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Federal Probation

A JOURNAL OF CORRECTIONAL PHILOSOPHY AND PRACTICE

Published by the Administrative Office of the United States Courts

VOLUME XLIX

MARCH 1985

NUMBER 1

INDEXES

This Issue in Brief

SEP 16 1985

CONTENTS

ACQUISITIONS

A Diversionary Approach for the 1980's.—Various changes in social thought and policy of the past several years carry important implications for the treatment of young offenders. These changes include a marked decrease in public willingness to spend tax money for social programs, a shift in focus from offender-rights to victim-rights, and an increase in the desire for harsher treatment of serious offenders. The general social ethos reflected in those positions has prompted a reassessment and new direction for the delivery of juvenile diversion services in Orange County, California. Authors Arnold Binder, Michael Schumacher, Gwen Kurz, and Linda Moulson discuss a new Juvenile Diversion/Noncustody Intake Model, which has successfully combined the collaborative efforts of law enforcement, probation, and community-based organizations in providing the least costly and most immediate level of intervention with juvenile offenders necessary to protect the public welfare and to alter delinquent behavioral patterns.

Home as Prison: The Use of House Arrest.—Prison overcrowding has been a major crisis in the correctional field for at least the last few years. Alternatives to incarceration—beyond the usual probation, fines, and suspended sentences—have been tried or proposed. Some—such as restitution, community service, intensive probation supervision—are being implemented; others have simply been proposed. In this article, authors Ronald P. Corbett, Jr. and Ellsworth A.L. Fersch advocate house arrest as a solution to prison overcrowding and as a suitable punishment for many nonviolent, middle-range offenders. The authors contend that with careful and random monitoring of offenders by special probation officers, house arrest can be both a humane and cost-effective punishment for the offender and a protection to the public.

A Diversionary Approach for the 1980's	Arnold Binder Michael Schumacher Gwen Kurz Linda Moulson	4	99051
Home as Prison: The Use of House Arrest	Ronald P. Corbett, Jr. Ellsworth A.L. Fersch	13	99052
Forgotten People: Elderly Inmates	Gennaro F. Vito Deborah G. Wilson	18	99053
Florida's Sentencing Guidelines: Progression or Regression?	David B. Griswold	25	99054
Reliability in Guideline Application: Initial Hearings - 1982.....	James L. Beck Peter B. Hoffman	33	99055
Responses to the Accreditation Program: What Correctional Staff Think About Accreditation	Susan M. Czajkowski Peter L. Nacci Nancy Kramer Shelley J. Price Dale K. Sechrest	42	99056
The Victim's Role in the Penal Process: Recent Developments in California	Donald R. Ranish David Shichor	50	99057 VRC
Recidivism Among Convicted Sex Offenders: A 10-Year Followup Study	Joseph J. Romero Linda Meyer Williams	58	99058
The Warrant Clause: The Key to the Castle.....	Leila Obier Schroeder	65	99059
Assessing Correctional Officers	Cindy Wahler Paul Gendreau	70	99060
Departments:			
News of the Future.....		75	
Looking at the Law.....		77	
Reviews of Professional Periodicals.....		80	
Your Bookshelf on Review.....		83	
Letters to the Editor.....		88	
It Has Come to Our Attention.....		89	

99052
99056

explains that exclusionary rules developed to keep illegally obtained evidence from being used in court and that both arrests and searches can occur without a warrant in specific circumstances.

Assessing Correctional Officers:—Authors Cindy Wahler and Paul Gendreau review the research on correctional officer selection practices. Traditionally, selection of correctional officers was based upon physical requirements, with height and size being a primary consideration. A number of studies have

employed the use of personality tests to aid in the identification of the qualities of "good" correctional officers. These assessment tools, however, have provided qualities that are global and not unique to the role of a correctional officer. Noting a recent trend towards a behavioral analysis within the field personnel selection, the authors argue that a similar type of analysis may provide a more fruitful avenue for assessment of correctional officers.

All the articles appearing in this magazine are regarded as appropriate expressions of ideas worthy of thought but their publication is not to be taken as an endorsement by the editors or the Federal probation office of the views set forth. The editors may or may not agree with the articles appearing in the magazine, but believe them in any case to be deserving of consideration.

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Home As Prison: The Use of House Arrest

BY RONALD P. CORBETT, JR. AND ELLSWORTH A. L. FERSCH*

PRISON OVERCROWDING has been a major crisis in the correctional field for at least the last few years. The topic has dominated yearly budgetary discussions between legislative bodies and correctional administrators.¹ It has preempted consideration for growth in governmental expenditures in other areas, as elected officials ponder their means of meeting the one problem alone. Beleaguered administrators have more recently taken to public, media-directed warnings about the explosive potential as prison and jail populations continue to swell considerably past capacity.² The urgency of the problem has been recognized at the highest level as well. President Reagan's Task Force on Violent Crime, in its published report of September 1982, proclaimed the following: "The problem of available bed space in our state prisons is the single most significant criminal justice issue in the country today."³ In the state of Massachusetts, Governor Dukakis' Anti-Crime Council has already established relief to overcrowded prisons and jails as its top priority.⁴

Why the clamor? Partly, it is an expression of concern for the conditions in which most inmates live. The Federal Court System has been inundated with prisoner law suits claiming violation of the eighth amendment protection against cruel and unusual punishment, and courts—in some cases—have responded by ordering some states, under penalty of contempt proceedings, to improve conditions.⁵ Those states' executives who may have trouble mustering sympathy for inmates sleeping next to boilers or sharing 5 by 8 cells with others will usually respond to a direct court order. Failing to comply could threaten their tenure or budget.

Secondly, and more importantly, the issue is not a temporary or stabilized one. Statistical projections for growing censuses at prisons have consistently been exceeded in reality. For example, in 1979, the then governor of New York, Hugh Carey, projected that the state would need 4,000 new prison cells by 1986. That projection was surpassed in 1981. Dur-

ing his first month in office, in January 1983, Governor Cuomo's projections for new cells needed within 12 months was reached in four.⁶ As judges show no inclination to move away from sentencing patterns that have grown stiffer since the mid-1970's, today's overwhelming problem will take on catastrophic proportions soon.

Much of the answer to the question as now posed must come in the form of new prison construction. Though this is inevitable, it raises enormous difficulties on many fronts for state executives. First, any significant new construction is immensely expensive.⁷ The 8,800 new cells that Governor Cuomo claims are needed will come at a cost of \$700 million and will absorb most of any foreseeable growth in state expenditures.⁸ Secondly, the public is exceedingly fickle about such proposals. Anxious to see more serious criminals locked up, the public remains uninterested in publicly subsidized bond issues for construction and positively adamant on the point that prisons, however funded, shall not be placed near anyone's home. This creates, to put it mildly, a dilemma for public officials who would like to think that the problem is solvable.

In an attempt to deal with the dilemma, we argue for increased attention to alternatives to incarceration. Within those alternatives, traditional options now coexist with some of a newer vintage.

Alternatives to Incarceration

Prisons have never been the answer for the overwhelming majority of offenders. Rather, most offenders are never incarcerated. Most offenders are viewed as needing something less than incarceration.

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¹ Robert Gangi, "Never Enough Prisons," *New York Times*, August 6, 1983, p. A25.

² "Prison Overcrowding," *Criminal Justice Newsletter*, fall promotional circular, 1984, p. 1.

³ Report to the President of the United States on Violent Crime, Department of Justice, Washington, D.C., 1982.

⁴ Phone conversations with support staff, Governor Dukakis' Anti-Crime Council, Summer 1983.

⁵ "Prison Overcrowding," *Criminal Justice Newsletter*, Fall promotional circular, 1984, p. 1.

⁶ Robert Gangi, "Never Enough Prisons," *New York Times*, August 6, 1983, p. A25.

⁷ William G. Blair, "Inmate Cost is Put at \$40,000 a Year," *New York Times*, December 27, 1984, p. 1.

⁸ Robert Gangi, "Never Enough Prisons," *New York Times*, August 6, 1983, p. A25.

tion.⁹ Society has decided it does not want to bear the cost of incarcerating vast numbers of people.¹⁰ There have, therefore, been a number of alternatives to incarceration.

The three most prominent alternatives are the standard punishments inflicted on offenders by the criminal justice system: fines, probation, and suspended sentences. Each of these three is a punishment, and each of these is an alternative to incarceration.

Fines benefit the community, suggest to the offender the financial consequences of acts, and prevent the community from having to pay for the housing and upkeep of the offender.

Probation is widely used and the most common alternative to incarceration.¹¹ It requires the offender to exercise care in daily activities but is not as clear in its message as is a suspended sentence. A sentence to an institution that is imposed then suspended implies a clear warning that further antisocial behavior will result in incarceration.

Aside from these commonly used sanctions which are alternatives to incarceration, a number of others are currently employed and gaining favor in the criminal justice system.

One of these is restitution. The offender is required to make the victim whole by paying money, performing service, or fulfilling some combination of the two. The underlying theory of restitution suggests that neither the victim nor the insurance company should have to suffer as a result of an offender's wrongdoing and that the offender will be deterred from future antisocial behavior, and other potential offenders will be deterred when they realize the cost to them of the wrongdoing. Restitution programs have been widely heralded as significant improvements in dispositions in the criminal justice system.

Another alternative to incarceration has been community service. While neither the victim nor the insurance company is made whole by community service, two purposes are accomplished by imposing this sanction as an alternative to incarceration: first, the offender is required to contribute overtime

to the betterment of the community (through cleaning playgrounds, helping with youth activities, working in city offices, and so forth) and second, the offender is encouraged to participate in constructive rather than destructive activity. Both the community and the offender are said to benefit from community services.

Still another alternative to incarceration has been prerelease programs. While these follow incarceration they nevertheless shorten the duration of incarceration and provide a transitional stage between incarceration and freedom. They may consist of halfway house living arrangements, supervised work situations, and the like. Their use has been increasing in response to criticism of the process of simply releasing incarcerated offenders when their time is up.

A related alternative to incarceration for prisoners has been early parole. Often necessitated by overcrowded conditions in prisons, this program has sometimes been planned and sometimes unplanned. It is unplanned when prisons have become overcrowded and the arrival of new prisoners has required that prisoners already there be removed or that the new prisoners not be accepted, if that is possible. On the other hand, early parole is planned when there is a general effort to reduce the prison population for theoretical or practical reasons.

Another alternative to incarceration has been recently and widely discussed and has taken a number of different forms. Most frequently referred to as "Intensive Probation Supervision" this alternative involves the close monitoring of the activities and whereabouts of offenders thought to be good candidates for incarceration but diverted to the IPS programs as a "last chance." A number of forms of monitoring have been suggested. In Massachusetts, the MENTOR program has provided one supervising adult for one juvenile offender, and that offender is never to leave the sight or home of the supervisor without the supervisor's permission and continuing supervision. Another suggestion has been that of electronic monitoring wherein the offender carries a device which can be connected with a central monitoring station so that the offender's whereabouts can always be known.¹² Electronic technology has accelerated the calls for such alternatives to incarceration. Opponents of such alternatives have used the new technology to sound warnings about the potential misuse of such techniques.

Still another suggestion for an alternative to incarceration has been the advocacy of corporal punishment, primarily the use of electric shocks, in the criminal justice system.¹³

⁹ Board of Directors, National Council on Crime and Delinquency, "The Non-dangerous Offender Should Not Be Imprisoned," *Crime and Delinquency*, October 1975, pp. 315-322.

¹⁰ Milton G. Rector, "The Extravagance of Imprisonment," *Crime and Delinquency*, October 1975, pp. 323-330.

¹¹ Sol Rubin, "Probation or Prison: Applying the Principle of the Least Restrictive Alternative," *Crime and Delinquency*, October 1975, pp. 331-347.

¹² Ralph Schwitzgebel, "Electronic Alternatives to Imprisonment," *Lex et Scientia*, 5, 1968, pp. 99-104.

¹³ Graeme Newman, *Just and Painful: A Case for the Corporal Punishment of Criminals*. New York: Macmillan, 1983.

All of these alternatives to incarceration have focused on two different aspects: the savings to the public through the lessened cost of the alternative compared with the cost of incarceration; and the benefit to the offender of not being incarcerated—the assumption being commonly held that incarceration makes a troubled, or bad, individual much worse.

Yet, all these alternatives to incarceration have also had their limitations. All put the public at risk, for obviously—except under the closest supervision—the offender is free, unless incarcerated, to act antisocially in the community at large. The public safety is in jeopardy under all alternatives to incarceration—though in greater jeopardy in some situations naturally than in others.

Further, while the cost of these alternatives is less than incarceration, the cost of some can be quite large nonetheless. For example, prerelease programs often provide housing, counselors, skills training, and other adjunctive services and can be quite expensive.

Even community service requires individuals to monitor the work of the offender and, in some instances, to help pay the offender at least a small fee for the work done.

Beyond the limitations of these alternatives in terms of lowered public safety and heightened cost, there is the problem of the large numbers of offenders to be serviced. With increasing calls for incarceration of offenders, or at the least meaningful punishment of offenders, there are more offenders than can be served by well-devised and well-run programs. Obviously, vast numbers of offenders can be served by a probation program that does nothing; but any program that is going to deal with offenders in a meaningful way must be adequately staffed and funded. The number of offenders makes this difficult at best.

Because there are so many alternatives to incarceration currently employed, because there are so many calls for more alternatives, and because of the limitations of those alternatives currently employed, it seems likely that a significant number of prison-bound offenders will be diverted to the community only if sentencing judges and an observant public can be reasonably assured that the peril to the public will not be greatly magnified. This will be difficult to prove.

Almost all current proposals, even though they may be eminently reasonable, are unlikely to capture the public's sympathy and support since they simply appear too soft. Intensive probation is, after all, still probation, and community restitution without accompanying incarceration may seem like buying one's freedom at the public's peril. Imprisonment is reassuring to the public primarily through its restraining capacity. The criminal is no longer at large. Alternative proposals will have to offer something of the same kind of assurance.

In this article we set forth a proposal which does offer that kind of assurance. We propose the establishment of a cost effective, publicly safe, genuine alternative to incarceration: house arrest.

House Arrest

We propose the use of "house arrest" as an alternative punishment for those we think of as nonviolent middle-range offenders. Most, if not all, seriously violent offenders will and should continue to be incarcerated. So will the most predatory property offenders. But of those offenders currently imprisoned, or of those for whom imprisonment is currently sought, there is, we believe, a percentage who could be handled effectively in the community, in a just manner, and to the public's satisfaction.^{14, 15}

In defining house arrest, it must be recognized that the term has negative connotations. It is used mainly in diplomatic circles and is associated with those who come to be known internationally as political prisoners. Galileo was one such victim of house arrest. He was confined to his home by contemporary authorities for his heretical suggestion that the earth revolved around the sun, which was contrary to established church doctrine.

Two more recent cases are Andrei Sakharov, Russian physicist, confined to an apartment in Gorky for what the government perceives as antistate activities, and Jacobo Timmerman who underwent a similar ordeal in Argentina for publishing dissident views in the newspaper of which he was the editor. These practices are abhorrent and the use of house arrest was an abuse in each case. But, these important reservations aside, we believe the mechanics of this practice have some use under less controversial circumstances.

A criminal sentence can serve many purposes. One common purpose for imprisonment is incapacitation—that is, making further crime impossible by immobilizing the offender. For some offenders, this can only be done through the medium of steel bars. But for others, the principle of incapacitation can be served, though less completely,

¹⁴ Board of Directors, National Council on Crime and Delinquency. "The Non-dangerous Offender Should Not Be Imprisoned," *Crime and Delinquency*, October 1975, pp. 315-322.

¹⁵ Milton G. Rector, "The Extravagance of Imprisonment," *Crime and Delinquency*, October 1975, pp. 323-330.

while allowing the offender to remain in the community.

If a judge, at the point of sentencing, is persuaded that because of the gravity of the crime committed and the need to protect the public, a particular offender must be incapacitated, he could first consider whether this could be done by confining that offender to his own residence. At its most stringent, house arrest could mean that movement outside the home, except for travel with a law enforcement officer or except with specific prior approval of the court, would be prohibited. For those offenders who were employed at the time of their conviction, the judge could consider whether travel to and from the place of employment would be allowed. Medical appointments that were critical, court approved attendance at therapeutic programs, and religious observance would be examples of other kinds of exemptions. At all other times, the offender would be required to be at home. And this would be monitored.

The responsibility for checking compliance with the court's order would be given to surveillance probation officers who would have special, reduced caseloads of house arrestees. They would be responsible for daily, random checks by phone and in person. There would be no predictability to the checks, no specified interval between checks, and no part of a 24-hour day that would be off limits. Such a truly random system would, we maintain, uncover scofflaws very quickly. A violation of the court order would result in return to court and, in most cases, imprisonment.

Foremost among the advantages of such a proposal would be the cost saving. Assuming the officers in charge had a limit of 10 cases to monitor, building in a pay differential for what would clearly be an irregular schedule of hours, the cost per offender on an annual basis might well be \$2,500 as compared to an average of 10 times that amount for a year of imprisonment.

There would also be indirect savings. Offenders with families would continue to support them and the state would therefore not incur welfare costs. The state would realize the usual tax revenues. The contaminating effect that prison is sometimes said to have on some offenders would be avoided. The salutary effect of contact with family and some community affiliations would remain unbroken.

But there are limitations to the proposal as well. Public protection cannot be as guaranteed as with imprisonment. Some offenders will try to beat the system by taking calculated risks or by trying to "con" the officer through various means, and some will succeed, though we think not many. The risk of

detection is too great, with multiple daily checks which are not predictable in any way, and the consequences too severe. We think most offenders will be most cautious and obliging. Further, this plan could be tightened if experience showed it should be. Nevertheless, it surely does not promise to deliver all that a prison can in terms of guaranteed public safety. It does presuppose that the risk is more than offset by the above-mentioned advantages, for a certain population of offenders.

Perhaps offenders will run criminal operations from their homes. This is something that the surveillance officer would have to be alert for. Some families might object to their homes being used in this fashion. And their approval would be a necessary condition for this alternative.

But house arrest need not be a unitary concept. Variations could be built into the punishment to deal effectively with different offenses and offenders. What follows is a description of three different uses of house arrest.

Sample Cases

Three sample cases will demonstrate the technique of house arrest, the types of cases with which it will work, and the effectiveness of it.

Case 1: Chronic property offender. The first case involves a multiple car thief. D is an 18-year-old young man who lives in a lower class neighborhood in the inner city. He has a steady job as an auto mechanic, lives with his family—mother, two brothers, and a sister—in a small apartment and usually steals cars for the excitement of driving them. He has already been fined and put on probation; as he continues to steal cars, he becomes more likely to be incarcerated. As an alternative we suggest his confinement to his house under house arrest. Except for leaving his house to go to his job and returning to his house from his job, he would be confined to his house. This would prevent his stealing cars for excitement. The circumstances surrounding his going to and coming from work could be arranged in such a fashion that he would not steal cars then.

A variation on Case 1 would be the chronic breaking and entering offender. C is an 18-year-old young man who lives in a lower class neighborhood in the inner city. He has no job, lives with his mother and one sister, and usually breaks and enters to get money to pay for his drugs and general living expenses. He has already been fined and put on probation; as he continues to break and enter, he becomes more likely to be incarcerated. As an alternative, we suggest his confinement to his house under house

arrest. Except for his leaving his house to go look for work, he would be confined to his house. And because of the circumstances he would have to be monitored while going to look for work. This would prevent his breaking and entering while looking for work.

Case 2. Murderer. J is a 48-year-old woman who was involved with a 60-year-old single man who then became involved with a 27-year-old divorced woman. Jealous and enraged, J shot her lover during a violent argument and killed him. A first-time offender convicted of a serious offense, J would otherwise be incarcerated for the offense. J has been an effective librarian and has lived alone in her own house. Under our suggestion, J would be placed under house arrest. The benefits would be clear: There would be minimal cost to the state, she would have her liberty restricted, and there would be no threat to the public safety. Her only travel outside her house would be to her job as librarian; and on any vacations from her work she would be confined to her house. Were she to have shot a library patron rather than her lover, she would have been placed under total house arrest so that she could not travel outside her house. Incarceration for her would cost the taxpayers a large amount and would add to the overcrowding of facilities.

Case 3. Drunk driver. O is a 38-year-old man who was arrested for drunk driving, as his first (perhaps second) offense. He is an erratically employed carpenter who at the time of the arrest was employed on a project which would last for some months. Rather than incarcerating him, placing him under house arrest would prevent his driving drunk, would reduce the expense to the taxpayer, and would restrict his liberty sufficiently to indicate punishment for his offense. His only movement,

monitored appropriately, would be to and from his job, while working, and to and from Alcoholics Anonymous meetings.

All three of these cases are the kind for which our suggestion of house arrest is appropriate. In all three cases, the offender is denied liberty, the taxpayer is saved money, and the monitoring of the system insures that individuals follow the requirements of house arrest—or are immediately incarcerated. Those who do not live up to their house arrest requirements are incarcerated; for the many who will live up to their requirements, house arrest provides a reasonable solution to many of the problems confronting the criminal justice system today. It balances the offender's right to liberty with the public's right to safety and considers the cost to society of various responses to antisocial conduct.

Conclusion

There has been some program experience which, in general, lends empirical support to our proposal. States such as Florida, California, and Illinois have implemented, on an experimental basis, programs which allow inmates to serve at least a portion of a jail sentence at home under probation supervision. Officials report that these programs have been reasonably successful provided subjects are screened carefully and closely monitored.^{16, 17, 18, 19, 20}

Further, the many experiments in intensive probation supervision currently underway—in New York, Georgia, and Massachusetts, for example—could easily incorporate aspects of a house arrest approach. Continued experimentation, along with rigorous research followup, is necessary.

House arrest may yet be found to be a humane, cost-effective way out of the looming, and potentially catastrophic, prison overcrowding crisis.

¹⁶ "Home Supervision: Probation Really Works," *Federal Probation*, December 1979, 43, pp. 50-52.

¹⁷ J. P. Manak, "Home Detention as an Alternative to Incarceration for Minor Offenses," *Prosecutor*, January 1980, 15, pp. 216-219.

¹⁸ "Home Detention Gaining Support," *Criminal Justice Newsletter*, November 21, 1983.

¹⁹ A. L. Hunt and K. Weiner, "Impact of a Juvenile Curfew—Suppression and Displacement in Patterns of Juvenile Offenses," *Journal of Police Science and Administration*, December 1977, 5, pp. 407-412.

²⁰ "Mom is this Thief's Warden," *Boston Globe*, January 27, 1982, p. 70.