

Abolishing electronic monitoring in Australia

Marietta Martinovic highlights the fate of home detention in the state of Victoria

Who says that punitive forms of electronic monitoring (EM) are expanding everywhere? The EM-home detention programme in Victoria was abolished in 2011 by the conservative coalition parties, which formed the state government in late 2010. Programme closure was a part of coalition parties' wider agenda of 'improving sentencing practices and enhancing community protection by 'getting tough on crime.' Other law and order reforms included abolishing suspended sentences, tougher minimum sentences for serious offences, extra police on the street, and the introduction of Victoria Police Protective Services Officers at train stations. Although at first hand it simply seems that a populist political 'tough on crime' agenda resulted in the closure of the EM-home detention programme, an important underlying issue over the years had been that the programme struggled to attract sufficient offender numbers due to a lack of stakeholders' support. This too however, reflected a sense that EM – at least radio frequency EM, used for curfews and home confinement – for all the rhetoric associated with it, was just not punitive enough.

Establishing EM-home detention

Victoria was the final mainland Australian state to initiate EM-home detention. The deliberation about whether to introduce it occurred over decades. In the early 1990s and then in 2000s sentencing scholar, Richard Fox, advised against it, in part fearing that it would be unduly punitive, but also because its impact was unproven (Smith and Gibbs, 2013). Various stakeholders (police, courts, lawyers, probation services, voluntary organisations working

with offenders), proponents and opponents, subsequently joined the debate on whether EM home detention should become a part of the Victorian sentencing landscape.

Eventually, a pilot three-year home detention programme was introduced in Victoria in 2004. At the front-end it functioned as a sentencing option equivalent to 12 months of imprisonment. At the back-end it operated as a pre-release option equivalent to six months of imprisonment. Up to 80 offenders were to be on the programme at any one time. They were subjected to electronic monitoring via radio frequency. Home detention was however restricted to offenders who resided within the state capital city of Melbourne.

In a cost-effective manner, the main aim of EM-home detention was to increase the possibility of successful rehabilitation and/or reintegration for low-risk offenders (Parliamentary Library Research Service, 2011). As such the programme specified 'a strong emphasis on case management as opposed to simply compliance management' (Melbourne Centre for Criminological Research and Evaluation for the Corrections Victoria, 2006). In practice this meant that offenders under the guidance of their supervising officers established individualistic rehabilitative goals and received consistent assistance and supervision to achieve them.

A problem with numbers

The Melbourne Centre for Criminological Research and Evaluation externally evaluated the first year of EM-home detention's operation, concluding it was a success. Technical violations and recidivism rates were low, there

was no evidence of significant risk to offenders' co-residing family members, and for every \$1 spent on the programme a cost-benefit return was \$1.80. On this basis, EM-home detention became a permanent part of the Victorian sentencing continuum. Nevertheless, the evaluation also indicated that there were lower than anticipated numbers of offenders sentenced onto the programme; in particular for front-end diversions. Increasing offender numbers was considered to be pertinent in order to further reduce programme cost and the prison population (*ibid*). However, the number of offenders on home detention never substantially increased – from 2004 until 2010 a total of 229 offenders were placed onto it (Smith and Gibbs, 2013).

Offender numbers did not become optimal on EM-home detention mainly because the stakeholders viewed the programme's operation to be problematic. This was evident in two inquiries that were conducted to explore the reasons behind the inadequate offender numbers on front-end home detention. First, in 2005, interviews with magistrates showed that they generally disagreed with the legislative equating of a term of imprisonment to a term of home detention. They were also critical of home detention programme's strict eligibility criteria. Lastly, magistrates reported being uncertain about 'right kind of cases' for the programme (Melbourne Centre for Criminological Research and Evaluation for the Corrections Victoria, 2006). Second, similar findings emerged in 2007 on the basis of interviews with 25 people representing Victim Support Groups, Victoria Police, Judiciary and the Legal Profession. The stakeholders agreed that home detention was not equivalent to a term of imprisonment, and that alternatively it should be a sentence in its own right on the sentencing hierarchy (Parliamentary Library Research Service, 2011).

In order to appease the stakeholders and increase the number of offenders sentenced to EM-home detention, policy makers in Victoria legislatively modified the programme

in 2010. It became a sentence in its own right. This change of the law amended the original purpose of Victoria's EM-home detention programme as it ceased operating as an alternative to imprisonment. No other Australian state had succumbed to this type of stakeholders' pressure. Policy makers probably caved into the pressure because it was election year and the pre-election polls were showing an enormous popularity for the (then) opposition's 'get tough on crime agenda' that encompassed the abolition of the EM-home detention programme (ibid). So, the (then) Labour government attempted to retain power by also appearing 'tough on crime,' – they were not, however, successful in achieving this.

Why it failed

The reason behind stakeholder's uncertain and unfavourable views about EM-home detention seems to have been two-fold. First, in Victoria there were no established partnerships that engaged the immediately involved stakeholders in its development and evolving operation. Furthermore, there was no official education strategy established that supplied information to inform the wider stakeholders about using EM-home detention. Consequently, neither the positive outcomes nor the punitive effects of the EM-home detention programmes were effectively publicised. For example, this included the fact that EM-home detention had much better reintegrative and rehabilitative prospects in comparison with prison, and that offenders who were exposed to it mostly viewed it as onerous, and even punitive. This lack of collaborative stakeholder involvement is surprising, as it is a well-documented fact that when community-based correctional programmes are politically supported, they are more likely to operate effectively.

Second, the media in Victoria has predominantly reported negative stories about EM-home detention. In particular, it raised the profile of these sanctions by misleadingly portraying them as 'elitist,' that is, mostly used by white collar criminals and upper class offenders. In

addition, the media has extensively reported instances when offenders on EM-home detention have taken off monitoring devices and/or engaged in serious re-offending. This is despite the fact that in reality the placement of affluent offenders and serious re-offending are isolated.

The damaging media portrayal has occurred throughout Australia. It has led to community opposition of these sanctions and inevitably a push toward 'truth in sentencing'. Politicians around the country responded to this by initiating populist policies that exemplify being 'tough on crime.' The outcome was the closure of several EM-home detention programmes – Western Australia in 2003, Queensland in 2006 and Victoria in 2011 (ibid). Further, two home detention programmes that have continued operating, New South Wales and the Northern Territory, have generally struggled with relatively small and decreasing offender numbers (ibid). Only one EM-home detention programme in South Australia is operating with optimal numbers. Unlike the others, it has not attracted controversy because it is mostly applied as a component of bail.

The coming of GPS tracking

Is there a catch to these closures? In mid-2013 the Victorian coalition government announced the introduction of GPS tracking technology as a possible condition of Parole Orders and Community Corrections Orders. This amendment of the law was portrayed as part of the 'get tough on crime agenda,' summarised as 'giving teeth to community-based sentences.' Ostensibly GPS tracking alters the very nature of monitoring, enabling the pinpointing of offender's movements, in real-time if needs be, and allowing the creation of exclusion zones whose electronic perimeters offenders are not permitted to cross. This is more sophisticated than mere 'presence-monitoring' in a single home. However, from an operational perspective the Parole Orders and Community Corrections Orders with GPS conditions may be quite similar to the abolished EM-home

detention orders. Politicians have made no effort to win stakeholder support or understanding with education or media strategies; the 'obvious' superiority of this form of EM over the previous sort has simply been assumed. The inscribing of EM conditions in various community-based dispositions (instead of home detention as a measure in its own right) may seem no more credible than EM-home detention had as a stand-alone sentence at the highest level of the tariff.

Electronic monitoring-home detention was abolished in Victoria because of struggling offender numbers due to an enduring lack of stakeholder support and confidence, and, specifically, the emergence of a new government's law and order policy explicitly based on penal populism. Unfortunately, the recently announced community-based sentences with GPS conditions are likely to encounter similar issues, however much political rhetoric claims them as improvements. This is because engagement of the practitioner-stakeholders in the development, implementation and operation of these sanctions seems once again to have been absent. If this problematic trend is to change, establishing ongoing stakeholder forums and developing an education and media strategy are imperative. ■

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References

- Melbourne Centre for Criminological Research and Evaluation for the Corrections Victoria (2006), *Home detention in Victoria: Final evaluation report*, Australia: Department of Justice Victoria.
- Parliamentary Library Research Service (2011), *Research Brief – Sentencing legislation amendment (Abolition of home detention) Bill 2011, No 8*, Australia: Parliament of Victoria.
- Smith, R. and Gibbs, A. (2013), 'Extending the electronic net in Australia and New Zealand – Developments in electronic monitoring down under,' in Nellis, M., Beyens, K. and Kaminski, D. (eds.), *Electronically monitored punishment – International and critical perspectives*, London: Routledge.