

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

*David Carruthers**



I. INTRODUCTION

New Zealand has a very high rate of imprisonment when contrasted with other comparable countries.¹ The Treasury briefing to the new Government in 2008 makes for sobering reading:² “New Zealand currently faces an unsustainable cost in the construction, operation, and wage cost of the infrastructure required by the criminal justice system (specifically prisons, legal aid, courts and police). For instance, for the foreseeable future, the Justice sector has the potential to consume large proportions of the operating and capital funding available to government.”

Despite this high imprisonment rate, New Zealand also has a number of initiatives and projects which seek to engage the wider community in the treatment of criminal offenders, many of which are outlined in this paper. This paper also looks at some of the legislative and other mechanisms available to courts and others to utilize these processes and enhance community involvement *prior to sentencing*. By strengthening the use of community treatment providers and providing for even greater community involvement in the system generally there is potential to both reduce the high imprisonment rate and address the causes of offending.

II. RATIONALE FOR COMMUNITY INVOLVEMENT AND TREATMENT

It is well recognized in the international community that community involvement in treating offenders is desirable and necessary. The Basic Principles for the Treatment of Prisoners, Adopted and proclaimed by United Nations General Assembly resolution 45/111 of 14 December 1990, notes that “With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.”

The so called “Tokyo Rules”³ seek to enhance community involvement in the management of criminal justice and particularly the treatment of offenders.

While community safety may be secured in the short term by the incarceration of an offender, in the longer term the release of most offenders is inevitable. Prison isolates offenders from the community; it can cause them to become dependant and they can become accustomed to the slow and different pace of life inside. All of this makes reintegration upon release more difficult, and can increase the risk a prisoner poses to society. An offender who remains in the community is less likely to assimilate to an inmate lifestyle, and instead is better able to maintain or learn conventional social norms.

* Chairman, New Zealand Parole Board.

¹ In March 2010 New Zealand’s 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 New Zealand’s neighbour Australia is at 129.

See http://www.corrections.govt.nz/about-us/facts_and_statistics/prisons/march_2010.html

² The Treasury, *Briefing to the Incoming Minister of Finance: Economic Fiscal Strategy – Responding to your Priorities*, November 2008. Accessible at: <http://www.treasury.govt.nz/publications/briefings/2008>

³ United Nations Standard Minimum Rules for Non-custodial Measures, Adopted by General Assembly resolution 45/110 of 14 December 1990.

Imprisonment does not of itself reduce reoffending rates. An excellent piece of Canadian research⁴ examines fifty studies dating from 1958 involving 336,052 offenders to determine whether prison reduced criminal behaviour or recidivism. *The primary conclusion was that prisons should not be used with the expectation of reducing criminal behaviour.* Alarmingly, there was some tendency for lower risk offenders to be more negatively affected by the prison experience. The authors argued that the primary justification of prison should be to incapacitate offenders (particularly those of a chronic, higher risk nature) for reasonable periods and to exact retribution. More recent evidence from the United States of America confirms the research that the overuse of imprisonment is likely to increase criminal offending rather than reduce it.

There are also significant cost savings in community treatment against incarceration.

III. GENERAL

In any discussion of community involvement in the treatment of offenders in New Zealand it is necessary to traverse the varying and escalating intrusions into the life of an offender all of which are calculated to treat the offending behaviour and to create opportunities and enhance abilities to prevent further offending and to return an offender to a constructive and offence-free lifestyle. In New Zealand the first of these interventions can be encapsulated under the heading of "Diversion".

IV. ADULT DIVERSION

A. Police Diversion (Prosecution Diversion)

"Diversion" is a scheme administered by the police (prosecution service) which has been operating in New Zealand for over two decades, despite there being no statutory basis for it.

Essentially diversion involves a criminal charge, generally of a less serious nature, being dealt with by the police without engaging any formal court processes. To be eligible an offender must acknowledge full responsibility for the offence as charged by the police. The offender will agree to undertake a "diversion plan" in exchange for the charge being withdrawn from court. The obvious benefit for the offender is that the charge does not result in a conviction being entered by a court with the attendant adverse consequences. One other benefit is that the process of diversion allows the offender to be "treated" in the community, and for the community directly affected by the offending to have a say over how the harm caused is redressed.

Some types of offending are deemed too serious to justify being dealt with under the diversion scheme. The Police Prosecution Service decides whether someone is eligible for diversion on a case-by-case basis after consideration of the victim's views and the seriousness of the case and in accordance with the published Police Diversion Policy. Once it is decided that diversion is suitable, a meeting must be held between the offender and the police diversion officer in order to formulate a "diversion plan". While the conditions of each plan will be individualized, and there is no limit on what conditions can be included, subject of course to the offender's consent, the following are common components:

- make an apology to the victim;
- make reparation to the victim;
- attend counselling, education programmes, addiction treatment or other therapeutic programmes in the community;
- make a donation of a specified sum to an approved group;
- be part of a restorative justice process (where appropriate).

When the plan is completed by the offender the police advise the court accordingly and the charge is withdrawn. Because diversion does not engage the court, any counselling, education or addiction treatment programme that is part of the diversion plan is provided for in the community by community based providers.

Diversion has no statutory basis. It is possible because the police have always had discretion to arrest and/or lay charges in court. The grant of diversion is an exercise of that discretion, being a determination

⁴ Paul Gendreau, Claire Goggin (Centre for Criminal Justice Studies, University of New Brunswick) and Francis T Cullen (Department of Criminal Justice, University of Cincinnati), *The effects of prison sentences on recidivism*, 1999.

that the offending can be dealt with outside of the formal court processes, and by keeping the offender in the community.

Much low level offending does not merit the expense of statutory sanctions involved in the criminal court. Indeed, there is a growing recognition of this within the police, who are making efforts to resolve criminal offending in ways without filing charges in court – diversion being one option. While diversion is primarily a way of diverting low level and generally first-time offenders away from formal court processes and the possibility of a criminal conviction, there is potential for a widening of the scheme and for greater community involvement in the process. There is scope for greater community involvement in both the development of a plan, and the monitoring and completion of such plans and some communities in New Zealand have taken advantage of this opportunity.⁵

B. Court Diversion

Just as the Police or Prosecution Service has the ability to divert charges from the formal criminal justice system so too do the courts have the same opportunity, exercised in much the same way, with the exception that the overriding principle of “openness” must hold sway. This means that the same rules apply to issues of suppression of name and details as will any other court hearing – it is a public process and must be transparent and available to public scrutiny. (*See Court of Appeal Decision in Proctor v R, R x Liddell etc (CA 131-00, 29 August 2000)*). These principles apply equally to persons charged as to those convicted.

That said, the advantages in terms of avoiding a record of conviction, speedy disposition of case, etc. equally apply as for police diversion.

The invitation to community providers for involvement in the police diversion scheme is managed locally by approved diversion officers or the district prosecution manager. The police regard it as important that the relationship is at a local level so that police who are involved with local communities can change arrangements which are not working, keep control of local costs and set up local monitoring arrangements to ensure that diversion conditions are being fulfilled properly and within proper timeframes. The one exception to local relationships relates to the decision about which charitable groups should receive donations made by offenders who are diverted and that is a decision made finally by Police National Headquarters and is made public.

There are a range of diversion schemes available to the courts which are similar to the police diversion scheme but, in addition, diversion to community-based organizations or community panels is popular. An example of one such is *Te Whanau Awhina*.

V. COURT REFERRED DIVERSION – TE WHANAU AWHINA

The *Hoani Waititi Marae* (Maori traditional meeting house) in Auckland runs a programme called *Te Whanau Awhina* which deals with offenders diverted by a court prior to sentencing (rather than by the police). Courts can refer certain offenders to the programme. A panel of nominated members of the *Marae* (traditional Maori meeting place) community meet with the offender and prepare a plan to address their offending. The panel emphasizes the need for the offender to accept responsibility for their offending, and to recognize the impact their offending has had on any victims, their *whanau* (family) and the wider community. Equal focus is placed on reintegration – restoring the connections of the offender with their family, *whanau* and with the community, particularly the Maori community in an urban setting.

Plans typically revolve around participation in Maori-based programmes and activities, making amends to the victim, gaining employment or employment skills, or participation in therapeutic/rehabilitative interventions. In many cases the plan will take the place of a sentence that the court would have imposed. Usually when the offender comes back before the court after completion they are discharged without any conviction being entered in the records about them.

An evaluation of the programme was conducted in 1999.⁶ The evaluation found that plans were satisfactorily

⁵ According to the New Zealand Police Annual Report 2009/10 there were 14,208 diversions approved from 158,700 cases prosecuted – in the previous year 16,230 diverted from 164,000 prosecuted – about 10%.

⁶ Gabrielle Maxwell, Allison Morris and Tracy Anderson, *Community Panel Adult Pre-trial Diversion: Supplementary Evaluation*. Wellington: Crime Prevention Unit (Department of Prime Minister and Cabinet) and Institute of Criminology, Victoria University, 1999.

completed by 68% of referred offenders. The rate of reconviction after 12 months was 33% compared to 47% for a control group. There was also a reduction in the seriousness of reoffending among those referred to *Te Whānau Awhina* compared to the control group. The evaluation also showed substantial savings – mainly in programme provision – resulting from the scheme.

The programme follows traditional Maori customary practices and gains strength from being able to provide many suitable community-based alternatives to corrections programmes. Its location on a *marae* and its embeddedness in Maori culture increases its effectiveness for Maori participants.

VI. YOUTH DIVERSION AND FAMILY GROUP CONFERENCES

The enactment of the Children, Young Persons and their Families Act 1989 introduced a philosophical sea change in the youth justice system. Prior to this legislation many youth offenders were sent to child welfare institutions, or in serious cases, detention centres, borstals or corrective training institutions; places where they would further develop their “bad boy/girl” image and learn new anti-social and criminal tricks.⁷ Youth offenders were dealt with by institutions of the state from arrest right through the process. There was some reform of the Court system in 1974 (particularly notable was the introduction of diversionary concepts) but these new procedures were seen as not working and the new Children’s and Young Persons Court was consequently too active.⁸ The failure of the existing system to prevent reoffending, and the manner in which it encouraged dependency on the welfare of the state can be seen as the major effects of the previous system. Further factors which influenced calls for change are summarized by Maxwell:⁹ “concern for children’s rights; new approaches to effective family therapy; research demonstrating the negative impact of institutionalism on children; inadequacies in the approach taken in the 1984 legislation to young offenders; the failure of the criminal justice system to take account of issues for victims; experimentation with new models of service provision and approaches to youth offending in the courts; and concerns raised by Maori about the injustices that had been involved in the removal of children from their families.”

A new and revolutionary process for dealing with children and young people involved in criminal offending was created by legislation introduced in 1989 as a response to those concerns.

A report by Mike Doolan was influential¹⁰ in securing the final form of the Children, Young Persons and their Families Act 1989. Judge Fred McElrea, a leading Youth Court Judge, provides an excellent summary of the procedure provided for in the 1989 Act:¹¹

“A sharp separation is to be found between (a) adjudication upon liability, i.e. deciding whether a disputed charge is proved, and (b) the disposition of admitted or proved offences. The adversary system is maintained in full for the former, including the right to trial by jury of all indictable offences, the appointment of a Youth Advocate in all cases, and the use of traditional rules concerning the onus and standard of proof (– ie. beyond reasonable doubt) and the admissibility of evidence.

For really serious offences (“purely indictable”) the young person is dealt with in the adult court unless a Youth Court judge decides to allow him to remain in the Youth Court – ss 275 and 276.

At the other end of the scale a robust diversion system operates to keep young persons away from the Youth Court. Both of the traditional means of obtaining a suspect's attendance before the court – arrest and summons – are carefully restricted. Thus no arrest can be made unless it is necessary to prevent further offending, or the absconding of the young person, or the interference with evidence or witnesses (s 214). And no summons can be issued without first referring the matter to a Youth Justice Co-ordinator

⁷ Consedine, J. (1999) *Restorative Justice: Healing the effects of crime*, Ploughshares, Chapter 6 at 102 - 103

⁸ Watt, E. (2003) *A History of Youth Justice in New Zealand* at 14. Accessible at www.justice.govt.nz/.../History%20of%20the%20Youth%20Court%20Watt.pdf

⁹ Maxwell, G. (2007), *The Youth Justice System in New Zealand: Restorative Justice Delivered Through the Family Group Conference in Restorative Justice and Practices in New Zealand* (Institute of Policy Studies, VUW) at 46

¹⁰ See Watt (supra n 7) at 23 - 25

¹¹ Judge FWM McElrea, *The New Zealand Experience of Restorative Justice Legislation*, September 2005. Accessible at <http://www.restorativejustice.org/10fulltext/mcelrea9/view>

who then convenes a Family Group Conference (“FGC”) – s 245. If the members of the FGC all agree, including the police officer present, the matter is handled as decided by the FGC and will not go to court.

The FGC is attended by the young person, members of his family (in the wider sense), the victim (with supporters if desired), a youth advocate (if requested by the young person), a police officer (usually a member of the specialist Youth Aid division), a social worker (in certain cases only), and anyone else the family wish to be there: s 251. This last category could include a representative of a community organisation, eg drug addiction agency or community work sponsor potentially helpful to the young person.

The Youth Justice Co-ordinator (an employee of the Department of Social Welfare) arranges the meeting and of course attends as well, in most cases facilitating the meeting.

Where the young person has not been arrested, the FGC recommends whether the young person should be prosecuted and if not so recommended, how the matter should be dealt with (s 258(b)), with a presumption in favour of diversion (s 208(a)). All members of the FGC (including the young person) must agree as to the proposed diversionary program, and its implementation is essentially consensual. Where the young person has been arrested the court must refer all matters not denied by the young person to a FGC which recommends to the court how the matter should be dealt with. Occasionally a FGC recommends a sanction to be imposed by the court. Usually it puts forward a plan of action, e.g. apology, reparation (in money or work for victim), community work, curfew and/or undertaking to attend school or not to associate with co-offenders. The plan is supervised by the persons nominated in the plan – which can be anybody, including a family member – with the court usually being asked to adjourn proceedings, say for 3-4 months, to allow the plan to be implemented.

The Youth Court nearly always accepts such plans, recognising that the scheme of the Act places the primary power of disposition with the FGC. However, in serious cases the court can use a wide range of court-imposed sanctions, the most severe being three months residence in a social welfare institution followed by six months supervision; or the court may convict and refer the young person to the District Court for sentence under the Criminal Justice Act 1985 (s 283(o)), which can include imprisonment for up to five years

As with other diversion schemes, if the plan is carried out as agreed the proceedings are usually withdrawn; if the plan breaks down the court can impose its own sanctions. Thus the court acts as both a back stop (where FGC plans break down) and a filter (for patently unsatisfactory recommendations).”

The Youth Justice system now embodies the idea that as far as possible a young offender should be kept away from state institutions and their treatment should be in the community from which they come. A youth offender will only face conventional court procedures where they deny responsibility for the offending, or when the offending is very serious.

The community, in the sense of the direct community affected by the offending (the offender’s family, the victim and their family) have a direct input into the “sentence” a young person will undergo via the Family Group Conference. Typically, a Family Group Conference plan will keep the youth in the community, seeking to address the causes of their offending by strengthening the communities around them.

This approach to youthful offenders has now been adopted by countries around the world. The central concept of diversion from the criminal justice system in favour of utilizing the strength of family and community where possible has attracted the attention of many countries which have seen the need to strengthen family and community responsibilities as a primary purpose in crime prevention. It has been shown by research to be enormously effective.

VII. RANGATAHI COURTS

A. Maori Over-Representation

It is well documented that the indigenous population of New Zealand, Maori, are grossly overrepresented in the prison population.¹² Despite making up just over 15% of the overall population, around 50% of the male prison population identify as Maori.¹³ The overrepresentation of Maori is even more marked in female inmate numbers; around 60%¹⁴ of the total number of female prisoners. They are also grossly overrepresented in the youth justice system:

- 19% of the 14-16 age group are Maori;
- 49% of those apprehended in that age group by the police are Maori;
- 53% of those before the Youth Court are Maori;
- Up to 66% of those in youth custody are Maori.

Concern about these statistics has led to the creation of “*Rangatahi* Courts” as an arm of the Youth Court in several regions throughout the country – an initiative inspired by the benefits of community involvement in sentencing and offender treatment. *Rangatahi* Courts are a judicially-led initiative with the purpose of helping to better link Maori young offenders (aged 14-16) with their culture and the local Maori community. This is achieved by holding regular sittings of the Youth Court on the local *Marae* (traditional Maori meeting houses).

Rangatahi Courts do not represent a separate system of youth justice. All young offenders are still required to appear first in the Youth Court. If they do not deny the offending for which they are charged, they will still be required to undergo a Family Group Conference. At that Conference, a comprehensive plan will be put in place in the regular way. However, if a *Rangatahi* Court sits in the region, the Family Group Conference will consider whether to include provision for regular and consistent monitoring of the young person’s progress to take place at the designated *Marae*. It may be that the offending is too serious to be dealt with a Family Group Conference plan, and in the usual way a formal Youth Court order will instead be imposed and the *Rangatahi* Court process will not be used. Essentially, the *Rangatahi* Court is a sitting of the Youth Court which is held on a local *Marae* in order to monitor the young person’s compliance with the Family Group Conference plan which has been developed for them to address their offending. Once the FGC plan is approved by the youth court, the next and subsequent hearings will be on the *Marae*.

A specific direction by a Youth Court Judge is required for each sitting of the case to be on the *Marae* – there is a specific statutory power allowing the Court to hold sittings at any place.¹⁵ In this way, the *Rangatahi* Court is an initiative that works within the current system and processes but at a different venue and with a strong Maori cultural input, especially using lay, community advocates as provided for in the Children, Young People and their Families Act 1989.

A *Rangatahi* Court hearing involves *kaumatua* (traditional elders) who are greatly respected members of the *marae* community. The hearing commences with a formal welcome onto the *Marae*. After that the hearings of individual young persons’ cases begin. The *marae kaumatua* sit with a Presiding Judge and the *kaumatua* acknowledges in a traditional way young person and *whanau*. The young person replies and introduces his/her *whanau* and supporters. Youth and Lay advocates will then address the court of progress being made, and the judge engages the young person and other professionals on the case. The *Rangatahi*

¹² See for example *The Too Hard Basket: Maori and Criminal Justice Since 1980*, Charlotte Williams, Institute of Policy Studies, Victoria University of Wellington, 2001 and *Over-representation of Māori in the Criminal Justice System: An exploratory report*, Policy Strategy and Research Group, Department of Corrections, September 2007, at 6. Accessible at: http://www.corrections.govt.nz/__data/assets/pdf_file/0004/285286/Over-representation-of-Maori-in-the-criminal-justice-system.pdf

¹³ *Over-representation of Māori in the Criminal Justice System: An exploratory report*, Policy Strategy and Research Group, Department of Corrections, September 2007, at 6. Accessible at: http://www.corrections.govt.nz/__data/assets/pdf_file/0004/285286/Over-representation-of-Māori-in-the-criminal-justice-system.pdf (last accessed on 23rd February 2009).

¹⁴ *Ibid*, at 6.

¹⁵ See s 4(4) of the District Courts Act 1947.

Courts are the first in New Zealand to blend our inherited English court processes with Maori culture or *tikanga*.

For the *Rangatahi* Courts to reach their full potential it will be vital that culturally appropriate and community-based rehabilitation programmes for serious young Maori offenders are available and accessible to the young offenders who have their sentences monitored on the *Marae*. Such programmes are starting to appear to support the *Rangatahi* Courts, including cognitive learning programmes, alcohol and drug programmes, and cultural strengthening programmes.

By engaging the community of the *Marae*, and involving it in the treatment and monitoring of youth offenders, it is hoped that the youths involved will engage with their culture and address the cause of their offending, leading to a crime free future.

VIII. MATARIKI COURT

An initiative is being rolled out in the District Court in the far north of New Zealand with a view to reducing the imprisonment of adult Māori and providing other options based in the community. The “*Matariki* Court” will deal with cases involving adult Māori offenders prior to sentencing and in potential sentencing options. The Court will utilize s. 27 of the Sentencing Act 2002 to hear from any person or persons on:

- (a) the personal, family, *whānau*, community, and cultural background of the offender:
- (b) the way in which that background may have related to the commission of the offence:
- (c) any processes that have been tried to resolve, or that are available to resolve, issues relating to the offence, involving the offender and his or her family, *whānau*, or community and the victim or victims of the offence:
- (d) how support from the family, *whānau*, or community may be available to help prevent further offending by the offender:
- (e) how the offender's background, or family, *whānau*, or community support may be relevant in respect of possible sentences.

The *Matariki* Court will also refer defendants (when suitable) to available community services to address their social needs and underlying causes of offending. Discussions will be held with government and non-government agencies about available services in the area; however, a key service that will be used by the court is a pilot programme being developed by *Tē Runanga-a-Iwi o Ngāpuhi*, the tribal authority for that district. They will work with the defendant and their *whānau* during and after the court process. The pilot programme's objective is described by *Tē Runanga-a-Iwi o Ngāpuhi* as “*a Ngāpuhi (tribal) response to the current rate of imprisonment of its and other people sentenced at the District Court. The Ngāpuhi (tribal) overall aim in is to stem that rate of imprisonment. It will do that by assisting offenders and their communities to a non-offending perspective, instil a sense of hope in the real prospect of positive growth and achievement, and support and maintain that change of direction by the development of relevant capacities and active support structures*”.

The Court is still a work in progress and is planned to be operating in early 2011.

IX. RESTORATIVE JUSTICE DIVERSION

While the Youth Court legislation embraced restorative justice practices and community involvement, recognition of the value of these practices in the adult court took a little longer in New Zealand.

The Ministry of Justice had for some time been seeking to replace piecemeal sentencing provisions and in 1997 the government released a discussion document entitled *Sentencing Policy and Guidance*.¹⁶ The new Labour government committed itself to a reform of sentencing practice and policy, which saw the eventual enactment of the Sentencing Act 2002 and Victims Rights Act 2002. The Acts contains a number of provisions which acknowledge and encourage the restorative practices which had been occurring on a

¹⁶ <http://www.justice.govt.nz/publications/global-publications/s/sentencing-policy-and-guidance-a-discussion-paper>

voluntary basis. Provisions supporting restorative practices are found throughout the Sentencing Act 2002, the Parole Act 2002 and the Victims Rights Act 2002.¹⁷

Unlike Family Group Conferences in the Youth Court, which are organized by a Youth Justice Co-coordinator from Child, Youth and Family (a department of the Ministry of Social Development), restorative justice conferences in the adult court are run by community-based organizations. The Ministry of Justice provides funding for 26 community organizations (mostly charitable trusts) to run these conferences, and also performs a role in supervising the quality of the services a provider delivers. These Ministry of Justice functions reflect a desire to allow RJ processes to be delivered by the community in which offending takes place and to remove the state from direct involvement.

The groups are able to work in ways that suit their community. They have good links with other community-based services and can link defendants into appropriate programmes. Some restorative justice groups involve lay members of the community in the restorative justice meeting. The panel members, as they are known, can be involved as well as direct victims.

The conferences are a relatively informal meeting between the offender and the people affected. They are there to talk honestly about what happened, what harm has been caused, who has responsibility to remedy that harm, and to work out ways forward. Conferences are private meetings; however, a report is prepared for the Court. How participants agree to move forward is for them to decide. Some conferences result in an agreement on a plan of actions that the offender will do to put things right, but this is not the outcome at every conference.

Courts must by law take account of the outcome of a restorative conference when passing sentence, and often a successful conference can effectively determine the sentence imposed, and/or be a significantly mitigating factor such that a term of imprisonment may be avoided.

Restorative justice conferences in the adult court are a further example of the community being involved in sentencing to a greater extent than traditionally has been the case. Being community-based, these conferences are able to link an offender into other community-based organizations, such as drug and alcohol programmes or anger management programmes, which have the aim of addressing the causes of offending.

There is however potential to extend the scope of restorative justice conferences for adult offenders. While the Youth Court Family Group Conference has the power to draw up a plan of action for the offender to complete to address the effects and causes of their offending, that is not statutorily provided for in respect of adult conferences – something which may be worth addressing. Producing an agreed outcome rather than one imposed by the state has several benefits.

Last year the Chief Justice of New Zealand delivered a speech which received widespread coverage in the media.¹⁸ In it she suggested that the traditional criminal court process should not accommodate victims, focusing as it does on the dispassionate and fair delivery of justice. As noted by USA Professor Howard Zehr (often called “the father of restorative justice”), restorative justice theory calls for victims to be central to justice.¹⁹ Indeed, restorative justice programmes appear to have significant potential for addressing victim concerns and needs. Zehr contends that justice for victims will not be achieved while the criminal justice system continues to focus on the conventional questions:

- What laws have been broken?
- Who “done” it?
- What do they deserve?

¹⁷ See <http://www.justice.govt.nz/publications/global-publications/r/restorative-justice-provisions-in-the-sentencing-act-2002-parole-act-2002-and-victims-rights-act-2002/publication> for a full discussion of these provisions.

¹⁸ The Shirley Smith Annual Address 2009, *Blameless Babes*. Accessible at <http://www.courtsfnz.govt.nz/from/speeches-and-papers>.

¹⁹ See *Fundamental Concepts of Restorative Justice*, Howard Zehr and Harry Mika, page 41, Chapter 3 in *Restorative Justice Critical Issues* (Sage Publications Ltd, 2003).

Zehr asserts that instead we should be asking:

- Who has been hurt?
- What do they need?
- Whose obligation and responsibility is this?

Incorporating restorative justice conferences as a regular part of criminal procedure would, it is suggested, go some way to lowering our imprisonment rate, and improving on our reconviction rates. A recent report commissioned by the Ministry of Justice in the United Kingdom has found reductions in reconviction rates for those completing restorative justice conferences.²⁰

Even if using restorative justice has little or no effect on recidivism and crime, it has positive effects for victims as outlined above, helping them understand the offending and move on with their lives. A successful conference can also mean an offender will remain in the community for treatment, rather than ending up in prison.

There may be merit in providing judges with an explicit power to direct a conference wherever a defendant admits guilt and the circumstances indicate it would be appropriate.

X. PORIRUA COMMUNITY COURT

The growing recognition that Court appearances for many defendants and their families can in fact be used for therapeutic interventions to address the causes of offending has seen the creation of another judicially led initiative seeking to strengthen community involvement. Inspired by the Red Hook Community Justice Centre in Brooklyn, New York and the North Liverpool Community Justice Centre in England, New Zealand Judges John Walker and Jan Kelly have been working hard to engage the local community with the Porirua District Court.

Red Hook and North Liverpool created “Community Justice Centres” which the Porirua project is modelled on. Community justice is about engaging with the local community, making the court more responsive to local people and working in partnership with criminal justice agencies, support services and community groups to solve the problems caused by offending in the local area. The key principles are maintaining a continuity of judges (seeing the same judge in the court each week); multi-agency collaboration, having a range of social services available for defendants and *whanau* on site; a problem-solving approach to socially harmful behaviour; and, vitally important, involving the local community and creating a community resource.

While the Porirua Project is in its early stages, a recent evaluation of the North Liverpool Community Justice Centre in England found that the community justice approach supports effective and efficient court operation.²¹ Unnecessary delays and bureaucracy are avoided, and decisive action against offenders’ non-appearance or breach of their sentences is possible. The Court has seen an increase in the number of guilty pleas, and a reduction in the number of hearings required compared to national averages.

XI. COMMUNITY LINKS IN COURT (CLiC)

The judges have been assisted by the roll out of a new initiative called “Community Links in Court” (CLiC) by the Ministry of Social Development and Ministry of Justice. So far the CLiC service has been rolled out in three District Courts – Porirua, Masterton and Auckland.

CLiC aims to meet some of the needs of people affected by family violence by leveraging off their likely

²⁰ Does *Restorative Justice Affect Reconviction?* Joanna Shapland, Anne Atkinson, Helen Atkinson, James Dignan, Lucy Edwards, Jeremy Hibbert, Marie Howes, Jennifer Johnstone, Gwen Robinson and Angela Sorsby, Ministry of Justice Research Series 10/08, June 2008 and see Sherman and Strang (UK). *Effects of Restorative Justice Conferencing on Re-offending 2010* – Jerry Lee Code of Criminology.

²¹ *Evaluation of the North Liverpool Community Justice Centre*, Katharine McKenna, Ministry of Justice Research Series 12/07 October 2007. Note. The Red Hook Community Justice Centre in New York recorded a seventy per cent drop in offending over the period of its operation.

attendance at, or contact with, a Criminal or Family Court. Criminal and Family Courts present an excellent opportunity to provide individuals affected by family violence with a link to such community programme providers and other services provided by the state.

The CLiC service will work with defendants and their families to:

- screen their current social situation (housing, employment etc);
- identify their needs for social support and discuss their willingness to attend a Domestic Violence Programme administered by a community group;
- when defendants are willing to attend a Domestic Violence Programme, provide the court with information on programmes that may be appropriate;
- link defendants and their families to appropriate social support services;

and where appropriate

- provide a report to the judge that includes the outcome of referrals made by the Community Link in Court and information provided by Domestic Violence Programme providers.

CLiC essentially involves representatives being present in court to provide a case management and service brokering role, facilitating access for defendants and their families to community groups and/or state services in order to address the underlying causes of their offending. CLiC workers will have to establish effective working relationships across many state services and community-based providers to be an effective resource.

Successful completion of programmes will be taken into account by the court when sentencing as a significant mitigating factor. Imprisonment may be avoided, and hopefully the offender is diverted away from further criminal offending.

XII. OTHER THERAPEUTIC INTERVENTIONS

There are a range of other therapeutic initiatives operating in New Zealand which seek to address the causes of offending and emphasize community treatment over incarceration. Some of these are listed below.

A. Family Violence Courts

Family violence has been in the spotlight in New Zealand in recent times, with several high profile incidents drawing intense media attention and prompting nationwide self-reflection. Although it is an increasing problem worldwide, one author has described family violence as an epidemic in New Zealand.²² The courts have responded by establishing specialist Family Violence Courts in many regions. These Courts apply a modified procedure to overcome systemic delays in court processes; to minimize damage to families by delays; to concentrate specialist services within the court process; to protect the victims of family violence consistent with the rights of defendants; to promote a holistic approach in the court's response to family violence; and to hold offenders responsible for their actions.

The cases are often resolved by programmes relating to drugs, alcohol, anger management and the like. All of the sentences available to the court are available in the Family Violence Court, but the preponderance tend to be non-custodial community-based sentences which are intended to provide remedies for the problems of the defendant and his family. The assistance of programme providers, victim advisors is encouraged.

An evaluation of the courts at Manukau and Waitakere completed in August 2008²³ found that the collaboration between the court and community organizations was a key factor in the success of the Courts.

B. Youth Drug Court

The Christchurch Youth Drug Court (YDC) was established on 14 March 2002. The Court has been an

²² *Free from abuse*, Hand, J. (2001), New Zealand: Auckland District Health Board.

²³ <http://www.justice.govt.nz/publications/global-publications/t/the-waitakere-and-manukau-family-violence-courts-an-evaluation-summary-august-2008/publication>

innovative programme aimed at reducing offending which is linked with alcohol and/or other drug dependency amongst young people. The YDC aimed to do this by facilitating early identification of young offenders with alcohol and/or other drug use problems; reducing time delays in community programme delivery to young people; facilitating effective inter-agency coordination; and monitoring the young people to facilitate the treatment process. The Court targets young recidivist offenders appearing in the Youth Court who have been identified as having a moderate to severe alcohol and/or other drug dependency that is linked to their offending.

C. Special Circumstances Court

Another therapeutic court in its early stages is known as the Special Circumstances Court, sitting in Auckland city. The overall objective of this Court is to aid the reduction of public space offending in Auckland's inner city by those who are homeless, and/or have on-going mental illness and/or addictions, or who are intellectually impaired through either injury or disability. The Court is a joint pilot scheme between agencies including mental health services, the judiciary, police, Housing New Zealand and the Ministry of Social Development – services such offenders are already likely to have come into contact with.

XIII. CONCLUSION

All the above show a depth of community involvement in the treatment of offenders prior to sentencing by the courts, often initiated by participants in the system rather than by policy or legislation of the government of the day. A regrettable international tendency of recent times has been the way in which many countries and communities have increasingly left the treatment of offenders to official institutions set up to do this work. Typically courts, correctional facilities, probation and others have taken over what used to be the ordinary tasks of local communities in identifying and dealing with their own problems. Particularly in the less serious category of crime, the challenge in New Zealand, as elsewhere, lies in returning that power and that responsibility back to the communities from which these offenders come. Sometimes there will be a need for central agencies to share resources to enable this to be done. New Zealand's experience however, also shows that it is important that judges and officials such as police and probation show that they are genuinely keen to involve such communities and are genuinely prepared to share authority and power with them and genuinely invite those natural communities to become actively involved in this way. The most significant New Zealand strategy to ensure community involvement in such treatment starts with such an invitation the promise of which is then carried out in practice.