



Summary of Chief Custodial Officer Review

Failure to Return from Temporary Release of Phillip John Smith

25 November 2014

Summary of the Chief Custodial Officer review into the Failure to return from Temporary Release of Phillip Smith on 9 November 2014

Introduction

The temporary release of certain prisoners from custody fulfils several legitimate purposes that are provided for in the Corrections Act 2004, including “the rehabilitation of the prisoner and his or her successful reintegration into the community”. Temporary releases can be highly beneficial for prisoners approaching their actual release from prison and can reduce their likelihood of re-offending. The Department will therefore have an ongoing commitment to approving the temporary release of prisoners where these benefits are consistent with the safety of the public. Public safety will always be the paramount consideration.

In the last financial year Corrections approved and managed 4,761 temporary release events involving 792 prisoners. This equates to around 90 temporary release events per week.

Around 68 percent of these temporary releases (approx. 3,203) are for prisoners to attend paid employment (Release to Work) and usually involve the same prisoner undergoing repeated releases.

Overview of the Incident

At 0730, on Thursday 6 November 2014, prisoner Smith left Spring Hill Corrections Facility (SHCF) under the supervision of Sponsor A, an approved sponsor, to commence a 74 hour temporary release¹. That afternoon, prisoner Smith left the supervision of his sponsor and made his way to Auckland airport where he flew out of New Zealand on a commercial flight to Chile.

Findings

Assessment of Practice

The central finding of this review is that the plan to manage prisoner Smith was overly ambitious and misinformed. The plan established during Smith’s treatment at Te Piriti, Auckland Prison, started a reintegration pathway including temporary releases without clarity that the Parole Board was likely to release him in the foreseeable future. This premature plan was then continued on his transfer to SHCF, without any review or assessment as to its intention and end goal.

Insufficient weight was given to prisoner Smith’s complex risk profile and dangerous offending behaviour. The evidence of his alerts, misconducts and his numerous attempts to thwart and abuse systems, including both internal and external systems, was minimised and did not raise concerns about the safety of his plan.

¹ Under section 62 of the Corrections Act 2004 ‘temporary release from custody’. Where an offender is temporarily released from custody and issued with a release license that defines the conditions of the release into the Sponsor care.

Prisoner Smith's complex risk profile was underestimated by staff and the appropriate offender management plan did not substantially address these issues. The management plan instead focused on discrete needs, events and pieces of information in isolation from a complete picture. The conflicting nature of his presentation was not identified and interrogated, and key pieces of information were not shared and analysed into patterns of risky behaviour.

There was a belief by staff that his minimum security status in prison entitled him to a pathway to release, given the endorsement by a Senior Psychologist and what was understood as support by the Parole Board. Security classification is assessed on prisoner behaviour in prison, not the risk to the community when outside a prison environment.

The plan to manage prisoner Smith by use of Temporary Release was overly ambitious

Following the April 2013 New Zealand Parole Board (NZPB) hearing when parole was declined, a meeting was convened at Auckland prison to discuss prisoner Smith's reintegration steps. It was at this meeting that the plan for a series of temporary removals² leading to temporary releases was discussed and agreed.

As prisoner Smith was participating in Circles of Support and Accountability (CoSA³) there was ongoing contact with both prisoner Smith and the sponsors.

Whilst the offender plan did make reference to prisoner Smith working towards Release to Work and minimum security, it did not specify Temporary Release for any other purpose.

Prisoner Smith is a highly manipulative and deceptive person who, whilst technically eligible, should not have been considered suitable for Temporary Release.

The plan to use Temporary Release appeared to be supported by the New Zealand Parole Board

In April 2013 The New Zealand Parole Board (NZPB) declined parole for prisoner Smith and recorded the following as part of the Decision from the Parole Board:

The Board is satisfied that Prisoner Smith remains at high risk of posing a serious danger to the community. He does not meet the statutory criteria to be considered for release on parole. Much more work is required on his part to illustrate that he would be able to live and work in the community without posing undue risk. However, we support the proposition that there be very cautious and slow steps for reintegration into the community. They may involve temporary releases or escorted releases as and when the Department of Corrections consider appropriate. That is a sentence management decision for the Department.

² Prisoners who have been temporarily removed from prison remain in the legal custody of the Chief Executive throughout the period they are away from the prison. They are escorted and supervised outings by a Corrections, Probation or Police Officer.

³ Circles of Support' is an initiative established at Te Piriti unit at Auckland Prison. It is designed to identify individuals in the community to support sex offenders to re-integrate into the community. The initiative was implemented and is managed by the resident psychologist.

In March 2014, the NZPB declined parole and recommended that prisoner Smith be tested on more temporary releases and stated that if prisoner Smith needed to be transferred to another prison to be tested in the community, then they would support it. The Decision of the Board from the hearing of 31 March states:

Prisoner Smith has been making good progress in terms of his temporary releases and engaging with his circle of support. However, the usual accepted and necessary pathway for an offender who has committed horrendous violent and serious crime such as his is to establish and prove himself through the necessary reintegrative steps. These, we consider, should include him working towards Self care and, if available, Release to Work. As yet he is not pre-approved for that privilege. It is something to which he can work toward. We agree with the psychological report writer that he would also benefit from overnight temporary releases.

In our view it would be premature to grant parole now, on the basis that he has had several temporary releases and a strong support group. His risk is, and has been, such that he needs to prove himself in wider range of situations, and over time, in the community. If it is necessary for him to be transferred to another prison in order to further that progress, then we would support it.

There was conflicting information pertaining to the risks prisoner Smith posed

A large volume of information was available to staff about prisoner Smith's history. This included his alias TRAYNOR, his history of manipulative behaviour and escape risk. However much of this information is contained in several places, for example in case notes, parole reports, information systems and intelligence reports and was not pieced together.

There was an emphasis placed on his progress and behaviour in custody that wasn't balanced against his overall risk of offending and evidence of manipulative and deceitful behaviour prior to and during his incarceration.

The emphasis on his progress and behaviour resulted in him obtaining positions of trust within the prison and a plan was developed for increased opportunities for temporary absences from the prison. The duration and frequency of these absences escalated rapidly and whilst managed according to policy, were not appropriate for a prisoner with such a complex risk profile.

The absences began with a series of four escorted temporary removals between 10 May 2013 and 2 July 2013. These absences progressed to temporary releases between 3 September 2013 and 29 March 2014 with durations of eight and twelve hours. Subsequent releases became more ambitious with a 24 hour release on 9 May 2014 and 48 hour release on 30 June 2014. In September 2014 prisoner Smith completed a 72 hour temporary release from SHCF.

Staff involved in the management of prisoner Smith have stated that he demonstrated all the behaviours that would be expected of a model prisoner. This manifested in how he interacted with staff, other prisoners and how he actively sought out leadership opportunities facilitating activities for other prisoners and utilising his organisational skills.

The policy and process for managing an application for Temporary Release were largely complied with

The policy and process steps were largely complied with. There was one omission in not sending a letter to both sponsors advising them of the conditions of release and their responsibilities.

The process of selection and training of sponsors is critical

Use of sponsors for prisoners on temporary release is common international practice and, in New Zealand, has been in place for approximately 50 years.

For the purposes of temporary release, a sponsor is a person who is responsible for the supervision and monitoring of a prisoner whilst on release. This is often a family member however they can also be selected members of the public who volunteer to take part in programmes such as CoSA.

All sponsors are required to go through a vetting and approval process on their first application. This involves criminal background checks and a review of the release address for suitability. The address review is completed by Community Corrections staff.

Sponsors for CoSA are carefully selected, supported and trained. Sponsors in the general sense do not receive any training or formal support.

The Sponsor did not fulfil their responsibilities

Prisoner Smith's Sponsor A signed the licence that was presented whilst uplifting him on Thursday 6 November. The licence outlines the conditions of the prisoner's temporary release.

At some point on 6 November 2014 prisoner Smith parted company with Sponsor A when he either got into a taxi or was dropped off at the named co-sponsors address. In either case Sponsor A did not ensure that the licence conditions were met as the licence clearly stipulates that prisoner Smith was to remain with the sponsors at all times.

The policy for monitoring prisoners on temporary release requires strengthening

The policy places the accountability on the sponsor to ensure the prisoner is compliant with conditions and to report any concerns to the prison staff. As written, the policy allows for the Department's monitoring arrangements to be undefined and inconsistent and has resulted in varying standards of practice across the prison system.

The response by SHCF senior management was passive

There appears to be some inconsistencies relating to the information passed between key managers at SHCF and the escalation process beyond the prison was inadequate. When confronted with the potential that prisoner Smith may have deviated from his temporary release plan they did not act with sufficient urgency to fully appraise the New Zealand Police or the victims.

Recommendations

The review included a number of recommendations to ensure we can learn from this incident and more effectively manage temporary release events throughout the prison network.

A number of interim measures have been put in place by Corrections as an immediate response to this incident. The recommendations below are in addition to the interim measures already introduced.

1. All policies, procedures, instructions and instances of when prisoners are outside of the secure prison perimeter must be reviewed and updated as a priority. These instances must include:
 - Release to Work
 - Temporary Release
 - Temporary Removal
 - External Self-care
 - External Work Parties.
2. A Temporary Release Advisory Panel should be chaired by Prison Manager's to consider all temporary release applications and include implications of prisoners with high ROC/ROI⁴, life sentenced prisoners and those on Preventive Detention and any relevant intelligence available. The panel is to include:
 - Case Management
 - Community Probation
 - Operational Intelligence
 - Departmental Psychologist
 - Police
 - Local Community representative
 - Child Youth and Family.
3. GPS monitoring should be considered as the default for all prisoners on Temporary Release unless otherwise authorised by the Prison Manager.
4. Contact monitoring arrangements for all prisoners on temporary release must be clearly described, accurately recorded on licence conditions and agreed to by the sponsor, employer prisoner and Prison Manager.
5. Temporary Releases must be limited to a maximum of 12 hours unless approved and signed off by the National Commissioner.
6. A full review of the sponsorship process must be undertaken.
7. An investigation is to be undertaken into the psychological management of prisoner Smith as a result of information discovered during this review.

⁴ Risk of reconviction/risk of imprisonment tool

8. A review of the Te Piriti Child Sexual Offending programme be undertaken by an independent expert in the field.
9. A weekly report of all prisoners subject to Temporary Release must be provided to the Prison Manager at the beginning of each business week for their attention. This report will highlight any potential risk areas.
10. The revised Prisoner Placement system as it pertains to the minimum security classification should be implemented as soon as possible following regulatory change.
11. All relevant Corrections staff to be trained in the new temporary releases process.
12. All managers and staff must be reminded that during any incident a time bound log of events must be commenced and maintained.
13. Internal control monitoring should include the temporary release application process.