

Home Detention

Transferring the Burden from the State to the Family



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Executive Summary	3
Introduction to Home Detention	3
Potential Benefits	4
<i>Cost to Government</i>	4
<i>Maintaining Community Integration</i>	4
The Problems	4
<i>Transfer of the cost of incarceration from the state onto families</i>	5
<i>Families become both prisoners and prison officers: Putting them under stress and in danger</i>	5
<i>Prisoners and families left without the support provided in prison setting</i>	6
<i>Net widening</i>	7
Community Centred Solutions	7
<i>Community Service Orders</i>	7
<i>Intensive Corrections Orders</i>	8

Executive Summary

Home detention is purported to operate as a cost-effective alternative to incarceration that allows offenders to maintain community ties. Yet in reality, home detention allows the government to transfer the burden of supporting offenders to the community, without providing the assistance necessary for an effective community-based solution. While many people - including prisoners themselves - support home detention, in reality home detention places enormous financial, emotional and psychological strains on families - particularly women – who do not receive any additional support from government, whilst widening the net for corrective services.

This report discusses the philosophy of home detention and its use in Australia before considering its perceived benefits. The report will then move to discuss the key problems associated with the practice for offenders, sponsors, their families and for society more broadly that render home detention an ineffective community-based solution. The report concludes by offering Community Service Orders and Intensive Corrections Orders as two community-based sentencing alternatives that draw on the potential benefits of home detention whilst overcoming its serious issues.

Introduction to Home Detention

Home detention is an alternative to full-time imprisonment where the offender serves their sentence in a confined area at an approved residence for a specific period of time, (for a maximum period of 18 months in New South Wales (NSW)) and if convicted of a federal offence under Commonwealth law.¹ The judge or magistrate within a court may decide to issue an order for home detention in circumstances when the offender has been sentenced to no more than 18 months imprisonment, and also satisfies the specific suitability requirements set out in Part 6 of the *Crimes (Sentencing Procedure) Act 1999* (NSW).² These requirements include:

- No prior convictions
- No dependency on illicit drugs
- Low likelihood that the offender will re-offend
- Appropriate residence circumstances
- Does not seem a risk to any person
- Job and residence does not seem to interfere with effective monitoring.

A home detention program requires the offender to demonstrate overall good behaviour and engage in a combination of face-to-face supervision, enforced household curfews, intensive program participation and electronic monitoring. If any of these requirements are breached, there are adverse consequences.

¹ *Crimes (Sentencing Procedure) Act 1999* (NSW) s 6; *Crimes Act 1914* (Cth) s 20AB.

² *Crimes Act 1914* (Cth) s 20AB.

Potential Benefits

Cost to Government

In a report by the NSW Auditor General it was found that home detention with electronic monitoring is approximately 75% cheaper than keeping an offender in prison.³ Home detentions help save \$25,000 over a six-month period per offender as compared to imprisonment.⁴

Maintaining Community Integration

When compared with incarceration, home detention can facilitate the maintenance of social relationships and community ties that may assist prisoners in overcoming offending habits and behaviours more effectively.

The positive effect of social relationships for prisoners is demonstrated by Bales and Mears' research, which found that prisoners with visitors in the last year of their sentence had a lower risk of recidivism,⁵ with the Australian Institute of Criminology stating that "evidence suggests community settings produce better outcomes than those delivered in institutions."⁶ As such, home detention may work to reduce the social isolation and deterioration of familial relationships associated with institutional incarceration, particularly for juvenile offenders, home detention supports the successful reintegration of offenders into a supportive community.

The Problems

In spite of the perceived benefits of home detention in reducing economic cost to the government and facilitating the maintenance of community ties, these benefits are outweighed by the problems created by home detention for those convicted and their families, and with respect to crime reduction more broadly.

Transfer of the Cost of Incarceration from the State onto Families

While home detention is often viewed as a cost-effective alternative to prison, these costs are not entirely averted, but are transferred from the state to the family. It costs the government over \$100,000 a year to provide for one prisoner,⁷ and if offenders are diverted from prison into home detention, it is the family who must bear the majority of these costs.

³ Peter Achterstraat, 'Auditor-General's Report Performance Audit- Home Detention Corrective Services NSW' (Report, Corrective Services NSW, September 2010) 26.

⁴ Ibid.

⁵ William B Bales and Daniel P Mears, 'Inmate Social Ties and the Transition to Society- Does Visitation Reduce Recidivism?' (2008) 45(3) *Journal of Research in Crime and Delinquency* 287.

⁶ Kevin Howells and Andrew Day, 'The Rehabilitation of Offenders: International Perspectives Applied to Australian Correctional Systems' (Research Paper No 112, Australian Institute of Criminology, May 1999) 4.

⁷ NSW Bureau of Crime Statistics and Research, *Sentencing Patterns and Statistics* (July 2013) New South Wales Law Reform Commission <<http://www.lawreform.justice.nsw.gov.au/Documents/report%20139-a.pdf>>.

When a person is in home detention their family must provide:

- **Accommodation:** The home detention sponsors share their home with a person under the control of the state and are therefore subject to surveillance, which lessens the value of their home as they are forced to make space for an additional inhabitant without any additional financial support.
- **Security, health, maintenance and sustenance:** Families are required to bear the additional costs of taking in an extra occupant and of supplying the needs that would otherwise be supplied by the state. Further, the sponsor's new caring responsibilities can often restrict their ability to work, exacerbating the financial strain.

These financial costs are especially problematic in light of the fact that people from low socio-economic backgrounds are over represented among the sentenced population.⁸ For these families, even a small increase in household costs as a result of home detention can have large, ongoing ramifications for all members of the family.⁹

Families Become Both Prisoners and Prison Officers: Putting Them Under Stress and in Danger

Beyond the financial burden placed on families, home detention is associated with significant emotional and psychological costs for families, particularly women, as they are under extreme pressure to control the offender.¹⁰ In acting as home detention sponsors, families become both prisoners and prison officers and are subjected to surveillance and search, such that their privacy is highly compromised.

This can place serious stress on a family. The NSW Department of Corrective Services interviewed families on the effect of home detention,¹¹ and found that:

- Both adults' and children's sleep was disturbed by monitoring phone calls
- Families felt that their privacy was invaded by the searches
- Individuals often felt uncomfortable explaining their home detention situation to friends and associates, or felt they must lie about their situation to protect their family.

This situation creates additional stress and tensions within family relationships, particularly as offenders often experience stress themselves, and have no outlets to vent their frustrations outside the home.¹² In doing so, this risk of deteriorating family relationships in home detention largely outweighs the potential benefit of maintained community integration associated with home detention.

⁸ Rob White and John van der Velden, 'Class and Criminality' (1995) 22(1) *Social Justice* 521.

⁹ Michael G Maxfield and Terry L Baumer, 'Home Detention with electronic monitoring: Comparing pre-trial and post conviction programs' (1990) 36(4) *Crime & Delinquency* 521.

¹⁰ Amanda George, 'Women and Home Detention – Home Is Where the Prison Is' (2006) 18(1) *Current Issues in Criminal Justice* 79.

¹¹ Kyleigh Heggie, 'Review of the NSW Home Detention Scheme' (1999) *NSW Department of Corrective Services Research Publication* 59-87.

¹² Leanne Alarid, Paul Cromwell and Rolando del Carmen, *Community-Based Correction* (Cengage Learning, 7th ed, 2007).

Additionally, families are under extreme pressure to control the offender, otherwise their loved one will be once again incarcerated, which exacerbates the enormous emotional pressure on the family. This can have a particular effect on young children, who are forced to tolerate offending behaviour to avoid the imprisonment of their family member. This is particularly relevant to crimes that can be committed in the confines of the house, such as drug dealing,¹³ and places the family at risk of complicity with criminal behaviour and incarceration.¹⁴

This pressure not to report offending behaviour also places families in danger of domestic violence. Regardless of the offender's gender, the people who consent to sponsoring offenders are almost invariably women.¹⁵ Within the pressure-cooker atmosphere of home detention, these women and their families are exposed to a greater risk of being victims of domestic violence, and in a situation where reporting their child, sibling or parent to authorities will invariably result in their incarceration.

Prisoners and Families Left Without the Support Provided in Prison Setting

The families of home detainees are responsible not only for keeping the offender in the home, but also carry numerous responsibilities such as keeping them off illicit substances, alcohol, and ensuring they take any medications that are part of the court's orders. These family members are not trained health care or counselling professionals, and cannot provide professional drug, alcohol and mental health support that would be provided by the state. This failure to provide adequate support to offenders and their families is largely responsible for the reduced costs incurred by the state. Yet, it is clear that this key 'benefit' only functions to transfer costs to families beyond the mere finances.

An offender's family are often the same group of people who were unable to control their behaviour in the past. They are often particularly ill equipped, but forced to confront these problems again within the tense environment of home detention without any additional support from the state, creating a stressful atmosphere at home.

Net Widening

While home detention is often understood as a broad level alternative to imprisonment, this form of diversionary sentencing does not function to reduce the prison population, but rather widens the net of Corrective Services.

Research underlines that existing prisons will fill regardless of crime rates or diversionary sentencing,¹⁶ with the building of new prisons almost universally resulting in an increase in

¹³ Ibid.

¹⁴ Matt Black and Russell G Smith, 'Electronic Monitoring in the Criminal Justice System' (Research Paper No 254, Australian Institute of Criminology, May 2003).

¹⁵ Maxfield and Baumer, above n 9.

¹⁶ Richard Edney and Mirko Bagaric, *Australian Sentencing- Principles and Practice* (Cambridge University Press, 2007) 358.

the numbers of prisoners.¹⁷ This means that even where one person is diverted from prison into home detention, another will be sentenced to prison that may have received a diversion, highlighting the net widening effect of home detention.

The Department of Corrective Services acknowledged the effect of creating more places in prison in their 1994 Women's Action Plan:

*"The provision of increased access to correctional facilities... may create a net widening phenomenon resulting in the courts sending more women to prison who may otherwise have received non-custodial sentences. There is a strong body of opinion that in spite of stated support for a reductionist approach to women in prison, if additional places were provided... they would inevitably be filled."*¹⁸

Furthermore, a Victorian government discussion paper in 1987 proposed; "if we regard homes as potential prisons, capacity for all practical purposes is unlimited."¹⁹ Beyond increasing the provision of custodial sentences, home detention creates an illusion of dissipating prison capacity problems, and diminishes the imperative to investigate and analyse the structural factors that are leading to our prisons overflowing.

Community Centred Solutions

While these significant problems associated with home detention outweigh the potential benefits of the sentencing alternative as a community based sentence, Community Service Orders (CSO) and Intensive Correction Orders (ICO) exist as viable alternatives that take the benefits of home detention while overcoming its problems.

Community Service Orders

Community Service Orders are community-based sentences wherein offenders perform unpaid work for non-profit agencies under the supervision of the Probation and Parole Service or an approved supervisor from the agency.²⁰ CSOs offer the same benefits promoted for home detention, but without the negative impacts discussed above, including more flexible sentencing construction, containment of overall correctional spending and potential social and community benefits. Community Service Orders also allow the offender to actively make amends to the community, and learn work skills and discipline.

Intensive Corrections Orders

An ICO is a rehabilitative approach to sentencing that allows the offender to serve their imprisonment within a community setting rather than a correctional facility. Focusing on a sense of restorative justice, ICOs seek to reintegrate offenders into society to allow positive

¹⁷ Smart Justice, *More Prisons are not the Answer to Reducing Crime* (22 September 2014) <http://www.smartjustice.org.au/cb_pages/files/SMART_MorePrisons%20Final%20Revised%202014.pdf>.

¹⁸ NSW Department of Corrective Services, *Women's Action Plan* (1994) 48.

¹⁹ Feiner, M (1987) *Home detention*, Victorian Office of Corrections, Australia.

²⁰ *Crimes (Sentencing Procedure) Act 1999* (NSW) s 89.

growth, away from the issues that prison may present. Whilst the official title of the order differs between state jurisdictions, all variants impose a community-based order that involves conditions such as extended periods of community service, curfews and mandatory involvement in personal development and rehabilitation programs. Ultimately, these programs are designed to reduce an offender's risk of recidivism through the provision of intensive rehabilitation and encouragement of positive reintegration into the community, thereby allowing the offender to remain in contact with family and employment.²¹

More information regarding ICOs can be found on the Justice Action website at <http://www.justiceaction.org.au/prisons/prison-alternatives/790-sentencing-alternatives>.

²¹ NSW, *Parliamentary Debates*, Legislative Council, 22 June 2010 (John Hatzistergos).