

# "Court in the Act"

A regular newsletter for the entire Youth Justice Community

THE YOUTH COURT OF NEW ZEALAND | TE KŌTI TAIOHI O AOTEAROA

December 2008



## Christmas Message from the Principal Youth Court

All involved in youth justice well know the statutory directive to make and implement decisions "within a time frame appropriate to a young person's sense of time". Speaking as the year ends, from an adult's perspective of time, I cannot help but observe how fast this year has passed.

As is common in election years, youth justice has been in the forefront of the news and public debate, probably as never before.

Issues surrounding the Private Member's Bill that would have drastically reduced the scope and jurisdiction of the Youth Court (amongst other things); the outgoing Government's proposed increase of Youth Court jurisdiction to include 17 year olds, and proposals to enlarge the range and length of sentencing options; and, now the new Government's plans to include some 12 and

13 year olds within Youth Court jurisdiction, have all received, and will continue to receive, vigorous and healthy debate.

There will be real challenges ahead in 2009 for the youth justice system. All this in the context of youth apprehension rates continuing to show real stability, but with serious, top-end violence committed by a small group of mainly young boys, apparently continuing to increase.

As we approach Christmas, there is time to reflect on the year and the challenges ahead. In particular, can I thank all of you who work so diligently and enthusiastically at the coal-face with young offenders. Much of your work is unrecognised and inadequately funded. All of you in these positions are in a real sense the "heroes" of our youth justice system.

Can I take the opportunity to thank you all and to encourage you in your renewed efforts next year.

I thought the comments from a builder, reported in the December 2008 issue of the Child Youth and Family newsletter, in respect of a young offender whose community work he had offered to supervise, struck just the right note: -

"You can sit back and be judgemental of all these kids that find themselves in trouble, our you can get to know them and make a difference".

To all of you in youth justice, thank you for "making a difference" in the lives of those with whom you worked in 2008. As we re-commit ourselves to make more differences in 2009, can I extend my Christmas good wishes to you all.

Judge Andrew Becroft



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"Life on the inside"

## New Youth Justice Residence For Rotorua

1 Earthworks have begun on a new youth justice residence on Parekaranga Trust land south of Rotorua. A soil turning ceremony attended by Trust members and representatives from Child, Youth and Family was held recently to mark this next phase of development.

2 Trust Chairman James Warbrick said it was marvellous that the project was getting under way.

3 "It is all about building bridges and linking with the community," he said.

4 While the residence is a national facility (the fourth youth justice residence in New Zealand), many of the young people will come from the Waikato and Bay of Plenty area, keeping them closer to

family and helping with their transition back into the community.

Once complete, the facility will be made up of eight separate buildings, including residential units, an administration block, and buildings where young people can continue their education and take part in cultural activities. There will also be courtyard areas and a playing field for sports and recreation.

The youth justice residence will provide accommodation for up to 40 young people and employ approximately 80 full time staff. Building begins early next year, and is expected to be complete by the end of 2010.

# Keeping Adolescents Out Of Prison

A policy brief has recently been published by the Woodrow Wilson School of Public and International Affairs at Princeton University and the Brookings Institute, which sets out “in a nutshell”, the justifications for a separate system of youth justice. The full paper can be found at [http://www.futureofchildren.org/usr\\_doc/FOC\\_Brief\\_Summer08.pdf](http://www.futureofchildren.org/usr_doc/FOC_Brief_Summer08.pdf).

## Immaturity mitigates blameworthiness

A core principle of our justice system is “penal proportionality”, namely that fair criminal punishment is based not only on the harm caused by the crime, but also on the blameworthiness of the perpetrator. It follows then, that a central question is whether an adolescent’s immaturity mitigates his blameworthiness and therefore should temper his punishment.

Adolescents are distinguished from adults along four psychosocial dimensions –

- susceptibility to peer influences;
- attitudes about risk;
- ability to adopt a future orientation; and
- capacity for self management.

On all four, abundant research evidence documents that adolescents are less mature than adults. As one example, studies of hypothetical dilemmas requiring adolescents to choose between antisocial behaviour suggested by their peers and positive social behaviour of their own choosing show that peer influences increase between childhood and early adolescence as adolescents begin to separate from parental control, peak at age fourteen, and then decline slowly during the high school years.

Not only does cognitive and psychosocial immaturity diminish the decision-making capacity of adolescents, it also heightens their vulnerability to coercive circumstances. The standard for judging culpability for apparently criminal acts is whether “reasonable people” would have been unlikely to commit the same act under comparable circumstances. In applying this standard to criminal acts by adolescents, the correct basis for analysis is the behaviour of other adolescents – not adults – under similar circumstances.

We are not arguing that juveniles’ diminished decision-making capacity fully excuses their actions, only that they bear less personal responsibility than an adult would for the same act, and that the punishment they receive for the their actions should therefore be reduced.

Yet another reason why adolescents are less than fully responsible for their actions is that their character is not fully

formed. Research demonstrates that many youths commit crimes as a result of normative experimentation with risky behaviour. Indeed, self-report studies show that more than 80 percent of teen boys say they have committed crimes. But most of these boys do not get caught and do not grow up to be criminals.

## Harsh punishments on adolescents do not work and may be counter-productive

Although the research on this issue should not be considered definitive, the United States Centers for Disease Control (CDC) recently sponsored an independent review of the evidence. The CDC’s expert reviewers located six high-quality studies; all provided evidence of the effect of transferring adolescents to adult jurisdiction on the subsequent incidence of violent offences after release. Only one study reported a decrease in violent crimes by youth who had previously been transferred to adult jurisdiction, while one study found no effect. The remaining four studies all found an undesirable effect in which transferred juveniles committed more subsequent violent or general crime than retained juveniles. *The evidence provided by these studies is sufficient to conclude that transfer to the adult justice system results in greater subsequent crime, including violent crime, among transferred youth.*

## What does work?

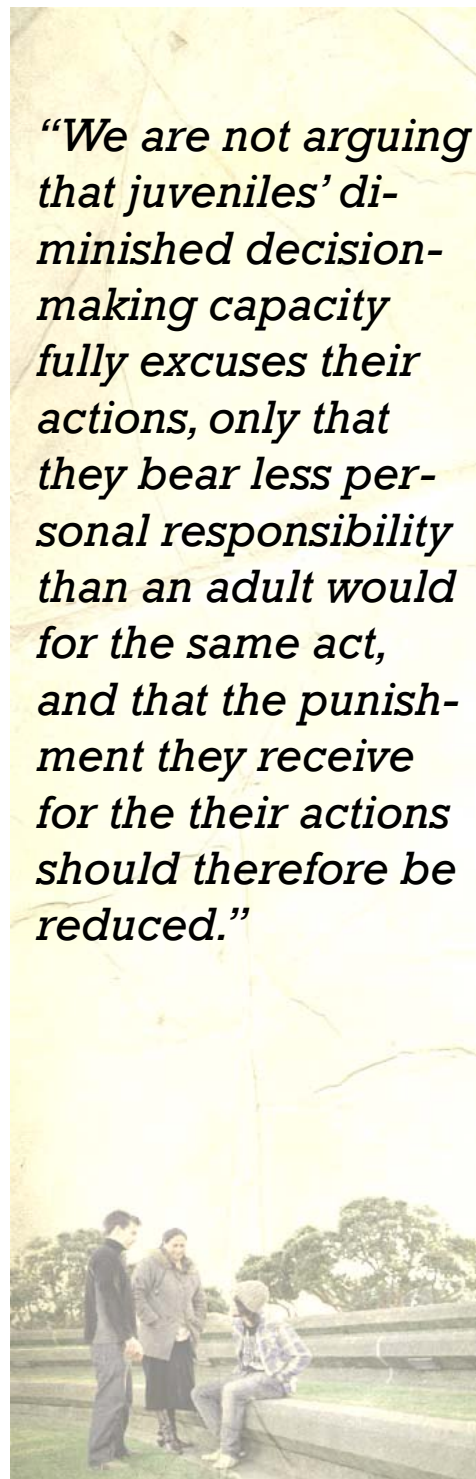
As shown in detail by Peter Greenwood in the most recent *Future of Children* volume, over the past fifteen years many high-quality studies have identified programmes that prevent delinquency or reduce recidivism. Indeed, the accumulating evidence is so strong that it could signal a new era in the treatment of troubled youth.

Greenwood’s careful review of the treatment literature can be summarized in five points.

- For troubled youth in community settings, family-based programmes that work with the juvenile, the family and perhaps others in the community have proven effective.
- For youth in institutional settings, treatments that base therapy on learning what goals youth have for their life and then helping them achieve those goals have a good track record.

- Programmes that are excessively harsh or punitive have either no effects or effects limited to the time frame of the programme.
- Incarceration is expensive and yields few if any benefits other than short-term incapacitation.
- Even the best evidence-based programmes must be fully and faithfully implemented if they are to produce the effects on teens that the evidence shows they can.

*“We are not arguing that juveniles’ diminished decision-making capacity fully excuses their actions, only that they bear less personal responsibility than an adult would for the same act, and that the punishment they receive for the their actions should therefore be reduced.”*



# Nature vs Nurture - The importance of both genes and environment

Recent medical research has discovered the reason why two people who experience the same adversity can have very different responses to it. The following excerpts appeared in Best Practice Journal, Issue 16, September 2008. The whole article can be found at [http://www.bpac.org.nz/magazine/2008/september/docs/bpj16\\_upfront\\_pages\\_4-5.pdf](http://www.bpac.org.nz/magazine/2008/september/docs/bpj16_upfront_pages_4-5.pdf)

Professor Richie Poulton and his team of researchers from the Dunedin Multidisciplinary Health and Development Study have made several key findings that reveal the way that genes and the environment work together. Their research confirms the importance of considering and managing factors within a young person's lifestyle and background that may contribute to their behavioural problem. Conversely, a negative environment or a risk identified in family history does not necessarily mean that a negative outcome is certain.

## Life stress and depression

The Dunedin Study researchers have discovered that a variation in the serotonin transporter gene interacts with life stress to predict depression. What this means is that people who have the short version of this gene are more likely to develop depression if they are exposed to stressful life events, than those who have the long version and who are more resilient. Ultimately this may lead to the development of new and hopefully more effective treatments for depression.

## Childhood maltreatment and violence

The researchers have also discovered that adult violence and antisocial behaviour in males can be predicted by an interaction between childhood maltreatment and a variation in the gene

that produces the enzyme monoamine oxidase.

**What this means is that badly treated boys with this gene variation, are more likely to become violent adults than boys who are also badly treated, but do not have this gene variation.**

## Adolescent cannabis use and psychosis

The third finding by the team was that the development of psychosis following use of cannabis during adolescence is linked to a variation in the catechol-O-methyltransferase (COMT) gene, which helps control the action of dopamine. What this means is that teenagers who use cannabis and who also carry this gene variation are more likely to develop illnesses such as schizophrenia as adults. This finding was unique in that it involved an additional factor – age of exposure. Cannabis use in adulthood did not elevate the risk for developing psychosis, even in the presence of the COMT gene variation.

## Breast feeding and IQ

More recently, the Dunedin study team reported that the association between breastfeeding and children's IQ depends, in part, on the baby's genotype in a gene called FADS2. This gene influences how the body processes fatty acids consumed through diet. For over 100 years IQ has been at the heart of

scientific and public debates about nature versus nurture. This finding clearly shows that genes may work via the environment to shape IQ.

Evidence that nature and nurture work together drives several nails into the coffin of the often bitter and largely obsolete nature-versus-nurture debate. Clearly, genes are not a blueprint or deterministic; rather they help to shape how our bodies and brains respond to our environment.

It is perhaps ironic then that this cutting-edge genetic research goes full circle to emphasise the importance of the environment. In all the studies described above, the genes by themselves have told us nothing. It was only when we looked at the genes working in association with environmental influences that we were able to predict outcomes. This justifies attempts to manipulate the environment to create better outcomes.

Modifying the environment in a positive way remains the key for influencing how people's lives turn out. This is particularly important when we cannot rely on pharmaceuticals for treating behaviours such as violence and aggression. Effectively tinkering with genes to achieve desired outcomes remains a long way off. Right now, however, that is not necessary. The environment is where the action is.

# Are children's rights adequately protected by the youth justice system in New Zealand?

Nessa Lynch of the Faculty of Law, Victoria University of Wellington recently published an article in *Youth Justice* which outlines New Zealand's youth justice system and asks whether the rights of children are being adequately protected. The article can be found at <http://yji.sagepub.com/cgi/content/abstract/8/3/215>.

While the youth justice system in New Zealand offers many protections for the rights of children (such as statutory diversion schemes, family conferencing and the use of restorative justice) the informality of these initiatives and the extensive use of discretion also poses potential threats to those rights. In particular, she discusses the following areas.

## Police Youth Diversion

While it is certainly positive for the child to avoid potentially stigmatizing court appearances and orders, the lack of independent oversight and accountability for the Policy Youth Diversion (PYD) scheme is concerning. There is little information available on the scheme and no discernable safeguards for the child.

Furthermore, as the PYD scheme is administered solely by the police, unfairness in investigative measures may go unchecked. It is vital that some upper limits be proposed on PYD outcomes to ensure fairness and equality in outcomes. Statistics on PYD outcomes should also be publicly available to ensure accountability and transparency.

## Young People's participation in Family Group Conferences

The nature of the FGC (informal, less hurried and taking place in 'neutral territory' with family support present) should mean increased levels of participation by children. In reality, this has not been the case. Observational

research of the FGC has demonstrated that many children do not feel involved in the decision-making process or do not understand what went on.

## The right to legal assistance at Family Group Conferences

While a child appearing in the Youth Court has access to a state-funded, specially trained lawyer called a Youth Advocate, children involved in a pre-charge FGC often lack legal assistance. As the FGC involves the child admitting and being censured for a criminal offence, it is vital that the child has access to legal assistance before admitting the offence in order to protect the child's rights during the process.

# Diversions rates for Australian indigenous young offenders

**Indigenous young people are overrepresented in the juvenile justice system in Australia. In 2005, indigenous young people accounted for 52 percent of 10 to 17-year olds in juvenile detention across Australia. A recent study used modelled data to examine juveniles' contact with the police and courts, and the differences in juvenile diversionary rates for indigenous and non-indigenous offenders in New South Wales, South Australia and Western Australia in 2005. It found that indigenous young offenders were more likely to be referred to court, and non-indigenous young offenders were more likely to be diverted. A full copy of this article can be found at <http://www.aic.gov.au/publications/tandi2/tandi355.pdf>**

## Juvenile justice systems

New South Wales, South Australia and Western Australia have introduced systems of conferencing and/or cautioning to reduce the overall rate of juvenile contact with the criminal justice system. In New South Wales, this is referred to as a Youth Justice Conference, in South Australia a Family Conference and in Western Australia a Juvenile Justice Team. Conferences are facilitated by a trained conference convenor. Family members of the offender, the victim, members of the criminal justice system and other interested parties can attend, along with the offender. The offence and its impact on the victim and the wider community are discussed, and the offender is encouraged to accept responsibility and negotiate some form of restitution.

The discretion available to police and courts in relation to whom they choose to divert, is very wide. None of the legislation underpinning these schemes contains a complete list of the factors that police and courts must or can take into account when deciding whether to caution a young offender. This makes it impossible to determine whether differences in rates of juvenile diversion can be explained solely in terms of legal factors.

## The overrepresentation of indigenous juvenile offenders

Although these diversionary alternatives appear to be effective in reducing re-offending, indigenous young offenders appear to be much less likely to be diverted than their non-indigenous counterparts. Data from South Australia indicate that indigenous young offenders are more likely to be sent to court and less likely to receive a formal caution or be diverted to a family conference than non-indigenous young offenders.

Similarly, in Western Australia, indigenous young people are five times more likely to have had formal contact with the police and 29 times more likely to have been arrested (in the 10-14 year age group). In New South Wales, indigenous young people are more likely

than non-indigenous young people to be taken to court (64% compared with 48%) and less likely to be cautioned (14% compared with 28%) by police.

The reason for this discrepancy in rates of juvenile diversion is of critical importance to criminal justice policy. Studies have argued that racial bias in the exercise of police discretion early in the criminal justice process contributes to indigenous overrepresentation in juvenile detention centres and prison. The argument is that because indigenous young people are more likely than non-indigenous young people to be arrested rather than cautioned, they tend to acquire a more extensive criminal record at a young age. The possession of a longer criminal record then increases their risk of detention or imprisonment when they reappear in the criminal justice system, even if they appear for offences that are comparable to those committed by non-indigenous offenders.

This is a plausible hypothesis; however, there are other possible explanations. It is possible, for example, that indigenous offenders are less likely to be diverted simply because they less frequently meet the legal requirements for diversion.

## Aims of this study

This study aimed to assess the extent to which the observed differences in diversion between indigenous and non-indigenous offenders could be explained by relevant factors. It also aimed to examine differences between indigenous and non-indigenous juvenile offenders for characteristics known to affect the likelihood of diversion.

## Results

When controls were introduced for age, sex, characteristics of the current case and the prior criminal history of the offender, the discrepancy between

indigenous and non-indigenous offenders in rates of diversion decreased for all three states but remained statistically significant. It is impossible to say whether the residual differences in rates of diversion are symptomatic of racial bias on the part of police (or courts) or reflective of other factors that are unable to be measured in the present study.

The legislation establishing diversion schemes in each state affords police wide discretion in determining who should be referred to court and who should be cautioned or referred to a conference. The available data, for example, does not permit any assessment of whether an offender accepted responsibility for an offence, although this is plainly relevant to decisions about how to deal with a young offender. Moreover, other factors such as the lack of diversionary alternatives in regional or remote rural areas may also contribute to differential rates of diversion.

Looking at the variables that were significant predictors of diversion across all three states, it is obvious that past contact with the justice system plays just as important a role in shaping subsequent decisions about diversion as it

does in shaping decisions about adult sentencing. Irrespective of jurisdiction, indigenous young offenders are much more likely than their non-indigenous counterparts to have had multiple contacts with the criminal justice system and much more likely to have been in custody before. The modelling suggested that these two factors greatly reduced the likelihood of diversion.

*"Data ... indicates that indigenous young offenders are more likely to be sent to court and less likely to receive a formal caution or be diverted to a family conference than non-indigenous young offenders."*

## Conclusions

The present study therefore strongly suggests the need for further research into the reasons for the high reconviction rate among indigenous offenders. The most obvious explanation for the high juvenile indigenous reappearance rate in court is that indigenous young people are more likely to re-offend, and there is some evidence to support this hypothesis. However, it is possible that other factors are in play, such as a lack of diversionary alternatives in regional or remote rural areas, a perceived lack of contrition on the part of indigenous young offenders or a lack of resources for diversionary programmes in remote rural areas where indigenous families reside.

# Youth Justice in the South Pacific—South Pacific Council of Youth and Children's Courts (SPCYCC)

Judge Becroft reports on the annual meeting of the South Pacific Council of Youth and Children's Courts (SPCYCC) which was held in July 2008, in Apia.

The SPCYCC has met regularly, under different names since 1995. Initially it comprised the Judicial Heads of the Youth Courts in New Zealand and in all the Australian States. Since the early part of this century, it has moved to include Judges that lead youth justice work in all the South Pacific island nations. The current members include:

New Zealand

Australian Capital Territory

New South Wales

Northern Territory

Queensland

Tasmania

South Australia

Victoria

Western Australia

Fiji

Samoa

Tonga

Vanuatu

Papua New Guinea

Kiribati

Solomon Islands

Cook Islands

The prime purpose of the meeting is to discuss issues and challenges relating to youth justice and child welfare and protection in all of the member countries. It is also a chance to hear of new initiatives and developments throughout the South Pacific.

This year, from New Zealand, Principal Youth Court Judge Andrew Becroft, and Judge Ida Malosi – Administrative Youth Court Judge for the Northern Region – attended the conference in Apia, Samoa. There was a very strong and enthusiastic turn out from throughout the South Pacific. The Council meeting took an "open meeting" format, with a variety of guest overseas presenters and speakers. We were very lucky to be challenged by Inspector George Fa'alogo from New Zealand as to the Police Youth Aid approach to dealing with young offenders, particularly emphasising firm, prompt, community-based diversion. From Child Youth and Family Services, Mr. Allan

MacRae and Mr. Afa Godinet very ably represented the Family Group Conference system as it is practiced in New Zealand, and emphasised how easily it could be exported throughout the South Pacific. I was proud to be part of a delegation that included such committed and enthusiastic participants in our youth justice system. From South Auckland, two youth workers, Mr. Efeso Collins and Mr. Ronji Tanielu also made very challenging presentations as to how to deal with Pacific Island young offenders.

While the Council continued to meet for the rest of the week, a series of parallel education seminars were provided to a wide group of Samoan "professionals" who were beginning to implement the new Samoan Young Offenders Act 2007. The Council meeting provided an opportunity for practical skills-based training for all those involved in the Samoan youth justice system.

Our abiding impression was the strength of the youth justice systems throughout the South Pacific and the commitment by all member countries to provide the absolute best system possible. We are also aware of some of the challenges facing the less-developed Pacific Island nations such as Vanuatu, Solomon Islands and Kiribati and Tonga, who do not have separate youth justice legislation, nor specialist youth judges, lawyers, police, or social workers. It is an enormous challenge for these countries to develop their own culturally appropriate South Pacific specific youth justice systems. Equally there are enormous opportunities for New Zealand to be involved in fostering and providing practical training. The SPCYCC is now an important part of the South Pacific youth justice landscape, and is playing an increasingly leading role in training, developing new initiatives, and emphasising best youth justice practice.

This poem was written by a 15 year old male who has completed a s311 supervision with residence order. While in residence he completed 26 Level 1 unit standards (to add to the 3 that he came in with). He now plans to return to mainstream education, complete his NCEA and eventually to do a carpentry apprenticeship.

**“LIFE ON THE INSIDE”**

MY MINDS TANGLED IN RESIDENCE  
BECAUSE OF MY IMMATURE ACTS, THE JUDGE HAD ME SENTENCED.  
THIS PLACE IS NO GOOD FOR ME  
ALL I SEE  
IS A LONG, DARK ROAD AHEAD OF ME  
I TRIED TO CHANGE MY WAYS AND TALK WITH GOD  
BUT MY MIND GETS DISTRACTED, CLOUDED WITH FOG  
I'VE GOT SO MUCH PEOPLE THAT LOVE ME TO DEATH.  
BUT IF I DO WHAT I DO I WILL PUT THEM TO REST.  
I DON'T MEAN TO BRING YOURS HEART, ANGUISH AND SHAME  
BUT ALL I EVER SEEM TO BRING MY FAMILY IS PAIN  
NOTHING MORE AND  
NOTHING LESS  
I'LL RETURN THE FAVOUR AND LOVE YOURS TO DEATH  
THATS ALL I HAVE TO GIVE FOR NOW BECAUSE IM NOT A RICH MAN  
BUT I NOW KNOW WHAT LIFE HAS INSPORE WHEN SHIT HITS THE FAN  
SO I NOW CONSIDER MY SELF A MAN AND MAKE MY OWN DECISIONS IN LIFE  
NOW I TAKE THE GOOD ROUTE IN SIGHT AND HEAD TOWARDS THE LIGHT  
THE LIGHT DOESN'T SHINE SO BAD  
IT DIMMERS MORE AND MORE WHEN IM MAD  
I TRY TO STAY FOCUSED AND KEEP ON TRACK  
BUT MY CHILDISH ANXIES KEEP HOLDING ME BACK.  
BEING IN HERE IS ONE OF LIFE'S LESSONS  
I PREYED TO THE LORD TO GIVE ME HIS BLESSINGS!  
IT DIDN'T WORK, SO I TRIED AGAIN 'N' AGAIN  
WHY HAS THIS LIFE TIME BROUGHT ME SO MUCH PAIN?  
I DON'T KNOW, AND NEITHER DO YOU!  
I WROTE THIS POEM TO SAY " I LOVE YOU"



## “Court in the Act”

is published by the office of the Principal Youth Court Judge of New Zealand.

We welcome contributions to the newsletter from anyone involved in youth justice in New Zealand or internationally.

Back copies of the newsletter can be viewed or downloaded from our website.

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MY MINDS TANGLED IN RESIDENCE  
 BECAUSE OF MY IMMATURE ACTS- THE JUDGE HAD ME SENTENCED  
 THIS PLACE IS NO GOOD FOR ME  
 ALL I SEE  
 IS A LONG, DARK ROAD AHEAD OF ME  
 I TRIED TO CHANGE MY WAYS AND TALK WITH GOD  
 BUT MY MIND GETS DISTRACTED, CLOUDED WITH FOG  
 I'VE GOT SO MUCH PEOPLE THAT LOVE ME TO DEATH.  
 BUT IF I DO WHAT I DO I WILL PUT THEM TO DEATH.  
 I DON'T MEAN TO BRING YOURS WHAT ANGUISH AND SHAME  
 BUT ALL I EVER SEEM TO BRING MY FAMILY IS PAIN!  
 NOTHING MORE AND  
 NOTHING LESS  
 I'LL RETURN THE FAVOUR AND LOVE YOURS TO DEATH  
 THAT'S ALL I HAVE TO GIVE FOR NOW BECAUSE IM NOT A FUCH MAN!  
 BUT I NOW KNOW WHAT LIFE HAS INSIDE WHEN SHIT HITS THE FAN  
 SO I NOW CONSIDER MYSELF A MAN AND MAKE MY OWN DECISIONS IN LIFE  
 NOW I TAKE THE GOOD ROUTE IN SIGHT AND HEAD TOWARDS THE LIGHT  
 THE LIGHT DOESN'T SHINE SO BAD  
 IT DIMMERS MORE AND MORE WHEN IM MAD  
 TRY TO STAY FOCUSED AND KEEP ON TRACK  
 BUT MY CHILDISH ANKTS KEEP HOLDING ME BACK.  
 BEING IN HERE IS ONE OF LIFES LESSONS  
 I PREPARED TO GIVE ME HIS BLESSINGS  
 IT DIDNT WORK SO I TRIED AGAIN N' AGAIN  
 WHY HAS THIS LIFE BROUGHT ME SO MUCH PAIN?  
 I DONT KNOW, AND NEITHER DO YOU!  
 I WROTE THIS POEM TO SAY "I LOVE YOU"



# LIFE ON THE INSIDE.

Continued