

The Puriri Foundation: A New Penal Alternative for Female Offenders and their Children

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I: INTRODUCTION

It is difficult to believe that in 1996, in a country which prides itself on its humanitarian record, the 'cruel and unusual punishment' of the children of women offenders is countenanced. These children are routinely separated from their mothers who, due to the lack of provision for them in the Auckland Region, are sent to Arohata and Christchurch Women's Prisons to serve their sentences. This inhumane policy is tolerated by the New Zealand public; partly out of ignorance of its existence, and partly because there is a belief that children of female offenders are inescapably burdened with the punishment of their mothers. The belief that woman should think of the child before committing a crime is another typical attitude. The aim of this article is to justify an alternative to incarceration for New Zealand women offenders and their children and to analyse its *realpolitik*. It also documents the growth of the Puriri Foundation for Women and Children, the trust set up to implement this goal. The embryonic nature of the Foundation and its aims necessarily means this article is a "work in progress".

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1. The Problem Defined

On the day of the 1993 Prison Census there were 118 sentenced women in prison in New Zealand and fourteen on remand in custody. Forty-four percent were the sole care-givers of their children.

Over the period 1993-94, five percent of the total Mount Eden women's muster (sentenced and on remand) were sent south without their children for periods between two and seven years.¹ This involved approximately 120 children whose mothers were their primary care-givers. There is only a fifty-seven bed transient facility for women in the female division of Mount Eden Prison. Since the prison is usually full, women are sent south, even for short sentences of a year or so, with little or no opportunity to say good-bye to their children. In the years 1993-94 approximately 700 women passed through this transient prison, ninety-one of whom were sent south. Half of those women left behind two or three children, one of whom was invariably a preschooler or baby.²

There is a policy to keep as many women as possible within their region.³ However, this is not always practicable as the catchment area for Mt Eden Prison is from Cape Reinga to Taupo. Despite this minor change in policy, there are no plans to develop additional women's facilities in Auckland in the next five years.⁴ Nearly all imprisoned women are non-dangerous and do not need to be held in a secure environment. They are property offenders or have offended in the context of a violent domestic situation.⁵ The overcriminalisation of women due to poverty and race is well recognised.⁶

1 Women were first sent south to Dunedin in 1959 to make way for male prisoners in the overcrowded prison. See also *Ministerial Commission of Inquiry into the Prisons' System: Prison Review - Te Ara Hou: The New Way (1989)* (Roper Report), Part V, "The Imprisonment of Women" at 22.22: "Plans for a much needed, entirely new institution within the Auckland area for long-term women inmates did not eventuate." At 22.25, it is noted that "the location of women's prisons has never been made on the basis of their needs. In addition, the small numbers of women inmates have served to justify the denial or tardy provision of the quality of facilities and opportunities available to their male counterparts. Advantages once gained have often been lost to meet the needs of male inmates. Moved from one location to another, in the space left as new prisons or units have been built for men, most women have been and still are detained hundreds of miles from family and support systems."

2 These figures were gained from the custody manager, Dorothy Costar, at Mount Eden Prison in 1995.

3 See Penal Policy and Procedure Manual issued by the Department of Corrections.

4 Section 21(1)(a) of the Human Rights Act 1993 (HRA) prohibits discrimination on the grounds of sex. It is therefore arguable that the Justice Department is acting unlawfully by discriminating against women offenders in its building policy (as prisons may be regarded as a facility and the legislation does not expressly exempt prisons). In a Saskatchewan case (*Daniels*), a sentencing judge held that federal regulations requiring women prisoners to be sent out of the area away from their families while men were imprisoned locally are unconstitutional under s 15 of the Canadian Charter of Rights and Freedoms. The decision is presently under appeal to the Supreme Court. See Wilcox, *An Australian Charter of Rights?* (1993) 172.

5 Immarigeon, *Women in Prison: Is Locking Them Up the Only Answer?* (1987), vol 11, Journal: The National Prison Project, 4.

6 See Carlen, *Women's Imprisonment* (1983), Carlen & Worrall (eds), *Gender, Crime & Justice* (1987), Carlen, *Women, Crime & Poverty* (1988), Carlen, *Alternatives to Women's Imprisonment* (1990).

Policy-makers and planners do not take due regard of the need of women for conditions of access to their children. Women are likely to be the primary caregivers of their children when they are sentenced to prison,⁷ yet there are dismal and inadequate visiting environments. Moreover, no attached parent/child units, preschools, or visiting centres are planned despite the recommendations of the Roper Report in 1990. If there is spare space it is used to house the overflow of male offenders rather than provide space of any kind for children. These problems are compounded by the fact that womens' prisons are being subsumed under male management. In 1994 the management of Christchurch Women's Prison was transferred to Rolleston Men's Prison.⁸ Early in 1996 the women prisoners' custody manager at Mount Eden Prison, a position traditionally filled by a female, was also replaced by male management. These changes have taken place in spite of the National Policy on women prisoners, approved for trial in December 1993, which states that women inmates should be managed independently of male inmates. Although parts of the policy are laudable, the accompanying performance standards are unattainable due to inconsistent actions which undermine the Policy.⁹

A 1994 study by Venezia Kingi of fifty-six women prisoners and their children was the first research ever carried out in New Zealand on what happens to those children.¹⁰ The results were worse than anticipated as many women did not know where their children were, did not know whether their letters were reaching them, and many had not had any visits from their children six months into their sentence. This particularly applied to children in the care of the Department of Social Welfare (DSW). These results confirm other studies and papers on New Zealand women offenders.¹¹

The present situation for women and their babies and young children in Mount Eden Prison is draconian. For example the regulations concerning the breast-feeding of babies; at present women who are breastfeeding infants are permitted to breastfeed for a period of three months, provided the child is maintained in the community and brought for feeding by its caregivers. Although reg 55 of the Penal Institutions Regulations 1961 allows mothers who give birth, or who on admission have babies less than six months old, to keep their babies with them, there are in reality few resources to support this, neither within the prisons themselves nor in the form of parent/child units attached to the prisons. The prison environment is not equipped for supporting successful breastfeeding either practically or

7 A Census of Prison Inmates (New Zealand) 1993; see also Kingi, "Preliminary Report Summary: The Children of Women in Prison".

8 Dunstall, *Policy and Practice: The Gulf Between Intent and Action at the National Women's Prison* (1994).

9 Ibid.

10 Kingi plans to follow these women over time to gauge the effects of the mothers' separation; see Kingi, "Preliminary Report Summary: The Children of Women in Prison"; see also *Ministerial Commission of Inquiry into the Prisons' System: Prison Review - Te Ara Hou: The New Way* (1989) (Roper Report), Part V chap 23 "The Forgotten Children".

11 See O'Neill, "The Experience of Imprisonment for Women" (1989) Unpublished Psychology Masters Thesis; see also Kingi, "Mothers in Prison - The Reality of their Needs" (1992) Unpublished Psychology Honours Paper.

psychologically. According to a former inmate present during the time a baby was being breastfed, the staff are reluctant to support the practice as they do not want the additional responsibility, lack empathy, and fear that other inmates may harm the baby.¹²

Successive National and Labour governments have failed to address a problem which, if allowed to remain unchecked, may have considerable damaging fall-out on successive generations of children. Due to the effects of maternal deprivation and separation on children, children are bearing the punishment of their mothers in a manner which may put them at risk of offending themselves. It is now well established that the disruption of normal maternal bonds or the failure to bond can lead to a multiplicity of problems in early childhood and later life.¹³ While it may be possible for a child to survive maternal separation well, due to effective bonding to others, it is clear that social disorders can be traced to the lack or disruption of early bonds.¹⁴ It is the strength, stability, and continuity of early bonding that leads to normal development. The age of the child at separation, the sex of the child (males are more vulnerable), and the duration and circumstances of the separation experience are all variables which have an effect on the emotional and behavioural consequences that mark the child's deprivation experience.¹⁵ It is also clear that the fragile care-giving arrangements by extended family and DSW in New Zealand often break down.¹⁶ There is increasing sensitivity to the fact that intergenerational crime bears unquantifiable, but nevertheless real, costs to the community, financially and socially. It is therefore in the public interest that the bonds of mother and child are preserved.

International Conventions such as the United Nations Convention on the Rights of the Child 1989 establish that children's rights are independent of their parents' standards or circumstances. Given that New Zealand is a signatory to these conventions it is incumbent on any government to consider the rights and needs of the children of women prisoners when formulating policy which affects them. The relevant New Zealand case law on international instruments¹⁷ is *Tavita v Minister of Immigration*.¹⁸ The judgment gave a strong obiter indication that the

12 In a recent decision, *Singh v ARCIA*, HC Auckland JP66R95 13/4/95, Morris J allowed an appeal against a five month sentence made by a women prisoner with a five month old baby which she was still breastfeeding on the basis of a medical report on the effect of the separation on the child. The sentence was commuted to 200 hours community service and reparation. Prior to the decision the prisoner's elderly mother had had to bring the baby to the prison twice daily for its feeds.

13 See Bowlby, *Attachment & Loss* (1970); see also Goldstein, Freud, & Solnit, *Beyond the Best Interests of the Child* (1973).

14 Goldstein, Freud & Solnit, *Beyond the Best Interests of the Child* (1973).

15 Hatty (ed), *Women in the Prison System: Proceedings 12-14 June* (1984), cited in Kingi, "Mothers in Prison - The Reality of their Needs" (1992); see also Young, "Mothers in Prison: The Experience of Being Separated from their Children" (1993) 79.

16 Kingi, "Preliminary Report Summary: The Children of Women in Prison" (1995).

17 The United Nations Convention on the Rights of the Child 1989 and the International Covenant on Civil and Political Rights 1966.

18 [1994] 2 NZLR 257 (CA).

Court would be pre-disposed to hearing argument on the obligation of the Crown to take human rights instruments into account when it makes bureaucratic decisions. Speaking for the Court, the President, Sir Robin Cooke (as he then was) labelled the Crown's submission that the Minister and the New Zealand Immigration service are entitled to ignore international instruments "an unattractive argument".¹⁹

The former Commissioner for Children, Ian Hassall, observed:²⁰

[T]he infant, who if he were asked and was able to reply would very likely say, "I want to be where my mother is. *She* is my environment. What terrible crime have I committed that the relationship that is the whole present meaning of my life and so necessary to my future should be interrupted and possibly destroyed?" [I]t is shameful that on their imprisonment we still separate mothers from their infants in New Zealand I have approached this matter from the perspective of the child's needs and rights rather than from the mother's or any other persons. It is possible to argue their case too but the case for the child stands on its own merits and is the more powerful. The infant is an innocent party who suffers deprivation and likely long term harm as a result of the State's action or inaction. This is intolerable.

The New Zealand public's punitive attitude to all offenders is at the root of this neglect and lack of will to provide better prison conditions and alternatives for women. Women are treated as double failures, as women and as mothers, when they commit crimes.²¹ Men, by comparison, do not seem to have their male identity or parenting ability questioned when they commit crimes.

2. Recent Government Initiatives

(a) The Criminal Justice Amendment Act 1993

The Criminal Justice Amendment Act 1993 increased the range of sentencing options available to the courts. Most importantly the Act introduced more flexibility into non-custodial sentencing options. Suspended sentences can now be combined with other sentences such as supervision. For less serious offenders, any kind of community-based sentence (community service, supervision, community programme and periodic detention) may be cumulative on a sentence of imprisonment of twelve months or less. Offenders sentenced to more than twelve months imprisonment are now eligible for parole after serving only one third of their sentence. This changing legislative environment opens the way for alternatives to imprisonment in the form of community houses where women serve their sentences while remaining with their children.

¹⁹ Ibid, 266.

²⁰ Address to the AGM of Prisoners' Aid and Rehabilitative Society (PARS) 1993, (emphasis added).

²¹ See Carlen, *Women's Imprisonment* (1983); see also *Ministerial Commission of Inquiry into the Prisons' System: Prison Review - Te Ara Hou: The New Way* (1989) (Roper Report), Part V chap 22 The Imprisonment of Women.

(b) The Justice Department Habilitation Project

The proposed Habilitation Centres Project for women parolees will be based solely in Wellington.²² This experimental rehabilitation programme is for selected parolees only and will not cater for women with sentences of less than one year. More significantly, it will not allow children to accompany their mothers post-sentencing, and could effectively add up to another year of separation. The proposal appears to value the 'rehabilitation' of women at the cost of continuing to separate children from their mothers. This is based on the misconception that continuing the separation of women from their children may contribute to their rehabilitation.

There is an inherent contradiction in basing healing efforts on continuing damage. How can women face a momentous challenge to transform life-patterns when they are incapacitated by anxiety about their children's health, happiness, and even whereabouts?²³ The woman's family role is integral to her basic identity, and it is difficult to see how her recovery can be successfully predicated on the demoralising effects of bitterness, fear and anxiety.

The Justice Department has been aware of expert advice highlighting these contradictions since the Roper Report and it is therefore difficult to understand the deficiencies in the project in terms other than a deliberate cost-cutting exercise in line with the policies of recent governments.²⁴

II: COMMUNITY BASED ALTERNATIVES TO PRISON

A significant amount of research, both local and international, was reviewed for the Puriri project before concluding that community houses for women are the most appropriate and cost-effective approach to sanctions for women in New Zealand. Other jurisdictions, particularly the United States, provide early release programmes together with alternatives to incarceration so that women can reside with their children. Community based programmes are better suited to meet women offenders diverse needs, and these services are more effective than incarceration in enabling women to lead law-abiding lives in the community.²⁵

22 Criminal Justice Development Group, Department of Justice, "*Pilot Habilitation Centres Project - Operating Specifications and Schedule*" (1994).

23 Kingi states that "[t]he reality is that a term of imprisonment may virtually destroy a woman's relationship with her children, causing her 'acute emotional deprivation and loss of role and status'. It has been shown that family ties are one of the prime factors in successful rehabilitation and positively related to reduced recidivism.", "Mothers in Prison - The Reality of their Needs" (1992) 8 Psychology Honours Paper.

24 Kingi states that "most [violent crimes] were the outcome of many years of frustration and abuse", *ibid.*, 3. She bases her conclusion on studies published in Crites (ed), *The Female Offender* (1976) chap 2.

25 See DeJesus & Gibney, *The Case for Expanding Work-Release for Women* (1988) cited in *Women's Prisons: Overcrowded and Overused* National Council on Crime and Delinquency, 1992, 9; see also McDonald, *Punishment Without Walls: Community Service Sentences in New York City* (1986) cited in *Women's Prisons: Overcrowded and Overused* National Council on Crime and Delinquency, 1992, 9.

The findings of researchers in other jurisdictions concerning the causal factors in female offending illustrate factors specific to women, including domestic violence, single motherhood and a history of sexual, emotional and physical abuse.²⁶

In the United States, state and national groups studies agree that female offenders overwhelmingly commit crimes that pose little threat to the physical safety of the community at large.²⁷ Seventy-eight percent of American women convicted of violent crimes have no prior criminal history. According to Robinson this “underscor[es] the situational nature of the crime and the lack of threat such women pose to community safety”.²⁸ He further suggests that:²⁹

[W]omen have never been a large enough part of the criminal population to have been considered uniquely in the determination and design of sanctions [M]ost women’s crime derives from desperation brought about by conditions of poverty, chemical dependencies, and victimization.

Clear and O’Leary emphasise that the treatment programmes must work to keep women from bouncing around the system in a cycle of failure.³⁰ Although there is a major trend towards intermediate sanctions such as home detention, this is motivated by prison overcrowding rather than a motivation to reduce recidivism through appropriate treatment and wide ranging assistance.

In the United States there are four main intermediate sanctions used in the sentencing of women offenders: intensive probation supervision, shock-incarceration or split sentence (a period of incarceration followed by probation), house arrest, and electronic monitoring.³¹ The most widely used sanction for women is intensive probation supervision. While its effectiveness in reducing recidivism is under scrutiny, it is cost-effective compared with prison and reduces over-crowding.

Given that “[m]ost crimes by women are of an economic nature, for means of survival”, and that “[v]iolent crimes by women are highly likely to be committed in response to situations of domestic violence”, Robinson believes it is necessary to address practical causative issues such as lack of education and vocational skills.³² Programmes which ignore these issues promote failure.³³ Women serving time on intensive probation supervision “should be provided with program components to promote economic self-sufficiency, including safe and reliable organised child-care, skills training, and education”.³⁴ Robinson is concerned at

26 See Robinson, “*Intermediate Sanctions and the Female Offender*” in *Issues and Controversy* (1992) 246.

27 Ibid, 246.

28 Ibid, 246.

29 Ibid, 246.

30 Clear & O’Leary, *Controlling the Offender in the Community: Reforming the Community Supervision Function* (1983) cited in Robinson, “*Intermediate Sanctions and the Female Offender*” in *Issues and Controversy* (1992).

31 Supra at note 26, at 247.

32 Ibid, 252.

33 Ibid, 253.

34 Ibid.

the increased use of punitive, custodial alternatives to traditional institutional settings, and is critical of both home detention and shock-incarceration sentences as they potentially exacerbate domestic abuse. Moreover, the latter threatens women's self-esteem which is often fragile in the aftermath of repeated early sexual abuse. Both intensive probation supervision and shock-incarceration tend to contribute to the sense of powerlessness and dependency women offenders already feel. Robinson warns of the danger of "replicating the same programme deficits" of prisons in alternative sentencing practices. He further concludes: "[t]he nature of women's crime argues against a system for women of punishment by default - that is, punishments created for males."³⁵

Instead he advocates an existing model of comprehensive programmes for women at the "front-end" of the criminal justice system tailored to individual needs. These programmes must be culturally appropriate to race and class. The key advantages of this model are reduced recidivism by promoting healthy conditions in women's lives, cost effectiveness, the diversion of women from an already over-crowded prison muster and community safety through a supervised environment.

In Delaware, the National Center on Institutions and Alternatives (NCIA) developed a profile of women incarcerated in prison and made recommendations to reduce the number. The authors recommended that:³⁶

- (1) Criminal sanctions for women should be based on the least restrictive alternative consistent with public safety. Studies indicate that women recidivate more when support services are lacking in the community but that they still do so at a lower rate than men;
- (2) Criminal sanctions should directly address social and economic problems faced by women offenders;
- (3) The populations of women's prisons are still sufficiently small that a well-planned effort is likely to show meaningful results. And that in the process we may learn more about how to develop cost-effective and humane methods of reducing our reliance on imprisoning men.

Corrections policy-makers in Delaware reviewed these recommendations and, after interviews, the number of women held were reduced from 145 to 80.³⁷

(a) United States National Council on Crime and Delinquency (NCCD) Report (1992)

The Report identified studies in six states that have attempted to address the specific circumstances and needs of imprisoned women. Of those studies, two are noted.

³⁵ *Ibid.*, 258.

³⁶ National Centre on Institutions and Alternatives, 13.

³⁷ *Ibid.*, 11.

In 1989 the Connecticut Permanent Commission on the Status of Women recommended a comprehensive range of pre-trial, sentencing, residential, and out-patient services, including expanded non-incarcerative options for women, to reduce the number of incarcerated women in the state.³⁸

The Illinois Citizens Assembly, a bipartisan legislative agency, supported a study of the feasibility of sentencing programme alternatives for women offenders.³⁹ They found that over eighty percent of incarcerated women in the state were mothers and that 82.7 percent of those women were single parent heads-of-household. The Assembly's Council on Women concluded that the forced separation of women prisoners from their children causes long-lasting and severe psychological harm. They further concluded that community-based alternative sentencing programmes are cost-effective and result in less recidivism than imprisonment.

The NCCD Report cites public opinion polls and surveys which show that the American public support viable alternative sanctions, more so than legislators and policy-makers believe.⁴⁰ The Report noted that a specific focus on community-based programmes for non-violent women prisoners may ultimately provide a model for the de-incarceration of male offenders.⁴¹

(b) Successful action against Corrections

In 1990 the California Department of Corrections settled a five year suit brought by Legal Services for Prisoners with Children.⁴² The suit concerned the state-mandated Mother-Infant Care Program created in 1978 for women with children under the age of six who had been sentenced to six years or less in state prison for non-violent crime. The Corrections Department was charged with failing to provide women prisoners with adequate notice of the programme, imposing unnecessarily restrictive eligibility requirements and failing to provide an adequate number of community facilities. State officials are now required to inform women about the availability of the programme within one week of their being taken into custody.⁴³ There are now Mother-Care Program Centres in San Jose, Oakland, San Diego, Fresno, Salinas, and two in Los Angeles. Ellen Barry, Director of Legal Services for Prisoners with Children, stated that statistics show that women in the programme have a twenty percent lower recidivism rate than women who are incarcerated. Young children live with their mothers in a home-like setting; the children attend neighbourhood schools and daycare centres; play in public parks; and benefit from full-time care from their mothers.

38 Avallone, Talisano, "Task Force on Women, Children, and the Criminal Justice System: Executive Summary/Final Report and Recommendations" (1989) cited, in *Women's Prisons: Overcrowded and Overused* National Council on Crime and Delinquency, 1992, 8.

39 Citizens' Council on Women, *Annual Report 1986* and *Annual Report 1987* cited in *Women's Prisons: Overcrowded and Overused* National Council on Crime and Delinquency, 1992, 8.

40 Immarigeon, *Surveys Reveal Broad Support for Alternative Sentencing* (1986) 9 *Journal: The National Prison Project*, 1-4.

41 *Women's Prisons: Overcrowded and Overused* National Council on Crime and Delinquency, 1992.

42 *Rios v Rowland*, 330211 cited in *The Recorder* 30 May 1990.

43 *The Recorder*, May 1990.

(c) U.S. Programmes for women offenders

A variety of private non-profit agencies have started community-based alternatives to incarceration for women offenders. Services offered by these programmes address basic social, economic and health problems associated with female criminality.

“Our New Beginnings” is an example of a residential community-based model. It was established by ex-prisoner Carole Pope in Portland Oregon.⁴⁴ Pope’s experience, borne out by the women she worked with, was that their failure to deal with life crises effectively led to self-destructive behaviours and crimes. The programme is run in an expansive, renovated Victorian house in the community and is staffed, in part, by ex-offenders. The project was originally designed to work with women coming out of prison, but in 1989 it received its first contract from the state of Oregon as an alternative to the Women’s Correctional Center. The general services offered include housing, mental health, drug and alcohol counselling, child care, maternal education, literacy tutoring, job placement, life skills training, anger counselling, advocacy for children, job training, abuse counselling, prenatal care, other medical care including AIDS education and support, and an addicted mothers programme.

Between 1984 and 1987, the programme provided services, both residential and non-residential, to 693 women, sixty-four percent of whom successfully completed the programme. Strict house rules and rules of personal care are enforced through drug and alcohol monitoring, prohibition on driving, monitoring of personal responsibility, and adherence to personal programme plans. Infringement of house rules or probation terms result in a swift return to incarceration.

Sixty percent of funding comes from state contracts and the balance from private grants. Our New Beginnings is a cost-effective alternative to incarceration. It costs US\$32 per day per prisoner compared with \$56 per day in the Women’s Correctional Center and \$80 per day in the state jail.

The Elizabeth Fry Center in San Francisco is another example of a community based alternatives to incarceration for women offenders.⁴⁵ It is one of five residential centres in California for low-risk women prisoners who have children under six years of age. In the mid-1980s, the state legislature authorised an early release programme whereby the California Department of Corrections contracts with public or private agencies for community correctional centres that accept inmate mothers. The Elizabeth Fry Center, an eleven bed facility, takes referrals from the Department of Corrections. The women selected have been convicted of non-violent crimes, have not been deemed unfit mothers and have remained drug and alcohol free for at least six months. The women’s release data indicates that eighty-four percent stay crime free after leaving the Center. In addition, there has

⁴⁴ *Supra* at note 25, at 255-257.

⁴⁵ In 1988 the Pennsylvanian Programme for Women Offenders had a seventeen percent recidivism rate which was far below recidivism rates found in studies of other interventions with male offenders.

been an outpouring of community support. Neighbours and local citizens groups have served as volunteers and have offered a variety of donations, helping to keep the programme cost per offender lower than the price of incarceration.

Britain is similar to New Zealand in that alternatives to incarceration are considered in light of the same ideological strategy of 'rolling back the state'. Carlen, who has reviewed current trends and alternatives in Britain, concludes that:⁴⁷

[A]lthough some excellent non-custodial rehabilitative schemes for women offenders already exist, they are by and large rendered ineffective in reducing women's imprisonment: first, because they are too few and far between; and second, because government legislation in other spheres systematically subverts the welfare, housing, employment and education provision which *must* provide reliable back-up to all non-custodial penalties.

Many of the British alternatives are compulsory attendance day-care centres. Carlen warns however that sentencers may use this custodial alternative to incarceration instead of other non-custodial alternatives such as community service.

III: NEW ZEALAND RESEARCH

(a) 1979-1989

Until the late 1980s there was a dearth of research on the effect of separation on mother and child due to the incarceration of the mother. An early paper mentioning the problem in New Zealand was the Clark paper published in 1979.⁴⁸

In 1981 the Department of Justice published a paper recommending Parent/Child Units in women's prisons as an alternative to the practice of separating children from their primary care-givers.⁴⁹ Aikman, in the same year, examined the files of seventy-two women prisoners, thirty of whom had children.⁵⁰ Of the fifty dependent children, twenty-five percent were with fathers or step-fathers, fourteen percent with grandparents, eight percent with other relatives and forty-six percent were in the care of the Department of Social Welfare.

⁴⁷ Carlen, *Alternatives to Women's Imprisonment* (1990) 9.

⁴⁸ Clark, "Women In Prison" (1979) 3 Auckland U L Rev 401.

⁴⁹ Saphira, "Children in Prison: An Alternative to Incarceration with Separation" (1981) Unpublished Department of Justice Internal Paper cited in Aikman, "Victims of Our Institutions: The Children of Women Prisoners" (1981) Unpublished LLM Research Paper.

⁵⁰ Aikman, "Victims of Our Institutions: The Children of Women Prisoners" (1981) 12 Unpublished LLM Research Paper.

Aikman found that:⁵¹

[I]n our society, where the upbringing of children still falls primarily on women, and where a large proportion of the women concerned are solo parents, the consequences of separation of mother and child will often be the most severe and long-lasting. This is particularly the case as so many of the children involved are of pre-school age.

The paper notes the lack of research examining the extent of this problem, due to the Department's unwillingness to address the problem because of the relatively small numbers of children involved.⁵²

There has also been little public pressure on the penal authorities as, despite the demands for greater rights for women, for prisoners and for children, the children of women prisoners have formed a small, unseen and voiceless minority, which does not particularly fall within any of these areas.

A 1981 study of Mount Eden Prison indicated that building a further women's prison in Auckland would not necessarily alleviate the problem of separation as only thirty-seven percent of all remand prisoners were actually born in the Auckland Province.⁵³

Aikman advocates community houses:⁵⁴

[T]he better solution would seem to be to provide small community house facilities in each of the regional centres, where the great majority of women, who are not security risks, can be housed. This would have the effect that most of the women would be within reach of their families, and could gain educational and employment opportunities which they could more easily continue when they leave prison [It] has been illustrated that community based correction facilities are often more effective and cost efficient than large institutions, especially as they provide a greater chance of reducing the recidivism rates of prisoners.

She concludes "[i]t is essential that our criminal justice system recognises that it cannot treat the individual in isolation from his or her family".⁵⁵

Retaining legal guardianship can be a problem when the mother is trying to exercise her rights from a distance, and when relatives do not consult the mothers regarding decisions affecting the children. In New Zealand a mother often makes inquiries of the Prisoners Aid and Rehabilitation Society and DSW because she

51 Ibid, 1.

52 Ibid, 2. See also O'Neill, "The Experience of Imprisonment for Women" (1989) 18 Unpublished Psychology Masters Thesis.

53 Jackson, "Provision for Female Inmates of the Justice System" (1981) Department of Justice Internal Paper, cited in Aikman, "Victims of our Institutions: The Children of Women Prisoners" (1981) 11 Unpublished LLM Research Paper.

54 Miller & Montilla, *Corrections in the Community* (1977) cited in Aikman, "Victims of our Institutions: The Children of Women Prisoners" (1981) 11 Unpublished LLM Research Paper.

55 Supra at note 50, at 65.

has heard nothing from the family for some time, sometimes because the family has moved without anyone advising the mother.⁵⁶

The Roper Report

The issue was not thoroughly examined until the Roper Report published its section on "The Forgotten Children".⁵⁷ It ended the drought of research, urging further studies to focus not only on the stressful effects on children, but also on the mothers' experience of prison, and the consequent risk of further misbehaviour in prison and re-offending.⁵⁸ The Report found that separation can lead to mental and physical illness for both mother and child. For a small child, separation can be like a death.⁵⁹ The Report questions "whether ... [the separation] is a reasonable form of punishment to impose on children who have committed no crime, and on mothers, in addition to their incarceration",⁶⁰ concluding that it is not.

The Report identified two groups of incarcerated mothers who, according to security policy, do not qualify for temporary parole under s 21 and s 28 of the Penal Institutions Act (1954) or s 91 of the Criminal Justice Act 1985 (authorising the early release of prisoners giving birth).⁶¹ It noted that more, rather than less, women giving birth in prison will be declined release given the changing nature of women's crime.⁶² Their foresight has been borne out with the release of the 1993 Prison Census which shows an increase in violent crime and drug offences by women offenders. The Report drew attention to the Department of Justice Submission, "Prisons in Change" which acknowledged separation as undesirable because it "may cause considerable psychological damage and distress to both parties [but] is, nevertheless, normal practice".⁶³

56 Ibid, 26 citing McGowan & Blumenthal, *Why Punish the Children? A Study of Children of Women Prisoners* (1978); see also Kingi, "Preliminary Report Summary: The Children of Women in Prison" (1995) Unpublished.

57 *Ministerial Commission of Inquiry into the Prisons' System: Prison Review - Te Ara Hou: The New Way* (1989) (Roper Report) Part V chap 22, The Imprisonment of Women.

58 Ibid, 23.3.

59 Ibid, 23.18.

60 Ibid, 23.22.

61 Ibid, 23.36 to 23.39.

62 Ibid, 23.38. The Prison Censuses 1987, 1989 1991 comparison contained in the 1993 Census. There is a disturbing trend now clearer in the 1993 census towards more violent crime and drug offences and fewer property offences. The 1993 Prison Census shows that 44% of women inmates were sentenced for a violent offence, 33% for property offences, 1 in 7 for drug offences, 4% for offences against the administration of justice; 77% of women were classified with a minimum security status and 44% were serving a custodial sentence of less than one year. There is still a high proportion of women convicted of dishonesty offences often committed to support their children. In New Zealand the situation is little different from the global trend of the 'feminisation' of poverty due to the increase in single parent families as stated in Ministry of Women's Affairs, *Status of New Zealand Women* (1992), and economic marginalisation due to welfare cuts as stated in Young, "Mothers in Prison: The Experience of Being Separated from their Children" (1993) 5 Masters Psychology Thesis.

63 Supra at note 57, at 23.39.

(b) 1989-1995

In 1989 O'Neill conducted a study of Arohata Women's Prison.⁶⁴ She identified that a period of incarceration could be sometimes considered 'time-out' for the women; that is, relief from their economic struggle, substance abuse and the abuse from men commonly experienced outside.⁶⁵ These benefits can be obtained at far lower emotional and physical cost, by placing the mother with her children in a home-setting which supports her and gives her the real help she needs. O'Neill considers the effect of separation on the mothers can be counter-productive to rehabilitation:⁶⁶

[T]he public expectation in New Zealand [is] that a woman will maintain the role of the primary care-giver The breakdown of this role has a range of possible effects on female inmates which could be described as unique to their gender One respondent, whose child was taken away to Australia by an ex-partner without her consent, coped with her grief by throwing herself more deeply into her heroin addiction.

In 1992 Kingi conducted a study which identified the profile of the New Zealand female offender.⁶⁷ She noted an over-representation of minority groups who are victims of poverty. Most are unemployed single parents on welfare. A large number are alcohol and/or drug users:⁶⁸

Many female offenders are also from disrupted, multiproblem families in which unemployment, poverty, substance abuse and criminality play a significant role.

Special issues concerning mothers in prison are the levels of stress and anxiety suffered by women who still feel responsible for their children without the means to adequately care for their well-being and interests.⁶⁹ The impact of separation of inmate mothers from their children manifests itself in guilt, dissatisfaction with the care provided by others and fear of the loss of the children's affection:⁷⁰

64 O'Neill, "The Experience of Imprisonment for Women" (1989) Unpublished Psychology Masters Thesis.

65 *Ibid*, 63-70, 84.

66 *Ibid*, 72.

67 Kingi, "Mothers in Prison: The Reality of Their Needs" (1992) Psychology Honours Paper; see also *supra* at note 54: A profile of the New Zealand female offender at 22.29 to 22.30: "80% have drug/alcohol problems; 70% of their offences related to uncontrolled intoxication; 80% are incest, rape or sexual abuse victims; see also the Department of Justice submission (1988): 90% left school with no formal qualifications; 87% were listed as unemployed; 78% had social welfare payments as their major income; 47% had dependent children; 79% were neither married nor in a de facto relationship; 18% had recorded psychological disabilities; 18% had attempted suicide; 13% had at least one incident of self-mutilation.

68 Kingi, "Mothers in Prison: The Reality of their Needs" (1992) 2 Psychology Honours Paper.

69 *Ibid*, 9.

70 *Ibid*, 10-11.

A woman's maternal role was seen as playing a significant part in the maintenance of self-esteem and crucial to her sense of identity For many of them the psychological repercussions of the situation were similar to those resulting from other forms of loss, such as death or divorce The fact that the women had only experienced limited contact with their children ...would affect their ability to adjust on release, both to the new situation and to their children. An added impediment was the longer a woman had been in prison, the less contact she was likely to have had with her children.

Kingi concludes that a community based programme is appropriate.⁷¹

Young undertook an indepth study of seventeen women, thirteen of whom were mothers, at Mount Eden Female Division in 1992.⁷² In summary, Young found:⁷³

[T]he pain of separation was the most significant reaction that emerged, together with a wide-spread blocking of emotions to help the women survive their time in prison. The women spoke of worry and anxiety about their children and families while they were in prison, with expressions of frustration at not being able to fulfil their role as primary care-giver. Maintaining satisfactory contact with their families posed a problem for the women, which caused further stress and anxiety.

For many of the women the prospect of continuing financial strain after release was demoralising and frightening.⁷⁴ This small study confirms Kingi's findings that custody issues lie at the base of the agonising sense of powerlessness experienced by imprisoned mothers.⁷⁵ Young concludes:⁷⁶

If penal policy (including financial constraints) prevents the provision of more prisons for women to cater for the needs of mothers, then urgent consideration should be given to alternative penalties for such women.

In 1995 Kingi revisited the fate of the children in a study of fifty-six women from all three women's prisons. More than one third of the women had sole responsibility for their children prior to their imprisonment. Fifty-two percent had pre-school children. The youngest child of twenty-one percent of the sample was aged between five and ten years; for a further twenty-one percent, the youngest child was between eleven and eighteen years. Seventy-five percent of the children were cared for by extended family in fragile arrangements. There was a fifty percent likelihood that the mother would be separated from her children when she went to prison. Childrens' placements in DSW care often broke down. A third of the women had not had a visit from their children (although seventy-three percent of the women had been in the prison less than six months). The majority of the women resident outside the area where the prison was located. Phone-calls and

71 Ibid, 27.

72 Young, "Mothers in Prison: The Experience of Being Separated From Their Children" (1993) Psychology Masters Thesis.

73 Ibid, "Abstract", ii.

74 Ibid, 80.

75 Ibid, 82-84.

76 Ibid, 148.

letters were either too expensive or fraught with difficulties. Many women were not even sure if their children were getting their letters. Mothers whose children were in foster care did not receive regular information regarding those children, and in many cases did not know where their children were and what was happening.

Kingi concludes that women are still the primary care-givers of their children. Fifty-seven percent of the women were solely responsible for the financial support of their children and their families had been split up. As one woman interviewed said:

When a hub's pulled out the whole wheel falls apart - when a guy goes to prison the wheel keeps on turning, it's just one spoke missing.

IV: A PILOT PROJECT

In January 1995, propelled by frustration, outrage and a growing realisation that there was no political will to initiate an alternative to prison for women, the author contacted the National President of Movement for Alternatives to Imprisonment (MAP) to discuss setting up a steering committee to devise and implement a pilot residential habilitation centre for women offenders and their children. The Committee was chosen to reflect a diversity of women with the relevant skills and professionalism to bring this project to fruition. The goal was to gain the support of opinion-shapers and gain access to resources to ensure the setting up of a House in the Auckland region as a real alternative to imprisonment where women can live with their children while they undergo a healing process on many fronts. The project has been registered as a Charitable Trust in January of 1996 under the name The Puriri Foundation for Women and Children.

The first meeting comprised representatives from community organisations: MAP; the Women's International League for Peace and Freedom; a child psychiatrist from the Child and Family Unit at Auckland Hospital; two women criminal barristers; an Auckland City Councillor; a representative of the Tangata Whenua; the Community Placement coordinator from the University of Auckland School of Law; two law students (one a family therapist); a family lawyer; a community worker; and two forensic psychologists. All were women who had been associated with either similar projects such as Odyssey House, the HELP Foundation, Women's Refuge and the Allen Nixon House. All were concerned with the human fall-out of current penal policies or were involved with the legal issues of prisoners' rights and the rights of children. All had responsible roles of long-standing working for women and their children. Some had high regional and national profiles; some not. There was a balance of those with grass-roots connections and those with political access at the highest level.

The committee solicited and gained letters in support of our applications for finance from prominent individuals in the criminal justice, health and welfare

fields including two District Court Judges, a professor of law, the President of the Howard League, a senior lecturer in women's sociology, a prominent feminist author and woman's health activist and the Commissioner for Children.

The aims and objectives incorporated in the Trust Deed are:

- (i) To establish a pilot residential rehabilitation programme for women offenders with their children as an alternative to prison;
- (ii) To provide accommodation, assistance, support and opportunities for women offenders in a structured programme which addresses causal factors in female offending and provides for the needs of their children, who may be at risk;
- (iii) To promote and encourage self-help as a major goal for the women involved;
- (iv) To break the cycle of recidivism and intergenerational crime.

The Programme

The envisaged pilot programme will provide accommodation and services for up to seven mothers and their children provisionally up to the age of ten years. The household will be run co-operatively by the residents with the sharing of household tasks. Each resident will share responsibility for creating a stable, welcoming, family-style atmosphere at the residential centre.

There will be regular meetings between residents and staff and the Management Committee whereby residents will have input into programmes and areas of policy which affect them. Where possible, residents' individual skills will be utilised in operation of the centre. Each resident will take part in a structured programme tailored to the needs of that individual. While some services will be provided in-house, it will also utilise current community programme providers in order to avoid duplication of services. The programme will incorporate the following: substance abuse counselling, abuse and grief counselling, positive parenting and childcare, budgeting and life skills, anger management, further education and training.

Funding permitting, the centre will provide childcare in order to allow residents to attend personal growth and educational courses. Residents will be required to sign a contract agreeing to adhere to strict House Rules and to carry through with their individual programmes.

In accordance with the Treaty of Waitangi, and in recognition of the fact that approximately fifty percent of women prison inmates are Maori, this group is committed to partnership.

The Trust Deed is based loosely on that of Odyssey House. The major issue was how the relationship between the Trustees and the Management Committee was to be formulated. The Trustees have legal duties and responsibilities. The Committee are employees and do not. It was thus decided to express the values of consultation and communication. The Trustees have ability to delegate without abrogating their overriding supervisory obligations as Trustees. The Steering Committee recommends that communication is assisted by Trustees rotating on

the Management Committee as observers and vice-versa without voting rights. An overriding concern is the ultimate accountability of the Trustees to sentencing judges and the need for a structure that reflected impeccably clear lines of responsibility within the organisation, with a willingness to listen and consult.

It was decided that it was important to select Trustees who would carry convincing weight in the community and have the time to give genuine care to the project. Those individuals will probably play or have played responsible roles within the criminal justice or allied fields. It was also crucial to include grass-roots community workers with knowledge and experience in similar ventures, but still retaining an optimistic outlook. Being aware that bureaucratic obstacles existed meant involving positive people who would be there for the long-haul and had back-bone if or when things got tough. A further priority was to include a woman ex-offender as a Trustee on the understanding that she could help keep the project grounded in the reality of the lives, hopes and anxieties of women offenders and their children.

After costings were completed it became obvious that much of the establishment funding and running costs needed to be funded by the Justice Department. At present negotiations, are occurring. Cost comparisons made by the coordinator show considerable savings when compared with the financial costs of keeping women in prison and their children in Social Welfare care. The cost (\$44,000) of keeping one woman and 2.4 children in the project is less than the cost of keeping one woman in prison (around \$50,000). It is currently impossible to calculate costs for the children left behind by incarcerated mothers. What is now obvious is that maintaining the mother/child unit in the proposed residential programme is far more effective financially than imprisonment and Social Welfare care.

V: CONCLUSION

The chronic unwillingness to alleviate the human costs of the current regime is unprincipled, inhumane and, since recent studies have identified the trauma of the children involved, now unconscionable. Most women are not violent or are of no further violent threat to the community. Current plans to build parolee accommodation for women without their children are therefore questionable.

Overseas studies and successful projects lead the way in showing that alternatives to prison for women and their children are cost-effective and lead to lower recidivism rates, two objective criteria which indicate that this approach works. Most significantly, New Zealand research has recommended the speedy implementation of an alternative to prison where women can keep their children with them.

This call has become louder and has moved from academics to a District Court Judge and a former senior manager at the National Women's Prison at Christchurch. It has been echoed by senior people in allied fields as evidenced by the letters in support the project has received, including support in principle from

the Minister of Health (who nevertheless considers it the responsibility of the Ministry of Justice).

New Zealand cannot afford to be complacent about its Human Rights record when a significant number of children are subject to an inhumane approach which has been proved to cause immense harm not only to them but to generations of children in the future. This cannot be justified when more effective, proven and cost-efficient solutions are at hand.

Now is the time for this community project to be realised. It is an opportunity to appeal to the New Zealand public's compassion for children, if not for the women themselves. It is a challenge to our notions of retributive justice and the punitive yet sentimental nature of the New Zealand psyche. The Trustees have thirty-five years of indifference to surmount since women were first sent south from Mount Eden. However the passion and the commitment of their combined experience in the field makes it inevitable that they will succeed.

Cross examine

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