# The Case for Alcohol and Other Drug Treatment Courts in New Zealand

Gerald Waters 2011

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# THE AUTHOR

I am neither an academic nor politically motivated. I am just an average guy, with a family, living in New Zealand. However I have had an opportunity to experience firsthand the devastating effects of what can happen when an offender, whose offending is driven by alcohol/drug dependency, fails – for whatever reason – to have alcohol/drug issues meaningfully addressed.

In March 2010, on a road near Kerikeri, our friend Katherine Kennedy was killed by a drunk-driver with 17 previous convictions for drink-driving. Since this terrible event, I have researched the case extensively to get a sense of what could have been done differently, and have come to the conclusion that this tragedy was predictable and could possibly have been prevented.

I was in court when the driver who killed our friend was sentenced. I did not see a violent killer who was intent on killing, in the dock that day. I saw an out-of-control alcoholic who had presented himself as such to the justice system on many previous occasions.

I have spent the last year studying Alcohol and Other Drug (AOD) impaired driving in New Zealand and internationally. I have also researched:

- Worldwide studies of recidivism
- Studies on counter measures for drink-driving such as alcohol ignition interlocks
- Blood Alcohol Concentration (BAC) level and accident rate correlation
- Worldwide studies of lowering of the BAC for drivers
- Rehabilitation and treatment of drink drivers
- Therapeutic jurisprudence
- Studies on worldwide drink-driving sanctions
- Data and statistics on drink-driving in New Zealand
- AOD Treatment courts
- AOD rehabilitation in NZ and internationally

I am in consultation and correspondence with world recognised experts and professionals in all the above fields. I am currently carrying out NZ specific research on drink-driving, and regularly accompany a police Traffic Alcohol Group on Compulsory Breath Testing operations in the Auckland area. I am researching and compiling data regarding the construction of an effective and economically viable drink-drive initiative for New Zealand. I am investigating the circumstances surrounding our friend's death to identify where improvements to the justice system could be made to prevent further avoidable harm.

# EXECUTIVE SUMMARY

- Drugs and alcohol are related to the majority of crime in New Zealand.
- Current attempts to meaningfully rehabilitate AOD offenders are inadequate.
- Very little is being done to effectively address AOD offender recidivism.
- Alcohol and Other Drug Treatment Courts (AODTCs) have proven to be effective and economically viable in tackling AOD offenders because they tackle the root cause: alcohol/drug dependency.
- All New Zealand political parties must collaborate on initiatives addressing this problem. Politicians must collectively aspire to develop and implement serious long-term goals regarding public safety from AOD offenders, rather than just short-term goals attainable to them in their term of office.
- The Sentencing Act is being failed.
- The public need to be better informed about this issue; demand action; and be part of the solution in their own community.
- We do not need more prisons: we need fewer offenders.

# INTRODUCTION

Currently in New Zealand a majority of crime is fuelled by alcohol or other drugs. Frequently these offenders, when apprehended, are given short sentences of imprisonment during which time they do not undergo any rehabilitation. They are then released back into the community where they are free to continue their offending until the next time they are caught. This approach is referred to as a 'revolving door'. Such offenders are not necessarily deterred by the prospect of imprisonment and are of the view that they have "done the crime and done the time".

Some offenders are sentenced to longer terms of imprisonment where there will be requirements on them to undertake rehabilitative efforts – if not in prison, then as parole conditions. However, there is no drug or alcohol testing for offenders on parole. If such offenders continue to use alcohol/drugs then their likelihood of re-offending is high.

Some offenders receive community-based sentences. Home Detention is a sentence served in the community for serious offending. However, although there is a standard condition that the offender is not to consume alcohol or illegal drugs for the duration of their sentence, there is absolutely no testing to ensure compliance.

Current attempts to meaningfully rehabilitate AOD offenders are inadequate, and where AOD dependency remains unaddressed related offending continues. This approach is referred to as 'catch and release'. It is ineffectual, costly, harmful, and does nothing to protect the community apart from the obvious utility that while incarcerated for a short period offenders cannot commit crime.

Alcohol and Other Drug Treatment Courts (AODTCs) have been proven to be effective in preventing recidivist crime and more cost effective than the 'catch and release' approach, by offering a regime of treatment and rehabilitation with monitoring for AOD offenders. AODTCs screen and identify offenders who are able, with support and treatment, to make positive changes in their lives, in turn affecting the lives of their family and dependants. AODTCs challenge the motivation behind criminal offending rather than simply imposing the punitive measures of traditional criminal courts. Currently in the United States there are 2559 drug courts in operation.

The public need to become informed on what needs to change to best protect our families, livelihoods, communities and also those who, with our help, could be rehabilitated thereby reducing recidivism. Addiction, if not addressed, will result in offenders continuing to take risks and becoming increasingly desperate in their efforts to fuel their addictions. This in turn puts the public at increased risk and makes our communities a less desirable place to work and live.

I have compiled this paper so we can be better armed when we ask for accountability from those charged with ensuring we are safe in our society.

Gerald Waters.

# THE FUEL OF CRIME

### *Drinking, Drugs and Crime in New Zealand*

Substance abuse is a major driver of crime. Approximately 80% of crime in New Zealand occurs under the influence of alcohol and/or illegal drugs[1]. Seven out of 10 offenders apprehended by Police in 2007 were under the influence of drugs in the period leading up to their arrests[2].

In 2008, approximately two-thirds of New Zealand prisoners had ongoing drug or alcohol problems[3]. Substance abuse creates numerous problems within families and impacts on a wide range of health issues, both physical and mental[4]. In 2008 drugs and/or alcohol were factors in 33% of all fatal road accidents[5], and 70% of all weekend Accident and Emergency admissions are related to alcohol use[6]. In 2009 alcohol-impaired driving alone contributed to 33% of fatal crashes and 21% of serious injury crashes[7]. Crashes involving alcohol resulted in 137 deaths, 565 serious injuries, and 1725 minor injuries at an estimated social cost of $875 million[8].

The cost of treating victims of crime is estimated at more than $400 million each year[9]. The cost to New Zealand society of harmful drug and alcohol use is estimated at $6.88 billion per year[10].

**Table 1: Cost of alcohol and drugs to New Zealand**

| ($m) | Alcohol | Other drugs | Joint AOD | Total |
|---|---|---|---|---|
| Tangible costs | 3,231.6 | 1,034.2 | 652.1 | 4,918.0 |
| Intangible costs | 1,561.9 | 392.4 | 8.7 | 1,963.1 |
| **Total social costs** | **4,793.6** | **1,426.7** | **660.8** | **6,881.1** |
| **% of social costs** | **69.7%** | **20.7%** | **9.60%** | **100.0%** |

Source: BERL

While illegal drug use is criminal in itself, alcohol and drug misuse also increases the chances of other crimes being committed by impairing judgement, reducing inhibitions and heightening emotions. Drug and alcohol misuse contributes to all types of offending including driving offences, property related offences, sexual and violent offences[11]. A large

[1] Brooking, 2010, page 14
[2] NZ police, 2007, page 47
[3] Department of Corrections, 2009-2014, page 3
[4] Department of Corrections, 2009-2014, page 3
[5] http://www.nzta.govt.nz/traffic/ways/car/driving-safely/alcohol-drugs.html (Last Accessed March 31, 2011)
[6] http://meas.ie/easyedit/files/Dr.%20Mike%20MacAvoy.ppt slide 10 (Last accessed Feb 7, 2011)
[7] Ministry of Transport, 2010, page 1
[8] Ministry of Transport, 2010, page 1
[9] National Health Committee, 2010, page 4
[10] BERL Economics, 2009
[11] Department of Corrections, 2009-2014, page 3

proportion of offending is committed under the influence of drugs and/or alcohol. Offending is often committed in order to support a habit or addiction, or is related to the sale and distribution of drugs[12].

In New Zealand:

- 71% of arrestees drug-tested by Police tested positive for one or more drugs[13].

- 65% of sentenced prisoners were identified as having ongoing drug or alcohol related problems[14].

> *Drug and alcohol misuse has historically been a factor in offending in New Zealand. Patterns of misuse among offenders evolve over time and consequently our efforts to address these problems must also evolve to remain effective[15].*

In 2009 the Department of Corrections with the Ministry of Health decided improvement was needed regarding the clear lack of AOD treatment or rehabilitation for offenders in prison[16], and initiatives were outlined for more help for low-level offenders.

> *Low-level offenders also often have a range of needs, including education, health and employment needs, which undermine their potential and ability to live well in society. For a range of reasons, low-level offenders are not generally offered rehabilitation and reintegration services, as they are prioritised for high risk offenders[17].*

AOD offenders also have a 'range of needs' as mentioned above for low-level offenders, yet there has been no mention of improvements for AOD offenders at the point of court appearance when this type of offender is most susceptible to attempts at treatment[18].

### *The Drivers of Crime*

On 3 April 2009 the Minister for Justice, the Hon. Simon Power, together with the Minister for Maori Affairs, the Hon. Dr Pita Sharples, co-hosted a meeting at Parliament concerning the underlying 'drivers of crime' in New Zealand. Over 100 invited participants from related fields regarding crime attended the meeting. Submissions were also received in response to this meeting. In the Government's report on the submissions[19] AODTCs are not mentioned. Only the submissions from the New Zealand Parole Board and the Ministry of Health came close, recognising that a Community court, as used internationally and AOD treatment as an option at sentencing would be effective in tackling crime. Most of the 49 submissions recognised common features:

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[12] Department of Corrections, 2009-2014, page 3
[13] NZ police, 2007, page 2
[14] Department of Corrections, 2009-2014, page 3
[15] Department of Corrections, 2009-2014, page 3
[16] Department of Corrections, 2009-2014, page 9
[17] http://www.justice.govt.nz/justice-sector/drivers-of-crime/drivers-of-crime-priority-areas/priority-area-four (Last accessed 24 Feb, 2011)
[18] New Zealand Drug Foundation, 2007, page 5
[19] http://www.justice.govt.nz/justice-sector/drivers-of-crime/drivers-of-crime-ministerial-meeting/justice-sector/drivers-of-crime/documents/drivers-of-crime-ministerial-meeting-report-on-submissions (Last accessed 23 Feb, 2011. Downloadable file)

- Alcohol and drugs
- Early intervention
- Parenting and Family
- More efforts at rehabilitation and treatment
- More community involvement

It is my belief that a number of concerns reflected in the submissions would be addressed by the implementation of problem-solving courts such as:

- Alcohol and Other Drug courts
- Driving Under the Influence (DUI)/ Driving While Intoxicated (DWI) courts
- Community courts

The Drivers of Crime meeting identified four priority areas that need to be addressed, one of which is reducing the harm from alcohol and improving treatment. But there is no mention of AODTCs in the literature regarding this area of concern and no mention of drug treatment or rehabilitation at all in the priority areas they have identified[20].

AODTCs were implemented internationally to address a majority of the issues raised at the drivers of crime meeting, and over 20 years of use of AODTCs in some countries means they are fine-tuned and highly effective.

I find it inconceivable that there is no mention of these courts whatsoever in the Government's report on the submissions. As we shall find out later in this paper, the proof of the effectiveness of these courts is overwhelming. I can only assume that this paper is long overdue, as it can only be lack of awareness that accounts for the absence or any acknowledgement of these courts in the Drivers of crime reports.

[20] http://www.justice.govt.nz/justice-sector/drivers-of-crime/drivers-of-crime-priority-areas (Last accessed March 31, 2011)

# AND THEN I LET IT GO AGAIN

### *AOD Offenders*

I am currently researching impaired driving in New Zealand and recently submitted to a Select Committee on the proposed amendments to the Land Transport Act. In my research I found that drink-drivers were being treated uniformly with the same sanctions and punishments meted out to all regardless of the reasons behind their driving while unfit. Eventually these drivers would end up in prison and lose their licence. None of this stopped them from drink-driving, frequently doing so while they were disqualified[21], with some offenders amassing a huge number of convictions. Most of these drivers would have met the criteria for having an alcohol problem[22]. 'Catch and release' allowed them back out and in a position to cause death and mayhem on the roads.

AOD-engaged offenders are not a homogeneous group[23]. Differences are found even among those people of the same age and gender who have the same cultural, ethnic, social, and economic backgrounds[24]. Differences include personality, patterns of AOD abuse, health status, socialisation, education, family, job training, urban and rural influences, and mental functioning. Often their only shared characteristics include involvement with alcohol and other drugs and the criminal justice system.

Once AOD offenders are identified, rehabilitation and treatment must surely be attempted if for no other reason than the massive social cost and harm these offenders create. Recently the Minister for Justice, the Hon. Simon Power, said:

> *"We all know that if we can stop people from getting on the carousel of crime in the first place then the savings - not only monetary but also in terms of human cost - will be huge."* [25]

I believe it is equally important to get these offenders 'off' the carousel of alcohol and drug related offending: strengthening families and individuals.

In his book 'Flying Blind' Roger Brooking, clinical director of ADAC ( Alcohol and Drug Assessment and Counselling) Wellington, explains in detail the state of rehabilitation and treatment currently on offer to AOD offenders in New Zealand by the Department of Corrections, and how no, or little, attempt is made to rehabilitate AOD offenders[26].

In October 2010, 203 out of every 100,000 people in New Zealand were in prison[27]. This is the sixth highest rate of imprisonment in the OECD and the 60th highest rate in the world.

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[21] Waters, 2010
[22] Brooking, 2010, page 30
[23] Angling and Maugh, 1992
[24] Dowden and Brown, 2002
[25] http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10707859 (Last accessed 23 Feb, 2011)
[26] Brooking, 2010
[27] Based on an estimated national population of 4.39 million at October 2010 (Statistics New Zealand figures)

New Zealand sits just above Libya in global imprisonment rates[28]. However, the rate for Mäori is about 700 per 100,000 people[29]. This is clearly grossly disproportional.

Using prison as an answer to AOD offending is not working. We will continue catching more offenders, building more prisons and then releasing offenders back into society. It seems blindingly obvious that for those offenders whose offending is driven by AOD dependency, their offending will continue until that dependency is addressed in an effective way.

### *Prison, Home Detention – the Department of Corrections*

The name "The Department of Corrections" would imply that correcting offenders' behaviour would be the foremost concern of such an institution.

> *"Reducing recidivism amongst offenders has been a core organisational objective of the Department of Corrections since its inception."*[30]

The high rates of repeat offending reported by the Department of Corrections demonstrates that just by being in prison offenders are not likely to be corrected or the fear of it happening again stop recidivism? The reality is that for AOD offenders minimal attempts at correction are undertaken as little is done to address their underlying problems[31]. Historically, prison has been the only option available to the courts in the fight against crime. Studies and observations of the growing prison population, plus advances in practice, thinking and technology, now allow us options previously unavailable or beyond the conception of our predecessors. Prison, one would like to think, would be a perfect place to intervene and attempt some form of correction regardless of the amount of time the offender is serving.

As has been reported, most offenders have drug/alcohol abuse/dependency issues. The approach of any correctional attempts should be to correct the source of the problem: alcohol and drugs. Recently, Care NZ, which provides treatment and rehabilitation services to prisoners in New Zealand, reported remarkable successes for the few to whom treatment was available[32]. Preventative detention for those deemed likely to harm the public is necessary, but for those for whom correction can be attempted prison may not be the best place for these efforts. Rehabilitation and treatment used in a community setting have an even greater impact[33].

> *"Evidence suggests that (rehabilitative) programmes may be more effective when delivered to offenders in the community rather than custodial environments."*[34]

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www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_stats.php?area=all&category=wb_poprate (Last accessed 1 Feb, 2011)

[28] World Prison Brief, International Centre for Prison Studies. www.kcl.ac.uk/depsta/law/research/icps/worldbrief/ (Last accessed 1 Feb, 2011)

[29] Department of Corrections, 2007, page 12

[30] Department of Corrections, 2009 (A), page 9

[31] Brooking, 2010

[32] http://www.carenz.co.nz/media-release.html (Last accessed March 31, 2011)

[33] United Nations. Office of Drugs and Crime, 2007

[34] Department of Corrections, 2009 (A), page 7

The utility value of imprisonment is obvious in that while someone is under supervised custody with no chance of freedom they are unable to commit crime. The conditions for prisoners in New Zealand prisons are fraught with instances of assault, sexual abuse and rape reported[35]. Prison, while immediately satisfying our feelings of retribution and revenge, can have long lasting and detrimental effects if it reinforces anti-social behaviour resulting in prisoners adopting aggression and avoidance strategies that can have deep, permanent psychological, emotional and behavioural ramifications which could impact detrimentally on the prisoner, their family and the wider community[36]. Drugs are available in prison[37] and the Department of Corrections is fighting an ongoing battle to keep drugs out of prison[38].

Observations of the National Health Committee's investigation into the health of prisoners, their families and whānau are revealing and their message to be heeded:

> *"Although we, as a society, tend to believe otherwise, prisoners are part of the wider New Zealand community. They come from and return to our communities – often staying in prison only briefly – and their poor health has implications for all of us. Returning people to their children and communities with poor or worsening health is not in anyone's interest and only adds to demands on the health system, offending rates, and our growing prison population.*
>
> *As beds and buildings are added to our prison system, waiting lists grow for addiction and mental health services; yet there is no shortage of evidence to demonstrate that there are ways to increase investment in health and addiction treatment that improve health outcomes and reduce offending.*
>
> *Prison is an opportunity to protect, promote, and improve the health of prisoners and the community. But the NHC has found that the experience of imprisonment has negative health effects on those incarcerated and unintended consequences for the health and well-being of their family and whānau. Furthermore, the health effects of imprisonment fall most heavily on already disadvantaged communities – further undermining their resilience and increasing inequalities. It is a tragedy that Mäori make up half the prison population. There are significant consequences for whānau ora and hauora Mäori overall.*
>
> *From our consultations and the evidence we have compiled it is clear considerable benefits can be gained by developing closer ties between prison health services and the health sector. In New Zealand, most specialist health services for prisoners are the responsibility of the health sector, but primary health care is provided by the Department of Corrections. The NHC has come to the view that the role of the Department of Corrections in community safety, that of custody and containment is inconsistent with the demands of contemporary, integrated primary health care. Our findings have raised the question of whether any agency charged with custody can or should be a health provider.*

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[35] National Health Committee, 2010, page 31
[36] National Health Committee, 2010, page 32
[37] http://www.3news.co.nz/How-easy-it-is-to-get-drugs-into-NZ- prisons/tabid/817/articleID/140423/Default.aspx (Last accessed March 31, 2011)
http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10703216&ref=rss ( Last accessed March 31, 2011)
[38] Department of Corrections, 2009-2014, page 2

*The health, economic, and social costs of not investing in health services for prisoners are high. The information we have gathered not only shows us that change is needed, but has also convinced us that change is possible.*

*The NHC believes we, as a country, have a responsibility to those we imprison and to their children and families. The benefits will accrue to our whole society and to future generations, but so too will the costs if we fail to take action."*[39]

Imprisonment for drug related offences does not necessarily result in a reduced crime rate; nor does it appear to deter others from committing crime[40]. Nor does it fulfil a retributive function as 80% of all prison sentences are less than six months[41]. Drug courts are tough and prison, by comparison, could be considered the soft option. Indeed the hardest task for drug courts is to get offenders engaged in treatment, with many not wanting to face their demons and instead wanting to 'do their time' and be released to continue their addictions and criminal activity.

*"What if they don't want treatment…? Everybody doesn't want treatment. What if we threaten them with prison? Well, not everyone is deterred by prison, and some would prefer prison over treatment. If you give someone effective drug treatment, that doesn't necessarily alleviate all of their issues."*[42]

Opponents of rehabilitation and treatment are living in a world of fantasy if they believe that drug courts are soft options. The soft option is to do nothing, or to continue to do the same thing over and over expecting different results. Addressing the real problem, the causes of crime, by tackling alcohol and drug addiction, *is* the tough approach.

Due to swelling prison populations New Zealand's current trend has been towards lessening prison time and replacing incarceration with Home Detention and community-based correctional services.

*"The growing business of community-based sentences continued its double-digit growth for the year to 30 June 2010. The average number of New Zealanders serving community services grew nearly 12% during 2009/10 to 62,103 people. This 12% growth in numbers was on top of a 20% growth the previous year and 23% growth during 2007/08. Since2005 the average number of people serving community sentences has risen 87%. A similar pattern of compounding growth is seen in the numbers serving home-based detention. The average number of people serving home detention rose nearly 10% during 2009/10 from 3.175 to 3,472 and has grown 129% since 2005. The rate at which New Zealanders are serving community-based and home-based sentences rose 75% over the five years to June 2010 to be at 2% of the adult population at any one time."*[43]

[39] National Health Committee, 2010, page VIII
[40] Andrews et al., 1990
[41] National Health Committee, 2010, page 23
[42] David Olson, chair of Loyola University Chicago's criminal justice department. http://news.medill.northwestern.edu/chicago/govt/story.aspx?id=156747 ( Last accessed March 31, 2011)
[43] Salvation Army, 2011

**Table 2: Community-based and home based sentences 2005-2010**

| Year ending June | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|
| Non-custodial community sentences | 33,229 | 33,965 | 37,746 | 46,518 | 55,648 | 62,103 |
| Home detention orders & sentences | 1,515 | 1,293 | 1,517 | 2,736 | 3,175 | 3,472 |
| Rate of community based sentences (per 100,000 people aged over 18 years) | 1,174 | 1,170 | 1,285 | 1,587 | 1,871 | 2,059 |

Source: Department of Corrections Annual Reports

It beggars belief that in New Zealand we do not test for the sobriety of those undertaking sentences such as Home Detention[44]. Failing to test for compliance with the "no drugs/alcohol provision" of sentences, ultimately encourages disrespect for the courts. We also know there is a high "no show" rate of offenders at treatment centres under supervision sentences[45]. In my opinion, those most likely not to show up for court imposed AOD treatment are those who are most dependent on drugs/alcohol and responsible for a significant amount of offending. This is the very group we should seek to target in an AODTC.

Our approach not to test for compliance of "no drugs/alcohol provision" of sentences seems so at odds with current international practice that when informed of this, U.S. Drug Treatment Court authority Ret. Judge Peggy Fulton Hora (on one of her visits to New Zealand) took some moments to register what she was being told. Judge Hora noted that research shows that you might as well do nothing at all if there is no random, observed testing for alcohol and other drug use[46].

So while Home Detention decreases the number of offenders in prison, it means that offenders are free to indulge their substance abuse and criminal activity of choice[47]. If the majority of crime is AOD related, and most offenders do not get assessed for these problems[48] and are then given Home Detention with no monitoring or random AOD testing, how can we expect anything different? All records of re-offending or breaches of supervision orders, while extremely high, still only record detected instances. For example, if a drink-driver is caught once, he has probably committed on average 200 instances of driving over the limit[49]. I also have no doubt that we only see the 'tip of the iceberg' in terms of the offending for which some of these offenders are caught. In the USA, for instance, it is estimated that the average addict commits 89 to 191 crimes a year[50].

Currently in New Zealand, those who are released into the community have very little or no appropriate monitoring of their alcohol and drug problems[51] and continue in their patterns of

[44] Department of Corrections, 2011 (Correspondence with author)
[45] Community Alcohol and Drugs Services. Offender Project Newsletter, June 2010
[46] Correspondence with author, 2011
[47] http://www.hawkesbaytoday.co.nz/local/news/home-detention-no-deterrent-in-hawkes-bay-judge/3938419/ (Last accessed March 31, 2011)
[48] Brooking, 2010
[49] In 2001 it was reported that, in New Zealand, 1 in 375 crash-free drunk driving trips resulted in a drunk-driving conviction. (Miller and Blewden, 2001)
[50] Fox, 2006
[51] Brooking, 2010

AOD use and crime until they are remanded into custody. If we are leaning towards less imprisonment for inherently non-violent offenders, and as we observe, treatment and rehabilitation work and are even more effective in a community setting with adequate support measures, if we add the ingredient of constant monitoring of offenders' AOD use, we find the recipe for Alcohol and Other Drug Treatment Courts.

### *Recidivism, business as usual*

Recidivism is the repetition of criminal or anti-social activity. AOD offenders driven by their addictions are prime candidates for recidivism as imprisonment and/or sanctions do nothing to address their substance abuse.

> *"Many recidivists appear almost endlessly to cycle through a sequence of offending, conviction, imprisonment, release, and rapid return to further offending. This situation creates a huge cost to the criminal justice sector as well as to society. This situation underlines the need across the justice sector to find effective options to target recidivism, and to reduce the costs imposed by such behaviour on society."*[52]

I believe Labour's spokesperson for Courts, the Hon. Rick Barker, summed up the state of recidivism in New Zealand in the following article. He has also written to Law and Order Select Committee Chair Sandra Goudie asking for an inquiry into recidivism.

> *"Recidivism has significant consequences for the victims of crime, and significant financial costs for the country," Rick Barker said. "The problem shows no sign of abating. In fact, with New Zealand's increasing rate of imprisonment, the problem looks set to get worse."*

Rick Barker said he wants the inquiry to focus on the causes of recidivism and what can be done to reduce the current high rate of recidivism.

> *"There are no signs of fresh ideas or initiatives. It is time to think again on how we deal with the reintegration of prisoners into the community, as any improvements will bring big benefits, the most important being the impact on individuals.*
>
> *Less crime will mean fewer victims," Rick Barker said. "Taxpayers will also benefit as it costs about $91,000 to keep a prisoner each year. There will also be cost savings to Police and the courts.*
>
> *The Parliamentary Library has calculated for me that savings could be about $44 million per annum. If we can reduce the rate of recidivism so that just one in five prisoners were back into prison within 12 months, this would reduce the prison population by 420 a year based on 6000 prisoners being released each year. Such a reduction could see three of our smaller prisons closed if everything else stood still, or mean deferring building another prison.*
>
> *The Corrections Department spends $57.2 million per annum on reintegration," Rick Barker said. "While this is a large sum, it represents just 6.1 percent of the total spend in the Corrections Budget. "Our rate of recidivism is 57 percent after two years, an appalling figure, particularly when compared to countries like*

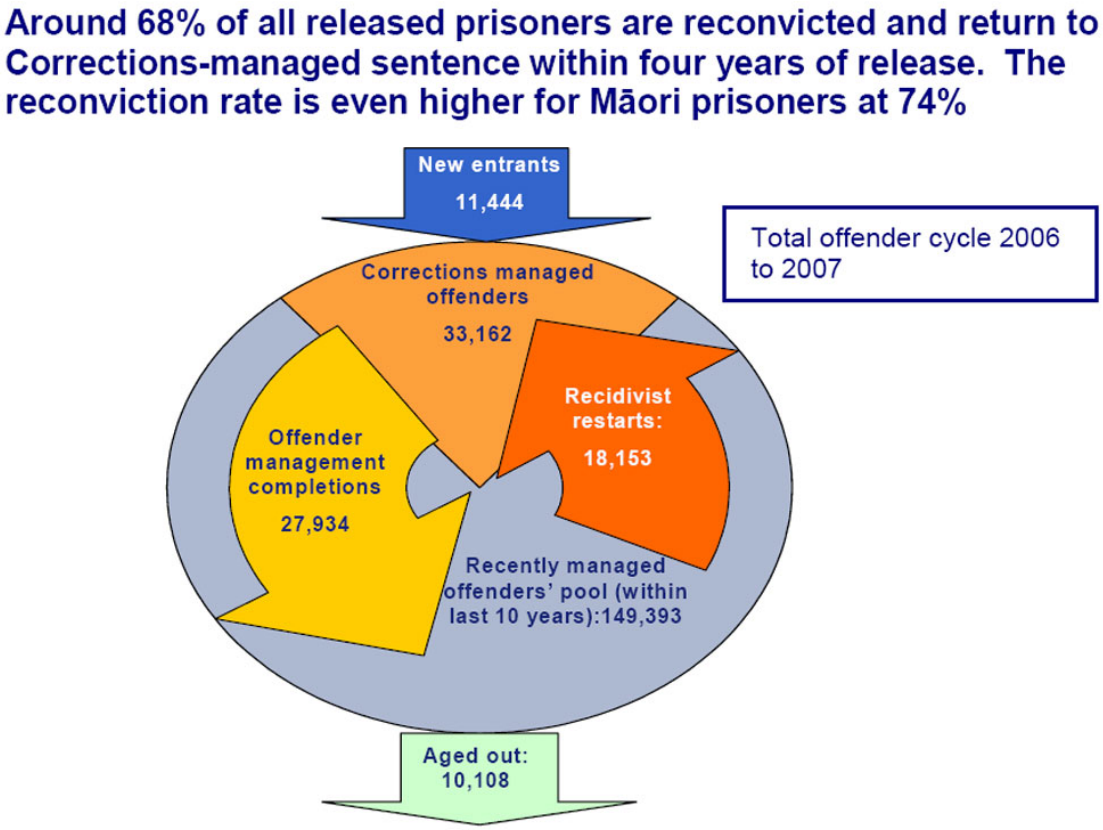
[52] Department of Corrections, 2009 (B), page 21

*Ireland which reports a comparable two year recidivism rate of just 39 percent. New Zealand prides itself on its ability to be among the best in the world, but in terms of imprisonment and recidivism we are among those with the worst statistics.*

*This can't be simply accepted as inevitable, but we can't just try to muddle through. We need fresh ideas and new initiatives or the statistics will get worse," Rick Barker said.*[53]

I couldn't agree more with Rick Barker. What sorts of initiatives have been proven to work in tackling recidivism in other countries? One of them is dedicated courts for alcohol and drug offenders as discussed in the next chapter.

**Figure 1: Recidivism Rates (Source: Ministry of Justice)**




### *Contact with the Justice system*

Being arrested can be a traumatic event in a person's life. It creates an immediate crisis and can force substance abusing behaviour into the open, making denial difficult. The period immediately after an arrest, or after apprehension for a probation violation, provides a critical window of opportunity for intervening and introducing the value of AOD treatment. Judicial

[53] http://www.scoop.co.nz/stories/PA1012/S00271/barker-asks-committee-to-hold-recidivism-inquiry.htm (Last accessed March 31, 2011)

action, taken promptly after arrest, capitalizes on the crisis nature of the arrest and booking process[54].

Rapid and effective action also increases public confidence in the criminal justice system. Moreover, incorporating AOD concerns into the case disposition process can be a key element in strategies linking criminal justice and AOD treatment systems. The criminal justice system has the unique ability to influence a person shortly after a significant triggering event, such as arrest, and thus persuade or compel that person to enter and remain in treatment. Research indicates that an offender coerced by the criminal justice system to enter treatment is likely to do as well as one who volunteers[55], with a recent paper reporting that they do even better than those who are referred from other sources[56]. The term 'coercion' however should not be exclusively reserved for those referred by the criminal justice system.

> *Future studies should avoid using subjective terms such as "involuntary" or "coerced" without directly assessing the client's perception of the referral process.*[57]

Our current approach in New Zealand seems to focus on whether offenders are "motivated" before they are referred for AOD treatment. If assessed as unmotivated, they are described as "pre-contemplative", with the inference being that until they become motivated they are unlikely to succeed in treatment. However, the experience of AODTCs internationally is that these very same offenders can respond extremely well to treatment when they are coerced into accepting the opportunity of treatment[58]. This approach does not wait until they become motivated; rather it begins the treatment – which has a significant chance of success because the participant is clean of drugs and alcohol while undertaking their programme. Typically, offenders soon develop the motivation themselves once they see there is hope for change.

> *"Unfortunately, addictions are hard to break. But an encounter with the criminal justice system – especially if the offender is facing their first spell in jail – provides an ideal time to intervene. The "system" can offer both carrot (a plethora of programmes and agencies to assist and support withdrawal) and a stick (a prison term for wilful non-completion). At no other time does such an opportunity arise since – quite rightly – addiction itself is not a crime.*
>
> *Quite apart from the benefit to the individual – whom many would argue deserves no consideration at all, having committed a crime – effective intervention at that point can prevent the creation of further victims. Thus logic would dictate that, regardless of our attitude to the offender, or offenders in general, a programme which effectively protects society is one which has merit."*[59]

[54] National Association of Drug Court Professionals. 1997, page 5
[55] Hubbard et al., 1989
[56] Justice Policy Institute. 2011
[57] Farabee et al., 1998, page 8
[58] Farabee et al., 1998
[59] Rex Widestrom, State Director of Civil Liberties Australia. (Correspondence with author, 2010)

# ALCOHOL AND OTHER DRUG TREATMENT COURTS

An AODT Court is specifically created for the purpose of offering treatment-based alternatives instead of prison. AODT Courts provide a non-traditional approach to criminal offenders who are addicted to drugs and/or alcohol. AODT Courts address the underlying addiction of offenders instead of focusing on their crimes and punishment. These courts are for adults and have marked differences to juvenile equivalents, and vastly superior results.[60]

AODTCs offer a unique partnership between the criminal justice system and the drug treatment provider. They also create a non-adversarial environment between the various agencies involved in the criminal justice system. The entire focus of the Drug Court Team, once the participant is accepted into the AODTC programme, is on the participant's recovery and law-abiding behaviour.

The Court's focus is to provide eligible defendants the opportunity to voluntarily participate in a drug and alcohol treatment programme instead of undergoing the sentence they would otherwise have received, which might include imprisonment. If the eligible defendant elects to participate in the AODTC programme, they then come directly under AODTC supervision and must participate fully in all programme requirements or face termination from the programme.

If the participating defendant meets the programme requirements they graduate and receive a favourable outcome on their criminal charges. In other words, they received credit for having completed the programme at the time they are sentenced. If participants fail to complete the programme or do not make steady progress and are terminated from the programme, their case is returned to the regular criminal court for disposition.

The judge is the leader of the drug court team[61], linking participants to treatment and the criminal justice system. The structure of the drug court demands early and frequent judicial intervention in treatment. Frequent status hearings provide the vehicle for ongoing judicial involvement, allowing a judge to impose appropriate sanctions and rewards commensurate with treatment progress. Regular status hearings are used to monitor participant's performance. The drug court judge is knowledgeable about treatment methods and their limitations. It is important that hearings be heard by the same judge for the length of participant's treatment allowing the judge and offender to:

*"….develop 'an ongoing, working relationship.' This one-on-one relationship tends to facilitate honesty through familiarity and permits the DTC (*Drug Treatment Court*) judge to become "a powerful motivator for the offender's rehabilitation."*[62]

Recovery from addiction is a process facilitated through therapeutic strategies aimed at preventing AOD use by teaching participants to manage their ambivalence toward recovery; identify high-risk situations; develop necessary coping skills to deal with high-risk situations; and maintain sobriety for increasing lengths of time. Plans for addressing participants who test positive at intake, and for relapses in the future, must be clearly established with outlined

[60] U.S. Department of Justice, 2003
[61] Marlowe et al., 2004
[62] Hora et al., 1999

treatment guidelines, enforced and reinforced by the judge. Graduated sanctions should be in place. A coordinated strategy, including a continuum of graduated responses for non-compliant behaviour, must be written and available for participant's review prior to committing to treatment. Drug courts are typically embedded in a network of community services to which they refer their clients. The effectiveness of the drug court program depends in part on the effectiveness of the services provided and available to the drug court clients.

A large and growing body of empirical research suggests that drug courts are outperforming virtually all other strategies that have been used with drug-involved offenders in terms of reducing recidivism.[63] Standing as a testament to this research there are currently 2559 drug courts in operation in the U.S.[64].

### *History*

The first drug court opened its doors in Miami in 1989; it launched a dramatic shift in how courts respond to the criminal behaviour of drug-addicted defendants. By combining treatment with close judicial supervision, the drug court model offered a new alternative to the unproductive and costly cycle of addiction, crime and incarceration. Unlike conventional courts, the success of drug courts is measured not by how quickly they process cases, how many convictions they produce or how much prison time defendants receive, but on tangible impacts: less drug use and crime, gains in employment and education, improved mental and physical health, and cost savings from diverting offenders away from prison. Their vast potential has led to a stunning expansion of these courts not only in America, Australia and Canada but worldwide.

### *Defining Drug Courts: The Key Components*

Since the establishment of the first AODTC in Florida, there has been extensive research and evaluation carried out in relation to AODTCs and the identification of best practice methods for maximum effectiveness.

The following standards are based on the 10 Key Components as developed and published by the U.S. Department of Justice, Office of Justice Programs.[65]

The Standards are designed to provide focus on treatment and judicial supervision so as to distinguish treatment-based multi-discipline, full-service drug courts from other programmes. They are:

**1.** Drug courts integrate alcohol and other drug treatment services with justice system case processing.

**2.** Using a non-adversarial approach, prosecution and defence counsel promote public safety while protecting participants' due process rights.

**3.** Eligible participants are identified early and promptly placed in the drug court program.

[63] See Belenko, DeMatteo & Patapis, 2007, for a review of relevant research
[64] http://www.nadcp.org/learn/about-nadcp (Last accessed April 16, 2011)
[65] National Association of Drug Court Professionals, 1997

**4.** Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.

**5.** Abstinence is monitored by frequent alcohol and other drug testing.

**6.** A coordinated strategy governs drug court responses to participants' compliance.

**7.** Ongoing judicial interaction with each drug court participant is essential.

**8.** Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.

**9.** Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.

**10.** Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.

These components are flexible and are guidelines at what best practice should strive towards. Each court will use its own initiative to accomplish the task through its own means.

Responses for compliance vary in intensity and may include:

- Encouragement and praise from the bench
- Ceremonies and tokens of progress, including advancement to the next treatment phase
- Reduced supervision
- Decreased frequency of court appearances
- Reduced fines or fees
- Dismissal of criminal charges or reduction in the term of probation
- Reduced or suspended incarceration
- Graduation

Responses to or sanctions for noncompliance might include:

- Warnings and admonishment from the bench in open court
- Demotion to earlier program phases
- Increased frequency of testing and court appearances
- Confinement in the courtroom or jury box
- Increased monitoring and/or treatment intensity
- Fines; payment of fees and restitution are part of treatment. Fee schedules are commensurate with an individual's ability to pay

- Required community service or work programs
- Escalating periods of incarceration (drug court participants remanded to prison should receive AOD treatment services while confined)
- Termination from the program and reinstatement of regular court processing

### *Drug Treatment Court (DTC) success factors* [66]

- Effective judicial leadership of the DTC team
- Strong interdisciplinary team collaboration - each maintaining professional independence
- Good knowledge of addiction, treatment and recovery by justice system team members, and of criminality by the healthcare members
- Operational manual for consistency and efficiency
- Clear participant eligibility criteria, with objective screening of potential participants
- Detailed assessment of each potential participant
- Fully informed/documented consent of each participant to be admitted to DTC
- Speedy referral of participants to treatment and rehabilitation following arrest
- Swift, certain and consistent sanctions for noncompliance and rewards for compliance
- Ongoing DTC programme evaluation and willingness to make improvements
- Sufficient, sustained and dedicated DTC funding
- Changes in underlying substantive or procedural law, if necessary or appropriate

> *"Some but not all drug-court programs have after-care planning, which I believe is absolutely critical because as you're addressing the core problems that individuals have, you have to make sure that you're connecting them with community or other resources that will help to sustain them as they transition fully back into the community and from the jurisdiction of the court."*[67]

Most comparable countries have systems in place to provide practical assistance and support to prisoners who are returning to the community. In many cases, offender interventions described as "reintegration" actually involve delivery of significant rehabilitation (substance abuse treatment, anger management, etc.)[68].

### *Screening and Eligibility criteria*

Drug courts are not intended to deal with all AOD offenders. Those that are deemed unlikely to respond to treatment or abide by the courts impositions are screened out. For some

[66] United Nations, Office on Drugs and Crime, 2005 http://www.docstoc.com/docs/69235028/DRUG-TREATMENT-COURTS-WORK! (Last accessed Feb 8, 2011)
[67] Judge Anita Josey-Herring, District of Columbia Superior Court. http://www.urban.org/url.cfm?ID=900803 (Last accessed Feb 15, 2011)
[68] Department of Corrections, 2009 (A), Page 32

examples of those who qualify for drug court and those that do not, I refer to the criteria of entry to the Queensland drug court: [69]

- Eligibility usually requires that the person is drug dependent and that dependency contributed to the person committing the offence.
- That it is likely the person would, if convicted of the offence, be sentenced to imprisonment.

As mentioned earlier, in New Zealand an approach has been taken to sentence offenders who would have received a sentence of imprisonment of two years or less to Home Detention, where that is a viable option. Therefore, it may well be that when New Zealand establishes AODTCs, the entry criteria should also include those who may have been sentenced to a sentence other than imprisonment.

Indeed there may be offenders in the New Zealand context who would now receive an outcome of a fine, for instance, but for whom admission to an AODTC would be an excellent option, for themselves and for the community. An example of such an offender may be a defendant charged with 'possession of a pipe for smoking methamphetamine'. Currently there would be no structured opportunity to coerce treatment. An AODTC could make a significant difference for such a person. I am not suggesting that all AOD offenders need to be seen by an AODTC but the option should be available to a Judge who perceives that some individuals, appearing on such charges as I've mentioned above, may benefit immeasurably by being dealt with in AODTC.

In terms of who may not be eligible for AODTC, clearly there will be some offending for which the public expectation is that only a term of imprisonment will meet the ends of justice. Frequently AODTC internationally have criteria which, for example, exclude those convicted of an offence of a sexual nature. An offender whose current offending involves violence would also typically be excluded.

However, the relationship between drug-related crime and violence, in particular alcohol[70], methamphetamine[71] and benzodiazepine abuse[72], has been observed. If we are to tackle AOD crime we will also have to allow for AOD offenders guilty of certain crimes (involving an element of what the law perceives as violence) to be eligible for AODTCs. This, of course, will be at the discretion of the AODTC whilst keeping public safety and wellbeing in mind, as all participants involved in drug court would be regularly monitored and tested for sobriety. This is in stark contrast to community-based sentences currently used in New Zealand where no testing is undertaken of an, even violent, AOD offender for compliance to the "no drugs or alcohol" provision of such sentences.

### *Something works-Effectiveness of drug courts*

The importance of AODTCs is well emphasised by the fact that more research has been published on their effects than nearly all other criminal justice programs combined. In a recent address on the effectiveness of these courts given to a U.S. House of Representatives

[69] Queensland Drug Court Act, 2000, pages 6&7
[70] http://pubs.niaaa.nih.gov/publications/aa38.htm (Last accessed Feb 25, 2011)
[71] http://police.govt.nz/news/release/1519.html (Last accessed Feb 27, 2011)
[72] http://www.benzo.org.uk/violence.htm (Last accessed 24 Feb, 2011)

Subcommittee[73] meta-analysis[74] showed that AODTCs dramatically reduce criminal recidivism. Table 3 (below)[75] shows the results of five meta-analyses performed by independent research organisations with no affiliation to the drug court field.

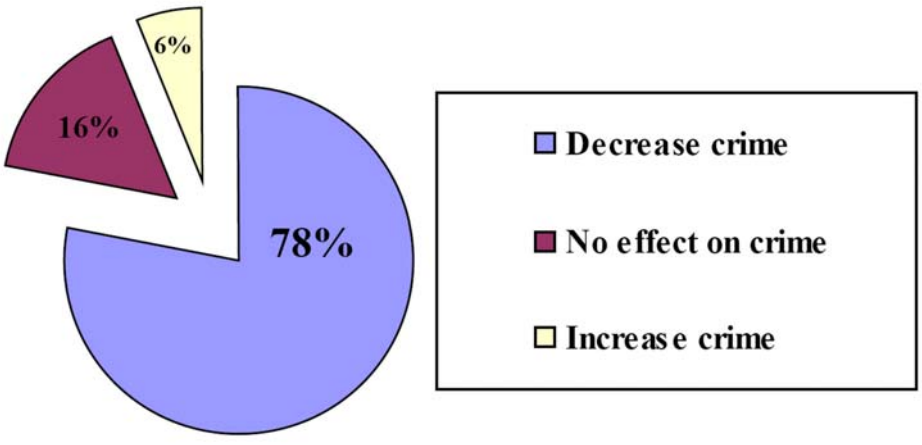
**Table 3: Drug Court meta-analysis**

| Citation | Institution | Number of Drug Courts | Crime Reduced on Avg. by . . . |
|---|---|---|---|
| Wilson et al. (2006) | Campbell Collaborative | 55 | 14% to 26% |
| Latimer et al. (2006) | Canada Dept. of Justice | 66 | 14% |
| Shaffer (2006) | University of Nevada | 76 | 9% |
| Lowenkamp et al. (2005) | University of Cincinnati | 22 | 8% |
| Aos et al. (2006) | Washington State Inst. for Public Policy | 57 | 8% |

Drug courts were on average found to have significantly reduced crime rates, by an average of approximately 8 to 26 percent more than the comparison conditions.

Not all drug courts have the same results as the pie chart (Fig 2)[76] below shows; indeed 6% of the courts involved in the meta-analysis reported increased criminal activity. This is where critical data can be obtained to examine where best practice is used. Twenty years' research and evaluation are spotlighting the best approaches to ensure optimal results from drug court efforts.

**Figure 2: Effectiveness of Drug Courts**




[73] Marlowe, 2010
[74] Meta-analysis is an advanced statistical procedure that yields the most conservative and rigorous estimate of the average effects of an intervention
[75] Marlowe. 2010, page 4
[76] Marlowe, 2010, page 5

In addition to the overwhelming evidence that drug courts reduce crime, other outcomes were also observed. The Multisite Adult Drug Court Evaluation (or MADCE) sponsored by the National Institute of Justice (NIJ) reported[77]:

- Significantly less involvement in criminal activity
- Significantly less use of illegal drugs and heavy use of alcohol[78]
- Significantly better improvements in their family relationships
- Reduced family conflicts (which might translate into reduced incidences of child abuse, child neglect and domestic violence)
- Trends favouring higher employment rates and higher incomes

This is surely confirmation that drug courts promote substantial improvements in other social areas as well as reducing recidivism.

With such positive outcomes in reducing recidivism and drug/alcohol use, as well as the reports of beneficial social outcomes, it is remarkable that drug courts have also been proven to be more cost effective than the usual approaches to AOD offenders:

> *In line with their positive effects on crime reduction, drug courts have also proven highly cost-beneficial (Belenko et al., 2005). A recent cost-related meta-analysis performed by The Urban Institute concluded that drug courts produce an average of $2.21 in direct benefits to the criminal justice system for every $1 invested — a 221% return on investment (Bhati et al., 2008). When drug courts target their services to the more serious, higher-risk offenders, the average return on investment was projected to be even higher: $3.36 for every $1 invested.*
>
> *These savings reflect provable, measurable cost-offsets to the criminal justice system stemming from reduced re-arrests, law enforcement contacts, court hearings, and jail or prison beds. When other indirect cost-offsets to the community were also taken into account — such as savings from reduced foster care placements and healthcare service utilization — studies have reported economic benefits ranging from approximately $2 to $27 for every $1 invested (Carey et al., 2006; Loman, 2004; Finigan et al., 2007; Barnoski & Aos, 2003). The result has been net economic benefits to local communities ranging from approximately $3,000 to $13,000 per drug court participant (Aos et al., 2006; Carey et al., 2006; Finigan et al., 2007; Loman, 2004; Barnoski & Aos, 2003; Logan et al., 2004).*[79]

It is not only in the USA that these courts have been found to have positive effects. The drug treatment court of Vancouver, Canada reported in 2009:

> *Although many participants maintained patterns of criminal behaviour and substance use after the program, the data suggests that there is a modest but significant decrease in drug use and drug related crimes for those who complete the program. Participants also report that they made important improvements in overall well being as a result of participation in the program. The evaluation of the Drug Treatment Court of Vancouver provides evidence that specialized treatment*

[77] Marlowe, 2010, page 5
[78] "Heavy use" of alcohol was defined as more than 4 drinks per day for women and more than 5 drinks per day for men
[79] Marlowe 2010, page 6

> *programs under court supervision as an alternative to the justice system can be cost effective and reduce crime and drug use but this is dependent on participants' full commitment to, and participation in, the program. Strategies are needed to encourage participants to complete the program for the model to be successful.* [80]

Closer to home, New South Wales announced in 2009 that 2008 had been its most successful year ever for its drug court outcomes[81].

An evaluation of the Victoria drug courts reported that:

> *By tackling the issues behind the offending behaviours of people dependent on drugs and caught in a cycle of crime and punishment, the Drug Court program benefits both the community and participants.* [82]

The evaluation further reported[83]:

**Benefits to the community:**

- Greater sense of personal and community safety
- Fewer victims of crime
- Reduced justice costs due to lower re-offending rates
- Improved community health and wellbeing
- Lower drug-related health costs
- Less welfare dependency and associated costs

**Benefits to Drug Court participants:**

- Less re-offending leading to less time in prison
- Harm minimisation and improved health
- Improved employment prospects
- Better social and family relations
- Less homelessness and associated risks
- Greater self-esteem
- Acceptance back into society.

The United Nations said of AODTCs:

> *Evaluations consistently show that Drug Treatment Courts effectively reduce recidivism and underlying addiction problems of drug abusing offenders. They provide closer, more comprehensive supervision and more frequent drug testing and monitoring during the programme than other forms of community supervision.*[84]

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[80] National Crime Prevention Centre Canada, 2008
[81] http://www.lawlink.nsw.gov.au/lawlink/drug_court/ll_drugcourt.nsf/pages/adrgcrt_2009review (Last accessed March 30, 2011)
[82] Department of Justice. State of Victoria, 2006, page 5
[83] Department of Justice. State of Victoria, 2006, page 5
[84] http://www.unodc.org/unodc/en/legal-tools/Drug-Treatment-Courts.html (Last accessed March 30, 2011)

Experience, constant monitoring and evaluation of AODTCs combined with quality screening of offenders to identify those who may benefit most from this approach, have made AODTCs highly effective in the best practice instances. While evaluations point out failings and weak points that need to be addressed to improve the court, I suggest the real reason they are so effective is because they acknowledge and address the heart of the matter, the root cause of the offending.

### *Barriers to AODTCs*

As reported by Roger Brooking, rehabilitation and treatment resources in New Zealand are woefully inadequate[85]. The Law Commission in its paper 'Alcohol in our lives - curbing the harm'[86] also reported the same findings and found that for alcohol treatment:

- There is a lack of access to quality addiction treatment across the spectrum of care because of service gaps, poorly defined systems and mechanisms of governance
- A major barrier to increasing treatment provision is a shortage of skilled practitioners
- Gaps in treatment availability have been identified as a problem for people with alcohol-use disorders coming into contact with the courts, corrections system, social welfare system, primary care, mental health and emergency department services
- There is the tension between social sectors (for example, health and justice systems) because they are focused on quite different outcomes
- Where alcohol and other drugs may have contributed to offending, there should be greater consideration during the sentencing of the need for alcohol or drug assessment and treatment. While the government is doing further work in this area, there should be efforts to improve the ability of court staff to provide screening and brief interventions.

The Law Commission also reported on drug courts in an issues paper on "Controlling and Regulating Drugs" that:

> *"We think that greater use should be made of the opportunity to provide assessment and treatment within the court system where alcohol or other drug abuse and dependence are identified. In this sense, drug courts and similar programmes, which ensure that appropriate focus is given to the particular needs of drug users in the criminal justice system, are desirable."* [87]

While there is obviously concern about the adequacy of resources in the community to deal with treatment issues, on the other hand there are a number of agencies in the community that are already established, willing and able to assist with services in a coordinated way, under the guidance of an AODTC. Examples of such groups include Alcoholics Anonymous (AA), Narcotics Anonymous (NA), and agencies who assist with the provision of emergency housing, and others.

[85] Brooking, 2010
[86] Law Commission, 2010 (A), Page 27
[87] Law Commission, 2010 (B), Page 344

The international experience of AODTCs is that one of the major successes of these courts is to streamline the provision of services for those before the courts, in a more managed, coordinated and effective way.

The Law Commission issues paper recognises that best practice methods need to be used for these courts to be most effective[88]. Again, the need for adequate treatment services to support AODTCs was underlined:

> *"Perhaps most fundamentally, the effectiveness of these programmes relies on adequate treatment services being available. As we have noted above, there is concern that current treatment services available to the court system are insufficient to meet demand."* [89]

While treatment services for AODTCs may not be available nationwide, there are enough resources available in certain areas of New Zealand for implementation of these courts to begin. Those areas, by virtue of the necessity for treatment and rehabilitation services, are also the areas that most need this type of approach to AOD offending. AODTCs can operate without legislative change needed, Section 25 of the Sentencing Act 2002 allows for the power of adjournment for inquiries as to suitable punishment, one of which is to enable a rehabilitation programme or course of action to be undertaken.

As the Law Commission observed, AOD offending needs an inter-departmental, inter-ministerial and cross-sectoral approach. The Ministries of Health and Justice as well as family and welfare services need to be involved and work collaboratively in much the same way as the multidisciplinary groups involved, in making drug courts effective[90].

The Law Commission, while recognising that AODTCs are cost effective, suggested that the woefully underfunded treatment services available could be financed by increases in excise tax on alcohol[91]. This is a view shared by many involved in the field of alcohol and other drug treatment.

Also noted by The Law Commission:

> *"There is a potential for some delay in the court process if offenders who would otherwise be dealt with on their first appearance must instead be remanded to the specialist court or programme. Depending on how the programme itself is implemented, the time required to dispose of a case may also be longer."* [92]

This may be true but what must be taken into consideration is the fact that offenders whose AOD dependency is treated are, of course, also considerably less likely to re-offend and so future court cases are potentially avoided. This is a way of allowing AOD dependent offenders to "get off" the carousel of crime referred to by the Hon. Minister of Justice, Simon Power.

[88] Law Commission, 2010 (B), Page 344
[89] Law Commission, 2010 (B), page 344
[90] Law Commission, 2010 (B), page 356
[91] Law Commission, 2010 (A), page 28
[92] Law Commission, 2010 (B), page 344

As reported earlier in this chapter, the cost of these courts compared to the social benefits is impressive in the long-term. All New Zealand political parties must collaborate on initiatives addressing this problem. Politicians must collectively aspire to develop and implement serious long-term goals regarding public safety from AOD offenders, rather than just short-term goals attainable to them in their term of office.

# FAILING OURSELVES

## The Sentencing Act

In the New Zealand Sentencing Act 2002[93] the Purposes of Sentencing are explained to be:

1. to hold the offender accountable for harm done to the victim and the community by the offending, or
2. to promote in the offender a sense of responsibility for, and an acknowledgment of, that harm, or
3. to provide for the interests of the victim of the offence, or
4. to provide reparation for harm done by the offending, or
5. to denounce the conduct in which the offender was involved, or
6. to deter the offender or other persons from committing the same or a similar offence, or
7. to protect the community from the offender, or
8. to assist in the offender's rehabilitation and reintegration, or
9. a combination of 2 or more of the purposes listed.

As already noted, most crime is alcohol or drug related. Rates of recidivism are very high – unacceptably so. In what ways are we currently complying with, or failing, the purposes of the Sentencing Act? Are we holding offenders accountable when we do not require them to address their AOD dependency issues, knowing that those issues are the drivers of the offending?

And how do we promote a sense of responsibility in these recidivist offenders when we do so little to encourage responsibility with regards to their substance abuse/dependency issues? How are the victims' interests best served by releasing alcohol and drug addicted offenders back into the community with inadequate provisions for meaningful treatment and oversight – and absolutely no drug/alcohol testing?

In terms of the ways in which the community is protected – it is true that while an offender is serving time, the community is protected, however, this is short-lived given the inevitability of their release back into the community, with their sense of having "done their time".

There is so much that we can do to change all this.

[93] http://www.legislation.co.nz/act/public/2002/0009/latest/DLM135342.html (Last accessed Feb 8, 2011)

## Why we need to act

It is a sad fact of life that governments do not cheer until they know who is winning and lack the courage to tackle the hard issues. This leaves it down to us, the people, to make our voice heard. It is our homes and cars that are getting broken into, our streets and communities that have to pick up the pieces after a drunken weekend, our friends and family being killed or injured by impaired drivers and our communities that are devastated by the family violence and child abuse that drugs and alcohol cause.

Nothing will change unless we let governments know that change is not only necessary but inevitable. If we do nothing except buy stronger locks, higher fences, more alarms, pay higher insurance premiums and keep off the streets and roads, it is we who will be ending up in jails of our own making. And this is not to mention the issue of building more and more prisons, at great expense to the community but with no parallel benefit. In fact we will only end up releasing back into the community greater numbers of offenders whose substance issues remain unaddressed. We don't need more jails, we need fewer offenders.

I am in favour of preventive detention and keeping those who are a danger to the public, off the streets. But if all we can do with our very considerable numbers of AOD offenders is jail them for a short period of time then release them, then catch them and release them again, this appears to be an exercise in futility. Albert Einstein once said "The definition of insanity is doing the same thing over and over again and expecting different results".

We are responsible for our communities and the answers to many of these issues lie within the community. This responsibility may seem to have been lost to the majority of us who look to government, the courts and the police for answers to questions that we can fully respond to ourselves. We are our brothers' keeper; it is this that empowers us. We are capable of many and great achievements but none is more important than those commitments we undertake together to shape the future for our children and grandchildren.

# CONCLUSIONS AND RECOMMENDATIONS

## Conclusions

- AOD offenders are being cyclically caught and then released to re-offend with ineffective treatment opportunities for those who are AOD dependent

- AODTCs reduce recidivism and are very cost effective when best practices are recognised and applied

- There are also enormous social benefits for the AODTC participants, their families, and the wider community in the successful rehabilitation of an offender whose offending had been driven by their dependency

- The international experience of AODTC is that one of the major successes of these courts is to streamline the provision of services for those before the courts, in a much more managed, coordinated and effective way

- We do not need more prisons: we need fewer offenders

High rates of imprisonment and recidivism make the need for new initiatives in addressing these problems imperative. Indeed the Minister for Corrections, the Hon. Judith Collins states that:

*Rehabilitation and reintegration remain a key Government priority in its drive to reduce re-offending.*[94]

With the Law Commission reports and issues papers and the majority of those involved in the Drivers of Crime meeting all calling for more treatment and rehabilitative efforts, AODTCs are long overdue.

It seems obvious that the vulnerable and those of limited education, limited life skills, less than desirable upbringing and ultimately a less advantageous position in New Zealand society are over represented in the crime statistics.[95] The question we need to ask is not only, how can we tackle the problems caused by alcohol, drugs, gangs etc, but what needs do they fulfill that we are not providing?

*"To reduce crime it is necessary to identify what makes criminals and deal with the causes…"* [96]

The cracks in the path of society will always get filled with detritus allowing weeds to grow, it doesn't matter how often we kill the weeds or clear out the cracks, they must be repaired.

## Recommendations

The implementation of pilot AODTCs in New Zealand with Government support.

[94] Department of Corrections, 2010
[95] National Health Committee, 2010, page 22
[96] Elias, 2009

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