

INQUIRY INTO BACK-END HOME DETENTION

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Date Received: 21/02/2005

Theme: This submission provides information about the development of home detention in New Zealand, particularly back-end home detention, how home detention operates currently and some of the issues that have impacted and continue to impact on the development of home detention.

Summary: Issues are discussed under the following headings:

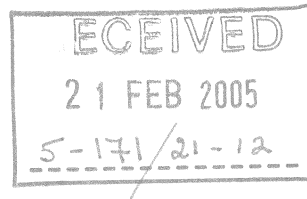
1. The home detention pilot
2. The expansion of home detention
3. The impact of the Sentencing Act 2002
4. Pre-parole (back-end) home detention
 - a. application process
 - b. management of a home detention order
5. Statistical information
6. Key issues that influence home detention in New Zealand
 - a. public and other stakeholder perception
 - b. public safety
 - c. reintegration of offenders
 - d. programme completion
7. Conclusion



DEPARTMENT
OF CORRECTIONS

15 February 2005

Rachel Callinan
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
Sydney
NSW 2000
AUSTRALIA



Dear Rachel

Inquiry into Back-end Home Detention

Please find attached some background information on the operation of back-end home detention in New Zealand as requested in your email of 17 December 2004.

I am aware that you have already received submissions from the New Zealand Select Committee on Law and Order. The information attached is intended to provide you with some background information regarding the development of back-end home detention, and the Department's operational perspective on back-end home detention as it currently operates.

For the reasons stated in my email dated 7 February 2005, I have decided that it would not be appropriate for New Zealand officials to attend the Committee. In particular, there is a risk that even a neutral explanation of New Zealand's experience and practice with home detention could be perceived as being critical of another jurisdiction, in terms of the differences. In addition to this, Ministers in New Zealand have asked that the Department review home detention, now that it has been operating for some time, and recommend areas for improvement. At this stage, it is not possible to anticipate the outcome of this review.

We would be happy to have direct discussions with NSW Justice Officials or, with our Minister's approval, the NSW Justice Minister(s) should they wish it. Alternatively, NSW Justice Minister(s) may prefer to contact our Minister directly. If you have any further questions we would be happy to reply in writing or via email if a quick answer is required.

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I hope that this information is of assistance. If further information is required please do not hesitate to contact Bronwyn Donaldson, Manager Strategic and Legislative Policy, at bronwyn.donaldson@corrections.govt.nz .

Yours sincerely

A handwritten signature in black ink, appearing to read "Jared Mullen", with a long horizontal line extending to the right.

Jared Mullen
General Manager
Policy Development

Background Information on the Development and Current Operation of Back-end Home Detention in New Zealand

Introduction

- 1 This paper contains information about the development of home detention, particularly back-end home detention (BEHD)¹, in New Zealand. The paper also provides information about how home detention currently operates in New Zealand and some of the issues that have impacted, and continue to impact, on the development of home detention.
- 2 It is understood that the Committee has submissions from the New Zealand Law and Order Committee.

The Home Detention Pilot

- 3 The concept of home detention was first mooted in New Zealand in 1987 in response to the growing number of inmates in prisons and the associated costs. Home detention schemes were already operating in various forms in the United States, United Kingdom, Australia and Canada. The concept of home detention was seen as having the potential to reduce correctional costs, provide extended protection for the public, and improve rehabilitation of offenders².
- 4 The New Zealand pilot commenced in Auckland in April 1995 for a period of two years, with the following objectives:
 - To ease the transition of inmates back into the community through a staged process of release, by providing support and control structures.
 - To ensure that offenders who would ordinarily be released on parole are not released on home detention, thereby ensuring the best use of resources and avoid netwidening.
- 5 New Zealand chose to pilot a back-end scheme for inmates who met the following criteria:
 - sentenced to more than 12 months imprisonment
 - convicted of an offence(s) which was *not* categorised as a serious violent offence
 - able to provide an address in the Auckland area

¹ *Back-end Home Detention* applies to those sentenced to determinate sentences of more than two years imprisonment; *Front-end Home Detention* applies to those sentenced to two years imprisonment, or less.

² Church, A & Dunstan, S, *Home Detention: The Evaluation of the Home Detention Pilot Programme*, Ministry of Justice, Wellington (1997).

- 6 Offenders who met the criteria could apply to the District Prisons Board or National Parole Board for release to home detention at any time from their Parole Eligibility Date³ (PED) to the Final Release Date⁴ (FRD).
- 7 The Ministry of Justice evaluation of the pilot found that home detention worked both for and against the first objective regarding the reintegration of inmates. Home detention was seen to have a positive effect upon reintegration in a number of ways. Both detainees and their families reported the establishment of a more positive lifestyle, which persisted beyond the period of home detention. In particular detainees reported a closer relationship with family, especially children and an increased motivation to seek and retain employment. The surveillance component was viewed as detrimental to reintegration due to the restrictions placed on normal life outside of the home.
- 8 In terms of the second objective regarding netwidening⁵ and the best use of resources, the evaluation found that most inmates were released earlier than they otherwise would have been, had they been released on parole.
- 9 There was a very low uptake for home detention during the pilot and consequently little impact on inmate numbers. Only 37 inmates were granted release to home detention. The programme was not found to be cost effective due to the lack of any economy of scale.
- 10 The Ministry of Justice evaluation found that eligibility for release to home detention at the PED presented incentive for only a “tiny proportion” of inmates to apply for home detention as a release option. The majority of offenders preferred to apply for parole, and only apply for home detention if release to parole was declined.

The Expansion of Home Detention

- 11 The Criminal Justice Amendment Bill (No. 3) was introduced to the House on 27 November 1997 with the purpose of expanding home detention as an alternative to imprisonment, in accordance with the Coalition Agreement. The Bill aimed to seek an alternative to imprisonment that reduced inmate numbers while still punishing offenders, but also giving them the opportunity to participate in rehabilitative programmes. The Bill was referred to the Justice and Law Reform Select Committee.
- 12 The Select Committee considered a number of submissions and a range of options for the expansion of home detention, including the inclusion of serious violent offenders and a front-end sentencing option.
- 13 The decision was made by the Select Committee to exclude serious violent offenders from eligibility for home detention at that stage. It was felt that the scheme should be seen to be operating successfully before considering the inclusion of serious violent offenders. It was also considered that the release of

³ The PED is the date that is one third of the sentence, under section 89 of the Criminal Justice Act 1985.

⁴ The FRD is the date that is two thirds of the sentence, under section 90 of the Criminal Justice Act 1985.

⁵ The term ‘netwidening’ refers to the potential for offenders who would have ordinarily received a lower tariff sentence, to receive the higher tariff sentence due more to the availability of the sentence, rather than the seriousness of the offence.

serious violent offenders should be considered in the wider context of their automatic eligibility for release at the expiry of two-thirds of the sentence.

- 14 Concern over netwidening centred on front-end home detention. This concern resulted in the Select Committee recommending that the decision regarding release to front-end home detention should be separated from the sentencing decision. It was decided that when sentencing an offender to imprisonment for 2 years or less, the sentencing Judge would also make an order granting or declining leave to apply to the District Prisons Board for release to home detention. The District Prisons Board would then decide whether or not to release the offender to front-end home detention.
- 15 The Criminal Justice Amendment Act (No.9) was passed in March 1999 allowing for the nationwide development of home detention. The Amendment Act contained the new extended eligibility criteria for home detention:
- “Front-end” – those sentenced to two years imprisonment or less, and granted leave to apply by the sentencing Judge, could apply to the District Prisons Board to serve the sentence by way of home detention
 - “Pre-Parole” (or “Back-end”) – those sentenced to a determinate sentence of imprisonment of more than two years, for an offence *other than a serious violent offence*⁶, could apply to the District Prisons Board or Parole Board for release to home detention three months prior to their PED.
- 16 The rationale for increasing the eligibility for back-end home detention to a date three months prior to the PED was to increase the incentive for prisoners to apply for BEHD and the number of inmates eligible to apply for home detention, thereby increasing the cost effectiveness of the scheme. It was also considered to act as an added incentive for inmates to complete rehabilitation programmes while in prison and increase rehabilitative potential following release.

The Impact of the Sentencing Act 2002

- 17 On 30 June 2002 the Sentencing Act 2002 and Parole Act 2002 repealed most of the Criminal Justice Act 1985.
- 18 The Sentencing Act 2002 abolished the category of ‘serious violent offences’, which meant that offenders convicted of these violent offences became eligible to apply for BEHD. From 30 June 2002, all prisoners who had been sentenced to a determinate sentence of more than 2 years imprisonment, regardless of the offence, were eligible to apply up to five months prior to the PED for release to home detention three months prior to the PED (section 33(2) of the Parole Act 2002).
- 19 A risk assessment tool was developed for the New Zealand Parole Board⁷, to assist them to assess the actual risk presented by each individual offender making application to the Board for parole or BEHD⁸. This process was as an

⁶ Serious Violent Offences were violent offences as specified in section 2 of the Criminal Justice Act 1985, for which the offender was sentenced to more than two years imprisonment.

⁷ Formerly known under the Criminal Justice Act 1985, as the District Prisons Board, or Parole Board.

⁸ The risk assessment is not applied to applications for front-end home detention.

alternative to the blanket assessment created by the serious violent offences provision, which did not allow for assessment of individual prisoners or assessment of the actual risk presented by those not categorised as serious violent offenders, but who nonetheless, may present an unacceptable level of risk.

- 20 The risk assessment tool confirms a baseline assessment⁹ of the offender's risk at conviction and of re-offending if released. It then determines whether a change in the offender's risk of re-offending has taken place as a result of the offender's detention and/or rehabilitation while in detention.

Pre-Parole (Back-end) Home Detention

The following section is a summary of how BEHD currently operates and some statistical information regarding the home detention population, volumes and outcomes.

Application Process

- 21 When an offender applies for home detention a report is completed by a Probation Officer. This report contains a proposal for release conditions, based on the domestic and employment circumstances, and criminogenic¹⁰ and reintegrative needs, of the offender.
- 22 The NZ Parole Board, when considering whether or not to grant home detention to an offender, takes into account the Probation Officer's report, along with the risk assessment and a variety of other reports such as the prison report, any psychological reports and submissions by the victim.
- 23 If the risk assessment indicates that the risk of re-offending is sufficiently low to consider the offender for release, the NZ Parole Board will then determine whether the release proposals contained in the Home Detention Report support the further rehabilitation of the offender and his or her successful reintegration into the community.
- 24 If the offender is granted release to home detention, the NZ Parole Board will set the conditions for release, including where the offender is to reside and the reintegrative/rehabilitative programmes to be completed.
- 25 The offender is required to make application to the NZ Parole Board, at the appropriate time, to be released from BEHD to parole. Release to parole will depend upon the length of the sentence and the offender's compliance with their conditions of BEHD.

Management of a Home Detention Order

- 26 The Department has recently revised the operational management regime for both front-end and back-end home detention. The original regime did not distinguish between the risk levels of each offender on home detention and managed all offenders with the same level of supervision. It became apparent that not all offenders on home detention required the same levels of supervision

⁹ The baseline assessment is completed early in the sentence, as soon as possible following conviction.

¹⁰ Criminogenic needs, are the needs of the offender that are directly related to the offending.

and that resources were best allocated to reflect the risk posed by each individual offender. This approach brings home detention into line with the management of other sentences and orders, which are also based on a risk assessment for the individual offender.

27 A home detention risk assessment tool was developed to identify the potential barriers to the successful completion of home detention. This risk assessment is used in addition to the existing risk assessment tools utilised by the Department and is applied after the NZPB have granted release to home detention. Specific barriers identified as impacting upon compliance with home detention include a lack of an effective support network, substance abuse issues, the youth of the offender, and negative associates. The presence of one or more of these factors flags a potential risk that may require particular attention to enable the successful completion of the order.

28 The following table shows the management regime for both front-end home detention and BEHD. All offenders released on BEHD are automatically assigned to Level 3 (High Risk) reflecting both the serious nature of the offending and the increased reintegrative needs of those who have served long term sentences of imprisonment.

RISK LEVEL	LEVEL 1 (LOW RISK)	LEVEL 2 (MED RISK)	LEVEL 3 (HIGH RISK)
Phase 1 (first half of sentence)			
Probation Officer contact	1 home visit + 1 phone call per week 1 check with relevant occupant per month 1 check with employer per month	2 visits per week 1 check with relevant occupant per fortnight 1 check with employer per month	3 visits per week 1 check with relevant occupant per fortnight 1 check with employer per fortnight
Authorised Absences	Employment/Training Programmes (special conditions) Weekly shop if sole adult in residence Community Work (sentence) Confirmed medical appointments Funeral/Tangi if accompanied and approved To meet other special conditions of order/restorative justice Education opportunities (if approved) Religious observance		
Phase 2 (third quarter of sentence)			
PO contact	Alternating home and office visits (weekly) 1 check with relevant occupant per/mth 1 check with employer per/mth	1 visit per week 1 check with relevant occupant per fortnight 1 check with employer per month	2 visits per week 1 check with relevant occupant per fortnight 1 check with employer per fortnight
Authorised Absences	As for Phase 1, plus: <ul style="list-style-type: none"> • Functions involving family or community members supporting the offender, to a maximum of 4hrs, once per month, unless with SM approval • Positive leisure time activity, of up to 4 hrs, once a week unless with SM approval. 		

Phase 3 (final quarter of sentence)			
PO contact	Alternating home and office visits (weekly) 1 check with relevant occupant per/mth 1 check with employer per/mth	1 visit per week 1 check with relevant occupant per fortnight 1 check with employer per month	1 visit per week 1 check with relevant occupant per fortnight 1 check with employer per month
Authorised Absences	As for Phase 2, plus: <ul style="list-style-type: none"> Increased number of family or community member function to once per fortnight, of up to 4 hours, unless with SM approval Funeral/Tangi unescorted if approved by SM. 		

- 29 Regardless of the phase or level of home detention, the offender remains subject to a 24 hour curfew and can only leave the residence for specified purposes with the written approval of the Probation Officer. They remain subject to continuous electronic monitoring while in the home and some form of surveillance¹¹ when on an approved absence from the home.
- 30 The criminogenic needs of the offender are addressed through the special conditions imposed by the NZ Parole Board and are usually based on the release proposals contained in the Home Detention Report. Reintegrative needs are also considered in the report. Within the first week of release a formal Reintegrative Needs Assessment is completed by the supervising Probation Officer. The tasks and actions required to address both the criminogenic and reintegrative needs are contained in the Sentence Plan for that offender.
- 31 Any minor non-compliance with the home detention order may result in the offender reverting to a more highly supervised, more restrictive phase or risk level. Continued minor non-compliance, or a single instance of serious non-compliance, will result in a charge of breach of release conditions being laid with the court and/or an application for recall to prison.

Statistical Information

- 32 The number of offenders released to BEHD increased steadily from the 2001/02 year onwards. The increase was partially due to the abolition of the category 'serious violent offences' and subsequent increase in eligibility for home detention.

	2001/02	2002/03	2003/04
Releases to Back-end Home Detention	110	161	297

- 33 The 297 new starts for BEHD in 2003/04, equates to 15% of the total number of offenders released to home detention during that period.

¹¹ Surveillance when outside of the home may be by electronic means or a security officer, or subject to confirmation by the Probation Officer, who either visits the location themselves, or contacts a reliable sponsor for verification that the offender is where they are supposed to be.

- 34 Of the 297 offenders released to BEHD in 2003/04, 138 were released prior to the PED, 107 were released after the PED, and 52 lacked data to confirm whether release was pre or post PED.
- 35 The average length of a back-end home detention order in the 2003/04 year was approximately 13 weeks.
- 36 If the assumption is made that those released to BEHD in 2003/04 would otherwise have been retained in prison for a further three months, this equates to approximately 74 prison beds, or 1.25% of the current number of offenders in prison.
- 37 For the 2003/04 year it cost \$59,125 to keep an inmate in minimum security prison compared to \$23,602 on home detention. This is a difference of \$35,523 per annum per offender, or \$8,880 per home detention new start based on a three month order.
- 38 As at 1 April 2004, Māori represented 41% of the total number of offenders on home detention (219/536) and 38% of those on back-end home detention (31/82). Of the 31 Māori offenders released to back-end home detention, 16 had committed violent or sexual offences.
- 39 As at 1 April 2004, Pacific People represented 6% of the total number of offenders on home detention (32/536) and 1.3% of those on back-end home detention (7/536). Of the seven Pacific People on back-end home detention, five had committed violent or sexual offences.
- 40 For the 2003/04 year there were 13 offenders on back-end home detention recalled to prison¹². This represents 4% of the total number of offenders released to back-end home detention during this period. Of those, three re-offended, the balance failed to fully comply with the special conditions of release, in particular attendance at residential programmes and abstinence from alcohol. Six offenders absconded, but four of those were from residential programmes. One offender did not have a suitable address at which to reside while on home detention.
- 41 The following table contains comparative re-offending rates¹³ for those on home detention, compared to those released from minimum and low-medium security imprisonment. The table includes releases to both front-end and back-end home detention from 1 April 2001 to 31 March 2002.

	Home Detention	Minimum Security	Low-Med Security
12 mths after sentence completion	7.1%	19.8%	32.2%
24 mths after sentence completion	12.1%	30.3%	45.3%

¹² Source, Community Probation Service, Business Objects report

¹³ Department of Corrections Annual Report, 1 July 2002 – 30 June 2003

Key Issues that Influence Home Detention in New Zealand

Public and other Stakeholder Perception

- 42 Some negative perception of home detention has emerged in New Zealand, as in a number of other jurisdictions. The Department is currently reviewing BEHD to assess how best to address the issues that have arisen. The negative perception is predominantly based on the following issues:
- Early release on back-end home detention is considered by some to negatively impact upon the integrity of the original sentence, by reducing the amount of time spent in prison for serious offences
 - Arguably, the distinction between front-end and back-end home detention is not transparent to the great majority of those expressing concern. Front-end home detention makes up 85% of those on home detention and is more commonly understood. It could be perceived that some serious offenders are being released to serve a significant proportion of their sentence on home detention, rather than just the final period of the sentence prior to parole
 - There may be a belief that dangerous offenders may be released early to home detention, and pose a threat to public safety
 - There may be a perception that unemployed home detainees have no requirements to participate in constructive activities, including employment
 - There have been some concerns expressed over how home detention is managed. In particular the reasons and extent to which home detainees are permitted to leave the residence, the surveillance in place to monitor absences from the home, and the management of non-compliance with conditions
 - Media reports have focused on individual instances of non-compliance with home detention and incidents of re-offending, rather than balancing these with reports on the positive aspects of home detention. In addition to this the focus has been on the more sensational electronic monitoring/technology aspects of home detention, rather than the reintegrative and rehabilitative benefits of intensive supervision and programmes.

Public Safety

- 43 The public may not be aware that due to the decision-making processes of the New Zealand Parole Board, potentially dangerous offenders will not be released to home detention at an early stage of the sentence. The release of higher risk offenders to home detention at a later stage of the sentence, prior to parole, is likely to enhance public safety.
- 44 Given the ultimate release of most prisoners, the best form of protection for the public is a comprehensive release programme that addresses the criminogenic and reintegrative needs of the offender while providing additional surveillance. While the surveillance may not prevent all re-offending, it serves to alert the authorities to non-compliance with curfew, at the earliest possible opportunity.

- 45 The Department has been monitoring advances in identification and tracking technology and is currently preparing to trial voice verification and GPS monitoring of selected offenders on home detention. If these trials prove successful, they have the potential to further enhance the level of public safety provided by BEHD.

Reintegration of Offenders

- 46 Reintegration services are currently a priority in New Zealand for Justice Sector Ministers and the Department. Effective reintegration of offenders is recognised as being highly likely to reduce re-offending rates and lead to safer communities. The literature suggests that investment in reintegrative services is necessary for successful rehabilitation¹⁴.
- 47 Reintegration of offenders is an objective for home detention generally, however it has the greatest impact on BEHD where offenders are being released from prison after lengthy terms of incarceration. BEHD provides the greatest opportunity for successful reintegration, given the intensive level of supervision provided, the increased contact with family members and the limitations placed on the offender in terms of when they can leave the residence, and for what purpose.
- 48 Released prisoners face problems not only with acquiring accommodation and employment, but also learning or re-learning the living skills required to function outside of prison. This is especially relevant where the offender is returning to live with a family, including young children. The New Zealand literature confirms the reintegrative value for offenders released on back-end home detention, particularly in relation to family/child relationships¹⁵.
- 49 Seeking or retaining employment is integral to the successful reintegration of many offenders and has always been a focus for home detention in New Zealand. Employment is viewed as a constructive use of time for an offender on home detention. The Department is currently commencing a project with the Ministry of Social Development (MSD)¹⁶ aimed at assisting offenders, especially those on home detention, into employment.

¹⁴ Andrews D.A "Principle of Effective Correctional Programmes" in Motiuk L. & Serin R. Compendium 2000 of Effective Correctional Programming.

Dowden C. A Meta-analytic Examination of the Risk, Need and Responsivity Principles and their Importance within the Rehabilitation Debate, MA Thesis, Carlton University, 1998

Cormier R "What Works in Corrections? The Canadian Experience. Prison and After." A Report from a Conference at the Institute for the Study and Treatment of Delinquency, University of London, 1993.

¹⁵ Church, A & Dunstan, S *Home Detention: The Evaluation of the Home Detention Pilot Programme*, Ministry of Justice, Wellington (1997).

Gibbs A & King D, "The Electronic Ball and Chain? The Development, Operation and Impact of Home Detention in New Zealand", Dept of Community and Family Studies, University of Otago, 2001.

¹⁶ Formerly the Department of Work and Income.

Programme Completion

- 50 The international evidence¹⁷ supports the value of home detention in relation to increasing levels of programme attendance and completion, and confirms the importance of targeting high risk offenders for programmes.
- 51 In the New Zealand context, where there is effectively a 24 hour curfew for the duration of the home detention order, there is the added incentive for the offender to attend programmes in order to have an approved break from curfew.
- 52 The vast majority of offenders released to home detention have programme attendance as a special condition of the order. Attendance at programmes is closely monitored by the Probation Officer and any failure to attend is quickly followed up.

Conclusion

- 53 Home Detention has been operating in New Zealand for over five years during which time it has undergone a number of changes as a result of legislation and a management review. Volumes have steadily increased over this period.
- 54 Overall the Department considers that home detention has been successful when compared to other sentences and orders, in terms of both reducing re-offending, and reducing the costs of managing offenders.
- 55 New Zealand currently has one of the most inclusive BEHD programmes. Only those on indeterminate sentences are excluded from applying for home detention. Offenders are granted BEHD based on an assessment of their current risk of re-offending and assessed motivation for addressing the causes of their offending, rather than a criteria based on the offence.
- 56 Public and other stakeholder perception remains an issue for the Department and work is currently underway regarding how best this can be addressed.

Contact Details

- 57 If further information is required please contact:

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¹⁷ Bonta J, Wallace-Capretta S & Rooney J, "Can Electronic Monitoring Make a Difference? An Evaluation of Three Canadian Programmes" in *Crime and Delinquency*, Vol 46, No.1, January 2000, 61-65, Sage Publications.