

## INQUIRY INTO BACK END HOME DETENTION

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**Theme:** This submission offers experientially-based evidence principally addressing a, b, e, f & g.

**Summary:**

- a - Any public perceptions of home detention as a soft option are not matched by the attitudes or reported experience of offenders.
- b - In both WA and Victoria a central aim of home detention was/is to strengthen the transitional process from prison back into the community
- c - The relationship between truth-in-sentencing and back-end home detention is principally a matter of legal debate rather than susceptible to operational argument.
- d - More a policy issue than an operational determination.
- e - The WA and Victorian systems share many eligibility and assessment criteria.
- f - See New Zealand, Canada and the United Kingdom.
- g - Emerging technologies for offender tracking.

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# **SUBMISSION TO NEW SOUTH WALES STANDING COMMITTEE ON LAW AND JUSTICE: INQUIRY INTO BACK-END HOME DETENTION**

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August 2004

# NSW STANDING COMMITTEE ON LAW AND JUSTICE: INQUIRY INTO BACK END HOME DETENTION

## 1. NATURE OF SUBMISSION

I refer to the inquiry of the NSW Standing Committee on Law and Justice into whether it is appropriate and in the public interest to introduce a “back end” home detention scheme in New South Wales.

This submission does not give equal attention to each of the terms of reference but offers experientially-based evidence principally addressing the following terms of reference:

- (a) the perceived benefits and disadvantages of back-end home detention;
- (b) the relationship between back-end home detention and existing external leave programs;
- (c) the criteria for eligibility for back-end home detention;
- (d) the experience other jurisdictions in implementing back-end home detention;
- (e) any other related matter.

Terms of reference (c) and (d) mostly relate to matters of policy rather than operational expertise. It should also be stated that any views expressed in this submission are my own and not those of the respective organisations in which my knowledge of home detention has been acquired. The intent of the submission is to reflect as objectively as possible on personal experience and direct knowledge of home detention in order to assist the Inquiry to reach its own conclusions.

## 2. FOUNDATIONS UPON WHICH THIS SUBMISSION BASED

In 1990, the Western Australian government legislated for the introduction of a home detention program. Home detention could be imposed as condition of bail, when a defendant would otherwise be remanded in custody, or as a back-end option for the release of certain offenders subject to prison sentences of less than twelve months, who had already served a defined proportion of the sentence in custody, and met other eligibility criteria. The *Community Corrections Legislation Amendment Act 1990* was the legislative vehicle by which the program was introduced. It came into effect on 3 April 1991.

In 1990 I was the Manager, Planning and Development in the Community Corrections Directorate of the then WA Department of Corrective Services. In that capacity I was assigned to set up the home detention program, establish its operational processes including electronic monitoring, and oversee its implementation. In this role and subsequently as Director of Community Corrections from 1994 to 2001, I accumulated a total of eleven years of home detention management experience in WA. During that time about 4,000 offenders went through the program, the vast majority being back end offenders.

In September 2001 I took up my current appointment as Director Community Correctional Services in Victoria, where legislation to establish a home detention program (the *Corrections and Sentencing Acts (Home Detention) Act 2003* became operative on 1 January 2004. It is administered by Community Correctional Services. A summary overview of the

program is attached for the information of the Inquiry. Home detention is both a front end sentencing option and a back end release option in this state. The newness of the program in this state precludes analysis of its impact.

Home detention as a back-end option has some shared features between Western Australia and Victoria, but there are other features unique to each. It is not appropriate for me to comment on policy determinants of differences in approach between the two states, but I am well placed to comment on the respective operational management regimes. It should however be noted that Western Australia no longer has a back-end home detention program per se, having replaced it with other options embodied in the *Sentence Administration Act 2003*. These new options, in combination with the abolition of prison sentences of six months or less, and the introduction of CEO-approved parole for shorter sentences meant that the need for home detention was no longer deemed necessary. Some features of home detention, including provision for curfew and electronic monitoring, have been incorporated into other forms of supervision order.

No longer having direct access to some Western Australian source material, this submission is necessarily based in part on memory of events there rather than precise statistical data. However, this submission has been reviewed by the W.A Department of Justice and its suggested minor amendments have been incorporated. An overview of the WA program written by the author of this submission was published in Western Australia in 1991 and a copy is attached. It is descriptive rather than analytical, but may be of interest.

### 3. TERM OF REFERENCE (A) – THE PERCEIVED BENEFITS AND DISADVANTAGES OF BACK-END HOME DETENTION

The public debate in Australia and abroad about the relative benefits and disadvantages of home detention as a back-end option tends to focus on the same issues. Amongst the more common criticisms of home detention are:

- The community's right to expect that offenders who merit a sentence of imprisonment should serve that sentence in custody, rather than in the home. (This traverses issues covered by the Inquiry's third term of reference in relation to truth in sentencing);
- Arguments that the home becomes a de facto place of incarceration for all residents, with detrimental impact on their ability to go about their lives without intrusion by the state;
- Concerns that consent given by other co-residents for their residence to be used as a place of home detention may involve elements of coercion or implied coercion by the offender;
- The supposed potential for heightened risk of family and domestic violence;
- The paradox that while eligibility for home detention is most often restricted to low risk or non-violent offenders, the management regime is more intensive than the post-release supervision applied to many more serious offenders ineligible for home detention;
- That in those systems where the releasing decision is made by correctional administrators rather than by an independent authority, transparency of process is compromised, and public confidence eroded.
- Electronic monitoring provides a false sense of security in that it can only confirm whether an offender is at home, but not guarantee that curfew will be observed.



Proponents of home detention as a back-end option argue that:

- The contemporary international evidence on what works in corrections points to the value of strong transitional programs to ease the passage from prison back into the community, and that home detention meets this criterion;
- The intensity of monitoring and supervision ensures that home detention is not experienced as a soft option by program participants, and that the rapid response capacity built into most home detention management systems provides good community safeguards;
- The breadth of collateral contacts with offenders' families, employers and significant others offers a better framework for effective case management than most other forms of supervision;
- Home detention can offer a graduated regime of monitoring and supervision which provides good incentives to offenders to cooperate.
- Claims of real or implied coercion by offenders upon families to consent to a home detention application are no more or less true than for any other form of supervised release (eg work release, parole, release on licence, etc).
- Electronic surveillance is a positive adjunct to case management and should not be wrongly seen as representing either the totality of the home detention program or its centrepiece.
- Completion rates for home detention as a back end option compare favourably or more than favourably with other forms of offender supervision.

In the experience of the writer, any public perceptions of home detention as a soft option are not matched by the attitudes or reported experience of offenders. A noticeable feature of the back-end home detention in Western Australia was the proportion of eligible offenders who elected not to apply. When the back-end home detention program in Western Australia was replaced by other release options last year, I recall a Justice Department statement which referred to a statistic that in excess of 40% eligible prisoners did not apply. Unfortunately, I am not still able to cite the source document for that figure. It accords with my impressions formed from personal experience.

Verbal feedback from prison officers and home detention staff in W.A often commented on prisoners' perceptions that home detention was much more demanding and intrusive than the routine in a minimum security prison. Anecdotal evidence frequently came to light that eligible prisoners who were not confident of their capacity for compliance would choose to stay in prison in order to be free of home detention's strict obligations and the attendant consequences of failure. This creates a dilemma: while the tough reputation of home detention with many offenders could assuage public perceptions to the contrary, that message appears either to have not reached its critics, or not to have been accepted. On the other hand, if offenders are deterred from applying, there may be somewhat limited application as a back-end diversion option. As a subjective view, the primary strength of back-end home detention is as a component of a structured prison to community transition continuum. More will be said about this under the next term of reference.

In relation to the impact of home detention on domestic stress as a result of the intensive surveillance and curfew regime, the literature provides mixed but mostly positive responses from participants and their sponsors. In 2001 Gibbs and King (see reference list attached) undertook research into the impact of home detention on offenders and their families in New Zealand, and interviewed other stakeholders, notably probation officers and prison board

members. A copy of their report can be made available to the Inquiry. The sample size of 21 offenders and 21 sponsors was relatively small but is consistent with other known findings, and my own experience.

In essence, Gibbs and King reported that...*“Sponsors and detainees were overwhelmingly positive about the concept of home detention.”* Positive benefits noted by detainees including greater self-discipline, access to courses and training, and having a reasonably good social support system. Offender completion rates were high and initial reconviction data for the first year indicated a reasonably low reconviction rate.

*“Overall, detainees resented little about home detention program, 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.”*

Gibbs and King acknowledged that in many ways sponsors were serving the sentence alongside the detainees and it placed extra responsibilities on them. They also acknowledged the existence of stress and tensions brought on by home detention, and some resentment at the surveillance and supervision expectations, but concluded that the first 18 months of the program could be viewed as a relative success, *“bar a few concerns with equipment and some negative impacts on families or sponsors”*.

Despite the qualifications, specific benefits quoted in the report included:

- It was particularly favourable with families, because it promoted family cohesion and meant fewer visits to prison;
- There was a consensus amongst detainees and their families that home detention was an effective deterrent to not committing further offences while subject to it; (greater caution was evident in their views about the longer term impact on re-offending);
- Even the sponsors and detainees who failed to get through the orders decided that in a different home situation with more supportive relationships, they would prefer home detention as a sentencing alternative to prison.

A study by Dodgson and others in the United Kingdom in 2001 also reported positive net benefits for families from home detention. The majority of respondents indicated that home detention made little difference to their relationship with the offender, but 25% stated that the relationship improved and only 4% said it deteriorated. Adverse impacts on time available for recreational activities were reported by some respondents, but overall, the report concluded that the home detention program in the UK had a neutral to slightly positive effect on relationships.

In their report, Gibbs and King also cited a British Columbian study involving 27 home detainees and their 27 spouses. Its conclusions mirrored those of New Zealand. Despite the not unexpected reference to additional stress on sponsors, none of these reports suggest or adduce evidence of a correlation between home detention and the incidence of family or domestic violence. This has always been a core concern of critics of the program. I am also unaware from operational experience of any claims or evidence that home detention intrinsically increases the rate of actual or threatened violence against family members. It is

considered that the combination of adequate screening criteria and appropriately trained staff can be effective tools in minimising such risk exposures.

In Victoria, training for staff at the Home Detention Unit (HDU) includes a number of modules on domestic and family violence issues delivered by relevant professional agencies. A number of additional strategies have also been implemented to enhance inter-agency communications. These include:

- establishment of a family violence working party to advise on training needs and program development issues;
- establishment of on-going formal consultations between the HDU and key family violence agencies;
- protocols established between the HDU and the Department of Human Services Child Protection Service.

First-generation electronic monitoring equipment was also often a source of domestic stress for families of home detainees, but due to technological advances, this should no longer be a problem. Passive electronic monitoring, which was widely used formerly, has now been phased out in most jurisdictions. It has almost totally been replaced by radio frequency monitoring (otherwise known as active monitoring). Passive monitoring systems generate random telephone calls to the detainee from a central computer, causing many families annoyance and inconvenience, particularly at late night hours. Radio frequency monitoring eliminates this problem because the offender wears a bracelet or anklet which sends a continuous signal provided he/she remains in range of a transmitter attached to the home telephone. Incoming telephone calls are thereby obviated.

The public debate about the merits of home detention tends to treat it as a generic program, when in reality its several different forms each have different strengths and challenges. In Victoria some of the quoted media examples of conspicuous failures in home detention in other states originated in Western Australia and were known to me. All were failures of persons on home detention as a condition of bail, which I would regard as the most complex and difficult of the home detention variants in existence. Home detention as a form of back-end prison release avoids at least some of the difficulties that its bail home detention counterpart must engage. From personal experience, these include:

- Where home detention was offered as a condition of bail it applied to defendants who would otherwise be remanded in custody. The profile of bail home detainees was such that many of them would not have met the stringent eligibility or screening criteria for home detention as a back end option;
- For offenders released on home detention from prison, the period of the home detention order was known from the outset, whereas for persons on bail it could extend indefinitely depending on the time taken for charges to go to trial. The uncertainty facing home detainees on bail was a compounding stress factor not shared by those released from prison. As a corollary, the supervision regime for back-end home detainees could be tailored to offer incentives for cooperation as the order progressed, whereas it was more difficult to offer a graduated regime for someone with an unknown end date;

- Prolonged remand under home detention as a condition of bail was often accompanied by increasing anxiety that a period of compliant home detention might not be reflected in any sentence imposed if there was an eventual conviction;

Although this Inquiry is not concerned about forms of home detention other than back-end prison release, it is important that clear distinctions are made between them, in order to avoid conclusions which can otherwise be erroneously drawn.

I am aware of a press report dated 21 June 2004 from the Dominion Post in Wellington, NZ alleging amongst other things that the New Zealand department administering the home detention program could not access figures on how many detainees were convicted of further offences while on the program. It implied anecdotally that re-offending was widespread. In fact, published re-offending rates for New Zealand are readily available. New Zealand correctional statistics for 2001-02 indicated a follow-up re-imprisonment rate after 12 months of 7.1% for home detainees compared to 19.8% for all offenders released from minimum security imprisonment. (NZ Department of Corrections, Annual Report 1 July 2001 to 30 June 2002 p34). The following year, the home detention re-imprisonment rate was higher (12.1%), but compared to a generally higher overall re-imprisonment rate in 2002-03 (29%), the relativities between the two rates remained similar. (NZ Department of Corrections Annual Report 1 July 2002 to 30 June 2003 p37).

In Western Australia the preponderance of home detention breaches was attributable to non-compliance with conditions (eg curfew violation, or visits to an unauthorised place during an approved or mandatory absence from the residence) rather than to re-offending, whether of a violent nature or not. In 1994 a review of 114 breaches of home detention was undertaken by type and circumstance of failure to comply. In that review, 109 of the 114 breaches were caused by non-observance of order conditions, rather than the commission of new offences.

Throughout the period in which I was responsible for home detention in WA, successful order completion rates for back-end home detention were consistently in the mid to upper 80% region. There was some year-to-year variation in the proportion of failures due to re-offending versus non-compliance with conditions, but the latter usually comprised between 70% and 90% of cases where the order was not completed. Measured by completion rates, home detention compared more than favourably with all other supervision order types, although the figures may have been influenced by the fact that the maximum length of a back-end home detention order was only four months. Order completion rates are in part a product of their length, although the profile of home detention and its intensive management regime possibly also meant higher than usual levels of vigilance in responding to non-compliance of any kind.

Although the successes of home detention greatly outweigh the failures, it is an emotive topic and public scrutiny will attach more to the latter than the former. Home detention is clearly not immune from failure, but as with all forms of offender interventions, it is a form of risk management. An intrinsic part of the risk calculus must be not only whether the assessment and management systems are robust. It must also take into account the relative risks, benefits and costs of making a home detention release decision in comparison to other available options. Offenders released on completion of sentence without supervision will not elicit public interest if they subsequently re-offend, regardless of whether the risk to the community is greater if no post-release support or supervision is offered.

As a personal reflection, back-end home detention does have a legitimate place in the offender management spectrum. Some of its alleged shortcomings are misperceived, but most others can be addressed through clarity of purpose and integrity of process. Its relationship to other external leave programs or to other post-release offender management orders is taken up in the following section.

#### 4. TERM OF REFERENCE (B) – THE RELATIONSHIP BETWEEN BACK-END HOME DETENTION AND EXISTING EXTERNAL LEAVE PROGRAMS

This term of reference has been taken to include the relationship to all other forms of post-release supervision and not only to prison leave programs.

The Western Australian and Victorian back-end home detention systems provide a study in contrast between two quite different approaches. In Western Australia, the back-end home detention program was only available to offenders who received a prison sentence (or aggregate prison sentence) of less than one year. Eligibility for home detention occurred after the prisoner had served the longer of:

- (i) One month of the term or aggregate; or
- (ii) One third of the term or the aggregate

In addition, the legislation required that the offender was not eligible to be considered for release on parole. In consequence, the longest period that could be served on home detention as a back-end option was four months. The construction of the eligibility criteria also precluded a home detention order being issued as a prelude to work release from prison. It was therefore a completely stand-alone sentence with no relationship to any other form of early release or post-release option.

The WA legislation responded to an environment in the late 1980's and early 1990's where the prison population was growing but of which a significant proportion was incarcerated for relatively short sentences. The legislation establishing home detention aimed to provide an administrative early release mechanism for certain low-risk prisoners, but under stringent conditions of curfew and supervision.

In retrospect, it might be seen as anomalous that offenders not posing a serious threat to the community could be released under a regime much more intrusive than offenders released to parole would be required to undergo. This paradox was explained in terms of the need to ensure the public credibility of home detention, so that it could not be criticised as simply an expedient administrative means of managing growing prisoner numbers.

In Victoria, home detention as a back-end option is available for up to six months for those who have served at least 2/3rds of their sentence, are eligible for release or parole in six months or less and are deemed both eligible and suitable according to program criteria.

In both states, a central aim of home detention was/is to strengthen the transitional process from prison back into the community, although the structural differences of the two programs have important implications for case management strategies. In Western Australia, where the maximum length of a back-end home detention order could not exceed four months, and where the average order length tended to be between two and three months, the potential for

referral to personal development or skills building programs was severely curtailed. Even if referrals were made promptly and coincided with program commencement dates (which in itself was unlikely), the short period of home detention thereafter would mostly preclude program participation. Adding to the difficulty was that the successful completion of home detention marked the end of the sentence, since home detention was not able to be used as a prelude to other forms of supervision. In other words there was no mechanism by which a program, once started, could be seen through to completion under supervision if the home detention order expired in the meantime.

In Victoria, back-end home detention program can apply for up to six months before eligibility for discharge to freedom or parole. Although this is not dramatically longer than the four months maximum in Western Australia, the scope for it to segue into parole arguably fortifies the use of home detention as a transitional process from prison back into the community. Where a specific program is identified as a desirable part of the individual case management plan, it is more feasible that participation will be achievable.

Regardless of whether back-end home detention is a stand-alone option or is linked in sequence to other orders, a question often posed is whether it has diminishing utility beyond a certain threshold period of time under curfew. There is a diversity of opinion, but reliable research evidence is in shorter supply. From personal experience, it is believed that although offenders and families find home detention tough, if they are given adequate advance preparation and there is a known end date in sight, they can cope with periods of up to several months. This can be enhanced if it is possible to offer graduated incentives once offenders have demonstrated their capacity and willingness to comply. Authorised absences for approved family recreation after an initial qualifying period are one means of motivation for home detainees to cooperate and assistance to their families to cope.

Linking back-end home detention to other leave or post-release programs can create additional complexity in program structure. If it is a prelude to other orders, the system has to be designed to ensure compatible program criteria and smooth passage from one order to the other. For example, if a home detainee responds satisfactorily but for any reason has the next stage of the release program (whether parole or some other option) deferred, this can cause considerable practical problems for what to do in those circumstances. This suggests that if home detention has a defined relationship to other types of prison leave or release, there should be a uniform or at least consistent management process that guarantees orderly passage through the system. Placing all of the relevant release decisions in the hands of one authority is seen as the simplest means of achieving this end.

#### 5. TERM OF REFERENCE (C) – THE IMPACT OF BACK-END HOME DETENTION ON THE PRINCIPLE OF TRUTH-IN-SENTENCING

The relationship between back-end home detention and the principle of truth-in-sentencing is principally a matter of legal debate rather than susceptible to operational argument. To the extent that the question has operational ramifications, home detention management regimes tend to seek public acceptance through more stringent surveillance than for other forms of community-based offender supervision. Electronic monitoring may be accompanied by ancillary home visits, random testing for alcohol and/or other substance use, and contacts with other significant figures such as employers during the course of the home detention order. This leads some critics to point to an apparent lack of congruence between strict

selection criteria that aim to exclude high-risk offenders, and supervision levels for successful applicants which exceed those for most high-risk offenders. Heightened levels of monitoring are also more likely to produce evidence at some point of non-compliance, regardless of how minor in nature. In turn, that can draw further unfavourable conclusions about the success of the program.

The resolution of these questions is seen to belong in the policy arena. Accordingly, they are mentioned for the consideration of the Inquiry at its discretion, but not further developed.

#### 6. TERM OF REFERENCE (D) – THE APPROPRIATE AUTHORITY TO DETERMINE WHETHER AN OFFENDER MAY PROCEED TO BACK-END HOME DETENTION

As with the preceding term of reference, the answer to this question is one for policy rather than operational determination. At the same time, The Victorian and Western Australian back-end home detention programs offer a case study of two different approaches.

In Western Australia, back-end home detention was subject to the approval of the Chief Executive Officer, although in practice it was delegated to operational managers. Upon reception into the prison system, the Information/Records officer was required to complete a standardised form which assessed the prisoner's eligibility for home detention against the legislated eligibility criteria. The officer was then obliged to notify the prisoner in writing of his/her eligibility.

An application by a prisoner for home detention was subject to screening in the first instance by the assistant superintendent of the institution. If it satisfied all criteria, it would then be referred to the community corrections centre nearest the proposed place of residence for further assessment and recommendation by a community corrections officer. It was then the responsibility of the centre manager to review the report, together with the prison report, and to make a final determination. In the event that the application was successful, the centre manager was authorised to issue the home detention order.

For the first few years that the home detention program was in operation, a centralised home detention unit existed, but this was decentralised in the latter part of the 1990's. The electronic monitoring unit was the only component of the system that remained centralised.

In the event of a breach of the order, the centre manager had the power to:

- Take no action;
- Reprimand the prisoner;
- Amend, revoke or impose any further conditions of the order;
- Order loss or deferral of privileges (eg authorised absence from the residence for an approved purpose);
- Suspend the home detention order;
- Cancel the order.

Given that back-end home detention was not available to any offender whose sentence made provision for work release or parole, and that the Parole Board did not have any full time membership, it was considered that this system would allow both for effective enforcement and rapid response in the event of non-compliance.



In contrast to Western Australia, the Adult Parole Board in Victoria determines release on back-end home detention and adjudicates all breaches. The process is described in the attached Home Detention Program Overview. The writer was not in Victoria when the draft legislation was first prepared, but it is understood that the principle of transparency was thought to be better served when an independent authority was the final adjudicator of release and breach. Secondly, because of the relationship between back-end home detention and parole as described earlier in this submission, it made practical sense to have one authority oversee both systems. Finally, the structure of the Adult Parole Board in Victoria is conducive to immediate response in the event that a home detainee fails to comply, or places himself/herself or others at risk.

There was relatively little overt public criticism of the WA system of internal decision making, but it is considered that on balance there are safeguards for both system integrity and for the operator if the ultimate authority for decision making is vested in an independent authority. The desirability of consistency and of smooth transition between home detention and parole management processes sustains a strong case for one authority to oversee both.

#### 7. TERM OF REFERENCE (E) – THE CRITERIA FOR ELIGIBILITY FOR BACK-END HOME DETENTION

Although the Western Australian back-end home detention system excluded offenders eligible for parole or work release, whereas Victoria does not exclude parole-eligible prisoners, the two systems share many eligibility and assessment criteria. To the best of the writer's knowledge, other jurisdictions tend to use similar general criteria to examine suitability.

Reference has already been made to WA eligibility exclusions based on sentence details, and to the requirement for a specific proportion of the sentence to be served in custody. In addition, fine defaulters imprisoned in default of payment or non-completion of community work hours imposed in default were also eligible for back-end home detention. Full details of eligibility are included in the attached Policy Directive issued by the WA Department of Justice. Ordinarily, prisoner eligibility was dependent on a security rating not greater than minimum, and the following additional exclusions applied if the prisoner:

- Was an illegal immigrant and had overstayed a work visa;
- Had no legal residential status in Australia;
- Had a confirmed or definite statement of intent for extradition either interstate or overseas;
- Had a signed order for deportation or a definite statement of intent from the department administering the Migration Act;
- Was subject to any remand warrants for outstanding criminal charges for which bail had not been set.

Evidence of the willingness to cooperate of other people living at the proposed place of home detention was also essential. They were obliged to allow community corrections officers into their home at all times to check the whereabouts of the offender, and to accept telephone calls twenty four hours a day. In practice, the need was for the most part eliminated when radio frequency electronic monitoring replaced random computer generated telephone monitoring. Finally, there were penalty provisions at law for any persons who gave a false answer about



the prisoner's whereabouts. These requirements were discussed with co-residents as part of the eligibility assessment process.

In Victoria, back-end home detention targets those who, in addition to sentence eligibility criteria as already described:

- Are aged 18 or older;
- Have no history of sexual, violent or firearm charges;
- Have no history of drug charges related to commercial quantities;
- Have accommodation available that is assessed as suitable for placement
- Are assessed as low risk and have minimum security status
- Reside within prescribed geographical boundaries (presently, the Victorian program is a three year pilot confined to the Melbourne metropolitan area).

Home detention programs are faced with the dilemma that if criteria for eligibility are perceived as too liberal, the public credibility of the program can be undermined. On the other hand, to exclude offenders at some degree of risk who may need a structured transitional release program, invites criticism that program criteria are designed to achieve high completion rates rather than to assist offenders' reintegration in the community. In Victoria back-end home detention is still in its infancy, having commenced on 1 January this year. It will be subject to independent evaluation during its pilot period, but it is too early to foreshadow whether changes to criteria might be contemplated after the pilot period.

In common with Western Australia, the Victorian home detention scheme places heavy emphasis on the role and rights of co-residents. In this state, eligibility criteria include the necessity for adult co-residents to give their written permission for an offender to reside at the nominated address while on home detention.

#### 8. TERM OF REFERENCE (F) – THE EXPERIENCE OF OTHER JURISDICTIONS IN IMPLEMENTING BACK-END HOME DETENTION SCHEMES

A reasonably detailed account of the experiences of Western Australia and Victoria has already been outlined. Further references to literature-based reports from New Zealand, Canada, and the United Kingdom at pages 4-6 leave little need for other comment. The only other point to be made is that home detention is often wrongly imagined to be an electronic monitoring program. Home detention is first and foremost an offender management program that relies on the skills of its caseworkers to engage with offenders, their families and significant others to achieve positive behavioural outcomes. Not all jurisdictions use electronic monitoring to ensure curfew observance, but even where it is used, the electronic component is best understood as an important adjunct rather than the core of the program.

#### 9. TERM OF REFERENCE (G) – ANY OTHER RELATED MATTER

Looking into the future, a question which may assume an increasing focus is the use of other emerging technologies. Although the current generation of home detention electronic monitoring equipment is generally reliable and effective (in a very small and highly competitive market it would not otherwise survive) it is limited in its scope. It is a static monitoring device, which can verify the detainee's presence at an approved address but can not confirm his or her whereabouts in the event of absence from the home, whether

authorised or not. Drive-by monitoring can be useful if there is an authorised absence to attend a specific place at certain times, but if tracking of movements from one place to another is required, home detention monitoring equipment does not have this capacity.

A number of offender tracking systems now exist, but they have proven extremely expensive, cumbersome battery support systems have been a problem and reliability has not been assured, especially when offenders have gone indoors. These problems are steadily being overcome but manufacturers to date, all of whom are in the Northern Hemisphere, have not shown much interest in the high cost of making product available in this part of the world for relatively low volume throughputs.

Not all commentators agree that tracking has a place in home detention. Some argue that if such high intensity methods are necessary, then the suitability of an offender to be on home detention should be reconsidered. The question may be of more interest in relation to the tracking of other high profile offenders (eg certain categories of sexual offender) not on home detention. Although tracking may offer a different solution to a different problem, it is drawn to the attention of the Inquiry in case it wishes to consider the matter further.

If it would assist the Inquiry, I would be happy to amplify or clarify comments in this submission about experience in Western Australia or Victoria, or about home detention issues of a general nature.

David Daley  
Melbourne, Victoria

30 August 2004

#### REFERENCES

1. Corrections Victoria (2004): *Home Detention Program Overview*, (2004). Copy attached.
2. Department of Corrective Services, Western Australia. *Community Corrections Legislation Amendment Act 1990: An Overview* (1991). Copy attached
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# **Corrections Victoria**

## **Home Detention Pilot Program**

### **1 Home Detention Program Overview**

#### **1 Overall Aim**

To divert carefully selected non-violent, low risk offenders from prison and to assist with the integration of non-violent minimum security prisoners back into the community.

#### **2 Geographical Target Area**

Melbourne Metropolitan Area (approx. 25 km radius from G.P.O.)

#### **3 Target Group**

Offenders aged 18+ who:

- (i) have no history of sexual, violent or firearm charges
- (ii) have not been charged with stalking or breach of an Intervention Order
- (iii) have no history of drug charges related to commercial quantities
- (iv) have accommodation available that is assessed as suitable for placement
- (v) are assessed as low risk and have minimum security status
- (vi) reside within the geographical boundaries.

*Note: Meeting one or more of the target group criteria does not guarantee acceptance onto the Program. Acceptance depends upon suitability of the Program to the participant, participant agreement, possible risk of harm to self or others and seriousness of the crime.*

#### **4 PROGRAM PRINCIPLES**

Home Detention will incorporate the following principles into Program planning, ongoing service development and service delivery:

- address the risk of re-offending and promote prospects for integration of offenders
- at no time will the Program put any person, offender or otherwise, at deliberate risk through Program provision
- Home Detention endeavours to address any specific concerns the Court or Adult Parole Board may have concerning individual offenders
- services will incorporate a flexible and intensive approach according to the individual needs of the offender
- the Program provides individuals with information that is relevant to them

- offenders need to voluntarily commit to and accept the Program conditions in Order to ensure self-responsibility, relevance and effectiveness
- all service standards will be set in conjunction with Corrections Victoria Standards and be subject to monitoring and evaluation appropriately.
- engage as required with offenders' family and other support systems to enhance prospects for successful completion of Home Detention
- maintain credibility through the continuous monitoring of curfew compliance and the enforcement of other supervision conditions throughout the order.

## **5 Program Background**

### *5.1 Legislation*

In June 2003 Parliament enacted the Corrections and Sentencing Acts (Home Detention) Act 2003 enabling the Home Detention Program to commence on January 1<sup>st</sup> 2004. The Program will operate on a pilot basis for three years.

The legislation contains a Sunset Clause which will cause the Home Detention provisions to lapse after three years if the Parliament does not act to retain them.

### *5.2 Access to the Program*

Home Detention is available to offenders in two ways:

- Front End

A sentencing option for the courts to direct offenders deemed eligible by Program criteria to serve a term of imprisonment in the home for a period of up to 12 months.

- Back End

A pre-release mechanism for up to six months for those who have served at least 2/3rds of their sentence, who are eligible for release or parole in six months or less and are deemed eligible by Program criteria.

### *5.3 Evaluation*

The Program will appoint qualified and independent evaluators to evaluate Home Detention after two years operation to determine its success and recommend what improvements, if any, can be made to the Program.

## 6 *Program Components*

### 6.1 *Staffing*

- Home Detention will be staffed by a Manager, Administration support worker and nine CCO's to be named Home Detention Officers (HDO's).

Two of the HDO's will hold senior roles that will oversee operational targets such as overseeing staff coordination and practical management issues, ensuring that key performance indicators such as meeting report and assessment requirement timelines and reporting to Courts and the Adult Parole Board on offender management issues.

### 6.2 *Structure*

The Home Detention Program structure considers all aspects of the offender and addresses causal factors impacting upon offending behaviour. Such issues may include:

- peer group influence,
- lack of supports,
- lack of structure,
- poor problem solving abilities,
- financial difficulties,
- substance misuse,
- lack of connectedness to family and community.

Intervention is individually tailored and implemented for each offender to assist reintegration, address causal issues, build support links and encourage constructive use of leisure time.

Public safety is a paramount consideration of the Program. Where there are safety concerns, Home Detention will not be offered

### 6.3 *Assessment*

Upon request from the Court or Adult Parole Board for an assessment of Program suitability, the Home Detention Unit will aim to undertake a thorough and comprehensive assessment of the offender within 28 days. If exceptional circumstances require an extension of the assessment time, these shall be referred by the Home Detention Manager *to the* General Manager for approval. Protocols with relevant authorities (D.H.S, police etc) and support services (A & D services, etc) will be in place to enable timely contact and obtaining of information.

Home Detention staff will interview the offender and consult with proposed co-residents, DHS, DoJ systems and information, police, existing support services etc, in order to assess suitability of the Program to the individual. The outcome of the assessment will be a condensed report to the Court / Adult Parole Board either refusing or recommending Home Detention.

Each offender will undergo initial assessment in accordance with Director's Instructions to devise and present a suitable Program structure to the Court / APB.

The offender must voluntarily agree in writing to the undertakings and requirements of the Program; in all instances, the offender will be aware of what the Program requires of them prior to their acceptance. If the offender has refused or been assessed as not suitable for the Program, the court will receive a report detailing this.

Front End Home Detention reports will be distributed to the Director of Public Prosecutions or Police Prosecutor, offender, their legal representatives and the Court at the time of the relevant hearing. Legislation does not require the report is circulated to any of the above during the Back End process.

The report will include the following:

- assessment of the risk of re-offending presented by the offender,
- assessment of offender suitability to comply with order requirements,
- educational / training requirements as per assessment,
- social and personal issues to be addressed,
- core activities that will be accessed, eg: education, careers, recreation, personal development, community work,
- outline of agencies to be involved, family / other support available,
- monitoring measures.

#### *6.4 Offender Management Plans*

An initial Program activity will be to develop an Offender Management Plan (O.M.P.) that is particular to those people on a Home Detention Order. Each offender is assessed to identify and set individual working goals that are achievable, productive and work toward prevention of re-offending. O.M.P.'s will offer an opportunity to tighten the overall broad objectives outlined in the Program proposal. The onus will be upon the offender to identify needs for the realistic setting of productive goals. This is important in working toward behaviour change and self understanding.

#### *6.5 Undertakings*

Undertakings will be signed by the offender outlining their responsibilities, rights, commitments and agreement to adhering to all aspects of the Program. Breach procedures will be explained with written information provided. Co-residents will be provided with copies of all relevant information including breach procedures, monitoring measures and Program components. They will be required to provide written consent for the offender to co-reside whilst on the Order. Co-resident consent can be withdrawn at any time, where upon the offender would be required to leave the residence immediately. In this instance if suitable alternative accommodation is not obtained, the offender will be transferred to prison.

## 6.6 *Worker / Offender Contact*

High frequency contact with offenders will occur to ensure effective case management and curfew monitoring. Contacts will include:

- formal contacts with Home Detention staff,
- contacts with employers, program facilitators and service providers,
- monitoring of attendance at approved activities,  
eg: personal development sessions, employment attendance.

Appointments with staff will take place primarily in the offender's home at varying times ensuring that Order requirements are met.

## 6.7 *Co-resident Involvement*

Co-residents will be consulted and informed of the offender's possible Program participation. Written permission must be obtained from co-residents to allow an offender to co-reside with any others whilst on Home Detention. Whilst co-residents have no monitoring capacity or responsibilities, they are encouraged to support and assist the offender to meet the conditions of the Program. Support and appropriate referrals for co-residents will be made available as required to ensure that they receive continued support.

## 6.8 *Monitoring*

Monitoring of curfews is an integral part of the Home Detention Program. The following tools shall be utilised to assist staff to monitor curfews and conditions.

- **Electronic Monitoring**

The offender shall wear on their ankle or wrist an electronic 'bracelet' that transmits signals to equipment fitted in the home and mobile units carried by staff. This information alerts staff to incidents of non-compliance of curfew requirements.

- **Substance Testing**

Urinalysis testing and breathalysing will occur on a random basis according to individual identified need to ensure that the legislative requirement of illicit drug and alcohol abstinence is maintained.

- **Face to Face Contact**

Frequent and random face to face contact between offenders and staff will form the basis of intervention. In addition, other structured interviews will take place as required to give effect to the Offender Management Plan.

## 6.9 Core Components

Case workers will set goals which are relevant and appropriate *with* the offender. Regular reviews will take place involving the Manager to ensure that case management is relevant and focused. Case meetings and consultations will regularly occur with other service providers and the offender to ensure a consistent and coordinated approach to meeting the needs of the individual.

Protocols will be developed with several agencies to ensure that offenders can be provided with services that are identified as relevant to achieving goals set in the O.M.P.

Examples of core Program components are as follows:

### Education & Training:

- investigate training & education options where necessary
- support and monitor education & training attendance
- negotiate attendance rates where applicable
- advocate and negotiate support where necessary

### Employment:

- provide referral and assistance with access and attendance to employment and training opportunities
- assist in continuing current employment
- monitor attendance of any employment

### General Personal and Social Development:

- assess and refer to personal development services, eg: counselling, mental health services, drug and alcohol services
- incorporate individual and group sessions where suitable to enhance social skills, team work and problem solving abilities where applicable.
- advise and assist access to benefits and financial entitlement
- provide support with family / carers where required

### Accommodation:

- provision of family support and / or referral to keep the offender at home if suitable
- referral to alternative accommodation where required

## 6.10 Breach Procedures

A swift and decisive procedure will apply to the management of incidents of order breaches by offenders. The breach process will occur if the offender refuses any Program component or does not attend without legitimate reason. All offenders will receive written and verbal explanations of breach procedures. Breaches will be handled according to their seriousness and sanctioned by the Adult Parole Board. Options will be provided for initial



written and verbal warnings if the offender is, for example, five minutes late for curfew. If a repeat breach occurs of a less serious nature, a final written and verbal warning will be provided. At all times the breach and status shall be reported to the Adult Parole Board.

Consistent with legislation, instant program removal shall occur if the offender is involved in any of the following:

- Compromising safety and security of the community, any person residing with the offender or the offender's family,
- Involved that commissioning of another offence,
- Non-compliance with an order made under section 84 or 86(1),
- Reputed failure to comply with the conditions of the Order,
- Breach of a core condition.

## **7 PREMISES**

The Home Detention Unit is accommodated in a purpose fitted building that allows for adequate resources, size and easy access to metropolitan Melbourne. It operates as a business unit within Community Correctional Services. The unit is linked to regional management structures and support systems such as training coordinators, business service managers, etc. The location site will comply with relevant Occupational Health and Safety and Corrections Victoria standards.

## **8 CASE MANAGEMENT ALLOCATION**

Not more than 80 offenders will be on the program at any one time throughout the pilot period. Cases shall be allocated to one key worker across each shift. This will enable seamless service contact and case management across both shifts. Key workers will share the tasks involved in case managing their offenders by adhering to case management and planning process, organised workloads and clear communication lines. A Case worker will hold main responsibility for 10 cases, and act as a contact for cross shift worker's case load on their days off to address day to day monitoring and supervision. Cross over between shifts has been factored into the rolling shift roster to allow all staff members to meet once per week to discuss and coordinate offender cases.

## **9 EXIT STRATEGY**

As the Home Detention Program offers high frequency contact and support, it is acknowledged that referral and hand over to continuing support services is important at the end of the Order. An 'exit strategy' will be developed with each offender according to individual need including referral and introduction to other Programs and workers. The offender will be supported in their initial contact by Home Detention staff to ensure seamless service delivery.

## Home Detention

Home detention gives eligible prisoners the opportunity to serve the last part of their sentence while living in the community. The decision to allow home detention is based on the nature and circumstances of the offence that resulted in the prison term, the degree of risk a prisoner poses to the community, and the views of the people living at the residence where the home detention will be served.

A home detention order is still a prison sentence, and strict guidelines apply. A prisoner on home detention:

- Must undertake six hours community service work in each seven-day period if they are working full-time. If not in full-time employment, 12 hours of community work must be undertaken in each seven-day period;
- Must have a suitable place to live while the home detention order is in effect;
- Must not leave the designated places specified in the home detention order without permission from the community corrections officer. Permission will be granted for urgent medical or dental treatment, employment and vocational training and, obviously, in a life-threatening situation (such as fire) a prisoner is entitled to leave the designated premises; and
- May have to wear an electronic monitoring device, and have electronic monitoring equipment installed in the house where he or she is living.

The cooperation of the people living where the detention will be served is essential. They must be prepared to allow community corrections officials into their home at any time of the day or night to check on the whereabouts of the offender, and be prepared to accept telephone calls 24 hours a day to ensure the prisoner is at home. Giving a false answer when asked about the prisoner's whereabouts can result in a \$2000 fine or 12 months' imprisonment.

When the home detention period expires, there are no further obligations - except the return (in good working order) of any electronic monitoring equipment that may have been supplied during the home detention period.

### Contact Details

#### **Community & Juvenile Justice**

Community Justice Services  
12th Floor, Westralia Square  
141 St Georges Terrace, Perth 6000  
Telephone: (08) 9264 1373  
Facsimile: (08) 9264 1837  
[Contact Community & Juvenile Justice](#)

## POLICY DIRECTIVE

<b>Title:</b>	<b>HOME DETENTION</b>
<b>Authorised By:</b>	Director General, Department of Justice
<b>Departmental Policy Number:</b>	PD24
<b>Operative Date:</b>	14 May 2001
<b>Review Date:</b>	May 2002

### Contents

1. Context
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  4. Assessment of advice to the prisoner
  5. Application
  6. Recommendation of relevant community corrections centre manager and Director General's decision
  7. Release on home detention
  8. On release to home detention
  9. Non-compliance by home detainees
  10. If the prisoner is ill or otherwise unable to attend
  11. Prisons without an assistant superintendent
- 

### 1. Context

Section 59(1) of the Sentence Administration Act provides that certain prisoners may be released to Home Detention.

### 2. Purpose

Home Detention is a community supervision order that provides for the early release from custody to certain prisoners. Whilst on the order, the home detainee is required to remain under curfew at an approved place of residence. Permission may be given for the detainee to leave home for certain reasons, at specified times eg to go to work or to seek employment, for medical treatment etc. The detainee is also obliged to undertake unpaid community work.

Home detention seeks to provide a period of community supervision for short-term prisoners, that facilitates the development of family ties and provides for community reparation.

### 3. Eligibility Criteria

A prisoner is eligible for release on home detention if all the following conditions under are met.

- The prisoner is serving a term of imprisonment or aggregate terms of imprisonment (without regard to remission) of less than one year. Please note that time spent in custody while on remand for trial or awaiting sentence is not considered to form any part of the imprisonment qualifying period.
- Fine defaulters sentenced to imprisonment pursuant to section 59 of the Sentencing Act 1995 and section 53 of the Fines Penalties and Infringement Notices Enforcement Act 1994 are eligible to apply for home detention.
- The prisoner has served, without regard to remission:
  - one month of the term or the aggregate (as the case may be); or
  - one third of the term or the aggregate (as the case may be), whichever is the longer
- The prisoner is not entitled or eligible to be considered for release on parole.
- If the prisoner is a federal prisoner, that he/she is not subject to a recognizance release order.

In addition, a prisoner is eligible if his/her security rating is not greater than minimum, except that assessment should proceed if:

- The prisoner is only rated higher than minimum-security as a result of the Escape Legal Custody policy or the Drugs policy or,

[http://www.justice.wa.gov.au/portal/server.pt/gateway/PTARGS\\_0\\_2\\_323\\_201\\_0\\_43/http://justicecontent.extranet.justice.wa.gov.au/displayPage.asp?structureID=69243144&resourceID=24669160](http://www.justice.wa.gov.au/portal/server.pt/gateway/PTARGS_0_2_323_201_0_43/http://justicecontent.extranet.justice.wa.gov.au/displayPage.asp?structureID=69243144&resourceID=24669160)

- It is anticipated that a minimum-security rating is likely to be approved by the Director Sentence Management prior to the Director General's endorsement of the order.

A prisoner is **ineligible** if the following criteria apply.

The prisoner:

- is an illegal immigrant and has overstayed a work visa
- has no legal residential status in Australia
- has a confirmed or definite statement of intent for extradition either interstate or overseas
- has a signed order for deportation or a definite statement of intent from the Department administering the Migration Act
- is subject to any remand warrants for outstanding criminal charges for which bail has not been set

#### 4. Assessment and Advice to the Prisoner

- At the intake stage, the Information/Records Officer shall assess the prisoner's eligibility for home detention against the eligibility criteria outlined above by completing Section A of the "Home Detention Programme Eligibility" form.
- The Information/Records Officer shall notify the prisoner in writing of eligibility using the "Prisoner's Notification of Home Detention Eligibility" form.
- If eligible the Information/Records Officer shall attach a "Home Detention Application" form to the "Prisoner's Notification of Home Detention Eligibility" form.
- The Information/Records Officer shall place the form (Section A having been completed) and a photocopy of the "Prisoner's Notification of Home Detention Eligibility" on the prisoner's prison management file pending receipt of the prisoner's application.

#### 5. Application

- A prisoner wishing to apply for release on a home detention order shall apply to the assistant superintendent by completing a home detention application form which must include details of the prisoner's proposed residence for home detention, proposed employment and the need for any ongoing medical treatment.
- The prisoner should be made aware:
  - that approval for home detention is not automatic and that a sound application must be made;
  - of all the regulations, conditions and obligations he/she would be subject to under a home detention order and especially that if the order is cancelled they will be liable to serve the balance of their sentence in prison **without remission**,
  - that definite accommodation arrangements are essential;
  - that any full time employment arrangements must allow for the prisoner to devote 6 hours per week to community corrections activity. This would normally consist of 12 hours of community work each week or 6 hours if employed full time. This is likely to preclude employment which does not allow for home surveillance requirements (eg interstate truck driver);
  - that any prisoner not undertaking full time employment must allow for 12 hours per week on community corrections activity.
- The completed forms are sent to the Assistant Superintendent who endorses them accordingly.
- The assistant superintendent shall forward, to the Community Corrections Centre nearest the prisoner's proposed place of residence, the following documentation:
  - the prisoner's Home Detention Application form
  - the fully completed "Prisoner Home Detention Program Eligibility" form
  - warrant Summary Sheet endorsed as a correct statement of sentence dates
  - any other relevant documentation that may assist eg. current court history
  - The Assistant Superintendent shall retain a copy of the application documents.

#### 6. Recommendation of Relevant Community Corrections Centre Manager and Director General's Decision

[http://www.justice.wa.gov.au/portal/server.pt/gateway/PTARGS\\_0\\_2\\_323\\_201\\_0\\_43/http://justicecontent.extranet.justice.wa.gov.au/displayPage.asp?structureID=69243144&resourceID=24669160](http://www.justice.wa.gov.au/portal/server.pt/gateway/PTARGS_0_2_323_201_0_43/http://justicecontent.extranet.justice.wa.gov.au/displayPage.asp?structureID=69243144&resourceID=24669160)

- The Community Corrections Centre Manager shall ensure that a community corrections officer prepares an assessment and recommendation using the "Report of Suitability for Home Detention" form. The officer will also draft a home detention order, if applicable.
- The relevant community corrections centre manager shall review the community corrections Officer's report and recommendation plus the prison officer's report and make a final recommendation.

## **7. Release on Home Detention**

- The prisoner shall be given a copy of Condition of Home Detention form and must sign the written declaration in the Home Detention Order form prior to being released from prison to confirm that he/she understands the obligations of and the conditions imposed on the home detention order and undertakes to comply with them. Once the prisoner has signed the home detention order he/she is entitled to be released from prison on the date specified in the home detention order.
- If a prisoner incurs further charges which renders him/her ineligible for home detention, the home detention order may be rescinded.
- The prisoner shall be given one copy of the signed home detention order and the conditions.
- The original or a copy of the signed home detention order shall be forwarded to the Sentence Information Unit.

## **8. On Release to Home Detention**

Upon release from prison the prisoner shall go:

- directly to the relevant Community Corrections Centre indicated on the home detention order; or
- to a place as directed by the Community Corrections Officer.

## **9. Non-Compliance by Home Detainees**

- Where an prisoner on home detention fails to comply with the regulations, conditions or obligations of the home detention order, the supervising Community Corrections Officer shall submit a written report to the relevant community corrections centre manager.
- On receipt of the report submitted in accordance with the above, the relevant community corrections centre manager may:
  - take no action;
  - reprimand the prisoner.
  - amend, revoke or impose any further conditions of the order;
  - order loss or deferral of privileges;
  - suspend the home detention order,
  - cancel the home detention order.

**NOTE:** Cancellation of a home detention order will cause a prisoner to be returned to prison. The prisoner shall receive credit for the period of time spent on home detention in accordance with section 73 of the Sentence Administration Act. Once the order is cancelled, the prisoner is liable to resume serving the fixed term in custody and is not eligible to be released until he or she has served the whole of that term.

## **10. If the Prisoner is Ill or Otherwise Unable to Attend**

The prisoner must notify the Community Work Supervisor promptly and provide a medical certificate or confirmed explanation for inability to attend. The Community Work Supervisor must approve any reasons for non-attendance. Continued inability to attend may result in the home detention order being suspended and the prisoner returned to prison.

## **11. Prisons Without an Assistant Superintendent**

Where this policy directive contains a reference to Assistant Superintendent but there is no Assistant Superintendent position in the prison, the reference to the Assistant Superintendent shall also refer to the position responsible for prisoner management.

Furthermore, any reference to an assistant superintendent in this rule also refers to the position responsible for prisoner management at Acacia Prison.

## Home Detention

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- If eligible the Information/Records Officer shall attach a "Home Detention Application" form to the "Prisoner's Notification of Home Detention Eligibility" form.
- The Information/Records Officer shall place the form (Section A having been completed) and a photocopy of the "Prisoner's Notification of Home Detention Eligibility" on the prisoner's prison management file pending receipt of the prisoner's application.

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- A prisoner wishing to apply for release on a home detention order shall apply to the assistant superintendent by completing a home detention application form which must include details of the prisoner's proposed residence for home detention, proposed employment and the need for any ongoing medical treatment.
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  - The Assistant Superintendent shall retain a copy of the application documents.

#### 6. Recommendation of Relevant Community Corrections Centre Manager and Director General's Decision

[http://www.justice.wa.gov.au/portal/server.pt/gateway/PTARGS\\_0\\_2\\_323\\_201\\_0\\_43/http://justicecontent.extranet.justice.wa.gov.au/displayPage.asp?structureID=69243144&resourceID=24669160](http://www.justice.wa.gov.au/portal/server.pt/gateway/PTARGS_0_2_323_201_0_43/http://justicecontent.extranet.justice.wa.gov.au/displayPage.asp?structureID=69243144&resourceID=24669160)

- The Community Corrections Centre Manager shall ensure that a community corrections officer prepares an assessment and recommendation using the "Report of Suitability for Home Detention" form. The officer will also draft a home detention order, if applicable.
- The relevant community corrections centre manager shall review the community corrections Officer's report and recommendation plus the prison officer's report and make a final recommendation.

## **7. Release on Home Detention**

- The prisoner shall be given a copy of Condition of Home Detention form and must sign the written declaration in the Home Detention Order form prior to being released from prison to confirm that he/she understands the obligations of and the conditions imposed on the home detention order and undertakes to comply with them. Once the prisoner has signed the home detention order he/she is entitled to be released from prison on the date specified in the home detention order.
- If a prisoner incurs further charges which renders him/her ineligible for home detention, the home detention order may be rescinded.
- The prisoner shall be given one copy of the signed home detention order and the conditions.
- The original or a copy of the signed home detention order shall be forwarded to the Sentence Information Unit.

## **8. On Release to Home Detention**

Upon release from prison the prisoner shall go:

- directly to the relevant Community Corrections Centre indicated on the home detention order; or
- to a place as directed by the Community Corrections Officer.

## **9. Non-Compliance by Home Detainees**

- Where an prisoner on home detention fails to comply with the regulations, conditions or obligations of the home detention order, the supervising Community Corrections Officer shall submit a written report to the relevant community corrections centre manager.
- On receipt of the report submitted in accordance with the above, the relevant community corrections centre manager may:
  - take no action;
  - reprimand the prisoner.
  - amend, revoke or impose any further conditions of the order;
  - order loss or deferral of privileges;
  - suspend the home detention order,
  - cancel the home detention order.

**NOTE:** Cancellation of a home detention order will cause a prisoner to be returned to prison. The prisoner shall receive credit for the period of time spent on home detention in accordance with section 73 of the Sentence Administration Act. Once the order is cancelled, the prisoner is liable to resume serving the fixed term in custody and is not eligible to be released until he or she has served the whole of that term.

## **10. If the Prisoner is Ill or Otherwise Unable to Attend**

The prisoner must notify the Community Work Supervisor promptly and provide a medical certificate or confirmed explanation for inability to attend. The Community Work Supervisor must approve any reasons for non-attendance. Continued inability to attend may result in the home detention order being suspended and the prisoner returned to prison.

## **11. Prisons Without an Assistant Superintendent**

Where this policy directive contains a reference to Assistant Superintendent but there is no Assistant Superintendent position in the prison, the reference to the Assistant Superintendent shall also refer to the position responsible for prisoner management.

Furthermore, any reference to an assistant superintendent in this rule also refers to the position responsible for prisoner management at Acacia Prison.



DEPARTMENT OF CORRECTIVE SERVICES

COMMUNITY CORRECTIONS  
LEGISLATION  
AMENDMENT ACT 1990

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AN OVERVIEW

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# COMMUNITY CORRECTIONS LEGISLATION

## AMENDMENT ACT 1990

### Overview

The *Community Corrections Legislation Amendment Act 1990*, which takes effect on April 3, 1991 provides for:

- Amendment to the *Bail Act 1982* to enable a home detention condition to be imposed on a grant of bail.
- The renaming of the *Offenders Probation and Parole Act 1963* as the *Offenders Community Corrections Act 1963*, and the amendment of that Act to provide for home detention orders.
- The repeal of the *Community Corrections Centres Act 1988* and the incorporation of its provisions within the *Offenders Community Corrections Act*.
- The repeal of redundant provisions in the *Offenders Probation and Parole Act* relating to probation orders made in another State or Territory.

The Home Detention programme covers two distinct categories of participant:

- Home detention is an option which may be imposed as a condition of bail, when a person would otherwise be remanded in custody.
- It provides for the release of certain offenders who are subject to prison sentences of less than twelve months and who have served at least one month, or one third of the sentence, whichever is the longer.

In both cases, participants are subject to a home curfew at all times, except for authorised absences at approved times, and under carefully circumscribed conditions. Authorised absences from home may be granted for purposes such as employment or the seeking of employment, to attend a Community Corrections programme, to seek urgent medical attention, or for other purposes as directed or permitted by a Community Corrections Officer.

Random monitoring of compliance with home detention conditions is an essential feature and may occur at any time. Surveillance makes use of a variety of methods including personal contact through home visiting or by telephone, and electronic monitoring. The latter may involve selected participants wearing a wristlet or other similar device capable of confirming that the wearer is at home during curfew periods.

Non-compliance with the requirements of home detention renders the participant liable to immediate termination of involvement in the programme. The procedures are:

- In the case of a person on home detention as a condition of a bail undertaking, the Executive Director of the Department of Corrective Services may, in his absolute discretion revoke the bail. The effect of such a decision would result in the arrest of the defendant to be brought before the appropriate Court. The Court may then remand the defendant in custody to appear at the time and place specified, or grant fresh bail in accordance with the *Bail Act*.
- Where a prisoner under a home detention order fails to comply with the requirements, the Executive Director may cancel or suspend the order. The original warrant of commitment or other authority for the prisoner's imprisonment would again take effect.

### **The Concept of Home Detention**

Home detention programmes (or closely related variants) are now operating in the majority of American States, as well as South Australia, Queensland and the Northern Territory in this country. Several other countries are committed to introducing home detention programmes or are evaluating the concept.

Home detention programmes are currently in use around the world as:

- a condition of bail when a person would otherwise be remanded in prison
- a Court ordered disposition in conjunction with a suspended prison sentence
- a pre-release transitional programme
- a condition of parole for prisoners for whom parole would not otherwise be granted.
- a special condition of diverse forms of community based supervision order.

The objectives of individual home detention programmes vary but they each emphasize some or all of the following:

- To reduce the rate of imprisonment by diverting appropriate defendants from remand in custody.
- To provide an appropriate alternative penalty for certain offenders who would otherwise be sentenced to imprisonment.
- To enable the home detainee to remain in the community and maintain family support and/or employment.
- To protect the community by the imposition of a rigorously enforced supervision regime.

### Home Detention as a Condition of Bail in W.A.

Amendments to the *Bail Act* embodied within the *Community Corrections Legislation Amendment Act*, provide that a court which is considering home detention as a condition of bail must obtain a report from a Community Corrections Officer as to the defendant's suitability [See Section 24A(2)]. Such a report must be supplied as soon as is practicable and will address the availability and suitability of the nominated place of residence, in addition to the defendant's own suitability. The informed consent of other occupants of the proposed home detention address to co-operate with the programme will be another important element, given its very intensive nature.

A Court must be satisfied that unless a home detention condition is imposed, the defendant would not be released on bail. [Part D of the Schedule to the *Bail Act*, Clause 3(2)(c)]. This is to avoid the risk of so-called "net widening" by preventing the release of defendants to bail under home detention, where the Court would otherwise have released the defendant to bail on less stringent bail conditions. To be eligible for home detention as a condition of bail, a defendant must also be 17 years of age or older. [Part D of the Schedule, Clause 3(2)].

The definition of "home" for purposes of the programme, will not be confined to any particular kind of dwelling unit. It may be any place (for example, a hostel or Aboriginal Community) provided that suitability criteria are met, and the defendant's compliance with home detention can be adequately monitored.

#### *Authorised Absence from Approved Residence*

A defendant released on home detention as a condition of bail may leave the place specified in the bail undertaking only for those purposes laid down in Part D of the Schedule to the *Bail Act*. These are:

- (i) to work in gainful employment approved by a Community Corrections Officer.
- (ii) with the approval of a Community Corrections Officer, to seek gainful employment.
- (iii) to obtain urgent medical or dental treatment.
- (iv) for the purpose of averting or minimizing a serious risk of death or injury to the defendant or to another person.
- (v) to obey an order issued under a written law (such as a summons) requiring the defendant's presence elsewhere;
- (vi) for a purpose approved of by a Community Corrections Officer; or
- (vii) on the direction of a Community Corrections Officer.

In addition to the foregoing the defendant must not leave the State and must comply with every reasonable direction of a Community Corrections officer, and with any conditions which apply to the home detention condition.

There is provision for the restriction of alcohol or other restrictions on a home detention condition of bail, and for requiring a defendant to undergo testing for alcohol or drug use.

However, defendants under a home detention bail condition do not have to be prohibited in all cases from consuming alcohol or from driving a motor vehicle if qualified to do so.

For the purpose of checking whether a defendant is complying with a home detention condition, a Community Corrections Officer may at any time enter or telephone the defendant's place of residence, employment or any other place where the defendant is permitted or required to attend. (Section 50C(2) of the *Bail Act*). A Community Corrections Officer may give such directions to a defendant as are necessary for proper administration of the home detention condition, including:-

- When the defendant may leave the place where he/she is required by the home detention condition to remain.
- The period of any authorised absence.
- The method of travel to be used by the defendant.
- The manner in which the defendant shall report his/her whereabouts.

Any member of the Police Force is empowered (Section 50D) to require the defendant to produce a copy of the bail undertaking for inspection and to explain his/her absence from the approved place of residence.

### ***Revocation of Bail***

The Executive Director of the Department of Corrective Services may, in his absolute discretion, revoke bail and issue a warrant directed to all members of the Police Force to have the defendant arrested and brought before the appropriate court. The Court may then remand the defendant in custody to appear at the time and place specified, or grant fresh bail in accordance with the *Bail Act*.

Consistent with existing provisions of the *Bail Act* (Section 48) a surety may also apply to a court for cancellation of his undertaking in respect of any defendant released to bail on a home detention condition. Likewise, a police officer who has reasonable cause to believe that the defendant is not likely to comply with his bail undertaking or is, has been, or is likely to be in breach of any condition of his undertaking, may also cause the defendant to appear before the appropriate judicial officer. Section 54(a)(iii) specifically provides for such action in relation to a defendant subject to a home detention condition on the bail undertaking. If the Court is satisfied that a breach has occurred, or is likely to occur, or that the defendant is not likely to comply with a requirement of his undertaking, it may revoke bail and either remand the defendant in custody, or grant fresh bail, subject to the *Bail Act*. These powers ensure that any defendant whose behaviour on home detention is unacceptable or who is perceived to present a serious risk, is subject to prompt and appropriate action.

### ***Lifting of Home Detention Condition***

It will be open to defendants on bail to apply to a Court for the lifting of the home detention condition after a period of one month or more since the previous occasion on which the case for bail was considered. (Clause 4(c) of Part B of the Schedule to the *Bail Act*). This is consistent with existing provisions of the *Bail Act* which set down circumstances under which a judicial officer may vary the terms or conditions of bail upon application by the defendant.



## Home Detention for Sentenced Prisoners

The Home Detention eligibility criteria as they apply to sentenced prisoners require (Section 50A(2) of the *Offenders Community Corrections Act*) that -

- (a) The prisoner is serving a term of imprisonment, or an aggregate of terms of imprisonment (without regard to remission) of less than one year;
- (b) The prisoner has served -
  - (i) One month of the term or aggregate (as the case may be); or
  - (ii) One third of the term or the aggregate (as the case may be),
 whichever is the longer.
- (c) The prisoner is not entitled to be released from prison on parole; and
- (d) the prisoner is not eligible to be considered for release on parole.

Subject to these eligibility criteria, the Executive Director of the Department of Corrective Services may order in writing that a prisoner be released on home detention, and may impose conditions on that order. In practice, all prisoners whose sentence makes them eligible for home detention will be given an information pamphlet soon after their reception into prison, and those who seek inclusion in the programme will lodge a brief written application. In determining whether to issue a home detention order, the Executive Director must have regard to the nature and circumstances of the offence or offences for which the prisoner is imprisoned, the risk to the security of the public that the prisoner's release would impose, and the views of other people residing at the place where the prisoner proposes to remain under the home detention order. [Section 50(A)(3)].

Prison staff and Community Corrections officers will scrutinise and investigate all aspects of the prisoner's application including his community support, past offence record, response patterns to any previous community based supervision orders, and any other matters likely to bear upon the likelihood of compliance. A prisoner may only be released on home detention after signing a declaration that he/she understands the obligations and conditions of the home detention order and undertakes to comply with them. A prisoner released on home detention will be subject to the same remission of sentence as applies to other prisoners under section 29 of the *Prisons Act*. In effect, this means that the maximum period for which a prisoner may be released on home detention will be four months.

### *The Supervision Regime*

Once released to home detention, prisoners will face the same restrictions on their movement away from the approved place of residence as will defendants on bail. The same powers as provided under the *Bail Act* will also be conferred upon Community Correction Officers to ascertain whether the prisoner is complying with the home detention order, and to issue directions about the time, purpose, destination, and method of travel of any authorised absence from home. However, unlike defendants subject to a home detention condition under the *Bail Act*, prisoners on home detention will also be required to attend a community corrections centre programme.

This will entail eight hours per week of unpaid community work or personal development activities for offenders in full time employment, and 12 hours per week for offenders not in full time employment.

There is provision for the restriction of alcohol or other restrictions in a home detention order and for requiring an offender to undergo testing for alcohol or drug use. However, offenders under home detention will not be prohibited in all cases from consuming alcohol or from driving a motor vehicle if qualified to do so.

Where a prisoner has been released on a home detention order, the Executive Director may at his absolute discretion, and by notice in writing to the prisoner, substitute a different place for the place where the prisoner is required by the home detention order to remain; he may also amend, revoke or impose further conditions on the order (Section 50C).

### *Cancellation of Home Detention*

In his absolute discretion, the Executive Director, Department of Corrective Services may cancel or suspend the order (Section 50E). In these circumstances the original warrant of commitment or other authority for the prisoner's imprisonment will again be in force. In the case of cancellation of the order, or suspension followed by subsequent cancellation, no credit would be extended to the prisoner for the time served on home detention prior to the cancellation. The prisoner would thus be liable to serve the full unexpired portion of his sentence as at the date of his release on home detention, less any remissions applicable under section 29 of the Prisons Act. This emphasises the intention that home detention will be a tough alternative to imprisonment, and will clearly signal to all participants the high standard of performance required.

Where a home detention order is suspended, but not subsequently cancelled, credit would be given for the period completed under the order. This provides a degree of flexibility, particularly in cases where the order is suspended for administrative rather than disciplinary reasons. Such an event could arise, for example, when for reasons beyond the offender's control the approved place of accommodation ceased to be available. There will be occasions when, pending the making of new arrangements, there is no alternative than to return the offender to custody. If a prisoner has been released on a home detention order, his sentence is deemed to be served if the order is not cancelled, and the offender satisfactorily completes the performance of its conditions and obligations.

The rules of natural justice will not apply to any act, omission or decision by the chief executive officer, either in respect to defendants released on home detention as a condition of bail, or to offenders released from prison on home detention. This provision reflects the status of home detention as a privilege, and is consistent with the provisions of the community based work release programme.

## **Other Provisions of the Community Corrections Legislation Amendment Act**

### **Repeal of the *Community Corrections Centres Act 1988*.**

The *Community Corrections Centres Act 1988* provided for the establishment of Community Corrections Centres and their management. These management provisions will also apply to home detention orders. It is therefore appropriate to draw together the management of all community corrections centre orders - home detention, community based work release, and work and development orders - under the umbrella of one comprehensive piece of legislation. Accordingly, the *Community Corrections Centres Act* is repealed, and all of its essential features are incorporated in the *Offenders Community Corrections Act* (particularly Parts 1B and 1C of the Act).

Community corrections centres are the focal point for the organisation of activity and developmental programmes for offenders. The Executive Director is authorised to approve such programmes which may include, but are not restricted to the following: Community voluntary or charitable work; programmes for the treatment of alcoholics or drug dependent persons; educational, occupational and personal-training courses; counselling programmes; or social and life skills courses.

Internal disciplinary procedures will control an offender's behaviour while at a centre or participating in a programme and these procedures will apply to offenders subject to a home detention order. For an offender on home detention, the conditions governing performance of a community corrections centre programme are additional to those which regulate curfew observance and the terms of any permit for absence from the approved place of residence.

Disciplinary action lies against any offender whose performance of the community corrections centre programme is unsatisfactory, who commits any offence while subject to a Community Corrections Centre order, or who fails to notify a Community Corrections Officer if unable to attend where and when required to do so. All failures to attend, whether for medical or other reasons, require an officer's approval, and evidence to support the absence may be required to be produced.

### **Repeal of Part IIIA of the *Offenders Probation and Parole Act 1963*.**

The *Community Corrections Legislation Amendment Act* repeals Part IIIA of the *Offenders Probation and Parole Act* which dealt with probation orders made in another State or Territory. Part IIIA was enacted in 1969. It was intended to overcome the problem that supervision orders imposed against offenders were not enforceable when they moved interstate. To be effective, part IIIA of the Act was dependent upon all States and Territories enacting reciprocal legislation, but only Western Australia enacted the provision. Accordingly, the provisions in this part have never been used. The transfer provisions in part IIIA relating to offenders on parole were repealed in 1987, having become redundant with the passage of the Parole Orders (Transfer) Act in 1984.

## Conclusion

In its first twelve months of operation, home detention will be available only in the metropolitan area, but it will thereafter, subject to available resources, be extended throughout the State.

The home detention programmes to be established under the *Bail Act* and *Offenders Community Corrections Act* will provide an alternative to imprisonment for suitable offenders (or defendants in the case of persons on bail) under rigorous management standards. The legislation will assist to reduce the high imprisonment rate in this State, with its attendant heavy economic and social costs but it will not compromise public safety or security. For those persons in the programme who fail to co-operate, or whose behaviour is in any way unacceptable, action will be swift and decisive.