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**AT THE HEART
OF THE MATTER,
NZ DRUG
FOUNDATION.**
Te Tūāpapa Tarukino o Aotearoa

New Zealand Drug Foundation submission on methamphetamine sentencing

Submitted to the New Zealand Court of Appeal on **5 April 2019**

Tēnā koe

Thank you for giving us the opportunity to submit to you on this important issue. We have been struck many times by the very large sentences that are handed down for methamphetamine and other drugs in NZ.

We believe the severity of these sentences to be out of proportion when compared with sentences for other offences. And we request that any new sentencing guidelines include the flexibility to take into account that drug-related offending can have complex motivations and is often linked to issues of dependency.

The Drug Foundation is a charitable trust. We have been at the forefront of major alcohol and other drug policy debates for nearly 30 years. During that time we have demonstrated a strong commitment to advocating policies and practises based on the best evidence available.

We are committed to reducing and preventing the harm caused by drugs in New Zealand. We focus on advocating for public health and socially just policies and services that build a healthy society where there is the least possible harm from drug use.

Our submission is structured as follows:

- **PART ONE** Overview of methamphetamine use in New Zealand
- **PART TWO** Penalties for methamphetamine offences are out of proportion compared to other crimes, and should be lowered
- **PART THREE** Sentencing guidelines must be flexible, to take account of the different motivations behind drug offending.

Thank you again for the opportunity to submit.

Ngā mihi nui,



Ross Bell

Executive Director

PART ONE – Methamphetamine use in New Zealand

Methamphetamine causes much harm to some. However, most people who use the drug do not become dependent

1. Methamphetamine can seriously affect health and mental health. It can impact relationships and employment and make life extremely difficult for police officers and hospital staff who deal with people under the influence of the drug – and for Court staff who try the worst cases. There is no doubt that methamphetamine fuels significant crime and continues to cause much hardship in New Zealand.
2. However, it is important to dispel the myth upfront that methamphetamine is a ‘one hit and you’re hooked’ drug, as it is often portrayed in the media. In fact, as with alcohol and other drugs, many or most people who use it do so irregularly, and without serious harm.
3. Rates of methamphetamine use in New Zealand have remained stable in the past 5 years. Around 0.8% of those aged 15 and above use the drug each year, equating to 31,000 adults in 2016/2017¹. Our statistics do not tell us how many of those once-a-year users use more regularly, or heavily. However we can use Australian statistics as an indication.
4. According to the 2016 Australian National Drug Strategy Household Survey, only 20% of adults who use methamphetamine in that country use once a week or more often. 69% use less than once per month. Although we do not have figures on how many users go on to become dependent, the statistics imply that only some do so. Others are clearly able to restrict themselves to occasional use.
5. All of this is not to underplay the very real harms that methamphetamine use causes for some, particularly in vulnerable communities. But it is worth a reminder that the Court probably sees the reality of methamphetamine more at the ‘sharp end’ – the end at which it causes huge harm to a percentage of those who use it.

¹ 2016/17 Ministry of Health Household Survey

PART TWO – Penalties for methamphetamine offences are extreme and should be lowered

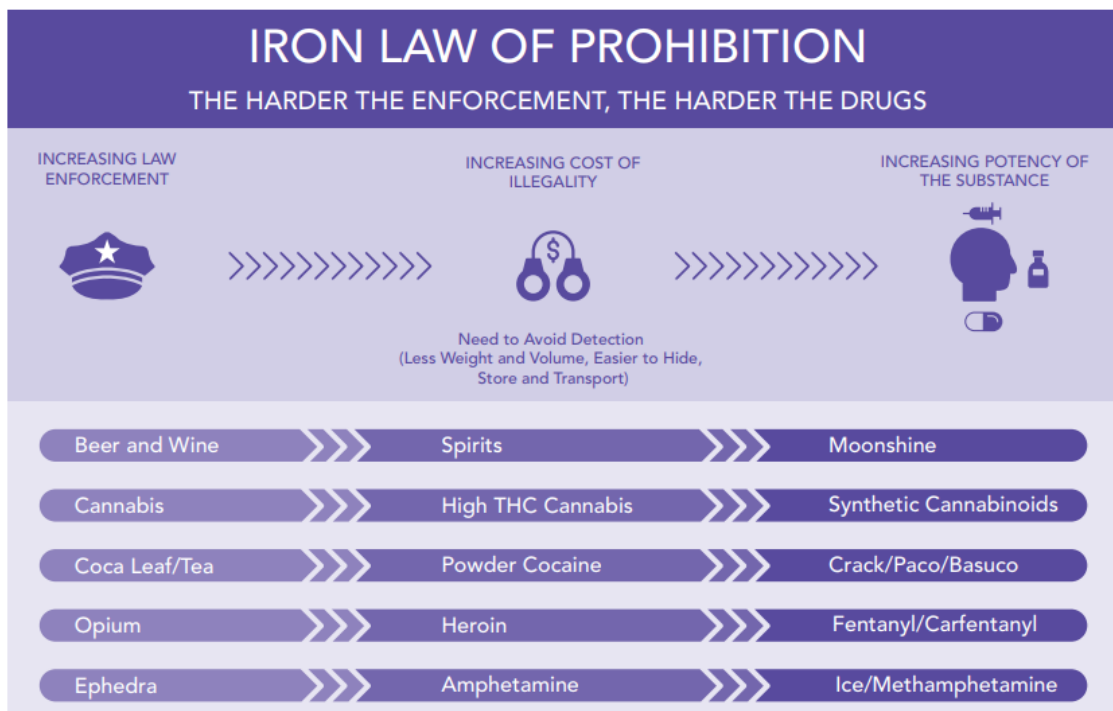
6. The public rightly has an interest in seeing those who harm others punished by the law. However, we apply extraordinarily high penalties for methamphetamine in this country. This seems to be for two reasons:
 1. out of a sense that it will help reduce the harm caused by a dangerous drug if we come down hard on the dealers; and
 2. out of a sense that drugs, particularly methamphetamine, are evil and those who deal with them are somehow ‘other’ or ‘bad’ and ought to be punished to the full extent of the law.
7. We address each of these reasons in turn below. Firstly, we point out that harsh sentences will not reduce the harm caused by methamphetamine. Coming down hard on supply does not impact demand for drugs, nor how accessible they are to those who wish to buy them.
8. We then challenge the Court to examine the extent to which the sentencing guidelines are influenced by public fear and judgment around drugs. We conclude that the type of sentence currently handed down is not proportionate to other crimes such as rape that involve acts *intended to cause* serious harm to other people.

Do extremely high sentences reduce the harm caused to communities by methamphetamine?

9. Given the high levels of harm that methamphetamine causes in our communities, we need a system that discourages its use. Logic would tell us that the higher the penalty for manufacture and dealing, the more people will be dissuaded from selling and the fewer people will use the drug as a result. Unfortunately that is not how a supply and demand market works.
10. The clear lesson of prohibition over the past sixty years has been that coming down hard on the ‘supply side’ of the drug market does not reduce drug use, or make it harder to get hold of drugs. This is because supply will always step up to meet demand². Experience from around the world, and in New Zealand, shows us that efforts to remove drugs from the streets by prosecuting drug dealers is only ever successful in the very short term.
11. In fact prohibition, combined with high sentences, can exacerbate harmful drug use. Coming down harder on drugs pushes up their price, making them more economically attractive. It can also make the products themselves more dangerous.

² Global Commission on Drug Policy, *War on drugs: report of the Global Commission on Drug Policy* (2011 report).

12. The higher the risk for suppliers, the more incentive to make products stronger, less bulky and thus harder to detect. For example, as the drug war intensified between 1990 and 2007 in the USA, the purity of heroin increased by 60%. The potency of cannabis increased by 161% and cocaine purity went up by 11%³.
13. This is known as the “iron law of prohibition”, as illustrated in the figure below.⁴



14. Long sentences for manufacture and supply do not stop demand and do not reduce the harms caused by methamphetamine. And we can't fall into the trap of thinking that high sentences are justified for the reason that they make communities safer. They do not.

How do penalties for methamphetamine offences stack up against other offences and penalties?

15. Some people argue that we need to come down hard on drug dealers because they are 'bad' or 'evil' people who cause harm to others by supplying them with a product that may hurt or even kill them. We examine how this had played into long sentences in New Zealand below.

³ Transform Drug Policy Foundation (2016). *The Alternative World Drug Report* (2nd edn.) Available from <https://www.tdpf.org.uk/resources/publications/alternative-world-drug-report-2nd-edition>

⁴ Global Commission on Drug Policy, *Regulation. The Responsible Control of Drugs* (2018 report).

Our moral sense of judgment about drugs is not set in stone. It has changed over time and continues to do so

16. We have had a very fluid cultural and moral approach to different drugs over the past two hundred years in this country. There is nothing set in stone about the way we see certain drugs, or the people who supply them.
17. From the 1960s onwards the USA started to put huge pressure on other countries to adopt drug prohibition. The United States was waging a race war at the time, and it is well-documented that officials openly used drug laws as a tool in that war.
18. This attitude influenced us in New Zealand. Although there was already some public ill-feeling towards alcohol and other drugs, new laws in the 1960s which made a range of drugs illegal increased fear and judgment significantly.

Methamphetamine is currently viewed through a lens of stigma, fear and judgment in New Zealand

19. Media has also played its part in ensuring methamphetamine is seen differently in New Zealand. Words commonly used include ‘meth scourge’⁵; ‘meth plague’⁶; ‘meth epidemic’⁷; ‘meth head’⁸. We also hear regularly about ‘P babies’⁹, despite the research behind the concept being extremely shaky.
20. The language used to describe methamphetamine in the media does not help us as a country to keep an objective view of the drug, but instead feeds into the fear and judgment felt about this (and other) drugs.

As a result, sentencing levels are disproportionate when compared to other crimes

21. Society should feel justified in attempting to dissuade people from dealing or manufacturing harmful drugs, and punishing them for doing so. However we are concerned that public fear and moral judgment around methamphetamine and other drugs has influenced sentence length to the extent that current sentences are out of proportion to the harm caused when compared with other crimes.
22. It is not unusual to see sentences handed down of well more than 20 years duration for methamphetamine dealing. Compared with sentences for murder, manslaughter, rape and child abuse, these extremely long sentences are not justified.

⁵ <https://www.radionz.co.nz/news/national/364513/a-huge-difference-to-combat-the-methamphetamine-scourge>; <https://www.newshub.co.nz/home/new-zealand/2018/09/brave-hearts-support-group-battles-meth-scourge.html>

⁶ https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12085175

⁷ https://www.nzherald.co.nz/lifestyle/news/article.cfm?c_id=6&objectid=12200154

⁸ <https://www.stuff.co.nz/the-press/opinion/78762077/giving-money-to-beggars-a-big-waste>

⁹ <http://www.stuff.co.nz/sunday-news/latest-edition/583890/P-babies-prove-problem-kids-who-cause-chaos-at-school>

23. In the case of rape, for example, the maximum penalty is 20 years. A person who rapes another commits an act against another person that:
1. is directly aimed at that person;
 2. is committed with the intention of hurting that person;
 3. has lifelong negative ramifications for the victim in every case; and
 4. is committed against the will of the victim
24. In the case of drug dealing, the offender commits an act where:
1. the purpose is to make money;
 2. in many cases no actual harm is caused to the purchaser by the sale;
 3. even if harm is caused, that will not normally be the offender's primary intent (although they may in some cases be indifferent to such harm being caused); and
 4. the purchaser, or 'victim', agrees to the act being committed.
25. The argument is of course more complex than this because a drug dealer may sell to dozens of clients, and in each transaction there will be a new risk of harm. Further, the harm is not limited to the person who buys the substance, but to their families and to wider society – in terms of increased health costs for example. In addition, many clients will be dependent on the substance offered, and will thus be powerless to resist purchasing more and more. This fact raises the 'moral' culpability of dealers in the eyes of many.
26. However it's worth going back to the case of alcohol briefly. Rightly or wrongly, we don't hold alcohol dealers responsible for the very significant health harms caused to their consumers (and their families) by their acts. This is despite the fact that alcohol dealers include well established and wealthy companies who are well aware of the effects of their 'dealing' on society.

In summary, we would like to see sentences lowered considerably

27. We in no way wish to imply that drug dealers and manufacturers ought not to be punished under the law. However, we do argue that the harshness of current sentencing practice is out of proportion compared with crimes such as rape that involve acts *intended to cause* serious harm to other people. And we do challenge the Court to examine the extent to which the sentencing guidelines are influenced by public fear and judgment around drugs.
28. We would like to see prison sentences lowered considerably. We would also like to see more alternative sentences offered, such as access to drug treatment and to health and social assistance.

PART THREE. Sentencing guidelines must be flexible enough to take account of the different motivations behind drug offences

29. Our concern is that sentencing guidelines are currently not flexible enough to ensure that offenders are treated fairly given the wide range of motivations that can cause offending. We hope the new proposed guidelines will rectify that.
30. From our experience there are main types of motivation for a 'career' in drug manufacture or dealing.
31. For the first group of offenders, the motivation is purely financial. This offender is in a good position to find another job that would supply an adequate living, but chooses instead to manufacture or deal drugs because of the large gains that may be made.
32. The second group also chooses to manufacture or deal methamphetamine for financial reasons. However, their choice is made because they are impoverished, and feel they have no other realistic employment opportunities. Perhaps they have a family to support but are uneducated or have a previous criminal record which makes it hard to find employment.
33. For this second group, society must bear at least some part of the blame for their offending. Not only do we allow poverty to persist in this country, but we have set up a drug law system which offers huge financial gain to people who are otherwise unable to find employment. This should be reflected in the range of sentences that are available to hand down.
34. The third group are made up of those who are dependent on drugs themselves, and offend in order to provide sufficient income to buy drugs for themselves. Other experts have submitted to the Court around the difficulty of shaking a dependency on methamphetamine, and how this dependency can by its nature lead people to behave in ways that they normally would not.
35. A person who commits drug-related offences due to a dependency on methamphetamine or other drugs should be treated quite differently when it comes to sentencing than a person who commits offences purely for financial gain. Not only should the sentences be much lower, but they should also be offered treatment and other health and social assistance.