

Electronic Monitoring of children and young people

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Introduction

This paper covers the electronic monitoring of young people for purposes of enforcing a night-time curfew. It does not cover other forms of electronic surveillance such as voice recognition phone systems used to track day-time locations, which may be part of the Youth Justice Board's (YJB) Intensive Supervision and Surveillance programme (ISSP). Since night-time curfews can be part of the ISSP we refer to the ISSP but this paper is not a review of the ISSP as such.

The ISSP is itself an extra-judicial surveillance and punishment regime devised by the YJB. Young people can be given electronically monitored night-time curfews under various legislative routes indicated below. These routes may also imply other requirements to be subject to daytime surveillance, report to YJB, Social Services or Probation officers, participate in activities etc. The YJB delivers all these requirements through its ISSP programme.

1.The law which allows the electronic monitoring of children and young people to enforce night-time curfews

The main legislative routes which allow for the electronic monitoring of children and young people are as follows:

i) Curfew Orders

The Criminal Justice Act 1991 allowed over 16s to be subject to a curfew for a maximum of 12 hours in any one day over a period of 6 months. (Sections 12 and 13 - 13 specifically mentions electronic monitoring). Section 43 of the Crime (Sentences) Act 1997 amended the 1991 Criminal Justice Act to allow tagging for under 16s for 3 months. This means in practice from 10 years and up.

The Powers of Criminal Courts (Sentencing) Act 2000 Section 37 legislates for Curfew Orders; any age 6 months and 3 months for under 16s, a maximum of 12 hrs per night. This is specific about electronic monitoring in Section 38. The 2003 Anti-Social Behaviour Act Schedule 2 amends this to 6 months for under 16s.

It would appear therefore that there are two separate pieces of legislation relating to curfew orders and children. We don't have any figures on which is being used in the courts.

ii) Supervision Orders

Supervision Orders are a 'Community Punishment' for under 18s introduced in the Powers of Criminal Courts (Sentencing) Act 2000 Section 62. They can last for up to 3 years. A supervision order does not specifically include a night-time curfew element. However; the 2003 Anti-Social Behaviour Act Schedule 2 explicitly allows for a Curfew Order to be made alongside a Supervision Order.

There are powers in a Supervision Order - cf. Schedule 6 in Powers of Criminal Courts (Sentencing) Act 2000 and amended in 2003 Anti-Social Behaviour Act Schedule 2 enforcing up to 180 days of 'activities'. (It was originally 90 days).

There were powers in Schedule 6 of the Powers of Criminal Courts (Sentencing) Act 2000 to require a 'night restriction' on a young person as part of a Supervision Order. However; this was not a curfew and could not be electronically monitored. These powers were dropped in the Anti-Social Behaviour Act 2003 Schedule 2 which amended the above schedule.

Thus young people on a supervision order are also put on a separate Curfew Order where the Youth Offending Team (YOT) wants to enforce a night curfew. There is no provision within the supervision order for a curfew.

There is however provision for other forms of surveillance such as reporting requirements and telephone monitoring, which we will cover in a separate paper.

iii) Community Rehabilitation Orders

Community Rehabilitation Orders are a 'Community Punishment' introduced in Powers of Criminal Courts (Sentencing) Act 2000 Sections 41-42. These are for over 16s and thus are used for 16 and 17 year olds. The Criminal Justice Act 2003 Section 204 allows a curfew for up to 6 months as part of the order (up to the usual 12 hours per day). The Criminal Justice And Court Services Act 2000 Section 52 modifies the original legislation for Community Orders in the Powers of Criminal Courts (Sentencing) Act 2000 to specifically allow electronic monitoring to enforce any part of any order. Thus an electronically enforced night-time curfew can be given as part of a Community Rehabilitation Order without any further orders - for up to 6 months. It would appear that the provision for electronic monitoring introduced in the Criminal Justice And Court Services Act 2000 Section 52 could be widely interpreted; however the provision for a night-time curfew is limited to 6 months.

iv) Detention and Training Order - Early Release

Detention and Training Orders (DTOs) were introduced in the 1988 Crime and Disorder Act Sections 73-79. This is the standard custodial sentence for under 17s for all but the most serious offences which are covered separately. The sentence can be for a total of up to 24 months and is split half in prison and half in the community under the supervision of the YJB.

Separately from this the Crime and Disorder Act 1998 Section 100 introduced Home Detention Curfews - that is electronically monitored curfews as part of an early release from prison. Curfews under this legislation must be for a minimum of 9 hours per day and no maximum is specified. The period of electronically monitored curfew lasts until the end of the half-way through the prison sentence; that is when the person would have been released from prison without these early release arrangements. This legislation does not specify age.

For DTOs this has been updated by Section 102 of the Powers of Criminal Courts Sentencing Act 2000; it is the case that there is a scheme in place for early release from the custodial portion of a DTO (one or two months) and that this should be covered by an electronic monitoring scheme.

v) Detention and Training Order - the period of Supervision

Section 76 in the 1988 Crime and Disorder Act Sections states that the offender will be given a notice from the Secretary of State specifying requirements with which he must comply during the supervision part of the sentence.

The Criminal Justice and Court Services Act 2000 Section 62 allows for electronic monitoring to be used to enforce any conditions of release from custody. As far as we can tell this applies to the whole supervision period of a DTO (not just any part where the prisoner has been released early). This is indeed how the legislation is being used.

A curfew can be ordered as part of the conditions attached to the supervision part of a DTO and that the above legislation allows for this to be electronically monitored.

The other requirements relating to the Community part of a Detention and Training Order are outlined in the Powers of Criminal Courts (Sentencing) Act 2000 Section 100-107.

vi) As a condition of bail

The Police Act 2001 Sections 131 and 132 amends the Bail Act 1976 and allows courts to order electronic monitoring to enforce any condition of bail for a child or young person (12-17) where they are charged with a serious offence or there is a repeat pattern (of being charged or convicted - note it need not be convictions) of offending. Note that there are no limits here e.g. for 12 hours per night. The legislation allows for the Secretary of State to modify the implementation through a Statutory Instrument.

2. Figures

a) Figures supplied to MoJ by contractors

The following table was supplied by the Ministry of Justice on 21 May 2008. It provides a 'snap-shot' in time relating to young people subject to Electronic Monitoring on the last days of January, February and March 2008.

Figures for 16 and 17 year olds who are subject to Electronic Monitoring as part of a Community Rehabilitation Order are not available; these orders are for adults and separate figures are not kept for 16 and 17 year olds.

The figures have been supplied for both the contractors with totals.

It would appear that a fairly substantial number of young people are being tagged as part of a Curfew Order - which may be given alongside a Supervision order. The figures for those tagged as part of their bail conditions also seems quite high given that only serious or repeat (based on charges not just convictions) young offenders should be tagged as part of their bail conditions.

The figures also show that only a tiny number of young people are being tagged as part of the Home Detention Curfew scheme - the one that the papers make all the fuss about.

TO 199062 Juvenile caseload by order type on the last days of Jan, Feb and Mar 2008

		<i>London, East Anglia, West Midlands and Wales</i>			
Serco	Dates	HDC Early Release Scheme	Curfew Order	DTO	Bail Condition
	31.01.08	12	829	113	485
	29.02.08	8	786	101	470
	31.03.08	8	798	98	454
		<i>North East, North West, East Midlands, Yorkshire and Humberside, South East, South West</i>			
G4S	Dates	HDC Early Release Scheme	Curfew Order	DTO	Bail Condition
	31.01.08	7	1381	261	355
	29.02.08	11	1382	235	341
	31.03.08	13	1357	235	340
Both contractors		HDC Early Release Scheme	Curfew Order	DTO	Bail Condition
Totals	31.01.08	19	2210	374	840
	29.02.08	19	2168	336	811
	31.03.08	21	2155	333	794

b) Figures from the courts

For April 2007 - March 2008 the following totals have been supplied by the Ministry of Justice. These figures include 16 and 17 year olds:

Bail: 10,226

Court orders: 10,975

HDC/DTO: 2,750