Issue 36

August 2008

www.youthcourt.govt.nz

"Court in the Act"

A newsletter co-ordinated by the Principal Youth Court Judge for the Youth Justice Community

In this issue...

"... there are no immediate or even long term plans to establish a designated facility for young people with intellectual disabilities who offend. I find that staggering, given the potential risk to our community in this challenging group of young offenders not being provided with the care and containment that is required. It is of great concern to me that young people like N who offend, have been marginalised in terms of dedicated secure facilities"

Judge Ida Malosi
Police v NW
5 October 2007

Specialist facilities for mentally ill young offenders

The first four pages of this issue of *Court In The Act* focus on the recent case of *Police v NW,* which illustrates the potential for outcomes which do not live up to the first object (s4(a)) of the CYPF Act, which is to promote the well-being of children and young persons by establishing and promoting services and facilities within the community that will advance the well-being of those children and young persons.

The young person referred to as NW has been the subject of a series of recent proceedings in the Youth Court, which have attempted to use various applicable legislation to construct a plan for NW that means he will be cared for as a mentally ill young person, while, at the same time living in a secure environment to prevent him from running off and posing a threat to himself and the community.

Summaries of two judgments from late 2007 which deal with NW's situation were reported in the Youth Court Law Review April 2008 as *Police v W* 5 October 2007 Youth Court, Manukau, CRI 2007-292-285 Judge Malosi, and *Re W* 3 December 2007, Family Court, Manukau, CYPF 2005-092-2310, Judge Adams. *Copies of these judgments are available from the office of the PYCJ.*

Police v NW — highlighting the inadequacies

Peter Williams — barrister and solicitor and member of the youth justice team at Meredith Connell, Crown solicitors, Auckland

Introduction

The interaction of the Children, Young Persons and their Families Act 1989 ("the CYPF Act") and the principles of Youth Justice contained therein, with the procedures contained in the Criminal Procedure (Mentally Impaired Persons) Act 2003 ("the CPMIP") give rise to a number of complexities that many Youth Courts around New Zealand may have faced infrequently, if at all, since the latter regime's inception four years ago.

The following aims to highlight some of these issues as they were encountered in the case of *Police v W* (Manukau Youth Court, 5 October 2007, Malosi DCJ), a proceeding to determine whether NW, a young person, was fit to stand trial, and the appropriate dispositions once it was determined that he was not. This case continued throughout much of 2007 and into 2008. The Police were represented by Meredith Connell, office of the Crown Solicitor, and the Youth Advocate was Jeremy Sutton. Both parties have contributed to the analysis in separate articles, and it is hoped that readers may gain an insight into their two perspectives.

By way of background, NW was a repeat offender and a repeat absconder from placements. This latest proceeding was not his first under the CPMIP. He had previously been found unfit to stand trial in relation to other offences. He had continued to abscond from placements implemented as part of the dispositions from the earlier proceedings. The proceedings in 2007 were case-managed by Her Honour Judge Malosi, and were conducted at the Manukau Youth Court. Ultimately NW was found to have an intellectual disability, to be unfit to stand trial, and to require 24-hour secure care (in a facility to be provided by Child, Youth and Family ("CYF") with the assistance of the Regional Intellectual Disability Care Agency ("RIDCA")). The key rulings of the Youth and Family Courts are outlined in the decision of His Honour Judge Adams, reported as *Re W* (2007) 26 FRNZ 604.

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Mentally ill young people and the youth justice system

Options for dealing with mentally ill young offenders in New Zealand are present in a number of Acts of Parliament.

The procedure for finding young people unfit to stand trial on criminal charges in the first place, or not guilty by reason of insanity is governed by the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIPA).

The CPMIPA provides for inquiries to be made about how best to deal with young people found unfit to stand trial or insane, and has a range of orders available to make it possible to detain the young person in a secure environment.

The CPMIPA also provides for the Court to order the young person to be treated as a 'patient' under the Mental Health (Compulsory Assessment and Treatment Act) 1992, or cared for as a 'care recipient' under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (IDCCRA).

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The Court, in the case of NW, turned instead to the care and protection provisions of The Children's, Young Persons And Their Families Act 1989. It made a custody order in favour of the Chief Executive of the Department of Child Youth and Family (CYF) under s101, in the hope that CYF and the Regional Intellectual Disability Care Agency (RIDCA) would be able to agree on which organisation should take the lead in providing services to NW.

RIDCA is the agency that has been established to fulfil assessment and treatment needs under the IDCCRA.

Dr David Chaplow (Director of Mental Health and Chief Advisor Ministry of Health) recently wrote "Systems of care for mentally abnormal offenders have been bedevilled by the interplay of a complexity of need, rejection from many quarters, and neglect and isolation from the mainstream services..." (Psychiatry and the Law, Lexis Nexis 2007, Brookbanks and Simpson eds, 385).

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Expected timeframes and planning the hearings

A smooth-running disability process usually involves three main steps under the CPMIP – an assessment of the actus reus under s 9; an assessment of mental impairment and fitness to stand trial under s 14; and determination of disposition under various sections (e.g. ss 24 & 25; s 34). A separate hearing is usually needed to determine disposition because a further report will be required if the young person is found to have a mental impairment (ss 23 or 35). This report is usually from a Health Assessor and recommends the most appropriate disposition. In the case of intellectual disability this includes a report under Part 3 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, which requires consultation with the young person, their whanau and various other interested parties. The inquiries must be made within 30 days.

Obviously more time will be required if any of the three stages are disputed by counsel. In our case, the s 9 requirement was conceded after briefs were presented by the Police by way of hand-up. However the s 14 hearing occupied a full day of cross-examination of both Health Assessors (a psychologist and a psychiatrist), and submissions from both counsel. Following the hearing counsel made further written submissions prior to the Judge delivering a decision – namely that the young person was mentally impaired and unfit to stand trial.

Inquisitorial not adversarial process

The Health Assessors, should they be required to give *viva voce* evidence, are not witnesses of the informant or the defendant. The reports they prepare are ordered by the Court, and while the informant may be asked by the Court to formally call the witness at the hearing, there is no suggestion in the legislation that the Assessors are aligned to one particular side. They are, as experts, ethically bound to be neutral witnesses and give evidence of their findings without bias.

The unique situation of the Health Assessors (not being witnesses of either the Police or the young person) arguably necessitates the appointment of an amicus or counsel to assist the Court. Such counsel, if experienced in the area, could be invaluable in the initial briefing of the Health Assessors and in calling them to give evidence at the hearing.

In practice, the Assessors will often reach a conclusion that is perceived to be contrary to the interests of one of the parties. That party is well advised to brief their own expert should they have concerns with the reliability of the Court-ordered reports. The process then becomes more adversarial in nature.

However the informant and the young person (or their counsel) should ideally have a concurrent desire to ascertain correctly whether the young person should in fact be made to stand trial. The Police, for instance, would not wish to pursue a defended hearing in the Youth Court against a young person who is incapable of understanding the process, and who properly needs the special care contemplated by the Act.

On the other hand, counsel may rightly be concerned to rigorously test the findings of the experts, if only to ensure the standard of reporting under the Act remains high.

The danger of repeated testing

In our case the psychologist gave evidence about phenomena known as test rehearsal and test fatigue. These tend to occur where a psychometric test has been administered on a person more than once in a 12 month period. Obviously the more frequent the testing, the greater chance of and possible degree of test rehearsal and/or test fatigue. These phenomena can arise where the same psychometric test is administered on a number of previous occasions and/or more than once within one year. The young person becomes familiar with the test thus possibly invalidating test results and at the very least raising real concerns over accuracy.

Accordingly it is important that the young person's clinical history is known before they are assessed, in particular any psychometric testing they may have had in the recent past. The psychologist would be expected to pick up on this; however there are no guarantees! Within one disability hearing, where the young person may well be seen by more than one psychologist, it is important that a particular psychometric test is not repeated within a short time span, for example 12 months. This further emphasizes the need for counsel to be involved in assisting the Court in directing this process from a very early stage (see below).

The issue of repeated testing arose in NW's case, where findings of unfitness had been made on previous occasions. Judge Malosi made the following suggestion for future cases:

"I share the concern of Counsel and [the psychologist] as to the number of times [the young person] has been subjected to various forms of psychometric testing for the purposes of assessments by Child, Youth and Family, and disability hearings under the CP(MIP) Act. It seems to me that in circumstances where a young person is already subject to orders under the CP(MIP) Act, but re-offends within 12 months of that order having been made, it is open to the Court to rely upon the previous psychometric test results coupled with an updating report from two health assessors. Each case of course will turn on its own particular circumstances."

Those who have participated in hearings concerning intellectual disability will likely be familiar with the Weschler Intelligence Scale for Children (the "WISC" test). This test seems to be the most well-recognized and frequently administered "IQ" type test for children and young persons in New Zealand, and provides a detailed picture of a person's cognitive functioning.

If the young person is 16 at the time of assessment and has recently had a WISC assessment in a previous proceeding, one option may be to administer the adult version of the WISC test. The psychologist will be able to advise whether this is possible.

Who should do the psychometric testing

A good reason for the WISC test not to be administered until the young person has been seen by the Court-appointed psychologist is so that the person who administered the test is the person writing the s 14 report, and is able to be questioned in detail about the process. The reasoning behind the psychologist's conclusions and the basis

for their findings are not always apparent from the written report, and counsel may want to further examine details about how the particular test was administered with the young person, instead of relying solely on secondhand information (usually hearsay) from the report of another psychologist who had seen young person on earlier date. This may occur where a preliminary assessment of the young person is completed at the behest of counsel for the young person, for the purpose of determining whether or not to initiate a disability hearing.

We have learned that the best way to avoid such a situation is to ensure that the more basic tests available are utilized in the preliminary stages of the disability proceeding (i.e. when determining whether or not to embark on the CPMIP process). The best approach seems to be for counsel for the young person to brief a psychologist to do a preliminary assessment of their client if they have concerns about their intellectual functioning, for that psychologist to administer only basic tests (not the WISC test) and to present those findings to the Court as an introductory step.

The psychologist should normally see the young person before the psychiatrist, as the latter needs to interpret the former's testing.

In Auckland the two Health Assessors are usually a clinical psychologist, who administers the psychometric tests and whose focus tends to be on the mental impairment side of the s 14 analysis (although they would usually be expected to comment in detail about the subject's fitness to stand trial); and a psychiatrist whose focus is often more on the issues around fitness to stand trial but is expected to provide the second Health Assessor's assessment as to mental impairment, usually by analysis of the psychometric tests and by conducting some shorter tests of their own.

This approach requires the psychologist to complete their report and then make it available to the psychiatrist who then completes their own report. It is useful to have both experts involved in dialogue during the report-writing stage.

The two experts will no doubt have different approaches, and different fields of expertise, though those fields do overlap in certain areas. Remember, two Health Assessors need to conclude that the young person is mentally impaired. A potential issue in later cases may be whether it is enough for the psychiatrist to simply say "it's not my area of expertise, but taking the psychometric testing at face value, I agree with the psychologist". In practice the psychiatrist's clinical observations of the young person and any testing they administer will likely either support the psychologist's findings or alternatively raise doubts about the accuracy of the psychometric testing.

Meeting to resolve issues can be useful where resources are an issue

Meetings between various stakeholders in the Youth Justice process often occur outside the Court. These frequently involve the Police, counsel for the young person, the young person themselves and their family, a social worker and other employees of CYPF and other agencies.

In NW's case counsel for both parties identified the need to arrange a special meeting of the relevant stakeholders. The meeting was not ordered by the Court, nor was it prescribed by statute. The initiative arose out of what was foreseen as potentially difficult issues as to disposition, concerns which turned out to be somewhat prophetic (see below). Where counsel can identify potential resource or custody related issues, such a meeting may well assist the Court greatly.

In our case the meeting held prior to the disposition hearing served to allow all affected parties to voice their views and concerns, and enabled the issues at the hearing to be dealt with in a more focused manner.

There is no dedicated secure facility for a young person who has a disability.

The most significant issue that arose in NW's case was the nation-wide lack of any facility for a young offender with a mental impairment who is in need of 24 hour secure care. In Auckland the Mason Clinic provides secure care for adult offenders with mental health difficulties. There are similar adult facilities around the country. However in the opinion of the experts these facilities were not suitable for a young person like NW.

Judge Malosi made reference to this predicament in her judgment, stating:

"Rather disturbingly I have been informed that there are no immediate or even long term plans to establish a designated facility for young people with intellectual disabilities who offend. I find that staggering, given the potential risk to our community in this challenging group of young offenders not being provided with the care and containment that is required. It is of great concern to me that young people like N who offend, have been marginalized in terms of dedicated secure facilities."

Judge Adams, who delivered the final decision as to disposition, echoed those sentiments:

"Like Judge Malosi, I identify a need for a specialist facility for young people like N. The lack of such a facility (whoever is to be the lead provider) is disgraceful."

The CPMIP is predicated on the assumption that there will be secure care available for those who require it. The Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, which provides for the care and treatment of intellectually disabled offenders found unfit to stand trial, expressly includes young people within its ambit (s 12). The lack of corresponding facilities placed the Court and the parties in this case in the invidious position of having to apply this law but in so doing to improvise in order to find a solution to a very basic question: where to put NW?

The Court ultimately had to force a round peg into a square hole due to this lacuna in available facilities – as Judge Malosi said, "With no obvious answers within the square I am forced to look out of it." This case has accordingly given rise to real concerns about resourcing in future cases where a young person is found unfit to stand trial and in need of 24-hour secure care.

Conclusion

Disability hearings are often complex and expose a variety of considerations. This is never more the case than when young people are involved. The need to resolve the process quickly is held in tension with the care and attention needed to obtain a just result in what is a critical determination, both for the young person and the wider community. The fact that the statutory framework for this process does not always make for an 'easy fit' with the CYPF Act and its principles suggests that amendments to streamline the two would greatly assist a more efficient and effective administration of justice in this area.

Disability Proceedings In The Youth Court - Lessons From A Protracted Case

The Youth Advocate's perspective. By Jeremy Sutton, barrister, Auckland.

Introduction

This article addresses issues arising from the case of *Police v W* (Manukau Youth Court, 5 October 2007, Malosi DCJ) & *Re W* (2007) 26 FRNZ 604, a case concerning the application of the Criminal Procedure (Mentally Impaired Persons) Act 2003 ("the CPMIP") to a young person, NW. The CPMIP is very recent legislation and many professionals have little or no experience in its application. Furthermore the vast majority of CPMIP case law is from the High Court in relation to adults.

The issues outlined below are addressed from the perspective of the Youth Advocate, and it is hoped that the suggestions made may assist others in representing young people who are faced with a similar process.

During the proceedings it became apparent that the interface between the CPMIP and the Children, Young Persons and their Families Act 1989 ("the CYPF") is unclear and amendments are needed.

Expected timeframes and planning the hearings

There may be up to three expert reports requested by the court and the parties and the entire process can take six to nine months. The young person and their family often struggle with the length of time taken and their expectations may be at odds with this. It is important to address this and ensure expectations are reasonable. In regard to this it is important to note that the young person's attendances can be excused for report monitoring type appearances.

If your client seems clearly under a disability then you will have limited interaction with them as they have limited capacity to engage.

If experts are required a special fixture of 1-2 days may be required. Indicate such a fixture to the court early. A hearing date set early means the professionals, including the report writers, work to that date. Good practice suggests there be a telephone or pre-trial conference at least two weeks before the hearing to confirm the date is still needed.

If you disagree with expert reports that have been completed, request your own specialist report writer. You will not successfully challenge findings related to disability without an expert in your favour.

Ensure any expert you brief does their report to the court in the context of an affidavit. This will save the report writer from coming to court in the event their report is not contested.

The views of the family may differ from the outcomes of the court. For example, an outcome that the young person is to be placed away from the family causes huge stresses. It is vital to remember in such cases that you are the advocate for the young person and not the family.

The Judge will welcome or even require written submissions in relation to hearings in this field.

Inquisitorial not adversarial process

The court seeks to find out the true extent of the young person's intelligence and abilities. With this in mind, open questions to the experts may deliver more effective outcomes. Finding out the amount of time the report writer spent with the young person, what assumptions lead to their conclusions and the report writer's experience in this area are helpful starting topics.

I view the way the hearing is run as comparable to an inquest, tribunal or other similar civil fixture. Consultation between the professionals will reduce any issues and speed up the result. We are all working together in an open fashion for the young person and it is not appropriate to hide any agenda.

Counsel to assist is often appointed, which is otherwise rare in the Youth Court. Their role may include helping to choose the experts and draft a brief setting out the required content for their reports. They may also lead the expert witness(es) in their evidence. One possible benefit of this appointment is that the lawyers for the Police and young person will not need to discuss the matter with the expert.

The danger of repeated testing

It is necessary to ask what testing the young person has had to date. There is no point reinventing the wheel if the proper tests have already been carried out. Find out what type of school the young person has gone to and what issues if any there have been there and at home. Is there a family court history? Is there any history of a head injury or other sudden event? What medical professionals has the young person seen? Making inquires of past diagnosis will narrow the issues and speed up the process.

The young person should not be "over tested". This is a judgment call in each case.

Repeat testing has little or less weight if taken within a short period of time as issues of test fatigue and reliability can arise. For NW he had the same test taken over a short period and this was regrettable.

Who should do the psychometric testing?

We think the well recognized tests like the WISC IV test should be carried out by one of the two health assessor's appointed under the CPMIP.

Often a section 333 report is carried out first of all. We prefer if, arguably the most important test, the WISC IV is carried out by the most suitable professional, the psychologist.

The psychologist should normally see the young person before the psychiatrist, as the latter needs to interpret the formers testing.

We think this is the logical order. There needs to be 2 health assessments under the Act. In some cases you may ask for a third test if the first two are not conclusive.

Meeting to resolve issues can be useful where resources are an issue.

Such meetings can shorten the lengthy process and narrow the issues. Decisions often have to be made at a national level but to hear the reasoning behind the policy is vital and progresses the matter. The solution may be as much practical as it is legal in having multiple statutes and agencies. For NW he was already under the CYPF Act and that had to be considered as well as the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

There is no dedicated secure facility for a young person who has a disability.

This is an ongoing issue for the professionals. NW is still in Youth Justice secure facility after 15 months although this is likely to change soon. In the short term it is a case by case matter and the need to involve multiple Government agencies including Ministry of Health and Child Youth and Family cannot be overemphasized.

Conclusion

This is an emerging area that presents huge challenges for all Youth Advocates. It is necessary to identify early where a young person may be subject to this legislation. For example you need to find out as much background as possible about the Young Person at the first interview which will flag potential issues.

The consequences of being found to be under a disability are highly significant for all concerned. The charges are normally "stayed" and the Young Person lives away from their family. The orders made under the legislation can last for up to 3 years, a much longer period than under the Youth Court umbrella.

Jeremy Sutton

Youth Advocate

Manukau

Offer hope to young offenders, not a quick fix

An article by Dr Ian Lambie and Dr John Langley, first published in The New Zealand Herald, 24 June 2008

Without exception, every generation believe that they were better behaved, better educated, showed greater respect to their elders, families and were harder working than the current generation. If only it was true!

It is a currently held belief that there are more young people committing crime than ever before. In fact, youth crime has remained relatively stable over the past decade, bar a recent increase in serious offending.

However, this increase has occurred across all age groups and is not isolated to youth. We shouldn't be fooled by politicians and political groups who can't count, or quote statistics inaccurately and are keen to make political mileage at the expense of today's youth and instil a climate of fear across our communities.

We seldom hear good-news stories in the media and yet it's clear that the vast majority of young people grow up to have productive lives and become good citizens who contribute to our society in a healthy way.

It is also a currently held belief that the only way to effectively punish anyone and prevent further offending is to jail them. Wrong again. We have one of the most "jailed" populations in the Western world.

Does it ever occur to anyone that putting more people in jail simply results in fuller jails? Recidivism does not decrease as the prison population increases.

Research dating back over 40 years clearly shows that jails don't work for offenders, and particularly for youth offenders. This is not simply "liberal opinion" - it is cold, hard fact, albeit a somewhat inconvenient truth for those who simply advocate longer and more punitive sentencing regimes.

If you want to create an adult criminal, then lock a teenager up with other young offenders during his youth, the most formative years of his life, and remove him from society. Force him to live in close proximity with other antisocial youth, and his view will simply come to reflect that which he sees everyday.

Let's be clear. There are some people, youth and adult, who are so badly damaged that they must be kept away from the rest of us. These people are clearly a danger to the community and our first step must be to ensure that we reduce the likelihood of creating more victims.

Tragically, some of these offenders may never see the light of day again. But they are a very small group and should be seen as the exception, not the rule.

Putting young people in prison does nothing more than school them in a culture of resentment, anger, distrust, alienation and further offending. It is nonsense and yet we continue to have calls for our youth to have tougher sentences, be placed in prison more readily, to spend time in boot camps, and be "scared straight".

The evidence about all of these "attempts to fix the problem", from several countries, is that they do not work, are a waste of money and in many cases actually cause more damage than good.

It is a sad reflection on us all that in a country that is supposed to be enlightened and liberal in its approaches to social matters, we continue to maintain that the more damaged someone is, the more we should continue to damage them in the hope that it will bring about a miraculous cure and "deal to them".

It never has and it never will. It is policy driven by ideology and politics rather than objective reality.

So what does work? There is a wealth of research evidence indicating that for most youth offenders the best treatment involves comprehensive family interventions based in the community.

Such programmes involve parents who receive training and supervision and who are paid well for undertaking such work. We need practitioners who receive specialist training to work with these challenging youth and families.

Surely it is better to spend money on changing these sorts of kids rather than building more and more prisons?

But without a doubt, the thing that is clearly needed is early intervention provided to children and families as early in the child's life as possible. Not only is this is a more humane way to address the problem, it also gives the young person a "chance" in life, without which they will be just another statistic, and more innocent members of society will have to bear that cost.

So let's not bury our heads in the sand hoping for some quick fix. And let's not label youth as hopeless.

We should remember our own adolescence and how we struggled to be accepted, how we struggled to stay on the right side of the law, and to know who we were and what this world was all about.

The youth of today are our future. Let us not forget this.

Dr Ian Lambie is senior lecturer in clinical psychology, and Dr John Langley is dean of education at the University of Auckland.

Both are also members of the Independent Advisory Group on Youth Offending (YJ IAG), which acts as a independent source of advice to government about youth justice issues .

What is the YJ IAG?

The Youth Justice Independent Advisory Group (YJ IAG) was established in 2003. It aims to assist in the delivery and implementation of the Youth Offending Strategy 2002, by providing a forum for discussing initiatives and developments in the youth justice sector. The YJ IAG develops independent, community-based advice to Ministers. The Group also provides feedback on policy and initiatives to ministers and to senior government officials.

Members of the YJ IAG are Ministerially appointed and they meet bi-monthly in Wellington.

Members of the IAG are:

Andrew Becroft
Principal Youth Court Judge

Anni Watkin
Manager, Youth and Cultural Development Society (NGO) Christchurch

Frank Moult
Former police Youth Aid constable, current CYF Youth Justice Co-ordinator, Palmerston North

Dr Ian Lambie
Director of Clinical Psychological Training, University of Auckland

Dr John Langley
Dean of Education, University of Auckland

Kaye McLaren
Research and training consultant, Wellington

La-Verne King
Barrister and Youth Advocate, Manukau

The YJ IAG members are very keen and willing to hear feedback and issues of concern to the community. Submissions to the Group or other correspondence can be sent to Leigh McPhail, Ministry of Justice, email: leigh.mcphail@justice.govt.nz, phone: 04 494 9703, or post to PO Box 180 Wellington.

The editors of *Court in the Act* wish to highlight the profound impact that this article has had on all who have read it, including Judge de Jong who first drew it to our attention and Principal Youth Court Judge Andrew Becroft, who commented that it was "one of the most powerful he had read", and "certainly an antidote to those who cry 'adult time for adult crime'". We also wish to pay particular tribute to the management at the Guardian, who graciously allowed us to re-publish it free of charge.

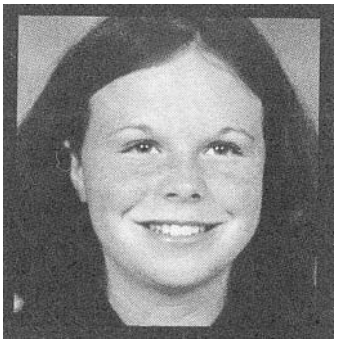
Life without hope

In the US, there are 2,270 prisoners who were sentenced as children to life without parole. They will die behind bars. Ed Pilkington asks five of them - from a 21-year-old to a 70-year-old - how do they cope?
This story was first published in The Guardian on 4 August 2007.

A woman prison officer bellows out "closing!", her arms stretched across the doorway. She presses a button and a grate of thick iron bars slides shut with a thud. I'm inside now. It's impossible not to be overcome by a sense of déjà vu. You've been in this place a hundred times in a hundred movies, walked these colourless corridors, breathed in the sweat and disinfectant, flinched as the doors slammed behind you. Over there is the observation desk where the guards are laughing at some joke behind bullet-proof glass. There are the inmates' relatives in the visiting room, some looking bored, others trying hard not to cry. There are prisoners themselves, dressed in their dark-blue uniforms like pyjamas. There are the nine-metre walls for you to stare at, and dream of scaling. Here are the rolls of barbed wire, glistening platinum white in the midday sun. And there in front of you is a person looking up, with a nervous smile. She has blue eyes, brown hair and freckles. Her prisoner number is stamped across her back: 599905.

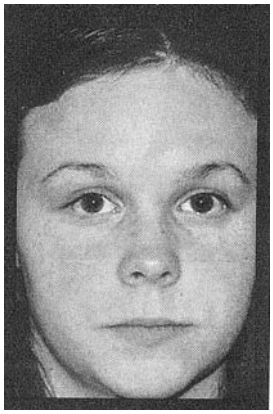
Nicole Ann Dupure. *Height: 1.57m. Weight: 63kg. Date of Birth: July 8, 1986. Earliest Release Date: Life.*

When she was sentenced, the judge ruled that the time she had spent in jail awaiting trial – 264 days – should be credited against her term of incarceration. What does that mean? Nobody can predict when Dupure will die, so nobody can calculate when to let her out. Her sentence demands she stay in the Robert Scott Correctional Facility, the main women's prison within the state of Michigan, for the rest of her natural life. She will never have the chance to demonstrate her remorse or convince anyone she has reformed: it is stipulated she is not entitled to parole.



Dupure was 17 when the crime for which she was convicted took place. She is one of 2270 juveniles across the United States who were sentenced to life without parole, a punishment second only in severity to the death penalty. All were under 18 when they committed the crimes. Six of them were 13, and 50 of them were 14 – an age at which US law forbids them to drive a car, give medical consent, vote, leave school, sign a contract, drink alcohol in a bar, serve on a jury, be drafted into the army, live away from home. Yet they were tried as adults in an adult court and given no possibility of a second chance.

In Michigan, Dupure is one of 347 such inmates, the third-highest number in any American state after Pennsylvania and Louisiana. She gets up at 4am to work in the kitchen. She does a 40 hour week earning 18 cents an hour. When she asked the prison authorities if she could take a business vocational course, she was turned down on the grounds that as she will never be set free, there is no point learning skills geared to



rejoining the outside. It's no exactly what she intended to do with her future when she was a teenager, she tells me. At school she aspired to become a medical lab technician, specialising in the treatment of heart defects. Her background was far from typical for a lifer – no criminal record, no history of alcohol or drug abuse, a high school graduate with mainly B grades. Her next step was to be college.

A chance encounter when she was 17 changed everything. She was working in the holidays to earn petrol money ay a grocery store near her home in Michigan's St. Clair County. There was a 19-year-old working there called William Blevins who was funny and charismatic. They started dating. "I wasn't able to see the warning signs. My mom did. She said he didn't seem like a good kid and I shouldn't be around him as he would bring me down. I didn't listen to her. I thought, like any teenager, that she just didn't want me to have a boyfriend".

When Blevins was thrown out of his home by his parents, Dupure, by then pregnant, left home to be with him. "I just didn't want him to be alone", she says. They went looking for a motel room to rent. On April 23, 2004, they stopped off at Big Boy, a fast-food restaurant she knew well because it was near the apartment of her great-aunt's best friend, Shirley Perry. Perry, who was 89, used to baby-sit Dupure when she was very young; Dupure and Blevins had been to her flat several times, offering to help her with shopping and odd jobs.

At this point, the official version parts company with Dupure's. The prosecution alleged the teens had plotted together to kill Perry for her money. They had taken $US30 from her flat to pay for motel fees and two milkshakes at Big Boy. Dupure had actively participated in the murder, striking the woman on the head with a cooking pot and fetching the kitchen knife Blevins used to kill her.

Dupure insists she was not in the apartment at all, but waited in the restaurant, oblivious to the events unfolding, while Blevins murdered the old woman, stabbing her several times and strangling her. Under police questioning, he admitted it, saying he acted alone. But shortly before he went on trial he changed his evidence and put Dupure alongside him at the scene of the murder. In return, the prosecution agreed he should be given the lesser charge of second-degree murder and avoid lifelong incarceration. Under cross-examination, he conceded to the jury, "I never had intentions to pin it on her until I ran out of options."

Blevins got 20 to 50 years, with the hope of reducing his sentence through good behaviour. Dupure got life without parole, with no forensic evidence tying her to the crime and entirely on the strength of Blevins' testimony.

Dupure has turned 21, but she still looks 17. She was told about life without parole for the first time when she entered prison – "You never go home." She spent much of her first year crying, she says. The doctor put her on Prozac but she stopped taking it. As she puts it, "I'm depressed because I'm in this place, not because I'm depressed." Instead, she sees the prison therapist once a month.

"The difficult but is blocking out the thought that I'm here forever. You can only do that for so long, and then you break down. Something hits you. Somebody will say 'I'm glad I haven't got life', and it will get

you. Or one of the friends you made will leave for the outside and that hurts, so you stop getting close to people."

Michigan is one of 41 states in America that allows children under 18 to be imprisoned for the rest of their lives. The US is among a tiny minority of countries (Somalia is another) that have refused to sign up to the UIN Convention on the Rights of the Child that expressly forbids the practice. According to Amnesty International and Human Rights Watch, only three other countries – Israel, South Africa and Tanzania – mete out the sentence and they have collectively just 12 prisoners serving it.

Technically, a child of any age could be incarcerated for life in Michigan for first-degree murder. Above the age of 14, suspects can be placed directly into the adult court system. At that point, even the judges' hands are tied. If a child is convicted in an adult court of a range of serious offences – taking part in a robbery that leads to murder, say – they must automatically be given life without parole, even where the judge feels that is inappropriate.

There are only three ways that prisoners put away for life as juveniles can hope to see the outside again. They can win an appeal, but proving there was a flaw in the trial process – they cannot challenge the sentence itself. They can receive a pardon from the governor of Michigan – except the governor has never pardoned a juvenile lifer. Or the state assembly could pass legislation outlawing the practice, and implement it retroactively. Lawyers working in many of the 307 cases have pulled together a bill that would do just that, which they hope will go before Michigan's lawmakers later this year.

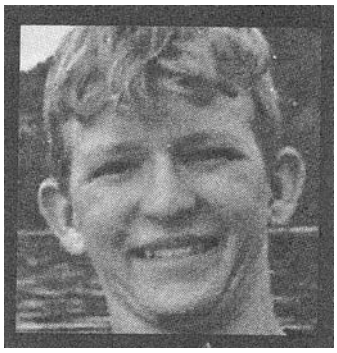
Deborah LaBelle, a leading lawyer who is supporting the bill on behalf of the American Civil Liberties Union, says she is as hopeful as she has ever been that the legislation might pass. "Sending someone to prison is partly about public security and partly about punishment. People are coming to understand that child prisoners should have chance to prove they no longer pose a risk. And on punishment, then surely having a person spend more of their life in a prison cell than they had lived as children on the outside has to be sufficient, even for the most unforgiving of people."

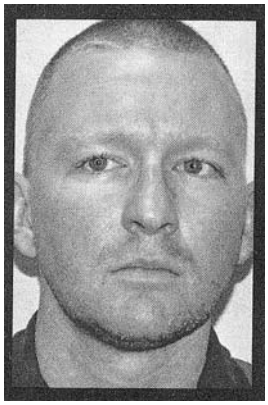
LaBelle has been careful to involve victims of juvenile crime and their families in the debate about changing the law, and several victims' families have privately offered their support. "They sat that what happened was horrible and has devastated them, but they do not want the knowledge that the child who committed the crime will stay in hail forever to rest on their conscience."

Kevin Boyd. *Prisoner 251328. Height: 1.7m. Weight: 77kg. Date of Birth: September 25, 1977.*

Boyd was 16 when, on August 6, 1994, he helped his mother murder his own father. His mother, Lynn, was addicted to prescription and illicit drugs; his father, Kevin, was an alcoholic who regularly beat him. His parents separated on Boxing Day when Boyd was 11 and his mother went to live with another woman. Boyd went to 10 different schools before he dropped out at 15. He received psychiatric treatment and was in hospital after a suicide attempt.

On the night of the murder, Boyd's mother, high on drugs, met him at Burger King and asked him for the keys to his father's flat, saying she was going to kill him. He handed over the keys. The next morning Boyd went to his father's flat and, hearing no one inside, forced open the door. Kevin





senior was slumped in his easy-chair. He had been bludgeoned with a baseball bat and stabbed 23 times.

Boyd was interrogated by the police for eight hours. He told them he handed over the keys and that was all. Then a second team of officers questioned him. They turned off the tape recorder, and kept repeating to him the mantra, "The truth will set you free."

"Every time I tried to tell them what happened, they shouted, 'No, you didn't do that!' This sounds totally irrational, I know, but after hours of that, I thought if I told them what they wanted they would let me out and it would all go away." He confessed to having been the one to stab his father 23 times, and was given life without parole.

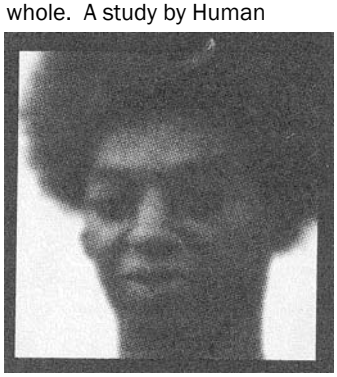
Boyd has contemplated his actions and its consequences a great deal over the past 12 years in jail. He is writing an account of his childhood, the murder and his subsequent imprisonment. Though he protests that he was not the killer, he still holds himself wholly to blame for giving his mother the keys and thinks it was right that he was sent to prison for many years. "I'm not innocent. I was responsible for his death. I could have said no to my mother. I could have picked up the phone to warn my father. Anything. But I didn't, and I am suffering the consequences."

He says he has made that phone call to his father a "million times": "I think about it every night before I go to sleep." He has had a clean prison record for six years and leads a pretty solitary existence. He once had a pet, an injured meadow vole he found in the exercise yard they he nursed and then let go. He hasn't had a human visitor for 10 years, though he does correspond with his mother, who is a lifer in the same prison as Dupure. He finds comfort in playing the guitar, jogging around the yard and writing his memoir. In one chapter, he says sorry to his father. "If I could change it, I would die in your place, just to hear your but contagious laugh one more time. Dad, I am so, so sorry. For what it's worth, I always loved you. I always loved you both."

Donald Logan. *Prisoner 132850. Height: 1.65m. Weight: 61kg. Date of Birth: June 23, 1954.*

Logan was tried and convicted twice for the murder of a paperboy, Thomas Eldridge, who went to his school. They were both 16. At the first trial, Logan, who is black, was found guilty by 12 white jurors. His lawyers appealed on the grounds that the racial composition of the jury was prejudicial, and a retrial was ordered. In the second trial there were 11 white jurors, including two who were members of whites-only organisations. The 12th juror was black, but during the hearing it emerged that she was the aunt of the prosecution's key witness who was giving evidence against Logan in exchange for a reduced sentence.

Logan's case illustrates two key statistics about juvenile life without parole. Of the 307 prisoners in Michigan on that sentence, 69 percent are black, compared with 15 percent of the state's population as a whole. A study by Human



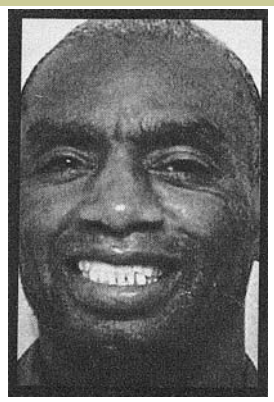
Rights Watch and Amnesty also found that more than one in four of the juveniles incarcerated forever was convicted of "felony murder" – serious crimes during which someone is killed yet where the juvenile did not personally or directly cause the death.

The prosecution case against Logan was that he identified the paperboy to a gang of his elder brother's friends who'd robbed Eldridge the previous week and wanted to prevent him giving evidence against them. Logan was alleged to have acted as lookout when two of the gang members shot the boy. It was never alleged he had pulled the trigger himself or even held a gun. "I killed nobody" Logan said. "The guys asked me who was the paperboy. I was the one who pointed him out. That's all I did."

At the trial, a psychologist who examined Logan said that though he was 17 by then, he had the level of understanding of a 12-year-old. The pre-sentence investigation described him as being a "failure in almost everything he ever tried" and he was labelled a "retard". As soon as he was arrested, aged 16, he was placed in an adult jail, where he faced physical and sexual harassment from older prisoners. "That's one of the things I'd preach if I ever got out: never send a teenager to adult prison. They are just like a little animal who will get eat up the minute they arrive," he told me.

In the early '90s, Logan taught himself to read and write and discovered, to his own surprise, that he wasn't a "retard" after all. He also became a Jehovah's Witness and, with the help of the Bible, he has learned how to live peacefully in prison. The last time he had a disciplinary ticket was in 1996. "I can see now how I messed up my whole life. But I've also learned something in all these years inside: how to be a man, how to respect people, how not to take life for granted."

Under the terms of his sentence, though he will never be able to



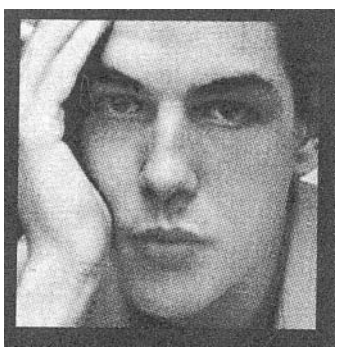
argue in front of a parole board that he has changed. His most recent – and final – appeal was in October 2001. His lawyers argued that to keep him inside any longer was tantamount to warehousing. They said he had proven himself to be a reliable, God-fearing and reformed person.

The judgment handed down at the end of that appeal sits in his legal file. It reads: "It is ordered and adjudged that the petition for habeas corpus be, and hereby is, DISMISSED WITH PREJUDICE."

Allen Smith. *Prisoner 085017. Height: 1.82m. Weight: 71kg. Date of Birth: December 6, 1936.*

Smith sent me word that he was keen to talk, but warned me that he hadn't been feeling well lately and had been spending a lot of time in the prison infirmary. He would phone me at his lawyer's office.

As I waited for the call, I read his file. Smith had an unhappy relationship with his stepfather, had been in and out of homes, and had a reputation for angry outbursts. He was 16 when, on December 2, 1953, he walked up to the house of an old couple he knew well, Robert and Celeste Holton. He said he had



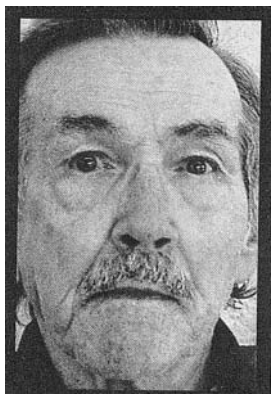
only intended to steal from the couple but things had got out of control. He had picked up a deer rifle that happened to be standing by their refrigerator. Afterwards, he said he didn't know what had come over him, why he had emptied the whole cartridge and killed them both.

He was arrested that day and taken to prison. The lawyer appointed to his case advised him to plead guilty. That way, he would be out after 10 years. "Listen to him, son," said the sheriff. "He's telling you right." Smith did as he was advised and on December 19, just 17 days after the murder, he was sentenced to life without parole. The judge said he had no choice. "It is hard on the court and hard on you and hard on everybody, and too hard on the two dead people, but crime does not pay," he said.

Smith spent several years in solitary confinement with hard labour. He writes in his file that son after the murder he was struck with a deep feeling of remorse. "I'd hoped they'd take my own life, and I couldn't understand how I could have done such a thing to such wonderful people. It really tore me apart for a long time."

Details from the file are sketchy, but he has clearly suffered other periods of anger and despair, punctured by moments of hope and happiness. He realised only a few years into his sentence that he would stay in jail forever. In 1976 he tried to build a better lift for himself in prison and he married a woman who had been visiting him. At the time he had hopes he might be given a parole hearing. When it became clear those hopes were groundless, he told the woman he wanted a divorce, to spare her. They still write. Then in 1982 he escaped from prison, and was recaptured after a few days. Futilely, he was given an additional five years on his sentence.

Recently, he has become more at ease with himself. He took up courses in Bible studies and literacy. He has also versed



himself in law, and until he became ill, would act as a legal advisor to younger prisoners, helping them prepare appeals. Smith says in his file that he has come to accept that he will die in jail. In an entry a few months ago, he says he is certain he has not long to live. He says religion has proved a comfort to him: "I know I have been forgiven."

I spent most of the day in the lawyer's office waiting for his call. It never came.

Nicole Dupure is at the beginning of the journey and has the experience of despair and reconciliation still in front of her. She's started to think about what has happened to her and why. "I just wanted to grow up too fast, I wanted it all right then."

Her parents visit her regularly. "I do my best to hide it when I'm not coping. Especially from my dad. He's 73 and he thinks I'll die before I get out." Her child by Blevins is now two years old and has been adopted by Dupure's mother. The little girl came to see Dupure for the first and only time in April. Dupure was shocked because she had assumed her daughter would not remember her, but she did and ran into her arms calling, "Mommy!"

I ask Dupure should the bill fail this year, and should she remain in jail forever, could she find any value in life? "I'm not going to try to kill myself or anything. I'm in prison, yes, but, it's still a life. I'm just in another world now."

Continued...

Continued...

And her regrets?

"I wish I'd listened to my mom. She laughs when I say that and says, 'It's a little late now, Nic."

I stand to leave, walking back past the observation post and into the antechamber with the iron doors. The woman guard steps forward to meet me and shouts "Closing!" for a second time.

New Zealand Blue Light 25th Anniversary Conference 8—10 May 2008

An article by Judge Paul Geoghegan, Youth Court Judge from Tauranga

I was very fortunate to attend the New Zealand Blue Light 25th Anniversary Conference which was held at Skycity from Thursday, 8 May to Saturday, 10 May.

Blue Light—alcohol, drug, and violence free

Most will be familiar with the Blue Light organisation but for those who are not, it is a community-based programme that involves police, young persons and their parents, schools and community volunteers. It is a community policing initiative the purpose of which is to provide entertainment, cultural, social and sporting events free of alcohol, drugs and violence for children and young persons aged between five to 18 years. The broad objectives of Blue Light are to reduce the incidence of young persons becoming either offenders or victims of crime, to encourage better relations between the police, young persons, their parents and the community and to contribute to police goals of crime and crash reductions.

A full programme

The programme was a very full one indeed, which commenced with an official opening by the Commissioner of Police and the Mayor of Auckland. That was followed by a keynote address from Judge Becroft, which went down extremely well with all present.

There were a significant number of delegates from Australia and a number of addresses were given over the course of the three days from Australian delegates who described the programmes that they are engaged in, in that country. The presentations included, youth mentoring "best practice", reducing youth offending programmes, alternative strategies for dealing with teenagers and the role of Blue Light in community policing. What struck me about the presentations was the huge amount of work which is being carried out in communities throughout the country and which is largely unheralded and unnoticed. What also struck me was the very significant number of voluntary hours contributed by police officers throughout the country in carrying out Blue Light programmes.

The Canterbury Youth Development programme

One of the more interesting initiatives is the Canterbury Youth Development programme. The programme has the backing of several Christchurch businessmen who also attended the conference and could provide a model which could be applied nationwide. The 52 week fresh start model is a model which accepts referrals from youth justice, police, community groups and schools in respect of young persons whose behaviour is a cause for concern and may lead on to offending or further offending. Depending on the assessment of the young person's needs the young person may be placed on a three week life skills module which involves both outdoor and residential factors and intensive training or a nine week programme focusing on personal growth and work and education development. That is followed by a further 40-week programme involving a high level of support around employment, trade training and mainstream or community based education. All of these programmes are integrated with family assessment and support and draw on the support of community organisations, the business sector, local body councils and the New Zealand defence forces. It is a programme, which in my view, has very considerable potential and I intend to visit the programme organisers in Christchurch later this year.

Conclusion

I thoroughly enjoyed attending the conference and making contact with a number of people working at the coalface of youth justice. As a result of the conference I am now a member of the Tauranga Blue Light Committee. I would encourage any Youth Court Judges to take the opportunity to attend a conference such as this, which simply emphasises the valuable work being done in our community for the benefit of our young people.

Boys Education Good Practice in NZ Secondary Schools

A new report by the Education Review Office has some positive messages for the education of boys in high schools

A recently relesed report from the Ministry of Education and the Education Review Office seeks to provide schools with examples of how 10 New Zealand secondary schools successfully support boys' education. The schools in this study were selected on the basis of their good overall levels of student achievement, previous positive ERO reports and their well developed pastoral care and support strategies.

Most of the schools had developed initiatives that were specifically intended to raise boys' achievement, and that were successful with certain groups of boys. There are initiatives that have variously developed the academic, cultural, sporting and leadership qualities of boys. Several are in important areas of literacy and numeracy. Schools also have organisational and design initiatives to improve the way the curriculum and timetable worked for boys, and others that supported the achievement of Mäori boys, Pacific boys, rural boys and boys who were at risk of not achieving.

The report also identifies key strengths of the schools and some ongoing challenges faced by them in relation to boys' education.

Key strengths found at schools in this study were: high quality staff and student leadership; a positive school culture with a strong focus on positive image; relevant teaching and learning contexts; and constructive relationships. The schools all dealt positively with potentially negative images of boys' education, including: the bullying image that affects some boys' schools; the support structures that existed particularly for boys' literacy; and the various ways that schools had engaged different groups of boys.

Key challenges for the schools were: meeting the needs of a small percentage of disengaged boys, many of whom are from disadvantaged backgrounds; supporting Mäori and Pacific boys; strengthening some aspects of literacy teaching; and undertaking useful analyses of the ongoing and complex gap between girls' and boys' achievement.

Factors in boys' underachievement

Issues of male identity formation seem to be crucial - specifically how boys see themselves as learners. Much of the research suggests that issues of gender identity are the most significant area to understand and address in boys' education issues.

It is also claimed in some research that aspects of education are 'feminised' and inherently biased towards the achievement of girls. In other research, issues of how boys approach the literacy areas of reading, writing and speaking

form a significant part of the discussion about boys' learning.

Responding to the educational needs of boys

The diverse range of factors influencing boys' underachievement has resulted in a range of different perspectives and approaches on the educational needs of boys and the ways to respond. The report notes that many of these factors are based on anecdotal data and observation, and while they may be effective in a particular setting, the authors say that the collection of evidence has not yet reached the point where teachers can be confident about what will work in their class. Some of these specific responses include:

- the use of goals and targets;
- practical, hands-on activities;
- giving boys responsibility for their learning and allowing them to make choices;
- providing high levels of structure and teacher-led activities;
- positive reinforcement;
- using competition in the classroom;
- incorporating physical activity into learning;
- mentoring and peer support programmes;
- the use of outdoor education programmes;
- developing relevant learning activities and contexts;
- importing popular culture texts into classroom reading;
- daily silent reading times;
- using computers and other electronic media to support writing;
- developing critical literacy approaches, including those that help boys understand how masculinity is created through texts; and
- making school fun for boys and avoiding repetitive learning.

Court in the Act is published by the Office of the Principal Youth Court Judge of New Zealand

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