



# People Against Prisons Aotearoa

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## *Submission to the Justice Committee on the Sentencing (Reform) Amendment Bill.*

People Against Prisons Aotearoa (PAPA) is a prison abolitionist organisation working for a fairer, safer, and more just Aotearoa. Established in 2015, PAPA advocates for people in prison to ensure their human rights are met. We also push for changes to the Aotearoa New Zealand criminal justice system to create more just outcomes.

PAPA is strongly opposed to all aspects of the Sentencing (Reform) Amendment Bill (“the Bill”). This Bill will intensify the existing harms of the prison system and dramatically increase the prison population. It will fail to achieve the stated purpose of the Bill, fail to reduce serious offending and will fail to 'ensure offenders take personal responsibility for the harm they cause'.<sup>1</sup> **We strongly recommend that the committee reject the Bill in its entirety.**

Our firm opposition to the Bill is based around two key points:

- Longer sentences are more harmful, but no more effective in deterring crime or reducing recidivism than the status quo;
- Alternatives to the regressive sentencing reforms in this Bill, particularly programs and policy changes that address the drivers of serious offending, would be more effective, more humane, and would improve public safety.

Our submission discusses these points in more detail.

This submission was prepared on behalf of PAPA by Tom and Ti.

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<sup>1</sup> Sentencing (Reform) Amendment Bill, 77-1 (2024).  
<https://www.legislation.govt.nz/bill/government/2024/0077/3.0/d909822e2.html>.

## The impact of longer sentences

### *Recidivism and deterrence*

1. **There is no sound evidence that longer prison sentences make people less likely to reoffend.** A number of studies have investigated the connection between sentence length and recidivism, but there is no consensus among them on whether longer sentences increase, reduce or make no difference to recidivism rates.<sup>2</sup> There is a consensus that if longer sentences do have any impact, whether to increase or decrease recidivism, it is small.
2. **There is also no evidence to suggest that the threat of harsher sentences deters offending.**<sup>3</sup> The inefficacy of the Three Strikes regime in reducing offending or victimisation in Aotearoa provides local evidence of this, in addition to the wider body of research.<sup>4</sup>

### *Lengthier sentences for young people*

3. Evidence is conclusive on the impact of harsher sentences for young people. **The threat of harsher sentences does not deter youth offending, while lengthier incarceration of young people increases their likelihood of reoffending.**<sup>5</sup>
4. In addition to this, many young people entering the justice system carry trauma from their early life experiences.<sup>6</sup> Many are neurodivergent, with cognitive impairments, foetal alcohol

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<sup>2</sup> Rydberg, Jason, and Kyleigh Clark. 'Variation in the Incarceration Length-Recidivism Dose-Response Relationship'. *Journal of Criminal Justice* 46 (September 2016): 118–28. <https://doi.org/10.1016/j.jcrimjus.2016.04.002>;  
Snodgrass, G. Matthew, Arjan a. J. Blokland, Amelia Haviland, Paul Nieuwbeerta, and Daniel S. Nagin. 'Does the Time Cause the Crime? An Examination of the Relationship Between Time Served and Reoffending in the Netherlands'. *Criminology* 49, no. 4 (2011): 1149–94. <https://doi.org/10.1111/j.1745-9125.2011.00254.x>;  
Loughran, Thomas A., Edward P. Mulvey, Carol A. Schubert, Jeffrey Fagan, Alex R. Piquero, and Sandra H. Losoya. 'Estimating a Dose-Response Relationship Between Length of Stay and Future Recidivism in Serious Juvenile Offenders'. *Criminology* 47, no. 3 (2009): 699–740. <https://doi.org/10.1111/j.1745-9125.2009.00165.x>;  
Meade, Benjamin, Benjamin Steiner, Matthew Makarios, and Lawrence Travis. 'Estimating a Dose-Response Relationship Between Time Served in Prison and Recidivism'. *Journal of Research in Crime and Delinquency* 50, no. 4 (November 2013): 525–50. <https://doi.org/10.1177/0022427812458928>;  
Wermink, Hilde, Paul Nieuwbeerta, Anke A. T. Ramakers, Jan W. de Keijser, and Anja J. E. Dirkzwager. 'Short-Term Effects of Imprisonment Length on Recidivism in the Netherlands'. *Crime & Delinquency* 64, no. 8 (1 July 2018): 1057–93. <https://doi.org/10.1177/001128716687290>.

<sup>3</sup> Pratt, Travis C., Francis T. Cullen, Kristie R. Blevins, Leah E. Daigle, and Tamara D. Madensen. 'The Empirical Status of Deterrence Theory: A Meta-Analysis'. In *Taking Stock: The Status of Criminological Theory*, 367–95. Advances in Criminological Theory. Piscataway, NJ, US: Transaction Publishers, (2006).

<sup>4</sup> Daly, Tadgh. & Matthew McClennan. *Three Strikes Law: Evidence Brief*. Wellington, Ministry of Justice, (2018).

<sup>5</sup> Steinberg, Laurence. 'A Dual Systems Model of Adolescent Risk-Taking'. *Developmental Psychobiology* 52, no. 3 (2010): 216–24. <https://doi.org/10.1002/dev.20445>;

Lynch, Nessa, and Huhana Ginty. 'Young Adults in the Criminal Justice System in Aotearoa New Zealand: A principled framework for reform.' *Michael & Suzanne Borrin Foundation*, (April 2022). <https://www.borrinfoundation.nz/wp-content/uploads/2022/05/Young-Adults-in-the-Criminal-Justice-System-in-Aotearoa-NZ-report.pdf>;

Lambie, Ian. 'What Were They Thinking? A Discussion Paper on Brain and Behaviour in Relation to the Justice System in New Zealand'. Report. Office of the Prime Minister's Chief Science Advisor, (January 2020). <https://doi.org/10.17608/k6.OPMCSA.12279278.v1>.

<sup>6</sup> Mana Mokopuna: Children & Young People's Commission. 2023. 'UN Calls out New Zealand's Youth Justice Record.' Mana Mokopuna. (August 2023); <https://www.manamokopuna.org.nz/publications/media-releases/un-calls-out-new-zealands-youth-justice-record/>;  
Mendel, Richard. 2023. 'Why Youth Incarceration Fails: An Updated Review of the Evidence – the Sentencing Project.' The Sentencing Project. (March 2023). <https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/>.

spectrum disorders, autism and/or ADHD, or barriers to learning.<sup>7</sup> Young people, people with trauma, and people with some neurodivergent traits, often do not have the self-regulation skills, future planning ability and other rational decision-making faculties that are assumed by this Bill.<sup>8</sup>

5. Put simply, the young people entering our justice system do not carefully and rationally weigh up the consequences when they offend. **This Bill means that harsher and lengthier sentences will become an inevitability for young people in the justice system, reinforcing the prison pipeline and creating a generation of life-long offenders.**
6. The Bill fails to acknowledge any of this evidence. It is based on flawed, inadequate, populist rhetoric rather than on what will actually improve our justice system. This Bill will fail to reduce offending, fail to help people to reform, and will not stop people from causing further harm once they are released. In many cases this Bill will increase offending and lead to further victimisations in the future.

#### *Lengthier sentences for containment, as a public safety measure*

7. Given the discussion in [1]-[6] above, the effectiveness of this Bill to improve public safety rests entirely on the idea that people will not be able to cause harm for the period that they are incarcerated. For the purpose of this submission we will refer to this as a 'containment' approach to public safety.
8. There are two problems with a containment approach. The first is that people do not stop offending or causing harm while they are in prison. Prisons are violent, dangerous places where people are frequently victimised, both by Corrections staff as well as other incarcerated people.<sup>9</sup> This is exacerbated greatly by the ongoing practice of double bunking in our prisons.
9. Locking people in prison does not reduce harm, it simply concentrates harm in one place. Any suggestion that this is acceptable, because people in prison may have caused harm

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<sup>7</sup> Lambie, 'What were they thinking?'

<sup>8</sup> Gibbs, Anita, and Kesia Sherwood. 'Putting Fetal Alcohol Spectrum Disorder (FASD) on the Map in New Zealand: A Review of Health, Social, Political, Justice and Cultural Developments.' *Psychiatry, Psychology and Law*. (May 2017). [https://www.tandfonline.com/doi/abs/10.1080/13218719.2017.1315784?casa\\_token=U3K-VU3F8HMAAAA%3ABrCYIRZtERwBfEP4ssLcM1Fv-IPVD5iwn\\_adW0ALCIPHwAIFzQfSW6aUjNs6uwkc\\_8cW-KG02Izrrg](https://www.tandfonline.com/doi/abs/10.1080/13218719.2017.1315784?casa_token=U3K-VU3F8HMAAAA%3ABrCYIRZtERwBfEP4ssLcM1Fv-IPVD5iwn_adW0ALCIPHwAIFzQfSW6aUjNs6uwkc_8cW-KG02Izrrg).

<sup>9</sup> National Health Committee. *Health in Justice: Kia Piki te Ora, Kia Tika! – Improving the health of prisoners and their families and whānau: He whakapiki i te ora o ngā mauhere me ō rātou whānau*. (2009). 31-32;

Gordon, Liz. *Causes of and Solutions to Inter-Generational Crime: The Final Report of the Study of the Children of Prisoners*. Pillars Incorporated, (2011). 24-29;

Mlinac, Ivana. *Exclusion, over-Regulation and Complexities: The Effects of Parental Incarceration on Prisoners' Children and Their Families*. Thesis, University of Auckland, (2016).

<https://researchspace.auckland.ac.nz/handle/2292/31496>;

Liz Gordon, Lesley MacGibbon. *A Study of the Children of Prisoners: Findings from Māori Data*. Wellington: Te Puni Kōkiri | Ministry of Māori Development, (2011).

<http://www.tpk.govt.nz/documents/download/115/tpk-childrenofprisonersdata-2011.pdf>;

Rākete, Emilie. 'The Problem with Prison Double Bunking'. The Spinoff. Accessed 21 October 2024.

<https://thespinoff.co.nz/society/07-10-2024/the-problem-with-prison-double-bunking>;

Block, George. 'Auckland Prison Death: Family's Fight for Answers as Body Cam Footage Emerges'. NewstalkZB. Accessed 21 October 2024.

<https://www.newstalkzb.co.nz/news/national/auckland-prison-death-family-s-fight-for-answers-as-body-camera-footage-emerges-of-pepper-spray-incident/>.

themselves and therefore 'deserve' this punishment, is both morally repugnant and an indirect violation of human rights.

10. The other problem with a containment approach to public safety is that only a tiny proportion of the people who cause serious harm are ever sentenced, and will be captured by this Bill. Every year the New Zealand Crime and Victims Survey reports that the number of victims of serious crimes like sexual assault are in the hundreds of thousands.<sup>10</sup> Meanwhile only a few thousand people are incarcerated for these offences.
11. We simply do not have the capacity to contain all of the people who have caused serious harm, because this would involve imprisoning tens or even hundreds of thousands of people. One researcher estimated that if we did imprison everyone who committed just sexual violence, among all the serious offences, around 15% of the population would be in prison at any one time and Corrections' budget would need to be about 25% of the country's GDP.<sup>11</sup>
12. This shows clearly how the approach to harm reduction taken by this Bill is critically inadequate. We need to look at alternatives if we want to make any progress on reducing the amount of harm that happens every day. Instead, this Bill pours hundreds of millions of dollars into containing only a fraction of a percent of the people who cause serious harm. This is a tragic waste of resources, if nothing else.
13. Of greatest concern to us in this approach is that the people who do end up imprisoned, and who will be most impacted by this Bill regardless of the actual numbers of people offending, are disproportionately Māori.

#### *Violation of the Crown's obligations under Te Tiriti o Waitangi*

14. Māori make up more than half of the prison population in Aotearoa, and are imprisoned at a rate 6.4 times higher than Pākehā.<sup>12</sup> This is in part because the justice system is biased against Māori.
15. **At all levels of the justice system, Māori face harsher responses for the same offending.**<sup>13</sup> For the same offending, Māori are already more likely to: be apprehended by police, face charges, struggle to find legal representation, be denied bail, plead guilty, be convicted, face harsher sentencing, and be denied home detention.<sup>14</sup> This bias will be intensified by this Bill.

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<sup>10</sup> New Zealand Ministry of Justice. *New Zealand Crime & Victims Survey (NZCVS) 2023 (Cycle 6)*. Wellington, New Zealand Ministry of Justice. (2023). <https://www.justice.govt.nz/justice-sector-policy/research-data/nzcvsv/>.

<sup>11</sup> Lamusse, Ti. *Abolitionist Justice: Towards an Abolitionist Theory of Justice and the State*. Doctoral Thesis, University of Auckland. (2023).

<sup>12</sup> New Zealand Department of Corrections, 'Prison Facts and Statistics – June 2024,' accessed October 21, 2024, [https://www.corrections.govt.nz/resources/statistics/quarterly\\_prison\\_statistics/prison\\_facts\\_and\\_statistics\\_-\\_june\\_2024](https://www.corrections.govt.nz/resources/statistics/quarterly_prison_statistics/prison_facts_and_statistics_-_june_2024).

<sup>13</sup> Te Uepū Hāpai i te Ora. *Turuki! Turuki! Transforming Our Criminal Justice System*. Wellington, Te Uepū Hāpai i te Ora: The Safe and Effective Justice Advisory Group, (2019); Quince, Khylee. 'Maori and the Criminal Justice System.' in *Criminal Justice in New Zealand*, eds. Julia Tolmie and Brookbanks, Warren J. Wellington: LexisNexis. (2007). 333–58.

<sup>14</sup> New Zealand Department of Corrections, *Over-representation of Māori in the criminal justice system: An exploratory report*. Wellington, Department of Corrections. (2007).

16. The limits on sentence reductions in this Bill will also make it harder for Māori to access kaupapa Māori resolution pathways and restorative practice processes. These more effective community-based options will not be available without greater sentence reductions.
17. This will be severely compounded by the recent removal of legal aid funding for reports under Section 27 of the Sentencing Act (2002). In the past these have helped to mitigate some of the bias that Māori face in the justice system, but are now unaffordable for many.
18. The result is that this Bill violates all three articles of *Te Tiriti o Waitangi*. By ignoring abundant evidence that the approach taken by this Bill will not work, the Bill fails to meet the standards of good governance promised by Article 1. By denying Māori tino rangatiratanga, especially in preventing access to kaupapa Māori approaches to justice, the Bill violates Article 2. Finally, by worsening the treatment of Māori compared to Pākehā for the same offending, this Bill fails to uphold the promise in Article 3 to extend Māori and Pākehā the same rights.

### **Broader harms of carceral justice**

19. The harms that people experience in prison reflect the purpose and history of prisons as tools of violence and suppression by the state, particularly against Māori. Prisons were first established in Aotearoa to crush Māori resistance to colonisation. Prisons, and the imposition of the English justice system, were key to colonial theft and expropriation of Māori land and resources, and to the destruction of Māori social and economic systems.<sup>15</sup> This purpose is alive and well today, with substantial harms done to society by our prison system, particularly to hapori Māori.

#### *Harms to the individual*

20. These harms begin most obviously with the people who are incarcerated. In order to survive in dangerous and violent environments of prison, people often learn maladaptive strategies for responding to conflict and interpersonal problems.<sup>16</sup>
21. Common disciplinary strategies in prison, like the use of pepper spray or solitary confinement, are a form of degrading treatment that leave people deeply traumatised.<sup>17</sup>

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<sup>15</sup> Comyn, Catherine. *The Financial Colonisation of Aotearoa*. Tāmaki Makaurau Auckland, Aotearoa New Zealand: Economic and Social Research Aotearoa, (2023);

Collins, David. *Fragile Foundations: The Application of Criminal Law to Crimes Committed in New Zealand between 1826 and 1907*. 1st ed. Chicago: Victoria University Press, (2024).

<sup>16</sup> National Health Committee. *Health in Justice*.

<sup>17</sup> Henrik Steen Andersen et al., 'A Longitudinal Study of Prisoners on Remand: Psychiatric Prevalence, Incidence and Psychopathology in Solitary vs. Non-Solitary Confinement', *Acta Psychiatrica Scandinavica* 102, no. 1 (2000): 19–25; Bruce A. Arrigo and Jennifer Leslie Bullock, 'The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units: Reviewing What We Know and Recommending What Should Change', *International Journal of Offender Therapy and Comparative Criminology* 52, no. 6 (December 2008): 622–40; Thomas B. Benjamin and Kenneth Lux, 'Solitary Confinement as Psychological Punishment', *Cal. WL Rev.* 13 (1977): 265;

Stanley Brodsky and Forrest Scogin, 'Inmates in Protective Custody: First Data on Emotional Effects', *Forensic Reports* 1 (1988): 267–80;

Even people who avoid these common, inhumane disciplinary processes are left harmed by the isolation of their prison experience.<sup>18</sup>

22. Meanwhile we have already discussed, in [8], the unsanctioned abuse suffered by the people in our prisons at the hands of Corrections staff and other incarcerated people, especially double bunked cellmates.<sup>19</sup>
23. Institutionalisation is of concern with any prison sentence, but particularly with lengthier sentences introduced by this Bill. Institutionalisation diminishes peoples' ability to function outside of prison, and is recognised as a form of chronic health condition.<sup>20</sup> Along with institutionalisation, the stigma of having been in prison follows people on release, where they struggle to find accommodation, work and community connections.<sup>21</sup>
24. Institutionalisation, the trauma and stigma of prison experience all pose barriers to peoples' reintegration into communities on release. Along with a lack of effective healthcare and treatment options in prisons, people often relapse into addiction or have other untreated health problems that are worse on release, creating further difficulties.<sup>22</sup>

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Stuart Grassian, 'Psychopathological Effects of Solitary Confinement', *American Journal of Psychiatry* 140 (1983): 1450-54;

Stuart Grassian and Nancy Friedman, 'Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement', *International Journal of Law and Psychiatry* 8, no. 1 (1986): 49-65;

Craig Haney, 'Infamous Punishment': The Psychological Consequences of Isolation', *The National Prison Project Journal* 8, no. 2 (1993): 3-7;

Craig Haney and Mona Lynch, 'Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement', *NYU Rev. L. & Soc. Change* 23 (1997): 477;

Richard Korn, 'The Effects of Confinement in the High Security Unit at Lexington', *Social Justice* 15, no. 1(31, 1988): 8-19;

Terry A. Kupers, 'What To Do With the Survivors? Coping With the Long-Term Effects of Isolated Confinement', *Criminal Justice and Behavior* 35, no. 8 (2008): 1005-16;

Holly A. Miller and Glenn R. Young, 'Prison Segregation: Administrative Detention Remedy or Mental Health Problem?', *Criminal Behaviour and Mental Health* 7, no. 1 (1997): 85-94;

Peter Scharff Smith, 'The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature', *Crime and Justice* 34, no. 1 (2006): 441-528;

G. D. Scott and Paul Gendreau, 'Psychiatric Implications of Sensory Deprivation in a Maximum Security Prison', *Canadian Psychiatric Association Journal* 14, no. 1 (1969): 337-41;

Dorte Sestoft et al., 'Impact of Solitary Confinement on Hospitalization Among Danish Prisoners in Custody', *International Journal of Law and Psychiatry* 21, no. 1 (1998): 99-108;

Peter Suedfield and Chunilal Roy, 'Using Social Isolation to Change the Behaviour of Disruptive Inmates', *International Journal of Offender Therapy and Comparative Criminology* 19, no. 1 (1975): 90-99. In some instances, this treatment can amount to torture, according to Mandela Rules.

<sup>18</sup> Goomany, A and Tommy Dickinson, 'The Influence of Prison Climate on the Mental Health of Adult Prisoners: A Literature Review: Prison Mental Health', *Journal of Psychiatric and Mental Health Nursing* 22, no. 6 (August 2015): 413-22, <https://doi.org/10.1111/jpm.12231>;

National Health Committee, *Health in Justice*.

<sup>19</sup> See: Lamusse, Ti. "Aotearoa Justice Watch: A Report on Complaints About New Zealand Police and Prisons." Wellington: Aotearoa Justice Watch, 2024.

<sup>20</sup> Crane, Johanna T. and Kelsey Pascoe, 'Becoming Institutionalized: Incarceration as a Chronic Health Condition', *Medical Anthropology Quarterly* 35, 3 (2020): 307-326, <https://doi.org/10.1111/maq.12621>.

<sup>21</sup> Johnston, Annaliese. 'Beyond the Prison Gate: Reoffending and Reintegration in Aotearoa New Zealand', (Manukau: Salvation Army Social Policy and Parliamentary Unit, 2016): <https://www.salvationarmy.org.nz/article/beyond-prison-gate>;

Mills, Alice, Anika Terry, Cinnamon Lindsay Latimer, and Barry Milne. "Going Straight Home? Post-Prison Housing Experiences and the Role of Stable Housing in Reducing Reoffending in Aotearoa New Zealand." Auckland: School of Social Sciences University of Auckland, 2022.

<sup>22</sup> Johnston, 'Beyond the Prison Gate'.

25. It is no surprise that even the best rehabilitation programs in our prisons result in only an 8% reduction in recidivism.<sup>23</sup> Despite some very dedicated and selfless volunteers, most rehabilitation programs are a far cry from this gold standard. **Prisons are simply not effective environments for rehabilitation. Compared to alternatives, any prison sentence is criminogenic.**

#### *Harms to young people*

26. Many of these harms are worse for young people than for adults. Incarceration leaves young people with trauma, or retraumatizes them given that the young people entering our justice system are already likely to have early childhood trauma.<sup>24</sup>
27. Time in prison or youth justice facilities disrupts the formation of positive social relationships with family, peers and community members. These are crucial developmental years, so the impact of this disruption is life-long. Incarceration also creates barriers to education or workforce training, again during crucial developmental years.
28. The result is that young people who have been incarcerated are left with negative impacts on their mental and physical health for the rest of their life.<sup>25</sup>

#### *Harms to families, whānau and communities*

29. Beyond just those who are incarcerated, prisons cause harm to the whānau and communities from which people are taken. Incarceration places a heavy financial, social and emotional burden on the immediate family.<sup>26</sup>
30. The children of people in prison are particularly harmed, with research showing that they suffer lower educational outcomes, worse physical and mental health, and higher rates of poverty.<sup>27</sup>
- 31. The violence and harms of prison all flow back into communities when people are released.**

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<sup>23</sup> Johnston, Peter. 'What works in correctional rehabilitation? Lessons from 15 years of programme outcomes analysis', *Practice: The New Zealand Corrections Journal* 5, 1 (2017): [https://www.corrections.govt.nz/resources/research/journal/volume\\_5\\_issue\\_1\\_july\\_2017/what\\_works\\_in\\_correctional\\_rehabilitation\\_lessons\\_from\\_15\\_years\\_of\\_programme\\_outcomes\\_analysis](https://www.corrections.govt.nz/resources/research/journal/volume_5_issue_1_july_2017/what_works_in_correctional_rehabilitation_lessons_from_15_years_of_programme_outcomes_analysis).

<sup>24</sup> Mana Mokopuna, 'UN Calls Our New Zealand's Youth Justice Record'; Mendel, 'Why Youth Incarceration Fails'.

<sup>25</sup> Barnert, Elizabeth S, Rebecca Dudovitz, Bergen B Nelson, Tumaini R Coker, Christopher Biely, Ning Li, and Paul J Chung. 'How Does Incarcerating Young People Affect Their Adult Health Outcomes?' *Pediatrics* 139 (2, 2017). <https://doi.org/10.1542/peds.2016-2624>.

Walker, Grace, Joseph Boden, David Fergusson, and John Horwood. 2019. 'Examining the Associations between Offending Trajectories in Adolescence/Young Adulthood and Subsequent Mental Health Disorders.' *APA PsycNet*. (2019). <https://psycnet.apa.org/record/2018-46117-001>.

<sup>26</sup> Lamusse, Ti, and Tracey McIntosh. "Prison Abolitionism: Philosophies, Politics, and Practices." In *The Aotearoa Handbook of Criminology*, edited by Elizabeth Stanley, Sarah Monod de Froideville, and Trevor Bradley, 289–302. Auckland: Auckland University Press, 2021.

<sup>27</sup> Gordon, *Causes of and Solutions to Inter-Generational Crime*, 24-29; Mlinac. *Exclusion, over-Regulation and Complexities*; Gordon & MacGibbon, *A Study of the Children of Prisoners*, 32-39.



## Alternatives

32. There are alternatives to the approach taken by this Bill. Instead of the ongoing costs of incarceration, the flow-on costs once people are released, and the cost of inevitable re-incarceration in the future, these alternatives represent a much more effective and more efficient use of the funding that the government will have to allocate to Corrections as a result of this Bill.

### *Alternative to prison*

33. Kaupapa Māori approaches to justice are shown to be much more effective in reducing future offending than incarceration.<sup>28</sup> This is because they provide an opportunity to address broader systemic failures that have contributed to offending. They also help to build capacities within whānau and hāpori Māori such as stronger relationships; conflict resolution skills; awareness of services, supports, entitlements; and knowledge of how to navigate government and justice systems.

34. Kaupapa Māori approaches also empower victims, placing them in active roles in addressing the harm that was caused. This is a meaningful improvement over the treatment of victims in the current justice system, and goes well beyond the minor improvements made by this Bill.

35. Other restorative justice approaches show similar effectiveness in reducing particularly violent reoffending, but also other recidivism.<sup>29</sup>

36. Rather than focusing on finding a sufficiently harsh punishment for breaking the law, restorative justice is an umbrella term for processes that aim to repair the harm that was caused. This usually involves offenders being accountable to the person or people they have harmed, all stakeholders being engaged in cooperative processes that address and repair that harm, and the supported reintegration of offenders into the community.<sup>30</sup>

### *Addressing the drivers of crime*

37. The alternatives described above are still merely an ambulance at the bottom of a cliff. In many cases, particularly depending on the nature of harm that has been caused, restorative justice may not be appropriate or safe. In other cases, the nature of harm that someone has caused might be so serious that there is no pathway for their safe reintegration into a community.

38. That is why many justice experts advocate for what is known as a transformative approach to justice. Transformative justice takes a holistic approach to crime and offending that often

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<sup>28</sup> Awa Associates. *Research Report: Kaupapa Māori Resolution Pathways*. Wellington, Chief Victims Advisor to Government. (August 2022).

<https://chiefvictimsadvisor.justice.govt.nz/assets/Documents/Publications/KaupapaMaoriResolutionPathways.pdf>

<sup>29</sup> Van Ness, Daniel W., and Karen Heetderks Strong. *Restoring Justice: An Introduction to Restorative Justice*. 5th ed. Waltham, MA: Anderson, (2015).

<sup>30</sup> Lamusse, *Abolitionist Justice*.



involves restorative justice processes, but also looks to transform the underlying structures and systems that contribute to offending.<sup>31</sup>

39. These drivers of crime are well understood. They include things like poverty and inequality; alienation; harms from drug and alcohol dependence or misuse; barriers to participation in communities, the workforce or education; inadequate and precarious accommodation; and poor access to healthcare, particularly mental health services.
40. **The most effective way to reduce offending and improve safety is to address the drivers of crime.** This prevents people from being victimised in the first place, rather than merely waiting until someone has been harmed and then trying to find the best way to respond.
41. For Māori, many of these factors are coextensive with ongoing processes of colonisation that have seen them disconnected from their whakapapa, culture and history; railroaded into low wage jobs; and denied fair treatment in the education, health and justice systems.<sup>32</sup> More broadly, many of the social problems that we seek to address by incarcerating people, including with legislative changes like this Bill, arise from breaches of *Te Tiriti*.
42. By upholding *Te Tiriti*, and enabling genuine tino rangatiratanga and mana motuhake, we can most effectively address these social issues for Māori. This will require considerable work on the part of the Crown, including constitutional changes and addressing historical breaches of *Te Tiriti*, which are extensive.
43. However it is not just Māori who offend, despite racist popular perceptions, and common portrayals in media. In order to genuinely reduce the number of people who are harmed by serious offending each year we need to address the drivers of offending for everyone in Aotearoa.
44. This would mean a commitment by the government to provide high quality education, housing and healthcare, and dignified, well-paying jobs. More specific changes could involve the decriminalisation of drug use and the treatment of drug harm as a health issue; taking a harm minimisation approach to alcohol licensing and advertising; or addressing homelessness by enacting Duty to Assist legislation similar to what has been recently passed in Wales.<sup>33</sup>
45. The *Turuki! Turuki! Transforming our criminal justice system* report by Te Uepū Hāpai i te Ora Safe and Effective Justice Advisory Group details a range of other options for transformative justice that the committee could consider instead of this Bill.<sup>34</sup> However it is worth noting that this report is out of date, and does not necessarily reflect current best

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<sup>31</sup> Zionov, Aaliyah, and Mackenzie Valgre. "Transformative Justice Workshop: Practical Ways of Solving Interpersonal Harm and Conflict in Our Communities." Auckland: People Against Prisons Aotearoa, 2018.

<sup>32</sup> Jackson, Moana. "He Whaipanga Hou – Maori and the Criminal Justice System: A New Perspective, Part 2." Wellington, New Zealand: Policy and Research Division, Department of Justice, 1988; Te Ohu Whakatika. "Hui Māori: Ināia Tonu Nei." Wellington: Ministry of Justice, 2019.

<sup>33</sup> Shelter Cymru, 'New Homelessness Laws', accessed October 21, 2024, <https://sheltercymru.org.uk/housing-advice/homelessness/help-from-the-council/new-homelessness-laws/>.

<sup>34</sup> Te Uepū Hāpai i te Ora. *Turuki! Turuki!*

practice or approaches. It would be well worth undertaking a new report on transformative justice in Aotearoa.

#### *Alternatives for young people*

46. For young people, all evidence suggests that interventions that avoid youth justice facilities and exit young people from the prison pipeline are most effective.<sup>35</sup> **It is deeply concerning to see this Bill doubling down on an approach that all available evidence suggests will have the opposite of the intended effect.**
47. Alternatives for young people can involve family group conferences, the use of diversions, and other wrap-around supports.<sup>36</sup> Programmes like Kotahi te Whakaaro and He Poutama Rangatahi have shown promise but need vastly more resourcing.<sup>37</sup>
48. Like adults, the most effective alternatives for young people is to address the drivers of youth offending. In many cases these are connected; the same drivers of offending by adults have negative impacts on young people that lead some of them to offend.
49. We covered this extensively in our submission to this committee on the Ram Raid Offending and Related Measures Amendment Bill (2023),<sup>38</sup> and so have reproduced the relevant section here from [50]-[57]. It required only minor edits to ensure it was relevant to this Bill as well, which is a troubling indication of how poorly-informed this Bill is by the abundant evidence that has already been presented to this government and considered by this committee.

#### *Addressing the drivers of youth offending*

50. For young people currently in the youth justice system, as well as for young people who are at risk of engaging in dangerous or criminal risk-taking behaviours, reducing offending starts with their environment. Experts have commented that a significant problem for many young people already in the justice system is that they get out and the environment they return to, which prompted them to offend in the first place, is usually still there and unchanged.<sup>39</sup>

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<sup>35</sup> Gluckman, Peter. *It's never too early, never too late: A discussion paper on preventing youth offending in New Zealand*. Wellington, Office of the Prime Minister's Chief Science Advisor. (June 2018). <https://www.dPMC.govt.nz/sites/default/files/2021-10/pmcsa-Its-never-too-early-Discussion-paper-on-preventing-youth-offending-in-NZ.pdf>.

<sup>36</sup> Gluckman, *It's never too early, never too late*.

<sup>37</sup> Davis, Kelvin, Chris Hipkins, and Carmel Sepuloni. 2022. 'Circuit Breaker Introduced to Stop Children Re-Offending.' The Beehive.govt.nz. (December 8, 2022).

<https://www.beehive.govt.nz/release/circuit-breaker-introduced-stop-children-re-offending>;

Work and Income: Te Hiranga Tangata. 'He Poutama Rangatahi - Youth Employment Pathways.' Work and Income.govt.nz. MSD. (2021).

<https://workandincome.govt.nz/providers/programmes-and-projects/he-poutama-rangatahi-youth-employment-pathways.html>.

<sup>38</sup> People Against Prisons Aotearoa, 'Submission to the Justice Committee on the Ram Raid Offending and Related Measures Amendment Bill'. (2023).

<https://papa.org.nz/wp-content/uploads/2023/10/People-Against-Prisons-Aotearoa-Submission-on-Ram-Raid-Offending-and-Related-Measures-Amendment-Bill-2023.pdf>.

<sup>39</sup> Hatton, Emma. 'Defining Issues: What Is the Youth Crime Problem We're Trying to Solve?' Newsroom. Newsroom. (September 21, 2023).

<https://www.newsroom.co.nz/defining-issues-what-is-the-youth-crime-problem-were-trying-to-solve>.

51. It is also important to understand what individual factors can lead to young people engaging in criminal offending. Factors like economic stress, poor mental health and boredom all contribute to the kind of risk-seeking behaviour that is involved in much offending.<sup>40</sup>
52. Solutions must address both individual and environmental factors. We need to ensure young people have opportunities to engage in society, have a voice in their community, and that they have healthy and supportive relationships with the people in their lives.<sup>41</sup> Having a stable family life, as well as broader social stability, economic stability, and positive connections to the community, such as through a church or sports club, are all known to reduce the chances that a young person will offend.<sup>42</sup>
53. Appropriate resourcing is therefore needed for parents, schools and communities to engage with and support young people. Programmes specifically aimed at supporting parents to have more consistent, positive interactions and greater emotional communication with their children help to reduce the chances of children offending as teenagers.<sup>43</sup> More broadly, reducing the economic and social stressors on parents will ensure all families are positive, supportive environments that nurture healthy young people.<sup>44</sup>
54. Finally, support and resourcing is needed for schools and teachers to implement positive behaviour management plans, focused on ensuring regular attendance and avoiding stand-downs, which are both known to contribute to youth offending.<sup>45</sup>
55. Truancy measures should involve building trusting and supportive partnerships between whānau and schools, and identifying any barriers to regular attendance. Truancy measures cannot merely rely on fines or punishments for parents, because these act only to further disadvantage students.<sup>46</sup>
56. Avoiding stand-downs involves supporting positive behaviour and engagement with learning before any significant harm is caused.<sup>47</sup> Accessing the existing support for students at risk of these behaviours is currently a long process that involves burdensome amount of time for teachers and school leaders. The kind of full, wrap-around support that is needed for continuity between home and school in some cases remains unavailable. Many schools

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<sup>40</sup> Ioane, Julia. 'Pasifika People in Youth Justice System Report.' Massey University School of Psychology, *Health Research Council of New Zealand*. (2023).

<https://pasefikaproud.co.nz/assets/Uploads/Pasifika-People-In-Youth-Justice-System-Report-2023.pdf>.

<sup>41</sup> Hatton. 'Defining Issues'.

<sup>42</sup> Ioane. 'Pasifika People in Youth Justice System Report.'

<sup>43</sup> Gluckman. *It's never too early, never too late*.

<sup>44</sup> Sampson, R. J., and J. H. Laub. 'Urban Poverty and the Family Context of Delinquency: A New Look at Structure and Process in a Classic Study'. *Child Development* 65, no. 2 Spec No (April 1994): 523–40.

<sup>45</sup> Gluckman. *It's never too early, never too late*.

<sup>46</sup> Ministry of Education. 'Improving Attendance: Case management of truancy and the prosecution process'. *Ministry of Education*. (2010).

<https://www.education.govt.nz/assets/Documents/School/Running-a-school/Managing-students/Managing-student-attendance/ImprovingAttendance2010.pdf>.

<sup>47</sup> Ministry of Education. 'Positive Behaviour For Learning'. n.d. Accessed 21 October 2024. <https://pb4l.tki.org.nz/>.

also need support to implement restorative practice programmes, which can avoid stand-downs by helping to address harmful behaviour before it escalates.<sup>48</sup>

57. Schools also need more resourcing and support to address young people's increasingly complex learning, social and emotional needs, to ensure that all young people experience success. Success at school is associated with a raft of positive outcomes that reduce offending.<sup>49</sup>

### **Conclusion and recommendations**

58. The overwhelming weight of evidence and experience of people involved in the justice system suggests that this Bill will cause significant harm, and achieve none of its aims. We recommend that the committee reject the Bill in its entirety and instead undertake to update the *Turuki! Turuki!* report on transformative justice in Aotearoa. This would provide a roadmap to a genuinely effective justice system, and more broadly to a society that prioritises peoples' health, safety and happiness.

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<sup>48</sup> Restorative Practices Development Team. 'Developing Restorative Practices in Schools: A Resource'. *School of Education, University of Waikato*. (2010). [https://www.waikato.ac.nz/\\_data/assets/pdf\\_file/0018/240903/Restorative\\_Practices\\_for\\_Schools\\_A\\_Resource-1.pdf](https://www.waikato.ac.nz/_data/assets/pdf_file/0018/240903/Restorative_Practices_for_Schools_A_Resource-1.pdf).

<sup>49</sup> OECD. 'Education at a Glance 2021.' OECD Indicators. n.d. Accessed 21 October 2024. <https://www.oecd-ilibrary.org/content/publication/b35a14e5-en>.