

INQUIRY INTO BACK END HOME DETENTION

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Theme: Justice Action opposes the use of home detention, whether front-end or back-end, on the grounds that it leads to net-widening.

Summary: Justice Action believes:

- the availability of home detention will increase the use of imprisonment as a sentencing option.
- “co-opting families into the State’s role as gaoler is divisive and damaging for families”.



Hon Christine Robertson MLC
Committee Chair
Standing Committee on Law and Justice
Legislative Council
Parliament House
VIA FACSIMILE: (02) 9230 3371

RE: Submission to Inquiry into Back-end Home Detention

Justice Action's submissions for the Legislative Council's Inquiry into Back-end Home Detention Justice Action opposes the use of home detention, whether front-end or back-end, as a sentencing option in our criminal justice system. We have two primary concerns. First, we believe the availability of home detention will increase the use of imprisonment as a sentencing option in our criminal justice system – and this is an outcome to be avoided at all costs. Second, we believe that co-opting families into the State's role as gaoler is divisive and damaging for families.

Our reasons are as follows:

Net-widening

1. It is widely recognised that the damage caused by and the cost of imprisonment is enormous. For this reason it has become established policy that
 - (a) imprisonment is an option of last resort; and
 - (b) the damage done by imprisonment should be minimised as far as possible.
2. Home detention is a form of imprisonment. So much is recognised in the legislation that enables home detention.
3. The onerous nature of home detention was described in some detail in the 1999 *Review of the NSW Home Detention Scheme* where it was also stated:

"The demands required to complete home detention are equal to but different from the demands required to complete a prison sentence." (p. ix of Executive Summary)
4. Reforms to the penal system should be directed at decreasing the use of imprisonment and providing genuine alternatives.
5. There is a large gap between imprisonment and community sentencing options like community service orders in terms of the seriousness with which they are regarded.
6. Many players in the criminal justice system view home detention as a less serious punishment than imprisonment and, accordingly (in popular perception at least) home detention exists in the gap between imprisonment and community sentencing. It is also cheaper and gives Corrective Services a vastly increased capacity to imprison people. For all of these reasons home detention has the potential to be very popular and result in a net increase in the prison population.
7. Conversely, as Justice Action pointed out in our 1996 submission to the NSW Law Reform Commission

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"historically a key restraint on expansion of the prison population has been cell capacity [and] ...an important stimulus to sentencing reform has been prison overcrowding."

Damage to families

8. The structure of home detention law is such that much of the burden of the sentence will be borne by the people the offender lives with, most often their family. Family members are subjected to the stigma, sleep deprivation, stress, tension and inconvenience of frequent visits and phone calls at any time of the day or night. Children are exposed to Corrective Services officers and the to the difficulties a confined offender suffers.
9. Additionally, home detention is conditional status that may be revoked at any time if it is considered not to be working. Accordingly there is a lot of pressure on households to present well to visiting Corrective Services officers and fear of the repercussions that may follow if they report the problems ensuing from the offender's confinement. Again it is worth noting the onerous nature of home detention for offenders. This is exacerbated because often they will be dealing withdrawals from drugs and alcohol while those around them may or may not continue to use drugs or alcohol themselves. (Offenders are subjected to regular urinalysis tests and negative results can mean revocation of home detention orders).
10. The resulting fear and stress pervades the household and is bad for all involved.

Conclusion

Justice Action believes the use of home detention will increase the number of people damaged by the dehumanising experience of being imprisoned. Both by increasing the number of people sentenced to imprisonment and by the indirect effects which are borne by families and cohabitants of offenders.

Sincerely,

Brett Collins
July 30, 2004

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