

JUDGES' UPDATE

JUNE 2005

Information for the Judiciary

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MILESTONE FOR BI-CULTURAL THERAPY MODEL

The Department of Corrections has reached a milestone in its efforts to offer all Māori offenders access to the Bi-cultural Therapy Model (BTM).

BTM is a Psychological Service (PS) initiative to develop a therapy model to assist psychologists in their work with Māori.

It offers Māori offenders the choice of traditional Māori healing or conventional psychological therapy methods. After a psychological assessment, they can choose either one or both forms of therapy.

Psychological Service (PS) Southern Regional Manager Steve Berry says for the first time since BTM was introduced in 1997, the Department has Māori service providers all over the country.

"It's had some ups and downs in terms of our ability to deliver to target. We're happier with our ability to deliver service now than we've ever been before. We have improved consistency of service and there is a clearer process stakeholders to follow.

"We're in a position now where we are consistently collecting data and have been doing so for the past 12 months. That will allow us to evaluate BTM and assess its impact on re-offending rates."

BTM also aims to empower PS staff to operate in a bi-cultural manner and to develop relationships with iwi throughout New Zealand.

Oversight Committees, comprising local iwi and PS representatives, manage the process at a local level. They recruit MSPs and uphold local iwi protocols.

The committees also determine the most suitable MSP for each offender wanting to access the BTM, based on referral information provided by the Psychological Service.

The model incorporates all aspects of the Department's Māori strategy including responsiveness, partnership and effectiveness. BTM can involve the principal psychologist or a senior staff member meeting with kaumatua/kuia senior leaders of organisations to work out the best approach for each offender, says Steve.

"Not only is the psychologist on the ground working with service providers, but managers are working with Māori leaders to govern it. In consultation with BTM service providers, we're modifying what we do."

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YOUR INPUT

Judges' Update is distributed quarterly to the judiciary, courts, and Parole Board. If you have any comments or suggestions for this publication, please contact:

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DEPARTMENT
OF CORRECTIONS

From the General Manager

Tena koutou katoa

This issue of Judges' Update covers two high-profile areas of the work CPS does - Home Detention and Extended Supervision for high-risk child sex offenders.

Extended Supervision is relatively new. But already the application and hearing process has produced a number of principles and matters of law. These are outlined in the ES implementation update article in this issue.

As recent events show, managing convicted child sex offenders in the community can attract widespread, sometimes ill-informed, attention. As always our focus is to protect the public and reduce re-offending.

This sometimes means trying to broaden the public's understanding of the system we work with.

The law allows sex offenders - once released from prison - the right to return to society and get on with their lives. It is our job to monitor them using all the authority and skills we have to minimise the risk of them re-offending. ES extends our ability to do that.

Home Detention is another area that sometimes attract public attention - particularly when offenders choose not to comply.

Latest figures on the rates of absconding from Home Detention show 1.8 percent of detainees abscond and less than one percent

of detainees re-offend while unlawfully at large. Recalling offenders to prison remains a vital enforcement tool.

Doing our work effectively is only part of the equation. We must also balance expectations of what is possible.

Noho ora mai



Katrina Casey, General Manager
Probation and Offender Services

New curriculum raises standards

Over the past eight months, the Community Probation Service has developed a robust training curriculum to raise the standard of professionalism and performance for Probation Officers.

Project manager Maxine Walker says until now, training material had been created in response to business or organisational changes.

"We had some good courses but there was no obvious pathway through the training."

The new curriculum provides training courses which will develop skills in a structured way. It combines the best of existing material and introduces brand new modules to reflect evolving business processes and knowledge.

Some existing material has been updated and made more relevant. Other completely new courses have been created to support business processes and knowledge.

A group of over 50 field and head office staff have contributed to the development project, with many others undertaking the training as pilot participants.

Maxine says the new curriculum will empower Probation Officers in their work and is designed to work in conjunction with the new CPS Operations Manual.

"We're constantly looking for ways to raise the standard of professionalism. This is one route we've taken to achieve that."

The curriculum involves 23 modules delivered over a two-year period and covers all aspects of Probation Officer work, from Interviewing Skills and Working with Offenders to Court Servicing and Level 2 Reports. Other courses include Sentence Planning and Intervention Skills, Home Detention and Community Work.

Implementation and delivery of the new PO Curriculum will begin in the 2005/06 financial year.

TV documentary an “insight” to parole process

Two years in the making, the first film of New Zealand Parole Board hearings finally reached television screens in May, with the Inside New Zealand documentary, Up For Parole, on TV3.

The programme came about after the Board’s manager of administrative support services Alistair Spierling issued an open invitation to journalists at a justice sector conference in early 2003.

Christchurch-based Raconteur International took up the offer - from there, the term “easier said than done” took on new meaning.

“It wasn’t as big as Ben Hur, but it felt like it at times,” Alistair said.

The aim was to show how the Board makes decisions using at least three genuine cases - the first hurdle being to find inmates willing to be involved.

Working with the Department of Corrections over the course of 18 months, the Board identified three parole cases: a young woman (convicted of GBH), and two men (a recalled arsonist, and a convicted murderer).

Filming was on an identified basis - full faces, using first names - for all but the murderer, his family, and the registered victims.

Less complicated but by no means straightforward was finding Board members who were comfortable with being filmed during deliberations.

Judge John Macdonald led the way, convening a panel in Christchurch for two cases, with Board Chairman the Hon Tony Ellis QC convenor for the hearing involving the murderer.

Mr Ellis concedes allowing cameras into hearings for the first time was not without its risks.

“While the Board had the right to correct any factual inaccuracies, you can’t agree to make a documentary and then expect complete editorial control,” he said. “We wanted a credible, objective documentary and I think Raconteur produced just that.

“The result provides a good insight into the parole process for people not familiar with it, and certainly fits in with the Board’s policy of providing greater transparency on the way the decisions are made.”

Feedback has been positive, with Christchurch TV reviewer Trevor Agnew calling it “a model of documentary making”.

“The public should have a much clearer idea of what is involved in the parole process,” he said.

That adds up to a success story for the Board.

Extended Supervision - implementation update

Facts and Figures

Extended Supervision (ES) for high-risk child sex offenders was introduced in July 2004 with the passing of the Parole (Extended Supervision) Amendment Act 2004.

To date, 29 ES Orders have been granted. Nineteen of these orders have started (with one currently suspended as the offender has been sentenced on new offences). A further 21 ES hearings are scheduled in the next three months.

After the court orders ES, an application may be made

to the Parole Board to impose Special Conditions over and above the Standard Conditions contained in the court order. Ten Parole Board hearings have been held so far and in every case Special Conditions were granted; one of these included person-to-person monitoring.

Most of the ES hearings to date have been held in the District Court (72 percent), with 28 percent taking place in the High Court. Only six of the 29 hearings were defended with respect to either the order (five) or its duration (one) with the remainder being granted by the consent of the offender.

(continued...) ►

▶ The legislation requires psychological health assessments to be made for all offenders identified as eligible for ES. As a result of these assessments, the Department of Corrections has decided not to proceed with applications for 23 offenders. Of the 29 ES Orders granted so far, 23 health assessments included an interview with the offender and six offenders declined to see the assessing psychologist.

Orders are imposed for the minimum length of time required for the purposes of the safety of the community and for a maximum of 10 years. Twenty-three orders to date have been granted for 10 years (79 percent). Defended hearings resulted in the granting of three orders for lesser periods (8 1/2 years, seven years, and five years). One order of five years' duration and two orders of two years were granted by consent and as recommended in the health assessment.

Three orders have been appealed and are currently awaiting fixtures in the Court of Appeal.

Judicial decisions

Written decisions were available for the six defended ES hearings. The judgments developed a number of interpretative principles and matters of law:

- The court rejected the argument that the ES legislation, which applied retrospectively in the case of transitional offenders, is in breach of the New Zealand Bill of Rights Act 1990. Retrospective application was clearly what parliament intended and even if it were inconsistent with NZBORA it would come within the s5 justified limitations.¹

- ES hearings are in the nature of an enquiry, not a trial, so there is no burden or standard of proof.² Rather, s107I(2) of the Act requires the court to be “satisfied” that the offender is likely to commit any of the relevant offences listed in s107B(2). “To be satisfied” is to be interpreted as “to make up its mind”.³
- “Likely” in this context means “something that may well happen”.⁴
- S107F(2)(a) requires the health assessment to address “the nature” of any likely future sexual offending. “Nature” refers to a sexual offence against a victim under the age of 16, i.e. a relevant offence. The health assessment does not need to be as specific as distinguishing the type of offence, e.g. rape or inducing indecency.⁵
- In addressing the matters required by s107F(2), the health assessment does not have to specifically and explicitly label them as set out in the section and as single, definable items. However, the matters must at least be addressed in the context of the health assessment report as a whole.⁶
- The test with regard to the length of ES is the statutory one of how long ES is required in order to protect the community (s107I(5)). This does not mean the minimum period required to facilitate treatment of the offender but the minimum period required to achieve protection of vulnerable members of the community.⁷ It is also not a sentencing exercise whereby the more serious the crime, the longer the sentence, but involves assessment of risk.⁸

¹ *Chief Executive of the Department of Corrections v Rimene* (High Court, Wellington, CRI 2004-485-174, 3 March 2005) paras 14, 15, and 27.

² *Department of Corrections v Wesley-James* (District Court, Christchurch, CRI 2004-009-13896, 2004-009-05749, 20 April 2005) para 16.

³ *Department of Corrections v Wesley-James*, *ibid*, para 16; *Chief Executive of the Department of Corrections v Grieve* (District Court, Hastings, CRI 2004-020-3986, 25 February 2005), paras 33-34; *Chief Executive of the Department of Corrections v Steven* (High Court, Rotorua, CRI2004-463-130, 18 April 2005) para 12; *Chief Executive of the Department of Corrections v McIntosh* (High Court, Christchurch, CRI 2004-409-000162, 8 December 2004) paras 21-22, applying *R v Leitch* [1998] 1 NZLR 420 (CA) with regard to preventive detention, s75 Criminal Justice Act 1985.

⁴ *Chief Executive of the Department of Corrections v Belcher* (High Court, Auckland, CRI 2004-404-000444, 12 April 2005). Applying *Secretary for Justice v M* (1990) 6 CRNZ 57.

⁵ *Department of Corrections v Wesley-James*, *op cit*, para 11.

⁶ *Chief Executive of the Department of Corrections v Grieve*, *op cit*, paras 17-19.

⁷ *Chief Executive of the Department of Corrections v McIntosh*, *op cit*, paras 26-27.

⁸ *Department of Corrections v Wesley-James*, *op cit*, para 8.

Re-offending rates on Home Detention

In the three months from 1 January to 31 March 2005, seven offenders were arrested for re-offending while on Home Detention.

This equates to a re-offending rate of 0.8 percent calculated against the total number of offenders on Home Detention during the three month period (see revised calculations below)

Nature of re-offending

Of the seven offenders arrested and charged with re-offending during this period, two have been convicted and five are awaiting further court hearings.

Three offenders absconded from their Home Detention residences and re-offended while unlawfully at large. Recall applications were underway and warrants had been issued for the offenders' arrest before they were caught for further offending.

Five offenders were on front-end orders. Two were charged with violence-related offences. Three were charged with dishonesty offences.

Of the two detainees on back-end orders, one was charged with a violence-related offence and the other with a traffic offence.

Absconding

In the 12 months from 1 January to 31 December 2004, 34 out of 2436 offenders on Home Detention

absconded. This equates to 1.4 percent. Of the 34, 14 were arrested for further offending while unlawfully at large.

In the three months from 1 January to 31 March 2005, 16 out of 845 Home Detainees absconded - equal to 1.8 percent. Three of the 16 were charged with further offences committed while they were at large.

Enforcement Action

The Community Probation Service took enforcement action on 53 occasions against offenders on Home Detention, comprising 26 breaches and 27 applications to recall offenders to prison.

Only 10 of these actions related to re-offending, including six recall applications and four breaches. Three detainees arrested for re-offending were subject to both recall and breach action.

Revised calculations

CPS has changed the way it reports re-offending rates on Home Detention. Figures were earlier calculated as a percentage of offenders who started their order during the relevant period and discounted those already serving sentences.

From now on, calculations will take into account all detainees, not just those who start their orders in the relevant period.

Re-offending rates on Home Detention

	Jul-Sep 04	Oct-Dec 04	Jan-Mar 05
Total no. of Home Detainees	1027	955	845
No. of detainees charged with further offending	8	5	7
No. of breach charges laid in relation to re-offending	4	2	4
No. of recall applications in relation to re-offending	6	5	6
% of all detainees charged with further offending	*0.8%	*0.5%	*0.8 %

*based on revised calculation method.

PARS chosen for supported accommodation pilot

The Department of Corrections has chosen Auckland's Prisoners' Aid & Rehabilitation Society (PARS) as the service provider of a supported accommodation service for released prisoners.

The contract, which took effect on May 31, brings the Auckland pilot a step closer.

The pilot follows a review of the Department's reintegrative services, which identified housing as a key need for released prisoners.

Eligible offenders will initially be identified during the pre-release process and may be referred to the pilot if they are subject to Parole or release conditions, have a reintegrative need for accommodation support and present other reintegrative needs.

The Community Probation Service will remain responsible for supervising pilot participants on Parole, as well as those offenders released with conditions, as per normal.

Housing New Zealand Corporation will provide eight bed sit-style units for the pilot from its Community Housing stock in different locations throughout Auckland.

Auckland PARS will manage the tenancies and provide reintegrative support to released offenders.

"Auckland PARS was selected as the provider for this pilot as their proposal met all the required criteria for providing the service and articulated a clear vision of how they saw the pilot operating. Auckland PARS was also selected due to their significant experience in working with offenders to support their reintegration," says Richard Bargh, Policy Development's Operational Policy Manager.

PARS spokesman Graeme Page says the supported accommodation service is unique in this country and will allow PARS to expand its work.

"We're looking for people wanting to make a real change to their lives. We accommodate a lot of people now with private providers. The difference with this pilot is that we can give the offenders that extra assistance."

To help their reintegration, pilot participants must meet weekly with PARS to discuss how they're coping with their goals and conditions.

He expects there'll be no shortage of interest. "There's a shortage of accommodation in Auckland, but we'll be having more stringent sets of rules than if just going into private accommodation. That's part of deal."

The single-occupant dwellings will be furnished and have phones with toll bars on so PARS can keep in touch with the pilot participants. PARS will also be motivating offenders to find work and move on to independent housing.

"We really want it to work. It really is extremely difficult for some people getting out of jail to get accommodation. I think if you can provide extra support as soon as people get out of jail, it's obvious that it's the time they need it."

Probation Officers will be able to refer offenders to the pilot and will continue to be responsible for assessing the suitability of accommodation offered to offenders.

The pilot initiative will be evaluated by June 2006 and it is intended to implement the service in other locations in 2006-07.

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HOW BTM WORKS

All Māori clients seen by PS psychologists, and various rehabilitation, reintegration, and liaison workers, are given three options:

- To work with PS clinician only
- To work with a Māori Specialist Practitioner only
- To work with both Māori Specialist Practitioner and PS clinician

The exception to this is where a client is attending a Special Treatment Unit. In this case the client will be

offered only options 1 and 3.

It is expected that MSPs will use therapy techniques centred on Māori values and beliefs. These will assist Māori clients to achieve an enhanced awareness of the self, the whanau, the iwi and wider society. In addition, it will offer a strong base from which Māori clients can rebuild and establish their mana and it will emphasise the positive aspects of being Māori.