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They're our Whānau

Abstract

In New Zealand there is a marked disparity between the rates of incarceration of Māori people compared with Non-Māori. Māori make up around 15% of the total population but a staggering 50% of the prison population. Unfortunately the voice of Māori is incredibly under represented on this topic, despite it being an issue that disproportionally affects their community. To consider Māori views on this topic, we will use a survey opened to the general Māori public as well as interviewing key stakeholders involved in this issue. The overarching themes that arose over the course of the study were around the effects of colonisation, institutional racism and the inappropriate nature of the current justice system with regard to Māori. Suggested solutions were also raised, some examples include; changes to the prison system regarding sentencing and an alternative approach to youth offenders. Overall we found that the opinion of the Māori community does not align with the current justice system or societal approach to crime, and unless changes are made it is unlikely we will see any change to the incarceration rates moving forward.

Introduction

The New Zealand Judicial system incarcerates more Māori people than any other ethnic group in New Zealand. As of March 2018, Māori make up 50.0% of New Zealand's prison population, despite only comprising 14.9% of the total New Zealand population. (1, 2) In 2012, 58% of female people in prison were Māori, while 51% of male people in prison were Māori. (1) For every person who is Māori in prison there is at least one whānau (extended family, family group) impacted. This means mokopuna (grandchildren) growing up without grandparents, tamariki (children) growing up without parents and rangatahi (youth) having to take on the role of the carer at critical times in their lives. There is little representation of the statistics of takatāpui (LGBTQIA+) people in prison. (1, 3)

The aim of this study is to focus on Māori public opinion on the current Māori incarceration levels in Aotearoa (New Zealand). We will explore current opinions using a combination of interviews and surveying to provide a comprehensive picture of the Māori views on the current rates of Māori incarceration. In addition we will conduct a literature review to investigate the drivers of incarceration in New Zealand, existing responses to the inequities in our prison system, and evidence based alternatives to incarceration.

Literature Review - Tātaritanga ā Rangahau Hāngai (complete Literature Review is available in Appendix 1)

10,645 people are incarcerated in prison in Aotearoa, an increase of 25.7% since March 2010. 31.5% of people in prison are on remand and 68.8% of people in prison have been sentenced. Over the last 30 years, Māori have consistently made up approximately 50% of the prison population. The majority of people sentenced to prison (53.1%) are classified as minimum or low security, indicating they pose low risk within and outside prison. (1) Crime rates in New Zealand are the lowest they have been in 20 years, at 777 per 10,000 people. (4, 5) The average prison population in OECD countries is 147 per 100,000, whereas New Zealand has a prison population of 220 per 100,000. (6). Refer to Figure 1.

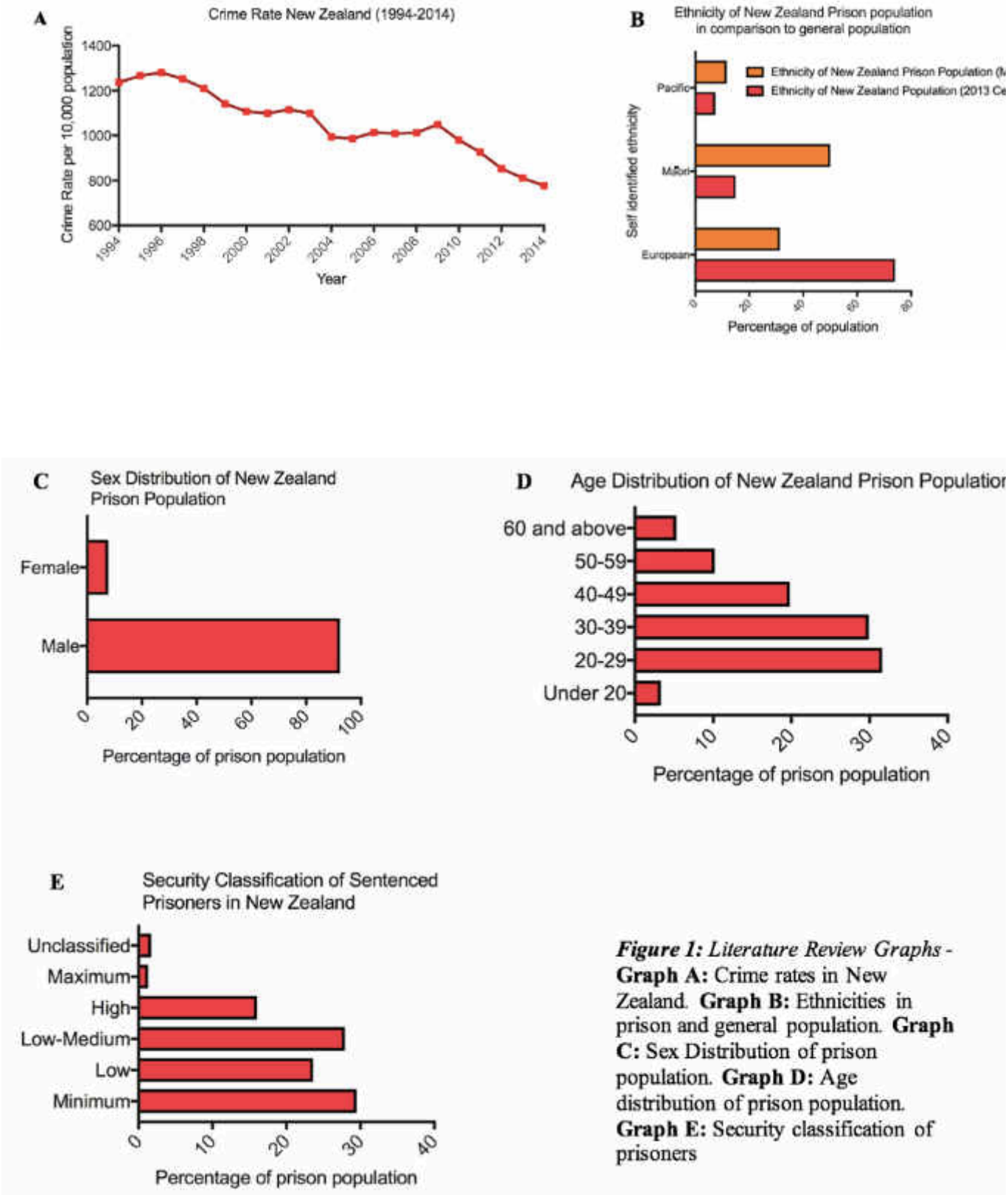


Figure 1: *Literature Review Graphs* - **Graph A:** Crime rates in New Zealand. **Graph B:** Ethnicities in prison and general population. **Graph C:** Sex Distribution of prison population. **Graph D:** Age distribution of prison population. **Graph E:** Security classification of prisoners

The average annual cost of detaining a person in prison is $90,977 and the Department of Corrections incurred operating expenses of $1,345 million for the 2016/2017 financial year. (7, 8) Cost-benefit analyses show that prison is only an efficient sentencing option for the most serious offenders. (9)

Prior to colonisation, Māori had a system of restoring mana (supernatural force, power in a person place or object) and balance when harm against whakapapa (genealogy, lineage) had occurred. Resolution included practices such as utu (recompense) and muru (a ritualised form of utu), and acknowledged the components of tapu (sacred, restricted) that led to hara (violating tapu or transgressing). (10, 11, 12) Through the process of colonisation, the British Crown introduced a Pākehā (European) law system that treated crimes as an individual offence. These monocultural policies failed to acknowledge traditional Māori tikanga (customs, lore, law), undermining the collective cultural structures of Māori that were vital in maintaining wellbeing and mana. (10) The role of intergenerational trauma as a result of colonisation and the systemic bias that exists in our judicial system are significant factors in generating the large inequities of Māori incarceration in New Zealand. (13)

In recent years, the Bail Amendment Act 2013 has made it more difficult for people that have committed serious crimes to be granted bail. (14) However, rather than just serious offences, this amendment has been applied across a range of offences, resulting in an increase in the number of people in prison of around 1500. (15)

The Sentencing and Parole Reform Act 2010 increased penalties for people who offend repeatedly. This policy is considered to have increased the number of people in prison by failing to deter people from committing offences, and enforcing maximum sentences to increase the length time a person is incarcerated in prison. (16)

Colonising factors such as marginalization, racism and rural-urban migration lead to the continual subjection of Māori to dissolution of tikanga and cohesive whānau units (17). The manifestations of these factors are evident in the disparities in socioeconomic status, mental health and substance abuse. These 'drivers of incarceration' generate behaviours and responses to a social climate which disproportionately drive Māori to offend. As a result of this, offending responses may range from an economic need (18), to frustration (19), to the negative impacts of these factors upon childhood development of social cues and behaviour (20, 21). We have illustrated the interactions between the drivers of incarceration and the vacuum of the NZ justice system in a prototype model developed during the course of the literature review. This integrates findings from the established literature and influential Māori views to conceptualise why Māori are disproportionately incarcerated in the current New Zealand societal ecosystem. This model will be further developed by incorporating the survey and interview data to more accurately convey the perspectives of Māori with regard to the inequities in incarceration of Māori when compared to non-Māori.

New Zealand's high recidivism rate shows a need for better rehabilitation and reintegration strategies for people in prison, in order to reduce incarceration. Alternatives to incarceration that emphasise rehabilitation are the norm in Scandinavian society. These include supervised probationary release, which involves goal setting for people in prison and support in housing and employment after release. Mediation is also frequently used as a way of promoting settlement rather than incarceration. Community based alternatives are readily used over prison sentences; for example fines, warnings and community service. (22, 23)

At present, for Māori in prison there are a range of rehabilitative interventions. These are tikanga-based to strengthen cultural identity and reduce likelihood of reoffending. Specifically, the Te Tirohanga National Programme educates people in prison on aspects of Māori culture and involves whānau support. (24) The Mauri Tu Pae programme also uses a cultural context to build mana, mauri (life force, vital essence) and wairua (soul, spirit). (24) However, despite

these programmes running for a number of years, Māori remain 50% of the prison population indicating these programmes are not working as they should be. (1)

For youth who are Māori, Rangatahi courts held on a marae (community meeting place) have had positive outcomes. These focus on accountability as well as education about culture and identity. There was a 32% decrease in Māori youth offending from 2009 to 2013 indicating that Rangatahi courts have had a positive rehabilitative influence. (25, 26)

There is very limited research into the views Māori have on Māori incarceration and reoffending rates in New Zealand. The Salvation Army has compiled the most cohesive New Zealand report with responses by ex-prisoners to incarceration so far. The main issue identified with the current jail system was the poor reintegration of formerly incarcerated people back into society. Other key points raised included strict rules around visiting and the inability to leave prison in exceptional circumstances leaving people in prison feeling isolated from family and community. (27)

Julia Whaipooti, a young Māori lawyer and chair for JustSpeak, identified that conversations about Māori offending is being driven by non-Māori. She says that "[a] starting point is recognising that the system wasn't made by us. It comes from a Western Pākehā construct that was imposed post-colonisation." She therefore believes the discussion around potential for change and alternatives to prisons should be led by Māori.(28)

Studies have also shown people's responses to incarceration is shaped by the media. Multiple studies felt that media in New Zealand takes a Pākehā centric approach and lacked core competencies around Māori culture. Overall participants felt that Māori were more likely to be shown in a negative light and be linked with social problems. (29, 30)

Indigenous populations in Canada and Australia have very similar incarceration and reoffending trends to Māori. (31, 32) Studies have found that migrant centric cultural ideology has been routinely pushed onto indigenous communities causing damage over long periods of time which will be difficult to fix. Unlike New Zealand, both Australia and Canada have both responded by doing independent inquiries into this damage, and both governments have made formal apologies to their indigenous communities. (33, 34, 35)

Methods - Ngā Tapuae me Ngā Raraunga

Interviews:

To elicit Māori views on high incarceration rates of Māori we conducted interviews with key Māori stakeholders. A suggested list of nine stakeholders with some experience in Māori incarceration was supplied by a Hauora (well being, health) Māori researcher at the University of Otago. They were contacted through email, phone calls and Facebook with an aim to interview five to seven stakeholders. Seven were able to be interviewed in person, by phone or through skype. Those interviewed included a former inmate, researchers on the topic, a Māori lawyer, a mental health specialist, social justice advocate and a political lobbyist. The interviews focused on three core questions. Refer to Table 1.

Six 4th year medical students at the University of Otago conducted the interviews. They were given training prior to the interviews which included a practice interview and discussion around correct pronunciation of Te Reo Māori (the Māori language) and terms of respect for the interviewees. Informed consent was gained prior to the interview to allow the interview to be recorded electronically and/or filmed by the interviewers for research purposes. The

interviewees were given the three main questions in advance of the interview, and the interview was centered around these with further questions and clarification as needed. The interviews were 15-50 minutes duration.

Table 1 – Interview Core Questions

1. What are your overall views about the level of responsiveness of the NZ criminal justice system to Māori? Do you have specific concerns about particular practices that are presented as 'interim measures' that result from the shortage of prison beds such as; Double bunking, Placing vulnerable prisoners in high risk situations e.g. transgender prisoners or youth, The use of seclusion?
2. Why, in your opinion, are Māori the most incarcerated people in Aotearoa?
3. What approaches/strategies/solutions do you recommend to change the high rates of incarceration and recidivism of Māori?

The recordings of the interviews were transcribed manually by the researchers for use in thematic analysis. Unfortunately the recording of one interview stopped after 10 minutes, so we elected to only use those 10 minutes in the thematic analysis.

Survey:

To collect data about Māori attitudes on crime, injustice and general knowledge about Māori imprisonment and incarceration, a web-based, 28-question survey was generated with the help of ActionStation and was released to the general public of New Zealand. Data collection was between the 10th-22nd of July 2018. The survey was based on a previous survey done by ActionStation around Māori knowledge of methamphetamine use that ran between 13th-19th June 2018. The means utilised to circulate the survey nationwide included; emailing ActionStation clients, contacting Iwi (tribe) through email, sharing on Facebook, and through personal networking. People were able to complete the survey by using a hyperlink to the survey on the ActionStation website. This was accessible both on personal computers and mobiles.

The survey itself consisted of 28 questions in total - including eight demographic questions, 19 questions relating to the study aims and one providing an option for anonymity. The survey took on average 15.58 minutes to complete. The types of question varied but included a Likert Scale, yes/no/I don't know, multiple choice questions, 'true/false' and open text fields. As the focus of our study is on Māori opinions of incarceration, we excluded any responses that did not categorise their ethnicity as Māori, which could be done under the ethnicity data question, or by nominating which Iwi they affiliated to. It is important to note that people were able to select multiple ethnicities and we included all people that selected Māori, regardless of whether they selected other ethnicities or not.

The survey was designed so that respondents were required to answer each question before they could continue to the next. However participants could submit their results at any point during the survey, although this would lead to an incomplete response, however we elected to still analyse all responses providing they had nominated their ethnicity. There was an option for respondents to remain anonymous if they chose.

Data from the closed questions was analysed using Microsoft Office Excel 2016. The answers from the two open questions as well as one of the 'other' open text boxes were analysed using the same thematic analysis approach as the interviews. Themes identified from the survey were eventually matched with those identified from the interview analysis.

We aimed to get at least 1000 Māori respondents for the survey. A total of 1356 people completed the survey, of these 813 were Māori. Some questions asked in the survey had also been asked in the previous survey run by ActionStation in June 2018. For these questions we added the responses from the previous survey to the results from this survey and then analysed the sum of the responses. We controlled for anyone answering both surveys by eliminating duplicate email addresses. The total respondents for the duplicate questions was 939. This is relevant for the following questions; "How important do you think it is that government policies are based on evidence", "Do you think people in prison should be allowed to vote?", "Do you think crime rates have been increasing over the past couple of years?" and "Which of the following interventions do you think best prevent and reduce crime?" as well as the true/false questions.

The thematic analysis was conducted according to the four steps devised in a paper on 'systematic text condensation'. (36). Refer to Table 2.

Table 2 - Thematic Analysis Steps

1. Read the whole text, with the aim to gauge the overall position of the interviewee but not to categorise their points at this stage.
2. Read the transcript line by line, highlighting 'meaning points' relevant to the topics which express salient ideas from the interviewee's perspective.
3. Code the 'meaning points' according to what they imply, or a broader factor which they represent. E.g. oppression of Māori culture and disruption of the connection with whakapapa are both examples of the effects of colonisation.
4. Bring the coded categories together to demonstrate the general attitudes and opinions of the interviewee's.

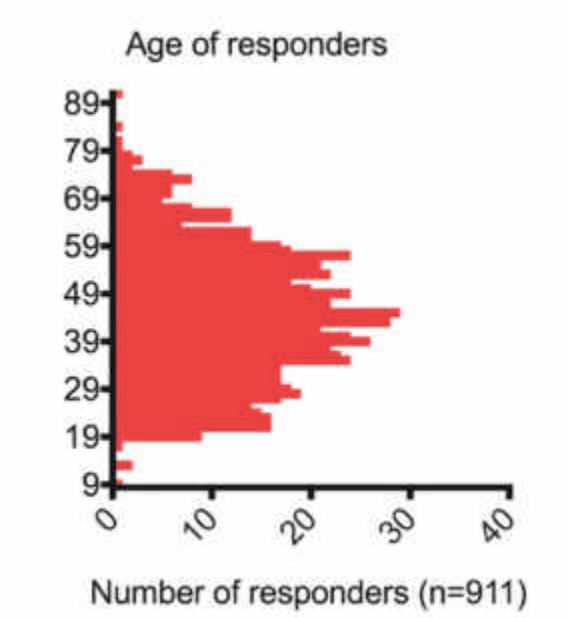
Two analysts conducted steps one, two and three on each transcript. Step four was then conducted collaboratively by four analysts, across all seven interviews, to gain an understanding of the broader findings of the study. This process was repeated for the open ended questions from the survey which were then included in the weighting of main themes.

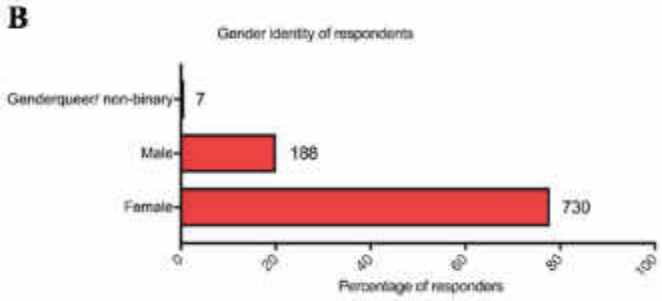
Results - Ngā Tukunga Iho

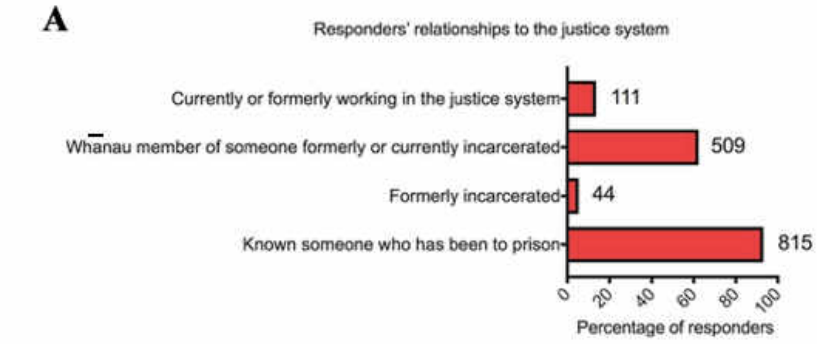
Survey Results:

939 survey responses were analysed. The distribution of responders included 78% (n=730) female, with others identifying as male (20%, n=188) and gender diverse/ gender non-binary / takatāpui (0.75%, n=7). As well as self-identifying as Māori, 47% (n=380) also identified as Pākehā and 9% (n=74) also identified as Pasifika . The majority of responders were aged 40-

59 (47%, n=428). Most knew someone who had been to prison (93%, n=815), and had had whānau incarcerated (62%, n=509).







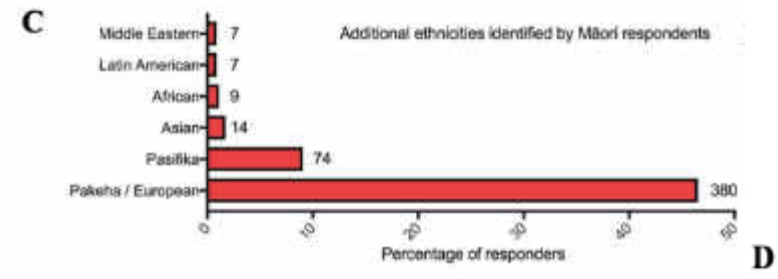


Figure 2: *Population features graphs.* **Graph A:** Responders' to the justice system. **Graph B:** Responders' gender identity. **Graph C:** Responders' additional ethnicities. **Graph D:** Responders' ages. **Graph E:** Iwi data.

The survey respondents had accurate knowledge of current justice issues relating to Māori, with four "true-false" questions answered with greater than 78% accuracy. Despite this, 58% (n=469) answered 'not at all' to whether mainstream media fairly and accurately reported justice issues. Media inaccuracies were reflected in responses showing that 64% (n=605)

incorrectly believed crime rates had increased over the past two years. Refer to Figure 4.

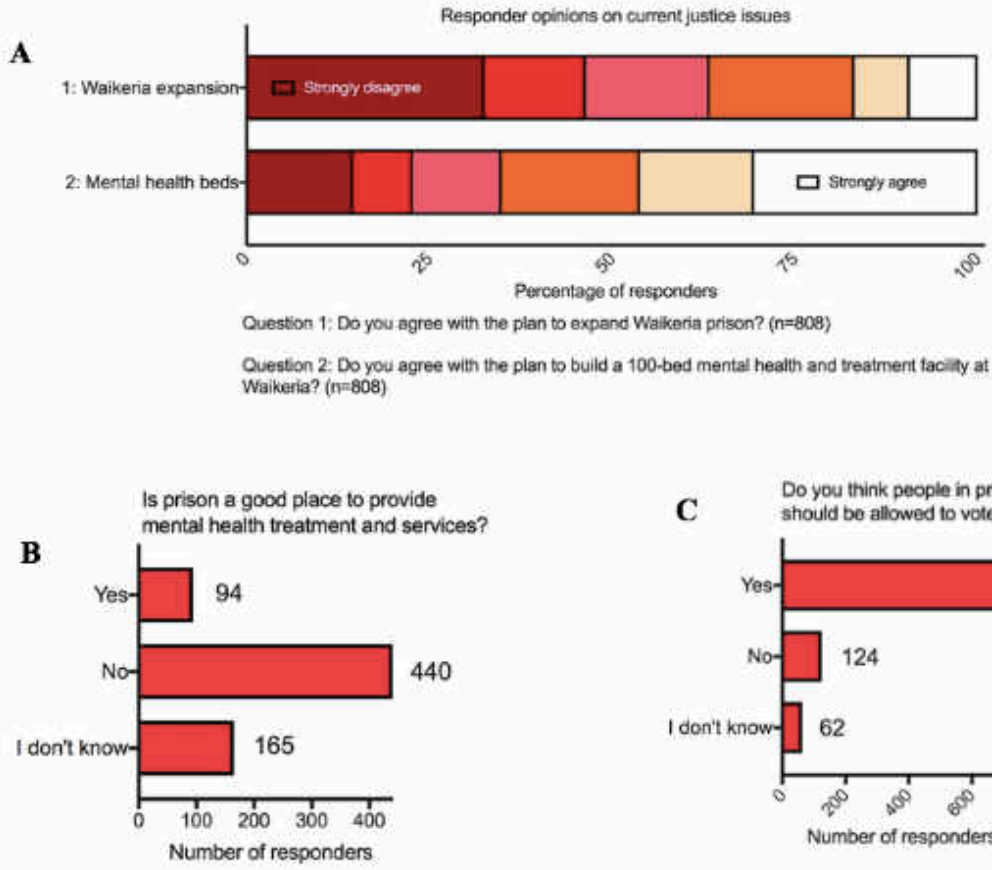
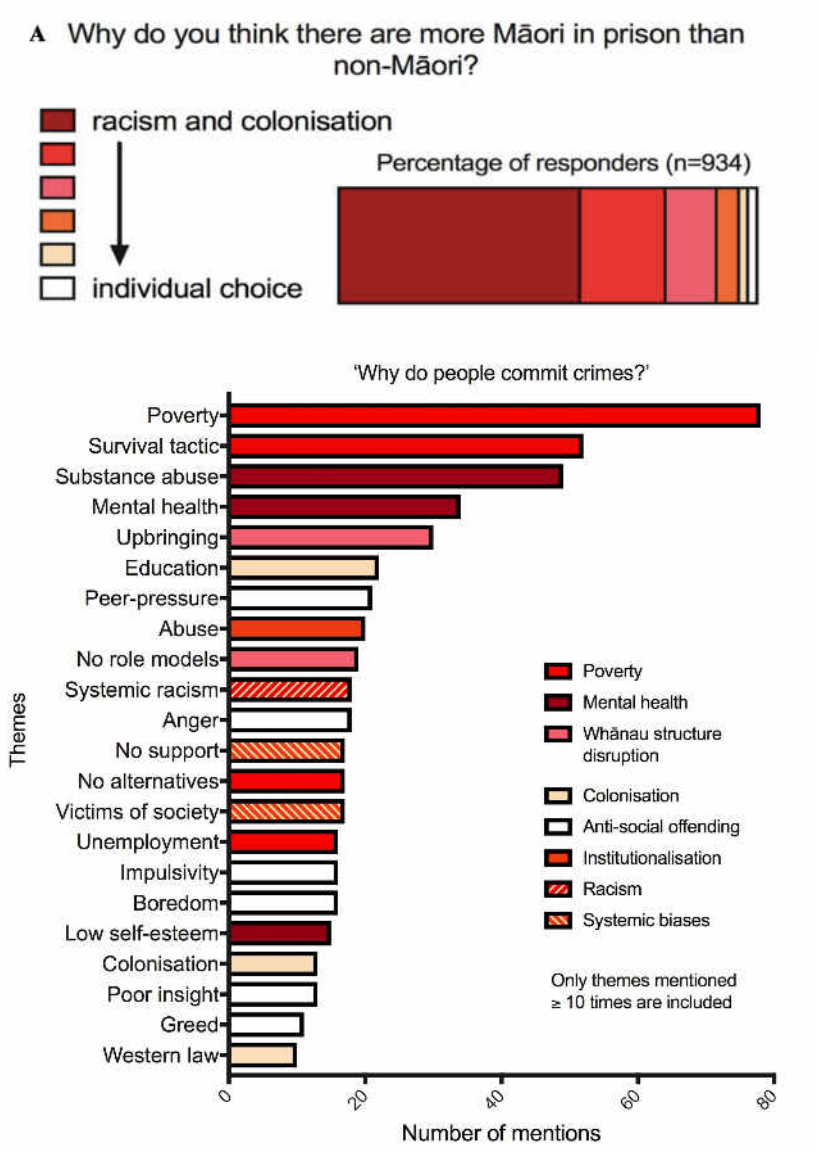
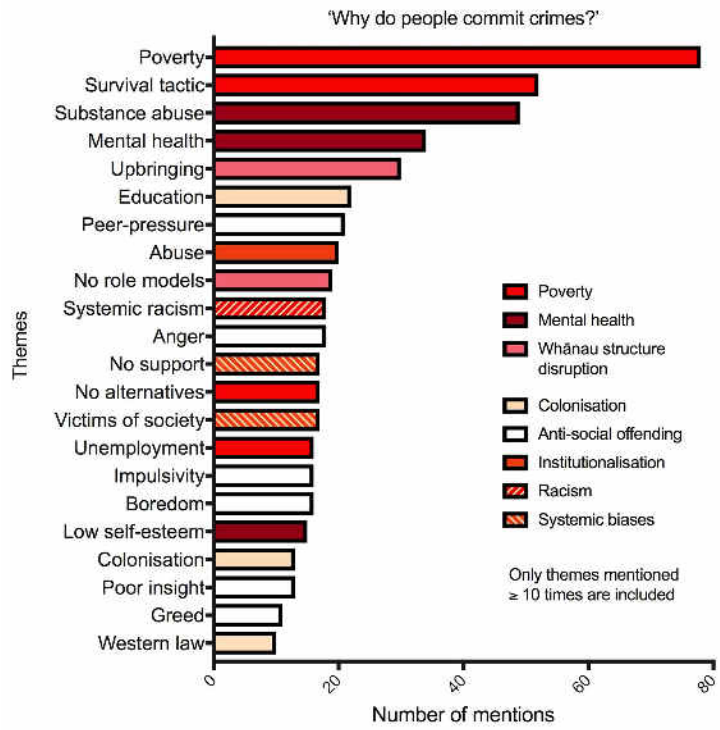


***Figure 4*: *Current Societal Issues.* Graph A: Opinion on current justice issues in New Zealand Graph B: Opinion on mental health treatment in prisons. Graph C: Opinion on ability to vote in prison**

Participants disagreed with the planned Waikeria prison expansion (63%, n=512); thought prison was not a good place to provide mental health services (63%, n=440); agreed with the planned 100-bed mental health and treatment facility at Waikeria (65%, n=526); and agreed prisoners should be allowed to vote (80%, n=936).

Given a choice of two factors contributing to Māori incarceration inequities, 90% (n=843) answered that colonisation and racism were implicated, with the remaining 9.7% (n=91) answering toward individual choice. Refer to Figure 5.


A Why do you think there are more Māori in prison than non-Māori?
racism and colonisation
individual choice
Percentage of responders (n=934)
'Why do people commit crimes?'
Poverty
Survival tactic
Substance abuse
Mental health
Upbringing
Education
Peer-pressure
Abuse
No role models
Systemic racism
Anger
No support
No alternatives
Victims of society
Unemployment
Impulsivity
Boredom
Low self-esteem
Colonisation
Poor insight
Greed
Western law
Themes
0
20
40
60
80
Number of mentions
Poverty
Mental health
Whānau structure disruption
Colonisation
Anti-social offending
Institutionalisation
Racism
Systemic biases
Only themes mentioned ≥ 10 times are included



Participants strongly agreed that solutions should be evidence based (61%, n=570), with a focus on interventions for youth (70.1%, n=659), and on funding community-based interventions rather than incarceration (76%, n=621). Interventions thought most effective in preventing crime were: connected communities (80%, n=752), mental health services (76%, n=716), addiction support services (73%, n=684), jobs and higher wages (71%, n=664), schooling (68%, n=641) and housing (63%, n=596). Refer to Figure 6.

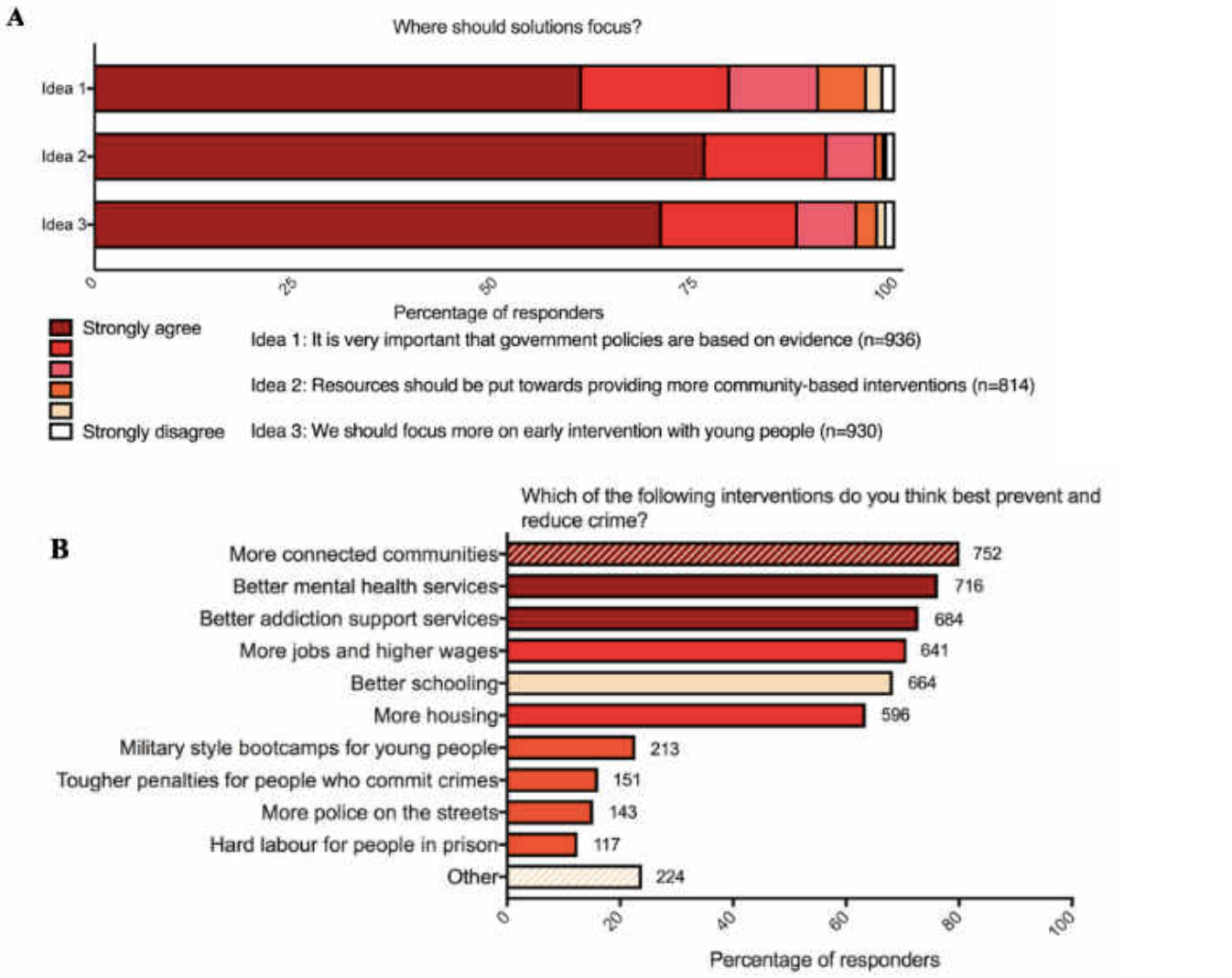


Figure 6: *Solutions.* **Graph A:** Focus of Solutions. **Graph B:** Interventions to prevent and reduce crime. **Graph C:** Other solutions to prevent and reduce crime. **Graph D:** Role of hapu and iwi in solution to Māori incarceration

Themes elicited from Interviews and Open Ended Survey Questions:
The themes which arose from the thematic analyses are described below, with quotes from interviewees to demonstrate these points. The themes represent those which were prominent in both the interviews and the open ended survey questions. The specific interview from which the quote came is noted beside them.

- Effects of Colonisation:

A major theme which recurred in all seven interview and many survey responses (48), was how the effects of colonisation are leading to high rates of incarceration of Māori. Colonisation is still occurring today, but particularly the hangover from the overt wrongdoings of the past, has influenced the way in which Māori live and survive today. Of note were issues regarding loss of identity through government oppression of Māori culture and loss of connection with whakapapa. Māori have been displaced from their traditional societies and forced to adapt without being given the tools and skills necessary to do so, meaning they fall into cycles of intergenerational poverty. Poverty drives people to commit survival based crime, and causes issues with mental health, substance abuse and whānau breakdown. Our justice system punishes survival based crime, without paying attention to the true cause of these acts. Māori stakeholder five stated; sometimes "this is the only way [they] can get a dollar on a Monday".

- Institutional Racism Leading to Disparity in Incarceration

Many stakeholders expressed how a disconnected whānau upbringing due to historical trauma and societal racism, pushes people to offend. The stakeholders and 30 survey respondents explained that children see their parents as role models and copy both the good and bad behaviours they exhibit. This continues until the whānau relationship falls apart. Youth then seek role models elsewhere, and it's then where gang involvement becomes apparent. "The gangs are becoming sort of surrogate parents in Māoridom." - Victim Advocate. Another expressed theme is how breakdown within a whānau has flow on effects which may lead to incarceration. These breakdowns include; children being taken by the government into state "care" and abused sexually, mentally and physically, lack of support from societal systems and youth not getting help to prevent reoffending. This was acknowledged as institutional racism. The stakeholders suggested that this discrimination by social services is a result of the societal idea that Māori are inherently bad (stakeholders two, three, five, six), which is further reinforced by the media. The interviewees said the justice system is an English system, not suited to our tangata whenua (people of the land)), which contributes to the racism that Māori experience. The general feeling about the magnitude of this situation is expressed by the Victim Advocate "No matter what position we take on this debate I don't think anyone can be proud of what we are seeing today".

- Prison System Failure: Prisoners are mis-sentenced, mistreated and not rehabilitated

Many interviewees identified problems within the prison system as a cause for the disproportionately high numbers of incarcerated Māori. From this, two main themes emerged: a disrespect, or disregard, for the culture and beliefs of Māori prisoners, and a sentencing process which is unjust towards Māori and ineffective in reducing crime rates. There is concern that the prison model does not fit with Māori beliefs, and decision makers are failing to respond to evidence and recommendations from Māori leaders. The introduction of tikanga workshops within prisons is seen as a gesture which to date has not had any significant effect on incarceration rates. Interviewees are critical of double bunking, a practice which is seen to unfairly place vulnerable people at risk. Concern was raised about the failure to accommodate for minority groups, especially people within the transgender population.

Among a majority of the interviewees is a belief that the sentencing process is contributing to the disparities within the prison population. This starts with the decision to charge, where several interviewees quoted evidence showing police are more likely to charge Māori with a more serious offence than a Pākehā who has committed the same act. It also appears in courts, where many feel the systems used to determine whether bail is granted are flawed, and makes assumption about Māori. Māori stakeholder one spoke strongly about the breakdown of presumption of innocence, a fundamental principle of the justice system. On top of this, a lack of effective rehabilitation processes upon release from prison was identified as contributing to a cycle of offending. Overall there is a feeling that current spending on imprisonment is excessive, and not enough is being spent fixing the problems which are causing high rates of incarceration.

- Solutions - Prison reform:

A majority of the interviewees shared the opinion that the prison system requires reform as a solution to the high level of incarceration of Māori. They believe alterations are required to sentencing with a particular emphasis on first time offenders and youth. In addition, they deem internal prison services of rehabilitation are ineffective and this lack of support is leading to a cycle of further offending. Many reiterated the need for improvement of community services to aid in breaking the cycle and to supply alternative options to incarceration. There was also a shared disapproval by stakeholders regarding the bail reform act and its impacts on increasing the prison population. The Victim Advocate had a contrasting opinion to the rest of the stakeholders that the bail laws are appropriate and reduced sentences are not the answer to the issue. This included the view that the safety of communities is more important than reducing sentences and incarceration numbers, and that New Zealand has no choice but to supply prisons able to populate the numbers.

- Solution - Community/Governmental Social Change:

The majority of the interviewees, as well as the survey respondents, indicated that in order to resolve this issue there needed to be community/governmental and social change. Four of the interviewees specifically discussed the importance of Māori led initiatives in order to get to a successful outcome. “Māori need to determine what pathways they take to determine how they keep their whānau out of prison” - Stakeholder 6. Two also discussed the need for Māori empowerment and maintenance of culture, a theme that also was heavily present in the survey results. There was also an emphasis on incorporation of tikanga Māori in policy to make the policies more effective for the target group. The survey data also specifically showed that people believed Iwi could have a direct impact on making and carrying out these changes.

Discussion – Matapaki

Māori Opinion and Drivers of Incarceration:

Our literature review painted a grim picture of incarceration in New Zealand, with Māori making up the majority of the prison population while only representing 14.9% of the overall population [37,38]. Previous research into the issue has shed light on historical shortcomings, and a belief among Māori that New Zealand has failed to implement a justice system which incorporates values important to them. Instead the almost entirely British system has been maintained, which requires Māori to adapt [10]. This sentiment was echoed by survey respondents, who strongly preferred “racism and colonisation” over “individual choice” when asked why they think more Māori are in prison compared with Pākehā. There is a growing sense of disappointment about the failure to adjust the criminal justice system, which in turn is

believed to have contributed to the development of glaring inequities. All interviewees agreed that the government response to Māori incarceration to date has been underwhelming, and a vast majority felt that the decision to expand Waikeria prison illustrates a failure from decision makers to take into account the causes of increasing prison numbers. This attitude stems from a belief that a new prison only serves to lock more people away, and represents a failure to recognise systemic errors and introduce measures that attempt to reduce Māori incarceration long term.

Research has shown that that the opinions of Māori ex-prisoners show that there was poorly structured reintegration into society following release from prison. (27) They felt there was a lack of support from society during reintergration; when it came to getting a job and housing, things needed to get back on their feet after their sentence. The survey reiterated this, in that 76% of respondents said that instead of increasing incarceration there should be more community-based interventions. This lack of support is consistent with the institutional racism which was raised multiple times during the Māori stakeholder interviews. The lack of resources accessible for Māori is a reason why reoffending rates are so high among Māori.

Loss of connection with whānau that were once involved with the prison system also came through very strongly from all aspects of the study. (27) Examples of this disconnect included not being allowed to have whānau visit them while in prison or being allowed leave to attend a tangihanga (funeral). Whānau feel like their personal connections are broken apart when children are taken away into state care. This loss of connection also extends to Iwi, as there is no longer widely available activities and events for Māori youth to stay connected to their culture and Iwi. From our survey 70.1% 'strongly agreed' that focus should be on increasing early interventions for youth to prevent them becoming engaged with the system at all. Our research participants have suggested that this disconnect contributes hugely to the high number Māori who are incarcerated, as they don't have a sense of belonging or connection to their whakapapa.

It is clear that Māori feel victimized by the way the media portrays them and their whānau, saying that they feel they are being shown in a negative light with regard to societal issues.(30) The effects of media misnomers are demonstrated by the fact that 64% of our survey respondents incorrectly believed crime rates had increased over the past two years. Over half of those who answered the survey felt the media doesn't fairly and accurately report justice issues. In print media Māori are over represented in crime articles which repeatedly vilify Māori, and contribute to the false social belief that Māori are inherently bad. This theme also reoccurred in the interviews; four Māori stakeholders said they feel that society view their ethnicity as inherently bad.

The drivers for high rates of Māori incarceration were astoundingly coherent between the literature review and the study findings. The literature review primarily identified factors such as poverty, substance abuse, breakdown of whānau and loss of traditional values. The thematic analysis of the interview transcripts and the open-ended questions demonstrated similar opinions on what the perceived drivers of incarceration were. Many of these drivers fall into the broader themes that have been raised such as colonisation and institutional racism. It was elaborated on during the stakeholder interviews; four of them spoke about how our justice system is an English/Western system, which is founded on very different principles and methods of social structuring to what Māori people have traditionally used. This enforcement of a foreign system on Māori people leads to oppression of culture, the development of intergenerational patterns of poverty and abuse, and lack of access to important services. These

factors are maintaining the hierarchy which activists are so desperately trying to change. This truly emphasises the need for a reform in our system from the ground up, to empower Māori and aid cultural immersion and reconnection with whakapapa. These opinions on what is driving incarceration were demonstrated a third time by the survey results, where 90% of respondents believed that colonisation and racism were part of the explanation of high levels of Māori incarceration.

The opinions arising in the survey responses and the stakeholder interviews, also suggest how underlying societal opinions are inevitably influenced by the institutions in which we live and work (education, justice, health etc.). This means that even for passionate, prejudicially aware people, it is very extremely difficult to make any valuable, lasting change. This instils a sense of "poverty of spirit" into Māori populations, where they feel like their situation is helpless and they do not have any power to change things. This feeling of disempowerment can create feelings of apathy towards our systems and rebellion against them. If Māori people are provided with more social and economic opportunity, they have the power to make decisions which are not solely based on survival instinct, which would remove a driver for criminal behaviour. Although there were some contrasting opinions on solutions to this issue, there is an overwhelmingly clear shared opinion between researchers, Māori stakeholders and the general Māori public, on the causes of ethnic disparities in incarceration.

Suggested Solutions:
Many of the stakeholders' positions opposing the current application of the 2013 Bail Amendment Act are supported by similar recommendations from Justspeak and the Youth Justice Organisation. They suggest that the application of the Bail Act be adapted to only apply to serious offenders, as originally intended by the reform. (15,39) By reducing the application of the Bail Act toward minor crimes the Māori remand population would be reduced hence reducing the demand for prison beds, providing a solution.

Justspeak also supports a review of the Parole Reform Act. They argue it is a system that exclusively increases the prison population with minimal rehabilitation effect. Research has shown that increasing the severity of the punishment does not reduce crime rates, which calls into question the purpose of policies which increase sentence length (40, 41). This recapitulates the views of the stakeholders who believe punitive measures and the current rehabilitation services for Māori, inside and outside of prison, are ineffective at breaking the cycle of crime and recidivism. This was also emphasised by multiple stakeholders and the victim advocate on modification to approaches to youth in the system. Stakeholders have a contrasting belief to the victim advocate as they believe that a punitive system is unlikely to be effective in reducing Māori offending. The majority of survey respondents also thought that in order to best prevent crime, the focus should be on youth, the development of connected communities and improvement of community based interventions. This clearly contrasts the current approach which involves introducing tougher penalties and increasing prison capacity.

These views are further supported by the evidence found from Scandinavian countries. These countries have the lowest rates of incarceration in the world and a significantly lower reconviction rate than New Zealand. (23). The main difference in their systems compared to New Zealand are that they use a restorative justice approach rather than punitive. This includes having alternative options to incarceration such as; monetary fines, formal warnings, community sanctions/alternatives and mediation to avoid incarceration. Incarceration is reserved as a last option for serious offenders but they have shorter sentences and many get released early on parole into a strong holistic rehabilitation programme. (23) This approach

seems to be better suited to Māori than our own system, as it reflects many of the opinions which have come through strongly in this study.

Perhaps the most imperative suggestion which arose through the stakeholder interviews, was a belief that Māori led initiatives would be fundamental in the process of reducing Māori incarceration and offending. There are currently some Māori programmes such as Rangatahi court, which has shown some improvements in reducing offending. (42) However, some Māori professionals view these programmes as attempts to meet obligations rather than actually aiming for rehabilitation. (43) The need for further strengthening of cultural identity and developing of kaupapa Māori (Māori approach/ideology) driven solutions, was also evident from many of the survey respondents. This indicates that many Māori believe that development of Māori based solutions would be much more effective than simple adaptations of the Pākehā system which are consistently falling short. The United Nations' 'Declaration of Indigenous Peoples Rights' states that indigenous people have the right to "maintain and strengthen their own institutions, cultures and traditions" as well as "participate in decision-making in matters that affect their rights through their own representatives." (44) This is mirrored by a significant number of study participants stating that they believe Iwi could play a more central role in developing effective strategies for Māori.

Strengths and Weaknesses of the Study:

Strengths of the study include the large survey response by Māori individuals. This was our target population as the issue of incarceration affects them most markedly. The survey was standardised and included a range of questions asked in different modes in order to maximise data collection. However, due to time constraints the survey was only open for a short amount of time. This restricted how far the survey was able to be spread and how many people were able to respond. While a lot of work was done to push the survey out into the community, it was not possible to measure the participation rate of individuals who were invited to take part in the survey. Furthermore, the use of the Likert scale introduces variability in participant responses as the scale could be interpreted differently by different individuals. The fact that the survey was online means the population was limited to people with internet access. This meant that people in prison were unable to complete the survey and share their view on a topic that is affecting them. We were, however, able to look at the demographics of those who completed the survey. The vast majority of those who completed the survey were female. Therefore the opinion of Māori men may still be underrepresented. An error during data collection for the survey meant 408 respondents were unable to complete the survey and enter their demographic information. These people were emailed twice with follow up questions. 139 people responded to these emails.

The interviews were conducted in a standardised manner consisting of three questions which minimised interviewer bias. These questions were sent to the interviewees ahead of time so each person had time to consider and plan their answers. The interviews were recorded and transcribed so they could be analysed by team members who did not conduct the interviews. Even though a structured interview was given, different people conducted the interviews. This could have introduced some interviewer bias due to differential approaches to the task. This was, however, minimised by each of the interviewers receiving the same interview training at the start of the project. The researchers analysing the interviews and survey data were also trained so they could do this in the same fashion as each other. Interviewees were recommended by one person which may be a source of selection bias. However, it is important to recognise the extent of knowledge these interviewees were able to offer this study as they are experts in

a wide range of topics surrounding this issue. Future studies could increase the number of community stakeholders interviewed as this study only interviewed a small sample of people.

As stated previously, this issue affects Māori disproportionately, and yet when examining the literature which informs policy, their voice is consistently underrepresented. Therefore, there is an urgent need for research such as this, to fill this gap, and provide a much needed Māori voice on an issue which is disrupting their communities in such a dire way. It is hoped that this study will help to inform a new direction for change within our justice system, and will instigate more research like it, to give Māori and other marginalised groups the much needed freedom to speak on issues which affect them. The themes that ultimately arose from our study were a clear juxtaposition to the current justice system and emphasised the general consensus that something needs to be changed. The current criminal justice system has not, does not and will not work for Māori.

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1. Purpose

The purpose of this research is to assess the current attitudes in the Māori community and amongst prominent Māori stakeholders, towards the current rates of Māori incarceration in Aotearoa. We also wish to assess opinions of why there are such inequities in the current system, and obtain solutions proposed by the Māori community. In addition, we are interested in opinions from Takatāpui (LGBTQIA+) as they are commonly underrepresented in statistics and data about the prison system.

We will evaluate the scope of information that is put forth in research as being relevant to the current inequities that exist in the justice system in New Zealand. We will assess the salient points of previous research in this specific field (2), provide data on the demographics of our prison population (3) and discuss the economic costs of incarcerating those who have committed crimes (4). We will outline the historical perspective of the introduction of British law systems in New Zealand (5). We will discuss the social determinants that increase the chances of a person committing an offence (6) and put forth two adapted models that outline what we have found to be the forces that drive disproportionate incarceration of Māori (6, 7).
Following this, we will address the research conducted in multiple countries about strategies to prevent offending (8, 9), and policy and systemic changes to reduce incarceration rates (10).
We will also discuss Māori Specific Justice Measures that have been proposed to reduce bias in the New Zealand justice system (11)
We will also discuss the response to Māori incarceration that exist in the Māori community, the media and more (12).

2. Previous Research

There is substantive international and national literature linking colonisation in New Zealand, Canada, Australia, the United States and other historically colonised countries with inequities in indigenous health. (1)
This literature review focuses on the context leading to the over-representation of Māori in the criminal justice system and examines the story behind the statistics on Māori offending.

Four key documents underpin and inform this research:

Māori and the Criminal Justice System (2)

In 1988, Dr Moana Jackson released his seminal report, *Māori and the Criminal Justice System*, or He Whaipaanga Hou. Jackson found that the use of legal instruments and the construction of prisons immediately following the signing of the Treaty of Waitangi is part of the enduring process of colonisation and a breach of the Treaty of Waitangi. This view is supported in national and international literature.

Tū Mai te Rangi: Report on the Crown and Disproportionate Reoffending Rates (3)

In 2017, the Waitangi Tribunal released the findings of *Tū Mai te Rangi*, a claim taken by Tom Hemopo, a former long standing employee of the Department of Corrections. This challenged the use of processes such as a Māori ethnicity rating (2%) which produces an elevated risk of recidivism score for Māori that can be linked to the length and severity of sentencing of Māori
.

Series of Gluckman Reports to the Prime Minister

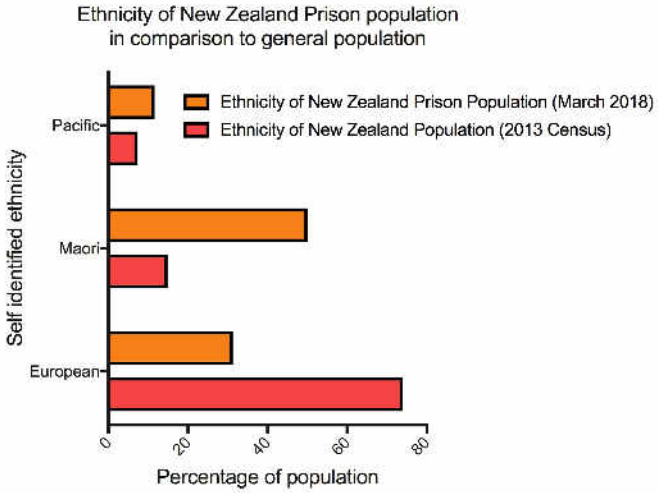
‘Using evidence to build a better justice system’ explored the factors that are involved in New Zealand’s high incarceration rate, and the economic costs involved with this increasing rate. (4)
‘It’s never too early, never too late’ explored the factors of high incarceration rates in the youth population of New Zealand. (5) These reports addressed the impact of colonisation on the increasing rates of Māori imprisonment in New Zealand. The reports recommended a broader Māori focussed approach, that recognised the role of the justice system in contributing to collective social harm. It was also recommended that any strategic plans should be clearly developed with partnership or leadership of Māori.

3. **Aotearoa’s Prison Population**

The March 2018 Prison Population was 10,645 prisoners. (6) Of these 3,316 are on remand, and 7,329 are sentenced prisoners. This total population represents approximately 0.22% of the total population of New Zealand, or 220 people per 100,000 people. (7)

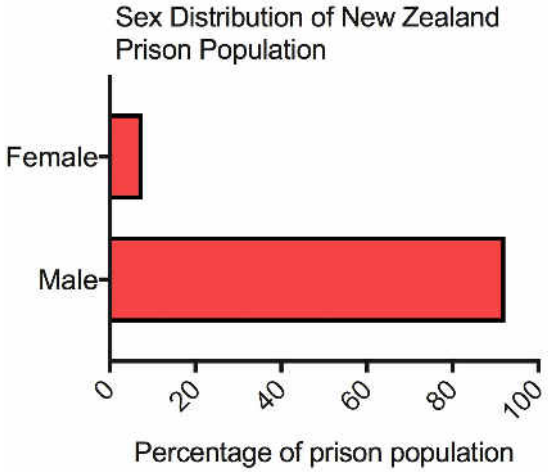
3.1 Ethnicity

50.0% of the New Zealand prison population are Māori, 31.3% are European and 11.6% are Pacific Islander. (6) Of the New Zealand total population 14.9% identify as Māori ethnicity, 68% as New Zealand European and 7.4% as Pacific People. (8)



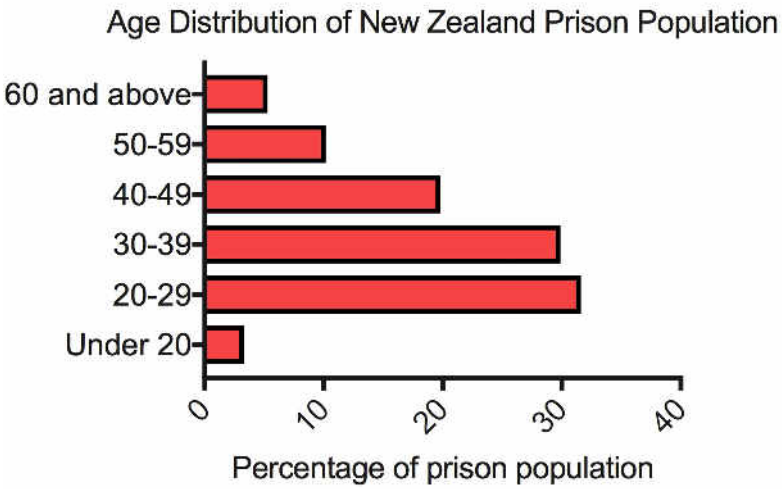
3.2 Sex

7.7% of the prison population are female and 92.3% of the prison population are male. (6)



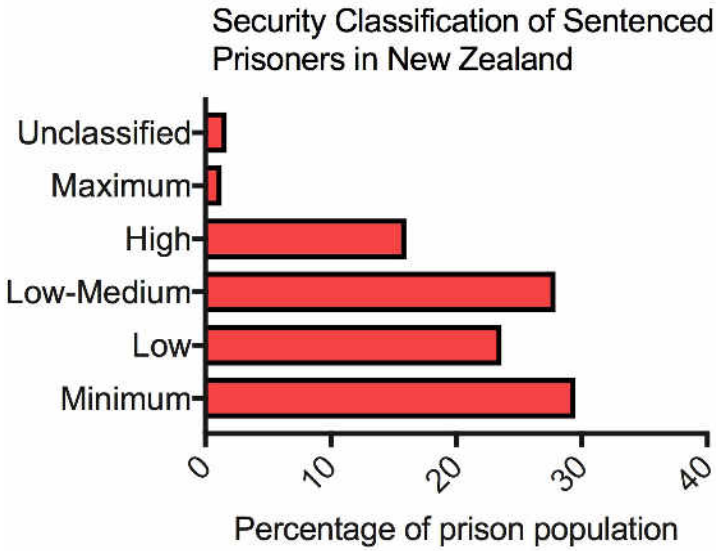
3.3 Age

3.3% of prisoners are aged under 20, 31.5% are aged 20-29, 29,9% are 30-39. 19.8% of prisoners are aged 40-49, 10.2% are aged 50-59 and 5.3% are aged 60 or above. (6)
The 20-29 age group can be further divided into 13.4% aged 20-24 and 18.1% aged 25-29. (6)



3.5 Security Classification of Sentenced Prisoners

Most people in prison are supervised and managed under a low risk classification, which indicates their low danger both within the prison system and with society. 29.5% of prisoners are minimum security. 23.6% and 27.9% are low and low-medium classification respectively. 16% are high security, and 1.3% are maximum security. (6)



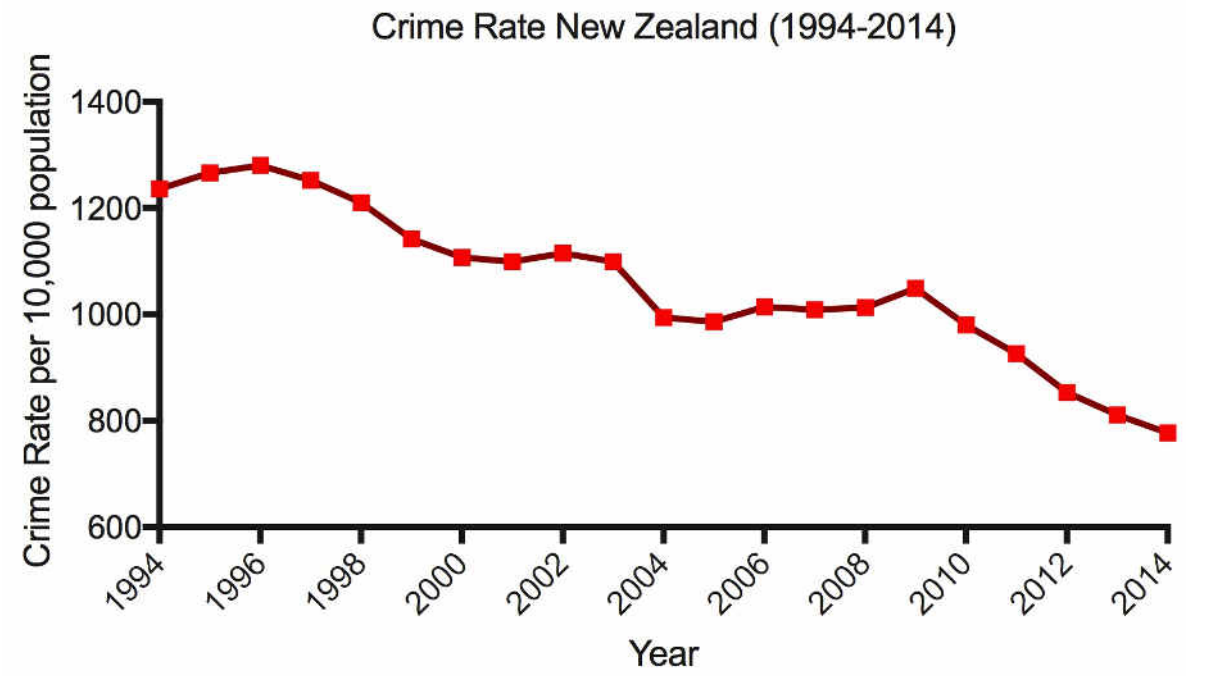
3.4 Most Serious Offence

People in prison may have multiple convictions across multiple categories. The most common serious offence is violence at 38.6%. Sexual offences make up 19.2% of serious offences, burglary makes up 12.2% and drugs make up 12.1%. Offences such as dishonesty, traffic, weapons, breaches, property damage and other, make up the remaining 17.9% of offence types. (6)

3.6 Takatāpui

There is limited available data on the rates of imprisonment of LGBTQIA+ or takatāpui in New Zealand's prisons. Transgender people are typically placed in a prison corresponding to their birth assigned sex, however a process does exist to allow transfer to a prison that aligns with their gender, although is found to be difficult to access. (9)

3.7 Crime Rates



The crime rate in New Zealand has been decreasing since the recorded 1994 data, with the most recent peak in 2009. Crime rates in 2014 were 777. (7, 10) The total crimes or victimisations recorded by the police for 12 months ending 31 May 2018, was 262,016. This was a decrease of 3.9% (-10,747) from the previous 12 months. (11) The Global Peace Index 2018, ranked New Zealand as the 2nd safest country in the world, after Iceland. (12)

3.8 Comparisons with OECD Countries

The average prison population among OECD countries in 2016 is 147 per 100,000 people. (13) New Zealand has a higher population than average OECD countries, similar to countries such as Hungary, Poland, Czech Republic and Mexico. (13)

4. Current Economic Costs

Law and order expenses for 2017 included $1,539 million for the New Zealand Police, $479 million for the Ministry of Justice and $1,145 for the Department of Corrections. (14) The 2016/2017 Financial Statement for the New Zealand Department of Corrections disclosed total operating expenses of $1,345 million. (15)

The total budget for the Department of Corrections for 2018/2019 is $1,342 million. This includes $1,034 million for prison based custodial services, $236 million for the management of community delivered sentences, and $231 million for case management and interventions to address underlying causes of criminal offending. (16)

The average annual cost of housing a prisoner in New Zealand in 2010 was $90,977. (17) This is the most recent data available on this cost, however both expenditure and prison population have been increasing at a similar proportion since 2010, so it can be assumed that the current cost is similar.

4.1. Cost Benefit Analyses of Imprisonment

Gluckman emphasised in his 2018 report that it is important to consider whether the extremely high costs of incarcerating a high number of prisoners - this includes, but is not limited to economic costs - represent value for money for New Zealand. (4) Marsh, K. et al performed an economic assessment of the benefits of prison in terms of rehabilitation (reducing the chances of returning to crime), incapacitation (preventing crimes while a someone is incarcerated), deterrence (discouraging future crimes) and retribution (punishment). From previous cost benefit analyses, they concluded that prison was an efficient sentencing option for serious offenders. However most studies find that from a perspective of incapacitation, specific deterrence and rehabilitation, prison for less serious offenders is an ineffective option and a waste of public resources. (18)

4.2 Cost Benefit Analyses of Alternatives

Cost benefit analyses have been used to attempt to estimate the monetary value of the effects produced (benefits) as well as programme resources used (costs). A review of benefit-cost analyses for crime prevention programmes was published in 2015. (19)
This review found that preschool intellectual enrichment programmes and cognitive behavioural treatment were the most cost-beneficial crime prevention programmes that could be applied during childhood development. (1) The Perry Preschool Programme was one such programme, implemented in 1962 in Michigan. This programme hypothesised that "good preschool programmes can help children in poverty make a better start in their transition from home to community and thereby set more of them on paths to becoming more economically self-sufficient, socially responsible adults". The adults were most recently assessed at age 40, with a low attrition rate. These adults had fewer lifetime arrests for crimes and also improvements in schooling, employment and income. The total cost per participant for this two year programme at age 3 was $15,166, and the total benefits were estimated at $195,621 per participant, giving a cost benefit ratio of $12.90. This was the highest ratio of the developmental studies in the review. 8 out of 11 studies reported a favourable cost benefit ratio, and the others reported a mixed ratio.
A programme like this would be difficult to implement on a large scale, and the social conditions and era this took place in may have significantly changed to render it less likely to be of current benefit. (20) However it is likely that there is a place for using money, that would otherwise be used to construct and run prisons, to implement large scale interventions that have been shown to reduce crime and improve a variety of social outcomes for the vulnerable and underserved in our society. Targeting early child development is one such area that can be utilised and will demonstrate many benefits. The role of child development ties into our model and the social determinants of incarceration.

5. Historical Perspective

5.1 Pre-colonial aspects of the Māori Justice System

Tikanga Māori can be used to describe the ‘ways of doing and thinking held by Māori to be just and correct’ that existed before the arrival of the colonisers. It is both a set of beliefs and lore, and a set of customs that can be considered law. (21) Tikanga is based on the balance of tapu (sacred, restricted) and noa (profane) that is enshrined in the whakapapa (genealogy, lineage). (21) The practices associated with Tikanga apply to group (whānau, hapū and iwi) and individual (tangata) wellbeing or Mauriora. This is anchored in whakapapa, the continuous

flow of all elements of Māori existence including metaphysical and physical worlds, the unification of wairua (spiritual) and physical realms. (22)
Hara refers to an offence against whakapapa whereas ‘offending’ in a Pākehā (European or British) constructed criminal justice system is based on individualising or removing collective accountability for actions that harm the cultural collective.
Mana is foundational to wellbeing. Mana is defined as (23):

1. A supernatural force believed to dwell in a person or sacred object.
2. Power; authority

Mana has interconnected and indivisible forms including mana whenua (the mana of the land and the people of that land), mana motuhake (whakapapa and hapū based political authority), mana tangata (the mana of the people) and mana atua (the mana of Māori deities), as described by K. Lawson-Te Aho on 23 July 2018.
The overarching goal of Tikanga Māori was to restore balance within whakapapa, when a hara, or offence against whakapapa occurred. Resolution of disputes acknowledged the imbalance in the components of tapu that may have led to offending, and resolution was achieved using utu (recompense) and muru (a ritualised form of utu). (2, 21, 24) In traditional times, the ultimate act of utu was disconnection from whānau, hapū and iwi through expulsion.
In contemporary times, utu might involve whakaiti or public humiliation; practical recompense such as the return of resources; isolation for a defined period of time through rāhui (prohibition) and other practices that have contemporary relevance based on the restoration of balance and mana to the victim and perpetrator. This has contemporary relevance and is proposed by scholars as the substance of a Tikanga based justice system for Māori. (23)
In summary, important components of hara and its subsequent resolution include mana, tapu, rahui, utu and muru (traditional methods of redress). (2, 24) Tikanga custom law recognised that the rights of an individual are indivisible from the welfare of his whānau, his hapu and his iwi. (2) The righting of wrongs could be seen as 'an ancestrally defined responsibility to maintain order and to protect the land'. (2) This involved physical action or a mediation process and was typically context based, guided by rangatira (chief, leader). (2, 21)

5.2 Introduction of Pākehā law

As the Māori population decreased due to introduced disease and the violent use of firearms between Māori and the colonisers, there was a weakening of legal and religious institutions that were important in maintaining whakapapa through the exercise of Tikanga Māori. (2) Some Māori wished to adopt aspects of Pākehā law, in an attempt to preserve taonga as the culture changed around them, for example, as Māori began to adopt Christian teachings. Pākehā often interpreted the Tikanga system of recompense as violent and disorderly, so sought to dismantle this aspect of Māori culture by replacing it with their own punitive legal system. (25) The Pākehā legal system treated crimes as an individual offence, deserving of individual punishment, which removed the collective or whakapapa based solutions for the restoration of mana. (2)
The colonisers saw the introduction of British Law as a necessity, and an 'inevitable step in the process of colonisation'. (2) Their attitudes and actions towards Tikanga Māori practices ranged from outright dismissal, to active destruction. (2, 23)
There was a fundamental difference in the interpretation of the Treaty of Waitangi between Māori and Pākehā, due to what are considered to be purposely contrived translations of important concepts. (2, 26) Ultimately this led to the 'imposition of one Pākehā law’ which could be seen as ‘a monocultural act that was dismissive of, and damaging to, the ideals of Māori law, Māori sovereignty and Māori cultural survival'. (2) Māori were not formally recognised in the Treaty as having any control or authority in the systems that were being

implemented in Aotearoa, although they signed te Tiriti o Waitangi under the assumption that they would maintain kawanatanga (governorship) of their land, culture and institutions. The Crown would have the authority to control security in the country, mainly those of British subject. (2) The ultimate results of this was the alienation of Māori land; the incarceration of generations of rangatira and whānau and other devastating outcomes for current and future generations of Māori.

5.3 Historical Policies and Actions

Laws that were introduced following the signing of the Treaty of Waitangi had an effect on traditional Māori cultural values, and thus played a part in undermining tikanga Māori. (27) Some of the more damaging and significant acts included the Native Lands Act 1862 and the New Zealand Settlements Act 1863. (28, 29) Laws that targeted land ownership and sale were instrumental in denying Māori of their connection to the whenua and eroded social, cultural and political structures. (2, 24, 30, 31) The Suppression of Rebellion Act 1863 was instrumental in allowing the Crown to confiscate land from Māori who resisted and rebelled against colonisation. The Tohunga Suppression Act 1907 was aimed at traditional healers, as a method to encourage the adoption of Western medical practices. (2, 31) Its wider effect was to undermine the mana of Tohunga, the repositories of cultural knowledge. This resulted in wider adoption of missionary teachings and further erosion of traditional Māori practices. (2)
The Native Schools Act 1867 introduced and reinforced British disciplinary practices, and punished and abused children who spoke their native language at school. (31) Christopher William Richmond was a politician from 1855, and described the intention to destroy the ‘beastly communism of the Māori’. (32)

By 1876 there were 30 minor jails around New Zealand, with a prison population in 1878 of 1,054, held in major and minor prisons, and small 'lock-ups'. (25) Generally the Māori prison population was 3% of the total prison population, with increased during the 1860s due to prisoners of war. There was a large increase in the 1880s due to the arrests at Parihaka, Maungapohatu and other sites of early Māori resistance to colonisation.

5.4 Role of intergenerational trauma

Historical or intergenerational trauma, sometimes referred to as ‘soul wounding’, describes ‘a complex and collective trauma experienced over time and across generations by a group of people who share an identity, affiliation, or circumstance; (33, 34, 35, 36). Kellerman initially used ‘historical trauma’ to describe the experience of children in the Holocaust. (37). Since then, this term has been applied to groups around the world who have had historical experiences of victimisation and oppression, particularly indigenous groups. Historical trauma as it impacts indigenous populations is a direct outcome of the enduring effects of colonisation. In Aotearoa, systems established by the Crown and the colonisers to take Māori land and rights to self-determination have resulted in the development of laws, institutions such as churches, schools, prisons all with the result of pacifying and subjugating Māori to the ongoing multi-generational impacts of colonisation. Pākehā and the Crown were permitted to obtain Māori land, prohibit tikanga practices and punish the use of the Māori language. (2, 31) This ultimately damaged the Māori social structure and belief system that maintained their hauora (holistic health and well-being) and state of balance. (31) Changes in traditional lifestyles, loss of connections with environment, culture and language, and reduced economic and resource stability, have played a role in eroding Māori identities. "These processes exposed Māori to chronic and complex trauma precipitating the development of physical and psychological conditions across

generations." (31) An epigenetic role is also considered to be implicated as historical trauma has been found to lead to ongoing chronic illness. (38)
Farrelly et al proposed that “the trauma of colonisation transmitted, as trauma often is, through generations” and this is reflected in certain statistics about Māori in New Zealand (39). In the present day, the impact of this historical trauma is keenly felt and observed. The outcomes of long histories under colonisation include multi-generational institutionalisation impacting three or more generations of whānau. The manufacture of Māori misery through the confiscation of Māori land by the systems outlined above has created high levels of unemployment, alcoholism and substance abuse, homelessness and a poverty line set so low, it is difficult to envisage a life beyond day to day survival. The daily stress of poverty, homelessness, unemployment, having to front work and income and take jobs paying under the minimum wage impact of the health and mental health of Māori. Hauora Māori is further exacerbated by implicit bias and structural racism in all aspects of healthcare delivery. (40)

5.5 Systemic Bias in the Judicial System

The fundamental tenets of a British law system include individual rights protected by the ideal of impartial application, indivisible justice, and inherent fairness. By continual treatment of a Māori offender as merely an individual, the judicial system as initially applied, failed to acknowledge the traditional Māori system of collective responsibilities, and this has not altered. Māori have been reluctant to believe that attitudes of 'one law for all' despite differing cultures can be justified, as this is not how they traditionally dealt with crime. (2)
Māori and the Criminal Justice System: A New Perspective, He Whaipaanga Hou describes how inequities are normally attributed as an aberrational flaw, rather than a systemic bias. (2) However, Jackson describes that the underlying system that has been applied since colonisation, is operating in a way that is institutionally racist. Rather than only racism on behalf of individuals in the system, the fact that a monocultural system was applied to New Zealand’s once bicultural, and now multi-cultural population and environment is the reason that Māori are overrepresented in the New Zealand criminal justice system.
“I honestly think that Pākehās must stop kidding themselves that their criminal system is fair just because everyone, or every Pākehā, keeps saying it is...it’s their system and it might be fair for them, but it’s not ours and it’s not fair for us.” (2)
Analysis of a New Zealand longitudinal study has found that after controlling for self-reported offending and individual characteristics, young Māori had rates of conviction that were 1.6-1.8 times higher than non-Māori. The results suggest that there exists a small ethnic bias in which young Māori were more likely to be convicted than young non-Māori of the same social background and with the same self-reported history offending. (41)

5.6 Recent Policy

5.6.1 Sentencing and Parole Reform Act 2010

The Sentencing and Parole Reform Act 2010 introduced a system of three strikes sentencing to increase penalties for repeat offenders. (42) Currently 40 types of offence are included in the three strikes law. A first offence issues a first warning and a second offence issues a final warning and the requirement to serve the complete sentence without parole. A third offence requires a sentence to prison for the maximum term of imprisonment for the offence, without parole. (43) A recent move has been made to consider removing this ‘Three Strikes Policy’, however this has not been successful in gaining support in the coalition government. (45)

5.6.2 Bail Amendment Act 2013

A government bill was put forward in 2012 to provide amendments to a variety of legal acts, including the Bail Amendment Act 2000. (46, 47) The intention of this was to 'improve public safety and enhance the integrity of New Zealand's bail system.' (47) This would work by making it more difficult for bail to be granted to defendants who were believed to be of risk to the public, as they had been charged with or committed serious offences.

5.6.3 Private Prisons

The first privatised prison opened in 2000, however the Labour government amended this law to prohibit the privatisation of prisons in 2004. (48) Privatisation was reintroduced under the National government in 2010, and Serco, a British company in the private sector, was contracted to run Mt. Eden Prison (Auckland Central Remand Prison). Operation was returned to the Department of Corrections in 2015 and Serco was required to pay damages to the government due to issues relating to poor management. Auckland South Corrections Facility is a privately run prison in Wiri, Auckland, which opened in May 2015. It operates under a 25 Year Private Public Partnership contract between the Department of Corrections and Serco. It is subject to the Corrections Act 2004. (49)

5.6.4 Criminogenic Needs Inventory (CNI) and Māori Culture-Related Needs Tool (MaCRN)

The New Zealand Criminogenic Needs inventory (CNI) was developed by the Department of Corrections with the goal of reducing reoffending. (50) Intervention is targeted at individuals who are classified as having the greatest risk of reoffending. The CNI assess specific factors, such as propensity to violence, alcohol and drug use, impulsivity, gambling, and association with other criminals, during time frames around the committed offence. . This is used to rank the severity of the risk of re-offense to allow the Department of Corrections to decide on interventions designed to reduce and prevent re-offending or recidivism . In addition, the Department also identified the need for a Māori Culture Related Needs tool, which includes needs that are specific and related to being Māori in New Zealand, that have potential to increase the risk of reoffending if they are not addressed.
A Waitangi Tribunal found that the development of the MaCRN without the consultation of Māori communities was a breach of the Treaty. The principle of partnership as outlined in the Treaty would indicate that consultation with Māori groups is vital, as they have a special interest in the use of Māori culture to prevent reoffending among Māori people. The Tribunal also recommended independent expert evaluation of the MaCRN tool, as there was limited evidence about the risks of increasing prejudice in the judicial system. (51) The findings of Tu Mai te Rangi recommended that the approach to risk rating for Māori be reworked on grounds that the MaCRNs tool would produce an elevating risk rating for Māori leading to the potential for higher risk rating and harsher sentencing (3, 24).

6. Social Determinants of Offending

There are multiple factors driving offending in the Māori population. These factors can be broadly referred to as the social determinants of offending This section attempts to examine the links between these factors and incarceration. Some factors that have been specifically linked to crime in indigenous populations were highlighted by the Report of the Royal Commission on Aboriginal Peoples (1996) in Canada. (52) The report included themes of economic and social deprivation, alcohol and substance abuse, intergenerational cycles of

violence, breakdown of cultural familial units through institutionalisation and removal of children from their own homes, loss of traditional values, and overcrowded and substandard housing. Although these were analysed in the context of Canadian colonised indigenous peoples, these themes are also consistently present within a Māori context. In particular, the impacts of colonisation on the drivers of incarceration are applicable to Māori. This section looks at the drivers of incarceration experienced by Māori and other indigenous populations, as well as high risk factors for offending in the general population in order to better inform change and prevention. This understanding will be further informed by the perspectives of Māori gained from the interview and survey data.

6.1 Poverty

Individual and community economic hardship has been particularly well-identified in contributing to the overrepresentation of indigenous youth in the criminal justice system across several colonised indigenous populations. (53) In addition to New Zealand Māori, these populations include - but are not limited to - Indigenous Australian Aboriginals and Torres Island peoples, Indigenous Canadians, Native Americans and Native Alaskans. The conditions of poverty inflicted by colonisation are shared by these indigenous populations. This economic deprivation is further associated with increased rates of offending on both individual and community levels. (54) There is a multitude of literature examining the relationships between criminal offending and low socioeconomic status. Specific measures of poverty such as low-income, unemployment and low education hardship are consistently correlated with increased rates of offending. (54) The causation behind this has been the focus of much of the literature, specifically in attempting to determine whether poverty is a direct causal factor for offending or whether it is more indirectly influencing other aspects of an individual's motivations or sociological understanding of how they may move through society. This section will explore how poverty may lead to offending behaviors and hence incarceration as a response to inequitable social determinants of health in Māori.

Māori are disproportionately represented in low-income and unemployment data. Although Māori unemployment has slowly crept downward from 11.4% in 2016, 9.6% of Māori are still unemployed as of 2018. (55) This is compared to only 3.8% of NZ Europeans. (56) Māori and Pacific individuals are also over-represented in statistics suggesting that their income is too low to support them and their whānau, being less likely to report that they perceive their income to be 'adequate' or 'in excess' of meeting their everyday needs, especially when compared to NZ European and Asian populations. Low income and unemployment issues are more frequently generating pressures for Māori than for Pākehā, and these statistics represent a clear disparity in the disproportionate amount of Māori living in poverty. The injustice of these large differentials in socioeconomic status was acknowledged in the Crime Prevention and Indigenous Communities: Current International Strategies and Programmes Report (2003). In particular, they acknowledged that these disparities persist in the face of the agreements stipulated in Te Tiriti O Waitangi, which states that 'the Crown must recognise the rights of Māori, and ensure that they progress in the same way as other New Zealanders'. (52)

Survival-Based Offending

The 'Economic Model of Crime' (57) implies a directly causal relationship, where crime results when economic resources are not available to an individual in the absence of stable employment and income. Illicitly profitable activities such as drug distribution, burglary and participation in underground markets may be utilised at a risk deemed less significant than the potential gain relative to their impoverished situation. (54) In the case of 'financially

prosperous' communities, the consequences of conviction represents too much to lose. (58) For those in poverty, however, the risk may seem relatively small compared to meeting individual or whānau needs (58), and thus the decision-making process is a rational one in which the individual analyses the risks and benefits involved in committing a crime that may enable them to secure short-term income or resources. (57) Anecdotal examples of this would be a parent stealing food from a supermarket to feed their family, or an individual selling illicit substances to pay off debts or bills. This direct/causal relationship was well illustrated when public assistance payment schedules or benefit systems across 12 different US cities were observed to assess whether fluctuations in payment or the gaps between payment would correlate with increased property crimes of economic gain. (59) In line with the economic model of crime, property offenses increased as the duration from last benefit pay-day got longer, while other types of crime not involving economic gain (violent crime, rape, homicide) do not fluctuate cyclically with the payment schedule. (59) Other studies in the US have shown that modest supplements to benefit payments for reoffenders reduced subsequent recidivism (60). Although these are criminal activities, the intention is *survival-based* and not inherently anti-social or violent in nature. This evidence convincingly argues that poverty and economic deprivation is more causally linked to relatively minor property crimes (as opposed to white-collar crimes) than to violent or anti-social offenses. (61)

Self-Control Characteristics, Cognition and Social Behaviours

To some degree, poverty has been argued to influence offending behaviour with regards to hindering childhood development of self-control characteristics and cognition. (62) Characteristics of poverty, such as joblessness, reduced educational levels and quality, and pressures associated with dissolved familial structures tend to be the aspects of poverty that most directly contribute to these risk factors for offending. The 'Self Control Theory of Crime' links the inability to self-moderate behaviors that may provide short-term benefits despite long-term detriment to involvement in crime, poor relationship development and anti-social behaviours. (63) The self-control theory argues in favour of prevention as the most promising approach to crime reduction, particularly during early childhood development. (63)

The impact of poverty on young mothers and their children in the context of accessing New Zealand social services and benefit-payment schemes was examined in the government's recent Something's Got to Change: Insights from Mothers Report (2018) and literature review released by The Ministry for Women. The themes that emerged from this report consistently showed that the current services available to mothers were not adequate enough to provide good nutrition, and negatively impacted upon their stress levels, self-perceived parenting skills and their physical home environments. Furthermore, mothers were frequently dealing with mental and physical health concerns and generally found navigating existing government services 'difficult, challenging, and non-transparent'. (64) This illustrates the persistent pressures exerted on young mothers living in poverty, and highlights an area for intervention where long-term outcomes for both mothers and their children could be improved and the cycle of intergenerational poverty may be reduced. (64) The rates of teen pregnancies amongst Māori have given rise to efforts to develop Māori specific responses that place collective child-rearing as part of whānau ora programmes. (65) There has also been extensive research conducted on Te Pa Harakeke, Māori models of parenting in context of whānau in contemporary times, based on Tikanga based metaphors and practices. (66, 67, 68)

Frustration-Aggression Offending in Response to Poverty, Marginalization and Racism

An alternative motivation to offend may also be borne out of 'frustration-aggression crime', where individuals respond to the pressures of marginalisation and racism that are thoroughly 'entrenched by poverty, poor schools, violent neighbourhoods" and familial dysfunction/dissolution. This type of (61) offending can be extended to acts of Māori political activism and resistance-based offending where this intentional behaviour is used to shift political policy and attitudes. However, this often makes these individuals vulnerable to incarceration for advocating change. The most salient example of this is the arrest of 8 protestors in the now infamous 2007 Tūhoe Terror Raids. (70) The psychological scars left in the community of Ruatoki and the trauma outcomes that continue to impact the mokopuna who were subjected to the use of undue force by police in full riot gear who boarded the Kōhanga Reo bus brandishing guns, has major impacts for many of the babies and children on the bus that day. This is one contemporary example of the ongoing legacy of colonisation and historical trauma. The significance of the terror raids is that the same tactic was used by the colonial militia in the break-up of the community of Maungapōhatu, under the leadership of peaceful prophet Rua Kenana/Mihaia/Messiah. (71)

From the available literature it seems that poverty is linked to offending through a complex series of both direct and indirect causal relationships, where pathways of influence such as children's social exposures, neighbourhood characteristics and schooling may combine in the context of individual and community poverty to increase the likelihood of offending and crime. (72, 73) The combination of greater incentives to commit property crime, criminogenic relationship networks, reduced opportunities and altered developmental trajectories throughout the life course of those in poverty arguably provides significant risk factors for offending and highlights opportunities to intervene.

6.2 Institutionalised Childhood Trauma and Childhood Development

In traditional times, Māori mokopuna and tamariki were cherished and raised within context of multigenerational systems of child rearing that included key roles for grandparents. (74)

There is a direct association between colonisation, inter-generational historical trauma and the current levels of Māori incarceration (ref. (75, 76) The psychological implications of trauma
are evident in all Indigenous cultures affected by colonisation. Inequities in education, employment, poverty, addictions, metal health, suicide, crime, & prison statistics are comparable across Indigenous cultures affected by colonisation and are indicators of suffering. Historical trauma traverses multiple generations disrupting traditional systems of child welfare systems that were once anchored in the relationships of whakapapa in which the entire whānau and hapū were concerned with the wellbeing of every person within the cultural collective and child rearing was shared amongst the cultural collective. (77)

The link between a particular type of indigenous trauma referred to as historical trauma has been shown to traverse generations, thereby having contemporary impacts on the mental health and well-being of indigenous populations. (78)

6.2.1 Intergenerational Trauma

Intergenerational trauma was developed to explain the historical impacts of the holocaust on Jewish families. It resonated with indigenous populations and was applied to scholarship on the impacts of historical trauma (from the enduring processes of colonisation). (33, 79) The association between historical trauma and the impacts for subsequent generations (i.e. the

grandchildren of survivors of the holocaust who have some of the highest rates of diagnosed mental illness in the world) lend weight to the idea that unresolved suffering and trauma in one generation, impacts on subsequent generations. Moreover, that the specific impacts of colonisation can be analysed using theories that derive from the scholarship on historical trauma. (80)

6.2.2 Whānau Disruption

The disruption of whānau is a direct outcome of the levels of incarceration, institutionalisation and other forms of social control which is a product of colonisation. In a traditional analysis, whānau is the core unit of Māori society. It is a collective entity that extends way beyond the limited boundaries of western conceptualisations of the nuclear whānau. The capacity of whānau to care for whānau members was destroyed during the time of colonisation. The realities of colonisation, incarceration including the use of institutions (Boys and Girls Homes to house wards of the state from 1950-1980) and other roles of the government and its agencies who have been uplifting Māori babies and children and putting them into stranger care in foster homes since the time of colonisation. Sixty five percent of Māori children in state sponsored foster care are in stranger care, not with their whānau. (81) The whole system becomes self-perpetuating and is a direct attack on whānau.

6.2.3 State Care Abuse

The institutionalisation of 100,000 predominantly Māori children who became abused in state care as wards of the state is a direct outcome of successive New Zealand government responses to Māori from the time of colonisation. Lawson-Te Aho (1993) argues that the systemic use of western based knowledge systems like psychology to abnormalise, pathologise and criminalise Māori is itself tantamount to the violation of Te Tiriti o Waitangi and part of the continuing strategy of colonisation. (82)

6.3 Mental Health and Substance Abuse

The recent inquiry into the mental health and addictions sector has highlighted the differential treatment of Māori and the use of Western psychology and psychiatry to harm Māori and other indigenous populations. Māori are disproportionately over-represented in admissions into mental health services in Aotearoa/New Zealand. The pathologising of Māori as mad (in need of mental health care) sad (suffering from depression) and bad (criminals) is grounded on racial profiling and the assertion of negative stereotypes of Māori. (84) This is part of the long use of western conceptualisations of what constitutes mental illness, behaviour and offending in a very negative light. Mental illness including suicide has been rising for Māori.

7. Modelling Forces Driving Incarceration of Māori

As illustrated by the incarceration inequalities outlined in 1.3, the current justice system is driving increased Māori incarceration rates. Two key literature-based themes arose to explain the over-incarceration of Māori. These themes are included in the Over-Representation of Māori in the Criminal Justice System Report (2007). (85)

> *'that bias operates within the criminal justice system, such that any suspected or actual offending by Māori has harsher consequences for those Māori, resulting in an accumulation of individuals within the system; and*

that a range of adverse early-life social and environmental factors result in Māori being at greater risk of ending up in patterns of adult criminal conduct" (p.4)

These two broad themes - of justice-system disparity and socioeconomic disparity - were illustrated throughout the literature leading to increased rates of Māori incarceration and reoffending.

We mapped these interactions using a model framework usually utilized to represent international migration flows of specific demographics. This model deals instead with the factors driving movement of the Māori demographic between society and the justice system.

'Push factors' in this model are characteristics of socioeconomic disparity that may drive Māori into survival-based as well as anti-social or resistance-based behaviours that lead to offending, while 'Pull factors' are those of the justice system that actively draw Māori into incarceration and disproportionately address Māori offending with increased severity relative to their offenses,.

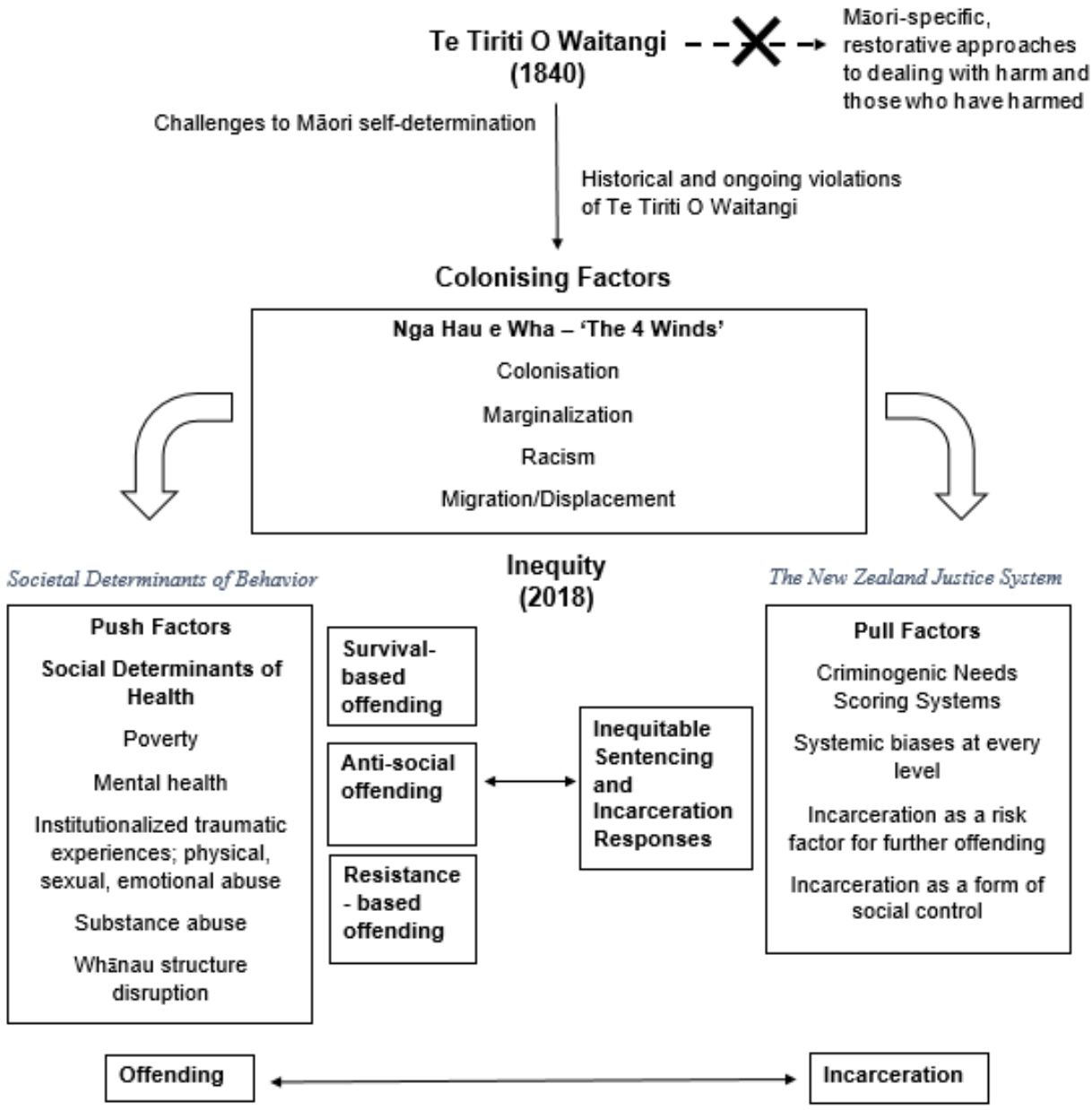
The 'adverse early-life social and environmental factors' referred to in the Over-Representation of Māori in the Criminal Justice System Report generate the disproportionate 'push' to offend. (85) This is the outcome of modified social determinants of health (such as poverty, mental health, substance abuse) as a consequence of a long colonial history of marginalisation, racism and rural-urban migration. These factors are referred to in our model as 'Nga Hau e Wha'. Nga Hau e Wha represents the colonising forces that present challenges to Māori health and well-being, and have relationships with both the social determinants of health and the inherent bias and accelerated accumulation of Māori in the criminal justice system. The concept of Nga Hau e Wha has been adapted from the Meihana Model, which is a clinical assessment framework that incorporates Mason Durie's Te Whare Tapa Wha Model to illustrate the challenges to and aspects of health of Māori in their cultural context. (86, 87, 88) In this way, we aim to create a model that utilises Māori scholarship to conceptualize an issue impacted by these same colonizing factors.

7.1 Push-Pull Model: Driving Forces Leading to Inequities in Māori Incarceration Rates

The model is intended to illustrate how our societal ecosystem is inherently conducive to producing disparities in Māori incarceration by the New Zealand government, and the forces that drive this in the historical context of the colonisation of Aotearoa. This will be considered our 'prototype' model for the research. This model could however be much further developed and contextualised beyond the existing literature through analysis of several Māori perspectives from our interview and survey data. Using this information, the analysis team may produce a model which more appropriately contextualises the 'lay of the land' with regards to incarceration of Māori in order to better understand and address this disparity. urrent literature regarding prevention of offending and the modification of western justice-system models have also been researched in this literature review. The efficacy of prevention through addressing 'push factors' such as poverty will be addressed in Section 7, and the evidence for alternatives to incarceration in the current justice system will be addressed in Section 8.

This model emphasises the context of these interactions between society and the justice-system for Māori - as ultimately influenced and shaped by the challenges of historical and current colonising forces. It integrates the findings from our literature review as well as the opinions of influential Māori consulted during the research process. Terms used by key stakeholders such as Eugene Ryder's expression of 'survival-based offending' (11th July, 2018) and Dr Moana Jackson's description of restorative ways of addressing 'harm and those who cause harm'(12th July, 2018) were adapted to reflect the context of Māori incarceration as it relates to Māori.

Push-Pull Model: Driving Forces Leading to Inequities in Māori Incarceration Rates



This model can be useful to compare the experiences of Pākehā and Māori in the current New Zealand context. Pākehā individuals may also experience 'push factors' from the social determinants of health, however this *disproportionately* affects Māori, thereby inequitably 'pushing' Māori toward behaviours (whether survival-based, resistant or anti-social in nature) that lead to incarceration. The different natures or motivations behind offending were stratified into these three categories to illustrate the complex pressures driving Māori offending. 'Survival-based' offending refers to criminal behaviours for which the motivation was borne out of living in poverty or attempting to provide for whānau. 'Anti-social' offending refers to violent or inappropriate behaviours in which factors such as childhood trauma, mental health and substance abuse may lead to a reactionary type of offending. 'Resistance-based' offending describes the context in which Māori political activists openly respond to the pressures of marginalisation through actions that render them vulnerable to police action, and incarceration

on grounds of rebellion and law breaking. The causative aspects that drive Māori offending are further examined and the concept of incarceration as a response to inequitable social determinants of health was discussed earlier in section 5.

These driving forces toward incarceration are further amplified by the 'pull factors' which are specific to Māori ethnicity and therefore not a challenge faced by Pākehā who offend. Examples of this include the systemic biases evident at all stages of the justice system, with disproportionality evident in police apprehension figures, prosecutions, conviction, sentencing and reconviction figures. This results in the accumulation of Māori and amplifies whatever real rate of criminal behaviour is generated by early life environmental influence and socially determined risk factors. (85) With young Māori being 1.6-1.8 times more likely (41) to be incarcerated than Pākehā for a similar offence, the 'pull' of the justice system as a driving force for imprisonment is evident. The impacts and mechanisms of ethnic bias within the judicial system is more thoroughly examined in section four.

8. Evidence-Based Strategies to Prevent Offending or Assist in Reintegration

The literature emphasises two main evidence-based strategies to prevent Māori offending and support reintegration. The first of these is **mitigating the drivers of crime** through preventative strategies, and the second is **reducing the degree to which incarceration actually predisposes an individual to reoffend.** Other alternative approaches include the abandonment of imprisonment for most except serious offenders. These will all be discussed in the following section of the literature review.

In addition to the disproportionate number of Māori initially offending as a result of the drivers of crime, Māori Prisoners have been found to consistently have a higher level of recidivism than non-Māori, and that there is a strong presence of intergenerational recidivism amongst Māori. (90) Existing rehabilitation programmes were also found to be less effective for Māori. (90) Ultimately, this illustrates an unmet need to facilitate societal reintegration, and in fact appears to further isolate Māori and reinforce those behaviours that lead to incarceration in the first instance. Given the high rates of reoffending amongst Māori it is important to examine alternative options or approaches that may more effectively reintegrate Māori offenders into society in such a way that recidivism is minimised following an interaction with the justice system, instead of being a further driver for reoffending.

8.1 Targeting High-Risk individuals in Prevention of Offending and Recidivism

A study of the Washington Justice System analysed the efficacy of a variety of interventions in preventing offending. The strategies found to either increase offending and recidivism or have no positive impact included those that broadly reinforced isolation, punitive approaches and monitoring without a therapeutic angle. These included adult boot camps, intensive supervision in surveillance oriented programmes, and jail diversion for mentally ill offenders. (91) These could be considered 'bottom of the cliff' approaches. Preventative approaches however were the most successful and effective in rehabilitation and prevention of recidivism in the review. The review concluded that a preventative approach where early identification of high-risk individuals guides interventions prior to offending is considered most effective. This sentiment was shared by the Report from the Department of Corrections to the Minister of Corrections (2001) (92):

'The high representation of Māori in high-risk groups provides a way of targeting rehabilitative services at Māori offenders. If high-risk cases are considered for inclusion in rehabilitative programmes first, up to 70 percent of resources will flow to Māori offenders which will not only reduce imprisonment of Māori but also over-representation.' (p.55)

This section of the literature review will focus on a combination of indigenous and western strategies that may be used to intervene early or prevent incarceration as an outcome for young Māori living with specific risk factors or social determinants of health.

8.2 Poverty

The strategies aimed at poverty include reducing the degree to which Māori families are impoverished, and furthermore developing programmes to mitigate the likelihood of offending and incarceration where poverty remains a risk factor. Youth-oriented programmes are significantly more effective than adult offender programmes, (90) and so youth crime prevention will be the main focus of this section of the literature review. The strategies used to reduce poverty impacting Māori incarceration will require significant policy change and governmental investment in the socioeconomic well-being of Māori, through addressing measures of poverty such as unemployment, income levels and education. In addition, there is support for redesigning the justice system to address injustices that lead to Māori being imprisoned at a much higher rate than Pākehā. (2, 4, 5)

In addition to these interventions - which attempt to address the symptoms of social marginalisation, racism and systemic injustice, the Mauri Ora Report (93) emphasises the importance of ultimately deconstructing the ongoing forces and processes of systemic racism and bias that pervade institutions and social dynamics, in order to truly improve and alleviate the social determinants of health for all Māori. This includes the necessary acknowledgement and modification of historical and current colonising factors that continue to impact negatively upon collective Māori well-being. (94) The report acknowledges a similar ethos shared by the Australian Aboriginal population, which states the necessity to address the root causes of inequities in order to alleviate them (94):

' To ignore, or worse, to deny that history is to obfuscate the origins, causes and nature of a current problem and to forestall any possible alleviation." (p.16)

In the United States, the Washington Justice System Review found that programmes that addressed education levels and socioeconomic development at a community level were more effective in reducing crime outcomes for the affected populations (91). These preventative initiatives included providing specialised preschool education for low-income 3-4 year-olds, promoting and helping low-income teenagers achieve high-school graduation, and investing in the generalised social development of the community in which a young person is brought up. The Whakapono: End Child Poverty in Māori whānau preliminary report explored solutions that would support 'family life-cycle transitions, and increase the possibility of healthy, happy children', in the context of envisioning a future without child poverty and disproportionate youth incarceration within Māori whānau. (95) The report highlighted the following recommendations as instrumental in addressing child poverty and also meeting obligations to Te Tiriti O Waitangi:

- Adequacy of tax credits and welfare benefits

- Support for good parenting beside the availability of high quality childcare and after school care
- Fair pay and accessible work opportunities
- Affordable, safe healthy housing
- Improved access to healthcare
- Improved access to education

Varied approaches to combating the cycle of poverty have been employed by Māori organizations such as Whānau Ora, which is a cross-governmental organization comprising of Te Puni Kōkiri, the Ministry of Health, and the Ministry of Social Development. (96) Te Puni Kōkiri specifically advises the government ministries on policy and Māori issues in social development, and focus on the development of tikanga and te reo use within Māori whānau and communities. They have developed initiatives such as Taiohi Ararau (Passport to Life) and Te Ara Mauwhare (Pathways to Home Ownership), which provides education and employment assistance for Māori to support their career trajectories and the betterment of the quality of life for them and their whānau.

Other programmes such as the Māori Business Growth Support Fund, and Te Pu Harakeke Fund provide financial opportunities for Māori-led social development at the levels of whānau, hapu and iwi. whānau ora providers and programmes are available throughout Te Tai Tokerau, Tamaki Makaurau, Waikato-Waiariki, Ikaroa-Rawhiti, Te Tai Hauarau, and Te Waipounamu. The He kai kei aku ringa Fund also acts to support the vision and goals of the He kai kei aku ringa Strategy, which is also known as Crown-Māori Economic Development Strategy and commenced in 2012. He kai kei aku ringa means ‘providing food by my own hands’, which has become a metaphor for the ‘resilience and economic self-determination’ of Māori. (97) The overarching aim of the strategy is to increase the Māori median income by 20% from $26,500 to $31,800 by 2021, and aspires for a ‘productive, innovative, export-oriented Māori economy driven by whānau’. (97) In this way, Māori are working towards self-determining their economic future. However, vulnerable groups such as solo mothers and children continue to face challenges to their emancipation from poverty.

8.2.1 Māori Mothers and Children in Poverty

A potentially transferable strategy highlighted in the Washington Review was to engage whānau and children from low-income families during their youngest developmental periods by developing mentoring partnerships between families and health professionals. (91) The most successful example of this was the development of Nurse-Family Partnerships (NFPs) with intense visitation by nurses to high-risk, low-income mothers bearing their first child in Washington State. These visits continued for the first 2 years of life to provide follow-up and mentorship. These were found to prevent crime outcomes in both the mothers *and* their children, which may be effective in the case of Māori for whom youth and female offending rates are particularly disproportionate when compared to other ethnicities. The NFP programme could be applied to Māori in a culturally competent manner, where Māori communities and preferably Māori medical or nursing professional staff systematically work together in mentoring partnerships to navigate the first few years of a child’s life.

In the Something’s Got To Change: Insights from Mothers Report (2018), it was identified that Māori and Pacific women who had become mothers at a young age were more likely to be sole parents and living below the median household income in New Zealand. (64) They were also

under-represented in education, employment and training, further highlighting that young Māori mothers and children are particularly vulnerable to low socioeconomic status and the impacts of this on future life outcomes. In this report, mothers from Whāngarei, South Auckland and Gisborne identified some of the forms of support that may help them to overcome barriers to staying in work and training, and provide better outcomes for them and their children. This included reducing the levels of benefit abatement when they find work, paying for childcare costs, and more flexible employment approaches for mothers. The Early Childcare Education (ECE) Support Program - which educates mothers on parenting, life-skills and nutrition - was identified as 'pivotal' for the mothers, but suggested that extending to 20 hours free for all under three-year-olds would help significantly, because childcare costs continue to rise.

Another strategy highlighted in the Washington Review to reduce crime outcomes in youth looked at addressing recidivism in young offenders. The specific intervention found to be moderately successful in the review was the use of Functional Family Therapy (FFT), where a trained therapist works with a young offender and their family for three months to look at setting up employment opportunities and facilitating reintegration in a positive way. This has been found to have a modest impact on reducing recidivism (6, 91). When integrated within their whānau context, a combination of Māori-centered preventive and remedial approaches may have significant positive outcomes for young Māori. In the case of Māori, however, indigenous scholars assert that any and all such strategies need to be weighed against the larger context of ongoing colonisation factors and the need for systemic and societal changes rather than just short-term programmes that may dissect the whānau collective (K Lawson Te Aho, 26th July 2018). It is particularly important to acknowledge that designing intervention programmes for Māori children out of context of their whānau and other cultural collectives would be ineffective. As with other indigenous and collectivist cultures, to recommend ongoing application of purely western-oriented strategies would be a continuing imposition of westernised psychosocial remedies to western-inflicted problems - without success.

8.2.2 Policy in Māori Social Development

Other current policy working towards closing the socioeconomic disparity between Māori and non-Māori in New Zealand were highlighted in the Report on Crime Prevention and Indigenous Communities: Current International Strategies and Programmes (2003) (52), broadly categorised under the Closing the Gaps Report (2000) strategy. (99) The five key principles of the Closing the Gaps strategy are: Recognition of rights and protection of Māori under te Tiriti o Waitangi, Māori development, Capacity Building, Closing the socioeconomic gaps between Māori and non-Māori and Tracing the outcomes of expenditure on Māori. The interventions included general programmes such as the Community Development Group and Grant Scheme, and the Youth Worker Training Fund - both of which aim to mobilise and empower communities to improve socioeconomic well-being and flow on to reduced offending and incarceration in these communities.

Policy that aims to promote Māori development such as the Ministry of Māori Development Act (1991) (100) states that all sector departments such as health, housing, education, employment, justice, welfare, and business and enterprise development must report Māori expenditure outcomes and government must report results to relevant Iwi. Various reports have also been generated discussing socioeconomic development for Māori: Progress Towards Closing the Social and Economic Gap between Māori and non-Māori (1998, 2000). (101) As seems to be the case with many of the reports produced, the recommendations made have

neither been enforced nor sufficiently informed by Māori to be effective in improving the overall socioeconomic nor holistic well-being of Māori.

8.3 Youth Mental Health and Substance Abuse

8.3.1 Mental Health and Substance Abuse in Young Māori

The developmental stage beginning around 14 years of age and continuing to 25 or 26 years of age is described as the 'youth transition age'. (102) This carries a heightened risk for vulnerability to issues that have long-term impacts, including incarceration and recidivism (102). As previously highlighted in this literature review, young Māori are particularly vulnerable to challenging life experiences as a result of racist systemic practices and sociocultural disadvantage actively maintained by historical and ongoing colonising forces. Therefore, young Māori may be over-represented in the group of offending young adults. Furthermore, young adults with a serious mental illness are 2-3 times more likely to become justice-involved than young people without, and are at particularly high risk of reoffending within a year of original offenses (102). This illustrates an opportunity to target services to address the needs of young Māori with mental illness. Characteristics such as living in poverty, substance use, and disconnection with school and work are attributed to the high prevalence of offending by emerging adults (102). Because young Māori in the general population are disproportionately predisposed to these negative social determinants of health and the development of mental health comorbidities, young Māori with serious mental illness may be a group that is currently under-served. Improved access to good-quality mental health services for young Māori before they can reach the stage of offending may therefore effectively reduce crime. However, mental health services that are ultimately informed by a monocultural western framework and the associated values of 'self-contained individualism' will not be conducive to the holistic and collective therapeutic approaches considered more appropriate within a Māori cultural context, as described by K. Te Aho Lawson (27th July 2018).

On this note, indigenous-specific approaches to mental health move away from the 'symptoms of mental distress' and dominantly focus on the persistent and ongoing systemic racism and structural biases, which cause 'fundamental and pervasive' distress to Māori. The Towards Mauri Ora report (93) specifically identified the following *Kāhupo* (risk factors) that sustain increasing rates of poor mental health and suicide risk in Māori:

- Entrenched social structures and dynamics supporting racism
- Ongoing injustice and perceptions of injustice
- Inequality of outcomes
- Resulting sense of hopelessness

The report outlines the requirement for government to focus on ameliorating these preventative factors in the interest of improving Māori mental health and thereby preventing offending and incarceration. The Kaupapa Māori Mental Health and Addiction Services Best Practice Framework also advocates for a holistic, Māori-centered approach to improve mental health outcomes for individual and whānau health. (103) This approach extends beyond intervening at the point where Māori are facing risk factors for worse mental health outcomes in their youth.

The Rangatahi Suicide Prevention initiative under Te Puni Kōkiri works alongside thirty-eight different organizations. Their primary focuses include developing 'tikanga-Māori and whānau-centered rangatahi leadership, building local capacity and capability, and building evidence-based research and evaluation'. (104) These approaches aim to prevent risk factors for poor mental health, whilst better meeting the needs of Māori who are at risk. Te Whānau o Waipareira Trust also produced a literature review which examined models of Kaupapa Māori mental health services, as well as Māori psychological therapy modalities which would cater to the cultural contexts that are currently neglected in favor of the Western norms in therapy and service at a cost to Māori mental health. (105)

8.3.2 Mental Health and Substance Abuse in Māori Offenders

At the point where an individual does offend, taking a therapeutic mental-health and substance-abuse approach as opposed to a punitive approach may better serve young Māori with serious mental illness. The specific intervention identified in the Gluckman Report on youth offending (5) describes and recommends the use of Multisystemic-Therapy for Emerging Adults (MST-EA) following incarceration. In this intervention, previous models for addressing adolescent antisocial behavior were adapted to specifically meet the needs of young adults with Serious Mental Illness. This intervention takes place within 18 months of a recent arrest or release from incarceration, and the measured outcomes of this intervention included the degree of mental health improvement and the rate of re-offence. In the case of Māori, it is important that these services are employed within the context of young Māori and their cultural and whānau collectives in order to be effective. Furthermore, MST does not address the cycles of violence and abuse that exist within whānau as a result of the intergenerational ramifications of historical and ongoing trauma.

8.4 Addressing Social Determinants of Health in Māori Offenders and Young Māori

With regard to effective reintegration and rehabilitation of offenders, New Zealand has established an 'Integrated Offender Management' system which attempts to provide rehabilitative services. These have been shown to reduce the expected incidence of re-offending 12 months later by 10-15 percent (92), but do not currently have a sufficient focus on addressing the improvement of socioeconomic status, mental health needs, substance abuse concerns, or cultural sensitivity in Māori youth. The Department of Corrections identified the opportunity to target high-risk Māori in order to address incarceration disparity in the About Time Report. (92) At this time, Māori made up 51% of the prison population. As of March 2018, the Māori prison population sits at 50%. This suggests that among the many proposed interventions, targeting high-risk Māori was not effectively implemented and requires re-evaluation and improvement.

9. Indigenous and Māori-specific Strategies to Prevent Offending and Assist in Reintegration

Te Puni Kōkiri identified in 2011 that the current policy approaches to reduce crime do not come from a Māori world view or are easily translatable to Māori settings, and failed to meaningfully reduce the over-representation of Māori within the justice system. (106) In terms of prevention, this has been attributed to many factors, but most specifically the failure to address 'social, economic and intergenerational issues for whānau and Māori communities that drive offending'. (106) Although the previous sections look at strategies implemented

elsewhere to target factors such as poverty, mental health, substance abuse, and institutionalized trauma - these evidence-based interventions have not been specifically implemented for the Māori population in a Māori context. Te Puni recommended five key operational directives to improve efficacy in addressing the 'Drivers of Crime' (106):

- A flexible funding approach
- whānau-centered services and interventions consistent with whānau ora
- Hard to reach whānau/communities given particular focus
- Implementation approaches varied to suit local context
- Action at policy and practice levels to address community and systemic factors

These elements of a strategy to prevent crime tie into the key themes of appropriate and successful responses to incarceration over-representation also used by other indigenous populations. There were a series of values highlighted in the Report on Crime Prevention and Indigenous Communities: Current International Strategies and Programmes (2003), looking at initiatives and approaches among multiple different indigenous communities such as New Zealand Māori, Australian Aboriginals and Canadian Natives to reduce crime. (52) The most prominent themes were the following:

- Community Involvement
- Self Determination
- Empowerment
- Restorative Justice

Although it is important to acknowledge the unique mana of each of these indigenous populations, these themes are considered necessary to improve the quality of life of indigenous communities around the world by supporting actions for self-determination. (84) Self-determination or *Tino Rangatiratanga* supports the proposition that indigenous communities are best placed to develop their own responses to the issues that confront them. Moreover, the Declaration on the Rights of Indigenous Peoples (107) and Te Tiriti o Waitangi (26) as well as domestic Treaties in Canada, the United States legitimates the principles and practices of self determination as a duty and obligation on all settler, colonial governments to support. There therefore needs to be the relinquishing and return of rangatiratanga to Māori in order to comprehensively address the drivers of offending, vulnerability and victimisation in these communities, described by L. O'Connell-Rapira on 27 July 2018.

9.1 Iwi Strategies

The Iwi Led Crime Prevention Plan (ILCPP) written in 2011 was contributed to by Te Runanga O Ngāti Whātua, Auckland Police and Te Puni Kokiri, and made recommendations to prevent crime in young Māori living in Auckland. The premise of the ILCPP is the idea that 'a reconnection to traditional Māori values and social structures is at the heart of reducing Māori participation in crime'. Three strategies for crime prevention were identified. These strategies included Tikanga-based prevention, education-based prevention, and a restorative justice approach. (108) As this section focuses primarily on preventative strategies, the nature of a restorative justice approach is discussed more thoroughly in 9.2.1.

9.2 Tikanga Based Prevention

The Tikanga-based prevention strategy looks at the purpose of tikanga as a series of guiding principles or a set of firmly enforced and shared values, so that 'self-management' and 'self-moderation' by Māori are made more achievable by engaging with culture on a whānau and individual level. The ILCPP argues that consumerist media influence and ongoing ramifications of systemic and institutionalized racism within government and media have disseminated and dissolved once strong Māori values and whānau units. (108) Furthermore, they suggest that the re-establishment of tikanga and reo in Māori communities and whānau will reduce the 'construction of deviance' in young Māori and improve cohesion of Māori whānau.

The ILCPP further explains that tikanga can be expanded to mean processes toward a certain outcome or plan, and that the adoption of Māori-guided tikanga in homes, schools and workplaces will help to strengthen whānau ora for Māori and all of society, leading to reduced criminal outcomes for Māori. It is suggested that the media could be utilised by Māori to positively shape and promote the use of tikanga and Māori values in their daily lives.

9.3 Education Based Prevention

In terms of an education-based prevention programme, the ILCPP recommended increasing the number and intensity of school-based programmes to provide the earliest and most effective impact for young Māori in reducing their likelihood of offending and incarceration. (108) Iwi-led initiatives in schools - with the involvement of social trainers, kaumatua and kuia, mentors, and tuakana-teina programmes - would 'build the social and moral character in Māori children' and create pride and knowledge within young Māori that their potential exceeds that of inevitable imprisonment. This approach is believed to help to ameliorate the social drivers of crime and have a greater likelihood of sustainable success and well-being for young Māori. The ILCPP envisions an alternative to the currently ongoing colonising forces at all levels of education. They aspire for the educational environment to be 'a vehicle for enlightenment' (ref) that ultimately facilitates Iwi driving young Māori toward a fulfilling life. (108)

9.4 Kaupapa Māori Dispute Resolution and Restorative Justice

Models of traditional dispute resolution exist across many indigenous cultures. Examples include healing and sentencing circles seen in Canada, and family group conferencing as a more appropriate response to young Māori offenders . The inappropriate nature and ultimate failure of Western justice systems in these colonised societies has led to increasing discussion and interest in the re-emergence of indigenous-led **restorative justice** as opposed to punitive justice. This perspective seems to be shared by Māori and will hopefully be elucidated further by survey and interview data. This view is shared by the ILCPP, which argues that it is necessary to look at redefining crime, but providing compassion and understanding in cases of offending driven by 'social dysfunction and high stress'. (108) This would be an alternative to a 'diversionary' or incarcerative response, for which the seriousness of any violence and previous history is used as criteria for its inclusion in the management of an offender, as

opposed to the default. In this way the focus is one in which offender and victims may potentially confront and reconcile the offending with each other if appropriate.

This Māori-led approach to prevention of crime may be summed up well by this passage from the ILCPP (108):

'[The justice system] system perpetuates the lack of personal accountability that tikanga requires. We must reintroduce personal, whānau, hapū and Iwi responsibility and accountability. Shame must be acknowledged and used to manage and deter anti-social behaviour. But there can be no shame where there is no pride in self or respect for self. A long programme of education is required so young Māori come to know they are special and tapu, as is everyone else they love or might harm.' (p.33)

10. Direct Alternatives to Incarceration

10.1 Policy based

10.1.1 Bail Amendment Act 2013

The Bail Amendment Act 2013 made it harder for defendants convicted of serious offences to be granted bail, and it was predicted that this would increase prison beds by 45 to 50. (46) However, the Prison Population Forecast 2015-2025 noted that there has been an increase in the use of remand across a range of offending, rather than only the serious offences specified in the Bail Amendment Act 2013. This has lead to an increase in prisoners of about 1500. (110) In September 2013, 18.8% of prisoners were on remand, compared to 31.1% in March 2018. (6, 111) Because Māori are disproportionately represented in the prison population, it can be extrapolated that Māori will also be disproportionately affected by this application of the Bail Amendment Act 2013. JustSpeak, a youth justice organisation, has recommended that the Bail Amendment Act be applied as originally intended, rather than going forward with plans for a new prison. There is also a recommendation to cater for more housing situations such as hostels when considering bail, to help decrease the number of prisoners on remand. These recommendations provide an alternative to increasing prison beds. (112)

10.1.2 Sentencing and Parole Reform Act 2010

The 'Three Strikes' bill took effect on 1st June 2010. Offenders convicted of the offences in the bill receive a strike warning. The offences included are serious violent or sexual offences and have a maximum sentence of 7 years or more. The second strike makes parole unavailable, so offenders must serve the full sentence. Committing a third strike offence results in the maximum sentence being imposed without parole. (44) A system such as this increases the prison population, as it is proven that increasing the severity of punishment does not increase the deterrent effect. Reviewing this bill and potentially scrapping it may help to reduce incarceration. (113, 114)

10.2 Changes to Prison systems and policies

10.2.1 Punitive vs Rehabilitative Approach

In New Zealand, two thirds of people in prison have addiction problems, and as many as 90% have literacy problems. (115) These statistics partly explain New Zealand's high rate of

recidivism, and show the need for better rehabilitation for people in prison. Currently there are two avenues for rehabilitation within prisons; reintegration programmes and rehabilitation. Rehabilitation programmes can be motivation focused or offence focused. However, a review of effectiveness these programmes had decreasing effectiveness and cost effectiveness with increasing age, suggesting that we should focus these programmes to youth offenders. (116)

An alternative that emphasises rehabilitation and reintegration is the use of Management Courts. Management Courts consider each offender's case individually, and come up with a plan for punishment as well as rehabilitation. This could include community work, and alcohol and drug addiction support. The concept of a New Zealand Management Court was suggested by Greg King, a criminal defence lawyer who studied similar models in the United States. (117) These strategies have cultural implications for Māori as they are derived from the same system that drives up injustices in Māori incarceration.

Reintegration strategies in New Zealand are currently not adequate, with only 2 halfway houses being funded by Corrections. Other organisations such as the Salvation Army provide accommodation options too. (118) Ineffective reintegration to society leads to higher rates of recidivism. A reintegration strategy used in Finland is supervised probationary release, which involves setting goals for a prisoner while they are still in prison. There are also plans made and information given about housing and employment. A probation officer supervises the prisoner once they have been released from prison and support them to abstain from drugs and alcohol. (115) Maori made up 51.4% of reconvicted offenders in 2015. The reconviction rate at 12 months was 45.5% in 2015, compared to 31% for the Scandinavian countries (Denmark, Finland, Iceland, Norway and Sweden). (16, 119) These statistics show a need for better reintegration and rehabilitation in the New Zealand justice system, and Scandinavian countries provide successful and workable alternatives which may be applied here.

Scandinavian countries take a rehabilitative approach to imprisonment and have the lowest rates of incarceration in the world. A restorative justice principle is used, meaning rehabilitation is the focus rather than punishment. Prisons are human rights focused and are only used for the most serious offences. A life sentence means about 15 years, so prison sentences are generally shorter. Alternatives to prison that are readily used are monetary fines, community sanctions and formal warnings. (120) Over a 13 year period, there was a 28% reduction in people sentenced to prison in Finland by diverting offenders into community based alternatives. (121) Mediation is also used, with settlement removing a need for prosecution.. Another feature of the Scandinavian prison system is that of early release. Almost all people in prison are released on parole after serving at least half of their sentence. (120) The principles of early release and/or shorter sentences reduces the need for an increase in prison beds. Crime rates in New Zealand and Finland are very similar, but the imprisonment rates are lower in Finland. This is due to alternatives to incarceration being favoured in Scandinavian countries.

10.2.2 Military-style Activity Camps (MAC) for youth

The MAC programme was introduced in October 2010 and was intended to target the most serious, repeat youth offenders. These camps aim to reinforce self discipline and personal responsibility. They involve a 9 week "wilderness camp" run by the New Zealand Defence Force, drug and alcohol treatment, and educational interventions. After graduating there is 12 months of community support to help the young person reintegrate back into the community. The MAC programme was reviewed in 2015 and looked at 79 youth offenders that had been through the process. There was 12 month follow up and it was found that 86% of the graduates

had reoffended within 12 months. There was little difference in the reoffending rates of Māori and Pākehā offenders. 78% of young people reduced the seriousness of their offending. (122) Based on the reoffending rates, it may be concluded that the MAC programme is ineffective.

11. Māori Specific Justice Measures

The disproportionate amount of Māori prisoners today has stemmed directly from colonisation and the breaches of the Treaty of Waitangi, which resulted in a monocultural system being applied to a bicultural society. In order to address systemic bias, the justice system must be thoroughly reviewed and revised. Moana Jackson's 1988 research contained a particularly relevant quote to describe this situation; "… in all sorts of ways the name 'Department of Justice' is all wrong because you actually can't get justice from an organisation that's institutionally racist… and you've only got to analyse how it deals with our people to know that's true". (2)

11.1 Use of Tikanga Māori in Kaupapa Māori Interventions

Kim Workman, in his 2014 article "The Social Integration of Māori Prisoners" highlights the need for a change in the way rehabilitation is approached to be more successful with Māori. (123) Workman asserts that basing rehabilitation on tikanga principles, and involving wider whānau and community will help emphasise the importance of establishing a "positive and pro-social identity". Workman highlights the importance of going back to the original meaning of rehabilitation; to shape a person's capability to play a full part in society rather than solely reducing reoffending. There are currently programmes in place in prisons that are using a tikanga Māori approach to rehabilitate prisoners, such as the Te Tirohanga National Programme. Further development or restructuring is required to meet the objectives of fully engaging not only prisoners but also wider whānau and community and to promote restorative practice to become the norm in New Zealand. (123)

Māori cultural identity loss as a result of colonisation and urbanisation in New Zealand has been labelled a major cause of offending. Māori who have a poor sense of cultural identity are more likely to offend. (2) There have been a number of initiatives based on the creation of a secure Māori cultural identity for offenders. Tikanga based programmes incorporate Te Ao Māori (Māori world view) and traditional Māori customs to strengthen cultural identity and reduce likelihood of reoffending. Rehabilitative programmes such as Te Tirohanga National Programme and Mauri Tu Pae help offenders develop strategies for prevention of reoffending. Mauri Tu Pae uses modalities such as cognitive behaviour therapy in conjunction with cultural content to ideally support individuals to build foundations of mana, mauri and wairua. (124) The Te Tirohanga National Programme has six phases and educates prisoners on aspects of Māori culture such as Te Reo (language), as well as using whānau support and rehabilitation services. Rehabilitation involves using Mauri Tu Pae and drug/alcohol rehabilitation. Te Tirohanga is based in whare (units) at five prisons around New Zealand. These programmes aim to reduce recidivism and provide more opportunity for successful rehabilitation for Māori prisoners. (124) However, in the view of professional Māori, these programmes do not resemble Māori culture at all and resemble an "official attempt to meet treaty obligations rather than an effort to reduce Māori offending and imprisonment". (125) A 2009 evaluation of Māori Focus Units and Māori Therapeutic Programmes (predecessors of Te Tirohanga and Mauri Te Pae) found inconclusive results on recidivism rates in Māori, and commented that strengthening of these interventions was needed to provide any real benefit. (126) This evaluation lead to efforts to improve these interventions and the Te Tirohanga National

Programme was implemented in 2013. Regardless of Tikanga based interventions, Māori remain 50% of the prison population. These interventions work for some Māori, but not a substantial proportion as is reflected in statistics. Further development of these programmes is needed (or complete restructuring) if they are to be a viable alternative to further incarceration for Māori.

11.3 Rangatahi Courts

Rangatahi or youth courts are held on a Marae, first implemented in 2008. Te Reo and Tikanga Māori are applied as part of the court process. The purpose of a Rangatahi court hearing is to monitor the young person's completion of their Family Group Conference (FGC) Plan. An FGC plan is designed to hold the young person accountable for their offending and deal with the risks and needs of the young person, as well as addressing the underlying causes of the offending. Rangatahi courts allow Māori youth an opportunity to learn about their own Māori culture and identity, and how they fit into society. (127) An evaluation of the Rangatahi Courts conducted in 2012 showed positive outcomes such as high levels of attendance and improved attitudes and behaviour. (128) Māori youth offending has also decreased by 32% between 2009 and 2013. (129)

11.4 Kaupapa Māori Prisons

Minister of Corrections, Kelvin Davis, proposed last year the idea of having a separate Māori prison, run entirely on Māori values. Using a tikanga Māori approach could reinforce Māori cultural identity and help reduce the prison population by reducing Māori offending and reoffending. (130) However, there was widespread resistance to this idea on the basis that Māorifying a prison does not change the fact that it is still a prison. No Pride in Prisons and JustSpeak oppose this idea, saying that prisons were forced on Māori as a result of colonisation, so having a prison based on Māori values is "simply ridiculous". (131) Instead, focus must be shifted to improving outcomes for Māori in the justice system. Julia Whaipooti, spokesperson of JustSpeak, suggested that solutions need to be led by Māori with an independent working group, to allow iwi and hapu to design something that will work for Māori. (132)
Responses: Responses to Māori/indigenous offending and reoffending rates.

12. Responses to Māori/indigenous offending and reoffending rates.

12.1 Responses among Māori and the incarcerated

There is very limited research into the views Māori have on Māori incarceration and reoffending rates in New Zealand.
The most cohesive report published so far has responses from ex-prisoners on incarceration in New Zealand and was done by the Salvation Army Social Policy & Parliamentary Unit in December 2016. A whole chapter of the report is dedicated to first-hand accounts by mostly male ex-prisoners who participated in filling out either surveys or attended focus groups. The main issue they identified with the current jail system was the poor reintegration of formerly incarcerated people back into society. Participants credited lack of housing, support and job opportunities were some barriers to reintegration leading invariably into higher rates of reoffending. This opinion held by many ex-prisoners is also supported by statistics showing that incarceration; rather than deterring a person from reoffending, often increases the likelihood of reoffending significantly. (118)

Two other key points raised were that strict rules around visiting and the inability to leave prison in exceptional circumstances (death of a family member) often left prisoners feeling isolated from their family and community. (118) Research has also shown the inverted scenario, that there is also a negative effect on the family of those who are incarcerated, particularly children (6). These ex-prisoners also felt that there was a lack of respect for their culture if they were Māori. One participant stated "I was part of the Māori Focus Unit and it was really good. It's different. You feel respected." Another participant stressed the value of helping Māori youth in maintaining their culture as one way to improve incarceration rates, "It needs to start young. Back in the day when I was a kid there was all that stuff where you would know where you were from and you would learn that stuff and go to kapahaka which was like a big family. That doesn't seem to happen anymore. That's what the young ones should be doing. It can be too late once you have been inside." (118) Testimony from the Salvation army participants also found that many prisoners felt that the public saw prisoners as dehumanised, "You don't know what people have gone through and why they ended up in prison, what childhood they had" said one participant. (118)

Notable responses by Māori to Māori incarceration is often in the form of opinion pieces presented in the media, however none of these responses seem to have been compiled into a cohesive study. One such opinion is that of Julia Whaipooti, a young Māori lawyer and chair for the advocacy organisation JustSpeak. In an interview Julia discussed her experience of working in the criminal justice system. (132) It was in Law school where she first noticed that conversations about Māori offending was being driven by non-Māori. She says that "(a) starting point is recognising that the system wasn't made by us. It comes from a Western Pākehā construct that was imposed post-colonisation." She believes because of this, planning change and alternatives to prisons should be led by Māori. (132) She also noticed Māori were being spoken of as if there was something "inherently criminal" about being Māori. (132)

The Māori party themselves have also pushed back on plans to instate boot camp style programmes for children who have lost their way. They felt there would again be an over representation of Māori in this programme which they deem archaic. (133)

This year Aroha Hathaway a NZ Radio Live newsreader responded to Jacinda Ardern's Waitangi speech in support, saying Māori incarceration is "a New Zealand problem, not a Māori problem." (134)

12.2 Responses in the media

Media has been shown to have a huge effect on the way New Zealanders, both Māori and non-Māori view Māori incarceration and has come to play a role in driving politics.

Gregory et al, is a study conducted in New Zealand examining the effect of mass media on perceptions of Māori. Mass media around the world has a role in shaping people's opinions on the society in which they live. It has been shown that if media continually show an idea repetitively, even the most critical viewer can start to become used to the stories or perceptions presented and accept at least part of this as fact even if the individual has an opposing view point. (135)

The Gregory et al participants felt that media in New Zealand takes a Pākehā centric approach and lacked core competencies around Māori culture. Overall participants felt that Māori were more likely to be shown in a negative light and were more likely to be linked by the media with social problems. They also felt that this was cumulative and that the more you saw these articles the more these concepts were drilled into the public. (135) McCreanor et al, also found this trend, showing that again Māori were over represented in print media about crime in New Zealand. (136) Not only that but Māori iwi and organisations were often not asked to give comment in these articles, these articles were more likely to appear in the first five pages of a newspaper compared with Pākehā crime stories and were also more likely to be picked up by other news outlets to be reprinted. (136)

During the last few elections in New Zealand politics there has been a trend emerging where each political party tries to be seen as the most tough on crime. Being soft on crime is seen as a flaw of party policy and has been seen to be unfavourable in the eyes of the public. An article found that in multiple studies the public of New Zealand, Australia, the UK and North America all thought that charges were too lenient; again, expressing the need for the 'tough on crime approach' based purely off emotion driven media surveys. (137). In New Zealand specifically, 92% of New Zealanders voted in a referendum in 1999 to toughen sentencing. This tough on crime approach has continued with the introduction of The Sentencing and Parole Reform Act 2010, which introduced the three strikes rule and more recently the introduction to tougher bail regulations. (6) However, when the article looked at citizens jury's trialled in Australia, it was found that the need by the collective group for a tough on crime approach diminished. This appeared to happen because a jury of people were made to take into account the health, upbringing, advantages/disadvantages in life, held by the perpetrator as well as having access to 'experts' they could clarify their conceptions with. (137) The Salvation army report emphasised that being tough or soft on crime should be irrelevant and rather New Zealand should have a new incentive to be "smart" on crime. (118)

In New Zealand specifically when it comes to Māori, there is a tendency for media to frame one Māori perpetrator as an example of the entire ethnic group rather than presenting them an individual. (135) Conversely Pākeha were portrayed as once off 'bad apple' offenders rather than representations of an ethnic group. (136) Both Aroha Hathaway and McCreanor et al acknowledged that if an offender is Pākehā it is not presented in the media but if the offender is Māori, the media will label them as Māori. (134) One Māori participant of a focus group in this article stated they felt "a sense of unfairness of the coverage given that the vast majority of Māori are thoroughly law-abiding citizens." (136) The McCreanor et al article also reiterated that there is a perception that, because a ethnicity forms a majority in a society, their values are superior compared with that of minority groups like Māori. (136)

In the face of a change from print media to social media there are emerging issues with media presentation. One study investigated Facebook and its presentation of news media, found that people had decreased exposure to content which would challenge their own opinions. The main reasons for this was individual choice; not to interact with this news, but also algorithms that have made it more likely for you to see articles that align with your or your close friends previously view pattern. (138) This change in media poses a changing landscape in which changing popular opinion must be contended with. It does however mean more people can give their opinions topics on social media very easily. This could mean than changing the way New Zealanders view Māori incarceration can be both helped and hindered by social media platforms.

12.3 Global Responses to Indigenous Incarceration

The Aboriginal and Torres Strait Islander people of Australia and Indigenous populations in Canada have very similar trends of indigenous incarceration compared with Māori in New Zealand. Like with Māori in New Zealand, there are high rates of migrant governments incarcerating indigenous people in both Canada and Australia. These people are also more likely to reoffend and have poorer health and social outcomes. (137, 139)

In 2007 the United Nations made a Declaration on the rights of Indigenous peoples to curb the many statistics seen specifically in indigenous populations around the world. The focus of the declaration was that indigenous peoples would be given the same human rights as all others; and sees the right of indigenous peoples to their own identity. (107) In 2007 New Zealand voted against this declaration but then reversed this position in 2010 to accept the declaration. The most relevant parts of the declaration to Māori incarceration, are the rights for indigenous peoples to "maintain and strengthen their own institutions, cultures and traditions" as well as "participate in decision-making in matters that affect their rights through their own representatives (article 18)" and "improvement of their economic and social conditions (article 21)." (140)

From the 1870-1990s many indigenous children all over Canada were taken from their families and sent to residentials schools. In a Spinoff article, Littlechild, who is of Cree descent gave his testimony of his experience in this system. He said entering residential schools was meant to strip the indigenous children of their cultural identity in favour of a 'superior' migrant culture. The effect of these schools has trickled down to social aspects including incarceration of indigenous peoples. Littlechild stated "In a prison the inmates were asked how many of the them were impacted by residential school legacy. One hundred percent of them raised their hands." (141)

One of the ways healing has been attempted in Canada is through a Truth and Reconciliation Commission started in 2010 which lead to formal government apologies and was able to shed light on the lives of indigenous people to the more general Canadian population. (141) Current prime minister of Canada Justin Trudeau recently commented on this history in a news interview saying "we have discriminated against indigenous children for generations, for decades, for centuries." He also reflected on the government budget and plans saying "Is it going to fix everything overnight? Absolutely not! We have an awful lot of work to do." (139)

Similarly, in Australia, indigenous Aboriginal and Torres Strait peoples often had children taken by the state, to stop population growth and assimilate the children to a migrant worldview (142). *Aboriginal and Torres Strait Islander children* are now 16 times more likely to be in child protection or youth justice programmes. Each year the Australian government puts out a Closing the Gap report, with the newest data and a commitment for change against these issues. (143)

In one study when asked about an intervention program in Australian prisons which taught indigenous people about their culture and introduced bonding time with their children, the responses were as such "I learned a lot about myself as an Indigenous person, how my ancestors and Elders raised their kids… I learned about our culture and my responsibility as a man – not just with my kids, but within the community…That's what I'm going to pass on to my kids." (144) Elva Richards who works as a Client service officer for Victoria's aboriginal legal

services recounted a time where she was trying to pay for petrol at a petrol station where a crime had been committed 10 minutes earlier "Because I was black, I was immediately associated with everyone else who was there and was ordered to get out. And if I didn't leave I was going to be arrested." (145)

A reoccurring principle seen in literature is that just because something is different (culture) doesn't mean it won't work or is wrong. A Pākehā, migrant centric cultural ideology has been routinely pushed onto indigenous communities causing damage over long periods of time which will take a long time to fix, as mirrored in Justin Trudeau's words (123, 139). The responses to incarcerations and factors in incarceration seemed to be very similar in many ways across Canada, Australia and New Zealand. New Zealand however, unlike these other two countries has never had an independent inquiry or given a formal apology to Māori for wrong doings. (142)

12.4 Responses to unconscious bias

Something that has been highlighted over and over in the portrayal by the media, in the testimonies of ex-prisoners and the opinions of focus groups was the presence of unconscious bias in the New Zealand criminal justice system. (135, 136) One participant in the Salvation army report put it simply saying "people still see you as a criminal just cos you are brown." (118)

In the document *Criminal justice system bias and amplification*, by the New Zealand Department of Corrections, it is outlined that at every stage in the incarceration process there are opportunities for bias, from a police officer's discretion to detain or arrest a person and then charge a person, along to a parole board's discretion to allow home detention or early release. The document acknowledges there are 'systemic factors' which could influence steps in the incarceration process and whether a person continues through these steps or are released which contribute to differences between Māori and non Māori. (146)

12.5 Responses for better reintegration after prison

Another recurring theme seen in personal responses to incarceration especially by ex-prisoners was that the biggest issue identified in the prison system was the way prisoners were reintegrated back into society. (118)
Julia Whaipooti has talked about this gap and how offenders are reintegrated back into society. "We offer no support. And they can't get a job because they've got a criminal conviction. We set the conditions for failure. For hurting people. And for keeping our communities unsafe…they're more likely to reoffend — and reoffend more violently. We have people coming out of prison more broken than when they entered." (132)

Under the current law people leaving prison are given $350 as a part of the Steps to Freedom programme to live on for 2 weeks. (118) Ex-prisoners highlighted that just giving them this money without any other support left them isolated and alone, often with no accommodation, no ID credentials to apply for a job or WINZ support, a criminal record stopping them from getting a job just to name a few, all of which can't be fixed by $350. One ex-prisoner stated "It's been tempting to do something stupid to breach my conditions just, so I can go back inside. At least in there you have somewhere warm to sleep and something to eat." (118) Another said "when you are released prison has messed with your head. It's like being let out of a cage…it

is really overwhelming…it is like setting you up to fail."(118) A quote used in the Te Ara information piece on Māori incarceration mirrored those from the Salvation army with the quote from a female Māori prisoner "…we get out we don't know what else to do…we go back to doing what we did before….They're doing it all wrong- thinking why their jails are filling up…why stick us in jail if there's nothing to help us." (147)

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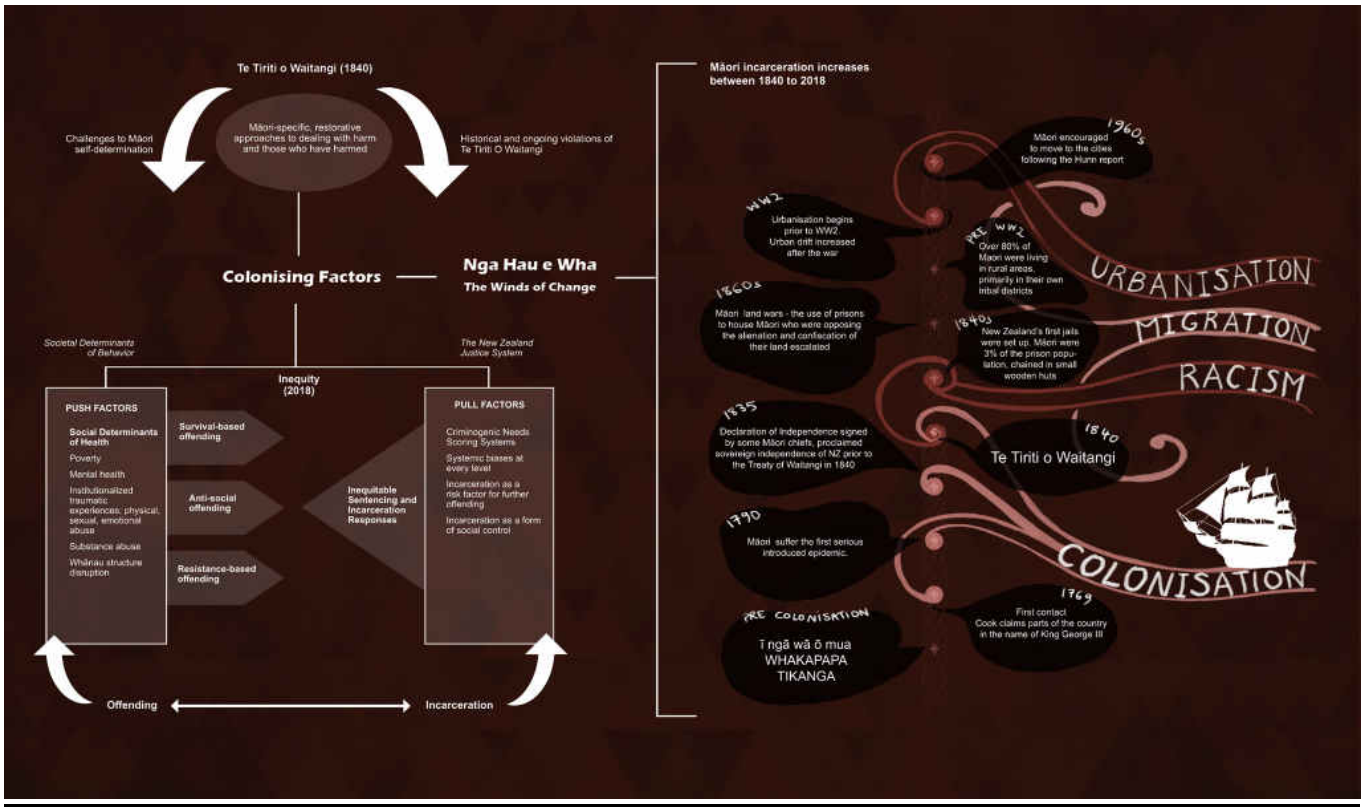
Appendix 2: Model



Appendix 3 - Survey Questions

'They're our whānau: Exploring Māori attitudes towards inequities in Māori incarceration rates'

This survey will take approximately 10 minutes of your time. You have the option to answer anonymously.

What is the aim of this project?

Māori incarceration rates are the highest they have ever been, and the incarcerated population is disproportionately made up of Māori, with this imbalance most pronounced among women and young people.

We aim to understand Māori attitudes towards this issue, so that ActionStation can be better informed in our advocacy in this space. We believe Māori voices and views should take prominence as this issue disproportionately affects Māori. The end result of this research will be a report that will be delivered to the Minister of Justice, Minister of Police and the Minister of Corrections. No identifiable information will be included in the report without expressed permission.

This research is being completed by ActionStation in conjunction with medical student researchers from the University of Otago Wellington. It is being supervised by Laura O'Connell Rapira and Dr. Keri Lawson-Te Aho.

Students are also conducting in-depth interviews with prominent Māori individuals and a literature review will supplement this survey. We thank you for your participation in this important mahi.

First up, can you tell us your first name so we know how to address you?

Thanks. And your email?
This is so we can get in touch about the results of the research and follow up for clarification if necessary. You can see our privacy policy here: https://actionstation.org.nz/privacy-policy.

It basically says that you will be contacted about this issue and other related kaupapa by ActionStation in future but you are free to opt out at anytime. It also says we promise never to sell or share your data without permission.

Recently the Prime Minister's Chief Science advisor released a report on youth justice. The report says the most effective way to reduce the number of people in prison is to prevent young people getting into crime through early intervention.

Do you agree we should focus on early intervention with young people?
The report highlighted risk factors that push young people into crime and says that evidence shows:
Harsh punishments have little deterrent effect on young people; Young people who are at-risk of committing harm need support, mental health and trauma-recovery services; The younger the child at intervention, the more effective it is likely to be.

0 = Strongly disagree
5 = Strongly agree

A report by the Corrections Inspectorate last year exposed issues that Waikeria prison has been facing, including overcrowding, suicide risks, 22 hours locked in cells, and an increase in double-bunking (sharing a cell).
The number of people in prison continues to climb, at nearly 11,000 as of 2018. As of last month there were just 400 spare prison beds.

The government recently announced an expansion of Waikeria Prison by 600 beds, including a 100-bed mental health and treatment facility.

Do you agree with the plan to expand Waikeria prison?

0 = Strongly disagree
5 = Strongly agree

Do you agree with the plan to build a 100-bed mental health and treatment facility at Waikeria?

0 = Strongly disagree
5 = Strongly agree

Is prison a good place to provide mental health treatment and services?

- Yes
- No
- I don't know
- Other [OPEN]

How important do you think it is that government policies are based on evidence?

0 = Not important at all
5 = Very important

The next couple of questions are for you to test your knowledge of the justice system. There will be a series of multi-choice and true or false questions.

True or false: Māori make up 15% of the national population, but 50% of the prison population.

- True
- False

It's true. Here's another:

True or false: 56% of young people in the youth justice system are Māori.

- True
- False

It's false. Māori actually make up 76% of the youth justice population. Māori are three to four times more likely to be arrested than a non-Māori person committing the same offence. If charged, four times more likely to be convicted and if convicted seven times more likely to be sentenced to a prison term.

True or false: The government spends more on prisons in two years than the entire history of Treaty settlements.

- True
- False

It's true! The government has spent $2.2billion on Treaty settlements which is roughly the prison budget for two years.

True or false: A third of all prisoners have not actually been sentenced to prison

- True
- False

It's true! 30% of people in prisons are there on remand awaiting sentence. 10% of those people will be found innocent.

True or false: A young person who has a parent in prison is more likely to go to prison as an adult.

- True
- False

It's sadly true. Many people forget, but prisons don't just affect the person in prison. They affect the whole whānau. 23,000 children currently have a parent in prison. These kids are nine times more likely to end up in prison.

Why do you think there are more Māori in prison than non-Māori?

Put your answer closer to the left if you think it is because of individual choice. Put your answer closer to the right if you think it's because of structural racism and intergenerational trauma (aka colonialism).

0 - Individual choice
5 - Racism and colonisation

Do you know anyone who has been to prison?

- Yes
- No
- I prefer not to say

Do you think people in prison should be allowed to vote?

- Yes
- No
- I don't know

Why do you think people commit crime?

[OPEN]

Do you think crime rates have been increasing over the past couple years?

- Yes
- No
- I don't know

Crime is generally measured by the number of offences being reported to police per 100,000 people. However many crimes go unreported, especially sexual crimes, and do not appear in official statistics. That said, according to evidence crime has been in steady decline since the 1990s.

Which of the following interventions do you think best prevent and reduce crime? Tick as many as you like.

Randomised answers

- Tougher penalties for people who commit crimes (e.g. the three strikes law)
- Better mental health services
- More police on the streets
- Better drug, alcohol and addiction support services
- More housing
- Hard labour for people in prison
- More jobs and higher wages

- Better schooling
- More connected communities
- Military style bootcamps for young people
- Other

Do you think government resources should be put towards increasing incarceration or providing more community-based interventions?
Put your answer closer to the left if you think we should invest more resources in putting more people in jail. Put your answer closer to the right if you think we should focus more on early and community-based intervention.

0 - Increasing incarceration
5 - Community interventions

Do you think that mainstream media in New Zealand fairly and accurately reports on justice issues that affect Māori?

0 - No, not at all
5 - Yes, they do

Thanks for answering those, you're almost finished! The following questions help us understand the diversity of the people answering this survey.
They are all optional

Do you identify with one or more of these categories?
- Formerly incarcerated
- whānau member of someone formerly or currently incarcerated
- Currently or formerly working in the justice system (police, corrections, law etc)

What's your occupation or vocation?

Which of these best describes your gender identity?
- Female
- Male
- Genderqueer/non-binary
- Prefer not to answer

Which of the following best represents your ethnic heritage?
Please note this list is not comprehensive, and is deliberately broad. Choose all that apply.
- Pākehā / European
- Māori
- Pasifika
- Asian
- African

- Latin American
- Middle Eastern
- Prefer not to answer

In what year were you born?

What's your postcode?

If an election was held today, who would you vote for?
This is so we can demonstrate the political diversity of people contributing to this project
- National
- Greens
- Labour
- NZ First
- TOP
- Māori
- Act
- United Future
- Prefer not to say
- I wouldn't vote
- Other

Do you wish to remain anonymous?
- Yes
- No

Appendix 4: Figures and Tables

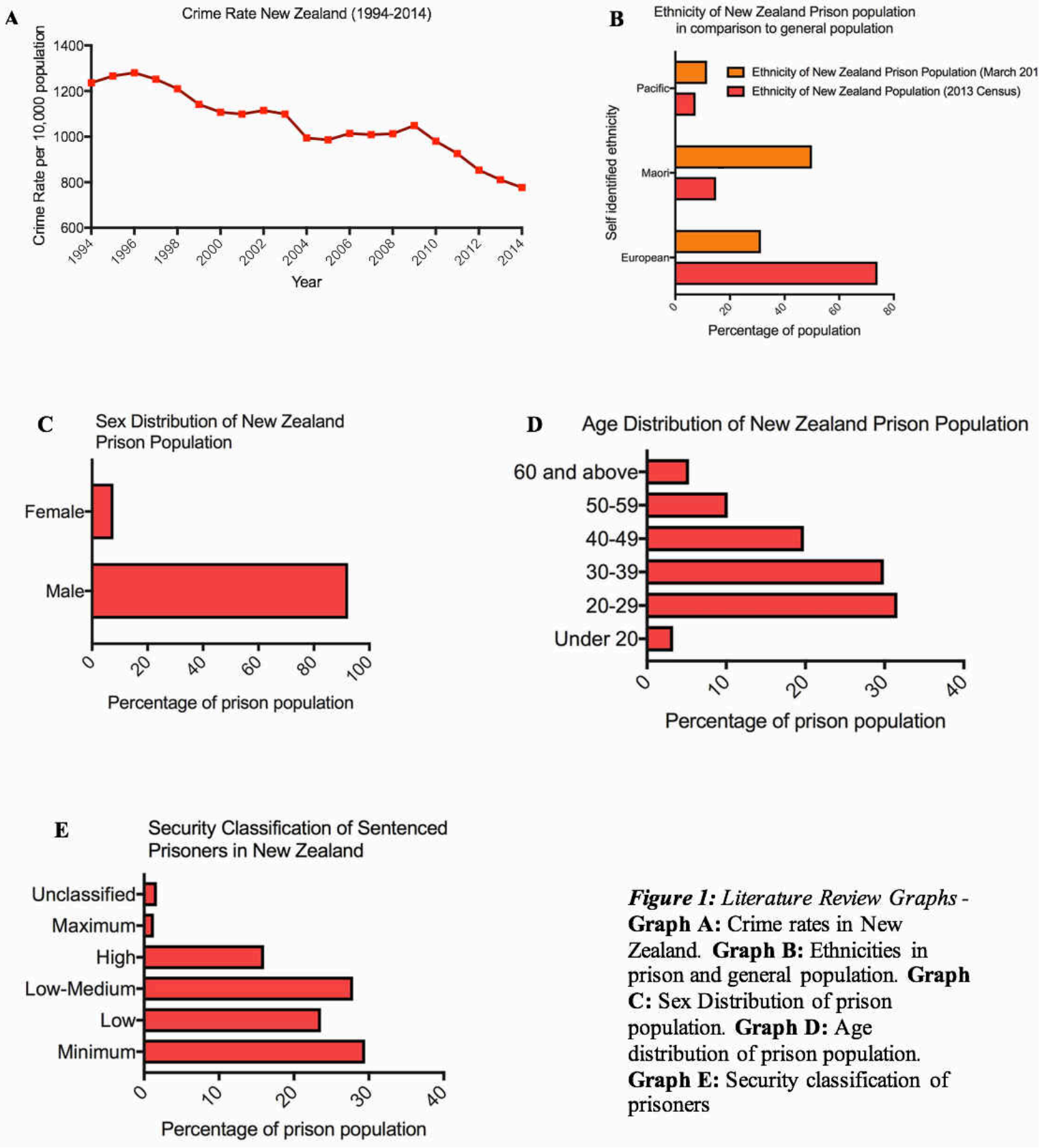


Figure 1: *Literature Review Graphs* - **Graph A:** Crime rates in New Zealand. **Graph B:** Ethnicities in prison and general population. **Graph C:** Sex Distribution of prison population. **Graph D:** Age distribution of prison population. **Graph E:** Security classification of prisoners

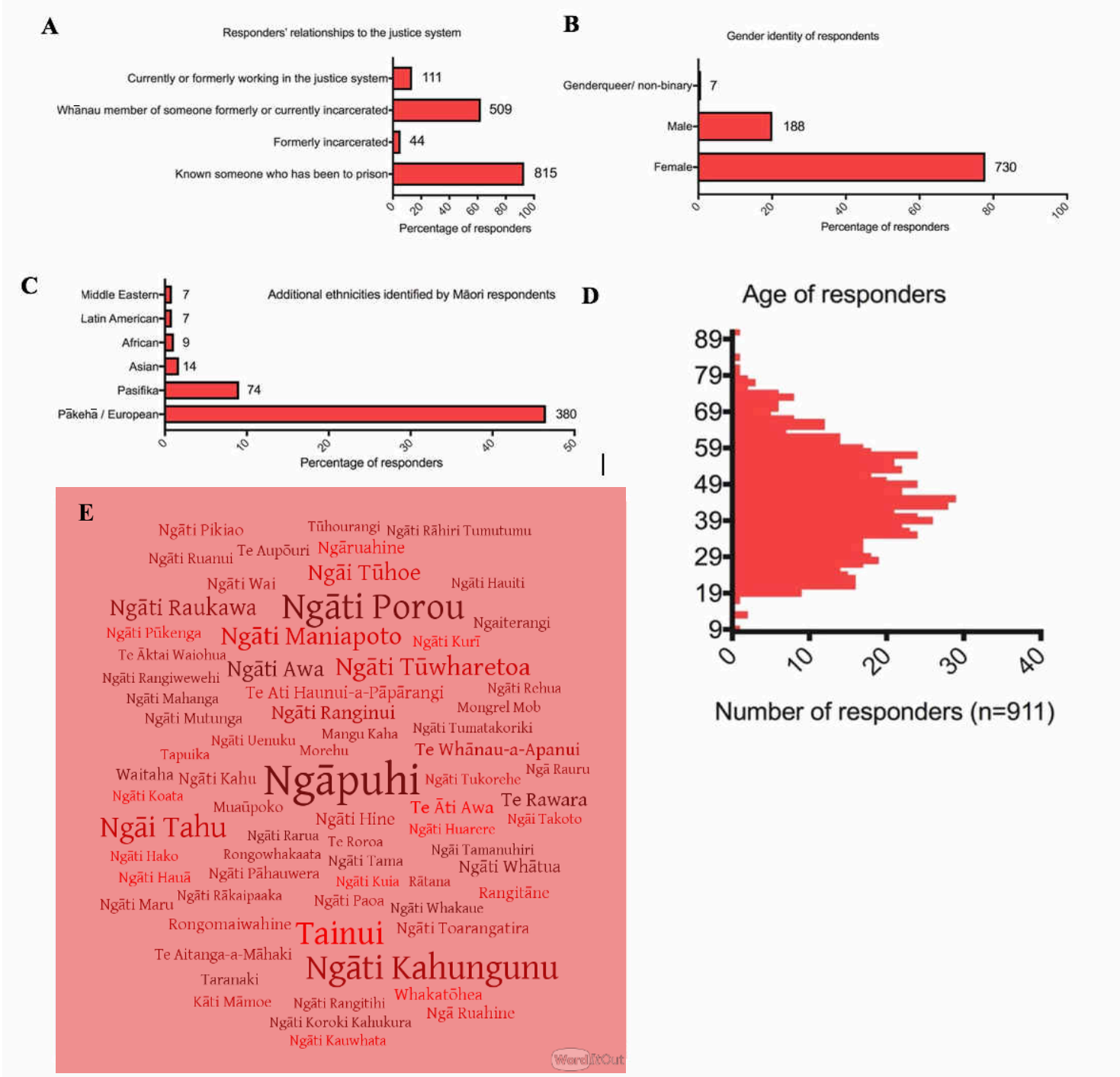


Figure 2: *Population features graphs.* **Graph A:** Responders' to the justice system. **Graph B:** Responders' gender identity. **Graph C:** Responders' additional ethnicities. **Graph D:** Responders' ages. **Graph E:** Iwi data.

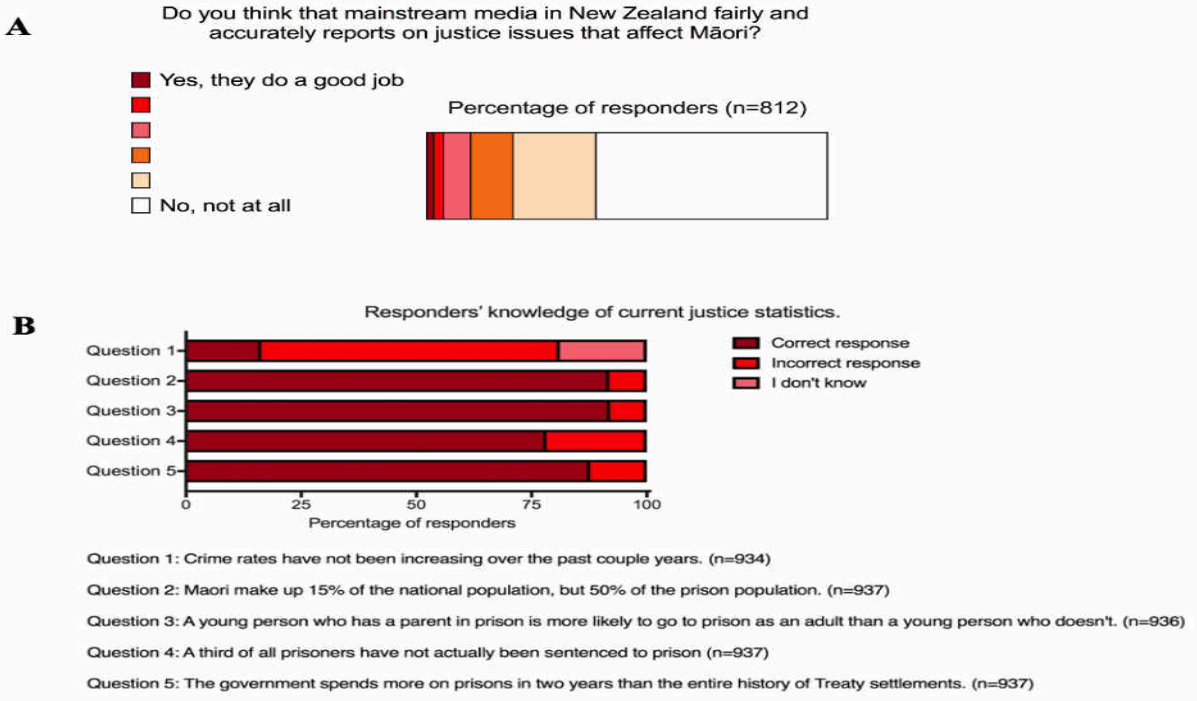


Figure 3: *Knowledge of Responders about the Justice System.* **Graph A:** Mainstream media portrayal of justice issues relating to Māori. **Graph B:** Responders' knowledge of justice systems

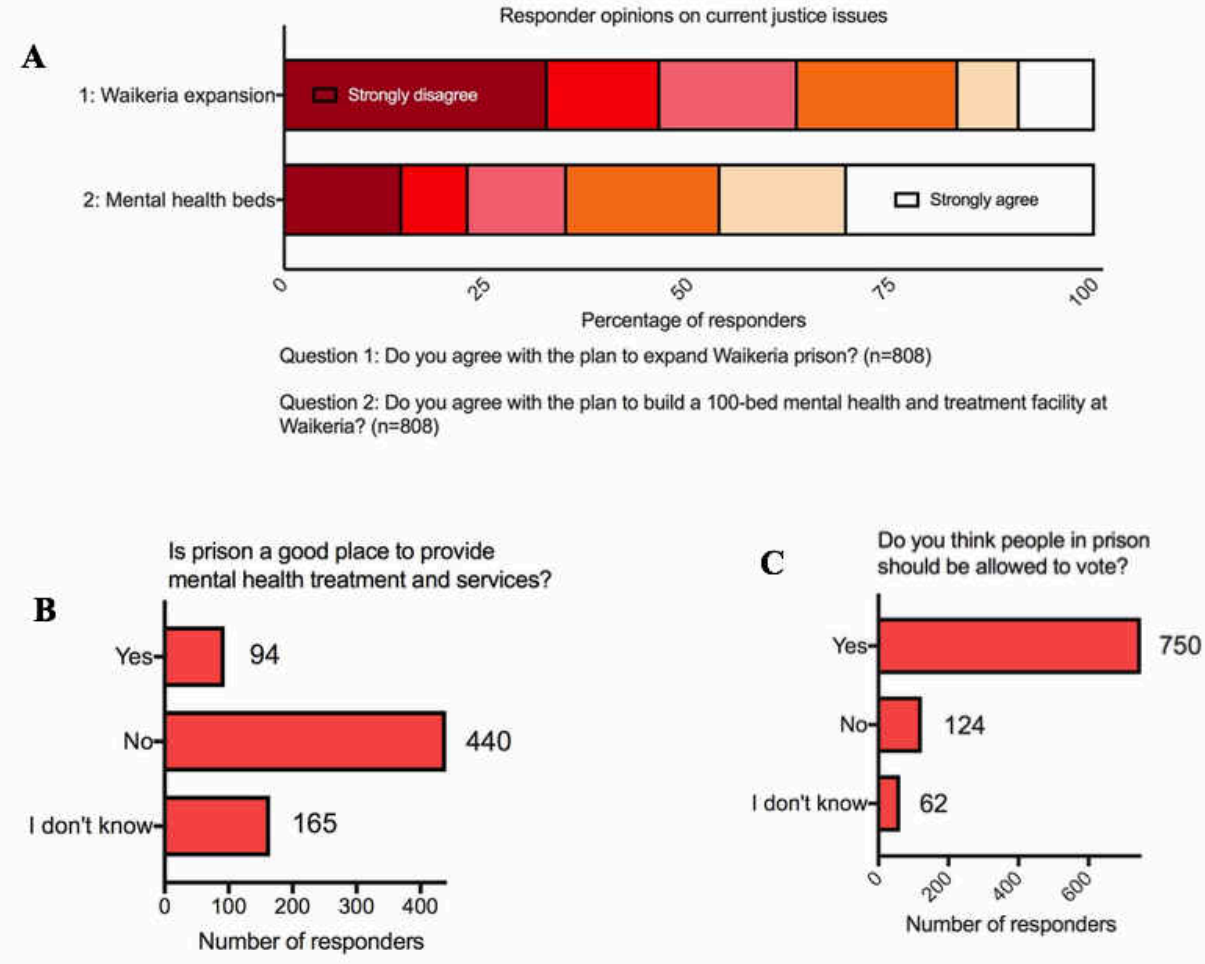


Figure 4: *Current Societal Issues.* **Graph A:** Opinion on current justice issues in New Zealand **Graph B:** Opinion on mental health treatment in prisons. **Graph C:** Opinion on ability to vote in prison

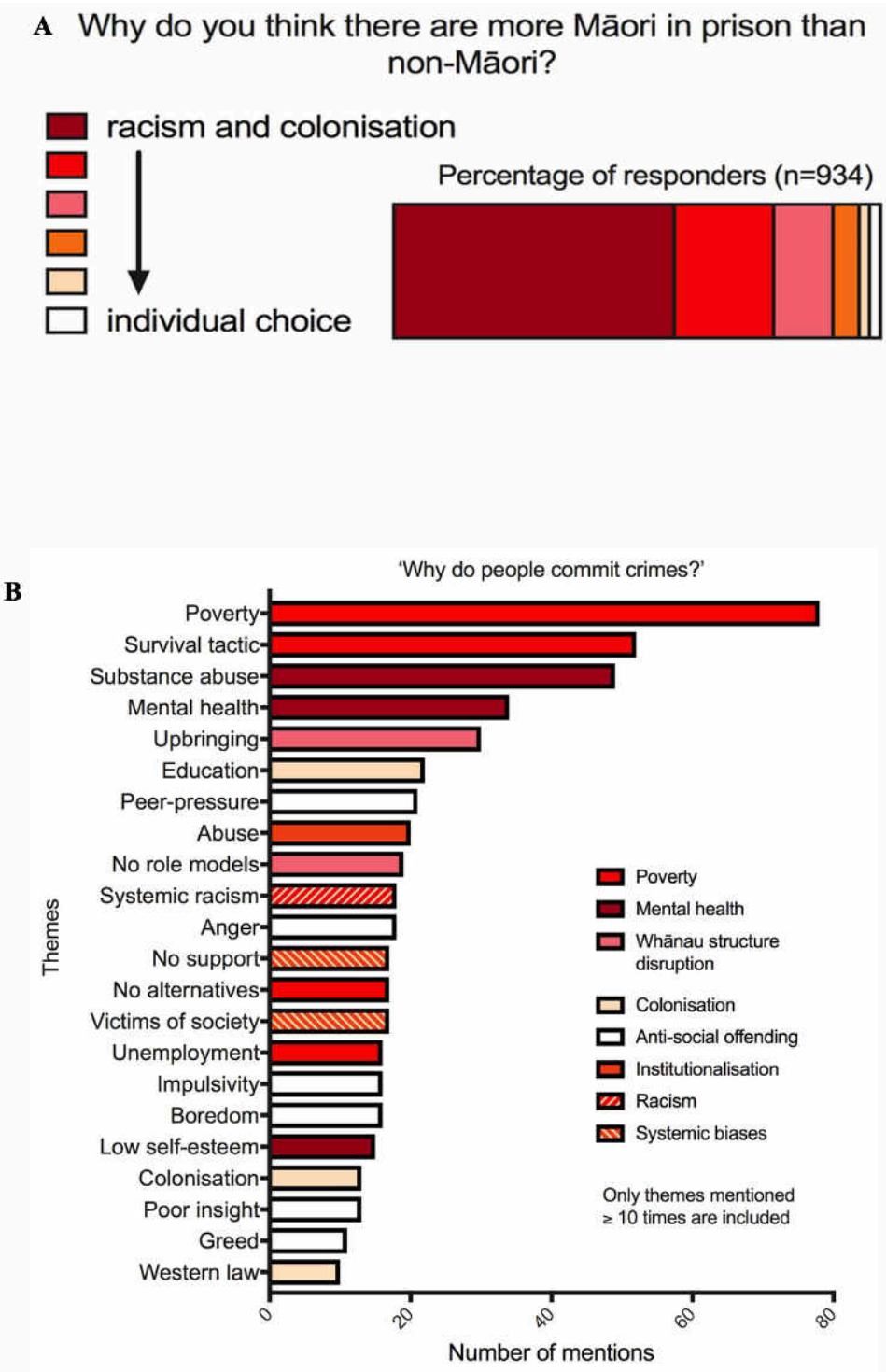


Figure 5: *Determinants of incarceration.* **Graph A:** Opinion on why there are more Māori in prison than non-Māori. **Graph B:** Opinion on why people commit crime.

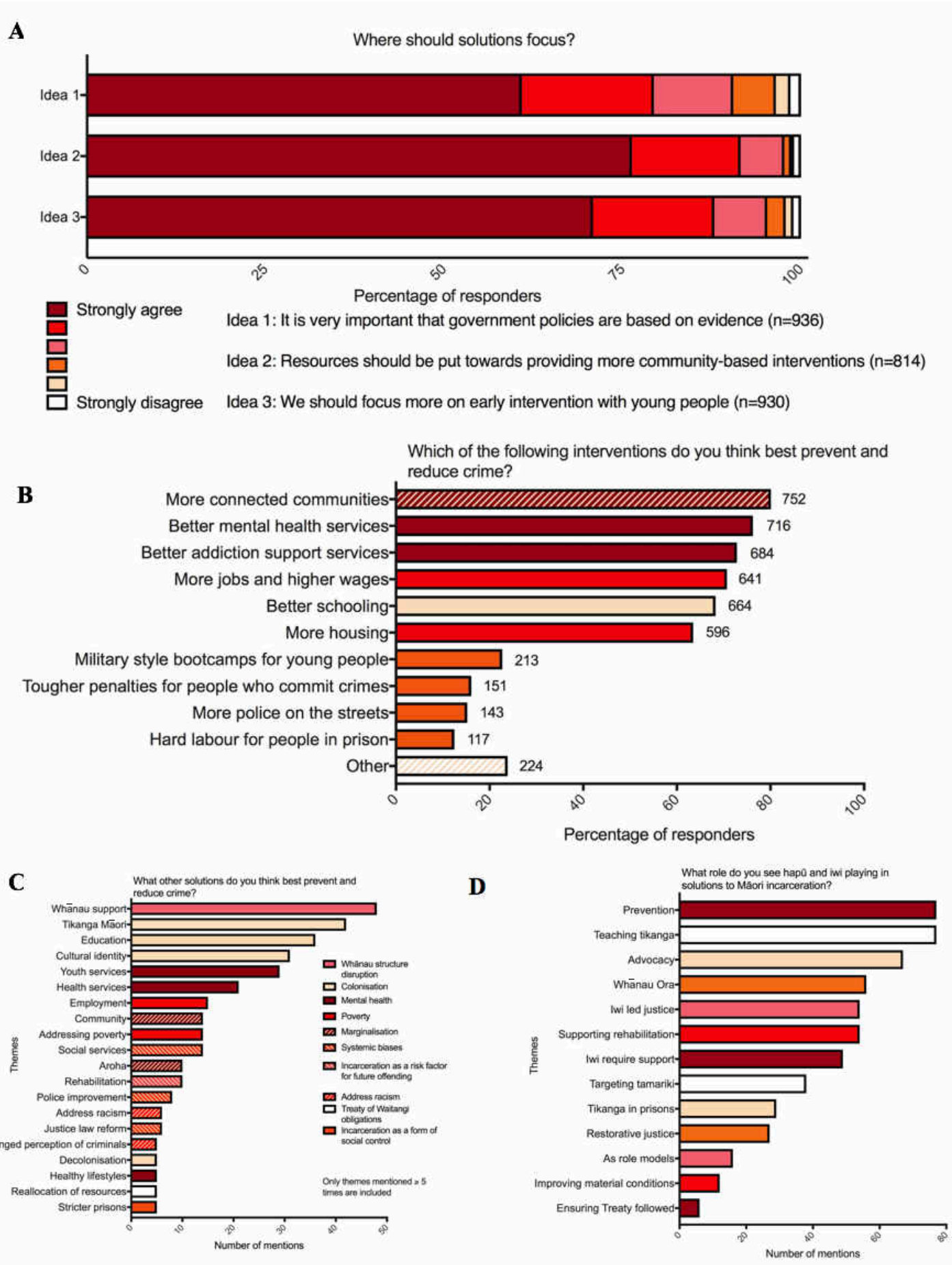


Figure 6: *Solutions.* **Graph A:** Focus of Solutions. **Graph B:** Interventions to prevent and reduce crime. **Graph C:** Other solutions to prevent and reduce crime. **Graph D:** Role of hapū and iwi in solution to Māori incarceration

reduce crime. **Graph C:** Other solutions to prevent and reduce crime. **Graph D:** Role of hapū and iwi in solution to Māori incarceration

Table 1 – Interview Core Questions

What are your overall views about the level of responsiveness of the NZ criminal justice system to Māori?

Do you have specific concerns about particular practices that are presented as 'interim measures'
that result from the shortage of prison beds such as; Double bunking, Placing vulnerable prisoners
in high risk situations e.g. transgender prisoners or youth, The use of seclusion?

Why, in your opinion, are Māori the most incarcerated people in Aotearoa?

What approaches/strategies/solutions do you recommend to change the high rates of incarceration and recidivism of Māori?

Table 2 - Thematic Analysis Steps

1. Read the whole text, with the aim to gauge the overall position of the interviewee but not to categorise their points at this stage.

2. Read the transcript line by line, highlighting 'meaning points' relevant to the topics which express salient ideas from the interviewee's perspective.

3. Code the 'meaning points' according to what they imply, or a broader factor which they represent. E.g. oppression of Māori culture and disruption of the connection with whakapapa are both examples of the effects of colonisation.

4. Bring the coded categories together to demonstrate the general attitudes and opinions of the interviewee's.