

INQUIRY INTO BACK END HOME DETENTION

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Theme: Addresses all terms of reference.

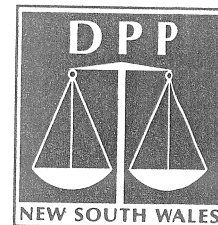
Summary: Front-end home detention is under-utilised.

Submission suggests that priority might be given to extension of front-end home detention to rural and regional areas (as indigenous offenders are more likely to be located in these areas) rather than the introduction of back-end home detention which might divert resources otherwise available for extension of front-end home detention (unless extra resources are specifically allocated to back-end home detention).

If back-end home detention is introduced and savings result, these should be quarantined for utilisation in extending the existing front-end home detention scheme.

OUR REFERENCE

DIRECTOR'S CHAMBERS

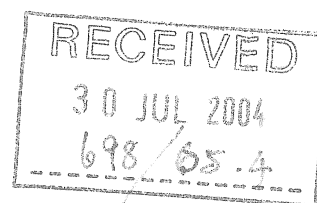


YOUR REFERENCE

DATE

27 July 2004

The Hon C Robertson MLC
Committee Chair
Legislative Council Standing Committee on Law and Justice
Parliament House
Macquarie Street
SYDNEY NSW 2000



Dear Ms Robertson

Inquiry into back-end home detention

I refer to your letter dated 22 June 2004 inviting a submission to the Committee's inquiry into back-end home detention.

I enclose a short submission prepared by one of my senior officers which addresses several aspects of the Committee's terms of reference and with which I am in agreement.

Thank you for the opportunity to contribute.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'N R Cowdery'.

N R Cowdery AM QC
Director of Public Prosecutions

Encl (1)

*Copy to Rachel
please.*

INQUIRY INTO BACK-END HOME DETENTION
LEGISLATIVE COUNCIL STANDING COMMITTEE ON LAW AND JUSTICE

(a) *The perceived benefits and disadvantages of back-end home detention*

The perceived benefits of back-end home detention include the following.

- Potential reduction in the prison population which would reduce prison overcrowding and reduce associated costs in administering and servicing prisons and prisoners.
- Better conditions for the remaining prison population.
- Improved rehabilitation and reintegration prospects of offenders, in that it allows offenders to maintain/resume employment and training and maintain contact with their families and lessens the negative effects of incarceration.
- The experience in New Zealand suggests that completion of a sentence on back-end home detention may reduce recidivism rates for these offenders.
- Encourages offenders to take responsibility for their own re-integration. Offenders may learn new skills and develop self-discipline and organisational skills while on home detention.

The perceived disadvantages of back-end home detention include the following.

- Lack of incapacitation; ie. potential for offenders to commit offences while at liberty.
- Public perception, including victim perception, that the offender is being dealt with too leniently and is not being punished according to the terms of the sentence imposed by the court; ie. that the sentence is being reduced.
- Electronic monitoring has been described as psychologically invasive and therefore psychologically wearing for the detainee and his/her co-residents.
- If electronic monitoring results in increased breach rates, the result may be an overall increase in prison admissions when breached home detainees are returned to full time custody.
- Can give rise to domestic conflict and other problems in the home if there are no constructive activities for the home detainees in the home, where other family members remain at home with the offender for protracted periods of time.
- Increased financial costs for the families of offenders if the offender is not in paid employment.
- Increased length of sentences if sentencing officers “added on” an amount to the non-parole period of the sentence in anticipation that the last few months of it would be served on home detention. This would produce unfairness if that offender was not ultimately released to home detention.

(c) *The impact of back-end home detention on the principle of truth-in-sentencing.*

If by the principle of “truth in sentencing” is meant that an offender sentenced to a full time custodial sentence must remain in gaol in full time custody for the whole of the fixed term or the whole of the non-parole period, then back-end home detention is self-evidently

inconsistent with that concept: it is a form of early release from prison on strict conditions, but these can never equate to the restrictions on liberty entailed in a full time custodial sentence (although they may require more self-discipline).

However, under the scheme in the *Crimes (Sentencing Procedure) Act* 1999 home detention and periodic detention are both designated as alternative means of serving a sentence of imprisonment; ie. one cannot qualify for either home or periodic detention unless one has first been sentenced to a period of imprisonment. Consistent with the scheme in the Act, like front-end home detention, back-end home detention is an alternative method of serving a sentence of imprisonment.

- (d) *The appropriate authority to determine whether an offender may proceed to back-end home detention.*
- (e) *The criteria for eligibility for back-end home detention.*

In order to maintain public confidence in the administration of justice it is essential that any program of back-end home detention:

- have strict criteria for the identification of suitable participants (thus reducing the potential for the commission of offences by offenders on back-end home detention). The same criteria as are currently taken into account by the Department of Corrective Services when preparing an assessment for the court as to an offender's suitability for front-end home detention would be relevant to this issue; similarly, reports as to the offender's performance and progress towards rehabilitation whilst in prison;
- deal promptly, strictly and consistently with any offender who breaches the program by commission of further offences while on back-end home detention;
- deal promptly and consistently with any offender who otherwise breaches the program; and
- require the original sentencing court to make the decision as to whether or not a prisoner will be released to back-end home detention. Thus the proceedings would be open to the public and the material put forward in support of and in opposition to the application and the reasons for the court's decision would be on the public record. For practical reasons, the matter should be dealt with by the original sentencing judge where s/he is available, but otherwise by another judge of that jurisdiction. The original judge may no longer be on the Bench or may be otherwise engaged. (In the interests of transparency and public confidence, back-end home detention should not be an option available administratively.)

The following other features of a back-end home detention scheme will also need consideration.

- For what portion of the sentence may an eligible prisoner be released on back-end home detention? The situation elsewhere appears to be as follows. In New Zealand - able to be released up to 3 months earlier than earliest parole date if serving a sentence of more than 2 years and eligible for parole or if sentenced to 2 years or less and the sentencing judge has granted leave to apply for back-end home detention. (Note that a Parliamentary Committee is presently reviewing the NZ scheme). In Victoria - available to prisoners who have completed at least two thirds of their sentence and are within six months of release. In South Australia - back-end home detention is available to prisoners who have served at least half

the non-parole period. In the UK - more widely available, subject to risk assessment and availability of suitable accommodation, as the final stage of a custodial sentence, where the sentence is up to four years imprisonment.

- Resourcing. An application for permission to serve the sentence by way of back-end home detention would not be able to be listed until the Probation and Parole Service had provided a report of the same type as is now provided to a person being considered for front-end home detention; ie. this report considers in detail the offender's eligibility and makes a risk assessment and has regard to the availability of suitable accommodation and the consent of co-residents. Informed consent of co-residents should be a pre-requisite. This will require allocation of suitably qualified officers to prepare such reports.
- At the hearing of the application, both the Department of Corrective Services and the applicant would have the opportunity to tender relevant material in support of or in opposition to the application and to make submissions. This will also involve the allocation of resources to the Department and, if the prisoner is to be legally represented, to the prisoner.
- To what extent and on what basis would an appeal be available as of right or by leave from a decision to release or not release a prisoner on home detention?
- Any breach of a back-end home detention order could be dealt with by the Parole Board in the same way as is currently the case for breaches of front-end home detention.
- Back-end home detainees will need to be properly supervised in addition to provision of electronic monitoring - this will be a resource issue for the Department of Corrective Services if the scheme is not separately funded.
- Participation of detainees in work and training would only be permissible if able to be monitored effectively; ie. if sufficient resources were available for that purpose; otherwise breaches of the program which were not detected and promptly dealt with would bring the program into disrepute.
- Availability of suitable criminogenic programs for detainees which enable detainees to address their offending behaviour. Release to home detention could be made conditional upon participation in certain programs. This also reduces the likelihood of breaches resulting from inactivity and boredom and reduces the potential for family conflict.
- A pilot scheme involving a small number of offenders should first be conducted.
- BOCSAR or an equivalent organization should conduct an evaluation of the effectiveness of the pilot scheme.

(f) The experience of other jurisdictions in implementing back-end home detention schemes.

Copies of the following reference material relating to this issue which may be of interest to the Committee are enclosed.

Electronic Monitoring in the Criminal Justice System by M Black and R G Smith
Australian Institute of Criminology Trends and Issues in Criminal Justice No. 254
May 2003

"Front-end or Back-end, There's No Place Like Home" N.T. Police News March 1990 pages 23-31. Considers back-end home detention in the Northern Territory and in South Australia.

The Electronic Ball and Chain? The operation and impact of home detention with electronic monitoring in New Zealand by Anita Gibbs and Denise King (which contains extensive references in its Endnotes).

The Australian and New Zealand Journal of Criminology Vol 36 Number 1 2003
pp1-17

(g) Any other related matter.

The number of offenders subject to front-end home detention orders is very small, compared with the total inmate population. The statistics published by the Corporate Research Evaluation and Statistics Unit of the New South Wales Department of Corrective Services as at 31 March 2004 indicated that there were then a total of 211 persons subject to home detention orders being 171 males, 38 females and 2 unknown.

By contrast, the number of sentenced inmates (excluding appellants and fine defaulters) was 5,986 and there were 559 appellants in custody.

Part of the reason for this extremely low take-up rate of home detention is its non-availability outside Sydney, the Hunter (a centre in Maitland extends to Singleton) and the Illawarra (a centre in Wollongong extends to Nowra). According to information provided by the Department, in May 2004 home detention was not then available in the Richmond-Tweed, the Northern Region, the North Western Region, the Central West, the South Eastern Region, Murrumbidgee, Murray and Far West and Mid North Coast. A pilot is projected for the Mid North Coast in 2004-05.

The extension of front-end home detention to those regional and rural areas outside Sydney in which it is currently not available is obviously desirable, so that offenders throughout New South Wales have access to the same sentencing options as are available to those in the main centres. As indigenous offenders are more likely to be located in these areas, the lack of availability of the scheme particularly disadvantages this problem segment of the offender population.

One difficult related issue which the Committee may care to consider is whether or not priority should be given to extension of front-end home detention to rural and regional areas, rather than the introduction of a back-end home detention scheme. Presumably the introduction of a back-end scheme will divert resources which would otherwise be available

for the extension of a front-end scheme, unless extra resources are allocated specifically for the back-end scheme.

A different perspective on this issue is to consider that savings to the Department resulting from a back-end scheme (because back-end home detention should cost the Department less than full time custody) should be quarantined for utilisation in extending the existing front-end home detention scheme.



No. 254

Electronic Monitoring in the Criminal Justice System

Matt Black and Russell G. Smith

Sometimes criminal justice authorities may wish to control or to monitor the location of an individual without resorting to imprisonment. For example, before a criminal trial, police may want to ensure that the defendant stays in town or stays away from the complainant. After conviction, a judge may wish to place limits on an offender's freedom while not employing a full-time custodial sanction. Upon release from prison, a parole board may want to impose restrictions on an offender.

Community-based programs aim to meet these goals through release conditions such as reporting to officials or complying with a curfew. Electronic monitoring is a technological means of enforcing such conditions. Using tracking systems, criminal justice agencies can monitor an individual's location and be alerted to any unauthorised movements. Technology, thus, can be useful in detention, restriction and surveillance.

However, constant surveillance of people, particularly through the use of devices fixed to their body, or even implanted beneath the skin, raises serious civil liberty and ethical concerns. This paper reviews developments in electronic monitoring in criminal justice settings in Australia and identifies the arguments for and against their use at a time when technology can provide solutions that previously were impractical.

Adam Graycar
Director

The technologies of electronic monitoring have their roots in the work of Dr Ralph Schwitzgebel of the Science Committee on Psychological Experimentation at Harvard University (1968). In 1964, he developed a one-kilogram Radio Telemetry Device that could be worn by a person. The device transmitted signals to a modified missile-tracking unit up to 400 metres away, which determined the wearer's location on a screen.

In the early 1980s an American judge, supposedly inspired by a Spiderman comic, persuaded a company to develop a monitoring bracelet suitable for offenders to wear (Rondinelli 1998). In 1983, the first order was made requiring an offender who had breached parole to wear an anklet to monitor his future behaviour (Liverani 1998). This use of electronic monitoring devices became commonly known as "tagging".

These developments took place at a time when community-based sanctions were becoming more prevalent and of greater significance in reducing prison populations (Richardson 1999).

Against a background of stubbornly high prison populations and rapidly developing technology, governments are now reaching a critical point in the use of electronic monitoring as a means of reducing costs and improving the effectiveness of corrections. The aggressive marketing of private companies has been instrumental in the growth of electronic monitoring (Maxfield & Baumer 1990; Liverani 1998).

There are three main rationales behind the use of electronic monitoring:

- **Detention**

Electronic monitoring can be used to ensure that the individual remains in a designated place. For example, home detention schemes typically require offenders to be at home during established curfew hours. This was one of the first uses of electronic

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Disclaimer: This research paper does not necessarily reflect the policy position of the Commonwealth Government.

monitoring and remains the most popular (Mukherjee 1999; Crowe 2002).

- **Restriction**
Alternatively, electronic monitoring can be used to ensure that an individual does not enter proscribed areas, or approach particular people, such as complainants, potential victims or even co-offenders (Marien 2002; *The Economist*, 15 August 2002).
- **Surveillance**
Finally, electronic monitoring may be used so that authorities can continuously track a person, without actually restricting their movements.

Electronic Monitoring Technologies

There are a number of technologies available that can aid with the detention, restriction or surveillance of individuals within the criminal justice system. Most involve some kind of device that is locked onto the subject's wrist or ankle with tamper-proof elements to prevent removal.

Passive Systems

In these systems, wearers are periodically contacted by telephone to ensure that they are where they are supposed to be (Crowe 2002). The individual's identity may be verified by such means as a password, a device that the subject wears or a biometric such as a fingerprint or retinal scan (Mukherjee 1999). Passive systems are only effective for detention purposes.

Active Systems

These systems utilise a device worn by the individual that continuously emits a signal (Rondinelli 1998). A corresponding device in the person's home relays the signal to a monitoring station. If the wearer strays too far from home or breaks the device, the authorities are alerted.

A variation of this system utilises mobile equipment that can detect the presence of the individual's device. A corrections officer can drive past a designated place to ensure that the wearer is there (Mukherjee 1999). Active

systems primarily seek to enforce detention, although they may be extended to achieve some restriction and surveillance as well.

Active systems impose restrictions through the installation of monitoring devices in places where the person is not permitted to go. If the wearer goes into those areas, an alert can be sounded and action taken (*The Economist*, 15 August 2002). Active systems can also be used to restrict an individual's access to other people if those people (for example, victims) are given a device that detects if the person under surveillance comes too close. The surveillance purpose can be achieved to some degree by placing monitoring devices at bus stops and train stations so that the individual can be tracked to and from work (for example, Johnson 1999).

Global Positioning Systems

Global Positioning Systems (GPS) consist of three components: satellites, a network of ground stations, and mobile user devices (Aerospace Corporation 1997). Measuring the user's distance from three different satellites identifies the user's location.

GPS is used in military operations, search and rescue, police surveillance and private-sector vehicle tracking (Aerospace Corporation 1997; Dotinga 2003). In the criminal justice system, GPS can be used for detention, restriction and surveillance purposes. The technology eliminates the need for a device to be installed in the wearer's home and is currently being used or introduced in a number of jurisdictions in the United States (Jarred 2000).

Detention with GPS is achieved in the same way as with an active system. The person is monitored to ensure curfew hours are kept. Place-restriction is enforced through an alert that is triggered if the person goes into prohibited areas. The person's proximity to other people can be controlled if those people also carry GPS devices, or are regularly informed of the wearer's location. Surveillance is achieved by

continuously monitoring the person's location.

Miniature tracking devices are also currently being developed and tested (*The Economist*, 15 August 2002). These can be implanted beneath the skin and can track an individual's location as well as monitor physiological signs. Although these may be removed using a simple surgical procedure, the potential for civil action for any adverse consequences of the surgery or the implant itself demands serious consideration before any such developments take place. Professional ethical issues also arise for doctors involved in the implantation and removal procedures. In the United Kingdom, there have been indications that the government may consider the use of surgically implanted devices for convicted paedophiles (Bright 2002).

An even more sophisticated device includes a miniature video camera that enables officials to observe the wearer's location and activities (Fabelo 2001), while other devices can measure biochemical characteristics such as the wearer's blood-alcohol level.

Applications

There are three stages at which electronic monitoring may be used in the criminal justice system: pre-trial, at sentencing and post-prison.

Pre-trial

Electronic monitoring may be a condition upon which a defendant is released on bail. Bail conditions are normally required to be no more onerous than is necessary to ensure that the defendant appears for trial and does not commit further offences. Punishment, at this stage, is not relevant (Maxfield & Baumer 1990). Electronic monitoring should, therefore, be confined to surveillance unless restrictions and detention are absolutely essential.

Trials of electronic monitoring in the bail process began in 1989 in the United Kingdom with 50 accused persons being subject to surveillance (Richardson 1999).

Such programs continue to operate in the United Kingdom today (Home Office 2002a). For example, one program allows defendants aged 12 to 16 to be released with curfew conditions enforced through electronic monitoring (Nacro Youth Crime 2002).

Electronic monitoring has been used as a pre-trial requirement in the United States. In one program, electronic monitoring was available for those who could not afford to pay the required bail amount (Maxfield & Baumer 1990). The program used a passive system and if the accused had not gone to trial after 90 days, the electronic monitoring condition was lifted as the accused was then considered a low risk.

In Canada, there are no specific legislative provisions for electronically monitored bail. However, the courts do use their general powers to order electronic monitoring in conjunction with home detention requirements for some defendants (*R v S (A.R.)* 2001 SKQB 47).

There are two other possible applications similar to pre-trial usage. The first concerns the monitoring of asylum-seekers while their applications are being processed. At present most such applicants are held in detention (Brennan 2002). The Human Rights Council of Australia (Sidoti 2002) has suggested electronic monitoring as an alternative to detention. The second context concerns restraining orders, which a court may impose to prevent a potential offender from approaching a complainant (Legal Aid NSW 2003). Electronic monitoring is not currently used in either of these settings in Australia, although modern restriction and surveillance capabilities may raise the possibility for consideration.

Primary Sentencing

Electronic monitoring can be used as a primary sentencing option to enforce certain restrictions on the liberty of an offender. For example, home detention schemes generally use electronic monitoring to keep the offender confined to his or her home during curfew hours.

Unlike pre-trial arrangements, the use of electronic monitoring in this context entails a sentencing court seeking to punish an offender. This suggests a much larger role for detention. Restriction and surveillance can also be used to reduce the likelihood of the individual re-offending, particularly against the original victim.

Electronic monitoring is currently available as a primary sentence in the United States and is generally considered to be somewhat more lenient than prison, but harsher than probation. Figures from the Bureau of Justice Statistics show that in 1998 there were 19,677 people on electronically monitored probation in the United States (Bonczar & Glaze 1999).

The Northern Territory's electronic monitoring program is a "direct alternative to imprisonment" (NT Department of Justice 2002). The court first sentences an offender to imprisonment and then, if the offender consents and is assessed as suitable, the term may be served through monitored home detention.

A similar situation exists in New South Wales, where a home detention scheme enforced with electronic monitoring exists (Studerus 1999). However, an offender can only be considered for such an option after being sentenced to imprisonment (Jarred 2000).

Post-prison

The post-prison stage may incorporate electronic monitoring in the early release of a prisoner into the community. For example, it is used in the United Kingdom "towards the end of a custodial sentence, as a form of transition from prison back into the community" (Home Office 2002b). Similarly in New Zealand, early release of specified prisoners with electronic monitoring has been available since 1999 and has been found to work well, apart from minor technological problems and some negative impacts on families and sponsors of offenders subject to monitoring (Gibbs & King 2003).

In South Australia, electronic monitoring is available in the final

six months of a prison sentence (Jarred 2000). The prisoner is released into the community with an electronic monitoring condition and will then either progress to a traditional parole order or finish the sentence. Queensland operates a similar program. Towards the end of their prison sentences, prisoners may be released to home detention with electronic monitoring. They spend three to four months on the program before finishing their sentence on parole (Corrections News 2001).

The Australian Legislative Framework

Pre-trial

Only Western Australia specifically provides for electronic monitoring at the pre-trial stage. The *Bail Act 1982* (WA) allows home detention to be imposed on an accused person aged over 17, but only by a judicial officer. A suitability report must first be obtained from a corrections officer and then the accused person may be required to wear a device or to permit the installation of a device in the place where the person is required to remain.

In most jurisdictions, electronic monitoring may be possible under the generally broad discretion available when imposing bail conditions (Nacro Youth Crime 2002). For example, section 11(2) of the South Australian *Bail Act 1985* allows the bail authority to impose a condition requiring an accused person to remain at his or her residence except for authorised activities such as employment. Although there is no specific mention of electronic monitoring, the Supreme Court of South Australia has interpreted this as authority to order electronically monitored bail, at least where the applicant is willing (*R v Blayney* [2002] SASC 184).

Primary Sentencing

Two Australian jurisdictions have specific legislative authority for home detention with electronic monitoring as a primary sentencing option. The Northern

Territory's *Sentencing Act 1995* provides that a "court which sentences an offender to a term of imprisonment may make an order suspending the sentence on the offender entering into a home detention order". Offenders on a home detention order may be required to "wear or have attached a monitoring device".

In Western Australia, the *Sentencing Act 1995* provides that a court may impose an intensive supervision order with a curfew requirement. This requires the offender to "submit to surveillance or monitoring as ordered" and to wear a device or have a device installed in his or her home. Electronic monitoring "may only be imposed for a term of six months or less".

New South Wales law does not specifically authorise electronic monitoring, however the *Crimes (Sentencing Procedure) Act 1999* (NSW) gives the court the power to sentence certain offenders to home detention with "such conditions as it considers appropriate". In practice, electronic monitoring is used to enforce these home detention orders (Keay 2000).

Electronic monitoring may also be possible under general powers of courts in other jurisdictions. For example, the *Tasmanian Sentencing Act 1997* provides that an "order of a court suspending the whole or a part of a sentence of imprisonment may be made subject to such conditions as the court considers necessary or expedient."

Post-prison

Legislation in two jurisdictions contemplates the use of electronic monitoring in post-prison administration of sentences. In Western Australia, the *Sentence Administration Act 1995* allows certain prisoners to be released on home detention. These offenders may be required to wear a monitoring device or to have a device installed in the place where they are required to live. Similarly, the *Queensland Corrective Services Act 2000* provides that offenders released on community-based release orders (including parole

and home detention) may be required to wear a device that monitors the offender's location.

Again, electronic monitoring after prison release may be possible under more general powers. The New South Wales *Crimes (Administration of Sentences) Act 1999* gives the parole board general powers to impose conditions on home detention and parole. The board in the Australian Capital Territory has similar powers under the *Rehabilitation of Offenders (Interim) Act 2001*.

Advantages and Disadvantages

There is a range of potential advantages associated with the use of electronic monitoring. One of the major advantages is the possibility of reduced prison populations. This is most likely where monitoring is used as an alternative to prison, rather than to enhance existing non-custodial orders. Major cost savings may be achieved through building fewer prisons as well as reducing the cost of administering custodial sentences.

Another suggested advantage is the possibility of improving rehabilitation and reintegration of offenders. Electronic monitoring may allow more offenders to maintain employment and contact with their families. It also avoids any negative psychological effects of incarceration, although of course the wearing of a device carries its own psychological pressures.

A disadvantage of electronic monitoring is the lack of incapacitation. Electronic monitoring does not physically restrain a person and dangerous offenders are still able to offend before authorities can intervene. Also, the less onerous conditions of home detention with electronic monitoring may result in some victims and the public perceiving some offenders as being dealt with too leniently.

There have also been concerns that electronic monitoring as a primary sentence may actually increase the severity of some sentences (Jarred 2000). For

example, it is possible that electronic monitoring may be used where mere suspension or probation would have been used previously. This may lead to "both a widening of the net of social control and an unwarranted escalation of penalties" (Fox 1987).

Ethical, Legal and Practical Issues

The use of electronic monitoring in the criminal justice system raises a number of ethical, legal and practical issues.

As monitoring is predominantly applicable in correctional contexts, so the question of punishment arises because of the power of modern monitoring technologies to facilitate restriction and surveillance. Although not a punishment in itself, electronic monitoring has the potential to enforce restrictions upon a person's liberty in connection with a judicially imposed punishment such as home detention.

A view expressed by some is that home detention is simply another way in which to serve a prison term, albeit in a less restrictive environment (Keay 2000). In New Zealand, for example, one of the few recent evaluations of electronically monitored home detention found that detainees were generally happy with the system (Gibbs & King 2003), and clearly it avoids the "violence, intimidation and degrading punishment" of some prison experiences (Keay 2000).

Electronic monitoring is undoubtedly an invasive technology that involves the physical attachment of a device to, or in, a person. Modern technologies are also psychologically invasive in the sense that the person's every move can be tracked, other than when the device is programmed to be off. Fox (1987) reported that:

...those who have experienced the regime of [electronically] monitored home detention indicate that it is psychologically wearing and more onerous in terms of self-discipline than the world of prison.

Complex questions arise concerning the scope and practical application of electronic monitoring. Is the use of force acceptable when attaching a device? Should surgically implanted devices ever be appropriate? If the offender is subject to a curfew, should authorities have any right to track his or her movements outside curfew hours? To what uses should information about the offender's movements be put? One system in the United States, for example, correlates the wearer's movements with crime reports and alerts authorities if he or she appears to have been present at the scene of a crime (Scheeres 2002).

Industry has played a pivotal role in the growth of electronic monitoring (Maxfield & Baumer 1990). In some jurisdictions, private sector firms operate systems and even attach the device to the offender (Richardson 1999). This raises many of the contentious issues surrounding the role of the private sector in prison management, including accountability, training and service quality (Harding 1998).

Financial considerations also arise. Some offenders involved in monitoring programs are required to pay a fee towards the cost of the equipment and the monitoring (Maxfield & Baumer 1990; Scheeres 2002). This is partially justified by the argument that offenders who remain in the community can continue in employment (if they are able to find suitable work). The logical extension is, however, that all offenders on community-based programs should be required to contribute to correctional costs. This could place hardship on those with low incomes and high family maintenance costs.

Electronic monitoring also raises the important legal question of whether specific legislative provisions should be enacted to authorise such an invasive program. In other words, should the general legal power to impose conditions be interpreted as authority to order electronic monitoring? This is currently the position in some

Australian jurisdictions where electronic monitoring is used under the court's general power to impose conditions on an individual. If that power is sufficient to require a person to wear a monitoring device, does it also authorise a court to compel an individual to submit to a surgically implanted device?

The Corrective Services Ministers' Conference (1996) has published guidelines for the implementation of home detention and electronic monitoring. It states that home detainees should be subject to the minimum level of supervision necessary and that the use of monitoring devices should be unobtrusive and clearly explained to offenders. While these standards are a positive move, there is a strong case for the implementation of legislation to govern the use of electronic monitoring. It may be possible for the Commonwealth to do this under its constitutional powers over "telegraphic, telephonic, and other like services" (s. 51(v) of the Australian Constitution).

Questions also arise about the effectiveness of electronic monitoring and whether or not it reduces costs and prison populations. If electronic monitoring results in increased breach rates, then the result might be an overall increase in prison admissions.

Finally, the question arises as to whether electronic monitoring can assist with the reintegration of offenders into the community better than conventional parole or prison programs. One argument is that electronic monitoring provides great potential for improved rehabilitation of offenders (Liverani 1998). It allows offenders to maintain employment and enjoy closer relationships with their families. This environment may be more conducive to behavioural change than a prison setting. Problems can arise, however, if there are no constructive activities for home detainees and where other family members remain at home with the offender for protracted periods of time (Jarred 2000; Gibbs & King 2003). Further research is needed to assess the

effectiveness of monitoring to reduce recidivism and to enhance rehabilitation.

There appears to be no consensus as to the ability of electronic monitoring to reduce prison numbers. It depends upon whether monitoring is used to enhance existing community-based sentences or as an alternative to prison. The Northern Territory claimed an almost immediate positive impact after the introduction of home detention with electronic monitoring (Owston 1990) and reductions of approximately 10 to 30 per cent were reported in Sweden (Jarred 2000). In the United States, however, electronic monitoring has generally not reduced prison overcrowding (Rondinelli 1998).

Electronic monitoring can, however, contribute to substantial cost savings (Richardson 1999). This has been the experience in a variety of jurisdictions including New Zealand, New South Wales, the United States and the United Kingdom (Maxfield & Baumer 1990; Richardson 1999; Jarred 2000). Cost savings are obviously enhanced even further if a user-pays system is utilised.

Many jurisdictions have also found high rates of successful completion of electronically monitored sentences. For example, rates of 80 per cent compliance in the United Kingdom and 90 per cent compliance in Sweden have been reported (Jarred 2000). In New Zealand, completion rates were also high and recidivism rates low (Gibbs & King 2003). However, these figures have not been compared with control groups, making conclusions less certain. At the very least, modern forms of electronic monitoring make non-compliance easier and quicker to detect.

Conclusion

The use of electronic monitoring has the potential to improve the cost-effectiveness of correctional programs, provide enhanced opportunities for offender rehabilitation and extend the range of sentences available to the

courts. Despite the fact that electronic monitoring has been in use for at least two decades, there are still many legal, ethical and practical issues to resolve. Although the latest technologies are more efficient than in the past, their surveillance potential creates concerns of over-regulation and infringement of human rights. An awareness of these developments is important, as is the creation of policies to ensure that if such technologies are adopted they are used in the most productive and ethical ways. In particular, the necessity for ensuring informed consent of those chosen to be subject to monitoring should be guaranteed and effective procedures established to deal with unethical or illegal practices.

Acknowledgments

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Front end or back end, there's no place like home

Home detention is now being used in three jurisdictions in Australia: Queensland, Northern Territory and South Australia. In the Northern Territory, home detention is used instead of imprisonment — the 'front end' use; in South Australia, it is used with or without electronic supervision for parole purposes at the end of a prison sentence — the 'back end' use. In Queensland, home detention is also a back end operation.

Significant aspects of home detention in the Northern Territory and South Australia are discussed in the two articles that follow.

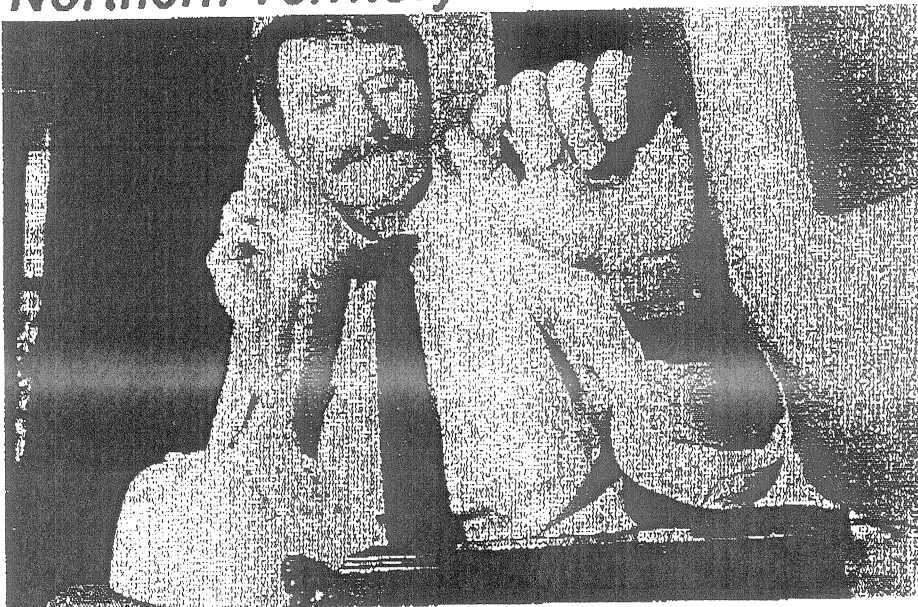
Adapted from a paper prepared by Dennis Challinger, Assistant Director (Information and Training), for a research workshop on alternatives to imprisonment to be held in association with the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders.

For many years, the Northern Territory of Australia has had an imprisonment rate many times the Australian rate. By way of example, in October 1988 the Northern Territory had an imprisonment rate of 231 per 100,000 population compared with a figure of 72 for Australia as a whole. However, the Northern Territory rate is now actually lower than it has been over the last few years, the relative rates for October 1987 being 271 and 74, and before that 271 and 70 (October 1986) and 264 and 68 (October 1985). The decrease in rates is a result of a commitment by Northern Territory Corrective Services (NTCS) to reduce imprisonment rates in the Territory.

Some remarkable successes have already been achieved in this area. Receptions into Territory prisons reduced by 25 per cent in two years from 1986 specifically as a result of conditional liberty programs with the fine default program having the most dramatic result. That program allows fine defaulters to satisfy monetary penalties by parrying out unpaid work in the community under the Community Service Order (CSO) scheme instead of undergoing a prison term. It also permits the use of the CSO program by persons who do not have the resources to pay their fines and who therefore were potential fine default prisoners.

In addition, great emphasis has been placed on diverting offenders from prison through providing sentencers with a range of viable non-custodial sentencing options, and trying to persuade them to use those options through court-based correctional staff being on hand to provide professional advice. This approach reflects the NTCS view that it is better to reduce the number of people entering the prison system by

Northern Territory home detention



action at the 'front-end' of the sentencing process. So called 'back-end' responses aimed at reducing the number of people in prison include early release schemes for prisoners, but they can be seen to be interfering with the judicial process by way of reducing a prisoner's sentence. It is this basic philosophy to avoid imprisonment at all which explains why home detention is offered to Northern Territory courts as a sentencing option quite specifically provided as an alternative to prison.

The Northern Territory Home Detention Order (HDO) is, by contrast, available only to a court. That the HDO is an alternative to prison is evidenced by section 19A(1) of the Criminal Law (Conditional Release of Offenders) Act. It states:

where an offender is convicted of an offence against a law of the Territory, the court by which the offender is convicted may, if it thinks fit, by order sentence that offender to a term of imprisonment but direct that the sentence be suspended on the offender entering into a home detention order. (emphasis, D.C.)

A demonstration of the electronic surveillance process being used in South Australia. A random, computer-generated phone call must be answered by the offender and registered by the lightweight wristlet in the black box in the foreground.

Clearly then, a sentencer has not only to decide that a prison term is required or warranted, but actually pass such a sentence before suspending it in favour of a HDO. This not only reduces the chance of net-widening, but also clearly establishes the consequences of breaching the HDO.

Making a home detention order

A court cannot make a home detention order without the consent of the offender and the Director of NTCS providing a report. Section 19B(1) of the legislation requires that report to state that:

(i) suitable arrangements are available for the offender to reside at the premises or place specified in the report.

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(ii) the premises or place specified in the report is suitable for the purposes of a home detention order; and

(iii) the making of the home detention order is not likely to inconvenience or put at risk other persons living in those premises or at that place or the community generally.

For the purposes of making that report, the Director may 'take into account the views of those members of the community who, in the opinion of the Director, may be affected by the making of the home detention order'. The two groups in the community who would be most affected by an offender being placed on a HDO are the offender's own family and the victim (if any) of the offence.

One criticism of home detention is that it places an unfair burden on offenders' families to themselves act as gaolers. In the Northern Territory, great efforts are made to ensure families understand and are comfortable with the concept of home detention. To date, the offences for which home detention has been used have not involved angry victims. But the above consideration does give an acknowledgement that victims of an offence might have real concerns if the prison sentence was not activated and their views could be considered in the assessment process.

Great care is taken in the assessment process to eliminate the possibility of net-widening and advice is provided to courts in a similar way to a pre-sentence report. Home detention assessments usually take a week to prepare and mandatorily include:

- ☐ welfare checks to ensure problems of child abuse and domestic violence are canvassed;
- ☐ previous convictions as recorded by the police;
- ☐ acknowledgement of the offender's obligations and the full consent of those others resident at the place of detention;
- ☐ consent of employer to random checks at workplace.

Surveillance

The surveillance of those on HDOs is an important and vital part of the program and the powers given to the officers by the legislation reflect this. Section 19G(2) reads:

A surveillance officer may, at any time —

(a) without a warrant —

- (i) enter premises or a place in or at which an offender is, in accordance with a home detention order, residing; or*
- (ii) search those premises or any build-*

ing at that place, or the offender, for the purposes of determining whether the offender is in breach of the order; or

- (b) require an offender under a home detention order to undergo such tests as the surveillance officer thinks fit to determine whether the offender is in breach of the order.*

The tests referred to in (b) above may include a test to determine the presence of alcohol or any other drug in the offender's body. In practice, surveillance officers (or police) can, on a regular or random basis, use hand held breath-testing apparatus to test whether home detainees have been drinking alcohol, although a formal breath test administered by the police is necessary to provide evidence for a court. Random urine tests can be required where a home detainee is suspected of using drugs. (Regulation 3(k) provides that home detainees are not to consume alcohol or any other drug without approval from the Director of NTCS.)

In early 1988, thirty-three surveillance officers were recruited and trained. These paid part-time officers were selected from over 250 applicants and their selection was largely based on maturity and reliability, and included Northern Territory Police security and character checks. A further nine surveillance officers were recruited and trained in early 1989, slightly decreasing the average age of 40 from the first intake. Approximately a quarter are female.

Most of these officers have passed involvement in discipline-oriented occupations or are still so employed, while others have no current careers due to family commitments or retirement. Surveillance officers are paid on contract rates and are reimbursed for the use of their private vehicles and telephones.

The surveillance process involves senior staff preparing a roster of face to face visits in advance and, depending on availability, selecting a surveillance officer to carry out the visits. Visits are made to places of residence, work and other places where the offender is permitted to be, and telephone checks are also made.

Surveillance rosters are assisted by computerised random selector and visits now average three in any twenty-four hour period. The minimum is two visits, while up to six have been made in cases where a home detainee's behaviour or movements have raised suspicions about their activities. Offenders are regularly visited in close succession and frequently between midnight and dawn. This is shown in Figure

1, which comprises a chart of actual surveillance for one offender in the early days of the program when sixty random visits were made over a thirty-day period.

Surveillance officers carry out visits by themselves using a specially prepared contact book for each offender. The book is countersigned by the offender at the time of the visit. Surveillance officers are expected to carry out visits at the time allocated and are themselves checked on to report any suspicious circumstances immediately. No home detainee is aware of which officer will visit, when or where.

Only in exceptional circumstances will home detainees now be given the necessary written permission to consume alcohol during the course of their HDO. In the early months of the program, many home detainees were permitted to consume alcohol in their own homes only and to never exceed .08 per cent blood-alcohol concentration. The .08 per cent blood-alcohol content level was used to teach offenders to control their alcohol intake to within legal driving limits (although in practice that proved to be virtually impossible). The first offender who tested at a level higher than .08 per cent was breached immediately resulting in his being in custody within ten minutes, for an appearance in court the next morning. The swiftness of breach action is a most important feature of the program.

Electronic monitoring

The Northern Territory Government now considers the electronic monitoring of home detention offenders as a realistic adjunct to face to face surveillance for suitable offenders. One problem with face to face visits is that they often invade the privacy of other residents at the offender's home and due to their random nature at all hours, can wake children and neighbours.

There is no intention to replace face to face surveillance with an electronic alternative but to balance the use of

- ☐ face to face surveillance;
- ☐ one to one counselling;
- ☐ active electronics, e.g. random phone calls;
- ☐ passive electronics — radio transmitters.

The mix of the four will naturally be dependent on the circumstances of each offender and the formula will be commensurate with program objectives and offender needs.

As the Northern Territory Department of Law has advised that the placement of any device on an offender (even with their consent) could construe a technical assault, and at the least, an

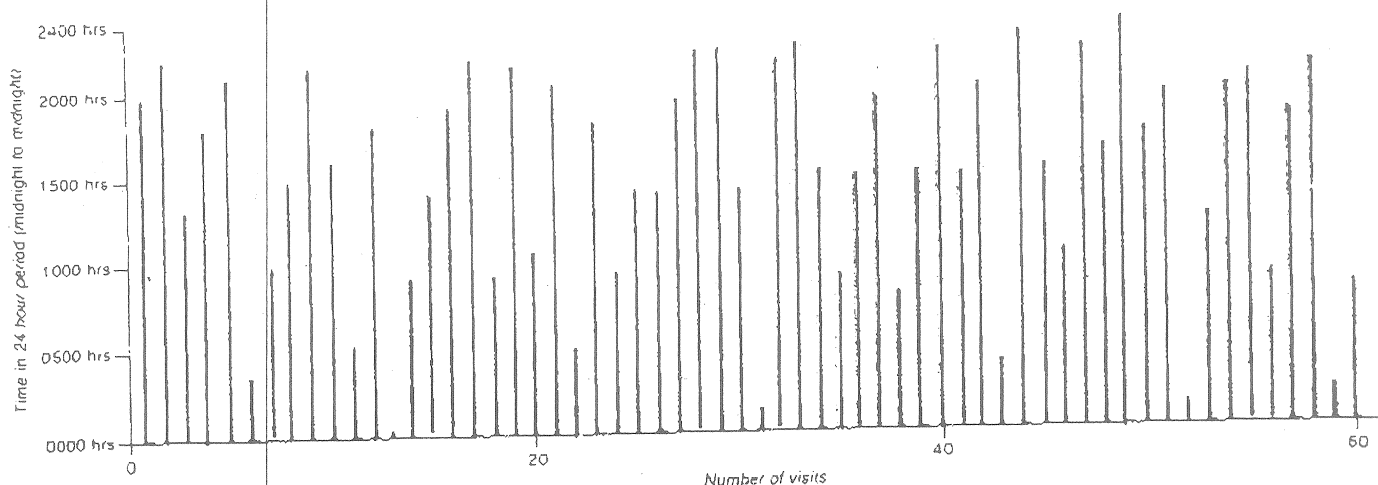


Figure 1
Typical surveillance record for a thirty-five day period, in which a working man on home detention received sixty home visits.

invasion of privacy, relevant legislation is being prepared to specifically permit the use of electronic surveillance devices.

The use of home detention

The home detention program started on 2 February 1988 and has shown slow but steady progress. At the end of June 1989, seventy-one persons had been on the program and had aggregated 6534 days of home detention. Extrapolated to a full year this represents (a saving of) 17.9 prisoner-days of space each day of the year. Alternatively, and based on the estimate of 143,445 prisoner-days of imprisonment in the Northern Territory in a full year, the percentage reduction in imprisonment through the diversion of 63 prisoners (in 1988-89) is therefore in excess of 4 per cent for the year.

Should the home detention program involve a hundred offenders per year, with an average seventy actual prison days each after remissions, then the reduction will be more than 5 per cent. If the number of home detainees in a year is more than a hundred or the length of orders is more than seventy real days of diverted imprisonment, then obviously the saving in prisoner-days will be even greater.

The main offences for which HDOs are imposed are alcohol-related driving offences (65 per cent) and driving while disqualified (15 per cent). Males predominate among the home detainees to date (90 per cent). 58 per cent are single and 46 per cent are aged 27 or less. The average period of a HDO is 3.3 months.

At the end of June 1989, forty-seven people had satisfactorily completed their HDOs, complying with conditions imposed by the court and the Director

of NTCS. Six home detainees have had their HDOs revoked by the court and the original imprisonment term activated and one home detainee absconded interstate and a warrant now exists for his arrest. Sixteen others have had breaches proved but were returned to the program. The success rate therefore, as a percentage of all completions, is currently 85 per cent.

Home detention for indigenous people

The Northern Territory faces a unique problem in prison management as the majority of its prisoners (70 per cent), are of Aboriginal descent. In addition, prisoners serve in general, comparatively short periods of incarceration and alcohol is often a related factor. The difficulties posed by indigenous prisoners are a cause for concern in many parts of the world. In the Northern Territory, where indigenous Australians often live on remote communities, a sentence of imprisonment simply removes them further from their community.

A high priority has therefore been placed on further establishing home detention in remote Aboriginal communities and recruitment of surveillance officers is currently under way in Groote Eylandt, an island off the coast (but part) of the Northern Territory, and peopled entirely by Aborigines.

Two traditional Aboriginal men, both of whom had severe alcohol problems, have successfully completed HDOs. The first man, from Yirrkala (a community on the Gulf of Carpentaria), completed the Alcohol Dependence Treatment Unit's three week residential program followed by weekly follow-up meetings as part of his HDO. This man had a long history of alcohol-related crime, including nine offences whilst disqualified and completed an HDO of six months duration, the last six weeks of which were served back at Yirrkala.

The other Aboriginal was from Bagot

(an Aboriginal community based in Darwin) and served a four month order for driving offences, conditional upon spending the first two months at the Gordon Symons Hostel for Aborigines with alcohol abuse problems. In the event, arrangements made for supervision back at Bagot proved unsuitable and the order was completed back at the hostel.

A further six Aborigines have been placed on HDOs, but all have been residents of Darwin. Nevertheless, it is the intention of the NTCS to examine every possible avenue for Aboriginal involvement, both in urban and rural areas. Few major problems exist with residential or surveillance provisions in urban areas, and the use of hostels is also currently being examined. Rural communities, however, do pose greater logistical obstacles, especially through peer group pressure, residential problems and the lack of substance abuse programs or established surveillance procedures.

The process of trialling the program in a rural community will take time and a good deal of community co-operation, in order that program credibility is not placed in jeopardy. It may well result in being viable in some but not all Aboriginal communities. (In fact, one euro-Australian is currently serving a HDO in a remote Aboriginal community where he is working on a building project.)

Summary

In effect, home detention is an offender treatment program whereby certain types of offenders can undergo their 'prison' sentences at home. Home detainees undertake to comply with conditions which severely restrict movement and activities beyond attending employment, rehabilitation programs, etc.

Notwithstanding these restrictions, 'exit interviews' with home detainees and their families often indicate that

the HDO has been a positive and beneficial experience for them.

Fundamental to the success of the home detention scheme is the perception on the part of courts, police, offenders and the community at large, that home detainees will be subject to strict surveillance under a system which cannot be circumvented.

Surveillance officers are employed to monitor home detainees and while they have certain powers, essentially their function is checking that home detainees are at home. Any breach of home detention conditions leads to prompt return to court.

As public confidence in the program grows, it can be expected that sen-

tencers will be more likely to use the sanction. But the legislation prevents the program from being used for offenders who do not merit a prison sentence. Any increase in numbers of offenders with home detention orders will have to come from those who would have otherwise gone to prison. It is therefore undeniably a valuable alternative to prison.

South Australian home detention

Lloyd Ellicksen, Co-ordinator, Home Detention, SA Department of Corrective Services.

The South Australian Department of Correctional Services introduced the Home Detention Program in early 1987. Legislation was passed through Parliament without undue resistance and with the mild optimism of the media and the South Australian community in general.

Home detention was framed to provide administrative flexibility to the Executive Director of Correctional Services to release selected prisoners to an approved residence under twenty-four hour curfew for a period of up to six months prior to normal expected prison release. Only prisoners with sentences less than one year and without conviction of a crime of violence were considered for selection. At that time the Government made a conscious decision not to introduce home detention as a sentencing alternative. It was considered that home detention as a court option might result in 'net widening' and in effect not assist with the overcrowding problem in prisons.

In order to increase the number in the program and in view of the fact that home detention had been operating successfully for ten months, the criteria were broadened with the approval of Government to allow the selection of prisoners for home detention regardless of offence type or length of sentence. This endorsement for expansion also included Government approval to introduce electronic surveillance equipment to assist home detention supervisors with monitoring the curfew obligations of the prisoners. The response to this decision was one of cautious acceptance by the Government, Opposition and the media. The Council for Civil Liberties supported the monitoring proposal in principle but reserved its full position until the procedures and practices were in place.

Electronic equipment selection

During the months that followed the decision to introduce electronics, a public tender process took place in which both 'active' and 'passive' electronic systems were considered and

studied. Several United States correctional jurisdictions were consulted to gain as much insight as possible as to the interface between their programs and the use of electronic equipment. In the final analysis, the 'passive' computer telephone system was the unanimous choice of the Department of Correctional Services. The deciding factor in this decision included the fact that this 'On Guard' system had a proven record of simplicity and reliability in some sixty American jurisdictions. The device worn by the participants with this system was not of significant size or weight and had the appearance of a piece of costume jewellery and could be worn comfortably on the wrist or the ankle. This system allowed the supervision by telephone calls to be programmed by the computer so that calls to the particular residence could be scheduled to suit individual circumstances and minimise intrusiveness on the part of the prisoner or other residents. These factors were particularly meaningful to the home detention supervisors as they were already responsible for an overall successful home detention program by balancing their dual role of surveillance and support. It was most important not to jeopardise the human intervention element of the program already established.

Operation

By mid-November 1988, fifteen electronic units were operational within the Home Detention Unit. A policy was established that prisoners would be nominated by the Co-ordinator, Home Detention, to participate in electronics, based on the type of offence, especially high notoriety offences, and/or the prisoner's history of impulsive behaviour.

When selected for the scheme, the offender is fitted with a light wristlet, which he cannot remove. Several times a day, sometimes in the early morning, the offender's home telephone is run by a computer and the offender clocks in. When he answers the telephone, he says 'hello', waits twenty seconds, gives his name and states the time. He then places the wristlet in a small black machine, which validates his position.

The routine can vary but the above is fairly typical.

The introduction of electronic surveillance has not affected the number of prisoners applying for the program. Applications from prisoners for the program continue to be received at a steady rate and prisoners have expressed very little concern to the inclusion of electronic monitoring as part of their home detention release conditions.

Those prisoners participating in the electronic monitoring are reviewed regularly and a successful adjustment to the overall program is responded to by discontinuing with electronics. To date, participants have not been involved with electronics for more than an approximate three month period. All participants with electronics have had their wristlets removed during the last few weeks prior to the expiry of home detention. Participants on electronics have received the same minimum two home visits per week from their supervisor as those participants not subject to electronics.

Cost

The cost of leasing the fifteen units increases the total home detention program cost by three to four dollars per day per prisoner but this small increase still allows the program to operate at approximately one fifth of the cost of institutional costs per day. A decision was made not to charge prisoners for their participation in home detention or electronic monitoring. An assessment was made that almost all prisoners leaving the institutional setting walked straight into a reality of economic hardship. Forcing a monetary payment for earlier freedom places counter productive pressure on the individual prisoner and the family.

Success/failure

The South Australian Home Detention Program has not solved the overcrowding problem in prisons. The average of twenty-five to thirty-five prisoners on home detention in any one day only assists in taking the pressure off low security institutional bed space. Home detention has not significantly affected the availability of high security space. Home detention is not a sub-

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stitute for secure confinement and the practice of releasing only reasonable risk applicants on the program for a maximum period of six months is not expected to alter.

If one measures the success of the South Australian Home Detention Program by prisoners who have failed, then it can be said that one out of six prisoners fail on the program and are returned to prison to finish their sentences. The reasons for failure vary but it would not surprise one acquainted with the criminal justice trends that alcohol and drugs contribute predominantly. The occurrence of fresh offences while on home detention has, as expected, taken place but not to any alarming rate or degree of severity. Nine out of a total of 225 home detainee participants to date are known to have been charged by police for offences while on the program.

Program responses

Prisoners that have completed their periods on home detention are consistently positive about the program and what it has meant to them. The most common remarks include 'it has really helped me get my life together' and 'if the program didn't make me stay home when I wanted to go out with my mates, then I'd be back in gaol by now'. The enforcement of curfew and the close supportive supervision is also spoken of very positively by the parents and wives of prisoners. They have regularly commented on witnessing better family involvement and the development of good habits around the home.

Domestic tensions can occur because of the restraints of the home detention program and for this reason supervisors interview the prisoner and the residents within the home during the application stage as part of their overall evaluation. The Prisoner Assessment Committee in turn considers any indications of past family violence or potential disharmony and will not recommend approval if the risk of family discord is too great. The regular home visits by supervisors monitor relationships and in cases where any tensions develop and the situation cannot be resolved, alternative accommodation including a return to prison is acted upon.

Approximately 60 per cent of all participants on the program to date have held employment or attended adult education courses. It has not been uncommon for an employer of a prisoner to comment that 'this guy is the most dependable fellow I have'. Unemployed prisoners are encouraged to seek employment and attend job interviews. For the unemployed, the boredom of curfew is often countered by

involvement in gardening, home maintenance or vehicle restoration or repairs. The pressure of curfew is also relieved by allowance attendance at a fitness centre or to participate with shopping.

Summary

South Australia has experienced a high degree of acceptance from all sectors involved or interested in the home detention program. There seems to be the general view that the program possesses the necessary protective elements for the community but that it also provides the prisoner with rehabilitative opportunities. The introduction of electronic monitoring equipment has not altered this positive endorsement of the program. The Department is not aware of any concern held or recently expressed by the Council for Civil Liberties.

The introduction of electronic monitoring equipment has not diminished or undervalued the need for human intervention. The use of electronics simply provides the mechanism to in-

tensify the supervision of curfew obligations. This factor also enhances the credibility of the total home detention program. The selection of 'appropriate' equipment to suit the program's objectives and operation is seen as the key factor for both public and prisoner acceptance. The frequency and timing of computer calls is scheduled to take into account the individual prisoner and other residents in the home. The wristlet is lightweight, fits as comfortably as a wrist watch and is not obviously recognisable.

Home detention is not an easy option for prisoners because of the curfew restrictions and total alcohol abstinence. A prisoner's commitment to the program is the key ingredient for success. Non-compliance to a condition of release is dealt with sternly and outright breaches result in a return to prison immediately. This firmness is tempered with caring and supportive supervision to give the participant every chance of adjustment and reintegration back to community life.



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The Electronic Ball and Chain?

The Operation and Impact of Home Detention with Electronic Monitoring in New Zealand

Anita Gibbs and Denise King
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In New Zealand, Amendment No. 9 (1999) of the *Criminal Justice Act* 1985 introduced Home Detention Orders as an early release from prison option, implemented on the 1st October 1999. The orders, with electronic monitoring, were available to convicted offenders who had not committed serious offences and who were sentenced to, or serving, varying lengths of imprisonment. The purpose of the new scheme was to ease the transition of prison inmates back into the community. It was also hoped that home detention would result in a reduction in overall time spent in prison, as well as addressing offending behaviour through the intensive supervision and programs accompanying the home confinement. After reviewing the literature on home detention, and outlining the development and operation of home detention in New Zealand, we will discuss research undertaken by the authors during 2001. The research aimed to ascertain the impact of home detention on offenders, and their families, and to explore the views of other stakeholders, for example, probation officers and prison board members. We interviewed 21 offenders, 21 sponsors, 6 probation officers, 2 security staff and observed over 20 members of district prison boards. Eleven key findings were identified: including factors of suitability, impacts on behaviour and relationships, gender issues and the effectiveness of home detention. We conclude with a brief discussion of the implications of the research: the need to support families and sponsors, ongoing ethical and legal issues, and the acceptance of surveillance as the norm in New Zealand.

Literature Review

The use of home detention as a means of confinement and control within the home can be traced back to biblical times when Paul, the apostle, was placed under

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house arrest by the Romans. The modern form of home detention (house arrest, or home incarceration) aligned to electronic monitoring has its origins in the mid-1980s in the United States (US) (Fox, 1987; Whitfield, 1997). Schemes now exist in over 45 US states, the United Kingdom (UK), Europe, Asia, Australia and Canada. The international literature has explored home detention and electronic monitoring from several angles: philosophical and ethical (Ball & Lilly, 1986; Enos et al., 1992; Garland, 1996; Mainprize, 1992; Moore & Haggarty, 2001; Payne & Gainey, 2000; Pratt, 2000; Rose, 2000; Whitfield, 1997); operational and practice issues (Bishop, 1996; Fox, 1987; Lilly & Nellis, 2001; Mortimer & Mair, 1997; Nellis, 2000; Payne & Gainey, 1998, 2000; Walter et al., 2001; Whitfield, 1997); and research (Bishop, 1996; Dodgson et al., 2000, 2001; Doherty, 1995; Gainey & Payne, 2000; Lilly et al., 1993; Mainprize, 1995; Mortimer, 2001; Payne & Gainey, 1998; Schultz, 1995; Smith, 2001).

Philosophical and Ethical Issues

Any form of social control brings with it fresh concerns of punishment, surveillance and undue intrusion. In this respect home detention with electronic monitoring poses a number of specific concerns:

- Home detention with electronic monitoring has extended the control and surveillance of the offender from prison to the community — “prisons in the home” or “the electronic ball and chain”.
- There is a challenge to the legal basis for electronic monitoring. Can it legally be right to punish or confine people to their homes, or encroach upon their privacy rights?
- Home detention has facilitated the involvement of offenders’ families and personal support networks in regulatory practices. Such practices were previously undertaken by the State.
- Home detention does not reduce the prison population significantly but tends to net-widen to include those who would not necessarily have been imprisoned. Low-risk offenders who do not require such a restrictive regime to deal with their offending tend to be those for whom home detention is granted.
- While home detention may be cheaper than imprisonment, the financial and social costs can increase for offenders, their families and personal support networks.

These particular issues have been detailed and debated in the literature (Ball & Lilly, 1986; Enos et al., 1992; Lilly, 1992; Moore & Haggarty, 2001; Payne & Gainey, 2000; Pratt, 2000; Rose, 2000). While the issues have not resulted in any notable decline in the use of home detention and electronic monitoring they are a constant reminder that home detention is an intrusive method of supervising offenders and an even greater intrusion into the lives of offenders’ families.

Operational and Practice Issues

A variety of purposes and uses for home detention with electronic monitoring exist. It is used as an alternative to imprisonment, or as a stand-alone sentence. It can provide monitoring for bail conditions, and is used to reduce prison numbers by releasing prisoners early. It is often used as a means to rehabilitate offenders, and

to allow them to maintain relationships with their families. Home detention also enables offenders to participate in programs of supervision or employment, with the ultimate aim of reducing re-offending.

The literature on the use of home detention suggests that one problem has been the lack of clear goals and purpose for the sanction. Home detention has attempted to fulfil too many purposes — to punish, to incapacitate, to deter, and to rehabilitate — when it can only fulfil some of these (Payne & Gainey, 2000). With all these purposes, it is no surprise to find that there have been many types of monitoring schemes, targeting different kinds of offenders and involving various levels of support from sponsors (or families), probation and security staff.

The typical offender on home detention is male, with few previous convictions and is usually convicted of property-related offending. He is normally over 30 years of age and often employed or attending a training course (Whitfield, 1997, 2001). Offenders who receive home detention also tend to be assessed as being at a low-risk of re-offending, and typically they have family or friends available to support them.

In relation to the actual operation of home detention schemes, practice issues highlighted include:

- Problems with technology, particularly monitoring and equipment (e.g., technical faults, poor monitoring coverage, equipment failure and uncomfortable tags). Proving breaches has raised legal and ethical issues, where the reliability of equipment has been questioned.
- The lack of programs, activities, intensive supervision and adequate support for the offender or their families/sponsors.
- Probation staff have been reluctant to participate in monitoring schemes and security staff have not been employed or skilled to deal with the social work requests of offenders (Mortimer & Mair, 1997; Nellis, 2000).
- There has been an increase in the control and surveillance functions of probation officers supervising those on home detention, but also some new opportunities to practice social work due the increased frequency of contact and home visiting of offenders.

Research Findings

The issues surrounding home detention have also been highlighted in the research in this field, particularly in the United States, and more recently in Britain, Europe and Australasia. Recidivism and re-offending rates associated with home detention and monitoring schemes vary from scheme to scheme, and have been as low as 30% (Mortimer, 2001) and as high as 70–80% (Sugg et al., 2001). These rates have depended on what is defined as recidivism (and when it is measured) and whether home confinement with monitoring, or monitoring and supervision, are used as sentences alone, or as part of pre-release or parole options. Recidivism rates show they are lower for older offenders and for those monitored as part of an early release from imprisonment option. Younger offenders and those with longer criminal records do worse (Smith, 2001) than, for example, drink drivers and lower-risk offenders (Bishop, 1996, Whitfield, 1997). However, Bonta (1999) has noted that electronic monitoring has not especially reduced the re-offending of low-risk

offenders. Many electronic monitoring programs target such offenders, so it may be an ineffective use of home detention resources for this group.

Completion rates have been at a high level for home detention, particularly when home detention has been used as an option for release from custody. Up to 95% completion rates have been reported (Mortimer, 2001; Smith, 2001). For other types of monitoring programs and options used as an alternative to custody, completion rates have been as low as 30% (Whitfield, 1997). It may be that for specific target groups (e.g., drink drivers) that home detention is particularly effective. For example, Lilly et al. (1993) completed a 7-year study of home confinement with electronic monitoring used as an alternative to custody for drink drivers. The completion rates were very high (97%), with the monitoring equipment found to be reliable and the scheme cost-effective especially as offenders contributed towards the cost of supervision and monitoring. Canadian and American research (Bonta, 1999; Bonta et al., 1999; Enos et al., 1992; Lilly et al., 1993) has suggested that effective rehabilitation, producing reductions in offending, can be achieved when electronic monitoring and home detention are used alongside cognitive-behavioural and other high quality programs of intervention.

The research on home detention has shown that the impact of monitoring and home detention on offenders and their families has been mixed. Offenders have felt both controlled (compared to other community-based sentences) and free (compared to prison) (Payne & Gainey, 1998). They have felt restricted, and acknowledged a loss of liberty and leisure opportunities. However, when balanced against the impact of a custodial sentence, they have still preferred home detention (Payne & Gainey, 1998). Families have enjoyed having their loved ones at home but have been stretched financially and emotionally because of their extra responsibilities (Doherty, 1995; Schultz, 1995).

The costs of home detention electronic monitoring schemes, compared to other criminal justice sanctions, have varied from scheme to scheme and country to country. The research studies referring to costs have been few but mostly indicate home detention with electronic monitoring is cheaper than an equivalent prison placement, or that financial savings can be made by using home detention. For example, the UK Home Detention Curfew Scheme (Dodgson et al., 2000, 2001) showed that £36.7 million was saved due to 1950 reduced prison places in its first year of operation. In 1987, the costs of home confinement or home arrest in the United States ranged from \$US 2000–7000 per annum (Fox, 1987). These costs were more expensive than routine probation, on a par with intensive probation, and far cheaper than most forms of imprisonment. The cost of schemes and the cost savings have been difficult to measure and few researchers have undertaken significant cost analyses of home detention. When the social costs to victims, offenders, families and to the wider public are considered, mere monetary savings would tell us little about the outcomes for home detention.

Home Detention in Australia

In Australia, EM programs have been running since the early 1990s in New South Wales, Queensland, South Australia, Northern Territory and Western Australia (Aungles, 1995). The Western Australia scheme has been utilised as an alternative

to custody (front-end option) and the South Australian scheme has been used as an early release from imprisonment (back-end option). In New South Wales (NSW), the scheme has also been employed as an early release from prison option, in conjunction with electronic monitoring, and has been extensively researched (Aungles, 1995; Heggie, 1999; Keay, 2000; Liverani, 1998).

The NSW scheme was piloted from 1992 until 1996 and fully implemented in 1997. In NSW, offenders are assessed for home detention after they have been sentenced to imprisonment. However, their prison sentence is initially suspended, usually for three weeks, so they can complete the assessment process — they are either remanded in jail or given bail. Once a thorough assessment has been completed, they go back to court for the decision as to whether they are granted home detention or their prison sentence is activated. Home detention is never automatic and only 12% of those eligible to apply have been released to home detention (Keay, 2000). For those subject to home detention, the NSW scheme is not a soft option. Detainees have reported “feeling watched”, or getting nervous about phone calls from the probation supervisor. They also revealed problems with sleep deprivation, and becoming obsessed with time (Liverani, 1998).

In NSW, few home detention orders were initially granted, with only 108 offenders supervised from February 1997 until October 1997 (Liverani, 1998). More recent evaluations have shown increased numbers on home detention (366 orders from February 1997 until August 1998), which represented more than 70% of those assessed for home detention (Heggie, 1999; Keay, 2000). There have also been cost reductions from \$120 per day for someone in prison, compared to \$48 per day for someone on home detention. Of the 366 people on orders to August 1998, 18% were women and 82% were men. Ethnicity figures were: 5.5% Australian Aborigines, 82% Australian Europeans, and 3% New Zealanders. The average age was 32 years, women at 35 years and men at 32 years (Heggie, 1999). Overall, 80% of home detainees completed their orders without revocation and 4.5% were charged with new offences. The NSW scheme has been an efficient scheme, serving the useful purpose of releasing minor risk prisoners earlier than they would otherwise have been.

Home Detention in New Zealand

Between 1995 and 1997 a pilot home detention scheme, using a passive monitoring system (phone calls and voice verification), operated in Auckland. An 18-month evaluation was conducted by the Ministry of Justice (Church & Dunstan, 1997). During the 18-month period only 37 prisoners were released from prison to home detention. One of the 37 was recalled to prison during the 18 months, and 11/37 were subsequently charged with new offences, from 4 months to 2 years following release from prison. The pilot scheme was not recommended for nationwide implementation because of operational, cost and impact issues. Nevertheless, the former National government, with an election looming, considered it prudent to introduce home detention with electronic monitoring, via amended legislation in 1999 (CJA 1985, Amendment. No. 9, 1999). This began operationally on 1st October 1999.

The current scheme is an option for all those who have been sentenced to imprisonment for 2 years or less, and for whom the sentencing judge has granted

leave to apply for home detention. It is also an option for prisoners currently serving sentences over 2 years and eligible for parole, for release up to 3 months earlier than their earliest parole date. The only automatic exclusion to these criteria are those who have committed serious violent offences.¹ The Community Probation Service completes a suitability assessment on those eligible and wanting to apply for home detention. The assessment includes a risk assessment, the views of sponsors as to whether they are willing to allow detainees to live in their homes, or other supported accommodation, and release plans of the offenders. It is then presented to the district prison board or parole board for consideration. If home detention is granted, prisoners are given a date for their release to home detention at the hearing. A key element of home detention is the supervision that accompanies the home confinement. Prison boards can also direct an offender to participate in selected programs as a condition of their release. A detainee may also be employed while on home detention, if they are able to be monitored while working.

Home detention is managed by the Community Probation Service, in conjunction with a private contractor which provides the security monitoring on a national basis. Electronic surveillance equipment provides monitoring through a dedicated telephone line or cellular network, and the offender wears a security anklet, which continuously emits a signal that is received by the equipment installed at the residence. The offender has to remain within the confines of his or her residence. Should the offender leave the property without prior consent from their home detention officer, an alarm is triggered immediately. Additionally, there are random checks by the surveillance company, as well as frequent visits (sometimes unannounced) from the detainee's home detention probation officer. The average time an offender spends on home detention is 13 weeks but the actual time for an a specific individual can vary from as little as 4 weeks to more than 18 months (Gibbs & King, 2001).

The home detention probation officer is responsible for coordinating the activities of the parties involved in carrying out an order, including security operations, employers, community agencies, program providers and sponsors supporting the detainee. The home detention order itself is typically operated in four phases. The differences between the phases lie in the nature and frequency of "approved absences" a detainee is allowed from their residence, and the degree of supervision from home detention officers. For example in phase one, usually the first month of an order, detainees are seen by probation staff at least three times per week whereas in phase four, usually towards the end of an order, a detainee may only be seen once a week or fortnight. In phase one approved absences are only those specified on the order but by phase four detainees get at least two family outings per month and one or two recreational outings. Detainees can move back or forward to different phases depending on their progress. Phases are strictly adhered to, with exceptions only for genuine emergencies.

The Research Study

The research undertaken by the authors in 2001 sought to study the development, operation and impact of home detention in the first 18 months since its inception in October 1999. There were four main objectives of the study:

1. To collect baseline data and information about the first 18 months of home detention development and operation in South Island locations.
2. To ascertain and examine the decision-making process in the application for, and granting of, home detention. For example, who was most likely to be placed on home detention and who was likely to be refused.
3. To explore the operation and impact of home detention with detainees, their families, co-residents and sponsors, home detention officers and other key stakeholders.
4. To assess the effectiveness of home detention in a number of areas; for example, its capacity to rehabilitate and reintegrate detainees; its impact on detainees and their relationships with sponsors; the effectiveness of supervision and surveillance; the costs and benefits of agencies working together (e.g., surveillance company, the Community Probation Service, program providers etc); home detention's ability to reduce re-offending, its incapacitation capacity; and its comparison to imprisonment.

The demographic data gathered over the first 18 months provided background information for our study. After 18 months, a total of 897 people had been on home detention. This represented about 31% of people who applied for home detention being released to an order. This was consistent with similar schemes overseas (Mortimer, 2001). Of the home detention population 83% were male and 17% female; 48% of detainees were NZ European; 39% Maori; 5% Pacific Islander and 6% European. Compared to their prison proportions women were much more likely to be released to home detention. The median age of detainees was 33 years. The primary offences of those on home detention in 2000 were property related (29%); drugs (26%); traffic (23%) and violence (15%) (Spier, 2001). The most recent data from Corrections (personal communication, 2001) shows re-conviction rates of 27% for detainees at 12 months following completion (or recall) of their home detention orders.

After ethical approval and negotiation with the Department of Corrections for access to records and offenders we approached and interviewed 21 detainees on home detention, 21 sponsors supporting home detainees, 6 home detention officers supervising people on home detention, and 2 security staff. Members of three home detention boards were also interviewed or observed. All participants signed consent forms and were sent copies of their transcripts. The participant group was chosen to reflect a range of viewpoints on home detention, not to be particularly representative of the national group of which there were no data available when participants were being selected. However, some demographic data was collected from the detainees: 7 of the detainees were women and 14 were men, 15 were NZ Europeans and 6 were Maoris. The average age of the detainees was 32. The main offences of this group were property (48%), violence (24%), drugs (19%), and traffic related (10%). The average time spent on home detention by this group was 16 weeks, slightly longer than the national total. Of the sponsors, 18 out of 21 were women. Sponsors were mainly family members or spouses/partners, but others included friends and flatmates. Eight of the sponsors had children living with them.

The interviews lasted between 1 and 2 hours. Using a semi-structured interview schedule we explored participants' experience of home detention, its benefits and

limitations, and its impact on their lives — including relationships, employment, home life, rehabilitation and offending. The questions for home detention officers, security staff and decision-makers emphasised their roles and perspectives on home detention, including decision-making, their views on the system, its strengths and limitations, and the overall operation of home detention. The interviews were analysed according to the interview questions and for any new themes emerging.

Key Findings

Suitability Factors

Evidence about suitability of detainees for home detention was compiled from home detention reports, written information from prison boards about those declined home detention, and comments from prison board members when observed at meetings by the researchers. These data revealed that a suitable applicant for home detention was someone who:

- had supportive sponsors
- was motivated to change and had exhibited compliance towards previous sanctions
- had organised sufficient activities and programs so as to be occupied
- had no victim concerns
- had no unaddressed alcohol and drug problems
- was not likely to “deal in drugs”.

Older offenders and women were also more likely to be granted home detention. (Gibbs & King, 2001; Spier, 2001). Prison boards were responsible for making a decision for release and commented on their reliance on community probation reports for good information on suitability factors. For the board members, the sponsors’ and victims’ support of the detainee’s release were important concerns.

Information Received and Reasons for Participation

The quality of information received about home detention by participants in our study was highly rated. This was primarily due to the efforts of home detention officers. They appeared to be the sole source of good information. Detainees and sponsors felt they had enough information given to them to make an informed choice about participating in home detention. For detainees, the reasons were based on wanting to be out of prison and their desire to be with their families. Sponsors agreed to have detainees for the same reasons, together with no longer having to visit their family members/partners in prison:

If I didn’t have my kids, I think I would have preferred to go to jail, because otherwise I’d have nothing to amuse me ... It wasn’t like I expected. I thought there would be more help and visitors more often (Kelly, detainee).

I believe that being with your family has got to be way better than jail. She was always there for us when we needed her ... She did a lot for us. And she’s my sister, I don’t want her being there. I’d rather her be here with us (Tania, sponsor).

Home Detention Officers' Role and Views

Home detention officers (HDOs) saw the purpose of home detention as being dualistic: to promote offender rehabilitation and to save the taxpayer extra costs of extended imprisonment. Officers were concerned that the tension between these remained in balance. They also commented on the lack of gate-keeping by district courts, and the possibility of net-widening occurring to those sentenced to short terms of imprisonment. Home detention officers saw their tasks as two-fold; community integration and addressing criminogenic factors in detainees' lives. They commented that, due to time constraints, achieving the balance between these two was difficult. Their role demanded clarity of expectation and being skilled in working within a home environment with detainees and their sponsors. The care and control dilemma existed as with standard probation work but was intensified by home detention.

Detainees reported frequent visits from HDOs, which typically tailed off towards the end of the orders. Detainees viewed this as necessary for the smooth running of their orders. They also thought that a trusting relationship with their HDO was important for gaining privileges and support during their orders. Detainees spoke positively about the practical support, the accessibility and the open approach of their HDO:

My probation officer was fantastic. She found out anything that I needed to know. She was always there to support me. There were times during home detention that I found more difficult than others. And because I had been granted an hour to walk every day she increased my walk on two or three occasions (Kathy, detainee).

Sponsor Role

Sponsors played key roles in the support and supervision of detainees. They provided practical help, surveillance and monitoring, accommodation, financial assistance and emotional support. Sponsors were mainly women. They were wives, partners or mothers, and they often had children to care for. They were mixed in their views of their responsibilities — most sponsors were pleased to have their family members back at home but some sponsors felt detainees were ungrateful and exploited their "caring" natures. About half of the sponsors and detainees noted stress and tension in their relationships brought on by home detention. Some sponsors also resented the surveillance and supervision expectations placed upon them by the criminal justice system generally, as well as by the home detention boards and probation service. Whilst most sponsors, who had children, were pleased that the detainees could spend time with families again, they felt that home detention was not flexible enough to allow the children to have outdoor playtime, or attendance for their parents at parent evenings at school and regular family outings.

Rules, Regulations and Monitoring

Detainees reported being told the rules in enough detail to be able to abide by them. Detainees were afraid of being caught and believed they would be; they also believed they would be recalled once caught. The physical constraints and monitoring process of home detention also made it difficult to break the rules.

The most common form of rule-breaking among detainees was in taking detours on their routes to various activities outside the home. In this study, only one detainee (out of 21) was recalled for a serious violation and re-offending. Electronic monitoring (EM) was accepted in principle by all participants. However, it was common for participants to comment on the equipment being unreliable. Security staff were frustrated by Corrections' Department systems limitations, but generally enjoyed the interactions with detainees and their families. Detainees and sponsors were accepting of EM, viewing it as a necessary part of gaining the privilege of being at home, as opposed to staying in prison. Difficulties with EM included uncomfortable anklets, the position of equipment in the home, and unreliable equipment which required regular visits from security staff:

My biggest problem before was that I didn't respect all the rules. I realise that now. Home detention has helped me with that attitude, because there's a lot of things I can do on home detention. I found it easy enough to just stay within the boundaries ... They say that you home is your prison. My home is my home. If I have to stay here because the law says, then I will. It's not a prison (Peter, detainee).

Employment, Income and Activities

Home detention had varying impacts on household employment and income. Six of the 21 detainees were in paid work — all men. Women detainees were invariably looking after children or pregnant. Detainees' income was not especially affected by home detention — some were worse off and some were better off. Sponsors however, were financially out of pocket:

That's probably been the hardest thing of all, because he can only do part-time work ... We've found it quite hard having to support him: feed him, the electricity, everything. I really had been wondering if there is some sort of payment that could be made to us or for home detention supporters to help keep them, because it's costing us a lot more than before he was here (Trudy, sponsor).

Detainees reported that keeping occupied was important, and even mandated activities were seen as an opportunity to "get out of the house". Most detainees attended activities outside the home, reporting that home detention increased the likelihood of their regular attendance and hence the benefits to them as well. Sponsors' activities were affected: having to do extra shopping, curtailing of their social lives, and feeling guilty if they went out without the detainee.

Attitude and Behaviour Changes

Detainees viewed their home confinement positively when compared to being in prison, though believed that a short time in prison was important to help them appreciate home detention. Younger detainees found it the most difficult, having to battle the temptation to abscond. Most detainees noticed a positive change in themselves, even compared to pre-imprisonment, such as positive thinking, increased self-discipline and organisation, and being creative with their time:

[Doing the] Straight Thinking course and on home detention at the same time, so I can't abscond my Straight Thinking course, it's just benefited me so much ... I think

if you're on home detention you should be made to do a course — either Stopping Violence, or Straight Thinking, so you can help think about your [offending] ... It's helping me a lot (Bill, detainee).

Prior to home detention, I was heavily involved in drugs, I was heavily involved in alcohol ... But, just the way I see things now, and how I feel at home is a lot different. I feel a lot more comfortable in my home now than I did before. My biggest worry is, that when this bracelet is removed, that I'm going to fall back into that scene that I was in before, and that scares me, it makes me worried. I know I'm not in there at the moment, because it's a case of I can't, I'm on home detention (Clare, detainee).

HDOs also noted changes made by detainees and commented that criminogenic programs were essential in assisting attitude and behaviour change in detainees.

The Impact of Home Detention on Relationships and Feelings

Where there was minimum disruption from imprisonment, most detainees and sponsors reported positive adjustments in their relationships on home detention. This was particularly so for any children in the household. Difficulties arose in relationships if there had been previous problems, if the detainee was not sufficiently occupied, and when there were restrictions on children's activities outside the home:

I guess it's just the whole thing of, you know, just tension, because he's sort of always here and he's just, I don't know. I guess it's because he wasn't enjoying work for a while, so he'd come home in a bad mood ... And I'd think, 'Oh, I'll just go out' and then I'd think he was in a bad mood because I'd left him here. It's a vicious cycle really ... If he was going out and doing his own thing, he'd be a lot happier, then I'd be a lot happier. Yeah, I think, you know, once he's off home detention, everything will probably be fine ... (Sally, sponsor/flatmate).

In this study, increased tensions within the home caused one detainee to abscond, two relationships to break-up and most sponsors to take "time out" from home, as a way of handling the tensions.

Detainees also reported a sense of reduced freedom on home detention, of feelings of panic when late, and confusion as to how to deal with emergencies:

Home detention is right on the dot. Like I was 20 minutes late the other night and you know it's different if you're not on home detention and you're 20 minutes late... I was nearly in tears the other night, because I was lost in Haverley and I was 20 minutes late. I thought, 'Oh no, if I'm another 40 minutes late I'll probably get recalled'. It was such a big stress factor. (Bill, detainee)

Gender Differences

There were 7 female detainees in this study and 18 out of 21 sponsors were female. Gender issues highlighted were that women felt obligated to take on sponsorship, they requested HDO support more frequently and felt they had to sacrifice their routines, time, money and energy in order to support detainees. Women detainees expressed more compliant attitudes to home detention, motivated by fear of the

consequences and the stigma of electronic monitoring. Women were on home detention longer than men (the average sentence length for women was 5 months and for the men it was 3 months).

Effectiveness of Home Detention

Members of prison boards, home detention officers, detainees and their sponsors were in favour of home detention as a means by which a prisoner could serve some of their sentence of imprisonment at home. It was particularly favourable with families, because it promoted family cohesion and meant fewer visits to prison. It was less favourable with young people, who had little to keep them occupied while at home. However, all of the detainees were in favour of home detention in principle compared with prison:

Heaps better. You've got some freedom for a start. You've got no-one controlling you. No-one telling you to go to bed, lock you up. Being with family, being able to work and pay your bills. Seeing the sun, good food and lots of it (Jeremy, detainee)

There was a consensus among detainees and their sponsors that home detention was an effective deterrent to not committing further offences while subject to it. They were more cautious in their comments about any long-term effects, in that they believed it was very much an individual decision as to whether anyone would stay offence-free:

I don't think anything will stop someone [offending] who is set in their mind they're going to do it ... (Graeme, detainee).

The factors in this study that assisted detainees to complete home detention successfully and avoid re-offending included the ability of detainees to keep themselves busy, the determination of detainees to keep to the rules of home detention and the belief they would be recalled to prison if they did not, and the experience of imprisonment prior to being released on home detention. Detainees also needed to have concrete plans about their future; recognise the negative impact of their crimes on their own lives, as well as those of their families; decide not to re-offend; and recognise the importance of family, and other support systems. The detainee's ability to deal with the restrictions and limited liberty offered by home detention was also an important consideration.

Benefits and Overall Impressions

Sponsors and detainees were overwhelmingly positive about the concept of home detention. Even the sponsors and detainees who struggled or failed to get through their orders decided that, in a different home situation with more supportive relationships, they would prefer home detention as a sentencing alternative to prison:

If it was my mum [as opposed to my girlfriend], I'd choose home detention, yeah, if it was a good sponsor and a good probation officer, I'd choose home detention (Smithy, detainee).

Overall the benefits of home detention noted by detainees included having new responsibilities; for example, having to look after children or doing the gardening;

developing more self-discipline and organisational skills; having thinking time and using this constructively to plan for the future; gaining new opportunities — attending courses or training programs; having a reasonably good social support system:

I think it's [home detention's] really good, because it means that you can be in your own home environment with your support people ... I found it was difficult because you needed a lot of self-discipline but I think it was fantastic to be at home ... it's taught me a lot about myself and my family. I think it does take a lot of self-discipline. It's like being in prison at home ... not allowed outside the gate. You've got to stick within your rules — otherwise you go back inside (Kathy, detainee).

The benefits were the most obvious in family situations, where the detainee was returned to the family and the positive impact this had on children in the family. Sponsors also reported a greater sense of security knowing where the detainee was at all times, which meant to them that they were not away and getting into trouble:

I can keep an eye on him, see what he's up to. Just having him around. I think he's grown up a bit. Not grown up, but matured. I don't need to stress out all the time (Heidi, sponsor).

Conclusions

The first 18 months of the operation of home detention in New Zealand has been viewed as a relative success, bar a few concerns with equipment and some negative impacts on families or sponsors. The number of detainees per annum has been between 700–800, in line with Department of Corrections' expectations. Of the people who applied for home detention, about one third were granted it, with women being more likely than men to be granted home detention. The completion rates were high and initial re-conviction data indicated a reasonably low re-conviction rate for the first year.

Detainees were very positive about the benefits of home detention, especially when compared to imprisonment. However, home detention also resulted in new responsibilities (e.g., looking after children for men) and challenges (e.g., increased self-discipline, the development of organisational skills, and using thinking time constructively). It also provided privileges not available in prison, such as being able to participate in courses or training, and remaining in the comforts of home with family and friends to support detainees. Overall, detainees resented little about the home detention experience, but had complaints about the operational constraints which produced inflexibility in the rules. They also complained of uncomfortable anklets, a lack of time for family outings, and boredom and tension in the home. In this study, these were mainly managed and coped with, with only one detainee absconding and being recalled to prison.

One important issue worthy of discussion was that of the impact on sponsors, who were mainly women, and the extra responsibilities placed on sponsors who were family members as they looked after the detainees in their homes. In many ways sponsors were serving the sentence alongside the detainees — the implications of this are huge and further research may highlight the full extent of the burdens placed on them. The few other studies of the impact on families of home

detention with electronic monitoring are consistent in their findings with the New Zealand study, except they present a more positive picture of family satisfaction with home detention (Dodgson et al., 2001; Doherty, 1995; Mainprize, 1995). In the Dodgson et al. (2001) study in the UK, the majority of people living in the same house as detainees (i.e., mainly family members) reported that the home detention made little or no difference to their relationships; one quarter said their relationship with the detainee had improved and 4% said the relationship had worsened. Almost one fifth of household members in the UK scheme felt home detention had adversely affected the time they had to do what they wanted (i.e., recreational activities). Dodgson et al. (2001) concluded that the home detention scheme in the UK was neutral to slightly positive in its effect on relationships.

The study by Doherty (1995) involved interviews with 27 offenders being electronically monitored at home and their spouses in British Columbia, Canada. Between them they had 54 children. Most of the offenders and spouses were positive about electronic monitoring compared to jail but noted EM impacted the children because fathers were around more, they could not participate in certain activities, and less time was spent with the children outside. Spouses also noted that their activities were more restricted than normal. On the positive side, however, participants mentioned that some offenders spent more time with their children and that relationships with their spouses generally improved. A few participants reported more arguments and strain in the relationships. Spouses commented on the extra shopping, bill paying and errand running that they had to do. The comments made by spouses are similar to those in the New Zealand study. Doherty (1995) concluded that in order to improve the electronic monitoring program more counselling for family members was needed as well as more assessment of how things were going during the sentence and more time out of the home for offenders to be with their children. There is no doubt that families and partners of detainees in New Zealand could also be better supported, perhaps by receiving monetary allowances to assist with the extra costs of looking after detainees, and by being given more advice and support from probation officers when they visit the family home.

Ball and Lilly (1986), Lilly (1992), and Payne and Gainey (2000) raise important philosophical and ethical issues about the nature and impact of home detention (or home incarceration) with electronic monitoring. These include issues of the sanction's potential to net-widen, to turn homes into prisons, to unfairly punish, to shame people and to fail to protect the public. These authors also question the capacity of home detention to achieve its (usually) broad-ranging goals of rehabilitation, retribution, deterrence, incapacitation and restitution. While our study did not especially consider the philosophical and ethical questions, it did find home detention caused psychological harm in emergency situations, as well as when detainees were late home from permitted activities (Gibbs & King, 2001). It also found that detainees' families experienced extra stress and restrictions as a consequence of home detention. Home detention in New Zealand does punish, restrict and infringe on the privacy of some people and this, as an issue, has not been debated, either by criminal justice professionals, or by members of society at large. It could be said that home detention is better than prison as it does not restrict as severely

but compared to other community-based options home detention is the most restrictive option.

The other concern about punishment and home detention is whether or not potential home detainees are subject to "double sentencing" (double jeopardy). At court the sentencing judge will grant leave to apply for home detention. It is the judge's decision as to whether a person meets the grounds for eligibility to apply for home detention. If a judge grants a detainee leave to apply then he or she may assume they should automatically be granted it by the home detention boards. However, only 31% of those applying to boards are granted it — the reasons for which have been highlighted in the section on suitability. Could it be argued then that double sentencing applies? New Zealand is one of few, if not the only country, which "grants leave to apply"² at court. In most other countries, home detention is either given as a sentence in its own right or people apply for home detention after they have been in prison for some time — hence the "leave to apply" aspect does not exist. Is this necessary for the New Zealand scheme? It could be suggested that specific suitability criteria be applied to all prisoners, and each application for home detention could be assessed by the boards as they now are, with no initial judicial indication at the time of sentencing. A related issue is that the same judge who grants leave to apply chairs the prison board which grants or denies home detention. There is somewhat a mixing of judicial functions at sentencing and executive functions of chairing the boards. The role ambiguities presented by judges do nothing to assist the view that suitability criteria, if there were any, would be applied equally or without prejudice. Indeed the researchers overheard at one board meeting a judge to say "I know this man". How could this man have got a fair hearing?

Finally, home detention appears to be accepted by New Zealanders generally — few people resisted its introduction into legislation and detainees reported no particular reactions from their friends or family members — other than to be curious to look at the anklet. A few women reported embarrassment about the visibility of the anklet and about people knowing they were on home detention, but in the main, participants reported no issue with the fact that home detention existed. Surveillance, in some form, is an accepted part of criminal justice in New Zealand (Gibbs & King 2002). While we, the authors, would like to see a wide debate occur about the introduction and use of electronic monitoring to confine people (and their families) to their own homes, we doubt that home detention itself would be axed by such a debate. Home detention would probably only be challenged if it proved too expensive and this does not look likely at the moment.

Endnotes

- 1 Serious violence refers to those offenders subject to Section 5 of the *Criminal Justice Act 1985*, who are those serving a determinate sentence of more than 2 years for various offences including sexual violence, manslaughter, wounding, use of firearms and robbery.
- 2 The original reason for setting home detention up in this way was to avoid the net-widening of unsuitable candidates for home detention.

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