

Crimes (Sentencing Procedure) Act 1999.

Section 74

Part 6 Sentencing procedures for home detention orders

Division 1 Preliminary

74 Application

This Part applies in circumstances in which a court is considering, or has made, a home detention order.

75 Definitions

In this Part:

assessment report means a report prepared under section 81.

domestic violence offence has the same meaning as it has in the *Crimes Act 1900*.

offender's obligations under a home detention order means the obligations that the offender has under section 104 of the *Crimes (Administration of Sentences) Act 1999* as a consequence of the making of the order.

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Division 2 Restrictions on power to make home detention orders

76 Home detention not available for certain offences

A home detention order may not be made in respect of a sentence of imprisonment for any of the following offences:

- (a) murder, attempted murder or manslaughter,
- (b) sexual assault of adults or children or sexual offences involving children,
- (c) armed robbery,
- (d) any offence involving the use of a firearm,
- (e) assault occasioning actual bodily harm (or any more serious assault, such as malicious wounding or assault with intent to do grievous bodily harm),
- (f) an offence under section 562AB of the *Crimes Act 1900* of stalking or intimidating a person with the intention of causing the person to fear personal injury,
- (g) a domestic violence offence against any person with whom it is likely the offender would reside, or continue or resume a relationship, if a home detention order were made,
- (h) an offence under section 23 (2), 24 (2), 25 (2), 26, 27 or 28 of the *Drug Misuse and Trafficking Act 1985* involving a commercial quantity of a prohibited plant or prohibited drug within the meaning of that Act,
- (i) any offence prescribed by the regulations for the purposes of this paragraph.

77 Home detention not available for offenders with certain history

(1) A home detention order may not be made for an offender:

- (a) who has at any time been convicted of any of the following offences:
 - (i) murder, attempted murder or manslaughter,

- (ii) sexual assault of adults or children or sexual offences involving children, or
 - (b) who has at any time been convicted of an offence under section 562AB of the *Crimes Act 1900* of stalking or intimidating a person with the intention of causing the person to fear personal injury, or
 - (c) who has at any time within the last 5 years been convicted of a domestic violence offence against any person with whom it is likely the offender would reside, or continue or resume a relationship, if a home detention order were made, or
 - (d) who has at any time been convicted of any offence prescribed by the regulations for the purposes of this paragraph, or
 - (e) who is (or has at any time within the last 5 years been) subject to an apprehended violence order (within the meaning of Part 15A of the *Crimes Act 1900*) made for the protection of a person with whom it is likely the offender would reside, or continue or resume a relationship, if a home detention order were made.
- (2) Offences prescribed by regulations made for the purposes of subsection (1) (d) may include offences under a law of the Commonwealth or of another State or a Territory.

78 Suitability of offender for home detention

(1) A home detention order may not be made with respect to an offender's sentence of imprisonment unless the court is satisfied:

- (a) that the offender is a suitable person to serve the sentence by way of home detention, and
- (b) that it is appropriate in all of the circumstances that the sentence be served by way of home detention, and
- (c) that the persons with whom it is likely the offender would reside, or continue or resume a relationship, during the period of the offender's home detention have consented in writing, in the form prescribed by the regulations, to the making of the order, and
- (d) that the offender has signed an undertaking, in the form prescribed by the regulations, to comply with the offender's obligations under the home detention order.

(2) In deciding whether or not to make a home detention order, the court is to have regard to:

- (a) the contents of an assessment report on the offender, and
- (b) such evidence from a probation and parole officer as the court considers necessary for the purpose of deciding whether to make such an order.

(3) A court may, for any reason it considers sufficient, decline to make a home detention order despite the contents of an assessment report.

(4) A court may make a home detention order only if an assessment report states that, in the opinion of the person making the assessment, the offender is a suitable person to serve a term of imprisonment by way of home detention.

(5) For the purposes of subsection (1) (c):

- (a) the consent of children below a prescribed age, and
 - (b) the consent of persons suffering a prescribed disability,
- may be given on their behalf by such other persons as the regulations may determine or may, if the regulations so provide and subject to any prescribed conditions, be dispensed with.

(6) A home detention order must not be made if the court considers it likely that the offender will commit any sexual offence or any offence involving violence while the order is in force, even though the offender may have no history of committing offences of that nature.

(7) If a court declines to make a home detention order with respect to an offender's sentence of imprisonment despite an assessment report that states that the offender is a suitable person to serve the sentence by way of home detention, the court must indicate to the offender, and make a record of, its reasons for doing so.

79 Concurrent and consecutive sentences

A home detention order may not be made in respect of a sentence of imprisonment (a **new sentence**) to be served concurrently or consecutively (or partly concurrently and partly consecutively) with any other sentence of imprisonment the subject of a home detention order if the date on which the new sentence will end is more than 18 months after the date on which it was imposed.

76 Home detention not available for certain offences

A home detention order may not be made in respect of a sentence of imprisonment for any of the following offences:

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(c) who has at any time within the last 5 years been convicted of a domestic violence offence against any person with whom it is likely the offender would reside, or continue or resume a relationship, if a home detention order were made, or

(d) who has at any time been convicted of any offence prescribed by the regulations for the purposes of this paragraph, or

(e) who is (or has at any time within the last 5 years been) subject to an apprehended violence order (within the meaning of Part 15A of the *Crimes Act 1900*) made for the protection of a person with whom it is likely the offender would reside, or continue or resume a relationship, if a home detention order were made.

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(b) that it is appropriate in all of the circumstances that the sentence be served by way of home detention, and

(c) that the persons with whom it is likely the offender would reside, or continue or resume a relationship, during the period of the offender's home detention have consented in writing, in the form prescribed by the regulations, to the making of the order, and

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Division 3 Assessment reports

80 Referral of offender for assessment

(1) After a court imposes a sentence of imprisonment on an offender, the court may refer the offender for assessment as to the suitability of the offender for home detention.

(1A) Despite subsection (1), an offender who has been referred for assessment under section 68 (for periodic detention) is not to be referred for assessment under this section (for home detention) in relation to the same sentence of imprisonment unless the court has decided not to make a periodic detention order with respect to that sentence.

(2) When a court refers an offender for assessment in relation to a sentence of imprisonment:

(a) the referral stays the execution of the sentence and the operation of section 48 in relation to the sentence, and

(b) the offender is to be remanded in custody, or granted bail in accordance with the *Bail Act 1978*,

until the court decides whether or not to make a home detention order.

(3) On deciding whether or not to make a home detention order:

- (a) any stay of execution of sentence under this section comes to an end, and
- (b) the requirements of section 48 come into operation.

81 Assessment of suitability

- (1) When an offender is referred for assessment, the Probation and Parole Service is to investigate and report to the court on the matters referred to in section 78 (1).
- (2) An offender's assessment report:
 - (a) must take into account, and specifically address, the following matters:
 - (i) any criminal record of the offender, and the likelihood that the offender will re-offend,
 - (ii) any dependency of the offender on illegal drugs,
 - (iii) the likelihood that the offender will commit a domestic violence offence,
 - (iv) whether any circumstances of the offender's residence, employment, study or other activities would inhibit effective monitoring of a home detention order,
 - (v) whether the persons with whom it is likely the offender would reside, or continue or resume a relationship, understand the requirements of the order and are prepared to live in conformity with them, so far as may be necessary,
 - (vi) whether the making of the order would place at risk of harm any person who would be living with or in the vicinity of the offender,
 - (vii) any matter prescribed by the regulations, and
 - (b) may indicate the nature of any conditions that it would be appropriate for the court to impose on a home detention order if such an order is made.
- (3) If it appears to the officer preparing the assessment report that the offender is homeless:
 - (a) all reasonable efforts must be made by the Probation and Parole Service, in consultation with the offender, to find suitable accommodation, and
 - (b) the report is not to be finalised until those efforts have been made.
- (4) The regulations may make provision for or with respect to the conduct of investigations and the preparation of reports for the purposes of this Part.

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Division 4 Miscellaneous

82 Court may impose conditions on home detention order

- (1) A court may impose such conditions as it considers appropriate on any home detention order made by it, other than conditions requiring the person to whom the order relates to make any payment, whether in the nature of a fine, compensation or otherwise.
- (2) The conditions imposed by the court:
- (a) may include conditions relating to the offender's employment while the home detention order is in force, and
 - (b) may require the offender to perform community service work while not otherwise employed.
- (3) The conditions imposed by the court must not be inconsistent with the standard conditions imposed by the regulations under the *Crimes (Administration of Sentences) Act 1999*.

83 Explanation of home detention order to offender

- (1) Having made a home detention order in relation to an offender's sentence of imprisonment, a court must ensure that all reasonable steps are taken to explain to the offender (in language that the offender can readily understand):
- (a) the offender's obligations under the home detention order, and
 - (b) the consequences that may follow if the offender fails to comply with those obligations.
- (2) A home detention order is not invalidated by a failure to comply with this section.

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