

**Submission
No 60**

**INQUIRY INTO DOMESTIC VIOLENCE TRENDS AND
ISSUES IN NSW**

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Inquiry into domestic violence trends and issues in NSW

This letter is in response to the call for submissions to the Standing Committee on Social Issues inquiry into domestic violence trends and issues in New South Wales. Thank you for providing me with an extended deadline for my submission following my belated receipt of your letter of invitation to make a submission.

I am a Professor of Criminology in the Faculty of Law at the University of NSW and have a long held research interest in violence against women including legal responses to domestic violence.

1. Strategies to reduce breaches and improve compliance with Apprehended Domestic Violence Orders (ADVOs), including:

a. the use of GPS bracelets

In the absence of any background material on this issue it is difficult to identify what the committee might have in mind by this part of the reference.

There is little available empirical research to guide consideration of the potential value of 'GPS bracelets' for improving compliance with ADVOs.

Electronic monitoring

Where electronic monitoring is used in the criminal justice system, it is typically used as: a sanction for convicted offenders, for instance in the form of home detention; as a condition of parole; as a means of monitoring prisoners on work or other forms of day release from the prison, or less commonly as a requirement for bail. Not all electronic monitoring is GPS satellite based.

Much of the limited available evidence concerning the use of electronic monitoring of offenders is in a context where offenders are required to remain in specified locations (home detention; work release), to abide by a curfew, or to avoid specified locations (as in sex offenders precluded from approaching schools etc). GPS monitoring for domestic violence matters presumably would require a different approach recognising that offenders need to be monitored in relation to a victim who will be undertaking their normal activities and who will not be confined to particular locations. This is likely to offer technical and operational challenges.

Commonly offenders under electronic monitoring are also involved in other programs (drug and alcohol etc) and it may be difficult to isolate the effects of electronic monitoring from other factors. Research commonly has addressed operational aspects of the programs and less research deals with reoffending. Methodological issues such as the absence of an appropriate control group limit the value of some studies.¹

Domestic violence related electronic monitoring

Since ADVOs do not constitute convictions, the use of electronic monitoring as part of an ADVO would be a departure from usual criminal justice practice in Australia. Some US jurisdictions have adopted GPS monitoring in cases following a breach of a protection order, but the extension of the scheme to protection orders per se, and not breach of the order, has been controversial. Several US schemes note that it is used as an alternative to imprisonment for convicted offenders² although commentary suggests it may sometimes be used in the context of bail.

Those US DV schemes which use the GPS bracelets do so **in conjunction with other mechanisms** for monitoring small numbers of high risk offenders. The GPS technology is not a standalone intervention but is part of a package of measures (programs, home visits and personal probation or parole supervision etc) designed to respond to high risk offenders.³ Available research and commentary acknowledges that it does not make women safe but rather alerts

¹ See an overview by Killias et al (2010) 'Community Service Versus Electronic Monitoring—What Works Better? Results of a Randomized Trial' *British Journal of Criminology* (2010) 50 (6): 1155-1170.

² <http://alaskapretrial.com/RESEARCH/VICTIM-CENTRIC%2ODIVERSION%20-%20DV.pdf>.

³ Ibid.

them, and others, to the offender's proximity.⁴ The small number of cases in programs, and the use of GPS in conjunction with other mechanisms, make an assessment of program effectiveness difficult.⁵ Also some of the claims made about the effectiveness of the technology seem to be associated with those with commercial interests in the technology. There is not yet a strong research base evaluating the effectiveness of the approach.

There are a great many issues that would need to be considered. These include inter alia: which offenders might be required to accept GPS tracking, and who would make this decision; whether there is a reliable basis for identifying high risk offenders; what other eligibility criteria might need to be applied; the need for victims to consent; minimising the negative effects of participation in the scheme for victims; being careful not to give victims a false sense of security; monitoring of the scheme and being alert to breaches; ensuring prompt police response to breaches; cost; geographical range.

The GPS monitoring scheme should not be considered in isolation. It is but one part of a response to high risk and it is vital that the committee also consider what other elements might need to be developed *as part of a strategy* in high risk cases. Reliance on GPS tracking alone is likely to be ineffective and possibly counter-productive.

b. whether existing penalties for domestic violence are adequate

I am not aware of any evidence that suggests that compliance with ADVOs is associated with the severity of penalties on breach. Criminological research more broadly suggests that deterrence is more associated with the perceived likelihood of being detected rather than the size of the penalty.⁶ An ongoing concern has been the perception that police do not reliably respond to breaches of orders.⁷ The enforcement of breaches and penalties on breach are

⁴ Edna Erez and Peter R. Ibarra (2007) 'Making your home a shelter: Electronic monitoring and victim re-entry in domestic violence cases.' *British Journal of Criminology*, 47: 100-120.

⁵ See for instance the Greater Newburyport High Risk Response Team, (no date) Annual Safety and Accountability Report (2006-2009)
<http://www.jeannegeigercrisiscenter.org/pdfs/Year-Four-Report.pdf>

⁶ See the overview in Sentencing Advisory Council, Victoria (2011) *Does Imprisonment Deter? A Review of the Evidence* Sentencing Advisory Council: Melbourne
http://sentencingcouncil.vic.gov.au/sites/sentencingcouncil.vic.gov.au/files/does_imprisonment_deter_a_review_of_the_evidence.pdf

⁷ See the ALRC/NSWLRC (2010) Family violence – A national response, Final Report at chapter 12.

discussed at length in the recent ALRC/NSWLRC report, *Family violence – A national response*.⁸

2. Early intervention strategies to prevent domestic violence

I would encourage the committee to examine the work being undertaken by the Victorian Health Promotion Foundation (Vic Health) which has developed a sophisticated, evidence based approach to domestic violence prevention, including early intervention strategies.⁹ I acknowledge here that I am an adviser to VicHealth on violence against women.

3. The increase in women being proceeded against by police for domestic violence related assault

A proactive policing policy underpins contemporary responses to domestic violence in many jurisdictions, including NSW. Studies in several countries have identified an increase in the number of women arrested either solely or with their current/ former partner as an unintended consequence of mandatory or pro arrest policing policies. This has been documented in the USA,¹⁰ Canada,¹¹

⁸ Ibid, Final Report at chapter 12.

⁹ VicHealth (2007) *Preventing violence before it occurs: A framework and background paper to guide the primary prevention of violence against women in Victoria* <http://www.vichealth.vic.gov.au/en/Publications/Freedom-from-violence/Preventing-violence-before-it-occurs.aspx>

¹⁰ Hirschel D & Buzawa E (2002), 'Understanding the Context of Dual Arrest with Directions for Future Research', *Violence Against Women*, vol. 8, no. 12, pp. 1449-1473; Hirschel D, Buzawa E, Pattavina A & Faggiani D (2008), 'Domestic Violence and Mandatory Arrest Laws: To What Extent do they Influence Police Arrest Decisions?', *Journal of Criminal Law and Criminology*, vol. 98, No 1, pp. 255-298; Lyon, A (1999), 'Be Careful What you Wish For: An Examination of Arrest and Prosecution Patterns of Domestic Violence Cases in two Cities in Michigan', *Michigan Journal of Gender and Law*, vol. 5, pp. 253-298; Miller S (2001), 'The Paradox of Women Arrested for Domestic Violence', *Violence Against Women*, vol. 7, no. 12, pp. 1339-1376; Dasgupta S (2002), 'A Framework for Understanding Women's use of Nonlethal Violence in Intimate Heterosexual Relationships', *Violence Against Women*, vol. 8, no. 11, pp. 1364-1389.

¹¹ Comack E, Chopyk V & Wood L (2000), *Mean Streets? The Social Locations, Gender Dynamics, and Patterns of Violent Crime in Winnipeg*, Canadian Centre for Policy Alternatives, Ottawa.

and the UK.¹² While concerns have been raised in Australia that arrests of women have increased, and that some women arrested (or having ADVOs made against them) are victims of domestic violence and are being dealt with inappropriately by police, such concerns remain anecdotal since Australian research on this matter is lacking. This issue was identified as a research priority in the *National Council on Violence Against Women and Their Children Action Plan*¹³ and in the *NSW Domestic and Family Violence Action Plan*.¹⁴

Yours sincerely,

Julie Stubbs
Professor

¹² Hester, M (2009), *Who Does What to Whom? Gender and Domestic Violence Perpetrators*, research commissioned by Northern Rock Foundation. Available at <http://www.nrfoundation.org.uk/downloads/Who%20Does%20What%20to%20Whom.pdf>

¹³ National Council on Violence Against Women and Their Children (2009) at 122.

¹⁴ NSW Dept of Premier and Cabinet (2010) at 66.