

COMMUNITY INVOLVEMENT IN TREATMENT OF OFFENDERS POST SENTENCING: THE NEW ZEALAND EXPERIENCE

*David Carruthers**

I. INTRODUCTION

As mentioned in the previous paper, New Zealand has a high rate of imprisonment compared with other countries.¹ There is a growing recognition that if current trends continue, expenditure on prisons has potential to sky rocket, together with all the other negative corollaries of imprisonment.

Despite that high imprisonment rate, we have a number of community-based sentences that can be imposed by the courts, which are outlined in this paper. Associated with these, there are many ways in which the community engages with offenders who are in prison in efforts to address their offending and support reintegration on release.

II. RATIONALE FOR COMMUNITY INVOLVEMENT

It is not necessary to repeat what was said in the first paper. It is enough to say that imprisonment should always be reserved for the most serious offenders, either to emphasize the egregious nature of the offending, or to keep the public safe, or to deter others from behaving in like manner. Except for relatively small number of prisoners who may be in prison for life for the most serious offending, all prisoners must eventually be released. In New Zealand the average costs of keeping an offender in prison amounts to approximately \$100,000 per annum. There are obvious advantages in reducing prison numbers and constructing community-based sentences to take their place, thereby enhancing rehabilitation, reintegration and reparation. The New Zealand hierarchy of sentences aims to address the requirement of clarity in respect of the various sentences and how each compares to the others. There is a principle requiring the Courts to apply the least restrictive outcome available. The hierarchy of sentences is based on this principle and is as follows:

- (a) Discharge or order to come up for sentence if called upon;
- (b) Fines or orders for reparation;
- (c) Non-association orders;
- (d) Community-based sentences of community work and supervision;
- (e) Community-based sentences of intensive supervision and community detentions;
- (f) Home Detention; and
- (g) Imprisonment.

III. COMMUNITY-BASED SENTENCES

There are a number of “community-based” sentences available to a sentencing judge under the Sentencing Act 2002. The term “community-based” is used in the sense of being an alternative to imprisonment. These sentences are administered by probation officers working for Community Probation Services (part of the Department of Corrections). Approximately 38,075 offenders are on community-based sentences at any one

* Chairman, New Zealand Parole Board.

¹ In March 2010 our imprisonment rate was 185 prisoners for every 100,000 members of the population. By way of distinction, America is the highest at 756, Denmark the lowest at 63, and our neighbours Australia were at 129. See http://www.corrections.govt.nz/about-us/facts_and_statistics/prisons/march_2010.html

time in New Zealand as at 31 October 2010, compared to 8,506 offenders in prison.

Community-based sentences allow the offender to remain in the community, preventing contamination with other offenders. They also allow for attendance at community-based programmes to address the causes of offending. Strong and credible community-based sentences are essential if the prison population is to be reduced.

Reports show that within four years of release from prison nearly 50% of offenders are convicted of at least one new offence and end up back in prison.² Another way of looking at this is to reverse the statistics; about 50% of all offenders do not return to prison within four years of release! The figures for those sentenced to a “community-based sentence” are improving.³ The latest Annual Report from the New Zealand Department of Corrections talks of a moderate fall in imprisonment rates for the second year in a row amongst offenders who commenced a community-based sentence.

IV. COMMUNITY WORK

In 1980 an amendment to the Criminal Justice Act 1954 was passed, establishing the sentence of community service. It was in response to “a growing body of opinion that felt that in some instances it is appropriate to extract some form of community service from an offender.”⁴ In 2002 the sentence was incorporated as part of the Sentencing Act 2002, and is now known as “community work”.

This was the first sentence in New Zealand in which a part of the responsibility for the supervision of an offender was given to people within the community. It has a content of general reparation to the community and in some instances may benefit the victim. It costs little to administer and is also inexpensive in terms of human and social cost.

Community work can be done anywhere in the community, from parks and reserves to schools, *Marae* (Maori meeting places), and churches. It can involve painting, gardening, building, graffiti cleaning, restoration, recycling, and more. An offender can be ordered by the court to complete between 40 and 400 hours of community work.

A significant amendment in 2002 was to enable some of the hours of community work to be completed as training for basic work and living skills. Up to 20% of hours may be substituted in this way.

Last year community work sentences provided 3.7 million hours of offender labour to charitable and local projects throughout New Zealand. Local Probation Officers are continuing canvassing local charities such as rest homes, schools, day care centres and other organizations and also are in contact with local government authorities in the search for appropriate community work projects. Across the country, several thousand such organizations are the beneficiaries of work done under community work sentences. Some 40% of all work is completed under the supervision of community organizations and the remainder is organized by a local supervisor paid by Community Probation Services.

² Figures released in March 2008 show that across the entire sample of offenders released from New Zealand prisons in 2002/03, 49 percent were convicted of a new offence and were returned to prison at least once during the 48-months follow-up period, see *Reconviction patterns or released prisoners: A 48 month follow-up analysis*, Arul Nadesu, Policy Strategy and Research, Department of Corrections, March 2008. Accessible at: http://www.corrections.govt.nz/__data/assets/pdf_file/0006/258864/Recidivism_Report2008.pdf.

³ A report released in March 2008 summarizes patterns of reconviction and imprisonment amongst almost 35,000 offenders who started community sentences (Supervision, Community Work) and orders (Front-end Home Detention) during the 12 month period 1 July 2002 to 30 June 2003. The overall reconviction rate of offenders who started Supervision, Community Work and Front-end Home Detention was 54% over four years. See *Reconviction patterns of offenders managed in the community: A 48 month follow-up analysis*, Arul Nadesu, Policy Strategy and Research, Department of Corrections, March 2008. Accessible at:

http://www.corrections.govt.nz/__data/assets/pdf_file/0011/289712/Community-sentence-reconviction-report-2008.pdf.

⁴ NZPD, vol. 427, 1979, p4152

V. SUPERVISION/INTENSIVE SUPERVISION

Supervision is a rehabilitative community-based sentence which requires offenders to address the causes of their offending. It was introduced in 2002. Offenders can be sentenced to supervision for between six months and one year by the court. The supervision sentence is aimed at offenders convicted of low level offences with relatively straightforward rehabilitative needs and a lower risk of reoffending. The sentence has been designed to minimize contact between CPS and the offender based on international research showing that high levels of intervention with offenders at a low risk of reoffending can actually increase their risk of reoffending.

Under a sentence of supervision an offender is required to report periodically to his or her probation officer. Courts almost always also impose a special condition requiring the offender to attend a community-based programme of some description to address the causes of their offending. The offender's probation officer is responsible for ensuring that the programme is attended and completed.

Intensive supervision provides a larger and more complex set of special conditions than is available under a sentence of supervision. Intensive supervision places a greater weight on the acquisition of basic work and life skills. It is targeted at offenders convicted of more serious offences and who have complex rehabilitative needs. Offenders can be sentenced to intensive supervision for between six months and two years.

The sentence requires frequent reporting to probation officers. Probation officers will also make calls at the offender's home. Special conditions requiring attendance at a rehabilitative programme are the norm.

A. Judicial Monitoring

Sentences of intensive supervision and home detention include a special condition allowing a judge to impose judicial monitoring of an offender's compliance with the sentence. The Court must be satisfied that judicial monitoring is necessary to assist compliance because of the special circumstances of the offender: s. 54I(2) and s. 80D(3).

If a condition of judicial monitoring is imposed, the probation officer must give the sentencing judge a report on the offender's progress within three months of the commencement date of the sentence or one third of the time into the offender's sentence, whichever is earlier. The judge may direct that further progress reports be given at specified intervals or not less than three months: s. 80ZJ.

The progress reports must contain information on the offender's progress and compliance with the sentence and other information relevant to the sentence.

After considering a progress report, the judge may order the offender to appear before the court if the judge considers it desirable for the administration of the sentence or the rehabilitation or reintegration of the offender: see s. 80ZK and the procedure in s. 80ZM.

VI. COMMUNITY DETENTION

This sentence involves an electronically monitored curfew and can be imposed in conjunction with community work, supervision and rehabilitation programmes. Community detention can only be imposed:

- (i) if an offender is convicted of a sentence punishable by imprisonment, or a community-based sentence or home detention is expressly provided for in the enactment specifying the offence (s. 69B(1)); and
- (ii) the Court is satisfied that:
 - it would reduce the likelihood of further offending by restricting the offender's movements during specified periods; or
 - it would achieve one or more of the purposes of accountability, responsibility, deterrence or denunciation; and
 - that an electronically-monitored curfew is appropriate, taking into account the nature and seriousness of the offence, and the circumstances and background of the offender (s. 69C(1)); and

(iii) the Court is satisfied that:

- there is a suitable curfew address within an area in which the scheme is operated; and
- the occupants of the address understand the conditions, consent and have been informed that they may withdraw consent at any time; and
- the offender understands and agrees to comply with the conditions: s. 69C(2).

The maximum period of sentence of community detention is six months (s. 69B(2)).

VII. HOME DETENTION

Home detention is a sentence that requires an offender to remain at an approved residence at all times under electronic monitoring and close supervision by a probation officer. It can help offenders to maintain family relationships, keep working or actively seek work, and enable them to attend training or rehabilitative programmes in the community.

Home detention as a standalone sentence was introduced in November 2007 as a way of addressing the ever-increasing prison population. Prior to the amendments in 2007, home detention was a way in which sentences of imprisonment could be served if leave was granted by the Parole Board. When the sentence was being considered it was noted that those on home detention had re-conviction rates that were a third to a quarter of those who had spent a comparable period of time in prison. Also, compliance rates were high and there were significant costs savings for home detention versus prison.⁵ It was estimated that making home detention a sentence in its own right would save 310 new prison beds.

Home detention is now available to the sentencing court whenever the court would otherwise sentence the offender to a “short term of imprisonment” (defined as any sentence under two years’ imprisonment). Home detention can last for a maximum of 12 months. Home detention can be combined with community work and a court can (and frequently does) impose a special condition requiring attendance at a rehabilitative community-based programme such as a drug and alcohol rehabilitation programme or anger management programme.

VIII. OPERATING THE HIERACHY OF SENTENCE

A. Community Work

Community work as a sentence is sometimes used as an escalation or when there is no possibility of paying fines but can also be used constructively to put something back into the community rather than taking from it. Using community work, for example, for those involved with graffiti, in order to clean up their neighbourhoods is useful, but there can be other constructive community-based outcomes such as building children’s parks, clearing scenic tracks and so forth. Also there can be a bonus, such as a young man who completed the community work for a community construction organization and did so well he ended up getting an apprenticeship with that organization.

Non-compliance with a community work order can be a problem because the community as a whole needs to recognize that it is a valid sentence. Some courts in New Zealand have set up special breach courts not to monitor compliance but to insist on it. And so, for example, in one community court the authorities are encouraged to bring breach action immediately – typically an extra day is added to the work and occasionally a sentence of community detention, i.e. electronic curfew, is added to ensure compliance.

All these sentences which are community-based can escalate into the next restorative intervention opportunity but prompt action for breaches is always imperative to avoid the perception of an easy sentence.

B. Supervision

Supervision is used for the delivery of necessary interventions such as violence cessation programmes, drug and alcohol, gambling and budgeting programmes. Sometimes supervision is linked with community work so there is a punitive element as well.

⁵ Cabinet Police Committee, Paper 7 – Home Detention, Effective Interventions, para 17.

C. Intensive Supervision

The next more intrusive intervention is intensive supervision, which can be for a longer period of up to two years but can also be used for residential treatment in community-based facilities.

The sentence of supervision also can have included in it judicial monitoring which involves three monthly reports on progress. This keeps the government departments responsible for interventions honest as well as ensuring offender participation.

D. Community Detention

The next intervention is community detention, which involves electronic curfew and can be used in two ways. The first is to include a punitive element by restricting liberty but also reduce opportunities for offending at night – some repeat drunk drivers respond to this. Supervision and community detention ensures they are home at night, safe from being out driving but able to attend programmes.

E. Home Detention

The last most important intervention is home detention, which is designed to be imposed in place of short term imprisonment and is a much more controlled mechanism but can have the down side of interfering with employment if that employment is not very structured. In New Zealand there is a high breach rate for home detention (28%) but that is sometimes the result of too long a period with such restrictions which can provoke the breach.

Breach of home detention in place of imprisonment without adequate explanation will quite often result in a short period of imprisonment.

A further intervention is called deferral. There is a section of the Sentencing Act – Section 25 – which supports deferral of sentence so that the Court can monitor compliance with a community-based wrap-around programme which might involve such important items as literacy, job search, drugs and alcohol treatment, and so forth. A number of community groups provide such wrap-around programmes. The final sentence, after such a deferral regime, usually reflects on the successful conclusion of other programmes.

IX. COMMUNITY INVOLVEMENT IN COMMUNITY-BASED SENTENCES

Community-based sentences are administered and monitored by Community Probation Services, an arm of the Department of Corrections. However, the sentences require a significant input from the community.

CPS staff work with community-based programme providers who provide rehabilitation in the areas of family violence, drugs and alcohol, gambling and sexual offending. In 2009/2010 3,280 offenders on community-based sentences spent 140,837 hours attending programmes run by community-based programme providers (note these figures do not include those on drug and alcohol programmes). Most of these programmes are completed as part of a sentence of supervision or intensive supervision.

A. Maori Programmes

CPS staff work closely with Maori programme providers to support the management of offenders who are serving sentences of supervision or intensive supervision. In 2009/2010 1,278 offenders spent 55,125 hours attending community run such programmes. Probation officers work closely with providers and offenders to ensure the success of these programmes, which aim to connect/reconnect Maori offenders with their cultural values and to use the strengths of Maori culture to assist them to live offence-free lives.

B. Domestic Violence Treatment

Domestic Violence Treatment programmes are delivered by community-based providers to help offenders identify their thinking and lifestyle and their use of violence. They teach offenders the skills needed to live without violence, such as controlling violent impulses and conflict resolution. The Community Probation Service refers offenders only to external community-based programme providers who are accredited under the Domestic Violence Act 1995 and registered with the Ministry of Justice.

The programmes teach offenders the skills needed to live without violence, such as controlling violent

impulses and conflict resolution. Programme content varies depending on the provider.

C. Alcohol and Other Drug Treatment Programmes

Both residential and non-residential alcohol and drug treatment programmes are implemented by a number of community-based providers across New Zealand for those serving community-based sentences. These programmes are suitable for offenders with a history of serious substance abuse identified as contributing to their offending. Problem gamblers have similar opportunities.

These treatment services are primarily funded by the Ministry of Health through District Health Boards; however, the Department of Corrections also holds contracts for residential alcohol and drug treatment services for a limited number of offenders per year. These providers in the main are community/church-based charitable trusts or societies.

In most cases offenders attend residential alcohol and other drugs treatment as a special condition of their order or sentence and are referred by their probation officer to attend these programmes.

Probation Officers may also encourage community-based offenders to attend Alcoholics Anonymous and Narcotics Anonymous programmes in the community.

D. Child Sex Offender Treatment Programmes

The Department of Corrections has fully funded contracts with three community-based providers for provision of child sex offender treatment programmes in the community – SAFE Network (Auckland), WellStop (Wellington) and STOP Trust (Christchurch). These organizations provide treatment for adult sex offenders who offend against children. Each organization employs a similar therapy model of Cognitive Behavioural Therapy, with a strong emphasis on relapse prevention.

The programmes aim to reduce the risk of reoffending by addressing major treatment issues. Offenders participating in the adult programme attend group therapy and individual therapy with their counsellor or case manager. The programme takes fifteen months to complete (three month waiting list and assessment plus twelve month programme). Regular review meetings include friends and/or family/*whanau* members who support the offender.

In addition to providing treatment for adult sexual offenders, all three programmes provide treatment for adolescents who have been sexually abused.

E. *Tai Aroha* Intensive Programme for Offenders in the Community

Tai Aroha is a residential rehabilitation programme based at Montgomery House in Hamilton. Target participants are high risk male offenders serving community sentences of Home Detention or Intensive Supervision, who have multiple treatment needs related to violent offending.

Participants live in a therapeutic community that provides a structured day and pro-social support, and participate in an intensive treatment programme delivered by Departmental psychologists and programme facilitators. The programme runs for 14-16 weeks, followed by through-care in the community.

Tai Aroha has a rolling intake with a maximum of 10 participants at any one time.

F. Community Work

Through community work, New Zealand communities benefit from over 3.7 million hours of labour annually. Agencies providing placements for individual offenders on community work need to supervise the offender and report on the person's progress to a probation officer. Agencies/community groups must be approved by CPS before they can receive offenders on community work. Specific examples of projects with community groups include:

- In Christchurch, offenders on community work are helping with cleanup efforts following the recent earthquake and will over time contribute to the longer term redevelopment projects;
- In Wellington, offenders on community work are working with *Wainuiomata Marae* to undertake maintenance work and are learning *Marae* protocol and Maori at the same time. Some offenders are

taking this opportunity to learn about and reconnect with their culture;

- In Kaitaia, offenders on community work are helping to restore a local beach's ecosystem and enhance erosion protection by assisting the Beach Improvement Society;
- In Canterbury, offenders on community work have been helping their local coastguard launch a new rescue vessel by assisting with maintenance duties around the coastguard building a premises so that coastguard volunteers can dedicate their time to keeping the waters safe.

X. COMMUNITY INVOLVEMENT IN PRISONS

Prison is and will remain inevitable for the worst offenders in our society. Equally inevitable, however, is that the great majority will be released back into the community after serving their time in prison. An offender who is simply released into the community with no support is very likely to continue offending to the detriment of everyone in society. All the international research shows that those offenders who receive assistance from the community or state to reintegrate back into society have a much better chance of staying crime free.

XI. PRISON FELLOWSHIP

The Prison Fellowship is a non-denominational Christian community organization which works in prisons and communities to restore prisoners and ex-prisoners to their communities and families, and to try and reconcile offenders and victims. The Prison Fellowship is involved on a number of different fronts, working with prisoners both in prison and after release. Some government funding is provided to this group. The following is a snapshot of its work with prisoners:

- *Prison volunteering*: The Fellowship has a large body of volunteers who attend prison to help prisoners in a variety of ways, contributing to the rehabilitation and reintegration of prisoners by sharing skills, experience and knowledge;
- *The Faith Unit*: In 2003 the Fellowship in collaboration with Rimutaka Prison established a 60 bed unit for prisoners who wish to explore the Christian faith;
- *Prisoner reintegration*: New Zealand's first prisoner aftercare programme using trained mentors was established by the Prison Fellowship in 2003, to support prisoners released from the faith unit. Known as Operation Jericho, it continues to support released prisoners from the faith unit and other prison units within the Wellington region, providing support pre-release, and for up to two years after release. Recently the Fellowship has moved to a "strengths-based" methodology for reintegration. The traditional approach to prisoner reintegration focuses on addressing prisoners needs – accommodation, employment, financial management, family relationships. It assumes that the prisoner is dependent on the state, or a provider, to meet those needs. The strengths-based approach discourages dependency. It focuses on the acquisition of skills; moral inclusion of the ex-prisoner within a targeted community; encouraging ex-prisoners to actively address harm done to victims, families and the community; and "paying back" to the community through voluntary reparation and community service. Restorative reintegration occurs when it draws on community processes through which informal support and controls traditionally take place. The community is treated as the primary agent for reintegration.

The Fellowship actively promotes the establishment of "circles of support".

- *Community and church involvement in reintegration*: There is a growing call from the wider community for involvement with prisoners and their families. Many church and community members feel called to mentor to ex-prisoners and their families, but lack the confidence and experience to do so. The Fellowship has undertaken to provide training seminars for those in the community with a desire to help out in this way. This new initiative encourages wider church and community involvement with prisoners, in a way which ensures that it will provide a safe environment for both volunteers and ex-offenders.
- *In-prison victim/offender conferences*: The programme involves facilitating safely-structured meetings, usually in prisons, between those who have suffered from a crime, and the actual perpetrators of that crime. Other restorative justice providers have facilitated in-prison victim offender conferences, but Prison Fellowship is the primary service provider at present. Referrals come from prisoners, the Parole

Board, victims, Prison Unit Managers.

Prison Fellowship also promotes increased awareness of the special transformative and therapeutic potential to be found in faith-centred biblical-based principles applied to offender rehabilitation and reintegration. At the core of this activity is a strategy to strengthen the church-community partnership and the development of mutual trust and social cohesion in society, through programmes which bring prisoners, victims and the community together.

XII. COMMUNITY-BASED TREATMENT FUNDED THROUGH THE DEPARTMENT OF CORRECTIONS

In recognition of the need for strong support for those being released from prison, Community Probation Service probation officers work with Maori *whanau*, *iwi* groups and other community support groups to plan for and support offenders being released from prison.

A. Reintegrative Support Services

The Department has contracts with three community-based providers for provision of reintegration support on a regional basis across New Zealand: Auckland Prisoner's Aid and Rehabilitation Society, Waikato Prisoner's Aid and Rehabilitation Society and the Prisoner's Aid and Rehabilitation Trust. These providers are not-for-profit organizations that utilize both paid staff and volunteers to support offenders both in prison and in the community.

Reintegrative support services assist offenders to address life's practical problems and issues that, if not addressed, may have significant impact on their successful reintegration into the community. In particular this assistance is aimed at:

- Acquiring suitable accommodation
- Obtaining employment
- Managing finances
- Managing relationship issues
- Developing pro-social community support
- Preventing victim-related problems
- Achieving continuity of health care post-release.

B. Supported Accommodation

The Department funds a supported accommodation service through community providers in Auckland (Auckland Prisoner's Aid and Rehabilitation Society), Hamilton (Anglican Action), Hawke's Bay (Salvation Army), Wellington (Salvation Army), Christchurch (Salvation Army) and Dunedin (Otago Prisoner's Aid and Rehabilitation Society).

The supported accommodation service assists offenders at high risk of reoffending who have a high level of reintegrative need to transition back into independent community living. It provides offenders with up to 13 weeks' single accommodation and support with money management, literacy and numeracy, finding work or training, forming positive community links and support.

The supported accommodation service may be followed by an additional 13 weeks of reintegrative support for the offender if required. The Department funds 54 houses nationwide.

C. Salisbury Street Community Residential Centre

The Department contracts with Salisbury Street Foundation for delivery of a residential programme in Christchurch for men who have spent substantial time in the criminal justice system. The programme aims to prevent further offending and to facilitate reintegration by providing vocational, recreational and educational skills, and by confronting inappropriate behaviour. Offenders attend the programme for between six months and two years, dependent on individual need.

Salisbury Street Foundation is a 12 bed facility.

D. *Whare Oranga Ake*

The Department of Corrections is currently establishing a new reintegration programme, *Whare Oranga Ake*, which the Government funded in the 2010 Budget. This residential reintegrative programme for male prisoners will entail a Maori environment within which prisoners are supported to reconnect with their culture and identity, address identified reintegrative needs, and live offence-free lives. A contracted community provider will deliver the programme.

Prisoners involved in *Whare Oranga Ake* will live in 16-bed unit built in the style of existing prison self-care units, with a communal facility alongside. One is to be located on the Hawkes Bay Prison site and the other on the Spring Hill Corrections Facility site. The unit will be located on prison land but outside the secure perimeter fence. *Whare Oranga Ake* is expected to open in July 2011.

Whare Oranga Ake will focus on a prisoner's reintegrative needs. For example, helping with employment, post programme rehabilitation, finding supported accommodation and improving *whanau* relationships. Prisoners will be supported to look for and be engaged in employment and/or further education. The service providers for *Whare Oranga Ake* will ensure that there is community support for prisoners on their release by linking prisoners, whilst in *Whare Oranga Ake*, to community support networks.

Whare Oranga Ake will also help prisoners by providing relapse prevention support for programmes which the prisoner has already undertaken. Prisoners will be expected to live communally within *Whare Oranga Ake*, and they will take on all of the responsibilities of daily living, e.g. cooking and cleaning. While security at *Whare Oranga Ake* will be provided by Prison Services the day-to-day running of *Whare Oranga Ake* will be contracted out to community providers. Corrections' Rehabilitation and Reintegration Services will manage the relationship with the contracted service provider and provide support where deemed necessary.

XIII. RESTORATIVE JUSTICE

A. General

1. Court-Based

- Prior to Sentence – The process of restorative justice is now utilized in various courts in New Zealand. Although the practice has no statutory definition, various provisions of the Sentencing Act 2002 contain reference to restorative justice processes and practices.
- Broadly speaking, restorative justice processes bring together offenders, victims and others who have a specific stake in the offence to collectively determine how the offender should be held accountable, how amends to the victim should be made, and how further offending can be prevented.

2. References to Restorative Justice in the Sentencing Act 2002

The following provisions in the Sentencing Act make reference to restorative justice or similar processes.

- Section 7: Purposes of sentencing. This section reinforces consideration of restorative justice outcomes in reaching a sentencing or other decision.
- Section 8: Principles of sentencing. The Court must take into account any outcomes of restorative justice processes that have occurred, or that the Court is satisfied are likely to occur, in relation to the particular case: s. 8(j).
- Section 9: Aggravating and mitigating factors. The Court must take into account any offer, agreement, or measure of a kind referred to in s 10: s. 9(1)(f).
- Section 10: The Court must take into account any offer, agreement, response, or measure to make amends. Among the measures to take into account are any agreements between the offender and the victim as to how the offender may remedy the wrong, the response of the offender or the offender's family to the offending, and any measures to make compensation to the victim.
- Section 25: Power of adjournment for inquiries as to suitable punishment. A Court may adjourn

proceedings after the offender has been found guilty or has pleaded guilty and before the offender has been sentenced or otherwise dealt with to enable a restorative justice process to occur, or to enable a restorative justice agreement to be fulfilled: s. 25(1)(b) and (c).

- Section 26(2)(c): Pre-sentence reports. Pre-sentence reports may include information regarding any offer, agreement, response, or measure of a kind referred to in s. 19(1) or the outcome of any other restorative justice processes that have occurred in relation to the case.
- Section 27: Offender may request the Court to hear a person speak on the personal, family, *whanau*, community, and cultural background of the offender. That person may speak on, amongst other matters, any processes involving the offender and his or her family, *whanau*, or community and the victim or victims of the offence, or that are available to resolve, issues relating to the offence: s. 27(1)(c).
- Section 32: Sentence of reparation. When determining the amount of reparation to be made, the Court must take into account any offer, agreement, response, measure or action.
- Section 62: Determining placement of offender for community work. Probation officers must take account of the outcome of any restorative justice processes that have occurred in the case when deciding on a placement of an offender for community work: s. 62(e).
- Sections 110 and 111: Come up for sentence if called upon. The Court may order an offender to come up for sentence if called upon. Under s. 111, the offender under such an order may be called up for sentence if he or she fails to comply with any agreement or fails to take any measure or action of a kind referred to in s. 10 that was brought to the attention of the Court at the time the Court made the order under s. 110.

(i) *Parole Act 2002*

The following provisions in the Parole Act make reference to restorative justice or similar processes:

- Section 7: Parole Board guiding principles. These include the principle that any restorative justice outcomes are given due weight.
- Section 43: Start of process. The information to be provided to the Parole Board prior to an offender's hearing for parole or home detention (and which is also relevant to the setting of parole/release conditions) includes any reports arising from any restorative justice processes the offender has engaged in: s. 43(1)(b).

3. Key Points for Restorative Justice Referrals

The following points have been generally agreed to by judges:

- There must be a firm guilty plea.
- The plea must be recorded.
- Ascertain willingness of offender and victim – of the offender through counsel and of the victim through the Victim's Adviser (not through an agent of the offender). Attendance is entirely voluntary.
- The case is then referred to a trained and professional independent facilitator who is familiar with resource materials such as the Ministry of Justice's Manual on Restorative Conferencing (2001).
- The facilitator should be provided with a copy of the charge(s), summaries of facts, any victim impact statement, the contact details of the offender and victim, and the name and base of the officer in charge.
- The facilitator must ensure that the police are invited to attend.
- Victims and offenders should be encouraged to have support people present.
- The conference cannot proceed unless both victim and offender are actually present (agents or representatives are not appropriate).
- Lawyers are entitled to attend but not in the role of advocate.
- The facilitator will write a report recording any agreements reached, arrangements for monitoring and completion of agreements, and adequate information to enable the Judge to appreciate the

processes of communication that took place.

4. Back to Court

Upon the offender completing a restorative justice contract, sentencing should normally occur in the usual way in open court with due regard to successful completion or non-completion.

B. Post-Sentence

A more recent development in the general field of restorative justice has been its use as part of the general parole system post-sentence and, often, in prison.

The primary purpose of parole is to manage the safe release of prisoners from prison back into the community. International research shows that sensible parole decisions based on the best research possible can be three to four times more successful in preventing reoffending than automatic release at the end of a fixed sentence.

This of course makes sense in an ordinary common sense way, because obviously those who are managed in a helpful way to get work, to have an income, to have a good place to live, to have pro-social people surrounding them, are going to do better than people who are simply dropped out of prison without any such support.

The Parole Board has now an agreement with the Department of Corrections for funding of recommended restorative justice conferences. New Zealand has had its own successes with restorative justice post-sentence. There is a vigorous restorative justice programme being run in parts of the country by the Prison Fellowship (see above), although it is not yet systemic. There are many examples of successful interventions, particularly from the victim's point of view.

For example, a young man down in the South island was in prison on a murder sentence. He had killed a young street kid some years ago, he and others after torturing the victim in accordance with satanic rituals. In prison he became a Christian and supported that by a change in behaviour. There was finally a restorative justice conference at his insistence at which the family of the street kid who was murdered attended. It was amazingly successful. The sister of the boy said to him "I have been in terror of you being released. I had enormous fear of you. It has stopped me from doing what I wanted in my life. Today I am getting rid of that fear. I have never wanted it; it has stopped me from doing things for myself and now I don't have it anymore. I wish you well."

That is an astonishing result. The New Zealand experience is that victims are often more generous and forgiving than expected. These things do not happen unless there is genuineness and honesty. Everyone in these meetings is alert to that. The result is that the tragedy will remain a tragedy and the loss will remain the loss. But it means that fear of reprisals is put to one side and if these people ever meet again in the small country of New Zealand it will be done without embarrassment and with dignity and some mutual respect. Family and friends and other who are contaminated by all of this can also be freed to continue the connectedness of life which is New Zealand.

When a successful restorative justice conference has been held, there has often been, if not forgiveness, an understanding and an ability to both move on and to allow others to do the same which has been truly impressive and often very humbling. It makes the Board's decision making very much easier, which is of course a secondary function.

XIV. CIRCLES OF SUPPORT

There are other opportunities arising from general restorative practices post-sentence. The faith-based communities in Canada have developed the concept of "circles of support" for indefinitely detained prisoners – often child sex offenders who are notoriously difficult to support back into the community. This way of working – constructing artificial support where no natural support now exists – is well known as "therapeutic communities" and it is to be found also in the UK. New Zealand is just starting to develop its version incorporating its own particular culture.

XV. CONCLUSION

There are many opportunities for community involvement in offender treatment post-sentence. The above narration sets out some of these. Inviting community members and organizations such as churches, faith-based communities, non-government organizations and other groups forms part of the responsibilities of the Corrections/Services who generally advertise for tender these types of involvement – but often also community groups, with a keen appreciation of the difficulties for prisoners, organize themselves to provide for gaps in services and approach government for funding. The process is dynamic and flexible. The needs are great. The government role is necessary to ensure adequate resources but finally, it is the communities themselves who are effective in providing rehabilitative services and of receiving and welcoming offenders back.

In respect of high risk offenders being released from prison, local probation officers canvass local communities for both skills and local sponsors. The community arrangements are therefore more frequently completed on an individual needs basis using local community strengths to engage with an offender and work with them following release or completion of sentence. Probably the biggest issue for community probation services in New Zealand in respect of offenders leaving prison is the provision of appropriate housing and that has been achieved by canvassing national organizations, local housing authorities and community-based providers.

In New Zealand, with its common law system based on the English system, it has been found very effective to use the judge or judges as independent persons talking to community groups and inviting community participation.

Where that is not possible, the New Zealand experience is that a community court co-ordinator - an official of the court with a liaison function to the community - is the next best person to issue the invitation. In all areas there are natural groups and community strengths which can be harnessed for the use of the criminal justice system but the New Zealand experience is that often such groups do not know how to access the courts and will not make their skills and resources available unless invited to do so. In the Porirua community court a community link co-ordinator funded by one of the Government departments fulfils this role in co-operation with two energetic District Court judges who make a point of speaking to community groups during the weekends and at week nights.

That has been found to be very effective in inviting and obtaining community strengths to assist the offenders in facing their offending and making changes to their lives.