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WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS

New Zealand

by

Warren Young
Victoria University of Wellington

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GENERAL OVERVIEW

1. Political System.

Despite its British heritage, New Zealand's governmental and legal structure has developed a distinct identity. While it is still linked with Britain through the retention of the monarchy, it is governed by its own Westminster-style parliamentary system, which is built on a uni-cameral legislature, triennial elections and two major political parties. Although there is some local government and some devolution of administrative functions to regions, most governmental functions are exercised at the national level.

The social and political culture can best be described as a liberal democratic one, which emphasizes ideals of democratic representation, the rule of law and open scrutiny of and restriction upon governmental power. Thus the prevailing political rhetoric emphasizes the protection of civil liberties, the maintenance of law and order and the preservation of an egalitarian ideology that underpins much of New Zealand's social and political life.

2. Legal System.

The New Zealand court structure is based on a

three-tier hierarchy, consisting of the District Court, High Court and the Court of Appeal. There is also an infrequently exercised right, of final appeal to the Privy Council in London.

Consistent with New Zealand's common law heritage, criminal trials are primarily adversarial in nature. In theory, the judge or jury is a neutral and independent adjudicator of the facts and that adjudication is limited only to consideration of the evidence presented by the parties at the trial. In practice, however, the adversarial process has been subject to significant modification. For example, an extensive police pre-trial diversion scheme is in operation. Also, the majority of cases that go to court often result in guilty pleas without scrutiny of the evidence. Those cases that do proceed to a defended hearing are often the subject of disclosure of the evidence and pre-trial conferences that define the issues in dispute. (Stace, 1986; Young and Cameron, 1989; Young, et al., 1992).

Moreover, in relation to youths under the age of 17, the Children, Young Persons and Their Families Act 1989 has instituted a radical new system which is largely non-adversarial in nature. The vast majority of young offenders are dealt with outside the formal court system by way of a relatively informal justice process involving extensive participation by the family, the community and the victim. (Maxwell and Morris, 1993).

3. History of the Criminal Justice System.

The current New Zealand criminal justice and legal systems have their foundation in the British colonization of New Zealand, culminating in the signing of the Treaty of Waitangi between the Crown and many of the indigenous Maori chiefs in 1840. The treaty had the effect of transplanting the English legal system, including its criminal law, to the new imperial settlement. Although a parallel indigenous justice system remained in place for a short while, the subjugation of the Maori during the second half of the nineteenth century virtually obliterated their own concepts of law and justice. (Pratt, 1992).

Despite the pervasiveness of concepts of liberty and egalitarianism, New Zealand has in recent years undergone significant social and economic restructuring which has affected the way in which these concepts are translated into practice. Unemployment and poverty have become

increasingly visible, urban areas have become more racially mixed as immigration from the Pacific Islands, Asia and rural areas has accelerated and the historically extensive welfare system has been steadily dismantled. Consequently, many economic and racial inequalities which could be largely concealed in times of prosperity and full employment have become more apparent.

The criminal law itself has been codified since the Criminal Code Act 1893, so that all substantive offenses are contained in legislation. The main statute governing the more serious crimes is the 1961 Crimes Act, while the 1981 Summary Offenses Act now contains a variety of lesser offenses and other enactments such as the Misuse of Drugs Act of 1975, the Transport Act of 1962 and the subsequent Arms Act of 1983. However, notwithstanding the codification of the substantive criminal law, many procedural and evidential rules, general principles of criminal liability and criminal defenses are still derived from the common law and developed through judicial precedent.

Contemporary sentencing and penal policy, which is now covered by the provisions of the Criminal Justice Act of 1985, can be traced back to the Criminal Justice Act of 1954. The policy's objectives are "to protect the community from violent offenders, to create a more cost-effective criminal justice system with an increased emphasis on community participation and decision making, to provide for the needs of victims through the sentence of reparation, and to discourage the use of imprisonment for property offenders and other minor offenders." (Galaway and Spier, 1985: 22).

Three other statutory enactments have had a significant impact on the operation of the criminal justice system in New Zealand. The first of these is the Bill of Rights Act of 1990 which enshrines in law certain basic rights and freedoms, including the right to a fair trial, the right to be secure against unreasonable search or seizure and the right of access to legal counsel. Secondly, the Privacy Act of 1993 works to limit the access and use of law enforcement information to specified bodies, persons and organizations and for certain stipulated reasons. Finally, the Police Act of 1958 regulates the functions and operations of the New Zealand police.

CRIME

1. Classification of Crime.

* Legal classification. The legal classification

of crimes is a complex one. There is a basic underlying distinction between indictable offenses, which may be tried before a judge and jury, and summary offenses, which are tried before a judge alone. However, this distinction has been the subject of a number of modifications over the years, most recently by virtue of the Courts Amendment Act of 1991. As a result, there are now six categories of offenses, which are as follows:

- 1) Purely summary offenses which are triable only before a judge alone in the District Court. These offenses are relatively minor and carry a penalty of three months' imprisonment or less;
- 2) Electable offenses, which can be tried summarily or on indictment in the District Court at the election of the accused. These offenses would otherwise be summary, but actually carry a maximum penalty of more than three months' imprisonment. They are comparatively rare, but include common assault and the possession or use of cannabis;
- 3) Hybrid offenses can be tried summarily or on indictment in the District Court. These offenses are listed in Schedule 1 to the Summary Proceedings Act of 1957 and include the majority of offenses against persons and property in the Crimes Act of 1961;
- 4) District Court purely indictable offenses can be tried only on indictment before a judge and jury in the District Court and include corruption, bestiality, aggravated robbery, aggravated burglary and arson.;
- 5) Offenses indictable at the High Court or District Court are generally triable by indictment in the High Court but may be triable on indictment in the District Court at the discretion of a High Court judge after considering the gravity of the offense, the complexity of the case and the general interests of justice. These offenses include rape, grievous bodily harm and kidnapping;
- 6) High Court purely indictable offenses are triable only on indictment before a judge and jury in the High Court and include murder and manslaughter.

* Age of criminal responsibility. The age of criminal responsibility is 10. However, by virtue of the Crimes Act of 1961 and the Children, Young Persons and Their Families Act 1989, a child between the ages of 10 and 13 cannot be prosecuted for any offense other than murder and manslaughter, and cannot be convicted for murder or manslaughter unless he or she knew either that the act or omission was morally wrong or that it was contrary to law. The result is that

prosecutions of children under the age of 14 are very rare.

* Drug offenses. Drug offenses in New Zealand are contained in the Misuse of Drugs Act 1975. Under this legislation, illegal drugs are classified into three types of controlled drugs. Class A drugs

are the most serious and potentially harmful and include cocaine, heroin, lysergic acid, thalidomide and a range of powerful chemically produced substances. Class B controlled drugs encompass morphine, opium, cannabis preparations (e.g. hashish, hash oil), methadone and other manufactured chemical compounds such as amphetamines. Finally, Class C drugs, deemed the least dangerous, include cannabis fruit, cannabis plant, cannabis seed, coca leaf, barbiturates and other manufactured products.

The Misuse of Drugs Act of 1975 makes it illegal to import or export, produce or manufacture, sell, cultivate, supply or administer any controlled drug, except as permitted under the Act for medical treatment and the like. The penalties for dealing in controlled drugs are substantially more severe than those for possession and use. An offender is liable to a maximum penalty of life imprisonment for dealing in Class A drugs, 14 years' imprisonment for dealing in Class B drugs and 10 years imprisonment in dealing in Class C drugs. By contrast, the possession or use of Class A drugs attracts a maximum penalty of only six months' imprisonment and the possession or use of any other drugs carries a maximum penalty of only three months imprisonment.

2. Crime Statistics.

The following statistics represent offenses recorded by the police for the year ending June 30, 1993. The definitions used by the police for statistical purposes mirror the definitions contained in statute. (In comparison to other jurisdictions, these statistics are in some respects inflated. For instance, all offenses that are reported to the police are recorded, even if it is determined that no offense occurred. Secondly, there are no hierarchy rules which allows single incidents to result in several recorded offenses).

* Murder. There were 53 cases of murder recorded by police in the year ending June 30, 1993, for a rate of 1.5 murders per 100,000 population.

Attempts are not included. Murder is defined as culpable homicide which, when first recorded by

the police, appears to involve an intent to kill; an intent to cause bodily injury that is known to the offender to be likely to cause death; use of an unlawful object that the offender knows to be likely to cause death; or the infliction of grievous bodily harm for the purposes of facilitating the commission of certain specified offenses or evading detection for such offenses. Attempted murder cases are recorded in a separate category.

* Rape. There were 1,193 cases of sexual violation recorded by police in the year ending June 30, 1993, for a rate of 34 sexual violations per 100,000 population. Attempts are not included. Sexual violation involves both rape and other forms of penetration of the vagina or the anus. Attempted sexual violations are recorded separately.

* Burglary. There were 100,604 cases of burglary recorded by police in the year ending June 30, 1993, for a rate of 287 burglaries per 100,000 population. Attempts are included.

Burglary includes any breaking and entering for the purposes of the commission of a crime. Breaking and entering not involving theft may therefore constitute burglary, while non-forcible entries involving theft do not. Unlike attempted murders and attempted sexual violation, attempted burglaries are included within the burglary statistics.

* Serious drug offense. There were 1,206 non-cannabis drug offenses recorded by police in the year ending June 30, 1993, for a rate of 34 per 100,000 population. Non-cannabis drug offenses include all prohibited Class A, Class B or Class C drugs under the Misuse of Drugs Act 1975.

(For the year ending June 30, 1992, there were 1,272 non-cannabis offenses, compared with 19,488 cannabis offenses).

* Crime regions. New Zealand's participation in the 1992 International Crime Survey revealed that persons residing in urban areas with populations greater than 50,000 had significantly higher chances of becoming crime victims than others. (van Dijk and Mayhew 1992).

VICTIMS

1. Groups Most Victimized by Crime.

New Zealand criminal justice agencies do not officially collate data on the characteristics of crime victims. The only available information

comes from victim surveys.

The most comprehensive survey, and the first undertaken in New Zealand, is reported in Robinson, Young and Haslett (1989). This survey, which was confined to two districts in the capital city region, found that while there were no significant gender or ethnic differences in the risk of victimization, there were age differences, with those between 16 and 29 years-old being significantly more likely to suffer both individual property offenses and offenses against the person.

2. Victims' Assistance Agencies.

There are a variety of agencies providing victim assistance in New Zealand. For instance, there are currently at least 60 victim support groups affiliated with the New Zealand Council of Victim Support Groups. These groups provide practical assistance, information, advocacy and emotional support for crime victims. Prior to March 1993, victims' support groups received some funding from the now defunct Victims Task Force. Presently, although the majority are administered privately or by voluntary staff, they still receive limited financial support from the nationally based Community Funding Agency.

There are approximately 26 autonomous Rape Crisis Centers nationwide providing support for victims of rape and sexual attack. They are linked through a national rape crisis coordinator and receive partial government funding through the Community Funding Agency.

The Te Kakano O Te Whanau is a national Maori women's organization working in the areas of incest, rape, sexual abuse and related violence and providing both victim support and educational services.

There are approximately 51 Women's Refuge Centers nationwide providing temporary accommodation and support for battered women and those at risk of domestic violence and abuse. They are predominantly staffed by volunteers, with an average of only 1.5 paid workers per group. They are linked through a National Association of Women's Refuges and receive partial government funding through the Community Funding Agency.

The Pacific Island Women's Project Aotearoa group works specifically with Pacific Island women and provides funding and assistance for groups and individuals dealing with domestic violence and sexual abuse.

Help Centers are charitable trusts which exist

in the major urban areas to offer counseling, medical examinations and support for victims of sexual abuse and their families. They work closely with the police.

Since 1993, six paid Victims' Court Assistants have been appointed by the Department of Justice, to work in four pilot courts throughout the country. Their job is to ensure that victims involved in court cases receive the services to which they are entitled.

The Accident Compensation Corporation administers a state compensation scheme for accident related personal injury. Accordingly, it provides financial redress for victims who suffer physical injuries or, in some cases, emotional harm as a result of a crime.

Role of Victim in Prosecution and Sentencing.

Victims generally have no formal role in the criminal justice process other than participating as a witness for the prosecution. They do not have the right to require that a prosecution be brought by the police; nor can they stop a prosecution. However, victims cannot be compelled to give evidence against their spouses, which gives them some control over the process in some domestic violence cases. They also have a residual right to bring about private prosecution if the police fail to do so.

In regard to sentencing, a victim impact statement must be prepared for the court by the prosecutor, outlining the physical, emotional and financial impact of the offense. However, that statement does not include the victims' views on the appropriate sentence. Other than their role as a witness, the crime victim has no right to address the court.

4. Victims' Rights Legislation.

New Zealand has legislation to protect victims' rights. Perhaps most importantly, the Criminal Justice Act of 1985 contains a presumption in favor of reparation where the victim has suffered loss, damage or emotional harm. It also establishes a procedure for determining the quantum of reparation where the amount of the loss or the offender's ability to pay is in doubt.

Under the Victims of Offenses Act of 1987, criminal justice agencies are required to treat victims with courtesy and compassion and with respect for their personal dignity and privacy. Prosecutors and court officers have a duty to keep victims advised of progress on the investigation

of the case and details of court proceedings. Victims of a serious assault can request notification of the impending release, or escape, of the offender from a custodial sentence. Finally, under this Act, victim impact statements are required to be prepared in all cases.

POLICE

1. Administration.

The New Zealand police are a civil force administered nationally under the command of a single Commissioner of Police and entirely independent of the military structure. For operational purposes, they are divided into six regions, each under the control of an Assistant Commissioner. Below the rank of Assistant Commissioner, there are four ranks in the chain of command - superintendent, inspector, senior sergeant and constable.

Legally, the authority of a police officer is derived from the common law office of constable and is thus original rather than delegated. In accordance with that original authority, the police oath which is contained in the Police Act of 1958 simply requires the police to preserve the peace, to prevent offenses against the peace, and to discharge their duties in these respects impartially and according to law. In addition to that general authority, police officers have a number of specific powers provided by statute, and they are accountable to the Commissioner of Police and the courts for the exercise of those powers.

By virtue of Regulation 7 of the Police Regulations of 1959, the Commissioner of Police is responsible to the Minister of Police for "the general administration and control of the police". The Commissioner of Police is required to ensure that all police officers "discharge their duties to the government and the public satisfactorily and efficiently". While there is some dispute about what is meant by "general administration and control", the generally accepted convention, based on the original rather than delegated authority of the office of constable, is that the Commissioner is not subject to political direction or control in relation to operational or law enforcement matters, including operational policy. The Minister is able to have some influence over law enforcement priorities and other operational policies through the budgetary process, but that influence is at a fairly general and indirect level.

Aside from the police, there are several other agencies responsible for law enforcement. These

are generally administered on a national basis under the control of a Minister of the Crown and include the enforcement activities of Customs, Social Welfare and Inland Revenue Departments, the Ministry of Agriculture and Fisheries, and the Serious Fraud Office.

2. Resources.

* Expenditures. The estimated expenditure on the police for the year ending June 30, 1994 is NZ\$ 624,247,000, which represents 0.85% of the Gross Domestic Product. This amount does not include expenditures on the law enforcement activities of other specialist law enforcement agencies, such as the Customs, Immigration and Inland Revenue Agencies.

* Number of police. As of October 4, 1993 there was a total of 6,834 sworn police officers and approximately 1,650 non-sworn civilian staff. The sworn staff, which numbered approximately 200 police officers per 100,000 population, was comprised of 6,097 (88%) male and 737 (12%) female officers. The ethnic origin of sworn staff is unavailable.

3. Technology.

* Availability of police automobiles. As of July 1, 1993, the New Zealand police possessed a total of 2,350 vehicles. Standard police cars, including administration vehicles, totaled 1,754, for a ratio of 3.8 sworn police officers to every car.

* Electronic equipment. The use of electronic equipment by police is widespread, although availability of some of the newest technology is limited to the major urban centers. For instance, a computer aided dispatch system is in operation in the major urban centers, linked to patrol cars by means of an extensive radio communications system. It encompasses an automatic calling device, a dispatch prioritization capability and an ability to monitor the workload status of police patrols. In other areas more standard radio communications are used.

There is also a comprehensive nationwide computer system, with a police sub-system which includes individual criminal histories, lists of wanted persons, wanted persons information, vehicle registration information, missing persons bulletins and a variety of other useful law enforcement information, including the modus operandi of criminal suspects. Recently, the

police have proposed that this be supplemented by the development of an Integrated National Crime Information System.

An automated fingerprint identification system, which is based on a national computerized data bank of fingerprint records, is also in operation. In addition, the Traffic Safety Branch of the police makes wide use of the HAWK speed radar detection device to apprehend speeding motorists.

* Weapons. The New Zealand police are not armed as a matter of course, although firearms are now frequently carried by detectives and in patrol cars and are otherwise available as required. The types of weapons used vary between operational units. General uniformed police and detectives have access to .223 Remington Bolt Action rifles and .38 Smith and Wesson revolvers. The Airport Police and the Diplomatic Protection Squad have access to semi-automatic machine pistols and the Armed Offenders Squad have access to semi-automatic .223 rifles, shotguns, 7.62 rifles, CS gas grenades and body armor.

4. Training and Qualifications.

Although the police prefer applicants for the job to have some formal school qualifications, they will accept applicants with no such qualifications provided that they pass the police entrance examination, which consists of a mental ability test and an English comprehension test.

After passing exams and before being accepted as a full constable, recruits must undergo a full time, live-in, six month training course at the national Police College. This college is operated by the police themselves. Most of the instruction is provided by sworn police officers. Specialty components of the course are taught by relevant experts.

After graduation, an 18 month probationary period begins, during which 21 in-service training modules must be passed. If the modules are passed, the probationary constable receives a permanent appointment as a fully qualified constable at the end of two years, otherwise, he or she is discharged.

5. Discretion.

* Use of force. Information Not Available.

* Stop/apprehend a suspect. Police have limited powers to stop and search persons and vehicles, notably for drugs, offensive weapons or firearms, and to stop vehicles or set up road blocks to arrest a person who is unlawfully at large or who

has committed an offense which carries a prison sentence.

* Decision to arrest. When a suspect is found at the crime scene or is detected in the course of subsequent investigations, or where the police detect an offense in progress, the attending officer must decide whether to take formal action. The officer has several options.

The officer can opt for an informal disposition or clearance as no offense. If the offense has not been recorded, the offender can be dealt with informally without the need to generate any formal procedure.

If the offense is minor and an offender is located it can be cleared by a warning or a formal caution. There are no departmental guidelines or rules that the officer must follow in deciding whether to administer a warning. Overall warnings and formal cautions make up a little under 20% of total clearances, although there is considerable variation between individual districts.

However, the most common response to an offense where a suspect is detected is prosecution. Although only 19% of recorded offenses result in prosecution, nearly half (49%) of cleared offenses do so. There are four methods of initiating a prosecution. First, the prosecution process can be initiated by arresting and charging the suspect, occurring in the majority of cases.

Although police may obtain a warrant to make an arrest, this action is taken infrequently. The vast majority of arrests occur without a warrant. Police have a general power to arrest persons without a warrant if there is good cause to suspect them of having committed a breach of the peace, an offense carrying a prison sentence, or a specific offense that is non-incarcerative, but for which the power of arrest is appropriate.

Instead of arrest, suspects may be summoned to appear in court on a designated date to answer the charge. Also, where an arrest is made, the arrested person can be released following arrest and issued with a summons instead.

The Minor Offense Notice is the legislatively preferred procedure for offenses where the maximum penalty does not exceed a \$500 fine and involves the offender being sent a notice of the offense through the mail and having the opportunity of paying a standard fine administratively as an alternative to prosecution. Its use is largely confined to traffic offenses and liquor offenses.

* Search and seizure. The police may obtain a warrant to search premises where there are reasonable grounds for believing that evidence of

an imprisonable offense is located. In relation to some warrants such as those obtained under the Misuse of Drugs Act 1975, this extends to the search of persons found on the premises. In addition, the police have more limited powers to enter premises without a warrant to search for drugs or firearms or to prevent the commission of an offense which is likely to cause serious and immediate injury to person or property. In relation to suspects in custody, the police are permitted to search their person by force, if necessary.

* Confessions. Where a confession or incriminating statement has been obtained in breach of the New Zealand Bill of Rights Act of 1990, there is a *prima facie* exclusionary remedy. Under this Act, *inter alia*, everyone has the right not to be arbitrarily arrested or detained, and if arrested or detained, is to be informed of the right to silence and the right to consult and instruct a lawyer without delay. At the discretion of the trial judge, any confession or incriminating evidence that has been obtained unfairly may be excluded from the official body of evidence.

6. Accountability.

Complaints against the police are generally investigated internally. An independent Police Complaints Authority also exists to intervene and deal with complaints. The Authority is able to receive complaints of police misconduct or neglect of duty and of any practices, policies or procedures affecting complainants. It also has a limited own motion power of investigation in cases of death or serious bodily harm.

The Authority can investigate the complaint itself, oversee the police investigation, take no action or wait for the police report on the matter. In addition, it can review completed investigations and direct the police to reopen any investigation or to consider any proposals it might make for action on a complaint.

PROSECUTORIAL AND JUDICIAL PROCESS

1. Rights of the Accused.

* Rights of the accused. If the offense is punishable by more than three months imprisonment and is ordered summarily, the accused has the right to elect trial by jury. Beyond this, the accused's ability to influence or determine the nature of the charges or form of trial is limited.

* Assistance to the accused. There is no public

defender system in New Zealand, although there are plans to establish one on a limited basis. There is, however, an offenders' legal aid scheme under which defendants who cannot afford to pay for private legal representation are assigned a lawyer from a roster to represent them. Lawyers on the roster work in private practice, with their fees in legal aid cases being paid by the government according to a scale fixed by regulation.

2. Procedures.

* Preparatory procedures for bringing a suspect to trial. Suspects are generally brought to trial as a result of police investigation, followed by arrest and charge or by the issue of a summons or minor offense notice. In arrest cases, all initial prosecution decisions are made by the arresting officer. Those decisions are then reviewed, although only rarely modified or reversed, by a "line supervisor" and by the Police Prosecutions Section.

Where the summons or minor offense notice procedure is being used, the police officer in charge of the case prepares a report for his or her line supervisor with a recommendation as to charge. The supervisor then endorses the recommendation or modifies it as he or she deems appropriate. Files containing recommendations in favor of prosecution are then sent to the Police Prosecutions Section for final decision. Police prosecutors rarely reverse a recommendation in favor of prosecution if they are satisfied that the recommended charge can be proved.

In respect of charges laid on indictment, there is a preliminary hearing to determine whether there is a *prima facie* case justifying a trial. That preliminary hearing is held before Justices of the Peace or, in the case of a more serious charge, a District Court Judge.

* Official who conducts prosecution. In summary cases, and at the preliminary hearing of charges laid on indictment, prosecutions are generally conducted by police officers who are assigned to Prosecution Sections for about two years. Some of them stay for an extended period or on a semi-permanent basis. Police prosecutors do not receive any additional legal training but they do attend in-service training courses on aspects of prosecution work, which are run by officers from the Police Legal Section.

Prosecutions on indictment, whether in the District Court or the High Court, are undertaken

primarily by local Crown counsel or by a member of the firm to which the Crown counsel belongs.

Crown counsel also appear for the prosecution at the preliminary hearing in homicide cases, and in a few summary trials involving complex legal issues, serious offenses against police and prison officers and cases which raise or are likely to raise allegations of serious police misconduct.

Crown counsel are usually senior local practitioners who are warranted to undertake prosecutions on behalf of the Crown. In the main centers, however, there are also panels of lawyers in private practice who, under delegation from Crown counsel, act on occasion for the prosecution. In most cases, Crown counsel have little contact with the case prior to the preliminary hearing or trial. The police have the responsibility to decide on the charges, to prepare the file, and to brief the witnesses.

* Alternatives to trial. Occasionally, the prosecution may agree to reduce charges or to modify the summary of facts in exchange for a guilty plea, or to drop certain charges in exchange for a guilty plea on others. However, concessions of this sort tend to be minor and limited to matters which the prosecution believes will make little or no material difference to the eventual sentence. Hence significant formal plea bargaining as a means of resolving cases is not common.

The main alternative to the formal criminal justice process is the police pre-trial diversion scheme, which has been in operation since 1989. This involves a decision by the Police Prosecutions Section that the offender should be diverted on particular conditions, which may include an apology to the victim, reparation, a donation to charity, community work and sometimes referral for counseling. This decision is made on the recommendation of the officer in charge of the case after charges have been made. Provided that these conditions are met, the charges are then withdrawn. The bulk of diversion cases involve shoplifting, cannabis possession, theft as a servant and other theft. However, a number of offenders prosecuted for minor assault and willful damage also receive diversion. The proportion of prosecuted cases receiving diversion varies significantly from one area to another. The proportion of cases diverted varied from 7% to 26%. (Young and Cameron 1992).

Apart from the formal diversion scheme, some offenders who are perceived by the police to be mentally disordered will be transferred into the

mental health system prior to prosecution and detained as a voluntary or committed patient. There is no information on the extent to which this occurs.

* Proportion of prosecuted cases going to trial. The substantial majority of criminal cases are resolved by way of a guilty plea. Excluding cases which are diverted by the police, over 75% of cases result in a guilty plea. (Stace 1986).

The conviction rate in cases that proceed to a defended hearing is a little more difficult to determine, since the official statistics are incomplete. In 1988, the proportion convicted in defended summary hearings was 73%, 68% in District Court jury trials and 79% in High Court jury trials. (Young and Cameron 1989).

* Pre-trial incarceration conditions. The police have no general power to hold a person in custody for questioning prior to arrest and charge. Once arrested, a suspect must be brought before a court "as soon as possible." In large urban areas, the person will usually be brought before the court a day or two following arrest. The time lag may be considerably longer in rural areas (Crimes Act of 1961, Section 316(5)).

* Bail Procedure. After a defendant appears in court, the court must decide whether he or she is to be held in custody. There are some restrictions upon the grant of bail in serious violent and drug cases. There are also some minor offenses for which defendants must generally be remanded at large or on bail. Apart from this, the vast majority of defendants charged with imprisonable offenses can be remanded at large, be released on bail, or be put in custody at the discretion of the court.

* Proportion of pre-trial offenders incarcerated. Of the total prisoners held on October 22 1993, 516 were on remand awaiting trial or sentence, representing 11.5% of the prison population.

Overall, the percentage of cases involving a custodial-remand at some stage during the hearing of the case is approximately 13%. The overall custodial-remand rate is about 22% for violent offenses, 12% for offenses against property and drug offenses and about 4% for offenses of disorder and other minor offenses. There can be significant district variation in pre-trial incarceration rates. In 1990, the custodial remand rate in courts with over 1,000 remands per annum ranged from a low of 6.3% to a high of 15.8%. (Spier, et al., 1992).

JUDICIAL SYSTEM

1. Administration.

The major criminal court is the District Court. This is not only the court of summary jurisdiction but, it also handles the majority of cases which proceed to jury trial.

Above the District Court is the High Court, which presides over the most serious criminal cases and hears appeals from the District Court against summary conviction and sentence. Above the High

Court is the Court of Appeal which hears appeals against convictions and sentences in cases laid on indictment in both the District Court and the High Court.

Although the Judicial Committee of the Privy Council in London has discretionary power to grant an appeal against a decision of the New Zealand Court of Appeal in criminal cases, it is rarely given. Hence, decisions of the Court of Appeal are usually final, making the Court of Appeal the paramount judicial body in New Zealand criminal cases.

2. Special Courts.

Youth Court. The only special criminal court is the Youth Court, which is a division of the District Court responsible for handling cases involving youths under the age of 17. However, criminal offenses may emerge in the context of proceedings before other specialist tribunals, such as the Family Court, the Employment Court, the Disputes Tribunal or the Equal Opportunities Tribunal. Although these tribunals have a variety of civil dispositions to deal with unlawful behavior, they cannot impose criminal sanctions.

3. Judges.

* Number of judges. There are 142 members of the judiciary. The Court of Appeal is made up of seven judges. These include the Chief Justice who is the administrative head of the judiciary, the President of the Court of the Appeal and five remaining High Court Judges appointed by the Governor General as judges of the Court of Appeal.

The High Court consists of 32 judges, including the Chief Justice, although the Governor General is empowered to appoint an additional judge or judges as illness or absence requires. In

addition, there are six Masters of the High Court who exercise certain summary court powers. In 1993, the first female High Court judge was officially appointed to office.

The District Court is limited by statute to 103 judges, including the Chief District Court Judge. As of 1993, it is operating at full staff capacity, which includes 11 women (10.7%), two Sri Lankans (1.9%) and two Maori (1.9%). The remaining judges are male New Zealand Europeans.

* Appointment and qualifications. Judges are professional lawyers appointed to the bench on a permanent basis by the Governor General on the recommendation of the government. They are drawn from the ranks of the legal profession and, in the case of the High Court, from the senior bar. Members of the judiciary and the legal profession are extensively canvassed before prospective appointees are put forward for consideration.

Judicial training is limited. All judges receive some on-going information about the types of sentences being imposed by other courts. Shortly after their appointment, District Court judges have an induction workshop on all aspects of their judicial function. Apart from this, both the District Court and High Court judiciary are largely reliant upon periodic judicial conferences and seminars for training and information.

PENALTIES AND SENTENCING

1. Sentencing Process.

* Who determines the sentence? The sentence is imposed by a single judge. At a defended hearing, the sentence would be determined by the judge who presided at trial.

* Is there a special sentencing hearing?
Information not Available.

* Which persons have input into the sentencing process? Judges may request a pre-sentence report from a probation officer, a medical or psychiatric professional or any other knowledgeable person. It is common for a pre-sentence report to be obtained when imprisonment or a community based sanction is being considered.

The judge may also hear submissions from the prosecutor and from defense counsel. Police prosecutors usually do no more than present a previous conviction list, a victim impact statement and, in the case of a guilty plea, a summary of facts. Crown counsel, on the other hand, often play a more active role, by providing

advice to the court.

The victim's input into the sentencing process is limited to the information provided by the prosecutor in the victim impact statement. The victim has no right to address the court in person or to provide his or her views on the appropriate sentence. Juries may request leniency when delivering their verdict but do not otherwise provide a view on the appropriate sentence.

Under Section 16 of the 1985 Criminal Justice Act, the offender may request the court to receive information about the offender's ethnic or cultural background, the way in which that background may relate to the commission of the offense and the positive effects that background may have in helping to avoid further offending. The court must hear those statements unless it is satisfied that, because of the existence of a mandatory penalty or some other special reason, it would not be of assistance to do so.

2. Types of Penalties.

* Range of penalties. There are four types of custodial sentences in New Zealand:

1) Life imprisonment is an indeterminate sentence with a minimum detention period of 10 years. It is the mandatory penalty for murder and the maximum penalty for manslaughter and dealing in Class A drugs.

2) Preventive detention is an indeterminate sentence with a minimum detention period of 10 years. It is available only for a range of specified serious violent and sexual offenses and is specifically designed to protect the community from further offending by removing the offender from the community for a substantial period.

3) Finite sentences of imprisonment are the most commonly prescribed sentences for serious offenses, and are imposed in the vast majority of cases for rape, robbery and serious wounding, in about 50% of arson cases and in about 30% of burglary cases.

5) Corrective training is available for offenders between the ages of 16 and 19 who are convicted of an offense punishable by three or more months imprisonment. Corrective training institutions are boot camp style institutions designed to provide a disciplined way of life and work, together with counseling and training.

Since 1993, the courts have had the power to suspend finite sentences of imprisonment of between six months and two years. Unless it would be unjust, a suspended sentence takes effect if an

offender is convicted of an offense punishable by imprisonment during the suspension period.

Below the level of custodial sentences, there are four community based sanctions which are available for imprisonable offenses and which involve on-going supervision or control in the community. Periodic detention is restricted to offenders over the age of 15 and requires the offender to attend a specified work center to undertake community work for up to 15 hours per week, excluding public holidays, for a period not exceeding 12 months.

Offenders may be required to perform community service for a period of 20 to 200 hours as specified by the court. The hours of work must be performed within 12 months. The nature of the work and the times at which it is performed are determined by an agreement between the offender and the community agency for which the work is done, subject to the approval of the supervising probation officer.

The sentence of supervision by a probation officer may be imposed for any period between six months and two years. It entails reporting to a designated probation officer as and when required and complying with any other conditions relating to residence, counseling, and employment which may be imposed by the court.

Some sentences require the person to attend a specified community program or to be placed in the care of a specified person or agency in the community. The sentencing period cannot exceed 6 months if the program is residential, or 12 months, if the program is non-residential.

Community based sanctions of these sorts are imposed in about 45% of all violent offenses and in over 50% of all property offenses. Below community based sanctions are monetary penalties, notably the fine and the sentence of reparation. As a result of economic recession and a change in sentencing patterns, their use has declined in recent years, so that fines and reparations now account for about 20% of sentences for violent offenses and 30% of sentences for property offenses.

Below the level of monetary penalties is a range of discharge options, which involve little or no sanction, other than that attaching to the court appearance and conviction itself.

* Death penalty. The death penalty was abolished for homicide in 1961 and for all other offenses, notably treason, in 1989.

PRISON

1. Description.

* Number of prisons and type. There are 20 separate penal institutions. Two of these facilities incorporate separate corrective training institutions for youths 16 to 19 years old. Aside from these two facilities, there are no institutions specifically reserved for young offenders. There are three female institutions, although with a drop in the number of female inmates in recent years, one of them now houses males in a separate wing. Of the 17 institutions specifically designated for males, one is a maximum security institution, nine are medium security and seven are minimum security. Two of the minimum security institutions operate as farms.

* Number of prison beds. As of November 14, 1991, the date of the last prison census, the number of prison beds totaled 4,477. This figure allowed for 4,262 male prisoners and 215 female prisoners.

* Number of annual admissions. There were a total of 8,432 admissions in 1993, of which 1,921 (22.8%) admissions were for drug crimes, 2,530 (30%) were for violent crimes, 561 (6.7%) were for property crimes, and 3,420 (40.5) were for other crimes.

* Average daily population/number of prisoners. During 1993, the average daily prison population was 4,512, for a rate of 133 per 100,000 population. Daily average statistics by the offenses for which inmates are incarcerated are not available. As of October 22, 1993 there were 142 women in prison representing 3.2% of the prison population.

At the time of the last prison census on November 14, 1991, there was a total of 3,537 inmates. Of these, 1,420 (40.1%) inmates were of New Zealand European ethnic origin, 1,519 (43%) were of New Zealand Maori origin, 310 (8.8%) were of Pacific Island origin, and 288 (8.1%) inmates were identified as a mixed or other ethnic origin. The most significant feature of these figures is that, while the New Zealand Maori make up approximately 15% of the population, they comprise 43% of the prison population.

In terms of gender, there were a total of 3,416 male inmates, of which 1,373 (40.2%) were New Zealand European, 1,464 (42.9%) were New Zealand Maori, 304 (8.9%) were Pacific Island, and 275 (8%) male inmates were identified as mixed or other ethnic origin. Out of the total of 121

female inmates, 47 (38.8%) were New Zealand European, 55 (45.5%) were New Zealand Maori, 6 (5%) were Pacific Island, and 13 (10.7%) female inmates were identified as mixed or other ethnic origin. (Braybrook and Southey 1992).

* Actual or estimated proportions of inmates incarcerated. The percentage of sentenced inmates by crime categories on November 14, 1991.

| | |
|-----------------|-------|
| Drug Crimes | 7.6% |
| Violent Crimes | 50.8% |
| Property Crimes | 24.0% |
| Other Crimes | 17.6% |

(Braybrook and Southey 1992).

2. Administration.

* Administration. The New Zealand prison system is comparatively small and administered on a national basis by the Corrections Operations Division of the Department of Justice.

* Number of prison guards. There is a total of 2,600 staff of which 1,700 are prison officers, providing a prison officer to inmate ratio of 1:2.6. While an ethnic breakdown of the prison staff is unavailable, 30% of the prison officers are women.

* Training and qualifications. No specific qualifications are necessary for appointment as a prison officer. However, potential prison officers must pass a pre-entry examination consisting of basic arithmetic, literacy and comprehension tests. After which, they are inducted into a prison where they complete a six-week, full-time, live-in training course.

* Expenditure on prison system. The cost of operating the prison system is approximately NZ\$35,000 per inmate per year. Accordingly, the total expenditure on the prison system per year is around NZ\$150,000,000, representing 0.1% of the Gross Domestic Product.

3. Prison Conditions.

* Remissions. Prisoners serving sentences of 12 months or less are released on remission after one-half of their sentence. Other prisoners are released on remission after two-thirds of their sentence unless a longer minimum term has been imposed by the court.

In addition, prisoners serving prison sentences exceeding 12 months are eligible for parole,

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excluding prisoners convicted of serious violent offenses. Parole eligibility is determined after one-third of their sentence has been served and is subject to standard and special conditions fixed by the Parole Board. Such conditions may include home detention and a residential or non-residential rehabilitation program.

* Work/education. Inmates are able to undertake a variety of educational and vocational programs. Other rehabilitation opportunities, including counseling, are offered on a limited basis. Medical treatment is readily available.

* Amenities/privileges. Weekend home leave and work parole (release for employment on an arranged job during the day) is also available as a privilege to some medium and minimum security inmates, especially inmates nearing the end of their sentence.

EXTRADITION AND TREATIES

* Extradition. The extradition of offenders to and from New Zealand is governed by two separate statutes. Extradition to and from the majority of Commonwealth nations is provided for under the United Kingdom Fugitive Offenders Act of 1881, as amended by the New Zealand Fugitive Offenders Act of 1976. Regarding non-Commonwealth countries, extradition is permitted under the Extradition Act 1965 only where a treaty has been concluded between New Zealand and the relevant country.

Treaties have been concluded with Albania, Argentina, Belgium, Bolivia, Chile, Columbia, Cuba, Czechoslovakia, Ecuador, El Salvador, Finland, France, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, Iraq, Italy, Liberia, Luxembourg, Mexico, Monaco, Netherlands, Nicaragua, Panama, Paraguay, Peru, Poland, Portugal, Romania, San Marino, Spain, Switzerland, Thailand, the United States, and Uruguay.

* Exchange and transfer of prisoners. Under the Niue Act of 1966 and the Cook Islands Amendment Act of 1966 there are special provisions for the transfer of convicted persons to serve sentences of imprisonment in New Zealand. There are no other provisions which relate to the exchange or transfer of prisoners to or from other nations.

* Specified conditions. Information Not Available.

SOURCES

- Braybrook, B. and Southey, P. *Census of Prison Inmates. Policy and Research Division, Department of Justice, Wellington, 1992.*
- Denyer, Murray, Ministry of Foreign Affairs and Trade, Legal Division, Private Bag 18 901, Wellington, Phone no. 472-8877.
Personal interview: November 1, 1993.
- Department of Justice Corrections Operations, P.O. Box 6 00, Wellington, Phone no. 499-5620.
Penal Division. Personal interviews: October 29, 1993 and January 18, 1994.
- Department of Justice Head Office, P.O. Box 600, Wellington, Phone no. 472-5980. Personal interviews: Frances Luketina and Marion Norris, October 27, 1993; Chief District Court Judge's Chambers, October 29, 1993.
- Galaway, B. and Spier, P. *The Impact on Sentencing of the Criminal Justice Act 1985.* Policy and Research Division, Department of Justice, Wellington, 1985.
- Maxwell, G and Morris, A. *Families, Victims and Culture: Youth justice in New Zealand.* Social Policy Agency, Department of Social Welfare, Wellington, 1993.
- National Association of Women's Refuges, P.O.Box 5136, Wellington, Phone no. 499-1881.
Personal Interview: October 29, 1993.
- New Zealand Law Commission. *The Structure of the Courts.* Report No. 7, New Zealand Law Commission, Wellington, 1989.
- New Zealand Police. Corporate Plan 1993-94, 1993 (Unpublished). Police National Headquarters, P.O. Box 3017, Wellington. Phone no. 474- 9499. New Zealand Police National Headquarters, P.O. Box 3017, Wellington, Phone no. 474-9499. Personal interviews: Dave O'Brien, Fleet Co-ordinator, October 28, 1993; Taffy Jones, Firearms Co-ordinator, October 29, 1993; Mary Schollum, Research and Statistics Section, October 26, 1993. Recruitment Officer, October 29, 1993; Colin D'Urville, Police Statistician, October 26, 1993.
- New Zealand Official Yearbook 1993. Wellington, Department of Statistics, 1993.
- Pratt, J. *Punishment in a Perfect Society.* Victoria University Press, Wellington, 1992.
- Rape Crisis National Office, P.O. Box 6181, Te Aro, Wellington, Phone no. 384-7028.
Date of contact: October 29, 1993.

Redshaw, Valerie, Royal New Zealand Police
College, Private Bag, Porirua, Wellington,
Phone no. 237-0139. Personal interview:
October 29, 1993.

Robinson, J., W. Young and S. Haslett. Surveying
Victims. Study Series 5, Institute of
Criminology, Victoria University of
Wellington, Wellington, 1989.

Stace, M. "The Police as Prosecutors". N. Cameron
and W. Young (eds.), Policing at the
Crossroads. Allen and Unwin, Wellington,
1986.

van Dijk, J. and Mayhew, P. Criminal
Victimization in the Industrialized World.
Directorate for Crime Prevention,
Ministry of Justice, the Netherlands, 1992.

Young, W., N. Cameron and R. Brown. The
Prosecution and Trial of Adult Offenders
in New Zealand, 1989 (Unpublished).
Department of Justice, P.O. Box 600,
Wellington. Phone no. 474-9499.

Young, W. and Cameron, N. Adult Pre-trial
Diversion in New Zealand, 1992 (Unpublished).
Department of Justice, P.O. Box 600,
Wellington. Phone no. 474-9499.