



Bail in New Zealand **Reviewing aspects of the bail system**

1. Background:

1.1 The Salvation Army is an international Christian and social organisation that has worked in New Zealand for over one hundred and twenty years. The Army provides a wide-range of practical social and community services, particularly for those who are suffering, facing injustice or those who have been forgotten and marginalised by mainstream society.

1.2 One of these key services is the Army's Court and Prison Services which provides court officers and chaplains for courts and prisons around New Zealand. The Court and Prison Services is committed to working with everyone and anyone involved in the court or prison process and attempts to be immersed in the reality of the criminal justice system in New Zealand¹.

1.3 There are some aspects of the criminal justice system in New Zealand that the Army is concerned with. These include the ever-increasing numbers of people being imprisoned and the high rates of re-offending and re-imprisonment in New Zealand. In *Stalled*², the Army's fourth State of the Nation report, the Army noted that the government spend on the Department of Corrections was over \$1 billion in 2009/10. This amounted to 1.4% of the government's spending on core public services compared to 1.1% in 2004/05. Yet despite this increase in taxpayer-funded spending by the government, there have still been increases in serious crime (crimes of a violent or sexual nature), community-based sentences, recidivism and prison populations between 2004/05 and 2009/10.

1.4 Clearly there are areas of the justice system and process in New Zealand that need to be challenged and modified to ensure that all New Zealanders can experience a fair, just and effective justice system. With this context, the Army presents this submission regarding the review of the bail laws in New Zealand. This submission is prepared on behalf of the Army by The Social Policy and Parliamentary Unit (SPPU) in partnership with the

¹ Smith, Dr Leanne and Bonnie Robinson. (2006) *Beyond the Holding Tank: Pathways to Rehabilitative and Restorative Prison Policy*, The Salvation Army, Social Policy and Parliamentary Unit, p 13.

² Johnson, Alan. (2011) *Stalled: A State of the Nation Report from the Salvation Army*, The Salvation Army Social Policy and Parliamentary Unit

Courts and Prison's Services and the Youth and Children's Services of the Army. The Unit was established in 2004 by The Salvation Army at its community ministry in Manukau City. The principal purpose of the Unit is to advocate for policies which will alleviate poverty in New Zealand and to undertake research and policy analysis to support this advocacy.

2. Overview of Submission:

2.1 General feedback:

The Army is pleased that a review of New Zealand's bail law and practices is in progress. The Army has outlined in *Stalled* the specific areas of the criminal justice system that it has real concerns for. These include:

- Increases in serious crime
- Increases in community-based sentences
- Record-high numbers of people incarcerated
- Serious over-representation of Maori in the prison population
- High rates of recidivism

2.1.1 The Salvation Army continues to advocate for more support of in-prison and post-release programmes to help reduce re-offending. The Army insists that there should be more value placed on cultural and faith based rehabilitation programmes. The Army's Courts and Prison Services also notes that more support can be given to both defendants and victims of crimes at the court, trial and sentencing phases. With the current wide-ranging reforms in our justice system, it is even more crucial to ensure that there is continued support for effective rehabilitation programmes and support for defendants and victims of crimes.

2.2 Bail Review:

The Army has outlined below the key questions that it wants to comment on in this review. In our Mission Statement, three specific objectives are stated; caring for people, transforming lives and reforming society³. We believe that all aspects of this Bail Review have some connection to the broad parameters of our Mission Statement. However, we have chosen to focus our responses to the key questions listed below.

3. Key Questions from Review:

3.1 Bail for Defendants charged with serious class A drug offences

Q1. What is your view on whether there should be a reverse burden of proof for defendants charged with serious class A drug offences (i.e.

³ <http://www.salvationarmy.org.nz/explore-connect/about-us/mission-statement/>, 05 May 2011.

should they have to prove that they should be granted bail instead of the prosecution having to prove that they should not)?

3.1.1 The Army believes that there should not be a reversal of the burden of proof for these types of offences. As mentioned earlier, the increasing rates of imprisonment are a real concern for The Salvation Army. If the burden is reversed, there will be a greater reliance on an already stretched and under-resourced legal aid and public defender system. This could mean that defendants do not always receive effective legal advice and could conceivably remain in remand for long periods of time without any due process being exercised for them. It is inexcusable for defendants to languish in remand for long periods of time whilst their lawyers are being pushed to prove the bail eligibility of their clients. For these reasons, we believe that this burden should not be shifted for defendants charged with serious class A offences.

Q2. What is your view on whether electronically monitored bail should continue to be an option for defendants charged with serious methamphetamine offences?

3.1.2 Methamphetamine is a destructive force in New Zealand families and communities. The Army, through its various programmes, deals with the harsh effects of these serious drugs every single day. In terms of EM bail for these types of defendants, we believe that this type of bail should still remain for these defendants. However, we are aware that methamphetamine drugs are easily made, sold and supplied from houses or homes. Therefore, we advocate that whilst EM bail can still be an option here, there might need to be more effective monitoring of these types of offenders. The specifics around how the monitoring is conducted can be clearly set out in legislation. There could also be opportunities to enroll these defendants into some type of initiative that could address some of the contextual issues these defendants are facing e.g. history of methamphetamine offences, unemployment, educational issues etc. For example, The Salvation Army is involved in an innovative pilot programme around methamphetamine and addictions with the Mongrel Mob. This type of innovative thinking could help foster ideas and solutions for those on EM bail for serious methamphetamine offences or for other types of offences.

3.2 Bail for defendants charged with serious violent and sexual offences

Q7. What is your view on whether the presumption in favour of bail for 17 to 19 year olds should apply to defendants who have previously served a prison sentence?

3.2.1 The presumption of bail for 17 to 19 year olds is based on this concept that in the Youth Court, children and young people should be kept in the community as far as is practical. We affirm that the presumption in favor of bail should remain for 17 to 19 year olds who have previously served a prison sentence. We are aware that some of these young people have a history of serious offending and some do re-offend whilst on bail for other offences. However, we are adamant that young people should have their offending dealt with within their communities as much as possible. These young people should be kept out of remand or prison for as long as possible. Even if the young person has a history of serious offending, there might be more effective solutions for this offending in the community rather than being behind bars. But the Army does acknowledge that with serious offending, extra support should be given to ensure that individuals, families and the wider community are not at risk of further harm.

Q8. What is your view on whether breach of any condition of bail should be a ground for arresting a defendant under 17 years of age without a warrant?

3.2.2 The Army is supportive of the work that the New Zealand Police does. In responding to this question, we believe that if young people are arrested for any breach of their bail conditions *without a warrant*, then too much power has been given to the Police. We acknowledge that in real-life situations, the Police are faced with important decisions within very intense and quick situations. But these realities should not impinge on the principle of natural justice crucial to the New Zealand justice system. If these young people have breached their bail, then a warrant should be issued if they are to be arrested. According to our youth worker teams in the Army, young people are often demonized by the public. Because they are still maturing at 17 years of age, there needs to be some safeguarding around how they dealt with if they breach their bail conditions.

3.3 Fail to answer Bail

Q10. Are there any other non-legislative measures that could be used to reduce the number of defendants that fail to answer bail?

3.3.1 The Army is very pleased that this type of question has been asked in this public consultation document. Innovative solutions are needed to help address the justice issues that New Zealand faces. The Army believes that a more collaborative approach between the courts and other key agencies might help reduce the numbers of those failing to answer bail. For example, if defendants are also using other social services (e.g. Salvation Army social workers or youth workers), then maybe notice of court appearances can be shared with these agencies and services who can then inform, remind or motivate these

defendants to attend court. Also, The Salvation Army's Court and Prison's services work directly with and build strong relationships with many of these defendants. If there is more collaboration, then key people in the defendant's life (e.g. social worker, coach, fellow church member) can help ensure that they attend court at the right times.

Q11. What is your view on whether the maximum penalty for failure to answer Court bail should be increased? If you think it should be increased, what should it be increased to?

Q12. What is your view on whether the maximum penalty for failure to answer Police bail should be increased? If you think it should be increased, what should it be increased to?

3.3.2 In response to questions 11 and 12 together, the Army believes that there should not be an increase in the maximum penalties, both prison and financial, that a defendant is subject to if they fail to answer bail. The Army is acutely aware of the tough financial situations several New Zealanders face. We believe that if these penalties are increased (and enforced) by the courts, then these people and their families could face even greater financial pressures in very tough financial times. Any increases might result in increased debt (to pay these penalties) and increases in other social pressures and hazards that the Army deals with in its every day work.

3.4 Legislation for EM Bail

Q15. What is your view on whether the EM bail regime should be set out in legislation?

3.4.1 The Army firmly believes that EM bail needs to be legislated clearly to eliminate any differences in the practice of EM bail around the country. The Army feels that legislating EM bail can lead to more uniform practices for the monitoring of these defendants. There also needs to be some safeguards within this legislation to ensure that this monitoring does not become overly taxing for the defendants and their families.

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