Submission No 18

INQUIRY INTO BACK-END HOME DETENTION

Organisation:

Name:

Telephone:

Date Received: 21/02/2005

Theme: Perspective that of an offender currently serving a home detention sentence in NSW

Summary The submission addresses most of the terms of reference. In particular it deals with the punitive nature of home detention.

22nd February 2005

Chairperson and members
Standing Committee on Law and Justice
Legislative Council of New South Wales
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Madam Chair, members and secretariat,

Re: Inquiry into Back-End Home Detention (BEHD)

Please find enclosed my submission to the inquiry of the Standing Committee on Law and Justice into Back End Home Detention.

My submission has addressed most of the terms of reference as outlined in the invitation.

I have written my submission from the perspective of a person currently undergoing a sentence of Home Detention in NSW. Whilst I appreciate that there are subtle differences between front-end and back-end home detention I have written my submission from the perspective of both, as I believe the two are conjoined for the purposes of this inquiry.

I note that the Committee plans to hold public hearings as part of its inquiry and I would be very interested in attending such hearings and providing the committee with the opportunity to seek further information or to elucidate upon some of the points I have made.

In my circumstances however I would request that should the committee so wish to hear from me, that a letter be forwarded to me as soon as possible on letterhead, indicating the time, date and place of the hearing, stating that I have been invited to attend and the duration of the hearings for the purposes of obtaining permission from my home detention supervisor.

I look forward to hearing back from you at your earliest convenience. Thank you for giving me the opportunity to contribute, particularly outside the scope of the submissions timeframe.

Yours sincerely,

Submission to

NSW Legislative Council
Standing Committee on
Law & Justice

Inquiry into Back end Home Detention

February 2005

Parliamentary Committee on Law & Justice
Inquiry into Back End Home Detention [BEHD]
COMMITTEE SUBMISSION

Name:

Date: 21st February 2005

My submission to the inquiry is from the background of an offender, who has served a term of imprisonment in both full-time conventional prison custody and (is currently serving) a period of home detention.

This submission supports the gradual introduction of BEHD noting that the current front-end home detention scheme is under-utilised.

It addresses most of the terms of reference with exception of (f) and (g) and questions if the Department of Corrective Services is the appropriate body to administer any programs outside of conventional imprisonment.

Prior to finalising this submission, I had the opportunity to read and reflect upon the public submissions received by the inquiry up to this date.

A brief overview of home detention from my experiences

The entire programe relies very much on intensive supervision but logic would dictate that a considerable amount of trust is placed on both the detainee and their family to abide by the conditions of the sentence. Only so much intensive monitoring is possible and leaving aside random drug and alcohol testing (substances which the detainee must abstain from) supervision is limited.

This is however to the credit of the program given the necessity to integrate a detainee back into the community and ensure some level of independence in the program.

<u>The punitive nature of Home detention</u>

In September 2002 a paper presented at the Australian Institute of Criminology Conference into Community corrections highlighted the punitive nature of home detention on both the offender and their family in a paper delivered titled "*The Punitiveness of Electronically Monitored Community Based programs"* ***(1).*** In this paper the author highlighted the typical home detainee in varying jurisdications in Australia, New Zealand and the United States. She went on to describe the varying punitive nature of home detention and how a majority of inmates declined the opportunity to participate in a sentence of home detention.

Varying reasons were given including the fear of going back to a drug or alcohol habit (assuming these substances were avoided whilst in prison).

There would appear to be anecdotal evidence, both in some of the submissions the committee has received and public opinion generally that home detention is a 'soft option' of sentencing and a 'get out of jail free' card when discussed in the context of being released at the approaching conclusion to a custodial sentence.

This is simply not correct and based in part in either ignorance or a fear of having a "prisoner" residing in the community and therefore increasing the community risk of being harmed in some way.

With the experience of having spent some time in custody, the idea that home detention is a soft option is totally false. Initially, the prospect of being released from prison prompts most offenders to accept any option apart from continued detention.

Therefore an offer of home detention to a married person with children waiting at home is certainly an attractive option. I myself was given the option of resuming periodic detention or beginning home detention. I chose the latter because in my circumstances the prohibition upon alcohol seemed a good idea in terms of rehabilitation/recovery.

If I had the same choice to make today I cannot say that I would elect home detention over periodic detention, however as a sentencing option it is in my opinion highly valuable.

There is a significant paradox in residing in your own home and having all the attractions that come with that normality of life and the reminder that you are in fact in custody and restricted in what you can do and where you can go.

The difficulties associated with this form of restriction are many and may not be for everyone, such as trying to explain to a neighbour why you cannot pop around for a cup of tea and particularly those with young children who want to be taken out to different places such as swimming pools, the beach, parks etc. But weighed against the separation of those young children when imprisoned certainly makes home detention a better option for someone in my position.

Suffice to say it would be impossible for me to make this submission if I was still in prison today.

There is an overwhelming amount of restriction placed on the home detainee which is difficult for both the detainee and his family.

Added to this is the often and random intrusion into the home of the detainee's supervisor who enquires as to the progress the detainee is making, interacts with the rest of the household and can and often does make random searches of the home to ensure no prohibited articles are there. Co-residents cannot consume alcohol or other drugs (which although illegal the committee must accept goes on in many thousands of homes every day without fear of detenction or prosecution) so there is a considerable burden put upon

them to de-facto comply with the detainee's sentence.

Finally the co-resident must take on the added responsibility of getting shopping items for them, attending to other duties and perhaps most importantly being a sounding board for the detainee's frustration at being confined and monitored. The level of monitoring and supervision appears to vary depending on the supervising officer. I have had the benefit if having several different supervisors over the period of my home detention, some are very strict and 'by-the'book' whereas others are laid back almost to the point of being complacent.

I do not consider that the co-residents (usally spouse and child/ren) have to act a jail keepers, nor act in unison with the Department. I do however acknowledge that home detention places some stress on the household throughout the course of the sentence. I believe however that this level of stress is not as intensive as the anxiety and worry upon a spouse when their husband is in jail on a full-time basis.

I have found that in the great majority of cases, the supervising officers who are not uniformed and not part of the 'custodial' division of the Department are very sensitive to the needs of the co-residents and have been very courteous and engaging around my daughter.

Terms of Reference

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

For the purposes of this term of reference, I have referred to home detention generally, although there is a distinction between front-end (being sentenced to home detention from the beginning) and back-end (being released to home detention at the approaching end of a sentence).

The benefits and disadvantages would appear to generally be the same.

To understand the benefits (and disadvantages) it is assumed that the home detainee would fit into a generally specific criteria, mainly that he has a place of residence at which to be detained, has access to a working telephone line for the purposes of being electronically monitored, and is not in custody for one of the offences precluding participation in the HD programme, as outlined in Sections 76 and 77 of the Crimes (Sentencing Procedure) Act 1999. It is also assumed, based on the current capabilities of the Department of Corrective Services that the offender would intend to reside in one of the areas serviced by the Home Detention programme, being the Sydney, Illawarra Hunter and Central Coast metropolitan areas.

Nothwithstanding that this has been the case for over 6 years now, and despite an ongoing assurance from the Department of Corrective Services to trial rural and regional programs, the fact remains that Home Detention be it front or back end remains only available to a small minority of all imprisoned offenders in NSW.

Even the State Director of Public Prosecutions concedes that the program is under-utilised (*see submission 6*) and that any consideration of adding to the existing program will require extra resources and funding.

The immediately apparant advantages to a program of back-end home detention include a reduction in the prison population and a reintegration back to the community by the offender. This is not entirely dissimilar to the existing parole system however the monitoring of the offender is obviously and neccessarily higher than the existing parole program. BEHD in effect creates a third tier to the custodial process, whereas the existing system has a fixed term and then release to a parole period, the proposed introduction of BEHD would see the fixed term, followed by a home detention term, followed by a parole term. The notion of reducing the prison population is perhpas flawed as one would then have to submit that the introduction of a parole period reduces the prison population. This is not the case and it would appear based on anecdotal evidence that for every prisoner released from NSW jails, another 2 are waiting to take their place. Perhaps this is in response to the governments' introduction of more stringent bail terms, but for whatever reason, the prison population is burgeoning.

Another advantage to the introduction of BEHD is the reduction in the rate of recidivism. Many of the submissions put to the inquiry have addressed this issue and it certainly does seem to be the case that prisoners who enter the home detention program have a greater

chance of addressing their criminality than those who do not. Indeed, the entire experience of being in jail appears to effect a person one of two ways; either they are so scarred by the experience they refrain even from littering, or they learn new ways and means to re-enter the correctional system at a future date. Indeed, many drug-free prisoners have left the prison system with a drug dependency which is perhaps the greatest argument in favour of diversionary punishment especially for young offenders.

A further consideration in favour of introducing BEHD is the incentive to work towards this goal whilst in custody. This in itself goes to the point that not all prisoners would be suitable for the program, just as the program is not suitable for all prisoners. Many in the custodial environment seem to enjoy their experience and know that when they return they will be in a familiar place with familiar faces.

This inquiry and this submission does not take those prisoners into account as the principle of BEHD will only apply to a specific niche of prisoners in the system.

For those wanting it however, their would be an incentive to work towards being released to home detention as quickly as possible. There are some prisoners in custody who believe that the system has worked against them, put them in jail and they are victims in the process. The introduction of BEHD would force them to become responsible and accept their own actions, as a return to jail would occurr if their behaviour and associated problems were not addressed.

Indeed, the whole program of home detention encourages and demands that an offender show self-discipline, reliance and some modicum of trustworthiness. Of course, such behaviours are not learned overnight and my experience to date leads me to believe that the supervision process takes this into account. The more you show your efforts, reliability and resolve then the less intensive the supervision becomes.

It is still a period of imprisonment and this point should not be lost on anyone expressing an opinion on home detention. Indeed, the then State Coroner Derek Hand, in delivering his findings into a suicide of a male person who had just completed home detention [the inquiry was held because of the techn icality of a 'death in custody' but the nature of the sentence or the operation of the scheme was not in question] said that he felt home detention was alot harder to complete than some people believed [Coroners findings, 22/11/1998] ***(2).***

It may also be considered that back-end home detention has one distinct advantage over front-end home detention and that is that an offender on BEHD has an understanding of the consequence of prison that an offender on front-end would not. It is assumable that the great majority of persons sentenced to front-end home detention have yet to see the inside of a conventional prison. They may have served periods of periodic detention but this is not the same. Therefore, perhaps it could be argued that without the benefit of experiencing the process of full-time corrections a person sentenced to front-end home detention may not have the same drive or committment to conclude their sentence as a person who has spent some time in full-time custody and is aware of what awaits them again should they not comply with the sentence or re-offend after its conclusion. This in

intself should lend some weight to the potential for back-end home detention to reduce recidivism in NSW albeit anecdotal.

There has been some discussion on the disadvantages of BEHD to the community and to the offender themself.

In considering the disadvantages to the community it is important that the subjective nature of home detention be countered over the politicised notion that anything short of a full-time and ongoing correctional sentence is a soft option. Let me again be very clear that home detention (be it front or back end) is not a soft option. It is a term of imprisonment, it is intrusive, demanding, disruptive and stressful. It does allow some flexibility in the day-to-day running of one's life but it is still extremely constrictive. It is hard to resist the temptation to dismiss negative opinions from the general community as to the nature of home detention as ignorant nonsense, however I am mindful of the fact that the community has an expectation to be kept safe and that the State punishes those who breach the "social contract".

That said, it is also important for legislators to be mindful of the spirit of punishment and the impact of that punishment for the benefit of the offender as much as for the benefit of the community.

Countless criminologists and jurists have agonised over this point for decades. I see it simply that if we do nothing but punish an offender without giving that offender the ability and the room to address their offending behaviour, then society is only delaying the inevitability of putting itself in harms way at some stage in the future when that offender is eventually released. To this point, the idea of home detention in any form must be considered as it was in part intended - to provide offenders a gradual and intensly supervised reintegration back into the community prior to their custodial sentence being completed. For if we are to consider the full impact of the "social contract" once a debt (ie sentence and parole period) has been served by the offender, the community and indeed the State has no business interfering in that offenders' right to do whatever they please. Surely it is better to intervene in the spirit of prevention than to react in the spirit of prosecution.

Other disadvantages may be seen to include the psychological impact of wearing electronic monitoring devices, intrusion into the family home and other related events which occur by nature of home detention. Whilst these are matters which cause some inconvenience I can only re-state that in comparison to the stresses and anxieties caused by full-time incarceration they are not insummountable and indeed, by their very nature, a reminder of what awaits should the terms of the order be breached. The stresses on the family of the offender are also taken into account at the assessment stage and it would appear based on my experience that supervisors are mindful of that impact and aware of the potential for personal relationships between the detainee and their family to sour. I have not seen any evidence in the submissions made to indicate a rise in domestic violence of home detainees and I can only infer that the risk of this occurring is no greater than in the many relationships that exist across the State every day. I do not believe that a sentencing programme can be discounted because of the possibility of something

happening, only that precautions and safeguards be in place to minimise any risk a much as possible.

There is the possibility that the offender can commit offences without coming to the immediate attention of supervisors, but again to discount a scheme because of the "what if's" is not conducive to the principle of the legislation. The rate of violent assualts in our jails is an indication of what can happen in any correctional environment, whereas in the wider community the offender would take the risk of not only detection by the supervising authorities, but also of the normal risks associated with committing an offence and coming to the attention of the Police. It would appear unlikely that the risk of an offender committing an offence whilst on home detention would be any greater than if he was free on parole or other release order. Certainly, the consequences of committing an offence are greater on the offender given the likelihood of being returned to jail before even being dealt with for the new matters (see *Parole Board In the matter of: Webster)**(3)***.

Any consideration of extending the existing home detention scheme to include back-end sentences when weighing advantages and disadvantages perhaps should also be mindful of the impact this will have on the personnel at the front-line of the program.

The supervisors themselves are to potentially have a greater caseload upon which to handle and without additional funding and resources this will not enhance the program.

I would argue that this caseload is already under-resourced and in the context of the submission of the DPP which claims that as a sentencing option home detention is under-utilised by the courts, it would be a tragedy if the back-end scheme was introduced without adequate planning or funding so as a consequence the program as a whole suffered and the confidence the community should have in the scheme was to diminish.

Part of the introduction of the [now repealed] NSW Home Detention Act 1996 required the Department of Corrective Services to review the operation of the scheme within 18 months of its commencement. In 1999, a research paper was published by Kylie Heggie ***(4)***, a research officer with the Department of Corrective Services, which was an extensive and comprehensive review of the scheme. Despite its age, it contains very useful and thought-provoking conclusions to many of the facets of home detention and its impact on the community, the department, the offenders and their families. I note that none of the submissions received by the committee make reference to this publication however I commend it to the committee and any other interested party for a very sound insight into Home Detention in this State. Notwithstanding that it is 6 years old most of the information it provides is still very relevant to today, and the committee's terms of reference.

Based on the above and submissions received by the committee from the DPP and the Department of Corrective Services, it can be said that the benefits of a BEHD scheme are outweighed by any perceived disadvantages to both the community as a whole and the offender themself so long as the programme receives and continues to receive adequate funding and resources.

(b) The relationship between back end home detention and existing external leave programs

The submission made by the Department of Corrective Services (submission 14) goes into some detail of the existing leave programs offered by the Department to inmates in NSW. It does not however explain with any clarity the difficulties associated with those programmes, their administration nor the lack of any right to appeal/reconsider which a legislative reform of introducing back end home detention should facilitiate. In so much as it does recommend back-end home detention (albeit under a different name) it argues for a simple administrative amendment to its own operating procedure.

I am loathe to agree with this and would hope that the committee sees fit, if it endorses BEHD to ensure that it is adopted as part of the legislative framework and not simply as an add on the existing powers of the Commissioner for Corrective Services.

My experience of the prison system based on both personal experience and conversing with other inmates is that it is administered at the top and maintained at the bottom by officers who are poorly trained in offender management and most are lacking in civil skills or talents. That is not to say that there are not any officers capable of compassion and understanding but they are in the moinority and for the most unable to extend that compassion or common sense to decision making or cultural change.

I have been victim of, and bore witness to, numerable instances of cruelty, vindictiveness and sheer bullying. Whilst I concede and accept that the department would respond to this by submitting "it is not in the culture or the mission of this department" I must stress that this is the day-to-day occurrence in NSW prisons, and any change in the structure of correctional sentences must consider the mechanics of creating such change.

To this any change to introduce BEHD *must* take place within the legislation and not simply handed to the Department to do with as it pleases.

There are many facts to support this. Indeed the Department's own submission, despite its underlying theme of self-congratulation and achievement, leaves itself open to question.

The departments' submission provides in some detail the various leave programs available to inmates in NSW correctional centres.

The provision for the granting of leave is embryonic in Section 26(1) of the Crimes (Administration of Sentences) Act 1999 which grants considerable powers to the Commissioner of Corrective Services. The Department submits that this power is "necessary for the Commissioner to deal with unusual situations that arise from time to time from the ... 8,600 inmates in the NSW correctional system".

Leaving aside that this infers the Commissioner may make certain rulings and provisions *for the benefit of inmates* (which at judicial scruitiny has been shown to be false - see Dowd J in *Middleton v Commissioner of Corrective Services & Anor* ***(5)*** the reality of this power is that the Commissioner delegates this authority to his Governors who in turn

delegate this authority to various officers within each facility to make decisions as to the appropriateness of the individual inmates capacity and deservedness to undertake such leave programs.

It is not inappropriate that certain requirements be made of inmates prior to being engaged in any leave scheme however the operation of the scheme itself is cause for some concern and reason for warning caution when considering the Departments' submission that it take on the additional role of placing appropriate prisioners in a proposed Stage 3 pre-release program of back-end home detention.

Submissions have been made to the committee (*Submission 5 in particular*) concerning the difficulties many inmates have in firstly accessing and then maintaining ongoing leave programs.

In my own personal experience I know of an inmate who spent some 12 months working with AOD workers in counselling young and first-time prisoners, running courses and facilitiating AA and NA meetings who then became eligible for a C3 classification, was transferred to the appropriate facility, completed three day leaves successfully and applied for and was granted weekend leave over the Christmas break in 2004. His family, mainly from Queensland, made a trip to the area he was approved to reside in for this leave, booked accomodation and spent considerable time and money to make this journey possible. His leave date was approved for Christmas Eve and when he was dressed and packed and ready to go was told it had been cancelled because a form which had been signed by his sponsor had been "lost" and they would have to reapply. This was despite the fact he held a copy of the relevant document which had been signed off, because it was a copy it was not accepted.

He now faces a wait until early March to reapply for weekend leave. A cursory approach to this example would be to consider it isolated, a factor of circumstance and whilst regrettable, unavaiodable. This is not an isolated example and typical of the current administration of leave provisions currently run by the Department. I agree with the submissions covering letter which laments the opportunity for current prisoners to have made similar submissions concerning their own experiences.

For the purposes of the terms of reference, it would appear that to consider the *relationship* between the existing provisions and the proposed introduction of BEHD the Department has shown it is not capable of effectively running the current provisions let alone any new additional categories.

The fact that only 342 of the 8600 inmates in NSW are currently participating in external leave programs provokes the assumption that either 8258 prisoners are not eligible (and I accept that a significant number of these are on short sentences) or the existing leave program is not utilised to its fullest potential.

I also note with some interest that the department lists the correctional centres which have programs in place to allow inmates to participate in work and day release programs. The departments own submission highlights the difficulty associated with inmates finding

suitable work-release programs in the Sydney area let alone country NSW however its own information shows that of the 25 correctional centres offering leave programs, 16 of these are in regional NSW.

Certainly for the most part, existing leave programs would offer a natural progression to home detention. Once day leaves are completed, weekend leaves are completed and so the progression goes on to a logical conclusion. I would however strongly caution against allowing the Department to administer a BEHD scheme in part due to its failings in making the existing leave programs work, but also in terms of the revokational discretion available to officers should a current leave participant fail to abide by the conditions of the leave program. Home detention and the rigours therein are not the same as prison leave programs and should have different standards applied to them.

If the Department was to administer BEHD it is not unforseeable that it would be administered by the jail itself as a satellite of its own catchment area, as it does with existing leave programs. No information or suggestion was offered by the departments submission however the thought of uniformed officers conducting home visits, work visits etc is not in the spirit of the home detention program. I would further submit that regular correctional officers are not suitable to conduct the additional support-related roles that current supervisors provide.

I would urge the committee to discount the possibility of BEHD being added to the current responsibilities of the custodial division of the department and whilst it is clear a relationship exists between current leave programs and any BEHD scheme that may take place, that the relationship not marry for the purposes of being an administrative function of the Commissioner or his many delegates.

Finally I note that whilst the Commissioner appears happy for his powers to be delegated under Section 26(1) and to be used by his delegates with his approval when making decisions concerning inmates (and the community generally by consequence), his confidence in allowing them to make submissions to this inquiry appears to be strictly limited, as is evidenced by the Commissioners' covering letter accompanying their submission.

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

So much has been spoken and written about the concept of truth-in-sentnecing that the concept itself has taken on a life of its own. Indeed it was as far back as 10th May 1989 when the then Minister for Corrective Services Mr. Yabsley introduced the Legislative Assembly to amendments to the Sentencing Act and the Prisons Act. ***(6)*** These amendments became colloquially referred to as 'truth-in-sentencing' and the catch-phrase remains today.

The concept of truth-in-sentencing appears to be relative to your opinion on penology, rehabilitation and punishment. Indeed some of the submissions to the inquiry consider truth-in-sentencing to be a wide ranging application of sanctions designed to maximise a

prisoners incarceration without any regard to rehabilitation, prevention of recidivism or collective self-improvement.

Indeed, as recently as early this year the current Minister for Justice and the Premier delighted in informing the community that NSW now has record prison numbers, presumably this was a good thing and the Premier noted that the community was now safer than ever before. Such statements can only be considered as political spin given the consequence of what the government is in fact saying is that crime in NSW is going up, detection of offenders is going up and therefore a greater number of people are being sent to jail.

The statement is not correlated with a sudden "get tough" by the judiciary, who have earnestly resisted the temptation to merge judiciary with executive since truth-in-sentencing as a concept started to take off.

Ironically within this ongoing issue of truth-in-sentencing, it was the same Mr Yabsley as Minister for Corrective Services who said "the principle of prison being the last resort is what we are all about". This quote was attributed to the former Minister by the current Minister for Justice in the Legislative Council on 16th September 2003. [Hansard, Council 16/9/2003].***(7)***

Mr. Hatzistergos was answering a question on the Home Detention Scheme and commending to the Council the benefits of the scheme, including the punishment of the detainee and the savings to the community.

So it would appear that irrespective of political party, when in government the scheme is supported and when in opposition it is not. Such an occurrence only serves to demonstrate that the subject of "truth-in-sentencing" as part of the wider Law and Order debate serves more as a political football than a reasoned academic notion.

That said, it is hoped that the position of the committee puts aside partisan issues and focuses on the very worthwhile opportunity to investigate the merits of any program which allows offenders to reintegrate back into the community gradually and with strict monitoring conditions.

As highlighted by the Director of Public Prosecutions, if the concept of truth-in-sentencing is that an offender remains in prison for the non-parole period of their sentence then the proposal of BEHD is not consistent with that principle. However, in taking into account the notion that home detention remains defined in legislation as a term of imprisonment, the argument becomes almost a technicality.

Of course, it could be argued that if an original sentencing court intended for an offender to serve a period of home detention then they would have done so at the time. It is difficult to obtain information on this concept although it seems apparant that if the scheme for front-end home detention is under-utilised then perhpaps this is an issue more aimed at educating and familiarising the Magistrates and Judges with home detention than inferring a deliberate intention to preclude an offender from participating in home detention.

His Honour Judge Price, the Chief Magistrate of New South Wales notes in his Annual Review of 2003 ***(8)*** that there were 266,179 criminal matters commenced in the Local Courts. He notes that a growing number of criminal matters are now being placed into the MERIT [Magistrates Early Referral into Treatment] programme and other diversionary sentencing options which are relatively new ideas. Little has been written about the impact of truth-in-sentencing into these areas and although I accept that the strict notion of truth in sentencing applies only after a sentence has been passed, it is worth considering the growing favourability of diversionary and therapuetic programs which are receiving interest and support by the sentencing courts.

Such a notion may therefore be expanded to encompass the idea of diversionary post-prison programmes and not just exclusivly pre-sentence such as has been successfully trialled by the NSW Drug Court at Parramatta.

I do not see a negative correlation between back end home detention and truth in sentencing. If anything it only serves to enhance the ambit of truth in sentencing if we accept the original Ministers' notion that the legislation was being proposed to "get...away from the throw-em-in-the-slammer mentality" ***(9)***.

(d) The appropriate authority to determine whether an offender may proceed to back-end home detention

In the other jurisdictions which offer schemes of back-end home detention it is noted that the South Australian and Queensland schemes rely upon the Department of Corrective Services to administer BEHD whilst the United Kingdom and New Zealand prescribe the responsibility to their Parole Boards and sentencing courts.

On 9th December 2004 the Minister for Justice made his second reading speech to the Legislative Council on the Crimes (Administration of Sentences) Amendment (Parole) Bill 2004 ***(10)*** and I am aware that some members of this committee made comment on the contents of that bill before it passed through the Council. The bill itself was concerned with the future role and responsibilities of the Parole Board of NSW which the Minister now wishes to call the State Parole Authority.

I wish to make a number of submissions concerning the Parole Board or SPA which, whilst not in the terms of reference, are I believe worth considering as it would appear logical that if end based home detention is adopted in NSW it would be highly likely that the administration of that scheme would be given to the Board for monitoring and taking appropriate action in the case of a breach.

Currently the NSW Parole Board, on satisfaction that an offender has failed to comply with a sentence imposed by a NSW Court, primarily for periodic detention, it will hold an inquiry into the matter and if it sees fit, issue a warrant for the offender to be apprehended and remanded into full-time custody until it is ready to make a decision to either confirm the revokation and impose an equal or alternative sentence. Presently, the time period between the offender being apprehended and remanded, and appearing back before the Parole Board is 6-8 weeks.

At the time of the first appearance the Board will decide if the offender is to be released back to periodic detention (if they have or will serve a complete 3 months in custody) or if the offender may be released to a sentence of home detention. If an offender makes an application for home detention, the board will stand the matter over for 2-3 weeks to allow for a preliminary home detention assessment. If the board is satisfied that home detention will be a viable option for the offender they are released on a TRO at the next meeting of the board. All up therefore an offender on breach of Periodic Detention can expect at best to spend at least 9 weeks in full-time custody before being released to an alternative sentence.

The Board is comprised of a judicial member and several community members. The selection criteria for community members is not clear nor is the composition of the board or its deliberations made public. The Board rarely gives reasons for its decisions and does not publicly publish its reasons for making parole decisions. In the age of cyber-technology it is impossible to even find a reference to the Board, its members, its functions or its decisions on the internet through a search engine or via related governemtn websites in LawLink, AUSTLII or the Attorney-General's web site.

Prisoners appear before the board usually by video-link when they are in custody and in person when they are not. Copies of reports relating to prisoners are not made available to them even when requested however you may inspect certain documents if permission is gained from the judicial member of the Board. Indeed, new amendments made to Section 194 as passed through the Parliament on 9th December 2004 give even further restriction upon what information the Board may disclose or make publicly available. I am not suggesting that addresses, psychological histories or other personal information be published for all to see, however transparency and accountability are after all the key-stone to our current judicial administration and I note again the sumission of the DPP that this would also be an important facet of back-end home detention.

Every other judicial body within the State court systems including the Supreme Court publishes all of its judgments on the internet as do the Industrial Relations Commission, the Administrative Appeals Tribunal, Residential Tenancies Tribunal and interested parties may obtain judgments from any matter in the District Court. The availability of information in the Local Courts is equally as available but must be asked for at the court itself. This is apparantly due to the sheer volume of sentences and matters heard in the NSW Local Courts on a daily basis.

The Parole Board does not appear to be required to provide any such information to any party, even the person upon whom their decision impacts.

The Board makes a report available to the Minister for Justice every year, however unlike the Department of Corrective Services which tenders its Annual Report (along with nearly every other statutory body) at the conclusion of the financial year, the Parole Board tenders it reports every calendar year. At the time of writing the last available report from the board was for 1 January to 31 December 2003 ***(11)***.

The nature of the Board is by far an authority-type body and has little or no supervision role whatsoever. It relies on the Probation and Parole service to advise it of an offenders behaviour (only in the negative) and takes action based on that information provided to it. The nature of the board and its chair is very much an interogative one and little provision is made for an offender to address the board as to any reasons for the breach or their side of the story etc.

In the calendar year 2003 the Board heard 1180 matters relating to Home Detention. I am unsure why there is a discrepancy here between the Boards figure and the Departments assertion that there are 426 prisoners serving terms of home detention. This means that either the Board had nearly 2 inquiries into every prisoner serving home detention in 2003 or 754 applications for home detention were refused.

Whilst I accept that the majority of breaches are brought about by the actions of the offender I do submit that the Board within its present framework would not be suitable or be able to cope with monitoring an expansion in this programme.

Indeed there may be some consideration for a new and independent (of Corrective Services) body to monitor and maintain community based corrections in this State. The changes made to the Board by the Minister in his 2nd reading speech do not appear to change very much the structure of the board or its role in the corrections process, except to change the name of the Board and remove the Secretary from sitting on the board from time to time.

Of course, in considering who the appropriate body is to consider all such applications it must be remembered that in order to get to this point the inmate must have satisfied all the internal requirements prescribed by the Department of Corrective Services.

My submission, and others have already highlighted the deficiencies within the Department as it applies to the leave programs and I am of the opinion that offender management in terms of placement within the community may in fact be better off in the hands of a body that is not itself directly associated or run by the Department. I understand and agree that officers and workers within the department do and should have an input into which offenders are suitable for leave, including BEHD however in terms of administering and running the scheme I would submit that the creation of a Community Offender Management Group be established to run the programs of leave, back-end home detention and parole. I accept this is a radical idea however I have formed the view based on my experience and the anecdotal submissions of other members of the community and government that corrective services per se should only be concerned with offender management in conventional jails. Too much emphasis is placed on information provided on offenders from the department and whilst it has been shown that often this information is inaccurate, out of date or provided in an untimely fashion, an independent review panel and community 'outreach' workers could administer all facets of parole, offender management, leave programs and reintegration without being solely reliant upon the department to reach its conclusions. Staff and resources from the

Departments of Health, Housing, Community Services, Courts Administration and the Police Service could all be utilised to administer and monitor the scheme.

Whilst I can expand further on this point I do not believe it is within the terms of reference to do so.

It stands to reason that the original sentencing court could not make a sound recommendation for BEHD at the time of sentence without knowing in advance the behaviour of the offender, their progress within the corrections system or the time period effecting both.

Returning the offender to the original sentencing court would be expensive and time-consuming wheras Parole Board decisions are made weekly and often without the inmate being required to attend. In all likelihood if the 'paper trail' was satisfactory an order for BEHD would occur by way of course. Leaving aside the difficulties I have already raised in being soley reliant on Corrective Services to provide this information at the exclusion of any other relevant information , for the puproses of this inquiry I submit that with additional resources, the NSW Parole Board (or what will then be the State Parole Authority) should administer a scheme of back-end home detention in this State.

(e) The criteria for eligibility

The criteria for eligibility for back-end home detention as it is for front-end home detention should be the same. Offenders should be drug-free, have been without serious incident whilst in custody and have been shown to have made an effort to participate in programs whilst in custody.

There are some issues of classification which may need to be addressed in terms of being eligible for release to BEHD. Classification C3 is the current requirement for release programs in NSW correctional centres, notwithstanding the Commissioners power under Section 26(1) to allow any inmate to participate. Currently C3 classification requires (as it should) considerable effort on the part of the inmate to proceed to this level of security classification.

The issue of eligibility differs in back-end home detention somewhat when considering the nature of offences committed by the offender. Currently, certain offences preclude participation in front end home detention and these are outlined in Sections 76 and 77 of the Crimes (Sentencing Procedure) Act 1999. Also, home detention is available only as a front-end option to offenders sentenced to imprisonment for a period not exceeding eighteen months.

For BEHD to be applied effectively, consideration must be given to whether those excluded offences would be included in the scheme.

An inmate for example serving a 7 year term for assault or manslaughter is precluded on both grounds, yet as he approaches the final 12 months of his sentence it may be argued that after 6 years in prison, he may be considered ideal for the scheme. This is further extrapolated when considering the offender who kills someone from drink-driving in a one-off incident. Indeed the offence requires severe punishment but to consider this offender as being in the same category as perhaps another is to deride the discretionary principle which underlies most sentencing practices.

Similarly, BEHD is unlikely to be available to the majority of short-term prisoners, ie those serving terms of 2 years or less. For the sake of simplicity I will assume that the majority of these offenders have not been considered suitable for home detention at the front end of the sentence and it is highly unlikely that they would proceed to a C3 classification and progress satisfactorily on day and weekend leaves prior to their sentence expiring for them to qualify.

I would submit that having a criminal history which precludes participation in front end home detention should not in itself preclude participation in a back end scheme. It has already been highlighted that a gradual reintegration back into the community is an ideal process for offenders, particularly those who have been incarcerated for many years. The parole system itself is effective in some instances but does not offer a high level of monitoring that BEHD would offer. It would appear to be an ideal 'stepping stone' between a custodial sentence and a parole period. It may be worth noting the findings however of the various national and internationl studies that not all inmates would find the idea attractive. Many however would and it should therefore be available as an option for those who wish to work towards achieving it.

As has been submitted by some other interested parties, the scope for considering the introduction of BEHD touches on some other related areas of the correctional system which are worth investigating. I accept that this inquiry in its current form is not the place for such an investigation, however to consider fully the benefits etc of BEHD is also to consider the administration and management of the Department of Corrective Services, the role of the judiciary in understanding and utilising front-end home detention as a sentencing option and the consideration of removing the Department of Corrective Services from any direct involvement of offender management outside of conventional custodial environment.

It has been many years since any formal inquiry into the management and direction of the Department of Corrective Services has been conducted and within that period, some smaller single-issue focussed inquiries have been held which have shown gross difficiencies within corrective services and its related entities. Some of the committee submissions have called for further investigation into the Department and I support those submissions.

I regret that public opinion on the issue of prisioners, correctional management and sentencing generally would not reflect such sentiment and whilst these prevailing

community attitudes abound it is difficult to imagine a government supporting such a proposal.

Indeed, such is the opinion of many when considering prisoner-related issues it is difficult to enlist even the support of opposition members, who it must be said are usually climbing over each other to highlight deficiencies and problems within the government of the day's administration.

I would like to think that one day we may have considered debate and constructive ideas on offender management, solutions to recidivism and preventative strategies to re-offending which do more to enhance the potential of many of the inmates within our correctional system than to simply take comfort in our bulging prison population and draconian offender management strategies.

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