

Federal Probation

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This Issue in Brief

What Punishes? Inmates Rank the Severity of Prison vs. Intermediate Sanctions.—Are there intermediate sanctions that equate, in terms of punitiveness, with prison? Authors Joan Petersilia and Elizabeth Piper Deschenes report on a study designed to examine how inmates in Minnesota rank the severity of various criminal sanctions and which particular sanctions they judge equivalent in punitiveness. The authors also explore how inmates rank the difficulty of commonly imposed probation conditions and which offender background characteristics are associated with perceptions of sanction severity.

Using Day Reporting Centers as an Alternative to Jail.—An intermediate sanction gaining popularity is day reporting in which offenders live at home and report to the day reporting center regularly. Authors David W. Diggs and Stephen L. Pieper provide a brief history of day reporting centers and explain how such centers operate. They describe Orange County, Florida's day reporting center, which is designed to help control jail overcrowding and provide treatment and community reintegration for inmates.

Locating Absconders: Results From a Randomized Field Experiment.—Absconders are a problem for the criminal justice system, especially for probation agencies responsible for supervising offenders in the community. Authors Faye S. Taxman and James M. Byrne discuss how the Maricopa County (Arizona) Adult Probation Department addressed the problem by developing a warrants unit devoted to locating and apprehending absconders. They present the results of a randomized field experiment designed to test the effects of two different strategies for absconder location and apprehension.

Rehabilitating Community Service: Toward Restorative Service Sanctions in a Balanced Justice System.—While community service sanctions used to be regarded as potentially rehabilitative interventions for offenders, now they are often used as a punitive "add-on" requirement or not clearly linked to sentencing objectives. Authors Gordon Bazemore and Dennis Maloney argue that community service could be revitalized by developing principles and guidelines

for quality and performance based on a clear sanctioning policy and intervention mission. They propose restorative justice as a philosophical framework for community service and present the "Balanced Ap-

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An Analysis of Home Confinement as a Sanction

BY STEPHEN J. RACKMILL

Chief United States Probation Officer, Eastern District of New York

IN 1988, in Addison County, Vermont, the Honorable Frances McCaffrey stunned an already cynical public when he imposed an innovative but controversial sentencing sanction on a convicted cocaine peddler who stood before him for punishment. The defendant, at 26, had been a student at Middlebury College and was known on campus as the "pharmacist" in view of his drug dispensing capabilities. What made this defendant unique was that John Zaccaro, Jr., was the son of the 1984 Democratic Vice Presidential candidate, Geraldine A. Ferraro, and the product of an affluent, influential background. With his defense lawyers at his side, defendant Zaccaro was sentenced to serve 4 months of a one-to-five-year suspended prison term under house arrest rather than behind bars.

Within a short time, the media discovered that Zaccaro was serving his period of house arrest in a \$1,500-a-month luxury apartment in Burlington, Vermont, which included cable television, maid services, and privileges at the neighboring YMCA. When interviewed, the prosecutor, John Quinn, stated that house arrest is a joke and concluded that Zaccaro was, for the most part, not being punished but grounded for 90 days. Expressing the view that Zaccaro's incarceration under an experimental program was making a mockery of the jail sentence, a spokesperson for Vermont's then Governor, Madeline M. Kunin, stated, "We will take a look and maybe we will make some changes."¹ In spite of the protestations, Zaccaro successfully completed the program without incident.

In a recent, celebrated case, arms dealer Adnan Khashoggi was released under house arrest after posting \$10 million bail following an indictment on charges of mail fraud and obstruction of justice for allegedly helping Ferdinand and Imelda Marcos plunder the Philippine Treasury. The decision to release Khashoggi under house arrest caused substantial controversy:

In July, Mr. Khashoggi traded a 75 sq. ft. cell at the Metropolitan Correctional Center in Manhattan for his 30,000 sq. ft. luxury Fifth Avenue apartment overlooking the spires of St. Patrick's Cathedral—complete with a swimming pool. The Saudi arms dealer wears the band on his right ankle according to officials in the U.S. Marshal's Office. The 54-year-old defendant was originally restricted to the court's jurisdiction—New York City and surrounding northern suburbs—which apparently affords him access to many of the city's posh watering holes. His hours are loosely restricted, too. He must remain home from 1:00 a.m. to 8:00 a.m. He received the court's permission to make holiday trips to Aspen, Colorado and his family home in Ft. Lauderdale,

Florida, one of the twelve residences he owns throughout the globe.²

In this era of increasing public outrage concerning a growing crime problem—and a Presidential commitment to wage a war on drugs—were the court's controversial dispositions in these two cases merely anomalies or were they balanced attempts to find suitable alternatives to incarceration? In sentencing jurisdictions throughout the country, judges are being faced with balancing such competing objectives as public safety, humaneness, and the assurance of offender accountability, while confronting accelerating increases in prison overcrowding and a political commitment to incapacitation and retributive justice.

The Probation and Pretrial Services Division of the Administrative Office of the United States Courts points out that the use of house arrest and electronic monitoring equipment is increasing as an alternative to pretrial detention. During 1989, 185 defendants were placed on electronic monitoring in the Federal system. Judicial officers are beginning to use house arrest and curfew as mechanisms to release offenders who otherwise may be confined to local jails.³

In discussing the rationale for home confinement for pretrial defendants, the Administrative Office of the United States Courts makes the following declaration:

The purpose of home confinement is to provide, in concert with pretrial services supervision, an alternative to detention for those persons whose non-appearance or danger to community safety cannot be controlled by less restrictive release conditions. Punishment is not appropriate for persons presumed innocent; therefore, home confinement is not used to punish, only to assure appearance and community safety.⁴

In addition to providing cost-effective alternatives to incarceration at the pretrial and sentencing stages of the process, home confinement programs are being used at the Federal level as a method to release inmates from custody before their scheduled parole release date. On March 3, 1986, the United States Parole Commission implemented an experimental program to provide an alternative to community correction center residence during the 60-day period before the parole release date. This "Curfew Parole Program"

... is designed for prisoners who would otherwise qualify for community treatment center residence, but who have acceptable release plans and do not require the support services provided by the community treatment center. Under this program, qualified and approved prisoners have their release date advanced for up to 60 days on the condition that they remain at their place of residence between the hours of 9 p.m. and 5 a.m. every night

unless they are given permission in advance by their supervising U.S. probation officer.⁵

On November 1, 1987, the United States Sentencing Commission implemented sentencing guidelines which allowed for the imposition of home confinement as an alternative to probation and supervised release. ("Supervised release" is a post incarceration period of community supervision implemented by the probation service under court jurisdiction.⁶) Also, Congress in November 1990 enacted legislation to provide a mechanism to allow the Federal Bureau of Prisons to release inmates up to 6 months earlier than scheduled under a term of home confinement.⁷

Based upon the foregoing, it is apparent that home confinement is being used as a viable pretrial release and sentencing option as well as a condition of early post incarceration release. With this backdrop, this article explains what home confinement is and how electronic monitoring is used in conjunction with it. The article discusses the cost advantages of home confinement and analyzes legal issues which have been raised regarding this sentencing option. Practical matters are also addressed, including criteria for selecting offenders to participate in home confinement, the appropriate duration for home confinement, and requirements for staffing home confinement programs.

Defining Home Confinement

The concept of home confinement is relatively ambiguous. Home confinement may range from evening curfew to detention during all nonworking hours to continuous incarceration at home. Monitoring techniques may range from periodic visits or telephone calls to continuous monitoring with electronic equipment. Home confinement options produce various degrees of offender control, and jurisdictions vary in the manner in which they implement these programs.

Curfew has been described as a type of home confinement requiring subjects to remain at home during specific timeframes, although generally in the evening. Home detention is more severe than curfew, requiring offenders to remain at home at all times except for certain specified periods. Exceptions allow travel for religious services, work, education, correctional treatment, shopping for food, and medical emergencies. Home detention tends to be strictly enforced and provides significant control over an offender's movement.

The most severe home confinement sanctions may be characterized as home incarceration in which offenders are required to remain in their homes with even more limited exceptions for such fundamental needs as religious services or medical care. Since the major objective of this form of detention is to punish

the offender, even visiting hours may be restricted. Given current prison overcrowding, this intermediate sanction has been well accepted. It contains aspects of rehabilitation within the framework of punishment and specific deterrence. Asserted to be a cost-effective alternative to imprisonment, its use has been expanded by the development of electronic monitoring programs.⁸

Electronic Monitoring

Technologically, electronic monitoring dates back to 1964 when an electronic telemetry system based on a triangulation process using radio signals to locate vessels was modified for possible criminal justice applications. This technology was refined by Ralph Schwitzgebel and described in *Behavioral Science*.⁹ During the mid-1960's, electronic monitoring systems were used to determine the location of parolees, mental patients, and research volunteers in Boston, Massachusetts. The initial systems were set up using multiple receivers to trace movement throughout specified areas. The number of receivers used and transmission characteristics of the environment were based upon the size of the monitored area.¹⁰

Two more current monitoring systems require telephone lines to communicate between an offender's residence and a central location. The first type is described as an active system and consists of a transmitter, a receiver-dialer unit, and a central computer or receiver. In this system, the transmitter is strapped to the offender and broadcasts an encoded signal to a receiver situated in the offender's home. The receiver is connected by telephone to the central computer or receiving unit. When the transmitter, worn by the offender, is within range of the receiver, the system indicates the offender's location. When the offender leaves the range of the unit, the signal from the transmitter is not received, which indicates an absence. The absence is then transmitted to the central computer telephonically. An attendant at the central computer station monitors the signals, comparing them to the offender's prearranged schedule and reporting breaches to the correctional agency.

A second type of unit using telephone lines consists of a central office computer, an encoder device, and a verifier box. In this type of system, referred to as a passive system, the offender wears the encoder device on either the wrist or ankle. A remote computer is programmed to generate random telephone calls to the offender, who is required to provide voice identification and then insert the encoder device into the verifier box to confirm the offender's identity. The verifier box tests the encoder for a specific code implanted in the bracelet that positively identifies the offender. The system provides a report when the phone is not answered or

if a busy signal is received for an extended period. It also signals a default if an offender fails to insert the encoder device into the verifier box properly. Electronic analysis of offender voice samples stored in the central computer detects impostors.

Essentially, the difference between the two systems is that the active system operates continuously, monitoring the offender from the time the offender arrives home until his or her departure. The passive system verifies the offender's presence only at selected times when random telephone calls are made from the central office.¹¹

Since 1984, 20 states have placed 45 electronic monitoring programs in operation, and the number continues to mushroom as manufacturers of the equipment aggressively market their goods and services while simultaneously refining their products. The technology is regularly revised in order to ensure report validity and minimize equipment malfunctions.¹²

Cost Effectiveness of Home Confinement

From a cost-benefit perspective, home confinement has advantages:

Assuming the officers in charge had a limit of ten cases to monitor, building in a pay differential for what would clearly be an irregular schedule of hours, the cost per offender on an annual basis might well be \$2,500 as compared to an average of ten times that amount for a year of imprisonment.¹³

Moreover, indirect savings result from the offender's ability to support his or her family while on home confinement. Wide-scale implementation of home detention affects welfare costs in that tax revenues collected by the state can also offset costs if the offender is capable of maintaining employment.¹⁴

House arrest is cost-effective because government not only saves the yearly cost of housing an offender (\$10,000-\$15,000 per year) but also the construction cost of new prison space at approximately \$50,000 per bed. Petersilia points out, however, that the initial cost of an electronic monitoring program may not necessarily be inexpensive. Because firms are attempting to recoup development costs, initial equipment purchases are quite expensive.¹⁵ The following is an assessment of the electronic monitoring experience in Kenton, Kentucky:

Kentucky spent about \$30,000 to purchase 12 electronic monitors. A cost evaluation of the program after 6 months concluded that the electronic monitoring had cost the county \$10,000-\$20,000 more than it would have spent if the twenty-three persons monitored had been sent to jail instead. However, if the system is used for twelve persons for an entire year, the cost comparisons reverse, and the county would save about \$65,000.¹⁶

It is also extremely important to recognize that this analysis relates to expenditures during the mid-1980's. Since then, based upon my observations as a probation administrator, the cost of equipment has

significantly decreased due to extensive competition among vendors.

In more than two-thirds of the jurisdictions that use electronic monitoring, costs are reduced because fees are charged to offenders capable of meeting payment schedules. The fees vary with half of the programs charging between \$100 and \$300 per month. A quarter of the programs charge fees less than \$100, and another quarter charge in excess of \$300. The highest fee was \$450 per month for the lease of electronic monitoring equipment.¹⁷

Oftentimes, fees based upon sliding scales are charged offenders, and such fees have financed entire house arrest programs. According to the San Diego Probation Department, fees covered the purchase of 85 bracelets, as well as the cost of the computer used to monitor offenders and the salary of two probation officers assigned to oversee the program:

In contrast, it costs \$28.00 daily to house a person in the county work-furlough detention center with about half of that fee being paid by the offender—and \$43.00 per day to feed, clothe and guard jail inmates, according to Probation and Sheriff's Department figures. That latter figure, moreover, does not include the jail's multimillion-dollar construction costs—dramatically widening the price differential.¹⁸

The Eastern District of New York Probation Department submits that house detention, instead of prison, is cost-effective from the perspective of governmental expenditures. In 1986, the average annual cost of imprisoning an individual was \$15,468.70. Estimating that one officer could monitor a specialized caseload of 25 house detainees who would otherwise be imprisoned, the annual savings would be \$386,717, less the probation officer's \$50,000 salary. This produces a net savings of \$336,717 per year on costs to the government. (These data did not incorporate expenses that would be incurred if electronic monitoring equipment were used.)¹⁹ During fiscal year 1993, the Administrative Office of the United States Courts awarded a national electronic monitoring contract to a vendor at substantially reduced costs for these services.

Criteria for Selecting Offenders

Based upon a variety of traditional sentencing factors, jurisdictions have developed varied selection criteria for assessing offender eligibility for home confinement programs. Various jurisdictions have screening programs geared to assess risks which usually preclude certain categories of serious or repeat offenders from entering the programs. Some programs have used objective, risk-scoring mechanisms which consider factors such as violence, substance abuse, unstable interpersonal relations, immigration issues, extensive prior records, and unstable employment histories.²⁰

The Probation Department of the United States District Court for the Eastern District of New York offers the following general criteria for selecting offenders for home confinement:

House detention should be used very selectively. It should never be used for defendants involved in crimes of violence or crimes using firearms. It would not be suitable for defendants with a history of current heroin or cocaine usage. It would be inappropriate for drug sellers. In general, house detention should not be used with any defendant who could be considered a danger to the community, i.e., one offering a substantial risk of further criminal activity.²¹

In selecting individuals for early parole into an electronic monitoring program, the United States Parole Commission set the following criteria:

The program was restricted initially to individuals paroled by the Commission, but was later expanded to include individuals who were originally denied parole but who were not classified as "poor" risks (as measured by the salient factor score) and had not committed a drug distribution offense rated as category six or higher (in accordance with the Commission's offense severity rating).²²

While some propose the use of house arrest as an alternative measure for offenders perceived to be non-violent, researchers strongly recommended that serious violent offenders and predatory property offenders never be placed in house arrest programs.²³

Duration of Home Confinement

There has been a good deal of controversy concerning the length of time an offender should be required to stay at home. This affects the length of the sentence if the court is attempting to equate the home confinement punishment to a 24-hour-per-day traditional period of incarceration.

Researchers have determined that long sentences can lead to "cabin fever." A survey of probation personnel led to the conclusion that a 6-month limit on home incarceration was appropriate. The survey revealed that in home confinement situations, oftentimes, living with others created problems and family conflicts when offenders were required to remain at home all day and evening. Probation personnel believed that when offenders were allowed to leave for specific timeframes, scheduling became critical, and problems developed when scheduling was vague and ambiguous. Officers stressed the need to ensure the integrity of the home confinement program by setting specific schedules with periodic verification. The planning enabled officers to develop individualized supervision programs accommodating the assorted needs and lifestyles of the diversified offender populations they serviced. Generally, there was a good deal of telephone contact between offenders and the probation department to ensure effective communication and eliminate potential problems arising from scheduling changes and deviations.²⁴

In the Probation Department for the Eastern District of New York, offenders are provided with special conditions of probation detailing their obligations while under house detention. Offenders are allowed to work but must return home promptly at the end of the workday. They are permitted to leave home for necessary medical and dental services as well as for weekly religious observance and for food shopping, if no other family member is available for this function. Offenders are permitted to have visitors and obviously are permitted to leave the residence in a life-threatening emergency such as a fire in the dwelling.

The conditions point out that the offenders must at all other times be restricted to the confines of the home. Their presence is checked through an electronic monitoring system, frequent unannounced home visits, and telephone calls by probation personnel. In order to maintain the integrity of the supervision process, the offenders are required to provide detailed data relating to employment schedules and their routes to and from work, as well as a daily log which is reviewed periodically by the Probation Department. Thus, all movements outside the home must be cleared in advance by the Probation Department. The offenders are also made fully aware of their responsibility to answer the phone. Additionally, they are not permitted call forwarding service and are advised to secure call waiting service. This enables the offender to place one call on hold while answering another in order to ensure easy access by the Probation Department.

Preapproved schedules are submitted to the central computer location in electronic monitoring cases, and the central station audits the transmission reports 24 hours per day, 7 days per week. The procedures for violations usually require the central station to attempt to establish contact with the offender. If it confirms an unauthorized absence, the central station notifies a probation officer who is on call and required to investigate the breach further. Offenders may, in fact, be home. Field trips to homes have occasionally revealed that the breaches were the result of either a power surge or equipment malfunction.²⁵

Staffing Requirements

Implementing home detention and electronic monitoring programs generally requires significant administrative changes affecting personnel policy, revocation procedures, and relationships with other components of the criminal justice system. A major issue concerning implementation is the procedure required in the event a violation is reported. Among the administrative options to be considered in the event of a violation are: simply a computer record of the violation, a followup with a phone call to determine the offender's presence, and personal verification via a

home visit in order to determine whether the report is accurate. Taking into consideration the possibility of a false alarm, the last alternative is the most appropriate but is costly and creates significant personnel problems.

Probation officers are not traditional law enforcement officers and do not provide a 24-hour-per-day service. Since violations frequently occur during the evening and on weekends, officers must be on call throughout the week in order to respond in a timely manner. Morale problems may result if officers are not compensated for working extra hours. Personnel policies and employee attitudes have to be significantly modified in order to enforce the conditions of supervision effectively. These issues can also become a source of problems if highly educated and trained probation officers eventually begin to perceive themselves as performing only surveillance functions. They frequently may be responding to false alarms, and these activities can become extremely dangerous if officers are visiting high crime areas during off-hours without proper training and equipment.²⁶ In assessing staffing needs and community protection, one writer submits:

Community protection, however, can be facilitated only by maintaining a pool of well-trained probation officers operating at a low detainee to supervisor ratio. In the Florida Community Control Program, the maximum caseload for a team of one surveillance officer and one supervising officer is forty offenders. Even if house arrest programs have enough supervisory personnel, training presents another potential obstacle. House arrest surveillance involves assuring strict compliance with severe limitations on the offenders' freedom of movement; hence, supervising probation officers will have to assume a greater policing function than those assigned to ordinary probation duty. Whether or not probation departments have the financial and human resources to train and maintain staffs for home confinement programs on a broad scale remains to be seen.²⁷

In conjunction with staffing issues, administrators are required to work with the court and prosecutors to develop uniform standards for reporting violations of home confinement. Budget cuts in programs and the increasing number of individuals on supervision have made careful planning by administrators and support by judges and prosecutors crucial. Unless administrators plan properly, set clear criteria for the selection of offenders and the duration of surveillance, and adopt appropriate procedural guidelines, the benefits of the technology may be significantly reduced.

Legal Issues

Home confinement symbolizes public disapproval and provides a form of social stigmatization. This is consistent with current criminological precepts of deterrence, retribution, and proportionality between offense and appropriate punishment. The purposes of home confinement are diverse, and the specific restrictions imposed through it determine how intrusive and

punitive the sanction is. Without explicit statutory authority to impose home confinement as a condition of supervision, appellate courts may determine that such a sentence constitutes an abuse of judicial discretion:

Although house arrest is a less severe and less punitive restriction than probationary detention in a prison setting, it remains a unique and controversial deprivation of liberty. By its very nature, the house arrest sanction imposes a regime of intrusive confinement. Unless a broader view of probation becomes widespread, the implementation of this novel sanction will be facilitated by the enhanced credibility and recognition that may derive from explicit statutory endorsement.²⁸

It has been recognized that probationers and parolees have diminished rights. Courts nevertheless have established that probationers do have a number of constitutionally protected rights that can possibly be violated by the state's coercive power. Generally, the authority to grant probation has led to broad discretion in determining conditions. Restrictions have included warrantless searches by probation officers, restrictions on travel and association, and regulation of employment and choice of residence. Courts have upheld these restrictions as reasonable.²⁹ The general elements for establishing the validity of a probation condition are clarity, reasonableness, and institutional requirements aimed at either rehabilitating the offender or ensuring the protection of society. Additionally, without a showing of a reasonable relationship between a condition of release and the purpose of release, the abridgement of a fundamental right will not be tolerated.³⁰

Arguably, the wearing of an electronic device is protective of society and rehabilitative of the individual. Setting a curfew for a convicted offender might protect society and instill a sense of discipline which can be rehabilitative for the probationer. Clarity of conditions poses no problem in electronic surveillance cases because the client obviously knows what is happening and how the condition might be breached. Where the practice may run into probable difficulties is in the reasonableness and constitutionality requirements. Reasonableness is closely linked to the equal protection provision of the Fourteenth Amendment, basically meaning that the requirement be fair and just. There is nothing inherently unfair or unjust with electronic surveillance when viewed in isolation, but when applied to an aggregate where financial capability becomes a determinant to obtaining probation, equal protection considerations might arise, particularly when no provisions are made for accommodating indigent defendants.³¹

With regard to electronic surveillance infringing upon an offender's right to privacy, rulings have determined that this form of monitoring does not breach this right. To argue that the electronic device would violate the right against self-incrimination is refutable with the recognition that the use of an electronic device is not testimonial self-incrimination but physical in nature.³² Additionally, the use of an ankle device is not a form of cruel and unusual punishment, and the user is not subjected to any significant humiliation

or degradation. Upon analysis, compared to incarceration, home detention would be perceived as much less restrictive and humane. There are, however, unclear equal protection issues. A challenge could be made that an indigent offender may be considered ineligible for a period of probation with electronic surveillance due to his inability to defray the costs. Seemingly, jurisdictions would have to provide funding in order to ensure that eligibility for participation was universal and not predicated upon an offender's ability to pay.³³

When courts assess challenges to conditions of house arrest, they must adopt a stance that cautiously balances the state's interest in imposing home confinement against the liberty interests of the offender as they relate to constitutional safeguards. Thus, sentencing courts must consider first amendment rights and conditions. If they do not provide opportunities for offenders to gain permission to travel for religious purposes, this might constitute an abridgement of religious freedom and could be considered unconstitutional. Offenders who suddenly develop religion upon an order of house arrest should be suspect and supervised cautiously to determine if they are violating travel restrictions. Deprivation of association has generally been held as a consequence of the restrictive nature of probation as long as it is related to rehabilitation and the prevention of recidivism.³⁴

There have been several recent cases concerning credit for jail time for periods spent in home confinement as part of a probation sentence or pretrial condition. In New York, a court held that home confinement, as a condition of probation, does not entitle the defendant to jail time for the period of probation spent in home confinement. This decision was reached after the court analyzed Section 70.30(3) of the New York State Penal Law pertaining to the term "in custody" which relates to jail credit entitlements credited to penal sentences.³⁵ In an Alaskan case, a court held, "We think that under certain circumstances, the restraints imposed as conditions of probation may be so substantial that the defendant is, in legal effect, 'in custody' although on probation confinement need not be penal in nature to be custodial."³⁶

A recent Federal case challenging jail credit while on house detention held that an offender should not be granted credit for time spent confined to his residence prior to self-surrender, since it would be contrary to statutory law and fly in the teeth of common sense.³⁷ Additionally, conditions imposed on a defendant's appeal bond, which included electronic monitoring home confinement, were determined not to constitute official detention for subsequent jail time credit.³⁸

In another New York case, the court concluded that the computer report in conjunction with a defendant's admission was adequate in establishing a violation of

home confinement. It was pointed out that there may be a need for more scientific and technical testimony in the event an offender does not admit the violation.³⁹ This view could require probation personnel to make home visits when breaches are reported electronically. This would ensure that computer-generated reports are not subject to challenges for possible technological malfunctions if the violation action is contested.

Conclusions and Unresolved Issues

A number of issues have been addressed in this article concerning the concept and implementation of home confinement. Renzema and Skelton submitted that home confinement is cost-effective; however, these programs have a number of indirect costs that have not been quantified with specificity. In mid-1987, there were 826 offenders on monitoring devices. As of February 1989, the number had grown to 6,490 nationwide.⁴⁰

With the programs proliferating in jurisdictions throughout the country, numerous offenders placed on electronic monitoring have committed more serious offenses than those of previous years. These researchers further inform that typical offenders are burglars, drug offenders, and major traffic violators. Most noticeably, the proportion of offenders who have committed violent crimes nearly doubled between 1987 and 1989 from 5.6 percent to 11.8 percent. A survey disclosed that the median age in 1989 was 29.1 years with women representing 10.4 percent of the monitored population. Finally, in assessing the success of the programs, when evaluating risk assessments on electronic monitoring, there was very little difference among offense categories with the exception of traffic offenders. The National Institute of Justice study concluded that this group generally committed fewer technical violations and new offenses than other individuals under electronic monitoring supervision. Their supervision terms were, however, shorter than the others, which may have minimized their risk for technical and new offense violations.⁴¹

The study found no significant difference in outcomes among programs that primarily supervise probationers, inmates or offenders on parole or in community corrections. All had successful termination rates of between 74.3% and 76.0%.⁴²

When electronic monitoring was used for pretrial offenders in the Federal system during fiscal year 1989, only 9 cases out of 168 failed to appear for a failure rate of 5.4 percent. This compares to a 2.8 percent failure for all other offenders; however, those placed on electronic monitoring were presumably perceived as presenting a greater risk of flight or danger to the community. The rearrest rates for the electronic monitoring cases were 3.6 percent for felonies and 2.4 percent for misdemeanors compared to the national

rates of 1.9 percent and 1.0 percent for unmonitored cases. Once again, the issue of greater risk may be the variable that resulted in the increased rearrest rates.⁴³

House arrest may compromise public safety, since offenders have the capacity to continue their criminal activity while at home. The sanction cannot guarantee crime-free living. This often depends upon an offender's willingness to comply with the conditions of supervision and the capabilities of the supervising service. It has also been proposed that house arrest may widen the correctional net, since it could be used as an adjunct to the sentences normally imposed, thereby increasing the intensity of the sanction and costs. Conversely, the punishment may not have a deterrent effect, since its crime preventive effects do not achieve the same objectives as total incarceration. Bias and racial issues may be other concerns, as there could be a disproportionate number of affluent white-collar offenders participating in these innovative programs.⁴⁴

The Administrative Office of the United States Courts (1993) reports that the average annual per capita cost of housing an inmate in a Federal penal facility was \$20,803 during fiscal year 1992.⁴⁵ This amount does not include collateral expenses such as defendants' public assistance cost, tax losses, and prison construction expenses to house these offenders. By the end of 1991, there were 823,414 individuals under penal jurisdiction. The growth rate represents an increase in prison populations of 150 percent since 1980 and translates into a need for approximately 1,000 new prison bed spaces weekly.⁴⁶ It was reported that in mid-year 1991, local jails held 422,609 persons, 101 percent over the rated capacity of the Nation's jails.⁴⁷

With these issues in mind, it can be concluded that a strong commitment must be made to programs designed to develop meaningful strategies to combat the problems of prison overcrowding. This can only be done by exploring other methods that will safely control eligible offenders within the community. As U.S. District Court Judge Jack Weinstein stated: "long prison terms, and imprisonment for more and more persons, cannot be borne indefinitely. Other controls to prevent crime, social policies to avoid criminality, and alternative punishments are essential."⁴⁸

In order to accomplish these objectives, community correctional agencies must be adequately staffed, funded, and provided with state-of-the-art equipment and technological assistance. An unwillingness to allocate adequate resources will result not only in continued cynicism toward innovative alternatives but will also create the possibility of compromising public safety due to poor planning and fiscal short-sightedness. In this regard, an organizational inability to use this

option judiciously became the subject of negative publicity when Federal prosecutors in the Southern District of New York denounced electronic monitoring devices used to track defendants on bail after two reputed high-profile organized criminals fled. Authorities later contended that if defendants pose a risk of flight or community danger, the use of this alternative was extremely problematic and subject to abuse.⁴⁹

Similarly, under mounting political pressure from the New Jersey legislature following several highly publicized negative experiences that compromised community safety, the embarrassed commissioner of the state department of corrections abandoned the early release program of electronic monitoring in spite of the beneficial budgetary implications.⁵⁰

Presently, probation supervision accounts for approximately 60 percent of the 4.3 million adults serving a sentence. About half of these probationers were convicted of felonies. Researchers determined that within 3 years, two in three of these offenders were either arrested for a new felony or charged with violating their supervision conditions.⁵¹

Innovative correctional programming requires extremely careful screening of participants, uncompromising resource allocation, sophisticated program design, and a total willingness to withstand adverse media exposure and political pressure. Without these ingredients, the future of widespread house detention as a true alternative to prison is bleak, as far too many are still haunted by the memory of Willie Horton and his impact upon the political arena.

Taking into consideration the many unresolved issues raised in this article, it is submitted that further research is necessary under strict methodological standards to evaluate the effectiveness of home confinement. Only then can decisionmakers truly determine the feasibility of this correctional alternative and its total impact and consequences.

NOTES

¹Posh Zaccaro "Jail" Quarters Upset Governor, Los Angeles Times, August 15, 1988, at part 2, p. 2.

²J. Cheever, Jr. *House Arrest Seen as Solution for Crowding Hard Time*, National Law Journal, March 26, 1990, at 51.

³T. Cadigan, *Electronic Monitoring in Federal Pretrial Release*, Federal Probation, March 1991, at 26-30.

⁴*Home Confinement Policies and Procedures for Pretrial Defendants* (Draft Report), Administrative Office of the U.S. Courts, Probation and Pretrial Services Division (July 1991).

⁵J. Beck, J. Klein-Saffran, and H. Wooten, *Home Confinement and the Use of Electronic Monitoring with Federal Parolees*, Federal Probation, December 1990, at 23.

⁶Title 18 U.S. Code Sec. 3624(e).

⁷Sec. 2902(b) of Public Law 101-647 codified under Title 18 U.S.C. Sec. 3624(c).

⁸P.J. Hofer and B. Meierhoefer, *Home Confinement: An Evolving Sanction in the Federal Criminal Justice System*, Federal Judicial Center, 6-8 (1987).

⁹Beck et al., note 5, supra at 24; also see R.K. Schwitzgebel, R. L. Schwitzgebel, W.N. Pahnke, and W.S. Hurd, *A Program of Research in Behavioral Electronics*, 9 Behavioral Science 233-238 (1964).

¹⁰R.K. Gable, *Application of Personal Telemonitoring to Current Problems in Corrections*, 14 Journal of Criminal Justice 167-176 (1986).

¹¹J. Vaughn, *Electronic Monitoring of Offenders: An Overview of the Technology*, Criminal Justice Center, Sam Houston State University (June 20, 1986).

¹²Hofer and Meierhoefer, note 8, supra at 8-10.

¹³R. Corbett and E. Fersch, *Home as Prison: The Use of House Arrest*, 49 Federal Probation, March 1985, at 16.

¹⁴Id. at 17.

¹⁵J. Petersilia, *Exploring the Option of House Arrest*, 50 Federal Probation, June 1986, at 50-59.

¹⁶Id. at 52.

¹⁷M. Renzema and D. Skelton, *Use of Electronic Monitoring in the U.S.*, 1989 Update, 222 National Institute of Justice Report 9-13 (1989).

¹⁸B.C. Hortsman, *When a Beep Takes Over for Prison Bars, Electronic Home Detention is Handled as Innovative by Some, Orwellian by Others*, Los Angeles Times, San Diego Ed., March 5, 1989, part 2.1.

¹⁹*House Detention* (unpublished policy), Probation Department, Eastern District of New York, at 2 (Nov. 1985).

²⁰Hofer and Meierhoefer, note 8, supra at 10-19.

²¹Probation Department, Eastern District of New York, note 19, supra at 2.

²²Beck et al., note 5, supra at 24.

²³R. Corbett et al., note 13, supra at 13-17.

²⁴Hofer and Meierhoefer, note 8, supra at 39.

²⁵Probation Department, Eastern District of New York, note 19, at 3.

²⁶C. Friel and J. Vaughn, *A Consumer's Guide to the Electronic Monitoring of Probationers*, 50 Federal Probation, September 1986, at 3-14.

²⁷Jeffrey Hurwitz, *House Arrest: A Critical Analysis of an Intermediate Level Penal Sanction*, 135 U. PA L. REV. 788-789, March 1987.

²⁸Id. at 789.

²⁹See *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778, 792 (1973); (Protections afforded parolees and probationers respectively upon revocation proceedings). Also, *Griffin v. Wisconsin*, 483 U.S. 868 (1987); (A probation condition requiring an offender to submit to a search by probation officials deemed constitutionally permissible). *U.S. v. Manfredonia*, 341 F.Supp 790 (S.D.N.Y.) affirmed, 459 F.2d 1392 (2d Cir.) cert. denied 409 U.S. 851 (1972); (Probation conditions requiring total financial

disclosure permissible). *U.S. v. Furukawa*, 596 F.2d 921, 922 (9th Cir. 1979); (Conditions requiring the offender to associate with only law-abiding people). *Tovar v. State*, 777 S.W. 2d 481 (Tex. App. 1989); (A trial judge can require an offender to find suitable employment contributing to rehabilitation); *U.S. v. Moran*, 889 F.2d 328 (1st Cir. 1989); (Failure to adhere to travel restrictions can justify violation).

³⁰R. Del Carmen and J. Vaughn, *Legal Issues in the Use of Electronic Surveillance in Probation*, 50 Federal Probation, June 1986 at 60-69.

³¹Id. at 64-65. Also see *Mitchell v. State*, 463 So. 2d 416, 419 (Fla. Dist. Ct. App. 1985); *Stranigan v. State*, 457 So. 2d 546, 547 (Fla. Dist. Ct. App. 1984); (Offenders sentenced under Florida's community control statute entitled to same range of constitutional protections as probationers).

³²*U.S. v. Karo*, 104 S.Ct. 3296 (1984). (In this case, a beeper was placed in a canister of ether owned by the government which was to be used to manufacture cocaine. The electronic beeper was used solely to monitor the movement of the canister. The court determined that the government's action did not constitute a search within the meaning of the 4th amendment as there was no interception of oral or wire communications).

³³Del Carmen and Vaughn, note 30, supra at 65-69.

³⁴Hurwitz, note 27, supra at 801. (See *U.S. v. Furukawa*, 596 F.2d 921, 922 (9th Cir. 1979).

³⁵*Kornaker v. Meloni*, 511 NYS 2d 527.

³⁶*Lock v. State of Alaska*, 609 P.2d 539, 543 (1980).

³⁷*U.S. v. Zackular*, 945 F.2d 23 (1st Cir. 1991).

³⁸*U.S. v. Insley*, 927 F.2d 185 (4th Cir. 1991); see also *U.S. v. Arch John Drummond*, 967 F.2d 593 (9th Cir. 1992), *U.S. v. Edwards*, 960 F.2d 278 (2nd Cir. 1992), *U.S. v. Wickman*, 955 F.2d 592 (8th Cir. 1992).

³⁹*N.Y. v. Ryan*, 134 Misc. 2d 343; 510 N.Y.S. 2d 828 (1987).

⁴⁰Renzema and Skelton, note 17, supra at 10.

⁴¹Id. at 10-11.

⁴²Id. at 12.

⁴³Cadigan, note 3, supra at 29-30.

⁴⁴J. Petersilia, note 15, supra at 57-59.

⁴⁵*Costs of Incarceration and Supervision*, Administrative Office of the U.S. Courts (April 30, 1993).

⁴⁶T. Snell, *Prisoners in 1991*, Bureau of Justice Statistics (May 1992).

⁴⁷L. Jankowski, *Jail Inmates 1991*, Bureau of Justice Statistics (June 1992).

⁴⁸*U.S. v. Murphy*, 108 F.R.D. 437, 438 (1985) (EDNY).

⁴⁹R. Sullivan, *U.S. Now Opposes Anklets for Use in Home Detention*, New York Times, September 5, 1992, at 23.

⁵⁰J. Gray, *Prison Commissioner to Drop Electronic Monitoring Program*, New York Times, October 11, 1992, at 46.

⁵¹P. Langan and M. Cuniff, *Recidivism of Felons on Probation, 1986-89*, Bureau of Justice Statistics, February 1992.