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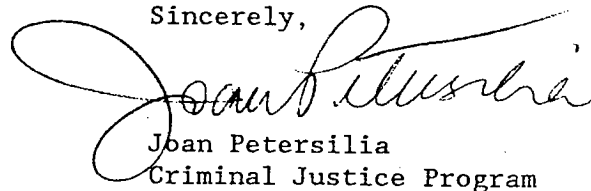
Mr. William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
1331 Pennsylvania Avenue, N.W.
Suite 1400
Washington, D.C. 20004

Dear Mr. Wilkins:

I appreciate your invitation to testify before the United States Sentencing Commission on the subject of sentencing alternatives. Unfortunately, I will not be in the D.C. area at that time.

I have enclosed a recent article I wrote on the subject of house arrests. I hope it will be of some use to you and your Commission.

Sincerely,



Joan Petersilia
Criminal Justice Program

JP:ar

Enclosure: Reprint, "Exploring the Option of House Arrest."

Exploring the Option of House Arrest

BY JOAN PETERSILLIA

Senior Researcher, the Rand Corporation, Santa Monica, California

Introduction

IN DECEMBER 1985, Maureen Murphy was sentenced by a Federal judge in New York to house arrest. The rarity of this sentence in U.S. criminal justice is suggested by the judge's remarks:

The sentencing of Maureen Murphy requires, in the court's opinion, a sentence not heretofore used in this District and almost never used in the country in the federal court. It is used elsewhere in the world and is considered by some to be highly objectionable. The difference, however, is that in other countries it is used to repress political dissent and before trial. Here it will be used after a full trial where the defendant has been found guilty of a serious offense. The penalty is house arrest.¹

With that pronouncement, Judge Weinstein ordered Ms. Murphy to remain in her apartment for the next 2 years. She is allowed to leave her apartment only for medical reasons, employment, religious services, or to conduct essential food shopping. If she violates these conditions, the probation department is ordered to commit her to prison, where she will be required to serve out her suspended (not cancelled) prison term.

Ms. Murphy was not a minor offender. She was convicted of a large insurance fraud and faced a maximum 50 years in prison and \$50,000 fine for her crimes. In most instances, the Federal court would have imposed at least a year in custody.

What motivated Judge Weinstein to make such an important departure from traditional sentencing practice? Judge Weinstein says he was trying to balance the competing aims of public safety, humaneness, and accountability—against a backdrop of seriously crowded prisons. Probation didn't seem like "enough" for this 35-year old woman who willfully committed a major theft. On the other hand, prison for this relatively young person with no prior criminal record seemed "too severe" and "would help destroy her." Given those conditions, he felt an alternative punishment was "essential."

Judge Weinstein and a growing number of his colleagues are searching for reasonable middle-range sentencing options—programs tougher than probation but less harsh (and less expensive) than prison. Variations on the theme include intensive probation supervision, shock incarceration, community diversion centers, police-probation surveillance teams, community sponsors, and, increasingly, house arrest.

Florida has the most ambitious house arrest program in the country, with more than 4,750 inmates "locked up" in their residence. As one Florida judge put it: "If the State can't afford to provide constitutionally acceptable prison space for all those who deserve it, why not utilize the offender's home instead? It may well be that the best place for a convicted offender, given current prison conditions, may be confined to his own home."

¹ From Judge Jack Weinstein's Sentencing Memorandum in the Maureen Murphy case (United States District Court, Eastern District of New York, December 1985).

Many in the judiciary are echoing similar thoughts, and house arrest programs are beginning to spread not only in the Federal system but in state and local corrections as well. A recent survey of "Innovation in Probation" shows that several states—including Oklahoma, Alabama, Connecticut, Delaware, Indiana, Georgia, Texas, and South Carolina—currently operate state-run home detention programs. Similar programs exist at the county level in several others. In total, 30 states are implementing some form of house arrest program, and a dozen more are planning programs to be implemented in the next year.²

This article summarizes the characteristics of house arrest programs and discusses their advantages and several important unresolved issues. It concludes by noting that probation's long-term survival may well depend on whether it succeeds in implementing house arrest and other intensive surveillance programs. If it can adapt its methods of supervision and service to deal with higher risk offenders in the community, probation may well find itself back in favor with the public and again the center of modern corrections policy.

Characteristics of House Arrest

While the goal of "house arrest" is easily understood—to restrict freedom—the mechanisms used to confine an offender to his home vary considerably. In some instances, curfews are simply added on to the offender's court-ordered parole or probation conditions.³ Typically, offenders participating in an intensive probation supervision program are required to be in their residence during the evening hours and on weekends. For example, evening curfews are mandatory for participants in Georgia's intensive probation program. While curfews permit individual freedom in the community except for particular hours, more direct home incarceration programs totally restrict the offenders freedom in all but court approved limited activities. The latter is much more intrusive than the former.

But even with the latter type of house arrest program, stringency varies considerably. House arrest programs without electronic equipment to monitor compliance tend to be less severe. These programs rely, for the most part, on probation officers' telephone calls and random home visits.⁴

² Rand conducted a small survey entitled "Innovations in Probation" which was completed by 120 chief probation officers in fall, 1985. These particular individuals were selected to represent a nationwide sample of chiefs from large counties. Follow-up telephone interviews were conducted with about 30 of these persons who reported operating particular innovative surveillance-oriented programs, including house arrest. In addition, the chiefs recommended others in parole or the private sector who operated similar programs. Complete results of this survey, sponsored by the Edna McConnell Clark Foundation, will be published in fall, 1986.

³ While house arrest could be used pretrial, our discussion is limited to its use for convicted felons, either as a condition of probation or parole, a direct sentence, or a condition of release after some period of incarceration (e.g., on work-release from jail).

⁴ Some counties are using nonprobation employees to monitor offenders. In Tulsa, Oklahoma, for example, the police are given weekly lists of all parolees on house arrest, their addresses, and curfew conditions. In addition, pictures of house arrestees are posted at the local police station. Police are encouraged to make random visits to the parolee's home and survey the offender's neighborhood to make certain offenders are in their residences. Other counties have used neighbors and community volunteers as "informants."

Some house arrest programs have begun to use computers to help monitor compliance. In New Jersey, for example, the telephone numbers of house arrest participants are programmed into an automatic telephone call-back system. The computer continues to call the offender until contact is made. Some telephonic systems even ask the offender a prerecorded question. If the individual is not there to answer the computer generated phone call, or fails to provide the correct answer to the question (verified by a probation officer), then a violation is recorded.

The most stringent of the house arrest programs are those using electronic monitoring devices. One form of the technology—popularly referred to as “active” monitoring—requires the probationer to wear a small transmitter. The transmitter emits a radio signal which is picked up by a receiver attached to the probationer’s telephone. During curfew hours, the computer automatically dials the offender’s phone at random intervals to determine whether the receiver is receiving a signal from the transmitter. If so, the computer assumes the probationer is at home. If not, the computer registers a potential curfew violation.

Another version of the technology uses a passive wrist band instead of a transmitter. In this case, a computer dials the probationer’s home during curfew hours, the probationer then inserts an identification bracelet worn on the wrist into a receiver attached to the phone, and the receiver sends a signal back to the computer. If the telephone is not answered, or the bracelet is not inserted into the receiver, the computer notes a potential violation.⁵

Who is Doing What?

The Rand “Innovations In Probation” survey revealed that about 28 states are operating formal intensive probation supervision (IPS) programs, of which house arrest is generally considered the most stringent type.⁶ Georgia’s IPS program is the oldest, begun in 1982, and our survey revealed that over half of the IPS programs nationwide report modeling themselves after Georgia’s program. Intensive supervision in Georgia mandates curfews and offender employment, community service, routine alcohol and drug testing, and two to five weekly staff/probationer contacts.⁷

⁵ For a more detailed discussion of electronic monitoring, see Charles Fyfe and Joseph Vaughn, “A Consumer’s Guide to the Electronic Surveillance of Probationers,” forthcoming, National Institute of Justice, U.S. Department of Justice, 1986; and “Monitoring Offenders at Work and at Home Through Electronics,” *NIJ Reports*, November 1983.

⁶ Nearly all states reported having intensive (or maximum) probation conditions. We distinguish here between operating a formal IPS program and simply placing select offenders in reposed conditions. The latter has been routine probation practice historically.

⁷ For a description of Georgia’s IPS, see Billie Erwin’s article in this issue of *Federal Probation*, entitled “Turning Up the Heat On Probationers in Georgia.”

As of this writing, several agencies are using active electronic monitoring. These include correctional agencies and private service corporations in Florida, Idaho, Kentucky, Michigan, New Jersey, Oregon, Utah, and Indiana. California and Virginia are planning to implement programs in summer, 1986.

All house arrest programs attempt to identify “low risk” prison-bound candidates. Some use formal screening devices (e.g., New York, Florida, New Jersey); others simply exclude defendants convicted of particular (usually violent) crimes. Some actively solicit the involvement of the community, whereas others hesitate about publicity for fear of community resistance. In most instances, offenders are charged a fee to cover some of the added expenses of house arrest, usually ranging from \$15 to \$200 a month, although in Oklahoma, no fee is collected. Most of these programs have been set up without formal legislation, although several states are attempting to develop a legal basis for house arrest (e.g., Kentucky, California, Maine). All house arrest programs stress surveillance and employment, and most require community service and victim restitution.

While these programs have received a great deal of media publicity, in actuality, house arrest has probably been used with less than 10,000 adult offenders nationwide. A large proportion of those participants have resided in Georgia, Florida, and Texas. Most of the participants have been property offenders, although Florida and Oklahoma admit offenders convicted of personal crimes. Persons convicted of “driving under the influence” are particularly favored house arrest targets, since keeping them at home, away from their cars, seems effective in forestalling their future crimes.

The Advantages of House Arrest

House Arrest is Potentially Cost Effective

While no definitive cost studies have been done of house arrest, it is thought to be highly cost effective. If the offender were truly prison bound, then the state would save not only the yearly cost of housing the offender (about \$10-15,000 per year), but also the pressure to construct new prison facilities (at about \$50,000 per bed).

If electronic monitoring equipment is used, house arrest is not as immediately cost effective. Because companies are trying to recoup some of the development costs, purchasing the initial equipment is currently quite expensive. For instance, 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 23 persons monitored had been sent to jail instead. However, if the system is used for 12 persons for an entire year, the cost comparisons reverse, and the county would save about \$65,000.⁸ Most agree with the manufacturers that in the long run home incarceration will be less expensive than institutional incarceration.

⁸ “Home Incarceration with Electronic Monitoring in Kenton County, Kentucky,” A Preliminary Report, by Robert Lilly and Jennifer Wright, unpublished draft, 1986.

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Using cost figures provided by some of those who completed our survey, we computed a rough comparison of costs per program type (see table 1).

TABLE 1.—ANNUAL COST OF HOUSE ARREST VS. ALTERNATIVE SENTENCES

Routine Probation	\$300—\$2,000
Intensive Probation	\$2,000—\$7,000
House Arrest (w/o electronics)	\$2,000—\$7,000
With Telephonic Call Back System	\$2,500—\$5,500
With Passive Electronic Monitoring	\$2,500—\$6,500
With Active Electronic Monitoring	\$4,500—\$8,500
Local Jail	\$8,000—\$12,000
Local Detention Center	\$5,000—\$15,000
State Prison	\$9,000—\$20,000

Not only are operating costs lower for house arrest than for jail or prison, but there are indirect cost savings as well. Offenders with families can contribute to their support, thus saving the state welfare costs the offender's family may have required. Most house arrest programs require the offender to be employed. Consequently, he continues to pay taxes and may be required to pay victim restitution and probation supervision fees as well. Georgia probationers paid \$650,000 in probation fees last year, which was enough to totally offset the cost of the intensive probation program. Florida reported collecting \$9.2 million in fees from its home detainees, although this was not enough to cover the costs of supervising them.

However, the figures in table 1 ignore an important cost component: the cost of reprocessing any recidivists. If house arrest participants are being rearrested and retried, then the system bears those reprocessing costs.⁹ Recent estimates show that it costs an average of \$2,500 to dispose of an arrest (Haynes and Larsen, 1984).

In short, we really don't have information to compute the full costs of various probation programs. At this point, all we know is that the cost of administering house arrest is less than confinement in either state or local facilities. But particularly with electronic monitoring, we must be skeptical of the claims supporting house arrest on the grounds that it is *much* less expensive.

A house arrest program in Contra Costa, California was cancelled, despite glowing reviews from all concerned, primarily because of expenses. After a 1-year trial, the house arrest program (without electronics) was deemed too expensive. "It turned out that it costs more to keep them in home detention than in jail," said Cecil Lendrum of the probation department. Jail overcrowding was not seriously relieved, and the sheriff's department was unable to reduce its staff. According to Rudy Webb, the program coordinator, the net cost to the county for 1 year of the program was \$95,000.

⁹ These operating costs also ignore the victim's cost, e.g., hospitalization, unemployment.

House Arrest Can Be Tailored to Meet Local Needs

One attraction of house arrest is its flexibility. It can be used as a sole sanction or part of a package of sentencing conditions. It can also be used at almost any point in the criminal justice process. It can also be used as a diversion before an offender experiences any jail time, after a short term in jail, after a prison term (usually joined with work release), or as a condition for probation or parole revocations. It can be used to cover particular times of the day or particular offender types. Because the offender is usually on some type of suspended sentence, he can be quickly revoked and sentenced to prison if he fails to meet the conditions of his participation. House arrest programs, for the most part, do not require legislative changes and can be set up with administrative memoranda. They usually include rather easy to communicate conditions, enhancing implementation ease.

House arrest also has potential applications for offenders with special needs, e.g., the terminally ill, mentally retarded, those with AIDS. Connecticut is exploring its use for pregnant women. Currently, when women come to jail or prison pregnant, the facilities must have special arrangements to assure the physical well-being of both mother and child. Depending on the level of risk involvement, such a woman might be released to her home or the home of a relative during pregnancy. This would likely result in cost savings, as well as provide a healthier atmosphere for mother and child.

House Arrest Minimizes the Social and Psychological Costs of Incarceration

Most believe that house arrest programs are "socially cost effective." House arrest can prevent the breakup of the offender's family and family networks, with its consequent psychological and physical disruption that may traumatize the offender's family as well as himself. And if the defendant had a job, he could keep it.

Furthermore, any "criminogenic effects" associated with prison would be avoided. This benefit is particularly attractive, especially for first offenders who may not have committed themselves to a life of crime. They would not learn from career criminals in prison, nor would they be physically assaulted. Most of those operating house arrest programs view this as an important advantage. While prisons are not designed to scar inmates psychologically, that is an unfortunate concomitant effect of most prisons today. As the New York house arrest guidelines noted:

Imprisonment returns a man to society with a scarred psyche, unpaid debts and financial losses, a highly disruptive if not irreparably broken family, children who lose respect for their parent, no job, and a gap in his life history that is hard to explain when he seeks a new job.

If we could devise a sentence that would not compromise public safety, and at the same time avoid such devastation, surely it would be preferable on this and other grounds as well. For example, prisons today are unable to provide extensive social and rehabilitative services. Offenders who remain in the community can be ordered (as a condition of their release) to undergo particular types of community based treatments. It is also probably true that rehabilitation taking place in the offender's own community has a higher probability of long-term success.

Unresolved Issues

Most people believe that house arrest is less intrusive and less expensive than prison and thus worth trying. Yet, there are concerns about this trend. Victims' advocates argue that placing convicted offenders back in the community, however stringent the conditions, trivializes the nature of their crimes. MADD—Mothers Against Drunk Driving—has been particularly critical of house arrest and sees such sentencing as a step backward in efforts to stiffen penalties for drunk drivers. (Drunk drivers are frequent house arrest participants.)

Probation officers are often critical because such programs focus on guarding people instead of helping them. Civil rights groups fear that the technology will be abused and that the private sector will begin selling the equipment to extend surveillance not only to convicted criminals, but to undesirables (e.g., persons with AIDS). And nearly everyone is concerned with the public safety issue—will offenders simply escape or use their homes as the base for criminal operations?

These and related issues discussed below are becoming important, as counties begin to consider the pros and cons of implementing house arrest programs.

Widening the Net of Social Control

Non-violent and low risk offenders are prime candidates for house arrest and are least likely to have been sentenced to prison in the first place. As judges become more familiar with house arrest, they may well use it for defendants who would normally have been sentenced to routine probation. Hence, a sentence originally intended to reduce prison crowding might instead "widen the net" of social control without reducing prison and jail populations appreciably.

Alvin Bronstein, head of the American Civil Liberties Union's National Prison Project, said: "We should be looking for ways to place fewer controls on minor offenders, not more. If these devices are used as alternatives to jail, then maybe there's no problem with them. If you're sending the same people to jail and putting people who otherwise would be on probation on them, it's a misuse. We're cautiously concerned."¹⁰

Alternatively, house arrest may be used as an "add on" to the sentence the judge would normally have imposed, thus lengthening the total time the offender is under criminal sanction. According to a probation officer who operates a house arrest program in Rock County, Illinois,

Probation could not convince the judges that home detention is a good program. It is being done, but it seems that judges are doubling the length of jail sentences imposed in order for offenders to put in the actual time the judge had wanted served in the first place.

¹⁰ As quoted in [Krelich, Kevin], "The Computer Age" in *Corrections Companion*, September 1983.

In the long run, "widening of the net" with house arrest programs is a realistic possibility. Research has shown that prison capacity drives prison commitments, as well as vice versa.¹¹ In other words, judges will sentence offenders to prison as long as capacity exists, and as capacity expands, so may prison commitments. If we begin to regard homes as potential prisons, capacity is, for all practical purposes, unlimited. Such possibilities have widespread social implications: who is to say how wide the "social net" would stretch.

But while we certainly don't want to "widen the net" irresponsibly, more intensive interventions may be necessary to curb the high recidivism rate of some felony probationers. In tracking 1,700 adults granted probation in California, Petersilia et al. (1985) found that two-thirds were rearrested in the 3 years following sentencing. Moreover, 75 percent of the official charges filed against those sampled involved burglary/theft, robbery, and other violent crimes—the crimes most threatening to public safety.¹² In searching for solutions to what is widely regarded as a serious problem—crimes committed by felons on probation—we recommended intensive supervision probation programs. House arrest is regarded as a form of intensive supervision.

Focusing Primarily on Offender Surveillance

Some worry that house arrest, particularly if coupled with electronics, will be the final blow to the "rehabilitation ideal." As probation officers focus more heavily on surveillance, rehabilitation-type activities are diminished. Most probation officers monitoring house arrest participants admit they have little time for counseling.

While it is true that counseling is reduced in most house arrest programs, employment or enrollment in school is often required. And, to my way of thinking, having a job or a high school diploma may do more to increase chances for a law abiding life.

Intrusiveness and Possible Illegality

Some people object outright to the state's presence in individuals' homes, long regarded as the one place where privacy is guaranteed and government intrusion severely restricted by law. If electronic devices are used, some fear we may be headed towards the type of society Orwell described in 1984. In 1984, citizens' conversations and movement were strictly monitored and used as a tool of government oppression. However, house arrest, with or without electronics, is quite different from the 1984 scenario. House arrest is used as a criminal sentence and only imposed on offenders after they have been legally convicted. It is imposed with full consent of the participant. It is intended to be used as an alternative to incarceration; and surely a prison call is more intrusive to the individual's privacy than even strict confinement to one's home.

¹¹ Carlson, Kenneth (ed.), *American Prisons and Jails*, Vol. II, National Institute of Justice, Washington, D.C., 1980.
¹² Joan Petersilia et al., *Granting Felony Probation: Public Risks and Alternatives*, The Rand Corporation, January 1985.

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Turning Up the Heat on Probationers in Georgia

BY BILLIE S. ERWIN*

INTENSIVE is a relative term. Intensive probation supervision (IPS) applies the term in varying degrees. The basic idea behind intensive probation supervision, which is sweeping the country, is to increase the heat on probationers in order to satisfy the public demand for just punishment. Can prison-bound offenders be diverted into IPS without posing serious threat to public safety? That is the pivotal question. If the answer is yes, IPS can be said to satisfy two goals that have long appeared mutually contradictory: restraining the growth of prison populations (and budgets) through diversion, while satisfying the public's demand that criminals be punished for their misdeeds. Not surprisingly in these budget-conscious times, the IPS concept is gaining popularity. This article describes Georgia's IPS program and summarizes preliminary research that suggests that IPS is both safe and cost-effective.

Background of IPS in Georgia

Like other states, Georgia experienced explosive growth in prison admissions and sentence lengths during the 1970's. Despite massive funding for new facilities, prison population continued to outstrip capacity, resulting in gross overcrowding, huge backlogs of state inmates in local jails, Federal lawsuits, and terrible budgetary overruns. A "three governors during this period (Lester Maddox, Jimmy Carter, and George Busbee) described the chronic prison crises as the worst problem of their administrations, one that sapped their energy and soaked up money desperately needed for other worthy projects.

The judges tended to be very conservative: the per-capita incarceration rate in Georgia was then the highest in the country, higher even than in the Soviet Union or South Africa. Some judges expressed the feeling that it was their responsibility to impose sentences reflecting just punishment for crime, while overcrowding was the responsibility of the corrections department (which in Georgia oversees both prison and probation). As the crisis deepened, however, the judiciary became more sympathetic and began using regular probation for more serious offenders. In spite of the fact that more serious offenders were being placed on regular caseloads, the crisis in prison overcrowding continued unabated. An alternative was needed that could be used for a still more serious category of offender—that was as "punishing" as prison without being costly and without the undesirable side effects of forcing innocent families onto welfare or plunging lesser offenders into prisons full of hardened criminals. Georgia's Intensive Probation Supervision program emerged from this decade of crisis and frustration, conceived and formulated by probation staff with direct input from judges.

*Billie S. Erwin is on the staff of the Office of Research and Evaluation for the Georgia Department of Corrections and served as principal evaluator for the intensive probation supervision pilot. She was assisted in data analysis by Dr. Edward M. Beckner, assistant professor at Georgia State University.

Who Should Fund: State Reimbursement to Counties?

If offenders who would normally be serving time in state prisons are diverted to local communities to serve intensified probation sentences, who should bear the cost? The state saved a prison or jail bed and operating costs, which at a minimum are \$10,000 per year, per offender. But probation picked up an additional client who requires intensive, costly community supervision.

In states with centralized probation departments, reallocating a portion of the overall corrections budget to correct this imbalance is rather straightforward (although not necessarily easy to accomplish). But in many states, prisons are state funded and probation is county funded. Hence, a savings in the state level prison budget does not necessarily translate into an "add on" to the county level probation budget.

Shouldn't the state reimburse the county to offset some of the additional costs incurred? This is a central question, and if they don't address it, probation officials are likely to find themselves again in a no-win situation: responsible for supervising high risk felons with too few resources to do the job adequately. Recidivism rates will likely rise, and probation will again come under fire for its ineffectiveness.

Can Probation Itself Adapt?

In my opinion, the most important "unresolved issue" concerns whether probation itself can adapt to house arrest and other intensive surveillance programs. In moving from primarily rehabilitative to restrictive supervision, structural and organizational changes must inevitably follow.

Most dramatically, probation departments may need to shift from 8 a.m. to 5 p.m. organizations, closed on weekends, to 24-hour, 7-days-a-week services. Donald Cochran, Commissioner of Probation in Massachusetts, says 24-hour probation is just around the corner:

It is naive to assume that the more serious probationers can be effectively supervised on a 9-5 basis. Criminals don't work bankers' hours. Ironically, probation is the only component in the criminal justice system that has historically thought of itself as immune from 24-hour availability. The police, correctional officials, and recently judges are called upon for around-the-clock service... Why not probation? Essentially, the argument is that the activities and schedules of probation officers ought to more closely reflect the activities and schedules of those they presume to service and deter. (APPA Perspectives, fall 1986)

Furthermore, probation as an organization will need to staff and monitor surveillance programs differently. It will need new screening criteria, perhaps recruiting and training different types of personnel, devising guidelines for length of stay, and determining what response will be made to violators. In house arrest, the first violations will be with respect to curfew. How will probation choose to respond? These issues are not minor, and probation officials need to give them considerable forethought.

The next few years are critical for the survival of probation. With virtually every state facing severe prison crowding, probation continues to dominate contemporary corrections policy. Departments that can reorient their services to handling serious offenders outside of prison are likely to find themselves back in favor with the public and those who provide their funding. House arrest programs show promise in this regard.

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Jericho, National Moratorium on Prison Construction, Washington, D.C., Spring, 1981.

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House
Arrest

s/a

Donald

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There have been no formal challenges to date concerning the legality of house arrest. But legal opinions written by officials in Utah and Florida argue that house arrest, with or without electronic monitoring, will withstand constitutional challenge as long as it was imposed to protect society and/or rehabilitate the offender and the conditions set forth are clear, reasonable, and constitutional.¹³

These officials believe it can be reasonably argued that house arrest is both protective of society and rehabilitating to the offender. And since offenders sign consent forms, it makes it difficult to argue that the conditions were not clear. "Reasonable" generally implies that the conditions are fair. If prison was the alternative, given that house arrest is less intrusive, it can therefore be justified as being fair. Further, house arrest as currently implemented does not appear to violate any constitutional guarantee.

Experts agree that the most plausible constitutional challenges pertain to the 4th and 14th amendments. The 4th amendment prohibits unreasonable search and seizures, and some question whether installation and subsequent monitoring by electronic transmitters constitutes an unreasonable "search." The 14th amendment guarantees equal protection under the law. If offenders are being required to pay a fee in order to be eligible for the program, and those who can't afford to pay are being denied probation or parole, house arrest may be liable to 14th amendment constitutional challenges.

Thus, while house arrest does not seem overly intrusive or threatening to constitutional rights, the situation needs to be closely monitored as the technology grows more sophisticated. Manufacturers of the electronic transmitters are already considering the potential of including home video and audio surveillance and remote-control testing of blood alcohol content. If these possibilities ever become reality, our assessment might change.

Race and Class Bias in Selecting Participants

Because house arrest programs are in the experimental stage, administrators are being extremely cautious in selecting participants. Most programs limit participation to offenders convicted of property crimes, with minor criminal records and no history of drug abuse. Such strict screening makes locating eligible offenders difficult, and those who are eligible tend to be disproportionately white collar offenders.

American Civil Liberties Union officials say the programs may discriminate against young, poor, and black people because to qualify for most house arrest programs, a person must be able to pay a "supervision fee," which runs about \$15 to \$50 a month. If electronic monitors are used, the fee is higher (about \$200 a month), and the offender must have a home and a telephone. Persons without these resources may have no alternative but prison.

¹³ For a complete review of legal issues, see Richard V. del Carmen and Joseph Vaughn, "Legal Issues in the Use of Electronic Surveillance in Probation," National Institute of Corrections, Washington, D.C., 1982 and "Legal Issues in the Use of Electronic Surveillance in Probation," *Federal Probation*, this issue.

As noted above, this situation raises possible "equal protection" issues as well as overall fairness concerns. Some programs have begun instituting sliding scale fee schedules, and a few others are providing telephones for offenders who don't now have them.

Compromising Public Safety

Some people seriously question whether house arrest programs adequately protect the public. Regardless of stringency, most admit that house arrest cannot guarantee that offenders will go "straight" and that it relies for the most part on the offender's willingness to comply. Can a criminal really be trusted to refrain from further crime if allowed to remain in his home? What is to stop him from simply using his home as a base of criminal operations, for example, drug deals, fraud, and prostitution?

To date, both the recidivism and escape rate for house arrest participants is quite low. Florida's Community Control Program reports a revocation rate of about 15 percent and an escape rate of less than 1 percent.¹⁴ While current statistics on recidivism and escapes don't cause particular alarm, the low rates are due in part to the fact that programs select the best risks. As house arrest becomes more widespread and incorporates other offender types, the public safety question might resurface.

Another caution bears mentioning. It is true that every house arrest program now operating attempts to select individuals with a low probability of recidivating. While that is reasonable in theory, predicting individual recidivism is difficult in practice. Research has shown time and again that the system's ability to successfully predict recidivism hovers around 70 percent accuracy—meaning that predictions for one in four offenders will be incorrect.¹⁵ While predictions are more accurate for low risk offenders, some of those predicted to succeed will undoubtedly fail. House arrest programs should not promise absolute success; they will undoubtedly fail to deliver.

Are We Guaranteeing Failures?

Some believe that despite good intentions, successfully completing a house arrest sentence may actually be tougher than serving a prison term. As Cecil Steppe, chief probation officer in San Diego, California noted: "In some ways house arrest can be tougher than being in jail. You come home and your kids beg you to go to the park or get some ice cream. You're not free to do that."

Everyone agrees that it takes a very disciplined person to act as his own warden. Given the impulsiveness of many offenders, expecting house arrest compliance over a long period of time may be unrealistic. While there have been some lengthy house arrest sentences, most have been for 6 months or less. Generally, offenders are trading 3 to 5 days at home for 1 in jail.

Setting expectations that offenders can reasonably meet seems important. Unrealistic conditions simply guarantee failure. The system will then have to reprocess and (perhaps) reincarcerate the recidivists, negating the cost savings associated with house arrest.

¹⁴ "Community Control Update," Florida Department of Corrections, May 1982.
¹⁵ Pomeroy et al., 1982.

Electronic