

Submission No 2

INQUIRY INTO BACK END HOME DETENTION

Organisation:

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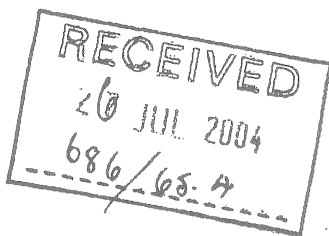
Date Received: 26/07/2004

Theme: Against extension of home detention to back-end

Summary:

1. Electronic devices can be tampered with
2. Contends that "truth-in-sentencing" has been negated by the introduction of "13 mitigating circumstances"
3. Suggests the Judiciary rather than Parole Board should set the terms and conditions of back-end home detention for offenders
4. Families and close relatives of offenders should have right to protest back-end home detention sentence
5. "The families did not commit the crime they should not have to pay the penalty of containing an offender within the home."

Mrs P. Wagstaff



21st July 2004

The Standing Committee on Law and Justice.
Director,

Inquiry Into Back-End Home Detention.

Please accept my submission concerning the - **Inquiry Into Back-End Home Detention.**

1. - Whether it is appropriate and in the public interest to introduce a "Back-End Home Detention" scheme in NSW.

(a) - Benefits and disadvantages of "Back-End Home Detention"

Benefits - point towards the offender and to the NSW Government, from this benefit the Government will save a considerable amount of money as pointed out by the Law Reform Commission publication - report 79 (1996) "Home Detention". Based on that report the "main objective" of Home Detention was - to reduce the prison population by directing offenders from the prison system into Home Detention, this would also bring about a reduction in the cost of running the prison system. Offenders benefit from the need to reduce prison numbers and expense by being placed on the Back-End Home Detention. Being contained within the family home is a "slap-on-the-hand" in comparison to being in prison

Disadvantages - families of the offenders would have the responsibility of containing the offender. Electronic devices to contain the offender can be tampered with. The decision taken to place an offender into "Back-End Detention" must be investigated in a thorough manner, if not the decision taken could place the members of the family into an abusive situation. The decision taken must be based on protection for the family, for the people who reside near the family home. The Parole Board in its wisdom allowed a convicted paedophile with multiple victims to spend their time on parole living in the family home beside a church with an active youth congregation. They allowed the paedophile to be with young children under the age of 16 if the paedophile was with a responsible adult. Unfortunately no checking on the responsible adult.

The greatest disadvantage would be to the victims of the offenders, once again justice would not exist for them "Home Detention" - "Back-End Home Detention" - "Charge-Bargaining" - the ultimate benefit given to the offenders by the Government, - "13 Mitigating Circumstances" that can reduce the sentence time an offender must face. Plus "Parol time" with conditions. As stated above, justice denied to the victims.

(b) - Relationship between - Back-End Home Detention - existing leave programs.

Back-End Home Detention is very close to the Parole system with minor differences. Conditions are placed upon the Parolee, they must abide by those conditions, they must attend the office of their Parole officer, they can be returned to prison to finish their remaining time if Parole conditions are violated. Home Detention is the closest program to Back-End Home Detention. Periodic Detention - ie Week-End Detention, Day Leave, Work Leave, the onus is placed upon the offender to abide by the conditions placed upon them.

"Progressive thinkers" who advise that benefits will flow from these detentions and existing leave programs do not have to live with the resulting impact of their decisions.

(c) - Impact of Back-End Home Detention on the principle of "truth-in-sentencing".

"Truth-in-sentencing" has been negated by the introduction of "13 mitigating circumstances" that the Carr Government has enacted for the benefit of the offenders when they face the court system. There is also the benefit of "charge-bargaining" that can be used by the offender. Admit to certain crimes, face the court on the ones admitted to and the rest of the crimes will not have to be accounted for. ie - "Admit to two accounts of sexual abuse of a child" face court on those two charges and the truth of four years of ongoing sexual abuse of that child is not considered in the case before the court. "Truth-in-sentencing" does not exist in the courts of NSW, it is a fallacy. "Back-End-Detention" only adds to that fallacy.

Home-Detention, Back-End-Detention, Periodic-Detention, Parole conditions etc make a farce of "Truth-in-Sentencing" ideals. We have instead the manipulation of the meaning of "Truth-in-Sentencing"

(d) - Appropriate authority to determine whether an offender may proceed to "Back-End-Detention"

The Parole Board makes decisions concerning the release of prisoners who have served a period of their jail sentence and can then apply for parole. Not all the decisions that the Parole Board have made have been successful, basing their decisions on what they believe are changes for the good in the prisoner can prove to be disastrous for the families and for the unsuspecting public. The judiciary has a sad reputation of not being able to understand the public's anger and frustration following decisions made by the judiciary. Who will make the decisions concerning offenders and "Back-End-Detention" is a problem, unfortunately the decisions that will be made from the chosen department or board, if past history is an example the decisions will favour the offenders at the expense of the general public.

At the time of sentencing the judiciary set the time of possible Parole for the convicted offender. If the judiciary also set the decision for what form of detention is going to apply to the offender, plus the length of time served by the offender it follows on that the judiciary would also handle "Back-End-Detention" decisions. This does not mean they would be the ideal group, it only points to the reality that it follows the court system.

(e) - Criteria for eligibility for "Back-End-Detention"

The release into "Back-End-Detention" must only be taken under strict guide lines, in particular that the crime committed did not merit the harshest of sanctions. The offenders behaviour whilst in detention should also be taken into account, with them showing a willingness to improve their attitude to public life. The families and the close relatives must be advised of their right to protest if they believe their safety, their well being, their sanity would be put at risk with the offender being restricted to the home over a long period of time. The neighbours, those either side of the offender's home should also have the right to comment if they believe the situation was being forced upon them by the "Back-End-Detention". There should not be any pressure placed upon the families to accept "Back-End-Detention" as a way of life for the length of time the Detention lasts. The families did not commit the crime they should not have to pay the penalty of containing an offender within the home.

(g) - Any other related matter.

Past history of the Parole Board points to the fact that they believe the offender has earned the right to parole. This can be acceptable only if the offender lives up to the conditions placed upon them. When the offender breaks those conditions they are then placed back into the prison system. This same condition must also apply to "Back-End-Detention". Families must be able to without condemnation report to those in authority if the situation with the offender becomes untenable. Neighbours must be able to prove they are being harassed or abused by the offender before the complaint is accepted as proof of violation of conditions.

Victims once again will feel they have been "duded by the justice system". These considerations may seem inconsequential to those in authority, but to those who have been made victims of a crime there must be some consideration given to them when offenders are benefiting from the law.

Mrs Patricia Wagstaff. —

A handwritten signature in cursive script that reads "P. Wagstaff". The signature is written in dark ink and is positioned to the right of the typed name "Mrs Patricia Wagstaff.".