

## **Electronic Home Detention - A woman's work is never done.**

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Various governments across Australia are looking at alternatives to institutional prisons. This has come about as they investigate the abolition of sentences under six months, respond to overflowing prisons and in the case of the federal government respond to international and community concern about the conditions in immigration detention centres. Electronic Home Detention is held up as one of the new alternatives and since 1988 has been adopted by most jurisdictions in Australia. Victoria after many years of successful community opposition to it has finally capitulated to the scheme.

Electronic Home Detention creates homes as prisons and prison rules are enforced through: surveillance by electronic tags, unannounced random 24 hour phone or personal visits, the searching of homes and urine and breath tests of detainees. EHD has been taken from the leaf of a Spider Man comic.<sup>1</sup> On first blush EHD has many people applauding its 'humanity' and many claims are made about its benefits - 'it keeps people out of the awfulness and 'contaminating' influences of prison, which in turn will reduce re-offending, it will reduce prison numbers and this will save money, and it will keep women offenders with their children'.

In fact, the slightest scratch of the surface of EHD reveals the scheme as one which holds the seeds of large scale big brother surveillance, a transfer of the cost of incarceration from the state onto families, big profits for private security corporations and families morphed into both prisoners and prison officers. There is also a strong gender bias in who is affected by home detention, whether it is women or men who are on it. This is because regardless of the gender of the offender, the people who consent to having the offender living with them and having their homes turned into prisons invariably are women. Any one who visits prisons, men's or women's will tell you that it is women who fill prison visit centres and likewise it is women who become EHD 'sponsors'.<sup>2</sup>

Home Detention also creates class-determined prisons. Some people will be imprisoned in mansions in Toorak, Potts Point, Kenmore or Peppermint Grove free to wander in their garden, permitted to pop out each day to keep their business going. Others will be incarcerated on the 27th floor in a ministry of housing flat, living on social security payments with toddlers and kids, looking down on a playground that they can't play in.

The most dangerous and disturbing feature of home detention was identified in a Victorian government discussion paper in 1987 when it was first mooted there. It said 'if we regard

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<sup>1</sup> R.G.Fox 1987 Dr Schwitzgebels machine revisited - electronic monitoring of offenders" Australia and New Zealand Journal of Criminology vol20 no 3.pp132.

<sup>2</sup> Sponsor is the word used in NZ to describe the people who agree to have offenders on EHD in their home, I will also adopt this term.

homes as potential prisons, capacity for all practical purposes unlimited'<sup>3i</sup>. This statement is not only portentous of a landscape of sprawling suburban prisons, it neatly removes any imperative to look at why our prisons are overflowing because prison capacity problems are rendered obsolete.

How does EHD work?

Across Australia's punishment regimes there are various junctures at which a person can apply for EHD. Generally a person can apply for EHD at sentencing as an 'alternative' to prison (like a community-based order, suspended sentence or intensive corrections order) or at the end of a prison sentence as a form of 'early release'. For EHD a person must have a home and a phone, so once again the homeless miss out. They have an electronic bracelet/anklet attached to them, which transmits through their home phone and is connected to a central computer which 'monitors' them. In Australia we do not at this stage have EHD with satellite tracking devices like in the US. There, the tag correlates its wearer's movements with crime reports and alerts authorities if that person is in the area.<sup>4</sup>

Essentially with EHD the detainee is on a 'curfew' at home. This means they must be at home except for prior approved absences -work, education, drug and alcohol counseling, dropping the kids to school. A corrections officer has 24 hour right of entry to their home, can search any place over which the family member has control (bedroom, kitchen, child's room, backyard etc) and can administer drug or alcohol tests. The offender can be prohibited from associating with certain people, paradoxically the very people they were imprisoned with. They will receive phone calls 24 hours a day from the central computer and must log their bracelet into their phone to prove they are there. If a person goes out of range of the home phone, the computer is notified and this constitutes a breach of the order. The offender must tell their workplace they are on EHD and mobile corrections officers can drive past and remotely check their whereabouts.

The corrections officer is required to provide support to them in finding work, organizing rehab programs and dealing with the challenges of the EHD order. They are also required to do assessments of the other members of the offenders household as everyone who lives in the home with the offender must 'consent' to the EHD order and its conditions – 24 hour phone calls, the right of entry and surveillance of the home by officers and to participate in discussions about the offenders progress.

But surely EHD is better than prison?

The problem with this question is that it is based on an assumption that EHD is the *only* alternative to a prison sentence. In fact there are many other alternatives already available. There are a range of sentences that prisoners already serve 'in the community' which are in fact legislative equivalents of a prison sentence. These involve community

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<sup>3</sup> Victorian Office of Corrections Summary Paper 1987, obtained under FOI.

<sup>4</sup> Electronic Monitoring in the Criminal Justice System, M. Black and RG Smith Australian Institute of Criminology Trends and Issues May 2003, p.5

work, rehabilitation programs, intensive reporting to corrections officers, urine/breath tests and the like. At the end of a prison sentence, governments could reinstate the early release schemes they have scrapped across Australian jurisdictions as a result of the move to 'truth in sentencing' and the media fuelled law and order auction that dominates debate. End of sentence EHD is in fact just a new type of early release but with far more oppressive conditions. A reinstated early release scheme could have similar conditions to community based sentences and would mean that the home and family a prisoner returns to after a sentence is preserved as a sanctuary from the mistrust, violence and despair of prison, not another version of prison.

Governments say that over and above the conditions of most community orders, the additional requirement of EHD that people are confined in home prisons will make the community safer. But if an offender is 'safe enough' to be in their home, aren't they safe enough to be in the community? As we know the home is in fact the place where most crimes of violence occur, particularly against women and children, as well as a string of other crimes – illegal drug taking/trafficking, possession, consumption and resale of stolen goods, stripping of stolen cars and various conspiracies to commit offences.

It is claimed that by being on EHD a person avoids the trauma and 'contamination' of prison and therefore this reduces the risk of a person risk re-offending. Yet research in the UK has shown that the impact of EHD on re-offending rates was neutral when compared with offenders who were not on it.<sup>5</sup>

Governments also make much of how instead of women being in prison and separated from their kids, EHD will allow women to be in prison at home with their children. The stereotyped vision that the Victorian government has of women is no better illustrated than in their glossy brochure promoting EHD. It has a man on EHD in a hard-hat working on a construction site and a woman with a child in her arms smiling over the stove.

The use of EHD in various jurisdictions exposes a preference for the over-controlling of women in home prisons. In NZ women on EHD were placed on it for a significantly longer time than men.<sup>6</sup> In NSW, 24% of women were given HD for their first offence compared to 7% of men<sup>7</sup>. Given that in NSW shoplifting was the most frequent offence for which women received HD it is no wonder that their Law Society expressed concern at the extremely high levels of women getting HD when other less intrusive diversionary sentences would have been used prior to HD's introduction.<sup>8</sup> These various research findings support a view that magistrates and judges treat women offenders more harshly when the option of a prison home is available and are eager to reinforce the home as a formal site of control and punishment of women.

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<sup>5</sup> Electronic monitoring of released prisoners; an evaluation of the Home Detention Curfew scheme. UK Home Office, Offenders and Corrections Unit. Findings 139, p4.

<sup>6</sup> Denise King and Anita Gibbs The Electronic Ball and Chain? The Operation and Impact of Home Detention with Electronic Monitoring in New Zealand. Australian and New Zealand Journal of Criminology Vol 36 No1 2003a p.12

<sup>7</sup> Kyleigh Heggie. NSW Department of Corrective Services Review of Home Detention. 1999 p.20

<sup>8</sup> Bernard Lagan. Female home detention rates alarm lawyers. Sydney Morning Herald 28 February 1998.p 17

The research on whether EHD reduces prison numbers is unclear and in fact extremely difficult to assess. For example in the NT the claim is that it has significantly reduced prison numbers. Some 30% of their prison population is in for unpaid fines<sup>9</sup>, and EHD has been used to divert these people from prison, but equally, any other community-based option their government chose to implement, could also have emptied prison of fine defaulters. And this is one of the problems in assessing the claim that EHD will reduce prison numbers, the fact is that any alternative to prison that a government develops could reduce prison numbers, it is not a unique feature of EHD. Research in the US across a number of jurisdictions though indicates that there EHD has not reduced prison numbers<sup>10</sup> and therefore the costs of the prison system.

So what are the consequences of the home being a formal prison?

One of the consequences of home prisons is that new layers of criminality are introduced into homes by virtue of home detention.<sup>11</sup> Ordinary activities like driving a car, drinking, being late for appointments, having a friend over to visit or leaving the house are redefined as 'criminalised' activities because they constitute breaches of the home detention order. The home then is not only the site of the prison, but also the site of a set of potentially new crimes, which can only be committed because the home has become a prison. This is exactly like other buildings formalised as institutional prisons, where behaviors which are 'normal' outside ie. to swear, to not make a bed, to be late for appointments, to have in your possession a non-transparent pen, all can constitute prison offences which attract punishment.

Furthermore when men are on EHD, and most people on EHD are men, it is women who provide as unpaid domestic labour all the work that professional prison officers and social workers in prison provide.. As one researcher put it "it does not seem just that women should be exploited by the needs of the criminal justice system to control and supervise offenders most of whom are men".<sup>12</sup> In addition women do the entire running around outside the home prison to support the home detainee's needs

With a man incarcerated in the home the traditional roles of the patriarchal family are disturbed. It is the woman and children who have freedom of movement and association, freedom to drink alcohol or to go out and spend money as they wish. One bad word from the woman or child to corrections officers and the man can be breached. For some men, this change in power dynamics will be a real threat to them and will produce tension, conflict and perhaps violence.

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<sup>9</sup> D. Owston Declining Northern Territory prison [population: How this was brought about by effective community based programmes. Keeping People out of Prisons. Conference proceedings series no 11. Australian Institute of Criminology, Canberra <http://www.aic.gov.au/publications/proceedings/11/owston.pdf> (viewed 24 November 2003)

<sup>10</sup> Matt Black and Russell G. Smith Electronic Monitoring in the Criminal Justice System Australian Institute of Criminology May 2003 Trends and Issues No 254, p5

<sup>11</sup> Ann Aungles. The Prison and the Home. Institute of Criminology Monograph series 1994. Sydney University Law School p.67

<sup>12</sup> Denise King and Anita Gibbs. Is home detention in New Zealand disadvantaging women and children. Probation Journal June 2003b 50(2) p.115 at 123

Why has EHD come about?

Prisons in most countries in the western world are experiencing a massive increase in prisoner numbers. This is not because crimes are escalating exponentially but can be explained by a number of phenomena. We live in a world of increasing gaps between rich and poor, a society which is becoming increasingly scared and less tolerant of a variety of 'antisocial' behaviors and is seeking criminal law solutions to social problems. A whole variety of new offences are being created from the plethora of 'terrorism offences' to new 'anti-hooping' laws in Queensland where a person can have their car seized for a second offence of having their car stereo too loud. In Victoria there are new anti-chroming laws that will result in the criminalisation of young people.

The cost of politicians' addictions to prisons is causing real budgetary problems. Politicians are desperate to lock 'em up, but moan about the cost. So there has been a cost-shifting move in prisons, as there has been in health and education and home detention fits neatly into this cost shifting ideology. In the US most prisoners on home detention must pay for the technology and the surveillance, which is privately owned and managed. In Australia prisoners don't pay for the surveillance<sup>13</sup> but over and above any social security benefit or paid work the offender gets families will bear the cost of housing, feeding, clothing and supporting the offender.

In Australia as in other countries the prison industrial complex has been active in pushing its wares, particularly in the area of surveillance and control technology, which is a high profit product. Around Australia prisons are snapping up the latest technology these companies tout. Biometric identification of visitors is the norm in most prisons, notwithstanding that only a minute number of prisoners over the decades have ever escaped disguised as someone else. Camera surveillance is an accepted norm in prisons. Cameras record prisoners 24 hours a day in suicide cells, and in a number of other areas in prisons, yet still in places like Victoria there are no rules or accountability around their use. Each year more and technology is being used for control and surveillance in prisons with electronic bracelets yet another addition to the electronic armoury. Yet legislation to protect privacy and ensure accountability for its use is much slower to develop than the budget lines to purchase these new toys.

## Consent and coercion

In Victoria the government says corrections officers will do 'assessments' of the women and children aroundon the issue of violence and safety and determine whether the 'consent' of the family members is freely given. Of course to talk about 'consent' in these circumstances is absurd because the 'choice' the family has is either they agree to their partner being on HD or their partner stays in prison. This is no 'choice' because not only are most women well schooled in the art of sacrifice to put the needs of others before

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<sup>13</sup> In NSW people on work release who are electronically monitored do pay for their own surveillance.

themselves, but any partner/mother/sister would generally prefer their family member out of the awfulness of prison.

NZ research showed that most women who 'sponsored' a home detainee, whilst they felt they did have a choice also indicated a real sense of obligation to consent because they were keen to get their loved one out of prison. When the person was at home on EHD the women felt they had to sacrifice their routines, time, money and energy to support the detainee. Women actually curtailed their own social lives in support of the detainee and children lost playtime outside the home. In other cases women made definite choices to spend more time away from home.<sup>14</sup>

Another impact of EHD is that families may feel responsible and to blame if the home detainee re-offends. This is another example of the family being caught in the widened carceral net. It is easy to imagine women partners/mothers etc saying it was; 'their fault that the detainee had a drink, they should have been more considerate/less tolerant of them, given more support/given less support, gone out less/left them alone in peace more often'. Families will share and bear a burden of guilt and responsibility if the offender detainee mucks up.

A less recognized consequence of EHD is the impact it can have on destroying a prisoner's outside support network, if these people won't consent to sponsoring the person on EHD. In WA a situation arose where a woman in prison with no immediate family and wanting HD, was unable to convince friends to take her in. She became increasingly desperate and hostile to these friends and as a consequence actually lost those friendships.<sup>15</sup> This is extremely significant because when a person gets out of prison it is these friendships and support that are key, not only in not re-offending, but to actually surviving.

The imperative of silence and lies.

One of the issues around EHD is that the consequences for speaking about problems or violence in the home prison can be that the offender goes back to prison and that responsibility for this, is borne by the woman. If questions are asked about a partners drinking for example, a woman faces a dilemma – lie, which makes the woman complicit in covering up his 'offending' or tell the truth, knowing that the consequences of this may result in a breach. This is an unenviable and unfair position to be in.

In institutional prisons there is a culture of silence about violence, there is now indisputable evidence that this silence is replicated in home prisons. In the NSW government review of 370 offenders 80% of whom were men the *only* person to admit to being a perpetrator of family violence during the EHD order was a woman and the only victims who reported were 2 men!<sup>16</sup> This shows how completely unrealistic it is to expect that family violence will be revealed in home prisons, just as it is in institutional prisons,

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<sup>14</sup>King and Gibbs 2003b p.129

<sup>15</sup>Gosnells District Information Centre, WA

<sup>16</sup>Heggie 1999, p 71

and that any so called safeguards to allow this information to come out will inevitably fail because of the characteristics of family violence. Family violence is already a prison for many women, EHD will ensure that this prison is deadlocked.

### Enforced fatherhood

A number of the studies of EHD have commented that by forcing men to stay at home, some men's relationships with children seemed to improve. This is an interesting twist in social engineering, enforced fatherhood as punishment. This change in relationship may well be a short-term benefit but there is no evidence that it continues after the sentence. It may be that in the same way that violent men who do anger management courses whilst they are still with partners sometimes modify their behavior positively during the course, this can fall away over time. So it is likely that when men once again retain their 'freedom of movement and association' ie. free to go out leaving partners and kids behind, that this blush of interactive and responsible fathering will also wither.

A NSW man on end of a prison sentence EHD commented that he became extremely distressed that he started enforcing the rules, regime and culture of prison in his home and with his kids. He was obsessive about tidiness, order and cleanliness in their home (a common institutionalized behavior that is hard to shake off because it is demanded in prison) and was more punitive with his children over these issues. He also found it extremely frustrating that his kids could not leave the house to play unless his partner was there. This, he said, resulted in him resenting his wife not being there and also resenting her when she did go out with the kids and he couldn't.<sup>17</sup>

### Conclusion.

Although EHD holds many simple promises it is clear that there are many underlying complexities that muddy the waters. Like many criminal justice issues, simple answers are often transparently flawed once you get behind the hype. The major concerns about EHD are that it reduces any imperative to tackle rising prison numbers through its potential in creating unlimited prison capacity and creates families as fellow prisoners and prison officers. It draws 'innocent' family members into the surveillance and control of the criminal justice system and there is no evidence that it reduces the overall costs of the prison system. The greatest nightmare of it all though is the Orwellian vision of sprawling suburbs of prisons under constant electronic surveillance, where even your family can't be trusted.

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<sup>17</sup>Part of this interview was broadcast on Stateline ABC TV May 2001

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