

The Use of Imprisonment in New Zealand

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Executive Summary

New Zealand's prison population has increased rapidly over the last decade even though imprisonment is generally regarded as the sentence of last resort. There are many who maintain that the number of people in New Zealand's prisons should be much lower. This assertion is made in the belief that prison does not rehabilitate offenders, does nothing to prevent crime, and costs too much, which sometimes leads to the suggestion that what is needed are more 'alternatives to imprisonment'. However, since 1985 imprisonment has been augmented by a wide range of community-based sentencing options, the use of which has also increased dramatically.

This paper is an overview of the use of imprisonment in New Zealand. It argues that:

- the use of imprisonment by criminal justice agencies closely matches the intentions specified by Parliament in legislation, and it is used as a sentence of last resort for those who have committed serious offences and/or have a long criminal record. In New Zealand custodial sentences are imposed on only about 8% of all convicted offenders and 20% of all convicted violent offenders;
- the rapid escalation of prison numbers is due to a combination of longer sentences being imposed and served, especially for offences of serious violence, and the way in which the dramatic increase in the use of community-based sentences and other alternatives (such as suspended sentences) has drawn the net of the criminal justice system wider, 'fast tracking' offenders up the sentencing hierarchy towards imprisonment;
- therefore, similar new 'alternatives to imprisonment' are likely to end up as 'alternatives to alternatives', and may well continue to increase the prison population, rather than reduce it;
- a key problem is the lack of any explicit references in legislation, regulations or policy, or agreement among those state agencies administering the criminal justice system, as to whether there is an appropriate number of offenders to have in prison. Legislative changes to sentences, individualised sentencing discretion practised by judges, and the release decisions of parole and district prisons boards proceed with no explicit constraints in terms of prison capacity;
- legislation in respect of sanctions for offending often lengthens sentences of imprisonment, or actual time served, in response to legitimate public concerns and fears. These decisions usually relate to the most serious of offences, which are also those which contribute most to increases in the prison population.

Specifically, this paper looks at: the laws relating to the use of imprisonment; the type of offenders that make up our prison population (what sort of offences they have committed, their criminal histories, the length of their sentences); how New Zealand's use of imprisonment compares to that of other jurisdictions; hypothetical scenarios which could lead to a reduction in the number of people in prison; the use of current alternatives to imprisonment; and how crime prevention measures and programmes to reduce re-offending may impact on imprisonment rates. The paper does not look at specific options for reducing the remand population in our prisons, consider new alternative sentences to imprisonment in any great depth, analyse the causes of offending leading to imprisonment, or examine either the purpose(s) of imprisonment in any detail or the effectiveness of imprisonment as a crime control strategy.

Legislative Framework

Section 2 looks at the key legislative provisions governing the use of imprisonment.

Imprisonment is the most common sentence in legislation for serious offences, usually expressed in terms of a maximum finite period. There are two indefinite sentences of imprisonment: life imprisonment, which is the mandatory penalty for murder and the maximum penalty for a number of offences including manslaughter; and preventive detention, which is mainly for repeat sexual and violent offenders. Where a maximum term of imprisonment is specified, a lesser term can usually be imposed by the court.

Where an offender is convicted of an offence punishable by imprisonment the court may instead impose a non-custodial sentence such as a fine, reparation, or a community-based sentence, although some community-based sentences require the consent of the offender. There is also a 3 months custodial sentence of corrective training for offenders aged 16 to 19 years.

A prison sentence of between 6 months and 2 years may be suspended for a period not exceeding 2 years. Such an order can only be made if the court would otherwise have sentenced the offender to imprisonment.

The general use of imprisonment is governed by the presumptions contained in the Criminal Justice Act 1985. These are:

- that violent offenders are to be imprisoned except in special circumstances (s5);
- that people convicted of property offences punishable by 7 years imprisonment or less should not be imprisoned, except in special circumstances (s6);
- that the courts should have regard to the desirability of keeping offenders in the community, and that any term of imprisonment should be as short as is consonant with promoting the safety of the community (s7).

The Criminal Justice Act also includes provisions regarding parole and final release prior to the expiry of the entire period of a prison sentence.

Profile of New Zealand's Prison Population and Trends

Section 3 presents data on the growth of our prison population and on some of the key characteristics of those who comprise that population.

New Zealand's prison population increased only gradually over the period 1962 to 1986. The increase can be largely accounted for by the country's rapidly growing total population in the key age group represented in prison (young males aged 15 to 29) as the imprisonment rate per the population in that age group remained stable. There has, however, been a rapid escalation in the prison population since 1986. The imprisonment rate per 100,000 of the total population increased by 46% in the decade 1987 to 1996. There was an increase of 26% in the number of cases resulting in a prison sentence per annum over that period and the average prison population reached 4,735, including remand inmates, in 1996 (an increase of 58% in ten years).

Over the last decade the overall number of convictions in New Zealand courts has not increased significantly and the proportion of offenders receiving imprisonment has not altered markedly. The increase in the prison population has resulted principally from a significant increase in the number of convictions for violent and other serious offences, particularly at the more serious end of the spectrum. As a consequence, sentences have been getting longer on average and this, combined with changes in parole provisions for offenders sentenced to life imprisonment or preventive detention and for serious violent offenders, means that longer periods are being spent in prison.

The majority of offenders in New Zealand's prisons at any one time have committed very serious offences. Those offenders imprisoned for comparatively less serious offences usually have a long history of offending. In particular:

- serious violent offences, including offences leading to life imprisonment and preventive detention sentences, make up less than one percent of offences recorded by the police but account for almost 45% of the prison population. Almost 60% of prison inmates have committed some type of violent offence;
- property offenders in prison have an average of 26 previous convictions. Most have committed serious offences (e.g. burglary or fraud);
- imprisonment is only used for the most serious of traffic offenders (e.g. driving causing death or injury, or drink-driving), or for persistent recidivists, such as those repeatedly convicted of driving while disqualified. Traffic offenders in prison have an average of 21 previous convictions;
- most of the offenders in prison for other than violent, property or traffic offences are drug dealers.

The serious violent offence group of offenders is the most important group of offenders driving the increase in the prison population. This is because of a combination of the long sentences that they receive and the high proportion of the imposed sentences actually served, rather than a high number of receptions. The same is even more true for life imprisonment, which accounts for a tiny percentage of receptions, but has the potential to account for a significant increase in the prison population due to the long sentences served.

The imposition of suspended prison sentences since 1993 has also been contributing to the increase in the prison population. The figures suggest that many suspended sentences are being given in place of non-custodial sentences and that more prison sentences of greater than 6 months are being imposed so that they can be suspended. About a quarter of suspended sentences are being subsequently activated following further offending.

Reception rates for Māori are much higher than for non-Māori for all offence groups and ages. In 1997 the overall reception rate for Māori males was 8 times greater than for non-Māori. Part of the difference between Māori and non-Māori is accounted for by the younger age distribution of the Māori population, as young people in general are more likely to be offenders. However, the high percentage of Māori in prison also reflects higher offending rates (measured by the rate of prosecutions per head of population) and a greater number of previous convictions on average compared to other ethnic groups, and a greater average seriousness of offending compared to other ethnic groups with the exception of Pacific peoples.

Costs

This section presents some information regarding the costs of imprisonment.

In 1996/97 the New Zealand Department of Corrections spent \$249.9 million on the administration of custodial sentences. A further \$27.5 million was spent on the provision of custodial remand services and facilities to hold offenders convicted but not yet sentenced. This compares to \$59.8 million spent on managing community-based sentences and orders.

International Comparisons

Section 5 presents a range of data relating to imprisonment rates in other jurisdictions, especially England and Wales, and the Australian states of New South Wales and Victoria.

The data presented in this section suggest that New Zealand is not particularly punitive, either in terms of the average time it requires offenders sentenced to imprisonment to serve, or in terms of the number of offenders it actually admits to prison (especially in respect of rate of admissions per convictions). This is true both in aggregate terms and also when the data are broken down by offence types. However, both by offence type and overall, New Zealand has a far higher rate of conviction than any of the other jurisdictions examined in any depth here, with the possible exception of Victoria. It could be concluded that this indicates a high crime rate by international standards, but victimisation surveys have shown that in general terms New Zealand's overall rates of offending are broadly consistent with those of other developed Western nations. Our high conviction rate may instead reflect a readiness on the part of the public to report crime to the police (although our reporting rate is not high by international standards), combined with a police force which appears to be efficient at detecting, recording, and clearing crime and, once offenders are apprehended, prosecuting it. It may also be partly due to the extent to which incidents reported to the police are officially recorded as offences and the range of offences prosecuted in the courts rather than dealt with as infringements (which do not result in a conviction being entered against the offender).

The data do not indicate that the practice of imposing imprisonment on offenders is performed more often and with more severity in New Zealand than in other jurisdictions. What they do indicate is that our imprisonment rate is likely to have a great deal to do with the number of offenders actually being convicted by the courts and the sort of offences that account for those convictions.

Reducing Imprisonment: Illustrative Scenarios

This section analyses the effectiveness of a variety of hypothetical approaches to reducing the prison population, including some of the commonly suggested options and some less favoured scenarios. The size of the sentenced prison population can be reduced, or at least better controlled, by sending fewer people to prison (prosecuting fewer offences, making certain offences or groups of people non-imprisonable, or using alternative sentencing options), by making sentences shorter (reducing maximum penalties), by releasing inmates earlier, or by introducing flexibility into the commencement of sentences. This section brings together the current information that is available on these scenarios. It only looks at

approaches that might reduce the sentenced prison population fairly rapidly and which are under the control of the courts and correctional systems (including those which would require legislative change).

A wide range of scenarios is presented, including some that go against recent trends in the criminal justice system (for example reducing maximum penalties for serious violent offenders, and earlier release for serious violent offenders). These particular examples have been included to illustrate the more dramatic reductions that could be achieved by targeting key drivers in the system that are contributing to the growth in inmate numbers. No one approach is recommended and scenarios are included simply to illustrate potential means of reducing the prison population.

The starting point is that most offenders in prison have committed very serious offences. Those offenders imprisoned for less serious offences usually have a long history of offending. Therefore targeting offenders who serve short sentences will have a very minor impact on the prison population and, by the same logic, any strategy aimed at reducing the prison population which does not apply to violent offenders or serious recidivists will have a minor impact. Reducing the imprisonment terms of serious offenders raises issues of public safety and also the possibility of additional costs resulting from recalls to prison and additional offending.

Reducing Reoffending

This section introduces the Department of Corrections' development of programmes aimed at reducing reoffending.

There is good evidence to suggest that it is possible to reduce the reoffending rates of some convicted offenders through the provision of well targeted programmes which address specific criminogenic needs (poor anger management and communication skills, inadequate self control, low levels of literacy, and so forth). Based on this evidence, the Department of Corrections has initiatives planned to reduce the flow of inmates into prisons by reducing the reoffending rates both of prison inmates and people serving community-based sentences. However, these initiatives are limited by resource constraints.

Alternatives to Imprisonment

Section 8 examines the relationship between the imprisonment rate and the number of offenders serving community-based sentences.

For a number of years it has been said that the solution to the problem of growth in prison numbers was to be found in developing and using alternative sentences to imprisonment for offenders convicted of crimes other than those involving serious violence. The view has sometimes been put forward that the judiciary should be using the new range of community-based sentences as alternatives on a more frequent basis.

The facts do not support this analysis. In New Zealand we already have a wider range of community-based sentencing options than exist in most other countries. Part of the increase in the use of community-based sentences is due to the degree to which they have been applied

to those who would have otherwise received a lesser sentence, such as a fine. It is likely that this has the effect of escalating some offenders up the sentencing tariff and widening the net of the criminal justice system to bring more people into the system and ultimately into prison. Successive alternatives to custody simply become alternatives to other alternatives to custody, with the effect of net-widening in the community while the prison population is maintained or increased.

There are fiscal savings to be made from a greater use of monetary penalties instead of community-based sentences. Monetary penalties are already the most widely used and possibly the most useful sanction available. They can be flexible, are less expensive to implement than imprisonment or community-based sentences, and are less disruptive to the lives of offenders. In addition, most monetary penalties are revenue producing. Legislation currently provides for a range of monetary penalties including infringement fees, court imposed fines, reparation, compensation, and court costs.

Efforts to enhance the credibility of monetary penalties, along with improvements to the economic factors which may have contributed to a decline in the use of these penalties over the past decade, will hopefully result in a greater use of fines and reparation rather than community based sentences. This would not only mean fiscal savings but may also slow the process by which the imposition of community-based sentences is hastening an offender's progress towards imprisonment.

Crime Prevention

Section 9 discusses the likely impact of crime prevention programmes on the use of imprisonment.

Crime prevention programmes will have little or no effect on the need for prison accommodation unless these programmes make substantial inroads into the types of serious offending that account for the bulk of New Zealand's prison population. Three quarters of the prison population is made up of prisoners serving sentences of more than 12 months. A tiny proportion of the population is involved in the type of offending that results in these sentences and it is not possible to predict precisely who will commit a serious offence or the extent to which policies and programmes now in place or being developed to address factors related to violent offending will succeed.

A small number of crime prevention programmes are of proven worth in terms of reductions in certain types of offending in restricted localities or reduced offending rates among programme participants. A larger number are promising in terms of these sorts of results, and preventive approaches have the potential to bring about a reduction in crime over the long term. Nevertheless, even quite large-scale success in crime prevention will not necessarily lead to a fall in demand for prison accommodation.

We cannot therefore have confidence that crime prevention will reduce the prison population, especially in the short term. On the other hand there are good reasons to expect that over time effective and well-targeted prevention programmes will reduce criminal offending. Preventive approaches might still be a better investment than building additional prisons in terms of reducing the total social cost of crime.

Conclusion

For a long time there has been an official policy in New Zealand that imprisonment is the sentence of last resort. That is to some extent embodied in legislation. The section in this paper which looks at the profile of our prison population does in fact show that the offenders who populate New Zealand's prisons closely accord with those for whom the legislative guidance (as provided by Parliament in the form of the relevant sections of the Criminal Justice Act 1985) directs imprisonment should be reserved.

New Zealand's volume of convictions per head of population seems to account for a large part of the difference between our prison population and that of some other countries (a high level of reported crime and a high proportion of crimes cleared by the police contribute to this level of convictions). Changes to the prosecution process may have the potential to reduce the number of convictions, which may in turn have an impact on imprisonment. This suggests that a useful direction to take is one involving a greater emphasis on diversion, keeping offenders out of the criminal justice system. Although this strategy would target less serious offenders currently receiving non-custodial or relatively short custodial terms, and so have only a minor impact on the prison population in the short term, it may have a more significant impact in the longer term if offenders accumulate fewer previous convictions and are less rapidly escalated through the range of penalties towards a custodial sentence.

However, jurisdictions seem to be more successful in making substantial inroads into the prison population by concentrating on the lengths of periods in custody. The size of prison populations is equally influenced by a small number of inmates serving long sentences or a large number of inmates serving short sentences. In New Zealand 66% of admissions are of offenders receiving sentences of less than 12 months, but those sentenced offenders comprise only 18% of the prison population. So in order to achieve an 18% reduction in the prison population by using alternative sentences for short custodial ones, we would have to substitute non-custodial sentences for 66% of prison sentences.

It is considered unlikely that further adding to the number of community-based sentences or intermediate sanctions will reduce the prison population. New Zealand already has a wide range of alternatives to custody by international standards and creating new alternatives to imprisonment has not proved successful in reducing the size of the prison population. Additional options are more likely to have a net-widening effect which will further increase the total number under the control of the corrections system (the average numbers on community-based sentences was approximately 21,400 in 1996) with attendant costs. This will be at the expense of fine revenue and the diversion of offenders and runs the risk of fast-tracking less serious offenders towards imprisonment through breaches of community-based sentences.

The population of sentenced prisoners is a product of both front-end and back-end decisions. At the front-end the legislature and the judiciary determine the offences for which imprisonment should be available; the types of mandatory, maximum, and minimum sentences available; and the number and length of nominal sentences actually imposed. There is also a series of back-end executive decisions about parole and remission that directly impact on the size of the sentenced population. New Zealand has made significant changes to its parole and remission provisions over the last twenty years, the most recent of which have

involved the abolition or reduction of parole eligibility for a substantial proportion of longer-term inmates.

Changing the eligibility of certain groups of offenders to parole and remission could result in a reduction in prison numbers. To have more than a slight impact on the growth in prison numbers these measures would need to target the earlier release of serious violent offenders serving sentences of more than 2 years. Alternative scenarios which would have a significant impact would be bringing forward the remission date to one-third of the term for sentences of one year or less, or making parole available at one-quarter of sentences for inmates serving more than one year who are not serious violent offenders. These scenarios carry with them potential problems regarding the credibility of a criminal justice system that has offenders serving punishments that fall well short of those imposed by the courts.

Potential outcomes from crime prevention measures (somewhat unquantifiable at this stage) may provide a longer-term solution. Similarly, reforms in the prison system aimed at reducing reoffending and improving the reintegration process are important but are unlikely to have any dramatic short-term effect on prison numbers. Crime prevention measures and programmes designed to reduce reoffending will require substantial current investment if they are to have a significant impact on prison numbers over the longer term.

The emphasis in this paper is on the difficulties incumbent upon making changes in the criminal justice system that will result in a reduction in the growth rate of our prison population. While there needs to be a focus on reducing imprisonment it is important to note that attempts to do so are complicated by other goals in the criminal system, particularly that of denouncing crime.

1. Introduction

The aim of this paper is to provide an overview of the use of imprisonment in New Zealand. This involves looking at the laws relating to the use of imprisonment; the type of offenders that make up our prison population (what sort of offences they have committed, their criminal histories, the length of their sentences); how New Zealand's use of imprisonment compares to that of other jurisdictions; hypothetical scenarios which could lead to a reduction in the number of people in prison; the use of current alternatives to imprisonment; and how crime prevention measures and programmes to reduce re-offending may impact on imprisonment rates. The paper does not look at specific options for reducing the remand population in our prisons, consider new alternative sentences to imprisonment in any great depth, analyse the causes of offending leading to imprisonment, or examine either the purpose(s) of imprisonment in any detail or the effectiveness of imprisonment as a crime control strategy.¹

In New Zealand in 1996, 8,861 court cases resulted in a custodial sentence.² In the same year there were 10,162 cases involving a remand in custody. Twenty-six per cent of those custodial sentences were for violent offences, 27% were for property offences, and 26% for traffic offences. Males accounted for 94% of the total custodial sentences.³

In 1996 the average daily prison population was 4,735 (4,212 were sentenced inmates; 523 were remand inmates).⁴ This represents 131 in every 100,000 of the country's total population. The 1995 prison census showed that 60% of the male sentenced population were there for violent offences, and 20% for property offences.⁵ Violent offenders comprise a greater proportion of the inmate population than of the population receiving prison sentences because of the longer imprisonment terms received by violent offenders compared to property offenders.⁶

In 1996 Māori offenders accounted for just over half (53%) of all cases which resulted in imprisonment for which the ethnicity of the offender was known, 38% of cases involved New Zealand Europeans, 7% of cases involved Pacific peoples, and 1% involved an offender of some other ethnic origin.⁷ In the 1995 prison census 45% of male sentenced inmates whose ethnic group was known identified themselves as Māori only.⁸

The principle that custodial sentences should only be imposed on offenders as a "last resort", which has been an underlying principle of the criminal justice system in New Zealand for many years and which is encapsulated in sentencing directions in the Criminal Justice Act

¹ The arguments for and against the ability of imprisonment to reduce crime are the subject of an earlier paper, *The "Prison Works" Debate: An Issues Paper*, by Helene Carbonatto, Ministry of Justice, Unpublished Document, May 1997. The goals pursued by sentencing and how particular sentences relate to those goals are among the issues discussed in the Ministry of Justice's *Sentencing Policy and Guidance, A Discussion Paper*, November 1997.

² Imprisonment or corrective training.

³ Data provided by P. Spier, Ministry of Justice.

⁴ Spier, P. *Conviction and Sentencing of Offenders in New Zealand: 1987 to 1996*, (1997), p117.

⁵ Lash, B. *Census of Prison Inmates 1995*, (1996), p30.

⁶ The size of the prison population is determined by the number of people admitted to prison (receptions), the length of sentence imposed by the court, and the proportion of the sentence served. That is, number of prisoners = receptions x sentence length x percentage served.

⁷ Spier, (1997), pp59-60.

⁸ Lash, (1996), p36.

1985, has failed to prevent persistent rises in the custodial population. This is despite the fact that the courts currently give custodial sentences to only about 8% of all convicted offenders and to about 20% of all convicted violent offenders.⁹

This country's prison population gradually increased over the period 1962 to 1986, and this was followed by a very rapid increase. In 1986 the prison population was 2,690 and in 1991 it was 4,182. There was a drop in 1994 following changes to parole eligibility but then the increase continued again. If past trends continue, the prison population is forecast to increase at around 140 sentenced inmates per year over the next decade. It can be expected to rise to 6,000 by the year 2002/03.¹⁰ In 1996/97 the government spent \$277.4 million in running the prisons.¹¹

There is no explicit reference in legislation, regulations or policy, or agreement among those state agencies administering the criminal justice system as to whether there is an appropriate number of offenders to have in prison. Legislation in respect of sanctions for offending, individualised sentencing discretion practised by judges, and the release decisions of parole and district prisons boards proceed with few explicit constraints in terms of prison capacity. Under these conditions the scale of imprisonment in New Zealand is simply the outcome of all the separate decisions made by legislators, judges and parole boards. This means that when there is overcrowding in the prisons there are no criteria by which to judge whether the problem is one of too many people in prison or not enough prison spaces. There is no natural tendency for societies to make adjustments to levels of punishment and levels of tolerance which keep the size of the custodial population at a relatively constant level.¹²

The standard position is that custodial sentences are imposed to reflect how seriously the public views certain criminal behaviours (retribution and denunciation), to ensure that the offender does not commit offences for a specified period (incapacitation), to deter the offender from committing further offences after release (individual deterrence), and to deter other potential offenders (general deterrence).¹³ In response to the question of who should be sent to prison, most people would agree that custody is appropriate as punishment for very serious offences, especially when the offender is violent and a continuing risk to the public. There is probably agreement that offenders convicted of murder, rape, robbery, aggravated robbery and other very serious offences should be sent to prison for a reasonably long time; part of the reason for this being that some of these offenders will be viewed as a continuing risk to the public. Similarly, most people would agree that those convicted of trafficking in large quantities of controlled drugs, and of arson and criminal damage endangering life, should be candidates for custody.

In New Zealand, Parliament and the courts have responded to public concern about violence by lengthening the prison sentences served by violent offenders, through increasing maximum penalties for some offences and increasing non-parole periods. In 1987 (Criminal Justice Amendment Act (No 3) 1987) serious violent offenders¹⁴ became ineligible for parole

⁹ Data provided by P Spier, Ministry of Justice.

¹⁰ Forecast provided by S. Triggs, Ministry of Justice, May 1998.

¹¹ *Department of Corrections Annual Report 1996/97*, p57.

¹² Young W and Brown M, "Cross-national Comparisons of Imprisonment" in *Crime and Justice: A Review of Research*, Vol. 17, ed. M Tonry, 1993, pp6-8.

¹³ A further rationale for using imprisonment as a sentencing option is that of rehabilitation, i.e. reducing future offending through the treatment of offenders in prison.

¹⁴ As defined by Section 2 of the Criminal Justice Act 1985, see section on Legislative Framework.

and were required to serve two-thirds of their sentence. The earliest date of eligibility for parole was increased from 7 to 10 years for life and preventive detention sentences. In 1993 section 80 of the Criminal Justice Act 1985 was changed to enable the courts to impose minimum non-parole periods greater than 10 years for those sentenced to life imprisonment or preventive detention and up to 3 months before the sentence expiry date or 10 years (whichever is the lesser) for serious violent offences. These changes lengthened the actual time served for a significant group of offenders. In 1993 inmates serving sentences for serious violence, or life or preventive detention sentences, made up 43% of the male prison population.¹⁵ An amendment to the Crimes Act 1961 in 1993 increased the maximum penalty for sexual violation from 14 years to 20 years imprisonment. In the years 1994 to 1996 the sentence for rape averaged 85.7 months compared to 71 months in the previous 3 years.¹⁶ Despite this, it is doubtful whether targeting violent offences for longer periods of imprisonment is the best way to prevent future violent offending.¹⁷

Imprisonment carries with it significant costs. On average, holding someone in prison for a month costs about 53 times as much as a sentence of community service and about 19 times as much as a sentence of periodic detention. However, not all sentencers or members of the public have full confidence in alternative sentences which leave offenders in the community, because either they are not considered sufficient punishment to discourage or deter such offending and/or they involve too much risk of reoffending.

New Zealand has a higher imprisonment rate¹⁸ than most other western countries apart from the United States. This fact on its own is not particularly informative. It says nothing about whether we have more offences committed, a higher level of detection (more, or more effective, policing), or more severe sentencing or parole policies. The complex mix of factors which shape the size and composition of the prison population includes the activities of practitioners located at all stages of the criminal justice process. Moreover, some of the determinants of the prison population are beyond the control of legislation and policy.

The relationship between the use of prisons and the incidence of crime is complex. Generally, where recorded crime rates for serious offences are high there will also be a high use of imprisonment, and where they are low the prison figures will be correspondingly low. This is helpful as far as extremes of crime rates and imprisonment rates are concerned but does not explain differences between such jurisdictions as New South Wales and Victoria, which have similar crime rates but significantly different imprisonment rates.¹⁹

Overall crime rates are most affected by trends in property offences, such offences accounting for about 71% of offences recorded by the police in New Zealand. However, property offences only account for 20% of the sentenced prison population. In contrast, offences against a person (mainly violent and sexual offences) make up less than 10% of the offences recorded by the police, but higher rates of clearance, prosecution, and custodial sentencing, together with longer average custodial sentence lengths, than apply to property offences combine to make those convicted of offences against the person by far the

¹⁵ Triggs, S. *Forecasting New Zealand's Prison Population*, (1995), pp39, 46.

¹⁶ Data provided by P. Spier, Ministry of Justice.

¹⁷ See Brown M, "Serious Offending and the Management of Public Risk", in *British Journal of Criminology*, Vol. 36, No 1, Winter 1996, p25.

¹⁸ Number in prison per 100,000 population.

¹⁹ Young and Brown, (1993), p24; Biles D, "Custody, Crime and the Community", in *Current Issues in Criminal Justice*, Vol. 7, No 3, March 1996, p330.

predominant group in the prison population. For these reasons changes in overall crime rates will not directly relate to changes in the size of the prison population.²⁰

The relationship between trends in crime and imprisonment rates is further complicated because the influence of an increase in the crime rate or conviction rate over the numbers in prison is likely to be delayed. First offenders rarely receive imprisonment and most accumulate a number of convictions before their first custodial sentence.

There are already alternatives to imprisonment which involve some deprivation of liberty and some action which is intended to reduce the risk of offending (some of which also involve some sort of recompense to the public for the offending). These are periodic detention, supervision, community programme, and community service (called community-based sentences). In 1996 custodial sentences were imposed in 8.1% of all cases²¹ resulting in a conviction. They were imposed in 10.6% of all non-traffic cases. Community-based sentences were imposed in 35% of all non-traffic cases resulting in a conviction (31.9% of all cases).²²

Although it seems contrary to common sense, the non-custodial measures usually referred to as “alternatives to imprisonment”,²³ such as supervision, community service, and suspended sentences, seem to be often used as alternatives to each other, or to less serious penalties like fines, rather than as measures that genuinely reduce the flow of offenders into our prisons or reduce the time they spend inside. If they did so impact on the use of custody one would expect that jurisdictions which recorded higher-than-average use of non-custodial penalties would have lower-than-average use of imprisonment, and vice-versa. However, quite the opposite is revealed by the facts. In Australia the high imprisoning jurisdictions – New South Wales, Western Australia, South Australia, Northern Territory – also have the highest rates for the use of probation and community service orders. Conversely, the low imprisoning jurisdictions, Tasmania and Victoria, have the lowest rates for the use of non-custodial or community-based penalties.²⁴ In New Zealand a high rate of imprisonment is also coupled with a high rate of use of community-based sentences.

There is a real danger with some of the non-custodial measures that the inevitable proportion of failures may actually boost prison numbers. This could happen because a breach of conditions of an order such as periodic detention (the only community-based sentence for which, if breached, a term of imprisonment can be imposed) may well result in a period of imprisonment. The breach of a less severe order may well result in the offender being given a second or even third chance in the community, but he or she may still progress fairly quickly to periodic detention or prison.

The number of people remanded in custody – remanded prior to and during trial and remanded for sentence – affects the size of the prison population. Over the past decade remand prisoners have made up 10% to 13% of total inmate numbers. This trend has been

²⁰ *Update on Modelling Crime and the Criminal Justice System*, Ministry of Justice Strategic Assessment Group Newsletter No 8, 1 December 1997, p2.

²¹ A case is defined in general terms as all charges against a single offender which share a first or final hearing date in common. For a case involving more than one charge the charge taken to represent the case is the one that resulted in the most serious penalty. The average number of charges per case differs by offence type. This means that the offence type distribution is different for court cases than for offences recorded by the police.

²² Spier, (1997), pp52, 53, 91.

²³ They are alternatives because they are only available for imprisonable offences.

²⁴ Biles, (1996), p331; Young and Brown, (1993), pp20, 43.

reasonably consistent, with trends in remand having mirrored trends in sentenced inmate numbers.²⁵ Remand practice may assume considerable importance in both the interpretation of prison population growth and the development of policy initiatives to limit or reverse that growth. Remand practice is currently the subject of a separate review by the Ministry of Justice and will not be considered in this paper.

There are, in theory, strategies to reduce the prison population. These strategies lead to scenarios which all involve major changes to existing criminal justice policy. Some would possibly reduce the overall effectiveness of the criminal justice system and adversely affect the community's sense of security. This paper considers such scenarios as sending fewer people to prison (by making certain offences or groups of people non-imprisonable or by using alternative sentencing options), making sentences shorter, releasing inmates earlier, and introducing flexibility into the start date of sentences. The areas in which policy and legislative changes need to be considered if the government wishes to reduce imprisonment are:

- the offences that are eligible for imprisonment;
- the offenders who are imprisonable (e.g. the age at which offenders can be imprisoned);
- the statutory maximum penalties;
- the decision to prosecute;
- the decision to pass sentence (instead of, for example, discharging or standing down the offender);
- the decision to impose a particular sentence;
- administration of sentences (flexibility with admission or release dates);
- parole eligibility and remission.

Since one of the major trends behind the increasing prison population is the increase in serious violent and other violent offences recorded by the police, broad-based approaches in the above areas are unlikely to make a significant impact and efforts must be targeted to specific classes of offenders and categories of sanctions.

Options which might reduce inmate numbers in the long term are those in the area of crime prevention (for example, early childhood interventions in high-risk families), and the provision of programmes, in the prisons and as part of community-based sentences, designed to reduce reoffending, particularly violent reoffending.

²⁵ Spier, (1997), p117.

2. Legislative Framework for the Use of Imprisonment

Imprisonment is the most common sentence prescribed by statute for serious offences, usually expressed in terms of a maximum finite period that can be imposed. There are two indefinite sentences of imprisonment. One is life imprisonment, which is the mandatory penalty for murder (s172 of the Crimes Act 1961) and the maximum penalty for a number of offences including manslaughter (s177 of the Crimes Act), for dealing in class A drugs (s6(2) of the Misuse of Drugs Act 1975), for treason (s74 of the Crimes Act), and for hijacking an aircraft (s3 of the Aviation Crimes Act 1972). The other is preventive detention, which is mainly for repeat sexual and violent offenders (s75 of the Criminal Justice Act 1985). The longest maximum finite term of imprisonment is one of 20 years for sexual violation. Within the maxima, lesser terms of imprisonment may be imposed, unless a minimum sentence is expressly provided for (s72 of the Criminal Justice Act). Currently there are no such minimum periods specified in legislation.

Where an offender is convicted of an offence punishable by imprisonment the court may impose a non-custodial sentence such as a fine, reparation, or a community-based sentence instead, although some community-based sentences – community programme and community service – require the consent of the offender. There is also a custodial sentence of corrective training for offenders aged 16 to 19 years who are convicted of an offence punishable by 3 or more months' imprisonment. It is for a fixed period of 3 months (s68 Criminal Justice Act).

The courts also have a number of dispositions available to them which do not involve the imposition of any sentence. Unless a minimum or mandatory penalty is prescribed for the offence a court, instead of passing sentence, may convict and discharge the offender (s20 Criminal Justice Act), or discharge without conviction any offender who is found guilty or pleads guilty to an offence (s19 Criminal Justice Act). Also, instead of passing sentence a court may, following the entry of a conviction, order an offender to come up for sentence if called upon within a specified period, not exceeding one year from the date of conviction (s21). Such an order may be combined with an order for costs or restitution. No other conditions may be imposed.

By virtue of section 21A of the Criminal Justice Act, inserted in 1993, a prison sentence of between 6 months and 2 years may be suspended for a period not exceeding 2 years. Such an order can only be made if the court would otherwise have sentenced the offender to imprisonment. The length of the suspended sentence should be the same as the length of the prison sentence that would otherwise have been imposed. If the offender is convicted of a further offence during the period of suspension, there is a presumption that the suspended sentence should be activated. However, if the court determines that it would be unjust to do so, it may substitute a lesser term of imprisonment, or cancel the suspended sentence and, if appropriate, replace it with any other non-custodial sentence that could have been imposed for the original offence.²⁶ The power to suspend sentences was clearly designed to effect a reduction in the numbers being sent to prison. The suspended sentence may be imposed concurrently with either any one kind of community-based sentence or the combination of the

²⁶ The Statutes Amendment Bill (No 2) which became law on 3 June 1998 included a provision which allows the court to make no order with respect to a suspended sentence upon the reappearance of an offender within the activation period.

sentences of periodic detention and supervision (s13(4)). A suspended sentence may not be cumulative on any other sentence, and no other sentence may be cumulative on it.²⁷

The use of imprisonment is governed by the presumptions contained in sections 5, 6 and 7 of the Criminal Justice Act 1985. These are:

- that violent offenders are to be imprisoned except in special circumstances [violent offenders are those convicted of an offence punishable by 2 or more years imprisonment and who either (i) used serious violence against, or caused serious danger to the safety of, another person, or (ii) used violence or caused danger and have a previous conviction within the previous 2 years for a similar offence punishable by 2 or more years imprisonment] (s5);
- that people convicted of property offences punishable by 7 years imprisonment or less should not be imprisoned, except in special circumstances (s6);
- that the courts should have regard to the desirability of keeping offenders in the community, and that any term of imprisonment should be as short as is consonant with promoting the safety of the community (s7).

In addition, prison may not be imposed upon those aged under 16 years unless it is for a purely indictable offence²⁸ (s8); imprisonment cannot be imposed where a person has not been legally represented except where they have refused representation (s10); and custodial sentences may be imposed where the court is satisfied that the offender is unlikely to comply with other sentences (s9). It should be noted that the legislation specifies that section 9 applies even to section 6 offences.

Legislation also contains a presumption either in favour of or against imprisonment in a number of specific instances, namely:

- under section 5A of the Criminal Justice Act, where an offender is convicted of a violent offence carrying a maximum term of imprisonment of 2 years or more, which was committed while the offender was on bail or remanded at large for an earlier violent offence, the court must impose a custodial sentence unless there are special circumstances;
- under the Crimes Act 1961, an offender convicted of sexual violation must be sentenced to imprisonment unless, having regard to the particular circumstances of the offence or of the offender, the court is of the opinion that the offender should not be so sentenced (s128B);
- where an offender is convicted of a second offence within 2 years of possession of a knife or offensive weapon or disabling substance either in a public place or in any circumstances which prima facie show an intention to use it, the court must impose a full-time custodial sentence unless there are special circumstances (s202BA Crimes Act);
- under the Misuse of Drugs Act 1975, where a person is convicted of dealing with a Class A controlled drug the court must impose a custodial sentence unless, having regard to the particular circumstances of the offence or of the offender, including the age of the

²⁷ The operation of suspended sentences of imprisonment is currently under review by the Ministry of Justice.

²⁸ Purely indictable offences are typically the more serious criminal offences under the Crimes Act 1961 and the Misuse of Drugs Act 1975. Section 8(2) of the Criminal Justice Act provides that a purely indictable offence is any indictable offence within the meaning of section 2 of the Summary Proceedings Act 1957, other than an offence for which, by virtue of section 6 of that Act, proceedings may be taken in a summary way.

offender if he or she is under 20 years of age, the court is of the opinion that there should not be such a sentence (s6(4));

- where a person is convicted of possession or use of only a Class C drug the court must not impose a custodial sentence unless, by reason of the offender's previous convictions or any exceptional circumstances, the court considers otherwise (Misuse of Drugs Act, s7(2)).

Under the Criminal Justice Act a prison sentence of 12 months or less may be combined with a cumulative sentence of periodic detention (s39), community service (s30), supervision (s47), or a community programme (s55), provided that any such community-based sentence must be completed within 12 months from its commencement. Section 8A directs that a mixed sentence must not be imposed if the court would not have imposed a sentence of imprisonment in the first place and that the total duration of the combined sentences must not exceed the term of imprisonment that would otherwise have been imposed for that offence. The purpose of this power to combine community-based sentences and short terms of imprisonment, introduced in 1993, was to shorten the length of imprisonment terms being imposed by the courts.

Provisions regarding parole and final release dates (subject to the inmate not having committed an offence against discipline as defined in the Penal Institutions Act 1954) are set out in Part VI of the Criminal Justice Act. In summary:

- offenders sentenced to a term of imprisonment of 12 months or less are not eligible for parole but must be released after serving one half of their sentence (s90(1)(a));
- offenders convicted of offences other than serious violent offences²⁹ and sentenced to prison terms of more than 12 months are eligible for parole after serving one-third of their sentence (s89(3)) and must be released after the expiry of two-thirds of the sentence (s90(1)(b));
- offenders sentenced for a serious violent offence are not eligible for parole unless sentenced to a term of 15 years or more when they are eligible for parole after 10 years (s89(7) and s89(4));
- offenders sentenced for a serious violent offence are to be released after two thirds of the sentence has been served unless a longer minimum period is imposed³⁰, such minimum period not to exceed ten years or a period ending 3 months before the sentence expiry date, whichever is the lesser (s90(1)(d) and s80);
- corrective trainees serve 2 months of a 3 month sentence(s90(1)(c));

²⁹ A serious violent offence is defined in section 2 of the Criminal Justice Act as being an offence against specified provisions in the Crimes Act 1961 in respect of which a sentence of more than 2 years imprisonment is imposed. The provisions are:

section 128 (sexual violation)
 section 171 (manslaughter)
 section 173 (attempt to murder)
 section 188(1) (wounding with intent to cause grievous bodily harm)
 section 188(2) (wounding with intent to injure)
 section 189(1) (injuring with intent to cause grievous bodily harm)
 section 189(2) (injuring with intent to injure)
 section 198A (using a firearm against a law enforcement officer, etc)
 section 198B (commission of crime with a firearm)
 section 234 (robbery)
 section 235 (aggravated robbery).

³⁰ A minimum period must not be imposed by the court unless it is satisfied that the circumstances of the offence are so exceptional that the imposition of the longer period is justified.

- those receiving life sentences and preventive detention are eligible for release on parole after 10 years imprisonment unless an extended minimum non-parole period has been imposed³¹, in which case the offender is eligible for parole after the period specified in the order (s80(1) and s89(1));
- the Parole Board may, following application from the Chief Executive of the Department of Corrections, order the postponement of an offender's release until 3 months before the end of the nominal sentence. The Parole Board may only make the order if satisfied that the inmate, if released, would be likely to commit a specified offence between the normal date of release and the applicable release date. The specified offences include murder, attempted murder, serious sexual offences, and serious wounding offences. An order must be reviewed every 6 months, and the Board may revoke the order and impose conditions to which the offender is subject on release (section 105);
- an offender sentenced to a term of imprisonment of ten years or more for a drug dealing offence may be required by the court to serve a minimum period not exceeding 7 years. Where the offender is sentenced to a term of less than 10 years for a drug dealing offence, the court may specify a non-parole period not exceeding seven-tenths of the term (s47 Misuse of Drugs Amendment Act 1978).

There are also provisions for the early release of inmates for special reasons such as the birth of a child, undertaking an educational course, or a serious illness (s94 Criminal Justice Act).

Offenders serving a sentence of imprisonment of more than 12 months, not being an indeterminate sentence or a sentence in respect of a serious violent offence, who are eligible for release on parole may be released to home detention (s103 Criminal Justice Act). A Criminal Justice Amendment Bill currently before the House provides for home detention as a way of serving all or part of a sentence of up to 2 years, and for release to home detention 3 months before the parole eligibility date for offenders who are serving sentences of 2 years or more for an offence other than a serious violent offence.

Children (aged under 14) and young people (aged 14 to 16 inclusive) who offend are dealt with under the provisions of the Children, Young Persons, and Their Families Act 1989. Some of the sentences which can be imposed in the Youth Court once a charge against a young offender has been proved differ from those which can be imposed in the District or High Court. The Youth Court cannot impose the Criminal Justice Act community-based sentences, or custodial sentences. These can only be imposed in the District or High Court. Young offenders can be transferred to the District Court for sentencing once a case has been proved in the Youth Court. For certain offences, young offenders may, after a preliminary hearing in the Youth Court, be tried in the District Court or High Court. If a case is finalised in the District or High Court then any of the full range of penalties available to these courts can be imposed on the young person.

The bulk of the cases involving offending by young people are dealt with under the Children, Young Persons, and Their Families Act by means other than formal court proceedings (e.g. family group conferences).

³¹ See previous footnote.

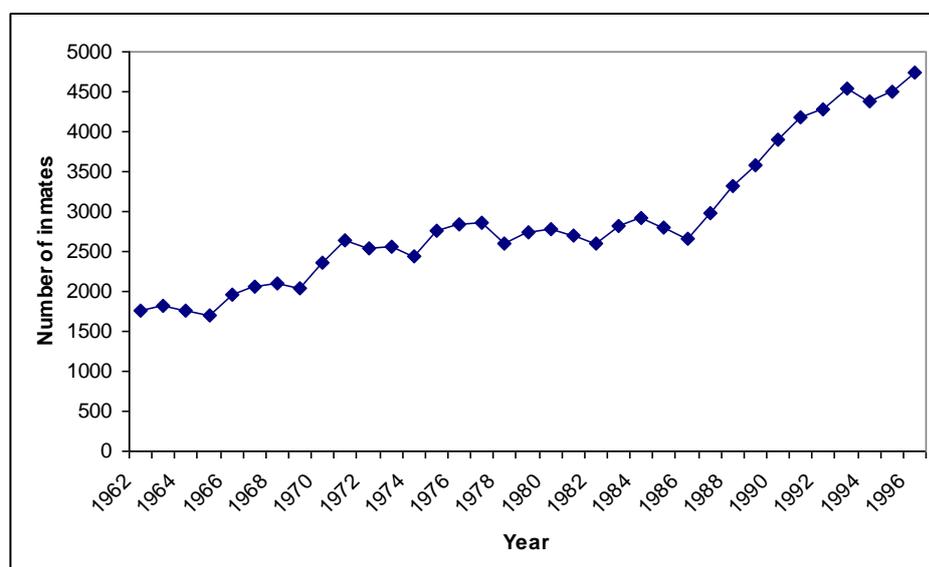
3. Profile of New Zealand Prison Population and Trends

G

Growth of the Prison Population

New Zealand's prison population³² increased only gradually over the period 1962 to 1986. The increase appears to have reflected the country's rapidly growing total population in the key age group represented in prison (young males), with the imprisonment rate per population of males aged 15 to 29 being very stable in that period. There has, however, been a rapid escalation in the prison population since 1986. The imprisonment rate per 100,000 of the total population increased by 46% in the decade 1987 to 1996. There was an increase of 26% in the number of cases resulting in a prison sentence per annum over that period and the average prison population reached 4735, including remand inmates, in 1996 (an increase of 58% in ten years).³³

Figure 1
Total prison population, 1962 to 1996



Over the last decade the overall number of convictions in New Zealand courts has not increased significantly³⁴ and the proportion of offenders receiving imprisonment has not altered markedly. The increase in the prison population has resulted principally from a significant increase in the number of convictions for violent and other serious offences,

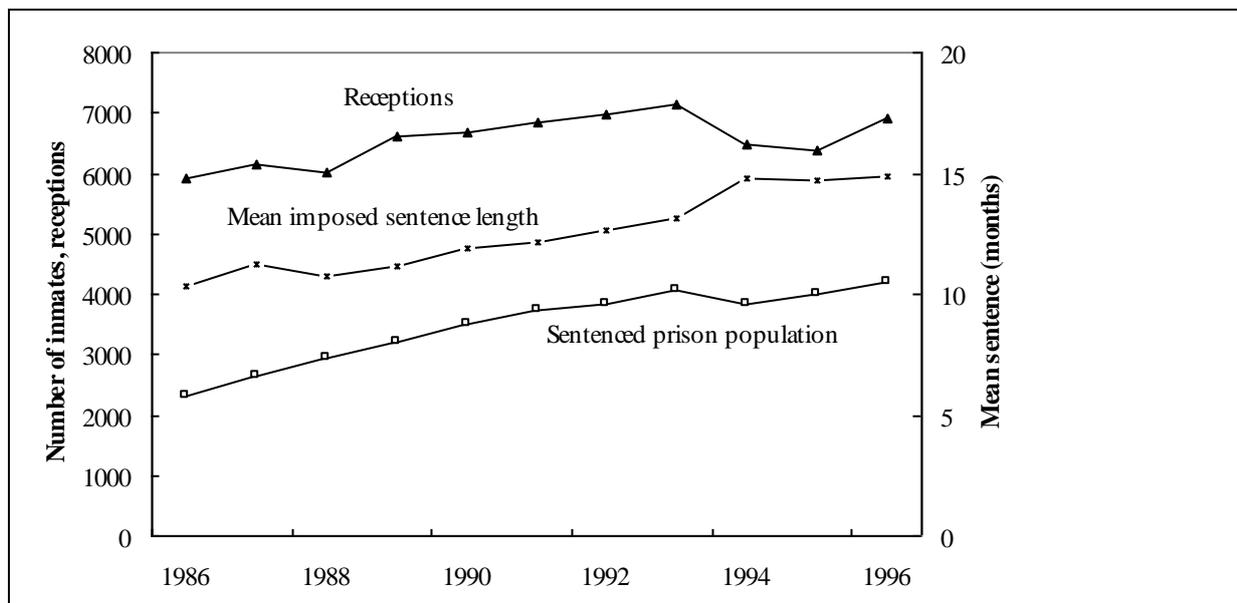
³² Prison population indicates the number of people in prison at a particular time or the average over a particular year. Admissions represent the number of people entering prison during a particular period.

³³ Spier, (1997), pp114, 117.

³⁴ The number of non-traffic offences recorded by the police increased by 29% between 1986 and 1996 (offences against the person more than doubled, offences against justice trebled, and the number of property offences increased by 19%). In spite of this there was a slight decrease in the number of cases dealt with by the criminal courts largely due to the decriminalisation of a number of minor traffic offences. Non-traffic cases increased by 11% and cases involving imprisonable offences increased by 20%. Triggs S, *From Crime to Sentence: Trends in Criminal Justice, 1986 to 1996*, (1998), pp15-16. Convictions for all non-traffic offences increased by 17% (see Spier, (1997), p26).

particularly at the more serious end of the spectrum. As a consequence, sentences have been getting longer on average and this, combined with changes in parole provisions for offenders sentenced to life imprisonment or preventive detention and for serious violent offenders, means that longer periods are being spent in prison.

Figure 2
Average annual sentenced prison population, number of receptions each year and average imposed sentence length, 1986 to 1996



The percentage of all cases prosecuted involving imprisonable offences that resulted in a prison sentence increased from 7.4% in 1986 to 8.6% in 1993. It declined to 7.4% in 1995 and then increased again to 8% in 1996. The increase up to 1993 may reflect the increasing seriousness of cases dealt with by the courts.³⁵ (Over that entire period the average seriousness score of cases prosecuted in court increased by 68%. The average seriousness of non-traffic cases increased by 41%.³⁶) The small decrease from 1993 is at least partly due to the introduction of suspended prison sentences as a substitute for sentences of imprisonment between 6 months and 2 years.

The only decline in the prison population over the period since 1986 occurred in 1994 and resulted from the introduction of the Criminal Justice Amendment Act 1993 which took effect from 1 September 1993. This Act changed the minimum period that must be served by inmates from one-half to one-third of the nominal sentence for people sentenced to more than one year's imprisonment who were not serious violent offenders. This change in parole

³⁵ Triggs, (1998), p79.

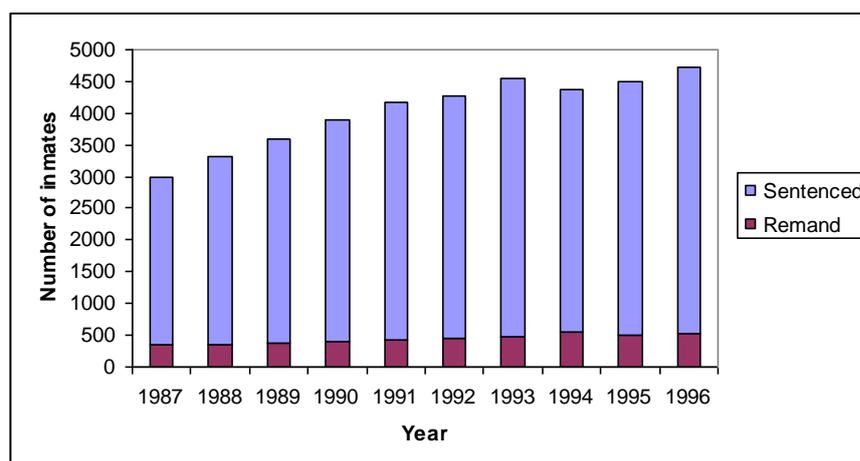
³⁶ *Ibid*, p39. The seriousness score used by the Ministry of Justice measures the average number of days of imprisonment imposed on every offender convicted of each offence over a 5 year period, where the average is taken over both imprisoned and non-imprisoned offenders. The total number of custodial days imposed for each offence is divided by the total number of offenders convicted of the offence to arrive at a score which enables offences to be ranked in terms of their relative seriousness. For example if there were 100 cases involving a particular offence and the total number of custodial sentence days imposed was 1500 then the seriousness score for that offence is 15. In any one year the number of convictions for each offence is multiplied by the offence's seriousness score and an average score is obtained for groupings of offences.

eligibility brought the average proportion of the sentence served by this group of sentenced inmates down from 57% to 44%.³⁷ When the new legislation came into force, the one-third parole provision was also applied to existing inmates so as not to disadvantage them. This resulted in a large number of inmates being released in the latter part of 1993. The use of suspended sentences also probably contributed to the fall in 1994 (although it appears that the activation of such sentences has contributed to the post 1995 increase).

The Custodial Remand Population

There has also been a significant increase (48%) between 1987 and 1996 in the average daily number of people in custody on remand. Throughout that period remand prisoners have consistently made up between 10% and 13% of total inmate numbers.³⁸ In other words, trends in remand inmates have been mirroring trends in the sentenced population. This is illustrated in Figure 3 below.

Figure 3
Annual average daily prison inmate numbers 1987 to 1996



The Criminal Histories of Sentenced Inmates

Another aspect of the profile of the prison population is the criminal history records of the sentenced inmates. The 1995 prison census data showed that offenders with more than 10 previous convictions made up 57% of the prison population, while only 14% had no previous conviction.³⁹ Property offenders had the highest mean number of previous convictions (40), compared to 29 for offenders against justice, 28 each for traffic offenders and offenders against good order, 19 for violent offenders and 17 for drug offenders. 507 property offenders (59.4%) had more than 20 previous convictions and within that group 217 offenders (25.4% of all property offenders) had more than 50 previous convictions. This compares to 10% of violent offenders having a record of more than 50 convictions. Such histories go a long way towards explaining why property offenders end up in prison despite a

³⁷ Spier, *Conviction and Sentencing of Offenders in New Zealand 1985 to 1994*, (1995), p132.

³⁸ Spier, (1997), p117.

³⁹ Lash, (1996), p35.

presumption against imprisoning them. 16% of traffic offenders in prison had more than 50 previous convictions.⁴⁰

Table 1
Number of previous convictions for sentenced inmates in different offence groups (percentages) as at 1995 census

	0	1-5	6-10	11-20	21-50	51+	Total
Violent	18.1	20.4	12.6	16.3	22.5	10.2	100.0
Other against person*	33.6	18.2	13.6	13.6	15.5	5.5	100.0
Property	5.6	7.3	9.6	18.1	34.0	25.4	100.0
Drugs	13.9	21.5	17.5	17.9	23.1	6.0	100.0
Against justice**	6.2	7.7	15.4	32.3	23.1	15.4	100.0
Good order***	0.0	20.0	14.3	22.9	28.6	14.3	100.0
Traffic	3.6	10.8	14.4	20.2	35.1	16.0	100.0
Miscellaneous	3.2	19.4	9.7	25.8	29.0	12.9	100.0

* These are mainly offences of obstructing or resisting police officers or other officials, a number of sexual offences, rioting, various firearm offences, and threatening and intimidation offences.

** Offences that are mostly the result of a breach of a sentence, a failure to comply with bail conditions, or related to court procedure.

***These include disorderly behaviour, offensive language, carrying offensive weapons, trespassing, and unlawful assembly.

The Ethnicity of Sentenced Inmates

In New Zealand, ethnicity is an important component of any analysis of the prison population. Māori inmates made up an estimated 45% of the male sentenced population in the 1995 prison census.⁴¹ In comparison, Māori make up 10% of the male population of New Zealand aged 15 or over, or 14% of the male population in the key 15-39 age group. The proportion of male inmates accounted for by Māori offenders does not appear to have changed greatly since the first prison census in 1987, when 48% of the prison population were Māori.⁴² However, the comparison is not fully reliable, as a different method was used to identify ethnicity in 1987 than in 1995.

Reception rates for Māori are much higher than for non-Māori for all offence groups and ages. In 1997 the overall reception rate for Māori males was 8 times greater than for non-Māori.⁴³ Part of the difference between Māori and non-Māori is accounted for by the younger age distribution of the Māori population, as young people in general are more likely to be offenders.⁴⁴ However, the high percentage of Māori in prison also reflects higher offending rates (measured by the rate of prosecutions per head of population) and a greater number of previous convictions on average compared to other ethnic groups, and a greater average seriousness of offending compared to other ethnic groups with the exception of Pacific peoples.⁴⁵

⁴⁰ Data provided by S Triggs, Ministry of Justice.

⁴¹ Lash, (1995), p26.

⁴² Braybrook, B. and O'Neill, R. *A Census of Prison Inmates*, (1988), p32.

⁴³ Data provided by S. Triggs, Ministry of Justice.

⁴⁴ Triggs, (1995), p35.

⁴⁵ Triggs, (1998), pp50-4. As part of the justice sector's Responses to Crime Strategy there is a Responses to Offending by Māori project which aims to identify and implement effective responses to offending by Māori to

In respect of female sentenced inmates in 1995, 49% identified themselves as Māori only.⁴⁶

Changes in the Composition of the Prison Population

The key trends in the composition of the prison population are

- the increasing proportion of violent offenders;
- the lengthening of the average period of detention, particularly for violent and other serious offenders (this being a combination of the longer sentences being imposed, mainly because those being sent to prison are those committing more serious offences on average, and the proportions of sentences that have to be served);
- the increasing age of inmates (from 29.3% being 30 years or over in 1987 to 45.4% being in that age group in 1995⁴⁷).

These factors are to some extent interrelated. A decline in property offending cases resulting in imprisonment and an increase in violent offending cases leading to imprisonment will both lead to an older prison population and an increase in average sentence length. This is because property offenders are younger on average, and receive shorter sentences on average, than violent offenders.

Changes in the composition of the prison population between 1987 and 1995 are shown in Table 2. Violent offenders made up 43.8% of the male sentenced prison population in 1987 and 59.5% of that population (2369 inmates) in 1995 (an increase of 36%). Property offenders declined from 29.4% of that population to 19.9%.⁴⁸ The number of cases involving violent offences resulting in a custodial sentence increased from 1,588 in 1987 to 2,281 in 1996, although the proportion of cases involving violent offences which resulted in a custodial sentence has been lower in the years 1994 to 1996 (19.6%, 19.2%, and 20.2%) compared to earlier in the decade when the figure was around one quarter.⁴⁹ The drop is mainly due to two factors. The number of less serious violent offences grew more rapidly in the 1990s than the number of more serious violent offences. In particular, domestic violence cases reported to the police increased greatly due to changes in policies regarding prosecution of these cases. Some violent offenders having their prison sentences suspended after 1993 is also likely to have contributed.

address the comparatively high proportion of Māori represented in police apprehension, prosecution, conviction and correctional population statistics.

⁴⁶ Lash, (1996), p26.

⁴⁷ *Ibid*, p83.

⁴⁸ *Ibid*, p86.

⁴⁹ Data provided by P. Spier, Ministry of Justice.

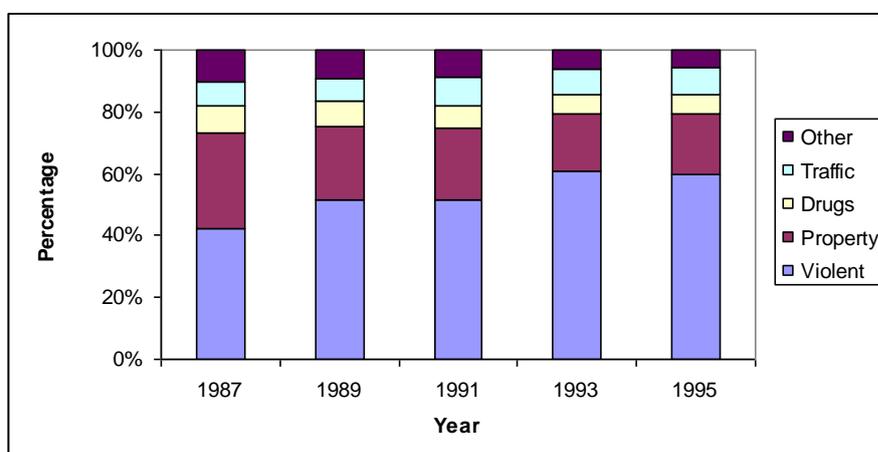
Table 2

Changes in the composition of the male sentenced prison population by offence type between the 1987 and 1995 censuses (percentages)⁵⁰

	1987	1989	1991	1993	1995	% change
Violent	43.8	52.2	51.4	60.6	59.5	36%
Property	29.4	23.7	23.5	18.9	19.9	-32%
Drugs	8.6	8.1	7.3	6.0	5.8	-33%
Traffic	8.3	7.1	8.9	8.5	8.8	6%
Other	9.9	8.9	8.9	6.0	6.0	-39%

Figure 4

Changes in the male sentenced population by offence type between 1987 and 1995



In 1995 five offence groups accounted for 70% of the total prison population: sexual offences (25%), robbery (13%), assault (12%), burglary (11%) and homicide (8%).⁵¹

The most common violent offences for male sentenced inmates were rape (21% of violent male sentenced inmates), aggravated robbery (20%), unlawful sexual connection (12%) and injuring or wounding (11%). Those four offence categories accounted for the major offence of 38% of all male sentenced inmates.⁵²

Traffic offences and offences involving drugs are the most significant categories after violent offences and property offences in terms of the major offence of sentenced inmates. Offences involving drugs (the major offence of 6% of sentenced inmates) are mostly the result of dealing in drugs (mainly cannabis).⁵³

⁵⁰ See Lash, (1996), Table 17.11.

⁵¹ Data provided by S. Triggs.

⁵² Lash, (1996), p31.

⁵³ *Ibid*, pp30, 32.

The Effect of Sentence Length

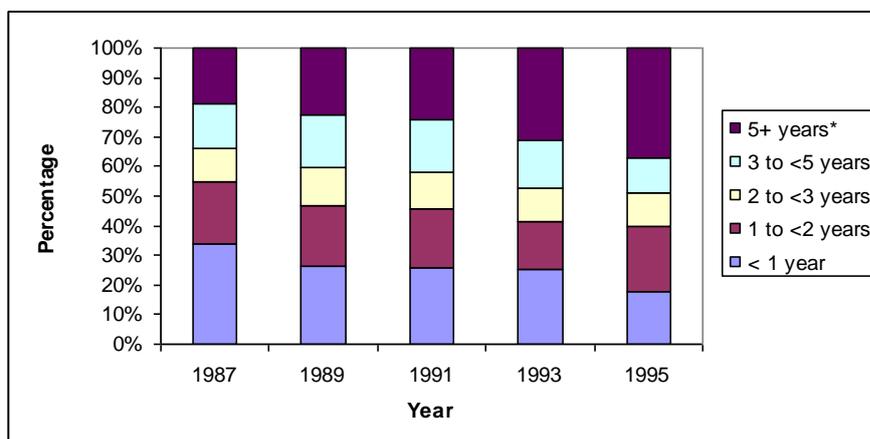
Although New Zealand is making greater use of imprisonment in the sense that we are sentencing more people to prison (8.0% of cases involving imprisonable offences resulting in a custodial sentence in 1996 compared to 7.4% in 1986⁵⁴), a more important factor driving the prison population is that there has been an 89% increase in the proportion of the prison population serving sentences of 5 or more years in the period 1987 to 1995 (from 19.5% to 36.9%).

Table 3
Changes in the composition of the male sentenced prison population by sentence length between the 1987 and 1995 censuses⁵⁵

	1987 (%)	1989 (%)	1991 (%)	1993 (%)	1995 (%)	% change
< 1 year	32.7	25.4	25.8	25.2	17.9	-45%
1 to <2 years	20.7	20.0	20.2	16.4	22.1	7%
2 to <3 years	11.8	13.3	12.2	10.9	11.0	-7%
3 to <5 years	15.4	18.2	17.6	16.1	12.2	-21%
5+ years*	19.5	23.2	24.3	31.4	36.9	89%

* Includes life and preventive detention

Figure 5
Changes in the male sentenced prison population by sentence length between 1987 and 1995



*Includes life and preventive detention

Those who are going to prison are receiving longer sentences or staying longer in prison. In 1987 2.1% of custodial sentences imposed were for longer than 5 years' imprisonment compared to 3.1% in 1996. In that period the average custodial sentence, excluding sentences of life imprisonment, increased from 9.5 months to 11.7 months, although there

⁵⁴ Triggs, (1998), p79.

⁵⁵ Lash, (1996), Table 17.9 on p85.

was little change in the years 1994 to 1996. The total number of corrective training sentences imposed has decreased significantly over the decade (from 841 in 1987 to 561 in 1996). Such sentences represented 12% of the custodial sentences imposed in 1987, but only 6% of custodial sentences imposed in 1996.⁵⁶ This is partly due to a decrease in the imprisonment of young offenders generally. Corrective training has decreased from 44% to 34% of custodial sentences for offenders aged less than 20 years.⁵⁷

Violent offenders who were imprisoned in 1996 received custodial sentences which were 5 months longer, on average, than violent offenders who were imprisoned in 1987 (the average increasing from 20 to 24.7 months). The average sentence imposed for rape increased significantly from 73.1 months to 87.8 months (7 years 4 months). (There was an increase in the maximum sentence from 14 to 20 years imprisonment for both rape and unlawful sexual connection in 1993). The average sentence for attempted sexual violation (for which the maximum sentence is 10 years imprisonment) increased from 34.2 months to 41.4 months.⁵⁸

In 1995 sentences of less than 12 months accounted for 66% of admissions to custody but they accounted for only 18% of the prison population in the 1995 census. In 1987 they accounted for 74% of admissions and 33% of the prison population.⁵⁹

The Seriousness of Offending

The substantial increase in the average length of prison sentences can be partly explained by the increasing seriousness of offences. The average seriousness score⁶⁰ of all cases involving imprisonable offences coming through the courts increased by 30% between 1986 and 1996, while there was an increase in the average length of sentence imposed of 45%.⁶¹

Prison has increasingly been restricted to the more serious offences, and for the most serious offence types penalties have increased. Four general patterns emerged over the period 1984-1996⁶²:

1. For very serious offences (e.g. sexual offences, robbery, kidnapping, and driving causing death or injury) there have been large increases in the average sentence lengths imposed with little change in imprisonment rates, suggesting that these offences are being dealt with more severely and/or there has been an increase in the seriousness within the offence type. For sexual violation this corresponds to an increase in the maximum penalty from 14 to 20 years' imprisonment in 1993.
2. For other fairly serious offences (e.g. assault causing injury, burglary, arson, cannabis dealing) there have been more modest increases in sentence lengths.
3. For less serious offences (e.g. less serious violent offences such as assault, property offences except for burglary and arson, driving while disqualified, and many offences

⁵⁶ Data provided by P. Spier, Ministry of Justice.

⁵⁷ Data provided by S Triggs, Ministry of Justice.

⁵⁸ Data provided by P. Spier, Ministry of Justice.

⁵⁹ Data provided by P. Spier, Ministry of Justice; Lash, (1996), p85

⁶⁰ See footnote 36.

⁶¹ Triggs, (1998), pp78-9.

⁶² *Ibid*, pp80-2.

against justice such as breach of periodic detention) there have been decreases in imprisonment rates, but increases in sentence lengths, suggesting that only the more serious offences are being imprisoned within these offence groups. This finding accords with the changes introduced in the Criminal Justice Act 1985, which directed that imprisonment should not be used for property offences except in special circumstances. The introduction of suspended sentences is also likely to have had an impact on this group of offenders.

4. For some offences (e.g. many drug offences other than cannabis dealing) there has been a trend to lower imprisonment rates and shorter sentence lengths.⁶³

Table 4
Changes in the imprisonment rate and the average imposed sentence length between 1984-86 and 1994-96, for selected offences⁶⁴

Offence type	Imprisonment rate(1)		Average imposed sentence length (months)	
	1984-86	1994-96	1984-86	1994-96
Homicide	89.0	91.0	*	*
Kidnap/abduct	65.8	71.8	29.5	38.4
Rape	97.4	94.4	53.9	81.1
Att. sexual violation	90.9	88.7	29.2	39.9
Indecent assault	37.5	40.3	15.2	18.2
Aggravated robbery	78.3	75.6	29.7	40.2
Robbery	59.7	54.3	10.6	16.7
Injure/wound	68.8	63.1	19.7	24.7
Aggravated assault	46.7	32.4	8.6	10.0
Male assaults female	16.7	12.0	5.5	6.3
Other assault	10.7	5.7	3.3	3.8
Threat to kill/GBH	31.8	18.3	10.3	8.3
Incest	82.4	78.1	25.4	46.8
Other sexual	30.9	47.4	16.8	27.0
Resist/obstruct	4.5	2.4	1.9	1.4
Threats/intimidation	5.1	6.1	3.1	4.4
Burglary	27.5	31.3	8.0	10.8
Theft	5.0	4.8	5.6	5.4
Receiving	9.7	8.7	6.1	6.6
Conversion	27.6	21.3	6.1	6.6
Fraud	12.0	11.1	7.8	8.9
Arson	43.2	45.0	15.1	21.2
Wilful damage	2.5	2.0	3.0	3.8
Use cannabis	2.7	2.0	2.0	1.5
Deal cannabis	11.2	13.0	8.9	12.8
Use other drugs	6.8	4.9	2.7	3.4

⁶³ 1997 data indicates that imprisonment rates for less serious offences have increased again in 1996 and 1997.

This seems to be related to the activation of suspended sentences.

⁶⁴ *Ibid*, p81.

Deal other drugs	65.4	47.7	35.7	31.3
Breach PD	33.3	17.3	1.6	1.8
Escape custody	67.7	42.6	3.2	4.5
Obstruct justice	16.3	27.1	8.9	9.8
Riot/assembly	39.8	39.0	6.5	6.2
Possess weapon	13.9	9.2	4.1	5.0
Drive causing death	18.8	18.0	9.7	16.8
Drive causing injury	3.4	5.8	5.0	10.5
Drink driving	2.6	2.3	1.8	2.0
Drive while disqualified	17.0	15.7	5.0	5.7

(1) The imprisonment rate here is the percentage of the total cases convicted which result in a prison sentence. Offences were excluded if they were newly introduced within the last decade or if the numbers imprisoned were too small for analysis.

*Average not given because includes indeterminate sentences of life imprisonment for murder.

The Effect of Release Mechanisms (“time served”)⁶⁵

The prison population is influenced both by the length of custodial sentences imposed by the court and the proportions of sentences that are actually served. This second factor is a product of the legislation regarding parole and early release (see section on legislation) and the way the legislation is implemented by the parole board and district prisons boards.

Table 5
Estimated average proportion of imposed sentences served, 1987 to 1996

	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)
Life imprisonment	*	*	*	*	*	*	*	*	*	*
Preventive detention	*	*	*	*	*	*	*	*	*	*
Serious violent	60	67	67	67	67	67	67	67	67	67
More than a year**	57	57	57	57	57	57	52	44	44	44
One year or less	50	50	50	50	50	50	50	50	50	50
Corrective training	67	67	67	67	67	67	67	67	67	67

* Cannot be given because the imposed sentence is indeterminate and following changes to parole legislation in 1987 and 1993 it is too early to estimate the served sentence with any reliability

**Figures indicated in table are average estimates. See Spier, *Conviction and Sentencing of Offenders in New Zealand: 1985 to 1994*, Ministry of Justice, 1995, p132.

The drop after 1992 in the average proportion of their sentences served by those sentenced to more than one year’s imprisonment who were not serious violent offenders is due to the change in the parole provisions during 1993 which made that group eligible for parole after serving one-third of the sentence imposed. Previously, these people would not have been eligible until they had served half of the sentence imposed. When the new legislation came into force on 1 September 1993, the one-third provision was applied immediately to existing inmates.

⁶⁵ Data provided by S. Triggs, Ministry of Justice.

Given recent parole changes, the disparity across offence groups between sentence lengths imposed and sentence served is not as great as one might imagine. Violent offenders serve the greatest proportion of their sentence, at 59% on average in 1996. Other offence groups all serve between 45% and 50% of their imposed sentence on average.

Figure 6
Sentence lengths imposed and estimated time served, 1996

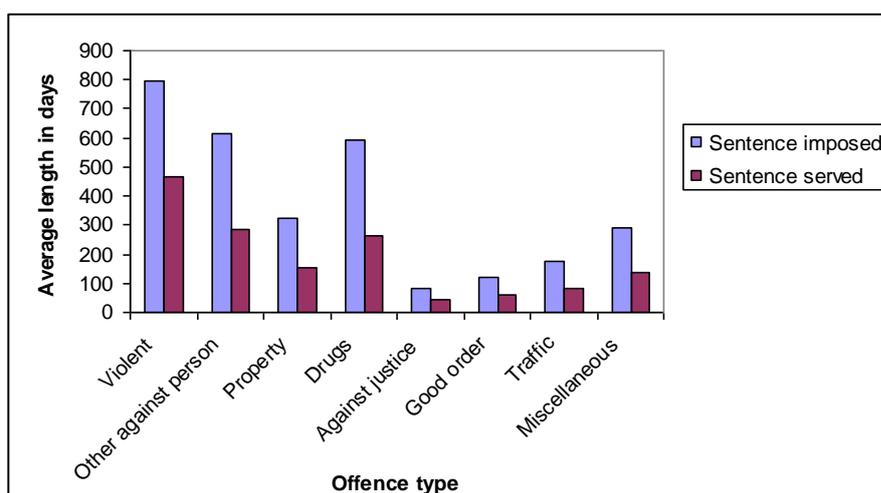


Table 6
Estimated average proportion of imposed sentence lengths served, by offence type, 1987 to 1996

	1987	1988	1989	1990	199	1992	1993	1994	1995	1996
	%	%	%	%	%	%	%	%	%	%
Violent	58	56	57	57	57	58	58	59	59	59
Other against person	54	46	44	46	44	44	44	46	44	47
Property	54	48	48	48	48	48	47	47	47	47
Drugs	55	46	45	45	45	45	46	45	45	45
Against justice	53	51	53	51	51	51	50	51	51	50
Good order	52	50	50	49	49	50	49	48	51	49
Traffic	52	49	50	49	49	48	49	48	48	48
Miscellaneous	55	48	47	47	49	48	48	48	47	47

By far the longest terms served are by offenders who have committed the most serious violent offences. Those who receive a life sentence (mainly for murder) or a preventive detention sentence (mainly for sexual violation) have no set sentence length to serve and are eligible for parole after a minimum of 10 years (or longer, if a minimum non-parole period is imposed). Even if these inmates stay at around 0.56% of admissions to custody per annum (which has been the case for 1994 to 1996), the number of people serving those sentences is

likely to increase significantly over the next decade (in the 1995 census they comprised 7.5% of sentenced inmates (i.e. 311 inmates) compared to 7.2% in the 1993 census and 6.2% in 1991⁶⁶). This is due to the increase in the minimum non-parole period to 10 years in 1987, the possibility of extended non-parole periods beyond 10 years after 1993, and the predicted increase in the numbers of admissions overall.

The Effect of Suspended Sentences

The introduction of suspended sentences⁶⁷ is probably contributing to the recent increase in the prison population. This would be through the combination of several factors. A 1995 study showed that the number of people receiving suspended sentences in 1994 (2938) was much larger than the total drop in receptions between 1993 and 1994 (643), let alone the drop in receptions of sentences between 6 months and 2 years (227). This strongly suggested that many suspended sentences were being given in place of non-custodial sentences. Secondly, the greatest reduction in receptions was for sentences of less than 6 months (482), suggesting that sentences of a shorter duration than specified in the Act were replaced by suspended sentences, i.e. offenders who would have otherwise received a sentence of less than 6 months, received longer prison sentences so that they could be suspended. Thirdly, about a quarter of suspended sentences were subsequently activated following further offending. Analysis of a sample of 500 people who received suspended sentences between February and May 1994 showed that between 21% and 27% of these sentences had been activated by June 1995.⁶⁸ Fourthly, the reoffending leading to the activation of the suspended sentences often results in a prison sentence, even though many of the subsequent offences committed are of relatively low seriousness and might not otherwise have resulted in a prison sentence.⁶⁹

In the period July to December 1996, there were 1,432 cases resulting in a suspended sentence. Over the same time there were only 34 fewer prison receptions in the range of 6 months to 2 years than the number estimated to occur if suspended sentences had not been introduced.⁷⁰ In total the number of prison receptions was only 183 fewer than the estimated number and the largest difference between the actual and the estimated number of inmate receptions actually occurred in respect of the group receiving sentences of less than 6 months (with receptions being 234 lower than the estimate). (Note that receptions to prison of sentences of more than 2 years duration were estimated to have increased by 85.) This suggests that the sentence is still not being imposed in accordance with sections 21A(2) and 21A(3) of the Criminal Justice Act.⁷¹

⁶⁶ Lash, (1996), p84.

⁶⁷ See section 2 above for a description of how suspended sentences operate.

⁶⁸ Spier, (1995), p126.

⁶⁹ Data provided by S Triggs, Ministry of Justice.

⁷⁰ This is based on trends in the ratio of receptions to total convicted imprisonable cases in the second half of the years 1986 to 1992 (i.e. the 7 years prior to the introduction of suspended sentences), extended through to 1996. As the actual number of convicted imprisonable cases was known for 1996, the estimated ratio could be used to calculate the estimated number of receptions. The difference between the estimated number of receptions (if suspended sentences had not been introduced) and the actual number of receptions is an indication of the effect of suspended sentences.

⁷¹ These sections state that a suspended sentence shall not be ordered unless the court would have sentenced the offender to imprisonment if a suspended sentence was not an available option and the length of a suspended sentence should correspond to the period of imprisonment that would otherwise have been given.

Most (89%) offenders who received a suspended sentence also received a community-based sentence. 59% of offenders receiving a suspended sentence also received periodic detention. There appears to be net-widening as some offenders who would have previously received a non-custodial sentence now receive a suspended prison sentence, most often in conjunction with a community-based sentence. The fact that the largest decrease in prison receptions was for sentences of less than 6 months suggests that longer prison sentences were being imposed in some cases so that they could be suspended. If the activation rate for the sentence continues to be 20% to 25% then the number of suspended sentences in July to December 1996 (1,432) that are activated will be between 286 and 358. This is in comparison to the estimated drop in receptions of 34 in the sentence range of 6 months to 2 years or a drop of 183 in total receptions as a result of suspended sentences.⁷² In other words suspended sentences will cause an increase in the prison population rather than the intended reduction.

The Effect of Combined Sentences

At the time of the introduction in 1993⁷³ of the power to combine community-based sentences and short terms of imprisonment, there were concerns expressed that offenders would end up receiving the same prison sentence they would have previously (since they were short sentences to begin with) plus a community-based sentence as well, or that persons who would not have got a prison sentence at all would get a short prison sentence in addition to the community-based sentence they otherwise would have received. It was suggested that since offenders serving prison sentences of 12 months or less have no conditions attached to their release, the courts would be tempted to impose subsequent sentences of supervision or community programme to achieve the same result as parole conditions, i.e. to reduce the risk of reoffending upon release.

Since 1993 the number of community-based sentences imposed cumulative on a custodial sentence has increased from 763 in 1994, to 1,001 in 1995, then to 1,283 in 1996. In 1996 these cases represented 14% of all cases resulting in a custodial sentence.⁷⁴ It is difficult to judge to what extent, if any, judges are imposing short terms of imprisonment followed by a community-based sentence where previously one or more community-based sentences would have been imposed. It could be working the other way, with shorter terms of imprisonment being imposed than would otherwise have been the case. For example, where once 2 to 3 years imprisonment was imposed, courts may now tend to impose a sentence such as 18 months' imprisonment or less plus 1 year's supervision.

The Forecast Population

The prison population (including remand inmates) is forecasted to increase to 6,000 by 2002/03⁷⁵(see Figure 6 below). Reasons for this are:

- the number of offenders convicted of serious violent offences is predicted to increase gradually in the medium term (even though the rate of increase for violent offences is

⁷² Spier, (1997), pp127-33.

⁷³ Criminal Justice Amendment Act 1993.

⁷⁴ Data provided by P. Spier, Ministry of Justice.

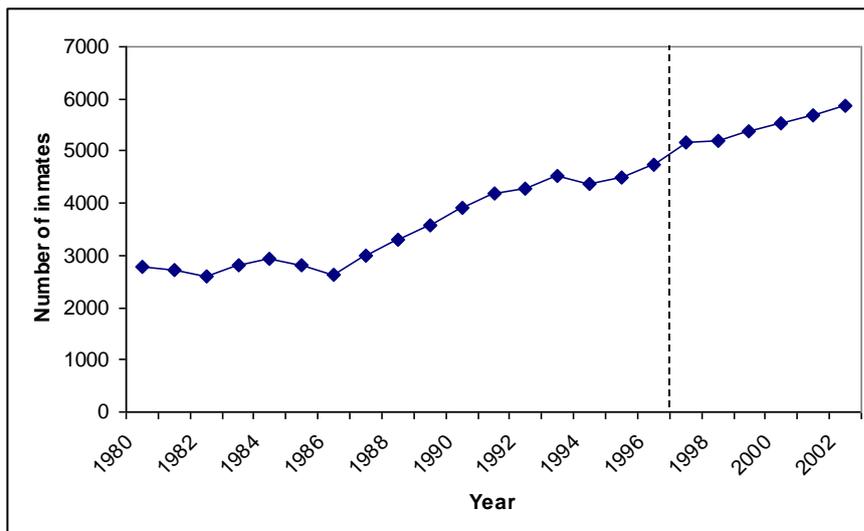
⁷⁵ Forecast provided by S. Triggs, Ministry of Justice, May 1998.

likely to be much slower than in the early 1990s, and indeed since 1995 there has been a decrease in the number of convictions for violent offences);

- the number of offenders convicted of serious property and traffic offences is predicted to increase gradually (whereas these decreased or were stable in the early 1990s);
- the rapid increase in the number of serious violent offenders in the 1980s and early 1990's created a bulge that is still passing through (as many received long sentences);
- although the average time served was reduced for some offenders in 1993, this has a smaller aggregate effect than the longer sentences now served by serious violent offenders and those serving life or preventive detention;
- the average imposed sentence length seems unlikely to go down and may continue to increase for serious offenders;
- the activation of suspended sentences may contribute to an increase in the prison population in the short term.

This forecast is based on current policies continuing. New forecasts will be required when policy changes (e.g. proposed changes to home detention and traffic penalties) are introduced.

Figure 7
Actual and projected prison population, 1980 to 2002



4. Costs

In 1996/97 the New Zealand Department of Corrections spent \$249.9 million on the administration of custodial sentences. A further \$27.5 million was spent on the provision of custodial remand services and facilities to hold offenders convicted but not yet sentenced. This compares to \$59.8 million spent on managing community-based sentences and orders.⁷⁶

The average cost of holding a sentenced inmate for a year is \$51,672 (\$4,306 per month). There are variations within these figures relating to the security classification of the inmate. The average cost of holding a remand inmate for a year is \$46,609 (\$3,884 per month).⁷⁷ This compares to the average cost of a community-based sentence of about \$1,915 per offender per year.⁷⁸ The average monthly cost of a person on periodic detention is \$227, the average monthly cost of a person on supervision is \$146, the average monthly cost for someone on community programme is \$129 and the average monthly cost for someone on community service is \$82.

Table 7
Costs of sentences⁷⁹

Class of Offender	Per Annum	Per Month
Sentenced inmate	\$51,672	\$4,306
Maximum security	\$73,882	\$6,157
Medium security	\$54,185	\$4,515
Minimum security	\$49,259	\$4,105
Remand inmate	\$46,609	\$3,884
Community-based	\$1,915	\$160
Periodic detention		\$227
Supervision		\$146
Community programme		\$129
Community service		\$82

Additional costs include the lost productivity of offenders, the social costs to their families, and welfare payments to families while offenders are in prison. The costs of alternative sentences do not take into account the social costs of offending which may occur when the offender is in the community.

⁷⁶ *Department of Corrections, Annual Report 1996/97*, p57. Figures are GST inclusive.

⁷⁷ Figures based on the summary of output costs contained in the Department of Corrections' 1997/98 Purchase Agreement with the Crown. The costs include the totals of Output Class 3: Custodial Sentences, Output Class 5: Custody of Remand Inmates, and Outputs 1.2: Public Prison Inmate Reports, 4.1: Clinical Treatment Public Prisons, 4.3: Corrland, 4.5: Specialist Programmes in Prison, 4.6: Support Services. The output costs are GST exclusive and include capital charges, depreciation, and corporate overhead costs.

⁷⁸ 1996/97 financial year. This cost and the following costs for individual sentences are based on time recorded for those sentences in Department of Corrections' time recording system and the volume of sentences. Figures are GST exclusive.

⁷⁹ Information provided by Department of Corrections.

5. International Comparisons

Prison use varies among jurisdictions. In each case it will be influenced by rates of offending, rates of detection and recording of offences, rates of clearance of crime, prosecution and conviction rates, remand practices, the sentencing of convicted offenders, and the operation of any early release mechanisms. Any of these variables, singly or in combination, will produce differences in indices of prison use. Different countries have different policing policies and practices and different views as to what should be an imprisonable offence. They operate markedly differently in filtering out offenders within the criminal justice process. Some countries have nearly as many people convicted as prosecuted, while others have great attenuation of the population from the stage of prosecution to the stage of conviction. Sometimes prison sentences imposed bear little relationship to prison sentences served because of sentences being modified by discretionary release mechanisms.

The conventional measure of national prison populations counts persons in custody per 100,000 total population. This number is taken either from the total number incarcerated on a particular date or from the average daily population over the whole year.⁸⁰ Such a comparison (over time) is provided in Table 8 below:

⁸⁰ These different ways of measuring the prison population can produce quite different results. For example, in New Zealand in 1993 the average prison population was 4,532 and the total number of offenders in custody as at 18.11.93 (1993 prison census) was 4,263.

Table 8
Rate of imprisonment (including remands) per 100,000 total population by selected jurisdictions 1986-1995*

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
New Zealand	80	90	99	106	115	122	123	129	124	126
Australia	72	74	75	77	84	87	89	90	95	96
New South Wales	76	81	82	91	109	120	126	127	127	127
Victoria	47	46	49	52	53	52	51	51	56	55
Queensland	84	88	87	84	79	71	67	66	78	88
South Australia	59	63	60	61	65	72	79	80	92	95
Tasmania	58	63	66	54	52	57	57	56	55	52
Western Australia	112	108	107	98	105	105	114	121	126	127
Northern Territory	290	298	245	225	264	279	268	249	266	271
England and Wales	93	97	99	96	90	90	89	87	95	99
Finland		86	82	75	65	68	63	68	65	60
Netherlands							49	51	55	67
United States	332	353	389	436	460	482	507	526	562	598
Austria								91	85	85
Belgium								72.1	65	75
Canada									119	115
Czech Republic								165	180	190
Denmark								71	72	65
France								86.3	90	90
Germany								81	83	80
Hungary								132	125	120
Ireland								59.8	60	60
Italy								89	90	90
Japan										35
Norway								60	60	55
Northern Ireland								118	117	105
Poland								160	165	170
Portugal								111	101	125
Romania								200	195	205
Russia									590	695
Spain								114.9	106	105
Sweden								66	66	65
Switzerland								81	59	80
Turkey								51.6	72	90

*1996 figures only available for 3 jurisdictions.

Sources:

- England and Wales: Numbers are average daily population, Home Office (July 1997), rate calculated from population data in Button, A. Annual Abstract of Statistics, HMSO (1996).
- United States: includes numbers in Federal and State prisons and jails; numbers are at 31 December each year for prisons, and 30 June for jails; population data used in rates was recalculated from tables in Bureau of Justice Statistics (June 1997).
- New South Wales: Numbers are average daily for year ending 30 June; National Correctional Services Statistics Unit (May 1997). Population data is from Australian Bureau of Statistics, *Australian Demographic Statistics* series.
- Other Australian states, Australia (total): National Correctional Services Statistics Unit (May 1997); prison population as at 30 June on given year: Population data is from Australian Bureau of Statistics, *Australian Demographic Statistics* series.
- Finland: Home Office (November 1997). Population data accessed from Statistics Finland web-site at <http://www.stat.fi>
- Netherlands: Figures for 1994-5 taken from Home Office (August 1996) and Home Office (July 1997). Figures for 1992 and 1993 from Eckert and Rau.
- New Zealand: Prison numbers (annual average prison population from Department of Corrections muster sheets) provided by S. Triggs, Ministry of Justice. Population data provided to Ministry by Statistics New Zealand. Census year figures are exact (1986, 1991) while intercensal years are estimated (1987-1990). Post 1991 figures are projected estimates.
- All other countries: As at 1 September each year except for England and Wales which are annual averages. 1993 figures: Eckert and Rau; 1994 figures: (Home Office (August 1996); 1995 figures: Home Office (July 1997).

New Zealand's imprisonment rate in 1995 (126) was above that of most of the countries in the above table including England and Wales, and all the Australian states except Northern Territory, Western Australia and New South Wales. In terms of growth over the period 1986 to 1995, New Zealand (with a growth rate of 58%) was below the United States (80%), New South Wales (67%), and South Australia (61%), but above the other Australian states and

England and Wales. Finland is one country to have achieved a significant reduction in the national rate of imprisonment over the last 8 years, which is discussed in Appendix 2.

These imprisonment rates may not all be measuring the same thing. For example some jurisdictions (New Zealand and England and Wales) include all those serving a full-time custodial sentence, regardless of age or type of institution; others (Canada and most Australian states) exclude persons under a specified age such as 18 or who are serving their sentence in a youth custody institution. (New Zealand had 2.5% of its inmates under 18 at the time of the 1995 prison census.) Some count all prisoners within their jurisdiction including those transferred to hospitals and psychiatric institutions for treatment and those on work release or home leave; others keep it to those actually in prison at the time. Queensland is one jurisdiction that has some inmates in custody who are resident in work camps or community corrections centres (on work release schemes) who are not recorded in the prison population statistics.⁸¹

There is little value in comparing New Zealand with Australia as a whole since it is evident that there are significant variations from one Australian state jurisdiction to another. The higher prisoner population in New South Wales (similar to New Zealand) compared to Victoria is partly due to the existence of residential periodic detention in NSW (periodic detainees are placed in custody for two days of each week for the duration of their sentence) and this state's greater use of imprisonment for fine defaulters. When these two groups of prisoners are excluded, the population difference appears to be mainly because sentenced prisoners are received into custody at a much greater rate in New South Wales (there is some evidence of higher rates of serious offending in NSW than in Victoria).⁸²

Remand Populations

Prison population rates lump together those in prison under sentence and those in prison on remand awaiting trial or sentence. The distinction between the two is most significant when it is shown how changes in the numbers of remand and sentenced prisoners contribute differently to changes in imprisonment rates within different jurisdictions. In some jurisdictions changes in remand numbers⁸³ closely parallel changes in the total sentenced population (New Zealand), in others the changes will move in opposite directions, and sometimes the growth in one group will significantly exceed the growth in the other.

⁸¹ Australian Bureau of Statistics, *National Correctional Statistics: Prisons, July 1994 to June 1995*, February 1996, p12.

⁸² Gallagher P, *Why does NSW have a higher imprisonment rate than Victoria*, Crime and Justice Bulletin, Number 23, NSW Bureau of Crime Statistics and Research, May 1995.

⁸³ There are differences in the way remands are counted. Notably, it is the practice in some European jurisdictions to count as on remand any prisoner who has not yet reached the end of the appellate process. (See Young and Brown, (1993), p10.)

Table 9
Remand prisoners as percentage of total in custody, selected jurisdictions, 1986 to 1996

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
England and Wales	22	22	23	22	22	22	21	23	26	22	21
United States	34	35	36	37	35	35	34	33	32	32	
Australia	17	11	13	13	16	11	8	8	13	12	
New South Wales	15	15	16	14	13	12	10	10	10	9	
Victoria	11	13	13	13	16	17	16	13	13	14	
New Zealand	13	12	11	11	10	10	10	11	13	11	11

Notes:

- New Zealand, England and Wales, Australian states: Remand numbers include both those kept in custody after they have been convicted but not yet sentenced, and those where no decision has been made about the outcome of the case. Numbers are average daily remand population for year to nearest whole number.
- Australian states: figures were recalculated from percentages.
- United States: these figures are for all *jail* inmates⁸⁴, and thus are a slight overcount compared to the New Zealand, and England and Wales definitions.

Sources:

- New Zealand: S. Triggs, Ministry of Justice (from Department of Corrections muster sheets).
- Australian states: National Correctional Services Statistical Unit (May 1997). Appendix A.
- United States: Bureau of Justice Statistics (June 1997). Calculated from Tables in Chapter 1: Trends in U.S. Correctional Populations.
- Refer to sources Table 8 for population data sources.

The predominant trend in terms of the influence of remand populations in the jurisdictions examined here is one of remand representing either a stable percentage of the prison population, or indeed a declining one, a fact which reinforces the importance of analysing sentenced prison populations in order to discover the sources of rising overall rates of imprisonment.

Table 10
Rate of sentenced imprisonment (remands not included) per 100,000 total population, selected jurisdictions, 1986 to 1996

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
England and Wales	73	78	76	75	69	69	69	64	69	76	83
United States	217	231	247	276	297	313	332	359	389	411	
Australia	60	66	65	67	70	77	82	83	83	85	
New South Wales	65	69	69	78	95	106	113	114	115	115	
Victoria	42	41	43	45	45	44	43	44	49	47	
New Zealand	70	79	88	95	102	109	110	116	108	111	117

Sources:

- England and Wales, New Zealand, United States: Sentenced population sources as for table 8.
- Australian states: Calculated from National Correctional Services Statistical Unit (May 1997).
- Refer to sources for Table 8 for population data sources.

Admissions and Sentences Served

Prison populations are a function of the number of people sent to prison and the length of time they stay there. Differences in imprisonment rates can result from differences in the rates of admission or in the average duration of actual detention or a combination of the two.

⁸⁴ Powell *et al* (1997), p.428, write: "Jails are detention facilities, usually managed by counties or municipalities, which hold men and women awaiting adjudication for alleged crimes. They also serve as short-term, local correctional centres for those serving short terms for misdemeanours. In contrast, prisons are generally state-operated institutions for adjudicated felons, whose crimes are usually more egregious and sentences longer."

Few jurisdictions keep data on time served on remand or on time actually served in prison. However, average time in custody can be crudely estimated by dividing the average daily prison population by the number of prison admissions in the same year.⁸⁵ Sentenced admissions per 100,000 population and the estimated average length of sentences served are compared in the tables below.

Table 11
Admission rates of sentenced inmates per 100,000 total population, by selected jurisdictions 1986 to 1996

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
England and Wales	172	172	162	151	133	142	136	142	162	172	159
United States	91	100	107	128	137	134	140	132	132	137	
Australia	160	161	134	118	127	143	156	151	137	132	
New South Wales	145	147	98	87	111	133	156	168	162	113	
Victoria	88	72	59	51	45	45	34	32	33	45	
New Zealand	179	184	179	195	196	199	201	204	183	178	192

Notes

- Australian States: Figures are totals of monthly data for the July-June year. For example, 1995 is July 1994-June 1995. Figures for 1993/4 for months of September 1993 and May/June 1994 were not available. Therefore the figure for 1994 is an estimate which uses the average of the other 9 months to account for the missing three.

Sources:

- Australian States: Salloom, Biles, and Walker (1993); Australian Institute of Criminology (series); National Correctional Services Statistics Unit (February 1996).
- United States: Bureau of Justice Statistics (June 1997), table 1.16.
- New Zealand: S. Triggs, Ministry of Justice.
- England and Wales: Home Office (July 1997), calculated from tables 4.7 and 5.7.
- Refer to sources for Table 8 for population data sources.

Table 12
Estimated average time served in custody by sentenced prisoners (months), by selected jurisdictions, 1986 to 1996

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
England and Wales	5.1	5.5	5.7	6.0	6.3	5.8	6.1	5.4	5.1	5.3	6.2
United States	28.6	27.8	27.7	25.8	26.0	28.1	28.5	32.7	35.3	36.0	
Australia	4.5	4.9	5.8	6.9	6.7	6.5	6.3	6.6	7.2	7.8	
New South Wales	5.4	5.6	8.5	10.8	10.3	9.6	8.7	8.1	8.5	12.2	
Victoria	5.7	6.7	8.7	10.6	11.9	11.6	15.1	16.6	17.6	12.5	
New Zealand	4.7	5.1	5.9	5.8	6.3	6.6	6.6	6.8	7.1	7.5	7.3

Notes:

- Calculated from data used to produce Tables 10 and 11.

New Zealand clearly has the highest admission rate of the jurisdictions represented here (even the United States) in all years over the past decade. From the above data, it would seem that the comparatively low imprisonment rate in Victoria is not a function of very short average time in custody but rather a very low rate of admissions, which has also been declining in recent years. Victoria is making a much more selective use of imprisonment and its relatively high average period of custody (over 1 year for each of the 4 years prior to

⁸⁵ This is a rough estimation procedure as the prison population in any one year contains large numbers of inmates from previous years, so that it is only accurate if the prison population is in equilibrium.

1996) may well be because the prison population comprises relatively few minor offenders in prison compared to other jurisdictions. The example of Victoria, however, runs counter to the research literature which generally shows that jurisdictions with a comparatively low prison population, or those that have achieved a reduction in that population, seem to manage to regulate or change prison rates through length of detention, and especially sentence length, rather than through admissions.⁸⁶ From the above two tables it appears that New Zealand's high rate of imprisonment relative to other jurisdictions is more a result of a high admission rate than long average periods served in custody. As noted elsewhere in this paper, the major driver of New Zealand's increasing prison population has been the increasing proportion of violent offenders in that population. It will be shown later in this section that our rate of convictions for violent offences is high relative to other jurisdictions.

It is interesting to compare figures for average length of sentence served with those of the average length of sentences imposed. As shown in Section 3, New Zealand's average length of sentence imposed by the courts in 1996 was 11.7 months (although this is an underestimate because it excludes life imprisonment). This compares with the estimated figure in the above table of an average of 7.3 months of time actually served, suggesting that on average 62.4% of nominal sentences is being served (or somewhat less, given the exclusion of indeterminate life sentences from the average imposed). In England and Wales the average sentence length imposed in 1996 was 14.9 months (excluding indeterminate sentences)⁸⁷ compared to the average time in custody of 6.2 months. These comparisons are somewhat rough, but they are useful in drawing attention to the various systems of early release that apply in different jurisdictions and how nominal sentence lengths do not mean the same thing from one jurisdiction to another.

Convictions and Sentencing

Rates of admission to prison are clearly influenced by conviction rates and the use of custody as a sentencing option (the percentage of convictions that result in a prison sentence). Unfortunately, few jurisdictions provide comparable conviction data. One of the difficulties is that it is not always clear whether the same range of offences are included in this data. Other jurisdictions may have a greater or smaller range of minor offences dealt with as infringements that do not result in convictions. Comparisons of New Zealand's conviction rates over time with three other jurisdictions are shown below:

⁸⁶ Young and Brown, (1993), pp18,19.

⁸⁷ Home Office (July 1997), pp78-9, 92.

Table 13
Rate of conviction per 100,000 total population, by selected jurisdictions, 1986 to 1996

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
New Zealand		3428	3839	4135	3067	3148	2975	3067	3087	3069	3030
England and Wales	3776	3090	3081	3028	2978	2945	2964	2771	2727	2616	2766
New South Wales								1576	1463	1467	1544
Victoria					5613	7225	7539	7701	6931	6414	6485

Notes:

- At this point in the paper the United States has had to be excluded. Statistics for convictions were only available for felonies (roughly equivalent to indictable offences in New Zealand) and not misdemeanors. Thus, conviction numbers and rates would appear much smaller than other countries, while later calculations of imprisonment per 100 convictions would appear vastly greater than other jurisdictions.
- New Zealand, England and Wales, New South Wales: Based on the number of cases which resulted in a conviction.
- **Victoria: Figures are charge-based; thus each charge against an offender is separate. In 1996 the average number of charges per case over all offence types was 1.89 in New Zealand.**⁸⁸

Sources:

- New Zealand: Spier (1997) and Spier (1994).
- England and Wales: Home Office (November 1997), (November 1996), and (November 1995).
- New South Wales: NSW Bureau of Crime Statistics and Research (1994), (1995), (1996), (1997: 1).
- Victoria: Calculated from *Sentencing Statistics Higher Criminal Courts* 1987-1996 (Table 3 for each year), and *Sentencing Statistics Magistrates' Courts* 1990-1996 (Table CR 4.4 for each year). In respect of Magistrates Statistics, only these years were available. Statistics supplied by Australian Institute of Criminology, Canberra.

Table 14
Sentenced admissions/receptions to prison per 100 convictions, by selected jurisdictions, 1986 to 1996

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
England and Wales	4.5	5.6	5.3	5.0	4.5	4.8	4.6	5.1	5.9	6.6	5.8
New South Wales								10.7	11.1	7.7	
Victoria					0.8	0.6	0.5	0.4	0.5	0.7	
New Zealand - All Offences		5.4	4.7	4.7	6.4	6.3	6.8	6.6	5.9	5.8	6.3
New Zealand - Non-Traffic Offences		8.0	7.8	8.9	10.6	10.0	10.1	9.2	8.2	8.3	8.7
New Zealand - Traffic Offences		2.5	2.0	2.0	2.8	3.0	3.2	3.2	2.7	2.6	3.2

Note:

- Victoria: It is important to reiterate that Victorian data for convictions are charge-based and thus not strictly comparable. However, the Victorian figures here are so low as to suggest that even if this fact is taken into account and case based-data used (if it were available), Victoria's figures would remain lower than those of other jurisdictions.

Table 15
Sentenced prisoners per 100,000 convictions, by selected jurisdictions, 1986 to 1996

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
New Zealand		2303.4	2289.5	2288.5	3340.0	3467.3	3713.7	3769.2	3497.0	3631.2	3849.2
England and Wales	1924.3	2528.0	2478.5	2477.1	2325.4	2333.0	2340.2	2318.5	2540.7	2907.1	2994.1
New South Wales								7250.5	7873.0	7834.3	
Victoria					795.2	603.8	570.3	576.2	705.6	733.9	

Notes:

- This table is calculated from data used to produce Table 10, and data used to produce Table 13.
- Victorian data is charge-based - see Table 13 commentary.

⁸⁸ See Triggs, (1998), p36.

If one compares the conviction rate for all offences per 100,000 total population (Table 13), then New Zealand is seen to have a rate 10% higher than the UK and nearly twice that of NSW (which has a similar per capita imprisonment rate to New Zealand). Table 14 shows that in 1995 New Zealand was sending 1 in every 17 convicted offenders to prison, England and Wales 1 in every 15, while for NSW it was approximately 1 in every 13. The average term of imprisonment served is 5.3 months in the UK, 7.5 months in New Zealand, and 12.2 months in NSW (Table 12). This suggests that New Zealand's comparatively high imprisonment rate is largely a product of many more convictions per capita rather than a higher percentage of convicted offenders being imprisoned or because of relatively long terms of imprisonment being served. Given our higher rate of conviction, it is perhaps surprising that our per capita imprisonment rate is not much higher than it already is. That it is broadly similar to that of New South Wales appears to be because New Zealand imprisons its convicted offenders somewhat less often and for shorter average periods of time (see Tables 14 and 12). This could be because the offences resulting in conviction are on average less serious, with other jurisdictions filtering out more cases before the arrest and conviction stages. Alternatively, it could be because New Zealand is simply dealing at the conviction stage more leniently with offences of the same or even greater seriousness.

Victoria's conviction figures are inflated relative to the other countries because they are charge-based and the others are offender-based.⁸⁹ Even taking this into account, Victoria still has a low rate of admissions to prison for every hundred convictions (although there are high average periods served in custody).

The picture of New Zealand's higher rate of conviction compared to New South Wales and England and Wales is also maintained when convictions are examined by offence types. Conviction rates for violent offences are the most significant here because those are the offence types that are most likely to attract custodial sentences.⁹⁰

Table 16
Rate of conviction for a violent offence or an offence against the person per 100,000 total population, selected jurisdictions, 1986 to 1996

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
England and Wales	105.3	116.3	128.7	133.2	125.6	112.5	104.7	93.9	91.0	75.3	77.5
New Zealand		261.8	252.5	241.6	209.6	223.3	243.6	307.2	367.3	374.5	358.5
New South Wales								210.1	205.0	201.6	219.6

Sources:

- See sources Table 8 for population sources.
- See sources Table 13 for conviction sources.

⁸⁹ See notes to Table 13.

⁹⁰ It is still hard to generalise from this data as the mass of convictions for these offence types are for minor assaults, whereas most prison sentences are for more serious offences against the person. A large number of convictions may therefore only mean that there are a large number of minor assaults dealt with by the courts.

Table 17
Admissions per 100 convictions for a violent offence or an offence against the person, selected jurisdictions, 1986 to 1996

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
England and Wales	18.0	18.4	16.3	14.3	13.5	14.7	16.5	18.9	21.5	28.6	30.6
New Zealand		16.5	17.6	19.3	22.5	22.8	22.4	20.4	16.4	15.8	16.8
New South Wales								14.1	14.4	14.4	13.3

Note:

- New South Wales: Due to the unavailability of admissions data broken down by offence type, this table uses percentage of convictions which result in imprisonment instead of admissions. Since receptions data count several overlapping sentences (from several offences involving a single offender) as one admission, using a sentence count gives an overcount of the number of 'admissions' for the table above. This means that when the calculation of average length of detention is made for the table below, the average length of detention appears lower than it probably is.

Sources:

- New Zealand: S. Triggs, Ministry of Justice.
- England and Wales: Home Office (July 1997).
- New South Wales: NSW Bureau of Crime Statistics and Research, (1994), (1995), (1996), (1997).

Table 18
Estimated average time served (months) by inmates whose major offence was a violent offence or an offence against the person, selected jurisdictions, 1986-1996

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
England and Wales	16.3	16.1	17.5	19.7	20.7	20.3	19.6	20.5	19.6	19.2	18.7
New Zealand		10.6		13.0		14.3		13.0		14.4	
New South Wales								21.4		19.9	

Note:

- This is calculated as: Sentenced Prison Population in Prison for a Violent or Against the Person Offence/Admissions for Violent or Against the Person Offence.

Sources:

- See sources Tables 10 (for Sentenced Prison Populations) and 17 (for Admissions)

New Zealand's conviction rate for violent offences and offences against the person is considerably higher than that of the other jurisdictions presented. New Zealand is seen to have a rate 4 ½ times that of the UK in 1996 and more than 1 ½ times that of NSW (Table 16). However, the UK put more of those convicted offenders in prison (nearly 2 times as many) in 1996 (Table 17) and for longer terms (average of 19.2 months compared to 14.4 months in New Zealand in 1995). In NSW the average time served by inmates whose major offence was a violent or other offence against the person (19.9 months in 1995) was also longer than in New Zealand.

Convictions for property offences and imprisonment rates for those convictions are shown below.

Table 19
Rate of conviction for property offences per 100,000 total population, selected jurisdictions, 1986 to 1996

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
England and Wales	538.7	523.0	487.8	413.6	414.8	412.9	393.9	367.0	346.8	344.1	332.3
New Zealand		653.3	641.9	605.4	551.8	600.4	609.9	612.1	572.5	536.7	525.6
New South Wales								353.3	330.7	336.3	351.5

Sources:

- See sources Table 8 for population sources.
- See sources Table 13 for conviction sources.

Table 20
Admissions per 100 convictions for property offences, selected jurisdictions, 1986 to 1996

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
England and Wales	8.3	8.0	7.6	8.0	6.3	6.6	6.8	7.4	9.7	11.2	12.2
New Zealand		9.8	8.6	9.4	11.2	10.0	10.1	9.7	9.0	9.2	10.1
New South Wales								12.9	13.1	13.5	13.3

Note:

- New South Wales: see note Table 17.

Sources:

- New Zealand: S. Triggs, Ministry of Justice.
- England and Wales: Home Office (July 1997).
- New South Wales: NSW Bureau of Crime Statistics and Research, (1994), (1995), (1996), (1997).

Table 21
Estimated average time served (months) by inmates whose major offence was a property offence, selected jurisdictions, 1986 to 1996

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
England and Wales	8.7	9.1	8.8	8.9	9.1	7.7	8.1	7.3	6.5	6.5	6.6
New Zealand		4.7		4.8		5.3		4.2		5.8	
New South Wales								10.0		9.2	

Sources:

- See sources for Tables 10 (for Sentenced Prison Populations) and 17 (for Admissions).

As with convictions for violent offences, New Zealand seems to have a comparatively high rate of convictions for property offences and a low rate of imprisonment in respect of those convictions.

Comparing differences in conviction rates to explain variations between jurisdictions in the use of imprisonment has to be done carefully. This is partly because of difficulties in obtaining comparable data. It is also because conviction rates do not take into account differences in clearance rates, rates of police cautioning, or the use of diversion. These will affect the type and seriousness of convicted offences for which sentences are imposed. Two jurisdictions could have similar levels of convictions but significantly different rates of imprisonment if the convictions relate to different types of offences.

Reported and Cleared Crime

Conviction rates are influenced by reported and cleared crime rates. It needs to be noted from the outset that jurisdictions vary enormously in the comprehensiveness of their recording practices and in the extent to which they classify relatively trivial offences as either offences or other incidents. Similarly, arriving at clearance rates is notoriously complex and open to manipulation.

Table 22 below shows that, for violent offences, New Zealand's recorded crime rates per head of population are significantly and consistently higher than those of England and Wales and, while not markedly so, also those of New South Wales. Our recorded crime rate for property offences is also consistently higher than both the other two jurisdictions, while for drug offences, New Zealand records a higher number of offences per head of population than New South Wales (data for drug offences was not available for England and Wales). Overall, New Zealand's recorded crime rate is significantly higher than that of the other jurisdictions. It should be noted that the New Zealand total figure is not strictly comparable with the other jurisdictions because it is a rate for non-traffic offences only.⁹¹ This means that the New Zealand rate is in fact a substantial undercount of the number of recorded offences compared to the other jurisdictions (for which it was impossible to exclude traffic offences).

Table 22
Recorded crime, rates per 100,000 total population, selected jurisdictions, selected offence types, 1986 to 1996

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
ENGLAND AND WALES											
Violence	355.2	395.1	428.2	473.4	491.3	518.8	554.2	571.9	601.1	600.4	663.1
Property	7281.4	7301.3	6886.7	7110.2	6937.6	9738.6	10273.8	10091.6	9482.4	9150.9	8915.9
Total recorded crime	7669.9	7734.7	7359.9	7638.0	7490.0	10325.0	10904.9	10743.2	10175.9	9849.2	9686.3
NEW ZEALAND											
Violence	767.2	832.6	920.0	894.5	919.8	956.9	992.8	1204.6	1386.3	1393.3	1381.4
Property	10053.0	9706.9	9774.0	9975.3	10685.9	11579.8	11886.0	11326.5	10474.2	10890.0	10952.3
Drug	524.0	529.1	586.8	552.8	575.5	597.0	593.1	702.3	713.9	603.5	627.7
Total recorded crime	12497.0	12201.3	12474.7	12578.2	13183.6	14105.2	14379.5	14331.6	13794.6	14157.7	14297.9
NEW SOUTH WALES											
Violence				621.9	686.4	724.6	717.1	788.2		889.4	1051.6
Property				6676.1	6604.1	6667.8	6208.0	6252.0		6704.0	7332.9
Drug				339.7	346.6	385.6	464.5	395.8		313.0	319.9
Total recorded crime				8265.7	8357.3	8530.2	8148.1	8254.9		9317.8	10316.9

Notes:

- **New Zealand total is for non-traffic offences only. Refer also note in above text.**
- Drug offence data not available separately for England and Wales.
- Data for 1994 were not available for NSW. The transition by Police to a new computer system meant that data were only available for April to December 1994.
- The three offence types do not add up to the total rate shown - there are other offences types for which rates are not included here.

⁹¹ Owing to recording practices which are different from those used to record non-traffic offences, data for traffic offences is neither comparable nor readily available. However, it is likely that in any given year, the volume of recorded traffic offences in New Zealand is around 105,000-110,000. This would mean, for example, that the rate of total recorded crime for New Zealand is likely to be approximately 17,000 per 100,000 total population.

Sources:

- New South Wales: NSW Bureau of Crime Statistics and Research, New South Wales Recorded Crime Statistics (series) 1991-1996.
- England and Wales: Home Office (November 1997).
- New Zealand: Supplied by S. Triggs, Ministry of Justice.
- Population data as for Table 8.

Table 23 shows the degree to which recorded crime is cleared by the police. No totals are shown because traffic offences in particular would upwardly distort the figures because most traffic offences are recorded and cleared simultaneously. It was not possible to separate traffic offences and provide non-traffic offence totals for the jurisdictions presented.

Table 23

Cleared crime as a percentage of recorded crime, selected jurisdictions, selected offence types, 1986 to 1996.

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
ENGLAND AND WALES											
Violence	62.7	65.8	67.9	69.7	69.3	67.9	65.9	65.4	66.4	64.9	65.7
Property	28.2	29.4	31.1	29.2	33.3	25.4	22.1	21.1	22.0	21.7	21.7
NEW ZEALAND											
Violence	76.0	78.2	78.2	76.6	74.7	73.9	74.9	78.6	78.8	77.8	77.8
Property	27.4	28.2	28.1	27.9	25.7	25.1	25.3	28.6	30.4	29.2	28.5
Drug	92.2	91.6	92.8	90.2	90.6	91.1	91.5	91.5	92.3	91.7	92.0
NEW SOUTH WALES											
Violence				55.1	54.3	55.4	54.9	55.9			
Property				11.9	12.7	14.3	14.4	15.0			
Drug				89.3	86.2	88.7	89.4	89.1			

Notes:

- New South Wales: Following the transition to the new computer system, presentation of clearance data in the Recorded Crime report series became less comprehensive. This meant it became impossible to provide complete offence type breakdowns as had been possible.
- England and Wales: Data for drug offences not available.
- Totals not shown because traffic offences were not able to be separated from England and Wales and New South Wales totals data, and data including traffic offences was not available in New Zealand. Traffic offences have a virtual 100% clearance rate which upwardly biases the overall percentage cleared.

Sources:

- As for Table 22.

The table shows that, in general, more of the violent crime recorded in New Zealand was cleared than in the other two jurisdictions. A somewhat greater percentage of property offences was being cleared in New Zealand than other jurisdictions, especially by the end of the ten years presented here. Clearance rates for drugs was roughly comparable in New Zealand and New South Wales.

Such percentages are important because they are a partial measure of how many offenders are likely to proceed through to further stages of the criminal justice system and perhaps end up in prison. This is especially true of violent offences. It may well be that New Zealand's higher recorded, and then clearance, rates for offending contribute to a higher conviction rate.

Once an offence is recorded, clearance rates are a partial measure of the effectiveness of policing agencies. New Zealand's Police appear to be doing a comparatively effective job in clearing crime. However, what is less clear are the reasons why New Zealand recorded crime

rates are so high. Any number of factors could be responsible. For example, it may simply be that New Zealand has a greater number of offences committed, or there is a greater willingness to report offences that are committed or that the police have particularly good recording systems. It may have something to do with New Zealand's comparatively small population, the nature of our justice system and public perceptions of the police. It may also be that more incidents are recorded by the police as "offences" than is the case elsewhere.⁹² Data for particular offence types, and interjurisdictional comparisons between them, are affected by policy decisions about recording practices, and the public perception of those. If a particular type of offence is focussed on by a Police force, it is entirely possible that recorded crime rates may jump startlingly, when in fact there has been no such alarming leap in criminal activity. Whatever the case, the fact that New Zealand's rates of recorded crime are comparatively higher is an important finding, because it means that more offenders are 'available' to be processed further in the system and therefore more may end up in prison. This conclusion should of course be viewed with caution, for it is only careful studies of 'attrition' between different stages of the criminal justice systems of several countries which would allow firm comparative conclusions to be reached.

Prison and Other Sentences

Those jurisdictions with higher imprisonment rates also have comparatively large numbers of offenders subject to continuing community-based supervision or control.⁹³ The table below provides comparative data for Australian states and New Zealand in 1991, as evidence of the existence of this phenomenon.

Table 24
Total number of people serving sentences and rates per 100,000 population in Victoria, New South Wales, Queensland, and New Zealand, August 1991⁹⁴

	Community-based sentences	Imprisonment	Total
New Zealand (pop 3.5m)	22,243 636 per 100,000	4,230 121 per 100,000	26,473 756 per 100,000
Victoria (pop 4.5m)	6,891 153 per 100,000	2,294 51 per 100,000	9,185 204 per 100,000
New South Wales (pop 6m)	17,570 293 per 100,000	5,915 100 per 100,000	23,485 391 per 100,000
Queensland (pop 3m)	12,202 407 per 100,000	2,139* 71 per 100,000	14,341 478 per 100,000

*Note that Queensland does not record in prison population statistics inmates in custody who are resident in work camps or community corrections centres (on work release schemes).

⁹² The *New Zealand National Survey of Crime Victims 1996* (Young, Morris, and Cameron, 1997) showed 40.8% of offences disclosed in the survey were reported to the police (p23) and 12.9% were recorded by the police (p19).

⁹³ Young and Brown, (1993), pp20, 43; Biles, (1996), p331.

⁹⁴ Department of Justice, *Imprisonment as "The Last Resort". The New Zealand Experience*, (1992), p9.

Although the above data are somewhat dated, they do show how in general high imprisonment rates exist alongside high percentages of the population subject to community based sanctions.

Summary

Table 25 below summarises the differences in recorded crime, conviction rates, imprisonment rates, admission rates and average custodial terms in one year for New Zealand, England and Wales, NSW, and Victoria.

Table 25`
Comparative data, selected jurisdictions, 1995

	New Zealand	Victoria	New South Wales	England and Wales
Recorded crime rate	14,158 per 100,000 pop**		9,318 per 100,000 pop	9,849 per 100,000 pop
Conviction rate	3,069 per 100,000 pop	6,414 per 100,00 pop*	1,467 per 100,00 pop	2,616 per 100,000 pop
Sentenced admissions per 100 convictions	5.8 per 100 convictions	0.7 per 100 convictions*	7.7 per 100 convictions	6.6 per 100 convictions
Admission rate	178 per 100,000 pop	45 per 100,000 pop	113 per 100,000 pop	172 per 100,000 pop
Imprisonment rate	126 per 100,000 pop	55 per 100,000 pop	127 per 100,000 pop	99 per 100,000 pop
Prison pop per 100,000 recorded crimes	787**		1,234	772
Estimated average time in custody	7.5 months	12.5 months	12.2 months	5.3 months

*Victoria's conviction figures are charge-based rather than case-based, which inflates them in comparison with the other jurisdictions.

**New Zealand total recorded crime is for non-traffic offences only.

Table 25 seems to indicate that New Zealand's relatively high rate of imprisonment is a reflection of a relatively high rate of conviction, rather than a more punitive approach to sentencing. Victoria's comparatively low per capita imprisonment rate by international standards is discussed in more detail in Appendix 2.

Conclusions

This comparison of New Zealand's imprisonment rate with that of other jurisdictions began with the fact that our gross imprisonment rate as expressed in terms of prisoners per 100,000 total population is, apart from that of the United States, one of the highest in the Western world. International comparisons such as those provided here may reveal underlying reasons why particular jurisdictions end up with the rates of imprisonment they do. Rates of

imprisonment are the product of the number and type of offences committed, willingness to report offences committed, the policies and practices of police authorities in respect of recording and clearing crime, and apprehending and prosecuting offenders, the number of convictions in the courts, and the imposition of particular sanctions on convicted offenders.

One of the limitations of international comparisons is the important political, social, economic, and cultural differences between countries which affect the above processes. These in turn are rooted in a society's historical values and socio-economic structure. Penal policy is the product of social and political choices made by state and civil institutions under specific historic conditions. The overall intrusiveness of the state and the severity of its punishments are shaped by public sensibilities, or at least the state's view of what will be popular with the public, or what the moral consensus is, and may well relate more to cultural factors than the formal structure of the criminal law or particular penal policies or principles that are espoused.

One recent theory has argued that a society's punitiveness seems to be related to its relative egalitarianism. The greater the differentials in terms of income and other rewards for those who succeed and the greater the gaps between rich and poor, the less tolerance towards those who break society's rules and the more extreme the scale of punishment will be. Countries that have a highly individualistic and competitive ethos, with substantial gaps between rich and poor, are likely to be comparatively severe in their penal outlook. Countries with highly developed welfare systems and a less materialistic reward structure will tend to be comparatively mild. While there is some evidence to lend support to this thesis, any sort of systematic cross-national investigation of its validity is in its infancy.⁹⁵

Another theory which relates to the political and social context, is that in some countries reform in the criminal justice system is determined by public sentiment, the strength of particular political parties and their programmes, and by the beliefs and preferences of Ministers in charge of justice issues. By contrast, other countries have a more bureaucratic power structure, where the convictions of senior civil servants and the experts consulted by these public servants have the major influence. Finland (as with the Nordic countries generally) operates to a large degree under the latter model and is of particular interest because, as shown in Table 7, it has achieved a significant reduction in its rate of imprisonment since 1987.⁹⁶ This achievement is discussed in Appendix 2.

The data presented in this section suggest that New Zealand is not particularly punitive, either in terms of the average time it requires offenders sentenced to imprisonment to serve, or in terms of the number of offenders it actually admits to prison (especially in respect of rate of admissions per convictions). This is true both in aggregate terms and also when the data are broken down by offence types. However, both by offence type and overall, New Zealand has a far higher rate of conviction than any of the other jurisdictions examined in any depth here, with the possible exception of Victoria. It could be concluded that this indicates a high crime rate by international standards, but victimisation surveys have shown that in general terms New Zealand's overall rates of offending are broadly consistent with those of other developed Western nations.⁹⁷ Our high conviction rate may instead reflect a readiness on the

⁹⁵ Young and Brown, (1993), pp41-2, 45.

⁹⁶ Törnudd P, *Fifteen Years of Decreasing Prisoner Rates in Finland*, (1993), p4.

⁹⁷ In the 1992 International Crime Survey (New Zealand did not participate in the 1996 Survey) New Zealand's overall victimisation rate (proportion of the sample group who had been the victim of one or more of the listed crimes) in 1991 was not significantly different from the rates in Australia, Canada, England and Wales, the

part of the public to report crime to the police (although our reporting rate is not high by international standards⁹⁸), combined with a police force which appears to be efficient at detecting, recording and clearing crime, and, once offenders are apprehended, prosecuting it. It may also be partly due to the extent to which incidents reported to the police are officially recorded as offences and the range of offences prosecuted in the courts rather than dealt with as infringements (which do not result in a conviction being entered against the offender).

The data do not indicate that the practice of imposing imprisonment on offenders is performed more often and with more severity in New Zealand than in other jurisdictions. What it does indicate is that our imprisonment rate is likely to have a great deal to do with the number of offenders actually being convicted by the courts and the sort of offences that account for those convictions.

Netherlands, and Italy, although it was higher than the rates in United States, Sweden and Belgium. New Zealand's five year (1987 –1991) rate of victimisation was not significantly different from the five year rates of Australia, England and Wales, and the Netherlands, although significantly higher than the rates of the United States, Canada, Sweden, Belgium, and Italy. See *Victimisation in New Zealand, As Measured by the 1992 International Crime Survey*, by Anne Harland, (1995), pp37-8. International crime victims surveys are limited by their exclusion of most of the more serious crimes.

⁹⁸ The 1996 International Crime Victims Survey (involving 11 industrialised countries) showed an average reporting rate for 6 types of offences of 50% (ranging from 47% to 58%) (pp39-40). The British Crime Survey had a reporting rate of 41% in 1995. The New Zealand National Survey of Crime Victims 1996 had 40.8 % of cases reported to the police (pp22-3).

6. Reducing Imprisonment: Illustrative Scenarios

This section analyses the effectiveness of a variety of hypothetical approaches to reducing the prison population, including some of the commonly suggested options and some less favoured scenarios. The size of the sentenced prison population can be reduced, or at least better controlled, by sending fewer people to prison (prosecuting fewer offences, making certain offences or groups of people non-imprisonable, or using alternative sentencing options), by making sentences shorter (reducing maximum penalties), by releasing inmates earlier, or by introducing flexibility into the commencement of sentences. This section brings together the current information available on these scenarios. It only looks at approaches that might reduce the sentenced prison population fairly rapidly and which are under the control of the courts and correctional systems (including those which would require legislative change).

A wide range of scenarios is presented, including some that go against recent trends in the criminal justice system (for example reducing maximum penalties for serious violent offenders, and earlier release for serious violent offenders). These particular examples have been included to illustrate the more dramatic reductions that could be achieved by targeting key drivers in the system that are contributing to the growth in inmate numbers. No one approach is recommended and scenarios are included simply to illustrate potential means of reducing the prison population.

The starting point is that most offenders in prison have committed very serious offences. Those offenders imprisoned for less serious offences usually have a long history of offending. Therefore targeting offenders who serve short sentences will have a very minor impact on the prison population and by the same logic any strategy aimed at reducing the prison population which does not apply to violent offenders or serious recidivists will have a minor impact. Reducing the imprisonment terms of serious offenders raises issues of public safety and also the possibility of additional costs resulting from recalls to prison and additional offending.

Which offenders/offences are to be imprisonable?

For less serious offences there may be benefit in taking away imprisonment as a sanction altogether, although this by itself would only reduce the increase in the prison population by a small amount. Making offences non-imprisonable raises issues of deterrence and incapacitation and powers of arrest.⁹⁹ Without legislative amendment, making certain offences non-imprisonable would effectively remove the power of arrest from the police in these cases, and remove the power to sentence those offenders to community-based sentences.

⁹⁹ Section 315 of the Crimes Act 1961 provides that the police may arrest and take into custody without a warrant any person committing an offence punishable by imprisonment or any person suspected with good cause of having committed an offence punishable by imprisonment. One implication of making any offence non-imprisonable is the effective removal of the above power from the police in those cases.

Some less serious non-violent offences which are currently imprisonable and which were the major offences for which inmates were in prison at the time of the 1995 prison census were: use or possession of cannabis other than for supply (3 inmates); fines default (1 inmate); and driving while disqualified (310 inmates). Only the numbers in the last group are significant.

Driving while disqualified made non-imprisonable

Under section 30AA(4) of the Transport Act 1962 any person who drives while disqualified is liable:

- for a first offence, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$3,000 or to both; and
- for a second or subsequent offence, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$6,000 or both.¹⁰⁰

Most offenders in custody for driving while disqualified have extensive histories of previous offending. The average number of previous convictions for these offenders was 30, including an average of 3.6 previous serious driving offences, 15.3 previous property offences, 3.7 previous offences against justice and 2.4 previous violent offences. Over 80% had served a previous custodial sentence (3.2 custodial sentences on average).

Three arguments against imprisonment as a sanction for disqualified drivers are:

- a prison sentence prevents the driver from driving only while in custody and the average sentence served by these offenders is under 3 months;
- previous offending records and previous custodial sentences of these offenders show that imprisonment does not deter this type of offender;
- driving while disqualified is disobeying a court order and does not in itself constitute any danger to other persons.

In November 1995 (prison census data) there were 310 inmates in custody (almost 8% of the prison population) whose major offence was driving while disqualified. However, if driving while disqualified was to be made non-imprisonable this would have an impact on prison population numbers only where no other offence had been committed. In 1993 73% of those whose major offence was driving while disqualified were also serving custodial sentences for other offences at the same time (54% being drink driving offences,¹⁰¹ 22% property offences, and 9% violent offences).¹⁰² The reduction in the prison population if driving while disqualified was non-imprisonable would therefore be of the order of 80 inmates.¹⁰³

This would be further reduced to about 30 inmates if people with a previous conviction for breach of periodic detention were excluded from this group.

¹⁰⁰ Under the Land Transport Bill 1997 the maximum sentence of imprisonment for a first or second offence of driving while disqualified is 3 months and for a third or subsequent offence it is 2 years.

¹⁰¹ Under the Land Transport Bill (see above) the maximum penalty for a third or subsequent offence of drink-driving is to be 2 years (currently 3 months for one or more such offences).

¹⁰² Unpublished Department of Justice research paper, 1995.

¹⁰³ This number will be reduced if the penalty is changed as set out in the Land Transport Bill 1997, see footnote above.

Dishonesty offences made non-imprisonable

If dishonesty offences such as theft, fraud and receiving (but excluding burglary) involving \$500 or less were made non-imprisonable then the prison muster could be reduced by about 31 people. However, these offenders had an average of 66 previous convictions each, including an average of 54 previous property convictions and 3 previous prison sentences.

If burglary was made non-imprisonable then according to the 1995 Prison Census there would be a reduction of 452 inmates. Most offenders convicted of burglary also had long criminal records.

Prohibit imprisonment for offenders under the age of 18 years.

Four percent of the sentenced prison population at the time of the 1995 census (166 inmates) were aged under 18 years at the time of conviction. The four main major offences of this group were aggravated robbery (22%), burglary (24%), injuring/wounding (12%), and murder (10%). 59% had a violent offence as their major offence and 34% were property offenders.¹⁰⁴ If imprisonment is retained as an option for violent offenders, the potential reduction in the prison population by excluding all other offenders aged under 18 years would be about 70 inmates. (It is not possible to accurately estimate previous offending histories for young inmates.)

A variation on this option is to have corrective training¹⁰⁵ as the only custodial option for this age group, except for serious violent offenders and those who would have received life imprisonment. This would mean that all custodial sentences for this group would be for a period of 3 months with release after 2 months. The resulting reduction in the prison population would be approximately 40 inmates.

Decision to prosecute

The central issues regarding the decision to prosecute which have the potential to affect prison numbers are:

- whether to prosecute or not (the present adult police diversion scheme involves charging the alleged offender, and later withdrawing the charges if the offender meets the diversion requirements);
- what offence(s) the alleged offender is charged with and how those charges are laid.

A reduction in the number of prosecutions, and in particular the number of prosecutions for violent offences, might have some impact on the prison population. New Zealand has a significantly higher rate of convictions per capita than England and Wales, and New South Wales. The initial decision to prosecute rests with the police in the case of the general criminal law. Crown prosecutors are principally involved in prosecuting jury trials. There are Crown Law prosecution guidelines which include comments on evidential sufficiency and the public interest. One option is to issue guidelines of a similar nature to all prosecution

¹⁰⁴ Data provided by S. Triggs, Ministry of Justice.

¹⁰⁵ Corrective training is currently under review by the Department of Corrections.

agencies. However, government must not interfere in individual case decisions by the prosecution agencies and there would be obvious difficulties with going so far as to restrict or even defer prosecutions when prisons have reached their capacity. The police already have national guidelines regarding the application of the adult diversion scheme to mainly first offenders and offences at the less serious end of the scale. (Diversion may be considered where the offence is serious per se but the circumstances put it at the bottom end of the scale and the effect of a conviction would be out of all proportion to the gravity of the offence.) There are not likely to be large reductions in prison numbers unless diversion is extended to more serious offenders and more repeat offenders and not mainly limited to the relatively minor offences currently dealt with under the scheme.

Decision to Sentence

Comparatively little use is made of some of the provisions of Part II of the Criminal Justice Act, such as discharge without conviction, conviction and discharge, and deferment.

Reducing the number of prosecutions may “crowd out” some of these options to some extent, since the type of persons diverted from prosecution may be the type most suitable for deferment or discharge. However there still may be scope for deferment to be used more frequently in circumstances where diversion would be inappropriate because of the severity of the offence. Statutory guidelines to this effect would be required because the independence of the judiciary precludes directing judges to take into account factors or interests over and above what is stated in legislation.

Decision to impose a particular sentence

A reduction in the prison population would require either reducing the numbers of those sent to prison, reducing the length of sentences imposed, or both.

Reducing maximum sentences

Those serving comparatively long sentences make up a large part of the average daily prison population. For more serious offenders, reducing the length of sentence imposed would have an impact on the size of the prison population. This could be achieved by lowering maximum sentences for certain offences, including removing life imprisonment as the mandatory penalty for murder. In 1987 19.5% of the daily inmate population were serving sentences of 5 or more years. In 1995 the proportion had increased to 36.9%. There is little evidence to suggest that a more severe sentence is more effective at reducing recidivism, or that a longer prison sentence is a more effective deterrent to offending behaviour than a shorter one.

One way to reduce the prison population would be to reduce the maximum penalty for serious violent offences. These offences are defined both by the type of offence (e.g. manslaughter, sexual violation, robbery, wounding or injuring with intent to injure or cause grievous bodily harm) and by the sentence imposed (a prison sentence of more than 2 years). They have a range of maximum penalties, from 5 years for injuring with intent to injure to life imprisonment for manslaughter. As the average sentence length imposed for this group of offenders is relatively long (an average of over 5 years) and the proportion served is high

(a minimum of two-thirds of the imposed sentence), serious violent offenders make up a large proportion of the prison population (almost 40%).

Reducing the sentence length for these offences would go against the recent trend for increased sentences:

- in 1993 the maximum penalty for sexual violation increased from 14 to 20 years;
- over the last decade there has been a 15% overall increase in the average sentence length imposed for serious violent offences;
- in 1987 serious violent offenders were made ineligible for parole.

The reversal of these trends (i.e. a change toward shorter sentences for serious violent offences) would presumably meet with public opposition. This scenario is included because it is an example of the significant impact on inmate numbers of reducing long sentences.

It is assumed that a 20% decrease in the maximum penalties would lead to a 5% reduction in the average sentence imposed for all serious violent offenders. This would lead to a reduction in the prison population of around 100 inmates. However, it would take several years to fully realise this reduction.

This calculation is based on a 5% reduction in the current (1996) average imposed sentence of 63 months for 546 annual receptions for serious violent offences. Larger percentage reductions may have a slightly greater proportionate impact, as a number of the shorter sentences would then fall below 2 years and would therefore no longer be included as 'serious violent offences'. It should be noted that reducing the maximum sentences for only the nine serious offences which constitute serious violent offences would disrupt relativities between maximum sentences.

For most offences the average custodial sentence actually imposed is already substantially less than the maximum penalty. It may therefore require substantial reductions in maximum penalties before reduced sentences would impact on the prison population.

Two other potential areas for reduced maximum penalties are driving while disqualified and dishonesty offences involving small amounts of money.

The present maximum term for a second or subsequent driving while disqualified offence is 5 years. In comparison, the current maximum penalty for driving with excess blood alcohol levels is 3 months. Reckless driving and careless driving causing injury or death also carry maximum 3 month penalties. This means that people convicted of multiple driving offences often have driving while disqualified as the designated most serious offence.

This situation is likely to change if currently proposed changes to traffic penalties are agreed.¹⁰⁶ The proposal is to increase the maximum penalty to 2 years for a third or subsequent offence of driving with excess blood alcohol levels. The maximum penalty for a third or subsequent offence of driving while disqualified would be reduced to 2 years (for first and second offences it would be a maximum of 3 months).

¹⁰⁶ Land Transport Bill, 1997.

Assuming the reduced sentence only affects those imprisoned for driving while disqualified who are not charged at the same time with other serious traffic offences or other imprisonable offences, and assuming an average decrease in the sentence served of 20%, this option is likely to reduce the prison population by about 30 inmates. It should be noted that the reduction in the maximum penalty for driving while disqualified currently being proposed is accompanied by an increase in the maximum penalty for repeat drink driving offences. It should also be noted that since the sentence lengths imposed for second or subsequent driving while disqualified offences are at present generally substantially less than the maximum penalty, there might be minimal impact from reducing that maximum.

Some property offences involving small amounts of money currently have relatively high maximum penalties. For example, the maximum penalty for theft of between \$100 and \$300 is one year's imprisonment, compared to a 6 months to one year maximum penalty for common assault. However, imprisonment is already rarely used for minor property offences. As was seen earlier, even making these offences non-imprisonable would reduce the prison population by only around 30. Reducing the average sentence served by 20% could decrease the prison population by about 6 inmates.

No imprisonment under 6 months

Suggestions for reducing the number of inmates in prison often focus on reducing the number of short sentences. If, for example, short prison sentences – generally up to 6 months – were not imposed and the offender dealt with instead by a non-custodial measure, there would be a reduction in the prison population of about 241 inmates (6% of the prison population). The danger with this, which might nullify its effect, is that some offenders who previously would have received less than 6 months as a sentence will instead be sentenced to 6 months or more, rather than a non-custodial sentence. Almost a quarter of inmates serving sentences of less than 6 months have driving while disqualified as their major offence. A further 8% of this group have driving with excess blood alcohol as their major offence and nearly 10% are imprisoned for breach of periodic detention. The potential for reducing the use of imprisonment for breach of periodic detention is limited, as prison is the only sanction more serious than periodic detention that can be used to deal with persistent breaches (there is a maximum term of imprisonment of 3 months imprisonment for breach of periodic detention).

Replace corrective training

Corrective training (CT) could be replaced with a new non-residential sanction suitable for the type of young offender currently sentenced to CT. The expected decrease in the prison population would be about 70 inmates. The actual change could be more or less than this depending on the level of uptake of the new sentence. If it proved popular, young offenders currently sentenced to non-CT custodial sentences may be re-directed to the new sentence, further decreasing the prison population. This would depend in part on the degree of compliance with the sentence. Conversely, some of those currently sentenced to corrective training may be given standard custodial sentences if the new option were not widely taken up. A much greater risk is that the courts may be inclined to sentence some offenders to this new sanction rather than other less costly community-based sentences. A pilot of any such replacement would help to assess the risks.

Home detention

Home detention (the confinement of offenders to their place of residence, continuously or during specified hours and with conditions, rather than in prison) was introduced in 1993 at the same time as suspended sentences. A pilot programme was conducted in the Auckland area which was open to inmates sentenced to imprisonment for more than a year who became eligible to be considered for parole. They could not be either serious violent offenders or serving indeterminate sentences, and the pilot aimed to place on home detention inmates who would not ordinarily have been released on parole. The average total caseload of home detainees in the pilot programme between March 1995 and November 1996 was 7.¹⁰⁷

A Bill changing the eligibility criteria for home detention has been introduced into Parliament. If enacted, home detention will become a way of serving all or part of a sentence of imprisonment of not more than two years if the court, following the imposition of such a sentence, makes a home detention order. The order would be made at the time of sentencing or during the term of the sentence. Home detention will also be available as a pre-parole option for those imprisoned for two years or more and currently eligible for parole at their one-third date, at three months before the one-third date.

As a sentencing option the modified home detention could potentially lead to a substantial reduction in the prison population. An estimated 1500 inmates are in prison with sentences of less than 2 years. If 10-20% of these people were considered appropriate for home detention then the prison population could be reduced by 150-300 inmates. Any calculation of cost savings would have to take into account the relative cost of home detention compared to imprisonment.

One of the possible problems associated with home detention as a sentencing option is that the actual reduction in the prison population could be much less than the predicted 150-300 due to net-widening. That is, the introduction of home detention as a sentencing option may lead to its extensive use in place of community-based sentences, rather than instead of custodial sentences as intended. This has been the experience of another new sentencing option, the suspended prison sentence (discussed in Section 3). As community-based sentences are cheaper to administer than home detention, the cost savings are likely to be limited if net-widening occurs.

In theory, as long as home detention is used in place of at least some prison sentences, there should be a decrease in the prison population. In practice, a significant proportion of offenders are likely to breach the conditions of home detention and receive a custodial sentence for the breach, thereby further reducing the potential reduction in prison numbers.

The actual reduction in the prison population due to home detention as a sentencing option may therefore be less than expected, perhaps around 50 inmates. Exact predictions are impossible to make given the unknown extent of net-widening that could occur.

Home detention as a pre-parole option may result in an average reduction of the prison population of the order of 4 to 55 inmates. This has been calculated by assuming:

¹⁰⁷ Church A. and Dunstan S. *Home Detention, The Evaluation of the home detention Pilot Programme, 1995-1997*, (1997).

- 22% (low option) to 67% (high option) of the inmates eligible for parole at their one-third date would be considered for home detention (this is based on the assumption that only those who would have been released early would be considered for home detention – 22% are currently released at their one-third date, while 67% are released before their half date);
- 10% (low option) to 50% (high option) of inmates have home environments suitable for home detention;
- the average reduction in sentence length is 3 months.

Sentencing guidelines

Another way of reducing sentence lengths, or the number of prison sentences imposed, or both, may be through sentencing guidelines.

The Criminal Justice Act states that:

- violent offenders should be imprisoned except in special circumstances (s5);
- people convicted of property offences should not be imprisoned, except in special circumstances (s6);
- any sentence of imprisonment should be as short as is “consonant with promoting the safety of the community” (s7);
- prison sentences should not be imposed on a person under the age of 16, except for a purely indictable offence (s8);
- custodial sentences may be imposed where the offender is unlikely to comply with other sentences (s9). (This applies even in relation to s6 offences above.)

A stronger direction against imprisonment could be along the following lines:

A court must not pass a sentence of imprisonment on a person unless the court, having considered all other available sentences, is satisfied that no other sentence is appropriate in all the circumstances of the case.

A further requirement could be placed on courts that when they pass a sentence of imprisonment of 2 years or less, they must state in writing the reasons for their decision, including reasons why a non-custodial sentence is not appropriate, and enter those reasons in the records of the court.

A more specific option that could be incorporated in sentencing guidelines (in line with restricting imprisonment for serious, particularly violent, offenders and repeat offenders) is that there be a presumption against imprisonment when the major offence is a non-violent offence that currently attracts an average sentence of 3 months or less and the offender has fewer than 5 previous convictions and no previous violent convictions. Under these restrictions, the prison population at the time of the 1995 Prison Census would have been reduced by 57 inmates. The actual reduction is likely to be less than this to the extent that special circumstances warrant a departure from the presumption.

Guidelines overseas have established sentencing ranges for offences set out in a schedule that takes into account the offending history of the accused and characteristics of the offence. In some cases prison capacity has been used as a constraint on such a schedule. If a sentencing range for one offence is increased, then another offence(s) must have the sentencing range

reduced in exchange. There are complicated issues in respect of the aims and strictness of these sorts of guidelines and how they are complied with or manipulated.¹⁰⁸

Administration of sentences

The scenarios discussed here are staggering the admission dates for offenders sentenced to imprisonment and introducing emergency release procedures to deal with overcrowding.

Staggering start dates

Staggering the starting dates of sentences could smooth out seasonal variations in the prison population, avoiding particularly high musters at peak times. There is no current provision in New Zealand for the deferment of a sentence commencement date on the basis of available prison space.¹⁰⁹ Sweden and the Netherlands both have systems of postponement of entry to prison. Offenders who are not placed on remand in custody are eligible. Suitable criteria would have to be developed, for example a delayed sentence start date would not be appropriate for persons remanded in custody or for other offenders who pose a risk to public safety or for those with long sentences to serve. There are potential compliance difficulties. In the Netherlands the “booking system” is now under review due to administrative delays and increases in non-compliance by “waiting prisoners” which has risen from 20% in 1985 to 33% in 1997.¹¹⁰

In theory, if the seasonal fluctuations could be completely smoothed out by delaying by several months the start date of prison sentences finalised around the middle of the year (between August and November when inmate numbers peak), the peak prison population could be reduced by 100 to 200 inmates.¹¹¹

Emergency release provisions

Another approach is the introduction of emergency release provisions designed to bring about a swift reduction in inmate numbers when musters reach unacceptably high levels. Such an approach could involve inmates appearing early before the parole board or obtaining early remission.¹¹² The Ministerial Committee of Inquiry into the Prisons System (1989)

¹⁰⁸ Ministry of Justice, *Sentencing Policy and Guidance, A Discussion Paper*, (1997), pp142-4.

¹⁰⁹ In fact the courts in *R v Upritchard* (High Court, Auckland T252/78, 4 May 1979) [1979] BCL 309 have said that it is a fundamental principle that a person convicted of a crime should be finally punished as soon as possible after conviction and not left awaiting sentence any longer than is reasonably necessary. (See Hall, *Hall's Sentencing*, 1993-1998, Volume 2, Appendix II. 7.3. J/351.)

¹¹⁰ Information provided by Department of Corrections (received from Dutch justice official in November 1997; see also David Downes, *Contrasts in Tolerance*, (1988), p46).

¹¹¹ The Department of Corrections is currently carrying out work on a “booking system”. Analysis of sentencing data indicates that from those offenders considered potentially eligible for a sentence deferment (that is those whose actual time served will be 10 weeks or less) there may be considerably fewer offenders actually suitable. To be able to capture the whole pool of potentially eligible offenders, the selection criteria for sentence deferment would have to be so broad as to possibly lead to suggestions that the credibility of the criminal system is being undermined. For example, it can be expected that a deferral for offenders sentenced to a term of imprisonment for a breach of periodic detention or a violent offence would be seen as unacceptable by the judiciary and the general public.

¹¹² To some extent provision has already been made for this. Section 97(6) of the Criminal Justice Act enables the Minister of Justice to designate a class of offenders who must be considered by the Parole Board for release

recommended introduction of an overcrowding relief procedure that would come into operation whenever the prison population exceeded the rated capacity of the institutions for 30 consecutive days. Under that procedure, after 30 consecutive days of overcrowding, all prisoners within 90 days of parole eligibility would become immediately eligible for parole consideration, with that procedure remaining in force until such time as the muster figures were reduced to below capacity level.¹¹³ Another arrangement could be on the basis that those inmates due to be discharged in say 2 weeks could be discharged instead one week earlier if the prison population rose beyond capacity.

Changes to parole eligibility

The average daily prison population is determined by the number of people sent to prison, and the length of time they spend there. A major factor in the latter is the proportion of the sentence imposed that the offender actually spends in prison. This in turn is determined by the law relating to release from prison. Extending or reducing inmates' eligibility for parole or remission will therefore have a significant effect on the prison population over time.

The current parole/remission provisions are set out in the earlier section on legislation.

Release at one-third date

If all offenders who received sentences of one year or less (approximately 4500 people per year) served only a third of that sentence rather than a half as they do now, the prison population would be reduced by about 330 inmates. This excludes corrective training inmates.

Parole at one-quarter

If inmates serving sentences of more than one year who are not serious violent offenders became eligible for parole after serving one quarter of their sentence instead of after one-third as currently is the case, the prison population would be reduced by about 170 to 320 inmates, assuming that imposed sentence lengths were not increased at the same time¹¹⁴. There would also be an immediate drop in the prison population if this earlier eligibility was extended to cover those already in prison.

Parole eligibility for serious violent offenders

Reversing the 1987 changes to parole eligibility for selected offenders would significantly slow down the rate of increase in the prison population, although the full effects would not be felt for some time unless it was also applied to those already serving sentences. There is also

on parole, notwithstanding that they are not otherwise eligible for parole. In 1984, under a similar provision in the Criminal Justice Act 1954, the then Prisons Parole Board was required to consider inmates subject to deportation and those in a penal institution for the first time serving sentences of two years or more, as a result of a very high prison muster. (Hall, G., *Sentencing in New Zealand*, (1987), p254.)

¹¹³ Ministerial Committee of Inquiry into the Prisons Systems 1989, *Prison Review: Te Ara Hou: The New Way*, (1989), p242. The net effect of such an arrangement, in the event that the emergency provisions came to be constantly applied, could be to reduce the non-parole period for all inmates by 90 days.

¹¹⁴ In 1995 it was estimated that the overall average proportion of the sentence served by these inmates was 44% (see Spier, P, (1995), p130). The estimated reduction in inmates is based on these inmates serving about 33-38% of their sentence if parole became available at the one-quarter date.

the option of reducing the list of serious violent offences by removing the less serious, i.e. wounding with intent to injure and robbery.

Although serious violent offenders make up only about 8% of receptions to prison, they account for almost 40% of the prison population, due to their long imposed sentences (an average of over 5 years) and the high proportion of the sentence served. Therefore, small changes in the number of inmates in this group can make a significant difference to the size of the prison population.

If people who have committed serious violent offences were made eligible for parole in line with other violent offenders, the eventual reduction in the prison population would be likely to be between 250 to 650 offenders depending on whether they became eligible for parole after serving one-half or one-third of their sentence. This scenario would achieve less reduction if judges imposed longer sentences than at present to compensate for possible earlier releases. It would also achieve a smaller reduction if district prisons boards and the parole board didn't release these offenders much earlier than when they are released at present.

Making "serious violent offenders" serve longer sentences in prison is not preventing the majority of serious violent offending. Serious violent offenders imprisoned in 1989 or 1990 accounted for 29 convictions for serious violent offences (with a sentence of 2 years or more) in the 2 years following their release. Other violent offenders imprisoned in those years accounted for a further 42 such convictions in the 2 years following their release. Over 1000 serious violent offences are usually committed in a two year period.

Data on the post-release history of a sample of 613 New Zealand prisoners sentenced to imprisonment showed that those sentenced for serious violent offences were no more likely to be reconvicted or re-imprisoned in the 2½ year period following their release than ordinary offence prisoners, and were in fact less likely to receive a further sentence of imprisonment.¹¹⁵

Te Ara Hou recommended that those inmates serving life imprisonment who posed no threat to the community should be eligible for parole after 7 years (i.e. the pre-1987 legal position).¹¹⁶

Amending definition of serious violent offenders

Another way of bringing forward the parole eligibility of a group of offenders is through raising the sentencing threshold for inclusion as a serious violent offence from more than 2 years imprisonment to more than 3 years. This would achieve a level of reduction of about 100 inmates. Increasing the threshold to more than 5 years would reduce the prison population by around 270 inmates. It would take several years to fully realise these reductions unless it was made to apply to serious violent offenders already serving prison sentences. The reduction would also depend on when district prisons boards and the parole board actually released people.

¹¹⁵ Brown, (1996), p25.

¹¹⁶ Ministerial Committee of Inquiry into the Prisons System, (1989), p243.

Habilitation centres

Habilitation centres were introduced by the Criminal Justice Amendment Act 1993. Inmates serving sentences of over 12 months may, if suitable, be released at their parole eligibility date to a habilitation centre to undertake a 6 to 12 month habilitation programme. Four pilot habilitation centres are currently being piloted and evaluated. The current small-scale of the pilot has resulted in an average of four people on the programmes at any one time. Unless the programme is expanded or the eligibility is widened, the effect of habilitation centres on the prison population is likely to remain extremely small.

Assuming this option became fully available, and was mainly taken up by a proportion of those inmates who would serve less time if they were released to a habilitation centre than if they stayed in prison, the decrease in the prison population might be of the order of 60 inmates. This estimate has been derived by assuming the following:

- half of those facing long sentences (more than 3 years) and who are not expecting early release are released to a habilitation centre, thereby reducing their proportion served to one-third;
- 10% of other inmates (mainly those not likely to get early release otherwise) are released to a habilitation centre, thereby reducing their proportion served to one-third;
- a third of those serving life and preventive detention sentences are released to a habilitation centre, thereby reducing their sentence by 1 to 2 years.¹¹⁷

Summary

The above scenarios and their potential outcomes are summarised below:

Table 26
A summary of potential reductions in the prison population for selected scenarios

Scenario	Estimated reduction (based on 1995 prison census)
1. Make certain offences non-imprisonable	
Cannabis use or possession	3
Fines default	1
Driving while disqualified	30-80
Dishonesty involving relatively small amounts	up to 36
Burglary	452
2. Make certain groups of people non-imprisonable	
Offenders under 18 years of age	up to 70
Non-serious offenders, low recidivism	57
Prohibit sentences under 3 or 6 months	probably none

¹¹⁷ Taken from Triggs, (1995), p69.

3. Extend adult diversion scheme	Depends on nature of change
4. Greater use of discharge and deferment	Depends on nature of guidelines
5. Alternative sentencing options	
Replace corrective training	0-70
Home detention	50 (up to 300)
Habilitation centres	4-60
6. Make sentences shorter	
Reduce selected maximum penalties	
- driving while disqualified	30
- dishonesty involving small amounts	6
- serious violent offences	100
Introduce sentencing guidelines	depends on option
7. Flexibility in sentence start dates	
Stagger start dates	up to 100-200 off peak population
8. Release inmates earlier	
Release at one-third for terms one year or less	330
Parole eligibility after ¼ served	170-320
Reinstate parole eligibility for serious violent offenders	250-650
Increase threshold for serious violent offenders to 5 years	100
Pre-parole home detention	4-55
Emergency release provisions	No estimate possible

The above table should not be considered in isolation from the preceding analysis in this section, which details the assumptions and important corollaries essential for interpreting these results. The scenarios shown represent a range of technically feasible ways to reduce the prison population, but are not necessarily approaches that are considered appropriate or desirable.

As stated at the beginning of this section, the main point is that most offenders in prison have committed very serious offences. Those offenders imprisoned for less serious offences usually have long criminal records. Any strategy designed to reduce the prison population will have a minor impact if it targets offenders who receive short sentences or if it does not apply to violent offenders or serious recidivists. A major consideration is that reducing the imprisonment terms of serious offenders raises fears of future re-offending by those offenders upon their release (even though the risk is not necessarily any greater from these offenders)

and also the possibility of additional costs resulting from additional offending and recalls to prison.

Most of the above hypothetical policy changes would probably need to be accompanied by a campaign to change public expectations of what sentencing in general, and long sentences of imprisonment in particular, can realistically achieve.

A final consideration is that if the numbers of people in custody were to decrease, only the most dangerous and intractable offenders will be behind bars. These changes would affect the security status of prisons, the type of accommodation required, the cost of holding inmates, and the type of programmes offered to inmates. This would happen over time as the numbers of serious violent offenders who need to be held in maximum security prisons rises. Placing more dangerous offenders on community-based sentences, especially periodic detention, may also cause management problems. However, if current trends continue the composition of the inmate population will change anyway. Inmates are likely to be older on average, more often violent offenders, and will be serving longer sentences.

7. Reducing Reoffending

It can probably be safely stated that to some extent imprisonment per se reduces offending simply by restricting the opportunities to offend for a limited period. However, it is likely to add to offenders' difficulties in living a normal and law abiding life. Prisoners do not have to provide for everyday needs, such as food and clothing, to find or keep jobs, or to look after their homes. Yet virtually all prisoners come out of prison. If the state takes away the liberty of a citizen, however serious his or her offence, the state assumes some responsibility for how that convicted criminal uses their time while deprived of liberty. Public safety is put at risk if on release they are even less qualified to get a job and lead a law-abiding life than when they were convicted. With overcrowding and pressure on prison resources it is more difficult to give offenders access to work, education, and courses and regimes which contribute to preventing reoffending.

There is good evidence to suggest that it is possible to reduce the reoffending rates of some convicted offenders through the provision of well-targeted programmes which address specific criminogenic needs (poor anger management and communication skills, inadequate self control, low levels of literacy, and so forth). Based on this evidence, the Department of Corrections has initiatives planned to reduce the flow of inmates into prisons by reducing the reoffending rates both of prison inmates and people serving community-based sentences. These initiatives, which are limited by resource constraints, are discussed in Appendix 3.

8. Alternatives to Imprisonment

Despite a long-term official policy that imprisonment is to be reserved as the sentence of last resort (which has to some extent received legislative embodiment and to a large extent been put into practice by the courts) and despite the expansion since 1985 of the menu of community-based sentences as alternatives to imprisonment, New Zealand's prison population has continued to increase at a steady rate. At the same time, the community-based sentence muster has also expanded steadily so that the total number under the control of the corrections system has reached record levels. While it could be argued that in the absence of the community-based sentences the prison population would be even higher, there is a likelihood that the use of these sentences is fast-tracking some offenders towards imprisonment, particularly if these alternative sentences are being used relatively early in an individual's offending history.

For a number of years it has been said that the solution to the problem of growth in prison numbers was to be found in developing and using alternative sentences to imprisonment for offenders convicted of crimes other than those involving serious violence. The view has sometimes been put forward that the judiciary should be using the new range of community-based sentences as alternatives on a more frequent basis, and it has been argued that a change of attitude is needed. This could perhaps be achieved by new legislation giving clear guidance to judges as to the use and non-use of imprisonment.

The facts do not support this analysis. In New Zealand we already have a wider range of community-based sentencing options than exist in most other countries and in the last decade there has been an increasing proportion of cases resulting in community-based sentences (from 18% of cases resulting in a conviction in 1987 to 32% in 1996¹¹⁸). During the period 1986 to 1996 the use of community-based sentences almost doubled from 16% to 27% of all cases prosecuted (excluding minor traffic offences) and the use of monetary penalties dropped from 56% of case outcomes to 34%. In 1996 there was a daily average of 7,400 offenders under supervision, 6,800 offenders serving periodic detention, 6,700 on community service, and 470 on community programmes. Numbers serving sentences of periodic detention, community service, and community programme peaked in the early 1990s after a very rapid increase. More recently the use of these sentences has declined while the use of monetary penalties has increased. The use of supervision and the size of the supervision muster increased rapidly in the early 1990s and is now starting to level off.¹¹⁹

Part of the increase in the use of community-based sentences has been owing to the tendency for them to be applied to those who otherwise would have received a lesser sentence, such as a fine, or have been diverted. This has the effect of escalating some offenders up the sentencing tariff and widening the net of the criminal justice system to bring more people into the correctional system and ultimately into prison. Successive alternatives to custody simply become alternatives to other alternatives to custody. Such "alternatives" are not replacing prison institutions, but come to exist alongside that which they are supposed to replace, with

¹¹⁸ Spier, (1997), pp52, 91.

¹¹⁹ Triggs, (1998), p58, and chapter 5.

the effects of net-widening in the community while the prison population is maintained or increased.¹²⁰

An expansion in the use of community-based sanctions in various jurisdictions has mostly been accompanied by a significant reduction in the proportion of offenders sent to prison but not the number of offenders sent to prison (even on a per capita basis). To the extent that intermediate punishments are used as alternatives to custody, they are invariably directed at those who would have served relatively short terms. There is no evidence that intermediate punishments per se are more likely than short prison terms to reduce the chances of reconviction or of imprisonment in the future. In New Zealand, the increased use of community-based sanctions has not been accompanied by any overall decrease in the numbers going to prison or in the proportion of offenders being sent to prison, at least since 1986.

The use of community-based sentences for cases involving violent offences increased significantly between 1987 and 1994 (from 32% to 52% of cases) with a slight drop down to 49% in 1996. Community-based sentences were imposed in 21.5% of cases involving other offences against the person in 1987. This increased to a high of 38.8% in 1993 and dropped to 28.7% in 1996. For cases involving property offences, community-based sentences were imposed in 36.8% of cases in 1987. This reached 52.9% of cases in 1992 and there has been a slight drop to 48.2 % in 1996. Cases involving drug offences received community-based sentences in 21.2% of cases in 1987 compared to 35.0% in 1996. In cases involving offences against the administration of justice (the vast majority of which are breach of periodic detention) 37% received community-based sentences in 1987 compared to 47.3% in 1996. For offences against good order (mainly possession of an offensive weapon and disorderly behaviour) 11.6% resulted in a community-based sentence in 1987. This rose to 23.9% in 1992 and declined to 14.1% in 1996. The majority of cases involving offences against good order (60% in 1996) result in a monetary penalty. In 1987 10.4% of traffic cases received a community-based sentence compared to 27.9% in 1996. In total there were 20,186 cases that received a community-based sentence in 1987 compared to 34,945 in 1996.¹²¹ Over the same period the number of cases resulting in imprisonment increased from 7031 to 8,861.

Table 27
Percentage of all cases by type of offence resulting in a community-based sentence in 1987 and 1996

Offence Type	1987	1996
Violent offences	31.8	48.9
Other offences against the person	21.5	28.7
Property offences	36.8	48.2
Drug offences	21.2	35.0
Offences against the administration of justice	37.0	47.3
Offences against good order	11.6	14.1
Traffic offences	10.4	27.9

¹²⁰ Pratt J, "Dilemmas of the Alternative to Custody Concept: Implications for New Zealand Penal Policy in the Light of International Evidence and Experience", in *Australia and New Zealand Journal of Criminology*, vol. 20, 1987, pp150, 155, 159.

¹²¹ Data provided by P.Spier, Ministry of Justice.

Most western jurisdictions are currently experiencing expanding prisoner numbers. Criminal justice systems' previous reliance on minimalist probation and traditional forms of incarceration has come under extensive scrutiny and criticism. Fears about inadequate control and punishment of high-risk offenders on probation or suspended sentences on the one hand, and concern about the effectiveness, overcrowding, and rising construction and maintenance costs of prisons on the other, have prompted calls for more extensive development and use of mid-range or "intermediate" sanctions.

The purposes of intermediate sanctions, that is non-custodial sentences, are to:

- deter offenders from crime;
- protect the community by exerting more control over offenders than traditional parole;
- rehabilitate offenders by meeting treatment requirements;
- save taxpayers' money by providing cost-effective alternatives to imprisonment;
- give something positive back to the community, and provide benefit to both the offender and the community through this interaction.

The response to calls for intermediate sanctions has produced internationally a rapid proliferation of alternatives. These include boot camps, day treatment and day-reporting centres, intensive supervision, and home arrest/electronic monitoring as well as the expansion and consolidation of earlier approaches such as community service, restitution, and therapeutic and other treatment interventions.

Intermediate sanctions have been seen as a way both to reduce the need for prison beds and to provide a range of sanctions that satisfy the just deserts concern for proportionality in punishment. During the mid 1980s in overseas jurisdictions, mainly the United States, intermediate sanctions such as boot camps, house arrest and electronic monitoring were oversold as being able to simultaneously divert offenders from imprisonment, reduce recidivism rates, and save money.

The literature for the most part raises doubts about the effectiveness of intermediate sanctions at achieving the goals their promoters have commonly set. While they may save money and prison space in the first instance, they will not be cost-effective in the long term if used inappropriately. Such use will lead to high rates of failure to complete the programmes and of revocations for technical violations, both of which often result in the offenders being sent to prison. If the sanctions also have minimal or no effect on subsequent re-offending, additional prison sentences and expenditure will occur further down the track. Further, the availability of new sanctions seems to present almost irresistible temptations to judges to use them for offenders other than those for whom they were created.

The process of expanding alternative sanctions options must give systematic attention to well-conceived and articulated development, implementation, monitoring, and evaluation strategies. The process should be that of an information-driven process of planned change rather than a crisis-oriented reaction. Unless this happens the new sentences are likely to be used inappropriately, and lack credibility (because of net-widening, cost overruns, and lack of effectiveness), and public safety may be threatened.

How alternative sanctions are viewed will depend on the stated goal of sentencing. A term of imprisonment has an incapacitative effect, preventing for a time offending in the community.

If incapacitation is the only or even principal justification for imprisonment, then for offenders who do not present unacceptable risks, most intermediate sanctions seem to offer a cost-effective way to keep them in the community at less cost than imprisonment and with no worse later prospect of re-offending. However, as has been shown above, the rapid expansion of community-based sentences in New Zealand has not been accompanied by any overall decrease in the numbers going to prison or in the proportion of offenders going to prison. Moreover, those jurisdictions with higher imprisonment rates also tend to have comparatively large numbers of offenders subject to community-based supervision and control.

There is a case for ceasing to refer to non-custodial sentences as alternatives to imprisonment. The term implies that imprisonment is the norm and alternatives are substitutes and that alternatives will reduce prison numbers. They should be viewed as penalties in their own right, and the principle of the lowest level of intervention that is compatible with the public interest should always guide their application. The Victorian Sentencing Act 1991 has directions to this effect.

There are fiscal savings to be made from a greater use of monetary penalties instead of community-based sentences. Monetary penalties are already the most widely used and possibly the most useful sanction available. They can be flexible, are less expensive to implement than imprisonment or community-based sentences and are less disruptive to the lives of offenders. In addition, most monetary penalties are revenue producing. Legislation currently provides for a range of monetary penalties including infringement fees, court imposed fines, reparation, compensation, and court costs.

The most fundamental difference between an infringement fee and the other monetary penalties is that in respect of the latter a court may take into account the defendant's financial means. By contrast, in the infringement fee system the defendant's means is of no consequence in determining the amount required to be paid. This is because the penalty is fixed by the legislature (or by the Executive by regulation). There is no discretion to vary the fee in case of hardship or for other reasons.

However, for enforcement purposes, all unpaid monetary penalties become unpaid fines to be enforced under Part III of the Summary Proceedings Act 1957 (for example by a warrant to seize goods or an attachment order). Community-based sentences or imprisonment, as a last resort, may be imposed by a Judge in respect of fines defaulters against whom enforcement action has been or is likely to be ineffective.

Non-payment or slow payment of monetary penalties reduces the advantages of disposing of offences in that way and contributes to a loss of confidence in the system. There are many possible reasons for non-payment of fines including low income, a public perception that fines are commonplace and unimportant, or a general perception that the fine will not be enforced.

The foremost strategic challenge facing the Collections Business Unit in the Department for Courts is to enhance the credibility of fines as a legal sanction through effective enforcement. This will be achieved through improving fines collection, limiting the substitution of more costly alternative sentences, and reducing the amount of fines that are remitted.¹²²

¹²² Department for Courts, Collections Business Plan 1997-1998.

Between 1987 and 1992 there was a marked decrease in the courts' use of monetary penalties (in particular fines) as the most serious sentence for cases involving non-traffic offences (from 58% to 36% of cases). However, since 1993 the proportion of cases involving a non-traffic offence which resulted in a monetary penalty as the most serious sentence has been increasing. In 1996, 42% of all sentences imposed for non-traffic offences were monetary penalties.¹²³

The decrease in the use of monetary penalties in the late 1980s and early 1990s is likely to be partly due to the introduction of the Police diversion scheme, whereby a number of the less serious cases were diverted from the court. However, while the use of monetary penalties has changed significantly over the past decade, the average seriousness of the offences resulting in a monetary penalty has not changed during this time. The proportion of cases for which the most serious penalty was a monetary one decreased substantially between 1987 and 1992 for each level of offence seriousness except that containing the most serious offences (for which the cases rarely result in a monetary penalty). This suggests that factors other than diversion, perhaps economic factors, have contributed to the decline in the use of monetary penalties during this period.¹²⁴

Over the period 1987 to 1992 the community-based sentences of periodic detention and community service were increasingly imposed instead of monetary penalties for cases involving offences of similar seriousness. Since 1993 there were increases in the use of monetary penalties, particularly for the offences with lower seriousness, while the use of periodic detention, and to a lesser extent, community service dropped slightly for these offences.¹²⁵

The efforts of the Collections Business Unit to enhance the credibility of monetary penalties,¹²⁶ along with improvements to the economic factors which may have contributed to a decline in the use of these penalties over the past decade, will, it is hoped, result in a greater use of fines and reparation rather than community based sentences. This would not only mean fiscal savings but may also slow the process by which the imposition of community-based sentences is hastening an offender's progress towards imprisonment.

¹²³ Spier, (1997), p54.

¹²⁴ *Ibid*, pp54, 56.

¹²⁵ *Ibid*, p56.

¹²⁶ The Summary Proceedings Amendment Bill (No 3) introduced in late 1997 enhances the powers of the courts to collect overdue fines and reparation, including the ability to attach social welfare benefits, to order deductions to be made directly from bank accounts, and to order charges to be registered against land. The Bill also enhances the ability of the courts to gather information about fine defaulters through the use of Inland Revenue Department and Department of Social Welfare databases.

9. Crime Prevention

Crime prevention programmes will have no effect on the need for prison accommodation unless these programmes make substantial inroads into the types of serious offending that account for the bulk of New Zealand's prison population.

A small number of crime prevention programmes are of proven worth in terms of reductions in certain types of offending in restricted localities or reduced offending rates among programme participants. A larger number are promising in terms of these sorts of results and preventive approaches have the potential to bring about a reduction in crime over the long term. Nevertheless, even quite large-scale success in crime prevention will not necessarily lead to a fall in demand for prison accommodation.

Three quarters of the prison population is made up of prisoners serving sentences of more than 12 months. This group is only 3% of all convicted offenders, not counting those convicted of traffic offences, and it is not possible to predict precisely who will commit a serious offence. Some people (such as young Maori men from disadvantaged social backgrounds) are more at risk of being imprisoned for serious offences than others and we have a reasonable idea of the nature of the factors leading to this higher risk. We do not, however, yet know whether policies and programmes now in place or being developed to address these factors will succeed to the extent necessary to reduce the number of serious offenders.

An example is the area of domestic violence. A large proportion of violent offending is domestic violence and there are indications that much other serious criminal offending is related to factors such as abuse of children. Over recent years considerable effort and resources have been directed into reducing this problem. As yet, we do not know what results will be achieved over the long term, but a substantial reduction in levels of domestic violence could be expected to result in a reduction in imprisonable offences.

This in itself will not, however, bring about a reduction in the prison population. Even if the number of offenders and the amount of serious crime committed fall we might still have as many prisoners. For example a higher proportion of offences might be reported, the Police could catch more offenders, or courts might increase the length of sentences. There are many steps between the commission of an offence and a sentence of imprisonment and changes in practices or policies affecting any stage in the chain can have a marked effect on imprisonment rates.

We cannot therefore have confidence that crime prevention will reduce the prison population. On the other hand there are good reasons to expect that effective and well-targeted prevention programmes will reduce criminal offending. Preventive approaches might still be a better investment than building additional prisons in terms of reducing the total social cost of crime (and other benefits that accrue from some programmes, such as better health and education). One US study¹²⁷ that examined this question concluded that it could be more cost-effective to divert resources away from increased use of incarceration and into social programmes such as intensive pre-school education for disadvantaged children. The authors, however, pointed out

¹²⁷ Donohue J and Siegelman P, "Allocating Resources Among Prisons and Social Programmes in the Battle Against Crime", in *Journal of Legal Studies*, 1, 1998.

that this conclusion was based on ‘hypothetical calculations’ and saw many problems to be overcome before it was possible to implement this approach on a large scale.

This conclusion is also applicable to New Zealand. Many things can be done to prevent crime and the weight of evidence suggests that for this purpose there are better investments than prisons. In practice, however, this is yet to be fully demonstrated and it is uncertain what impact prevention will have on rates of imprisonment, due to the many mediating factors involved. Variations in the use of imprisonment will continue to depend largely on changes in how we respond to crime once it has occurred.

The effectiveness of crime prevention programmes is discussed in more detail in Appendix 4.

10. Conclusion

The majority of offenders in New Zealand's prisons at any one time have committed very serious offences. Those offenders imprisoned for comparatively less serious offences usually have a long history of offending. In particular:

- serious violent offences, including offences leading to life imprisonment and preventive detention sentences, make up less than one percent of offences recorded by the police but account for almost 45% of the prison population. Almost 60% of prison inmates have committed some type of violent offence;
- property offenders in prison have an average of 26 previous convictions. Most have committed serious offences (e.g. burglary or fraud);
- imprisonment is only used for the most serious of traffic offenders (e.g. driving causing death or injury, or drink-driving), or for persistent recidivists, such as those repeatedly convicted of driving while disqualified. Traffic offenders in prison have an average of 21 previous convictions;
- most of the offenders in prison for other than violent, property or traffic offences are drug dealers.

The serious violent offence group of offenders is the most important group of offenders driving the increase in the prison population. This is because of a combination of the long sentences that they receive and the high proportion of the imposed sentences actually served, rather than a high number of receptions. The same is even more true for life imprisonment, which accounts for a tiny percentage of receptions, but has the potential to account for a significant increase in the prison population due to the long sentences served.

For a long time there has been an official policy in New Zealand that imprisonment is the sentence of last resort. That is to some extent embodied in legislation. The section in this paper which looks at the profile of our prison population does in fact show that the offenders who populate New Zealand's prisons closely accord with those for whom the legislative guidance (as provided by Parliament in the form of the relevant sections of the Criminal Justice Act 1985) directs imprisonment should be reserved.

Comparison of New Zealand with a limited number of overseas jurisdictions suggests that New Zealand is not particularly punitive either in terms of the proportion of offenders sent to prison (especially in terms of numbers of admissions per convictions), or in terms of the average period offenders sentenced to imprisonment are required to serve.

New Zealand's volume of convictions per head of population seems to account for a large part of the difference between our prison population and that of some other countries (a high level of reported crime and a high proportion of crimes cleared by the police contribute to this level of convictions). Changes to the prosecution process may have the potential to reduce the number of convictions, which may in turn have an impact on imprisonment. This suggests that a useful direction to take is one involving a greater emphasis on diversion, to keep offenders out of the criminal justice system. This strategy would most likely target less serious offenders currently receiving non-custodial or relatively short custodial terms, and so have only a minor impact on the prison population in the short term, but it may have a more significant impact in the longer term if offenders accumulate fewer previous convictions and are less rapidly escalated through the range of penalties towards a custodial sentence.

However, jurisdictions seem to be more successful in making substantial inroads into the prison population by concentrating on the lengths of periods in custody. The size of prison populations is equally influenced by a small number of inmates serving long sentences or a large number of inmates serving short sentences. In New Zealand 66% of admissions are those receiving sentences of less than 12 months, but those sentenced offenders comprise only 18% of the prison population. So in order to achieve an 18% reduction in the prison population by using alternative sentences for short custodial ones, we would have to substitute non-custodial sentences for 66% of prison sentences.

The state of Victoria in Australia has a high rate of convictions, imposes relatively long terms of imprisonment on average, but avoids having a large number of short prison sentences. This jurisdiction's low rate of imprisonment by international standards can be attributed to a very selective use of imprisonment which puts very few minor offenders in prison.

Reducing the rate of increase in our prison population must be considered within the context of the apprehension, prosecution, conviction, and 'treatment' of offenders, the protection of society, and the wider context of controlling offending within our society.

In New Zealand, just to maintain the prison population at about the current level would require very substantial changes in criminal justice policy, unless rates of serious (especially serious violent) offending decrease. An analysis undertaken in December 1995 indicated that the sort of dramatic changes required to achieve the goal of holding the prison population at 1993 levels were of the order of:

- Removing **all** non-violent offenders from prison (and assuming a levelling off of all violent offences over the next 5 years); or
- Reducing the proportion of sentences served to 0.56 for serious violent offenders, decreasing the average sentence served for life imprisonment and preventive detention to 10 years, and decreasing receptions for violent offenders by 2.5% per year (and assuming reception rates remained stable at 1993 levels for all non-violent offenders and there was no increase in sentence lengths for serious violent offenders).¹²⁸

To reduce the number of people in prison would require even greater changes. The major difficulty is that the more politically acceptable options for change would only produce relatively small reductions.

For example, the potential for reducing prison numbers and saving prison costs by making less serious offences non-imprisonable is limited since persons committing these offences are only imprisoned in exceptional circumstances and for relatively short periods in lower security (lower cost) institutions. Most inmates who are imprisoned for less serious offences have long criminal histories, including previous periodic detention and custodial sentences. Many have also been convicted of a breach of periodic detention. These offenders have been given custodial sentences because other sentences imposed in the past have not deterred them from offending. If imprisonment is removed as a sentencing option for less serious offences, this type of repeat offender may present a sentencing dilemma.

¹²⁸ Triggs, (1995), p83.

There are legislative imperatives in the Criminal Justice Act and guideline judgments of the Court of Appeal regarding the use of imprisonment but there may be a need for a more comprehensive legislative statement which, while not preventing judges from exercising their sentencing judgement, will provide them with an improved framework upon which to base their sentencing decisions. This is currently being considered by the Ministry of Justice in a separate review of sentencing policy and guidance.¹²⁹

Any limit on the availability of places within the prison system by which the courts or the police have to abide would seriously threaten the independence of the judiciary or the police and is not considered to be a realistic option in the context of prosecution or sentencing guidance.

It is considered unlikely that further adding to the number of community-based sentences or intermediate sanctions will reduce the prison population. New Zealand already has a wide range of alternatives to custody by international standards and creating new alternatives to imprisonment has not proved successful in reducing the size of the prison population. Additional options are more likely to have a net-widening effect which will further increase the total number under the control of the corrections system (the average numbers on community-based sentences was approximately 21,400 in 1996) with attendant costs. This will be at the expense of fine revenue and the diversion of offenders and runs the risk of fast-tracking less serious offenders towards imprisonment through breaches of community-based sentences.

The population of sentenced prisoners is a product of both front-end and back-end decisions. At the front-end the legislature and the judiciary determine the offences for which imprisonment should be available; the types of mandatory, maximum, and minimum sentences available; and the number and length of nominal sentences actually imposed. There is also a series of back-end executive decisions that directly impact on the size of the sentenced population, being decisions about parole and remission. New Zealand has made significant changes to its parole and remission provisions over the last twenty years, the most recent of which have involved the abolition or reduction of parole eligibility for a substantial proportion of longer-term inmates.

Changing the eligibility of certain groups of offenders to parole and remission could result in a reduction in prison numbers. To have more than a slight impact on the growth in prison numbers these measures would need to target the earlier release of serious violent offenders serving sentences of more than 2 years. Alternative scenarios which would have a significant impact would be bringing forward the remission date to one-third of the term for sentences of one year or less, or making parole available at one-quarter of sentences for inmates serving more than one year who are not serious violent offenders. These scenarios carry with them potential problems regarding the credibility of a criminal justice system that has offenders serving punishments that fall well short of those imposed by the courts.

There are some administrative procedures for the admission and release of inmates that could be introduced to balance the inflow of prisoners from the courts. They are mechanisms for smoothing out seasonal fluctuations rather than for ratcheting down prison numbers. One option is to increase the rate of remission beyond the normal level in response to each

¹²⁹ The Department for Courts is also continuing the expansion of its sentencing information system (a database of sentencing decisions and trends and developments in sentencing).

increment in the size of the prison population above prison capacity. The new arrangements would work on the basis that those inmates due to be discharged in say 2 weeks could be discharged instead the previous week if the population rose beyond capacity. Another option is bringing forward the parole eligibility of inmates when stated prison capacity is exceeded.

At the admission stage, staggering admission dates for some of those sentenced to custody so that they wait on bail until a space becomes available in prison could be an option if suitable criteria could be developed. Such queuing systems exist in both Holland and Sweden. This would level off fluctuations rather than produce reductions in prisoner numbers.

Potential outcomes from crime prevention measures (somewhat unquantifiable at this stage) may provide a longer-term solution. Similarly, reforms in the prison system aimed at reducing reoffending and improving the reintegration process are important but are unlikely to have any dramatic short-term effect on prison numbers. Crime prevention measures and programmes designed to reduce reoffending will require substantial current investment if they are to have a significant impact on prison numbers over the longer term.

The emphasis in this paper is on the difficulties incumbent upon making changes in the criminal justice system that will result in a reduction in the growth rate of our prison population. While there needs to be a focus on reducing imprisonment it is important to note that attempts to do so are complicated by other goals in the criminal system, particularly that of denouncing crime.

PAROLE AND EARLY RELEASE MECHANISMS IN OTHER KEY JURISDICTIONS

Introduction

Parole can play a major part in determining sentence length, and ultimately the size of the prison population. This section provides an overview of some of the main parole and early release mechanisms in a number of key jurisdictions. A summary of the key provisions can be found at the end of this section.

Australia

Victoria

The Sentencing Act 1991, together with the Corrections (Remissions) Act 1991, introduced a comprehensive set of reforms to the principles, practices and sentencing options in Victoria. One of the main features of this legislation was the abolition of remissions in the name of ‘truth in sentencing’. Remission operates to reduce a sentence so that the offender may be released unconditionally before the date on which the term of the sentence expires. Section 3(1) of the Corrections (Remissions) Act abolished remission entitlements, which was coupled with a direction in section 10(1) of the Sentencing Act that sentencers must take into account the removal of remissions when imposing sentences in order to ensure that the time an offender will be required to serve would be no longer than it would otherwise have been prior to the introduction of the legislation.

Prior to the abolition of remission, almost all persons sentenced to imprisonment under state law in Victoria had a portion of their sentences remitted for good behaviour whilst in custody. The remission entitlement was one-third of the sentence of imprisonment if no minimum term was fixed, or one-third of the minimum term and one-third of the period between the minimum term and the term of imprisonment.

Rather than fixing in legislation a ratio between the term of imprisonment and the non-parole period, Victoria has always left this aspect to the discretion of the court. Courts in Victoria can set a term of imprisonment as either a ‘straight’ sentence – one that specifies a single term of custody – or a ‘parole’ sentence, comprising a maximum term and a non-parole period (the part of the sentence that must be served before the inmate is eligible for release on parole). Section 11 of the Sentencing Act provides that where a court sentences an offender to be imprisoned for a term of 24 months or more (including life imprisonment), the court *is required*, as part of the sentence, to fix a period during which the offender is not eligible to be released on parole unless the court considers that the nature of the offence or the past history of the offender make the fixing of such a period inappropriate. Where a sentence of between 12 and 24 months imprisonment is imposed, the court *may* fix a non-parole period. Any non-parole period must be at least 6 months less than the term of the sentence.

Offenders sentenced to an indefinite term of imprisonment for a “serious offence” (defined in section 3 of the Sentencing Act as including, among other things, the offences of murder,

manslaughter, rape, causing serious injury intentionally, kidnapping, abduction, various sexual offences and armed robbery) under section 18A of the Sentencing Act are not eligible for release on parole. An indefinite term of imprisonment can only be imposed if the court is satisfied, to a high degree of probability, that the offender is a serious danger to the community because of:

- (a) his or her character, past history, age, health or mental condition; and
- (b) the nature and gravity of the serious offence; and
- (c) any special circumstances.

When imposing an indefinite sentence the court must specify a nominal sentence of a period equal in length to the non-parole period it would otherwise have fixed. The court must then review the sentence on the application of the Director of Public Prosecutions, as soon as practicable after the offender has served the nominal sentence; and on the application of the offender, at any time after the expiry of 3 years from the carrying out of the initial review and thereafter at intervals of not less than 3 years. On a review the court must discharge the indefinite sentence and make the offender subject to a 5 year re-integration programme administered by the Adult Parole Board, unless the court is satisfied (to a high degree of probability) that the offender is still a serious danger to the community.

Queensland

Where a court imposes a term of imprisonment on an offender, it may recommend a non-parole period which the offender must serve before being eligible to apply for parole (section 157 Penalties and Sentences Act 1992).

Courts are also empowered under Part 10 of the Penalties and Sentences Act 1992 to impose an indefinite sentence on an offender convicted of a violent offence (defined in section 162) if the court is satisfied that the offender is a serious danger to the community because of the offender's antecedents, character, age, health or mental condition, and the severity of the violent offence and any special circumstances. In imposing an indefinite sentence, the court must state the term of imprisonment that it would have imposed had it not imposed an indefinite sentence (the "nominal sentence"), and the court must review the indefinite sentence within 6 months after the offender has served 50% of the nominal sentence or, if the offender's nominal sentence is life imprisonment, 13 years. The court must also review the sentence at subsequent intervals of not more than 2 years from when the last review was made. Unless it is satisfied that the offender is still a serious danger to the community when a review is made, the court must discharge the indefinite sentence and sentence the offender for the violent offence for which the indefinite sentence was imposed (this sentence being deemed to have started on the day that the indefinite sentence was originally imposed and must not be less than the nominal sentence). The offender may, however, apply to be released to a re-integrative programme.

Part 4 of the Corrective Services Act 1988 covers parole eligibility. Subject to any non-parole period imposed by the court under section 157 of the Penalties and Sentences Act 1992, a prisoner serving a term of life imprisonment is eligible for parole after serving 13 years, and in the case of any other prisoner, after serving one half of the sentence (section 166). There are amendments in the Penalties and Sentences (Serious Violent Offenders) Bill 1997 which will provide that persons identified as "serious violent offenders" will be required to serve at least 80% of their sentence before being eligible for parole.

Section 130 of the Corrective Services Act 1988 provides that regulations may be made prescribing for, or with respect to, the granting or forfeiting of remission of sentences of imprisonment. It does not, however, appear that any such regulations have been made.

New South Wales

The Sentencing Act 1989 covers sentences of imprisonment and eligibility for release on parole. The objects of the Act, as set out in section 3, are to promote truth in sentencing by requiring offenders to serve the minimum or fixed term of imprisonment as set by the court, and to provide that offenders who have served their minimum terms of imprisonment may be considered for release on parole for the residual of their sentences. The legislation was partly a reaction to the large gap between the head sentence and the actual time served under the old system. All forms of remission were abolished under the Act, and a fixed proportion between the minimum term and the full sentence was introduced. The Act does not, however, direct judges to take into account the abolition of remissions on sentencing. This appears to have resulted in a large increase in the rate of imprisonment per capita, which has only recently levelled off.

Under section 5, the court is required, when sentencing a person to imprisonment for an offence, to set a minimum term of imprisonment that the person must serve for the offence (i.e. the non-parole period), and to set an additional term during which the person may be released on parole. This additional term must not exceed one-third of the minimum term, unless the court decides that there are special circumstances. There is provision in section 6 for the court to decline to set a minimum and additional terms if it appears appropriate to set a fixed term, which the person must serve in full for the offence, because of the nature of the offence, the character of the person, other sentences already imposed on the person or for some other reason.

Where the court would otherwise sentence the offender to a total sentence of 6 months or less, section 7 provides that the offender must be sentenced to a fixed term of imprisonment (the effect of this provision being that short-term prisoners are ineligible for parole).

The provisions in the Sentencing Act relating to the setting of minimum and additional terms of imprisonment do not apply to a life sentence or any other indeterminate period of imprisonment. Since 1990, "life" means that the sentence must be served for the period of the person's "natural life". However, offenders subject to a sentence of life imprisonment imposed before or after the commencement of the Act may apply to the Supreme Court for the determination of a minimum term and an additional term for the sentence under section 13A. Such an application can only be made if the person has served at least 8 years of the sentence, or at least 20 years in the case of persons subject to a non-release recommendation (a recommendation or observation made by the original sentencing court that the person should never be released from prison).

Part 3 of the Sentencing Act covers parole. The Act abolished discretionary release on parole for offenders sentenced to 3 years or less. These offenders must be released on parole after serving the minimum term of their sentence. For sentences of imprisonment of more than 3 years which have a minimum term, the Parole Board may release the offender if the Board determines release to be appropriate. For prisoners who are "serious offenders", additional considerations must be taken into account by the Parole Board when considering release of the offender, including submissions from the victim(s).

Northern Territory

Where a court sentences an offender to a term of imprisonment for life or for 12 months or longer, the court is required, under section 53 of the Sentencing Act 1995, to fix a non-parole period as part of the sentence. The court can, however, determine that the fixing of such a period is inappropriate, given the nature of the offence, the past history of the offender, or the circumstances of the particular case. The non-parole period must be at least 50% of the head sentence, and at least 8 months in duration (section 54). Where the offender has been convicted of sexual assault, the court must fix a non-parole period of at least 70% of the head sentence (section 55).

Section 58 of the Sentencing Act 1995 provides that the court must consider, when sentencing an offender to a term of imprisonment of less than 12 months, the abolition of remission entitlements under the Prison (Correctional Services) Act. Section 93 of that latter Act does state that the Director may grant a period of remission of not more than 30 days per year to a prisoner in such circumstances as the Director thinks fit.

Provision is also made in sections 65-78 for indefinite sentences to be imposed on violent offenders (which are reviewed by the court).

Western Australia

The Sentencing Act 1995 provides that at least one-third of sentences 6 years or less must be served before eligibility for parole arises. For sentences over 6 years, the offender becomes eligible 2 years prior to serving two-thirds of the total sentence (section 94).

South Australia

Section 32 of the Criminal Law (Sentencing) Act 1988 requires the court to fix a non-parole period when sentencing a person to a term of imprisonment of one year or more, unless the court is satisfied that such a period is inappropriate given the gravity of the offence, the circumstances surrounding the offence, the criminal record of the person or their behaviour during any previous period of release on parole or any other circumstance.

As a general rule, the Parole Board is required to order the release of a prisoner who is serving a total period of imprisonment of less than 5 years and for whom a non-parole period has been fixed. In these cases the prisoner is to be released not later than 30 days after the day on which the non-parole period expires (section 66(b) Correctional Services Act 1982). Provision is made for the Director of Public Prosecutions or the presiding member of the Parole Board to apply to the sentencing court for an extension of this non-parole period (section 32(6) Criminal Law (Sentencing) Act 1988).

Where a prisoner is serving a sentence of life imprisonment or a total period of imprisonment of 5 years or more and a non-parole period has been fixed, the prisoner or authorised person in the Department of Correctional Services can apply to the Parole Board for release on parole at any time after 6 months before the expiration of the non-parole period (section 67 Corrections Services Act 1982). The Parole Board can order the release of the prisoner or, if the prisoner is serving a life sentence, the Board can recommend the prisoner's release to the Governor.

United Kingdom

Criminal Justice Act 1991

Part II of the Criminal Justice Act 1991 contains arrangements for the early release of inmates, and for their supervision and liabilities after release. The provisions were based on recommendations made in the report on the review of the parole system in England and Wales carried out by the Carlisle Committee (Home Office, November 1988) and the Government's proposals set out in the White Paper *Crime, Justice and Protecting the Public*. The committee's report described a system that was resistant to scrutiny (lacked transparency), was largely unaccountable and failed to recognise the due process rights of prisoners.

Part II of the Act, which came into force on 1 October 1992, established a regime in which the right of an inmate to early release was graded according to sentence length. Remission was abolished and new parole arrangements introduced to ensure that all inmates served at least half of their sentences in prison. In order to justify automatic release for a large number of inmates at the half-way point of their sentence, the notion was developed that standard custodial sentences were to be served partly in prison and partly in the community. Offenders were to understand that sentences did not end on their release from prison, but rather post-release supervision was to be demanding, with strict rules of attendance and strong sanctions for breach. The parole system had a procedure for recalling parolees to prison quickly, on the recommendation of the supervising probation officer, when their behaviour suggests that they are at risk of serious reoffending.

Under Part II of the Criminal Justice Act 1991 the right to automatic and uncontrolled release for those serving short sentences steadily declines through the progressive introduction of compulsory supervision and discretionary decision-making as the sentence lengthens. Key aspects of the early release provisions are as follows:

- those serving sentences of under twelve months are entitled to *automatic* early release at the midpoint of sentence and are not subject to any period of compulsory supervision (section 33(1)(a));
- where the sentence was more than twelve months but less than 4 years, the offender is entitled to *automatic* early release on licence after serving one-half of the sentence (section 33(1)(b)). On release the offender is, in effect, subject to a continuing suspended sentence. If, between release and the end of the period covered by the original sentence, the offender commits any offence punishable by imprisonment, he or she is liable to serve the balance of the original sentence outstanding at the date of the fresh offence (section 40). Early release is therefore never unconditional under the Criminal Justice Act 1991. In all cases the second part of the sentence is not remitted but suspended;
- parole only affects those sentenced to four years' imprisonment and above. These inmates become eligible for *discretionary* early release on parole halfway through their sentence and become eligible for *automatic* early release only at the two-thirds point (sections 33(2) and 35(1)). The decision of the Parole Board to release the offender during the discretionary early release period is subject to veto by the Home Secretary and, regardless of when release was granted, the offender is subject to compulsory community

supervision until three-quarters of the sentence had lapsed. The ‘at risk’ suspended sentence provisions following release also apply.

With respect to indeterminate sentences of imprisonment, the English legal system provides for two types of life sentence: the mandatory life sentence for murder and the discretionary life sentence where the crime in question carries a maximum sentence of life imprisonment but a lesser sentence may be passed. Section 34 of the Criminal Justice Act 1991 empowers a judge when passing a discretionary life sentence to specify by order such part of the sentence (‘the relevant part’) which must be served before the inmate may require the Home Secretary to refer his or her case to the Parole Board. The Board can then direct that the prisoner be released if satisfied that it is no longer necessary that the prisoner be confined to protect the public, and the Home Secretary is then required to release the prisoner. The discretionary life sentence is thus made of two parts: (a) the relevant part, which consists of the period of detention imposed for punishment and deterrence, taking into account the seriousness of the offence; and (b) the remaining part of the sentence, during which the offender’s detention is governed by consideration of risk to the public.

The task of determining the relevant or ‘penal element’ of the mandatory life sentence is entrusted to the Home Secretary and not the judges. Under section 35 of the Criminal Justice Act 1991 the Home Secretary has a discretion to refer the case of a mandatory life prisoner to the Parole Board, and it is only if the Home Secretary chooses to refer the case to the Board, the Board recommends release and the trial judge (if available) and the Lord Chief Justice have been consulted, that the Home Secretary has power to release the prisoner. The Home Secretary is not however bound to exercise that power.

Crime (Sentences) Act 1997

The Crime (Sentences) Act 1997 was to have replaced the early release scheme established by the Criminal Justice Act 1991 with an “earned early release scheme” under which no inmate would have been able to earn more than approximately 20% remission of sentence. Remission would have been dependant upon co-operation and positive good behaviour as assessed in prison. Much of the justification for dismantling the early release scheme is summed up by “honesty in sentencing”. The 1996 Government White Paper *Protecting the Public* criticised the fact that many offenders received an automatic release after serving only half their sentence, with the result that the public, and even the courts, were confused and increasingly cynical about what prison sentences actually mean.

Under section 11, a prisoner serving a sentence of imprisonment for a term of more than 2 months and less than 3 years may have received an “award” of early release days for good behaviour. As a general rule, for each assessment period (that is, the period of 2 months beginning with the day on which the offender was sentenced) the prisoner may have been awarded with up to 6 early release days (having regard to the extent to which the prisoner’s behaviour met the ‘prescribed minimum standard’) and up to a further 6 days (having regard to the extent to which the prisoner’s behaviour exceeded that standard). Where any early release days were awarded to a prisoner, any period which she or he must serve before becoming entitled to be released would have been reduced by the aggregate of those days. Section 14, on the other hand, provided for the award of additional days to prisoners who were guilty of disciplinary offences.

For offenders sentenced to a term of imprisonment of 3 years or more, section 12(2) provided that as soon as the prisoner has served five-sixths of the sentence, the Home Secretary must, if recommended to do so by the Parole Board, release the prisoner.

Under section 26 of the Act the courts would have been expected to take into account, when passing sentence, the abolition of parole and the changes in early release. It was therefore expected that the new scheme would not have resulted in a general increase in the period of time offenders serve in prison.

Chapter II of Part II of the Crime (Sentences) Act 1997 dealt with life sentences. Similar provisions as outlined above would have applied to discretionary and mandatory life sentences.

The new Home Secretary, Mr Jack Straw, has indicated that the early release arrangements set out in the Crime (Sentences) Act 1997 will not be implemented. The new Government is of the view that the same effect can be achieved in a clearer and more straightforward way by ensuring that judges and magistrates spell out in open court what the sentence they have imposed really means in practice. They should state the time to be spent in prison, the period of supervision after release, and the period during which the offender might be recalled to prison. In this way, the victim, the offender and the public will understand the true nature of the sentence.¹³⁰

Canada

Criminal Code and the Corrections and Conditional Release Act 1992

Section 120 of the Corrections and Conditional Release Act 1992 sets out the normal periods before the offender is eligible for parole, which, in most cases, will be one-third of the sentence or 7 years, whichever is the lesser.

There are provisions in the Criminal Code which enable the court to order that an offender must serve one-half of the sentence or 10 years, whichever is the lesser period, before being eligible for release on parole. This power applies only to sentences of 2 years or more imposed for various specified offences, which are set out in Schedules I and II to the Corrections and Conditional Release Act. These offences include various sexual offences, assault, injuring offences, kidnapping, arson, use of firearm during the commission of an offence, robbery, and various drug offences (trafficking, cultivation etc). Before exercising this power the court must be satisfied that, having regard to the circumstances of the commission of the offences and the character and circumstances of the offender, the expression of society's denunciation of the offences or the objective of specific or general deterrence requires the extended period of parole ineligibility (section 743.6). The courts have held that this section should only be invoked as an exceptional measure where the Crown has satisfied the court on clear evidence that an increase in the period of parole ineligibility is required. The judge is required to clearly enunciate the specific reasons for increasing the ordinary period of ineligibility for parole, and general concerns such as the

¹³⁰ Hansard, 30 July 1997.

frequency of commission of the particular offence in the community, will not justify an order under section 743.6.¹³¹

The parole ineligibility periods with respect to life sentences are set out in section 745 of the Criminal Code. These periods are:

- (a) 25 years for persons convicted of high treason or first degree murder;
- (b) 25 years for persons convicted of second degree murder who have previously been convicted of murder;
- (c) 10 years for persons convicted of second degree murder, unless the court has substituted a greater period not exceeding 25 years (the period is set by the trial judge after taking into account the recommendation as to parole eligibility, if any, from the jury pursuant to section 745.2); and
- (d) the normal period for persons sentenced to life imprisonment for all other offences.

An offender may apply under section 745.6 for judicial review of the parole ineligibility period with respect to the offences of high treason and murder where the sentence has been imprisonment for life without eligibility for parole for more than 15 years and the offender has served at least 15 years of the sentence. However, a person who has been convicted of more than one murder may not make an application to review their parole eligibility. The purpose of the review procedure is to re-examine a parole ineligibility decision in light of new information or factors which could not have been known initially.

Where an offender has been declared by the court to be a ‘dangerous offender’ and the court has imposed a term of imprisonment for an indeterminate period in lieu of any other punishment for a ‘serious personal injury’ offence (defined in section 752 of the Criminal Code), section 761 provides that, generally, the offender’s case must be reviewed for parole 3 years after custody commenced and at least every 2 years thereafter.

Prisons and Reformatories Act

Provision is made in section 6 of the Prisons and Reformatories Act for earned remission. Every prisoner serving a sentence must be credited with 15 days of remission of the sentence in respect of each month during which the prisoner has obeyed prison rules and conditions and actively participated in programs designed to promote the prisoner’s rehabilitation and reintegration. Every prisoner who, having been credited with earned remission, commits any breach of the prison rules is, at the discretion of prison administration, liable to forfeit, in whole or in part, the earned remission. Where remission has been credited against a sentence, the prisoner is entitled to be released from imprisonment before the expiration of the sentence.

Under the Corrections and Conditional Release Act 1992 remission is dealt with by the provisions which set out an offender’s entitlement to statutory release. For offenders sentenced on or after 1 November 1992 (when the provisions came into force), the offender is entitled to be released after serving two-thirds of the sentence and to remain at large until the expiration of the sentence according to law. Provision is made in section 129 for the detention of certain offenders during the period of statutory release where there are grounds

¹³¹ See *R v Dankyi* (1993), 86 CCC (3d) 368, 25 CR (4th) 395, [1993] RJQ 2767 (CA) and *R v Goulet* (1995), 97 CCC (3d) 61, 22 OR (3d) 118, 37 CR (4th) 373 (CA).

to believe that the offender is likely to commit one or more specified serious offences before the expiration of their sentence. These provisions apply only to those offenders serving a sentence of two years or more that includes a sentence imposed for an offence set out in Schedule I or II of the Act (these offences are, generally speaking, the various sexual offences, crimes of violence, and various drug offences for which the court may initially order a longer period of parole ineligibility under section 743.6 of the Criminal Code).

Summary

The roles of the judiciary and the executive differ in determining parole eligibility, remission, and early release across the jurisdictions mentioned above. As has been seen, the majority of Australian jurisdictions do not specify a proportionate relationship between the non-parole period (or minimum term) and the total or head sentence. The minimum term, which represents the time that the offender must serve in prison, is determined by the sentencing court with reference to the circumstances of the crime and of the offender. The exceptions include Northern Territory, where the non-parole periods must be at least 50% of the head sentence and at least 8 months in duration. Legislation in Western Australia also requires that at least one-third of sentences 6 years or less must be served before eligibility for parole arises. For sentences over 6 years, the offender becomes eligible 2 years prior to serving two-thirds of the total sentence.

A number of the Australian jurisdictions have also abolished remission as a result of “truth in sentencing” legislation, with the effect that the minimum duration of the offender’s incarceration is determined by the sentencing judge.

The United Kingdom has a similar parole eligibility and early release regime to New Zealand, where the right to automatic and uncontrolled release declines as the sentence length increases. As a general rule, the legislation sets out the proportion of the sentence which must be served before the offender is eligible for automatic release or discretionary release on parole. In the UK, parole only affects those sentenced to four years’ imprisonment or more, and inmates become eligible for parole after serving 50% of their sentence.

In Canada, parole eligibility and early release is also determined largely by the legislature, where the general rule is that one-third of the sentence or 7 years (whichever is the lesser) must be served before an inmate is eligible for early release on parole. The judiciary is able to increase this period to one-half of the sentence or 10 years (whichever is the lesser) for various serious offences where the court has determined that society’s expression of denunciation of the offence or the objective of deterrence requires an extended period of parole ineligibility. Earned remission has largely been replaced with an entitlement to statutory release, which is generally after the inmate has served two-thirds of the sentence.

Appendix 2

Two Case Studies of Imprisonment: Victoria and Finland

Imprisonment in Victoria¹³²

For many decades, Victoria has maintained one of the lowest imprisonment rates in Australia, and a comparatively low imprisonment rate relative to the rest of the world. In 1995 Victoria's rate of imprisonment was approximately 55 per 100,000, which was significantly lower than the New Zealand average of 126. The Victorian experience may therefore offer some insights into the legislative environment, judicial sentencing practices, and other factors which contribute to a relatively low imprisonment rate.

Brief History of the Sentencing Reform in Victoria

Victoria's sentencing legislation has been undergoing significant change since the beginning of the 1980s. Three major pieces of sentencing legislation were enacted by the Victorian Parliament in that period: the Penalties and Sentences Act 1981, the Penalties and Sentences Act 1985, and the Sentencing Act 1991.

The most comprehensive set of reforms was contained in the Sentencing Act 1991 ("the 1991 Act"), which came into force in April 1992. One of the purposes of the Act was to affect the relative mix of sentencing options, with a declared preference for the use of the least restrictive option available in all the circumstances of the case (section 5(3)). A central feature of the Act was the abolition of remissions in the name of 'truth in sentencing' (which refers to the attempt to link more closely the sentence imposed by the court and the period of time actually served by the offender). However, the Act also directed judges to reduce sentence lengths to adjust for the absence of remission. The 1991 Act substantially revised statutory maximum penalties, created a new sentence of the intensive correction order and revised provisions relating to community-based orders, suspended sentences and fines.

Six months after the Sentencing Act 1991 came into force, the reformist Labour government was replaced by a conservative Liberal/National Party coalition government. In response to what it perceived to be the community's concerns over the inadequacy of custodial sentences passed upon sexual and violent offenders, the new government rushed through Parliament amending sentencing legislation within a short period of coming into office. The resulting legislation, the Sentencing (Amendment) Act 1993 ("the 1993 Act"), which came into effect in August 1993, was intended to increase custodial sentences by creating new classes of offenders, "serious sexual offenders" and "serious violent offenders", to whom special sentencing rules applied. If these specified offenders have committed certain nominated offences (serious sexual or violent offences) in the past, section 5A(a) of the Act requires the court to regard the "protection of the community" as the principal purpose of sentencing. Section 5A(b) further provides that the sentencing judge may, "in order to achieve that

¹³² This section draws heavily on the work of Arie Freiberg, Professor of Criminology, University of Melbourne. See "Sentencing Reform in Victoria: A Case-Study" in C M V Clarkson and R Morgan (eds.) *The Politics of Sentencing Reform* (1995); "Change and Stability in Sentencing: A Victorian Study" by Freiberg and Ross (1995) in *Law in Context*; and "Sentencing Reform in Victoria", in M Tonry and K Hatlestad (eds.) *Sentencing Reform in Overcrowded Times* (1997).

purpose, impose a sentence longer than that which is proportionate to the gravity of the offence considered in the light of its objective circumstances". In addition, the ameliorating effects of section 10 in the 1991 Act, requiring adjustments in sentences to take into account the absence of remission, do not apply to these offenders, effectively increasing sentences by a third. Sentences imposed upon serious sexual offenders are also presumptively cumulative (section 16(3A)). The 1993 Act also introduced indefinite sentences for adult offenders who are proved, to a high degree of probability, to be a serious danger to the community and who have been convicted of specified 'serious offences' (section 18B).

Sentencing Practice

For a number of years, sentencing judges in Victoria have had available to them, and have used, a range of sentencing options. Intermediate sanctions, such as the community-based order, have been recognised as sanctions in their own right, representing a proportionately punitive response to offences in the mid-range of seriousness and seen as able to fulfil a number of the aims of sentencing, such as deterrence and rehabilitation (*Wood v McDonald* (1988) 46 SASR 570, 574-5). Imprisonment has come to be reserved for the worse class of offending, with the range of intermediate options enhancing the hierarchy of punishments available to the courts.¹³³

Use of Imprisonment

Imprisonment is used for approximately half of all sentences in the higher courts in Victoria, which deal with about 5% of all criminal cases, and 5% of sentences in the Magistrates' Court.¹³⁴ As the Office of Corrections Master Plan in 1983 noted:

It is quite difficult for an offender to get himself/herself imprisoned in Victoria, and either repeated or very serious offences must be committed before imprisonment is considered a desirable course of action by the courts.¹³⁵

Courts in Victoria can set a term of imprisonment as either a 'straight' sentence – one that specifies a single term of custody – or a 'parole' sentence, comprising a maximum term and a non-parole period. The non-parole period term is the period that must be served before the inmate is eligible for release on parole, and the difference between the maximum and minimum term is the period that will be served on parole if the inmate is released at his or her earliest eligibility date. While parole is normally granted at the earliest eligibility date, inmates may be denied parole for some or all of the period up to the expiry of their maximum term.

Prior to the 1991 Act, all custodial terms – straight, minimum and maximum – were subject to remission at a nominal rate of one day for every 2 served. While sentence remissions could be revoked for misconduct, the vast majority of inmates received their full entitlement. The law provided that a prisoner was entitled to be credited with his or her remission entitlements at the beginning of his or her sentence (section 60(3) Corrections Act 1986). The remission entitlement was either one-third of the sentence of imprisonment if no minimum term was fixed, or one-third of the minimum term and one-third of the period between the minimum term and the term of imprisonment (the period during which the

¹³³ Freiberg and Ross (1995), pp115-6.

¹³⁴ *Ibid*, p123.

¹³⁵ Cited in Freiberg and Ross, (1995), p123.

person is eligible for parole) unless the person was released on parole.¹³⁶ The effective length of sentences could be further reduced by other administrative early-release mechanisms such as release to a pre-release programme, and the granting of special remissions and pre-discharge leave. However, these programmes have been progressively abolished after 1988 and had minimal impact on prisoner numbers by 1992.¹³⁷

As noted above, one of the major purposes of the 1991 Act was the introduction of ‘truth in sentencing’ in Victoria. The combination of remissions, pre-release, and special leave provisions had created a crisis of confidence in the penal system resulting in the government’s decision to abolish both remission and pre-release.¹³⁸ As the abolition of remission without corresponding adjustments in sentencing law would increase sentences and cause a corresponding rise in the prison population, section 10(1) of the Act directed sentencing judges to take into account the removal of remissions when imposing sentences in order to ensure that the time to be served in custody would not be longer than it would otherwise have been prior to the introduction of the legislation.

Impact of the Sentencing Act 1991

Statistical data tends to indicate that the 1991 Act had little impact on prison reception rates. Office of Corrections’ data for the decade prior to the 1991 Act show that the number of sentenced prisoners received into Victoria’s prisons increased from 3921 in 1981-82 to 6622 in 1984-85, decreased to 2805 in 1987-88, increased again to 4898 in 1989-90 and then steadied at around 3500 for the next four years. This has led some commentators to argue that most of the diversionary impact of sentencing changes had taken place in the decade before the introduction of the 1991 Act.¹³⁹

One of the major changes embodied in the 1991 Act was a change in the relationship between the length of sentences passed by the courts relative to actual time served, through the abolition of remissions. As noted above, section 10 of the Act provides that this change should not result in inmates having to serve a longer period in custody simply by reason of the abolition of remissions. If the courts were adhering to the provisions of section 10, the reduction in the average length of both straight and minimum imprisonment terms of one-third could be expected. However, researchers have found that the average length of straight/minimum terms remained more or less unchanged after April 1992, while the average time served increased to match court sentences.¹⁴⁰ While in general terms the post-April 1992 sentences were not significantly shortened to compensate for the effect of the abolition of remissions, commentators note a shift in the distribution of sentence length which could indicate the workings of other factors. One possibility is that the social and political

¹³⁶ That is, an inmate sentenced to a straight sentence of one year would serve 8 months in custody and have the remaining 4 months remitted. Similarly, an inmate serving a maximum term of 4 years with a minimum of 3 would (if released at his or her earliest parole eligibility date) serve 2 years in custody and 1 year on parole (the parole not subject to remission).

¹³⁷ Freiberg and Ross (1995), pp129, 124, 140.

¹³⁸ *Ibid*, p123.

¹³⁹ *Ibid*, p128.

¹⁴⁰ *Ibid*, p130. Note, however, that a preliminary evaluation of a study undertaken by the Victorian Criminal Justice Statistics Planning Unit and the University of Melbourne, which examined the total data for prison sentences in Victoria, revealed that the average aggregate prison term for all prison receptions dropped from 14.7 months in the 2 years prior to the 1991 Act to 10.8 months in the 6 months after the Act (a drop of 27%) (Freiberg, (1997), p150).

pressures that led to the 1993 reforms were, to some extent, taken into account by the courts in the form of longer sentences for offenders convicted of serious crimes.¹⁴¹

Comment

Commentators have suggested that Victoria's low imprisonment rate is the result of a combination of the following factors:

1. The Victorian judiciary has generally taken a view that imprisonment is ultimately unproductive, has undesirable side effects, and should be reserved as a sanction of last resort. They have accordingly used imprisonment sparingly. This factor tends to support those commentators who argue that cultural factors have a large part to play in imprisonment rates, and neither the formal structure of the criminal law nor particular penal policies or principles underpinning it explain divergent rates of imprisonment. According to this analysis, effecting substantial shifts in the use of imprisonment involves changing a range of sociocultural attitudes rather than embarking on 'rational' penal reform that attempts to alter penal practices by refining penal philosophies or offering a greater choice in the smorgasbord of sanctions.¹⁴²
2. Victoria has a number of measures, both front and back end, to keep its imprisonment population low. At the front end, Victoria has attempted, relatively successfully, to remove the short-term social problems which had previously clogged the penal system. In the early 1970s the alcoholics, vagrants and other minor 'public order' offenders were effectively decarcerated. Fine defaulters were dealt with by substituting community service or effectively ignoring their default. Victoria has also attempted to control entry for the recidivist offender by lengthening the path to prison by adding more rungs at the higher level (the suspended sentence and the intensive correction order), although at the same time it compressed the mid-range through the introduction in 1985 of the community-based order (which subsumed three previously separate orders: the probation order, the attendance centre order, and the community service order).¹⁴³ Freiberg has argued that the non-custodial options in Victoria have displaced the custodial option for a range of offenders.¹⁴⁴ Prison census data indicates that Victoria's prison population is older and that inmates tend to have more prior convictions and periods of incarceration than inmates of other Australian states.¹⁴⁵ Freiberg also suggests that suspended sentences are having some impact on the lower end of the sentencing range.¹⁴⁶
3. Victoria has employed a wide range of sentence modification measures to keep its prison population under control. Unlike other jurisdictions, which have abolished remissions and set a fixed ratio between the head sentence and the non-parole period, Victoria has always left this aspect to the discretion of the court.¹⁴⁷
4. An important source of stability in Victoria penology has been the relatively unchanging nature of its sentencing structure. Victorian sentencing law has maintained an elastic,

¹⁴¹ *Ibid*, p131.

¹⁴² See Young and Brown, (1993), p40.

¹⁴³ Freiberg and Ross (1995), p133.

¹⁴⁴ Freiberg (1997), p151.

¹⁴⁵ Freiberg and Ross (1995), p133.

¹⁴⁶ Freiberg (1995), p90.

¹⁴⁷ Freiberg and Ross (1995), p133.

hybrid system in which the task of sentencing is seen as an intuitive combination of all the aims of sentencing (rehabilitation, retribution, deterrence, and incapacitation). Although the internal balance of these aims may have changed over time, and varies between sentencing judges, until the 1993 amendments, the overall shape of the system has remained the same. Victorian sentencers have also refused to accept sentencing guidelines and have opposed presumptive or mandatory sentences.¹⁴⁸

5. Demographic features of Victoria's population may contribute to its low imprisonment rate (for example, its low aboriginal population).¹⁴⁹

Commentators have noted, however, that the constituency of both legislators and judges is changing. The sentencing balance between the interests of the offender, the state, and the victim is shifting away from the former to the latter. The greater sensitivity to the rights and interests of victims, and the protection of the community in general, is being reflected in more severe sentences.¹⁵⁰

Imprisonment in Finland

Since 1976 there has been a substantial drop in imprisonment rates in Finland. This is markedly against the trend seen in other European and Commonwealth jurisdictions. The Finnish experience is reported most fully in a publication by Patrik Törnudd, *Fifteen Years of Decreasing Prisoner Rates in Finland*.¹⁵¹

The two graphs which follow show Finland's trends as compared to those in New Zealand (see also table 8 in the main body of this paper).

¹⁴⁸ *Ibid.*, (1995), pp136-7.

¹⁴⁹ Informal discussions with Alan Thompson, Chief Executive of the Department of Justice in Victoria.

¹⁵⁰ Freiberg and Ross, (1995), pp137 8.

¹⁵¹ Törnudd (1993). See also Törnudd P. "Sentencing and Punishment in Finland" in *Overcrowded Times*, vol. 5, no 6, December 1994.

Figure 8

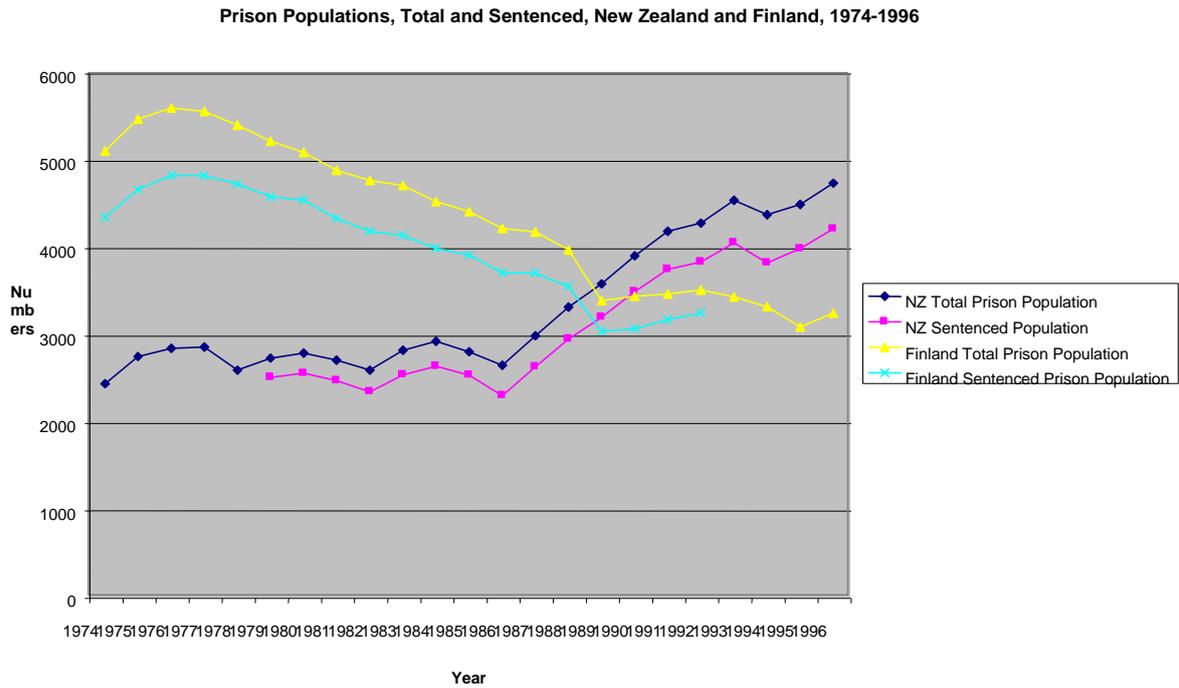
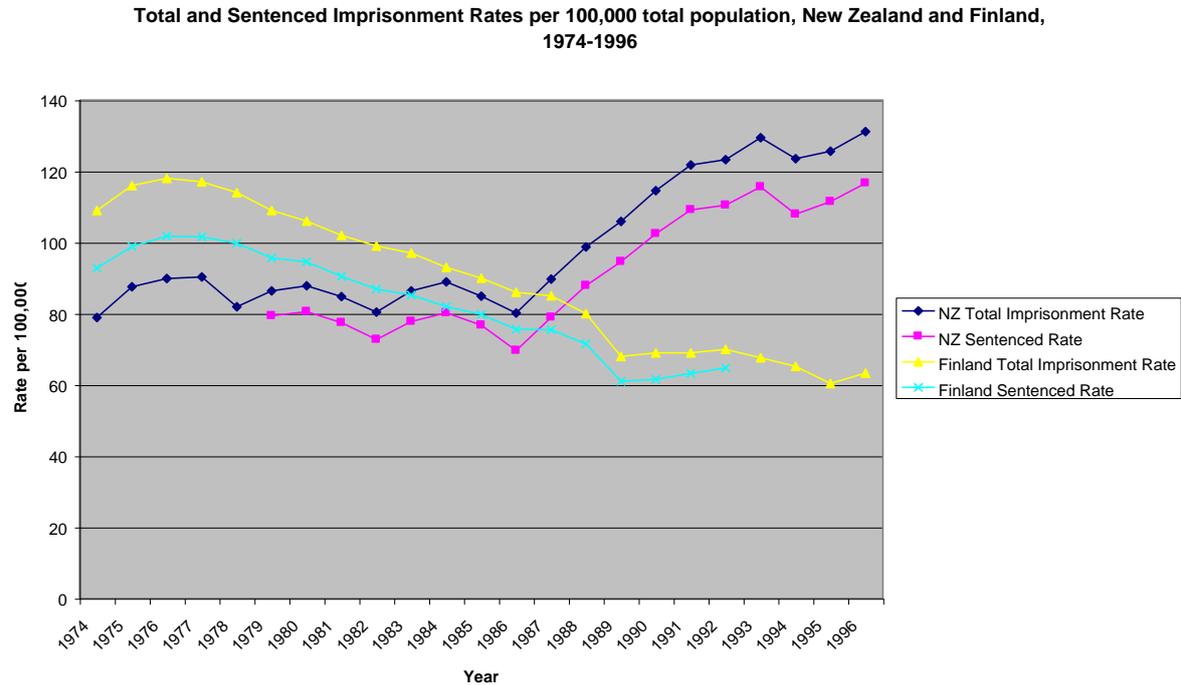


Figure 9



Notes (both charts):

- Finland: Prison population figures to 1992 are annual averages; 1993-1996 are as at 1 September. Population data is for end of year. Rates figures to 1992 from Törnudd 1993; 1993-1996 calculated from sources listed below. Sentenced prisoners: this is all prisoners serving a sentence, fine defaulters, vagrants, juveniles and dangerous recidivists in detention.
- New Zealand: S. Triggs, Ministry of Justice.

Sources (both charts):

- Finland: Population data for 1974-1984 is recalculated from Törnudd (1993); 1985-1996 is from Statistics Finland. Prison population data 1974-1992 is from Törnudd (1993); 1993-1996 is from Home Office (August 1996) and (July 1997).
- New Zealand: Prison population data – S. Triggs, Ministry of Justice. Population data: 1974-1985 - Statistics New Zealand (1997); 1986-1996, see Table 8.

Törnudd discusses how in the late 1960s and early 1970s, the fact that Finland had an internationally high prison population rate was “shrugged off” as being simply an internal national problem, “not as something relevant to Finland’s international profile.” However, eventually the rate was felt to be somewhat abnormal, and the causes behind the comparatively high rate were investigated in earnest. It was discovered that Finnish offence clearance rates were very high, a large proportion of convicted offenders were sentenced to imprisonment, and that prison sentences tended to be “systematically longer” in Finland.¹⁵²

A consensus emerged that something had to be done, and dramatic reductions in the Finnish rate of imprisonment have taken place at a time when many other nations have experienced a rapid rise. In explaining the reductions, Törnudd canvasses some technical changes which made such a trend possible. However, he cautions that:

it is...more important to understand the ideological determinants of the reduction process than to go through the technical details of how this reduction was carried out...the fact that it became possible to carry out a large number of reforms aimed at reducing the level of punishment was ultimately dependent on the fact that the small group of experts who were in charge of reform planning or who worked as crime control experts...shared an almost unanimous conviction that Finland’s internationally high prisoner rate was a disgrace.¹⁵³

Törnudd argues that in some countries the direction of reform is determined by public sentiment, the strength of particular political parties and their programmes, and by the beliefs and preferences of the Minister in charge. By contrast, other countries have a more bureaucratic power structure, where the views of senior public servants and the experts consulted by these public servants have the major influence. Finland (in common with the Nordic countries in general) is subject to a far greater degree of this latter characteristic than the more populist dimension described first. In addition, Törnudd notes that crime control has never been a central political issue in election campaigns in Finland, and Ministers of Justice have never seen crime control as a primary area of concern.¹⁵⁴

Törnudd then turns to the means by which Finland actually achieved its reduction in imprisonment rate. He notes three key areas in which changes were made. The first was to reduce the number of offenders brought to trial (diversion and decriminalisation), the second was to reduce the number of offenders sent to prison and also impose shorter sentences, and the third was through pardon and parole methods during the term of sentences.

The decriminalisation of public drunkenness in 1968 (an offence nearly always punished with a fine), and reform of the law on converting fines to imprisonment, reduced the number of fine defaulters entering Finland’s prisons by about 480 after 2 years. In 1985 the automatic prison sentence of 11 months for refusing to perform military (or any substituted other) service on the grounds that one was a Jehovah’s Witness was abolished, reducing the annual average prison population by about 100. In 1991 the law on the discretionary dropping of prosecution by the public prosecutor was reformed with the expectation that this would increase its use, though Törnudd cautions that no information is yet available on how this has operated.

¹⁵² Törnudd, (1993), p1.

¹⁵³ *Ibid*, p2, 5.

¹⁵⁴ *Ibid*, p4.

Until the year in which Törnudd's report was published (1993), Finland's criminal justice system essentially had only 3 sentencing options – unconditional imprisonment, conditional imprisonment (similar to New Zealand's suspended sentence, with the threat of imprisonment if further offences are committed during the period of the sentence, which can last up to 3 years, but also involving supervision in the case of young offenders), or a fine. Law changes in 1976 have encouraged greater use of conditional prison sentences and a simultaneous reduction in the use of unconditional sentences. Prior to 1976 conditional imprisonment was reserved for first offenders and young offenders. There were changes to larceny (theft) statutes in 1972 (involving new definitions and penalty reductions), so that an increasing proportion of such offences could be dealt with through a fine sentence (82% of larceny offences were dealt with by a fine in 1991 compared to 37% in 1971). Drink driving laws were changed in 1976, which allowed the emergence of new sentencing practices, introducing a conditional prison sentence (typically in combination with a fine) as the standard penalty for drunken driving. Unconditional imprisonment for drunken driving offences decreased from 69% in 1971 to 17% in 1991. Törnudd notes that larceny offences and drunken driving are "two major crime categories as far as Finnish prison sentences are concerned."¹⁵⁵

In 1971 the law was changed to restrict preventive detention for recidivists (involving the continued detention of inmates after the completion of their sentences) to repeat dangerous violent offenders. Previously it had been applied mainly to repeat property offenders. This reduced the number of offenders held in preventive detention from over 200 to about 12. In 1991 Finland introduced community service in certain districts on a trial basis, as an alternative to an unconditional prison sentence only. It was extended nation-wide in 1994.

In discussing Finland's comparatively narrow range of alternatives, Törnudd notes the following:

A sometimes heard remark in the endless Finnish discussions on the desirability of introducing new alternatives to imprisonment and reducing the number of prisoners has been: "an excellent alternative to present-day prison sentences would be to simply introduce shorter prison sentences."¹⁵⁶

In fact, this has been what has occurred. There has been both a reduction in the median length of all unconditional prison sentences imposed (from 5.1 months in 1971 to 3.9 months in 1987) and also in the average sentence length served. In 1991 only 1.4% of all unconditionally sentenced offenders received a prison sentence of 4 years or longer. This reduction has occurred even for an offence type such as the larceny offences, "despite the fact that the shift in the sentencing structure has left a residue of more serious offenders in the category of offenders to be sentenced to unconditional imprisonment."¹⁵⁷

Finally, in the area of parole and pardoning, there was a one-off reduction in sentence length by one-sixth in 1977 to celebrate Finland's 50th anniversary of independence. This was an example of the use of Finland's 'pardoning instrument', though this has not been used since 1977. Such a one-off 'pardon' has been supplemented by several changes to the parole structure. In Finland parole is available either after one half or two-thirds of the sentence has been served, and in the 1970s the applicability of one half parole (formerly reserved for first-

¹⁵⁵ *Ibid*, p8. This situation, along with Finland's former imprisonment of fine defaulters and those refusing military service, is not the case in New Zealand.

¹⁵⁶ *Ibid*, p10.

¹⁵⁷ *Ibid*, p11.

time prisoners) was extended. At the beginning of the 1970s it was stipulated that a prisoner had to have served at least six months to be eligible for parole. In February 1976 this was reduced to four months, and in 1988 was reduced to 14 days (the minimum length of an unconditional prison sentence).

In summing up, Törnudd makes some reference also to such structural factors as the ageing of large birth cohorts born after the war, but essentially he is keen to stress the following point:

The decisive factor in Finland was the attitudinal readiness of the civil servants, the judiciary and the prison authorities to use all available means in order to bring down the number of prisoners....it is that attitudinal and ideological readiness to bring down the number of prisoners [which] is more important than the choice of technique to achieve this end.¹⁵⁸

¹⁵⁸ *Ibid*, p12-13.

Appendix 3

Reducing Reoffending¹⁵⁹

The Department of Corrections' key strategic focus is reflected in its purpose statement "...contributing to safer communities through reducing re-offending." For the Department to make a significant impact on reoffending, it is not sufficient simply to keep offenders in custody and to ensure that sentences and orders issued by the judiciary are administered safely and humanely. While for some offenders their first encounter with the criminal justice system may be sufficient to deter them from further criminal activity, for a large proportion some additional intervention is necessary.

Based on experience in New Zealand and overseas, it is estimated that typical moderately successful programmes ought to reduce reoffending by 10 to 13 percent.¹⁶⁰ Correctional Service Canada, which deals with offenders sentenced to a term of imprisonment of 2 years and more and their subsequent parole, spends 7% of its annual budget on reintegrative activities. In comparison, the Department's expenditure on this type of reintegrative activities in 1996/97 was 2.43% of the total expenditure.¹⁶¹ These activities include education, programmes and inmate employment and achieve reoffending rates of less than 30%, although results are variable across offender and programme types. In general, community-based programmes have proved more effective than those within institutions. Superior programmes can achieve reductions in re-offending of more than 25% over that of a control group which does not receive programmes.

Tools and information currently available do not provide the Department with a comprehensive picture of interventions, particularly in identifying the programmes that are most effective in reducing reoffending. Expenditure on programmes is probably not at a level to make a significant impact on the overall level of reoffending. There is also the additional issue that in the programme areas many current initiatives have simply grown up over time, are provided in an ad hoc manner and have not been evaluated for their effectiveness.

The Department is developing a strategy to be implemented over the next 2 to 3 years to address these issues. In its Strategic Business Plan (SBP) the Department has identified a number of initiatives to reduce the flow of offenders into prisons and thereby ameliorate the costly implications of rising inmate numbers. A summary of these initiatives and the time frames within which they may be developed is attached to this appendix as an Addendum.

All aspects of the Department's strategy aim to reduce the risk of re-offending. If successful in that, in the longer term the Department wants to achieve a decrease in the number of recidivists, that is a decrease in the numbers re-entering the criminal justice system in any form. For those for whom interventions were not successful in preventing re-entry into the

¹⁵⁹ This material was supplied by the Department of Corrections.

¹⁶⁰ McLaren, K., *Reducing Reoffending: What Works Now*, (1992), pp 38-56.

¹⁶¹ To calculate a direct comparison with the Canadian figure this percentage figure excludes the costs of Clinical Treatment Services. Those costs consist of treatment services, provision of Special Unit Psychological Programmes and the provision of reports by Psychological Service to Public Prisons and Community Corrections resulting from referral for assessment and treatment.

system, the Department is seeking to achieve at least a lessening of the severity of their reoffending and to stop their progression from community-based sentences to sentences of imprisonment.

As part of a prioritisation process, the Department has prepared business cases for the larger and more significant initiatives, and is currently seeking additional funding for the implementation of cognitive skills, bi-cultural therapy, increased supervision and psychological intervention, home detention, corrective training and programme funding levels.

The Department is targeting those offenders at medium to high-risk of reoffending and is focusing on interventions through Community Corrections Service and the Psychological Service. By targeting this group the likelihood of their continuing to offend is reduced, the seriousness of any offending they may commit is likely to lessen and, as a consequence, their movement into prison will also be reduced.

The SBP has identified infrastructure constraints that at this stage affect the Department's capacity to present a comprehensive plan that identifies all the specific programmes and interventions needed, and in what quantities, to reduce reoffending and make long-term savings.

The Department plans to use the infrastructure development and investments to undertake research and development work on the nature of the services, and the assessment and evaluation tools required to make an impact on reoffending rates. This includes initiatives with respect to Māori offenders, and initiatives that focus on the identification of quality interventions, to ensure more effective targeting of these interventions in the future.

To present options in these areas, the Department needs to be sure quality programmes have been identified, and that they can be targeted to meet the specific needs of offenders. In this regard the Department needs to measure the gap between the needs identified and the level of resources available to meet those needs. The Department expects to be in a better position to address these factors within the next two years.

Programmes in Prisons

Existing Programmes

Programmes for addressing substance abuse are provided by alcohol and drug counsellors or community groups for offenders with a history of such abuse. An intensive alcohol and substance abuse treatment programme is currently being piloted as part of the 1996/97 Crime Prevention Package. Also as part of the Package, parenting programmes are being trialed at 3 prisons.

Education programmes include primary and secondary school subjects, literacy courses, university study, and vocational training. The cost and availability of such courses varies considerably across the country.

Individual and group anger management programmes are run by the Department and community organisations. These programmes are based on effective overseas initiatives

where the programmes have been researched and evaluated. However, for the most part the Department has not carried out any evaluation of their delivery in New Zealand.

Inmate employment aims to increase the chances for inmates to obtain legitimate post-release employment through the maintenance or promotion of work habits and skills, thus contributing positively to reducing re-offending.

Kia Marama and Te Piriti child sex offender treatment units offer 8 months' full-time intervention with provision on release for extensive community support and intervention as required. The aim is to provide a programme which will reduce the likelihood of reoffending by child sex offenders.

Other programmes provided by community groups include cultural programmes and language courses, personal and social development courses, such as parenting programmes, and leisure and recreational skills courses. The aims and targets of these programmes are often unspecified.

The Department funds and monitors support services provided by the New Zealand Prisoner Aid and Rehabilitation Society (NZPARS) to offenders who have been sentenced to a term of imprisonment or corrective training, to those remanded in custody, and to former inmates and parolees. The objective of these services is to provide social contact, information, and assistance to offenders and their family/whanau in a manner which contributes directly to the offender's rehabilitation or reintegration.

New Programmes/Initiatives

The Department is putting into place a new system for managing offenders, the Integrated Offender Management (IOM). The IOM will maximise the likelihood of a reduction in reoffending through the provision of services in an integrated and consistent fashion. The IOM will cover the management of the people involved in the corrections system from the point of entry into the system to their departure from it, including planning for post-order support. The assessment part of the IOM is fundamental if the Department is to manage an offender successfully and, in particular, to have an impact upon an offender's likelihood of reoffending. The assessment will occur upon an offender's entry into the corrections system. Criminogenic needs, the risk, and the responsiveness of offenders will be assessed in order to prescribe individually targeted intervention programmes.

The Department has been developing its response to the special needs of Maori offenders by introducing Māori programmes which seek to recover Maori principles and disciplines as a basis for the rehabilitation of Maori offenders. There are indications that this approach can be successful. Building on these programmes, a Māori Focus Unit opened at Hawkes Bay Regional Prison on 10 December 1997. The Unit provides a cultural context and medium for appropriate interventions expected to reduce Māori reoffending through providing an environment and programmes which better respond to the unique needs of Māori offenders.

The Department participates in the Responses to Offending by Māori (ROBM) project which was developed within the context of the Responses to Crime Strategy. The principal objectives of ROBM are to reduce over-representation of Māori in the criminal justice system as offenders and victims, and increase the positive participation of Māori in that system. Of

particular interest to the Department is the problem of insufficient programme providers with the necessary capacity to intervene. The Department is looking at ways of supporting provider development for both Community Corrections Service and Public Prisons Service.

Young prison inmates (those between the ages of 16 and 20 years) commonly have a wide range of problems, including poor anger management and communication skills, and literacy and numeracy difficulties. They often lack a work ethic and have trouble finding employment upon release from prison. Programmes which are effective in addressing the criminogenic needs of this group make an important contribution to crime prevention. Programmes assist inmates who might otherwise go on to extensive criminal careers and in the process draw many of their peers and own children into a cycle of offending. The Department will be trialing an extension and modification of the New Zealand Conservation Corps (NZCC) programme to prison inmates aged 16 to 20 years. The NZCC programmes aim to offer participants opportunities for learning and personal development and to improve their employment prospects. The NZCC programmes have been operating since 1989 and have succeeded in these aims with the non-offending young people in the community.

A special treatment unit for violent offenders, a new 30 bed stand alone custodial unit at Rimutaka Prison, will be dedicated to the treatment of offenders serving sentences for 'interpersonal violence'. The offenders will typically move through this treatment programme during the last 12 months of their sentence. It is a violence prevention programme that will strongly emphasize relapse prevention and thus contribute to a reduction in reoffending rates.

Research indicates that many offenders lack self-control, are action-oriented, impulsive, and unable to consider the consequences of their actions. Evaluations of cognitive skills programmes in Canada and Wales indicate that recidivism rates can be reduced by up to 13%. The Department is proposing to implement a cognitive skills programme which would annually include 1,306 prison inmates and 1,184 offenders serving a community-based sentence.

The high proportion of Māori offenders suggests that interventions have not been reaching a significant proportion of this client group. The implementation of the bi-cultural therapy programme will provide a culturally appropriate service to Māori offenders via the Psychological Service. It is projected, based on previous studies, that such a service for Māori offenders will reduce re-offending by this group by 12 to 13%.

The Department is currently working closely with the Ministry of Justice, the Ministry of Pacific Island Affairs, the Police, and other justice sector agencies to develop a strategy to deal with the area of violence, with special focus on family violence, within Pacific Peoples' communities (violent offending accounted for 35% of all convictions for Pacific Peoples for non-traffic cases in 1996¹⁶²). Research and consultation has focused on the Samoan and Tongan communities which have been identified as over-represented in criminal justice and youth justice statistics. The Department, together with the other agencies, is working to identify primary intervention strategies that will prevent the entry of Pacific Peoples into the criminal justice system and effective programmes that promote exit and prevent re-entry. The results of this project are expected to provide information for the Department's

¹⁶² Data provided by P. Spier, Ministry of Justice.

purchasing decisions about programmes and strategies that have a significant effect on reducing reoffending among Pacific Peoples.

The Department has reviewed the sentence of corrective training, a sentence which is intended to deter 16 to 19 year olds from reoffending by the experience of a short sharp shock. The review has identified that corrective training is not effective in reducing reoffending, a finding entirely consistent with overseas experience. Wanganui computer data shows that 94.5% reoffend within a 4 year period and there is no decrease in the seriousness of their reoffending. Of those who reoffend, 70% subsequently receive a custodial sentence. The Department has identified 4 options for the future of the sentence. These options will be re-examined in the Department's review of the sentencing and management of serious young offenders requiring secure custody.

Interventions through Community Corrections

Existing Programmes

Through the Community Programme and Maatua Whangai funds, programmes are purchased for those on sentences of supervision, community programme or parole, from a range of community organisations that aim to meet the criminogenic needs of offenders. Offender needs are identified using a computer-generated model developed by Ernst and Young which provides managers with both an offender and community profile, designed to aid in the prioritisation of offender needs and programmes for purchase. The model aims to ensure that programmes are matched with the needs of offenders in particular communities, especially in the area of cultural appropriateness of delivery. The focus on high and medium risk offenders has meant that the types of programmes purchased are being reviewed, and programme providers are being encouraged to work with the Department in order to ensure that their programmes are meeting the Department's needs. Community Corrections Service is working with Policy and Service Development in the areas of core programmes, the development of an evaluation tool, and the development of guidelines for substance abuse, violence prevention, and driving, all of which will have a major impact on the type and quality of the programmes purchased.

The Integrated Model of Supervision (IMS) was first introduced into the New Zealand Community Corrections Service in 1995. Developed and tested by Dr Trotter, an Australian researcher with a long association with the corrections environment, the model provides a framework for the supervision of offenders. IMS follows three main principles which have been shown, through international research, to be effective in reducing reoffending. These are: targeting high-risk offenders; using pro-social modeling and reinforcement; and teaching and modeling the use of problem-solving techniques and skills. IMS provides intensive supervision for those most at risk of reoffending. As an intensive intervention model it requires the probation officer to spend more time with the offender than is currently available. The model also needs to be further tested and evaluated within the New Zealand environment.

New Programmes/Initiatives

The Department is investigating the best approaches to reducing re-offending amongst the group who are being convicted and sentenced to all types of sentences for traffic offending.

The research literature indicates that comprehensive alcohol treatment of repeat drink-driving offenders can be expected to reduce traffic reoffending by about 8%. The DOT programme run from Christchurch Community Corrections has reported considerably better success with repeat disqualified drivers, their traffic reoffending was reduced by about 18%. At this stage it is not possible to put a figure on the total potential reduction in the prison population.

The habilitation centres pilot programme arose from the 1989 report of the Ministerial Committee of Inquiry into the Prisons System (*Te Ara Hou*) which asked for a programme which would habilitate offenders and serve as an alternative to prison. Government decided to make the habilitation centres pilot programme a parole option for offenders who have served some time in prison. There are currently four centres located in West Auckland, New Plymouth, Plimmerton and Christchurch. The habilitation centres in West Auckland and New Plymouth are specifically designed for Māori, while the centre in Plimmerton is for female offenders. A contract has just been signed with a provider for a fifth habilitation centre which will be located in South Auckland. The Department is evaluating the effectiveness of the existing habilitation centres, with the evaluation results to be available at the end of 1998.

Montgomery House provides a 10 week violence prevention programme delivered in a community residential facility. The programme has been determined by the Department and is based on an integration of Taha Maori and a psychological model employing social learning and cognitive behavioural techniques. An evaluation of the current Montgomery House programme will be available later this year.

Rehabilitative programmes are currently not available on a sentence of periodic detention. The Department will be evaluating the effectiveness of having programmes at periodic detention through the establishment of pilots later this year.

CRIMPS is an intervention model for probation officers which focuses on motivational interviewing, problem solving, and relapse prevention. The aim is to provide probation officers with these skills to assist in working effectively with offenders.

As part of the 1996/97 Crime Prevention Package the Department is evaluating the effectiveness of community-based violence prevention and sex offender treatment programmes.

A pilot home detention programme has been operating in Auckland since 1995. Following an evaluation of the pilot, the Department has obtained Cabinet approval (CAB (97) M 38/11) for the expansion of home detention. Subject to the passage of legislation which has been referred to a select committee, the Department plans to have this in operation during the 1999 calendar year. Following overseas evidence, home detention will be combined with rehabilitative programmes. This is recognised internationally as a cost-effective alternative to imprisonment and an effective means of rehabilitation, contributing to the reduction of reoffending.

The increased supervision and psychological treatment business case expands on the use of the IMS model referred to earlier. The Department is seeking additional funding to increase the number of probation officers and psychologists to work with high-risk community corrections service offenders. Judging by overseas research, an increase in supervision and

psychological treatment for these offenders will, in association with other initiatives, reduce their reoffending rates by about 13%.

Conclusion

The Department is currently still providing some programmes developed a number of years ago that have not been evaluated and their effectiveness is not known. The Department's strategic direction has two critical objectives:

- ensuring that offenders comply with sentences and orders imposed by the justice system; and
- reducing the re-offending of those who come within its jurisdiction.

The objective of reducing reoffending includes:

- providing programmes for education, training, inmate employment, psychological treatment, and violence and anger management that have been shown to have the potential to reduce re-offending; and
- developing crime prevention strategies (for example, drug abuse, violence prevention programmes, and inmate employment initiatives).

The Department, in the course of its strategic planning, has identified a number of initiatives it believes will contribute to the reduction of reoffending. It has identified purchase initiatives that have the potential to cap the growth of prison inmate numbers post the year 2000 and potentially reduce the demand for prison accommodation from that point. These are cognitive skills, bi-cultural therapy, increased supervision and psychological intervention, home detention, and corrective training. Implementation of these initiatives depends on securing additional funding for the Department.

The objective of reducing reoffending is of high strategic importance to the Department. It could be argued that the Department contributes to reducing reoffending by incapacitating offenders and administering deterrent sanctions. There is now strong evidence that addressing offenders' criminogenic needs is a particularly effective way to reduce reoffending, yet this has only a relatively small share of the total Departmental expenditure.

ADDENDUM

KEY INITIATIVES AS IDENTIFIED IN THE STRATEGIC BUSINESS PLAN

Synopsis of Key Initiative Milestones

Integrated Offender Management Framework	Policy development and introduction of Integrated Offender Management Framework	1996/97
	Assessment Sentence planning Standards Post-release policy Culture	1997/98
		1998/99
Integrated Offender Management System (IOMS)	Development of system Introduction of IOMS HR/training	1996/98
Knowledge of and influence on demand for corrections' services	Evaluation	1998/99
	Community Corrections forecasting Improved forecasting models for Department	1998/2000 1999/2000
Programme provision	Develop standards and menu Develop general guidelines for programme evaluation	1997/99
	Introduce systems for evaluation Pilot the use of programmes in periodic detention	1998/2000 1988/99
Evaluation	General staff training in evaluation Staff training on programme evaluation	1997/99 1997/98
Sex offending	Evaluate community-based sex offending treatment programmes	1997/2000
Habilitation centres	Evaluate pilot	1996/97
Home detention	Ministry of Justice to evaluate pilot	1996/97
Driver offender treatment programme	Evaluate present programme	1996/97
Violence prevention	Develop criteria and guidelines for effective prevention programmes	1996/97
	Establish prison-based violence prevention unit Evaluation community-based violence prevention programmes	1997/98 1997/99
Cognitive Skills Programme	Implement Programme in Public Prisons and Community Corrections Enhance cognitive skills by the development and introduction of more specific intervention	1997/99 1998/99
Parenting programmes	Introduce into prisons Evaluate programmes in prisons	1996/99 1997/99

Health services	Develop policy and review health services including mental health	1997/99
	Psychiatric morbidity review	1996/99
	Review policy on infectious diseases	1997/98
	Review of methadone protocol	1997/98
	Review purchasing of drug and alcohol treatment programmes for offenders	1997/98
Drugs	Implement the national strategy on drugs in prisons	1997/98
Alcohol and drug offending	Establish an alcohol and drug intervention prison unit	1996/99
	Evaluate prison-based programme	1996/99
Young offenders	Develop policies	1997/98
Women offenders	Review the management of women offenders in the corrections system	1997/99
Remand inmates	Review the conditions	1998/99
Māori offenders	Investigate interventions most likely to be effective in reducing reoffending	1996/98
	Review adequacy of existing programmes	1996/97
	Implement mechanisms to ensure appropriate consultation with and involvement of Māori	1998
	Establish agreed policy and standards on services related to Māori and a framework for service specification and delivery	1996/98
	Identify problems with access and referral services for Māori	1997/98
	Introduce Bicultural Therapy Programme	1997/98
	Develop and introduce the policy basis for and feasibility of kaupapa Māori or Māori programme prison units	1996/98
Provide appropriate staff development so staff can work effectively with Māori offenders	1997/98	

Appendix 4

Crime Prevention Initiatives

Much crime prevention activity relies on indirect action and targets the factors that give rise to offending, rather than the offending itself. Thus, some of the most promising crime prevention programmes will only have an impact in the long term. For example, a follow up study of disadvantaged children who attended the Perry pre-school programme in Michigan for 2 years found that this group had half the arrest rate of a control group over the period up to age 27.¹⁶³ There is no assurance that similar results could be expected from large-scale application of this approach, but even if this was the case there would be no payback in terms of reduced numbers of offenders coming into the criminal justice system until at least 15 years in the future and the full benefits would not be apparent for up to 30 years. Even allowing for these factors, locking up offenders may be a less cost-effective means of controlling crime over the long term than investing in pre-school education for at risk groups,¹⁶⁴ but if savings are not available in the short term new funding must be obtained for such programmes.

Not all crime prevention programmes have such long payback periods. Some successes have been experienced with programmes for at-risk or delinquent teenagers and with situational crime prevention techniques that work to prevent crime by reducing opportunities or increasing the difficulty of offending.¹⁶⁵ There have been very promising initial results from new policing strategies applied in some places in the USA. For example, one study indicated that intensive patrolling of crime “hot spots” resulted in decreases in offending at those places of up to 50% in the short term.¹⁶⁶ Nevertheless, the results of evaluations are often equivocal or inconsistent. Most successes are small scale and the outcomes are not measurable in terms of reductions in numbers of people going to prison.

The UK Home Office has carried out a comprehensive evaluation of some anti-burglary programmes that shows these to be very effective in reducing burglary rates.¹⁶⁷ On average, the value of burglaries prevented (in terms of savings to victims plus savings to the justice system) was twice the cost of the programmes. On the other hand the programme costs were still greater than the estimated savings to the criminal justice system and the evaluation does not identify how many prison sentences were avoided.

Most burglars do not go to prison and when they do it is not for long periods. There would need to be a very large reduction in total numbers of burglaries for a prevention programme to have any effect on the need for prison accommodation. This is the case with many situational crime prevention programmes: that they are most successful in reducing relatively common and less serious forms of offending. The reductions achieved can be very worthwhile in terms of the overall cost of crime to society, but have limited potential to reduce the prison population, as this is made up largely of serious violent offenders.

¹⁶³ Schweinhart L. J. , Barnes H. V. and Weikart D. P. , *Significant Benefits*, (1993).

¹⁶⁴ As suggested by Donohue and Siegelman, (1998).

¹⁶⁵ See Sherman L W et al, *Preventing Crime: What Works, What Doesn't, What's Promising, A Report to the United States Congress*, (1997), and also Clarke R V G ed., *Situational Crime Prevention-Successful Case Studies*, (1997), for a survey of some successful situational programmes

¹⁶⁶ Sherman (1997) chapter 8, pp 16-19.

¹⁶⁷ Ekblom P, Law H, Sutton M, *Safer Cities and Domestic Burglary*, (1996).

Studies of crime prevention programmes that show any evidence of impact on rates of serious offending in the short term are rare. An exception was the 1982 evaluation of the US Federal Government Job Corps programme. Sherman¹⁶⁸ cites this as virtually the only example of an employment-related programme that has a plausible claim to affect the offending rates of participants. It is an expensive, long-term residential training programme aimed at a particularly disadvantaged clientele (mainly high school dropouts) and benefits claimed include lower rates of homicide, robbery, burglary, and theft compared to a comparable group.

American studies have cited a small number of other programmes for at-risk young people that also appear to be successful in reducing the offending rates of participants. A Rand Corporation study of costs and benefits of “diverting children from a life of crime”¹⁶⁹ gave the highest cost benefit rating to a programme that gave academic assistance and cash and other incentives to disadvantaged youths to help them graduate from high school and go on to college.

Further examples could be described of crime prevention programmes that have shown promising results in terms of reductions in certain types of offending in restricted localities or reduced offending rates among programme participants. This, however, is not at all the same thing as achieving noticeable reductions in overall levels of offending. In view of the small scale of most programmes this would be an unrealistic expectation. It remains to be seen therefore whether the promise shown by a very small number of largely experimental projects can be translated into successful large-scale crime prevention programmes.

¹⁶⁸ Sherman, (1997).

¹⁶⁹ Greenwood P W, Model K E, Rydell C P, Chiesa J, *Diverting Children from a Life of Crime: Measuring Costs and Benefits*, (1996).

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