation found that the initiative provided a proportionate response to minor offending, with police more well-placed to build relationships with offenders who are not charged. While some concerns were raised about the potential lack of accountability, the formal nature of a pre-charge warning and the restricted list of minor offences that it applies to alleviated many of these concerns. Following the evaluation of the pilot, the policy was rolled out nationwide with only a few minor changes.

The adult diversion scheme is well-established in New Zealand. Usually only offered to first-offenders who accept full responsibility for minor crimes, the police will agree to withdraw charges after agreed conditions have been fulfilled. Conditions could be that the offender must apologise or offer reparation to the victim, attend counselling, or undergo treatment for addiction. Once the offender has complied with the relevant condition(s), the police prosecutor will formally withdraw the charge in court.
Solutions before imprisonment

If charges are pursued by the police, imprisonment is not inevitable. As we saw in Part One, the New Zealand courts have a wide array of sentencing options available. However, some judges are changing the way sentencing takes place, through problem-solving court processes, and the introduction of restorative justice.

Problem-solving courts

Essentially, “problem-solving courts” aim to address the psychosocial causes of offending. The idea was put into practice in the United States in the late 1980s. New Zealand’s first adult problem-solving courts, the Family Violence Courts, were established in 2001. A Youth Alcohol and Drug Court opened in Christchurch the following year. There is now also a number of Rangatahi and Pasifika Courts for young people.

1. Drug Courts

Approximately 50 to 80 per cent of crime in New Zealand occurs while the offender is under the influence of alcohol or drugs. Offending is often committed in order to support a habit or addiction, or is related to the sale and distribution of drugs. In 2008, approximately two-thirds of New Zealand prisoners had on-going drug or alcohol problems.

The drug court concept first emerged in the United States in 1989 when a Miami judge took a “hands on” approach to re-offending that was undeniably linked to drug addiction. Offenders would be assigned a treatment disposition in place of a prison sentence. Today there are more than 2,780 drug courts in the United States (and many other specialist problem-solving courts besides). Drug courts have since been established in Australia, Canada, the United Kingdom, Ireland and parts of Europe.

The operation of drug courts varies across the world. New South Wales, for example, established the Compulsory Drug Treatment Centre in 2006. The Centre aims to treat, rehabilitate and reintegrate male participants who have repeatedly offended in order to support a drug dependence. Offenders are participants in the programme not by choice, but under Compulsory Drug Treatment Orders imposed by the Paramatta Drug Court. They must meet set criteria to be referred by the ordinary criminal courts to the Paramatta Drug Court, and neither the Crown nor the offender has a right to object to that referral.
There is a wealth of research advocating the effectiveness of drug courts. American-based research has shown that drug courts retain offenders in treatment considerably longer than most other correctional programs. In 2006, a meta-analysis of drug court evaluations concluded beyond reasonable doubt that drug courts reduce both drug use and criminal recidivism.

In an Alcohol and Other Drugs Treatment Court (“AODT Court”), participants experience non-adversarial interactions with a specialist team, consisting of the judge, registrar, prosecutor, defence counsel, case managers, social workers, and treatment advisors including probation, victim advocates and advisors.

Drug courts combine evidence-based, substance-abuse treatment with strict behavioural accountability for their participants. This non-adversarial process is a nod to research showing that offenders respond positively to interactions with judges that last more than three minutes. Through the judge’s acknowledgment of their progress, the offender’s sense of self-worth grows. On the flipside, expressing disappointment at the offender’s choices can be the motivator towards positive change.

The structure of drug courts is further informed by evidence that suggests at least equivalent amounts of positive reinforcement and punishment are necessary for participants to reduce undesirable behaviours. Rather than using the courtroom solely to hand down punishment, the drug court also provides the opportunity for participants to earn reward and recognition for their progress. Participants are motivated to make an ongoing commitment to the treatment programme, and ultimately, achieve and maintain abstinence from substance abuse.

A flow-on effect of an offender making an ongoing commitment to the programme is the significant cost-saving to the state. American literature based on almost 20 years of research shows that the average direct benefit to the criminal justice system from every dollar invested in drug courts is US$2.21. For drug courts focussed only on serious, higher-risk drug offenders, the average return on investment is even higher at US$3.36 for every US$1 invested.

The average direct benefit to the criminal justice system from every dollar invested in drug courts is US$2.21.
The New Zealand Drug Court pilot programme

Against this background, District Court Judges Lisa Tremewan and Ema Aitken took the initiative to lead New Zealand’s first specialised Alcohol and Drug Treatment (AODT) Court. The initiative had strong support from Judge Peggy Hora (Ret), a pioneer of the American drug courts.\textsuperscript{26}

In November 2012, a five-year pilot programme was launched in the Auckland and Waitakere District Courts.\textsuperscript{27} Offenders are assessed for eligibility to enter the AODT Court at their first appearance. Most importantly, they must have a drug or alcohol dependency that contributed to their offending. If they are eligible, offenders must agree to enter the AODT Court and plead guilty to their charges. Each AODT Court has capacity for around 50 cases at one time, and each offender’s treatment is expected to last 12 to 18 months.\textsuperscript{28} According to the Ministry of Justice:\textsuperscript{29}

"[The AODT] court will focus on treating the cause of the offending rather than the offending itself and aims to reduce re-offending as a result."

Criteria for the AODT Court

- Appearing at Auckland or Waitakere District Courts, or live in those catchment areas;
- Has an alcohol or other drug addiction or dependency that is the main reason for the offending;
- Pleads guilty;
- Is facing a term of imprisonment of less than three years;
- Has no history of, and is not charged with, sexual offending, arson, or serious violence;
- Does not have a serious medical or mental condition (other than the addiction);
- Is a New Zealand citizen or permanent resident.
AODT Court participants must agree to actively participate in the treatment plan developed for them (which may require residential or community-based programmes), undergo regular and random drug tests, and to attend treatment and scheduled appointments (including court appearances). The offender is sentenced at the end of the treatment. The judge will then take the offender’s success in the programme into account and adjust the sentence accordingly.

The pilot is still too new to have been formally evaluated for effectiveness. The Ministry of Justice and New Zealand Law Commission are aware of the need to develop careful criteria to assess the AODT Courts’ effectiveness; recidivism rates alone are a blunt instrument. However, pilot drug courts in other jurisdictions have become permanent parts of the legal landscape. One reason for this is that treatment, whether residential or out-patient, is cheaper for the state than imprisonment.

JustSpeak agrees that a careful monitoring and evaluation methodology is essential to the AODT Court pilot, especially to shape the drug court system to the unique features of New Zealand’s criminal justice system. After such evaluation, which is already underway, JustSpeak would like to see the AODT Court pilot become a permanent feature of the criminal justice system in all New Zealand District Courts.

2. Other alternative courts

There are other examples of specialist courts that seek to directly address the issues that go hand-in-hand with the cause of offending. In the United States, specialist courts have been established for gambling issues, homelessness, veterans suffering from PTSD, and more.

In New Zealand, the main target of the specialist courts is young people from Māori and Pasifika backgrounds. In 2008, Judge Heemi Taumaunu set up the first marae-based youth court, Te Kooti Rangatahi, in Gisborne. Since then, nine other Rangatahi Courts have been launched, as well as two Pasifika Courts based on a similar model.

Although Rangatahi Courts are open to all young people regardless of ethnic background, Rangatahi Courts are designed to deal primarily with Māori youth offenders. According to Judge Taumanu, the idea of Rangatahi Courts arose partly in response to the disproportionate over-representation of Māori youth offenders. The Rangatahi Courts aim to link justice processes for young Māori into their whānau and community, help reconnect young Māori offenders to their culture and reduce re-offending.
The Rangatahi Courts, rather than operating as a separate legal system, employ the existing Youth Court framework within a marae and using tikanga Māori. All young offenders may choose to be referred to a Rangatahi Court to monitor completion of their Family Group Conference Plan. The first full-scale review of Rangatahi Courts by the Ministry of Justice concluded that they helped young Māori connect with their cultural identity, engage with their local marae community, and find positive role models. The review found that this in turn encouraged positive behaviour such as active engagement with the court process.37

“From the marae point of view – we see the ones that come through. We know which ones that really, really look lonely or lost and need that extra bit of awhi. Our kaumātua and kuia pick it up and go over. One of the other things we focus on – is that when they leave their mana is intact. At the Youth Court it’s the other way around. Ka pu te ruha ka hao te rangatahi – how important it is. (Marae kaumātua)”


JustSpeak considers that Rangatahi Courts are a positive step in the right direction, and would like to see some of, if not all the principles of the Rangatahi Courts extended to adult criminal courts. This distinctive New Zealand way of doing justice should be more readily available regardless of age or culture. As stated by Judge Taumaunu, the introduction of Rangatahi Courts should only be seen as a first step. JustSpeak holds the view, as stated in its 2012 position paper on Māori and the criminal justice system in New Zealand, that wide ranging, multi-sector governmental and community strategy is required to deal with the underlying causes of the over-representation of Māori youth (and adult) offenders.38

In Wellington, the Special Circumstances Court was launched in March 2012 by a small group of committed people from the judiciary, police, mental health services, the Salvation Army, Housing New Zealand, and the Ministry of Social Development.39 It focuses on offenders who are homeless, and particularly those who appear frequently before the courts. However, it receives no special funding from the Ministry of Justice,
and survives on the goodwill of those involved to keep it running. The New Beginnings Court in Auckland, which was piloted by the Ministry of Justice with the support of other agencies to target a similar group of offenders, also struggles to continue funding itself.40

Greater government enthusiasm for these initiatives is needed sooner rather than later.

JustSpeak encourages innovative thinking as a way to tailor sentences to the offender’s circumstances. After all, our law recognises that “prison is a measure of last resort”.

When we create options that have a high potential to successfully rehabilitate offenders, we create the possibility of avoiding prison terms.

Restorative justice approaches

Restorative justice aims to resolve criminal offending by addressing the harm done to victims and the community, while holding the offender personally to account for that harm. There is no one model for "doing" restorative justice, but it usually entails a mediated meeting between the offender and victim. To avoid doing more harm than good, the offender must accept his or her offending before that meeting, all parties must be carefully briefed on what to expect from the meeting, and a trained facilitator must run it.

A key aspect of restorative justice is its focus on victims and community as well as criminal offenders. Whereas many crime-combating practices, such as incarceration, primarily attempt to punish offenders or deter them from offending, restorative justice aims to mend the broken relationship between the offender and society. The offender is held accountable, but also given the opportunity to make amends to the victims of their crime. As outlined in Part One, victims often feel excluded by the criminal prosecution process. Allowing the victim to face the offender can enhance their experience of, and satisfaction with, the criminal justice system.

When successful, restorative justice holds the offender accountable, provides for the needs of the victim, and promotes a sense of responsibility for the offending, all in a more constructive way than imprisonment ever can. When these factors are taken into account at sentencing, it can mean the difference between imprisonment or a community-based sentence being the most appropriate outcome.

For every £1 spent on restorative justice conferencing, there was a saving of £9 in costs to victims and the criminal justice system.
**Restorative justice conferences in the criminal justice system**

Restorative justice principles have underpinned youth justice in New Zealand since the late 1980s, when Family Group Conferences were introduced. During the 1990s, restorative justice conferences took place on an ad hoc basis for adult offenders, but in 2002 found statutory recognition in the Sentencing Act 2002, Parole Act 2002, and Victims’ Rights Act 2002. Restorative justice is now commonplace before sentencing offenders and before granting prisoners parole.

In 2001, a pilot programme funded pre-sentence restorative justice conferences called for by judges in the Auckland, Waitakere, Hamilton and Dunedin District Courts. Today, the Ministry of Justice funds 24 restorative justice providers who (with a further three voluntary providers) cover 36 of the country’s 63 District Courts.

The most recent evaluation shows a 23 per cent reduction in the frequency of re-offending, and a 12 per cent reduction in re-offending rates, in offenders who had participated in restorative justice conferences since 2008. As a result of the 1,569 restorative justice conferences held in 2011/2012, the Ministry of Justice estimates that there will be 650 fewer offences prosecuted and 1,100 fewer offences recorded over a three year period.

- 74% of victims said they felt better after attending the conference
- 80% of victims said they would be likely to recommend restorative justice to others in a similar situation

Surveys of offenders who participated in restorative justice have found that:
- 81 per cent of the offenders who went through the process felt that the conference would prevent re-offending; and
- Nearly two-thirds felt more positive towards the criminal justice system as a result of the conference.
Besides participant satisfaction, restorative justice also proves its worth in terms of monetary value. A recent study undertaken in the United Kingdom for a period of thirteen years shows that for every £1 spent on restorative justice conferencing, there was a saving of £9 in costs to victims and the criminal justice system. The same study showed that the reconviction rate of violent offenders sentenced to community supervision was reduced by 55 per cent, and the overall reconviction rate was reduced by an average of 27 per cent.

Restorative justice in the future

In 2013, the Ministry of Justice allocated $4.4 million to the expansion of restorative justice in the criminal justice system, funding an extra 2,400 conferences per year as well as including restorative justice services for family violence and sexual offending. This will bring the total number of yearly restorative justice conferences to 3,600.

JustSpeak commends this positive development towards a more universal practice of restorative justice in the case of adult offenders. New Zealand’s Youth and Family Courts are world leaders in their use of restorative justice. There is no barrier to extending its use to the adult criminal justice system, which suffers from its absence.

As His Honour Judge Sir David Carruthers has recognised, restorative justice in New Zealand is currently “in its adolescence”. JustSpeak would like to see restorative justice become a central part in New Zealand’s criminal justice system, not just as mitigation in sentencing but as a real alternative to the adversarial process. As Part One of this report highlighted, one of the purposes of imprisonment is that it serves as a form of public denunciation. In appropriate cases, restorative justice minimises the need for an external source of denunciation. Instead, importance can be placed on resolving the harm caused to those directly involved in the offending and helping the offender take responsibility for their wrongdoing.

Moreover, restorative justice satisfies two societal needs that Part One showed are left untended by imprisonment alone: assisting in an offender’s reform and offering more meaningful engagement to the victim. For these reasons, JustSpeak recommends the use of restorative justice to enhance the outcomes for all involved in the criminal justice system.
Rehabilitation: community-based, or in prisons

Participation in rehabilitative programmes may be part of diversion conditions, or part of a community-based, sentence-like supervision. These programmes may focus on the behaviour that led to the offending, drug- and alcohol-related issues, or the offenders’ cultural heritage.52

Rehabilitative programmes in community, rather than custodial, settings often have more successful outcomes. Community-based sex offender treatment programmes have a slightly better effect than Kia Marama and Te Piriti (around five per cent of graduates go on to re-offend sexually).53 Community-based residential alcohol or drug treatments are even more successful, reducing re-offending by a third or more.54

Incarceration increases the likelihood that young people in particular will return to prison after any given release. First-timers to prison aged under 20 are 66 per cent more likely to return, and recidivist youth 88 per cent more likely to return, within 60 months.55 Community treatment is particularly likely to be positive for young people.56

Community programmes may be more effective because prison is not always the most appropriate for rehabilitation. Dr Elizabeth Stanley writes:57

Despite the rehabilitative aims and functions of the corrections system, empirical evidence shows that imprisonment generally does not have a positive relationship with rehabilitation. In the wake of systematic reviews, it is clear that offenders are more likely to re-offend following imprisonment than with any other form of punishment58. Offenders receiving prison sentences are, at best, likely to exhibit a ‘modest...recidivism reduction’ but, at worst, ‘increased recidivism’ (ibid: 314). Such findings raise broader questions regarding the expectations placed on prisons to rehabilitate offenders, and the role and use of imprisonment to achieve this purpose. Moreover, any positive impacts on recidivism can be undermined by lack of funding, inadequate staffing levels or overcrowding.59

In 2012/2013, 86% of prisoners began and completed a rehabilitation programme; only 63% of community-based offenders both began and completed one.

Source: Department of Corrections Annual Report (2013)
A somewhat contradictory situation arises whereby prisons are required and expected to assist prisoners’ rehabilitation; yet the nature of imprisonment itself poses significant challenges to the successful rehabilitation of offenders. This raises questions about what imprisonment can be expected to achieve, and whether prisons, or other social institutions, are best placed to provide effective rehabilitation.

JustSpeak considers community-based rehabilitation programmes are desirable over similar programmes offered in prisons. Staying in the community means offenders maintain important relationships with family, friends, and employers. It means the offender faces real-world challenges that require them to apply the skills and knowledge they are simultaneously acquiring in the programme. As a result, community-based rehabilitation programmes have proved to be more effective at reducing re-offending than residential programmes. Running these programmes in the community is also much cheaper than it is in prison.

The difficulties with community programmes must also be acknowledged. Even when offenders are required as part of their sentence to attend programmes, attendance and completion rates at these programmes are lower than at residential programmes. Non-completion in turn can lead to rises in recidivism. Sometimes this non-attendance is the result of apathy or rebellion against the conditions of an offender’s sentence. However, at other times offenders may not be able to attend for fear of jeopardising employment commitments or simply because they could not find transport. Many offenders face insurmountable problems. Extending wrap-around services to those participants who need extra support may be part of the answer.

Unfortunately, many programmes have long waiting lists, especially for individual psychological treatment. Other programmes are available only in certain regions. While the government is laudably committed to rehabilitation, until the requisite support is in place, these programmes cannot be taken up by many offenders.

JustSpeak commends the Department of Corrections’ intention to continue partnering with iwi and community groups to deliver rehabilitation and assist with reintegration into the community in order to meet the Government’s goal of achieving a 25 per cent reduction in re-offending by 2017. It is hoped this will provide a stepping stone back into the community, help reduce re-offending and therefore the overall incarceration rate.
Department of Corrections’ goals for 2017 relating to Iwi and Community Groups:

- 750 prisoners and 2,000 community offenders a year receiving an innovative externally-provided rehabilitation intervention using results driven contracts;
- 1,370 young Maori community offenders a year receiving facilitated rehabilitative support; and
- 6,000 offenders a year receiving integrative support and assistance from the community and iwi.

Effectiveness of rehabilitative programmes in prison

Part Two set out some of the rehabilitative programmes on offer in New Zealand prisons. While these types of programmes have been heavily studied and evaluated, both in New Zealand and internationally, a comprehensive review of those evaluations is beyond the scope of this report. The discussion below examines programmes according to recidivism rates. While this is still a useful comparator, it is oversimplistic. Other factors (particularly the nature and frequency of re-offending) must also be considered before the full picture is known.

Re-offending after rehabilitation

Evidence shows that some of the programmes offered within the prison context are working. For example, the Kia Marama (all male) programme was found to more than halve sexual offending by those who completed it (only 8 to 10 per cent of Kia Marama graduates re-offended sexually within the four-year follow-up period, as compared to 20 to 21 per cent of offenders who did not receive treatment and were convicted of a further sexual offence).  

Fewer than 5.5 per cent of offenders who completed treatment through Te Piriti re-offended sexually (compared with a sexual recidivism rate of 21 per cent in the untreated control group of convicted child sex offenders). Evaluations of Drug Treatment Units in prison have found that offenders who complete the programme are 10 to 14 per cent less...
likely to re-offend. A 1999 study in a California State Prison found even higher rates of change: after three years, only 27 per cent of the prisoners involved in the drug treatment and after-care programme re-offended and returned to prison, compared to 75 per cent of those who did not receive the treatment.

Unlike Kia Marama and Te Piriti, the High-Risk Special Treatment Units have been introduced only in the last decade (the most recent in 2008). Men who have graduated from the programmes and are then transferred back to the regular prison environment report feeling isolated. Few custodial staff understand what concepts and strategies are taught by the Special Treatment Unit Rehabilitation Programme and, although they want to help the prisoners on their post-treatment journey, they are unable to do so.

The Kia Marama unit was estimated to have saved the Department of Corrections $3 million between 1989 and 1998.

During this time the Kia Marama unit treated 238 offenders. The programme cost $2 million to run and saved $5.6 million in convictions and imprisonment.

**Case study: the Rimutaka Dependency Treatment Unit**

Each year, the nine Dependency Treatment Units (DTUs) in New Zealand have spaces available for 450 prisoners, mainly those serving short-term sentences. Run by CareNZ (the delivery arm of the New Zealand Society on Alcohol and Drug Dependence) in collaboration with the Department of Corrections, they provide group therapy work and education to teach inmates self-awareness, how to deal with anger and high-risk situations, and an understanding of Te Whare Tapa Wha. Each programme cycle is six months long, and is split into three two-month phases in groups of ten segregated or mainstream prisoners.

Maximum-security prisoners have the opportunity to participate in the DTU programme at Rimutaka Prison. One hundred and twenty men complete the programme each year. A JustSpeak contact who works in the Rimutaka DTU reports that:

Many of the men are resistant when they enter the programme. Mainly because they have never ever faced themselves before, and the experience is foreign to them. However in time most will come to see the value in addressing their issues to create a healthier lifestyle for themselves and this will in turn benefit their families and wider relationships.
Many men have commented that prison was the best thing to happen to them. They have never had the opportunity or considered changing their lifestyles until they came here. Whilst in the DTU they choose not to take drugs and alcohol because of the consequences: that if they are caught they will be exited from the programme.

DTUs are effective in reducing the rate of re-offending. In 2006, for example, an evaluation of the 24-week programme revealed that DTUs reduced the reconviction rate by 15 per cent for male offenders and by 30 per cent for female offenders.68

DTUs offer inmates the opportunity to change their lifestyle so that upon release they are equipped to make better life choices. Entering the unit may be the first time in a very long time an offender has not been under the influence of substances on a daily basis. The inmate has the opportunity to think clearly about their participation in the programme. While in prison, inmates may face scenarios that could trigger relapses, such as gang-related violence. The DTU programme aims to give the participants the psychological and interpersonal skills to deal with such situations constructively.

CRITERIA FOR RIMUTAKA DTU PROGRAMME

To be eligible for the DTU programme, prisoners must be:

1. serving a sentence of imprisonment which is long enough to allow completion of the program at any stage of their sentence;
2. displaying harmful patterns of drug or alcohol abuse;
3. rated at any Security Classification below Maximum Security classification;
4. able to demonstrate they are currently drug free;
5. able to read and write;
6. motivated to make a change in their life; and
7. considered treatable by CareNZ.
Because it works, addiction treatment saves the State money: for every dollar spent on addiction treatment programmes, there is a $4 to $7 reduction in the cost associated with drug-related crimes.


However, the prison environment can also be an obstacle to effective and meaningful rehabilitation. Pressures are constantly present, such as lack of trust amongst peers, always having to “watch your back”, gang influences, and restrictions on movement and resources that could otherwise aid treatment. As noted above, Department of Corrections Officers who do not understand the change in attitudes being taught at these programmes can potentially sabotage the participants’ recovery. The “Right Track Programme” recently implemented by the Department of Corrections (and discussed above in Part Two of this report) aims to increase Department of Corrections Officers’ awareness of each inmate’s needs at his/her stage of the cycle to rehabilitation.

Whānau provide another avenue of support after exiting the DTU programme. Having made changes to their thinking and behaviours whilst on the DTU programme, many participants find their whānau have not made the same changes, and misunderstand the journey the participant has been through. Including whānau in the change process could enhance inmates’ rehabilitation. Some programmes, like the Māori Focus Unit, do include whānau in their treatments. However, this can pose a challenge for inmates in a high security unit, where contact with people on the outside is typically very restricted.

JustSpeak suggests that, as well as incorporating whānau into the process of change, the DTU programme would be enhanced by drawing on opportunities for the participants to express their own creativity, and educating the wider community to understand the progress participants have made upon their release from the DTU and from prison into society.

Within the prison, there is considerable room for improvement in the way rehabilitation programmes are run. The availability of drug and alcohol treatment must be expanded. The Department of Corrections has set out a plan that aims to expand drug and alcohol initiatives by 2017, as outlined in the table next page.
Department of Corrections’ Goals for Expanding Drug and Alcohol Treatment Programmes:

- 4,000 more prisoners a year in expanded alcohol and drug programmes;
- 12,000 prisoners a year receiving brief alcohol and drug interventions from health staff;
- 5,800 more community offenders a year receiving externally provided alcohol and drug programmes;
- 22,000 community offenders a year receiving brief alcohol and drug interventions from Probation Officers; and
- 100 community offenders a year referred for treatment by the pilot drug court in Auckland.

Source: Department of Corrections “Tackling Alcohol and Drug Abuse” Resources (12 August 2013)

Even this ambitious plan barely scrapes the surface of the concerning fact that 80 per cent of all offending in New Zealand is related to drugs and/or alcohol in some way. Despite this fact, drug and alcohol rehabilitation programmes are still not widely available to all prisoners: fewer than 1,000 of the 20,000 people who spend time in prison each year will receive treatment, and even by the Department of Corrections’ own goals, this number will expand to only 5,000 inmates.

Entry requirements are currently restrictive. For example, entrants into the DTU programme must be able to participate and learn in a group environment and may be rejected due to psychiatric disorders, insufficient intellectual capacity, or limited English language skills. Places for high security prisoners on DTU programmes are particularly limited.

In addition, the length of an inmate’s sentence can determine whether or not they are eligible for the programme. The Department of Corrections’ current policy is that inmates must have enough time left in their sentence to complete a four-month or six-month programme. In 2011, the practice for the Department of Corrections was to postpone
drug and alcohol rehabilitation courses for long-term prisoners until they were eligible for parole.\textsuperscript{72} Prisoners with long, minimum, non-parole periods are left without any option for recovery for years at a time.\textsuperscript{73} JustSpeak recommends that the Department of Corrections implement structural changes to ensure that victims of drug and alcohol addiction can make the most of programmes that have already proved their worth.

Whilst the Department of Corrections’ goals are a step in the right direction, JustSpeak believes further measures are necessary to ensure rehabilitation is accessible to all who require it. JustSpeak would like to see all offenders whose crime is linked to drug and/or alcohol abuse, or who identify as having drug or alcohol abuse issues, participate in a programme to help tackle their issues. There is evidence indicating that of the $130 million spent on rehabilitation programmes, funding for drug treatment in prisons receives a mere $4.7 million.\textsuperscript{74} JustSpeak strongly recommends that a significantly higher level of investment is allocated to drug and alcohol treatment programmes to ensure offenders do not miss a crucial step in their rehabilitation and reintegration into a crime-free lifestyle.

\section*{Community involvement}

Many programmes currently bring family and other community members into New Zealand prisons. This section looks at some of the successful initiatives run by the Department of Corrections and voluntary societies, and suggests ways to maximise the impact of these initiatives.

\textit{Community involvement}

As at 1 December 2013, there were 2,298 approved volunteers registered with the Department of Corrections.\textsuperscript{75} In 2012, volunteers made over 19,000 volunteer visits.\textsuperscript{76} Many of these visits are simply to converse with prisoners. For prisoners who receive no personal visitors, a visit from a volunteer may be the only contact with a person outside of prison.\textsuperscript{77} For others, it may be the only visitor who does not have an ulterior motive.\textsuperscript{78}

Barbara Jennings, the National Advisor Volunteers at the Department of Corrections, calls volunteers “a link to the community”.\textsuperscript{79} Prisoners who receive visits in prison are more likely to be successful in re-entering society.\textsuperscript{80} Visits may “sustain or strengthen an inmate’s social bond and by extension, insulate or constrain him or her from an impulsion to engage in crime”.\textsuperscript{81} Social support also can help prisoners to view themselves as something more than just offenders.\textsuperscript{82} Relationships developed in visits may also be used on release to provide resources and support.
Because of volunteer services, prisoners are able to make a positive contribution to the community. For instance, in New Plymouth volunteers teach inmates knitting. The clothes that are knitted are donated to Taranaki Women's Refuge. In many cases, the offenders who participate have been perpetrators of family violence. This service allows them to “give back to the community they may have hurt”. Other programmes include quilting, arts and crafts, budgeting, faith-based services, lawn bowls, yoga, carving, dance, Toastmasters and alcoholics anonymous. Many of these services are not provided by the Department of Corrections, and would not be possible without the efforts of volunteers.

Volunteering in prisons has a positive effect not only on prisoners and the community at large, but also on the volunteers themselves. New Zealanders who have had little previous contact with prisoners can often hold prejudicial views of those “on the inside”. Even the Minister of Corrections has been recorded saying that “[s]ome of these prisoners are simply bad, and nothing anyone can do will prevent them forging a career in crime and spending much of their lives behind bars.” Interacting with prisoners changes the way that volunteers view prisoners.

A recent and well-publicised example is the chef Martin Bosley’s Prison Gate to Plate project. As part of a Wellington food festival, Mr Bosley taught six prisoners cooking skills and led them in cooking a four-course dinner for 70 people at Rimutaka Prison. Prior to his involvement, he had “some pretty red-necked opinions of those who committed crimes ... I thought a life sentence should be for life, and that prisoners should be breaking rocks in the hot sun and that three meals a day was too many”. The experience reversed his views on rehabilitation. Since the dinner, he has employed at least one prisoner on a "release to work" programme.

JustSpeak sees four areas of improvement in order to expand the use and impact of volunteer services:

1. Greater access and acceptance;
2. Extension of existing programmes;
3. One-off events; and

Each of these recommendations is discussed in greater detail.
1. **Greater access and acceptance**

Voluntary “third sector” organisations have many advantages over state-run service providers. These organisations widen the services and resources available to offenders, are independent from the criminal justice system (so may be seen by offenders as more approachable and trustworthy), are less constrained by bureaucracy, and offer a link to the community that can continue after release. However, before they can offer these benefits, volunteers need easy access to the prisons.

The number of registered prison volunteers has fallen in the last five years from 3,000 to 2,500. The bureaucratic demands of the Department of Corrections have created an “increasingly hostile environment toward volunteer involvement in the prison system.”

Historically, volunteer staff and Department of Corrections Officers have been at odds: volunteers were viewed as “naive do-gooders” who were perceived to be “on the side of the prisoners” and therefore in opposition to the prison staff. However, recent British research has found a change in those attitudes. One staff member acknowledged the benefit of third sector organisations that “show a lot of our lads as well that not everyone thinks that they’re all toe rags out there”. One volunteer suggested that:

> What I like about working with prisons is that most prisons accept that they’re not really very good at it. They’re good at locking people up, they’re good at making sure they don’t escape, but they know they’re not very good at rehabilitation. . . . Lots of them [officers] call us care bears and all the rest of it, but they know they can’t do it, they really know that.

The same research suggested that primary issue with non-staff working in prisons is the security risk it poses. One prison staff member stated:

> … you tend to get some [volunteers] who don’t see why certain rules exist... I fortunately caught a letter being taken out by a volunteer. I said, ‘Where are you going with that, you’ve been told you can’t do...?’ ‘But he only wants me to post it.’ I said, ‘You don’t know what’s in that letter, we don’t do that’.

Organisations that are sending volunteers in to prisons need to ensure the volunteers are properly trained about security risks and boundaries to minimise situations that could jeopardise the relationship between the prison and the organisation. This training is also the responsibility of the Department of Corrections.

Perhaps the most significant issue is the time taken to get security clearance for
volunteers, second only to being refused access to prisoners due to unexplained security incidents or being told on arrival that a particular prisoner has been unexpectedly released. These issues are all due to a lack of communication, which might be symptomatic of volunteers' work being under-valued.

Recent research has also made clear that there appears to be a lack of knowledge about outside organisations and what they do in the prisons, from both prison officers and prisoners. When surveyed in the British study, prison management claimed to engage with around 20 organisations; but the average prisoner was only aware of four and actually engaged with one or fewer. There is a need to educate staff, who can in turn raise awareness and encourage participation from prisoners.

Increasing access to prisons and increasing volunteering numbers could lead to the government relinquishing responsibility for prisoner well-being. Ultimately, responsibility for prisoner rehabilitation and occupation must lie with the Department of Corrections. Volunteer agencies should not be used to substitute for (and avoid paying for) professional services. Volunteers should add to the primary work of the Department of Corrections; for example, by assisting with homework assignments due for a Department-provided course.

2. Extension of existing programmes

Many volunteers come either as individuals or from a small organisation, often a faith-based organisation. Programmes are often driven by an individual or a local organisation. This means that many successful programmes are limited to one prison, and often a small number of prisoners. Information about how successful programmes are run should be shared, so that other volunteer organisations can roll them out across the country. Such information-sharing would also benefit the Department of Corrections by ensuring consistency between programmes available at prisons across the country. Below are a few examples of these programmes.

In 2007, Storybook Dads, a programme first developed in the UK, was introduced into the Otago Corrections Facility by the Methodist Mission in conjunction with the Department of Corrections. Inmates read a story aloud to a camera, and the recording is sent to their children. Storybook Dads aims to increase literacy of prisoners and to connect children with their parents in prison.

A Storybook Kaupapa Māori programme has also been implemented. An evaluation provided very positive feedback from the prisoners. One prisoner said it was an “excellent
course, with an awesome purpose – a rare opportunity in jail to do something for our children.” Another said that “because of this course my baby will be proud of me,” and one said it was the “first time I read a story to my boys”.

The programme has been immensely successful in the UK. A 2012 review of the British programme showed that 90 per cent of child participants seemed happier and showed an increased interest in books and reading, and that 97 per cent of the offender participants indicated that it had improved their relationship with their children. In the UK, some prisons now provide editing facilities and have trained 500 prisoners to do their own video editing, with the possibility of achieving formal qualifications.

Research has shown that prisoners who keep in touch with their families are six times less likely to re-offend. Storybook Dads is a creative, fulfilling way of doing this that also helps the literacy of both prisoners and the children. Often children will not visit their parents in prison (usually because the offender does not want them to), and this programme provides a tangible reminder of the missing parent. Storybook Dads is a programme that has been proven to be effective in doing this. It should be run in every prison in New Zealand and available to all parents.

Another type of successful programme is those involving animals. Though there is so far only scant research, contact with animals is usually a positive influence on prisoners. It has been suggested that animals “stimulate a kind of love and caring that is not poisoned or inhibited by the prisoners’ experiences with people”. Overseas, animal-based prison programmes are very common. Examples of such programmes include rehabilitating retired racehorses, gentling wild mustangs, training dogs to work with people with disabilities or as bomb dogs, or rehabilitating abandoned animals.

A commonly cited benefit of such programmes is the sense of responsibility instilled from caring for a dependent animal. One researcher felt that caring for animals addressed a fundamental human need in prison, which was a point of difference from other programmes that focused on the “deficit” of the prisoner by focusing on skills or addictions. While education and treatment have their place, “education that merely remains on the surface of human life that fails to go to the heart of being will inevitably fail in being correctional or, in other words, formative, reformatory or transformative”.

Animal-based programmes are limited in New Zealand. Mobility Assistance Dogs Trust in conjunction with the Department of Corrections runs a programme where offenders train mobility dogs in Auckland Region Women’s Correction Facility. This programme is
open only to eight women, who had excellent discipline records within prison and had shown an interest in animals. The application process, which required applicants to put together a CV and go through a formal interview, was beneficial in itself.

Reactions from the women involved in the programme have been positive. One said, “I now feel more responsible for my children and I let them know that I may be incarcerated but I am still here for them.” This carried through in her actions, with the prisoner no longer spending money on cigarettes but on phone cards to call her family. Other prisoners avoided confrontations with other prisoners because “I am responsible for my puppy and I really want this to work out,” or felt it was “an honour to have a puppy and I don’t want to let myself down, the prison, my puppy or Mobility Dogs.” Four men at the Spring Hill Corrections Facility will soon have the chance to take on puppies themselves.

Creative programmes are also run in various prisons. InsideOut is an art programme that the Mairangi Art Centre has run for four years at Northland Region Corrections Facility, Auckland Prison, and Auckland Region Women’s Corrections Facility. Art produced by the prisoners is exhibited and sold, with the proceeds going back to the community. In 2011 the proceeds went in large part to the Christchurch Earthquake Appeal.

Showing that prisoners can create art changes community perceptions of the prison population. At the InsideOut exhibition opening in 2011, Mayor Len Brown said “redemption is part of our communities and society. Look at how often we have to stand ourselves back up to meet great challenges. These works in front of us represent that.”

In the Hawkes Bay Regional Prison, sixty men in the Te Whare Tirohanga Māori Unit learn weaving in weekly lessons. This is supported by the Department of Corrections. Those who run the programme strongly believe that it has a positive effect on the offenders. “It’s a very healing time in Te Whare Pora, where we work. We sing waiata and tell stories, and the men share their techniques and pass on their knowledge to the new men.” Weaving connects offenders their teachers from the community, but also to their culture. “They too come to find a place of respect and love while they work with harakeke. The healing journey for the men is visible as they pick up the flax and connect with their tipuna.”

Similar benefits have been seen in the Northland Region Corrections Facility, where a retired teacher and tohunga teaches carving. He says that:
“Diners gave glowing reviews of the food, and one testified that his view of prisoners had been radically changed through his interaction with the servers: “the whole night was a brilliant experience. I used to think prisoners were all awful human beings with no redeeming qualities.” Another said, “when you think of prison what is the first thing you think of? Low lifes, criminals, wasters? I was the same until ... From Prison Gate to Plate.”

Source: Kevin Blakeman “From Prison Gate to Plate” Stuff (online, New Zealand, 16 August 2013).

Carving seems to create a receptive environment where the men are learning subconsciously. When they’re carving, they learn the ways of whakairo as a way to be in the world. They’re encouraged to think about thinking, explore their cognitive abilities and ask appropriate questions. Down the track, this will help [them] make appropriate choices.

Each of these programmes brings benefits to the prisoners who have the opportunity to participate in them. JustSpeak suggests that they should be available to more prisoners across the country.

3. **One-off events**

There are also "one-off" events that have been very successful. Again, both the Department of Corrections and other organisations should look at the success of these events with a view of implementation nationally and on a consistent basis. Wellington on a Plate and Singing with Conviction are two examples of these.

The Prison Gate to Plate project was referred to above. It was part of the Wellington on a Plate food festival, with a top chef tutoring six prisoners from November to August in the art of fine dining. In August, the prisoners cooked and served a four course meal in Rimutaka prison to diners who paid $70 for the experience. It was advertised as an opportunity for people to see and participate in the rehabilitation of offenders, and it completely sold out in 14 minutes.
The prisoners also bore testament to the success of the programme:135

... before I came to the kitchen I was pretty much one of those people no one wanted. I was the trouble maker who was in the high security unit for seven years. I was lucky someone gave me a chance and I haven't looked back.

All anecdotal accounts point to the event being successful. It would be useful to have a formal evaluation of the event and how it was run, so that similar events could be set up in Wellington again or in other cities.

Singing with Conviction established prison choirs in five prisons during 2005 and 2006.136 It was based on a South African initiative that saw prison choirs travelling and competing against each other. Predicting public outrage if inmates were allowed to travel to contests, the New Zealand organiser decided to record the performances and judge them remotely.137 Although 339 prisoners were initially involved, only 70 maintained involvement through to the end. The choirs performed in front of an audience, their performances were recorded, and sold as DVDs. A short documentary was made about one of the choirs.

A review of the programme described the better relationship between prisoners and prison staff it encouraged, though also suggested that “insufficient attention to cultural context and ethnic responsiveness” may have limited its success.138

4. Provision of information and evaluations

So that ideas can spread around the country, JustSpeak suggests that a database of the volunteer programmes run in each prison be set up. Groups wanting to begin a programme could see if there are gaps in the services offered in their area, or be inspired by initiatives in other regions. Information about how a programme is run in conjunction with the security requirements of the Department of Corrections could also smooth the road to establishing similar programmes elsewhere.

More information is also needed on whether volunteer programmes are effective, and what makes them so if they are. If any evaluation is done, it often focuses on prisoner feedback only, and does not record external indicators of behavioural or attitudinal change.
Children and family involvement

At any one time, about 20,000 children in New Zealand have a parent in prison. Given rising prison numbers, this figure is not likely to decrease in the near future. Children of prisoners are far more likely than the general population to become offenders and prisoners themselves.

It can be difficult to get a comprehensive or cohesive picture of the effect that parental imprisonment has on children, as information on the numbers of children of prisoners is not routinely collected internationally or in New Zealand. Experiences of children who have a parent in prison will also differ according to which parent is imprisoned.

However, it is known that these children are more likely to suffer health, developmental and psychosocial adversities (including being at a greater risk of infectious diseases, developing behavioural problems) and to become involved themselves in the criminal justice system. In almost all criminal justice systems, the rights of affected children are ignored and potentially threatened.

<table>
<thead>
<tr>
<th>Age of child</th>
<th>Impact of parents’ imprisonment</th>
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<tbody>
<tr>
<td>0-3 years</td>
<td>Low degree of attachment to imprisoned parent and loss of bond</td>
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<tr>
<td></td>
<td>Separation anxiety</td>
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<tr>
<td>4-7 years</td>
<td>Separation anxiety</td>
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<td></td>
<td>Bedwetting</td>
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<td>Night terrors</td>
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<td></td>
<td>Aggression and violence</td>
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<td></td>
<td>Lack of engagement in school</td>
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<tr>
<td>8-10 years</td>
<td>Aggression and violence</td>
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<td></td>
<td>Feeling depressed</td>
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<td></td>
<td>Truancy</td>
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<tr>
<td>11-15 years</td>
<td>Violence</td>
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<tr>
<td></td>
<td>Assuming the role of the absent parent or parenting the parent</td>
</tr>
<tr>
<td></td>
<td>Truancy</td>
</tr>
<tr>
<td></td>
<td>Decreased academic achievement</td>
</tr>
</tbody>
</table>
Children of prisoners are more likely to live in poverty, and are therefore more likely to suffer the ill-effects of childhood deprivation. Diseases like asthma, eczema, psoriasis, and nervous disorders are common.\textsuperscript{146} New Zealand studies have found that the impacts of imprisonment differ depending on the age of children.\textsuperscript{147} The separation of very young children in particular has significant implications for their development. A mounting body of research from developmental psychology and neuroscience confirms attachment relationships to be a “central axis of the child’s developmental pathway”.\textsuperscript{148} A secure attachment to a primary caregiver in the early years of a child’s life has a significant bearing upon behaviour,\textsuperscript{149} and separation from the principal figure can have serious behavioural consequences.

Many of the recommendations raised in this report share a common factor – the importance of involving whānau in offender rehabilitation. It is a crucial component to successful reintegration into the community. This section will assess how family involvement with prisoners can be improved.

**Visitation**

In most cases, visits are essential to sustaining relationships. Visits are the only face-to-face opportunities prisoners have to restore relationships with family and friends that have been severed by imprisonment.\textsuperscript{151} Inmates who receive visits are more likely to be successful in re-entering into society.\textsuperscript{152}
Maintaining relationships with children is particularly important. Research has shown that:

...fathers who have regular contact with their children before release and report good family support overall are more likely to be attached to their children after release.

Moreover, in the first few months after release, fathers who are more strongly attached to their children work more hours per week, have better mental health, and are less likely to commit crime, get arrested, or violate conditions of their supervision.

Despite the importance of visitation, there are many barriers that deter visitors. Overseas literature cites the prison environment as a common barrier: “the visitation area itself, staff treatment, prison services and the length of visitation hours”. One American researcher highlighted:

Few prison visitation programs are designed to encourage visits. Rather, most visitation programs are subordinate to safety and security procedures. Many prisons perform background checks on potential visitors and bar anyone with a criminal background ...

... Also, visitation hours are usually limited to a few hours and only on certain days of the week ... The last major barrier to visitation involves the nature of many visitation programs and the uncomfortable settings. Generally speaking, prisons are not designed for the comfort of prisoners or visitors. The families of inmates often travel long distances to prisons, only to wait in line for hours in rooms that sometimes have no bathrooms or vending machines, and poor circulation. After waiting for hours, visitors usually meet with inmates in large multi-purpose rooms, where they are closely watched and allowed little physical contact.

Prisoners in England have agreed that the physical environment of visiting rooms were not conducive to a successful visit. One prisoner commented that it might help matters to have “softer chairs, a little round table, instead of a high table, kick board and a chair where you can’t move... It’s like you are sectioned off away from your family isn’t it, even though you are not on closed visits it feels like you are.”

Prisons could encourage visitation by:

- Placing inmates in facilities as close to their home communities as possible;
- Encouraging community service agencies and organizations to visit inmates;
- Ensuring parking is available for visitors;
- Expanding visiting hours to evenings and weekends to accommodate visitors who are employed or have to travel long distances;
- Decreasing bureaucratic barriers to visitation;
- Increasing the cultural sensitivity of staff members; and
- Making sure that visitation rooms are clean, comfortable, and hospitable.
To ensure that visitation is being encouraged in New Zealand, it would be useful for the Department of Corrections to apply the above criteria to its current visitation services.

To make a significant difference to visitation, the Department of Corrections needs to seriously consider the location of visitation facilities on a nationwide scale. Prison visiting room facilities may create a negative atmosphere\textsuperscript{158} that is not conductive to preserving family bonds and discussing family issues. This is particularly the case in respect of children. Prison visiting centres are often not appropriate for children. A report by Pillars, an organisation that works with the families of prisoners, highlights the key issues of children visiting prisons:\textsuperscript{159}

Children are required to be screened at the gatehouse, and may actually be searched. While children may give their prisoner parent a hug, ongoing contact is not generally allowed. All food and drink is prohibited except for one bottle for a baby. In most prisons there are no toys to play with. With nothing to do, children often find it hard to communicate with their parent. The adults may have a range of matters to discuss, at the same time as having to supervise bored children. As reported in that study, the visiting situation in prisons is far from ideal.

**Opportunities for improvement in family access**

In Christchurch, a family VIP Centre was created to encourage visits and normal parental interactions between children and their parents in prison.\textsuperscript{160} This centre is in a standalone building, and includes a visiting area with tables and chairs, three activities rooms (for arts and crafts, DVD-watching, and toys), and an outdoor area (where children can play hopscotch).\textsuperscript{161} Parents may interact with their children in a relaxed setting and enjoy activities with their children. This is in stark contrast to normal prison rules that do not allow toys and food or drink in the visiting area. The rules also allow only limited physical contact.

The building was supplied by the Department of Corrections. Pillars organised the room and supplied all the toys. The biggest issue with this is the provision of the building and the staff. An evaluation of this centre yielded very positive feedback, and the biggest criticism was that it was not open often enough.\textsuperscript{162} JustSpeak suggests that a similar model of family centre should be applied to all prisons across New Zealand.

Another model which could be trialled in New Zealand is the concept of all-day family visits, first introduced into the United Kingdom's Dartmoor prison. This initiative allows prisoners to spend an entire day with their family.\textsuperscript{163} Special children-focused all-day family visits are run during school holidays. These visits are more relaxed than normal
visits. Prisoners are able to move around and interact with their families. Activities and a buffet meal are provided for families to share. This is something that should be considered in New Zealand to encourage family relationships.

Long-distance communication

Another element of sustaining relationships is ensuring ongoing communications. Prisoners are often placed at prisons far from their hometown, and many families are unable to visit due to the distance. Although there is no New Zealand research on this point, overseas research indicates that distance is the number one barrier to visitation. JustSpeak considers the rapid advancements in technology should be used to maintain relationships between prisoners and their families. For example, prisoners could use Skype, or other video messaging programmes to contact family and whānau. While prison services overseas are considering computer technology trials to facilitate communication, a proposed New Zealand trial was abandoned due to the security risks.

One successful use of technology is to allow families to send emails, which are then printed and given to the prisoners. This initiative was trialled for three months in the DTU in the Rimutaka Prison while the New Plymouth Prison was shut and transferred inmates were far from their families. Seventy-six emails were received during the trial, and the service is still available. However, it has not been extended beyond the DTU, let alone to other prisons. This policy should be reviewed and expanded. It would dramatically increase the ease of communication for families, while still maintaining the necessary security levels (as all emails are monitored for objectionable material, profane, sexual or gang-related language).

As a result of the New Plymouth shutdown, private audio-visual conferencing was also trialled in Whanganui Prison to try to maintain contact for offenders and their families. The prison continues to facilitate virtual visits using audio visual technology (AVL) on Mondays and Fridays for four hours each day, for friends and families of prisoners living in the New Plymouth region. Contact with families from other areas is also facilitated when resources are available. AVL appears to be a realistic alternative to face-to-face contact, but would require more resourcing to be put into place throughout New Zealand.

American research has also suggested that transport could be organised for families by either the Department of Corrections or community volunteers, and that the substantial hurdle of distance could be overcome if prisons were built in urban areas.
Further family involvement

Ideally, family involvement in prisons would not be limited to visits. Māori Focus Units are running in five of New Zealand’s prisons. Half of the prisoners in these units have broken or non-existent relationships with their whānau, but the units still operate a ‘whānau-centric’ framework which incorporates the family into many aspects of the prisoner’s rehabilitation. Four Pou Arataki act as whānau liasons. They build and strengthen relationships between offenders and their whānau, identifying positive relationships where they can and making initial contact with those whānau members. The Pou Arataki assists in identifying harm that may have occurred and identifying possible steps to restore this relationship.

The Pou Arataki also assists whānau by linking them up with support services. Whānau are invited to attend programmes alongside the offender and to assist in resolving any issues that arise for him. On release, a whānau plan is put in place, which identifies the whānau’s aspirations and how the offender can achieve this.

The Pou Arataki role approximates the Family Contact Development Officer (FCDO) in prisons in Scotland and other parts of the UK. The FCDO is in charge of managing child/parent bonds, being a contact person for families and providing information to prisoners on visitation processes, and encouraging contact with families. A review of this role found that the support offered was very well received by prisoners and families. However, in many prisons the role was not fully supported and operated with very few resources.

JustSpeak would like to see a team of family liaison officers in every prison in New Zealand. While family members are often significant supporters of rehabilitation, intervention and encouragement may be required where offenders have pushed their families away.

Post-release

Being released from prison may be a positive time, but also a challenging one for the offender. Prisoners live a highly regimented life with few personal decisions to make. The sudden change to independence can be bewildering, and lead to re-offending if the proper support systems are not in place. Fortunately, support is available for many prisoners. This section highlights some of the assistance.
Accommodation

1. Orongomai Marae: a model for successful reintegration

The Orongomai Marae, located in Upper Hutt, is a success story of reintegration services. The Marae receives funding on contract from the Ministry of Social Development to assist ex-prisoners in maintaining a crime-free, stable lifestyle. Three full-time staff act as reintegration officers, offering services ranging from relationship counselling, transport to work, and providing furniture for houses. People attend the marae on a strictly voluntary basis.

George Kupa, the leader of the reintegration services team, dedicates many hours to the cause. He often survives on five hours of sleep to remain on-call for overnight emergencies and to take ex-prisoners to work in the early morning. Together, the team assists ex-prisoners to gain skills (from literacy qualifications to forklift and heavy vehicle licences), attend medical appointments, complete courses (such as first aid), and practice job interviews.

In the period of one year, the team at Orongomai Marae has helped re-house 25 ex-prisoners in the Wellington region – an important process in reintegration. Kupa admits that the outside world can feel less free than prison for some ex-prisoners as different sounds, fewer systems, and greater flexibility can be unsettling for them. However, as challenging as reintegrating back into the community is, of the 260 clients that have come through the programme, just 11 have returned to prison. With one-on-one treatment, group support, and informal assistance, the reintegration services team is helping many Wellington-based offenders to overcome personal and social disadvantages in order to live a crime-free, meaningful life beyond prison.

2. Halfway houses

Halfway houses can provide the crucial support for individuals seeking stable accommodation upon release from prison. The importance of such provision for ex-inmates was identified by the then-head of Parole Board Sir David Carruthers in 2010. He despaired that:

It is almost impossible to find stable accommodation for them in the communities of this country. Frankly, they are not wanted. When we have released people, they have been outed, the released undermined and [the parolees] returned to prison.
Sir David noted that Canada is largely successful in maintaining low recidivism rates because of its network of around 400 halfway houses, serving as a bridge back into the community, budgeting, and pro-social groups of friends.\(^{179}\)

A recent innovation in New Zealand is the two 16-bed Whare Oranga Ake reintegration units at Hawkes Bay Regional Prison and Spring Hill Corrections Facility. These provide a kaupapa Māori environment for selected prisoners nearing the end of their sentence. Opened in July 2011, the programme is run by skilled Māori service providers while security is maintained by the Department of Corrections. Within the programme, prisoners upskill in preparation of their reintegration in areas such as employment, reconnection with iwi and the community, how to meet accommodation needs, and basic education.\(^{180}\)

The Grace Foundation is another example of how the community can take on responsibility for post-release offenders. The Grace Foundation is a charitable trust established in 2012 to provide accommodation for those in need of safe accommodation. This includes ex-prisoners, battered women, the homeless and sex workers.\(^{181}\) The Grace Foundation currently runs six male and seven female community homes throughout South Auckland. Each house is guided by volunteer “house parents”, who provide wrap-around services such as transport, parenting education, financial advice, alcohol and drug addiction programmes, basic literacy and numeracy education and faith-based counselling.\(^{182}\) The Grace Foundation relies entirely on its own funding, volunteers, and donations.

JustSpeak commends the work done by this and similar organisations. Greater public awareness of their struggles is required to secure the financial resources and volunteers needed to enable such initiatives to continue.

**Employment opportunities**

Upon release from prison, employment can give offenders structure in day-to-day living, a sense of achievement from earning an income, and a sense of contribution to the community. Stable employment and connections to the community play an important role in reducing the likelihood of recidivism and associations with negative peer groups for those in “the aftermath of imprisonment”.\(^{183}\)

JustSpeak sees employment programmes as a crucial component of reintegrating offenders back into the community and reducing re-offending rates. One noteworthy initiative is Pathway Charitable Group’s Total Reintegration Strategy. This organisation
offers the Pathway to Employment programme to individuals who face barriers to employment, such as criminal records. During their 20 weeks in the programme, individuals are formally employed and learn skills while “on the job”. Pathway Charitable Group aims to change attitudes, by developing confidence and a good work ethic.184

Types of employment that Pathway Charitable Group offers include the restoration of public buildings, maintenance of public walkways and reserves, and lessons in driving and the use of specialty tools. To date, 90 per cent of all attendees have successfully found jobs in areas such as farming, logistics and trades.

The use of employment programmes in prisons, combined with a continued connection to education and employment services after release can reduce recidivism, making it a promising initiative.185 Such programmes should be encouraged as they empower prisoners to contribute to society while they are serving their sentence, thus challenging the perception that offenders are only a drain on society’s resources.

Service providers such as Prisoners Aid already provide valuable support to ex-inmates, such as CV building and employment support. JustSpeak would like to see this type of support extend across the community so that a conviction is neither a barrier to nor a stigma on an individual’s employability.

The Department of Corrections has set a goal to provide real jobs for an additional 7,900 community-based offenders and released prisoners per year by 2017.186 JustSpeak acknowledges that achieving this goal will be great progress in the right direction. JustSpeak encourages the Department of Corrections to not only meet but to exceed this goal by 2017. As the Department itself acknowledges, people who find stable employment on leaving prison are less likely to commit crime in the 12 months after their release.187

**Conclusion and recommendations**

JustSpeak acknowledges that the Department of Corrections is tasked with a difficult challenge. It is responsible for over 40,000 offenders at any one time. These offenders each have different needs, from the 8,500 held in prisons to the 31,000 serving community-based sentences or orders.188 Many have drug and/or alcohol dependencies, violence or serious mental health issues. Others are illiterate, without qualifications or employment experience. Each year, over 30 per cent of prisoners are released back into the community only to re-offend and be reimprisoned.189
The Department of Corrections has put into action some creditable goals. It aims to reduce offending by 25 per cent by 2015.\textsuperscript{190} The Department of Corrections’ evidence-based approach to reducing re-offending has been commended by the Office of the Auditor-General.\textsuperscript{191} In particular, the Office of the Auditor-General considered that the Department of Corrections “continuously assesses the effectiveness and efficiency of its interventions, learns from success and failures, and uses that information for improvements”.\textsuperscript{192}

Whilst this is an encouraging report on the government authority responsible for managing New Zealand’s criminal justice system, JustSpeak agrees with the Auditor-General that there is still scope for the Department of Corrections to improve its rehabilitation and reintegration of offenders. In particular, JustSpeak encourages the Department of Corrections to continue to meet the Auditor-General’s recommendation by taking careful consideration of the evidence outlined in this report.

JustSpeak recommends:

**Improving the current scheduling system** to enable all offenders to undertake rehabilitation programmes such as DTUs.

**Expand the use of specialist courts**, such as the AODT and Rangatahi courts, to make them more accessible to offenders regardless of age or culture.

**Establish a national database** of career-relevant programmes available to inmates.

**Restorative justice**: increased investment and integration of restorative justice processes into New Zealand’s criminal justice system.

**New reintegration strategies**: investigating and implementing strategies to better transition offenders from prison into the community.
CONCLUSION
CONCLUSION

New Zealand has a prison problem. The number of people being convicted and sentenced has remained largely stable since 1983; yet over the same three decades, New Zealand’s prison population has increased almost 300 per cent.

Political recognition of the limited social and economic benefits of a large prison population has not translated into actual political action to change the present system. Rather than engage in rational and evidence-based discussion of sentencing and imprisonment policy, the increasing trend is to tinker with the prison system in response to a particular event or perceived problem. Debates about criminal justice in New Zealand are too often based on misinformation and the inflammatory opinions of vocal minorities.

What prisons ought to achieve, and whether they actually achieve those goals, is not a question that one sector of society can ever hope to answer. This report proposes recommendations that JustSpeak consider to be rational; it cannot provide conclusive answers. JustSpeak aims to direct New Zealand towards the much-needed “constructive and clear headed public debate” based upon research and evidence about our penal system.

As we saw in Part One, the starting point for that debate must be an understanding of actual sentencing practice and theory. The current statutory framework claims to make imprisonment a measure of last resort, but restrictions within sentencing procedure mean it is not used in that way. When examined closely, the purposes for which imprisonment ought to be imposed do not stack up with what imprisonment achieves. Alternative sentences are unavailable for offenders with an end sentence over two years’ imprisonment, which artificially limits the use of alternative sentences even when they would be the option which best meets the purposes of sentencing. Establishing the Sentencing Council, which has lain dormant for over a decade, could help to rationalise sentencing practices across the country.

Part Two moved from theory into the practice of prisons within their historical context. While conditions within prisons have evolved from their brutal beginnings, New Zealand has yet to implement policies which match criminological research. Young people are imprisoned and mothers are unable to remain with their newborn children – despite the clear statistics showing the harm this causes. Healthcare is a particular problem,
recently highlighted by the Ombudsman. While the Department of Corrections is making
encouraging steps in the right direction towards changing prison officers’ attitudes, more
must be done to make prisons a place of change rather than stagnation for offenders.
Comparing the sums spent per year on imprisonment versus community-based sentences
and parole is telling: almost twice as much, for fewer than 15 per cent as many offenders.

Part Three looked at what is currently being done in the criminal justice system to
encourage changes in offenders, and what might be improved. Before sentencing, formal
warnings, diversions, and specialist problem-solving courts keep people away from the
prison system. While serving a term of imprisonment, rehabilitative programmes run by
the Department of Corrections and committed volunteers do inspire offenders to change
entrenched attitudes and behaviours. And after returning to the community, friendly
employers and reintegration providers embed those pro-social changes.

However, too few specialist courts exist at present. The uniquely New Zealand flavour
of the Rangatahi Court is restricted to young offenders, rather than available to all.
Restorative justice and rehabilitation programme providers have limited capacity.
Specialist Treatment Units within prisons have restrictive entry requirements, and
sometimes offenders find themselves unsupported after they leave the Unit. Family
and volunteers meet barriers rather than welcomes when they wish to provide support
to prisoners. After release, the stigma attached to prisoners prevents many from
reintegrating into the society they left.

New Zealand needs to face up to its prison problem. The facts show that our rate of
imprisonment must decrease to remedy the moral and fiscal failure of our penal system.
While New Zealand has progressed in its short history, and progressed significantly in
the last decade, the changes need to keep coming. Valuable policies and initiatives are in
place to reduce New Zealand’s high rates of incarceration and re-offending, to assist in
offender rehabilitation, and to encourage successful reintegration into the community.
But more must be done. How we decide who to send to prison, why we send them there,
and how to ensure that these individuals leave prison less likely to commit further
crimes, is a discussion in which all New Zealanders should engage.
It can be concluded that existing prisons are of limited use to society and for the future we must plan for a continuing reduction in prison numbers by other more effective means of responding to crime.
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ENDNOTES
Introduction

1. At March 2014 there were 8,520 prisoners in New Zealand prisons: Department of Corrections “Prison Facts and Statistics – March 2014” <www.corrections.govt.nz>. At the end of March 2014, it was estimated there were 4,524,926 people in New Zealand at 31 March 2014: Statistics New Zealand “Population Clock” <www.stats.govt.nz>. This gives 188.28 prisoners per 100,000 population.


3. Roy Walmsley, above n 2.


7. The cost to imprison an offender per day is $266. Department of Corrections Annual Report: 1 July 2012 – 30 June 2013 (Department of Corrections, Wellington, 2013) at 26.


9. During this period, New Zealand’s population has increased by a little over 25 per cent in the same time period, from 3.199 million in 1983 to 4.433 million in 201.

10. The statistics in figure 1 are drawn from the Official Year Books of New Zealand, the Department of Corrections, and also from Statistics New Zealand. In 1983, the number of adults convicted was 81,693. In 2013, the number of adults convicted was 74,506. While the rate of conviction remained largely below the 1983 level, there were two peaks in 1989 (103,043 adults convicted) and in 2009 (99,723 adults convicted) but since then the rate has decreased to 74,506 adults convicted: Statistics New Zealand “Adults Prosecuted in Court – All Offence Types” <www.stats.govt.nz>.

11. 992 on remand (prisoners who have been charged and denied bail, but are awaiting trial or appeal) and 4,899 serving a custodial sentence: Department of Corrections “Annual update of forecasts of the prison population” (Department of Corrections, 2003) <www.corrections.govt.nz>.

12. 1,555 on remand and 6,668 serving a custodial sentence: Department of Corrections “Prison facts and statistics - December 2013” <www.corrections.govt.nz>. Most recently, there are 8,520 prisoners, 1802 on remand and 6,718 serving a custodial sentence: Department of Corrections “Prison facts and statistics – March 2014” <www.corrections.govt.nz>.

13. Statistics New Zealand, Historical Population Estimates Tables” (online) puts the population at 31 December 2003 at 4,061,600 and the population as at 31 December 2013 at 4,504,600.


16. For example, the Bail Amendment Act 2013 (prompted by calls for “Christie’s law”), the Public Safety (Public Protection Orders) Bill 2012 (68-1) and the Sentencing and Parole Reform Act 2010 (the “three-strikes” law)
are all likely to increase prison populations. Their effect on public safety is debatable.


19. At 39.

20. (20 July 1910) 19 HCPD 1354.

Part 1


2. Sentencing Act 2002, ss 7 and 16(1).


4. Speaking of the purposes of criminal punishment, the High Court of Australia has said that they “overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions”: Veen v R (No 2) (1988) 164 CLR 465 at 476.

5. Rehabilitation is specifically excluded from the purposes for which imprisonment can be imposed under s 16 of the Sentencing Act 2002, though it is a general purpose of sentencing under the Act. Punishment is not a purpose of sentencing at all in New Zealand. When the Act was reviewed by the Justice and Electoral Select Committee, its absence was explained because “all sentences constitute some form of punishment or have punitive implications involving as they do limits on an offender’s rights or the imposition of some form of obligation. To state punishment as a purpose provides no guidance as to what would be an appropriate sentence”: Sentencing and Parole Reform Bill (148-1) 2001 (select committee report).


7. Sentencing Act 2002, ss 16(2)(c), 8(g), and 17.


15. However, this outcry must be resisted. As Woodhouse P in R v Puru [1984] 1 NZLR 248 (CA) at 250 stated: “... the judicial obligation is to ensure that the punishment [the courts] impose in the name of the community is itself a civilised reaction, determined not on impulse or emotion but in terms of justice and deliberations.”


21. D Ritchie Does Imprisonment Deter? A Review of the Evidence (Victorian Sentencing Advisory Council, Melbourne, 2011) at 1; in R v Radich [1954] NZLR 86 (CA) at 87 the Court of Appeal conjectured that imposing a sentence of imprisonment on an offender “mak[es] it clear to the offender and to other persons with similar impulses that, if they yield to them, they will meet with severe punishment. ...”

22. R v Radich, above n 21, at 87.

23. J Bentham Introduction to the Principles of Morals and Legislation (1789); D Ritchie, above n 21, at 8.

24. D Ritchie, above n 21, at 8.


27. George Tsebelis “Penalty has no Impact on Crime: A Game-Theoretic Analysis” (1990) 2 Rationality and Society 255


29. Roger Brooking estimates that it is 80 percent of offenders are under the influence of alcohol or drugs at the time of the offending: Roger Brooking Flying Blind (ADAC, Wellington, 2011). However, the Ministry of Health in their discussion document A New National Drug Policy for New Zealand (2013) places this at around 50 percent. No citation is given but presumably the statement is based on Berl Economics “Costs of Harmful Alcohol and Other Drug Use” (Report to Ministry of Health and ACC, July 2009).


36. PC Smith, C Coggin and P Gendreau, above n 35.

37. DS Nagin, FT Cullen and CL Jonson, above n 33, at 126. See also D Ritchie, above n 22, at 2.

38. DS Nagin, FT Cullen and CL Jonson, above n 33, at 126.


40. DS Nagin, FT Cullen and CL Johnson, above n 33, at 128.

41. Historical events such as police strikes, where there has been a lack of enforcement of the law, coincide with a significant increase in the commission of crime: A Von Hirsch and A Ashworth (eds) Principled Sentencing: Readings on Theory & Policy (2nd ed, Hart Publishing, Oxford, 1998) at 51.

42. D Ritchie, above n 21, at 2; P Smith, C Goggin, P Gendreau, above n 33, at 10.


44. SN Durlauf and DS Nagin “Imprisonment and Crime: Can Both Be Reduced” (2011) 10 Criminology and Public Policy 13 at 25.


49. AR Piquero and A Blumstein, above n 48, at 268.

50. AR Piquero and A Blumstein, above n 48, at 271. See also the discussion in D Ritchie “How Much Does Imprisonment Protect the Community Through Incapacitation?” (Victorian Sentencing Advisory Council, Melbourne, 2012) at 13 – 14. Perhaps the more recent study of R Johnson and S Raphael “How Much Crime Reduction Does the Marginal Prisoner Buy?” (2006) should be taken as most relevant, as it is based on more recent figures. Johnson and Raphael estimated that imprisonment reduced around 8 crimes per person per year.


52. AR Piquero and A Blumstein, above n 48, at 275; Carolina C Lukkien and Peter W Johnston, above n 34, at 4.


Endnote 140
60. Sentencing Act 2002, s 16(2)(c), 8(g) and 17.
61. R v Rawiri, above n 8, at [18].
64. Sentencing Amendment Act 2007.
68. Sentencing Act 2002, s 110.
69. Sentencing Act 2002, s 19. Reparation may be ordered with any other sentence, but a fine can only be combined with imprisonment if there is another statute specifically authorising it for the particular offence.
70. Geoff Hall Hall’s Sentencing (online loose leaf, LexisNexis) at [SA 39.3].
72. Sentencing Act 2002, ss 12 and 32. Section 32(2) provides that reparation can only be imposed for emotional harm if the person who suffers the emotional harm is a “victim” within the definition in s 4 of the Sentencing Act 2002. Broadly speaking, that means any person against whom an offence is committed, who suffers loss because of offending (or their parent or guardian if it a child or young person is offended against or suffers loss), or an immediate family member of a person who is killed or rendered incapable by the offending.
73. R v O’Tozurke [1990] 1 NZLR 155 (CA) at 158.
74. Sentencing Act 2002, s 55.
75. R v Rawiri, above n 8, at [18].
76. Sentencing Act 2002, s 56(2).
77. Sentencing Act 2002, s 66A.
78. Sentencing Act 2002, s 45(2).
81. Sentencing Act 2002, s 54C.
82. Sentencing Act 2002, s 69B.
83. Sentencing Act 2002, s 69G.
85. Sentencing Act 2002, s 69C(1)(a)(i). As the Explanatory Note to the Criminal Justice Reform Bill 2006 (93-1) at 5 states: "Community detention ... is particularly suitable for offenders whose offending has a specific pattern or tends to occur at particular times."
87. Note that it is not a requirement to be electronically monitored. Section 80C(2)(d) of the Sentencing Act 2002, only requires the offender to be subject to electronic monitoring if required by the probation officer. Section 80E of the Sentencing Act 2002 states that the purpose is to deter the offender from breaching his or her conditions and monitor his or her compliance. In situations where compliance is not an issue, it may not always be necessary to require electronic monitoring. See R v Singh-Kang [2014] NZHC 126 at [41]–[47].
88. Sentencing Act 2002, s 80C(2) and (3).
89. Sentencing Act 2002, s 80E.
90. Sentencing Act 2002, s 80C(2)(e)–(g).
91. Sentencing Act 2002, s 80O sets out the standard post-detention conditions, while s 80P provides special post-detention conditions that can be imposed by a court.
92. See below at pages 39–41.
94. Parole Act 2002, s 84(1)
95. Sentencing Act 2002, s 86D(3) and s 20(5) of the Parole Act 2002.
96. Sentencing Act 2002, s 86(2).
97. As defined in s 86A of the Sentencing Act 2002.
98. Set out in s 87(5).
100. Sentencing Act 2002, s 89.
107. Sentencing Act 2002, s 9(1)(a), (b), (c) and (f).
108. Sentencing Act 2002, s 9(2)(d) and (c).
109. Sentencing Act 2002, s 9(1)(c) and (f).
110. Sentencing Act 2002, s 9(2), (e), (f) and (g).

Endnote 142
112. *Hessell v R*, above n 111, at [79].

113. *Hessell v R*, above n 111, at [59].

114. *Hessell v R*, above n 111, at [60].

115. *Hessell v R*, above n 111, at [60].

116. The Sentencing Act 2002 does not say this explicitly, but because home detention is only an allowable sentence if the Court would otherwise have imposed a term of imprisonment of two years or less (s 15A(1)(b)), it has become standard and unquestioned practice.

117. Sentencing Act 2002, s 8(e).


120. Criminal Justice Reform Bill 2006 (93–1) (explanatory note): “The purpose of the Bill is to introduce a range of measures to arrest the sharp increase in the prison population in recent years ... The Bill, which includes some measures that will have an immediate effect and others that will take longer for their impact to be felt, is intended to contribute to a reduction in the imprisonment rate over time.” The Ministry of Justice does not forecast an increase in home detention or community detention: See “Justice Sector Forecast 2013-2023” (Ministry of Justice, 2013) at 10–12 <www.justice.govt.nz>. Another factor that may reduce the use of home detention is that home detention places a very real burden on those other people living at the home detention address and they may not consent to the address being used. Alternatively, the address may not be suitable for several reasons.

121. A von Hirsch and A Ashworth, above n 12, at 17; A von Hirsch, above n 12, at 11. Geoff Hall, above n 11, at 83

122. A von Hirsch, above n 12; Nicola Lacey, above n 14, at 23.

123. Sentencing Act 2002, s 8(a).


125. Sentencing Act 2002, s 86A defines “serious violent offence”.


129. See 18–20 above.

130. The cost to imprison an offender per day is $266. Department of Corrections Annual Report: 1 July 2012 – 30 June 2013 (Department of Corrections, Wellington, 2013) at 26.


132. Section 10A of the Sentencing Act 2002 provides a hierarchy of sentences. The most restrictive sentence is a sentence of imprisonment (s 10A(2)(f)). Immediately below a sentence of imprisonment is a sentence of home detention (s 10A(2)(e)). Under s 15A(1)(b) a sentence of home detention can only be imposed if the court would otherwise sentence the offender to a “short-term sentence of imprisonment”. A “short-term” sentence is defined in s 4 of the Sentencing Act 2002 as a determinate sentence that is 24 months or less. See *R v Zafiri* HC Auckland CRI-2010-404-316, 16 November 2010. In addition, some offences create a presumption of imprisonment (for example, sexual violation: s 128B(1) of the Crimes Act 1961; and supplying a Class A drug: s 6(4) of the Misuse of Drugs Act 1975).
133. Hessell v R, above n 111, at [26], [41], [43] and [51]. In R v Finn [2007] NZCA 257 at [8] the Court of Appeal considered that consistency in sentencing can be achieved through “consistency of approach by judges.”.

134. If the Judge departs too markedly from other this could amount to the sentence being “manifestly excessive or inadequate” which is a ground for appeal: Knox v Police [2014] NZCA 51 at [16].

135. Sentencing Act 2002, s 8(e).

136. For example a sentence of around three years or more is often imposed for sexual violation and other more serious charges such as possessing methamphetamine for supply or arson. In contrast, sentences for two years to three years can be imposed on a range of offending such as: cultivation of cannabis, burglary, benefit fraud, intentional damage along with breach of a protection order, perverting the course of justice, assault with intent to injure. While these are serious charges, they may or may not require imprisonment.

137. A “short-term” sentence of imprisonment is defined in s 4 of the Sentencing Act 2002 as having the meaning given to it in s 4(1) of the Parole Act 2002, which is 2 years.


139. R v D [2008] NZCA 254 at [60].


141. Ministry of Justice, above n 140, at 28.

142. Ministry of Justice, above n 140, at 20. 23.0% compared to 52.6% for 2008-2009 year.

143. Ministry of Justice, above n 140, at 21. 6.6% compared to 31.4% for 2008-2009 year.

144. Ministry of Justice, above n 140, at 15.

145. Ministry of Justice, above n 140, at 18–19. This is based on 3,547 offenders being on home detention, 744 offenders offending, and of those 744 only 17% are criminal offending (the remaining 83% are “justice offense” generally involving breach of conditions).

146. Ministry of Justice, above n 140, at 9.


149. Ministry of Justice, above n 140, at 27. For more discussion of some of these issues see JustSpeak Maori and the Criminal Justice System – A Youth Perspective (online, March 2012).

150. Further the maximum periods for similar offending are often incoherent. Law Commission Maximum Penalties for Criminal Offences (NZLC SP21, 2013).


152. At 20.

153. At 20.

154. At 22.


156. They could be regulations and so able to be disallowed.

157. One Court of Appeal Judge, one High Court Judge, two District Court Judges, the chairperson of the Parole Board (who is a Judge): s 10 of the Sentencing Council Act 2007.
Part 2


3. John Pratt, above n 2, at 12.


5. Norval Morris and David J Rothman (eds), above n 1, at viii.


7. Norval Morris and David J Rothman, above n 1, at xiii.

8. Norval Morris and David J Rothman, above n 1, at xiii.


13. Michel Foucault, above n 11, at 200.


15. Departmental Committee of Prisons in Britain "Report from the Departmental Committee on Prisons", (C 7702, 1895, 56 Parliamentary Papers at 5).


18. Pew Center On The States, One In 100: Behind Bars In America 2008 5 (online, 2008) Statistics from the past

32. Howard League for Penal Reform “Fact Sheet 54: Private Prisons, Ideology or Evidence led?” (online, 27 April 2009).
34. New Zealand Press Association “Controversial Private Prison Opens” The New Zealand Herald (online ed, Auckland, 30 March 2011). The Prison Management Contract itself is available on the Department of Corrections’ website. The “service requirements”, such as receiving all prisoners with proper committal orders and correctly discharging them when their sentence is served, and “performance measures” are at Schedule 2.
36. The level of funding is considered commercially sensitive information, and is not publicly available: above n 34.
37. The Prison Management Contract itself, above n 34. The “service requirements”, such as receiving all prisoners with proper committal orders and correctly discharging them when their sentence is served, and “performance measures” are at Schedule 2. The fees charged by Serco have not been released.
45. The cost per male prisoner is $97,090 per year: Department of Corrections Annual Report: 1 July 2012 – 30 June 2013 (Department of Corrections, Wellington, 2013) at 26. Since MECF is primary a remand prison, it does not provide the full range of services which make imprisoning a sentenced prisoner more expensive.


50. Elizabeth Stanley, above n 48.

51. Statistics New Zealand “Adults Convicted in Court By Sentence Type – All Offence Types” <www.stats.govt.nz>. The total number of sentenced adults in New Zealand in 2013 was 76,506 while those receiving prison only amounted to 7,111.

52. Statistics New Zealand “Annual Recorded Offences for the latest Calendar Years” <www.stats.govt.nz>.


58. Department of Corrections, above n 58, at 6.

59. Department of Corrections, above n 58.

60. Department of Corrections, above n 58, at 29.

61. Department of Corrections, above n 58, at 28.

62. Department of Corrections, above n 58, at 11.

63. Calculated using “Maori Population Estimates (at 30 June 1991-2013)” (Statistics New Zealand, 2013) <www.stats.govt.nz> and Infoshare – Estimated Resident Population by Age and Sex (1991+) (Annual-Jun) (2013) Statistics New Zealand <www.stats.govt.nz/inforshare>. Ages 15 and up were selected because 15 is the earliest age at which a young person can be convicted and sentenced to the District Court, and therefore can also face imprisonment (see Children, Young Persons and their Families Act 1989, s 283(o)).


66. JustSpeak Maori and the Criminal Justice System – A Youth Perspective (online, March 2012) at 8.


68. Shane Cowlishaw “Pacific Islanders make up half our foreign prisoners” Stuff (online, 16 January 2014).


70. Venezia Kingi and others Mothers with Babies in Prison: Some Women Prisoner’s Perspectives (Department of Corrections, August 2008) at 4.

71. Venezia Kingi and others, above n 70, at 4.
71. Maori women are ten times more likely to be imprisoned than other groups, and comprise 60 percent of the female prison population: Ministry of Maori Development A study of the children of prisoners: Findings from Maori data (June 2011) at 12.

72. Elizabeth Stanley, above n 48, at 91.

73. Kirsty Johnston "Women prisoners cost much more to lock up" Stuff (online ed, New Zealand, 19 February 2012).

74. Department of Corrections "Formative Evaluation of the Mothers with Babies Units" (5 November 2013) <www.corrections.govt.nz>.

75. Department of Corrections "Mothers and Babies" Information Sheet <www.corrections.govt.nz>.

76. Above n 76.

77. Children, Young Persons and their Families Act 1989, s 272(1).

78. With some exceptions – as a general rule, non-imprisonable traffic offences are not managed by the youth justice system, and a young person can leave the youth justice system if he or she elects jury trial (which is a possibility for serious offences) or, in some circumstances, where there is a joint trial.

79. Further offences are marked “other”, hence why they do not add up.

80. For example, if a child or young person is accused of murder or manslaughter their trial will be in the High Court rather than the Youth Court (Children, Young Persons and their Families Act 1989, s 275); if they are charged with a serious offence they may elect a jury trial in the District or High Courts (s 274), and if their offending is particularly serious the Youth Court may transfer their case to the District Court (s 283(o)). This is the most serious order that the Youth Court can make, and had been used in only 28 cases from 2010 to 2012: "Fresh Start Reforms in Operation: Progress Report" (2012) at 3 <www.msd.govt.nz>.

81. As required by the United Nations Convention on the Rights of the Child, art 37(c). The Convention defines “children” as people under the age of 18 (see art 1).

82. See for example Julia Fossi "Young adult male prisoners: A short thematic report" HM Inspectorate of Prisons (October 2006); Vincent Schiraldi and Jason Zeidenberg "The Risks Juveniles Face When They Are Incarcerated with Adults" (1997) Justice Policy Institute <www.justicepolicy.org>. Small-scale research (11 young women) in 2007 concluded that on one level, adult prisoners could provide support to younger women, but ultimately they were negative role models that normalised prison life: S Goldingay "Jail Mums: The Status of Adult Female Prisoners among Young Female Prisoners in Christchurch Women's Prison" (2007) 31 Social Policy Journal of New Zealand 56 as cited in Elizabeth Stanley, above n 48, at 86.


85. For a recent review of literature in a New Zealand context, see Ian Lambie and Isabell Randell "The impact of incarceration on juvenile offenders" (2013) 33 Clinical Psychology Review 448.


89. Department of Corrections Prison Operations Manual at [L04].

90. Department of Corrections Prison Operations Manual at [S.07.03].
93. Sections 89–103 of the Corrections Act 2004 detail staff limitations when conducting a search.

94. Corrections Act 2004, s 90.

95. Corrections Act 2004, s 94(b).


98. Steve Hopkins and Andrea Vance “Stay out of trouble if you don’t like prison food – Collins” Stuff (online, New Zealand, 27 May 2011).


105. In New Zealand the rate of suicide in prison is around 50 per 100,000; see Rebecca Todd “Suicide Rates Lifts in Jail” Stuff (online ed, New Zealand, 13 August 2010). In 2013 the suicide rate in the general population was 12.10 per 100,000 (total 541): see Judge Neil MacLean “Annual Provisional Suicide Figures” (Office of the Coroner, 2013).


108. Memorandum of Understanding between the Ministry of Health and Department of Corrections 2004, annex 3 to Beverly Wakern and David McGee, above n 100, at 70.


112. Beverly Wakern and David McGee, above n 100. This list is excerpted from a more detailed summary of the Ombudsman’s findings, which was produced in the Rethinking Crime and Punishment Newsletter (February 2012) <www.rethinking.org.nz>.

113. Beverley Wakern and David McGee, above n 100. at 151.


115. Auditor-General Mental Health Services for Prisoners (Office of the Auditor-General, Wellington, 2008).


117. "Business Rules for Referral to Psychologists Office”, appendix 1 in Maria Ludbrook Youth Therapeutic
Programmes: A Literature Review (Department of Corrections, Wellington 2012). The relevant risk for recidivism is a ROC-ROI score greater than 0.7.

118. Department of Corrections “Right Track, Putting Offenders at the Centre of Our Work” Corrections News (online ed, New Zealand, November – December 2012).

119. Auditor-General Department of Corrections: Managing Offenders to Reduce Reoffending (Office of the Auditor-General, Wellington, 2013) at [7.12].

120. Auditor-General, above n 119, at [7.13].

121. Adams and others ‘A Large-Scale Multidimensional Test of the Effect of Prison Education Programs on Offenders’ Behavior’ (1994) 74 The Prison Journal 433; Lois Davis and others Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults (Rand Corporation, Santa Monica, 2013).

122. Elizabeth Stanley, above n 48, at 48-49.


124. Corrections Act 2004, s 78(1).

125. Corrections Act 2004, s 78(2).

126. Anne Tolley “Increase in Prisoner Education to Reduce Crime” (press release, 21 February 2013) <www.beehive.govt.nz>; “NCEA Behind Bars”, above n 120, provides that approximately 3000 prisoners accessed education programmes. There were 7,973 people in prison at the time, according to the Department of Corrections “Prison facts and statistics - December 2012” <www.corrections.govt.nz>.


133. Department of Corrections, above n 132.


135. See Jazial Crossley ‘Insiders’ view of print good value” Stuff (online, 23 November 2012).


137. At present, formal training is available in: building construction and allied trade skills (BCATS), forestry, horticulture, pre-trade painting, motor industry, plumbing, engineering, and brick and block laying: Department of Correction “Working with Offenders – Education and Training” <www.correction.govt.nz >.


140. Leon Bakker, Stephen Hudson, David Wales and David Riley And There Was Light: Evaluating the Kia Marama Treatment Programme for New Zealand Sex Offenders Against Children (Department of Corrections, Christchurch, 1998).
141. Lavinia Nathan, Nick Wilson and David Hillman "Te Whakakotahitanga - An Evaluation of the Te Piriti Special Treatment Programme" (Department of Corrections, Wellington, 13 April 2007).

142. Kirsty Johnston "Paedophiles' Life of Luxury Angers" Stuff (online, 5 January 2014).

143. Glen Kilgour and Devon Polaschek Breaking the Cycle of Crime: Special Treatment Unit Evaluation Report (Department of Corrections, Wellington, 2012). The ASOTP is not offered at Te Whare Manaakitanga.

144. See Pita Sharples "Community support vital to success of Whare Oranga Ake" (press release, 20 January 2011); and Karla Akuhata "Next unit outside jail gates" Waikato Times (online ed, Hamilton, 11 June 2010).


147. Care New Zealand "Drug Treatment Units" <www.carenz.org.nz>.


Part 3

1. Ministry of Justice "The factors associated with proven re-offending following release from prison: findings from Waves 1 to 3 of SPCR" (United Kingdom Ministry of Justice Analytical Series, 2011) at 25.


8. J O'Reilly, above n 7, at 51.

9. For more on the diversion scheme, see New Zealand Police "Adult Diversion Scheme" <www.police.govt.nz>.

10. See Katey Thom, Alice Mills, Claire Meehan and Brian McKenna Evaluating problem solving courts in New Zealand: A synopsis report (Centre for Mental Health Research, November 2013) at 6.

12. W Searle and P Spier Christchurch Youth Drug Court Pilot: One Year Follow-up Study (Ministry of Justice, Wellington, 2006).


15. See Katey Thom, Alice Mills, Claire Meehan and Brian McKenna, above n 10, at 10.

16. Katey Thom, Alice Mills, Claire Meehan and Brian McKenna, above n 10, at 5.


23. In fact, there is a 153% greater reduction in recidivism if the Judge spends three minutes or more talking to the offender: National Drug Court Institute “Best Practices in Drug Courts” (2012) 8 Drug Court Review at 24.


26. Interview with Judge Peggy Hora (One News, 3 November 2013).

27. New Zealand Government “New Zealand’s first Alcohol and Drug Court launched” (press release, 1 November 2012).

28. Katey Thom, Alice Mills, Claire Meehan and Brian McKenna, above n 10, at 11.


35. For an overview of these Courts, see Humans Rights Commission Rangatahi and Pasifika Youth Courts (2014) <www.hrc.co.nz>.


38. JustSpeak Māori and the Criminal Justice System – A Youth Perspective (online, March 2012).


47. “Report shows restorative justice reduces crime by 27%” Sheffield Telegraph (online ed, Sheffield, 1 July 2008).

48. Above n 47.


54. See Department of Corrections, "About Time: Turning people away from a life of crime and reducing reoffending" (Department of Corrections, Wellington, 2001) at 50 and The Matrix Knowledge Group "The Economic Case for and against Prison" (November 2007) at 7.

55. A Nadesu “Reconviction Patterns of Released Prisoners: A 60-months Follow-up Analysis” (Department of Corrections, Auckland, 2009).


63. Leon Bakker, Stephen Hudson, David Wales, and David Riley "And There Was Light: Evaluating the Kia Marama Treatment Programme for New Zealand Sex Offenders Against Children" (Department of Corrections, Christchurch, 1998).

64. Lavinia Nathan, Nick Wilson, and David Hillman "Te Whakakotahitanga - An Evaluation of the Te Piriti Special Treatment Programme" (Department of Corrections, Hamilton, 2007).


71. Letter from Julie Miller (Manager of Ministerial Services for the Department of Corrections) to Holly Mortimore (Justspeak) regarding the Department of Corrections Drug Treatment Programme (16 August 2013).


73. In some cases this has been a point on appeal warranting the quashing of the minimum period of imprisonment: see, for example, Fleming v R, above n 72.

74. Roger Brooking, above n 69.

75. Obtained under Official Information Act 1982 Request to Department of Corrections.


77. At 1. Official Information Act Request, above n 75.

78. At 1. Official Information Act Request, above n 75.

79. Department of Corrections “Corrections News May-June 2013”, above n 76.


82. Daniel Mears, Joshua Cochran, Sonja Siennick and Williams Bales, above n 81, at 893.
84. See for example Kevin Blakeman “From Prison Gate to Plate” Stuff (online ed, New Zealand, 16 August 2013) where the author states, “I used to think prisoners were all awful human beings with no redeeming qualities”.
86. Wung Hong Chui and Kevin Kwok-yin Cheng “Effects of Volunteering Experiences and Motivations on Attitudes towards Prisoners: Evidence from Hong Kong” (2013) 8 Asian Criminology 103.
88. Christine Retschlag, above n 87.
89. Alice Mills, Rosie Meek and Fina Gojkovic The role of the third sector in work with offenders: the perceptions of criminal justice and third sector stakeholders (Third Sector Research Centre, Working Paper 34, April 2010).
90. Kim Workman “Prayer Vigil Changes Penal Reform Agenda” Scoop Media (online, New Zealand, 22 October 2013).
92. Alice Mills, Rosie Meek and Fina Gojkovic, above n 91, at 396.
93. Alice Mills, Rosie Meek and Fina Gojkovic, above n 91, at 396.
94. Alice Mills, Rosie Meek and Fina Gojkovic, above n 91, at 397.
95. Alice Mills, Rosie Meek and Fina Gojkovic, above n 91, at 398.
101. Charles Pearce and Alexandra Fusco, above n 100.


111. Mobility Dogs, above n 110.

112. Mobility Dogs, above n 110.


116. The Big Idea, above n 115.


118. Arts Access Aotearoa, above n 117.

119. Arts Access Aotearoa, above n 117.


121. Arts Access Aotearoa, above n 120.

122. Jo Moir “Fine dining behind Rimutaka Prison bars” Dominion Post (online ed, Wellington, 7 June 2013); Kevin Blakeman “From Prison Gate to Plate” Stuff (online, New Zealand, 18 August 2013).


125. Christine Retschlag, above n 124.


127. Nancy Menning, above n 126, at 112.


136. Liz Gordon, above n 130, at 49.


139. Mary Ainsworth “Infant-Mother Attachment” (1979) 34 American Psychologist 932 at 936.


146. Rachael Dixey and James Woodall, above n 135.


150. Liz Gordon, above n 149, at 5.


152. Liz Gordon, above n 149, at 12.


154. Christy Visher, above n 143: “In a recent survey of more than 200 family members of Chicago prisoners, Naser and Visher (2006) found that distance was the most often cited obstacle to maintaining contact with incarcerated family members, followed by the costs and logistics of visiting. Seventy-five percent of respondents indicated that distance was a challenge to maintaining contact with incarcerated family members.”; Nancy Loucks “Keeping in Touch: The Case for Family Support Work in Prison” (2005) Prison Reform Trust <www.prisonreformtrust.org.uk> states that research in England, Wales and Scotland has also had similar findings.
155. Shane Cowlishaw “Skype Trial for Inmates Canned” Stuff (online ed, New Zealand, 16 June 2013).
156. Lyn Humphreys “Prisons to get email service” Taranaki Daily News (online ed, New Plymouth, 2 August 2012).
157. Lyn Humphreys, above n 156.
158. Shane Cowlishaw, above n 155.
164. Nancy Loucks, above n 163, at 33.
166. Speech by George Kupa (JustSpeak Forum, Wellington, 25 September 2013).
167. George Kupa, above n 166.
169. Derek Cheng, above n 168.
172. Interview with representatives of the Grace Foundation (Holly Mortimore, JustSpeak, 18 February 2014); Grace Foundation Charitable Trust “Information”, above n 171.
177. Department of Corrections, above n 176.
179. Auditor-General Department of Corrections: Managing Offenders to Reduce Reoffending (Office of the Auditor-General, Wellington, 2013) at Appendix 3.
181. Auditor-General above n 179, at 5.
182. Auditor-General above n 179, at 5.