

Increasing Compliance on Home Detention Based Sanctions through Utilisation of an Intensive Intervention Support Program†

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Abstract

Over the past 25 years, Home Detention Based Sanctions (HDBS) have been among the most stringent community-based penalties in the Western sentencing hierarchy. While the uptake of these sanctions has traditionally been relatively slow, over the last decade cheaper, more reliable and practical technological developments (such as Radio Frequency (RF) and Global Positioning Systems (GPS)) are allowing the imposition and monitoring of diverse and restrictive conditions, and thus the use of these sanctions for sentencing relatively serious offenders. The increased application of HDBS and greater reliance on surveillance-oriented monitoring equipment will probably result in a further inflation of already high technical violation rates. This article challenges the traditional practice that those who formally breach their HDBS through technical violations are re-sentenced and, in most cases, incarcerated, as this has proved to be an unsustainably expensive and ineffective process. It is argued that, instead, all technical violators should be encouraged to undertake a community-based reformatory initiative called the Intensive Intervention Support Program (IISP). This program operates on the basis of: first, uncovering the complex interplay of reason/s behind the detainees' lack of compliance; and second, implementing supportive strategies and/or specialised treatment/counselling sessions that enhance detainee's ability to subsequently complete the HDBS.

Introduction

Over the past 25 years, Home Detention Based Sanctions (HDBS) have been among the most stringent community-based penalties in the Western sentencing hierarchy. While the uptake of these sanctions has traditionally been relatively slow, over the last decade cheaper, more reliable and practical technological developments (such as Radio Frequency (RF) and

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Global Positioning Systems (GPS)) are allowing the imposition and monitoring of diverse and restrictive conditions, and thus the use of these sanctions for sentencing medium and relatively serious offenders. The increased application of HDBS and greater reliance on surveillance-oriented monitoring equipment will probably result in a further inflation of already considerable technical violations rates. This article challenges the traditional practice that those who formally breach HDBS through technical violations are re-sentenced and, in most cases, incarcerated, as this has proved to be an unsustainably expensive and ineffective process. It is argued that, instead, such violators should undertake the new community-based reformative initiative called the Intensive Intervention Support Program (IISP) developed by the author. The rationale of the IISP is to divert offenders from costly court and incarceration processes into a community-based and a cost-effective alternative. The IISP is established as a short sharp response designed to get detainees who have committed repeated technical violations ‘back on track’ to complete the remainder of their HDBS. This would be achieved through an intensive engagement of the detainee in supportive and reformative measures.

Defining Home Detention Based Sanctions (HDBS)

Throughout history, HDBS have been applied as a means of silencing political dissidents and radical thinkers (Ball, Huff and Lilly 1988:34; Gibbs and King 2003:1; Morris and Tonry 1990:213; Whitfield 1997:31). In the early 1980s however contemporary HDBS, which utilise electronic monitoring technology, became actual sentences of the court in the United States (Enos, Holman and Carroll 1999:71; Whitfield 1997:31). Viewed as a modern solution to the increasingly unsustainable prison cost and overcrowding crisis, the implementation of these sanctions legislatively expanded rapidly across the United States (Doherty 1995:129; Renzema 1992:47). HDBS ‘were developed during a period when correctional policy was enmeshed in the politics of “getting tough on crime”¹ (Clear and Dammer 2003:234).

Similar to the United States, other Western countries have also experienced burgeoning prison populations and the prohibitive costs of building and sustaining prisons (Baumer and Mendelsohn 1990:1; Bonta, Rooney and Wallace-Capretta 1999:1; Joutsen and Zvekcic 1994:5; Renzema and Mayo-Wilson 2005:215; Whitfield 1997:12, 35). Many of these countries, including Australia, Canada, England and Wales, New Zealand, the Netherlands, Sweden and Scotland followed the United States’ lead by swiftly embracing and trialling varied models of HDBS during the late 1980s and early 1990s (Mainprize 1995:141; New Zealand Department of Corrections 2000:3; Whitfield 1997:57–76). On the cusp of the 21st century, Switzerland, France, Germany, Spain, Denmark, Finland, Belgium, Portugal, Italy, Argentina, Taiwan, Singapore and Israel also joined the growing international trend of confining certain offenders to their homes as an alternative to incarceration (Lilly and Nellis 2001:59; Paterson 2007:98). While most HDBS throughout

¹ The ‘get tough’ rhetoric of the 1970s, including increased emphasis on discipline, punishment and control rather than welfare assistance, is still operational throughout the Western world. This is despite the fact that it has not been justified on any theoretical grounds nor have any social benefits been served by it (Biles 2009:323; Clear 1994; Clear and Dammer 2003:234–5; McCarthy, McCarthy and Leone 2001:163; Whitehead 2007:172).

the Western world operate similarly, each country designed its own sanction as a specific response to the problems identified within its criminal justice system.

Current community-based dispositions in which offenders are detained in their homes appear under a wide variety of potentially confusing titles. Researchers refer to these almost identical sanctions by the following terminology: home detention, home confinement, house arrest or electronic monitoring (Alarid, Cromwell and del Carmen 2008:191; Champion 2008:88; Cotter 2004:3; Heggie 1999). Some authors alternatively use these terms in a variety of combinations, such as ‘electronically monitored home confinement’ (Champion 2008:101; Enos, Holman and Carroll 1999:70) and ‘home detention curfew’ (Whitfield 2001:36). Others refer to them interchangeably (Ball and Lilly 1986:17; Champion 2008:88; Cromwell, Alarid and del Carmen 2005:178; Welch 2004:279), and some even try to distinguish between them (such as Schmidt 1989).

Another level of complexity within the terminology relates to the fact that home detention or home confinement is said to be a condition of two stand-alone sanctions in the United States; these are Intensive Supervision Program (ISP) and Day Reporting Center (DRC). While there are many versions of ISP and DRC, they all impose a number of restrictive conditions on the offender, including confining them to their home for at least some time during a 24-hour period (Alarid Cromwell and del Carmen 2008:201–4; Cromwell, Alarid and del Carmen 2005:178; Enos, Holman and Carroll 1999:70; McCarthy, McCarthy and Leone 2001:188). Therefore, a wide range of terms are associated with, in reality, very similar sanctions that principally restrict the offender to their home as a means of detention and, more generally, punishment (Ball and Lilly 1986:17). For the purpose of this article, all of these sanctions will collectively be classified under the umbrella of ‘HDBS’.

HDBS generally operate as front-end or back-end alternatives to imprisonment (Tonry 1998:86). Offenders are placed onto front-end HDBS by having their sentences of imprisonment fully suspended (Heggie 1999:2; Smith 2001:203; Tonry 1998:86). Alternatively, only offenders who had been incarcerated are able to be released early and placed onto back-end HDBS (Church and Dunstan 1997:83; Dodgson et al 2001:1; Heggie 1999:2; Tonry 1998:87). Unlike those on front-end HDBS, those on back-end sanctions are highly dependent on the availability of supportive bridging networks. This is because re-entry into society typically means facing complex challenges in emotional adjustment, hence making returning to crime, most often using and selling drugs, an increasingly tempting alternative (Dodgson et al 2001:vii; Ekland-Oslon et al 1983:271; Welch 2004:270).

While HDBS vary in terms of the specific restrictions and obligations that they impose, there are certain conditions common to these sanctions around the Western world. These typically include:

- not committing further offences while on the HDBS (Heggie 1999; Henderson 2006);
- residing in a suitable residence that is subject to being searched at any time (Church and Dunstan 1997:19, 25; Gainey, Payne and O’Toole 2000:739;

Henderson 2006:17; Maxfield and Baumer 1990:525; O'Toole 2002:94; Whitfield 1997:59, 93);²

- remaining confined to their residence at all times, except when they are performing pre-approved activities (Heggie 1999:2; Mair 2006:57; O'Toole 2002:94);³
- engaging in employment, community work and treatment/counselling, and committing to remaining drug and alcohol free (Ansay and Benveneste 1999:123; Champion 1996:310; Henderson 2006:44–7; Rackmill 1994:46; Schulz 1995:59–69); and
- paying part of their own supervision cost, drug testing and victim restitution. It needs to be noted that this requirement is not as widespread as the others (Baumer and Mendelsohn 1990:45; Blomberg, Bales and Reed 1993:191; Fulton and Stone 1992:82; Whitfield 1997:59).

While detainees can be sentenced to HDBS for periods of up to two years, most detainees are placed under these sanctions for up to one year (Henderson 2006:49; Whitfield 1997:32).

Non-compliance with any conditions of HDBS constitutes a breach. HDBS can be breached by detainees committing further offences and/or technical violations (Cromwell, Alarid and del Carmen 2005:360; Champion 2008:673; Clear and Byrne 1992:221). All instances of further offending during a HDBS constitute an immediate return to court for re-sentencing. However, not all breaches of HDBS due to technical violations, which constitute the majority of all breaches of HDBS, warrant a return to court for re-sentencing (Alarid, Cromwell and del Carmen 2008:144; Caputo 2004:189; Nellis 2004:41). Consequently, a distinction must be made between minor and serious breaches due to technical violations.

- Minor breaches include *once off* being late, failing to attend a supervision/treatment appointment or eliciting a positive urine sample. These are dealt with by an internal administrative process whereby the detainee is usually formally warned or more stringent conditions are imposed on them by the Manager/Director of HDBS.
- Serious breaches, on the other hand, constitute detainees absconding and/or repeating minor breaches. These are dealt with by a formalised process, that is, a return to court where the judge/magistrate most often revokes the HDBS and imprisons the detainee.

A considerable body of research has indicated that detainees commit technical violations of HDBS, which constitute minor or serious breaches, due to the stringent conditions of the sanctions.

² It needs to be noted that their co-residents (if there are any and they are over the age of 18) must sign a contract allowing them to serve the sanction in that dwelling (Church and Dunstan 1997:19, 25; Gainey, Payne and O'Toole 2000:739; Henderson 2006:17; Maxfield and Baumer 1990:525; O'Toole 2002:94; Whitfield 1997:59, 93).

³ Their compliance with this condition is usually enforced by electronic monitoring equipment (using either RF or GPS technology), in combination with home visits and telephone calls by the HDBS officer (Heggie 1999:2; Mair 2006:57; O'Toole 2002:94).

Perceptions of the severity of HDBS

The myriad of research from the United States, Canada, New Zealand and Australia suggests that when detainees are surrounded with various pressures in deprived environments, which is typical for most detainees, they are likely to experience substantial stress and a loss of motivation to comply with the stringent conditions of HDBS (Ansary 1999:215, 217; Caputo 2004:119; Church and Dunstan 1997:93; Crouch 1993:81; Rackmill 1994:45). Since the 1960s, psychiatrists and social scientists have recognised that life changes, specifically termed 'life events,' may produce substantial stress and even mental health problems (Wilkinson, Moore and Moore 2000:118). Detainees on HDBS potentially experience multiple 'life events' including: fear of being incarcerated; fear of loss of job or change of job; financial problems; an increase in family disharmony; as well as, changed living conditions, work hours and conditions, and recreation/leisure pursuits (Wilkinson, Moore and Moore 2000:118). A well-known mechanism of surviving any type of built-up stress and anxiety is taking a decisive action — fighting, freezing, or fleeing (DiTomasso and Gosch 2002:3). In practice, this means that despite almost definite subsequent apprehension and certainty of tougher punishment, detainees' stress and anxiety may lead them to lose motivation to comply with HDBS, thus giving in to various temptations in the community and breaching HDBS (Church and Dunstan 1997:30–1; Dodgson et al 2001:35–6; Heggie 1999:73; Van Ness 1992:353).

Sentencing detainees to HDBS also transforms their entire 'home' into a 'prison' as offenders' punishment in reality 'spills over into the lives of others' (Ansary 1999; Von Hirsch 1990:170-171). This becomes an issue for the overwhelming majority of detainees as they reside with co-residents, who are generally female family members, for the duration of HDBS (Aungles 1995:35; Baumer and Mendelsohn 1990:24; Church and Dunstan 1997:23; Mainprize 1995:148). In particular, women are said to 'feel more obliged than men to sponsor detainees, to be responsible for the welfare of the children and for harmony within the household' (King and Gibbs 2003:120). HDBS are said to specifically change the intrafamilial social arrangements, as co-residing family members usually give up their time, leisure interests and normal activities in order to 'provide practical help, surveillance and monitoring, accommodation, financial assistance and emotional support' (Gibbs and King 2003:9). While, on the one hand, detainees welcome the support provided by their co-residents, on the other hand, they may view it negatively because their co-residents can be seen to be punished, albeit indirectly and unintentionally (see Martinovic 2007; Martinovic 2004:144)⁴. In cases where detainees are not provided with the required assistance and support from their co-residents, they are more likely to breach conditions of HDBS (Martinovic 2007).

It is, therefore, not surprising that research analysing offenders' opinions of the perceived severity of HDBS indicates that most offenders perceive these sanctions as onerous, and some even regard them as very punitive (Nellis 2004:37). In fact, studies

⁴ It should be noted that when offenders are incarcerated, their families are perhaps even more substantially affected than when they are sentenced to HDBS (Silverman 2001:504). Inmates' families, particularly their wives and children, are sometimes even referred to as 'the second victims of their crimes' as they must cope with 'dismemberment', which is essentially the loss of the husband/father, demoralisation caused by the shame and stigma and financial problems (Silverman 2001:504).

conducted in the United States, New Zealand and Australia have specifically found that almost one quarter of incarcerated offenders who were surveyed (either presented with real-life choices or hypothetical questions) indicated that HDBS are very harsh and, at times, preferred imprisonment⁵ (Champion 2008:75; Chan and Zdenkowski 1986:138; Church and Dunstan 1997:19; Heggie 1999:29–30; Petersilia and Deschenes 1994:3; Petersilia and Turner 1993a:324; Petersilia 1990:23; Wood and Grasmick 1995:2). In particular, when certain conditions of HDBS were conjoined (for instance, 24-hour electronic monitoring, employment and payment of a \$20 per week supervision fee) they were viewed as considerably more punitive than prison (Petersilia and Deschenes 1994:5–6, 11; Wood and Grasmick 1995:3, 19). It appears that ‘these offenders would rather interrupt their lifestyle via incarceration than deal with attempts to [significantly] change their lifestyle via compliance with [the stringent] conditions of HDBS’ (Byrne 1990:23).

Despite offenders’ overwhelming perception that HDBS are onerous, many members of the general public, together with some legislators and criminal justice practitioners regard these sanctions as a mere ‘slap on the wrist’ when compared to traditional punishment (Larivee 1993:20; Payne and Gainey 1998:151; Von Hirsch 1990:163). The reason for this is twofold. First, the media’s sensationalised reports of celebrities and wealthy detainees who are confined to their luxurious homes while being able to maintain lucrative employment have meant that the common punitive character and the deprivations associated with these sanctions have been overlooked by the community (Cheever 1990:31 cited in Payne and Gainey 1999:206; Rackmill 1994:45). Second, whenever an offender on any type of a community-based sanction has committed a serious offence (such as murder or rape) it has been widely publicised and extreme fear of crime and distrust in community-based sanctions have been created. Despite the fact that in reality the placement of affluent detainees on HDBS and serious re-offending by detainees on HDBS are isolated, most members of the community see them as ‘the image of HDBS’ and compare them with the ‘obvious’ and widely publicised deprivations of imprisonment. As a result, they perceive these sanctions as ‘soft on crime’ and maintain little support for them (Petersilia 1998:142; Von Hirsch 1990:163–4).

The application and breach of HDBS

While legislators had expected that HDBS would be applied widely, sentencers have been relatively cautious in applying these sanctions. In the United States, which is still the largest user of these sanctions, there are over 150,000 detainees on HDBS daily (Alarid, Cromwell and del Carmen 2008:197).⁶ The average daily number of detainees on HDBS in England and Wales is about 10,000 detainees and in Australia it is about 650 detainees (Henderson

⁵ More specifically, studies which analysed the perceptions of offenders who were imprisoned and given a real-life choice of HDBS versus imprisonment found that between five and thirty per cent of inmates chose to serve the incarceration period (Church and Dunstan 1997:19; Heggie 1999:29–30; Jones 1996:36; Pearson 1988:447; Petersilia 1990:24). Similarly, studies which report on presenting imprisoned offenders with hypothetical questions about the severity of various sanctions have found that the majority of offenders prefer shorter-term imprisonment in comparison with longer-term HDBS (Crouch 1993:72, 79; Spelman 1995:108,121). Despite some limitations associated with these studies, they collectively indicate that some offenders consider HDBS to be overly punitive (Wood and Grasmick 1995:18).

⁶ This number includes all offenders subjected to any type of electronic surveillance — that is, on various sanctions such as home detention, parole and probation (Alarid, Cromwell and del Carmen 2008:197).

2006:74; Steering Committee for the Review of Government Service Provision 2006:Tables 7A1 and 7A3).⁷ Despite the fact that these figures are relatively modest in comparison to the number of offenders in prisons and on less stringent community-based dispositions, it should be noted that since the inception of these sanctions their use has been steadily increasing throughout the Western world (Clear, Cole and Reisig 2006:527; Henderson 2006:74; Stacey 2006 and NLECTC 1999 cited in Paterson 2007:100).

Over the last 25 years, the target population for HDBS has changed substantially. During the 1980s and early 1990s the offender pool specifically included minor offenders, non-violent offenders, non-parole violators, those who were employed, and those who had strong family support (Alarid, Cromwell and del Carmen 2008:193; Caputo 2004:109; Champion 2008:92; Henderson 2006:20–3; Nellis 2004:36; Welch 2004:280). However, during the last decade, in the United States, England and Wales and Australia offenders for whom it would have been considered a ‘taboo’ — medium and relatively serious offenders — are also being sentenced to HDBS (Caputo 2004:109; Edgely 2007:351; Nellis 2004:45; Renzema and Mayo-Wilson 2005:215; Vollum and Hale 2005:104–6). In the United States, England and Wales, relatively large numbers of these offenders are placed under HDBS as a mechanism for early release from prisons (Jannetta et al 2007:2; New Jersey State Parole Board 2007:1–2; Shute 2007:1–3). On the other hand, in the United States and Australia smaller numbers of medium and relatively serious offenders are sentenced to HDBS as a means of preventative detention — that is, post offenders’ court ordered sentences (see Edgely 2007:351; Queensland Government 2007:7).⁸

Increasingly, the imposition of HDBS on serious offenders is the result of three main factors. First, prison overcrowding and the cost of incarceration have spiralled out of control. For example, between 1980 and 2000 the prison population more than tripled in the United States, and almost doubled in Australia, consuming larger and larger portions of state and/or federal budgets (Austin, Irwin and Kubrin 2003; Graycar and Grabosky 2002:16; McCarthy, McCarthy and Leone 2001:16; Ryan 1997:104). Second, HDBS have become increasingly punitive, imposing stringent conditions that are carefully enforced and oriented toward control and surveillance (Champion 2008:90; Nellis 2004:45–6; Vollum and Hale 2005:104; Welch 2004:280). Third, since the mid-1990s intensive, high-tariff, credible electronic monitoring technology using RF, and more recently GPS, has progressively become cheaper, reliable and practical (Nellis 2004:38).⁹ Hence, both low-risk and high-risk offenders, including ‘people who refuse to pay child support, tax cheats, drunk drivers, child molesters, and paroled killers’ are already being, and will increasingly be, sentenced to HDBS (Renzema and Mayo-Wilson 2005:215).

⁷ This number does not include offenders on probation and parole in England, Wales and Australia because they are not subjected to electronic surveillance.

⁸ It should be noted that further utilisation of HDBS for more serious offenders in Australia was one of the key recommendations of the report prepared by the Melbourne Centre for Criminological Research and Evaluation for the Corrections Victoria (2006).

⁹ The United States seems to be most advanced in the use of sophisticated electronic monitoring technology. It utilises RF technology in most states and has GPS technology operational in 36 states (Clear and Dammer 2003:222; Tennessee Board of Probation and Parole 2007:37). England and Wales extensively utilise RF technology and have also piloted GPS technology (Shute 2007:1–3). Australia, on the other hand, only uses RF technology (Henderson 2006:64). It is probable that in the future the use of GPS technology will proliferate beyond the United States.

Even prior to the sentencing of medium and relatively serious offenders using HDBS and the application of increasingly stringent technological measures (such as GPS), these sanctions have generally had a considerable technical violations rate. Throughout the Western world, the rates of breach of HDBS due to technical violations have generally varied between 10 and 40 per cent (Church and Dunstan 1997:62–72; Clear and Dammer 2003:218–24; Cowlishaw 2009:1; Dodgson et al 2001:14–15; Henderson 2006:78; May, Muchan and Noakes 2006:42; McCarthy, McCarthy and Leone 2001:188–93). The highest rates have traditionally been in the United States; this is because it comparatively places more serious offenders under HDBS, imposes stricter conditions, and intensively monitors detainees (Ansary 1999; Bourke 1997 and Gray Fields and Maxwell 2001 cited in Alarid, Cromwell and del Carmen 2008:144; Clear and Dammer 2003:200, 234–5; Petersilia and Turner 1992:629). It is reasonable to assume that the more widespread utilisation of sophisticated GPS technology and the increased placement of medium and relatively serious offenders under HDBS will elicit higher technical violations rate.

The technical violations rate is also likely to increase in the future due to the continuous demand of communities to make HDBS ‘punitive’, particularly when their target is increasingly the serious offender population. Their push for these sanctions to have more substantial economic, work-related, educational and control measures will probably mean that progressively more stringent conditions will be imposed on detainees (Bagaric 2000:439; Biles 2009:323; McCarthy, McCarthy and Leone 2001:166–71; Vollum and Hale 2005:110–11). This is despite the fact that there is no evidence that more punitive conditions have a deterrent effect, and that, in fact, greater targeting of conditions in accordance with an offender’s risk and needs, may minimise the already considerable technical violations rate and return to prison (McCarthy, McCarthy and Leone 2001:179; Renzema and Mayo-Wilson 2005:232).

Prior research has already indicated that targeting more serious offender groups and imposing longer HDBS leads to higher technical violations rate. For example, Florida recorded only a three per cent breach rate for well-motivated drink drivers whose HDBS were on average 36 days in length (Whitfield 2001:13). Yet, the same state reported a 70 per cent breach rate for its Community Control II program, whose target group was offenders who had already breached other community-based sanctions and were sentenced to HDBS lasting six to eight months (Whitfield 2001:13). It therefore seems probable that greater enforcement of increasingly punitive conditions will increase the likelihood of relatively serious offenders committing technical violations. Consequently, additional pressure will be put on the current, already problematic, process of dealing with detainees who breach HDBS due to technical violations.

Problems with the current process for dealing with breach of HDBS due to technical violations

Throughout the Western world, three main problems have been identified with the current process for dealing with breaches of HDBS due to technical violations:

1. Contrary to HDBS’ purpose of diverting offenders from prisons, prison crowding has reached unprecedented levels (Alarid, Cromwell and del Carmen 2008:144;

Caputo 2004:189; Clear 1997:125; Clear, Cole and Reisig 2006:525; Findlay, Odgers and Yeo 1999:224; Fulton et al 1997:70; Nellis 2004:41; Ryan 1997:104). The rate of incarceration has been intensified by HDBS' imposition of punitive and stringently enforced conditions and the lack of suitable and/or available treatment for detainees (Clear and Dammer 2003:234–35; McCarthy, McCarthy and Leone 2001:176; Melbourne Centre for Criminological Research and Evaluation for the Corrections Victoria 2006:49–53).

Prison overcrowding is particularly problematic in the United States as a growing percentage of the prison population is made up of non-violent detainees who breach HDBS due to technical violations and become institutionalised (Alarid, Cromwell and del Carmen 2008:146, 152; Clear, Cole and Reisig 2006:518, 232).¹⁰ The main reason for this is that a penalty of one-year incarceration is typically imposed for those who commit breaches of HDBS due to technical violations (Alarid, Cromwell and del Carmen 2008:192; Welch 2004:269). This has inadvertently meant that those who were diverted from prisons into HDBS and violated their conditions ended up doing more prison time overall than those who were sentenced straight to prison (Clear 2007:183). The prison consequently became a 'backup sanction' (Clear 2007:183), or the 'revolving door' (Petersilia and Turner 1990:103), when detainees were unable to abide by the stringent requirements of HDBS. This practice is:

somewhat controversial because behaviours that are not ordinarily illegal — [such as] changing one's residence without permission, failing to attend a therapy program, neglecting to report to the probation office, and so forth — [if repeated] can result in incarceration (Clear, Cole and Reisig 2006:209).

Consequently, in the United States the mere existence of HDBS has actually increased the cost of corrections (Clear, Cole and Reisig 2006:232; Palumbo Clifford and Snyder-Joy 1992:237; Petersilia and Turner 1990:103; Ryan 1997:104).

2. The court systems are overburdened and no aspect of the re-sentencing process allows for an in-depth investigation into the reasons behind the detainee's lack of compliance with the HDBS and, consequently, what is the best way to reform and punish them.
3. A community-based support system, with a reformatory role that can help to imprint pro-social behaviours and attitudes, does not exist yet, although various research has indicated that it is required to assist detainees in completing HDBS (see Gable and Gable 2005:5; Renzema and Mayo-Wilson 2005:215). However, some jurisdictions in the United States are currently trialling punishment-based

¹⁰ It should be noted that discussion of the correctional crisis in the United States is important in Australia as our correctional policy is frequently based on United States' experiences and results (Biles 2009:323). Furthermore, for years there has been a push by the Australian community for governments to implement increasingly stringent penalties for offenders. Therefore, it is important for Australian people and governments to learn from the likely, albeit unintended, consequences of these 'tough on crime policies' (Bagaric 2000:439; Biles 2009:323).

methods of dealing with those who breach HDBS due to technical violations. For example, Delaware and Georgia are placing such violators in work release or in violation centres, instead of formally re-sentencing and incarcerating them (see Alarid, Cromwell and del Carmen 2008:146, 152). However, these methods are clearly not the much-needed individually-tailored supportive and reformatory initiatives.

Accordingly, it has been suggested that a more effective method of dealing with those who breach HDBS due to technical violations must be introduced (Alarid, Cromwell and del Carmen 2008:144; Nellis 2004:41). In line with this, the author has developed a radically new initiative called the Intensive Intervention Support Program (IISP).

The proposed process for dealing with HDBS breaches due to technical violations – Intensive Intervention Support Program (IISP)

The IISP is proposed as a new program for dealing with detainees who formally breach HDBS due to technical violations and are at a stage of being re-sentenced. The rationale of the IISP is to divert detainees from costly court and incarceration processes into a community-based cost-effective alternative. The IISP is established as a short sharp response to get detainees who have committed repeated technical violations ‘back on track’ to subsequently complete the remainder of their HDBS. This would be achieved through:

- uncovering the reason/s behind the detainees’ lack of compliance; and
- implementing supportive strategies and/or specialised treatment/counselling sessions, thus enhancing the detainee’s ability to subsequently complete the sanction.

The IISP would operate independently from the HDBS Unit and would be based on the generalist principles and goals of ‘case management’, in particular the principle of working with an offender in a holistic manner (see Woodside and McClam 1998:28).¹¹ Contact between IISP case managers and detainees would be frequent as well as substantive, and it would be aimed at assistance and problem resolutions (see Fulton, Stone and Gendreau 1994).

IISP case managers

A team of carefully selected case managers would manage the IISP. The team could include behavioural/social psychologists and social workers (who are specialists in corrections and have an experienced ability in engaging with people who have difficulties), and an operational expert for HDBS (who understands the procedural aspects of HDBS, including

¹¹ This type of case management approach is similarly used in specialist and/or problem oriented courts throughout Australia, that is, domestic violence/family violence courts, drug courts and Aboriginal/Koori courts (Sarre and O’Connell 2009:301–5). These courts generally take a multi-agency and multifaceted approach in trying to investigate the reasons behind offending behaviour and put in place ways to support a person not to reoffend. This has also been more broadly referred to as a part of therapeutic jurisprudence (for more information see Sarre and O’Connell 2009:301–5).

the functioning of the electronic monitoring equipment). The number of case managers in the IISP would be dependent upon the jurisdiction/state breach rate of HDBS due to technical violations and the actual number of detainees on the IISP.

IISP suitability assessment

A panel of IISP case managers would assess all detainees who breach HDBS due to technical violations and reach the stage of being returned to court for re-sentencing. In cases where the detainee breaches the same HDBS for the second time, they would not be assessed for the IISP again if they had been assessed for, completed or attempted to complete the IISP after the first breach of the HDBS. In those circumstances, they would be sent straight to court for re-sentencing.

The suitability assessment process would take place over a period of a week. In order to determine the detainee's suitability for the IISP, the case managers would: first, analyse the breach report prepared by the detainee's HDBS officer; and second, they would conduct in-depth interviews of the detainee. They would specifically aim to understand, and subsequently identify, the issues that resulted in the detainee committing technical violations and the breach of the HDBS. In addition, they would ascertain the specific roles of the detainee's 'significant others' (such as their co-residents, family members, regular/past treatment counsellor and their employer) in relation with their compliance with the HDBS. Uncovering the role of detainee's significant others, particularly their co-residing family members, is important because they usually assist the detainee in complying with the HDBS, and they often provide practical help, financial assistance and emotional support (Ansary 1999; Gibbs and King 2003:9; Van Ness 1992:353).

If the panel of IISP case managers are of the collective opinion that one or more supportive and/or reformative measures could be implemented so that the detainee's issues can be mostly resolved and/or their needs addressed during the IISP, they would explain the IISP to the detainee and encourage participation. If the detainee indicates a willingness to participate in the IISP and subsequently to complete the HDBS, then they would be placed onto the program.

In cases where the detainee is assessed as a 'not suitable candidate' for the IISP (that is, the panel of IISP case managers are of the opinion that the detainee has complex issues and/or needs that cannot be mostly resolved or addressed during the IISP, or the detainee does not want to participate in the IISP and/or does not want to subsequently complete the HDBS), a copy of their assessment report outlining their 'non-suitability' for the IISP would be sent to their re-sentencing judge for consideration in their forthcoming deliberations.

If, during the suitability assessment process, it becomes apparent that there were operational issues related to the control of the detainee on the HDBS that have inadvertently resulted in them committing technical violations, then a written report would be prepared for the Manager/Director of HDBS. For example, a report may be written if there is a problem with the operation of electronic monitoring, such as faulty equipment or inexperienced operators (see King and Gibbs 2003:117; Tennessee Board of Probation and Parole 2007:35). In consultation with the Manager/Director of HDBS, IISP case managers may return the detainee onto the HDBS instead of proposing that he/she does the IISP.

IISP duration and conditions

The IISP would last up to one month depending on the complexity of issues that have resulted in detainee's non-compliance with the HDBS. The maximum duration of the IISP is based on three independent criteria:

- managing program costs;
- encouraging detainee participation; and
- allowing an appropriate timeframe (in accordance with rehabilitation literature) to effectively intervene and mostly resolve detainees' issues and/or address detainees' needs (see Fulton et al 1997:68).

While the maximum length of the IISP would be set at one month, it is expected that, in practice, most detainees would be on it for a lesser period — that is, between two and three weeks. This would be due to IISP's intensive engagement of detainees in supportive and reformative measures and subsequent provision of continuing support and/or treatment in the community while on the HDBS.

The IISP would comprise of up to three specific phases during which detainees would have to adhere to both basic conditions and individually-tailored interventions. Basic conditions would be imposed on the detainee as soon as they are placed onto the IISP, that is, at the assessment stage. These would include not further offending, residing at a particular address and adhering to a curfew. Basic conditions are purposely minimalistic to allow detainees to fully engage with the individually-tailored interventions (see discussion below on the second and third phases of the IISP).

The individually-tailored interventions would be determined on the basis of detainee's specific issues and/or needs identified during the first phase of the IISP. Appropriate interventions would consequently be put into place during the second and/or third phase of the IISP to assist detainees and strengthen their ability to subsequently complete the remainder of their HDBS successfully. IISP case managers would regularly monitor detainees' compliance with the basic conditions and progress with imposed interventions.

While all detainees would participate in the first phase of the IISP, depending on their specific issues and/or needs some detainees would only participate in the second phase of the IISP, some only in third phase of the IISP, and some in both the second and third phases of the IISP. Those who participate in both the second and the third phase of the IISP would do so concurrently.

First phase of the IISP

This is a short and intensive phase comprising of a number of sessions throughout a one-week period. During this time the IISP case managers and the detainee (and their significant others if applicable)¹² collectively determine the individually tailored interventions that are expected to enhance the detainee's likelihood of subsequently completing the HDBS. First, the IISP case managers would consider all of the information collected during the detainee's suitability assessment for the IISP; this includes the HDBS breach report and the IISP

¹² The detainee's significant others, particularly their co-residing family members, would be invited to be part of and engage in a discussion about detainee's issues and possible strategies to resolve them, because they are also directly and indirectly affected by the IISP and subsequently the HDBS (see Ansay 1999; Doherty 1995; Lobley and Smith 2000:9).

assessment report. Second, they would conduct semi-structured interview/s with the detainee and their significant others (if applicable). Here, they would engage in the discussion about the critical issues and/or needs and determine which supportive strategies and/or treatment/counselling sessions would enable the detainee to subsequently complete their HDBS. At the end of this phase, the detainee would sign a binding contract outlining their individually-tailored interventions to be implemented in the second and/or third phase of the IISP.

Second phase of the IISP

IISP case managers over a period of up to three weeks would provide the detainee with supportive strategies comprising of step-by step advice and practical help. This would be done in order to address practical issues and/or needs that have in the past directly or indirectly resulted in the detainee's non-compliance. For example, the detainee could be assisted in obtaining an alternative suitable residence, obtaining and/or maintaining viable employment, finding and/or adjusting to appropriate associates, improving financial and/or time management skills, and generally establishing ongoing networks in community agencies. This is important because research has indicated that many detainees have inadequate life-skills and some are generally unprepared for life outside of prison (see Ansay 1999; Dodgson et al 2001:vii; Melbourne Centre for Criminological Research and Evaluation for the Corrections Victoria 2006:50–1; Van Ness 1992:354).

Third phase of the IISP

Concurrently over a period of up to three weeks IISP case managers would engage the detainee in supportive and reformative treatment/counselling sessions that they have established. These would address specific social and/or psychological issues and/or needs that have in the past directly or indirectly resulted in the detainee's non-compliance. On the basis of previous research four session streams are regarded to be necessary:

1. Sessions designed to motivate the detainee by energising their desire for compliance with the HDBS. The detainee would be encouraged through the explanations of the overall advantages of achieving positive long-term goals as opposed to engaging in short-term 'pleasurable activities' that constitute non-compliance. In addition, the detainee would be helped in dealing with and effectively resisting 'temptations' that surround them in the community while on the HDBS. This is because research had indicated that detainees are generally tempted to return to their previous lifestyle that may have involved criminal activities, drug use and/or alcohol consumption and other behaviours that endorse general non-compliance with order conditions (Church and Dunstan 1997:31; Dodgson et al 2001:vii; Heggie 1999:73; Van Ness 1992:353).
2. Sessions designed to generally coach the detainee and their co-residing family members about forming effective relations based on a mutual understanding and support in a potentially difficult environment. It is well reported in the literature that co-residents, particularly family members, often try to understand the distresses associated with being a detainee and similarly detainees try to recognise the stresses that are involved in residing with them (Ansay 1999:166; Heggie 1999:61, 69–70; Martinovic 2007:90–101; Wilkinson, Moore and Moore 2000:215). However, as this may produce prolonged seemingly unreasonable

anxiety that is disruptive to both in everyday life, it can be difficult for them to individually deal with it firsthand without professional assistance.

3. Sessions designed to help the detainee deal with adjustment and some mild forms of depressive mood and anxiety. For example, detainees would be assisted in relation to the feeling of inability to cope, plan ahead, or continue in the present situation, as well as, having some degree of disability in the performance of daily routines. Various research has reported that there is a need for detainees to have access to specialised psychological services targeted at anxiety and adjustment problems (Ansary 1999:166; Church and Dunstan 1997:49–51; Melbourne Centre for Criminological Research and Evaluation for the Corrections Victoria 2006:53).
4. Sessions designed to therapeutically assist the detainee in dealing with a recurring drug/alcohol addiction. A specialised relapse prevention program would assist detainees in overcoming dependency; this intervention would be specifically intended for those whose relapse had not become irretrievable (Department of Corrective Services 1999:2). The main reason for this session stream is that increasingly detainees are committing technical violations for drug/alcohol use due to improved drug and alcohol testing (Clear and Dammer 2003:235). Furthermore, research has generally indicated that detainees on HDBS encounter difficulties in remaining drug and alcohol free (Clear and Dammer 2003:223; Melbourne Centre for Criminological Research and Evaluation for the Corrections Victoria 2006:84; Heggie 1999:73).

All four session streams would run either as small-group or one-on-one treatment/counselling sessions. Each session within the streams would be specifically adjusted to detainees' individual level of motivation, learning style and personal and inter-personal circumstances [in accordance with Ward and Maruna's (2007:49, 103) 'responsivity principle']. Depending on detainees' specific issues and/or needs they would be able to undertake different session streams simultaneously.

Completion and breach of the IISP

Once detainees complete the requirements of the IISP they would be given a final chance to finish the remainder of their HDBS. A completion report would be prepared by the IISP case managers ascertaining the detainee's key issues and/or needs and how they were managed, as well as, any ongoing issues and/or needs with which the detainee may require continuing support and/or treatment. The case management principle of 'continuity of care' is crucial here, as the ongoing support and/or treatment would be provided by the HDBS officer and/or specialised community agencies. In cases where support and/or treatment is provided by specialised community agencies the overall progress of the detainee would be monitored by the HDBS officer. If the detainee fails to comply with either the basic conditions or the individually-tailored interventions of the IISP, then an IISP breach report would be written and the detainee would be returned to court for re-sentencing.

Benefits of the IISP

The IISP, a radically new program that deals with detainees who breach HDBS due to technical violations and reach the re-sentencing stage, is expected to have major benefits. These include:

- The overall operation of the criminal justice system would become more cost-effective. This is because the current very expensive court and incarceration processes would be replaced by the significantly cheaper IISP. Furthermore, as more detainees would obtain required support, participate in specialised treatment/counselling and consequently complete HDDBS, less would re-offend and be incarcerated (Jolin and Stipak 1992; Petersilia and Turner 1993b:8). Hence, direct and indirect prison costs would be reduced substantially.
- The operation of the court process would become more efficient. First, diversion of most detainees onto the IISP in lieu of the court process would mean that already overburdened courts would be relieved, thus reducing waiting time for upcoming matters. Second, the courts would make more informed re-sentencing decisions for all detainees who do go back to court. This is because IISP case managers would provide independent appraisals of detainees' current issues and circumstances in IISP assessment reports and in some cases IISP breach reports.
- The operation of HDDBS would generally become more humane and equitable. This is because those most vulnerable (that is, on the brink of incarceration) would get access to specialised supportive and reformative assistance to subsequently complete the HDDBS. There would be a further provision, in cases where detainees have ongoing issues and/or needs post the IISP, to be provided with continual community-based support and/or treatment. Additionally, the assessment process for the IISP would aid in safeguarding against potentially inaccurate and discriminatory operational issues related to control of detainees on HDDBS. This is particularly important as there have been various faults with the functioning of the electronic monitoring technology as well as wrongful allegations for technical violations of detainees who are technologically illiterate (see Paterson 2007:105; Tennessee Board of Probation and Parole 2007:37; Turner et al 2007:10, 13).

Piloting the IISP

The IISP needs to be carefully piloted, that is, implemented in accordance with its original design and without any short cuts, as well as independently evaluated so that its specific strengths and limitations are outlined. The jurisdiction/state which pilots the IISP would need to amend its relevant Sentencing Act and channel funding into the establishment of an IISP. It is essential that the jurisdiction/state has a long-standing and well-established HDDBS as well as a substantial number of detainees on it and a significant technical violations rate.

The IISP should be piloted for a period of at least a two years and follow up of detainees should last for a minimum of two years. Adequate amount of time is necessary for two reasons; first, in order for the IISP case managers to fully adjust to the program, and second, for the IISP breach rate and subsequent re-offending rate to reveal the prolonged impact of the IISP. In addition to these 'traditional measures' broader outcomes associated with the IISP also need to be followed up, including whether there are any improvements in detainees' employment, reduced levels of substance abuse and other behavioural changes (see Boone and Fulton 1995). The relatively longer operation of the pilot program would also determine the optimal number of detainees and IISP case managers that are required for the IISP to work most efficiently.

While piloting of the IISP seems most imperative for jurisdictions/states that have significant breach rates due to technical violations (such as the United States — see Bourke 1997 and Gray Fields and Maxwell 2001 cited in Alarid, Cromwell and del Carmen 2008:144; Clear and Dammer 2003:200, 234–5; Morrison 1994:119; Petersilia and Turner 1992:629), it is also important for those jurisdictions/states that don't have this problem. This is because in the foreseeable future it seems that Western governments will further expand HDBS and therefore encounter similar operational issues and require potential solutions such as the IISP (Biles 2009:323; Clear and Dammer 2003:224).

Conclusion

The further proliferation of community-based corrections throughout the Western world seems destined to continue as a myriad of prison related problems have escalated, while HDBS with electronic monitoring technologies seem set to become a 'normal and dominant feature of community supervision' (Nellis 2004:33, 51). The key aspects associated with these sanctions' increasing dependability have been the imposition of numerous restrictions and obligations on the detainee as well as the advent of technology that has substantially improved the ability to react should the detainee breach the sanction's restrictions and obligations (Nellis 2005:139; Petersilia 2003:91). It is expected that in the future a substantially higher rate of offenders will be sentenced to these sanctions, as the pool of offenders who are eligible for these sanctions is enormous.¹³ Burgeoning sanction applications will mean that electronic control mechanisms will become progressively more precise and reliable in controlling detainees, further displacing human supervision and assistance, thus probably resulting in increasing technical violations.

Consequently, the well-reported ineffective and expensive current process of dealing with detainees who breach HDBS due to technical violations should be replaced with the IISP. The IISP would attempt to uncover the complex interplay of reason/s behind the detainee's lack of compliance and would implement supportive strategies and/or specialised treatment/counselling sessions to reinforce the detainee's ability to subsequently comply with the HDBS. This is expected to have significant benefits such as improving the cost-effectiveness of the overall criminal justice system, increasing the efficiency of the court process and generally establishing more humane and equitable HDBS. So, it is apparent that HDBS coupled with the IISP would offer more promise to the 'embattled field of corrections' than all other recent initiatives. But it remains to be seen whether legislators, practitioners and the community can move beyond the 'get tough' rhetoric and develop supportive programs such as the IISP that can address the reality of offender control in the community (Clear and Byrne 1992:329).

¹³ For example, in the United States, the vast majority of those incarcerated are non-violent offenders sentenced to terms of less than two years (Irwin Schiraldi and Ziedenberg 2005:13–15; Petersilia 1998:188).

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