

# INTRODUCTION TO SENTENCING

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## Key Questions

1. *Why do we punish offenders?*

Punishment, deterrence, denunciation, rehabilitation and incapacitation

2. *What tools do sentencing judges have*

Fines, Supervision, community work, community detention, home detention and imprisonment

Sentencing Act 2002, section 8 and the “least restrictive” outcome

3. *Who is involved in sentencing process*

Probation officer, prosecutor, defence counsel and the judge

4. *The sentencing process*

Starting points and tariff judgments; aggravating and mitigating factors ; “doing the arithmetic”.

5. *Parole and its influence*

Parole; non-parole periods and the “three strikes” provisions

## Sentencing hypothetical *R v Arnold*

Arnold pleaded guilty to charges of selling methamphetamine, a Class A drug. Under the Misuse of Drugs Act 1975 the maximum penalty for that offence is life imprisonment.

The accepted facts are that Arnold made regular, purchases of one or two grams of methamphetamine which he then then divided into smaller quantities and sold on to other persons including his family, associates, and on a number occasions an undercover police officer. The total amount of the drug sold over the relevant period was about 80 grams.

Arnold is 50 years of age, has a number of low-level prior convictions but has never been sentenced to imprisonment, he has for many years been addicted to methamphetamine, but has since his arrest successfully undertaken treatment to help end the addiction. He is married, with five adult children. He pleaded guilty at the first opportunity after his arrest.

Lawyers for both prosecution and defence are agreed the sentencing judge must take into account the following guidance from the Court of Appeal in deciding the starting point for sentencing Arnold.

*R v Fatu* [2006] 2 NZLR 72,

[34] The result is that we adopt the following sentencing bands in cases involving the sale or supply of methamphetamine:

- (a) Band One – low-level supply (less than 5 gms) – 2 to 4 years' imprisonment.
- (b) Band Two – supplying commercial quantities (5 gms to 250 gms) – 3 to 9 years' imprisonment.
- (c) Band Three – supplying large commercial quantities (250 gms to 500 gms) – 8 to 11 years' imprisonment.
- (d) Band Four – supplying very large commercial quantities (500 gms or more) – 10 years to life imprisonment.

We emphasise that these are starting points, before taking into account aggravating and mitigating factors relating to the offender (as opposed to the offending).

### Questions:

- (a) Should the starting point for the sentence for Arnold be a term of imprisonment?
- (b) If so, how long should that term of imprisonment be?
- (c) What factors might reduce his overall sentence?