



บรรณานุกรม

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ภาคผนวก

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

1. กฎหมายต่างประเทศที่ใช้ประกอบการวิจัย

Kentucky Revised Statute; section 532:200-250

§ 532:200 Definitions: - As used in KRS 532:210 to 532-250, Unless The context otherwise requires.

(1) "Home" means the temporary or permanent residence of a defendent consisting of the actual living area. Where more than one (1) residence or family is located on a single piece of property, "home" does not include the residence of any other person who is not part of the social unit formed by the defendent's immediate family. A hospital, nursing care facility, hospice, half-way house, group home, residential treatment facility or boarding house may serve as a "home" under this section;

(2) "Home incarceration" means use of a person's home for purposes of confinement;

(3) "Violent felony offense" means an offense defined in KRS 607.020 (murder), 607.030 (manslaughter in the first degree), 508.010 (assault in the first degree), 508.020 (assault in the second degree), 609.040 (kidnapping), 610.040 (rape in the first degree), 510.070 (sodomy in the first degree), 510.110 (scxual abuse in the first degree), 511.020 (burglary in the first degree), 513.020 (arson in the first degree), 513.030 (arson in the second degree), 513.040 (arson in the third degree), 515.020 (robbery in the first

degree), 515.030 (robbery in the second degree), 580.030 (escape in the first degree), any criminal attempt to commit any such offense (KRS 506.010), or conviction as a persistent felony offender (KRS 532,080) when the offender has a felony conviction for any of the above-listed offenses within the five (5) year period preceding the date of the latest conviction;

(4) "Terminal illness" is a medically recognized disease for which the prognosis is death within six (6) months to a reasonable degree of medical certainty; and

(5) "Approved monitoring device" means an electronic device approved by the corrections cabinet or apparatus which is limited in capability to recording or transmitting information as to the prisoner's presence or non-presence in the home. Such devices must be minimally intrusive. No monitoring device capable of recording or transmitting:

- (a) Visual images;
- (b) Oral or wire communications or any auditory sound;

or

(c) Information as to the prisoner's activities while inside the home, shall be approved. (Enact. Acts 1986, ch 243. §, effective July 15, 1986).

§ 532.210. Petition:- Study of record-Order.- (1) Any misdemeanant may petition the sentencing court for an order directing that all or a portion of a sentence of imprisonment in the country jail be served under condition of home incarceration. Such petitions may be considered and ruled upon by the sentencing court prior to and throughout the term of the misdemeanant's sentence.

(2) The sentencing judge shall study the record of all personal petitioning for home incarceration and, in his discretion, may:

(a) Cause additional background or character information to be collected or reduced to writing by the county jailer or misdemeanor supervision department;

(b) Conduct hearings on the desirability of granting home incarceration;

(c) Impose on the home incarcerated such conditions as are fit, including restitution;

(d) Order that all or a portion of a sentence of imprisonment in the county jail be served under conditions of home incarceration at whatever time or intervals, consecutive or non-consecutive, as the court shall determine. The time actually spent in home incarceration pursuant to this provision shall not exceed six (6) months or the maximum term of imprisonment assessed pursuant to this chapter whichever is the shorter;

(e) Issue warrants for Person when there is reason to believe they have in violated the conditions of home incarceration. conduct hearings on such matters, and order reimprisonment in the county jail upon proof of violation and.

(f) Grant final discharge from incarceration.

(3) All home incarcerated shall execute a written agreement with the court setting forth all of the conditions of home incarceration.

tion. The order of home incarceration shall incorporate that agreement and order compliance with its terms. The order and agreement shall be transmitted to the supervising authority and to the appropriate jail official.

(4) Time spent in home incarceration under this subsection shall be credited against the maximum term of imprisonment assessed for the defendant pursuant to this chapter.

(5) Home incarcerated shall be under the supervision of the county jailer except in counties establishing misdemeanor supervision departments, wherein they shall be under the supervision of such departments. Home incarcerated shall be subject to the decisions of such authorities during the period of supervision. Fees for supervision or equipment usage shall be paid directly to the supervising authority. (Enact. Acts 1986, ch 243, 12, effective July 15, 1986)

§ 532.220 Conditions: - The conditions of home incarceration shall include the following;

(1) The home incarcerated shall be confined to his home at all times except when;

(a) Working at approved employment or traveling directly to and from such employment

(b) Seeking employment;

(c) Undergoing available medical, psychiatric, or mental health treatment or approved counseling and after care programs;

(d) Attending an approved educational institution or program;

(e) Attending a regularly scheduled religious service at a place of worship; and

(f) Participating in an approved community work service program;

(2) Violation of subsection (1) of this section may subject the home incarcerated to prosecution under KRS 520.030 (escape);

(3) The home incarcerated shall conform to a schedule prepared by a designated officer of the supervising authority specifically setting forth the times when he may be absent from the home and the locations where he may be during those times;

(4) The home incarcerated shall not commit another offense during the period of time for which he is subject to the conditions of home incarceration;

(5) The home incarcerated shall not change the place of home incarceration or the schedule without prior approval of the supervising authority;

(6) The home incarcerated shall maintain a telephone or other approved monitoring device in the home or on his person at all times;

(7) Any other reasonable conditions set by the court or the supervising authority including;

- (a) Restitution under KRS 533.030;
- (b) Supervision Fels under KRS 439.315; and
- (c) Any of the conditions imposed on persons on probation or conditional discharge under KRS 533.030 (2); and

(8) A written and notarized consent agreement shall be filed with the court by every adult who will share the offender's home during the term of home incarceration (Enact. Acts 1986, ch 243, 4 3, effective July 15, 1986).

§ 532.230 Ineligibility: - No person being held under a detainer, warrant, or process issued by some other jurisdiction shall be eligible for home incarceration. No person convicted of a violent felony offense shall be eligible for home incarceration. (Enact. Acts 1986, ch. 243 4,; effective July 15, 1986)

§ 532.240 Responsibilities of persons held in home incarceration: - Any person serving his sentence under conditions of home incarceration shall be responsible for his food, housing, clothing, and medical care expenses, and shall be eligible for government benefits to the same extent as a person on probation, parole, or conditional discharge. (Enact Acts 1986, ch. 243, 5, effective July 15, 1986)

§ 532.250 Monthly list of incarcerated provided to local law enforcement agencies. - At least once every thirty (30) days, the supervising authority shall provide all and county law enforcement agencies with a list of the offenders under home incarceration in their jurisdiction, the list shall include the following information:

(1) The prisoner's place of home incarceration;
(2) The crime for which the prisoner was convicted;
(3) The date that the sentence of home incarceration will be completed; and

(4) The name, address and phone number of the officer of the authority supervising the prisoner. (Enact. Acts 1986, ch. 249 6, effective July 15, 1986).



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

2. รายงานสรุปประชุมปฏิบัติการวิจัย

โครงการ 2 การกักขังและใช้เครื่องมืออิเล็กทรอนิกส์ควบคุมผู้ต้องโทษในสหรัฐอเมริกา

ของ

สำนักงานปฏิบัติการงานวิจัย อาชญากรรมทางธุรกิจ

คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย

โดย

Professor Dr. J. Robert Lilly

Professor Mark M. Stavsky

รองศาสตราจารย์ ดร.อภิรัตน์ เพ็ชรศิริ

รองศาสตราจารย์ วีระพงษ์ บุญโญภาส

13 มิถุนายน 2531

ศูนย์วิทยพัชการ
จุฬาลงกรณ์มหาวิทยาลัย

ผู้เข้าร่วมประชุม

1. ร.ศ. ประสิทธิ์ วัฒนเลิศ คณะบดีคณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย
2. ร.ศ. อภิรัตน์ ทรัพย์ศิริ รองคณะบดีฝ่ายวิจัย คณะนิติศาสตร์
จุฬาลงกรณ์มหาวิทยาลัย ประธานโครงการ
3. ร.ศ. วีระพงษ์ บุญเรืองทาส อาจารย์ประจำ คณะนิติศาสตร์
จุฬาลงกรณ์มหาวิทยาลัย ผู้ดำเนินรายการ
4. Professor J. Robert Lilly ผู้เชี่ยวชาญทางด้านอาชญาวิทยาและกฎหมายจาก
ประเทศสหรัฐอเมริกา
5. Professor Mark M. Stavsky ผู้เชี่ยวชาญทางด้านกฎหมายจากประเทศสหรัฐอเมริกา
6. ผ.ศ. มุรธา วัฒนชีวะกุล อาจารย์ประจำคณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย
7. อาจารย์ ชัยนติ ภัทรกาญจน์ อาจารย์ประจำคณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย
8. อาจารย์ จตุพร บานชื่น ผู้แทนจากคณะสังคมศาสตร์ มหาวิทยาลัยเกษตรศาสตร์
9. อาจารย์ จริณ วัฒนพานิช ผู้แทนจากคณะนิติศาสตร์ มหาวิทยาลัยรามคำแหง
10. อาจารย์ ยัจนรามรรณ อุดมสิน ผู้แทนโครงการอาชญาวิทยาและกระบวนการยุติธรรม
บัณฑิตวิทยาลัย มหาวิทยาลัยมหิดล
11. อาจารย์ ปราณี เสรีจินตนิม อาจารย์ประจำ คณะนิติศาสตร์
มหาวิทยาลัยสุโขทัยธรรมมาธิราช
12. อาจารย์ ธีรชัย ณ นคร อาจารย์ประจำ คณะนิติศาสตร์

- | | |
|---------------------------------|---|
| | มหาวิทยาลัยสุโขทัยธรรมมาธิราช |
| 13. อาจารย์ ประเสริฐ เมฆมณี | ผู้แทนจากกรมราชทัณฑ์ กระทรวงมหาดไทย |
| 14. อาจารย์ กุศลผล พลวัน | กองวิชาการ กรมัยการ |
| 15. ผู้พิพากษา กฤตศิษฐ์ กนกนาก | ผู้แทนจากสำนักงานคุมประพฤติ |
| | สนง. ส่งเสริมงานตุลาการ กระทรวงยุติธรรม |
| 6. พล ต.ต. จารักษ์ แสงทวีป | ผู้บังคับการกองทะเบียนคนต่างด้าวและภาษีอากร |
| | กรมตำรวจ |
| 17. พ.ต.อ. สมพงษ์ บุญธรรม | รองผู้บังคับการกองทะเบียนคนต่างด้าวและ |
| | ภาษีอากร กรมตำรวจ |
| 18. ร.ต.ท. มงษ์วุฒิ มงษ์ศรี | กองวิจัยวางแผน กรมตำรวจ |
| 19. ร.ต.ท. บุญสิทธิ์ รอดชะพรหม | บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย |
| 20. นส. รัชชี สงวนแก้ว | บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย |
| 21. นส. พรทิพย์ จุลมูล | บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย |
| 22. นส. ปาริชาติ เปล่งศิริวัฒน์ | บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย |
| 23. นาย ปราบ ศิเชษฐสุนทร | บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย |
| 24. นาย เบลจ๊ะ เห็งดิษฐ์ | บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย |
| 25. นส. อรุณษา ภัตตราพิบูลย์ | บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย |
| 26. นส. สายชล อุดมสิน | บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย |
| 27. นส. พรทิพย์ มูลยิทธินันท์ | เลขานุการสำนักงานปฏิบัติการวิจัย |
| | อาชีวกรรมทางธุรกิจ |

TEXT OF PROF. R.J. LILLY'S SPEECH AND DISCUSSION

From my western view and experience this is an unusual audience that Prof. Stavasky and I can appreciate. It is rare in the U.S. to get professors, students and practitioners together to talk. We usually talk to only one audience. I think it is a major accomplishment to have these audiences together in the capitol of your home country.

I want to begin my contribution to this seminar by beginning with a brief review of the history of punishment in the Western world. By doing this we can see how house arrest and electronic monitoring fits into the modern world. Some of this information has been published in some of my papers. They are available here.

For a moment or two let us consider that the punishment of criminals has historically in the Western world, involved excluding them from the community. We would send them away from the community. We used banishment and transportation, as in English experience of sending prisoners to Australia. Later with the development of work houses, we saw the development of prisons as we now know them. This has been the pattern of punishment in the Western world for many years. In recent years in the 20th century, alternatives to excluding people from the community have been developed. For example, probation and parole, are two examples of supervision of offenders which keep them in the community. In the 1960s and 1970s, in Europe and in the U.S., a political conservative movement has encouraged a judicial system, including the police, to put offenders out of the community. This movement put people out of the community and into prisons at a higher rate than at any time in previous decades of the 20th century. In the U.S. the cost of putting people in prison has become astronomical. It costs between \$30,000 and \$100,000 to build one cell for one prisoner. In addition to that, it cost approximately \$16,000 U.S. dollars a year to keep a prisoners for one year. It costs approximately the same amount of money to send a student to Harvard for one year.

Even with these costs, we continue to put more and more people into prison. It may be a surprise to you, but in the U.S. we put approximately 1,000 new people per week into our prisons. At the moment there are over 500,000 people in prison in the U.S. To summarize my point, our inclination and desire to put people in prison, plus the cost of putting people in prison, has forced a new search for alternatives to prison. One idea that has been developed, is to keep people in their home instead of sending them to prison. I am going to elaborate on this point. It is not the cost alone that has made us look at house arrest and electronic monitoring. There is something else, another element: that other element is the development of technology, More

specifically, it is the development of electronic technology, which allows us to have greater supervision of people than if we relied only on our eye, or ears, or our "traditional" senses. We have then, moved from the older forms of imprisonment and social control, to where now through electronic surveillance we can watch people in new ways. I want to give you some examples of the new surveillance that goes beyond keeping people in prison. I want to talk with you and share some of the examples in the Western world we have become capable of knowing a lot more about people's behavior than ever before. We will talk about whether that is desirable, or not desirable, a little later.

We call this the "new age of surveillance"; it is new because the old barriers to privacy and anonymity are broken. The list is quite long, and many of the examples I am going to share with you were developed during and after the Viet Nam War. Much of the technology was part of our military technology used in the 1960s in Viet Nam. It has been adapted, modified, and it is now used in many sectors of our society. Some of these examples are, however, are more recent. For example in the U.S. today we are increasingly getting away from keys in our doors. Instead we are using a plastic card, especially in hotels. One slips the card into the door knob, twist the knob, and enter. In hotels the door knob is connected to a computer that records when the door is opened. The hotel has a record of when someone enters the room.

Another example of the "new Surveillance" comes in the form of biological analysis, enhanced by electronic technology. We have from England, the development of DNA "fingerprinting." This is a type of biological identification that is more accurate than the finger print. By having a very small amount of blood, sperm, or hair, we can identify a suspect with the accuracy of being wrong only 1 time out of 25 million. Hair analysis is another example of how electronic technology has increased surveillance. By using one hair we can now determine what kind of drugs a person has been taking during the last 6 years. Another example of electronic surveillance and monitoring is what we call REM...Rapid Eye Movement. REM cameras are now used in some banks as security checks for people who have to go into vaults. It looks very much like a set of binoculars. One has to look into the camera, and their REM is checked against a record which contains their REM. The REM is matched to a previous set, or record, to see if the two correspond. If the records match, the person is allowed to enter into the secure area of the bank. This is more secure than a finger print.

Polygraph tests I assume you are familiar with. Lie detector tests are very common. "Voice verification" is another form of surveillance. Voice verification is somewhat like REM analysis. A

previous record of a voice is matched to the voice of a person trying to get into a secure area. "Motion detectors" are used at a home or business for security.

We have heat detectors. They go off when someones body heat triggers an alarm. We also have breath analysis often used for testing for alcohol consumption for drunk drivers. One of the more interesting and surprising forms of surveillance is found in the use of ordinary and common household electronic devices. For example, VCR's, video players/tapes. In the U.S. we have cable television from which we can record/tape a program. We can steal it. Until recently it was not possible to find out who was stealing a program. VCR's now are being monitored individually to see if the current of electricity is changing while a television program is being watched. A record can be produced which indicates that a program was taped at a particular time. The same technology is being developed for cassettes used to record radio programs. "Electrical circuit monitoring" is being developed for the entire home. When the radio is turned on, the bill goes up. When the T.V. is turned on, a record is made when this occurred. We are also developing new electric switches and outlets, which indicate when electricity is used.

The importance of these examples for our discussion, is that we are increasingly able to monitor "everyday life." We also have telephones which allows a picture to be taken of who is talking on the phone. I think they are made by Misubishi. We are also able to listen to phone conversations locally and internationally, as never before. Satelite dishes until recently were not protected by U.S. law for private conversations. We also have taken the technologies I have described and put it use monitoring streets and roads. In Texas and Arizona speeding monitors take pictures of cars speeding, a picture of the car license plate and the driver all at the same time. The driver doesnot know that a picture has been taken until they get a copy of it and a notice of a fine in the mail. They are never stopped, then never talk to a policeman. But they are caught. They have have this in Hong Kong and part of Sweden.

I have not observed many examples of these forms of monitoring in Bangkok. I do not know what you have...but I don't see video cameras in stores very often. I didn't see metal detectors at the airport when I came in...but I now know they are used. It is my impression that Thailand has yet to become very involved with electronic monitoring observing people. But it is coming. I have collected some examples from the press, just during the short time I have been here. In this issue of Asiaweek, June 10, 1988, just last week, there is an article about a device that can be used to cut down on the use of office phones for personal use.

Now management can record when employees are talking to their friends. That is an example of the new electronic monitoring. Again from the June 3 issue of Asiaweek, the idea of following a car which I mentioned: "The new device is being used to follow cars that are speeding. May 25th, right after I came here, there are two very fascinating articles in the Bangkok Post, about introducing electronic surveillance into Thailand. We have the "First Safety and Securing Show" is going to be here in August. It is about security and surveillance. Right beside it is another article, same day, same page. A Safe-Tee firm to increase capital. This article is about a company that makes "Safe-Tee" equipment. They are investing 10 m B to develop additional monitoring equipment. They are going to develop a Safe-Tee Dog, which is a sound system that sounds like a dog. It alarms when someone enters or comes too close to one's home. It is basically a burglar alarm system. Those are some of the major examples of electronic monitoring.

The difference between this type of monitoring and control, compared to the older type is that the new form is more powerful. I want to mention some of the ways the new monitoring is so different. First, the electronic monitoring equipment does not get tired, as would a guard or probation officer. The observation is therefore 24 hrs. a day. The video camera does not get tired. Another difference is that it can ignore distance, and walls and time. In other words, people can be monitored from far away. One does not have to be beside, or close to the person to monitor them. People can be monitored from miles away. In the U.S. there is a case of a young woman who killed someone in a auto accident. She killed the person in Fla. The judge said she could be placed under house arrest and electronic monitoring for 3 years. The first year of her sentence was spent in Fla. The last 2 years of her sentence were spent a 1,000 miles away, in New Jersey. So, distance is not a problem at all. Also, it is different in terms of labor costs. Traditional supervision requires a lot of people, a lot of labor. Electronic monitoring does not. T.V. cameras, and other monitoring devices, can watch a large number of people at one time. One computer, such as you have sketched before you, monitors as many as 1,000 people at a time. So it does not take a lot of people to do house arrest and electronic monitoring. One computer can monitor many people. In addition, electronic monitors can watch anyone who has what we call a "paper identity." "Paper identity" refers to identification cards of various kinds, such as a drivers license, or a social security card. We have some people in the U.S. who are homeless, so they could not be monitored electronically. But anyone who has an address, a drivers license, or Social Security Number, can be monitored electronically. In addition, another difference with the new electronic monitoring is that more

information is created. It creates a record 24 hours a day. It can store the info quickly and readily, and retrievably. Unlike traditional supervision, which last 8 hrs. and then released from responsibility, this type of surveillance is unending.

I would like to talk to you about the advantages of house arrest and electronic monitoring. Before I get to that I want to tell you a little bit about the beginning of house arrest in the criminal justice system in the U. S. In 1983, less than 5 years ago, the first paper discussing the possibility of house arrest and electronic monitoring of offenders, was given at the IX International Congress of Criminology, Vienna, Austria. The ideas offered in 1983 suggested that house arrest had a "bad reputation." South Africa, Poland, Colombia, S.A., and other countries had not used house arrest with traditional criminal offenders. It had been used more for political offenders. The paper in Vienna suggested it might be possible to use House Arrest and Electronic Monitoring with ordinary criminal offenders.

It has been used informally in England and the U.S., but in 1983 in the U.S. it had not become part of any state's formal statutes. Therefore an argument with some evidence had to be made that house arrest could be used. These ideas were offered in Vienna, as were four arguments as to why house arrest and electronic monitoring could be used.

These ideas formed the basis of much of the usage of house arrest and electronic monitoring now used in the U.S. The first issue was identified as "the question of degree of fit." The issue involved here is "can house arrest be properly fitted to any type of offender." In other words, is it possible to make sure that house arrest is an appropriate punishment. This question is very important, because when the offender is at home, he/she is in the community. They are not "excluded" from the community, therefore the question of protecting the public becomes very important. The question of "degree of fit" asks if house arrest fits different life styles. Some people work in the morning, some at night, and still others work at other times. In 1983 we had no answers to that question. We argued that we should put the idea out into the public, and let the technology catch up to the idea.

The second idea, or major issue, is what we called "staging". It refers to when can house arrest and electronic monitoring be used in the entire criminal justice procedure. Can it be used only as an alternative sentence? Can it be used instead of parole? Can it be used in the middle of a sentence? Can it be used for "preventive detention?" One of the questions we were very concerned about before they go to trial? Could they be kept at

home securely, and have them come to court when it was time. The question of when should house arrest and electronic monitoring be used was a very important issue.

The third question involves whether the idea would be accepted in the community and also in the criminal justice system. This was perhaps the most difficult question. Traditionally in the U.S. we believe that a person's home is their castle, and the police cannot come through the door, or through the wall. It is part of our history and experience with England in the 16th, 17th, and 18th centuries. Privacy in the U.S. A. is extremely important. Individuality and privacy are considered, perhaps, as the two most important values we have. So, how would the public respond if the monitoring of people in their homes was introduced by the criminal justice system. Would the public accept or reject the idea? At this point when we discussed this point, we often heard people say we are creating and implementing George Orwell's 1984 "Big Brother." It refers to the government watching everybody all of the time. 1984 is the name of a book written in 1948. It addresses the issues of the government intruding too much into citizens' lives.

The fourth issue is who should, for us, initiate house arrest? Should it come from the court, from the police, or from the individual charged with the crime?

These four questions provided much political and public response to the idea of house arrest and electronic monitoring between 1983 and 1985. By 1985, however, house arrest and electronic monitoring had been discussed so much, that no one was any longer surprised by the idea. By 1985-86 an average of 300 newspaper articles per month in the U.S. Most of them advocated the use of house arrest and electronic monitoring for certain types of offenders. Now I want to review the types of offenders who have been placed under house arrest and electronic monitoring in the U.S. ; I also want to describe some of the house arrest and electronic programs used in the United States.

I was very much involved in creating the third program of house arrest and electronic monitoring in the United States. This was in the state of Kentucky. We were able to have our state General Assembly pass a law saying house arrest and electronic monitoring was approved as a form of punishment for non-violent offenders. The reason we focused on non-violent offenders was because they make up approximately 70% of the people in jail. We were trying to find a way to keep people out of prison in an economic and human manner, at the same time to protect the public. Included as non-violent offenders was what we refer to as DWI's, Driving While Intoxicated...drunk drivers. They represent a very big

problem in the U.S. Approximately 50,000 people per year are killed by drunk drivers. And research indicates that it does not do any good to send them to jail. So we focused on that population. We also have a problem in the U.S. with men who have left their wives and children, and refused to pay child support. So we targeted those types of offenders. The law said that these people had a choice: either pay the child support or go to jail. House arrest and electronic monitoring allowed them to keep their jobs and pay child support. If they went to jail they would lose their jobs. Burglary was also included in the Kentucky law, as was 'forgery.' ...under \$500. Some types of drug dealers were thought to be appropriate for house arrest, especially caught with small amounts of drugs. It was thought it would be better keep them out of prison, than to put them into prison. Also, surprisingly, 'mercy killers,' have been placed under house arrest. Two men in Florida killed their spouse because they were sick. Both men are old and ill; the state decided to place the men under house arrest for the rest of their life at home, instead of going to prison. Also, some juveniles have been placed under house arrest. These are called "youth offenders."

At this moment I cannot tell you how many people are under house arrest in the United State with electronic monitor. There are probably different programmes now in the United State. There are at least 8 major companies making electronic monitoring devices which become popular in our country. I don't want to give you the impression that house arrest and electronic monitoring has not been on a post. It has been a post. I want to mention to you some of the reason that house arrest has been a post. First of all it has been a post because it helps to create more of an intrusion into private life it has been resisted as a device too intrusive. That has been a general objection and furthermore it has been a post by individual who think that it won't be used as alternative at all to prison. Some people believe that it will be used as just another way to put more and more people under the control of a correction system or police system. Other people have argue that we don't need it on any grounds because what we should do is to build more prisons leave the home alone. This argument follows this type of logic. It assumes that there are so many criminals and we just have built enough cells yet.

จุฬาลงกรณ์มหาวิทยาลัย

DISCUSSION

Discussion pertaining to the expenditure for one offender.

It cost approximately 50000\$ to buy a monitoring system for 25 people, that prize can vary. I think it is reasonable figure, you have 2 things to be included in that figure you have the cost of the computer and also the anklets or the bracelets. The anklet is reuseable so you can use it on numbers of people.

Now the amount of money charged to the criminal can be either fix amount or a percentage of their weekly income. In some answers it was 25 percent of their weekly income after taxes.

Discussion pertaining to the use of the device and offenders' service to the community.

With many people there is a combihation of house arrest, community service requirement. The example of community services are limited only by your imagination. For example, a person may be send to wash all the police cars every day or he may be send to work as a volunteer in a hospital for whatever amount of time the schedule permits; may be for a year or may be for two years. Some community services require three years of volunteer service to a public services or to hospital or some other nonprofit organization. In case of a wealthy white collar criminal, I know a couple of cases where they have been directed to the community service that has been responsible for raising funds for a particular community need . So there is no limit to the type of community service. In addition to a community service the offender has been required to undergo treatment , for example, treatment or alcoholism treatment. In case where they are unemployed or have difficulty finding a job they also are required to see job trainee. So you can have a combination of financial retribution, community service, rehabilitation requirement and job training. The idea which is a little bit different from what we are talking about early in the Dean's office here is that you may be not satisfy, you would rather see white collar criminal go to prison; we like that idea too, but when the cost of prison operation is increasing we would like to get more out of the person too.

Discussion pertaining to Applicable Law.

There are no uniform laws regarding U.S. They are based on state laws, in only 5 states and in the other places, they are under the guidance of an admistration of the courts. In another words they don't have statutory guideline.

There is more some simirality than differences in the state that have laws , they are almost identical to the one we have create in Kentucky or now.They open to non-violence offenders. Most of them permit the used of electric equipment. All of them provide for either fee or non fee criteria.

Discussion pertaining to types of Devices:

They are two types of equipments. One we called active and one we called passive. Active electronic monitoring devices are continuously sending signal 24 hours a day.

Passive system sends signal at programmed time. There was some person may be at home and some times to work.

I know that we also have electornic divices that signal randomly, you never know. Also some system requires the person to talk on telephone with their supervisor. For instance, the person who has passive electornic monitor, they will call him at random requesting you to call your supervisor. So the person doesn't know when he is getting up signal.

The information giving in here pertain to the most simple form of electronic monitoring material existing. There are, for example, other systems require the offender to ware a special wrist watch and there is a special device attach to the phone and the person then may hook it up with the telephone or turn it on at night and the individual then has to put this equipment in the dvice and send the signal back say " I'm here " . Now, in addition, the person may have to talk to telephone so that they'll get a voice identification application at the same time and also he may have to have picture taken at the same time, so you will have three or four differents way to guarantee yourself that the person is indeed in their home.

Discussion pertaining to the scheme to employ the device:

You'll have to find out what the person daily scheduling is . What time you go to work? What time will you be home? And you programmed that particular monitor to suit the vary scheduling they have. In other word, it is normal to leave the house at 10 o'clock then the dvice disperse to send the signal that you are not there. If you still there it means a violation and you have a little window or a little space from either side come home, leaving home or coming back again, for traffic purposes: and you schedule that for every day. And you can vary it every day. May be your have a different schedule on Monday, Wednesday, Friday thus what you are doing on Tuesday and Thursday.

Discussion pertaining to the device's suitability:

You have to consider both points of view, the criminal point of view and the public's. For the point of view that criminal has accepted. Most people were giving the opportunity to have it.

As they accepted it because they can maintain their job, they can stay with their family and do the other thing we mentioned accept that they have restriction when they have to be at home. In a few instances it has been rejected by criminal and a very few instances as the circumstance under which was rejected was very interesting, a person may be reject house arrest because it is too long compare to the time that they would spend in the jail. In other word it varies from one place to the other. In Kentucky if you got a 30 days setting in jail, you got a 90 days setting at home. In Florida is the opposite, let's go back to Kentucky, in Kentucky a person may be setting 30 days in jail or 90 days at home. If he goes to jail he's out in 10 days for good behaviour and because jail is too crowded to keep him. And is it consider to be punishment. I think in the first few days it is not consider to be a punishment by the offenders.

Let's get out to the public point of view for a moment. The public responses then is very positive to it. Primarily I think because of the economics. There has been only 1 source or 3 sources of opposition to it. The American Civil Librition Union or ACUL. about 2,3 years ago, they have said a home should not be a prison, we should accept the responsibility building jail and building prison etc. In New York, it was a post by a group of people whose concern was about drunk drivers. This organization was called "MADD" and the opposition base its theory upon the the idea that to kill someone or hurt someone because you were drunk you should be in prison for it. But that position has not been expressed very often because we know that sending people to jail for drinking doesn't stop their drinking and it doesn't help them. Infact their drinking usually increasing when they're out. We don't care how much they drink as long as they stay at home. Don't get out and drive. Now, in Florida there has been 2 or 3 instances that I know of very serious crime committed by people who were suppose to be at home but were not. Couple of murders but the outcry not has been such as to stop the programme.

จุฬาลงกรณ์มหาวิทยาลัย



ประวัติผู้วิจัย

นายเบญจจะ เฟ็งศิษฐ์ เกิดวันที่ 26 สิงหาคม 2501 ที่จังหวัดชัยนาท สำเร็จ
การศึกษานิติศาสตรบัณฑิต (เกียรตินิยมอันดับหนึ่ง) จากมหาวิทยาลัยธุรกิจบัณฑิต ปีการศึกษา
2524 และเนติบัณฑิต จากสำนักอบรมศึกษากฎหมายแห่งเนติบัณฑิตยสภา ปีการศึกษา 2526
และเข้าศึกษาในหลักสูตรนิติศาสตรมหาบัณฑิต สาขาวิชากฎหมายอาญาและกระบวนการยุติธรรม
ทางอาญา ภาควิชานิติศาสตร์ บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย เมื่อปีการศึกษา 2529

ปัจจุบัน ทำงานที่มหาวิทยาลัยธุรกิจบัณฑิต ตำแหน่งอาจารย์ประจำและเลขานุการ
คณะนิติศาสตร์

ศูนย์วิทยพัทธยากร
จุฬาลงกรณ์มหาวิทยาลัย