

Offenders on Indeterminate Sentences

Introduction

Prisoners serving sentences of Life Imprisonment and Preventive Detention form a distinct sub-set of the prisoner population. The following pages provide information about recent trends involving these offenders. As will become apparent, numbers of prisoners serving indeterminate sentences have been growing steadily for several decades.

It is hoped that this analysis will improve understanding of this sub-group, and potentially stimulate improvements in the management of such offenders, both while in prison, and after their eventual release.

Life sentences and Preventive Detention

Life Imprisonment and Preventive Detention are described as indeterminate sentences because, when imposed by a sentencing judge, no fixed expiry date applies. Instead, a “minimum non-parole period” is specified, constituting the length of time that the offender must remain in prison before parole can be considered. However, as the following analysis will show, prisoners subject to indeterminate sentences can serve many years beyond the non-parole date before eventual release.

Once released, indeterminately sentenced offenders are subject to recall to prison at any time, and may as a result of recall spend many more years in custody.

Offenders

In total, 1,299¹ offenders have been sentenced to an indeterminate sentence since the Department’s records began.

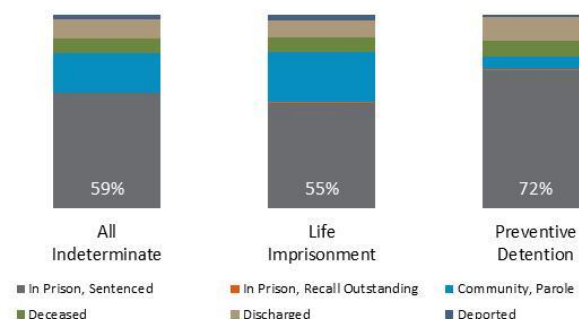


Figure 1 Indeterminate sentenced offenders by current status

¹To date there are 20 offenders who have been sentenced to both Life Imprisonment and Preventive Detention. In these cases, the offender has been counted only as a Life Imprisonment.

Prior to implementation of the Sentencing Act 2002 and the Parole Act 2002, most offenders sentenced to Life Imprisonment were subject to minimum non parole periods of 10 years. Offenders sentenced to Preventive Detention were subject to minimum non parole periods of 7 years. The 2002 legislation specified that the minimum non-parole period for life imprisonment should remain at 10 years, with periods longer than 10 years possible in cases involving aggravating factors. For cases involving one or more serious aggravating factors, a non-parole period of at least 17 years must be imposed, unless the court was satisfied that it would be manifestly unjust to do so.

Under section 89 of the Sentencing Act 2002, offenders sentenced to Preventive Detention must serve a minimum period of imprisonment of at least five years, although longer non-parole periods are also frequently imposed.

Parameters of this analysis

All offenders sentenced to Life Imprisonment and/or Preventive Detention since 1945 have been included in this analysis. However, it is acknowledged that official records of offenders prior to 1980 are not always complete.

Where an indeterminately sentenced offender is recorded as having been released prior to 1990, and no further records relating to the person can be found (including parole orders), he or she is recorded here as “discharged”.

On 31 December 2013, 776 of this number were in prison (including 4 waiting for a recall hearing), 28 had been deported, and 99 are deceased. The remaining 265 are being managed in the community on life-long parole.

STATUS	ALL	LIFE	PD
In Prison, Sentenced	772	512	260
In Prison, Recall Outstanding ²	4	2	2
Community, Parole	265	242	23
Deceased	99	69	30
Discharged ³	131	86	45
Deported	28	25	3
Grand Total	1299	936	363

Figure 2 Indeterminate offenders by current status

² Offenders who are counted as *In Prison, Recall Outstanding* have been released on parole, and have been recalled to prison and are awaiting a recall hearing to confirm if the NZPB will approve the recall order.

³ Under the Criminal Justice Act 1985, offenders could be discharged from life parole by the National Parole Board. This was repealed with the introduction of the Parole Act 2002 S29(3).

Snapshot of indeterminate offenders in prison

Although typically fewer than 50 offenders start indeterminate sentences each year, they remain in prison for lengthy periods and are becoming an increasingly significant subset of the prisoner population.

Indeterminate offenders now make up 11 percent of the sentenced population.

In 1990, 85 percent of indeterminate sentenced offenders in prison were serving Life sentences. Since then, this proportion has reduced significantly, to 66 percent, with a greater proportion now on Preventive Detention.

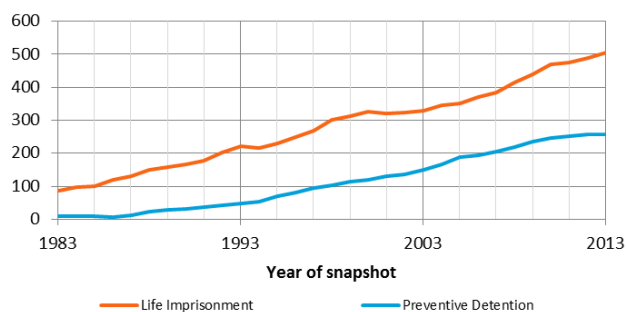


Figure 3 Number of indeterminate sentenced offenders in prison

New indeterminate sentence starts

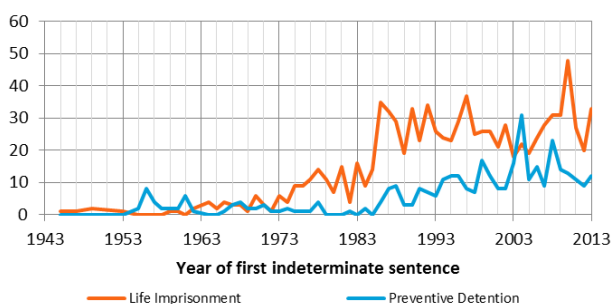


Figure 4 Number of new indeterminate sentence starts each calendar year

Approximately twice as many offenders are sentenced to Life Imprisonment than receive Preventive Detention. Unusually, in 2004 the number of starts on Preventive Detention was more than the number of Life Imprisonment starts.

Since 1985 the number of offenders sentenced to an indeterminate sentence has generally been increasing.

Spikes in the number of offenders sentenced to Life Imprisonment appear to have occurred in each of the last three decades. For example, against an average of around 25 Life sentence starts per year, in 2010, 48 offenders were sentenced to Life Imprisonment.

Age at sentencing

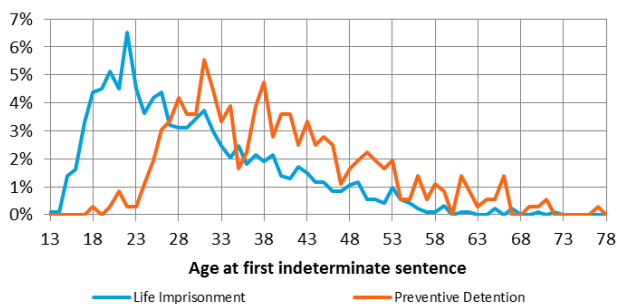


Figure 5 Indeterminate sentenced offenders by age at sentencing

Figure 5 shows the proportion of indeterminate offenders according to the age at which they were first sentenced to the indeterminate sentence. More younger offenders are sentenced to Life Imprisonment than those sentenced to Preventive Detention. This is due to the nature of the offences associated with each sentence type (see Figure 11).

The median age of offenders sentenced to Life Imprisonment is 27 years. This is significantly lower than the median age of offenders sentenced to Preventive Detention, which is 38.

Two thirds of offenders sentenced to Life Imprisonment were between 20 and 39 years old when their sentence started. The remaining third can roughly be halved into two equal age groups, under 20 and 40 and over.

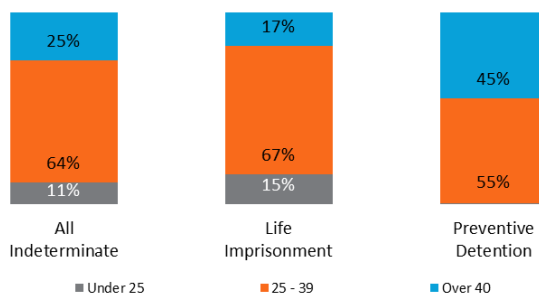


Figure 6 Indeterminate sentenced offenders by age group

Offenders sentenced to Preventive Detention present a different profile. About half of the offenders sentenced to Preventive Detention were aged 40 years or over when they commenced the sentence. Offenders between 20 and 39 account for over half of all offenders sentenced to Preventive Detention.

Only one offender under the age of 20 has been sentenced to Preventive Detention.

Gender

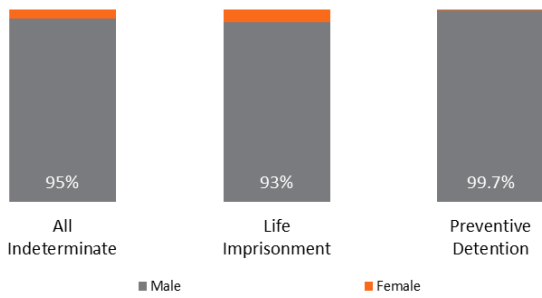


Figure 7 Indeterminate sentenced offenders by gender

Of the 1299 offenders sentenced to an indeterminate sentence, 62 (five percent) are female.

When split by sentence type a clear difference emerges. Only one female offender has ever been sentenced to Preventive Detention and, unlike the majority of male Preventive Detention offenders, the offences involved were violent rather than sexual in nature.

Of all offenders sentenced to Life Imprisonment, seven percent are female. This is still below the proportion of females sentenced to imprisonment on determinate sentences (10 percent).

Ethnicity

The ethnicity of offenders serving indeterminate sentences is very similar proportionally for both Maori and European, around 45 percent. Pacific peoples generally account for just over 10 percent, and all other ethnicities about four percent.

Maori make up the same proportion of offenders sentenced to Life Imprisonment and Preventive Detention (42 percent).

A higher proportion of European offenders however are sentenced to Preventive Detention (51 percent) compared to Life Imprisonment (40 percent).

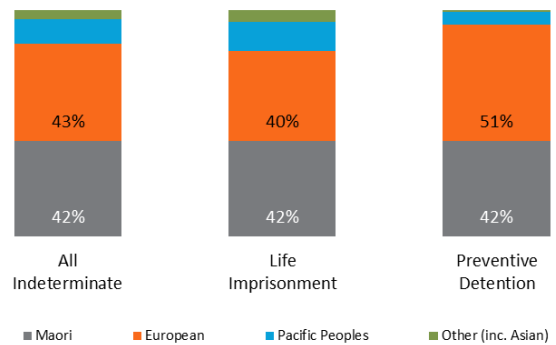


Figure 8 Indeterminate sentenced offenders by ethnicity⁴

⁴ Ethnicity of 12 percent of all indeterminate offenders is not recorded. These offenders, most of whom were sentenced prior to 1990, have been excluded from the above figures.

Gangs

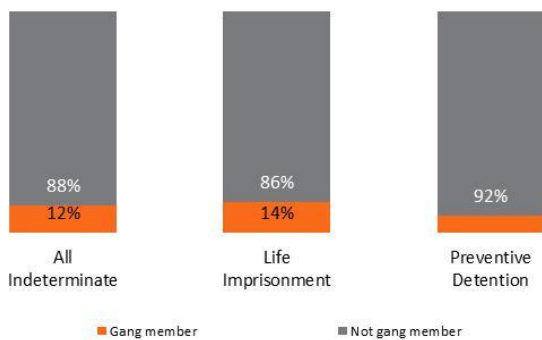


Figure 9 Indeterminate sentenced offenders who are active gang members

Twelve percent of all indeterminate sentenced offenders are gang members. Fourteen percent of all Life Imprisonment prisoners and eight percent of all Preventive Detention offenders are gang members.

The finding that offenders on Life Imprisonment sentences have a higher rate of gang members than Preventive Detention sentences is to be expected for two reasons:

- the majority of Life Imprisonment offenders are sentenced for homicide or violent offences, as are over half of gang members.
- the majority of Preventive Detention offenders are sex offenders, and sex offences constitute the offences of only 10 percent of all gang members in prison.

Offence type

Life Imprisonment sentences are predominantly imposed for murder (over 99 percent), although a small number have been imposed for less serious violent offences such as manslaughter. A very small group of Life-sentenced prisoners received this penalty for drug importation or manufacturing offences. Preventive Detention sentences are mainly imposed for sexual offences, although 17 percent of offenders sentenced to Preventive Detention were sentenced for non-sexual offences. Most of these however were sentenced under old legislation that has since been repealed.

Figure 10 shows the first indeterminate sentence of each sentence type and the offence type for that sentence.

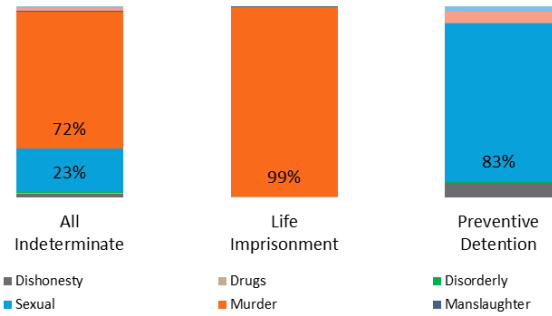


Figure 10 Indeterminate sentenced offenders by offence type

Indeterminate sentences as proportion of all prison sentences⁵

Figure 11 shows that only 0.4 percent of all prison sentences are indeterminate in length.

Only one percent of imprisoned violent offenders receive an indeterminate sentence. However, the sentences of four percent of all sexual offenders who were imprisoned were Preventive Detention.

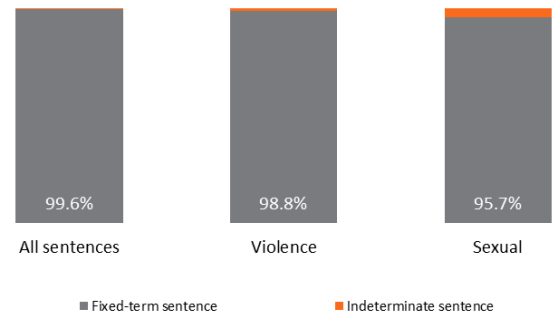


Figure 11 Offence type by prison sentence type

Indeterminate sentenced offenders' place of birth

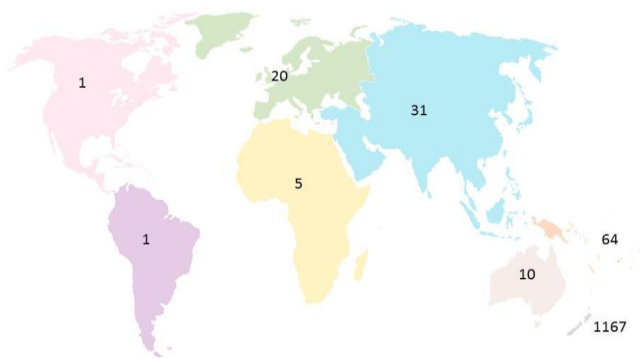


Figure 12 Number of indeterminate offenders and location of birth⁶

⁶ Where an offender has no specified birthplace, the assumption has been made that they were born in New Zealand.

Over 90 percent (1167) of offenders sentenced to an indeterminate sentence were born in New Zealand.

Offenders born in the Pacific Islands (5 percent) are the largest group of offenders with non-New Zealand places of birth. These percentages are not dissimilar to proportions found the wider prison population.

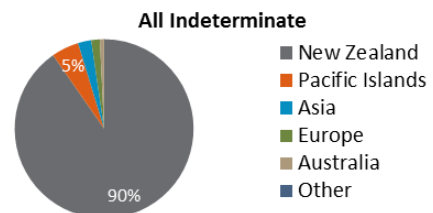


Figure 13 Life offenders by birthplace

Imposed minimum non-parole period

Figure 14 shows the spread of imposed non-parole periods.

Minimum non-parole periods for Life Imprisonment and Preventive Detention have changed a number of times as relevant legislation has been revised.

Almost half of all Life Imprisonment sentences were imposed with 10 years non-parole periods. With sentences of Preventive Detention, 38 percent had a 10 years non-parole period, with the majority (57 percent) having minimum periods below 10 years. This difference reflects the provisions of the Sentencing Act 2002.

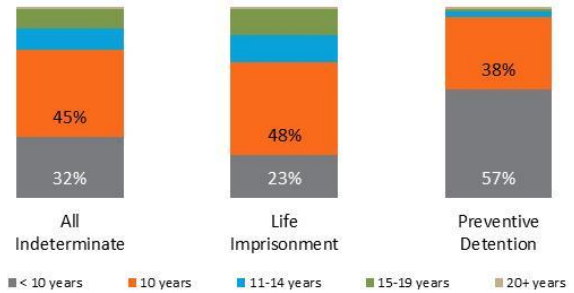


Figure 14 Minimum non-parole periods of indeterminate sentences

The mean imposed non-parole period for a Life Imprisonment sentence is 10 years 2 months, compared with 7 years 7 months for Preventive Detention.

To date, the longest imposed non-parole period for a Life Imprisonment sentence is 30 years, imposed in 2003.

The longest imposed non-parole period for a Preventive Detention sentence is 28 years, imposed in 1984.

Seriousness Index

Not surprisingly perhaps, amongst all offenders on whom an indeterminate sentence has been imposed, those released from prison and currently on parole were originally convicted of offences lower in seriousness than the offences of those who currently remain in prison (see Figure 15). This difference is particularly pronounced amongst Preventive Detainees. The seriousness of the offences for which the sentence was imposed is influential in determining long-term risks to public safety posed by any individual offender.

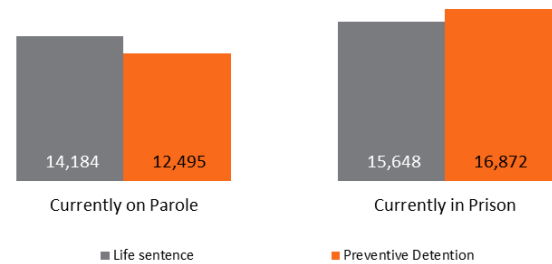


Figure 15 Average Seriousness Index

Ever released on parole

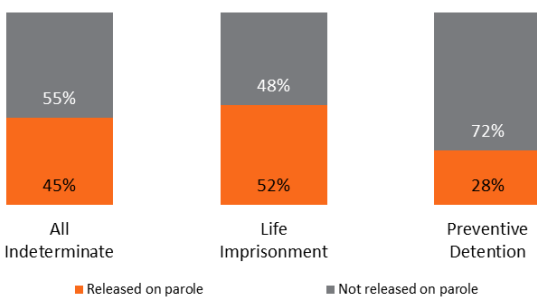


Figure 16 Indeterminate sentenced offenders who have been released on parole at least once⁷

Figure 16 shows the proportion of indeterminate sentenced offenders who have been released on parole (at least once), by sentence type.

Of the 1299 offenders sentenced to an indeterminate sentence, 589 (45%) have been released on parole at least once.

Over half (52 percent) of offenders who have been sentenced to Life Imprisonment have been given parole at least once, compared with only 28 percent of offenders sentenced to Preventive Detention.

Of the 265 indeterminate sentenced offenders who are currently released on parole, only 23 (9%) were Preventive Detainees. These differences reflect the fact that a significant number of offenders sentenced to Life Imprisonment are assessed as having low risks of re-offending. However, Preventive Detention is imposed only on offenders who are assessed at the time of sentencing as having a very high risk of future offending.

⁷ Releases on parole here include those released by the NZ Parole Board and its predecessor, the National Parole Board.

Time served before first release

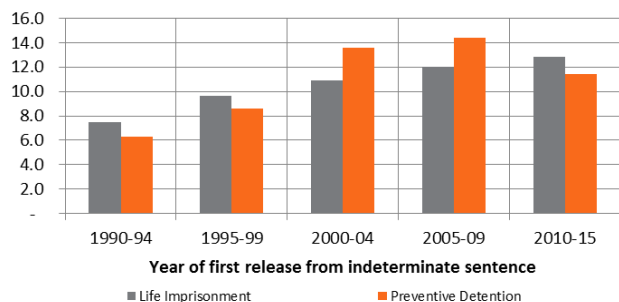


Figure 17 Average number of years served before first release, counted at year of first release

The average time served by those released from a Life Imprisonment sentence has increased steadily since the early 1990s. Time served amongst those released from Preventive Detention increased significantly between 1990 and in the early 2000s, peaking at 14.4 years. Since 2010, the average number of years served before being released from Preventive Detention has decreased to just over 11 years.

It should be stressed however that these figures relate only to indeterminate sentenced offenders *who have been released*: they do not reflect the lengths of time served by those who have passed their parole eligibility date but have not been released.

Time served for those not yet released

Figure 18 shows all indeterminate sentenced offenders who have passed their parole eligibility date, but have not yet been released. Most of these offenders have spent five years beyond their parole eligibility date.

Preventive Detention offenders are found to have served slightly longer (2-3 months) on average since passing their parole eligibility date than have Life Imprisonment offenders.

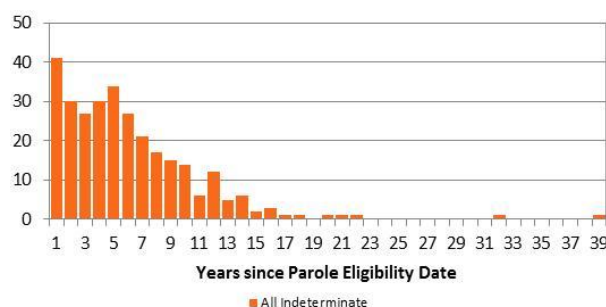


Figure 18 Number of years since Parole Eligibility Date⁸

⁸ These figures relate only to indeterminate sentenced offenders who have passed their parole eligibility date and have not yet been released. They do not include indeterminate sentenced offenders who have been released but then recalled to prison.

Recalls to prison⁹

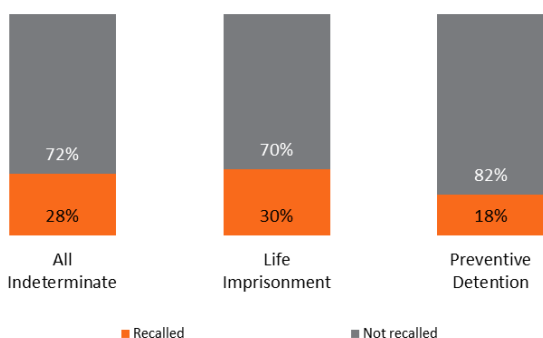


Figure 19 Indeterminate sentenced offenders who have been released on parole at least once and proportion recalled¹⁰

Figure 19 relates only to indeterminate offenders who have been released on parole. It reveals the proportion of these who have been recalled to prison to resume serving the indeterminate sentence at least once.

Just over a quarter of indeterminate offenders who have been released have subsequently been recalled. This proportion is significantly higher for Life Imprisonment offenders than for Preventive Detention offenders.

¹⁰ Offenders recalled following release from an indeterminate sentence included here may or may not still be in prison.

⁹ Releases and recalls referred to in this document relate to decisions made by both the New Zealand Parole Board, and its predecessor, the National Parole Board

Sub-types of indeterminately sentenced offenders

Offenders sentenced to Life Imprisonment or Preventive Detention vary significantly in terms of prior offending history. A graphical representation developed by the Department – the *Offender Timeline* – depicts individual criminal histories in a simplified visual format.

Each offender’s timeline starts at left as the offender’s date of birth, and continues until very recently (December 2013). Longer timelines represent older offenders and shorter timelines, younger. Interspersed along each timeline are markers representing elements of a unique offending history:

- Markers above the timeline represent individual offences; the colour of each marker depicts the nature of the offence (see Legend opposite).
- Slight differences in height of each marker above the line depict the seriousness score for each offence.

- The colour of each bar below the timeline depicts the nature of the most serious offence for which a sentence was imposed
- The depth of each bar below the line depicts the nature of the imposed sentence or order (see Legend).
- The length of each bar depicts the length of the sentence or order.

LEGEND	
Line colour = offence type	Line thickness (above line) = seriousness score
Homicide	Score <= 40
Sexual Offences	Score <= 100
Violence related	Score <= 1000
Burglary	Score > 1000
Drugs	Line thickness (below line) = sentence type
Robbery	Community sentenced
Good order etc	Parole or ROC
Traffic	Remanded in custody
	Prison sentenced

Figure 20 Legend for offender timeline

Timelines for offenders sentenced to Life Imprisonment

Offenders sentenced to Life Imprisonment appear to divide equally into two categories: those with a significant history of offending prior to the Life sentence, and those who had little or no prior history of offending¹¹.

A sample of offender timelines for Life-sentenced prisoners with significant previous offending histories appears immediately below. Violent and dishonesty offences predominate in these prior offences, with convictions and sentences for burglary being particularly common.

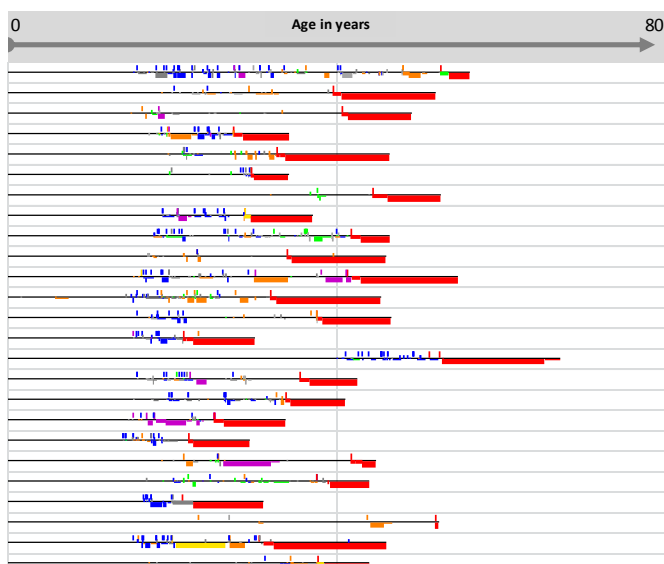


Figure 21 Sample of offenders with a strong history of offending

¹¹ Offenders are counted as having a significant history of offending if there is at least one prison sentence, or five community sentences prior Life Imprisonment.

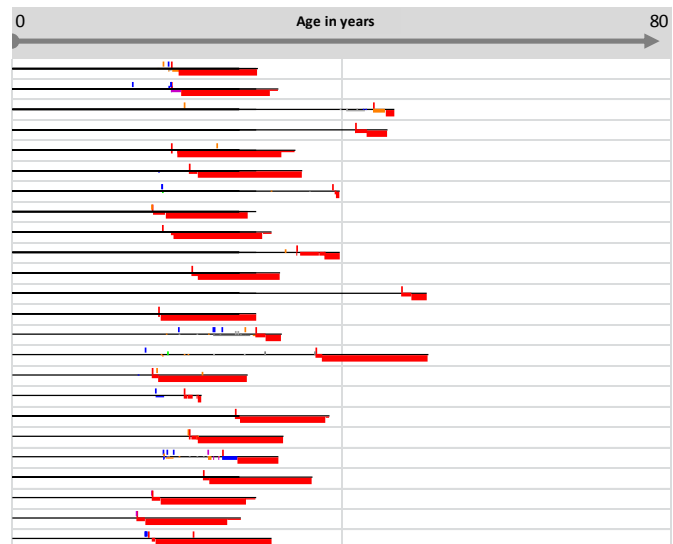


Figure 22 Sample of offenders with no history of offending

Just over half (53 percent) of all offenders sentenced to Life Imprisonment have little or no prior history of offending¹². Offenders in this category are probably more likely to be released shortly after their parole eligibility date.

¹² Note that this form of analysis counts only Corrections-administered sentences, and thus does not show convictions resulting in fines, discharges, and other lower-level sentencing outcomes.

Preventive Detention

Offenders sentenced to Preventive Detention fall into one of three somewhat distinct categories. These include offenders with a significant history of offending of various types¹³, those with multiple prior convictions and sentences but for sexual offending only¹⁴, and those with only minor, or no prior convictions of any type.

As with many chronic offenders who eventually receive Life Imprisonment, Preventive Detention offenders in the first group are revealed as having significant quantities of convictions for violent and dishonesty offences (including burglary), as indicated in the graphic below. Over 75 percent of offenders sentenced to Preventive Detention are found also to have significant histories of non-sexual offending.

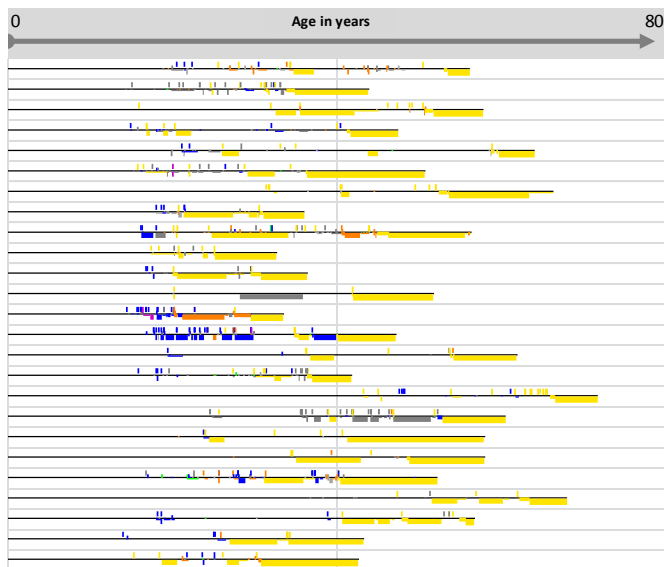


Figure 23 Sample of offenders with a significant history of offending

Fourteen percent of offenders sentenced to Preventive Detention have significant offending histories which is exclusively, or very largely, sexual in nature. Example timelines are given in the following graphic (Figure 24).

¹³ An offender is counted as having a significant history of offending if he or she has at least one prison sentence or five community sentences prior to receiving Preventive Detention.

¹⁴ An offender is counted as having a significant history of sexual offending if he or she has at least one prison sentence or five prior community sentences for sexual offences prior to receiving Preventive Detention.

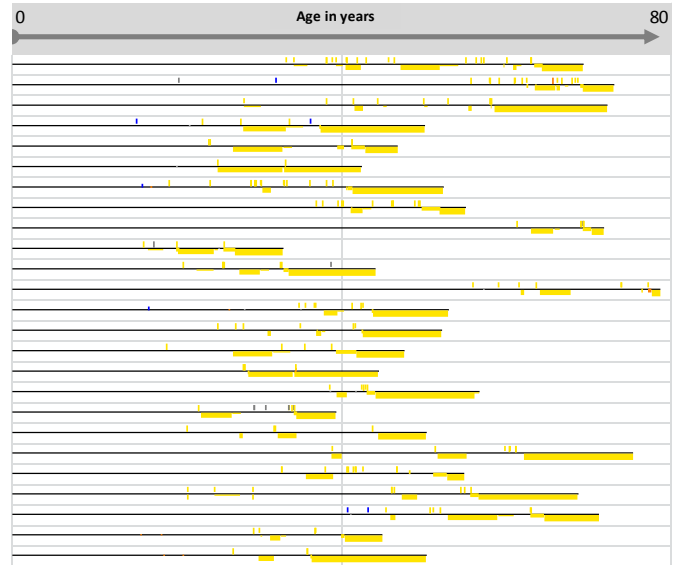


Figure 24 Sample of offenders with a significant history of sexual offending

Less common again are instances of Preventive Detention being imposed on offenders who present with no prior convictions or sentences for any type of offence, including sexual. Around ten percent of offenders sentenced to Preventive Detention are in this category – the Preventive Detention sentence is the first time that they have been subjected to a prison term, and without any prior record of offending. However, as appears in the timelines examples given below, when Preventive Detention is the first prison term ever imposed on an individual there has been proven a long and serious history of sexual offending that may have spanned many years. Imposition of the sentence also signifies an assessed high risk of future re-offending.

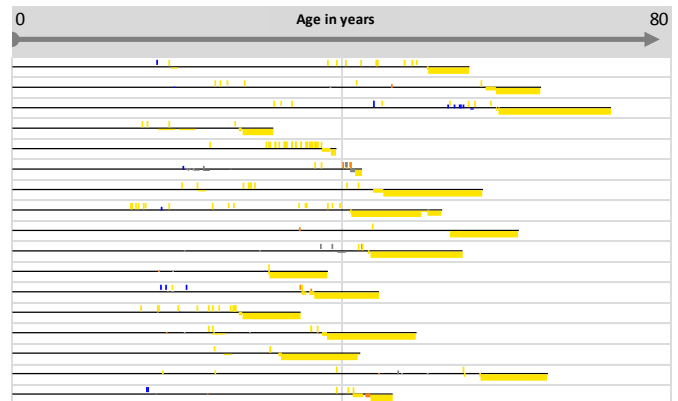


Figure 25 Sample of PD offenders with little or no official record of previous sentencing

Conclusion

Indeterminate sentences are the most severe penalty that can be handed down by a court in New Zealand, and almost always reflect offending of the most serious type. At the end of 2013 there were 776 prisoners serving indeterminate sentences in New Zealand prisons. These offenders comprise 11% of the sentenced prison population. An additional 265 have completed their prison term and were being managed on parole in the community. These latter offenders are subject to recall to prison at any time, and will remain so for the rest of their lives.

Based on trend of the last 20 years it appears likely that the number of prisoners on indeterminate sentences will continue to increase. This group of offenders will therefore continue to be an important focus for correctional policy and practice, both to ensure sound and humane management of these offenders while in prison, and to promote effective rehabilitation so that as many as realistically possible can eventually be released, without creating undue risks to public safety.

Relevant source documents

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Appendix 1

The following table shows the changes to the minimum non-parole periods for each indeterminate sentence type.

Non parole periods for Life Imprisonment	
Criminal Justice Act 1954	5 years
Criminal Justice Amendment Act 1962	10 years
Criminal Justice Amendment Act 1967	6 years
Criminal Justice Amendment Act 1975	7 years
Criminal Justice Act 1985	7 years
Criminal Justice Amendment Act 1987	10 years
Sentencing Act 2002	10 years

Non-parole periods for Preventive Detention	
Criminal Justice Act 1954	3 years
Criminal Justice Act 1985	7 years
Sentencing Act 2002	5 years