

**The evolution of Home detention based sanctions frameworks
in the USA and Australia up to 2013: A comparative case
study**

A thesis submitted in total fulfillment of the requirements for the degree of
Doctor of Philosophy

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Declaration

I certify that except where due acknowledgement has been made, the work is that of the author alone; the work has not been submitted previously, in whole or in part to qualify for any other academic award; the content of the thesis is the result of work which has been carried out since the official commencement date of the approved research program; any editorial work, paid or unpaid, carried out by a third party is acknowledged; and ethics procedures and guidelines have been followed.

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Table 3.1 Offenders on HDBS in the USA (total number)

Table 4.1 Offenders on HDBS in Australia (at any one time)

List of abbreviations

APPA	American Probation and Parole Association
CMS	Central Monitoring System
CCTV	closed circuit television
DPSOA	Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)
DSOA	Dangerous Sexual Offenders Act 2006 (WA)
EM	electronic monitoring
GIS	Geographic Information Systems
GNSS	Global Navigation Satellite System
GPS	Global Positioning Systems
GSM	Global System for Mobile Communications
HDBS	Home Detention Based Sanctions
ISP	Intensive Supervision Probation/Parole
JIRS	Judicial Information Research System
RF	Radio Frequency
RPAs	Remotely Piloted Aircrafts
SCRAM	Secure Continuous Remote Alcohol Monitoring
UK	United Kingdom
USA	United States of America
UAVs	Unmanned Aerial Vehicles

Summary of research

Uniquely operated Home Detention Based Sanctions (HDBS) have existed since ancient times when several prominent people were placed on them. Contemporary HDBS, which utilise electronic monitoring (EM) technology, became first available in the 1980s in the United States of America (USA). Many nation states around the world have since embraced and trialled varied models of these sanctions. While the development and expansion of contemporary HDBS throughout the world has taken place over the last three decades (1982-2013) with varied success, relatively little is known about their comparative rationale, implementation and operation. The employment of comparative historical scholarship in this study of HDBS has allowed the researcher to identify and examine the similarities and differences in the development, operation and outcomes of HDBS over time (last three decades, that is, from 1982 to 2013) and place (the USA and Australia). This methodology was vital in order to predict the future trajectory of these sanctions and to specify the lessons learnt that could be implemented to improve their operation.

More broadly, the evolution of the HDBS frameworks in this research has been divided into three ideologically distinguishable phases. The early phase of HDBS in the USA and Australia occurred from 1840s until the 1960s. It was characterised by the development and small scale operation of probation and parole. Offender supervision on these iconic community based dispositions was based on humanitarian principles. Following this, the middle phase of HDBS occurred in the USA and Australia from the 1960s to 1970s. It comprised five converging factors. The most problematic was that 'tough on crime' policies led to enormous prison crowding and budgetary restraint, while the currently available community based dispositions were regarded as ineffective. This culminated in a 'correctional disillusion' that led to governments' decisions to introduce the late phase of HDBS, which has been operational over the last three decades (1982-2013).

The late phase of HDBS in the USA commenced with the implementation of intermediate sanctions, comprising of HDBS with Radio Frequency (RF) in the 1980s. In the mid-2000s, however, the expansion of sex offender post-release supervision laws and the development of electronically monitored Global Positioning Systems (GPS) technology led to utilisation HDBS for serious sex offenders. The number of offenders on all HDBS has been increasing in the USA. The ideology of offender supervision during this phase has been characterised by strict and close surveillance and monitoring, although treatment-based components have usually been available for serious offenders on HDBS with GPS. The last three decades of evaluative research about HDBS with RF have generally indicated problematic operational outcomes as well as significant ethical and political and stakeholder issues and dilemmas. On the other hand, HDBS with GPS have been operationally successful, although studies assessing some of their ethical and overall political and stakeholder issues and dilemmas have been lacking.

The late phase of HDBS with RF in Australia also started in the 1980s. HDBS with GPS entered the correctional arena after 2000 in very similar circumstances to the USA. The overall number of offenders on HDBS in Australia has however remained relatively stable. The ideology of offender supervision on these sanctions has entailed a combination of strict and close surveillance and treatment-based components. The last three decades of evaluative research of HDBS with RF have generally found that these sanctions have achieved their anticipated operational results, but have encompassed significant ethical and particularly political and stakeholder issues and dilemmas. Research assessing the operational outcomes, ethical and political and stakeholder issues and dilemmas of HDBS with GPS is still inadequate, and it is imperative that such research is conducted in the future.

The predicted future trajectory of HDBS in both the USA and Australia is increased sanction application. This is based on six relevant facts - numerous nation states have adopted HDBS as permanent parts of their sentencing landscapes; throughout the Western world, HDBS mostly operate effectively; a few Australian jurisdictions have been examining ways of increasing the use

of these sanctions; EM technology is constantly advancing, becoming less intrusive and cheaper overall; nation states are developing additional satellite navigation systems and establishing Global Navigation Satellite System (GNSS); and mass incarceration is not sustainable.

The future viability and outcomes of HDBS in both nation states are however dependent on whether policy makers and/or correctional administrators, with the support of governments, improve the operation of HDBS by implementing the lessons learnt based on the evidence of best practice. These include: collaborative working and sharing of information with stakeholders; inclusion of rehabilitative and reintegrative initiatives; ongoing independent evaluation process that informs continual improvement; application of equitable selection criteria and conditions; offender tailored order conditions and length of orders; provision of support for offenders' co-residing family members; and clear policies and procedures to guide their operation. If the jurisdictions within the USA and Australia implement the specific lessons learnt relevant to their own problematic areas of HDBS' operation, the application of these sanctions will become more effective.

Chapter 1 – Introduction to home detention based sanctions and research orientation

All penal innovations are a product of their time, and this one is no exception. In order for a new sanction, or a new form of imprisonment to proliferate, it has to be consistent with some important penal philosophy.

(Roberts, 2004:12)

1.1 Introduction

As Roberts (2004) asserted in 'The virtual prison: Community custody and the evaluation of imprisonment' the birth and proliferation of all penalties, institutional and community based, is a distinct product of their time. Despite the fact that the early phase of diverting offenders from custody into community based penalties around the Western world began at the turn of the 19th century, it was not until the 1960s that the concept of 'decarceration' or 'community treatment' actually emerged and was theoretically and politically supported. It was presented "as a new panacea for the age-old problem of controlling the mad or the bad" (Chan, 1992:1). Policy makers generally hoped to minimise the increasing cost and ineffective outcomes of incarceration with a greater diversion of offenders into community based penalties centred on offender treatment (Clear & Dammer, 2003; King, 1991; Walker, 1991). A significant part of this diversion were contemporary Home Detention Based Sanctions (HDBS), which utilise electronic monitoring (EM) technology. The focus of this research is to analyse these sanctions in relation to their aims and rationale, implementation process, operation cycle and to ascertain what in fact can be learnt from the last three decades of their operation (1982-2013).

This chapter commences with background contextual information for this research. It discusses the application of the earliest forms of HDBS from the

ancient times, when they were imposed on revolutionaries, to the 'transportation policy' when they were imposed on convicts in the beginning of the settlers' period in Australia (O'Toole, 2006; Whitfield, 1997). The chapter then outlines the contemporary world-wide application of HDBS. Throughout the Western world these sanctions were initiated as original sentences of the court in the 1980s, but some authoritarian governments still apply them sporadically and distinctly to isolate 'dissidents' (Roberts, 2004). The contemporary terminology of these sanctions, as applied throughout the Western world, is then clarified as various different titles are classified under the umbrella of HDBS for the purpose of this research.

The historical development of the tool of contemporary HDBS – electronic monitoring – is then critically discussed. Whilst HDBS were initially developed on the basis of human surveillance they flourished with the introduction of electronic surveillance. The maturing of the Electronic Monitoring (EM) technology from Radio Frequency (RF) to Global Positioning Systems (GPS) has allowed sentencing more serious offenders onto these sanctions (Lilly & Nellis, 2013).

Subsequently, the methodology and the data collection used in this research are outlined. While the development and expansion of contemporary HDBS throughout the Western world over the last three decades (1982-2013) with varied success, relatively little is known about its overall development, implementation and operation, as well as the current issues it encompasses. Consequently, through a comparative historical analysis, the researcher identified and examined similarities and differences in the operation and outcomes of HDBS over time [last three decades, that is, from 1982 to 2013] and place [the United States (USA) and Australia]. It was hence possible to predict HDBS' future trajectory in both nation states¹ and specify the lessons learnt that would allow these sanctions to become more effective and better-utilised in the future.

¹ The USA and Australia are referred to as 'nation states' in the remainder of this research.

This chapter then outlines the theoretical underpinnings of this research. The development of contemporary HDBS throughout the Western world was part of the theoretical underpinning termed 'decarceration.' More broadly, however, the evolution of HDBS frameworks comprised of three distinct phases which are discussed throughout the research. The chapter concludes with the structure of the thesis. Chapter 2 discusses the early and the middle phases of HDBS in the USA and Australia. Chapter 3 analyses the late phase of HDBS in the USA. Chapter 4 analyses the late phase of HDBS in Australia. Chapter 5 provides the overall conclusion to the research and future implications for HDBS in both the USA and Australia.

1.2 Background contextual information

The following section 'sets the scene' by providing the historical groundwork for HDBS and the contemporary world-wide application of HDBS.

1.2.1 Historical groundwork for HDBS

Ever since the establishment of communities, some form of social control aimed at curbing undesirable conduct has existed, so, as Welch (2004:21) suggests, "punishment is as old as civilization itself". The importance of how society punishes wrongdoers must also not be underestimated:

The punishment of criminal offenders is a barometer of culture. As it represses undesirable conduct, punishment simultaneously expresses civility. Punishment signifies a society's values, morality, sensibilities and reasoning.

(Ericson, 1992:xv cited in McMahon, 1992:xv)

Legal codes of punishment which have served as official guidelines of society are thought to have been first established by the imposition of the Code of

Hammurabi² in 1750 B.C. in Babylon. These legal codes set the trend for penalties to be very severe including whipping, mutilation and forced labour for many centuries (Welch, 2004). The only 'wrongdoers' who at times avoided the imposition of these harsh corporal penalties were political dissidents and radical thinkers who were usually silenced through strict detention within the community (Whitfield, 1997; Morris & Tonry, 1990; Ball, Huff & Lilly, 1988). This type of punishment, today classified as a HDBS, seems to have constituted the earliest form of community based sentences. It must be noted that although an offender's home was used as a 'place of punishment', HDBS in ancient times did not operate like today's HDBS. The primary difference was that numerous stringent conditions were not imposed on offenders as they are today. (For more information see section 1.3.2). The sanction concentrated on 'isolating' the offender from the general community, that is, their supporters. Furthermore, these sanctions were usually imposed by reigning rulers or governments without any "proper judicial due process" (Ball et al., 1988:21). The confinement to one's home was indeterminate; it lasted until the individual dissident recanted their beliefs, passed away, was executed, or the regime was overthrown (Roberts, 2004).

Since ancient times several prominent people have been sentenced to these uniquely operated HDBS because they were regarded as posing a threat to the ruler or the government (Roberts, 2004). Prominent examples include:

- St Paul the Apostle, who became one of the first major Christian missionaries and theologians. He spread Christianity, which was banned throughout the Roman Empire in the early AD period.³ As a result, Roman soldiers detained him in his home. Once they realised that he would not renounce his faith he was 'martyred' in 64AD (Gibbs & King, 2003a; Pearsall & Trumble, 2002).

² This is well known as the 'eye for an eye, and tooth for a tooth' principle. The basis for punishment under this code was 'lex talionis' meaning the 'law of retaliation' which refers to vengeance (Welch, 2004).

³ Christianity was established as the official religion of the Roman Empire in 313AD (Abercrombie, Hill & Turner, 2000).

- Galileo Galilee, the Florentine philosopher, astronomer and physicist, was found guilty of heresy in 1634 when he offered an unorthodox view of the universe - that the earth revolved around the sun. The church authorities forced him to spend the last 8 years of his life detained in his home (Cromwell & Killinger, 1994; Lay, 1988a; Lay, 1988b; Whitfield, 1997; Lilly & Ball, 1987).

- Queen Lili'uokalani, who was the last reigning monarch of the Hawaiian Islands, was confined to her home in 1895 due to the overthrow of the Hawaiian monarchy by a group of USA businessmen and missionary descendants. She was released 8 months later with the establishment of the Republic of Hawaii and soon after abdicated her throne (Barnes, 1999).

- Nicholas II, who was the last emperor of Russia, and his family were detained in their home and forced to abdicate in 1917 by the Bolsheviks after the Russian Revolution. A year later they were executed (Whitfield, 1997).

Therefore, political dissent was suppressed by forcing 'dissidents' outside of the public arena (Ball et al., 1988).

The first time a unique form of a community based sanction with some elements of HDBS was applied on a large offender population was between 1790 and 1838 in the beginning of the settlers' period in Australia (O'Toole, 2006; Lay, 1988b). Under the wider policy of 'transportation', 175,000 convicts were permanently removed from England to Australia between 1787 and 1868 (Miethe & Lu, 2005; Brown, 1989). Almost 90% of these convicts were assigned to work for free-settlers and about 10% were employed by the government to work on projects or placed into institutions of secondary punishment (O'Toole, 2006; Finnane, 1997; Blackmore, Cotter & Elliott, 1969).

The 'assignment system', onto which the vast majority of the convicts were placed, formed a pioneering way of managing offenders from the late 18th until the mid 19th century. Yet it must be noted that the:

assignment system was not the result of a breakthrough in correctional philosophy; it was more properly the result of a practical decision in offender management in the absence of walls.

(Lay, 1988b:3)

Under this system, offenders were effectively banished [that is, physically removed] from their communities in England and placed on [what can today be referred to as] a community based sanction in Australia. They were assigned to undertake hard labour for free-settlers within a set of laws and rights. The strictest condition was that offenders were not allowed to be absent from work without pre-approved leave by the free-settler, or able to go from one settlement to another without a pass from a magistrate (Clarke, 1997). The free-settlers were in turn expected to generally supervise as well as support offenders by providing lodgings and clothing (O'Toole, 2006; Blackmore et al., 1969). According to O'Toole, the objective of the assignment system was unprecedented:

The assignment system was a form of intensive community-based supervision. Having a convict placed completely under the control of a free settler put the onus on the settler to ensure they got the best out of the individual, training and instructing them to be a productive community member.

(O'Toole, 2006:33)

The free-settler essentially consented to be the community-based 'jailer' of the offender in the assignment system. Apart from controlling the offender, they also resided with them and provided them with their basic human needs, as well as attempted to reform them - all in return for the provision of labour. It is

clear that this system utilised some elements of the currently applied HDBS – although the role of the free-settler is now principally played by the supervising officer and at times by the offender’s co-resident/s. (See section 1.3.2 for the currently applied HDBS order conditions).

It is not surprising that the assignment system was very advantageous for the British government. It was seen to be both cost-effective and strategic in the long-term despite the high cost of offender transportation from Britain to Australia. This policy pragmatically meant that additional prisons did not have to be built in Britain and government costs post-transportation were transferred initially to the free-settlers and then onto the convicts who compensated the settlers through their hard labour. Undertaking hard work provided offenders with the potential to become productive settlers by learning practical skills as well as developing independence and self-esteem (O’Toole, 2006; Lay, 1988a; Lay, 1988b). It was also thought that because offenders were supervised in the community by law abiding settlers the stigmatisation process associated with convicts-only socialisation would be reduced. The prospect of cheap labour also more generally encouraged large-scale capitalist settlers to migrate to the new colony (Clarke, 2003).

In due course the most fundamental expectation of the British government’s transportation policy was fulfilled as ex-convicts eventually prospered and themselves employed newly arrived convicts. This has been encapsulated by O’Toole (2006) as:

The best evidence of the success of the assignment system can be seen by the situation in the colony by the 1820s. By then the majority of the convicts had been assigned to masters who were ex-convicts. According to Hirsh (1983) these ex-convicts owned half the wealth in the colony and three-quarters of the land.

(O’Toole, 2006:33)

For these reasons, Hughes (1987:586) referred to the assignment as "... by far the most successful form of penal rehabilitation that had ever been tried in English, American or European history."

During the early 1830s however the balance of the previously predominant convict population overwhelmingly changed and increasingly lost its political influence. In order for the new colony to further prosper the British government sponsored a large number of free-settlers to migrate to Australia (O'Toole, 2006; Grigsby, 1976). This newly composed mostly free-settler population became quickly dissatisfied for two reasons. First, they had to compete for work with the convict population who worked for free or very cheaply. Second, they had to live among ex-convicts who prospered in the new colony. As they regarded themselves as socially and morally superior, the free-settlers refused to socially mix with the ex-convicts, let alone accept them as their equals (O'Toole, 2006; Clarke, 2003; Grigsby, 1976). Their persistent complaints to the British government ultimately resulted in an inquiry into the convict transportation policy by the House of Commons despite the earlier reports of the policy's efficacy (O'Toole, 2006).

The Committee of the English House of Commons during 1837-1838, which was headed by William Molesworth who was an outspoken opponent of transportation, recommended the ending of the assignment system. In particular, the Committee "found that transportation did not reduce the crime rate in Britain, did not reform the criminals who were transported and produced a colony (Australia) founded on 'depravity'"⁴ (O'Toole, 2006:34). This outcome was widely publicised as Molesworth was the owner of popular English journals (O'Toole, 2006). As this finding appealed to people's retributive views, the British administrators and the general public were quickly persuaded that the assignment system was a 'light form of punishment' where convicts were able to acquire new skills instead of being

⁴ It must be noted that eventually it became apparent that the Committee's negative finding about the assignment system was clearly influenced by Molesworth's own biases against the transportation policy (O'Toole, 2006).

actually punished. As a result, the assignment system was abandoned in 1838 (O'Toole, 2006; Blainey, 1994; Grigsby, 1976).

The assignment system seemed to have laid the groundwork for the subsequent introduction of iconic community based dispositions during the 1840s. These were probation, which started in Boston (USA), and parole at the Norfolk Island (Australia). These two dispositions formed part of the early phase of HDBS (discussed in Chapter 2.2), and were the predecessors to the late phase of HDBS when contemporary application of these sanctions started (discussed briefly below section 1.2.2 and in Chapter 3.2 and Chapter 4.2).

1.2.2 Contemporary world-wide application of HDBS

It was not until the 1980s in the United States of America (USA) when contemporary HDBS, which utilise electronic monitoring technology, became actual sentences of the court (Enos, Holman & Carroll, 1999; Whitfield, 1997). Viewed as a modern solution to the increasingly unsustainable cost of incarceration and prison overcrowding crisis, the implementation of these sanctions expanded rapidly across the USA (Doherty, 1995; Renzema, 1992). (See Chapter 3.2 for additional information about the inception and proliferation of HDBS in the USA).

Similar to the USA, other nation states (particularly throughout the Western world), have also experienced burgeoning prison populations and prohibitive costs of building and sustaining prisons (O'Toole, 2002; Bonta, Rooney & Wallace-Capretta, 1999; Whitfield, 1997; Joutsen & Zvekic, 1994; Baumer & Mendelsohn, 1990). The late 1980s and early 1990s witnessed many nation states swiftly embracing and trialling varied models of HDBS. The first of these included Australia, Canada, England and Wales, New Zealand, the Netherlands, Sweden and Scotland (New Zealand Department of Corrections, 2000; Whitfield, 1997; Mainprize, 1995). Subsequently, on the cusp of 21st century, Switzerland, France, Germany, Spain, Denmark, Finland, Belgium, Portugal, Italy, Argentina, Taiwan, Singapore and Israel joined the growing

international trend of confining offenders in their homes as an alternative to incarceration (Paterson, 2007; Lilly & Nellis, 2001). While most of these HDBS operate similarly, each nation state designed its own HDBS as a response to the unique issues identified within its criminal justice system.

It is interesting to note however that while legislators had originally believed that HDBS would be widely applied, sentencers have generally been cautious in imposing these sanctions. In the USA, which is still the largest user of these sanctions, there are more than 200,000 offenders on HDBS at any one time⁵ (DeMichele & Payne, 2009:17; Alarid, Cromwell & del Carmen, 2008:197). The average daily number of offenders on HDBS in Australia is about 770 offenders (Smith & Gibbs, 2013; Henderson, 2006). While it may appear that that these numbers are significantly different, for example, that the number of offenders in Australia is much smaller than in the USA, the numbers similarly represent a few percent of the 'potential offender market' in both jurisdictions⁶. It is however worth noting that, since the inception of these sanctions, their growth has been either stable or increasing (DeMichele & Payne, 2009:17,13; Henderson, 2006:71).

In contrast to Western nations that impose HDBS for various types of offenders, some authoritarian governments apply these sanctions sporadically and distinctly. They only place individuals whom they consider to be 'political insurgents' on HDBS. These sanctions operate similarly to house arrest⁷ as in ancient times, without imposing any additional punitive or reformative conditions (see above discussion). The aim of the authoritarian governments is simply "to isolate (and hence neutralise) [the offender] from other like-minded individuals" (Roberts, 2004:7). The reason why these dissidents are

⁵ This number includes all defendants and offenders subjected to electronic monitoring, that is, on various community based dispositions such as bail, parole and probation and bail (Alarid et al., 2008).

⁶ This statistic was calculated by subtracting the number of offenders on HDBS from Whitfield's calculation of the 'potential market' in both the USA and Australia. Whitfield (2001:61) "defined the [potential] market as the sum of the prison and supervised populations – a very crude approach indeed, but with the sole virtue that it makes international comparison more realistic and achievable."

⁷ The term 'house arrest' developed a negative connotation due to its association with political detention and its use has been abandoned (Fox, 1987a).

not incarcerated is because the same degree of isolation experienced on this unique type of HDBS could not be achieved. Recent examples of 'dissidents' who were/are indefinitely confined to their homes include:

- Aung San Suu Kyi, who has been the figurehead for Myanmar's⁸ struggle for democracy. She was Myanmar's democratically elected leader in 1990 and the recipient of the Nobel Peace Prize in 1991. Despite this, the military regime refused to hand over power to her and confined her to house arrest for 15 of the 21 years of her imprisonment (Win & Genser, 24.10.08⁹). In 2010 she was released after a widely criticised general election in Myanmar in which the military retained power. Aung San Suu Kyi's role in the future of democracy in Myanmar remains a subject of debate (Mydans, 17.05.09; Amnesty International, 2008).
- Mordechai Vanunu, who is Israel's former nuclear technician. After spending 18 years in prison for being found guilty of treason for revealing details of Israel's nuclear weapons program to the media, he was released onto house arrest in 2004. He remains indefinitely subjected to numerous restrictions on speech and movement (Tisdall, 29.12.09).
- Dr Abdul Qadeer Khan, who is a nuclear scientist in Pakistan. He was also indefinitely placed under house arrest by the former President Musharraf in 2006 for undisclosed political affiliations. Despite never being officially tried for the offence of spreading the unauthorised uranium enrichment technology to the Middle Eastern countries, he made a televised confession to that effect (Button, 19.08.06).

⁸ In 1988-89 the State Law and Order Restoration Council changed the official name of Burma to Myanmar (Daniel, 2008).

⁹ When a date is referenced it denotes referencing of a newspaper article.

Therefore, various aspects of HDBS have been applied throughout the world in recent times. Each nation state operates a distinct form of HDBS that targets unique issue/s within its criminal justice system. This issue can be as diverse as reducing prison overcrowding (USA) and silencing political dissidents (Myanmar).

1.3 Terminology and definition of contemporary HDBS

This section clarifies the various contemporary terminology that is associated with HDBS, and provides a definition of HDBS. It is confined to those sanctions that are widely applied to various offender populations as actual sentences of the court that impose numerous conditions on offenders, rather than isolated cases of 'political dissidents' who are confined to their homes.

1.3.1 Clarifying the terminology associated with HDBS

It is difficult to find a common definition for contemporary HDBS throughout the Western world because a number of countries that utilise them define and apply them in myriad ways. Nevertheless, the purpose of this section of the research is to, in the clearest way possible, provide generalised explanations of HDBS in order to provide a better understanding of their similarities and differences.

Current community based dispositions under which offenders are detained in their homes appear under a wide variety of potentially confusing titles. Researchers refer to these almost identical sanctions by the following terminology: home detention (Corrections Victoria, 2003), home detention curfew (Paterson, 2007; House of Commons Committee of Public Accounts, 2006), home confinement (Welch, 2004), house arrest (Spelman, 2004), or electronic monitoring (Cotter, 2004; Welch, 2004). Some authors alternatively use these terms in a variety of combinations, such as 'electronically monitored home confinement' (Champion, 2008; Enos et al., 1999); 'electronic detention house arrest' (Spelman, 2004) or 'home confinement and electronic

monitoring' (McCarthy, McCarthy & Leone, 2001). Others refer to them interchangeably (Champion, 2008; Cromwell, Alarid & del Carmen, 2005; Welch, 2004; Ball & Lilly, 1986), and some even try to distinguish between them (such as Schmidt, 1989).

Although it is more than 20 years ago now, Schmidt's (1989) attempt to distinguish between the various labels given to HDBS remains one of the most discussed in the literature. He differentiated between the three main subtypes of HDBS in terms of their varied levels of punitiveness. These were as follows:

- Curfew – as the least severe. Offenders who are on a curfew must remain at home for a specified period of time, usually between 8 and 12 hours during the night.
- Home detention – as being within the middle range of severity. On home detention, offenders must remain in their home at all times, except when they are attending pre-approved activities such as employment, education, correctional treatment, or other types of necessary and authorised leave such as a medical emergency or legal appointment.
- House arrest – as the most severe. Offenders on house arrest are most strictly confined to their homes at all times – they are only able to leave for urgent serious medical treatment and, in some programs, religious practices (Schmidt, 1989).

Schmidt's typology has, however, become outdated. Offenders today are no longer placed onto HDBS that have conditions such as those described under 'house arrest.' Strict confinement was seen to be psychologically damaging to offenders and their household members (Nellis, 2013; Spelman, 2004). Further, as mentioned earlier, the term 'house arrest' became unpopular due to its association with political detention (Fox, 1987a).

Another level of complexity with the terminology relates to the ambiguous relationship between HDBS and the USA sanction known as Intensive Supervision Probation/Parole (ISP), and more generally the concept of 'intensive supervision'. In some USA literature, ISP is a separate stand-alone sanction to which home detention and home confinement are frequently applied as conditions (Cromwell, et al., 2005; McCarthy et al., 2001; Enos et al., 1999; Lay, 1988a). On the other hand, some USA literature states that home detention and home confinement incorporate more generally the concept of 'intensive supervision', which comprises various restrictions and obligations that are placed on offenders (Cromwell, et al., 2005; Lay, 1988a). In more recent times in the USA 'home detention programs' have become almost non-existent while 'home detention,' that is electronic monitoring, is applied as a condition of various community based sanctions, particularly ISP (DeMichele & Payne, 2009; McCarthy et al., 2001).

Therefore, a wide range of terms are associated with what are in reality very similar sanctions that principally (at least partially) restrict the offender to their home as a means of detention and more generally punishment (Nellis, 2013; Schmidt, 1994b; Ball & Lilly, 1986). For the purpose of this research all of these sanctions are collectively classified under the umbrella of the term 'HDBS'.

1.3.2 Defining HDBS

The application of contemporary HDBS throughout the Western world is flexible as these sanctions can be applied at various stages of the criminal justice process including both juvenile and adult offender populations. Traditionally, the technology has been attached to HDBS that operate as either pre-trial or post-trial alternatives to incarceration, and more recently it has formed a part of extended supervision orders and restraining orders (Nellis, 2010a; Renzema 1992).

Pre-trial HDBS usually operate as a component of bail, so they are utilised for unconvicted defendants as a method of enhancing their appearance at trial and non interference with victims/witnesses; hence they are not used as a punishment as such (Altman & Murray, 1997; Maxfield & Baumer, 1990). These dispositions were established in order to reduce the size of the remand population, as defendants who do not meet eligibility criteria for release on bail/recognisance (due to their seriousness and risk) are placed on them (Minister of Justice, 2011; Maxfield & Baumer, 1990).

On the other hand, post-trial HDBS are imposed as a criminal sanction after an offender's conviction (Heggie, 1999). Mostly, these sanctions operate as equivalent to incarceration on the basis that they, similar to incarceration, serve multiple sentencing philosophies, including incapacitation, retribution, deterrence, and rehabilitation (Meyer, 2004). The most controversial sentencing justification of HDBS is incapacitation. This is because offenders can cut off the electronic device, abscond and commit a crime (Alarid et al., 2008; Meyer, 2004; Clear & Dammer, 2003). [Electronic monitoring devices need to be able to be cut off easily in cases of medical or safety emergencies]. It is however arguable that incapacitation can be achieved when offenders' movement is adequately monitored by authorities, and electronic monitoring system alerts are immediately responded to, and the offender is captured and sanctioned if they breach the pre-determined HDBS conditions (Meyer, 2004).

Post-trial HDBS typically operate as either 'front-end' or 'back-end' alternatives to imprisonment (Heggie, 1999; Tonry, 1998). Offenders are placed onto 'front-end' HDBS by having their sentences of imprisonment fully suspended and being sentenced instead to serve their time at home (Smith, 2001; Heggie, 1999; Tonry, 1998). Alternatively, only offenders who had first been imprisoned are able to be released early and placed onto 'back-end' HDBS (Dodgson, Goodwin, Howard, Llewellyn-Thomas, Mortimer, Russell & Weiner, 2001; Heggie, 1999; Tonry, 1998; Church & Dunstan, 1997). The aim of all post-trial HDBS is to reduce or stabilise rising prison populations. The

specified offender target group for post-trial sanctions is most frequently low to medium-risk, non-violent offenders (Gainey, Payne & O'Toole, 2000; Schulz, 1995; Rackmill, 1994; Lilly, Ball, Curry & Smith, 1992; Baumer & Mendelsohn, 1990; Maxfield & Baumer, 1990).

HDBS that operate as extended supervision orders entail monitoring of the most serious offenders (Tennessee Board of Probation and Parole, 2007). This was only made possible with the introduction of Global Positioning Systems (GPS) technology in the late 1990s. (See section 1.4.3 for the explanation of GPS technology). In fact, after serving the entirety of their prison sentences serious offenders (mostly convicted of sex related offences) who are determined to be at high risk of reoffending are placed onto these sanctions (Nellis, 2010a). HDBS that operate as extended supervision orders were established under extended sex offender laws that were the result of a community demand for continued strict supervision of these offenders. This was the result of 'moral panics' created by the media in the USA about a few high-profile cases of known sexual predators who committed heinous crimes against children (Bales, Mann, Blomberg, Gaes, Barrick, Dhungana & McManus, 2010a). Similarly, in Australia the media fuelled a community uproar due to the release of well-known sex-offenders who were perceived to be too dangerous for unsupervised release back into society (Milovanovic, 13.07.05). The aim of these sanctions is to increase community protection by reducing the 'opportunity and availability' of victims (Nellis, 2010a).

Apart from most obviously depriving the offender of their liberty through home confinement and/or GPS enabled tracked movement, HDBS throughout the Western world generally share three ideological features. First, these sanctions are designed to be 'punitive' (as they impose a number of onerous obligations onto the offender) but they are also inherently 'humane' (as they allow the offender to remain in the community continuing to work and be with their family) (Carlson, Hess & Orthmann, 1999; Byrne, Lurigio & Baird, 1989; Clear, Flynn & Shapiro, 1987). Second, these sanctions generally employ rehabilitative programs to address the offending-related needs of offenders; these include substance abuse treatment programs, sex offender programs,

violence intervention programs, adult literacy programs, and/or employment training (Langan, 1998; Johnson, 1995; Richards, 1991). Third, a range of strict surveillance and monitoring mechanisms, which encompass various electronic monitoring devices, are imposed on offenders to strictly control their movement and more generally to protect the community (Alarid et al., 2008; Langan, 1998; Richards, 1991).

More specifically, HDBS usually impose a number of core and some specific conditions¹⁰ on offenders. These conditions essentially result in offenders having certain obligations. Offenders on these sanctions are generally obligated to:

- Have a 'suitable residence' that is maintained with electricity, landline and/or mobile phone (Gainey et al., 2000; Carlson et al., 1999; Micucci, Maidment & Gomme, 1997; Maxfield & Baumer, 1990). Additionally, strict residency requirements are imposed on offenders on HDBS with GPS so that they are not near children in schools and parks. It should however be noted that offenders on HDBS with GPS in the USA only are able to be homeless (Bales, Mann, Blomberg, McManus & Dhungana, 2010b).
- Obtain 'co-residents' agreement' to serve the HDBS with passive and RF technology. It should be noted that this is not a requirement for offenders on HDBS with GPS. This is probably because the imposition of GPS monitoring means that co-residents are not disturbed by random home visits or phone calls at all times which are an inevitable part of passive and RF monitoring (Alarid et al., 2008; Meyer, 2004; McCarthy et al., 2001; Church & Dunstan, 1997).

¹⁰ Core or standard conditions are mandatory and are applied to all offenders. Specific or special order conditions on the other hand are discretionally applied to offenders depending on their special circumstances, that is, their risk and need (Alarid et al., 2008; Clear & Dammer, 2003).

- Provide for their own basic needs financially and physically; these needs include food, hygiene and medical requirements (Ansay, 1999; Van Ness, 1992; Baumer & Mendelsohn, 1990; Ball et al., 1988).
- Submit to surveillance and control at any time. This may include wearing and maintaining the electronic monitoring device, regularly reporting to a correctional office, receiving phone calls, home and work place visits and allowing a search of their premises, and generally planning all of their activities in advance (Bales et al., 2010b; Jannetta, 2006; Ansay, 1999; Heggie, 1999; Church & Dunstan, 1997; Heath, 1996; Rackmill, 1994; Blomberg, Bales & Reed, 1993; Van Ness, 1992; Ball et al., 1988).
- Agree that immediate family, co-residents, employers in most programs, and even neighbours in some programs (Blomberg et al., 1993), are told about them being on the HDBS (Ansay, 1999; Heggie, 1999; Church & Dunstan, 1997; United States General Accounting Office, 1990; Ball et al., 1988).
- Remain at home for specific periods of time ranging from a night curfew to 24-hour detention (Nellis, 2013; Gainey et al., 2000; Bonta et al., 1999; Carlson, et al., 1999; Heggie, 1999; Church & Dunstan, 1997; Heath, 1996; Rackmill, 1994; Blomberg et al., 1993; Maxfield & Baumer, 1990). Additionally, offenders on HDBS with GPS are mandated to stay away from predetermined exclusion zones (Nellis, 2013; Bales et al., 2010a; Bales et al., 2010b). (For more information see section 1.4.3). As mentioned earlier, offenders on HDBS with GPS in the USA only are able to be homeless (Bales et al., 2010b).
- Abstain from the use of illegal drugs and alcohol (Gainey et al., 2000; Heggie, 1999; Church & Dunstan, 1997; Heath, 1996; Blomberg et al., 1993).

- Limit association to people who have not been and are not involved in criminal activities (Ansay & Benveneste, 1999; Carlson et al., 1999; Heggie, 1999).
- Engage in necessary developmental, counselling and/or treatment programs (Bales et al., 2010b; Gainey et al., 2000; Ansay, 1999; Church & Dunstan, 1997; Micucci et al., 1997; Heath, 1996; Blomberg et al., 1993; Van Ness, 1992; United States General Accounting Office, 1990).
- Perform community work and/or engage in employment (Bales et al., 2010b; Brown, McCabe & Wellford, 2007; Tennessee Board of Probation and Parole 2007; Blomberg et al., 1993; Van Ness, 1992; United States General Accounting Office, 1990).
- Only in the USA, pay part of their own supervision cost, drug/alcohol testing and make specific victim restitution payments/fines/court costs (Bales et al., 2010a; Gainey et al., 2000; Whitfield, 1997; Heath, 1996; Blomberg et al., 1993; Fulton & Stone, 1992).

Offenders' compliance with these obligations, which are the outcome of imposed HDBS' conditions, is monitored by their supervising officers. Non-compliance with any conditions of HDBS constitutes a breach. HDBS can be breached by offenders committing further offence/s and/or technical violation/s (Champion, 2008; Cromwell et al., 2005; Clear & Byrne, 1992). All instances of further offending during a HDBS constitute an immediate return to court for re-sentencing. However, not all breaches of HDBS due to technical violations, which constitute the majority of all breaches of HDBS, warrant a return to court for re-sentencing (Alarid et al., 2008; Meyer, 2004; Nellis, 2004). Consequently, a distinction must be made between minor and serious breaches due to technical violations:

- Minor breaches include being late *once off*, failing to attend a supervision/ treatment appointment or producing a positive urine sample. These are dealt with by an internal administrative process in which the offender is usually formally warned or more stringent conditions are imposed on them by the Manager/Director of the HDBS.
- Serious breaches on the other hand constitute offenders absconding (by cutting off the electronically monitored device and becoming unreachable by the correctional authorities) and/or repeating minor breaches. These are dealt with by a formalised process, that is, a return to court where the judge/magistrate most often revokes the HDBS and imprisons the offender.

Research has indicated that the strict severity of HDBS results in offenders committing technical violations, which constitute minor or serious breaches of HDBS (Clear 2007; Clear, Cole & Reisig, 2006; Meyer, 2004).

1.4 Historical development of the tool of contemporary HDBS - electronic monitoring technology

The following section describes the early attempts at the use of electronic monitoring technology and explains the development and the intricacies of electronic monitoring with RF, as well as electronic monitoring with GPS. It concludes with a discussion on the subsequent developments in electronic monitoring technology.

1.4.1 Definition and early uses of electronic monitoring technology

While contemporary HDBS were initially developed on the basis of human surveillance they flourished with the introduction of electronic surveillance. This is because the technology resolved the problems associated with manual monitoring of offender compliance, which was regarded as labour-intensive, personnel dependent, and unreliable due to potential threats to public safety (Baumer et al., 1993). It also allowed the sentencing of more serious offenders

to community based sanctions, and more generally enhanced the professional status of correctional agencies (Baumer, Maxfield & Mendelsohn, 1993). Community based dispositions consequently became 'tougher' by being 'more surveillance-oriented' (Petersilia, 2000:178).

The core condition of contemporary HDBS, which is surveillance and control of offenders' movement, is monitored and enhanced by the electronic monitoring technology (Bonta et al., 1999; Byrne et al., 1989). The emergence and the rapid development of electronic supervision technologies has brought enormous irreversible change to community corrections as well as the broader criminal justice system. Its scope has even been compared with the advent of the light bulb that was said to be responsible for major social change in advancing Western civilisation (DeMichele & Payne, 2009).

Cromwell et al., (2005:181) define electronic monitoring as:

a correctional technology used as a tool in intensive supervision probation, parole, or home confinement using a radio frequency or satellite technology to track offender whereabouts using a transmitter and receiver.

Electronic monitoring is therefore utilised as a telemetry tool in conjunction with HDBS (Nellis 2010/2011; Mair, 2006; Carlson et al., 1999; Schmidt, 1994b; Renzema, 1992). Technology encompassing various types of electronic monitoring equipment is designed to increase the accountability of offenders in the community by enhancing the officer's ability to supervise offenders (McCarthy et al., 2001; Champion, 1996). It is very important to note that the technology does not therefore replace personal contact with offenders, which is essential "to meet surveillance and case management goals" (Heath, 1996:28).

The nature and extent of the electronic monitoring technology that is applied on offenders on specific community based sanctions varies widely. It is primarily dependent on the jurisdiction's funding levels and officials'

preferences and desired security. Furthermore, it varies in accordance to a jurisdiction's social, cultural and political factors (Nellis, 2010/11). As a result, vendors throughout the Western world have produced several types of electronic monitoring equipment to satisfy officials' diverse needs. These include passive electronic monitoring technology, active radio frequency electronic monitoring technology, hybrid passive and active electronic monitoring technology, and GPS that also operate as passive, active and hybrid systems (Tennessee Board of Probation and Parole, 2007; McCarthy et al., 2001; Heath, 1996). (For more information see below).

The very first attempt of using electronically monitored devices to track the movement of human beings in the community was undertaken in 1964 by Dr Schwitzgebel and his colleagues at Harvard University in the USA¹¹ (Whitfield, 1997; Renzema, 1992; Fox, 1987b; Schmidt & Curtis, 1987). This experiment, whose findings were published in 1966 in the *Harvard Law Review*, was titled 'electronic rehabilitation system.' It was tested around the Harvard University campus with volunteers including students, parolees and "mental patients" who wore an electronic monitor (Fox, 1987a:133).

There were multiple receiver transmitters around the Harvard campus to pick up and retransmit the signal via a missile-tracking device. The tracking device showed on a screen where on the Harvard campus or its vicinity the person wearing the monitor was.

(Fox, 1987b:76)

It was hoped that the tracking device that is worn in the future would be able to monitor "physiological functions, blood alcohol levels, brainwaves, and other bodily activities that might be predictive of criminality" (Fox, 1987b:76). This would then mean that it could be a more humanitarian means of monitoring offenders and mental patients, and it could even replace prisons and mental institutions (Renzema, 1992; Fox, 1987b). However, the experiments did not show significant achievements, and as a result did not

¹¹ The idea of tracking human movement was based on the tracking of animal movement in the wild (Fox, 1987b).

generate interest among corrections or mental health professionals (Renzema, 1992).

Nevertheless, soon after this experiment, Ingraham and Smith (1972 cited in Cohen, 1977:224) made a prediction that the future ability of electronic monitoring will be limitless:

In the 'very near future', a computer technology will make possible [new types of] alternatives to imprisonment. The development of systems for telemetering information from sensors implanted in or on the body will soon make possible the observation and control of human behaviour without actual physical contact. Through such telemetric devices, it will be possible to maintain twenty-four-hour-a-day surveillance over the subject and to intervene electronically or physically to influence and control selected behaviour. In the name of social order, these new forms of control, which have important implications for basic civil rights, may percolate into the community with little scrutiny or public accountability.

Four decades later the envisaged application of electronic monitoring technology has not been realised. This is probably because policy makers have been largely mindful of the potential legal and ethical implications that such an application would have.

Following the Harvard University experiment, the next formalised attempt at using electronic monitoring was based on New Mexico, USA District Court Judge Jack Love's inspiration when he read a Spiderman comic strip in 1977. The comic strip illustrated Spiderman being tracked by a transmitter fixed to his wrist (Ball et al., 1988). The judge used this idea to develop electronically monitored tracking of offenders in the community because he was frustrated at imprisoning offenders who he believed did not need to be imprisoned, but did need a more stringent sanction than regular probation (Goss, 1990). He was specifically saddened by a prison riot that killed relatively minor offenders who he had sentenced to prison (Fox, 1987b). Consequently, he approached

major computer companies, none of whom were willing to commit resources to such a project. Subsequently, Michael Goss, an engineer, left his current employment and established his own company to pursue this idea. After a number of years he designed a device consisting of an electronic bracelet, which emitted a signal picked up by a receiver placed in a home telephone (Nellis & Lilly, 2013; Renzema, 1992). This device was lawfully used by Judge Love for the first time on a probation violator in March 1983 in Albuquerque, New Mexico (Fox, 1987a). However, due to faulty equipment and a lack of funding this attempt at electronic monitoring failed with only 5 offenders being monitored (Renzema, 1992).¹²

The winding down of the Cold War and the advancement of computer and telecommunication technology resulted in unprecedented application of technology in the criminal justice system. The sophisticated technological systems predominantly designed for military purposes were quickly adapted to 'techno-corrections' - keeping offenders under surveillance (Paterson, 2013; Padgett, Bales & Blomberg, 2006; Petersilia, 2000; Whitfield, 1997). These technological advancements included electronic monitoring, voice verification systems, on-site drug testing, and breathalysers through the phone (Petersilia, 2000). In particular, it was electronic monitoring which was said to have been perhaps the most important penal innovation of the 1980s.

During the mid-1980s, the most basic 'passive electronic monitoring' equipment became commercially available in the USA (DeMichele & Payne, 2009; Anderson, 1998). This technology simply confirmed the offender's presence in their home when the central computer randomly contacted them. The central computer was programmed to generate random telephone calls to the offender, who was required to provide voice identification or insert the encoder device (worn on their wrist or the ankle) into the verifier box. More recently, offenders have had to provide their fingerprint or a retinal scan in order for their identity to be confirmed (Black & Smith, 2003; Community

¹² Following Goss's initial trial, Thomas Moody in late 1983 in Key Largo, Florida developed the first electronic monitoring continuous signaling system which subsequently became a part of an ongoing statewide HDBS managed by a private contractor (Pride Inc) (McCarthy et al., 2001; Renzema, 1992).

Based Services Directorate, 1999; Anderson, 1998; Schmidt, 1998; Schmidt, 1994b; Harkins, 1990). When the phone is not answered, is busy for a period of time, or if the offender fails to be correctly identified, a breach report is sent to the correctional agency which then follows up the offender's whereabouts (Anderson, 1998).

In the late-1980s and early-1990s, literally hundreds of articles appeared in the correctional literature advocating the application of passive electronic monitoring technology in community corrections (Ball et al., 1988). The technology was described as safe, secure, reliable and, most importantly, cost-effective in comparison to incarceration (Baumer et al., 1993; Maxfield & Baumer, 1990). Proponents also argued that wide-spread application would result in the technology becoming increasingly less expensive, and that further technological developments would make the technology progressively more precise (Corbett & Marx, 1992). Although at this time a few sceptics warned that the use of the technology in corrections would subsequently raise unanticipated issues, critical discourse was generally lacking (Schmidt, 1994b; Ball et al., 1988). Hence, the idea of 'cheap' close surveillance and monitoring of offenders very much appealed to policy makers as well as criminal justice professionals (McCarthy et al., 2001).

1.4.2 Electronic monitoring with RF

A more advanced version of 'active electronic monitoring' equipment, which operates on the basis of active RF, became extensively available in the early 1990s.¹³ It continuously informs authorities about whether the offender is present or absent at a specified place (Mair, 2006). This technology utilises a combination of radio frequency signals and standard telecommunications technology (Ferguson, 13.11.00). A signal is continuously emitted from an offender's bracelet or an anklet transmitter to the monitoring unit, which is

¹³ Electronically monitored technology combined with other devices to monitor offenders' sexual urges, inclination to violence, and drug use also became available at this time (McCarthy et al., 2001).

usually located in the offender's home¹⁴ (Schmidt, 1998; Harkins, 1990; Vernon, 1987). This monitoring unit is connected by a landline phone to the central computer, indicating every time that an offender leaves or returns home (Anderson, 1998). In accordance with an offender's pre-approved activity plan, all of the pre-arranged absences (such as work schedules and counselling/treatment appointments) are entered into the central computer, and if an offender leaves or returns at an unscheduled time, a breach is reported.

Alternatively, in order to verify an offender's location away from home (for example their presence at a work, school or counselling session), supervising officers use a portable monitoring unit or a 'drive-by' unit which picks up the radio signals from the offender's transmitter (Courtright, 2002; Schmidt, 1998; Altman & Murray, 1997; Vaughn, 1987). A number of advantages are associated with the portable monitoring unit - it protects the officer from entering potentially dangerous areas, allowing them to quickly verify the presence of a number of offenders, as well as being less intrusive for the offender (Courtright, 2002; Altman & Murray, 1997). When it is handheld or used in a vehicle with a roof-mounted antenna it can detect the radio signals from the offender's transmitter within a range of 67-267 metres (Courtright, 2002; Schmidt, 1998; Altman & Murray, 1997). It can also ascertain the battery status of the transmitter and whether the offender has tampered with it. Similarly, these devices can also alert authorities that an offender is at an unauthorised location; for example, on a random drive-by an officer can find out if an offender is at a public place instead at work (DeMichele & Payne, 2009).

A 'hybrid electronic monitoring' system combines both active and passive electronic monitoring technologies (Renzema, 1992). Under this model, offenders wear a transmitter that continuously indicates whether they are at home during certain times, and they are also passively supervised by

¹⁴ This technology specifically indicates whether the offender is within the 50-60 metres of the home-based receiver (Schmidt, 1998; Harkins, 1990).

secondary means (Schmidt, 1994b). These secondary means of supervision include a requirement to respond to random phone calls from supervising officers, and to confirm their identity through voice verification systems or the insertion of a wrist worn device into the verifying box (Schmidt, 1994b; Renzema, 1992).

During the 1990s, however, a number of specific problems with the functioning of the passive as well as active RF electronic monitoring equipment emerged (Schmidt & Curtis, 1987). These mainly comprised of:

technical and electric problems such as bad wiring, living close to radio stations, power outages, and call-waiting and call-forwarding features [which] caused problems with the transmitter being able to send and receive the required information to central control.

(Alarid et al., 2008:195)

In addition, large metal objects (usually made from iron and steel inside or surrounding the offender's home), 'sleeping patterns' and 'dead spots' were found to interrupt transmissions or create an electromagnetic field and indicate false alarms (Ball et al., 1988; Fox, 1987a; Schmidt & Curtis, 1987; Friel & Vaughn, 1986). Furthermore, some older phone line equipment was not able to transmit the electronic monitoring signals. Similarly, if an offender had technologies such as call forwarding, call waiting or a portable phone, the electronic monitoring technology was not able to determine whether they were at home or not (Schmidt, 1994b; Fox, 1987a). Since all violations had to be followed-up to reduce the likelihood of the offender violating their order conditions by roaming free after removing the electronic equipment, research indicated that 'false alerts' required significant follow-up by officers. This impacted on the morale and fortitude of correctional officers (Meyer, 2004; McCarthy et al., 2001).

The rapid development of the electronic monitoring technology has meant that the above stated operational problems have been progressively resolved and that the technology has generally improved. For example:

- Radio interference and weather-related issues that resulted in losses in transmission were fixed. This was achieved by installing surge protectors on incoming electrical and telephone lines, placing repeater-signal stations, and providing uninterruptable power supplies (McCarthy et al., 2001; Schmidt, 1994b; Fox, 1987b; Schmidt & Curtis, 1987).
- Inadequate telephone line compatibility and related technological issues have been resolved (Schmidt, 1994b; Fox, 1987a).
- Specific improvements were made to the equipment that offenders wear. More specifically, it was miniaturised, its battery life was enhanced, and its bands were made stretchable and tamper resistant (McCarthy et al., 2001; Schmidt, 1994b).
- The equipment signal was made for each offender. This meant that when an officer drove-by to conduct a portable check on whether the offender was at a specified location, the officer was able to distinguish whether that specific offender was actually present. Even if signals from other offenders in the area were simultaneously evident (Schmidt, 1994b).

Although passive and active RF electronic monitoring had been available in community corrections for some 15 years, their major limitation was their inability to pinpoint the offender's location if they absconded and were not within the specified area (Cotter, 2004).

1.4.3 Electronic monitoring with GPS

In the late 1990s the most sophisticated 'electronic monitoring with GPS' was adopted in the USA's criminal justice system (Johnson, 2002). Unlike its predecessors, GPS has a unique ability to pinpoint the specific current location as well as past locations of the offender (Bishop, 2010; Sex Offender Supervision and GPS Monitoring Task Force, 2010; DeMichele & Payne, 2009; Wagner, 2008; Jannetta, 2006; Shute, 2007). It also provides communication with the offender (and past victim if applicable), location mapping for archive retrieval, immediate tamper notification and remote laptop tracking with a wireless modem (Florida Department of Corrections, 2006). The development of GPS has been considered to be so significant that it prompted some researchers to ask 'whether there is a future for RF in a GPS world'? Lilly and Nellis (2013) have explained that RF is likely to remain in operation as correctional authorities have usually purchased the technology as opposed to leased it, and staff are generally familiar with its operation.

Electronic monitoring with GPS uses telephonic communications and elements of RF together with the USA Department of Defence's GPS system to identify an offender's location on a map (Brown et al., 2007). It specifically tracks offenders' movements via satellite triangulation,¹⁵ a network of 5 ground stations,¹⁶ and the portable tracking device which is attached to the offender (Mair, 2006; Black & Smith, 2003). GPS agencies are further able to program specific location parameters - inclusion and exclusion zones:

¹⁵ There are 34 USA military defence NAVSTAR GPS satellites, of which 24 constantly orbit the earth 11,000 nautical miles above it and send signals to the ground stations at the speed of light (DeMichele & Payne, 2009; Brown et al., 2007). These satellites were originally designed for military navigation, mapping and weapons delivery purposes, but are now used for a variety of non-military purposes including personal car and boat navigation as well as supervision of offenders. Information from 3 to 6 satellites is needed to indicate the offender's exact location (DeMichele & Payne, 2009; Cotter, 2004; Johnson, 2002). The use of the satellites for military purposes has decreased to less than 10% (Nellis, 2005). There have however been concerns that some of the satellites are outdated and need fixing (Michael, McNamee & Michael, 2006); steps have been undertaken to address this. (For more information see section 1.4.4).

¹⁶ There are 5 ground stations around the world that manage the operational health of the satellites by transmitting orbital corrections and clock updates (Brown et al., 2007).

- Inclusion zones are areas where the offender is expected to be at various times, such as the static workplace during the day and their home during the night. The number of inclusion zones can range from 100 to an unlimited number and size (Cotter, 2004; DeMichele & Payne, 2009).
- Exclusion zones are areas where the offender is not permitted to go; these include parks and schools for paedophiles, a former partner's home or place of employment for a perpetrator of domestic violence, or bars and pubs for an alcoholic. The number of exclusion zones can range from 20 to an unlimited number and their size is between 91 metres to 610 metres radius (Cotter, 2004; DeMichele & Payne, 2009; John Howard Society of Alberta, 2000).

All of the zones are entered on GPS mapping software in the form of addresses. The GPS software enables zones to be established as non-circular shapes (DeMichele & Payne, 2009). A computer program instantly sends alerts if an offender enters the exclusion zone or leaves the inclusion zone at an unscheduled time. The offender's movement is then monitored to determine if their entry or exit was accidental or deliberate. If it seems that the offender was in an exclusion zone intentionally, the police are given the offender's exact location to arrest them (DeMichele & Payne, 2009).

A specific type of GPS technology, called 'bilateral technology,' is used for perpetrators of domestic violence/stalking where, apart from the perpetrator, the victim carries their own GPS device and their movement becomes a mobile exclusion zone to the perpetrator's movements (Nellis, 2010c; McFerran, 2008). Victims are alerted when the offender is in close geographic proximity to them. Offenders are similarly alerted if they are approaching the mobile exclusion zone (that they may have been unaware of) and instructed to change their direction immediately (Ballard & Mullendore, 2002; Johnson, 2002). If the offender violates the rules, the authorities are notified (Johnson, 2002). The evidence has shown that the use of GPS technology in domestic

violence and stalking cases however is not a panacea, as offenders are still able to re-offend; however, “it does provide an improved warning system and evidence of where the offender has been” (McFerran, 2008:3).

GPS can operate under three modes:

- **Active:** The information pinpointing the offender’s whereabouts is transmitted from the GPS receiver to the monitoring centre almost continuously, that is, every 1 to 5 minutes, referred to as near-real-time (Brown et al., 2007; John Howard Society of Alberta, 2000). This type of monitoring is very resource intensive due to the continuous flow of information that needs to be assessed by staff (Fransson, 2005). However it allows for very quick response times and is usually most appropriate for the highest-risk offenders.
- **Passive:** The GPS receiver stores all of the information about the offender’s whereabouts and transmits it to the monitoring centre at regular intervals (usually once a day). The downloaded information is then assessed by the staff. Therefore, any zone violations or crime incident notifications are retrospectively identified and acted upon usually the next day (Fransson, 2005; Frost, 2002; John Howard Society of Alberta, 2000). This mode is usually most appropriate for relatively stable high-risk offenders.
- **Hybrid:** This is the latest mode of GPS monitoring combines active and passive monitoring. It is essentially passive monitoring where offender location data is reported more regularly, that is every few hours, unless an offender enters an ‘exclusion zone’ and/or tampers with the equipment. The monitoring then switches onto active monitoring reporting offender movement in near-real-time (Brown et al., 2007; DeMichele & Payne, 2009; Fransson, 2005). For the vast majority of high-risk offenders this is the most useful and cost-effective type of GPS monitoring. This is because exclusion areas can be made sufficiently large so that active monitoring can commence as soon as

possible when the offender nears the exclusion zone. Correctional authorities then assess the alert and if necessary send the police to intervene (Fransson, 2005).

Active GPS systems are consequently the most expensive type of GPS monitoring (Cotter, 2004). Throughout the USA the median cost of active GPS tracking per offender per year was estimated to be \$5,475 and passive GPS \$4,745 per offender per year. This figure includes the cost of the lease of equipment as well as staff and overhead resources, but excludes costs associated with staff overtime, specialised staff training and lost/stolen equipment (Brown et al., 2007).

In order for the GPS system to obtain a wearer's location it needs to be in a position where it can receive the GPS signal from the GPS satellites. This signal is best received outdoors, but modern GPS receivers are sensitive enough to also receive signals in domestic environments through tiled roofs or large windows. Difficulties in obtaining a location are typically encountered in heavily urbanised areas, in or around high-rise buildings, in tunnels and underground and in metal enclosures such as trains and to a lesser extent in motor vehicles (Buck, 2009; DeMichele & Payne, 2009; Shute, 2007).

The GPS device must be able to access the Global System for Mobile Communications (GSM) network to transfer information regarding its location and any breaches such as curfew violations or equipment tampering to the vendor's Central Monitoring System (CMS) for processing (DeMichele & Payne, 2009; Brown et al., 2007). Access to the GSM network can be a problem in far rural and mountainous areas, in underground parking garages or rail tunnels (Nellis, 2008).

The main limitation that has been associated with the operation of HDBS with GPS is 'false alerts,' which occur frequently while the personnel who are doing the monitoring usually find it difficult to ascertain which alerts are false and which ones are real and must be attended to (Armstrong & Freeman 2011; Bales et al., 2010; Sex Offender Supervision & GPS Monitoring Task

Force, 2010). The reason behind these alerts is that GPS equipment involves complex technology and devices which are subjected to a variety of harsh environmental conditions on a daily basis.

Evidence-based research from the USA has indicated that in order for HDBS with GPS to operate satisfactorily staff must have clearly defined responsibilities, as well as familiarity with associated tasks (Turner, Jannetta, Hess, Myers, Shah, Werth & Whitby, 2007). The complexity of the tasks involved is explained by McCarthy et al., (2001:192):

A computer-skilled employee is required to enter and remove clients from the system, input schedule modifications [if applicable, inclusion and exclusion zones], and produce summaries of EM contact records. Additional work is involved in the training and orienting of clients, connecting of equipment, updating of offender schedules, keeping track of excused absences, reviewing and interpreting system messages, following up on suspected violations, and conducting independent field checks of the offender and equipment. When the system is out of order, the tasks must be performed manually.

Consequently, all levels of staff require ongoing training so that they can undertake tasks in multiple areas of the system (Turner et al., 2007).

In addition, evidence-based research has indicated the importance of an effective centralised monitoring centre that manages the enormous data flow and adequate responses to alerts (Sex Offender Supervision & GPS Monitoring Task Force, 2010). The staff at the monitoring centre need to be thoroughly trained to interpret and prioritise the large volume of alerts and pass them on to correctional officers and/or the police who then respond to the alerts (Sex Offender Supervision & GPS Monitoring Task Force, 2010). Sound collaboration between all of the parties involved must be in place (Sex Offender Supervision & GPS Monitoring Task Force, 2010).

A key advantage of tracking offenders with GPS is that their tracking movements can be compared with geographic information systems (GIS), which display crime incident data, thus uncovering whether they have engaged in further offending (O'Hara, 2004; Frost, 2002). In fact, it can be used in court to convict or exonerate offenders¹⁷ (Sex Offender Supervision and GPS Monitoring Task Force, 2010; Wagner, 2008). Two vendors in the USA, Pro-Tech Monitoring and Satellite Tracking of People, have developed software systems, CrimeTrax and VeriTracks respectively, that cross-reference the two separate data sets and detect 'hits'; these are automatically provided to law enforcement agencies (Drake, 2009).

The tolerances of the systems are adjustable. One agency may want to know if any offender has been within 1,000 feet of any reported crime scenes within 1 hour of the offence occurring. Other agencies may want to narrow the search by asking for a list of offenders who were within 250 feet of any crime scene within 15 minutes of the crime occurring.

(Drake, 2009:5)

The validity of the data is investigated and it is determined whether the offender is a potential witness or a suspect in a crime. If the investigation results in an arrest, the Department of Corrections is notified and the offender is charged with breaching the conditions of their order (O'Hara, 2004).

It should however be noted that the consolidation of GPS and GIS data is not a typical part of GPS offender monitoring programs. This could be due to a lack of knowledge of the availability of the technology, or some law enforcement agencies being unwilling to share their data, and/or overall inter-agency co-operation being complex and time consuming (Drake, 2009). A number of USA states have nevertheless been advocating for a wider

¹⁷ Although initially some judges were reluctant to accept GPS tracking data as evidence of further offending, as the technology has continued to mature it has become accepted as evidence (Brown et al., 2007; Tennessee Board of Probation and Parole, 2007; Turner et al., 2007).

application of the integrated investigative technology (Sex Offender Supervision and GPS Monitoring Task Force, 2010).

Another way of enhancing supervision and monitoring of high-risk offenders who are GPS tracked is polygraph testing. This practice is typical in the USA where in some states, like New Jersey, supervising officers are trained in polygraph testing and test offenders on a regular basis (New Jersey State Parole Board, 2007). In California however, expert polygraph examiners test offenders on a frequent basis and discuss the results with the supervising officers (Sex Offender Supervision and GPS Monitoring Task Force, 2010). This practice helps the supervising officers to uncover information about offender's inappropriate thoughts, and may provide indications of increased risk of re-offending; hence, allowing early intervention by supervising officers. It should however be noted that polygraph testing cannot be used as evidence in criminal cases (New Jersey State Parole Board, 2007).

1.4.4 Subsequent developments in electronic monitoring technology

The search for increasingly reliable technological supplements to face-to-face supervision has continued. This is because the application of electronic monitoring equipment has been strongly supported by a large private sector of the equipment's manufacturers and vendors (Lilly & Nellis, 2013; Mair, 2006; McCarthy et al., 2001). These private providers have invested a lot of money in continuously improving the technology, and they have successfully marketed at correctional tradeshow (Mair, 2006; McCarthy et al., 2001). Further progress and more widespread use of electronic monitoring technologies are likely to persist in the future as the need to contain correctional costs continues.

The precision of GPS tracking is constantly being enhanced in numerous specific ways. For example:

- Improved GPS reception – The recently available GPS chips utilise assisted GPS (A-GPS) along with sophisticated algorithms, which allow for the location of the offender to be tracked even if only partial signals are received from the satellites. In addition, the improvements in GPS devices' antenna technology have made offender tracking more precise in structures that are made out of wooden frames (which was an issue in the past) (Drake, 2009; Nellis, 2010c).
- Mobile phone tower trilateration – In the USA some mobile phone companies (such as Sprint Inc) use the SDMA communication network, which provides mobile phone location by measuring the distance from the mobile phone to three or more mobile phone towers.¹⁸ Some GPS vendors (such as Omnilink of Alpharetta) supplement this information with the GPS tracking data for more precise tracking of offenders indoors in metropolitan areas (Nellis, 2010c; Drake, 2009).
- Upgrade of the GPS system – The accuracy of monitoring offenders subjected to GPS tracking will continually improve due to an ongoing upgrade of the GPS system (Bergin, 2013; Drake, 2009; Nellis, 2008).
- WiFi and WiMax – The integration of WiFi and WiMax location data into GPS tracking data has become possible, thus allowing offender movement to be tracked underground (Drake, 2009).
- Deduced (Dead) Reckoning – The use of 'dead reckoning' when a GPS signal is lost enables continuous estimation of the offender's pathway by sensing their direction, altitude and acceleration. In fact, various devices including accelerometers, digital compasses, gyroscopes and altimeters take over until the GPS signal is regained. These are achieving a 90% accuracy level. Dead reckoning is particularly useful in determining whether the offender has remained inside a building (Drake, 2009).

¹⁸ This signal strength is more robust than the GPS signal, which is typically used by the mobile phone companies (Drake, 2009).

The most significant development in relation to GPS tracking however is the establishment of the Global Navigation Satellite System (GNSS), which within the next decade will combine the tracking information from more than 100 satellites from various countries. In particular, it will integrate the tracking data gathered by the USA's GPS, Russian's GLOSNASS, Europe's GALILEO and China's COSMOS.¹⁹ This will "deliver improved availability, accuracy and integrity" (Victorian Spatial Council, 2011:12).

In addition, miniature tracking devices that are surgically implanted beneath the skin with an ability to monitor physiological signs have also been developed (Bright, 17.11.02; Fabelo, 2001). The most sophisticated devices also include a miniature video camera that enables officials to observe the wearer's location and activities (Fabelo, 2001). These have not been used on offenders so far; this is probably because of potential human rights issues.

A much less controversial technological innovation called 'kiosk reporting' has been developed for monitoring low-risk offenders on HDBS. It has been utilised, for example, by the New York Probation Department since 2008.

The system allows offenders to report as frequently as needed (at scheduled times) to a machine – resembling an ATM [Automatic Teller Machine] – that uses a thumb print scan to identify the user, and takes a photograph and video of the reporting session.

(DeMichele & Payne, 2009:20)

Offenders are required to complete a series of questions on their progress and kiosks are interfaced with the state's police databases so that they can prompt the offender to report to an officer, take a drug test or follow some

¹⁹ It should be noted that GLOSNASS, GALILEO and COSMOS are the actual titles of satellite navigation systems that are written in all capital letters. GLOSNASS became fully operational in late 2011. GALILEO became partially operational in 2012, and will be in full operation by 2015. COSMOS will be operational in 2020 (Bergin, 10.07.13; Drake, 2009; Nellis, 2008).

other action. While there have been no reported differences in the rates of technical violations or re-offending, this has resulted in officers' workloads becoming more manageable and public safety being improved. This is because officers have been freed up to more comprehensively supervise high-risk offenders who are not suitable for kiosk reporting (DeMichele & Payne, 2009).

Therefore, a quantum leap has been made over time in the application of electronic monitoring as it has offered abundant possibilities for controlling offenders in the community (Clear & Cole, 2003; Schmidt & Curtis, 1987). Its inception has been referred to by renowned criminologist George Mair (2006:57) as "the most significant development in intermediate sanctions²⁰ in the last 30 years". The latest technological developments have generally meant that, apart from detaining offenders in their own homes, it is now possible to restrict their access to carefully identified places and/or people, and impose strict surveillance on them that tracks their movements in almost-real-time (Cromwell et al., 2005). In addition to increasing HDBS' capacity to inhibit crime, the technology can also ensure that offenders attend rehabilitative initiatives which encourage them to adopt a pro-social lifestyle (Nellis, 2010b; New Jersey State Parole Board, 2007; Payne & Gainey, 2004; Morris, 1988). This has enabled correctional authorities to impose HDBS on more serious offender cohorts, which is likely to result in the wider application of these sanctions and overall cheaper per offender cost (Tennessee Board of Probation and Parole, 2007). It is possible that in time these technological developments, which make HDBS increasingly reliable, will result in greater community support for such sanctions.

1.5 Methodology and data collection

This section outlines the methodology and the data collection used in this research. It discusses the focus of the study and research questions, the

²⁰ Intermediate sanctions are defined as "spectrum of community supervision strategies that vary greatly in terms of their supervision level and treatment capacity, ranging from probation to partial custody" (Alarid et al., 2008:369). HDBS are an element of intermediate sanctions (Champion, 2008; Petersilia, 2000).

rationale for the study, the comparative historical methodology, the data collection process and analysis. It concludes with a discussion of the limitations of the research.

1.5.1 Focus of the study and research questions

While the development and expansion of contemporary HDBS throughout the world has taken place over a three decade period (1982-2013) with varied success, relatively little is known about the rationale behind its implementation and operation, as well as the current issues (Alarid et al., 2008; Clear et al., 2006; O'Toole, 2006; Nellis, 2005). At a 'macro-level,' there has been an abundance of quantitative research focusing on effectiveness-related issues of specific HDBS²¹ such as cost, potential net widening effect²², and recidivism rates (Roy & Barton, 2006; Renzema & Mayo-Wilson, 2005; Finn & Muirhead-Steves, 2002; Stanz & Tewksbury, 2000). At a 'micro level,' there has been limited qualitative research investigating how offenders relate to punishment on HDBS (Gainey & Payne, 2000; Ansay, 1999; Ansay & Benveneste, 1999; Payne & Gainey, 1998; Mainprize, 1995; Doherty, 1994). Importantly, there does not seem to have been any 'middle-ground research' exploring HDBS' aims and rationale, implementation process, operation cycle and what in fact can be learnt from the last three decades of HDBS' operation.

Consequently, the **main question of this research is:** 'What has been the evolution of HDBS frameworks and their associated outcomes in the USA and Australia particularly over the last three decades (up to 2013)?'

Sub-questions of this research are:

1. Which correctional predecessors, factors and theoretical underpinnings led to the establishment of HDBS during the 1980s in the USA and Australia?

²¹ Most of this research was government-sponsored evaluations of pilot or just initiated HDBS.

²² The term net widening "is based on an analogy to a fisherman's net. If the net is opened more widely, more fish will be caught in it. In this context it refers to sanctioning those [people] who would not have otherwise have been sanctioned or sanctioning someone more severely than would otherwise have been done" (Schmidt, 1994b:371).

2. How have HDBS operated and what have been their associated trends from 1982 until 2013 in the USA and Australia?
3. What have been the outcomes of the operation of HDBS from 1982 until 2013 in the USA and Australia?

Hence, the questions posed by this research are unique in criminological literature. This study seeks to improve the overall operation of HDBS by providing policy makers and other stakeholders with previously un-researched 'middle-ground' insights about the efficacy of various policy developments and implementation and operation processes in this rapidly growing area of correctional policy.

In order to best answer the research question and sub-questions, the evolution of the HDBS frameworks in this research has been divided into three ideologically distinguishable phases. These include:

- *The early phase of HDBS* in the USA and Australia operated from 1840s until 1960s. This phase was characterised by the introduction of probation and parole, which were the predecessors to the late phase of HDBS when contemporary application of these sanctions started (Clear et al., 2006; O'Toole, 2006; McCarthy et al., 2001; Cromwell & Killinger, 1994).
- *The middle phase of HDBS* was the interregnum between the two phases, which operated during the 1960s and 1970s in both the USA and Australia. It comprised five converging factors that led to the late phase of HDBS (McCarthy et al., 2001; Joutsen & Zvekic, 1994; Patmore, 1991; Petersilia, 1987).
- *The late phase of HDBS* in the USA and Australia has been operating from 1982 to today (2013). The contemporary application of these sanctions started in the 1980s when HDBS with RF were introduced. Further, in the mid-2000s HDBS with GPS were initiated.

In this research, the three phases were analysed in accordance with themes and presented chronologically.

1.5.2 Rationale for the study

This exploratory investigation will be of critical importance to policy makers worldwide, as the future of punishment for most offenders must lie in community based corrections. This is primarily due to the dual forces of increasing rates of incarcerating offenders and escalating costs of imprisonment in both the USA and Australia (Fowley, 12.02.13; Clear, 2007; Welch, 2004). More specifically, since the 1980s the incarceration rate in the USA has more than tripled (Schmitt, Warner & Gupta, 2010; Welch, 2004). This is a particularly significant statistic as the 1980s was marked by the introduction of a wide array of surveillance oriented community based penalties that have operated as alternatives to incarceration in an attempt to reduce the number of offenders sentenced to prison. Even more concerning is that 60% of offenders in prisons in the USA are non-violent offenders (Schmitt et al., 2010). Conversely, growing evidence suggests that some alternatives are just as effective as prison for many offenders, and rehabilitation is more likely outside the artificially created prison setting (Clear et al., 2006; Graycar, 2000; Keay, 2000). Therefore, the potential of HDBS which are socially useful and financially prudent must be recognised, as opposed to prisons which are very expensive to build and maintain and fuel social dislocation and shatter families.

In addition, the fact that contemporary HDBS have been in existence since the 1982, reaching an important 30-year landmark of natural progression²³, means that policy makers, practitioners and scholars need to reflect upon and learn from their operation. In particular this research will be of special benefit to policy makers who are constantly looking to improve HDBS and to broaden

²³ HDBS' natural progression has included the following stages – beginning in the 1980s, proliferation, implementation and evaluation in the 1990s (Petersilia, 2000), redesign, growth and evaluation in the 2000s.

their use (Clear et al., 2006; New South Wales (NSW) Standing Committee on Law and Justice, 2006; Payne & Gainey, 1998; Chan & Ericson, 1981). While some jurisdictions have evaluated the pragmatic issues associated with these sanctions, they have not recognised the lessons learnt that would allow these sanctions to become more effective and better-utilised. This comparative historical investigation of HDBS enables policy makers to learn from afar, in terms of both time and distance, by providing a more complete understanding of the specific components/initiatives that constitute best practice among HDBS. Policies based on empirical research can then be introduced to improve the operation of HDBS in the highly dynamic and continually evolving criminal justice environment.

This study will be of value not only to stakeholders concerned with corrections policy, but it will also be useful for a broader audience interested in justice processes and their intended and non-intended effects. It is specifically anticipated that a wider dissemination of this study's results will inform the community about the previously unknown trends, benefits and issues of HDBS. In addition, the comparative findings may in fact educate the community about the importance of HDBS' punitive and reintegrative potentials, thus changing the traditionally negative perceptions of these sanctions (Payne & Gainey, 1998; Larivee, 1993). Therefore, this study should be beneficial for a wide range of interest-groups as decarceration of offenders proceeds worldwide.

1.5.3 Comparative historical methodology

In order to investigate the historical terrain and the current operation of HDBS in the USA and Australia a comparative historical methodology approach was determined to be the most suitable. This is due to two fundamental reasons. First, significant processes, such as the evolution of HDBS frameworks, are best understood historically, that is through the recognition of the significance of chronological sequences and the unfolding of events over time. Second, a comparative analysis of these processes is most appropriate so that lessons

transcending national boundaries can be learnt (Mahoney & Rueschemeyer, 2003). Therefore, a combination of comparative and historical methodology, which is aligned with the qualitative research tradition, is the best way of uncovering the efficacy of various HDBS, related developments and implementation processes in the two nation states.

Since the 1990s, comparative historical methodology has gained prominence and has even been referred to as the 'leading form of analysis' in the social and political sciences, including criminal justice studies (Mahoney & Rueschemeyer, 2003; Neuman, 2000). It has enjoyed unprecedented influence as a social research method with an increase in the volume of comparative historical books and eminent journals publishing articles based on comparative historical research. Institutions and organisations have been progressively more receptive to comparative historical investigations (Mahoney & Rueschemeyer, 2003).

Even though comparative historical researchers typically do not claim to discover universal knowledge about historical incidents or movements, their research aims to uncover critical lessons from the past:

Comparative historical analysts are frequently able to derive lessons from past experiences that speak to the concerns of the present. Even though their insights remain grounded in the histories examined and cannot be transposed literally to other contexts, comparative historical studies can yield more meaningful advice concerning contemporary choices and possibilities than studies that aim for universal truths but cannot grasp critical historical details.

(Mahoney & Rueschemeyer, 2003:9)

The overarching purpose of these inquiries is to "understand the past and the present in the light of the past," thus improving current policies and processes (Burns, 1996:387).

Comparative historical methodology is generally difficult to succinctly define as it is not unified by one theory or one method. Furthermore, its adherents continue to be innovative and look into other fields for methods or theories (Kaestle, 1992, 1997 cited in Johnson & Christensen, 2004). This does not however mean that there is no overall consistency in the way in which this research is conducted (Johnson & Christensen, 2004). For example, Mahoney & Rueschemeyer's (2003) three guiding features of comparative historical research are generally accepted among comparative researchers (see Babbie, 2005). These three leading features are said to include:

- exploring causal arrangements that produce major outcomes
- analysing chronological processes
- utilising logical comparison, generally limited to a small number of cases.

All of these focal points are clearly pertinent to the current study. First, the central aim of this study is to investigate the causal configurations, that is, nation state specific correctional predecessors, factors and theoretical underpinnings that were responsible for the establishment of HDBS frameworks, so that it is possible to assess the associated outcomes of HDBS. Second, this study will chronologically explore each nation state's specific development, the operation, and associated trends of HDBS frameworks. This is important because practical and procedural changes could be related to wider national or international events and/or research findings. Third, the researcher will engage in a systematic and contextual comparison of HDBS in two nation states in order to "formulate new concepts, discover novel explanations, and refine pre-existing theoretical expectations in light of detailed case evidence" (Mahoney & Rueschemeyer, 2003:13). Therefore, as historical differences and/or trajectories become apparent, theoretical explanations²⁴ will be conceptualised (Amenta, 2003).

²⁴ These explanations may be portable, that is, only applicable in certain cases or time periods (Amenta, 2003).

A key argument supporting the decision that comparative historical methodology is most suitable for this study is that it is defined as a “powerful method for addressing big questions” that are relevant to the real world²⁵ (Skocpol, 2003:420; Neuman, 2000:383). By asking large comparative questions about the development of social policy,²⁶ such as why revolutions occurred in some countries and not in others, or why one country was an early or a late adopter of establishing a policy, researchers are able to reconceptualise events or movements (Amenta, 2003). Questions posed are generally regarded to be substantively and normatively significant by specialists, as well as non-specialists as researchers aim to provide historically grounded explanations of important large-scale outcomes (Amenta, 2003; Mahoney & Rueschemeyer, 2003). Hence, the application of comparative historical methodology in this study enables the review of HDBS in the USA and Australia to answer a fundamental question – what has been the evolution of HDBS frameworks and their associated outcomes?

In comparative historical inquiries, larger questions are normally confined to analysing carefully selected cases that possess sufficient similarities to be meaningfully compared with one another. While these cases for comparison can vary significantly, most common units selected in studies utilising comparative historical research are nation states (Mahoney & Rueschemeyer, 2003). As mentioned earlier, nation states are also used in this study as the basis for comparison of HDBS. Literature on comparative studies indicates that within the context of global economies, world systems, and multinational penetration, comparative research among similar societies is most suitable (Miethe & Lu, 2005; May, 1997). This is principally because processes in these countries are regarded to be comparable and “countries that are similar are more likely to borrow from one another” (Teune, 1990:58 cited in May, 1997:185). Therefore, if nation states are homogenous on a number of theoretically relevant dimensions, they are said to be appropriate for

²⁵ It should be emphasised that there is a significant gap in criminological research asking larger comparative questions (Neuman, 2000).

²⁶ Questions in comparative historical research do not have to be confined to “asking questions only for which there are sufficient data on a population of cases to answer the questions” (Amenta, 2003:105).

comparison and generalisation (Amenta, 2003; Mahoney & Rueschemeyer, 2003; Skocpol, 2003).

For the reasons mentioned this study focuses on comparative analysis of the implementation and the operation of HDBS in two similar nation states - the USA and Australia. In the USA every county and state has its own criminal justice system and there is also a federal criminal justice system. Similarly, each of Australia's states and territories has its own independent criminal justice system. All of these however operate somewhat alike and face common issues (Challinger, 1994a; Schmidt, 1994a). This is because most vital commonality between these nation states is that they belong to the same legal and cultural tradition (Miethe & Lu, 2005). Both the USA and Australia were British colonies and, as a result, their culture and religious backgrounds are reflective of the 'Common Law legal tradition' (Miethe & Lu, 2005; Reichel, 2002). In addition, their structural profiles have many similarities; for example, the two nation states:

- are geographically diverse
- have mixed racial/ethnic groups
- Christianity is their dominant religion
- have high economic development
- are highly industrialised
- are based on capitalism and the market economy
- face growing class disparity
- operate on the basis of political democracy
- have two major political parties
- have separate executive, legislative and judicial branches of government
- have a hierarchy of federal/state court systems
- their criminal acts are classified as felonies or misdemeanours OR summary and indictable offences
- have relatively high crime rates (Hayman, 17.11.06; Ryan, 17.11.06; Miethe & Lu, 2005; Crystal, 1997; Kaim-Caudle, 1973).

Apart from having significant structural commonalities, the two nation states have faced the same correctional challenges and pressures. In particular, during the 1970s and 1980s the escalating cost of building and sustaining prisons forced the nation states to search for cheap but effective community based sentences. As a result, the nation states, albeit at different times, initiated HDBS in order to divert the increasing number of offenders being sentenced to prison (O'Toole, 2002; Whitfield, 2001; Bonta et al., 1999; Whitfield, 1997; Joutsen & Zvekic, 1994; Baumer & Mendelsohn, 1990). Since introducing these sanctions the nation states have experimented with various components/initiatives of HDBS, searching for the particular aspects of these sanctions that might constitute best practice. These nation states have also invested considerable amounts of money in the ongoing development of cheaper and more sophisticated electronically monitored devices that have enabled increasingly secure home-based offender confinement (Brown et al., 2007; Nellis, 2005). However, the success of the various initiatives has never been comparatively assessed.

The practice of comparatively studying topics across the nation states, referred to as 'comparative research' or 'cross-national research', has gained eminence among social scientists over the last 50 years (May, 1997). Increasing globalisation²⁷ has meant that the world is 'getting smaller' and progressively more interconnected due to increases in mass communications and technological advances. This advancement has led to the widespread development and rapid progression of nation states (Miethe & Lu, 2005; May, 1997). The fact that various practices/processes which aim to achieve similar aims operate among the nation states means that the need for cross-national research challenging ethnocentric beliefs and encouraging shared learning is considerable.

A comparative approach challenges our ethnocentric beliefs of 'good' and 'bad' practices based on our particular culture and

²⁷ Globalisation has been defined as " a multidimensional set of social processes that create, multiply, stretch and intensify worldwide social interdependencies and exchanges while at the same time fostering in people a growing awareness of deepening connections between the local and the distant" (Steger, 2003:13).

national experiences. The potential discovery of punishment responses and principles that transcend boundaries of time and space provides an empirical basis for improving our understanding of criminal sanctions and punishment in Western and non Western societies.

(Miethe & Lu, 2005:2).

The comparative component of this study is essential because of four specific benefits that are unique to comparative research. The first is the 'import-mirror' advantage, which suggests that comparative research gives the researcher a critical insight into the operation and the potential improvement of HDBS practices in the two nation states (May, 1997). This is because the comparative inquiry allows the researcher to conduct the broader 'inter-societal comparison,' which is the analysis of the distinct ways in which the two nation states have reacted to the economic challenge of financially unsustainable increasing rates of incarceration. Furthermore, the more specific 'intra-societal comparison' is also conducted assessing the various ways in which different jurisdictions within the two nation states have implemented and operated HDBS (May, 1997).

In particular, when conducting comparative analysis each nation state is treated as if it has 'multiple layers'. This effectively means that the researcher "grasps surface appearances as well as reveals the general, hidden structures, unseen mechanisms, or causal processes" (Neuman, 2000:391). HDBS are therefore analysed within clearly recognisable as well as hidden socio-political variations, so that the complex relationship between politics and correctional practice becomes apparent (Skocpol, 2003). This importantly reveals the rationale and aims that have led to the establishment of these sanctions, their implementation process and the operation cycle. It then becomes possible to assess whether the goals that these sanctions were set to achieve have been accomplished in each nation state (Burns, 1996).

The second advantage of comparative research is the ability to understand the reasons behind the varied processes in separate societies. By comparing

HDBS in two nation states it is possible to ascertain whether they have developed in similar or diverse ways (May, 1997:186). Rose (1991:447 cited in May 1997:187) concisely explained this process:

Anyone who engages in comparative research immediately notices differences between countries. Yet anyone who persists in wide ranging comparative analysis also recognises boundaries to these differences: for example, among two dozen countries the variations in methods of electing parliament are different. Since the time of Aristotle, the first task of comparison is to observe the extent to which countries differ or are similar. The second task is to ask why. Under what circumstances do differences occur?

It was anticipated that this research would therefore uncover why the operation of HDBS, in terms of the overall conditions and the offender selection criteria, is somewhat different in the USA from its operation in Australia (Paterson, 2007). To determine the reasons behind the varied HDBS operation, HDBS must be analysed in the context of each nation state's social, economic and political system (May, 1997).

'Theory development' is the third advantage that has been associated with comparative research, as comparative studies are said to be ideal in discovering overall theories that describe the way in which societies are organised (Amenta, 2003; Neuman, 2000; May, 1997). Once the researcher gains a deep understanding of the operation of HDBS in the two nation states they "think seriously about the issues of process, timing, and historical trajectories" (Amenta, 2003:94). In the process of evidence synthetisation the concepts are refined, patterns across nation states and time are established, and critical similarities and differences begin to be drawn out (Neuman, 2000). The data is then organised into sequences and paired together to create 'a larger picture' (Neuman, 2000). All of the evidence is also examined from as many angles as possible and additional links and connections are explored (Neuman, 2000). At the final stage of the analysis the researcher reads and

re-reads all of the notes from the documents and studies, ensuring that the information is sorted appropriately into themes.

Comparative analysis of HDBS more generally opens the possibility of identifying robust patterns across both the comparative and historical context as well as exceptions to these patterns (Miethe & Lu, 2005). On the basis of established patterns gathered from this methodological framework the researcher develops theories on HDBS frameworks within two correctional continuums. Conversely, when exceptions to these patterns are uncovered the researcher restricts claims of universalism and notes that further research assessing the reasons behind the exceptions is required (Miethe & Lu, 2005). This method of theory development is summarised by Amenta (2003:95) as:

In [this] process, we appraise and develop new theoretical arguments, ascertain the conditions under which they apply or do not, refining theoretical argumentation along the way, and uncover new empirical facts and patterns as a result of new questions and theoretical development.

Because there are significant structural similarities between the two nation states which are compared in this study, it was anticipated that the researcher would develop universalistic theories, meaning that they would be applicable across the two nation states. Nevertheless, it was possible that some of the aspects of these theories would be particularistic, meaning that they would only be applicable to one nation state (May, 1997). Hence, important contributions to knowledge will be made as the operation of HDBS is explained through the analysis of the broader causal propositions in society. In fact, the key strength of this comparative historical research is the development of the overarching theoretical framework that applies to the development of HDBS in two nation states, as well as an overall improvement in the meaning and conceptualisation related to HDBS (Amenta, 2003; Skocpol, 2003; Neuman, 2000).

The fourth benefit of comparative research is the ability to predict the future (May, 1997). Comparative critical assessment of HDBS across the two nation states²⁸ enabled the researcher to assess the outcomes of HDBS on a nation state specific level, and more importantly, make likely predictions about the future trajectory of HDBS frameworks in each nation state. When explaining this method's unique ability to capitalise on the past, Berg (1998 cited in Johnson & Christensen, 2004:393) highlighted the following:

The past can give us a perspective for current decision making and help to avoid the phenomenon of trying to reinvent the wheel. The past can also provide information about what strategies have and have not worked. In other words, it allows us to discover those things that have been tried and found wanting and those things that have been inadequately tried and still might work.

On the basis of understanding each nation state's social and cultural context, the researcher was able to further specify the potential of specific HDBS as well as the particular components/initiatives likely to enhance their operation. As a result, Departments of Corrections in the USA and Australia "will be able to embark upon particular courses of action knowing their likely consequences" (May, 1997:188). It should however be noted that criminal justice is a highly evolving field in which new social, political or economic conditions may arise that create fundamental changes. Predictions based on past performance must therefore be considered in conjunction with new developments (Borg & Gall, 1989). Nevertheless, future decision making is informed as policy makers are provided with a comprehensive understanding of what constitutes best practice among HDBS.

²⁸ Comparative critical assessment was conducted on the basis of a longitudinal outline that chronologically specifies all of the HDBS in each nation state. This method is frequently employed in historical comparative research (Dawson, Klass, Guy & Edgley, 1991).

1.5.4 Data collection and analysis

In qualitative research, which underpins this study, the quality of data collected is imperative in order for the researcher to gain insights about the development, implementation and operation of HDBS in two nation states (Punch, 1998). This is because the researcher's task is to be able to convey the 'entire picture' through 'thick description' which comprises two aspects:

First, the description (of the group or case, event or phenomenon) must specify everything a reader needs to know in order to understand the findings. Second, the research report needs to provide sufficient information about the context of the research so that the reader can judge the transferability or generalizability of its findings.

(Lincoln & Guba 1985 cited in Punch, 1998:192)

The advantage today, unlike prior to governmental bureaucratisation in the 20th century, is that substantial information is generally available on correctional policies (Amenta, 2003). Abundant government and independent studies enabled the researcher to understand the wider social and political factors, as well as the more specific aims and the rationale that shaped the implementation of these sanctions, and the specific lessons learnt from the operation of HDBS in the two nation states.

While comparative historical researchers predominantly rely on analysing qualitative data, they are also allowed to use quantitative data to supplement their analysis (Neuman, 2000). In particular, the researcher combined both micro (small scale independently conducted studies based on offender views of HDBS) and macro levels (large scale government funded full scale evaluations of HDBS) of reality and linked them to each other (Neuman, 2000). So, a combination of both qualitative and quantitative micro and macro data was used to "reconstruct and present the facts and figures in a way that communicates an understanding of the events from the multiple points of view of those who participated in them" (Johnson & Christensen, 2004:392).

Rigorous analysis of extensive literature on the operation of HDBS throughout the two nation states enabled the researcher to understand their social meaning and context (Neuman, 2000).

Historical comparative research therefore requires that extensive bibliographic documentation related to the topic is obtained, including various published and unpublished sources such as public documents, archival records, personal documents, administrative documents and formal studies and reports²⁹ (Neuman, 2000; Sarantakos, 1993). So, the researcher's first task was to search for as many primary³⁰ and secondary³¹ sources relating to the topic as possible (Borg & Gall, 1989). There is a lack of primary sources on HDBS, as all of the literature is written by government organisations or independent researchers rather than offenders who have experienced the sanction. This meant that the researcher searched for the most useful and accurate secondary sources to obtain offenders' views of HDBS (Johnson & Christensen, 2004; Neuman, 2000). Thus, like most comparative historical researchers, the researcher primarily relied on secondary sources of data, that is, published and unpublished books, articles and manuscripts written by specialist criminologists (Neuman, 2000). The researcher's overall aim was to gather data from a variety of sources and vantage points, forming data triangulation (Burns, 1996).

In order to collect comprehensive qualitative and quantitative data for this study the researcher initially examined many general indexes and catalogues at university libraries throughout the USA and Australia. Several hundred

²⁹This specifically means that relevant legislation, policy and procedural manuals, manuscripts, annual reports, evaluations, newspaper and journal articles need to be collected.

³⁰ A primary source is defined as "the testimony of an eyewitness, or of a witness by any other of the senses, or of a mechanical device like the dictaphone – that is, of one who... was present at the events which he tells" (Dawson et al., 1991:256). Studies based on these sources are considered to be most accurate (Dawson et al., 1991:256).

³¹ A secondary source is defined as "one which offers indirect or hearsay evidence by other than eyewitnesses and is often an analysis and synthesis of primary sources" (Dawson et al., 1991:256).

studies, books and manuscripts were obtained.³² The researcher also searched several State libraries as well as specialised research libraries within Correctional Services Departments and historical archives throughout the USA and Australia, accessing several hundred more sources of information related to the topic. At the end of the data collection stage the most complex task was identifying a range of data sources that strictly related to the scope of the study as well as similar types of evidence from each nation state³³ (Neuman, 2000; Borg & Gall, 1989).

In accordance with the scope of this study, the focus was on selecting sources that discussed the historical as well as current aspects, including the operation, trends and outcomes of carefully defined HDBS, especially over the last three decades (1982-2013). In practice this meant that a clear set of guidelines had to be drawn up to determine whether a piece of literature related to HDBS was within the scope of the study. Only documents and studies referring to specifically defined HDBS were included. The following criteria formed the basis of this selection:

- HDBS that target adult offenders rather than juveniles
- HDBS that are designed to supervise post-trial orders rather than pre-trial releases
- HDBS that are actual 'front-end' or 'back-end' alternatives to imprisonment or are applied as post-prison extensions of offender supervision
- HDBS that apply electronic monitoring as well as human supervision on offenders.

The fact that the data had been collected and determined to be relevant to the research questions "may be biased, distorted and somewhat invalid when

³² Most of the literature was ordered through a Document Delivery Service at RMIT University. This is a free service that enables Higher Degree students to obtain up to 100 documents/sources per year that are not stored at RMIT libraries.

³³ While searching for similar types of evidence from each nation state, the researcher discarded some data that was deemed to be 'inessential', that is, it may only be necessary if the researcher was studying and/or claiming expertise specific to one nation state (Amenta, 2003).

used for other purposes” meant that it had to be tested for truthfulness (Burns, 1996:393). This is because historical documents and studies gathered for this study had already been collected for another purpose or administrative function. Consequently, it is important to recognise that:

any source can be affected by factors such as prejudice, social or economic conditions, political climate, and religious background... Even if a document has not been deliberately altered or falsified, it could be affected by the particular bias a person may have or the political or economic climate existing at the time.

(Johnson & Christensen, 2004:399-400)

The overall process of critically evaluating every data source in terms of external³⁴ and internal³⁵ criticism is referred to as ‘historical criticism’ (Johnson & Christensen, 2004; Borg & Gall, 1989). When external criticism of the data was conducted it was determined that all of the documents and studies were authentic. This is because these discuss a relatively non-controversial correctional process that took place in recent history (Johnson & Christensen, 2004). When internal criticism of the data was undertaken the findings were somewhat more complex. Because many of the documents and studies collected were conducted and/or funded by government organisations it is possible that there was research bias and distortion – wherever possible these were balanced with independently conducted research (Borg & Gall, 1989).

The assessment of data accuracy and its strength of evidence essentially meant that “each fact and proposition were carefully weighted and added to the case leading to the research conclusion” (Burns, 1996:393). Where the

³⁴ External criticism establishes the validity or authenticity of the data (Burns, 1996).

³⁵ Internal criticism is only conducted once external criticism has been completed, and it establishes the accuracy and worth of the data (Johnson & Christensen, 2004; Burns, 1996). Here the researcher needs to assess whether the document reveals the ‘true picture’, that is, “were the writers honest, biased, too antagonistic or too sympathetic, sufficiently acquainted with the topic?” (Burns, 1996:393). It is very important to establish this because “what most affects the reliability of a source, is the intention and prejudices of the writer” (Kuppuram & Kumudamani, 2002:158).

evidence was strong, the researcher was able to generalise their interpretations and where it was not, the generalisability of the findings was limited (Borg & Gall, 1989). In assessing the collected data the researcher also noted alternative interpretations of evidence and instances where issues were not mentioned (as per Neuman's 2000 suggestions). Data collection and evaluation in comparative historical methodology is generally said to be less biased than other methods, as the researcher cannot control the variables and texts are accessible and readily available for testing and re-testing (Burns, 1996; Sarantakos, 1993).

1.5.5 Limitations of this study

No research methodology is without its limitations, and this study is no exception. A limitation often associated with comparative historical research is that the data collected can have problems with equivalence³⁶ (Neuman, 2000). In this study this problem was substantially minimised as there were no vast differences in eras or cultures being analysed and there was very little possibility of misunderstanding or misinterpreting events. This is because this research is centred on a correctional process that took place in recent history and not in a different era. In addition, the two nation states where HDBS were analysed belong to the same legal and cultural tradition, and as a result have significant cultural similarities (Miethe & Lu, 2005; May, 1997). Therefore, it was possible, where appropriate, for the researcher to generalise and explain social relations across the nation states and their social contexts.

Another weakness of comparative historical methodology is that the scope of the study is bounded by the literature examined, meaning that the limitations of individual documents and studies become the limitations of this study (Sarantakos, 1993). Specifically, some of the documents and studies contained information and/or were based on a relatively small number of offenders, and so were not representative or fully generalisable (Sarantakos,

³⁶ Problems with equivalence mean that the researcher is unable to adequately comprehend cultures and societies that are different from their own (May, 1997).

1993; Dawson et al., 1991). The researcher attempted to overcome this problem by gathering information from as many sources as possible,³⁷ at the same time critically analysing their methodologies and the specific HDBS that they had examined (Strauss & Corbin, 1998; Sarantakos, 1993).

A related problem with comparative historical methodology is that it is possible that there is a lack of documents within one or more of the nation states being comparatively analysed (Miethe & Lu, 2005; Neuman, 2000). This was somewhat a difficulty in the present study as the quantity and quality of data in the two nation states where HDBS were comparatively examined varied. In fact, there was an overwhelming amount of literature in the USA and generally less information in Australia.³⁸ Further, in both nation states, particularly Australia, the amount of studies on HDBS with RF greatly outweighed studies on HDBS with GPS. Where relevant this is indicated throughout the following chapters. Nevertheless, on the basis of the evidence gathered the researcher was able to draw conclusions on the implementation and the operation of HDBS frameworks in the two nation states, the USA and Australia.

In addition, the researcher had to be aware of other researchers' inferences and logical analyses when critically evaluating collected documents and studies (Neuman, 2000; Burns, 1996). It is understood that all researchers bring their own perspectives to an analysis, and it is necessary to keep in mind the possibility of biases and beliefs of those who conduct the empirical research as well as the social and political context in which they function (Burns, 1996). Therefore, processes have already been interpreted by the primary authors who have potentially made decisions on attending to some details and omitting others from their reports (Borg & Gall, 1989).

Government conducted or sponsored analyses of HDBS (which are extensive) may, for example, mean that political accommodation and

³⁷ Unlike in most comparative historical studies where research is limited, indirect and generally incomplete where conclusions at times have to be based on fragmentary evidence, gathering ample government records and independent studies on home detention practices in the two nation states was not an issue (Neuman, 2000).

³⁸ This is because HDBS originated in the USA and over the years the USA has invested more resources into studies and evaluations in comparison with Australia.

attendant biases – whether favourable or unfavourable – could be possible (Hughes, 2000; May, 1997; Burns, 1996; Sarantakos, 1993). Conversely, studies conducted or financed by government departments are often done by a group of individuals who are less likely to be able to select some information and disregard other information, and their personal biases are not likely to become apparent as the data is analysed and re-analysed a number of times by different individuals. Furthermore, government reports are seldom organised in terms of a narrative history so these are relatively easy to compartmentalise (Neuman, 2000). Nevertheless, the researcher has tried to balance these potentially biased studies with independently conducted research.

In evaluating the potential biases of collected documents and studies, the researcher adds yet “another layer of interpretation in the way they choose to emphasise or ignore facts about the past and in the way they fit facts into categories and patterns” (Borg & Gall, 1989:806). While the researcher creates the story line on the basis of the interpreted evidence, it is possible that different researchers looking at the same literature may ascribe different meanings to it (Neuman, 2000; Burns, 1996). Thus, the researcher also potentially brings their own perspectives and personal biases to the research (Burns, 1996).

Despite these limitations, a comparative historical approach still has the best potential for understanding the similarities and differences in the implementation and the operation of HDBS across the two nation states including the identification of the components/initiatives that constitute best practice among these sanctions. It is also important to emphasise that the limitations that are associated with this methodology are also present in most other research designs (Miethe & Lu, 2005). In addition, these limitations “can be minimised somewhat by common sense, logical reasoning, and the exercise of appropriate caution when making inference about general practice” (Miethe & Lu, 2005:53).

1.6 Theoretical underpinnings

The rapid development of community based corrections over the last century (including HDBS more recently) throughout the Western world was part of the theoretical underpinning termed 'decarceration' which resulted in dramatic changes in the use of punishment (Cohen, 1979; Matthews, 1979). The most significant change was that, by the end of the 1960s, prisons once again, as at the end of 18th century, became places of 'last resort.' That is, the courts applied a sentence of incarceration only once they had explored and eliminated all non-custodial options (Cohen, 1979). Commitment to this policy, labelled 'decarceration', marked by the introduction of various non-custodial sanctions, was unprecedented in the Western world. This will become evident in the following chapters.

The study of decarceration – of efforts to minimize the use of prison – has been among the most intellectually fruitful topics in contemporary criminology and has attracted some of the best thinkers in the field... More than any other topic, decarceration research has taken criminology outside of narrow parameters of the criminal justice institution, and into myriad social, cultural, economic and political institutions that also constitute crime and punishment.

(Ericson in Chan, 1992:v)

As Ericson in Chan (1992) explained, since the 1970s many theorists have written about decarceration from many different viewpoints. However, the first person to conduct a theoretical and political analysis of deinstitutionalising 'deviant populations' was Andrew Scull in 1977. He conducted an historical analysis of the social control apparatus in prisons and mental hospitals in the USA and England and compared it with the wider changes in these countries' social systems (Scull, 1977). The aim of this study was to reveal the complex interplay of politics, economy and ideology behind increasing diversion of offenders and mental hospital patients into community settings. In order to explain this major change in penal policy which effectively resulted in

institutions becoming the last rather than first resort, he coined the word 'decarceration' which he explained as:

shorthand for a state-sponsored policy of closing down asylums, prisons and reformatories. Mad people, criminals and delinquents are being discharged or refused admission to the dumps in which they have been traditionally housed. Instead, they are to be left at large, to be coped with "in the community."

(Scull, 1977:1)

Despite the fact that this is a specific and narrow definition of decarceration – in the correctional context the basic opposite of incarceration– throughout Scull's book it becomes apparent that the meaning of the label is actually wide-ranging; that is, it describes the entire *process* of diversion from the segregative forms of social control (Chan, 1992; Matthews, 1979; Scull, 1977). According to Matthews (1979) Scull's description of decarceration in fact encompasses four distinctive processes. These include:

- The 'physical expulsion' of inmates due to the closure of institutions
- Reduced level of incarceration due to a cut in correctional funding
- Decriminalisation of offences
- Increased use of discretion by the police and the courts in order to divert offenders into non-custodial penalties³⁹

The contemporary meaning of decarceration similarly encapsulates numerous processes associated with the general trend towards non-custodial or community based responses to crime and deviance. Chan clearly illustrates this point:

the term 'decarceration' has been used to describe a variety of diversionary measures, including the decriminalization of offences, police cautioning of juveniles, pre-trial diversion of accused persons,

³⁹ It is interesting to note that Matthews (1979) concluded that none of the four processes that Scull had predicted had in reality eventuated.

sentencing of offenders to non-custodial penalties, conditional release of prisoners, the use of half-way houses and privatization of corrections. 'Community corrections' is the ideological umbrella under which these policies or programs have been justified.

(Chan, 1992:1)

A significant part of this major change in corrections was HDBS frameworks. More broadly, the evolution of the HDBS frameworks in this research has been divided into three ideologically distinguishable phases - the early, the middle and the late phase of HDBS - these are analysed in forthcoming chapters.

1.7 Structure of the thesis

The next chapter (chapter 2) describes the early and middle phases of HDBS simultaneously in the USA and Australia. The early phase essentially comprised the development and operation of probation and parole from the 1840s until the 1960s. During this time the ideology of offender supervision was based on humanitarian principles. The middle phase of HDBS is subsequently discussed. It is an interregnum during the 1960s and 1970s between the early and the late phase of HDBS, which comprised five converging factors. Most significantly, the quandary was the outcome of the 'tough on crime' policies that led to unsustainable prison crowding and budgetary restraint, while the currently available community based dispositions were ineffective. This propelled governments' decisions to introduce the late phase of HDBS.

Chapter 3 outlines the late phase of HDBS in the USA which is still operational. It commences with the implementation of intermediate sanctions in the 1980s. These essentially comprised HDBS with RF. In the mid-2000s, however, the expansion of sex offender post-release supervision laws resulted in HDBS with GPS being introduced for serious sex offenders. The number of offenders on all HDBS has been increasing in the USA. During the

late phase of HDBS, the ideology of offender supervision has been characterised by strict and close surveillance and monitoring, although treatment-based components are usually available for serious offenders on HDBS with GPS. The last three decades of evaluative research of HDBS with RF indicated problematic operational outcomes as well as significant ethical and political and stakeholder issues and dilemmas. On the other hand, HDBS with GPS have been operationally more successful. But there has been insufficient research assessing some of their ethical and overall political and stakeholder issues and dilemmas.

Chapter 4 explains the late phase of HDBS in Australia which is still operational. The chapter starts with a historical account of the introduction of HDBS with RF in the late 1980s. The chapter then discusses HDBS with GPS which entered the correctional arena after 2000 in very similar circumstances as in the USA. The number of offenders on HDBS in Australia remained relatively stable. The overwhelming ideology of offender supervision on HDBS has generally been based on a combination of strict and close surveillance and treatment-based components. Research has indicated that HDBS with RF have generally achieved their stated operational objectives, but have encompassed significant ethical and particularly political and stakeholder issues and dilemmas. Research assessing the operational outcomes, ethical and political and stakeholder issues and dilemmas of HDBS with GPS is still lacking and it is imperative that it is conducted in the future.

Chapter 5 starts by summarising the key outcomes and conclusions of the research. It then predicts increased application of HDBS as a future trajectory in both the USA and Australia. Future viability and outcomes of HDBS in both countries are however dependent on whether policy makers improve the operation of HDBS by implementing the lessons learnt from the evidence of best practice. These include collaborative working and sharing of information with stakeholders, inclusion of rehabilitative and reintegrative initiatives, ongoing independent evaluation process that informs continual improvement, application of equitable selection criteria and conditions, offender tailored order conditions and length of orders, provision of support for offenders' co-

residing family members, and clear policies and procedures to guide their operation. If jurisdictions in the USA and Australia implement the specific lessons learnt relevant to their own problematic areas of HDBS operation, the application of these sanctions will become more effective in the future.

Chapter 2 – Early and middle phases of HDBS in the USA and Australia

So it was not merely a question of reform 'going wrong'. The benevolent sounding destructuring package had turned out to be a monster in disguise, a Trojan horse. The alternatives had merely left us with 'wider, stronger and different nets'.

(Cohen, 1985:38)

2.1 Introduction

It was hoped that the widespread introduction of community based sanctions in the 1980s would provide sentencers with a 'carceral archipelago' that would be applied in the USA and elsewhere as alternatives to prison. Instead as Cohen (1985) described, these sanctions became 'add ons' to the current system capturing increasing numbers of offenders in the "wider, stronger and different" net of social control. As a result, opposite to the intended effect, the widespread utilisation of community based sanctions had no effect on the rising prison population and growing correctional outlays (McCarthy et al., 2001; Tonry, 1999; Biles, 1996). It must however be noted that absolute support is given to the wide application of community based sanctions, particularly as most incorporate rehabilitative measures, that are much more likely to rehabilitate offenders in comparison with prisons (Clear, 2007).

This chapter critically discusses the early and the middle phases of HDBS simultaneously in the USA and Australia. This is because in both nation states there were similar factors and their outcomes. The chapter consists of two themes in which information is presented chronologically. The first theme analyses the early phase of HDBS, which began with the introduction of probation and parole in the 1840s. The philosophic core of the early phase of HDBS was based on humanitarian principles. The application of probation and parole was initially sporadic and it was not until the 1960s that the

utilisation of these sanctions proliferated and offender rehabilitation practices were officially embraced. This led to additional government funding and increased application of early phase HDBS. Progressively these sanctions gained credibility and public support (Petersilia, 1998; Tulett, 1991; Richards, 1988).

The second theme then assesses the middle phase of HDBS in the 1960s and 1970s which comprised numerous factors (Tonry, 1990; Blomberg, Waldo & Burcroff, 1987). These include:

- The recognition that imprisonment has multifarious drawbacks, such as being ineffective, inhumane and costly.
- An ideological shift where the prison became an option of last resort in the sentencing hierarchy and community based dispositions were preferred.
- The decarceration debate which entailed a number of prominent theorists debating the main reason behind the substantial change in sentencing practices and whether its outcome was a success.
- An unprecedented problem for the state's philosophy – 'get tough on crime' – resulted in overwhelming prison crowding and consequently unsustainable cost (Joutsen & Zvekic, 1994).
- Procedural as well as operational problems that collectively indicated ineffectiveness with existing community based sentences, that is, probation and parole.

Although these combined factors resulted in the development of the late phase of HDBS, it was the final two – 'get tough on crime' that led to enormous prison crowding and budgetary blowout, and the ineffectiveness of currently available community based dispositions – that made it necessary for governments to introduce the late phase of HDBS when contemporary application of these sanctions started (Joutsen & Zvekic, 1994; King, 1991; McCarthy, 1987). (This is discussed in Chapter 3 and Chapter 4).

2.2 Early phase of HDBS (1840s-1960s)

This section describes the early phase of HDBS across the USA and Australia which lasted from the 1840s until 1960s. This phase was marked with an introduction and proliferation of probation and parole. The mode of community based supervision for both of these sanctions was primarily based on rehabilitative principles. Probation and parole were the predecessors of the late more prominent and contemporary phase of HDBS, which is still operational.

2.2.1 Historical development and proliferation of probation

While the idea of probation⁴⁰ can be traced back to judicial experimentation in England in the 1820s⁴¹ and USA in 1830s,⁴² until it was trialled and there was proof that it could be a valuable treatment process respected by the courts and the public, it was not enacted (Cromwell et al., 2005). The first person in the USA to formalise ‘court leniency’ and in fact the ‘father of probation’ was John Augustus (Clear et al., 2006). While he was a bootmaker by profession and never worked in the criminal justice system, his interest in helping offenders especially alcoholics was stimulated by his membership of the Washington Total Abstinence Society⁴³. He has been recognised as being the first probation officer, coining the term ‘probation’⁴⁴ and laying its groundwork (O’Toole, 2006; Clear & Cole, 2003; Enos et al., 1999).

⁴⁰ Probation is basically defined as “the idea that, in lieu of imprisonment, the offender is allowed to live in the community under supervision and demonstrate a willingness to abide by its laws” (Clear et al., 2006:189).

⁴¹ In the 1820s in Warwickshire, England, magistrates mitigated punishment of imprisonment by conditionally releasing suitable young offenders back into the care of their parents or their masters. This practice was based on an emerging ideology that offender guidance and assistance instead of stringent punishment are more likely to reduce recidivism (Tulett, 1991).

⁴² In the 1830s there were some isolated examples of judges in Boston, Massachusetts, USA, placing offenders onto community based probation-like sanctions but these have not been well documented (Cromwell & Killinger, 1994).

⁴³ This organisation was devoted to the promotion of temperance (Cromwell & Killinger, 1994).

⁴⁴ The term ‘probation’ was derived from the Latin verb *probare*, meaning to prove, to test (O’Toole, 2006).

His activities were begun in 1841 when in court one morning he saw 'a rugged looking man' who told him that if he could be saved from prison 'he never again would taste intoxicating liquors' (Augustus 1939:4-5). He persuaded the judge to bail the man to his care, and thus began his practice of putting up a bail surety, helping the person in a number of practical ways and then reporting back to the court at the end of the bail period.

(Raynor & Vanstone, 2002:14)

For the remainder of his life Augustus was both a bondman and probation officer at the Boston Courts in the USA (Cromwell et al., 2005; McCarthy et al., 2001). He used his own finances and the financial aid that was subsequently given to him from the influential members of the community to pay bail and fines for offenders. His work then focused on rehabilitating offenders based on his assertion that offender reformation and crime prevention instead of revenge should be the primary purposes of punishment. Even though Augustus' activities are today considered to be philanthropic, they were novel and progressive at the time. As a result, he faced vigorous opposition inside and outside the court, and was also mocked by newspaper reports that referred to him as lacking decency and wanting to make a profit (Cromwell & Killinger, 1994).

During a period of 18 years Augustus successfully supervised almost 2,000 people, very few of whom returned to court for reoffending (McCarthy et al., 2001). This excellent record of offender reform can be attributed to Augustus' establishment of rehabilitative casework strategies such as assisting offenders in finding accommodation⁴⁵ and employment, as well as, helping them regain their self-respect through counselling and treatment. In some situations he also provided various forms of assistance for offenders' families (Clear et al., 2006; Lipchitz, 1986). Hence, through helping offenders Augustus gained their confidence and friendship and also intensively

⁴⁵ Most offenders were initially taken into Augustus' home until he was able to help them organise more permanent housing (Cromwell & Killinger, 1994).

supervised their activities. He additionally developed administrative processes that are still a vital operational part of community based sanctions. These include presentence investigations, reports to the court, and revocation of processes (Clear et al., 2006). Augustus and his volunteers' tireless efforts resulted in the first probation statute being enacted in Massachusetts in 1878; this statute created an official state-wide probation system with salaried probation officers (O'Toole, 2006; Cromwell et al., 2005; Tulett, 1991). States that soon followed Massachusetts' lead in introducing probation were Vermont, California, Rhode Island and New York (Cromwell et al., 2005; McCarthy et al., 2001).

By 1920 every USA state had a juvenile probation scheme, and 33 states operated adult probation as a correctional disposition (Cromwell et al., 2005; McCarthy et al., 2001). There were three key reasons for this timeframe. First, the 1916 *United States versus Killits* case⁴⁶ eventually resulted in the passage of the *National Probation Act (1925)* that authorised the suspension of prison sentences and adopted probation as a formal sentencing option. Second, the use of community based dispositions for young offenders was advocated by the increasingly prominent juvenile court movement. Third, there was more general support for flexible case-by-case rehabilitative approaches for offenders (Champion, 2008; Clear et al., 2006; McCarthy et al., 2001).

By 1954 every USA state operated adult probation as a correctional disposition (Cromwell et al., 2005). While the introduction of probation during the 1920s was a part of the larger progressive reform movement toward more humane treatment of offenders, its potential to act as an inducement for offenders to plead guilty and relieve overcrowded courts resulted in its increasing use during the 1940s and 1950s (Clear et al., 2006).

⁴⁶ It is interesting to note that in the *United States versus Killits* case the Supreme Court ruled that the trial court did not have the constitutional authority to indefinitely suspend a sentence of incarceration. However, instead of viewing this case outcome as a backward step in the progression of probation, its proponents subsequently extensively lobbied Congress, which passed the national probation legislation in 1925 that formally promoted the use of probation (Mays & Winfree, 2002).

Similar probation statutes allowing adults to be released from court on the condition of good behaviour were only enacted in Australia around the 1950s (Tulett, 1991). This time delay is very interesting given that as early as 1887 probation became available for young offenders in two Australian states - Queensland and South Australia. The scope of probation for youth however was very limited in that it was restricted to those offenders who committed first offences of a minor nature (Daley, 2005; Tulett, 1991). The primary intent was to more effectively reform the character of these young offenders by offering them a 'second chance', so that they could avoid 'contamination' with other more serious prisoners. An associated benefit, although usually not mentioned, was saving money due to diversion from costly overcrowded prisons (O'Toole, 2006; Tulett, 1991). Queensland and South Australia's legislation was based on the British *Probation of First Offenders Act 1887* (Tulett, 1991).

Tasmania paved the way in introducing the first adult probation service in Australia in 1946, New South Wales followed suit in 1951, South Australia in 1954, Victoria in 1957, Queensland in 1959 and Western Australia in 1963 (O'Toole, 2006; Daley, 2005). All of the Australian states based their probation statutes on the English Probation Service, which was established in 1907. The main aim of probation supervision was to treat an offender as an individual, advising and supporting them, while relatively low priority was placed on punishment (O'Toole, 2006; Tulett, 1991). In addition, probation officers were appointed to assist the judiciary in the sentencing process by conducting comprehensive investigations into defendants' social backgrounds and providing pre-sentence reports (Tulett, 1991).

It is worthy of note that the recommendation of Magistrate Halcombe's Royal Commission in 1930 to introduce probation for adult offenders in South Australia on the basis of English and Canadian models was ignored by the state government of the day. Although the rationale was not officially provided, it was thought that probation for adult offenders would be too expensive and difficult to administer in a vast country such as Australia (Tulett, 1991). Furthermore, there was some political disagreement about who

should administer probation – prison officers or social workers – if it was enacted (Tulett, 1991). Lastly, Chief Probation Officer and Controller of Prisons, Whittle, did not support Halcombe's recommendation, possibly as he did not want to lose control of the proposed probation service, as it was recommended that it be developed separately from prisons (Tulett, 1991).

The impetus for implementation in the 1950s was bringing Australia into line with the international practice of offender management after the end of the Second World War (O'Toole, 2006; O'Toole, 2002). In particular, the Economic and Social Council of the United Nations urged all governments to adopt or expand the availability of probation in order to prevent future crime through the treatment of offenders (Tulett, 1991). An associated benefit to governments was the diversion of offenders from overcrowded prisons (O'Toole, 2006; O'Toole, 2002).

2.2.2 Historical development and proliferation of parole

While there were some attempts to release prisoners early from prisons in Spain and in Germany during the 19th century, Englishman Alexander Maconochie was credited with developing the first operational parole⁴⁷ system (Cromwell et al., 2005; Clear & Cole, 2003; McCarthy et al., 2001). Maconochie was a retired naval captain and geographer who administered British penal colonies in Australia and in the South Pacific (Clear et al., 2006). As a young man, he spent 4 years as a prisoner of war which gave him a unique insight into the plight of the incarcerated (O'Toole, 2006). In 1837 he proposed a 'marks system' to the English House of Commons, arguing for a gradual offender release mechanism dependent on offenders' good conduct and hard work, not simply the length of time they spent in custody. This 'marks system' set the historical foundation of the modern parole system (Cromwell & Killinger, 1994).

⁴⁷ Parole is most simply defined as an early prison release mechanism that mandates community-based supervision of offenders (Clear et al., 2006). The word parole originated from the French word *parole d'honneur*, which stands for 'word of honour' (McCarthy et al., 2001).

In 1840 the English authorities offered Maconochie the opportunity to test his 'marks system' on Norfolk Island. Norfolk Island is located 1,600 kilometres off the eastern coast of Australia and is classified under the jurisdiction of New South Wales (Cromwell et al., 2005). Although he was sceptical about whether it was suitable for his purpose, he accepted the appointment and was appointed as the governor. Prior to his arrival, Norfolk Island (opened in 1825) was renowned for being one of the world's most severe penal environments. Here, there were about 2,000 incorrigible convicts who had committed violent offences whilst incarcerated in England and Ireland and were permanently transported to Australia (Morris, 2002 cited in Cromwell et al., 2005). They were kept in severely overcrowded conditions. Further, "verbal interactions were at an absolute minimum, and prisoners experienced no meaningful work, education or recreational activities and little or no time out of their cells" (O'Toole, 2006:36). Prisoners were also brutally treated by the constant use of punishments such as cat-o-nine-tails, the gag,⁴⁸ solitary confinement and exposure to the gallows (O'Toole, 2006).

During his four year tenure on the island, Maconochie changed all this. He argued that offenders should be treated in accordance with regulations which were based on humane principles. As a result, he "discontinued flogging and chain gangs and introduced adequate food, health care, disciplinary hearings and reading material" (Morris, 2002 cited in Cromwell et al., 2005:224). Based on good offender behaviour, a graduated incentives-based release system was also initiated on Norfolk Island. It operated in the following way:

As prisoners demonstrated evidence of good behaviour and good work ethic, their freedom and privileges gradually increased. Marks were deducted for negative behaviour. Maconochie's system allowed prisoners to move from strict imprisonment, to labour in work gangs, through conditional release around the island and finally to complete the restoration of liberty.

(Morris 2002 cited in Cromwell et al., 2005:224)

⁴⁸ The gag is "a large wooden mouth piece that prevents communication and is held in place at the back of the head with a leather strap" (O'Toole, 2006:37).

Maconochie's perceptions and operations were unprecedented for his time and he faced strident opposition. The resistance was both from English and Australian officials and the public, who, on the basis of their retributive stance regarded the 'marks system' as "radical and too liberal" (Cromwell & Killinger, 1994:197). Some even considered him to be "irrational and the humanity extended to prisoners under his control scandalous" (O'Toole, 2006:36). Despite the success of the 'marks system,' as evidenced though offenders' reformation with reconviction rates of less than 3% of 1,450 released offenders during Maconochie's term, the influential opposition ultimately prevailed. The event which was crucial to his demise was his permission for prisoners to celebrate Queen Victoria's birthday on which they spent the day attending various amusements and had dinner with rum and lemonade. Even though there were no disciplinary issues, in 1844, Maconochie was dismissed soon after in 1844 and his release system was abolished (O'Toole, 2006; Cromwell et al., 2005). Maconochie's successors at Norfolk Island immediately reintroduced the brutalities of the past, resulting in numerous prison riots, murders and suicides. The establishment was closed in 1856. According to the New South Wales government, however, the reason for the closure of the prison was expensive maintenance (O'Toole, 2006).

The first person to be influenced by Maconochie's innovative penal practices was Sir Walter Crofton, the director of the Irish prison system. He drastically revised the Irish prison system in 1854 by implementing the main principles of the 'marks system' (Welch, 2004). The basis of the reform was the assertion that offender reformation should be the goal of incarceration, and offenders who show "achievement and positive attitude changes" should be rewarded by early release (Cromwell & Killinger, 1994:198). Amended administration of the Irish prison system meant that offenders were provided with a graduated release experience comprising three distinct phases - strict imprisonment, followed by an indeterminate sentence and a potential 'ticket of leave' (Cromwell et al., 2005).

As prisoners moved into the third phase of penal servitude by earning marks for good conduct and achievement in education and industry, they were

conditionally released into the community. Once paroled, under the granting of the 'ticket of leave,' they were required to maintain employment, reside at a specified location, and submit monthly reports about their progress to the police (Cromwell & Killinger, 1994).⁴⁹ Unlike the English model of 'ticket of leave,' which had no supervisory ability to track offenders, the Irish model contained the infrastructure of offender control and support which was provided by civilian employees or the police (Clear et al., 2006; Cromwell & Killinger, 1994). In cases where offenders failed to comply with any of the specified conditions, they were returned to prison to serve the remainder of their sentences (McCarthy et al., 2001). The Irish system of 'ticket of leave' was regarded as successful because it "had the confidence and the support of the public and of the convicted criminal" (Cromwell & Killinger, 1994:198).

As the English and Irish parole experiments became known across the Atlantic, a few attempts were made in the USA during the mid 19th century to release offenders early from prisons. It was not, however, until 1876 that the first parole system became operational in the USA. The superintendent of the Elmira Reformatory in New York, Zebulon Brockway, became renowned for its establishment (Clear et al., 2006; Clear & Cole, 2003). He firstly convinced the New York legislators to pass an indeterminate sentence law authorising correctional personnel instead of the judiciary to determine the amount of time that offenders should serve in prisons. Secondly, he introduced a system at Elmira Reformatory where offenders could be paroled for a period of up to 6 months (McCarthy et al., 2001).

Similar to the English and Irish parole models, a decision to parole the offender at Elmira Reformatory depended on them earning 'good time credits' based on their compliance with prison rules and prison officers believing that they were ready to be released (McCarthy et al., 2001). Unlike the Irish system, where there was continuous offender supervision and monitoring, in this model the offender was only required to report monthly to their guardian. The guardian was an ordinary citizen who volunteered their time in

⁴⁹ These conditions resemble today's parole conditions throughout the Western world (Cromwell et al., 2005).

supervising the offender and whose role was to regularly compile a written report about the offender's progress and submit it to the prison where the offender was incarcerated (Cromwell et al., 2005; McCarthy et al., 2001). As the number of parolees increased, the state replaced voluntary parolee supervisors with trained and paid supervising officers, and volunteer-based prison societies were formed to further assist parolees' reintegration processes (Clear et al., 2006).

Although the other USA states were initially slow in introducing statutes allowing early offender release mechanisms, 44 USA states provided for offender release on parole and had indeterminate sentencing laws in place by the mid-1920s. At this time, the vast majority, in fact more than 80% of felons⁵⁰ in major industrialised USA states, were paroled prior to being released from prison (Clear et al., 2006). Major industrialised USA states were more likely to embrace parole possibly because of their more progressive thinking about the cost-effectiveness of parole when compared with incarceration (Clear et al., 2006). By 1944, the other 6 USA states also had implemented parole and indeterminate sentencing laws (Cromwell et al., 2005; Clear & Cole, 2003).

Evaluative studies of parole from the 1920s and 1930s were however predominantly negative – generally indicating high rates of parolee re-offending and prejudice among parole board members who were deciding whether an offender should be paroled (Alarid et al., 2008; Clear et al., 2006). This led to significant improvements in the operation of parole; comprising of increased conditions on offenders and enhanced supervision, including the establishment of parole board guidelines about offender release (Alarid et al., 2008). Additional reforms were introduced between 1945 and 1970, including the provision of vocational training, educational programs and individual therapy (Alarid et al., 2008). Interestingly, the media has traditionally negatively portrayed parole by publishing only horrific stories of parolees committing heinous crimes predominantly in newspapers. Due to its ongoing

⁵⁰ Felony offender is a term exclusively applied in the USA referring to offenders convicted of indictable offences (Siegel, 2005).

negative media portrayal, parole, as well as subsequent community based sanctions, have generally been regarded as unreliable (Clear et al., 2006). (For more information see Chapter 3.3.4 and Chapter 4.3.4).

The imposition of parole flourished until the 1970s⁵¹ with liberally imposed indeterminate sentencing and widely encouraged discretionary releases by parole boards (Clear et al., 2006). The legislative proliferation of parole, similar to probation, during the 1920s was based on humanitarian reasons. However, it should be noted that the first Intensive Probation/Parole Supervision (IPS)⁵² programs, called HDBS in this research, emerged in early 1950s. These were trialed on a larger scale in the 1960s and 1970s (Clear & Dammer, 2003). Offenders on these sanctions were subjected to very strict individualistic supervision on regular probation or parole (Deschenes, Turner & Petersilia, 1995; Lurigio & Petersilia, 1992; Polk & del Carmen, 1992; Clear & Hardyman, 1990). (This is further discussed in Chapter 3.2.2).

The associated economic benefit of parole, like probation, during the 1940s became vital (Cromwell et al., 2005). This was because scarce state and federal financial resources were for the first time being drained by prisons. Between the 1840s and 1940s USA prisons were generally self-sufficient (and in some cases profitable) due to leasing out of prisoner labour to private companies (Cromwell et al., 2005). In the 1940s however legislation was passed limiting offender labour to certain industries, and as a result, prison profits decreased and taxpayers for the first time started bearing some of the costs of offender incarceration. As soon as it was realised that paroling offenders would somewhat offset this spending, it became increasingly popular (Cromwell et al., 2005).

⁵¹ More specifically, in 1973 the critiques of rehabilitation programs became particularly influential and the government under community pressure imposed 'tough on crime' policies. As a result, there were significant moves to strict determinate sentencing of prisoners (Daley, 2005; Clear et al., 2006). (For more information see section 2.3.4).

⁵² As mentioned earlier, Intensive Probation Supervision and Intensive Parole Supervision both have the same abbreviation 'IPS' due to almost identical requirements (Petersilia & Turner, 1993).

In spite of Maconochie's development of the first operational parole system in Australia during the 19th century, a more formal and structured process of parole did not become operational in Australia until the mid-20th century. The genesis of modern parole can be traced to the influential Alexander Whatmore's report which was presented to the Victorian Government in 1951 (Nicholson, 1988). The then Inspector General for Penal Establishments, Whatmore travelled through the United Kingdom (UK), USA and Europe visiting various correctional establishments and authorities. Based on this experience and in accordance with the humanitarian principles that were prevailing at the time, he recommended that Australia generally improve and modernise its prison operation as well as establish a parole service (Provan, 2007; Nicholson, 1988).

However, at the time of Whatmore's report a limited form of parole existed in Victoria. In fact, it operated under *Indeterminate Sentences Act* 1907 and was only related to prisoners who were serving indeterminate sentences (Provan, 2007). These sentences were exclusively given to habitual criminals who were detained at the Governor's Pleasure. A body called the Indeterminate Sentences Board administered indeterminate sentences by visiting prisons on a monthly basis, and granting prisoners temporary release (usually of a 6 month duration) which was followed by a 2 year probation period (Provan, 2007).

Parole was firstly officially introduced in New South Wales in 1951 and then subsequently throughout all of the states (O'Toole, 2006; Daley, 2005; O'Toole, 2002). More specifically, the *Penal Reform Act (Vic)* 1956 encompassed many of Whatmore's recommendations and also formed the basis of most other Australian jurisdictions' parole legislation (Nicholson, 1988). Most significantly, a system of determinate sentencing, parole and the Adult Parole Board was introduced in Victoria.⁵³

⁵³ It replaced indeterminate sentences and the Indeterminate Sentences Board (Nicholson, 1988). Australian jurisdictions established Indeterminate Sentences Boards in early 1900s to regulate the detention and release of habitual criminals confined in reformatory prisons (Nicholson, 1988).

The authority of the Parole Board in Australia was different to the USA. In Australia the sentencing court was to set the limits within which parole was to be applied to a prisoner so that the Parole Board's discretion was much more limited than in the USA where the Parole Board determined the actual sentence served by the prisoner (Adult Parole Board, 2010; Nicholson, 1988). This may have been one of the reasons that parole in Australia attracted less condemnation than parole in the USA (Nicholson, 1988). The severe criticism of the operation of Parole Boards in the USA in the late 1970s resulted in dramatically changed policies of discretionary release which was either limited or abolished (Alarid et al., 2008).

Similarly to the USA, the aim of parole was to assist the transition of the offender back into the community through the provision of links with welfare organisations which helped the offender to obtain employment and housing (O'Toole, 2006). It must be noted however that in Australia the concept of after-care for prisoners had unofficially existed in practice through the work of the church and welfare agencies since the first organised prison systems were developed during the late 19th century (O'Toole, 2006).

2.2.3 Ideologies of supervision

Supervision ideologies of probation and parole are concurrently discussed, because in most USA and Australian states officers supervise both probationers and parolees on the same caseload. The supervision process and order conditions of both are very similar, even though parolees are usually more serious offenders than probationers (Alarid et al., 2008; O'Toole, 2002; Cromwell & Killinger, 1994). The underlying ideological basis for the development of probation and parole was humanitarianism. As such, the mode of community based supervision of offenders on probation and parole, from the late 1840s until the late 1960s, in the USA and Australia was primarily based on humanitarian principles (Clear et al., 2006; O'Toole, 2006; Daley, 2005; Tulett, 1991). The overarching aim was offender reformation, and within it two distinct modes of supervision were in place.

The first supervisory mode was titled the 'Casework Era' and operated between the early 1900s and late 1960s (Cromwell et al., 2005). From the 1900s until the 1940s, offender supervision was mostly based on humanitarian principles. However, an ideological problem was starting to emerge. Most probation officers saw themselves as following the 'social work model.' This was based on the humanitarian and rehabilitative orientation that emphasised the provision of supportive services to meet offenders' needs (this was originally developed by Augustus and his volunteers in the USA). In contrast an increasing number of probation officers then saw themselves as following the 'law enforcement model.' This was based on offender surveillance and close control coupled with enforceable conditions. This was generally developed by subsequent probation officers who had a previous law enforcement background (Clear et al., 2006). This dichotomy however was not particularly significant during the early phase of HDBS, as the treatment-oriented social worker role of probation prevailed.

A parallel problem faced by probation officers was that, throughout the 1920s and 1930s there wasn't a body of knowledge about offender treatment, and even more importantly, evaluative treatment-related literature was almost non-existent. This meant that literature on which supervisory strategies were more effective was rare, and as a result there was generally a lack of consistency in methods of offender supervision.

Probation officers were given an almost impossible task: with very little scientifically based theory to guide [probationers'] actions, they were expected to keep their charges crime-free. What passed as ways to reform probationers often turned out to be little more than attempts to indoctrinate them with middle-class moral injunctions – work, go to church, keep clean, get ahead, be good – attitudes not consistent with real life in city slums.

(Clear et al., 2006:53)

This operational uncertainty led some politicians to argue against probation, claiming that sentencing offenders to probation instead of prison was in fact being 'soft on crime' (Clear et al., 2006). Despite these criticisms, the use of probation continued. This was probably because it was considered to be valuable in inducing offenders to plead guilty, thus relieving the pressure on overcrowded courts (Clear et al., 2006).

A more uniform approach toward offender supervision began in the 1940s when offender reformation was officially adopted as the principal goal of punishment and the rise of the 'rehabilitative ideal' was significant. Correctional administrators embraced psychological and medical literature and employed terminology such as 'treatment', 'intervention' and 'diagnosis' (Clear et al., 2006; Gibbons, 1992). Supervising officers increasingly viewed themselves as 'caseworkers,' whose primary aim was to create a therapeutic relationship with the offender and help them to live a productive life in the community (Cromwell et al., 2005; King, 1991; Vodanovic, 1988). The main thrust of this supervisory strategy was to assess the offender and then to address the problems that had contributed to their offending behaviour (O'Toole, 2006; Broadhurst, 1991; Tulett, 1991).

More specifically, supervising officers established rapport with offenders, and then used it to modify their inappropriate behaviour (McCarthy et al., 2001). Supervising officers were hence 'agents of change' who aimed to personally reform offenders through their counselling techniques (Clear et al., 2006; Cromwell et al., 2005). This mode of supervision was significant for the further development of probation and parole as it moved them into the realm of a profession. The skills that were developed subsequently became renowned in offender interviewing and counselling in social work (Clear et al., 2006; Cromwell & Killinger, 1994; Tulett, 1991).

Several factors were responsible for the demise of the 'Casework Era' and the establishment of a subsequent ideology of probation and parole supervision. In the late 1960s and early 1970s, criminological literature increasingly described crime as a complex phenomenon; that is, "the product of poverty,

racism, unemployment, unequal opportunities, and other social factors” (Clear et al., 2006:190). While in principle supporting community based sanctions and offender reintegration, the literature generally encouraged more professional and specialised offender treatment (Clear et al., 2006). This recommendation was empirically supported by the USA National Advisory Commission on Criminal Justice Standards and Goals in 1973. In its main report the Commission concluded that probation and parole failed to realise many of their goals because officers dealt inadequately with offenders’ complex needs (cited in Cromwell & Killinger, 1994).

A further problem was that there did not seem to be an actual process to ascertain when an offender had been rehabilitated. Moreover, when an offender was not rehabilitated they were usually blamed despite the fact that there could have been actual problems with the rehabilitative programs and the nature of their supervision (Daley, 2005; O’Toole, 2006; Broadhurst, 1991). All of these findings were not surprising, as a compounding problem had been that supervising officers had become overburdened with high caseloads and administrative duties. They were increasingly unable to develop meaningful relationships with offenders, which was the central tenet of this supervisory approach (McCarthy et al., 2001). On the basis of these operational issues, the Commission advocated for offender treatment to be provided by specialised service providers (cited in Cromwell & Killinger, 1994).

A subsequent mode of offender supervision, which also operated during the early phase of HDBS, was called “Brokerage of Services Era” (McCarthy et al., 2001). It was particularly prominent during the 1970s when the aim of rehabilitating offenders prospered, but, as evaluative studies and prominent literature showed, the mode of probation and parole supervision changed from officer provided treatment to service brokerage. Under this philosophy, the officer’s main role was to determine offenders’ reasons for offending, their specific needs (related to employment, training, housing, and health) and then refer them for treatment to the appropriate community agency (Clear et al., 2006). It was anticipated that specialised service providers, skilled in working

with specific problems, would then more effectively administer the 'specialised treatment' than the officer could have (Cromwell et al., 2005). The officer's subsequent task was to monitor the linkages between the offender and the appropriate agencies and their overall reintegrative progress in the community (McCarthy et al., 2001; Cromwell & Killinger, 1994). Evaluative studies praised this specialised rehabilitative approach and, as a result, community based correctional budgets grew strongly throughout the 1970s (Clear et al., 2006).

A less prominent supervision approach which was closely aligned to the "Brokerage of Services Era" model and operated during the same timeframe was the "Community Resource Management Team Model" (Cromwell et al., 2005). Probation and parole officers who utilised this model developed specialised skills and linkages with community agencies in one or two distinct areas such as drug abuse, employment, or family counselling. Probationers and parolees were then assisted by several officers depending on their needs. As this supervisory approach was seldom applied, it was not rigorously evaluated (Cromwell et al., 2005).

By the late 1970s, the overall condemnation of the rehabilitation ideal and rehabilitative programs diminished the general belief in the ability to treat offenders (Cromwell et al., 2005; Daley, 2005; Cromwell & Killinger, 1994; Broadhurst, 1991; Weatherburn, 1991). According to some authors, such as Vodanovich (1988), the demise of rehabilitation, which was the linchpin of community based corrections, had a lasting effect on these sanctions as it eroded their theoretical basis. The disillusionment resulted in significant moves by the criminal justice system to appear tough and punitive on criminals. Consequently, a drastic change in community based offender supervision occurred - offender reformation was substituted with offender deterrence - to be achieved through surveillance and punishment (Clear et al., 2006; O'Toole, 2006; Daley, 2005; Cromwell & Killinger, 1994; Broadhurst, 1991; King, 1991). (For more information see Chapter 3.2.4).

2.3 Middle phase of HDBS – Interregnum (1960s-1980s)

This section describes the middle phase of HDBS across the USA and Australia which lasted from the 1960s until the 1980s. This phase consisted of five distinct converging factors that resulted in the much more substantial late phase of HDBS after the 1980s.

2.3.1 Multifarious drawbacks of imprisonment

Even though criminologists had historically criticised the appropriateness of the use of incarceration as the suitable response to most forms of crime,⁵⁴ the period during the 1960s was significant in correctional history as it was marked by unprecedented criticism of incarceration (Chan, 1992; Cohen, 1979). The plentiful arguments against the use of incarceration can be classified into three clusters ineffectiveness of prison, inhumaneness of prison and cost of prison.

Ineffectiveness of prisons - The foremost argument for increased application of community based dispositions was that prisons were not effective in deterring and/or rehabilitating offenders (Cohen, 1979; Tomasic & Dobinson, 1979). Offenders were said to “frequently leave prison with greater reasons for offending than when they went in” (Walker, 1991:49). Incarceration was found to be supporting criminal socialisation, providing opportunities for learning more sophisticated criminal tactics, encouraging gang violence, sexual assault and generating racial discord⁵⁵ (Meyer, 2004; McCarthy et al., 2001; Enos et al., 1999; Dean-Myrda & Cullen, 1998; Doherty, 1995; Gerkens, 1987; Burns, 1975). This collectively meant that prisons produced generally more violent offenders who were more likely to re-offend once they

⁵⁴ In fact, there are reports going back to the 1820s which concluded that prison failed to reduce crime (Hoggarth, 1991).

⁵⁵ Community based sanctions, and in particular HDBS, could be seen as a relatively non-violent alternative to incarceration (Wahrab, 2012; Hallett, 2008; Steger & Lind, 1999; Galtung, 1990). There is considerable literature about non-violence, but there does not seem to be any discussion of HDBS as a viable non-violent alternative. This research is however relevant to a more general discussion on non-violence that goes beyond the current literature on HDBS.

were released (Chan, 1992; Greenberg, 1975). This was eloquently summed up as: prison “is serving little purpose other than to reinforce criminal inclinations and to improve the criminal expertise of the sentenced” (Vernon, 1987:2).

If prisons were overcrowded then the environment within them was even more problematic as tensions and frustrations inevitably found in confinement situations were generally exacerbated. More specifically, the shortage of space and personnel usually meant that it was “difficult for prison administrators to protect the weak from the strong⁵⁶ and to isolate from the gang” (Morris, 1988:5). Further, access to and engagement in education, work and other programs was restricted (Walker, 1991; Carlson, 1988).

Leading sociological theories in particular became increasingly influential in the negative portrayal of incarceration. For example, labelling theory (which was dominant during the 1960s), established that the further the offender was processed into the criminal justice system and forced into close association with other delinquents the more difficult it was to abandon a criminal career, reintegrate back into society, and become a ‘conformist’ living a ‘pro-social lifestyle’ (McCarthy et al., 2001). Arguments ensued that formalised processing and incarceration should be discouraged (Dean-Myrda & Cullen, 1998; Joutsen & Zvekic, 1994; Hylton, 1982; Cohen, 1979). The government therefore had the responsibility to be progressive and support community based alternatives to incarceration (Chan, 1992; Cohen, 1979).

Inhumanness of prisons - The burgeoning of community based alternatives to imprisonment was further encouraged by the argument that prison was an inhumane and even a disgraceful setting. In prison studies of the Victorian and South Australian states, Neilson Associates (1983) and Hunt and Woodberry (1987) respectively specifically found that conditions in many

⁵⁶ It is very common for prisoners to classify themselves into ‘the strong’ and ‘the weak.’ The weak, who are usually younger and more impressionable prisoners, constantly live under the threat of violence and intimidation (Gerken, 1987).

prisons were inconsistent with the United Nations Minimum Rules for the Treatment of Prisoners.⁵⁷

The facilities can be variously described as outmoded, sub-standard, unhygienic, and in some cases unsafe, and generally neglected. Even the newer facilities, such as Ararat prison, show signs of considerable neglect...

(Neilson Associates, 1983:284)

Chan and Zdenkowski (1986) and Chan (1992) similarly reported that prisons were horrific and brutalising places that were characterised by deprivation, degradation, boredom, loneliness, loss of privacy and fear of violence. More specifically, the older institutions were depicted as “often harsh and sometimes barbaric,” and the newer institutions were referred to as “pastel prisons” that can be psychologically oppressive (Greenberg, 1975:7).

It was also argued that, in the artificially created setting, offenders “become accustomed to an alien lifestyle, which is unlike anything that occurs in the community” (Champion, 1996:282). This process of institutionalisation occurred due to three reasons. First, offenders were physically separated from their family unit and these conventional ties became weakened and disrupted. Second, while incarcerated they were constantly surrounded by violence and gang activities that became the norm. Third, when prisons were overcrowded, which was often the case, all of the negative consequences of imprisonment were even more emphasised (Joutsen & Zvekic, 1994). It was consequently asserted that the experience of imprisonment generally did not equip offenders with the necessary skills to cope with conventional life on the outside once they were released; alternatively, it made it very difficult for them to readjust to society and live productive lives (Joutsen & Zvekic, 1994; Van Ness, 1992).

⁵⁷ These are specific guidelines outlining the minimum acceptable standards of prison life concerning for example, accommodation, hygiene and food; thus, these are essentially “basic rights” of prisoners (Hunt & Woodberry, 1987:48).

Cost of prison - An added bonus further supporting the proliferation of community based sanctions, in fact the “hard evidence” (Walker, 1991:49), was that institutional punishments were simply too expensive when compared with community based sanctions (Dean-Myrda, & Cullen, 1998; Walker, 1991; McCarthy, 1987; Cohen, 1979). It is worth noting that these early cost analyses simply compared the direct cost of being on the HDBS and per diem cost of incarceration (Schmidt, 1994b). Therefore, they omitted the indirect non-correctional costs of incarceration such as the loss of productivity of persons previously employed and the costs of welfare support for their families once they were sent to prison. These are typically avoided when a sentence is served in the community. If these costs of incarceration were also included, then the cost saving associated with community based dispositions would have been even higher (Walker, 1991).

Prisons were actually becoming increasingly costly during the 1960s due to the rapidly rising cost of prison construction and government employees' salaries (Abadinsky, 1987; Greenberg, 1975). In the USA, states found the spiraling costs of incarceration in the 1960s particularly intolerable because they were not used to bearing any of the costs of offender incarceration (Cromwell et al., 2005). As mentioned earlier, taxpayers only started contributing to the costs of incarceration in the 1940s and soon after they ended up paying the entirety of the prison costs (Cromwell et al., 2005).

Numerous researchers and correctional departments therefore presented calculations that states could save substantial amounts of money if lower-risk offenders were supervised in the community instead of being sent to prison (Petersilia, 1987). Further, as opposed to imprisonment where the indirect non-correctional costs are considerable, when community based sanctions are imposed these are turned into substantial savings (Joutsen & Zvekic, 1994). This is because community based dispositions, unlike prisons, are ‘socially cost-effective’ due to “indirect welfare savings occasioned by offenders continuing in employment, contributing to the support of their families and saving their family circle from psychological and financial disruption” (Fox, 1987a:139). The multifarious drawbacks of imprisonment led

to an ideological shift where the prison became the last resort and community based sanctions became preferred.

2.3.2 Ideological shift - prison becomes last resort and community based sanctions expand

The catalyst for the stakeholders' shift towards a much more substantial utilisation of community based punishment was extensive literature from the 1950s and 1960s which argued there was a multitude of irrecoverable problems with imprisonment (Joutsen & Zvekic, 1994; Chan, 1992; Cohen, 1979; McCarthy, 1987; Greenberg, 1975). Instead of incarceration McCarthy (1987:3) advocated for a more rapid expansion of diversionary programs, hailing non-institutional sanctions as "best strategies to meet individual offender needs, promote reintegration, and reduce crime." An added bonus was the fact that these programs were cheaper than incarceration (McCarthy, 1987).

As both the USA and Australia were in a financial position to experiment in the 1960s (that is, there was full employment, rising wages, and an expansion of the welfare state) and the overall sentiment during this era was based on 'general progression', alternatives to incarceration flourished (Ball et al., 1988; McCarthy, 1987). This period of economic prosperity, which started following the end of the Second World War, peaked in the 1960s, and collapsed in the early 1970s, was referred to by some observers as the "golden age of controlled capitalism" (Steger, 2003:38). Bipartisan political support prospered in both the USA and Australia and various legislative changes were implemented enabling state sponsored policies towards community based sentences to become fully effective and the prison became a sentencing option defined as "last resort" (Chan & Ericson, 1981:5). It was presumed that non-custodial sentences would be more effective in rehabilitating offenders as they would reduce their reoffending and subsequent incarceration rates (Meyer, 2004; McCarthy, 1987).

In the USA, major efforts were undertaken by the state to accelerate the diversion of criminals away from prisons (Greenberg, 1975). The most significant legislation, supported across the political spectrum, was the *Model Sentencing Act* which was revised in 1963 to instruct judges to sentence all offenders (providing that they posed no danger of serious harm to public safety) to community based sentences (Greenberg, 1975). In addition, reputable government-sponsored studies (two federally appointed commissions the President's Commission, 1967, and National Advisory Commission, 1973, as well as a state-appointed body Citizen's Study Committee 1972, cited in Greenberg, 1975) advocated for a further expansion of the criminal justice sentencing continuum and greater use of community dispositions.

Similarly, the utilisation of community based sentences was gathering momentum in Australia during the late 1960s and early 1970s. Almost every government commission, task force and department associated with sentencing and penal policy encouraged this (Chan & Zdenkowski, 1986). The laws were also changed in all states and territories to widen the application of community sentences and apply the principle of using imprisonment as a sentencing option of last resort.

Even though there was certain vagueness about what community corrections actually meant, community based programs quickly expanded in relative obscurity and largely free from critical scrutiny (McCarthy et al., 2001; Petersilia, 1997; Greenberg, 1975). While there was a slight increase in the parole rate, the most rapid growth was in the size of the probation service in both the USA and Australia (Polk, 1987). In fact, in Australia during the 1970s the Adult Probation Service expanded three-fold in terms of its officer personnel (Tulett, 1991; Chan & Zdenkowski, 1986). The problem however was that the rate of imprisonment remained relatively stable (Polk, 1987). Further,

there was no independent evaluation studies to establish whether the [community based sentences] were being implemented effectively,

and whether the goal of rehabilitating probationers was being achieved in the manner that the legislators envisaged.

(Tulett, 1991:130)

The expansion of community based sanctions was subsequently vigorously challenged as part of the decarceration debate.

2.3.3 Decarceration debates

Well-publicised criticisms of incarceration led to increasing dissatisfaction of its use for controlling offenders. This was supposed to be overcome by the widespread introduction of non-custodial sanctions which were 'miraculously' seen to be:

- more effective than imprisonment as they increase the chance of the successful reintegration of the offender into the community
- a more humane way of punishing an offender as they remained within their conventional network of support
- less costly than imprisonment (Dean-Myrda & Cullen, 1998; McMahon, 1992; Chan & Zdenkowski, 1986; Scull, 1984; Hylton, 1982; Chan & Ericson, 1981; Cohen, 1979).

According to Cohen (1979:342) this set of justifications was "repeated with the regularity of religious catechism" and was seen to be a "matter of common sense", "what everybody knows", or the "irrefutable result of empirical research". The proponents of this approach as well as anybody who called themselves progressive, insisted that community based sanctions "must obviously be better" and must at "least be given a chance" (Cohen, 1979:342).

Despite the fact that extensive arguments against incarceration propelled the widespread introduction of community based sanctions, Scull (1977) argued that decarceration was only able to occur in the second half of the 20th century

because of the costly development of the post-Second World War welfare state and unsustainable segregative modes of social control. Scull (1977) therefore theorised that although three main justifications had been given for the shift towards community corrections (in that prisons were considered to be ineffective, inhumane and expensive), the primary element in the reform movement was the growing fiscal crisis of the state. This crisis occurred due to the unprecedented 'social organisation' of capitalist societies which effectively meant that there was a significant rise in expenditure on health, education and social security programs during the 1960s. Government spending also rose due to the unionisation of state employees which almost doubled the cost of institutional care in prisons and mental institutions (Scull, 1977). In the late 1960s, however, the maintenance of this welfare state became unsustainable and intense pressure was mounted to reduce public expenditure (Ball et al., 1988).

Scull (1977) asserted that the beginning of this economic crisis created by significant new expenditures was the catalyst that forced the state to increasingly employ cheaper alternatives to the traditional institutionalisation of deviants (mentally ill and prisoners) in mental institutions and prisons. Decarceration was supported by the fact that the mentally ill and criminals were for the first time provided with public housing as well as welfare payments while undergoing their 'treatment in the community' (Scull, 1977:152).

Theory of decarceration was based on an analysis of the USA prison population which between 1962 and 1970 was characterised by a steady reduction and a simultaneous increase in community based controls such as probation and parole (Scull, 1977). The same time period saw a reduction in the size of most mental hospitals and even the closure of several of them (including some juvenile reformatories) as well as a continuing increase in community based responses such as half-way houses⁵⁸ (Scull, 1977).

⁵⁸ Unlike today when half-way houses are used only for criminals as a part of their re-integrative post-prison process, they were used for both criminals and the mentally ill in the 1970s (Scull, 1977).

However, it should be noted that Scull's (1977) analysis missed the rapid growth of the prison population during the 1970s across the USA (USA Department of Justice, 1978 cited in Chan & Ericson, 1981).

Nevertheless, the historically unprecedented major shift in social control and practice resulted in deviants being "dumped back on the rest of us" in the community while they "received little or no supervision" (Scull, 1977:1). Scull (1977) illustrated this in the following statement:

For the criminal and delinquent, 'community corrections' has meant a further erosion of the sanctions imposed on their conduct. Not only are they steadily less likely to be caught in the first place, but if they do have the misfortune to be apprehended and convicted, their chance of receiving a prison term grows ever more remote. Instead they find themselves released on probation, 'supervised' by men coping with caseloads of one and two hundred persons. This allows the probation officer to give each case an average of ten or fifteen minutes' attention per week.

(Scull, 1977:2)

These 'inadequately supervised' offenders were placed in deteriorating inner-city neighbourhoods where caring and coping with them was problematic due to limited resources. In these 'delinquent ghettos' the extent of state intervention and expenditure substantially reduced (Scull, 1977). Consequently, the end of the golden age of controlled capitalism meant that cheaper ways of confinement became a necessity (Scull, 1977). The cycle of penal reform and reaction was governed by economic constraint which led to a less punitive outlook (Weatherburn, 1991).

While subsequent researchers generally regarded Scull's (1977) analysis of decarceration of mental patients as influential, his explanations of decarceration of criminal offenders were found to be problematic (Chan, 1992). More specifically, the criticisms were mainly centred on Scull's description and explanations of decarceration as a phenomenon (Chan,

1992). In particular, consequent researchers vigorously challenged “the ‘holy trinity’ of reform rhetoric” that community based sanctions are going to be less costly, more effective and humane in comparison to incarceration (McMahon, 1992:33). Matthews (1979) and Chan (1992) however rigorously criticised Scull’s (1977) entire study by for its sketchy data, methodological shortcomings, theoretical confusions and political impotence.

Extensive literature appeared disputing the notion that community-based corrections were successful in reducing the state’s costs. One of the first researchers to warn about the cost-effectiveness argument was Greenberg (1975). Based on an examination of the USA Departments of Corrections data where extensive implementation of community based sanctions had taken place, he concluded that “substantial budget cuts through decarceration seem slight” (Greenberg, 1975:6). This was due to the running costs in prisons being fixed and not able to fluctuate when there are less prisoners.

Other researchers generally supported Greenberg’s finding, explaining that savings are only marginal until the number of prisoners is substantial enough to affect the staffing of the facility or reduce the requirement for construction of additional facilities (Schmidt, 1994b; Polk, 1987). Weatherburn’s (1991) analysis of the variable cost of imprisonment, such as prisoners’ meals and the cost of managing them, however illustrated that such costs are considerable and a diversionary program could have a significant impact on reducing them.

Hylton’s research (1982) had similarly challenged the assumption/finding that community based alternatives are cheap. Based on a meta-analysis of evaluations of non-custodial sanctions in the USA he reported that, while a simple comparison between the ‘per offender’ costs of incarceration versus a community based disposition is generally going to conclude that community based supervision is cheaper. This is often misleading since the low costs of community based sanctions often reflect the lack of quality of the services provided (Hylton, 1982:364-365). To illustrate this point Hylton (1982: 364-365) asserted that:

the assessment of the costs associated with community corrections is much more complex than usually suggested by proponents ... When complex factors are considered, it becomes clear that in many instances financial savings do not accrue from community programs; where savings are achieved, it is often because program objectives have been sacrificed... It [also] seems reasonable to suggest that some of the portion of police costs, other security costs, court costs, and expenses associated with insurance claims, property loss, medical care, disability payments, and the like, ought to be attributed to the policy of operating programs of correction in the community.

Matthews (1979) supported this conclusion stating that community based programs would be considerably more expensive if they provided appropriate rehabilitation programs that target various offender needs such as drug use, psychiatric issues and lack of educational/vocational skills. If indirect costs, even though these are not borne by the correctional system, were also somehow included in the overall cost of community corrections, the costs would be more expensive than imprisonment (Hylton, 1982; Greenberg, 1975).

Cohen's (1979) findings were particularly damning, as he reported that government savings were impossible because decarceration had actually resulted in an expansion of 'new populations of offenders' in the criminal justice system. This argument was based on his statistical analysis of British and USA incarceration rates during the 1970s which were either steady or increasing. Furthermore, he found that increasing numbers of minor offenders who would have otherwise avoided incarceration were formally processed and placed on community based sanctions. Cohen explained that the problem was that community based sanctions had "become not alternatives at all but new programs which supplement the existing system or else expand it by attracting new populations" (Cohen, 1979:347). This pioneering finding was termed "widening of the net of social control," or 'net widening' for short (Cohen, 1979:347).

Chan and Ericson (1981) and Hylton (1982) agreed with Cohen's notion that there had been no cost savings, but in fact an increase in the use of community based penalties beyond the regular use of prisons. Chan and Ericson (1981) empirically proved this on the basis of their analysis of the official trend data of public expenditure statistics in Canada during the 1970s when community correctional programs were heavily implemented. Similarly, Hylton (1982), who had examined the effects of the introduction of community correctional programs in Saskatchewan (Canada) from 1962-1979, found that not only was there no reduction in the number of offenders incarcerated, but also that there was a three-fold increase in the number of people under state supervision. It was concluded that decarceration had turned out to be more expensive than institutionalisation as it was accompanied by a substantial growth of the criminal control apparatus (Hylton, 1982; Chan & Ericson, 1981). According to Chan and Ericson (1981:45) community based sanctions became "add ons" to the criminal justice system rather than genuine alternatives to incarceration.

It was no surprise that comparative research assessing correctional spending in Australia, Canada and the USA concluded that there had been an enormous increase in expenditure. For example, in Australia in 1968-69 combined correctional outlays were \$22 million and in 1981-82 they had increased significantly to \$276 million (Chan & Zdenkowski, 1986).

A number of studies have also pointed out that there is a lack of empirical support for the premise that community-based sentences are more effective than institutional punishments in reducing the crime rate. Cohen (1979:343) specifically reported that in Britain and in the USA during the 1970s "no community alternative to imprisonment had proven to be more effective in reducing crime (through preventing recidivism) than imprisonment". Hylton (1982) supported this finding after conducting a meta-analysis of existing evaluations of non-custodial sanctions throughout the Western world. He emphasised that by 1982 no Western country which had widely adopted community based programs was reporting substantial reductions in crime or

recidivism rates. Morris (1974) and Chan and Zdenkowski, (1986) similarly reaffirmed this finding by concluding that there was no substantial reduction in prisoner numbers and clearly no indication of prisons 'disappearing' anywhere in the world.

The lack of effectiveness of community based sanctions was attributed to the inadequacy of appropriate community based services and treatment for the vast majority of offenders on these sanctions. Blomberg (1980), who re-examined a number of studies that assessed the quantity and quality of services provided to those sentenced to community based dispositions in the USA, found that offender treatment was uneven and that offenders frequently did not receive the services that were ordered by the court. Hylton (1982) agreed with Blomberg (1980) concluding that it is not clear that clients generally receive adequate services in the community. Earlier Greenberg (1975) reported that even in cases where community based treatment was available it did not prove to be particularly effective, and at times it had a detrimental effect. Consequently, studies overwhelmingly suggested that community based sanctions do not rehabilitate offenders more effectively than prisons.

More generally, Greenberg (1975) explained that the community may not be the 'ideal' therapeutic place for offender treatment and rehabilitation as the offender 'got into trouble there' in the first instance. Consequently, when the offender is sentenced onto a community based sanction the criminogenic environment in which they may have lived still surrounds them. For example, past criminally-inclined associates and drug use could be the obstacles to compliance on these sanctions. Offender reintegration may be additionally difficult as "the community itself may have little desire to be reintegrated with its criminals" (Greenberg, 1975:5). He concluded that high rates of recidivism maybe the result of many complex factors in society, not simply inadequate treatment provision on the community based sanction.

The final argument that community based programs are more humane in comparison with correctional institutions had also been questioned by a growing body of evidence. Reviewing the operation of community based sanctions in the USA and Britain, Hylton (1982), Cohen (1979), and Greenberg (1975) collectively argued that for many offenders being on a non-custodial sentence is more similar than dissimilar to being in prison. For example, Cohen (1979), in discussing the blurring of boundaries between institutional and non-institutional punishments, emphasised that halfway houses have rules which are very similar to the rules imposed in institutions. He concluded that sometimes it was very difficult to distinguish between the experiences of the two sanctions. This argument was also illustrated by Greenberg (1975:8-9):

the substitution of a halfway house or group home for a prison or reformatory is not “deinstitutionalisation” but the replacement of one institution by another... When freedom from supervision can be reached simply by walking away, and is therefore a constant temptation, some halfway house residents may find contained residence in the house even more irritating than the prison. Indeed, male ex-prisoners released to halfway houses in several large cities have indicated to the author that they had initially accepted halfway house placement with the expectation that it would be an improvement on prison, but later found they had been mistaken.

It is no surprise that many offenders reported being ‘resentful’ soon after being placed in a half-way house, as strict regulations were imposed on them, including abstaining from drugs, alcohol and sexual activities, as well as adhering to a strictly enforced curfew (Greenberg, 1975). Compliance with being ‘half-free’ and resisting the constant temptation of freedom, which can be reached by simply walking away, was reported to be particularly difficult for offenders (Greenberg, 1975). Conditions imposed on offenders on community based sanctions, which seem to favour punitive goals as opposed to rehabilitative goals, often resemble the features of custodial sentences which they were originally designed to replace (Cohen, 1979).

By the early 1980s therefore the available evidence indicated that all three principal arguments presented to maintain the widespread adoption of community based programs were dubious (Chan & Zdenkowski, 1986). In particular, there was clearly no indication of community based programs being more humane and effective than prison and leading to reduced correctional outlays (Hylton, 1982; Chan & Ericson, 1981; Scull, 1977). As Hylton (1982:372) concluded:

Community programs have not reduced reliance on correctional institutions; instead, they have served to expand greatly the proportion of the population under state supervision. While many clients are channelled into services that are inexpensive to operate, the social control apparatus as a whole has expanded and the costs associated with the maintenance of social order have continued to increase.

Hence, the widespread introduction of community based sanctions throughout the 1960s and 1970s widened the net of social control and increased correctional outlays (Hylton, 1982; Cohen, 1979). This led to the 'get tough on crime' philosophy.

2.3.4 'Get tough on crime', phenomenal prison overcrowding and escalating cost

A multitude of factors throughout the 1970s contributed to the subsequent 'get tough on crime' policy and unprecedented prison overcrowding crises in the USA and Australia.⁵⁹ In the USA it began in the early 1970s with the rampant increase in crime and acts of civil disobedience against the USA's involvement in the Vietnam war in major cities throughout the country (McCarthy et al., 2001; Dean-Myrda & Cullen, 1998; Gibbons, 1992; Hartjen, 1992; Morris, 1988; Petersilia, Turner, Kahan & Peterson, 1985). Interestingly enough, the increase in crime was not 'actual' as, according to victim surveys,

⁵⁹ Prison overcrowding however was not a new phenomenon in corrections. As Morris (1988:5) eloquently summed up "after all, it was the overcrowded prison and hulks of 18th century England, combined with the revolutionary fervour of the dissident colonial Americans, that brought the First Fleet here (to Australia) two hundred years ago."

it was the *reporting* of crime that was rising dramatically, not the actual commission of criminal acts (Kennan, 1987). Further, it is worth noting that new categories of crime were established and crime was generally being better detected and prosecuted than in the past (Kennan, 1987). Property crime in fact made up 80% of all reported crime during this time. This substantial increase coincided with the global economic instability that was characterised by high inflation, low economic growth, high unemployment, and public sector deficits as well as the increased use of illicit drugs (Steger, 2003; McCarthy et al., 2001; Holten & Handberg, 1990).

Despite the fact that the type of crime that was escalating was overwhelmingly property crime, combined with acts of civil disobedience, the media cultivated the community's fear of crime by highlighting isolated cases of sensational and terrifying violent acts. This led to an unfounded national concern about soaring violent crime and the community changing their lifestyles in order to avoid serious victimisation (Lurigio & Petersilia, 1992; Burns, 1975). Traditionally held punitive sentiments towards offenders were easy for the media to ignite. As Ranaulf (1964, cited in Greenberg 1975:24) described:

Those who have hoped that the public would forgive and forget have not considered that there may be social-psychological sources to the desire to punish which cannot be simply wished away.

As a result, the public demanded the harsher treatment of criminals (McCarthy et al., 2001; Dean-Myrda & Cullen, 1998; Gibbons, 1992; Hartjen, 1992; Morris, 1988; Petersilia et al., 1985). The judiciary was fiercely criticised as it was believed that it was too lenient in sentencing offenders. Instead it was argued that more stringent sentences, predominantly incarceration, needed to be imposed (Burns, 1975). In particular, incarceration of offenders, based on just deserts [spelt also as just desserts] principles, was favoured. This is however contrary to the purpose for which the prison was initially established (Dawes, 1988). The modern prison, which was invented in the late 18th century by the Quakers of Pennsylvania, was in fact based on humanitarian and rehabilitative principles, thus replacing corporal punishment

(Dawes, 1988). Morris (cited in Dawes, 1988:63) described it most eloquently as “a gift born of benevolence not malevolence, of philanthropy not punitiveness.”

In addition, negative community based and rehabilitative program evaluations appeared in the mid-1970s, exacerbating the growing cynicism regarding the effectiveness of correctional treatment. This resulted in a decline in enthusiasm for offender rehabilitation (McCarthy et al., 2001). The most renowned such study in the rehabilitation literature is summarised as ‘nothing works’ (Sarre, 2005:164). It was actually an article written by the infamous Robert Martinson, who was part of a research team⁶⁰ that explored the effectiveness of USA correctional rehabilitative programs. This study employed the technique of ‘meta analysis’ to systematically re-analyse 231 studies of rehabilitative programs. These studies were carefully selected on the basis that they were conducted in a time period between 1945 and 1967 in the USA and were all determined to be methodologically rigorous (McMahon, 1992:16). Martinson’s study update, which became one of the most frequently quoted articles in rehabilitation literature, titled ‘*What works? Questions and answers about prison reform*’ (1974:25 cited in Sarre, 2005:162), concluded that “with few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism”.

Even though the subsequent final report (by Lipton, Martinson & Wilks, 1975) negated ‘closing the rehabilitation door’ (Holt, 1998), and Martinson himself later re-affirmed the value of offender rehabilitation (cited in Sarre, 2005), rehabilitation’s demise was secured. This was because Martinson’s (1974 cited in Sarre, 2005) preliminary finding that the rehabilitation ideal had failed was quickly embraced by both sides of USA politics and widely publicised. In particular, liberals (democrats) initially felt confused about the failure of community based and rehabilitative programs. The conservatives (republicans) however quickly embraced these negative findings, proposing to

⁶⁰ In fact, Martinson subsequently joined Lipton and Wilks when they were well into the research (Sarre, 2005:164).

end lawlessness and increasing crime rates by 'getting tough' on offenders. As the community embraced conservatives' suggestions, the liberals also started to vigorously support them (Dean-Myrda & Cullen, 1998).

It was consequently believed that, if offender rehabilitation could no longer be legitimated by science, then there was no actual role for indeterminate sentencing, early release mechanisms or 'lenient probation'. As a result, an innately retributive public turned its complete attention to the strict penalising of 'irreparable' offenders (Holt, 1998; Petersilia et al., 1985).

The escalating rates of crime and fear of crime, together with the presumed failure of the correctional rehabilitative ideal, resulted in the 'get tough' approach to sentencing of offenders in the late 1970s and 1980s (Ball et al., 1988:32). The most profound legislative amendment was at a Federal level by the conservative Regan administration⁶¹ - the *Sentencing Reform Act (1984)* - requiring 'truth in sentencing', with the main intention to teach offenders that 'crime does not pay' (McCarthy et al., 2001).

The shift in federal sentencing policy pragmatically influenced state policies in every USA state. They amended their policing, prosecutorial and judicial practices to be based on severity as opposed to leniency (Holt, 1998; Corbett & Marx, 1992; Morris, 1988). This was achieved through a number of specific reforms including the abolition of early release, mandatory minimum sentences⁶² and determinate sentencing⁶³ (Holt, 1998; Lurigio & Petersilia, 1992).

Long-lasting, strictly-deprivative incarceration was supposed to not only deter offenders from re-offending, but also to prevent those contemplating criminal

⁶¹ Ronald Regan was the President of the USA from 1981 until 1989. During this time his administration implemented numerous punitive correctional policies (McCarthy et al., 2001).

⁶² Under mandatory sentencing, regardless of the circumstances of the case and offender's background, a minimum sentence to be served in prison is dependent on the crime committed (Schmidt, 1994a). For example, the minimum prison time to be served by violent offenders usually increased to 85% (Holt, 1998).

⁶³ Sentencing indeterminacy, prior to being terminated, was used as a traditional way to reduce and control prison crowding (Alarid et al., 2008; Tonry & Lynch, 1996; McCarthy et al., 2001).

conduct from engaging in it (Dean-Myrda & Cullen, 1998). Therefore, the overarching belief was that the 'war against crime' would be won if the criminal justice system collectively treated offenders punitively by imprisoning them (Braithwaite, 1988). Criminologists at the time however argued that the war on crime can only be won by engaging offenders in various pro-social community based initiatives, that is, schools, churches, playgrounds, work places and homes (Braithwaite, 1988; Carlson, 1988; Morris, 1988). In particular, Braithwaite (1988:56) 25 years ago stated that "the major elements of victory will be employment, education, health welfare and more equal social and economic opportunities for all citizens." As predicted, 'war on crime' has not been won by simply incarcerating offenders. Community based reintegrative initiatives have delivered much better outcomes. (For more information see Clear, 2007; Clear & Cole, 2003).

Nevertheless, the difficulty was that politicians were elected on the basis of two opposing ideologies - getting tough on crime as well as reducing the burden on taxpayers (Clear, 1997; Cochran, 1992). So, the community wanted offenders to be punished by being incarcerated but without an increase in their taxes⁶⁴ (Carlson, 1988). This meant that, in practice, "everyone wanted an ever-increasing piece of a constantly shrinking fiscal pie" (Cochran, 1992:309). Escalating prison funding throughout the 1970s had come "at the expense of having to reduce funding for schools, roads, economic development, health care, and other priorities" (Clear & Dammer, 2003:101). A significant problem with this change in the allocation of expenditure was that an actual investment (as opposed to reduced spending) in health care, education, housing and employment would have probably reduced the number of criminogenic situations and had a considerable and lasting effect on crime and delinquency (Morris, 1988).

The get tough on crime policy resulted in longer-term incapacitation and soon lead to a tremendous strain on the existing prison system (Lilly, Ball, Curry &

⁶⁴ In addition, the community also did not want prisons being built in their neighbourhoods. In fact, popular opinion was held that they should be constructed as far as possible in sparsely, populated/unpopulated country areas (Carlson, 1988).

McMullen, 1993; Corbett & Marx, 1992; Gibbons, 1992; McCarthy, 1987). Throughout the 1970s and 1980s the prison populations in the USA kept spiralling out of control (Whitfield, 1997; Tonry & Lynch, 1996). Hylton (1982:343) encapsulated this view as follows:

The American Correctional Association reported in 1980 that numbers in state and federal institutions had reached an all-time high for the fifth consecutive year. State and federal prison populations reached 310,000 that year, a 58 percent increase over the figures for 1970, while the United States population increased by less than 10 percent in the same period.

Between 1975 and 1985 the prison population grew 10 times faster than the general population, that is, it doubled, so prison overcrowding not surprisingly became rife (Gibbons, 1992; Braithwaite, 1988). This occurred despite the fact that “old and discarded buildings were once more being reopened and crammed with prisoners” (Hylton, 1982:343). A crisis point was reached in the 1980s, as prison operating capacity met less than one third of required bed space (Wilson, 1998; Austin & Krisberg, 1982).

During this time, rates of imprisonment had been escalating in almost every English speaking democracy (Morris, 1988; Richards, 1988; Vodanovich, 1988; Kennan, 1987). However, it is interesting to note that the proliferation of stricter laws in the USA during the 1970s and 1980s comparatively resulted in the exclusion of more people per capita from their communities in prisons than in any other Western country (Lurigio & Petersilia, 1992; Morris & Tonry, 1990; Lilly, 1989). This comparative disparity in rates of imprisonment between the USA and other Western countries has continued to this day (Cole, 2011; Reichel, 2008; Roth, 2005).

The escalation in punitiveness that was created by the ‘get tough’ rhetoric in the 1970s is still generally operational despite the fact that it has not been justified on any theoretical grounds, nor have any social benefits been served by it (Clear & Dammer, 2003; McCarthy et al., 2001; Clear, 1997; Clear,

1994). However, during the last few years there have for the first time been indications of more reasonable crime and justice policies in the USA, such as the justice reinvestment movement, resulting in actual flattening out of the incarceration rate and even its reduction in state prisons (Cole, 2011; Guerino, Harrison & Sabol, 2011). The shift in policies has been the result of states' inability to finance growing prison populations due to the country's economic downturn as well as global instability (Brown & Schwartz, 2011; Clear et al., 2006; Tonry, 2004).

A substantial number of prisoners took legal action in the 1980s, arguing that overcrowding in prisons violated the eight-amendment of the USA Constitution which prohibits cruel and unusual punishment. The Federal courts agreed that the overcrowding crisis contravened the USA Constitution and subjected 40 states (particularly those in the south of the country) to judicial orders limiting their prison population and making it mandatory for them to address overcrowding (Whitfield, 1997; Schmidt, 1994a; Walker, 1991; United States General Accounting Office, 1990; Petersilia, 1987; Austin & Krisberg, 1982).

The most problematic consequence of the get tough approach was that the 'incarceration binge' quickly meant 'going broke' (Braithwaite, 1988; Petersilia, 1987). Between 1960 and 1980 spending on corrections more than doubled, and in the following 10 years it doubled again (Whitfield, 1997; Braithwaite, 1988). More demanding prison standards and increasingly expensive prison construction and operation meant that the USA could not build new prisons fast enough to keep pace with the increasing number of offenders being sentenced to incarceration (Whitfield, 1997; Walker, 1991; United States General Accounting Office, 1990). It must be remembered that while the initial costs of construction and the conversion of prison space were expensive, long-term operational expenses were even more astronomical (Carlson, 1988).

[Even] politicians were starting to admit (though often not in public) that they could not build their way out of the problem when the capital cost

of each new cell was \$75,000 and revenue costs of \$14,000 per prisoner per year had been reached.

(Whitfield, 1997:35)

The fact that prison overcrowding reached epidemic proportions, coupled with policy makers' inability to finance the rapid building of new prisons, invariably resulted in increased sentencing of serious offenders onto community based sentences (McCarthy, 1987). (For more information see section 2.3.5).

Unsurprisingly, a very similar situation was taking place in Australia. Despite the fact that the specific type of crime that was officially increasing significantly was property crime (Gerkens, 1987), the public's general perception of crime became dominated by violent crimes as reported by the tabloid media. It should however be noted that in Australia, similarly to the USA, it is most likely that the 'actual' crime rate was not drastically increasing, but people were more likely to report crime so the official crime rate was increasing dramatically (Kennan, 1987). In addition, as mentioned earlier, crime was generally better detected and prosecuted than in the past (Kennan, 1987). Dramatic reporting of victimisations resulted in increasingly vocal lobbying for perpetrators of crime to be safely locked away (Richards, 1991; Nicholson, 1988). This resonated with the public and in turn meant that they became so concerned about the incidence of violent crime and the fear of becoming a victim, that they wanted to punish all offenders harshly (Patmore, 1991; Vodanovich, 1988). Research has however shown that it is generally a false notion that victims of crime are comforted and mollified by increased punishment of the offender (Stoneman, 1991).

Increased public antipathy towards crime and criminals created a climate where the prevailing mood was in favour of 'getting tough' toward offenders, and the imposition of harsher law enforcement and penal policies (Biles, 1996; Weatherburn, 1991; Gerkens, 1987). Community's "right to feel secure and protected from crime" was solely equated with sentencing of offenders to lengthy terms of incarceration (Hunt & Woodberry, 1987:52). This was despite

equivocal evidence that did not support imprisonment as a method of crime prevention (Lobban, 1987; Zdenkowski, 1987). Gerkens (1987), Kennan (1987) and Zdenkowski (1987) however criticised the significant influence of the 'media reported public opinion,' arguing that it usually comprised the vocal minority, those usually uninformed, due to a lack of access to detailed and accurate information about sentencing matters. A recommendation was made to set up an independent body that could gauge informed public opinion and that would more appropriately guide policy making in the criminal justice sphere but this did not eventuate for some years⁶⁵ (Kennan, 1987).

The community's perceived leniency of the criminal justice system resulted in bipartisan political support in most jurisdictions across Australia to increase prison sentences by abolishing remissions for good behaviour and early licence releases. More specifically, legislation encompassing USA slogans such as 'truth-in-sentencing'⁶⁶ or 'real time sentencing' and 'three strikes and you're out' was implemented (Biles, 1996; Richards, 1991; Stoneman, 1991). Further,

expert reviews of the role of sentencing suggested that 'just deserts' should be the primary aim of sentencing policy and that the aims of deterrence and rehabilitation are relevant but secondary (Australian Law Reform Commission, 1988). Thus, 'just punishment' which stresses proportionality, certainty and limited executive discretion restricts the extent that sentencers can pursue deterrent or rehabilitative purposes.

(Broadhurst, 1991:25)

The reform process throughout Australia was therefore aimed at reconstructing penalties and curtailing release discretion to enhance certainty

⁶⁵ It was not until 2004 that the independent statutory body titled the 'Sentencing Advisory Council' was established in Victoria. Its main role is to inform the community about sentencing issues and to advise the government and courts about community perceptions (Sentencing Advisory Council, 2012).

⁶⁶ For example, in New South Wales the extra punitive power granted by the 'truth in sentencing' laws is seen in the minimum percentage of the total sentence to be served in prison for life sentences trebling from approximately 25% to 75% under the new minimum term (Stoneman, 1991).

and significantly reduce early release options, such as parole eligibility for offenders (Broadhurst, 1991; Kennan, 1987). The abolition of a pre-existing safety valve to reduce overcrowding in prisons resulted in a prison overcrowding problem for Australian jurisdictions which was very similar to the aforementioned situation in the USA (Stoneman, 1991; Gerken, 1987).

A potent combination of punitive attitudes and sentencing practices led to escalating rates of imprisonment⁶⁷ and acute prison overcrowding in all mainland states in Australia (Biles, 1996; Owston, 1991; Stoneman, 1991; Lay, 1988a; Vernon, 1987; Zdenkowski, 1987). For example, in Victoria, which has had a traditionally relatively low incarceration rate, prison numbers grew by almost 100% in a three-year period from 1984 to 1987 (Kidston, 1987). As the sheer number of offenders overwhelmed the resources of space and personnel, consuming more and more scarce state funding, the search for solutions to the problem became a necessity (Patmore, 1991). A quick resolution was also crucial because overcrowding neglected prisoners' human rights and impacted on the safety and well being of correctional personnel (Hunt & Woodberry, 1987).

There were two possible solutions to the overcrowding crisis. The first was building more prison space. In capital costs during the 1980s each new cell cost between \$130,000-\$200,000 (depending on the security level of the prison) and the annual cost of keeping each offender had reached about \$33,000 (Lay, 1988a; Kennan, 1987; Kidston, 1987; Vernon, 1987). It should be noted that the cost of prison construction and operation in Australia has traditionally been much more expensive than in the USA. This is due to Australia having a much lower incarceration rate per 100,000 adult population, much smaller prison capacities, more expensive construction costs and

⁶⁷ Studies have repeatedly shown that there are vast differences in imprisonment rates (prisoners per 100,000 of the adult population) among the Australian states and territories (Biles, 1996; Walker, 1991). For example, the most substantial variations are found among the territories - the Northern Territory rate is nearly always 9 or 10 times higher than the rate for the Australian Capital Territory and, among the states, the Western Australian rate is between 2 and 3 times higher than the Tasmanian rate (Biles, 1996). An explanation for this disparity is that Aboriginal people, who make up the majority of the prison population in both the Northern Territory and Western Australia, are 15 times more likely to be imprisoned than non-Aboriginal people (Dawes, 2003).

generally better conditions in prisons (Reichel, 2008; Stephan, 2004; Haney, 2001).

The second solution was imposing a moratorium on the building of more prison space and adopting policies to reduce prison crowding, that is, somehow control increasing numbers of offenders outside the parameters of prisons (Patmore, 1991; Lay, 1988a). At the time the cost of community based programs was comparatively far less - \$1,800 per offender per year. When the impact of unpaid community work was taken into account the cost was even lower (\$1,230) (Kidston, 1987).

The economic imperative meant that correctional administrators formulated a strategy to expand the use of community based dispositions in order to divert offenders away from imprisonment and thereby alleviate prison overcrowding (Richards, 1988; Hunt & Woodberry, 1987; Chan & Zdenkowski, 1986). Research had indicated however that a solution to the overcrowding crisis should involve a holistic approach by the entire criminal justice system - that is, apart from most obviously encompassing an overhaul of correctional practices, it should also include policing and courts practices because of their flow-on effects (Grant, 1987; Kidston, 1987; Vernon, 1987).

2.3.5 Ineffectiveness of existing community sentences

During the 1980s it became apparent that existing community based sentences in the USA were ineffective. At this time the criminal justice system was faced with an unprecedented situation – the critical nationwide level of prison overcrowding resulted in the courts being obliged to sentence significant numbers of felons to probation (Petersilia & Turner, 1993; Petersilia et al., 1985). Probation was however initially designed to supervise non-serious small caseloads of offenders who could be rehabilitated through a partially controlled life in the community. So, the National Institute of Justice sponsored the RAND Corporation to conduct the first-ever comprehensive

study of probation, in particular trying to determine what implications were associated with the placement of felons on probation.

The RAND Corporation subsequently reported that traditional probation was an inefficient and inappropriate sentencing disposition for serious offenders⁶⁸ (Burns, 1975). More specifically its findings indicated that about two-thirds of nearly 2,000 felony probationers who were tracked during its study⁶⁹ were re-arrested before their probation period had expired; over half of these were re-convicted, and over a third were re-incarcerated (Petersilia et al., 1985). These results clearly indicated that probation was not an effective sentencing disposition for felons, as they were highly likely to re-offend and compromise public safety. Despite this specific finding, RAND's widely accepted and disseminated study wrongly resulted in probation's overall loss of credibility (Tonry, 1990; Petersilia, 1987).

High breach rates of probation were to be expected as, instead of strengthening financial support for probation agencies to manage the increasing as well as complex clientele being sentenced to it, the allocated funds actually decreased. In fact, from 1975 to 1985, the probation population had increased by 70% while its allocated funding had decreased by 25% (Petersilia, 1985). Probation agencies consequently experienced serious financial difficulties, and were forced to reduce staff and specialised program initiatives (Petersilia & Turner, 1993). The lack of funding also meant that probation officers were overburdened as they were increasingly allocated higher caseloads. This resulted in them being less able to supervise offenders or hold them accountable for their crimes (Petersilia, 2000; Petersilia et al., 1985). The budget reductions were the result of the community's punitive

⁶⁸ There were however earlier reports outlining the overall inefficacy of probation. For example, as early as 1967 the President's Commission on Law Enforcement and Administration of Justice reported that most probationers (in fact 76% of misdemeanants and 67% of felons) received only ten-to-fifteen minute interviews with their officer once or twice a month. The Commission therefore concluded that probationers were denied appropriate counselling and supervision which are the main goals of probation (Ball et al., 1988).

⁶⁹ These felons were from Los Angeles and Alameda counties in California and they were tracked for a period of up to 40 months (Petersilia et al., 1985).

mood and politicians' reluctance to support anything apart from the 'tough on crime' position (Petersilia et al., 1985).

The RAND study concluded with specific recommendations on what the criminal justice system should do to rectify the ineffectiveness of probation. More specifically, the increasing number of serious offenders whose complex needs could not be managed under the current probation framework. The researchers believed that increased funding for probation alone could not alleviate the issues that were associated with its operation. Probation was said to "need a new, formal mandate that establishes its mission and recognises the kinds of offenders it now faces" (Petersilia et al., 1985:xi). Further, it was recommended that a spectrum of community based alternatives to prison be developed; most importantly, it needed to encompass a new 'reliable' intermediate punishment for felons (Petersilia, 2000; Petersilia et al., 1985)

An 'offshoot study' found that parolees had similarly high recidivism rates as probationers (Petersilia, Turner & Paterson, 1986). Researchers identified 511 probationers from the original sample of nearly 2,000 felony probationers in California and matched them with 511 parolees on the basis of similar background and criminal characteristics (Petersilia et al., 1986). When the recidivism rates of these two groups of offenders were compared two years post sentence the outcome was that parolees had higher rates of recidivism and offended more quickly than probationers, although their crimes were not comparatively more serious. In particular, 72% of the parolees versus 63% of probationers were re-arrested, and 47% of parolees were incarcerated compared with 31% of the probationers (Petersilia et al., 1986). Having a period of incarceration immediately prior to the community based disposition was associated with a higher probability of recidivism (Petersilia et al., 1986). The reason behind the high recidivism rate was that similarly to probationers, parolees were also inadequately supervised because of limited resources. The recommendation was to expand the range of community based sanctions available for felony offenders (Petersilia et al., 1986).

Very similar findings indicating unacceptably high parolee reoffending rates were reported by Beck and Shipley (1987). They based their conclusion on a study of almost 4,000 young prisoners (aged between 17 and 22) released from prison on parole in 22 states across the USA in 1978. The specific finding was that 70% of these offenders were re-arrested for a serious crime within 6 years after their release and about 50% were re-incarcerated (Beck & Shipley, 1987). A subsequent much larger scale study conducted by the same researchers indicated comparable findings. Of the 108,580 offenders released from prison on parole in 11 states in 1983, 62.5% were rearrested for a serious crime within 3 years of their release from prison (Beck & Shipley, 1989). Hence, extensive research throughout the USA indicated the inadequacy and/or failure of existing community based sanctions, that is, probation and parole, recommending that more effective community based sanctions be established.

In Australia, mainly state-level procedural as well as effectiveness related criticisms were levelled at parole and probation. The strongest condemnation came from the Nagle Royal Commission into New South Wales prisons in 1978. Nagle produced a scathing analysis of the operation of the Parole Board for its inadequate reasoning, non-availability of written decisions, lack of operational principles, and absence of an offender's right to appear and be heard (Nicholson, 1988). Subsequently, in 1980, Interim Report Number 15 of the Australian Law Reform Commission on the sentencing of federal offenders recommended 'the abolition of parole' (Nicholson, 1988). The main reason for this recommendation was that offenders were paroled on the basis of unfairness and inconsistency having served much shorter periods in prison when compared with the original sentences imposed by the judiciary. The Final Report of the Australian Law Reform Commission, Number 44, published in 1988, however took into account the need to retain parole as a community based sanction, and parole was said to have some merit (Broadhurst, 1991). Nevertheless, the first two critical reports were the start of the community's perception of parole as a 'charade' (Nicholson, 1988).

In 1987, the Victorian Sentencing Committee disagreed with earlier criticisms that were aimed at the operation of parole. It specifically asserted that the Parole Board cannot interfere with judicial sentencing authority, as its discretion is limited by the judiciary's control over the maximum and minimum sentence imposed on an offender (Nicholson, 1988). More specific issues with the operation of parole, similar to the ones reported in New South Wales, were however uncovered. These included:

That its proceedings are conducted in secrecy and parole decisions which affect the liberty of the individual are not revealable. The general criteria applied by the Parole Board are not readily available either to prisoners or the public. The parole procedure does not fully utilise the facilities available to the community to assist the re-integration of the offender into the community through the community based programs of the Office of Corrections.

(Nicholson, 1988:49)

Further research in Victoria revealed that, similarly to parole, the operation of probation was also problematic. There were substantial variations in the amount of supervision that individual offenders received on both parole and probation. Very few probationers and parolees, only those that presented as very difficult, were appropriately supervised. Most were not supervised at all and were not even allocated supervising officers (Kidston, 1987). These inequities led to legal complaints, particularly when offenders were charged with breaches of their orders (Richards, 1988).

A study which specifically measured the effectiveness of parole in Western Australia over a 20 year period found that the vast majority of offenders complied with its restrictions. In particular, about 70% of offenders successfully completed their parole period, whereas about 30% committed technical violations and/or reoffended (Vodanovich, 1988). Similar results were reported in New South Wales where, in a randomly selected sample of 400, offenders 60% successfully completed their parole period (Porritt, 1988).

The rates of failure were nevertheless considered to be unacceptably high and a steady stream of criticism was levelled at parole from both the media and some politicians. As a result, public confidence in the operation of parole continued to be low (Vodanovich, 1988).

In South Australia and New South Wales, researchers explored whether being supervised on parole versus receiving no community based supervision positively affected subsequent recidivism rates. In South Australia, recidivism rates were compared between two offender groups in a sample of 866 offenders (Morgan, 1988). The first group was selected parolees and prisoners who were released without any community based supervision, and the second group was offenders released on parole with mandatory supervision. Three years post sentence completion the reoffending rate for offenders who were not receiving any community based supervision was 62% versus 59% for those who were paroled (Morgan, 1988). Similar findings were reported in New South Wales where a two year follow up of a sample of 762 offenders indicated that paroled prisoners had only marginally lower recidivism rates than those who were released unconditionally (Broadhurst, 1991). Hence, the differences between paroled and non-paroled groups were found to be insignificant.

Throughout Australia, community based correctional programs, probation and parole, lost considerable credibility due to questionable administration as well as effectiveness (Broadhurst, 1991; Grant, 1987). As a result, all jurisdictions needed to implement radical changes if community based dispositions were to regain credibility and support (Nicholson, 1988; Vodanovich, 1988; Kidston, 1987). It was also suggested that, as in the USA, more reliable community based alternatives needed to be introduced into the sentencing hierarchy (Kidston, 1987).

2.4 Conclusion

This chapter critically described the development of the early and the middle phases of HDBS across the USA and Australia. The early phase of HSBS

essentially comprised of relatively tentative and small-scale application of probation and parole from the 19th century until the middle of the 20th century. During this time the ideological and legislative groundwork for community based sentences was laid. The supervision of offenders was based on humanistic and rehabilitative principles. It was not however until the next phase of HDBS, the middle phase, that stakeholders both in the USA and Australia shifted their paradigm of punishment away from incarceration toward community based dispositions (Chan & Ericson, 1981; Scull, 1977).

The middle phase of HDBS specifically comprised five converging factors that occurred during the 1960s and 1970s. The first showed imprisonment as an inhumane environmental setting which was ineffective and costly (Clear & Dammer, 2003; Enos et al., 1999). The second was the ideological shift away from the use of incarceration as the primary method of punishment and simultaneous development of community based sanctions. The third included critical debates about the rationale and the effect of the widespread introduction of community based sanctions, which was a significant part of the 'decarceration'. The fourth was the introduction of the 'get tough' on crime policies that resulted in overwhelming prison overcrowding and escalating cost that soon became unbearable. The fifth factor showed the ineffectiveness of existing community based dispositions, that is, probation and parole. These factors collectively propelled the introduction of the late much more substantial phase of HDBS, which is discussed in two forthcoming chapters (Chapter 3 and Chapter 4) (Tonry, 1990; Blomberg et al., 1987).

Chapter 3 – Late phase of HDBS in the USA

We have punitive options outside of incarceration. The community corrections field can and does provide adequate oversight to supervise in such a way that public safety is not hampered. Despite periodic reports of “parole does not work” (Solomon, Kachnowski, and Bhati, 2005), and media reports of probation failures, let’s remember that a prison stay rarely has pro-social transformative effects. That is, if by ‘work’ we are referring to recidivism, then we already know that individuals released from prison are typically rearrested.

(DeMichele & Payne, 2009:11)

3.1 Introduction

As illustrated above by DeMichele & Payne (2009), community based sanctions are continually compared to imprisonment, the cornerstone of the present penal system and the most feared sanction due to its stringent deprivations, and they face an ongoing challenge. This challenge is to provide sufficient penalties and restrictions so they are appropriate alternatives to imprisonment for some offenders. Some community based dispositions, such as HDBS with RF and HDBS with GPS, have the propensity to be onerous. In addition, if these sanctions are appropriately implemented and resourced they typically elicit more positive outcomes in comparison with prisons such as lower cost and lower recidivism (Bales et al., 2010a; DeMichele & Payne, 2009; Clear, 2007).

This chapter critically discusses the currently operational late phase of HDBS in the USA only. The late phase of HDBS in Australia is discussed in a separate chapter because its development and proliferation took two somewhat diverging pathways and as a result had varied outcomes (see Chapter 4). The late phase of HDBS in both nation states was the result of the middle phase that most significantly entailed the ‘get tough on crime’ policy

that led to enormous prison crowding and budgetary restraint, and ineffectiveness of current community based dispositions, probation and parole (see Chapter 2).

This chapter consists of two themes in which information is generally presented chronologically. The first theme in this chapter critically describes the operation of the late phase of HDBS in the USA. The first sub-theme is the development of HDBS with RF, which were implemented throughout the USA as a part of intermediate sanctions in the 1980s (Petersilia, 1998; Clear & Hardyman, 1990). Rehabilitative ideals were turned into punitive courses characterising offender supervision by strict and close surveillance and monitoring (Petersilia, 1998). The second sub-theme is the development of HDBS with GPS, which was initiated by the expansion of sex offender post-release supervision laws in the mid-2000s. These surveillance-oriented sanctions are applied on serious sex offenders in order to increase public safety and/or divert them from imprisonment due to prohibitive costs of building and sustaining prisons (Bales et al., 2010a; DeMichele & Payne, 2009). Currently, the number of offenders on HDBS with GPS is close to the number of offenders on HDBS with RF and it seems that it will overtake it in the near future (DeMichele & Payne, 2009).

The second theme discussed in this chapter is the assessment of outcomes of the late phase of HDBS in the USA. More specifically, HDBS with RF as well as HDBS with GPS are separately analysed in relation with 4 sub-themes – operational results, ethical issues and dilemmas, legal issues and dilemmas and political and stakeholder issues and dilemmas. The last three decades of evaluative research of HDBS with RF have indicated problematic operational outcomes as well as significant ethical and political and stakeholder issues and dilemmas. On the other hand, HDBS with GPS have been operationally more successful, but research assessing some of their ethical and overall political and stakeholder issues and dilemmas has been lacking. Despite their individual problems, HDBS with RF and HDBS with GPS have both become integral components of the correctional continuums across the USA (Clear et

al., 2006; Clear & Dammer, 2003; Fulton, Latessa, Stichman & Travis, 1997; Tonry, 1990).

3.2 Late phase of HDBS – Operation (1982-2013)

The following section of the research provides a comprehensive exploration of the historical development of contemporary HDBS in the USA. The mode of community based supervision on HDBS has primarily been based on strict offender punishment and the enhancement of public safety.

3.2.1 Historical development and proliferation of intermediate sanctions

The late phase of HDBS commenced in the 1980s when it became apparent that the major diversion of offenders to non-custodial settings was essential (Clear & Hardyman, 1990; Petersilia, 1987). As mentioned in Chapter 2, this was mainly propelled by the prohibitively high capital and maintenance costs of prisons and the overwhelming institutional crowding (McCarthy et al., 2001; Carlson, 1988; McCarthy, 1987). Financial pressures meant that more responsible governmental decision-making practices were established. In particular, public accountability and corporate management principles were setup in government agencies. These primarily aimed to increase the effectiveness and efficiency of government expenditure as it became subject to severe constraints (Joutsen & Zvekic, 1994; Tulett, 1991). As King (1991) asserted, governments had, for the first time:

been forced to examine what services we provide, why we provide them, whether they could be provided more effectively or efficiently by someone else, whether the costs outweigh the advantages, and whether the community really wants or needs the service in the first place.

(King 1991:101)

The establishment of 'intermediate sanctions'⁷⁰ – largest ever community based sanctions development – consequently aimed to offer jurisdictions a viable means of diverting prison-bound offenders and thus ensuring that prison space is utilised more effectively and efficiently (Carlson, 1988). The new spectrum of sanctions represented mid-range punishments for offenders for whom imprisonment was unnecessarily severe and traditional probation was inappropriately light (Petersilia, 2000). The overarching term 'intermediate sanctions' encompasses all community based sanctions that lie somewhere between imprisonment and probation on the criminal justice continuum; these include HDBS, half-way houses and boot camps (Champion, 2008; Petersilia, 2000; Petersilia, Turner & Deschenes, 1992; Byrne, 1990; McCarthy, 1987).

Although 'intermediate sanctions' usually operate as 'alternatives to imprisonment' the title 'intermediate sanctions' was chosen to represent them due to two reasons. First, unlike 'alternatives to imprisonment,' 'intermediate sanctions' is a broader term that encompasses a variety of sanctions that involve a short period of incarceration. Second, the term 'intermediate sanctions' is considered to be 'politically neutral' as opposed to 'alternatives to imprisonment' which is said to contain politically liberal bias (Schmidt, 1994a).

However, the portrayal of intermediate sanctions as 'alternatives to imprisonment' was difficult for the community to accept (Dean-Myrda & Cullen, 1998). This ideological problem occurred because all community sentences were originally therapeutic in nature and designed only for minor offenders to keep them out of prison (Carlson, 1988; Lobban, 1987). Further, it was too difficult for the community to accept these new, albeit 'tougher,' community based sanctions as being adequately retributive for offenders who may have committed serious offences (Carlson, 1988; Hunt & Woodberry, 1987; Lobban, 1987; Harry & Clifford, 1986). This is not surprising because, since its inception, incarceration has been overwhelmingly synonymous with

⁷⁰ The introduction of intermediate sanctions had been for a number of years advocated by prominent criminologists such as Morris and Tonry (1990), Petersilia et al., (1985) and Burns (1975).

punishment, so “the notion that law breakers deserve to suffer (i.e. be imprisoned) for their offences [was] a belief not easily abandoned” by the state or the community (Scull, 1977:135).

The new continuum of sanctions allows the judiciary to carefully match offenders to this “ladder of scaled punishments,” commensurate with the seriousness of their crimes (Morris & Tonry, 1990:227). This more appropriately satisfies “the just deserts concern for proportionality in punishment” (Tonry, 1998:80), and results in a “comprehensive, principled and even-handed system of punishment that does less harm and achieves greater decency and justice than present practice, with no loss in the prevention and control of crime” (Morris, 1988:10). Morris & Tonry (1990) however warned that intermediate punishments would not automatically be ‘alternatives to imprisonment’ as they could just as easily be alternatives to probation depending on how the judiciary applied them.

The [then] existing continuum of sanctions was considered to be inadequate as the judiciary faced a polarised choice between two extremes. Pragmatically, offenders had to be classified into two very different categories – serious offenders, who were to be imprisoned, and less serious offenders, who were to be placed on probation (Petersilia & Turner, 1993; Burns, 1975). The problem was that there was no ‘middle range’ of sentencing dispositions for those offenders who occupied the middle ground on the scale of severity of ‘just deserts’. Petersilia (1998) encapsulated this view:

This two fold division disregards the range of severity in crime, and as a result, sentencing can err in one direction or another: either it is too harsh, incarcerating people whose crimes are not serious enough to warrant a sanction this severe, or too lenient, putting on probation people whose crimes call for more severe punishment.

(Petersilia, 1998:68)

An updated sentencing continuum with a variety of sanctions between the imprisonment and probation seemed necessary. As the development of these sanctions was enmeshed in the politics of 'get tough' they were surveillance and control oriented. They were promoted to the public on the basis of enhanced public safety through strict offender control rather than as a form of treatment or a lenient sanction (Clear et al., 2006; Tonry, 1998; Joutsen & Zvekic, 1994; Carlson, 1988).

In addition, it was claimed that intermediate sanctions would 'solve' the most complex problems that the criminal justice system was facing (Dean-Myrda & Cullen, 1998). The expectations of intermediate sanctions were best summarised by Petersilia (1998:68):

- to save taxpayers' money by providing cost-effective alternatives to incarceration for prison-and-jail-bound offenders
- to deter offenders (specifically) and the public (generally) from crime
- to protect the community by exerting more control (than traditional probation) over offender behaviour
- to rehabilitate offenders by using mandatory treatment requirements, which are then reinforced by mandatory substance abuse testing and the swift revocation of violators.

More generally, intermediate sanctions were promoted on the basis that they would allow less serious offenders to remain in the community, where they would be able to maintain family ties and continue to work (Joutsen & Zvekic, 1994). Consequently, offenders' readjustment to society is facilitated by using these sanctions, while offenders avoid the 'prisonisation' and/or contamination with more serious criminals (Gibbs & King, 2003a; Mays & Winfree, 2002; Petersilia & Turner, 1998).

Apart from these well-publicised 'stated purposes', it had been argued that intermediate sanctions also have a variety of other significant but underlying 'latent aims.' For example:

- to create correctional reform by providing judges with diverse sentencing options beyond the narrow choice of probation and prison
- to satisfy the public by introducing strict and punitive punishments
- to provide an opportunity for probation administrators to supervise offenders in a firm and comprehensive manner (Lurigio & Petersilia, 1992; Tonry, 1990).

Subsequently, however, the literature has indicated that both the stated and latent expectations of intermediate sanctions were far-reaching and their goals were lofty, unrealistic and even in some respects contradictory⁷¹ (Clear, 1997; Petersilia & Turner, 1993; Petersilia et al., 1992; Clear & Hardyman, 1990). This was best summed up by Tonry & Lynch (1996:101) in the following terms: “like most propositions that seem too good to be true, this one was not true.”⁷²

3.2.2 Historical development and proliferation of HDBS

The first IPS programs, called HDBS in this research, emerged in the early 1950s. These were subsequently trialed on a larger scale in the 1960s and 1970s (Clear & Dammer, 2003). Offenders on these sanctions were subjected to very strict individualistic supervision on regular probation or parole (Deschenes et al., 1995; Lurigio & Petersilia, 1992; Polk & del Carmen, 1992; Clear & Hardyman, 1990). The ideology behind these early HDBS was that smaller offender caseloads would enhance the prospect of offender rehabilitation as supervising officers had more time for one-on-one counselling and other rehabilitative measures (Clear & Dammer, 2003; Lurigio & Petersilia, 1992). Nevertheless, various evaluative studies concluded that the recidivism rates of probationers/parolees in these HDBS caseloads were often higher and that these programs generated more technical violations

⁷¹ Similarly, since its establishment the prison has had a series of ambitious expectations from “Quaker ‘gateway to heaven’ concept, to the more recent magic box phenomena in which we claimed that we could manage rehabilitation – insert a criminal or convict, press a programme button, and extract a compliant citizen” (Braithwaite, 1988:55).

⁷² It is not within the scope of this research to explore the overall goals of intermediate sanctions in more detail, but the specific aims and the outcomes of HDBS will be specifically analysed in section 3.3 for the USA and in Chapter 4.3 for Australia.

than regularly supervised probationers/parolees (Clear & Dammer, 2003; Lurigio & Petersilia, 1992; Clear & Hardyman, 1990).

It should be noted, however, that offenders were assigned to these early caseloads based on the seriousness of their offence, prior record, or behavioural patterns. Their recidivism rate was then compared to the recidivism rate of less serious, regular probationers. Because none of the numerous extraneous variables was controlled, it is neither possible nor sound to attribute the rate of recidivism to any single variable.

(Polk & del Carmen, 1992:44)

In fact, these early evaluations of HDBS provided little accurate information about their actual efficiency. Nevertheless, the finding that close contact between the supervising officer and the offender does not guarantee greater success resulted in community correctional caseload sizes dramatically increasing during the 1970s (Polk & del Carmen, 1992; Clear & Hardyman, 1990). As a result, government funding soon dissipated and the first HDBS were quickly dismantled (Polk & del Carmen, 1992).

3.2.2.1 Inaugural HDBS

Despite a weak evidence base about HDBS, a subsequent set of HDBS trials commenced in the 1980s with enormous enthusiasm from correctional authorities, legislatures and even the public. It started with Georgia's implementation of the first well-publicised IPS program, called HDBS in this research (Petersilia, 2000). This sanction was piloted in 1982 in 13 of Georgia's 45 judicial sentencing circuits (Erwin & Bennett, 1987). It was designed as a 'front-end' alternative to imprisonment, the main objective being to divert high-risk but non-violent felons from over-crowded prisons, and to include regular probationers who needed greater supervision (Petersilia, 2000; Fulton, Stone & Gendreau, 1994; Petersilia, 1987).

The highest per capita incarceration rate in the USA and subsequent prison overcrowding in the late 1970s were the catalyst for Georgia's desperation to

devise a workable community based sanction (Champion, 2008). The prison overcrowding crisis in Georgia was eloquently explained by Erwin (1986:17):

Despite massive funding for new facilities [in the 1970s], prison population continued to outstrip capacity, resulting in gross overcrowding, huge backlogs of state inmates in local jails, Federal lawsuits, and serious budgetary pressures.

Offenders typically spent between 6 to 12 months in the intensively supervised HDBS and then a year on regular probation that imposed less stringent conditions (Byrne et al., 1989; Petersilia, 1987). Severe conditions and intensive contact between the supervising officers and the offender were imposed as it was believed that this would increase deterrence and simultaneously enhance the prospect of rehabilitation (Petersilia, 1987). The standard sanction conditions included:

- Four to 7 weekly supervision contacts
- adherence to an 8 hour a night curfew
- performance of community service (a minimum of 132 hours during the Order)
- payment of a supervision fee (\$10 to \$50 a month)
- full-time employment or enrolment in an educational/vocational program (Petersilia, 2000; Fulton et al., 1994; Erwin, 1987; Erwin & Bennett, 1987; Petersilia, 1987).

Additional restrictions such as further curfew times and unannounced drug or alcohol testing also could be imposed by the judge or the probation officer (Erwin, 1987; Petersilia, 1987). In late 1987 some jurisdictions in Georgia added electronic monitoring as an enhancement to the HDBS (Erwin, 1990).

Specific order conditions and the intensity of supervision steadily declined on the basis of three graduated phases. Once an offender had met all of the conditions of an earlier phase, they were moved to a later phase (Fulton et al., 1994; Byrne et al., 1989; Erwin, 1987). The first two phases were mandatory

and offenders spent a minimum of three months in each one. The length of the third phase was unspecified and had to be determined by the supervising officer (Fulton et al., 1994; Erwin, 1987).

A unique team based approach of offender supervision operated in Georgia. In practice, this meant that the team consisted of a probation officer and a surveillance officer who supervised a caseload limited to 25 offenders on HDBS (Petersilia, 2000). The probation officer's role included screening offenders to determine their sanction eligibility, identifying offender treatment needs and providing direct services or access to the required social services, ensuring proper case administration and serving as court liaison. The surveillance officer's duties included enforcing the sanction conditions, providing surveillance capabilities, and generally assisting the probation officer (Petersilia, 2000; Fulton et al., 1994; Erwin, 1987; Petersilia, 1987). The double-teaming, where one officer specialised in risk reduction and the other in risk control, was seen to be essential in order to closely monitor offenders in a supportive way (King, 1991; Clear et al., 1987).

With the intention of avoiding inappropriate net widening, offender selection criteria in Georgia's HDBS specified prison-bound offenders as its target group. It was specifically defined as "serious but nonviolent offenders who, without the intensive supervision option, would have gone to prison in the jurisdiction under which they were sentenced" (Erwin, 1986:2). Offenders could be placed on the HDBS directly at the time of sentencing as well as after sentencing as long as HDBS staff recommended them for the sanction (Fulton et al., 1994). An additional requirement was that the sentencing judge also had to sign a statement declaring that the offender would have been incarcerated if they were not placed on the HDBS (Clear et al., 1987).

In 1987 the Georgia's Department of Corrections published an internal evaluation of its HDBS. This evaluation was based on the first four years of sanction operation (from 1982 to 1985), when it expanded from 13 to 33 judicial sentencing circuits, and had supervised 2,322 offenders (Petersilia, 1987). The costs, revocation and reoffending rates were compared between

the entire HDBS group and a carefully 'matched' group of regular probationers and prisoners (Erwin, 1987). The findings were uniformly positive – a saving of about \$6,000 per offender diverted from prison onto HDBS, as well as lower recidivism rates for serious crime when offenders on HDBS were compared to both regular probationers and prisoners (Petersilia, 2000; Erwin, 1987; Erwin & Bennett, 1987; Petersilia, 1987). The success of Georgia's HDBS resulted in huge media and professional interest. It became a hallmark HDBS, prompting many USA jurisdictions to develop similar sanctions (McCarthy et al., 2001; Petersilia, 1987).

A number of methodological problems with Georgia's self-reported 'effectiveness' emerged in the late 1980s (Fulton & Stone, 1992). Apart from the fact that the internal evaluation suggested possible biased results, the main criticism of Georgia's HDBS evaluation was that a truly matched comparison group was not identified. This was because the prison group (173 offenders) was much smaller than the HDBS group (542 offenders) and had somewhat different demographic characteristics (Petersilia & Turner, 1993; Byrne et al., 1989). In addition, the fact that Georgia attributed the reduction in the number of those incarcerated solely to the introduction of its HDBS was challenged as a multitude of other factors such as prison capacity, legislation, as well as the development of alternative sanctions such as 'shock incarceration'⁷³ could have also reduced incarceration (Byrne et al., 1989). Finally, despite Georgia's vigorous efforts to avoid inappropriate net widening by carefully defining its clientele as 'prison diversions', a number of studies have suggested that over half of the offenders on the HDBS seemed to have been diverted from probation instead of prison (McCarthy & McCarthy, 1991; Clear et al., 1987). This finding was based on the statistical analysis of the profile of the HDBS' clientele, which more closely resembled regular probationers than prisoners. The potential net widening effect clearly offsets the lucrative cost saving figures (Petersilia & Turner, 1992; Byrne et al., 1989).

⁷³ 'Shock incarceration' is a relatively short period of incarceration lasting between 30 to 90 days. The aim is for offenders to find the prison experience to be onerous, and hence not re-offend (for more information see Clear et al., 2006).

It is important to note that these criticisms of Georgia's HDBS did not damage the strong support it had won from both the legislative and judicial branches of government (Clear et al., 1987). This was because, ever since the sanction was initiated, extensive education and lobbying of key government officials as well as the media was conducted by administrators (Clear et al., 1987; Erwin & Bennett, 1987). Having been successfully promoted on the basis of 'toughness and strictness,' the sanction enjoyed sustained backing from stakeholders (Clear et al., 1987; Erwin & Bennett, 1987; Petersilia, 1987).

Georgia's HDBS had become the most popular and widely replicated HDBS. This was even though its replication had subsequently proven to be problematic as Georgia's HDBS could not simply be copied. Georgia, unlike many other states in the USA, had particularly harsh sentencing practices and, as a result, an extraordinarily wide pool of potential clients for the HDBS. Hence, in order to have an adequate number of offenders, the replicated HDBS' structure had to be carefully adapted to the specific jurisdiction's intrinsic operation of its criminal justice system. Further complexity arose because most jurisdictions that replicated Georgia's HDBS failed to adequately lobby and educate stakeholders about the sanction and as a result faced a lack of stakeholder support (Clear et al., 1987; Petersilia, 1987).

New Jersey's HDBS was second to Georgia's in terms of pre-eminence and duplication (Byrne et al., 1989). It gained its prestige on the basis of its operation as a back-end alternative to imprisonment, that is, after a period of shock incarceration (Pearson & Harper, 1990). New Jersey established HDBS in 1983 in order to alleviate the state's serious prison overcrowding problem (Byrne et al., 1989; Pearson, 1987a). To avoid the potential for net widening and actually reduce the number of those incarcerated, only prisoners who had served between 30 and 60 days in custody were able to apply for early release onto HDBS. An initial offender assessment was conducted within the prison, and the final decision on whether to release the offender onto HDBS was made by a 3 judge re-sentencing panel. Each offender was first released onto the HDBS for a trial period of 90 days, and once that period had been successfully completed, they were officially placed onto the sanction for a

duration of 1 to 5 years (Pearson & Harper, 1990; Byrne et al., 1989; Pearson, 1985).

Similarly to Georgia's HDBS, compliance with the conditions of the HDBS in New Jersey was strict and punitive, requiring offenders to make a "7-day-a-week effort" (Byrne et al., 1989:29). Standard conditions included:

- at least 20 monthly contacts
- at least 4 drug tests per month
- completing at least 16 hours of community service per month
- abiding by an electronically monitored curfew
- being employed or satisfactory progressing in an educational/vocational training program
- attending specialised counselling programs such as programs dealing with drug abuse, family problems and financial problems
- if applicable, paying fines, restitution and child support (Pearson & Harper, 1990; Byrne et al., 1989; Pearson, 1987a).

The intensity of all of these requirements was slowly reduced as the offender progressed through the sanction. Offenders who did not comply with these stringent conditions may have had additional restrictions/requirements imposed on them or else were returned to prison (Fulton et al., 1994; Pearson & Harper, 1990). Electronic monitoring increased offender surveillance, reduced manual checking that officers were conducting, and increased overall cost-effectiveness (Lay, 1988a).

Unlike the team based supervisory approach in Georgia's HDBS, New Jersey's HDBS distinctively placed an emphasis on collaborative association between officers supervising offenders on HDBS and various community members and organisations (Fulton et al., 1994). Offenders were obliged to have a community sponsor who saw them on a regular basis, discussed their problems and provided encouragement. In addition, they were required to have a network team sponsor/s who practically helped them. For example, they assisted them with transport to and from work, treatment programs

and/or community work (Pearson, 1987a). Supervising officers were mandated to work closely with the community and network team sponsors to enhance compliance with sanction regulations and assist offenders' reintegration into society (Byrne et al., 1989).

With the intention of avoiding the criticisms of potential bias that Georgia's internal HDBS evaluation attracted, an external evaluation of the New Jersey HDBS was conducted. During 1987 and 1988 the USA National Institute of Justice sponsored Pearson to conduct a comparative analysis of the effectiveness of the New Jersey HDBS compared with a closely matched sample of parolees (Byrne et al., 1989; Pearson, 1988; Harper, 1987). The study concluded that the introduction of the HDBS yielded the following significant benefits for New Jersey:

- A cost saving of approximately \$7,000-\$8,000 per offender who was released early from prison and placed onto the HDBS in comparison to a matched sample of parolees who served the original time in prison and were then paroled (Byrne et al., 1989; Pearson, 1988; Pearson, 1987b).
- 'True' diversion without the opportunity for net widening (Byrne et al., 1989; Pearson, 1988).
- Ten percent lower recidivism rate for offenders on HDBS compared with the matched sample of parolees (Pearson, 1988).

These exceptional evaluation results led to complimentary media coverage. Subsequently, there was an extensive introduction of HDBS modeled on New Jersey's HDBS across the USA in the late 1980s (Clear et al., 1987).

Similarly to the critique of Georgia's HDBS overwhelmingly positive findings, the accuracy of New Jersey's HDBS complimentary conclusions were also questioned. The main criticism was that a truly matched comparison group was not in place, as only about 25% of the control group was roughly comparable by offence type and risk-level to the treatment group (Byrne et al., 1989). This lack of comparability between the treatment and comparison

group of offenders subsequently meant that the conclusions about cost-effectiveness, as well as lower recidivism rates, were likely to be deceptive (Byrne et al., 1989). In addition, despite the claim that New Jersey's HDBS was a 'true diversion program', a number of researchers such as Byrne et al (1989), Lay, (1988a) and Clear (1987) argued that there was the potential for offender net widening. They explained that, while sentencing judges did not directly place offenders on the HDBS, the fact that they knew about it meant that they could have adjusted their sentencing practices. Hence, judges could have anticipated that incarcerated offenders would be subsequently released onto the HDBS. According to Clear (1987) and Tonry (1990) even partially true, this would override the benefits of the HDBS as only one sixth of prisoners who applied were selected because of the sanction's rigorous eligibility screening.

Despite these persuasive criticisms, New Jersey's HDBS continued to receive strong judicial support and acclaim from politicians and criminal justice officials (Byrne et al., 1989; Clear et al., 1987). In particular, dissemination of research reports and regular meetings with criminal justice professionals was used to dismantle any skepticism and misunderstandings about the sanction. Because public support was also seen to be important, care was similarly taken to explain the sanction to community groups and the media (Pearson & Harper, 1990). It was additionally thought that achieving positive outcomes during the first few years of operation was vital, so the sanction was implemented as planned, without 'cutting corners'. The ongoing support for the HDBS prevailed over the rigorous questioning of its successful operation (Pearson & Harper, 1990).

In 1983 Florida implemented its own well-regarded statewide adult HDBS titled 'Community Control Program'.⁷⁴ It was implemented as a 'front-end'

⁷⁴ It is interesting to note that neither IPS or home detention are included in its official title, even though some authors refer to it as IPS and others as home detention; nevertheless as all of these sanctions have essentially identical features it is a HDBS (Byrne & Pattavina, 1992). Today however an electronic monitoring component is attached to various community based dispositions in Florida including felony offender probation, drug offender probation, sex offender probation, community control, conditional release, parole and addiction recovery supervision (Bales et al., 2010b). This is in accordance with the trend across the USA to

sanction aiming to divert prison-bound offenders from entering prison thereby alleviating prison overcrowding (Whitfield, 1997; Ball et al., 1988). Offenders could spend up to 2 years on the sanction as an alternative to 12-30 months in prison (McCarthy et al., 2001). Upon completion of the HDBS, offenders were either placed on regular probation or granted unconditional release (United States General Accounting Office, 1990).

Florida's HDBS was based on a significant degree of offender control; its standard conditions included:

- being confined to one's home at all times except when performing pre-approved activities such as working, shopping for food, and attending to medical needs
- reporting to a supervising officer 4-7 times a week
- performing community work
- paying restitution and supervisory fees
- submitting urinalysis, breathalyser or blood specimen tests
- participating in ordered self-improvement programs
- maintaining a daily activity log (Ansay & Benveneste, 1999; Blomberg et al., 1993; Baird & Wagner, 1990; United States General Accounting Office, 1990).

Apart from these core conditions offenders were occasionally mandated to maintain or restrict contact with their victims, neighbours, friends and creditors (Ball et al., 1988). Supervising officers monitored compliance with these conditions through intensive individualised face-to-face supervision of offenders (Blomberg et al, 1993; Blomberg et al., 1987). In certain cases, personalised supervision was supplemented with electronic monitoring⁷⁵ (McCarthy et al., 2001; Lilly et al., 1992).

apply electronic monitoring as a condition of various community based sanctions, particularly ISP (McCarthy et al., 2001).

⁷⁵ The first jurisdiction in Florida to implement HDBS with electronic monitoring was Palm Beach County in 1984 (Lilly et al., 1992). Traditionally throughout Florida, electronic monitoring technology has been seldom applied, that is, on a few percent of offenders on community based programs. Electronic monitoring was initially imposed at the discretion of

In order to reduce the potential for net widening, the HDBS' target population was carefully defined in the sentencing guidelines. The specified candidates were non-violent felons who would not normally qualify for probation due to their criminal history and current offence, and probationers and parolees charged with technical or misdemeanor violations (United States General Accounting Office, 1990; Blomberg et al., 1987). Once an offender was placed on the HDBS, a needs-assessment was conducted and an individualised management plan was developed (Blomberg et al., 1987).

In the first few years after Florida's HDBS was introduced it was periodically evaluated. The findings were substantially more modest than Georgia and New Jersey's HDBS' evaluations, indicating that Florida's HDBS generally diverted more prison-bound offenders than in widened the net. The program achieved a cost saving of approximately \$2,746 per offender, and resulted in comparatively lower re-offending rates than for prisoners (McCarthy et al., 2001; Baird & Wagner, 1990). As these positive outcomes were not subsequently criticised, Florida's HDBS became the largest and best-established HDBS in the USA (Clear & Dammer, 2003; Blomberg et al., 1993; Baird & Wagner, 1990; United States General Accounting Office, 1990; Ball et al., 1988).

Official evaluations of Georgia's, New Jersey's and Florida's HDBS indicated very favourable findings and were not overwhelmed by criticism, even though some of it was persuasive. As a result, these three programs became pioneers in corrections (Petersilia & Turner, 1993; Tonry, 1990; Byrne et al., 1989). Well publicised success stories in the media referred to these sanctions as 'the future of corrections' and were the catalyst for the development of similar sanctions throughout the USA in the late 1980s (Fulton & Stone, 1992; Petersilia, 1990b; Byrne et al., 1989; Petersilia, 1987). Positive accolades of HDBS were based on the stakeholders' confidence that significant benefits were associated with these sanctions. The overarching belief was that HDBS could simultaneously relieve the intractable problem of

correctional officers as a disciplinary measure, and since 2004 it is imposed solely at the discretion of the sentencing authority (Bales et al., 2010b; McCarthy et al., 2001).

prison crowding as well as promote public safety by strictly controlling offenders (Polk & del Carmen, 1992; Clear & Hardyman, 1990; Silverman, 2001). The remarkable expectations of HDBS were summarised as:

the most significant experiment made by the criminal justice system in the next decade [1985-1995]. We expect to see such programs adopted in jurisdictions across the country. If [these programs] prove successful over time and across jurisdictions, they would not only restore probation's credibility, but they could also reduce incarceration rates without increasing crime. And perhaps most important such programs may well rehabilitate at least some of the offenders who participate.

(Petersilia, et al., 1985:77)

Unfortunately HDBS did not achieve the anticipated outcomes in the USA. (For more information see section 3.3).

3.2.2.2 Expansion and subsequent development of HDBS

By 1990 all states of the USA had established HDBS with RF for adult offenders and more than 55,000 offenders were participating in them at any one time (McCarthy et al., 2001; Petersilia, 2000; United States General Accounting Office, 1990; Pearson, 1988). As the main component of HDBS from the 1990s became the EM technology that they utilise, in the remainder of this chapter they are referred to as either 'HDBS with RF' or 'HDBS with GPS.' HDBS, which use the different EM technology, must be distinguishable as they usually have vastly different rationales, operations and outcomes. (For more information see below). In instances when the generic term 'HDBS' is used in the remainder of this chapter it refers to both 'HDBS with RF' as well as 'HDBS with GPS.'

The aim of HDBS with RF was mainly to divert offenders from prison at sentencing or by early release from prison (Alarid et al., 2008; Petersilia & Turner, 1993). In cases of diversion there was however some disparity in

equivalence between the time the offender was to spend on the HDBS with RF in lieu of prison. More specifically, legislation varied between the ratios of 1:1, 3:1 and even 5:1 (Fox, 1987b; Ford & Schmidt, 1985). In the more conservative jurisdictions, once offenders realised that they had to spend a longer period of time on the HDBS with RF than in prison, they often opted for imprisonment (especially as there were usually further reductions in incarceration time due to prison overcrowding) (Clear, 1997; Petersilia, 1997). As a result, it soon became apparent that in order to alleviate prison overcrowding, the time spent on the HDBS with RF needed to be equated with the time spent in prison.

The maximum duration of these sanctions was usually 6 months, with lessening phases that reinforce good conduct (Fox, 1987a; Fox, 1987b). Six months was thought to be the maximum duration that offenders were able to remain confined to their homes (subject to manual physical monitoring by supervision officers and/or RF electronic monitoring technology). This was based on research which indicated that most offenders are impulsive by nature and unable to comply with longer sanction duration period (For more information see Schmidt, 1994b; Fox, 1987b). Over time this concern dissipated due to less regard for offenders' impulsivity and the introduction of GPS electronic monitoring technology that continuously tracks offender movement and does not confine them to their homes for prolonged periods of time (Bales et al., 2010b).

Although HDBS with RF varied by jurisdiction, most imposed a number of requirements including 3 times a week contact with supervising officers, adherence to a curfew, maintenance of full-time employment, submission of random urine and alcohol testing, and payment of victim restitution as well as part of the cost of supervision (Deschenes et al., 1995; Fulton & Stone, 1992). Consequently, HDBS with RF overwhelmingly emphasised offender control (Clear & Dammer, 2003).

In 1997, the American Probation and Parole Association (APPA) developed a specific model of HDBS with RF titled 'prototypical intensive supervision'

(Fulton et al., 1997). This sanction was based on research in the 1990s which criticised the strong emphasis on offender control, arguing that greater participation in treatment and employment programs would in fact lower recidivism rates (Petersilia & Turner, 1992; Pearson, 1987a). The model shifted the exclusive emphasis of HDBS with RF on incapacitating and punishing the offender to a more integrated focus on risk-control, treatment and services. This approach to supervision aimed to achieve long-term behavioural change in offenders. Sanctions with this ideology were piloted in 10 jurisdictions across the USA (Fulton et al., 1997). Unfortunately no significant differences in recidivism rates were reported between these offenders and offenders assigned to regular punitive supervision (Fulton et al., 1997). This surprising finding may be explained by the fact that even though these offenders were provided with intensive treatment during their sanction, post sanction there were no treatment provisions. Offenders' personal issues, which are usually long-term addictions to illegal substances were thus easily resumed. Subsequent engagement in crime to support the addiction was therefore often the outcome.

Also in 1997, Florida conducted another correctional experiment, related to the use HDBS with GPS to monitor serious violent offenders on community supervision. This trial was implemented as an alternative to the imprisonment of sex offenders with the aim to assess the possibility of reducing prison overcrowding (Johnson, 2002). Up until this point, the placement of serious offenders on HDBS with RF was inconceivable; however, the fact that GPS technology allows unprecedented careful monitoring and tracking of offenders has allowed this initiative to occur (Brown et al., 2007; New Jersey State Parole Board, 2007; Tennessee Board of Probation and Parole, 2007; Vaughn, 1987; Friel & Vaughn, 1986). The trial results indicated promising findings related to the use of HDBS with GPS for serious offenders.

It was not, however, until the mid-2000s with the expansion of serious sex offender post-release supervision laws at the state and federal level that the utilisation of HDBS with GPS spread (DeMichele & Payne, 2009; Lilly, 2006). The updated sex offender laws were the result of known offenders committing

brutal crimes on children. They are essentially ‘memorial laws’ as they are named after the high-profile victims - Megan’s Law (1994)⁷⁶, Jessica’s Law (2005)⁷⁷ and Adam Walsh Law (2006)⁷⁸ (Terry, 2011; Bales et al., 2010a; Harris & Lurigio, 2010). Collectively these laws impose longer incarceration terms and ongoing post-sentence community based surveillance of sex offenders. The surveillance specifically encompasses:

- sex offender registration and community notification
- residency restrictions
- HDBS with GPS for serious sex offenders (mostly paedophiles) who have completed their maximum prison sentences.⁷⁹

More recently, however existing sex offender laws in the USA have been further extended so that HDBS with GPS can be applied to serious sex offenders as a condition of standard probation and parole, allowing complete or partial diversion from imprisonment (Armstrong & Freeman, 2011; Myers, 2011; Jannetta, 2006). Some states also broadened the types of serious offender categories on whom HDBS with GPS can be applied. As well as serious sex offenders they have included violent offenders, habitual property

⁷⁶ Megan Kanka was a 7-year-old girl from New Jersey who was brutally raped and murdered in 1994 by a twice-convicted sex offender who had moved across the street from her family home. It is believed that her death could have been prevented if the family had known about their neighbour’s previous offences. Following a public outcry the federal and all state governments introduced a law titled ‘Megan’s law’. This law mandates each sex offender to be registered on a freely accessible public website as well as allows sex offenders to be monitored using GPS technology (Wagner, 2008).

⁷⁷ Jessica Lunsford from Florida was abducted, raped and also brutally killed at the age of 9 by a known sex offender in 2005. Because the offender was not registered with the police when he committed the crime, the inadequacy of ‘Megan’s law’ became apparent. The case became the catalyst for the creation of federal and state ‘Jessica’s law’ which requires lifetime GPS monitoring after a long prison term for adults convicted of a serious sexual crime against a child (DeMichele & Payne, 2009).

⁷⁸ Adam Walsh was 6 years old when he was abducted from a shopping centre and his decapitated body was partially recovered in Florida in 1981. On the 25th anniversary of his death, in 2006, the USA Congress passed ‘*Adam Walsh Child Protection and Safety Act*’. This Act established a national Sex Offender Registry and mandates sex offenders to regularly update their whereabouts every three months for the rest of their lives, every 6 months for 25 years of registration, and every year for 15 years of registration depending on the seriousness of their offences and when they committed them (Brown et al., 2007; McPherson, 2007).

⁷⁹ This research is confined to analysing the third aspect of the ongoing post-sentence community based surveillance of sex offenders – being on HDBS with GPS. This is because research on it is generally lacking, while there is extensive research on the first and the second aspects (Harris & Lurigio, 2010).

offenders, gang related offenders, perpetrators of domestic violence/stalking and, in some cases, bailed high-risk defendants (Pinto & Nellis, 2011; Drake, 2009; Brown et al., 2007; Shute, 2007; Jannetta, 2006).⁸⁰

The placement of serious offenders (mostly sex offenders), onto extended supervision HDBS with GPS is directly imposed by the judiciary without obtaining an offender's consent (Bales et al., 2010b). These sanctions can be imposed in duration from a few months to a few years and even a lifetime in some states (Bishop, 2010; DeMichele & Payne, 2009; Brown et al., 2007). On average, the length of HDBS (probation/parole) with GPS is between 30 and 90 days when used as a sanction (Brown et al., 2007). Non-compliance with these sanctions typically results in imprisonment. Currently, 35 states in the USA are using HDBS with GPS for serious sex offenders, 5 are using HDBS with GPS for broader serious offender categories, and many others are in the process of trialling it (Armstrong & Freeman, 2011; Tennessee Board of Probation and Parole 2008).

HDBS with GPS typically use other tools and methods as part of an overall supervision strategy. Supervision strategies include:

- RF monitoring
- Secure Continuous Remote Alcohol Monitoring (SCRAM)
- urine analysis for drug and alcohol use
- polygraph testing
- field visits
- regular office visits.

A significant component of HDBS with GPS is mandatory treatment for offenders. Treatment strategies include substance abuse treatment, sex offender treatment, anger management treatment and mental health

⁸⁰ The application of HDBS with GPS on these 'other' offenders and even defendant cohorts is still in its infancy, so evaluative and critical discourses, as far as can be determined, are not yet available. So, the explanatory and evaluative discussion throughout this research is based on the application of HDBS with GPS for serious sex offenders.

counselling. Offenders are also typically assisted with employment related issues (Brown et al., 2007).

Supervising serious sex offenders in the community is a very challenging task, which requires highly experienced and thoroughly trained supervising officers (Sex Offender Supervision & GPS Monitoring Task Force, 2010; Winistorfer & Milano, 2010). Constant vigilance is required as this offender group is likely to be 'deceptive and manipulative.' Furthermore, a new crime committed may have irreparable consequences for the victim, the family and the community. Supervising officers therefore usually closely collaborate with treatment providers and aim to proactively avoid offenders reoffending (Turner et al., 2007).

The utilisation of HDBS with GPS for sex offenders has not been contentious in the USA. Advocates have maintained that it enhances community protection as the likelihood of offender detection is increased, with the most vulnerable members of the community, that is children, being better protected from strangers who want to commit the most repugnant crimes (Myers, 2011; Sex Offender Supervision and GPS Monitoring Task Force, 2010; Jannetta, 2006; Nellis, 2004). These beliefs are held despite research that has indicated that the vast majority of paedophiles are known to their victims, and that paedophiles are an offender category least likely to reoffend (Myers, 2011; Richards, 2011; Harris & Lurigio, 2010). Further, it has been argued that in comparison with prolonged incarceration or a term in a mental health institution, HDBS with GPS in the community are less onerous for the offender and provide them with better rehabilitative prospects. They are also much cheaper for the state (Myers, 2011).

Nevertheless some opponents, mainly civil rights advocates, have argued that HDBS with GPS conflict with offenders' human rights, are excessively onerous, and enhance their stigmatisation (Myers, 2011). Further, it has been stated that it could even be unconstitutional to extend correctional supervision post maximum sentences being served. To date, however, the judiciary has not ruled any aspects of HDBS with GPS to be unconstitutional (Iqbal, 2008).

(For more information see section 3.3.3). Despite some opposition, the use of HDBS with GPS has proliferated throughout the USA.

State and federal legislation across the USA under which HDBS with GPS operate resulted from the culture of fear and moral panic that generally surrounds sex offenders and in particular violent paedophiles. Sex offenders are considered to be particularly deceptive and manipulative. Further, if they commit a new sex crime, this will create unbearable suffering for victims, their families and the entire society more so than any other new crime committed (New Jersey State Parole Board, 2007). Enhanced supervisory strategies were accordingly thought to be essential for high-risk sex offenders in an effort to reduce their level of recidivism. Unlike the past when HDBS with RF were developed to curtail prison overcrowding and escalating costs, less concern occurred about the costs and the net widening potential of HDBS with GPS (DeMichele & Payne, 2009; Lilly, 2006). The primary rationale for these sanctions is therefore based on reducing offender risk and enhancing community protection and safeguarding victims.

In summary, there has been an ongoing expansion of HDBS that utilise both RF and GPS electronic monitoring technology. Since 1990, HDBS coupled with active RF electronic monitoring have existed in all 50 states of the USA, and offender numbers have continued to grow gradually (Renzema, 1992). They have however varied markedly from state to state (Lilly & Nellis, 2013). Further, since the late 1990s the application of HDBS that use GPS technology has also been increasing. In particular, in 2011, 35 states in the USA were using HDBS with GPS for serious sex offenders, 5 were using HDBS with GPS for broader serious offender categories, and many others were in the process of trialling it (Armstrong & Freeman 2011; Tennessee Board of Probation and Parole 2008). The growth has therefore been substantial as Table 3.1 shows (DeMichele & Payne, 2009; Lilly, 1993; Baumer and Mendelsohn, 1992; Friel, Vaughn & del Carmen, 1987).

Table 3.1 - Offenders on HDBS in the USA (total number)

Year	Offenders on RF	Offenders on GPS
1986	95	-
1990	12,000	-
1992	30,000	-
1993	50,000	-
1999	75,000	230
2002	75,000	1,200
2004	82,000	5,000
2006	90,000	20,000
2008	102,000	62,000
2009	110,000	90,000

It is interesting to note that the number of offenders on GPS is increasingly catching up to the number of offenders on RF, and it is likely to overtake it in the near future (DeMichele & Payne, 2009). The overall numbers are however still relatively small, as they comprise only a few percent of all offenders in the USA (Lilly & Nellis, 2013; DeMichele & Payne, 2009).

3.2.3 Ideologies of supervision on HDBS

During the late phase of HDBS, which essentially consisted of the instigation and proliferation of HDBS with RF and GPS, the mode of offender supervision has primarily been based on strict offender punishment and the enhancement of public safety.⁸¹ This punitiveness oriented offender supervision and surveillance based approach was the result of a marked philosophical and political shift away from offender treatment and rehabilitation in the 1970s.⁸²

⁸¹ This model of offender supervision replaced the models operating during the Casework Era and the Brokerage of Services Era which both emphasised the importance of therapeutic correctional treatment, that is, diagnosing the reason for offending and subsequently rehabilitating the offender (Cromwell & Killinger, 1994). (For more information see Chapter 2.2.3).

⁸² The move to a more punitive role for probation and parole was triggered by Martinson's initial finding that 'nothing works' in rehabilitating offenders. Despite being refuted and having a number of methodological flaws this finding dealt an irreparable blow to the rehabilitation ideal, because it appealed to both liberals and conservatives (Sarre, 2005; Cromwell &

From the 1980s until the present day two distinct modes of offender supervision based on similar philosophies have been in place (Cromwell et al., 2005).

The 'Justice Model of Supervision' operated between the mid-1980s and 1995 (Cromwell et al., 2005). The focal point of this model was to re-define and re-establish the value of HDBS with RF. It was thought that this would be achieved by portraying these sanctions as distinct community based dispositions that control, punish and manage offender risk, appropriately corresponding to the seriousness of the crime committed. As Gemignani (1983 cited in Cromwell et al., 2005:109) explained:

The justice model advocates an escalated system of sanctions corresponding to the social harm resulting from the offense and the offender's culpability. The justice model repudiates the idea that probation is a sanction designed to rehabilitate offenders in the community and, instead, regards a sentence of probation as a proportionate punishment that is to be lawfully administered for certain prescribed crimes.

More specifically, due to the perceived "failure of corrections to live up to its 'promises' to rehabilitate, reintegrate, and restore offenders to productive, law abiding lives", the main aim of this model of supervision was to drastically change the way that offenders had been traditionally supervised in the community (Cromwell & Killinger, 1994:123). Instead of applying rehabilitative strategies such as offender counselling and reporting, the emphasis was on 'getting tough' through home-based deprivation of liberty and community and victim reparation (Champion, 2008). The officer's primary role under this model was to monitor the offender's confinement in their home (through electronic monitoring technology), attendance at supervision appointments, performance of community work and payment of victim restitution⁸³ (Alarid et

Killinger, 1994). (See Chapter 2.3.3 for a more detailed description of the events that led to the demise of the philosophy of rehabilitation).

⁸³ The fact that the entire case coordination and offender monitoring occurred from the confines of the office meant that this style of supervision was referred to as a 'fortress style'.

al., 2008; Champion, 2008; Cromwell & Killinger, 1994). Only in cases where the offender expressed a need or desire to engage in counselling or treatment, and was prepared to pay for it, were they referred to the community agency/ices that would provide the rehabilitative assistance⁸⁴ (Alarid et al., 2008; Cromwell et al., 2005).

The justice model's increased tendency to advocate for risk control in community corrections was criticised on several grounds (King, 1991). Principally, it was thought that the emphasis away from rehabilitation toward a sole emphasis on risk control would have permanent negative impacts on the roles and functions of community corrections officers (King, 1991). Further, reactive case management practice based on enforcement of surveillance was said to limit proactive creative individualistic case management plans and 'deskill' correctional officers (King, 1991). This resulted in the recruitment of 'new types' of correctional officers who were surveillance-oriented security guards performing technical and clerical tasks over skilled specialised counsellors/case managers. The latter were becoming fewer and fewer and only dealt with the highest risk offenders (King, 1991). Finally, as corrections officers were mandated as a part of their role to visit offenders at their home/workplace and even supervise various tests, this had made the nature of their job more prone to physical violence (King, 1991).

Evaluations indicated that the justice model approach of offender supervision had relatively high recidivism rates. It did not prove to be more successful in reducing recidivism in comparison with previous rehabilitative supervision approaches (Cromwell et al., 2005). This is not surprising, as criminogenic factors that lead offenders into criminal activity were generally not dealt with by the supervising officer or specialised community agency/ies who previously provided rehabilitative treatments.

This separation of the officer from the offender and the community was subsequently regarded as the main disadvantage of this model of supervision (Alarid et al., 2008).

⁸⁴ It should be noted that there were legislative provisions in some jurisdictions allowing for treatment-related order conditions on HDBS with RF. However, due to a diminished belief in the ability to treat offenders, these were probably seldom imposed, and even when they were, the rehabilitative services lacked quality due to reduced funding (Alarid et al., 2008).

The latest supervision initiative, which was developed in the late 1990s, is known by a variety of terms including 'neighbourhood based supervision', 'community justice' and 'broken windows probation' (Alarid et al., 2008). Similar to the 'justice model of supervision,' this model is primarily aimed at enhancing public confidence in HDBS with RF and GPS. It is believed that the community can regard these sanctions as palatable if offender supervision is tough and visible (Alarid et al., 2008; Clear & Dammer, 2003). As a result, this approach employs a mixture of supervisory strategies, community oriented policing methods and treatment provisions. Some of these include:

- strong and consistent enforcement of order conditions, which increases offender accountability
- visible offender supervision
- enhanced partnerships between supervising officers, treatment providers, and the police
- combined use of offender's GPS tracking movements and Geographic Information Systems (GIS) technology, which displays crime incident data to more effectively apprehend offenders if they re-offend
- application of performance-based initiatives to regularly measure the effectiveness of HDBS with RF and HDBS with GPS (Beto, 2000:12 cited in Cromwell et al., 2005).

Further, neighbourhood based supervision usually uses a unique model of case allocation where offenders are assigned to officers according to relatively small geographic areas. GIS mapping technology is heavily relied on in this approach as it provides officers with an unprecedented amount of offender-related information which can be used to apply offender-specific risk management as well as engagement in suitable treatment. More specifically, GIS:

uses special computer software to visually diagram locations in a neighbourhood, or the entire city, of individuals and/or events. GIS enables a probation or parole agency to obtain a full picture of who is on probation and where probationers live... Available data

includes number of police calls for service, the number and location of orders for protection, and access to treatment venues from probationers' residence... [this] information can be shared with police departments which already use GIS to locate suspects and investigate new crimes.

(Alarid et al., 2008:115)

The utilisation of GIS in geographically confined offender caseloads also aims to enhance public safety, as officers are able to thoroughly get to know offenders, their circumstances and surroundings, and usually quickly capture them if they re-offend (Alarid et al., 2008; Clear & Dammer, 2003).

Preliminary evaluations of neighbourhood based supervision models have produced mixed results. In comparison with the more traditional justice model of supervision, the positive outcomes of this approach include that offenders seem to obtain more support from their supervising officers such as finding employment, and accessing treatment providers. Further, officers report closer connections with the police and the community agencies. However, technical violation rates are higher and re-offending rates are similar when compared to the justice model of supervision (Alarid et al., 2008). Higher technical violation rates for offenders supervised on this model are not surprising as close contact between officers and offenders, which is integral to this supervision model, is bound to uncover more technical violations (Clear & Dammer, 2003).

3.3 Late phase of HDBS – Assessment of outcomes (1982-2013)

This section discusses the outcomes of the currently operational late phase of HDBS in the USA. These outcomes are chronologically described over the last three decades, first in relation to HDBS with RF and then HDBS with GPS. It should however be noted that the number of studies assessing the outcomes of HDBS with RF generally outweighs the number of studies assessing the outcomes of HDBS with GPS. This is probably because there

has been three decades of application of HDBS with RF and less than a decade of application of HDBS with GPS.

The outcomes are presented under 4 sub-themes - operational results, ethical issues and dilemmas, legal issues and dilemmas, and political and stakeholder issues and dilemmas. While the arguments presented under operational results are predominantly based on actual figures, the analysis presented under ethical, legal and political and stakeholder issues and dilemmas is somewhat broader and less tangible.

3.3.1 Operational results

The Operational results are presented under 4 points. The first broadly examines whether HDBS have widened the net or reduced prison crowding. The second analyses the effect of HDBS' technical violation rates on prison crowding. The third investigates the effect of HDBS' recidivism rates on prison crowding. The fourth discusses whether HDBS have generally reduced the cost of corrections. These areas are determined to be pivotal in analysing the operational results of HDBS because they either formed the rationale for their establishment or were generally considered to be important by corrections departments. The number of studies which specifically assessed the operational results of HDBS with RF and HDBS with GPS is extensive. Studies examining specifically the operation of HDBS with GPS are abundant probably because during the first decade of the initiation of these sanctions correctional departments allocated the necessary funding to explore their operation in relation to various supervision models and costs so that most serious offenders (who are typically subjected to these sanctions) can be supervised most effectively.

3.3.1.1 Have HDBS widened the net or reduced prison overcrowding?

The impetus for the creation and legislative proliferation of HDBS with RF across the USA was a belief that these sanctions would alleviate overcrowding in prisons (Fulton et al., 1997). A nation-wide survey conducted in 1990 revealed that 'virtually all' of the 335 agencies that operated HDBS with RF stated that one of their main goals in developing and operating these sanctions was to reduce the size of the prison population (Renzema, 1992). In order to achieve this goal, HDBS with RF aimed to divert lower-risk prison-bound offenders from prison⁸⁵ (Clear et al., 2006; Tonry, 1990).

Problems occur when HDBS with RF do not attract prison bound offenders as then they merely widen the net of social control. The result is that offenders who would otherwise be sentenced to less intrusive means of control such as ordinary probation and parole are placed on the more severe sanctions. Consequently, if there is a net widening effect of HDBS with RF there is no reduction in the prison population or the correctional budget but rather an increase in both (Meyer, 2004; Wagner & Baird, 1993). In spite of this, Tonry (1990) has argued that the net widening effect can also be viewed positively. This is because it enhances the overall functioning of the criminal justice system by improving the struggling and overburdened operation of probation. He further believed the sentencing of some probation-bound offenders to HDBS with RF where they are more appropriately stringently supervised can have favourable effects. During this era of economic rationalism, net widening is nevertheless considered to be problematic as it has opposite consequences to the standard goal of public policy - maximising cost-effectiveness (Walker, 1991).

In the 1980s, studies analysing the effects of HDBS with RF generally found that prison diversion was occurring. This indicated that the characteristics of

⁸⁵ Instead of targeting the prison bound population, very few HDBS with RF were specifically developed to target high-risk probationers; the most prominent such sanction is the Massachusetts HDBS (Byrne et al., 1989).

offenders on HDBS with RF predominantly resembled the prison population (Erwin, 1987; Pearson, 1987b). Subsequent research vigorously disputed the validity of these findings, arguing instead that true-diversion did not occur. It was reported that over half of offenders on HDBS with RF during this time were not prison-bound but were instead diverted from ordinary probation and parole onto HDBS with RF (McCarthy & McCarthy, 1991; Byrne et al., 1989; Clear, 1987; Clear et al., 1987).

Various studies in the 1990s reported that significant net widening occurred as offenders on HDBS with RF were not truly prison bound as legislatively intended (Meyer, 2004; Fulton et al., 1997; Champion, 1996; Clear & Hardyman, 1990; Tonry, 1990). Even though most HDBS with RF referred to their client group as 'serious', 'dangerous' or 'recidivist' prison-bound offenders, in reality the stringent eligibility criteria often excluded various offence categories and inadvertently relegated the offender pool to low-risk probation-resembling offenders (Meyer, 2004; Clear, 1997; Clear & Hardyman, 1990). More specifically, this included minor offenders, non-violent offenders and non-parole violators, who were usually employed and had strong family support that made them more likely to successfully complete the HDBS with RF (Alarid et al., 2008; Champion, 2008; Meyer, 2004; Welch, 2004).

In addition, when higher risk offenders were considered eligible for HDBS with RF, they usually declined placement and opted instead for prison, which they regarded as comparatively 'easier' (Clear, 1997; Fulton et al., 1997; Petersilia, 1997; Clear & Hardyman, 1990). This is due to serious offenders' usual familiarity with prison terms, environments and culture. These offenders also typically lack community-based support systems and generally feel unable to comply with stringent order requirements of HDBS with RF. In particular, they feel that it would be impossible for them to resist the various pro-social and anti-social temptations in the community that are forbidden on HDBS with RF (Spelman, 1995; Crouch, 1993). Furthermore, these offenders are generally aware that, due to prison overcrowding, only a fraction of the imposed

sentence of incarceration is usually served – at times this can be as low as 10% (Clear, 1997; Petersilia, 1997).

More specifically, research indicated that net widening occurred during sentencing of offenders to front-end and back-end HDBS with RF (Tonry, 1990; Pearson, 1987a). Front-end HDBS with RF were promptly recognised as more susceptible to net widening as offenders are sentenced to them at the sentencing stage and not from prison. Research indicated that many offenders were placed onto front-end HDBS with RF rather than regular probation. This occurred even though judges at sentencing were usually required to sign affidavits declaring that the offender was prison-bound (Clear, 1997; Clear & Hardyman, 1990; Tonry, 1990; Erwin, 1987). Somewhat surprising was that even back-end HDBS with RF, which directly release offenders early from prisons, have difficulty achieving prison diversion. This is because judges were found to typically sentence borderline cases (but in fact probation bound offenders) to prison and invite them to subsequently apply for HDBS with RF (Clear, 1997; Tonry, 1990; Clear et al., 1987).

After 2000, it became apparent that HDBS with RF have not reduced prison crowding (Meyer, 2004; Clear & Dammer, 2003; Johnson, 2002). This is even though there is some evidence which indicates that offenders are being more carefully selected for HDBS with RF. This is due to considerable uncertainty about how to target higher risk prison bound offenders to HDBS with RF in a manner that reduces prison crowding and simultaneously achieves community protection (McCarthy et al., 2001).

Some HDBS with GPS technology have recently reduced prison overcrowding, but others have widened the net (Meyer, 2004; Clear & Dammer, 2003). This reduction relates to its use for serious sex and violent offenders who are placed onto HDBS with GPS as an alternative to imprisonment. Conversely, offenders who are placed onto extended supervision HDBS with GPS post their prison sentence to increase public safety have widened the net. Previously, these offenders would have been released into the community after their prison sentence expired, or they would

have been paroled (for more information see DeMichele & Payne, 2009; New Jersey State Parole Board, 2007; Shute, 2007; Renzema & Mayo-Wilson, 2005). Of interest is, as previously stated, that little concern comparatively exists when net widening is the result of placing serious offenders on HDB with GPS (DeMichele & Payne, 2009; Lilly, 2006).

In order to reduce the possibility of casting the correctional net too widely, HDBS with GPS should be reserved only for the highest risk offenders (Bottos, 2007). It is highly likely that HDBS with GPS will be increasingly applied across the several stages of the criminal justice process, from those awaiting trial, to those on front-end and back-end sanctions, as well as those on extended supervision orders. As such it could be very easy to subject substantial numbers of offenders under these sanctions to heightened surveillance. Accordingly, these sanctions should be applied to carefully selected offenders matching the intensity of service and supervision and risk (Bottos, 2007).

3.3.1.2 What has been the effect of HDBS technical violation rates on prison crowding?

Apart from the fact that net widening associated with HDBS with RF has generally not reduced prison crowding, the placement of low-risk offenders on HDBS with RF has resulted in high rates of technical violations and subsequent sentencing of offenders to prison. This inadvertently exacerbates prison crowding (Bottos, 2007; Tonry, 1990). Over the last three decades the rates of technical violations of HDBS with RF have varied greatly, fluctuating between 10 and 70 (Clear & Dammer, 2003; McCarthy et al., 2001; Petersilia & Turner, 1992). The highest rates have generally been reported among HDBS with RF that have longer average lengths of orders, apply stricter conditions, intensively monitor offenders and do not provide offenders with adequate rehabilitative services (for more information see Bourke, 1997 and Gray, Fields & Maxwell, 2001 cited in Alarid et al., 2008; Clear & Dammer, 2003; Ansary, 1999; Petersilia & Turner, 1992).

In the 1980s, the rates of technical violations on HDBS with RF varied between 10 and 25% (Schmidt, 1994b; Wagner & Baird, 1993; Pearson & Harper, 1990; Fox, 1987a). These rates were low for two reasons. First, offenders were carefully hand-picked for participation on these sanctions. The states that implemented initial HDBS with RF such as Georgia, New Jersey and Florida were in a unique position as their prisons were the most severely overcrowded in the USA (Champion, 2008; Byrne et al., 1989; Ball et al., 1988; Erwin, 1986). This was due to traditionally stringent sentencing practices that in reality meant when these states introduced HDBS with RF it was easy for them to 'hand pick' offenders who were more likely to be compliant and not commit technical violations (Wagner & Baird, 1993; McCarthy & McCarthy, 1991; Byrne et al., 1989; Clear, 1987; Clear et al., 1987; Erwin, 1987).

Second, there was enormous enthusiasm among stakeholders to achieve positive outcomes during the first few years of operation of HDBS with RF (Byrne et al., 1989). This meant that early sanctions generally encompassed rehabilitative services; these services at least to some extent addressed offenders' needs, thus reducing rates of technical violations (Pearson & Harper, 1990; Pearson, 1985). Nevertheless, after this 'Hawthorne effect',⁸⁶ that is, during the 1990s, rates of technical violations on HDBS with RF soared (for more information see Lilly et al., 1993).

Technical violation rate increased on HDBS with RF during the 1990s. It ranged between 40 and 60% (Gray, Fields & Maxwell, 2001 cited in Alarid et al., 2008; Morrison, 1994; Petersilia & Turner, 1992). There were two key reasons for this. First, all states across the USA had established HDBS with RF by 1990 and the novelty and enthusiasm surrounding these sanctions had abated (McCarthy et al., 2001; Petersilia, 2000; United States General Accounting Office, 1990; Pearson, 1988). As a result, the sanctions were no

⁸⁶ The 'Hawthorne effect', is the initial period when a HDBS is implemented. At this time, offenders who are highly likely to be compliant are carefully 'hand-picked' for participation on these sanctions. These offenders are not likely to commit technical violations or reoffend. However, after this initial period of sanction operation, the operation and outcomes are highly likely to deteriorate. (For more information see Lilly et al., 1993).

longer carefully operated, with the emphasis overwhelmingly on the punitive aspects of HDBS with RF. Offender rehabilitation was ignored which led to higher rates of technical violations (Clear & Dammer, 2003; Clear, 1997; Tonry & Lynch, 1996; Deschenes et al., 1995; Fulton & Stone, 1992; Petersilia & Turner, 1990). Second, net widening meant that many non-prison bound habitual property offenders were sentenced to HDBS with RF. These offenders were not deterred by a short incarceration period if they breached the HDBS with RF. These offenders were generally aware that they were low-risk and that endemic prison crowding meant that they would not experience long prison sentences (for more information see Petersilia, 2000; Petersilia, 1998; Tonry, 1990).

Since 2000, technical violations of HDBS with RF as well as HDBS with GPS technology have been relatively low, at between 10 and 40% (Padgett et al., 2006; Frost, 2002; McCarthy et al., 2001). More specifically, technical violation rates of HDBS with GPS are comparatively lower than for HDBS with RF. For example, across the USA it has been found that technical violation rates for HDBS with RF are on average around 30 to 40% (slightly down on 1990s figures), and on HDBS with GPS on average between 10 and 30% (Padgett et al., 2006; Frost, 2002; McCarthy et al., 2001).

The most compliant group on HDBS with GPS is sex offenders (Bales et al., 2010a). There are two possible explanations for this phenomenon. First, the fact that high risk offenders are monitored by the most sophisticated GPS technology seems to serve as a deterrent and creates an awareness that if an offender breaches the conditions they will be caught (Wagner, 2008; Padgett et al., 2006; Frost, 2002). Second, due to their high-risk classification, these offenders are typically aware that if they breach the conditions they will face a lengthy period of incarceration.

3.3.1.3 What has been the effect of HDBS recidivism rates on prison crowding?

High recidivism rates following HDBS with RF have worsened the prison crowding crisis across the USA. Since being implemented re-offending rates post HDBS with RF have varied between 10 and 40% (Wagner & Baird, 1993; McCarthy & McCarthy, 1991; Pearson & Harper, 1990; Petersilia & Turner, 1990; Pearson, 1988; Erwin & Bennett, 1987). Empirical evidence has shown that if offenders undergo treatment during HDBS with RF their level of recidivism is reduced (Petersilia, 1997). The ongoing problem however has been a lack of financial support for HDBS with RF. This meant that insufficient resources have been allocated for the provision of treatment for offenders on these sanctions (Clear & Dammer, 2003; Petersilia, 1997). Nevertheless, the importance of other supportive mechanisms such as family and/or co-residents' support, the assistance of community-based networks and the availability of adequate employment, cannot be underestimated in living a pro-social crime-free lifestyle after the HDBS with RF.

During the 1980s, follow up recidivism rates (some 1 year post being on the sanction, some 2 years post being on the sanction and some 5 years post being on the sanction) were reported to range between 10 and 36%. This was initially perceived to be very positive because it was substantially lower than recidivism rates after incarceration which are normally over 60% (for more information see Wagner & Baird, 1993; McCarthy & McCarthy, 1991; Pearson & Harper, 1990; Pearson, 1988; Erwin & Bennett, 1987; Erwin, 1987). Subsequently however these low re-offending rates were vigorously critiqued as offenders on HDBS with RF at that time were carefully hand-picked for participation, and as mentioned earlier, were not truly prison bound (Clear & Hardyman, 1990). As a result, these relatively low-risk and low-need offenders were less likely to re-offend than a prison bound cohort (McCarthy & McCarthy, 1991; Byrne et al., 1989; Clear, 1987; Clear et al., 1987). Further, the relatively low recidivism rates were also not surprising because early HDBS with RF provided offenders with some treatment and support mechanisms (Pearson & Harper, 1990; Pearson, 1985).

Re-offending rates were reported to be considerably higher during the 1990s, on average approximately 40% a year post HDBS with RF (Lilly et al., 1993; Petersilia & Turner, 1990). The increase in re-offending was the result of stringent offender control becoming pre-eminent and treatment and support of offenders' needs becoming negligible (Clear & Dammer, 2003; McCarthy et al., 2001; Petersilia, 2000; Clear, 1997; Deschenes et al., 1995; Fulton & Stone, 1992). Inadequate provision of rehabilitative strategies consequently contributed to offenders being more likely to engage in re-offending after their HDBS with RF (Clear & Hardyman, 1990; Erwin & Bennett, 1987). Further, lower-risk offenders, who were predominantly sentenced onto HDBS with RF during the 1990s, were more likely to re-offend post the HDBS with RF for the same reason that they were more likely to commit technical violations. They were aware that their penalty, usually a period of incarceration, would be relatively short due to their low-risk status as well as prison overcrowding (for more information see Petersilia, 2000; Petersilia 1998; Tonry, 1990).

From 2000 onwards there has been a lack of specific follow up of offenders' recidivism rates post their HDBS with RF in the USA (Alarid et al., 2008; Brown et al., 2007). One influential study analysing whether being on HDBS with RF had any specific deterrent effect on offenders was conducted by Padgett et al., (2006), from Florida State University. Empirical evidence indicated a crime suppression effect even during a relatively short period of being on HDBS with RF (Padgett et al., 2006). In particular, lower technical violations, revocation rates and recidivism rates for the duration of being on the sanction were found in comparison with offenders on all other community based dispositions without electronic monitoring (Florida Department of Corrections, 2003; Padgett et al., 2006). Overall, the results showed that electronic monitoring significantly reduced the likelihood of offenders failing to comply with the HDBS with RF, effectively serving to incapacitate and/or deter offending, and hence protecting public safety (Padgett et al., 2006). However, it remains unclear whether this could be sustained after years of being on the HDBS with RF (Nellis, 2010c). Even so, the enhanced level of supervisory control that is afforded through electronic monitoring beyond

human contact alone may augment offender accountability, thus ultimately reducing the likelihood of re-offending (Florida Department of Corrections, 2003; Padgett et al., 2006).

Contrary to the mixed recidivism-related findings that are associated with HDBS with RF, all studies since 2000 that have analysed HDBS with GPS' effect on recidivism have found considerable impacts. For example, the State Parole Board, New Jersey, GPS monitoring report suggested that the placement of sex offenders onto the HDBS with GPS contributed to a lower recidivism rate than nationwide data for high-risk sex offenders showed (New Jersey State Parole Board, 2007). The pilot program spanned over 3 years and consisted of 225 sex offenders. Evaluative results showed that only 5.3% of these sex offenders on the HDBS with GPS were arrested for a new sexual offence following their release from prison (New Jersey State Parole Board, 2007). GPS monitoring was said to encourage high-risk sex offenders to control their behaviour by producing controls which prevent offenders from criminogenic situations, hence circumventing the inspiration for new crimes. The State Parole Board adopted a "containment" approach, meaning intensive parole supervision, offender-specific treatment, and polygraph examinations alongside GPS monitoring (New Jersey State Parole Board, 2007). Sex offenders reported that they felt as though their movements were being watched, placing a greater control on their behaviour. Additionally, a constant reminder was realised through wearing the device (New Jersey State Parole Board, 2007). Most importantly, offender-specific treatment directly addressed sexual offending behaviours based on cognitive-behavioural principles, intervening proactively in order to prevent re-offending. The New Jersey State Parole Board (2007) observed that offenders who completed offender-specific treatment recidivated at a significantly lower rate.

The empirical findings from the largest ever comparative assessment of the operation of electronic monitoring technology versus ordinary community supervision of over 270,000 offenders were also very encouraging and supportive of earlier reported Padgett et al. (2006) findings. The study

conducted by Bales et al. (2010a) found that being on a HDBS with RF reduces the likelihood of failure under community supervision, in relation to technical violation rates and recidivism, by about 30%. Being on a HDBS with GPS provides a further 6% compliance improvement rate when compared to HDBS with RF. This study also found that HDBS with GPS monitoring are most effective for sex offenders, as they are the most compliant offender category (Bales et al., 2010a).

Brown et al. (2007) in their empirical studies sponsored by the USA National Institute of Justice best summarised the 'lessons learned' concerning recidivism and deterrence associated with HDBS with GPS. These included:

- GPS does prevent an individual from committing a crime, and it provides offenders with a set of rules which they fully understand the consequences of, and have a choice about whether to abide by
- Because offenders believe that they are being observed, they may be less likely to engage in non-compliant activities
- Particular locations and victims are avoided due to geographical perimeters set by exclusion zones
- Maintaining contact with former associates is discouraged due to the presence of GPS
- It is however unknown whether being subjected to GPS has a sustainable impact on behaviour modification (Brown et al., 2007).

The steady accumulation of evidence has therefore revealed that stand-alone electronic supervision does not have a positive impact on recidivism, and that produces positive results when combined with treatment (Nellis, 2010c; Renzema & Mayo-Wilson, 2005). Despite this, research indicates that USA jurisdictions rarely build rehabilitative elements into HDBS with RF (Olotu, Beaupre & Verbrugge, 2009). This is because these sanctions were developed on the basis of punitiveness which has meant that the rhetoric of rehabilitation has often been overlooked. Yet the placement of serious offenders onto HDBS with GPS has meant that treatment and rehabilitative provisions are increasingly incorporated into these sanctions and that the

technology is not simply viewed as a deterrent tool in itself (Nellis, 2010c; Brown et al., 2007; New Jersey State Parole Board, 2007). As a result, further and more intensive interaction of treatment and control in HDBS, particularly with RF, may in the future provide more longer-term effects in recidivism reduction (McCarthy et al., 2001; Petersilia, 1997).

3.3.1.4 Have HDBS reduced the cost of corrections?

Directly related to the aim of relieving overcrowded prisons and diverting offenders into community based settings is the goal of saving money (Petersilia, 2000; McCarthy, 1987). In comparison with incarcerating an offender, placing them on a HDBS with RF seems to be much cheaper for the state. For example, it “costs the state nothing to house them; lodging, subsistence, and often even the cost of an electronic monitor are covered by the offender’s own resources” (Clear & Dammer, 2003:221). Over the last three decades however there have been mixed findings about whether HDBS with RF actually achieve financial savings for the state. This seems to be dependent on 4 factors including:

- Whether prison-bound offenders are actually sentenced to HDBS with RF. In cases where net widening occurs no savings are possible as offenders who are sentenced to HDBS with RF would have otherwise received a less serious punishment such as traditional probation. In fact, additional expenses are incurred because the cost of HDBS with RF is up to 10 times more expensive than regular probation (Clear & Dammer, 2003; Clear, 1997; Schmidt, 1994b).
- The rates of technical violations on HDBS with RF. Tough enforcement of stringent conditions of HDBS with RF usually results in high rates of technical violations and substantially reduces the cost saving potential of HDBS with RF. As Clear (1997:129) explained “every case that ‘fails’ [and results in a return to court due to technical violations] and goes to

prison for the original sentence not only obliterates any potential savings but also adds the costs of the HDBS option that failed.”

- The rates of recidivism post HDBS with RF. High post HDBS with RF recidivism rates, usually due to a lack of rehabilitative strategies during the sanction, lead to increased prison crowding and hence exacerbate the cost of corrections.
- The overall cost of delivery of HDBS with RF. Determining the cost of delivery of HDBS with RF for the state is complex as many interacting indirect factors may affect the final figure. Nevertheless, the cost is mainly influenced by the specific electronic monitoring agency costs [which vary according to the number of offenders supervised, the type of equipment used and the average length of time offenders are supervised] (DeMichele & Payne, 2009). Further, the availability and extensiveness of rehabilitative treatment programs and services, and the extent to which offenders contribute to their own cost of supervision and monitoring are also important.

In addition, no real cost savings are realised unless a prison or at least a wing of a prison is closed, or diversion prevents the building of a new prison (Clear & Dammer, 2003; Fulton et al., 1997). Alarid et al (2008:190) most clearly explained this in the following example:

If we assume that ISP [HDBS] ‘saved’ a state corrections department from using 250 beds in a prison facility that holds 1,250 offenders, the saved costs would be meals, medical care, and other minor supplies that would have been provided for those 250 offenders. However, the prison would have to remain open for the other 1,000 offenders.

In the late 1980s, studies analysing the operation of HDBS with RF reported that correctional departments who had implemented HDBS with RF were achieving significant cost savings (Wagner & Baird, 1993; Erwin, 1987; Pearson, 1987b). For example, Erwin (1987) and Pearson (1987) compared

the per diem costs of prison with the per diem costs of HDBS with RF. They concluded that between \$6,000 and \$8,000 was saved per offender who was diverted from prison onto HDBS with RF. A subsequent criticism of these cost models was that they “failed to take into account the net widening and re-processing as a result of technical violations and new arrests” (Fulton et al., 1997:70). A more comprehensive cost analysis was conducted in Florida by Baird and Wagner (1990), who considered the costs associated with net widening, revealing an approximate \$2,700 saving per offender on the HDBS with RF.

In the 1990s, researchers overwhelmingly concluded that HDBS with RF cost the state substantially more than initially thought (Fulton et al., 1997). The main reason was the significant rate of net widening. Numerous studies reported that the vast majority of offenders on HDBS with RF were not prison-bound, that is, they were low to medium risk probationers (Fulton et al., 1997; Champion, 1996; Clear & Hardyman, 1990; Tonry, 1990). It was concluded that no real saving occurred, because even though the actual delivery of the HDBS with RF is cheaper than prison, HDBS with RF costs up to 10 times more than regular probation, which they were replacing (Clear, 1997).

Furthermore, studies indicated that HDBS with RF technical violation rates markedly increase the costs of prisons up (Meyer, 2004). High rates of breach of HDBS with RF due to technical violations, combined with a penalty of one-year incarceration in some states for those who commit such breaches, had inadvertently meant that many non-prison bound offenders who violated their conditions of HDBS with RF ended up ‘unnecessarily’ doing prison time (Alarid et al., 2008; Welch, 2004). If HDBS with RF did not exist it is probable that those offenders would simply be placed on probation or in some cases in prison where due to overcrowding they would serve only a portion of their original sentence (for more information see Clear, 2007). The prison consequently became a ‘backup sanction’ (Clear, 2007), or the ‘revolving door’ (Petersilia & Turner, 1990), when offenders were unable to abide by the stringent requirements of HDBS with RF. Hence, sentencing an offender to a

HDBS with RF could actually increase the overall cost to the state in comparison with incarcerating them (Meyer, 2004).

At the turn of the century Johnson (2002) argued that anticipated cost savings associated with HDBS with RF were illusionary. The latest empirical evidence in contrast has indicated that HDBS with RF, which provide treatment and employment training, cost about two-thirds of the cost of incarceration (DeMichele & Payne, 2009). Throughout the USA the median cost of leasing the RF equipment is \$2,190 per year per offender (Brown et al., 2007). Once staff and overhead resources are added onto these costs they increase to \$4,380. These figures exclude the cost associated with staff overtime, specialised staff training and lost/stolen equipment (Brown et al., 2007).

The cost of HDBS with GPS, treatment and employment training is even higher, almost similar to the cost of incarceration (DeMichele & Payne, 2009; New Jersey State Parole Board, 2007; Shute, 2007; Renzema & Mayo-Wilson, 2005; Caputo, 2004). Throughout the USA the median cost of leasing the GPS equipment is \$2,920 per year per offender (Brown et al., 2007). Once staff and overhead resources are added onto these costs they increase to \$5,475. [These figures exclude the cost associated with staff overtime, specialised staff training and lost/stolen equipment (Brown et al., 2007)]. The cost of operating GPS technology is more expensive as, unlike the RF technology, it involves much more sophisticated equipment that provides considerably more extensive information about the offender's movements which may require analysis and action (Minnesota Department of Corrections, 2006). Once the expenses associated with (at least some) net widening and technical violations are added to these costs, these sanctions are said to become more expensive than prison.⁸⁷

⁸⁷ As mentioned earlier, it is worth noting that prisons in the USA are comparatively much cheaper to operate than elsewhere in the Western world. This is because the USA has a much higher incarceration rate per 100,000 adult population, larger prison capacities, cheaper construction costs and generally worse conditions in prisons (Reichel, 2008; Stephan, 2004; Haney, 2001).

According to Minnesota Department of Corrections (2006) the placement of serious offenders, mostly sex-offenders, on extended supervision HDBS with GPS to increase public safety has widened the net of social control and increased correctional outlays. The 'moral panic' surrounding sex offenders in particular throughout the Western world has led to stringent legislation under which the protection of public safety outweighs the overall concerns about the cost (Nellis, 2010c). Previously, these offenders would have either been set free into the community following imprisonment or would have received a parole period. The underlying assumption behind the legislative changes is that sex offending is fundamentally a subject of availability and opportunity. Imposing continual surveillance over the offender is supposed to deter them from re-offending both during the sentence as well as after it (Nellis, 2010c).

Conversely, HDBS with GPS that operate as alternatives to prisons for serious offenders appear to result in cost savings for the state. This is because overall figures indicate that HDBS with GPS are generally cheaper than imprisonment. Brown et al., (2007) from the Centre for Criminal Justice Technology were sponsored by the National Institute of Justice (USA) to report on USA-wide lessons learnt about the operation of HDBS with GPS. They concluded that, even though the cost of incarceration varies significantly throughout the USA, the median figure per inmate per year is around \$30,000 (Brown et al., 2007). It should be noted that this figure typically excludes the costs of constructing new prisons or the expansion of current facilities. To these overheads, additional millions of dollars need to be added. This report also found that throughout the USA, on average, HDBS with GPS costs the state US\$5,475 per offender per year. This figure is inclusive of the cost of the lease of equipment as well as staff and overhead resources, but excludes costs associated with staff overtime, specialised staff training and lost/stolen equipment (Brown et al., 2007). According to these average costs of incarceration and HDBS with GPS, about 5 offenders can be placed on HDBS with GPS annually rather than incarcerating one inmate for one year. Consequently, correctional outlays seem substantially different when making comparisons between prison and HDBS with GPS (Bales et al., 2010a).

Extensive research has however indicated that actual operational costs associated with HDBS with GPS are often overlooked or underestimated (Drake, 2009). Because GPS tracking is very resource-intensive, requiring extensive collaboration between different components of the criminal justice system (Drake, 2009; Fransson, 2005). GPS technology operates on the basis of mobile phone signal availability as well as the connection with satellite signals, which means that whenever the signal and/or connections are lost follow-up is necessary. This is even though the mobile phone signal may be in a 'dead spot' or the satellite signals may be lost due to the offender being surrounded by high-rise buildings or being inside buildings (DeMichele & Payne, 2009). As all of these 'false alerts' require analysis and perhaps a response, this substantially increases the costs of HDBS with GPS (Minnesota Department of Corrections, 2006). Due to this, monitoring centres need to be staffed around the clock. This is particularly for hybrid and active tracking since all alarms indicating possible equipment tampering or entry into an exclusion zones must be evaluated and responded to without delay (Fransson, 2005). However, the number of individuals that a staff member can handle simultaneously is limited. Interestingly, the response to alert warnings is one of the least recognised costs of HDBS with GPS (DeMichele & Payne, 2009).

Further, staff involved in installation of the device, maintenance of technical equipment, and staff within corrections and police departments assigned to monitoring the offender, also need to be costed (Fransson, 2005). In particular, staff salaries in proportion to the number of offenders on the HDBS with GPS should be included in cost calculations (Olotu et al., 2009). Furthermore, initial and periodically repeated training of all stakeholders is also a component of expenses (DeMichele & Payne, 2009). Significant increases in personnel, overtime and training, as well as supply costs must all be accounted for in the operation of HDBS with GPS.

Other broader costs which are rarely taken into account include establishing and maintaining the GPS agency infrastructure, particularly the 'start-up costs' (Olotu et al., 2009). More specifically, administration overheads, employee

compensation, vehicles and office space costs must be incorporated (Drake, 2009). Further, the cost of the treatment and services provided for offenders is also critical when considering the total cost of a program (Shute, 2007). If these significant expenses are not counted, then there is a possibility that the calculated cost will be inaccurate and that the HDBS with GPS will be critically underfunded (Drake, 2009).

When discussing cost effectiveness of HDBS with GPS, a number of indirect cost savings must be mentioned. Empirically, it has been demonstrated that offenders on HDBS with GPS (typically high-risk sex-offenders) have higher successful completion rates and lower recidivism rates. Lower costs are therefore associated with re-arrest and re-incarceration in comparison with non-electronically monitored offenders (Bales et al., 2010a; Bottos, 2007; New Jersey State Parole Board, 2007; Padgett et al., 2006). This is because these offenders consciously avoid exclusion zones in the knowledge that their movements are being monitored, so GPS equipment creates an 'ever-seeing eye'⁸⁸ within society. According to Olotu et al., (2009:xiv) "surveillance and monitoring value could [also] provide opportunities for offenders to enhance their independent community living" even after the HDBS with GPS. A further advantage of GPS technology is that it provides community corrections officers with valuable information about an offender's attitude to behavioural change (DeMichele & Payne, 2009). Cost savings may be the result of greater understanding of each offender's movements. This would result in an increase in compliance with other conditions and subsequently lead to lower rates of recidivism and decreases in re-arrests and incarceration (DeMichele & Payne, 2009).

Additional government savings are achievable through the possible continuation of an offender's employment in the community, an offender's ability to pay taxes and, in some cases, an offender's personal contribution to the expenses associated with the operation of HDBS (DeMichele & Payne,

⁸⁸ This is also referred to as the "panopticon" (Olotu et al., 2009). This is Jeremy Bentham's concept for a prison design where guards could monitor prisoner's actions at all times without being seen (for more information see Clear et al., 2006).

2009; Bottos, 2007). In the USA, sanction costs are often partially offset through the offender's contribution to equipment daily lease fees. For example, the Florida Department of Corrections can require offenders on HDBS with RF and HDBS with GPS reimburse the service for some or all of the cost of the equipment (Bales et al., 2010a). The study conducted by Bales et al (2010a) found that 61% of offenders were ordered to pay for some portion of the daily lease of their devices. In addition, in some instances, damages incurred to the equipment were also charged to the offender. Offender payments operated on a sliding scale, proportional to the income of the offender⁸⁹ (Bales et al., 2010a). However, it is interesting to note that all of the offenders' financial contributions only offset the overall costs of sanction delivery by about 10% (Bales et al., 2010a). Nevertheless, as offenders adopt a stable lifestyle and further develop their responsibilities, such as steady employment and income, these cost offsets would increase according to the offender's financial position in the future.

3.3.2 Ethical issues and dilemmas

Ethical issues and dilemmas are presented under 4 points. Initially, there is a philosophical discussion about whether HDBS are a part of a surveillance-oriented Orwellian⁹⁰ society. This is followed by a more specific analysis on whether there is discrimination in the selection process for HDBS, whether punishment on HDBS varies between offenders, and whether HDBS punishment spills over into the lives of offenders' co-residing family members.

Ethical issues and dilemmas are generally presented in relation to mostly HDBS with RF. This is because the number of studies that have explored the

⁸⁹ Using a sliding scale is necessary due to many offenders having relatively low educational levels and thus their ability to obtain and maintain reasonable employment may subsequently be limited (Bales et al., 2010a). (For more information see section 3.3.2.2).

⁹⁰ George Orwell in his classic novel titled '1984' (written in 1948 and published in 1949) provided a thought provoking look into the future, outlining his fear of the totalitarian state where among other features two-way television screens allow unprecedented governmental intrusion into private lives and constant monitoring of activities; it specifically included spying on people, revealing their secrets and imposing on their privacy (Bigo, 2006; Schmidt, 1994b).

ethical issues and dilemmas of HDBS with RF is significant, but is more limited in relation to HDBS with GPS. In particular, gaps in research are in whether punishment on HDBS with GPS varies between offenders, and whether punishment on HDBS with GPS spills over into the lives of offenders' co-residing family members. It is possible that this is because HDBS with GPS do not confine offenders to their homes for prolonged periods of time. As such, the punishment on offenders undergoing these sanctions is probably not as diversified and has substantially less impact on their co-residents in comparison with HDBS with RF (Martinovic & Schluter, 2012; Alarid et al., 2008; Meyer, 2004; McCarthy et al., 2001). Nevertheless, future research assessing these issues is imperative.

3.3.2.1 Are HDBS part of a surveillance-oriented Orwellian society?

While from a purely operational perspective the monitoring associated with HDBS is not considered to be "surreptitious" (Ball et al, 1988:127), there are larger ethical issues and dilemmas worth considering. For example,

What does it imply when homes are being converted into jails?
What will be the effect of a policy that might lead to a significant portion of society living under the constant realization that their movement is being monitored by a computer somewhere? Is this just the beginning of what will become further state intrusion into the home? Is it part of an even larger trend toward greater state control over the private lives of its citizens? Such questions ... force us to be sensitive to the larger implications of our efforts, to the "big picture".

(Ball et al., 1988:127)

Consequently, the first and broadest ethical consideration related to the operation of HDBS with RF was whether they were a part of the government's move towards an extension of total control (Lilly & Ball, 1987), that is, a

surveillance-oriented Big Brother - Orwellian society (for more information see Lilly, 2006; Payne & Gainey, 1998).

Throughout the 1980s, the opponents of HDBS with RF argued vigorously that the introduction of these sanctions has allowed governments to utilise 'private homes' as 'public prison space'. The contentious point was that 'the home', which has had historical significance among Anglo-Saxon people, was losing its power (Ball & Lilly, 1986). The home had acquired a sacred character as it became a personal sanctuary and a safe harbour for all regardless of their economic status. The often cited quotation from Pitt encapsulates this:

The poorest man may in his cottage bid defiance to the crown. It may be frail – its roof may leak – the wind may enter – but the King of England cannot enter – all his force dares not cross the threshold of the ruined tenement.

(cited in Glasser 1974:100)

It was also asserted that electronic devices would inappropriately penetrate the offenders' private realm (Ball et al., 1988). In particular, the electronic bracelet was regarded as being especially intrusive because it is strapped to the body itself and "the body is even more crucial to selfhood than is the home" (Ball et al., 1988:130). Consequently, it was argued that the excessive use of technology should be avoided and electronic monitoring employed selectively (Vaughn, 1987).

The counter argument that was presented against the view that HDBS with RF allow the government to excessively intrude on offenders' privacy was that they are much less intrusive and much more protective of personal privacy than institutional detention (Schmidt, 1994b; Ball et al., 1988). This view was eloquently expressed by Toombs (1995:343):

Big brother is watching criminals. The difference is that big brother's current means of watching criminals gives the advantage to those who are being watched, the criminals, rather than to big brother, the watcher.

However, the complexity that is associated with HDBS with RF is that they possess a false appearance of freedom and autonomy as well as maintenance of relationships with family and friends. The reality of being on a HDBS with RF is unpredictable and unnatural – it involves constant monitoring, surveillance and control that in fact blur the boundaries of liberty and relationships of the offender (Ball et al., 1988).

Interestingly, the literature during the 1980s urged future debate, predicting unprecedented governmental intrusion of individual privacy through the application of HDBS more generally. However, the philosophical discussion about this ethical dilemma did not subsequently happen during the 1990s or 2000s (Lilly, 2006; Ball et al., 1988). This is particularly astounding given the introduction of HDBS with GPS, where the technology is referred to as “the eye in the sky” (Tennessee Board of Probation and Parole, 2007:26). It has allowed unprecedented restricting of offender's movement as well as tracking and pinpointing of their specific location virtually anywhere in the world; this total control was at least to some extent, envisioned and cautioned by the author George Orwell in the late 1940s (Mair, 2006; Meyer, 2004; Black & Smith, 2003).

The reason behind the lack of subsequent critical discussion about HDBS with GPS becoming part of an Orwellian society is that the use of various surveillance mechanisms more generally in our society has become an entrenched part of our lives (Lyon, 2006:3). (For more information see Chapter 5.4). It has also become widely accepted that the technology generally imposed on people as well as more specifically on offenders is “not the result of deliberate governmental efforts to be omnipresent” (Lilly, 2006:94). In addition, it seems that concern for serious offenders' privacy (who are typically subjected to these sanctions) has generally been

outweighed by the seriousness of the crimes that they have committed and the overall culture of fear and moral panic that generally surrounds them.

3.3.2.2 Does the selection process for HDBS discriminate against offenders with certain characteristics?

A more specific ethical issue and dilemma is whether the correctional selection process for HDBS discriminates against offenders with certain characteristics. Theoretically, offenders should be selected for HDBS according to a measuring instrument which provides an offender's statistical risk-and-needs-analysis and considers factors such as an offender's convicting offence/s, criminal history, substance abuse and interpersonal relations (Schulz, 1995; Reichel & Sudbrack, 1994; Fulton & Stone, 1992; Van Ness, 1992; Baird & Wagner, 1990). In contrast, discrimination occurs if a decision recommending for or against placement on a HDBS is based on other factors such as an offender's gender, race or economic status.

During the 1980s, there was no consideration of whether discrimination during the selection process for HDBS with RF occurred, but in the 1990s studies about it were extensive. These later studies generally confirmed an early concern that HDBS with RF would be more readily available for middle-and-upper-class offenders in comparison with lower-class offenders (Reichel, 2001). While offenders' economic status was not directly considered during the selection process for HDBS with RF, three specific selection determinants inadvertently considered it. These included the requirement for an offender to reside in a suitable home, maintain a telephone and pay sanction-related expenses.

The most basic requirement that offenders have a suitable home, that is, reside in a 'private' home or with 'reliable friends or relatives' and not live in boarding houses or hostels or have a more 'itinerant lifestyle,' was determined to be potentially discriminatory (Schulz, 1995; Petersilia & Deschenes, 1994; Maxfield & Baumer, 1990; Friel & Vaughn, 1986). This is because some

offenders are excluded from HDBS with RF simply because they are indigent – unable to afford to reside in a ‘suitable home.’ It is a well reported fact that lack of appropriate housing has been an ongoing issue for offenders and many are precluded from participating on HDBS with RF because of it (Baldry, 2005; Maxfield & Baumer, 1990).

In addition, offenders’ co-residents over the age of 18 (if there are any) must consent to the offender’s placement on the HDBS with RF, and sign a ‘contract’ agreeing to cooperate with its requirements (Gainey et al., 2000; Maxfield & Baumer, 1990; Ball et al., 1988). This is problematic because offenders are dependent on their co-residents consenting to the imposition of the HDBS with RF within their living space. If they do not agree, and the offender cannot afford to move to another suitable residence, then they are not placed on the HDBS with RF and are thus discriminated against.

Similarly, the fact that offenders on HDBS with RF were mandated to maintain a telephone at their home was determined to be potentially inequitable (Gainey et al., 2000; Schulz, 1995; Reichel & Sudbrack, 1994; Maxfield & Baumer, 1990; Friel & Vaughn, 1986). The telephone is necessary for passive as well as active RF electronic monitoring of offenders as it either “initiates calls to the central computer or receives calls from it” (Baumer & Mendelsohn, 1990:44). The need for a telephone line posed serious obstacles for offenders with limited financial means, as they were required to pay for the installation of a telephone service fee, monthly service fee and any prior outstanding accounts (Baumer & Mendelsohn, 1990; Maxfield & Baumer, 1990).

Finally, the requirement of HDBS with RF that offenders pay sanction-related expenses (in the interest of cost efficiency) was also determined to be potentially discriminatory (Fox, 1987a). These can include paying supervisory fees, restitution, and drug/alcohol testing, as well as paying to travel to meet various sanction requirements such as community work and rehabilitative treatment (Blomberg et al., 1993; Fulton & Stone, 1992; United States General Accounting Office, 1990; Fox, 1987a).

Some HDBS with RF where offenders were required to pay set daily charges, which were estimated to be about \$450 per month, discrimination was reported to occur (Gainey et al., 2000; Ansay, 1999; Baumer & Mendelsohn, 1990). This is because HDBS with RF which do not base their fees on an offender's income. Low-income offenders, who generally find it difficult to pay their and their dependents' normal cost of living, are therefore not able to afford these fees (Gainey et al., 2000; Ansay, 1999; Baumer & Mendelsohn, 1990). Hence, if HDBS with RF are utilised as diversions from imprisonment, offenders who are unable to meet these predetermined monetary obligations end up in prison and are discriminated against simply due to being indigent (Fox, 1987a).

Alternatively, in most HDBS with RF, where supervision fees were based on a sliding scale approach according to an offender's weekly income, offenders were not discriminated against. This is because offenders had equal access to being on a HDBS with RF regardless of their income. Further, some HDBS with RF had provisions for fees to be waived in deserving cases (Rackmill, 1994; Renzema, 1992; Van Ness, 1992; Baumer & Mendelsohn, 1990; Lilly, Ball & Wright, 1987).

Therefore, the mandatory requirements of HDBS with RF could generally be more easily met by persons with some level of financial security and stability (Reichel, 2001). Consequently, indigent offenders could be precluded from participating on HDBS with RF as the selection criteria potentially discriminated against those who did not have a suitable home, were unable to pay for telephone maintenance, and pay other sanction-related expenses.

On the contrary, research through the 1990s reported that an offender's family status, age, gender, race and education do not *per se* determine their placement onto HDBS with RF. While it was a commonly held belief that 'family men and women' and older offenders would be more likely to be admitted onto HDBS with RF (Lilly et al., 1992), research indicated that those on HDBS with RF had varied marital statuses and living arrangements, and that their age composition was very similar to prisoners (Gainey & Payne,

2000; Lilly et al., 1992; Baumer & Mendelsohn, 1990). Other studies reported that even though Caucasians, females, and better-educated offenders were more likely to be sentenced to HDBS with RF, this did not occur due to potential discrimination (Lilly et al., 1992; Baumer & Mendelsohn, 1990). A close examination of the literature indicated that there was an external reason that accounted for this discrepancy. HDBS with RF during the 1990s specifically targeted offenders who committed non-violent and non-serious crimes and these offenders were more likely to be Caucasians, females, and better-educated offenders (Lilly et al., 1992; Baumer & Mendelsohn, 1990).

Since 2000, research exploring whether discrimination occurs during the selection process for HDBS with GPS has been lacking. The only studies appear to be from Tennessee and California which found that HDBS with GPS targeted higher risk offenders and as such the characteristics of the offenders closely resembled that of the incarcerated prisoner population. It was thus concluded that there was no discrimination on the basis of an offender's gender or race (Tennessee Board of Probation and Parole, 2007; Turner et al., 2007; Florida Department of Corrections, 2006).

Furthermore, it should be noted that over the last decade many jurisdictions that employ HDBS with RF and HDBS with GPS have made specific attempts to reduce the inadvertent consideration of an offender's economic status which can result in discrimination during the selection process.

Even through having a suitable home is still the primary determinant of placement on HDBS with RF, alternative accommodation options are available in some states (Enos et al., 1999; Schulz, 1995; Petersilia & Deschenes, 1994). For example, offenders in California are provided with an option to serve their HDBS with RF in foster/surrogate homes. Here the offender resides outside their previous environment with a surrogate family. The surrogate family are paid approximately \$600 a month to provide room and board (Enos et al., 1999). The families also contribute to the offenders' rehabilitation and reintegration by providing them with transportation, employment assistance and overall guidance. Evaluations of this scheme

have shown positive results (Enos et al., 1999). The challenge is in securing funding to broaden such alternative accommodation options for offenders throughout the USA (Tennessee Board of Probation and Parole, 2007).

It is also important to note that having a suitable home is not a requirement for offenders on HDBS with GPS. While strict residency requirements are imposed on these offenders so that they are not near children, that is, schools and parks, they are able to be homeless. If an offender has no access to an electrical outlet to charge the device due to being homeless or indigent, as is the case for many offenders in the USA, finding a place to charge the GPS device can be a real burden. Massachusetts' Highest Court in 2010 ruled that offenders should not be punished if they have no access to a power outlet (Myers, 2011). In such cases, responsibility falls to the Department of Corrections to organise alternative arrangements such as charging the GPS device at their premises (Myers, 2011).

Similarly, while co-residents' agreement to serve the HDBS with RF is still necessary, it is not a requirement for offenders on HDBS with GPS. This is probably because the imposition of GPS monitoring means that offenders are not confined to their home for a prolonged period of time and their co-residents are not disturbed by random home visits or telephone calls which are usually an integral component of RF monitoring (Martinovic & Schluter, 2012; Alarid et al., 2008; Meyer, 2004; McCarthy et al., 2001; Church & Dunstan, 1997).

While offenders traditionally had to maintain a telephone at their home (Gainey et al., 2000; Schulz, 1995; Reichel & Sudbrack, 1994; Maxfield & Baumer, 1990), in many HDBS with RF and HDBS with GPS this is no longer the case. The technology of electronic monitoring equipment has continued to progress, allowing HDBS with RF and HDBS with active GPS to rely on cellular phone technology; this is increasingly cheaper for offenders in comparison with a landline phone and can even be supplied by the agency during the period of serving the sanction (Brown et al., 2007; McCarthy et al., 2001; Reichel, 2001). In cases where landline phones are still necessary,

such as HDBS with passive GPS, agreements can be made in some jurisdictions with telephone companies to provide landlines with restricted service (Brown et al., 2007; Reichel, 2001; Carlson et al., 1999). Although phone-related expenses are becoming increasingly affordable for offenders, the issue remains for those who have limited financial means and their HDBS with RF or GPS mandates the maintenance of a landline phone at home (Tennessee Board of Probation and Parole, 2007).

The payment of sanction-related expenses has become somewhat more affordable for offenders. This is because an increasing number of USA states - in particular 22 out of 51 - do not require offenders to contribute to a portion of their monitoring cost (DeMichele & Payne, 2009). Further, the set fees for active RF electronic monitoring are cheaper than before, estimated to be about \$320 a month, while the fees for GPS monitoring are similar, between \$200 and \$500 a month (DeMichele & Payne, 2009; Alarid et al., 2008; Wagner, 2008). Most importantly however, many HDBS with RF and GPS charge sliding scale fees and waive fees in certain cases so that low-income individuals can be placed onto these sanctions (Tennessee Board of Probation and Parole, 2007; Meyer, 2004). Nevertheless, the issue is that indigent offenders may still struggle to pay fees even if they are based on a sliding scale, and some HDBS with RF and GPS still impose fixed fees (DeMichele & Payne, 2009; Tennessee Board of Probation and Parole, 2007).

In conclusion, although attempts have been made over the last decade to make HDBS generally less discriminatory, they are still not equally accessible to offenders regardless of their social status. In 'deserving cases' jurisdictions should be able to absorb the cost of an offender's accommodation (and relocation if necessary), telephone installation and service and sanction-related expenses.

3.3.2.3 Is punishment on HDBS varied?

A related ethical issue and dilemma is whether being on HDBS results in a vastly diverse experience of punishment and therefore discriminates against offenders with certain characteristics. The research, which has only been undertaken in relation to HDBS with RF, has overwhelmingly indicated that offenders potentially experience markedly different experiences of punishment.⁹¹ This is primarily because offenders on these sanctions are confined to their homes where generally the nature of their environment and the quality of their interpersonal relationships are of great importance. The punishment on HDBS with GPS is probably not as diversified since offenders on these sanctions are not confined to their homes for prolonged periods of time. More specifically, 6 personal and social characteristics of offenders, which are explained below, seem to most profoundly determine their HDBS with RF experience. It should be noted that in this section information is presented thematically, rather than chronologically; this is because the findings over the three decades of operation of HDBS are indistinguishable. These include:

Gender - Females tend to find compliance with the requirements of HDBS with RF to be more onerous than males. The main reason is that females are much more likely to be primary care givers for dependents as well as have unshared domestic responsibilities (Maidment, 2002; Ansay & Benveneste, 1999; Micucci, Maidment & Gomme, 1997; Wood & Grasmick, 1995; Robinson, 1992). They are also more likely to live in poverty, due to having limited employment skills (Micucci et al., 1997; Robinson, 1992). In addition, females report wearing the electronic monitoring device to be more burdensome than males (Payne & Gainey, 1998). They also noted being more worried and ashamed about being identified as an offender (Ferdinand & McDermott, 2002; Gainey & Payne, 2000; Payne & Gainey, 1998). This is

⁹¹ It is worth noting that the experience of all penal sanctions is potentially unique, and most notably, imprisonment can be a vastly different individual experience dependent on offenders' personal and social characteristics (Spelman, 1995; Petersilia & Deschenes, 1994; Crouch, 1993). However, the fact that it takes place in a single setting makes it somewhat less unique than HDBS, which occur in many different settings and environments, allowing for extreme disparity in sanction experience.

probably because industries in which females are more likely to be employed in, such as hospitality, usually require them to wear uniforms, so that concealing the device may not be possible (Micucci et al., 1997; Lilly et al., 1992).

Race - Racial minorities (such as African Americans and Hispanics) consider being on the HDBS with RF to be more demanding in comparison with Caucasians. This is because they are more likely to be unemployed or working in low-paid jobs having therefore lower socio-economic profiles (Clear, 2007; Carroll, 1982). Similarly, racial minorities are likely to reside in deprived, crime-prone, ghetto environments (Clear et al., 2006; Johnson, 1976). More specifically, African American offenders were more likely to feel discriminated against by supervising officers, regardless of an officer's racial background (Spelman, 1995). Further, the wearing of the electronic monitoring device is likely to result in them feeling humiliated (Baumer & Mendelsohn, 1990).

Urban/rural residence - Offenders who reside in rural areas find compliance with HDBS with RF to be more onerous than offenders who live in urban areas. These offenders usually have lower incomes as a result of poorer job availability and skills (Ansay, 1999). They are also likely to face issues with access to adequate transportation (Ansay, 1999; Levine & Scotch, 1970). In addition, unlike their urban counterparts, rural offenders are typically not used to residing in more limited spaces, and are more likely to be affected by a loss of privacy and shaming (Gainey & Payne, 2000; Ansay, 1999; Levine & Scotch, 1970). Finally, offenders residing in rural areas are more likely to believe that they are supervised more intensely on HDBS with RF than those residing in metropolitan areas (Gainey & Payne, 2000; Jones, 1996).

Employment status - Offenders who are unemployed find the HDBS with RF experience to be generally more difficult than those who are employed (Courtright, Berg & Mutchnick, 2000; Ryan, 1997; Jolin & Stipak, 1992). If the

HDBS with RF does not mandate offenders to obtain employment and they remain unemployed then they are likely to experience boredom. Alternatively, in HDBS with RF where offenders are required to obtain employment, unemployed offenders generally find this onerous because they have to notify their prospective employer about being on the sanction and their inability to follow unpredictable work schedules.⁹² Upon gaining employment, these offenders may face difficulties in quickly developing the necessary work habits and skills (Petersilia & Deschenes, 1994; Petersilia, 1990a).

Financial situation - Offenders who are not financially stable find the overall punitive effect of HDBS with RF to be more onerous (Gowen, 1995; Smykla, 1981). They are likely to reside in a smaller living space where they and their co-residents have less privacy, and are generally more likely to be disturbed by surveillance in their household (Ansary, 1999). Offenders who are not financially stable are similarly unlikely to be able to afford some at-home 'luxuries' such as entertainment and recreational equipment that are said to somewhat ease the difficult time on the HDBS with RF⁹³ (Gowen, 1995; Crouch, 1993; Petersilia, 1990a:). Hence, they are generally "more tempted to escape the deprived environment" (Ansary, 1999:217).

Co-resident relationships - Offenders on HDBS with RF who are not supported by their co-residents⁹⁴ find the experience to be more burdensome (Payne & Gainey, 1998; Doherty, 1995; Jolin & Stipak, 1992). This is particularly the case if co-residents are not willing or able to support them emotionally, physically or financially (Gainey et al., 2000; Ansary, 1999; Payne & Gainey, 1998). In order to profoundly assist the offender, co-residents may

⁹² These are not permitted on HDBS with RF because close and random supervision at work would not be possible (Church & Dunstan, 1997). On the other hand, HDBS with GPS have overcome this problem due to their ability to constantly monitor offender movement anywhere, and there are no such employment-related restrictions (DeMichele & Payne, 2009).

⁹³ It is therefore not surprising that "many of those at the bottom of the socio-economic scale enjoy better living conditions in custody" [than outside] (Gowen, 1995:12).

⁹⁴ It should be noted that a caring and stable relationship with a family member or a friend who is not an offender's co-resident could also reduce the punitive impact of the HDBS with RF on the offender.

need to drastically (and at times detrimentally) change their own lifestyles. (For more information see section 3.3.2.4).

Therefore, females, racial minorities, those residing in rural areas, and those who are unemployed, not financially secure, or without supportive co-resident relationships seem to experience HDBS with RF to be more onerous. The more of these characteristics an offender possesses, the more difficult the HDBS with RF seems to be for them.⁹⁵ The extensively varied punishment experience, which is potentially inequitable and even discriminatory, is an ethical issue and dilemma that has not yet been recognised in the policy that guides the operation of HDBS with RF. The policy could be amended to allow sentencing officials to undertake a detailed analysis of offenders' personal and social characteristics, as well as their broader circumstances, indicating whether they fit group norms. Individually tailored conditions that are specifically punitive for each offender could then be imposed (Martinovic, 2004).

3.3.2.4 Do HDBS punish offenders' co-residents?

The final ethical issue and dilemma discussed is whether the punishment directed toward the offender on HDBS spills over into the lives of their co-residents. Investigating this issue is important because the overwhelming majority of offenders reside with co-residents, who are generally family members, for the duration of the sanction (Mainprize, 1995; Baumer & Mendelsohn, 1990). The research, which is only present in relation to HDBS with RF, has clearly shown that offenders' co-residing family members are punished, albeit indirectly and unintentionally when a HDBS with RF is imposed (Martinovic, 2004). HDBS with GPS probably have less punitive effects on offenders' co-residents as offenders are not confined to their homes for prolonged periods of time, and their co-residents are not disturbed by random home visits or phone calls at all times which are usually an integral

⁹⁵ However, this overall finding must be treated with caution because not all people conform to group norms.

part of RF monitoring (Martinovic & Schluter, 2012; Alarid et al., 2008; Meyer, 2004; McCarthy et al., 2001; Church & Dunstan, 1997). Sharing the punitive impact of HDBS with RF is ethically problematic as offenders' co-residing family members have not committed any crimes and are already likely to be struggling financially and emotionally (Gibbs & King, 2003b).

During the inception of HDBS with RF, that is in the mid-1980s, these sanctions were portrayed as a "piece of cake" (Blomberg et al., 1993:191), whose main selling-point was offenders' ability to remain at home with their families continuing to maintain their roles and support them (Meyer, 2004; McShane & Krause, 1993). Co-residing family members' role within HDBS with RF was entirely ignored and their consent for the imposition of the sanction within their living space was not regarded as necessary (Gainey et al., 2000; Ball et al., 1988). It should be noted that at the time very few researchers alluded to the problems that offenders' co-residents could encounter during HDBS with RF – the most prominent were Ball et al (1988). They argued that, despite careful screening of offenders, there was a possibility that co-residents could be victimised by the offender, and that the offender could pressure them to engage in illegal activities such as procuring drugs (Ball et al., 1988).

On the contrary, in the 1990s, jurisdictions started to make mandatory provisions for offenders' co-residents to sign a contract formally consenting to the imposition of the HDBS with RF within their home. The contract also assumes that they will cooperate with the sanction requirements such as allowing supervising officers to conduct unannounced searches of the home (Roberts, 2004; Whitfield, 1997). This shift in policy was the outcome of an increasing recognition that HDBS with RF may have an inadvertent impact on offenders' co-residents. While acknowledging this is positive, it is also problematic because, from the outset, co-residing family members may be placed in an awkward situation if they object to the offender's placement onto the HDBS with RF.

Studies conducted throughout the 1990s and 2000s, which researched the effect of HDBS with RF on offenders' co-residents, have been classified together (due to complementary findings) into a five-point typology of impacts endured by offenders' co-residing family members (for more information see Martinovic, 2007).

Effects caused by feeling responsible to help the offender comply with the HDBS with RF. Research has indicated that co-residing family members are most likely to feel responsible to assist offenders with three explicit conditions of HDBS with RF, including limited movements, monetary obligations, and exposure to temptations (Ansay, 1999; Altman & Murray, 1997; Blomberg et al., 1993). It seems that co-residing family members have chosen these three areas of assistance, because these are considered to be mostly demanding by the offenders and they are uniquely placed to offer such assistance.

Limited movement is the most stringent condition of HDBS with RF which makes offenders particularly vulnerable. As a result, co-residing family members often assume additional tasks in order to help offenders comply with the sanction as well as reduce the potentially negative sanction effects on the household (Altman & Murray, 1997; Whitfield, 1997). They often elect to perform general duties outside the home such as shopping, paying bills and picking up laundry (Payne & Gainey, 1998). In addition, if offenders have children, co-residing family members seem to take responsibility for organising and orchestrating children's schooling and recreational activities outside of the home (Ansay & Benveneste, 1999; Altman & Murray, 1997). They also often drive offenders to treatment and/or counselling centers, community work and/or employment in order for them to fulfill their sanction requirements (Ansay, 1999). This performance of additional activities usually results in co-residing family members curtailing their own social lives and as a result feeling alienated from their own social support networks (Whitfield, 1997).

In order to further lessen the negative impacts that offenders experience on HDBS with RF, their co-residing family members have reported feeling responsible to financially assist them by contributing to monetary obligations associated with these sanctions. Consequently, co-residing family members have reported the necessity to jointly re-channel the household budget and/or sacrifice their previous spending patterns (Ansay, 1999; Blomberg et al., 1993; Van Ness, 1992).

Co-residing family members have also reported feeling responsible for reducing the offender's temptations of leaving the household and returning to a non-pro-social lifestyle.⁹⁶ They usually purposely restrict their social life outside of the immediate family (Ansay, 1999; Blomberg et al., 1993). A supervising officer encapsulated this as "when one cannot go, they all stay home" (Ansay & Benveneste, 1999:129-130). Moreover, co-residing family members typically employ various changes in the domestic setting in order to increase the offender's comfort. For example, Ansay (1999:80, 153), found that "in one form or another, all family members produced accounts of a social world that had changed drastically to accommodate the restrictions placed on the [offender]." She specifically reported that parents were likely to purchase "material components of leisure pastimes (i.e. computers, VCRs)" in order to ensure that their son/daughter remained in the household (Ansay, 1999:217).

Another temptation that co-residing family members have reported feeling responsible to encourage the offender to resist is drug/alcohol consumption. They are known to do this by themselves adopting a drug and alcohol free lifestyle and even undertaking rehabilitative treatment programs (Ansay, 1999; Blomberg et al., 1993). Hence, in various ways, co-residing family members may encourage the offender to endure being on the HDBS with RF and embrace a pro-social lifestyle, reducing the likelihood that the offender will return to their previous offending behaviour.

⁹⁶ Non-pro-social lifestyle may include drug use and/or alcohol consumption and not going to work, which all constitute breaches of HDBS with RF.

Effects caused by HDBS with RF's indirectly applied facilitating control factors. Supervision on HDBS with RF consists of random phone calls and physical visits throughout a 24-hour time period to ensure that offenders are in fact confined to their home. This demanding discipline often means that their co-residing family members also feel disrupted (Ansay, 1999). In particular, they have reported viewing the late-night phone calls and/or unannounced visits at all hours of the night as the 'most upsetting' aspect of control mechanisms (Baumer & Mendelsohn, 1990). The disturbance of the home environment may consequently contribute to increased tension within the family which can result in family conflict (Whitfield, 2001; Lilly et al., 1993).

Effects caused by feeling embarrassed as a result of residing with an offender on HDBS with RF. Co-residing family members often feel embarrassed and try to hide the offender's sanction status whenever possible. Even when they want to disclose the offender's sanction status to their neighbours, friends and/or extended family members they have reported usually feeling uncertain about how to explain it (Richardson, 1999). This is problematic as some co-residing family members may avoid contact with their social support network and consequently feel isolated and alienated.

Effects caused by perceived relocation of HDBS with RF from governmental control into private homes. The imposition of a HDBS with RF can be viewed as a relocation of surveillance and control from the government personnel to offenders' co-residents (Leigh, Knaggs & McDowall, 1997). Adult siblings and parents of young and unmarried offenders are particularly likely to view this imposition to control the offender as a burden of responsibility (for more information see Ansay, 1999:172). This perceived family responsibility to informally supervise the offender contributes to co-residents feeling stress and anxiety (for more information see Richardson, 1999) which is "marked by feelings of fear, resentment, worry and guilt" (Ansay, 1999:162).

Effects caused by HDBS with RF's 'under-duress' social interaction in the household. Although most co-residing family members and offenders attempt

to somehow support one another during HDBS with RF, the fact that offenders on these sanctions are confined to their homes for prolonged periods of time means that 'under-duress' social interaction is likely (Maidment, 2002; Ansay, 1999; Payne & Gainey, 1998). This has been termed a 'pressure cooker' environment where a change in domestic roles typically occurs as co-residing family members, particularly female spouses, are required to instantly adjust to the offender being confined to the home and disrupting various family routines including child rearing, housekeeping and cooking (Gainey et al., 2000; Payne & Gainey, 1998; Blomberg et al., 1993). Moreover, co-residing family members and the offender have to at times adapt to each other under different circumstances and/or deal with 'unsolved' issues and problems (Payne & Gainey, 1998). Therefore, 'under-duress' social interaction inside the home, combined with the pressures of everyday life under circumstances where all are likely to feel frustration and stress, has been found to contribute to disputes and intensify strains in frequently already fragile relationships (Alarid et al., 2008; Meyer, 2004; Clear & Dammer, 2003; Blomberg et al., 1993).

While the five-point typology provides a generic explanation of the impacts endured by offenders' co-residing family members, it is worth noting that the impact of HDBS with RF on offenders' co-residing family members is individualistic and varied (Ansay, 1999). The experience seems to be generally more onerous for offenders' co-residing family members if:

- they have a caring and stable relationship with the offender and feel obligated to assist them in complying with the HDBS with RF (Martinovic, 2002; Whitfield, 1997)
- the HDBS with RF is for a relatively long period and it involves stringent conditions (Rackmill, 1994)
- as a household they are not financially secure, meaning that financial sacrifices need to be made in order to comply with HDBS with RF monetary requirements (Martinovic, 2006; Ansay, 1999).

Interestingly, despite the abovementioned intrusions and responsibilities resulting from the five distinct onerous effects that are likely to place diverse pressures on co-residing family members, some of them seem to eventually regard the HDBS with RF experience as a useful opportunity for offenders to change their criminally-oriented lifestyles (Roberts, 2004). The principal positive effect is that the sanction mandates offenders to genuinely adopt a pro-social lifestyle which includes remaining drug and alcohol free, undergoing relevant rehabilitative treatment, and being employed (McCarthy et al., 2001). Co-residing family members, particularly female spouses, are likely to view this as personally beneficial as some report that for the first time in their marriages the offenders are employed on a continuous basis and are bringing home pay checks (Blomberg et al., 1993). Witnessing these beneficial results is likely to make co-residing family members view the HDBS with RF as a positive experience.

Hence, HDBS with RF are said to change intra-familial social arrangements, as co-residing family members give up their time, leisure interests and normal activities in order to provide offenders with practical assistance and emotional support (Ansary, 1999). Even though co-residing family members may view these various intrusions and responsibilities that the HDBS with RF imposes on them as permissible (Ansary, 1999), this is ethically problematic as in reality punishment spills over onto those who have not committed any criminal offences. Therefore, HDBS with RF should consist of policies that provide co-residing family members with sufficient information about their role and function within HDBS with RF, and where feasible and necessary, link them into external supportive services and networks as the need arises (for more information see Martinovic, 2007). This would adequately inform them of their role as well as subsequently lessen the punitive impacts that HDBS with RF have on them.

3.3.3 Legal issues and dilemmas

Legal issues and dilemmas have centred on a discussion about whether HDBS violate the USA's constitutional rights of offenders. The number of studies that have analysed the legal issues and dilemmas of HDBS with RF and HDBS with GPS is considerable, but the analysis within them is quite superficial. As a result, this section is shorter than the others.

During the 1980s, some criminologists and legal professionals in the USA believed that the intrusion of HDBS with RF into an offender's home and privacy would be regarded as unconstitutional when brought before the courts (for more information see Reichel, 2001; Rackmill, 1994; Ball et al., 1988). In fact, the imposition of these sanctions was argued to probably be in violation of:

- Fourth Amendment's right to privacy and protection from unreasonable searches and seizures
- Fifth Amendment's right against self-incrimination
- Eighth Amendment's protection from imposing cruel and unusual punishment
- Fourteenth Amendment's Equal Protection Clause (for more information see DeMichele & Payne, 2009; Reichel, 2001; Carlson et al., 1999; Rackmill, 1994).

In particular, the Fourth Amendment of the Constitution was seen to be most relevant to the prohibition of HDBS with RF. This is because it specifies:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by an oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(Enos et al., 1999:212)

Consequently, throughout the 1990s a few legal challenges were based on the argument that HDBS with RF infringe upon various constitutional rights of offenders. Courts have however upheld the constitutionality of HDBS with RF in all instances, ruling that offenders are generally not entitled to the same rights that ordinary citizens enjoy as they have committed criminal offences (DeMichele & Payne, 2009; Carlson et al., 1999). It has further been asserted that since offenders voluntarily accept being sentenced to HDBS with RF,⁹⁷ which inherently impose some intrusive conditions, they waive certain constitutional rights such as the right to privacy (for more information see DeMichele & Payne, 2009; Champion, 2008). The courts have nevertheless emphasised that the conditions of HDBS must be:

- Related to the protection of society and/or rehabilitation of the offender (*Port v. Templar*)
- Clear (*Panko v. McCauley*)
- Reasonable (*State v. Smith*)
- Constitutional (*Sobell v. Reed*).

(Carlson et al., 1999:165-166)

After 2000 the constitutionality of HDBS has not been legally questioned. There seems to be an overall consensus in the literature that HDBS with GPS do not encompass legal issues, that is, they do not violate the constitutional rights of offenders (DeMichele & Payne, 2009; Alarid et al., 2008; Clear & Dammer, 2003). This is interesting given that HDBS with GPS are in fact mostly imposed on offenders once they have served their original sentences. Further, the maturing of the electronic monitoring technology from RF to GPS has allowed unprecedented invasion of offenders' privacy (DeMichele &

⁹⁷ As mentioned previously, offenders' consent is only sought for their placement on the HDBS with RF as these sanctions are usually applied as alternatives to incarceration. Hence the offender has a choice between undertaking the HDBS with RF or going to prison. On the other hand, the placement of serious offenders (mostly sex offenders), onto extended supervision HDBS with GPS is directly imposed by the judiciary without obtaining an offender's consent (Bales et al., 2010b).

Payne, 2009). As mentioned earlier, it seems that there is an overall belief that offenders should not be entitled to the same rights as ordinary citizens - particularly serious sex offenders sentenced to HDBS with GPS, given the nature of the crimes that they have committed and the overall culture of fear and moral panic that surrounds them.

3.3.4 Political and stakeholder issues and dilemmas

Political and stakeholder issues and dilemmas discussed in this section comprise a discussion of stakeholders' perceptions of HDBS and how this influences the political debate, policy formation and the application of these sanctions. The stakeholders whose views are presented below include criminal justice practitioners,⁹⁸ offenders themselves, the community, and the media.⁹⁹ The media has become the key stakeholder with the most dominant influence (DeMichele & Payne, 2009). This is because complementary or derogatory media coverage has the most power in creating community perceptions and therefore political pressure and policies. The political and stakeholder issues and dilemmas are presented on the basis of studies about HDBS with RF only, as no studies have been found to have analysed these issues and dilemmas in relation to HDBS with GPS. A lack of interest in critically exploring these issues and dilemmas related with HDBS with GPS may be attributed to the relatively non-controversial implementation of these sanctions for sex offenders across the USA.

⁹⁸ Stakeholders who are closely involved in the operation of HDBS are seldom asked about their perceptions, and even when they are, these are rarely publicised and typically do not have political influence (DeMichele & Payne, 2009).

⁹⁹ The media became the major stakeholder in the 1960s when it highly politicised issues related to crime and justice (Clear & Dammer, 2003:470). This time period was unprecedentedly marked by anti-war and civil rights protests, various successful legal suits instigated by prisoners, numerous prison riots and even assassinations of high profile political figures (for more information see Clear & Dammer, 2003; Reichel, 2001). The media captured these images and widely distributed them as illustrations of out of control crime and social disorder as well as reporting on a daily basis cases of sensational and terrifying violent acts as the overall crime rate was increasing (Caputo, 2004). As the outraged public became more punitive towards crime and criminals, political reaction was strongly criticised and drastic change was demanded. This eventually resulted in politicians needing to be seen as responsive to community needs and promising to 'get tough on crime' in the 1970s (for more information see Caputo, 2004; Clear & Dammer, 2003; Reichel, 2001).

During the 1980s, stakeholders overwhelmingly viewed the development of HDBS with RF enthusiastically. Both sides of politics supported their expansion due to the belief that these sanctions would reduce prison overcrowding and costs, while at the same time criminals would be closely monitored (Lilly, 2006; Wagner & Baird, 1993; Erwin, 1987; Pearson, 1987b). More specifically, the growth of HDBS with RF accorded with both political parties' ideologies. Liberals saw HDBS with RF as an appropriate less serious alternative to incarceration, while conservatives regarded HDBS with RF as more stringent forms of probation. The bipartisan support that these sanctions enjoyed when they were initiated still generally remains and has been instrumental in their increasing application throughout the USA (Clear & Dammer, 2003).

Further, criminal justice officials formed partnerships and worked collaboratively prior to as well as during the implementation of HDBS with RF. In particular, legislators engaged sentencing officials in sanction development, and correctional authorities educated legal practitioners, the judiciary and the media about the operation of HDBS with RF (Clear et al., 1987; Erwin & Bennett, 1987). The media advocated for the further expansion of HDBS with RF by publishing their success stories and reassuring the community of their protection through the sanctions' emphasis on offender control (Fulton & Stone, 1992; Byrne et al., 1989; Roeger, 1988). Stakeholders' enthusiasm was so strong that, even when persuasive evidence in the late 1980s appeared questioning the overwhelmingly positive evaluation results of HDBS with RF, it was largely ignored (Petersilia & Turner, 1993; Byrne et al., 1989; Clear et al., 1987).

Despite initially supporting HDBS with RF, the media widely discredited these sanctions in the late 1980s. It portrayed them as an unsafe 'slap on the wrist' punishment which was unequally imposed (Lilly, 2006). Two specific cases rose to prominence by being given widespread media attention, illustrating the inadequacy of these sanctions:

- The William Horton case shocked the public when in 1987 the violent recidivist was released onto a weekend furlough¹⁰⁰ where he committed a number of serious crimes, including raping a woman (Clear & Dammer, 2003; Payne & Gainey, 2000). Television advertisements displayed the image of Horton's harsh-looking mugshot, followed by photographs of the innocent victims of his brutal crimes. These advertisements were made during George H. Bush's election campaign for President of the USA in 1989. The conservatives used the William Horton case to show that under liberal leadership very dangerous offenders are and will continue to be let out into the community (Clear & Dammer, 2003). As a consequence, all community based sanctions were tarred with the same brush and portrayed to be unsafe because they allowed dangerous offenders to be in the community (Clear & Dammer, 2003).

- The John Zaccaro Jr., case outraged the community when he was convicted of cocaine dealing in 1988 and sentenced to a prison term which was converted to a HDBS with RF (Payne & Gainey, 2000; Rackmill, 1994). The significance of this was that it was thought that he was given preferential treatment by the courts due to his affluent and influential background (Rackmill, 1994). John Zaccaro Jr., was the son of Geraldine Ferraro, who was a famous attorney and the 1984 Democratic Vice Presidential candidate (Rackmill, 1994:45). Further, Zaccaro was to serve his HDBS with RF "in a \$1,500-a-month luxury New York apartment with cable television, maid service and privileges at the neighbouring YMCA" (Rackmill, 1994:45). It was therefore argued that the imposition of this sentence was not experienced equally or fairly among all

¹⁰⁰ Weekend furlough is an unescorted trip away from the prison prior to offenders' official release. Its purpose is to slowly integrate the offender back into society by preparing them for release fastening networks, employment and housing. The negative media surrounding the William Horton case negatively affected furlough policies throughout the USA for a number of subsequent years (Silverman, 2001).

groups in society and it made a mockery of the criminal justice system (Payne & Gainey, 2000; Rackmill, 1994).

As this was the era of conservative ideology centred on ‘the war on drugs’ and tough punishment, the public was easily convinced that HDBS with RF inadequately supervise offenders and that they should be used sparingly (Payne & Gainey, 2000). This also led to a general view that all punishment can be classified into two starkly constraining categories – prison or ‘slap on the wrist punishment’ (Morris, 1988). The belief that punishment in prisons is generally preferred and that all options outside of prison are not tough enough has generally impeded the necessary emphasis on rehabilitative initiatives in both prisons and community based corrections (Morris, 1988).

Throughout the 1990s, HDBS with RF continued to attract negative publicity about not being tough on criminals,¹⁰¹ with devastating political consequences (Fulton et al., 1997). Whenever an offender on any type of a community based sanction committed a serious offence (such as rape or murder) it was widely publicised and extreme fear of crime and distrust in community-based sanctions, including HDBS with RF, was promoted (Clear & Dammer, 2003; Carlson et al., 1999). In addition, each time a celebrity or a wealthy person was sentenced to a HDBS with RF, their confinement to a luxurious home and maintenance of lucrative employment opportunities were portrayed as not sufficiently punitive (Rackmill, 1994; Cheever, 1990:31 cited in Payne & Gainey, 1999). Although in reality these cases were isolated, most members of the community saw them as ‘the image of HDBS with RF’ and compared them to the ‘obvious’ and widely publicised deprivations of imprisonment, concluding that HDBS with RF are an unequal and inappropriately lenient punishment.

The community’s negative perceptions of HDBS with RF were affirmed in studies which reported that members of the general public perceive these sanctions as ‘soft on crime’ and therefore maintain little support for them

¹⁰¹ Interestingly, the media did not discuss any of HDBS with RF’s problematic operational outcomes nor its various ethical issues and dilemmas.

(Payne & Gaaney, 1998; Petersilia, 1998; Larivee, 1993; Von Hirsch, 1990). For example, a survey of 500 New Yorkers indicated that only 31% approved of HDBS with RF instead of incarceration and 54% supported the imposition of HDBS with RF after prison (Brown & Elrod, 1995). A study by Payne & Gaaney (1999) however indicated that, once the public was educated about HDBS with RF, it had much more positive view. The researchers analysed the views of 180 university students and 29 offenders on HDBS with RF about their perceptions of the severity of punishment on HDBS with RF. It was found that once the students were informed of the specific restrictions and obligations of HDBS with RF they viewed them as more punitive than the offenders subjected to them. Despite the fact that the community's negative perceptions of HDBS with RF were based on the lack of operational awareness, politicians' support for these sanctions diminished and was reoriented in line with the populist viewpoint of building more prisons and 'getting tough on crime' (Lilly, 2006).

Simultaneously however, numerous research studies were showing that offenders overwhelmingly perceived HDBS with RF as onerous. In fact, studies found that almost one quarter of incarcerated offenders who were surveyed (either presented with real-life choices or hypothetical questions) viewed HDBS with RF to be very harsh and at times preferred imprisonment (Champion, 2008; Wood & Grasmick, 1995; Petersilia & Deschenes, 1994; Petersilia & Turner, 1993; Petersilia, 1990a). More specifically, studies which analysed the perceptions of offenders who were imprisoned and given a real-life choice of HDBS with RF or imprisonment found that between 5 and 30% of inmates chose to serve the incarceration period (Jones, 1996; Petersilia, 1990a; Pearson, 1988). Similarly, studies which report on presenting imprisoned offenders with hypothetical questions about the severity of various sanctions have found that the majority of offenders prefer a short-term of imprisonment rather than longer-term HDBS with RF (Spelman, 1995; Crouch, 1993). Despite some limitations associated with these studies, they collectively indicate that some offenders consider HDBS with RF to be overly punitive (Wood & Grasmick, 1995).

In particular, when certain conditions of HDBS with RF were conjoined (for example, 24-hour electronic monitoring, employment and payment of a supervision fee) they were generally perceived as more punitive than prison (Wood & Grasmick, 1995; Petersilia & Deschenes, 1994). This was probably because during the 1990s HDBS with RF emphasised stringent offender punishment through onerous and numerous conditions including electronic monitoring rather than treatment and support of offenders' needs (Clear & Dammer, 2003; McCarthy et al., 2001; Petersilia, 2000; Clear, 1997; Deschenes et al., 1995; Fulton & Stone, 1992). It is also possible that these offenders had become 'institutionalised,' so they preferred incarceration to significantly changing their lifestyle in order to comply with various stringent conditions of HDBS with RF (Byrne, 1990). Nevertheless, due to their punitive stance on law and order, the public largely disregarded offenders' views about punishment on HDBS with RF.

The public's growing dissatisfaction with community based punishment not being tough enough meant that HDBS with RF were placed on legislative agendas. This meant that these sanctions were strictly regulated (Payne & Gainey, 2000). Consequently, a number of federal restrictions were placed on how these sanctions operated. More specifically, federal government legislation titled 'Truth in Sentencing' resulted in HDBS with RF being imposed only on selected low-risk offenders and hence substantially widened the net of social control. (For more information see section 3.3.1). While most states changed the operation of HDBS with RF to comply with the federal restrictions, some states such as New Jersey regarded the restrictions as too prescriptive without an ability to reduce the prison population, and abolished their HDBS with RF (Payne & Gainey, 2000). The legislative changes actually resulted in net widening and a steady increase in the total number of offenders sentenced to HDBS with RF throughout the USA during the 1990s (Lilly, 1993; Baumer & Mendelsohn, 1992).

At the turn of the century most of the jurisdictions which had eliminated their HDBS with RF re-established them and those that kept them expanded their offerings by adding HDBS with GPS. The catalyst for this political reaction

was public pressure to extend the community based supervision of serious sex offenders and/or budgetary pressure to reduce unsustainable prison crowding and escalating prison costs (Johnson, 2002). Central to the expansion of re-emerged sanctions was also the continually improving performance of the electronic monitoring equipment itself (Payne & Gainey, 2000).

Studies assessing criminal justice practitioners' perceptions of HDBS with RF during the last decade - since 2000 - have indicated mixed results. On the one hand, some legal personnel have generally reported positive views of HDBS with RF, arguing that they have improved the toolbox of judicial options by allowing better 'customisation of justice' (Meyer, 2004). Similarly, correctional personnel have generally reported that the close supervision which is imposed on these sanctions has enhanced the protection of society and this has somewhat revitalised the reputation of community based sanctions, especially probation, in the criminal justice system (Meyer, 2004; Clear & Dammer, 2003).

Conversely, many court officials still do not consider that being on HDBS with RF is the same as being confined in a prison even through this may be legislatively purported. As a result, the judiciary has remained relatively modest in applying HDBS with RF (Roberts, 2004). This is despite the fact that in some USA states, when HDBS with RF are breached, the time spent on the sanction is generally not counted as time served toward the conviction as prison time. Hence, the offender is required to serve the full term of their original sentence in prison (DeMichele & Payne, 2009; Alarid et al., 2008; Champion, 2008).

Undoubtedly, a critical discourse about the overall penal system, including HDBS with RF, needs to regularly occur in the public domain. It could principally entail an outline of the criminal justice agencies' mission and the specific operation of all penal dispositions such as their goals, advantages, disadvantages, costs and recidivism rates (DeMichele & Payne, 2009). Further, criminologists could more actively share their study outcomes and

informed opinions with the public through the media and online, and with practitioners and policy makers through publication in practitioner-oriented journals and participation in conferences (Payne & Gainey, 2000). While correctional personnel often regard the media as the 'enemy,' this perception must be changed as it can be central in gathering support for HDBS and supplying information to stakeholders (DeMichele & Payne, 2009).

Correctional agencies could more specifically appoint a 'Public Information Officer' who would have a public relations strategy (DeMichele & Payne, 2009). Most importantly,

public relations issues must be addressed proactively. A good public relations strategy should 'sell' the practice to the top-decision makers and effectively elicit public support. The designers will need to develop press kits, conduct public information forums and education seminars, and hold press conferences to effectively communicate program benefits and limitations honestly and fairly.

(DeMichele & Payne, 2009:223)

Scrupulous discussion about the penal system, based on empirical data, would generally challenge the populist assertion that tough punishment = incarceration = good politics. This is because it would address the current lack of balanced and comparative public information about all penal dispositions that often drive the public opposition to community based sanctions (DeMichele & Payne, 2009; Roberts, 2004). In the future it is possible that it could consequently generate public and professional confidence in community based sanctions, including HDBS with RF, and lead to policies that improve their operation (DeMichele & Payne, 2009; Roberts, 2004; Payne & Gainey, 2000; Petersilia, 1997).

3.4 Conclusion

This chapter critically described the currently operational late phase of HDBS in the USA. It commenced with the implementation of intermediate sanctions in the 1980s. These essentially comprised HDBS with RF. In mid-2000s however the expansion of sex offender post-release supervision laws resulted in HDBS with GPS being introduced for serious sex offenders. The number of offenders on all HDBS has been increasing in the USA. During the late phase of HDBS, the ideology of offender supervision has been characterised by strict and close surveillance and monitoring, although treatment-based components are usually available for serious offenders on HDBS with GPS.

The last three decades of evaluative research of HDBS with RF indicated problematic operational outcomes as well as significant ethical and political and stakeholder issues and dilemmas. On the other hand HDBS with GPS have been operationally more successful. Research assessing some of their ethical and overall political and stakeholder issues and dilemmas has been lacking. Nevertheless, over the years the number of offenders sentenced to HDBS has continued to grow gradually.

Chapter 4 – Late phase of HDBS in Australia

...the search for alternative means of managing offenders is gaining political and fiscal momentum...

(Lay, 1988a:184)

4.1 Introduction

As Lay (1988a) commented above, there was a comprehensive search for effective alternatives to imprisonment in Australia in the late 1980s that would reduce the fiscal impact of increasing incarceration rates. This was coupled with serious prison overcrowding and disillusionment with the concept of offender rehabilitation; hence, the result was offender surveillance and control becoming the primary aims of punishment on HDBS (Smith & Gibbs, 2013).

The proliferation of the late phase of HDBS in the USA (discussed in Chapter 3) was the catalyst for the development of late phase of HDBS in Australia, which is still operational. The Australian sanction proliferation is critically discussed in this chapter. The chapter consists of two themes in which information is generally presented chronologically. The first theme critically describes the operation of the late phase of HDBS in Australia. The first sub-theme is the development of HDBS with RF, which were implemented in Australia in the late 1980s (Gibbs & Smith, 2013). The second sub-theme is the development of HDBS with GPS, which entered the correctional arena after 2000 in very similar circumstances to the USA. The number of all offenders on HDBS in Australia has however remained relatively stable. More specifically, the number of offenders on HDBS with RF has been decreasing, whilst the number of offenders on HDBS with GPS has been increasing. The ideology of offender supervision on these sanctions has entailed a combination of strict and close surveillance and treatment-based components.

The second theme discussed in this chapter is the assessment of outcomes of the late phase of HDBS in Australia. More specifically, HDBS with RF as well as HDBS with GPS are separately analysed in relation with 4 sub-themes – operational results, ethical issues and dilemmas, legal issues and dilemmas and political and stakeholder issues and dilemmas. During the last three decades studies of HDBS with RF generally found that these sanctions have achieved their anticipated operational results, but have encompassed significant ethical, political and stakeholder issues and dilemmas. Research assessing the operational outcomes, ethical and political and stakeholder issues and dilemmas of HDBS with GPS is still lacking and it is imperative that it is conducted in the future.

4.2 Late phase of HDBS – Operation (1982-2013)

This section provides a comprehensive explanation of the historical development of contemporary HDBS in Australia. The mode of community based supervision on these HDBS has been based mostly on strict and close surveillance and monitoring, but has also contained rehabilitative treatment components as a part of case management of offenders on this sanction.

4.2.1 Historical development and proliferation of intermediate sanctions

Australia was a part of the worldwide trend to introduce intermediate sanctions. Although these sanctions originated in the USA, their broad application was prompted by United Nations' Congresses adopting various resolutions for non-custodial alternatives to imprisonment to alleviate overcrowded prisons. In particular,

in 1980, the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders adopted a resolution recommending that Member States expand the use of alternatives to imprisonment and identify various new alternatives to prison sentences. Five years later, the Seventh United Nations Congress

adopted another resolution, recommending that Member States intensify the search for credible non-custodial sanctions. The Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in 1990 devoted much attention to this issue, which was placed on the agenda of the congress but also in the context of other of the congress's items; it adopted a number of decisions and resolutions.

(Joutsen & Zvekic, 1994:1)

Reconstructed non-custodial measures such as fines, probation and parole orders, community service orders, home detention and suspended sentences were introduced into the Australian criminal justice sentencing continuum during the 1980s. The core feature of these sanctions was that they involved some limitation of the offender's liberty. More specifically, they usually included any or all of the following:

- requiring the offender to notify authorities of a change of address
- receiving visits from a supervising officer
- being required to attend community correctional centres
- performing community work
- undergoing drug and alcohol testing.

The reworked community based penalties aimed to operate as alternatives to imprisonment by diverting offenders from prison without widening the net of social control (Biles, 1996; Broadhurst, 1991). Australian criminologist Braithwaite (1988:57) however warned that the practical challenge for these new initiatives would be their utilisation as 'actual' alternatives to incarceration and not as 'adds on' to those who would normally receive a conditional release. This is because only appropriately administered alternatives could produce fewer prisoners and lower correctional costs.

In addition, intermediate sanctions aimed to revitalise community corrections on the basis of their punitive nature based on risk control and risk reduction.

This was significant at the time because the community was 'fed up' with escalating crime rates, distrusted the concept of 'rehabilitation' and believed that imprisonment was the only 'real' sanction (King, 1991). Community based offender supervision therefore aimed to be carefully targeted to the high risk and/or special need offender categories, where supervising officer intervention was most likely to make a 'real difference' (King, 1991).

Over the years it has generally become apparent that intermediate sanctions have failed to live up to their stated promise of significantly improving the sentencing landscape in Australia. This is predominantly because they have not reduced the reliance on imprisonment. For example, over the years there has been a significant increase in the size of the prison population, with longer terms of incarceration being imposed. More specifically, the prison population has increased by about 100% over the last two decades whilst there has not been a statistically equivalent increase in the crime rate (Australian Bureau of Statistics, 2012; Bagaric, 2002).

The problem has been that intermediate sanctions are generally considered by criminal justice stakeholders to be 'soft options.' This has led to net-widening, because they have not typically been used for prison-bound offenders, but rather for offenders who would otherwise be treated less harshly (Bagaric, 2002). A further issue with intermediate sanctions is that, while operationally these sanctions are significantly cheaper than imprisonment, they have higher levels of breaches and violations than less rigorous community based sanctions, so that they are nevertheless expensive in absolute terms (Bagaric, 2002).

4.2.2 Historical development and proliferation of HDBS

The very positive USA experience with HDBS resulted in the proliferation of similar sanctions in the Western world during the late 1980s (Lay, 1988a). At the forefront of this development was Australia, with its willingness to implement the latest USA experiments in crime control, particularly those that

subsequently involved electronically monitored technology (Smith & Gibbs, 2013). Various Australian states established working parties within their correctional services, and participants visited the USA to examine the operation and assess the applicability of HDBS for Australia (Farr, Owen & Hayes, 1986). The information gathered from the highest-profile USA-based HDBS such as Georgia and New Jersey included detailed planning, implementation and evaluation. This was used to launch state-specific HDBS in Australia during the 1980s (Lay, 1988a; Farr et al., 1986).

4.2.2.1 Inaugural HDBS

Queensland, South Australia and the Northern Territory were the three inaugural HDBS that were established in Australia during the late 1980s. Queensland was the first Australian state to trial HDBS in 1986¹⁰² (Dorey, 1986). This HDBS was initially set up on a 6 month trial basis, and depending on the outcome of the trial a decision was to be made whether it was to be established permanently. HDBS was envisaged to operate as a 'back-end' solution to prison overcrowding.

The HDBS aimed to achieve a range of specific objectives for key stakeholders. These were as follows:

- For the offender, it aimed to allow them to be reunited with their family sooner and provided them with opportunities to engage in rehabilitative and educational activities within the community, therefore reducing their likelihood of further offending (Dorey, 1988; Dorey, 1986).
- For the co-residents, it aimed to reduce the negative social and economic effects of prolonged incarceration of an offender by allowing

¹⁰² HDBS' operational manual however reveals that its design was not based on another HDBS operating at the time, but on years of offender supervision on various community based dispositions in multiple jurisdictions (Dorey, 1988).

them to more quickly re-establish family life (Dorey, 1988; Dorey, 1986).

- For the community, it aimed to provide them with an opportunity to have closer links to the prison system, and for government and non-government organisations to be working collaboratively to expand services for prisoners and their families (Dorey, 1988; Dorey, 1986).
- For the corrections department, it aimed to reduce pressure on existing prison space, thereby saving money (Dorey, 1988; Dorey, 1986).

The corrections department carefully selected offenders nearing prison terms of 12 months or more to serve up to the last 4 months of their prison sentence in the community on the HDBS. Those convicted of serious violent or sex offences were not eligible for the sanction, nor were those with extensive/serious criminal histories¹⁰³ (Challinger, 1994b; Dorey, 1988; Dorey, 1986). Further, the offender had to consent to being placed on the sanction. They also had to reside within a district where the sanction operated. Initially, the HDBS was only operational within and near the Brisbane metropolitan area, but after the trial period the sanction was extended to the Rockhampton and Townsville areas in Northern Queensland (Dorey, 1986) and eventually statewide. The fact that Australia is a vast sparsely populated country with the majority of its population residing in major cities has meant that all of the Australian HDBS (except in the Australian Capital Territory which essentially comprises one city - Canberra) were initiated as pilot programs in only one or a few most populated cities/regions within a state/territory. It was anticipated that HDBS would subsequently be implemented state/territory wide. While this did occur in some states/territories, it did not in all of them. (For more information see section 4.3.2.2).

¹⁰³ Offence restrictions on eligibility for the HDBS were subsequently removed (Sentencing Advisory Council, 2008).

In addition, offenders on HDBS had to be employed or financially supported by their spouse/partner, parents or relatives (as they were not eligible for Social Security Benefits) (Dorey, 1988; Dorey, 1986). Finally, offenders' co-residents were required to agree to the imposition of the HDBS within their living space. In particular, they had to indicate that they understood the sanction's requirements and its possible implications for the home environment (Dorey, 1986). To reduce the potential for discrimination against those who lacked family/friends' support, offenders were also allowed to reside in an approved hostel or a rehabilitation centre (Dorey, 1988).

Similarly to offenders on HDBS in the USA, offenders on HDBS in Queensland were subjected to a range of random methods of supervision - face-to-face supervision in their homes, telephone calls to their home, and checking their attendance at prescribed activities (Dorey, 1986). Supervising officers were however atypically dressed in civilian clothes and travelled in unmarked cars in order to preserve offenders' anonymity within their neighbourhoods and ease their transition back in the society (Dorey, 1986).

The unique aspect of the Queensland's HDBS was that its ideology of offender supervision apart from the surveillance and control features also encompassed individual case management. Unlike in the USA, it was argued that supervising officers in Queensland should respond to offenders' changing circumstances during their time on the HDBS (Dorey, 1988). Supervising officers also determined, on the basis of offenders' risk and need analysis, the educational, rehabilitative or other approved activities in which they should participate. The range of activities was extensive, including:

drug and alcohol counselling, family counselling, enrolment in educational or technical skilling courses, attendance at Alcoholics Anonymous and Gamblers Anonymous, completion of self-development and personal growth workshops and participation in fitness and other recreational pursuits.

(Dorey, 1986:4 – 439D)

This type of offender management together with the positive rewards that encourage appropriate behavior, was thought to be likely to increase the chance of breaking the cycle of previous offending behaviour (Dorey, 1988).

The HDBS was externally evaluated by researchers from the University of Queensland (Dick, Guthrie & Snyder, 1986; Dorey, 1986). The findings of the evaluation assessing the first 6 months of HDBS' operation indicated very positive results. These were as follows:

- The cost of the HDBS was 5 times cheaper than incarceration. For example, the cost of keeping an offender in prison was estimated to be around \$16,500 per prisoner per year (1983-84 data) as opposed to \$3,242 per offender per year on HDBS (1986 data)¹⁰⁴ (Dick et al., 1986). In fact, the actual cost of keeping an offender on the HDBS in the first 6 months of sanction operation was only \$304 because offenders spent a much shorter time on the sanction than a year (Dick et al., 1986).
- Only 4% of offenders on the HDBS had been returned to prison for breaching their order. The reasons for their return were repeated technical violations rather than further offences (Dick et al., 1986). This is particularly impressive given that although most offenders on the HDBS were minor offenders, they were in fact chronic offenders whose lifestyles and behaviour had been synonymous with unlawful behavior, and so they were in fact at a high risk of recidivism (Dorey, 1988). Hence, the cost as well as breach rates of the HDBS in Queensland

¹⁰⁴ The cost of keeping an offender on the HDBS was calculated on the basis of dividing the known costs directly attributed to the sanction (such as salaries of three supervisors, car registration, petrol and cost of community activities that offenders participate in) by the average number of offenders on the sanction (Dick et al., 1986). Omitted from these costs were, however, other associated costs (such as part of the manager's salary, telephone costs and costs of the premises), as well as broader cost benefits (such as reduction in capital works as fewer offenders are held in prisons). If these were taken into account, the cost advantage of the HDBS would be substantially improved. It should also be noted that as the caseloads on the HDBS were likely to increase, the sanction's cost per offender would be further reduced (Dick et al., 1986).

were therefore very similar to the cost and breach rates of HDBS in the USA at the time (Dick et al., 1986).

- Staff administering the HDBS applied the officially stated goals and objectives in a practical manner. Furthermore, there was evidence of team work as well as esprit de corps which were regarded as being high among the staff (Dick et al., 1986). Offenders' assessments of the HDBS also indicated very positive results; in particular, they described officers as mostly supportive and fair (Dick et al., 1986). More generally, the media and the public also responded well to the HDBS (Dick et al., 1986).

The evaluation also indicated some points of caution if the HDBS was to be expanded, if electronic surveillance became utilised as part of offender supervision and if unemployed offenders were granted HDBS. According to the evaluators, if the HDBS was expanded, the maintenance of staff commitment, teamwork and cohesion, the main components that made this sanction so effective, were predicted to be more difficult to retain (Dick et al., 1986). In addition, the introduction of electronic surveillance was said to be likely to result in a reduction of existing rehabilitative provisions for offenders as well as close contact between supervising staff and offenders and their families (Dick et al., 1986). Finally, the placement of unemployed offenders on HDBS was thought to require additional resources – more intensive supervision and more active participation in community agencies (Dick et al., 1986).

In March 1987 following the Queensland University's positive evaluation, the legislators adopted HDBS as a permanent sentencing disposition (Dorey, 1988). From mid-1987, it was projected that a minimum of 700 offenders per year could be placed on the sanction, thus significantly reducing the state's costs of incarceration (Dorey, 1986). By November 1987, the target of almost 700 offenders had already been reached. Results after 5 years of operation continued to show successful completion rates around 95%, and 5% of failures mostly attributed to technical violations (Challinger, 1994b; Dorey,

1988). The key to the success of Queensland's HDBS was said to be committed staff who provide individualistic case management to offenders which enhances their positive re-establishment in the community (Dorey, 1988).

Interestingly, in 2001 a trial using electronic monitoring technology was undertaken in Queensland. The trial was however considered to indicate disappointing results - on its own electronic monitoring was not able to assist in reintegrating offenders back into society. There was no advantage in completion rates for offenders who were on electronic monitoring as opposed to those who were not and the use of electronic monitoring was considered to be prohibitively expensive (Smith & Gibbs, 2013). Nevertheless, it seems that the expectations on the technology were too ambitious, so it is not surprising that it is not able to rehabilitate offenders on its own. Further, although its use is expensive it is undoubtedly cheaper than the cost of incarceration which it replaces.

The second Australian state to introduce HDBS was South Australia in 1987. Like Queensland, South Australia initiated a back-end HDBS (Butler, 2007; Winton, 1999; Bloor, 1988). Broad bipartisan political support for the sanction was obtained on the basis of alleviating severely overcrowded prisons, which created enormous pressure on the police and court systems¹⁰⁵ (Bloor, 1988). Furthermore, closely structured and cost effective community based sanctions for currently imprisoned offenders who could be released early from prisons was considered to be necessary.

The specific objectives of the HDBS included:

- Provision of a flexible cost effective community based alternative to imprisonment for suitable offenders.

¹⁰⁵ The prison overcrowding situation in South Australia was further exacerbated by the closure of the Adelaide Gaol where deteriorated conditions were considered to be inadequate (Bloor, 1988). Tremendous prison crowding also had a significant impact on police holding cells that, despite not being designed for long-term holding of prisoners, were housing sentenced prisoners.

- Reduction in the number of incarcerated offenders and limiting adverse impacts of imprisonment, while at the same time maintaining a proper level of protection for the community.
- Provision of opportunities to assist offender reintegration back into society, including re-establishment of family relationships and employment opportunities (Butler, 2007; Heath, 1996).

Similar to Queensland, selected prisoners in South Australia were released early from prison at the discretion of the corrections department and placed on HDBS (Challinger, 1994b). A prisoner was said to be eligible for the HDBS if they were serving a sentence of imprisonment with a set parole period of more than 12 months. Prisoners had to specifically serve two ninths of their sentence in prison and be in the last 12 months of their sentence to be eligible to apply for the HDBS (Butler, 2007). They also had to consent to being on the HDBS and reside in an area where the sanction operated.¹⁰⁶ Finally, a supervising officer assessed offenders' suitability at the prison as well as their nominated residents at their home. These residents were asked to sign an agreement of compliance with the HDBS terms and conditions. The Prisoner Assessment Committee further assessed every application and made the final decision on whether to release the offender on the HDBS (Butler, 2007).

Once released onto the HDBS, offenders were confined to their homes under strict supervision. They could only leave for essential reasons such as medical treatment, employment/study/community work, food and clothing shopping at a centre closest to the residence, childcare responsibilities and legal/Centrelink/counselling appointments (Butler, 2007). On all occasions offenders were required to obtain pre-approved permission for their movements and the supervising officers checked their whereabouts either by telephone or face-to-face visit (Butler, 2007).

¹⁰⁶ HDBS became available statewide throughout South Australia in 2001 (Parliamentary Library Research Service, 2011).

Offenders were visited at home a minimum of 3 times per week plus telephoned randomly 1 to 3 times during a 24 hour period. Urinalysis and breath testing were also conducted randomly. A Radio Frequency based electronic monitoring system was subsequently introduced, partially replacing face-to-face supervision. This was able to check offender's presence at their residence every 11 seconds and alert the officer if the offender had moved out of range or had tampered with the equipment (Smith & Gibbs, 2013). Minor breaches of compliance were dealt with by the Home Detention Coordinator who could direct the offender to remain at home for prolonged periods. More serious breaches of conditions resulted in an immediate return to prison (Butler, 2007).

Similarly to Queensland, the ideology of offender supervision in South Australia, apart from the surveillance and control mechanisms, also entailed rehabilitative initiatives. The sanction operation manual stated that the HDBS was designed to function with restorative justice aims of repairing offenders' relationships with their family, friends and victim/s and generally re-engaging them in pro-social activities. Supervising officers consequently developed specific re-integrative case plans for each offender while liaising with their families and support agencies. They also educated the community and departmental staff to ensure that stakeholders were informed more generally about the HDBS and could assist in reintegrating offenders back into society (Heath, 1996).

The Corrections Department's Coordinator of Research and Planning was responsible for assessing the efficiency of the South Australian HDBS by a comparison of the sanction's stated objectives with actual outcomes during the first year of HDBS' operation (Roeger, 1988). The technical violation rates were reported to be 15% and further offending rates were 9%. Both of these rates were considered to be acceptable since in comparison with other jurisdictions they were quite low (Heath, 1996; Roeger, 1988). Furthermore, the HDBS was found to be cost-effective. The cost of placement on the HDBS per offender per year was calculated as \$17,000, which was substantially

cheaper than the cost of incarcerating an offender, which was calculated at the time to be about \$44,000. It was however recognised in the evaluation that there was 'no true saving' to the correctional department since there was no significant reduction in expenditure on prison operation and the corrections budget had in fact increased (Roeger, 1988). It should be noted that there is quite a discrepancy in per offender per year cost of HDBS and incarceration in Queensland and South Australia. Both are significantly more expensive in South Australia, probably because it generally has a smaller incarceration rate and its cost analysis calculations are more comprehensive.

A problem occurred as the HDBS was not diverting sufficient numbers of offenders from the prison system (Bloor, 1988). Advice was sought from the Director of Community Corrections who visited the USA and Canada and examined a number of HDBS in late 1987. His key recommendation was a reduction in restrictions on HDBS' eligibility criteria. Furthermore, the decentralisation of the HDBS to District Offices was imperative to allow for sanction responsibility to be placed with District Probation and Parole Officers (Bloor, 1988). In addition, the Justice and Consumer Affairs Committee, a Cabinet sub-committee, explored the potential of HDBS' expansion. It recommended the introduction of electronic monitoring, which was expected to make sanction expansion more acceptable to stakeholders, and in particular, the community.

In November 1987, the South Australian HDBS was legislatively amended with several significant changes. The first major change was to the eligibility criteria. HDBS became available for prisoners who were serving sentences that were even longer than 12 months, provided that they were in the last 6 months of their sentence and that they had achieved a low security rating (Bloor, 1988; Roeger, 1988). The second amendment was the introduction of the use of the Telsol Electronic Monitoring System by South Australia - the first Australian jurisdiction to initiate electronic monitoring (Challinger, 1994b). The HDBS continually expanded over the next 6 years and in 1993 it was decentralised to Community Correctional Centres at Noarlunga, Adelaide, Port Adelaide and Elizabeth (Winton, 1999).

The Northern Territory launched the first 'front-end' HDBS in Australia as a direct alternative to imprisonment in 1988.¹⁰⁷ Similar to the rationale for HDBS in Queensland and South Australia, the main reason behind the establishment of the HDBS in the Northern Territory was to divert offenders from prison. This was not specifically due to prison overcrowding, but the inordinately high, and growing imprisonment rate (Owston, 1991). For example, as Challinger (1994b) ascertained, the rate of incarceration in the Northern Territory had always been many times higher than the Australian average; for example, the imprisonment rate in the Northern Territory in 1988 was 231 per 100,000 adult population, compared with 72 per 100,000 for Australia overall.

More specifically, the priority was to address the overrepresentation of Aboriginals in the prison system. In 1984-85, Aboriginals represented only 20% of the general territory population but comprised some 73% of the prison population (Challinger, 1994b; Owston, 1991). It was considered to be particularly pertinent to divert Aboriginals from incarceration as they often live in remote communities, and a sentence of imprisonment removes them further from their communities into criminal activity (Challinger, 1994b). Furthermore, the fact that, at the time, more than 70% of prisoners were serving sentences of less than 12 months, for relatively minor offences, such as drink driving, break enter and steal, and non-sexual assault, meant that the possible offender pool for diversion was substantial (Owston, 1991).

As the HDBS in the Northern Territory is a front-end sanction imposed directly by sentencing officers (magistrates and judges), strict offender criteria had to apply in order to reduce the possibility of net widening (Challinger, 1994b). To place an offender on the HDBS, the sentencing authority had to receive a report from the parole/probation officer stating that the offender was facing certain imprisonment, consented to the sanction, could reside at a suitable

¹⁰⁷ The introduction of this HDBS in the mid-1980s was part of a number of strategies that Northern Territory corrective service put in place to reduce the growing imprisonment rate. A conditional liberty program with a fine default component was another strategy that was implemented which had a particularly significant result – a reduction in the incarceration rate by 25% from 1986 to 1988 (Challinger, 1994b).

residence, and that the offender's family/close neighbours were not put at risk by their being placed on the sanction (Challinger, 1994b; Owston, 1991).

Once on the HDBS the offender's movements and activities were severely restricted beyond attending employment, treatment/counselling and necessary personal and family matters (Owston, 1991). Offenders' compliance with remaining confined to their home or being at work was checked randomly on a face-to-face basis or by telephone by supervising officers (Owston, 1991). More specifically, computerised random selection determined the home visits, which averaged 3 in any 24 hour period. In cases where an offender's behaviour or movements had raised suspicions, more frequent visits were made (Challinger, 1994b; Bakermans, 1990). In addition, offenders on the HDBS were usually required to abstain/reduce their level of alcohol consumption, which was randomly checked by an electronic breath analyser (Challinger, 1994b). Finally, offenders were typically mandated to undertake counselling or treatment for alcohol/drug abuse or mental health problems (Owston, 1991).

In 1990, an electronic telephone surveillance system became a part of offender supervision on the HDBS to improve the surveillance imposed on offenders (Challinger, 1994b). The advantage of using the technology for the Correctional Service was that it could randomly and quickly verify the offender's presence at home (Owston, 1991). Further, the technology permitted a reduction in the number of face-to-face visits, which could impinge on the privacy of other residents at the offender's home (Challinger, 1994b). As a result, most offenders who had direct access to a telephone were keen to accept the use of technology, which was initially voluntary (Bakermans, 1990).

The first year of HDBS' operation generally indicated positive results. Nearly 130 offenders had been placed onto the sanction most of whom were convicted of driving-related offences such as drink driving and driving while disqualified (Challinger, 1994b; Owston, 1991). More than 90% of these offenders had successfully completed the sanction. The average length of

time on the sanction was 3.5 months (Challinger, 1994b; Owston, 1991). In relation to HDBS' cost effectiveness, it was calculated that the saving in actual prison days was more than 5% (Challinger, 1994b). It is also worth noting that wider social cost savings such as the stigma accompanying imprisonment - which can be long lasting - and the loss of employment that can impact on the entire family, were avoided (Bakermans, 1990).

The evaluation further revealed that offenders' family members were generally not negatively affected by the imposition of the HDBS in the household. In fact, in most cases, offenders' relationships with spouses and children had improved due to their constant employment and engagement in counselling or treatment for alcohol/drug abuse or mental health problems (Bakermans, 1990).

However, the initial target of diverting 200 low-risk offenders from imprisonment had not been reached (Bakermans, 1990). More specifically, the numbers of Aboriginal offenders who were placed onto the HDBS were considered to be inadequate. For example, of all offenders on the sanction within a year only a little over 10% were Aboriginal (Owston, 1991). The reason for this was that the majority of Aboriginals sentenced to short-terms of imprisonment in the Northern Territory lived in remote traditional communities such as Groote Eylandt and Port Keats. The HDBS was not offered in these communities, but only in major centres (Darwin, Alice Springs, Katherine, Tennant Creek-Groote Eylandt and Nhulunbuy) and some remote centres (including Jabiry, Port Keats and Papunya) where a resident is a supervising officer (Bakermans, 1990).

On the basis of statistical analysis of sentenced offenders, it was concluded that it should be possible to divert more than 500 offenders from prison onto the HDBS within the next 12 months (Owston, 1991). Furthermore, a high priority was placed on establishing HDBS in an increasing number of remote Aboriginal communities, even though it was recognised this was complex and only viable in some communities. Operating HDBS in all remote areas was said to be impossible because of logistical obstacles in establishing

surveillance procedures, residential problems, and lack of rehabilitative substance abuse programs (Challinger, 1994b; Owston, 1991). An additional commitment was made to recruit more supervising officers who were of Aboriginal descent (Challinger, 1994). Finally, it was recommended that higher numbers of Aboriginal offenders living in main urban centres be placed onto the HDBS with alcohol treatment, since alcohol abuse was a contributing factor to the offending of many of these offenders (Owston, 1991).

Despite issues with small numbers on the HDBS, it was concluded that the overall success of the sanction had been demonstrated. This is because key stakeholders, including the courts, police and the community generally regarded it as a credible, suitably punitive, and rehabilitative alternative to incarceration (Challinger, 1994b; Bakermans, 1990). It was predicted that, as confidence in the HDBS grows, so would the use of the sanction (Challinger, 1994b).

4.2.2.2 Expansion and subsequent development of HDBS

In comparison with the USA where by 1990 all states had established HDBS with RF, it took much longer in Australia. It was not until 2004 that all of the Australian mainland states and territories had introduced HDBS with RF.¹⁰⁸ As the main component of HDBS from the 1990s became the EM technology that they utilise, they are referred to as either 'HDBS with RF' or 'HDBS with GPS' in the remainder of this chapter. HDBS, which use the different EM technology, must be distinguishable as they usually have vastly different rationales, operations and outcomes. In instances when the generic term 'HDBS' is used in the remainder of this chapter it refers to both 'HDBS with RF' as well as 'HDBS with GPS.'

Furthermore, unlike in the USA where three HDBS (Georgia, New Jersey and Florida) essentially became the templates that other states subsequently

¹⁰⁸ Tasmania is the only island state of Australia. It has never initiated a HDBS with RF (Henderson, 2006).

copied and adapted to their own criminal justice needs, in Australia this did not occur. Each mainland state and territory in Australia developed, trialed and operated its own HDBS. The application of these sanctions over the last three decades has varied significantly between the states and territories.

The most substantial utilisation of HDBS with RF is in South Australia. Around 400 offenders are on HDBS with RF at any one time (Smith & Gibbs, 2013). Although HDBS with RF initially started only as a back-end alternative to imprisonment in 1986, since 2000 their application has been extended statewide and another two distinct applications of HDBS with RF have been made available. These were a front-end alternative to imprisonment as well as an alternative to remand in custody, a condition of bail for unsentenced offenders (Parliamentary Library Research Service, 2011). This front-end HDBS with RF commenced in 2000 and operates statewide as an alternative to a period of up to 12 months of imprisonment. Unlike any other Australian state, the rules around its utilisation are very strict as it is only available in cases where the court has determined that the offender is unable to go to prison because of illness, disability or frailty. For this reason it is seldom applied. HDBS with RF as a condition of bail is most widely applied, and there is a relatively small application of it as a back-end alternative to imprisonment (Parliamentary Library Research Service, 2011; Department for Correctional Service, 2006).

The second largest HDBS with RF in Australia is in New South Wales. Despite this, an ongoing problem has been the relatively small number of offenders being sentenced. That is, around 180-200 offenders at any one time are on the sanction compared with the total prison population which over the years has been consistently around 8,000-9,000 prisoners (Smith & Gibbs, 2013; NSW Standing Committee on Law and Justice, 2006). As a result, over the last decade two government reviews have been commissioned to explore the reasons behind the lack of its use.

The Standing Committee on Law and Justice compiled the first review in 2006 on the basis of submissions/statements by various stakeholders. It reported

the following as the possible reasons behind the low offender numbers on HDBS with RF in New South Wales:

- HDBS with RF is not available statewide and only in the Sydney metropolitan area, plus Newcastle and Wollongong
- reluctance by some judges to sentence offenders to HDBS with RF due to a view that it is a soft-option
- contrary perception of HDBS with RF by offenders who regard it as too onerous and decline placement on it (due to the belief that a substantial level of self-discipline is required to comply with the sanction's demanding conditions) (NSW Standing Committee on Law and Justice, 2006).

The report recommended that the government extend HDBS with RF statewide (Achterstraat, 2010). However, the finding that two key stakeholders whose discretion and preference clearly precluded the sanction's wider application as they held opposing perceptions of HDBS with RF was more difficult to address. It would undoubtedly require stakeholder specific educational sessions that outline the benefits as well as the drawbacks that are associated with HDBS with RF. These sessions have been a fundamental part of most effective HDBS with RF throughout the USA (for more information see Clear et al., 1987; Erwin & Bennett, 1987).

The Auditor-General's Report Performance Audit constituted the second review in 2010, again confirming inadequate offender numbers being placed on HDBS with RF. In fact, the number of offenders sentenced to HDBS with RF was reported to be declining. In 2008-09 an average of 175 offenders were on HDBS with RF at any one time, compared with 2002-03 when it was 229 offenders. The decline in offender numbers was considerable, almost one quarter (Achterstraat, 2010). Most of the barriers to wider application of HDBS with RF were repeated from the earlier report:

- HDBS with RF still had not been rolled out statewide and made available in rural and remote regions in New South Wales
- some sentencing officials were still unwilling to sentence offenders onto HDBS with RF, as in 2008-09 only 35 out of 47 local courts with access to HDBS with RF made referrals to it
- the Correctional Department's screening process for HDBS with RF suitability had become more rigorous over time. From 2006-07 to 2008-09 about 40% of offenders referred for assessment had been found unsuitable. In contrast from 1999-2000 to 2003-04 the rate of offender unsuitability stood at 34% (Achterstraat, 2010).

Again it was recommended that HDBS with RF be expanded to all of the regions of New South Wales. In addition, information sessions be organised for sentencing officials. Further, the reasons for offenders being assessed as unsuitable be identified and common barriers removed (Achterstraat, 2010). Interestingly, the operation of HDBS with RF in New South Wales, unlike any other Australian state, is supported by both political parties (Parliamentary Library Research Service, 2011). Therefore, as it has not been highly politicised, its application is likely to continually improve.

The smallest still operational HDBS with RF is in the Northern Territory. Only 30-40 offenders are typically on this sanction at any one time despite its statewide operation (Smith & Gibbs, 2013). However, unlike New South Wales, no published government inquiries have been conducted in the Northern Territory to explore the possibilities of increasing the number of offenders being sentenced to HDBS with RF (Parliamentary Library Research Service, 2011).

Over the last decade a populist political 'tough on crime' agenda led to a closure of three HDBS with RF in Australia. (For more information see section 4.3.4). The first to discontinue its operation was Western Australia's HDBS with RF in 2003, which had functioned as a post-prison sentence and a

condition of bail since 1996. The main reason behind its abolition was that a few high profile incidents resulted in a strong public drive for 'truth in sentencing' and a general hardening of community attitudes toward offenders (Winton, 1999).

The second to cease its operation, also due to a push toward 'truth in sentencing,' was Queensland's HDBS with RF in 2006. This was despite its relative widespread use with about 80 offenders at any one time (Smith & Gibbs, 2013; Sentencing Advisory Council, 2008). The closure was specifically "designed to ensure that prisoners were either in prison or on parole, and that a prisoner's release date would only be determined by a court or by a parole board" [not the corrections department as was the case in relation to HDBS with RF] (Parliamentary Library Research Service, 2011:11). Paroling offenders was considered to be less discriminatory and preferential as there were instances in the past where offenders could not secure suitable accommodation to be placed onto HDBS with RF. Further, HDBS with RF was reported to sometimes place significant stress on families (Sentencing Advisory Council, 2008).

The Victorian HDBS with RF was the third to be discontinued in 2011, due to a perception that it was not tough on criminals. Victoria had been the final mainland state to initiate HDBS in 2004. The first year of its operation indicated successful outcomes, but low offender numbers had been an ongoing issue (Sentencing Advisory Council, 2008; Success Works, 2007; Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006). The previous Labour government attempted to tackle this issue by introducing the *Justice Legislation Amendment Act 2010*. This effectively meant that the HDBS became a sentence in its own right in accordance with the recommendations of three separate reports (Sentencing Advisory Council, 2008; Success Works, 2007; Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006). This legislative change was also regarded to be pertinent due to the pressure to react to the [then opposition's] populist 'get tough on crime' agenda during the election year. The actual effect of this legislative amendment could not be

seen as the HDBS with RF was abolished in the following year (Parliamentary Library Research Service, 2011).

The abolition of the HDBS with RF in Victoria was the specific result of a change of state government in late 2010. Even before forming the government, the conservative coalition party had announced a plan to abolish HDBS with RF because they considered it to be a part of the previous Labour government's "soft-on-crime-approach that ignores proper sentencing, community protection and the views of victims" (Parliamentary Library Research Service, 2011:4-5). Abolition of HDBS with RF was part of a wider coalition party' agenda of improving sentencing policy by 'getting tough on crime.'

It is very important to note that in mid-2013 the Victorian coalition government announced the introduction of GPS technology as a possible condition of Parole Orders and Community Correction Orders (O'Donohue, 2013). This amendment of the law was portrayed as part of the 'get tough on crime agenda,' summarised as 'giving teeth to community based sentences.' However, from an operational perspective the Parole Orders and Community Correction Orders with GPS will be quite similar to the abolished HDBS with RF. The only difference between them will be the use of the updated technology. This is because at the time when HDBS with RF was abolished it in fact operated as a sentence in its own right at the highest level of the hierarchy of community based dispositions. The application of the electronic monitoring technology as a condition of various community based dispositions (instead of HDBS) follows the legislative trend in the USA (DeMichele & Payne, 2009; McCarthy et al., 2001).

The Australian Capital Territory's HDBS with RF was terminated in 2005. After 4 years of operation it closed because its yearly numbers were so small, less than 5 offenders at any one time and it struggled to be viable (Smith & Gibbs, 2013; Parliamentary Library Research Service, 2011).

Whereas heinous criminal acts committed on children by recently released known paedophiles had resulted in the introduction of HDBS with GPS in the USA, in Australia the sanction commencement was sparked by the post-prison release of high-profile violent sex offenders. In Queensland in 2003 Dennis Ferguson's¹⁰⁹ release created a 'moral panic' in the media (Edgely, 2007; Queensland Corrective Services, 2007). The Queensland Government reacted 6 months later by passing the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* (DPSOA) (Queensland Corrective Services, 2007). This became the first Australian legislation that allowed for post-sentence preventative detention as well as continued community based supervision in cases where a court determined that there is an unacceptable risk of the offender committing further serious sexual offences (Edgely, 2007).

Western Australia replicated Queensland's scheme by introducing the *Dangerous Sexual Offenders Act 2006 (WA)* (DSOA) in order to continue the supervision of a serial rapist Gary Narkle,¹¹⁰ after the expiry of his sentence (Edgely, 2007). Both the Queensland and Western Australian Acts are imposed on:

serious sex offenders who have been sentenced to a period of imprisonment for a wide range of sexual offences against children, including sexual penetration, indecent assault, incest and the possession or production of child pornography.

(Provan, 2007:16)

¹⁰⁹ Dennis Ferguson was a notorious paedophile who was released in 2003 in Queensland after he had served the entirety of his 14 year prison sentence. The main issue with his release was that that he had been a recidivist who was unwilling to accept treatment while in prison and there were no government provisions at the time to keep him detained or to continue supervising him in any way in the community (Edgely, 2007; Queensland Corrective Services, 2007).

¹¹⁰ Gary Narkle had a criminal history of sex and violent offences going back to 1972. He had been convicted of multiple rapes, abduction of a girl aged under 16 and carnal knowledge of the same minor (Cordingley, 15.10.11). Narkle was due to be released in 2006 but Western Australia's former Attorney General described him as "a serial sex monster" (Cordingley, 26.07.11), and applied to the court for him to be imprisoned indefinitely or if released for corrections to continue supervising him. He was released on a supervision order but reoffended soon after (Lampthakis, 12.07.08). The most recent string of offences involved him repeatedly drugging, threatening and raping a homeless man for which he was convicted in 2010 and is currently serving a 10-year sentence. It has been said that an application for his indefinite detention/continued community supervision will be made again when he is due to be released in 2019 (Spooner, 10.01.13).

If these offenders are assessed as posing an unacceptable risk of sexual re-offending at the end of their sentence¹¹¹ they can be indefinitely detained or released in the community subject to appropriate conditions (specified in a supervision order). Most importantly, these offenders are limited in where they can live and work and their contact with children is restricted. It is important to note that, unlike in the USA, in Australia offenders on extended supervision orders in the community are not allowed to be homeless. The conditions imposed on offenders on HDBS with GPS are generally said to increase their rehabilitative prospects as well as protect the public (Smith & Gibbs, 2013; Queensland Corrective Services, 2007).

The Victorian Government followed suit by setting up its own legislative scheme so that it could continue to supervise dangerous sex offenders, such as Brian Keith Jones,¹¹² who had been unresponsive to treatment, did not take part in rehabilitative treatments and/or did not show remorse for his previous crimes (Smith & Gibbs, 2013). It passed the *Serious Sex Offenders Monitoring Act 2005 (Vic)*, which introduced extended supervision orders that offenders are ordered to serve at an acceptable residential location within the

¹¹¹ The application process within the DPSOA and DSOA is as follows: the Attorney-General applies for a Supreme Court order that the prisoner's detention be continued indefinitely; if the court is satisfied that there are reasonable grounds for continued detention the prisoner is ordered to undergo examination by two court-nominated psychiatrists; both psychiatrists provide a detailed assessment of the level of risk that the prisoner will commit another serious sexual offence; the court makes a continuing detention order or orders that the prisoner be released at the end of their sentence under specific conditions outlined in the supervision order (Edgely, 2007). If a continuing detention order is imposed it applies indefinitely and is subject to annual reviews (Edgely, 2007).

¹¹² Brian Keith Jones was initially convicted of kidnapping and molesting 6 young boys in the 1980s for which he served 8 years incarceration. He reoffended almost immediately - post release - sexually assaulting two more boys. He subsequently received a sentence of 14 years imprisonment (Smith & Gibbs, 2013). He was nicknamed 'Mr Baldy' by the media for his habit of shaving victims' heads before molesting them. For the entirety of his sentence he was not responsive to treatment and was the first offender on whom the Victorian extended supervision order was imposed. Extensive negative media attention was given to his release. This started with journalists uncovering his place of residence in the community and subjecting him to harassment. Corrections officials had to then relocate him to the Extended Supervision Order Temporary Accommodation Centre (see explanation below). Ever since, the media has kept a close watch on his movements despite the fact that he has been subjected to rigorous supervision which has included electronic monitoring (Smith & Gibbs, 2013). The media has portrayed the conditions of Jones' release as being too lenient, despite the fact that these had been the toughest conditions ever imposed on a sex offender in Victoria.

community or in the Extended Supervision Order Temporary Accommodation Centre.¹¹³

While the application process for applying for an extended supervision order is very similar to Queensland and Western Australia, the unique aspect of the Victorian legislation is that electronic monitoring is a core condition of extended supervision orders. It enforces offenders' night curfew as well as bans them leaving home during the times when children are likely to be encountered (Smith & Gibbs, 2013; Provan, 2007). Victoria initially utilised HDBS with RF but moved to HDBS with GPS in mid-2013 (O'Donohue, 2013; Victorian Spatial Council, 2011; Price, 2010). Extended supervision orders in Victoria can be for up to 15 years but are subject to review every 3 years (Provan, 2007). Under all of the legislative schemes if an offender fails to comply with any of the predetermined conditions of their supervision orders, without a reasonable excuse, breach action is initiated and if proven guilty offenders can be sentenced to a term of 5 years imprisonment (Provan, 2007).

Other Australian states soon adopted Victoria's policy of using electronic monitoring in supervising dangerous sex offenders. The first to pass similar legislation extending supervision of dangerous sex offenders with electronic monitoring was New South Wales in 2006 (Edgely, 2007). Later that same year Queensland, then Western Australia in 2012, followed suit by passing amendments to their existing DPSOA and DSOA legislation which allowed the courts to impose electronic monitoring on offenders as one of many conditions issued as part of supervision orders (Orr, 30.04.12; Queensland Corrective Services, 2007). Hence, Victoria, New South Wales, Queensland and Western Australia are all using HDBS with GPS to monitor sex offenders

¹¹³ Extended Supervision Order Temporary Accommodation Center (dubbed 'Village of the damned') is a compound made up of one-bedroom cabins inside Ararat prison's outer perimeter fence. It houses offenders for whom suitable accommodation in the community cannot be obtained (Wilkinson & Dowsley, 07.07.07). Difficulties are typically encountered in finding an acceptable residence for sex offenders as it cannot be near schools, kindergardens or child-care centres (Smith & Gibbs, 2013). The existence of the Temporary Accommodation Center has however been vigorously criticised by prominent scholars as being 'quasi detention' which lacks facilities. But, victims of crime groups generally support its operation (Wilkinson & Dowsley, 07.07.07).

(O'Donohue, 2013; O'Loan, 03.06.11; Sandy, 07.06.11). The latest technology was said to "complement and enhance the intensive supervision already in place for DPSOA [and DSOA] offenders residing in the community" (Queensland Corrective Services, 2007:2).

In Australia, the legislative changes allowing HDBS with GPS to be used in supervising dangerous sex offenders after their expiry of their original sentences were implemented quickly, allowing little time for public debate (Szego, 18.04.05). The key argument for the amendment of the law was the enhancement of public safety (Bligh & Roberts, 2011). More specific advantages that sporadically appeared in the literature included that being on HDBS with GPS deters offenders from further offending. It results in controlled offender rehabilitation and its cost is lower than the cost of incarceration (Michael et al., 2006). Interestingly enough there was limited critical discourse in the public arena about this significant amendment to the law. An ethical issue mentioned by Michael et al. (2006) was the possibility that HDBS with GPS could be imposed on sex offenders who may not in fact be likely to offend again (Michael et al., 2006). Further, professionals who treat sex offenders also raised the uncertainty that these legislative changes would in fact reduce re-offending (Szego, 18.04.05).

Following the implementation of laws allowing continued supervision of dangerous sex offenders in Victoria, New South Wales and Queensland, Edgely (2007) vigorously attacked the court's process of determining offenders' propensity to reoffend. The legislation specified that when determining whether an offender represents an unacceptable risk to the community the court must consider their past criminal conduct and psychiatric reports (Edgely, 2007). Edgely (2007:371) argued that this was highly problematic as "the American Psychiatric Association and the Royal Australian and New Zealand College of Psychiatrists have concluded that predictions of dangerousness are too inaccurate for use in a forensic context." Edgely (2007:374) also believed that decisions about continued supervision were based on a "speculative practice."

More comprehensive critical debate about using HDBS with GPS occurred when it was being considered for domestic violence aggressors (Immigrant Women's Speakout Association of New South Wales, 2011; New South Wales Government, 2011). In particular, various stakeholders sent submissions to the 'Inquiry into Domestic Violence trends and issues in New South Wales.' The submissions that referred to the use of HDBS with GPS generally argued that it could be a useful tool with some shortcomings. Specified shortcomings included that HDBS with GPS invades domestic violence aggressors' civil liberty and privacy, GPS devices can be removed, and GPS tracking signals can be lost for a period of time (Immigrant Women's Speakout Association of New South Wales, 2011; New South Wales Government, 2011). The Immigrant Women's Speakout Association of New South Wales (2011) also warned that the use of HDBS with GPS will only be successful if detailed regulations and sophisticated practice guides its operation. Hence, when there was a proposed expansion of the offender population on HDBS with GPS, stakeholders presented various critical arguments.¹¹⁴

The Australian Institute of Criminology subsequently commissioned a special trends and issues paper demystifying common misperceptions about child sex offenders (Richards, 2011). It explained that, while child sex offenders are presented in the media as compulsive recidivists, research has indicated that their rates of re-offending are generally low - varying from 10% to less than 40% - depending on the follow up period (Richards, 2011; Edgely, 2007). In addition, the common belief that strangers typically abuse children is unfounded, as the vast majority of child sex offenders are known to their victims (Richards, 2011). Richards (2011) concluded by stating:

Although sexual offending against children is a highly emotive issue, it is important that the empirical literature on this topic underpins any public policy response to child sex offenders (eg risk assessment, treatment, investigative and court processes, sentencing, child

¹¹⁴ To date no Australian state/territory has trialed the use of HDBS with GPS for domestic violence aggressors.

protection policies) in order to ensure the implementation of approaches that are best placed to enhance public safety and protect children from sexual abuse.

(Richards, 2011:7)

It is interesting to note that Australia has recently enacted legislation which enables control orders to include the application of electronic monitoring in preventing terrorist acts¹¹⁵ (Smith & Gibbs, 2013). Although these orders are yet to be applied, their existence has raised numerous legal and human rights concerns in relation to the pre-existing legal protections. Further there are questions about whether they are constitutional and if they comply with international human rights protections (Smith & Gibbs, 2013).

The possibility of using electronic monitoring to track the whereabouts of refugees while they are in the process of applying for asylum has been discussed in Australia. This application would be for refugees who would typically be held in detention. Unsurprisingly, the Human Rights Council of Australia has advocated for the utilisation of electronic monitoring instead of detention (Smith & Gibbs, 2013). Furthermore, there has been some interest in using electronic monitoring to enforce restraining orders in Australia. Although there are no legislative provisions for the use of electronic monitoring in either of these settings, it is predicted that there will be in the future (Smith & Gibbs, 2013).

In summary, unlike in the USA where there has been a continual expansion of HDBS that utilise both RF and GPS electronic monitoring technology, in Australia it has remained relatively stable as Table 4.1 shows. More specifically, the number of offenders on HDBS with RF has been decreasing because throughout Australia 4 out of 7 HDBS with RF had ceased operating over the last decade. Conversely, the number of offenders on HDBS with GPS seems to be on the increase (Smith & Gibbs, 2013; Henderson, 2006). Actual numbers of offenders on HDBS with GPS in Australia are not publicly

¹¹⁵ For more information please see Criminal Code Act 1995 (Cth), Division 104.

available. This is because in some jurisdictions they are counted as a part of the imprisoned offender cohort, and in others as part of the paroled offender cohort. Therefore, a uniform classification of these offenders is needed. Despite this, it is most likely that the offender numbers on these sanctions have grown since the sanctions were initiated in 2006, especially given the fact that they are now operational in four states (O'Donohue, 2013; Orr, 30.04.12; Edgely, 2007).

Table 4.1 - Offenders on HDBS in Australia (at any one time)¹¹⁶

Year	Offenders on RF
1999-2000	539
2000-2001	576
2001-2002	558
2002-2003	657
2003-2004	684
2004-2005	792
2005-2006	886
2006-2007	772
2007-2008	586
2008-2009	665

Like in the USA, in Australia the overall numbers on HDBS are relatively small, as they comprise only a few percent of all offenders (Henderson, 2006; Ross & Allard, 2001).

4.2.3 Ideologies of supervision on HDBS

As Australia followed the USA in setting up its own HDBS it was in a position to firstly assess HDBS' ideological strengths and weaknesses and then implement HDBS with components that were most likely to be suitable and

¹¹⁶ In Australia, unlike in the USA, offender numbers on HDBS are usually presented 'at any one time.' When this figure is compared to the yearly figure, the 'at any one time' figure is usually doubled or tripled as relatively short orders in duration of a few months are typically imposed (NSW Standing Committee on Law and Justice, 2006).

effective for the Australian sentencing landscape. The USA's mode of supervising offenders on HDBS with RF being primarily based on strict offender punishment and surveillance was highly criticised by prominent scholars while the establishment of these sanctions was under consideration in Australia. They argued that if USA's ideology of offender supervision on HDBS with RF was introduced it would simply leave offenders intensely under the control and surveillance without any chance of changing their behavior (Lay, 1988a; Fox, 1987b). Fox (1987b:83) eloquently summarised this in the following terms:

There is reason to be anxious that the supervision of an offender in the community is being shifted from an individual-based program designed to meet and deal with the offenders' particular needs in the community, to one of remote impersonal surveillance, superintendence and discipline in the person's own home under conditions emulating a prison environment without providing adequate supportive services.

(Fox, 1987b:83)

Australian scholars were also critical of the USA's concentration on the punitive and control components of HDBS with RF that seemed to simply reflect the popular emphasis on community protection rather than offender rehabilitation. Control and surveillance seemed to therefore assume a dominant role in order to satisfy the public's demand for punishing offenders (Roeger, 1988).

As a result, King (1991) argued that HDBS with RF in Australia should contain elements both of close surveillance and monitoring as well as treatment and rehabilitation. This is because controlling offender risk as well as reducing that risk are equally necessary in their management:

- Risk control is achieved by the imposition of various correctional department' surveillance enhancing mechanisms such as electronic

monitoring, urine analysis, breathalyser tests and intensive supervision. These mechanisms have a deterrent effect on the offender – if they breach their order conditions they know they will be caught (King, 1991).

- Risk reduction occurs by creating provisions for offender rehabilitation. It more broadly involves correctional administrators contributing to social policy development and ensuring that offenders have access to community services. More specifically, it includes the establishment of treatment programs in accordance with particular offenders' needs. These are usually substance abuse programs, adult literacy programs and employment training (King, 1991).

So, the key issue with simply controlling offender risk on HDBS with RF, as some jurisdictions in the USA have done, is that the emphasis is simply on catching offenders should they fail to comply with order conditions and/or commit further offences. The counterbalance that is missing is risk reduction, which contains elements that provide offenders with actual strategies to reduce the likelihood of their non-compliance and/or further offending (King, 1991).

Taking on board the ideological criticisms of USA's HDBS with RF, Australian legislators introduced HDBS with RF that are mostly based on a strict and close surveillance and monitoring regime (like in the USA) but also contain rehabilitative treatment components as a part of case management (unlike in the USA). Unlike the USA, Australia did not have more specific modes of offender supervision. (For more information see Chapter 3.2.3).

Surveillance and monitoring measures in Australian HDBS with RF have typically encompassed electronic monitoring, a few face-to-face visits per week, random 'drive-by' contacts and phone calls, as well as urinalysis and breath testing (Smith & Gibbs, 2013; Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006; Studerus, 1997; Challenger, 1994b; Owston, 1991; Dorey, 1986). Treatment and rehabilitative

initiatives have been plentiful and offenders' participation has been dependent on their problems, their criminogenic needs and other goals. Initiatives have been determined on the basis of individualised case management, which is able to respond to offenders' changing circumstances and is said to increase the chance of breaking the cycle of criminal offending (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006; NSW Standing Committee on Law and Justice, 2006; Owston, 1991; Dorey, 1988).

It should also be noted that offender supervision supporting offender treatment and rehabilitation has been particularly employed in back-end HDBS with RF in Australia (Queensland, South Australia and Victoria). This is through the application of case management principles that specifically encourage both offenders and their co-residents to engage in pro-social activities and lifestyle (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006; Heath, 1996). Furthermore, while supervising officers are typically liaising with offenders' families, they are also in dialogue with offender support agencies with the objective of successfully reintegrating them back into the wider community (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006; Heath, 1996).

A comprehensive Benchmarking Study of HDBS with RF in Australia and New Zealand by Henderson (2006) confirmed that, decades after the introduction of HDBS with RF, supervising officers still regarded a mix of surveillance monitoring mechanisms and rehabilitative provisions imposed through case management practices as critical components of effective HDBS with RF. In particular, they outlined:

- an intensive case management approach combining (monitoring/supervision with guidance/counseling)
- an effective case management approach based on one to one personal contact and
- ensuring 'a constructive day' through work or other activities.

(Henderson, 2006:53)

Henderson's (2006) findings contradict South Australia's findings where correctional officers supervising those on HDBS with RF were usually not clear about what constitutes case management and even if they were clear they generally do not apply its principles consistently (Department for Correctional Service, 2006; Winton, 1999). South Australia's findings are not surprising as the main clientele on HDBS with RF in South Australia are bailees, who arguably should not be case managed as they are awaiting trial and have not yet been convicted of any criminal offences (Department for Correctional Service, 2006).

The ideology of punishment for offenders on HDBS with GPS seems to be very similarly based on HDBS with RF, that is, it typically contains aspects of both strict surveillance and monitoring as well as rehabilitative initiatives (Smith & Gibbs, 2013; Edgely, 2007).

It is not surprising that international best practice has continually documented the importance of integrating rehabilitative provisions based on individual case planning which match assessed risks/needs to services, and case management of offenders which provides appropriate levels and types of support to address those risks/needs (Henderson, 2006).

4.3 Late phase of HDBS - Assessment of outcomes (1982-2013)

This section discusses the outcomes of the currently operational late phase of HDBS in Australia. These outcomes are chronologically described over last three decades almost exclusively in relation to HDBS with RF. No Australian studies have yet comprehensively assessed the outcomes of HDBS with GPS. This is possibly because there was very limited critical discourse about the introduction of HDBS with GPS in the public arena and for that reason there were probably no immediate plans to evaluate their application. Australian legislators probably relied on the USA literature, which had over a decade of experimentation with HDBS with GPS, yielding very positive operational results. This is nevertheless troublesome, as the use of HDBS with GPS must be assessed within the unique Australian context.

The outcomes are presented under 4 sub-themes - operational results, ethical issues and dilemmas, legal issues and dilemmas and political and stakeholder issues and dilemmas. Whilst the arguments presented under operational results are mostly based on actual figures, the analysis presented under ethical, legal and political and stakeholder issues and dilemmas is somewhat broader and less tangible.

4.3.1 Operational results

The Operational results are presented under 4 points. The first broadly examines whether HDBS have widened the net or reduced prison crowding. The second analyses the effect of HDBS' technical violation rates on prison crowding. The third investigates the effect of HDBS' recidivism rates on prison crowding. The fourth discusses whether HDBS have generally reduced the cost of corrections. These points were determined to be pivotal in discussing the operational results of HDBS because they either formed the rationale for their establishment or were generally considered to be important by corrections departments.

4.3.1.1 Have HDBS widened the net or reduced prison overcrowding?

The driving force behind the establishment of HDBS with RF in Australia was the belief that these sanctions would alleviate overcrowding in prisons (Smith & Gibbs, 2013:82). All HDBS with RF shared this aim¹¹⁷ (NSW Standing Committee on Law and Justice, 2006; Owston, 1991; Bloor, 1988; Dorey, 1988). This aim was to be achieved by diverting lower-risk prison-bound

¹¹⁷ It is worth noting that, although Victoria operated HDBS with RF as an alternative to imprisonment from 2004 to 2010, State Parliament amended the law in 2010 for it to operate as a sanction in its own right. This radical step was considered pertinent in an election year due to the popularity of the opposition's 'get tough on crime agenda' that encompassed the abolition of HDBS with RF (Parliamentary Library Research Service, 2011:4-5). HDBS with RF was nevertheless abolished in late 2010 by the incoming conservative coalition government (Parliamentary Library Research Service, 2011; Sentencing Advisory Council, 2008).

offenders at either front-end or the back-end from incarceration (Parliamentary Library Research Service, 2011; NSW Standing Committee on Law and Justice, 2006; Challinger, 1994b). It was anticipated that the offender pool for diversion from prison would be substantial (Owston, 1991).

As mentioned earlier, it is considered to be quite problematic if the net of social control widens when alternatives to imprisonment are misapplied as a replacement for more lenient sanctions. This is because if net widening occurs, then HDBS with RF increase both the prison population and the corrections budget (Meyer, 2004; Wagner & Baird, 1993). Fox (1987b) was one of the first Australian scholars to warn about the possibility of net widening on the basis of past experience with community based alternatives to imprisonment:

when a non-or semi-custodial sanction is supposed to be available only on the basis that it is a humane and mitigated version of imprisonment, there is an inexorable tendency to make use of it when, in truth, there is not a real likelihood of immediate imprisonment at all. This can be easily tested by seeing what happens when the order is breached, or when the offender refuses to consent to it for some personal reason. They should be sent straight to prison. They are not in a significant number of cases.

(Fox, 1987b:80)

Australian evaluations conducted in the 1980s which explored whether HDBS with RF had reduced prison overcrowding all indicated that actual diversion from prison was occurring (Owston, 1991; Dorey, 1988). Furthermore, these evaluations indicated that while offender numbers on inaugural HDBS with RF were adequate, the longer-term prospects entailed substantial growth in offender numbers on these sanctions (Owston, 1991; Bloor, 1988). To facilitate this, many states relaxed the eligibility criteria of HDBS with RF, hoping that increased offender numbers on these sanctions would thereby substantially reduce prison overcrowding (Bloor, 1988).

During the 1990s one study, which analysed whether net widening was occurring when HDBS with RF was imposed, was undertaken in New South Wales. Specifically, a statistical exercise was conducted using the Judicial Information Research System (JIRS). It reported that the “large majority of the sentences handed down were within acceptable sentencing parameters for each particular offence type” (Heggie, 1999:117). This finding that no net widening was related to front-end HDBS with RF, which is typically much more susceptible to net widening than back-end HDBS with RF, is considered to be significant (for more information see Clear, 1997; Clear & Hardyman, 1990; Tonry, 1990; Erwin, 1987). Throughout the 1980s and 1990s, unlike in the USA, Australian criminologists did not critique the validity of the officially reported findings that HDBS with RF did not result in net widening but in fact reduced prison crowding. The lack of interest may have been due to no anticipation that untrue prison diversion was occurring. Furthermore, unlike in the USA, in Australia there were no government sponsored large-scale critical evaluations of already established HDBS with RF.

Since 2000 there have not been any specific studies assessing whether HDBS with RF has widened the net or reduced prison overcrowding. Nevertheless, government issued reports and sponsored studies generally stated that HDBS with RF lower the prison population as they operate as alternatives to incarceration (Provan, 2007; Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006; NSW Standing Committee on Law and Justice, 2006). Offender numbers on HDBS with RF have however typically been “too small to exert a significant downward influence on prison numbers” (Ross & Allard, 2001:6). This is despite the early expectation that offender numbers on HDBS with RF throughout Australia would grow considerably thereby substantially reducing prison crowding (Smith & Gibbs, 2013:85). George (2006:88) has however argued that “whether HDBS with RF reduce prison numbers is unclear and extremely difficult to assess.” This uncertainty was based on the continued rise of the prison population across Australia (George, 2006; Black & Smith, 2003). Hence, no concrete evidence has been presented to counteract the claim that HDBS with RF reduce prison crowding to date.

The recently implemented HDBS with GPS however do not aim to reduce prison overcrowding. Instead serious sex and violent offenders are placed onto extended supervision via HDBS with GPS to increase public safety with little concern about the net widening effect. Prior to the establishment of extended supervision HDBS with GPS these offenders would have been released into the community following their prison sentence or they would have been on basic parole (for more information see Smith & Gibbs, 2013; Edgely, 2007). The lack of concern about the net widening was the result of legislative amendments to address the culture of fear and moral panic in the community that surrounds sex offenders' release from prison (Szego, 18.04.05).

4.3.1.2 What has been the effect of HDBS technical violation rates on prison crowding?

Over the last three decades the rates of technical violations on HDBS with RF throughout Australia have varied between 2 and 25% (Achterstraat, 2010; Community Based Services Directorate, 1999; Heggie, 1999; Heath, 1996; Challinger, 1994b; Owston, 1991; Roeger, 1988; Dick et al., 1986). As these rates have been considered to be low, they have not been regarded as contributing to prison crowding (Achterstraat, 2010). The technical violations of HDBS with RF have been low due to appropriate funding provisions, which have permitted small offender caseloads and individual case management, as well as various rehabilitative initiatives (Heath, 1996; Dorey, 1988).

In the 1980s, the rates of technical violations on HDBS with RF throughout Australia varied between 4 and 15% (Challinger, 1994b; Owston, 1991; Roeger, 1988; Dick et al., 1986). These rates were particularly low because the states that implemented initial HDBS with RF such as Queensland and South Australia had fairly overcrowded prisons. As a result, it was relatively easy for them to 'hand pick' small numbers of 'likely to be compliant' offenders for placement on pilot HDBS with RF (Bloor, 1988; Dorey, 1988). After the 'Hawthorne effect' during the 1990s it was expected that the rates of

technical violations on HDBS with RF would increase (for more information see Lilly et al., 1993).

As anticipated, technical violation rates of HDBS with RF during the 1990s increased to a range of between 15 and 20% (Community Based Services Directorate, 1999; Heggie, 1999; Heath, 1996). This increase in technical violations probably occurred because numbers on HDBS with RF increased and offenders were no longer 'hand picked' for participation. Nevertheless, the increase in technical violations was not significant (unlike in the USA) probably because HDBS with RF in Australia continued to encompass individual case management and rehabilitative provisions (Henderson, 2006; Heath, 1996).

Since 2000, technical violations of HDBS with RF technology throughout Australia ranged between 2 and 25%, but have mostly been around the 20% (Achterstraat, 2010; NSW Standing Committee on Law and Justice, 2006). Technical violations of HDBS with RF over the last three decades have generally continued to increase throughout the country. Interestingly, actual technical violation rates have been directly associated with the number of offenders on the HDBS with RF – the smaller the number of offenders on the HDBS with RF – the smaller the breach rate. For example, in Victoria in 2008-09 the average number of offenders was 32 and the breach rate was 2%. The larger the number of offenders on the HDBS with RF, the larger the breach rate. For example, in South Australia in 2008-09 the average number of offenders was 423 and the breach rate was 25%) (Achterstraat, 2010). This is probably because HDBS with RF that have more substantial offender numbers are unlikely to 'hand pick' offenders for participation on these sanctions, and their offender eligibility criteria is more relaxed. The overall technical violation rates of HDBS with RF however have not increased substantially, because these sanctions still entail individual case management and rehabilitative provisions, and are therefore resource intensive.

4.3.1.3 What has been the effect of HDBS recidivism rates on prison crowding?

Since HDBS with RF were initiated in Australia, follow-up re-offending rates have varied between 0 and 12% (NSW Standing Committee on Law and Justice, 2006; Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006; Heath, 1996; Roeger, 1988; Dick et al., 1986). As these have been considered to be low, they have not been regarded as contributing to prison crowding (Achterstraat, 2010). These rates have probably been low because, unlike in the USA, HDBS with RF in Australia encompass adequate rehabilitative services, which have seemed to positively impact on recidivism rates.

During the 1980s, follow up recidivism rates of offenders on HDBS with RF were reported to range between 0 and 9% (Heath, 1996; Roeger, 1988; Dick et al., 1986). This was regarded to be very positive because it was substantially lower than post-release recidivism rates for other community based dispositions (for more information see Dick et al., 1986). The re-offending rates were particularly low as offenders were carefully selected for participation on inaugural HDBS with RF. This meant that they were very likely to be low-risk and compliant (Dorey, 1988; Bloor, 1988). Again these offenders were also individually case managed and had access to various rehabilitative initiatives (Heath, 1996; Dorey, 1988).

No evaluations in Australia during the 1990s analysed re-offending rates on HDBS with RF. However, it was expected that post the 'Hawthorne effect' the rates of technical violations on HDBS with RF would have increased during this time with a resultant increase in offenders returning to prison (for more information see Lilly et al., 1993). The increase would probably not have been substantial, as HDBS with RF as discussed above continued to entail individual case management and rehabilitative provisions.

Since 2000, recidivism rates on HDBS with RF throughout Australia have ranged between 2 and 12% (NSW Standing Committee on Law and Justice,

2006; Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006). Therefore, recidivism rates for HDBS with RF have continued to slightly increase throughout Australia over the last three decades. This is probably because offenders are no longer 'hand picked' for participation on these sanctions, and the offender eligibility criteria is more relaxed. Again the recidivism rates of HDBS with RF have not grown substantially because these sanctions still encompass individual case management and rehabilitative provisions.

HDBS with RF's recidivism rate of between 2 and 12% is generally compared to the recidivism rate of 50% for offenders released from prison, and 26% for offenders on other community based dispositions (Sentencing Advisory Council, 2008). HDBS with RF are said to have a lower recidivism rate than prisons because they more effectively support reintegration and rehabilitation of offenders, thereby preparing them more adequately to adopt a pro-social lifestyle (Sentencing Advisory Council, 2008; NSW Standing Committee on Law and Justice, 2006). Furthermore, offenders on HDBS with RF are said to have a distinct offender profile as opposed to offenders on other community based penalties – these offenders are more likely to be low-risk, non-violent, better educated, employed and generally adopting a stable lifestyle, and hence less likely to reoffend (Parliamentary Library Research Service, 2011). Nevertheless, Achterstraar (2010) argued that it should be possible to further lower the reoffending rates of offenders on HDBS with RF by more intensively targeting rehabilitation programs to offenders as part of their individual case management and supervision.

4.3.1.4 Have HDBS reduced the cost of corrections?

Directly associated with the aim of relieving overcrowded prisons is the goal of saving government resources (NSW Standing Committee on Law and Justice, 2006; Heath, 1996; Dorey, 1988; Dorey, 1986). Unlike in the USA, HDBS with RF have been considered to be cost effective in Australia over the last three decades. This is because rates of technical violations and net

widening have been relatively low, and the cost of their alternative, that is incarceration, has been quite expensive.

In the late 1980s, evaluations of HDBS with RF reported significant cost savings for correctional departments who had implemented these sanctions. The actual per offender per year cost of HDBS with RF substantially varied from state to state ranging from \$3,200 per offender per year in Queensland to \$17,000 per offender per year in South Australia. Further, a cost advantage for HDBS with RF over prison was generally reported to be between the ratio of 1:2.5 and 1:5 (Challinger, 1994b; Roeger, 1988; Dick et al., 1986). The discrepancy in the cost of HDBS with RF between the Australian states and territories is not surprising, as it is very similar to the variation in the cost of incarceration between the states and territories (Challinger, 1994b).

Interestingly, however, Roeger (1988) warned that these are not 'true savings' but rather are 'figurative savings' – meaning that there had not been a significant reduction in prison expenditure – correctional budgets had in fact continually increased. It should be noted that it is highly likely that if HDBS with RF were not introduced correctional budgets would have increased even further. This is because all of these offenders (due to no net widening) would have been in prison instead of HDBS with RF. The evaluations however pointed out the broader, not easily quantifiable, positives of HDBS with RF. These included the fact that the social and psychologically debilitating effects of imprisonment are avoided/reduced when an offender is on HDBS with RF. Further, many offenders gain employment while on HDBS with RF which means that their family is no longer dependent on welfare benefits (Roeger, 1988). Nevertheless, it should be noted that these evaluations omitted to add into their cost estimates the cost, although minor, of processing HDBS with RF's technical violators and recidivists.

During the 1990s, studies revealed comparable findings. More specifically, HDBS with RF were reported to cost between \$10,000 (in South Australia) and \$17,520 (in New South Wales) per offender per year (Heggie, 1999; Winton, 1999; Heath, 1996). When these costs were compared to the cost of

incarceration in both states, HDBS with RF were said to yield a general saving of 1:3 ratio in comparison with incarceration. The cost in New South Wales was produced as a part of an evaluation of pilot HDBS with RF. As such, it was projected that in the future the cost of HDBS with RF when operating at or near capacity would decrease to \$12,775 per offender per year (Heggie, 1999). It should be noted that instead the cost of HDBS with RF in New South Wales to date has continued to slightly increase (Achterstraat, 2010; NSW Standing Committee on Law and Justice, 2006). This is probably because the optimal offender number on HDBS with RF has still not been reached, but has in fact continued to decrease over the last decade (Achterstraat, 2010). (For more information see section 4.2.2.2).

Winton (1999) however, similarly to Roeger (1988), cautioned that diversion from prison to HDBS with RF does not result in a lump sum saving to corrections. As he explained:

the transfer of a single prisoner from a custodial environment to [HDBS with RF] does not produce a saving of the difference between the annual cost of imprisonment and the annual cost of home detention. Up to 90% of the costs of maintaining a prisoner in custody are essentially fixed for small changes in prisoner numbers. These costs include the shared staff supervision costs for a prison unit, administrative costs, energy and other building related costs. All of these costs are still incurred if there are a small number of empty beds in a unit. In the long run, a sustained reduction in prisoner numbers can create opportunities for the closure of units and additional savings.

(Winton, 1999:17)

The evaluations once again reiterated that “the exact costs of [HDBS with RF] remain unknown” (Heath, 1996:35). This is because cost is typically calculated on a direct basis excluding the costs and savings of other related agencies such as welfare, police and courts, and more broadly the family, victims and community at many different levels (Heath, 1996). If all of these

costs and savings were included it is highly likely that they would indicate substantial cost benefits of HDBS with RF. These savings would however be somewhat offset if the costs of processing HDBS with RF's technical violators and recidivists were also included in the overall cost analysis.

Studies conducted since 2000 assessing the cost of HDBS with RF have once again indicated similar findings. HDBS with RF in New South Wales was estimated to cost around \$20,000 per offender per year, whereas HDBS with RF in Victoria was calculated to cost \$48,000 per offender per year (Achterstraat, 2010; Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006; NSW Standing Committee on Law and Justice, 2006). This cost of HDBS with RF in New South Wales and Victoria is not inclusive of the costs associated with the processing of HDBS with RF's technical violators and recidivists (although these are probably minor). The Victorian figure however is more expensive than any other previously provided. This is because it was based on a relatively recent evaluation of a pilot HDBS with RF, which is usually higher than the operational cost of an established HDBS with RF. Further, this HDBS with RF only attracted less than one third of the expected caseload during the pilot period, and as such its per offender per year cost was substantially higher than anticipated. It was predicted that the cost per offender per year would substantially reduce once HDBS with RF was established as a permanent sentence and the number of offenders on the order grew. This HDBS with RF also uniquely specified a strong emphasis on case management, which could have somewhat contributed to its high cost (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria 2006).

Although these figures are substantially higher than the figures reported in earlier decades, they are still much lower than the cost of incarceration, which has also continued to increase and is calculated at \$68,255 per prisoner per year (in New South Wales) and \$83,200 per prisoner per year (in Victoria) (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006). When the cost of HDBS with RF is compared to incarceration the HDBS with RF's cost advantage is said to be between the

ratio of 1:1.8 and 1:3 (Achterstraat, 2010; Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006). George (2006), an outspoken opponent of HDBS with RF, has however contentiously maintained that the cost of HDBS with RF should be compared to other community-based dispositions, rather than imprisonment. This is because she has argued that “if a person is ‘safe enough’ to be in their home they are ‘safe enough’ to be in the community” (cited in Parliamentary Library Research Service, 2011:7-8).

The evaluations since the turn of the century have also specified a number of HDBS with RF’s outcomes to which a monetary value cannot be assigned. These include: reduced parole breach rates, reduced cost of crime (due to reduced recidivism), improved employment outcomes (offenders on HDBS with RF were more likely to find employment than those released from prison) and improved family outcomes (Achterstraat, 2010; Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006; NSW Standing Committee on Law and Justice, 2006). Achterstraat (2010) has argued that governments around Australia could achieve various savings if they expand HDBS with RF. He also ascertained that the costs associated with HDBS with RF would further reduce with the expansion of these sanctions, but these should not be at the cost of their integrity.

The placement of serious sex-offenders on extended supervision HDBS with GPS to increase public safety has widened the net of social control and as a result increased correctional outlays. The ‘moral panic’ that has surrounded sex offenders has meant that the concern for public safety has outweighed any concerns about increased spending (Smith & Gibbs, 2013; Edgely, 2007). As mentioned earlier, these offenders would previously have either been released into the community following imprisonment or have received a parole period.

4.3.2 Ethical issues and dilemmas

Ethical issues and dilemmas are presented under 4 points. Initially, there is a broad philosophical discussion about whether HDBS are a part of a surveillance-oriented Orwellian society. This is followed by a more specific analysis on whether there is discrimination in the selection process for HDBS, whether punishment on HDBS varies between offenders, and whether HDBS punishment spills over into the lives of offenders' co-residing family members.

Ethical issues and dilemmas are generally presented in relation to mostly HDBS with RF. This is due to the considerable volume of studies which have explored the ethical issues and dilemmas of HDBS with RF and the lack of studies that have assessed these issues and dilemmas in relation to HDBS with GPS. In particular, there are gaps in research exploring whether there is discrimination in the selection process for HDBS with GPS, whether punishment on HDBS with GPS varies between offenders, and whether punishment on HDBS with GPS spills over into the lives of offenders' co-residing family members. It is possible that this is because HDBS with GPS are structurally less discriminatory during the selection process, they do not confine offenders to their homes for prolonged periods of time, and the punishment of offenders on these sanctions is therefore probably not as diversified and has substantially less impact on their co-residents in comparison with HDBS with RF (Martinovic & Schluter, 2012; Alarid et al., 2008; Meyer, 2004; McCarthy et al., 2001). Nevertheless, the lack of research is troublesome and future research is imperative.

4.3.2.1 Are HDBS part of a surveillance-oriented Orwellian society?

While no Australian researchers have specifically engaged in the debate about whether HDBS are a part of governments' movement towards a surveillance-oriented Orwellian society, they have continually discussed the broader ethical implications of HDBS. It was only Fox (2001) who explored the applicability of Orwell's surveillance-oriented society to the general way in

which society in the present day functions, not the imposition of HDBS with RF as such. He concluded that state centered surveillance, as argued by Orwell, is only operational in former eastern block countries (Fox, 2001). In capitalist societies, on the other hand, surveillance is conducted by both the public and private sectors for their own separate purposes. Even though the information collected is subject to the risks of error and abuse, the community has not regarded this to be oppressive 'Big Brother' watching. Fox (2001) explained that this was because surveillance is less visible, as well as being generally consensual, diffuse and benign, and therefore not considered to systematically undermine personal freedom and individual privacy.

In the 1980s, Fox (1987a, 1987b) initiated a theoretical discussion about the ethical issues related to HDBS with RF. He argued that the imposition of these sanctions means that homes in practice were being converted into prisons with the discipline of imprisonment being dispersed into people's homes (Fox, 1987b). At home, he ascertained that electronic monitoring is both physically and psychologically invasive to the wearer – physically as the device is attached to the person and – psychologically as self discipline is required to endure the strict monitoring. He further contended that being on HDBS with RF is more onerous than incarceration (Fox, 1987a).

Ellard (1988) added to the debate by accurately predicting that future electronic devices would be able to determine an offender's location at any given time and correlate that information with other offenders' movements as well as crimes. While he argued that this would be plausible for crime detection, he maintained that it was quite problematic that the offender pool for monitoring could be potentially extremely wide. Furthermore, he provocatively asked "why stop there?" – perhaps all crime could be prevented if all people at birth were equipped with an electronically monitored device (Ellard, 1988:24). The basic argument was therefore that the government, with the 'right' arguments, could turn the entire society into a controlled institution (Ellard, 1988).

The actual utilisation of 'home' as a place of confinement on HDBS with RF has been vigorously criticised by Australian authors such as George, (2006), Fisher (1995) and Aungles (1994). It was argued that that HDBS with RF impose a real threat to the sanctity of home, which had "over time ... become a place of sanctuary, symbolising the dignity and freedom of the individual despite their social status" (Fisher, 1994:15). When HDBS with RF are imposed the 'private domestic family sphere' becomes the location for penal reform, blurring the boundaries of social control and social relations (George, 2006; Aungles, 1994; Fisher, 1994).

In Australia academic interest in critically exploring broader ethical issues of HDBS with RF has not abated like in the USA, but has continued since the turn of the century. Black and Smith (2003), in a special publication of Trends and Issues titled 'Electronic monitoring in the criminal justice system' published by the Australian Institute of Criminology, argued that there are many ethical issues with electronic monitoring that have not yet been resolved despite the fact that the technology had been in use for several decades (Black & Smith, 2003). They illustrated this through posing a number of pertinent ethical questions for which protections under the law were non-existent. These included:

Is the use of force acceptable when attaching a device? Should surgically implanted devices ever be appropriate? If the offender is subject to a curfew, should authorities have any right to track his or her movements outside curfew hours? To what uses should information about the offender's movements be put? ... Should the general legal power to impose conditions be interpreted as authority to order electronic monitoring? This is currently the position in some Australian jurisdictions where electronic monitoring is used under the court's general power to impose conditions on an individual. If that power is sufficient to require a person to wear a monitoring device, does it also authorise a court to compel an individual to submit to a surgically implanted device?

(Black & Smith, 2003:5)

As HDBS with GPS had just permanently entered the correctional arena in the USA, and were under consideration in Australia, Black and Smith (2003) more specifically argued that the application of this surveillance had the unprecedented potential to create over-regulation and infringement of human rights. They therefore considered it to be imperative for policies to be enacted to ensure that the information gathered is used in the most productive and ethical way, and that clear procedures are established for unethical or illegal uses of that information (Black & Smith, 2003).

Black and Smith (2003) concluded by presenting a case that there should be specific legislation governing the application of electronic monitoring. They even suggested that this be done at the national level under Commonwealth Government's constitutional powers over "telegraphic, telephonic, and other like services" (s. 51(v) of the Australian Constitution) (Black & Smith, 2003:5). This was considered to be essential, despite the existing guidelines for the implementation of home detention and electronic monitoring, which state that offenders "should be subject to the minimum level of supervision necessary and that the use of monitoring devices should be unobtrusive and clearly explained to offenders" (Black & Smith, 2003:5). The issue with these is that they are not enforceable, although they were endorsed and published by the Corrective Services Ministers' Conference (1996).

Specific exploration of wider ethical implications of tracking offenders' movements through HDBS with GPS was conducted by Michael et al. (2006). They agreed with earlier reports that there are many problematic ethical implications of these sanctions, as well as an absence of stringent ethical safeguards for those who are tracked. They also suggested that policy makers establish comprehensive procedures to ensure the ethical treatment of offenders on these sanctions (Michael et al., 2006). More specifically, tracking of serious offenders on extended supervision HDBS with GPS resulted in ethical as well as unethical aspects. Ethical aspects included that it may prevent crimes from occurring, and it controls and rehabilitates. However, it is considered unethical that monitoring could be imposed on offenders who were unlikely to re-offend (Michael et al., 2006).

Most recently, Smith and Gibbs (2013) repeated the ethical concerns that were presented earlier by Black and Smith (2003). The application of electronic monitoring has arguably continued to raise serious civil liberty concerns and a range of other ethical issues. This is because the abundance of information that can be collected and the resultant potential for misuse that could infringe human rights. Policies, which are still unavailable despite earlier recommendations, are considered to be essential to ensure the ethical use of the application of electronic monitoring and data collected (Smith & Gibbs, 2013). Interestingly, the concerns expressed by Australian researchers about these potential misuses have not appeared in the USA literature.

4.3.2.2 Does the selection process for HDBS discriminate against offenders with certain characteristics?

A more specific ethical issue and dilemma is whether the correctional selection process for HDBS discriminates against offenders with certain characteristics. Offenders should be selected for HDBS according to their statistical risk-and-needs-analysis, which considers factors such as their criminal history, substance abuse and interpersonal relations (Henderson, 2006; Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006; NSW Standing Committee on Law and Justice 2006; Heggie, 1999). In contrast, discrimination occurs if a decision (recommending for or against placement on a HDBS) is based on other factors such as an offender's gender, race or economic status.

It is important to note that offenders on HDBS with RF throughout Australia, unlike in the USA, have never been required to financially contribute to any direct sanction-related expenses such as supervisory fees and drug/alcohol testing (George, 2006; Fox, 1987b). Offenders on HDBS with RF in Australia, like in the USA, have however been required to maintain their 'suitable residence' with electricity and a telephone, provide for their own basic human needs, and pay to travel to various sanction-requirements such as community work and rehabilitative treatment. George (2006:81) nevertheless considers

this to be “bearing the cost of running the home prison,” which, she argues, is usually done by the entire family. (For more information see section 4.3.2.4).

Like in the USA during the 1980s there was no investigation in Australia about whether discrimination occurred during the selection process for HDBS with RF. During the 1990s and 2000s a number of studies discussed this issue. These studies generally confirmed an earlier concern that HDBS with RF would be more readily available for middle-and-upper-class offenders than lower-class offenders (Sentencing Advisory Council, 2008; Success Works, 2007; George, 2006; Heggie, 1999; Aungles, 1995). While offenders' economic status was not directly considered during the selection process for HDBS with RF, three specific selection determinants inadvertently considered it. These included offenders' requirement to reside in an area within the state/territory where the HDBS with RF is operational, residing in a suitable home, and maintaining a telephone.

The most basic requirement that offenders reside in an area within the state/territory where the HDBS with RF is operational was determined to be potentially discriminatory (NSW Standing Committee on Law and Justice, 2006; Heggie, 1999; Heath, 1996). This is because some offenders are excluded from HDBS with RF simply because they are able to reside only in rural or remote areas, usually due to living in Aboriginal communities and/or not being able to move for financial reasons to metropolitan areas where the HDBS with RF is operational. The fact that Aboriginal people are much more likely than non-Aboriginal people to reside in communities that are situated in rural and remote areas of Australia, where there has traditionally been a lack of availability of HDBS with RF, has meant that Aboriginal people have been more likely to be discriminated against (NSW Standing Committee on Law and Justice, 2006).

Another requirement that offenders have a 'suitable home' was determined to be potentially discriminatory¹¹⁸ (George, 2006; NSW Standing Committee on Law and Justice, 2006; Moyle, 1993/94). This is because some offenders are excluded from HDBS with RF because they are indigent, that is, unable to afford to reside in a 'suitable home.' Similarly to the USA, in Australia the lack of appropriate housing has been an ongoing issue for offenders, particularly women, and many are precluded from participating on HDBS with RF because of this (George, 2006; Baldry, 2005). It is also worth noting that Aboriginal offenders are particularly disadvantaged by the strict definition of 'home' as "it may not fit the concept of home within the Aboriginal communities" (Heggie, 1999:98). This is the case if they reside in wider settlements called outstations¹¹⁹ (for more information see NSW Standing Committee on Law and Justice, 2006; Heggie, 1999; Moyle, 1993/94).

Offenders' co-residents over the age of 18 (if there are any) also must consent with their placement on the HDBS with RF, that is, sign a 'contract' agreeing to cooperate with its requirements (Heggie, 1999; NSW Standing Committee on Law and Justice, 2006; Moyle, 1993/94). This is a potential issue because offenders are dependent on their co-residents being prepared to accept the imposition of onerous conditions of HDBS with RF within their living space. If they do not agree, and the offender cannot afford to move to another suitable residence, then they are not placed on the HDBS with RF and thus are discriminated against. This requirement is also particularly problematic for Aboriginal spouses as well as wider family members as there is substantial pressure on them to accept the responsibility due to a strong cultural expectation of hospitality. Hence, they may do so without necessarily understanding the implications that HDBS with RF will have on them (Moyle, 1993/94).

¹¹⁸ It should however be noted that Queensland's HDBS with RF from commencement had provision that allowed offenders who lacked family/friends' support to reside in an approved hostel or rehabilitation centre (Dorey, 1988).

¹¹⁹ An outstation is "a small number of houses on an area of land occupied by a family group remotely situated as a satellite to a larger community" (NSW Standing Committee on Law and Justice, 2006:192).

Finally, the requirement that offenders maintain a telephone at their home was determined to be potentially inequitable (NSW Standing Committee on Law and Justice, 2006; Heath, 1996; Bakermans, 1990; Vernon, 1987). The need for a telephone can pose serious obstacles for indigent offenders, as they may be required to pay the telephone installation fee, monthly service fee and prior outstanding accounts if there were any.

The mandatory requirements of HDBS with RF are in reality more easily met by persons with some level of financial security and stability. Consequently, indigent offenders, particularly Aboriginals were possibly precluded from HDBS with RF as the selection criteria potentially discriminated against those who did not reside in an area within the state/territory where the HDBS with RF is operational, have a suitable home, and were unable to pay for telephone maintenance.

Over the years many Australian jurisdictions have made specific attempts to reduce the inadvertent consideration of offender's economic status that can result in discrimination during the selection process for HDBS with RF.

HDBS with RF had become operational state/territory wide in most Australian states/territories. Western Australia (discontinued), Queensland (discontinued), Australian Capital Territory (discontinued), South Australia (ongoing), and the Northern Territory (ongoing) all operate/d HDBS with RF on a state/territory wide basis (NSW Standing Committee on Law and Justice, 2006; Heath, 1996). This was considered to be pertinent as the Royal Commission into Aboriginal Deaths in Custody Report recommended that all community based initiatives be made available in Aboriginal areas, particularly the ones that are situated in rural and remote areas (Heath, 1996).

Offenders on HDBS with RF in the remote areas of Australia usually have been supervised face-to-face without electronic monitoring, which was logistically impossible to operate in some terrain. Supervisors have been employed on a casual basis to impose surveillance on offenders within their

local community. In cases when an offender wants/needs to leave their community they phone the Regional Community Corrections Office which then recruits another suitable casual supervisor who monitors the offender traveling away from their community and ensures that surveillance is not compromised. Partnership arrangements are also arranged with local police agencies (NSW Standing Committee on Law and Justice, 2006). This supervision model however presented challenges as in some communities it is easier and in others more difficult to recruit suitable supervisors (NSW Standing Committee on Law and Justice, 2006; Heath, 1996).

On the other hand, HDBS with RF did not become operational statewide in Victoria, even though there was a plan for this to occur in 2011; this is because the incoming conservative coalition government instead discontinued HDBS with RF (Parliamentary Library Research Service, 2011; Sentencing Advisory Council, 2008). In addition, statewide operation also has not to date occurred in New South Wales despite the recommendations on expanding it to all of the regions of the state. It seems that ongoing issues have been a lack of resources, that is staff required to monitor offenders and lack of availability of adequate electronic monitoring technology that is able to service rural and remote areas (Achterstraat, 2010; NSW Standing Committee on Law and Justice, 2006).

By flexibly defining Aboriginals' homes during HDBS with RF, Aboriginals' cultural difficulties have been partially recognised in two jurisdictions that have significant Aboriginal populations - Northern Territory and Queensland (NSW Standing Committee on Law and Justice, 2006; Moyle, 1993/94). In the Northern Territory, as discussed above Aboriginal offenders residing in remote areas are confined to small community areas called 'outstations' instead of a dwelling (NSW Standing Committee on Law and Justice, 2006). In Queensland, where the HDBS is now discontinued Aboriginal offenders were given the option to serve the HDBS with RF in a rehabilitation centre due to recognition that they frequently have problems with alcohol consumption and within their communities there is usually heavy alcohol consumption (for more information see Moyle, 1993/94).

In addition, Queensland and the Australian Capital Territory, before discontinuing their HDBS with RF, both recognised the need and explored the possibility of providing 'supported accommodation' for offenders who did not have a suitable residence (NSW Standing Committee on Law and Justice, 2006).

While offenders on HDBS with RF have traditionally had to maintain a telephone at their home, suggestions have been made for the government to absorb this cost in justifiable circumstances. Furthermore, it has been recommended that strategies be implemented to prevent offenders from abusing access to the telephone. These included:

- Easycall abbreviated dialing which only allows calls to numbers that are programmed into the telephone exchange at the Department's request
- Easycall call control which limits the amount of numbers that the offender is allowed to access to as few as three
- In some exchanges an "In Contact" service allows incoming calls but restricts the customer to calling 000 or Telstra.

(Heath, 1996:31)

It was argued that specific cost implications should be further investigated in an effort to make eligibility for HDBS with RF more equitable (Heath, 1996). This however did not eventuate in any of the Australian states/territories.

Although attempts have been made to make HDBS with RF less discriminatory, these sanctions are still not equally accessible to offenders regardless of their social status. HDBS with RF should be operational state/territory wide and in 'deserving cases' jurisdictions should have provisions to absorb the cost of offender's accommodation (and relocation if necessary) and telephone installation and service.

In addition, research assessing the claim that "home detention is a sentence with inherent class, gender and racial bias" (George, 2006:81) has reported

that an offender's family status, age, gender, race and education do not in themselves determine their placement onto HDBS with RF. More specifically, studies have found that even though females, the racial majority and the better-educated offenders are more likely to be sentenced to HDBS with RF, this does not occur due to potential discrimination (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006; NSW Standing Committee on Law and Justice, 2006; Heggie, 1999; Heath, 1996). In fact HDBS with RF specifically target offenders who commit non-violent and non-serious crimes; these offenders are in fact more likely to be females, the racial majority and better-educated offenders (Heggie, 1999; Moyle, 1993/94).

4.3.2.3 Is punishment on HDBS varied?

A related ethical issue and dilemma is whether being on HDBS results in a vastly diverse experience of punishment and therefore discriminates against offenders with certain characteristics. The research, which has only been undertaken in relation to HDBS with RF, has overwhelmingly indicated that offenders potentially experience drastically different experiences of punishment. This is primarily because offenders on these sanctions are confined to their homes where generally the nature of their environment and the quality of their interpersonal relationships are of great importance.¹²⁰ Like the research in the USA, Australian research has also reported that offenders' 6 personal and social characteristics, which are explained below, seem to most profoundly determine their sanction experience. It should be noted that in this section information is presented thematically, rather than chronologically. This is because the findings over the last three decades of operation of HDBS are consistent.

Gender – Australian research concurred with USA' research by overwhelmingly arguing that women are particularly disadvantaged by the

¹²⁰ As already mentioned punishment on HDBS with GPS is probably not as diversified as offenders on these sanctions are not confined to their homes for prolonged periods of time.

imposition of HDBS with RF. This is mainly because they are much more likely than men to have sole parental responsibility/ties, without adequate support from other family members. The overall compliance with the requirements of HDBS with RF is hence particularly difficult for them (NSW Standing Committee on Law and Justice, 2006). Women also face particular challenges when no other adult is available to take their children out, as they have to deal with having them confined to the home (Sentencing Advisory Council, 2008; Heggie, 1999; Heggie, 1998). If they want assistance to take their children out, they usually have to reluctantly explain to their family/friends about being on the HDBS with RF (George, 2006).

Race - Australian research has vigorously argued that the requirements of HDBS with RF generally ignore the special needs of Aboriginal (or other racial/ethnic minority) groups, and it is more difficult for them to comply with such sanctions (NSW Standing Committee on Law and Justice, 2006; Moyle, 1993/94). More specifically, the fact that HDBS with RF confine offenders to their homes for prolonged periods of time is considered to be culturally inappropriate for Aboriginal offenders, as their strong kinship and familial ties with their community inevitably suffer (NSW Standing Committee on Law and Justice, 2006). This is especially problematic as they are more culturally vulnerable to feel isolated in comparison with non-Aboriginal people (NSW Standing Committee on Law and Justice, 2006). Even in cases where Aboriginal offenders are confined to outstations, the environment in some of these communities is not conducive to being on HDBS with RF, as there may be overcrowding and heavy consumption of alcohol (Moyle, 1993/94). In addition, the strict planning ahead of all activities and adherence to time restraints, which are an intrinsic part of HSBS with RF, typically disadvantage Aboriginal people who usually lack organisational skills (Moyle, 1993/94). Despite the cultural issues, it has been recognised that HDBS with RF are better for Aboriginal offenders than incarceration (NSW Standing Committee on Law and Justice, 2006).

Urban/rural residence - Offenders who reside in rural areas experience compliance with HDBS with RF to be more onerous compared to offenders

who live in urban areas. This is because these offenders are more likely to perceive being confined to their home as difficult due to feeling socially isolated from their very close contact with the wider community (NSW Standing Committee on Law and Justice, 2006; Moyle, 1993/94). Offenders living in rural areas are also more likely to be generally disadvantaged and have less employment prospects in comparison with those residing in urban regions (Moyle, 1993/94).

Employment status - Offenders who are unemployed generally find the HDBS with RF experience to be more difficult in comparison with those who are employed (George, 2006; Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2005; Moyle, 1993/94). If they remain unemployed, providing that the conditions of the HDBS with RF permit it, boredom is an often reported issue (George, 2006; Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2005). Conversely, if they are unemployed and required to obtain employment or choose to obtain employment, the research has shown that it is particularly difficult and/or awkward for them to inform potential employers about being on the HDBS with RF. Often this resulted in potential employers being reluctant to employ them. In addition, it was difficult to find 'suitable employment' as many workplaces have variable worksites and are deemed to be inappropriate by supervising officers¹²¹ (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2005).

Financial situation - Offenders who are not financially stable experience the overall punitive effect of HDBS with RF to be more onerous. This is because they are likely to reside in a smaller living space such as a small flat in a public housing estate, where overcrowded conditions are rife. They are also likely to be receiving minimal income such as social security benefits and as such struggle to afford basic home-based entertainment to somewhat ease

¹²¹ Variable work sites are not permitted on HDBS with RF because close and random supervision at work would not be possible (Church & Dunstan, 1997). On the other hand, HDBS with GPS have overcome this problem due to their ability to constantly monitor offender movement anywhere, and therefore there are no such employment-related restrictions (DeMichele & Payne, 2009).

the onerous HDBS with RF experience (George, 2006; Bagaric, 2002). Australian academics have been particularly scathing of HDBS with RF being served in individual homes, what George (2006:83) called “class-determined prisons,” as this infringes the principle of equality in the impact of sanctions. Consequently, they have argued that these sanctions structurally perpetuate the grossly unequal impacts on offenders with differing resources and sensitivities (Bagaric, 2002). The example which is often used to illustrate this point is that a financially stable offender may be confined to a mansion with access to a tennis court, swimming pool, garden, the latest computer technology and television networks, as well as be able to continue working in a highly paid job (George, 2006; Bagaric, 2002).

Co-resident relationships - Offenders on HDBS with RF who are not supported by their co-residents¹²² find the experience to be more physically, emotionally and financially burdensome (George, 2006; Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2005; Heggie, 1999). They are also more likely to feel bored and even isolated due to spending a prolonged period of time confined to their home (George, 2006).

Therefore, females, racial minorities, those residing in rural areas, unemployed, not financially secure, and those without supportive co-resident relationships find HDBS with RF to be more onerous. The more of these characteristics an offender possesses, the more difficult the HDBS with RF seems to be for them.¹²³ The extensively varied punishment experience, which is potentially inequitable and even discriminatory, is an ethical issue and dilemma that has not yet been recognised by the policy that guides the operation of HDBS with RF.

Specific suggestions to address the inequality have been made, including allocating time provisions for females with childcare responsibility/ties, for

¹²² As mentioned earlier, a caring and stable relationship with a family member or a friend who is not an offender's co-resident could also reduce the punitive impact of the HDBS with RF on the offender.

¹²³ However, this overall finding must be treated with caution because not all people conform to the group norms.

Aboriginal offenders to be supervised by local Aboriginal communities who are best placed to understand the sensitivity of their social and cultural aspects, and permitting offenders to work at variable worksites where their employers accept a supervising role during their work hours (Smith & Gibbs, 2013; Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2005; Heath, 1996; Moyle, 1993/94). A more general suggestion is amending the HDBS with RF policy to allow sentencing officials to undertake a detailed analysis of offenders' personal and social characteristics, as well as their broader circumstances indicating whether they fit group norms; individually tailored conditions that are specifically punitive for each offender could then be imposed (Martinovic, 2004).

4.3.2.4 Do HDBS punish offenders' co-residents?

The final ethical issue and dilemma discussed in this section is whether the punishment directed toward the offender on HDBS spills over into the lives of their co-residents. Investigating this is important as the overwhelming majority of offenders live with co-residing family members (George, 2006; Aungles, 1995), and "the family domain essentially becomes the site of containment" (Aungles, 1994:66). The research, which is only existent in relation to HDBS with RF, has overwhelmingly shown that HDBS with RF have inadvertent punitive effects on offenders' co-residing family members (Martinovic, 2004). HDBS with GPS probably have less punitive effects on offenders' co-residents as offenders are not confined to their homes for prolonged periods of time, and their co-residents are not disturbed by random home visits or phone calls any time which are usually an integral part of RF monitoring (Martinovic & Schluter, 2012; Alarid et al., 2008; Meyer, 2004; McCarthy et al., 2001; Church & Dunstan, 1997). This is ethically problematic as offenders' co-residing family members have not committed any crimes.

Similarly to the USA, when HDBS with RF were introduced in Australia in the mid-1980s they were depicted as 'family friendly,' with one of their most important advantages being the offender's ability to avoid/reduce prison time

and be at home with their families (Butler, 2007; Heath, 1996; Dorey, 1988; Dorey, 1986). It is important to note that the offender's ability to remain at home with their family has continued to be regarded as a major advantage of HDBS with RF (Smith & Gibbs, 2013; Henderson, 2006). More specifically, "it was argued that HDBS with RF reduce the disruption to family life; minimise the deterioration of relationships between parents and children (particularly very young children); and provide an opportunity for offenders to strengthen relationships by spending quality time with family" (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2005:4).

Interestingly, however unlike in the USA where the co-residing family members' role within the sanction's experience was entirely ignored until the 1990s, in Australia even the inaugural HDBS with RF during the 1980s required co-residents' consent for the imposition of these sanctions (Butler, 2007; Challinger, 1994b; Owston, 1991; Dorey, 1986). For example,

The South Australian scheme initially asked the home 'resident' to sign a contract agreeing to accommodate the prisoner, to assist and encourage the prisoner to be of good behaviour, to abide by the conditions of the HDBS and to contact the supervisor without delay on any matters of concern involving the prisoner's HDBS conditions.

(Aungles, 1995:36)

George (2006) has argued, however, that although co-residents who are usually women (as offenders on HDBS with RF are predominantly men) are asked for their 'consent' before a HDBS with RF is imposed, this does not constitute a 'real choice' for women. This is because women tend to put the needs of others ahead of their own, and they generally prefer their family member to be out of prison. Hence they may feel a sense of obligation to consent to the HDBS with RF within their living space. In her analysis, George (2006:84) further notes that:

The burden women are expected to consent to is agreeing to their home becoming prison, having a male partner trapped in the home for months, and being essential to both supporting compliance with and vigilance of [sanction's] conditions.

Residing with an offender on a HDBS with RF is therefore a much more onerous obligation than living with an offender on parole where they are not confined to the home and their supervision is undertaken by others (George, 2006; Aungles, 1994). Another potentially problematic issue for co-residing family members is that they may experience subsequent vengeful behaviour if they object to the offender's placement onto the HDBS with RF (Feiner, 1987).

Although no studies assessed the impacts of HDBS with RF on offenders' co-residing family members during the 1980s, a number of studies were conducted throughout the 1990s and 2000s. As in the previous chapter these have been classified together (due to complementary findings) into a five-point typology of impacts endured by offenders' co-residing family members. (For more information see Martinovic, 2007).

Effects caused by feeling responsible to help the offender comply with the HDBS with RF. Research has indicated that co-residing family members are most likely to feel responsible to assist offenders with three explicit conditions of HDBS with RF; these include limited movements, monetary obligations, and exposure to temptations (George, 2006; Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2005; Bagaric, 2002; Heggie, 1999; Aungles, 1994; Moyle, 1993/94). As mentioned earlier, these three areas of assistance have been chosen because they are considered to be mostly demanding by the offenders, and their co-residents are uniquely placed to offer their assistance with them.

Limited movement is the most stringent condition of HDBS with RF for which co-residing family members feel most compelled to offer their assistance (Smith & Gibbs, 2013; Melbourne Centre for Criminological Research and

Evaluation for Corrections Victoria, 2005; Heggie, 1999). Co-residing family members typically perform numerous duties outside the home on behalf of the offender (George, 2006). A co-residing family member illustrated this:

I was pushed to the limit during my husband's sentence. I had to hold down a job, do all the shopping, take the kids to school then take them to sport on Saturday...

(Heggie, 1999:66)

Even more problematic is that co-residing family members, usually women, also continue to conduct the majority of the unpaid domestic labour inside the home, including cooking, housekeeping and child rearing (George, 2006). Additional activities such as these typically result in co-residing family members reducing their social activities (Bagaric, 2002).

Co-residing family members have reported feeling responsible to assist offenders with the monetary obligations of HDBS with RF by jointly making changes to their previous spending patterns (Smith & Gibbs, 2013; Standing Committee on Law and Justice, 2006; Heggie, 1999). For example, Heggie (1999) found that most families thought that there was decreased expenditure on relatively expensive goods and services (such as social activities outside the home, take-away foods, personal items, drugs and/or alcohol), and increased expenditure on relatively cheaper goods and services, including groceries, home entertainment and phone bills.

Co-residing family members also revealed feeling accountable for reducing the offender's temptations of leaving the household and returning to a non-pro-social lifestyle while they are on the HDBS with RF.¹²⁴ The Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria (2005:6), reported that "co-residents acknowledged that they were not expected to alter their routines for the offender, but they still made efforts to

¹²⁴ As mentioned earlier, non-pro-social lifestyle may include drug use and/or alcohol consumption and not going to work, which all constitute breaches of HDBS with RF.

organise their lives around the HDBS with RF to ensure that the offender didn't feel lonely, left out or distressed in any way." This burden of ensuring the offender remained at home 'at ease' is likely to result in co-residing family members restricting their social life (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2005; Bagaric, 2002).

Furthermore, co-residing family members indicated feeling responsible to encourage the offender to resist the temptation of drug and alcohol use by themselves adopting a drug and alcohol free lifestyle. Interviews with offenders and their co-residents revealed that the "pressure placed on family to refrain from using drugs/alcohol [led] to an overall decrease in consumption" (Heggie, 1999:74-75).

Effects caused by HDBS with RF's indirectly applied facilitating control factors. As the confinement of offenders to their homes on these sanctions is ensured by random phone calls and physical visits throughout a 24-hour time period, offender's co-residing family members are undoubtedly disrupted (Heggie, 1999; Aungles, 1994). In particular, the frequent late-night calls, which disturb their regular sleeping patterns, are reported to be the most annoying part of HDBS with RF (Heggie, 1999). Further, the disturbance of the home environment is likely to exacerbate stress and lead to conflict (Heggie, 1999; Aungles, 1994).

Effects caused by feeling embarrassed as a result of residing with an offender on HDBS with RF. Co-residing family members have on occasions reported wanting to hide the offender's sanction status because they felt embarrassed (Heggie, 1999; Fisher, 1994). Some have also revealed feeling social stigma due to home visits by supervising officers and worry about the longer-term impact these might have on their children's perceptions of crime and punishment (Fisher, 1994).

Effects caused by perceived relocation of HDBS with RF from governmental control into private homes. The imposition of a HDBS with RF can be viewed as a relocation of surveillance, control and labour from government

personnel, that is prison officers and social workers, to offenders' co-residing family members (George, 2006). Co-residing family members have in particular reported having a sense of obligation to adopt a 'supervisory role' in making sure that the offender complies with the rules and attends all of the appointments associated with the HDBS with RF (Smith & Gibbs, 2013). This feeling of personal responsibility and blaming of oneself if the offender breaches the condition/s and/or reoffends is likely to result in co-residing family members feeling stress and anxiety (Smith & Gibbs, 2013; George, 2006; Aungles, 1994).

A contradictory finding was reported by the Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria (2005:7), which found that co-residing family members generally did not feel the need to act as "quasi-parole officers." This can be explained by the fact that the participants in this study displayed an unusually strong level of support for the offender and the HDBS with RF, stating that they would get through it "no matter what" as it is "infinitely better than having a partner or relative in prison" (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2005:7). Co-residing family members probably held this view because offenders on this HDBS with RF were actually released early from prison, and they were 'more likely to be compliant' because this was a pilot HDBS with RF. Post the 'Hawthorne effect', that is, once offenders were no longer 'hand-picked' for placement on the HDBS with RF, the views of co-residents would probably be similar to the other studies.

Effects caused by HDBS with RF's 'under-duress' social interaction in the household. Even though most co-residing family members and offenders aim to support each other during HDBS with RF, the fact that offenders are confined to their homes for prolonged periods of time means that 'under-duress' social interaction between them is likely (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2005; George, 2006; Heggie, 1999; Aungles, 1994). The home environment has even been termed a 'pressure cooker,' as the sanction "shifts the usual roles within the family dynamic" (Heggie, 1999:70). The change in domestic

responsibilities may mean that the co-residing family members, particularly female spouses, must adjust to having the offender detained in their home and challenging the established family routines related to child rearing, house keeping and cooking (Heggie, 1999). In addition, co-residing family members and the offender may have to instantly deal with previously unsolved issues (Heggie, 1999; Aungles, 1994). Therefore, 'under-duress' social interaction inside the home, where everyone is under pressure and stress, may lead to conflict (George, 2006; Heggie, 1999; Aungles, 1994).

The five-point typology provides a generic explanation of the HDBS with RF's impacts endured by offenders' co-residing family members, but the specific impact is of course individualistic and varied (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2005). The experience seems to be generally more onerous for offenders' co-residing family members if:

- they have a caring and stable relationship with the offender and so feel responsible to support them during the HDBS with RF (Martinovic, 2002)
- the HDBS with RF is relatively long and imposes stringent conditions (Rackmill, 1994)
- as a household they are not financially stable, and so changes to previous spending patterns must be made in order to comply with HDBS with RF monetary requirements (Martinovic, 2006:5).

Despite the abovementioned intrusions and responsibilities resulting from the five distinct onerous effects that are likely to place diverse pressures on co-residing family members, they can regard the HDBS with RF experience as a beneficial opportunity for offenders to start living a pro-social lifestyle (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2005; Heggie, 1999; Bakermans, 1990). In addition, many co-residing family members have reported that the sanction experience had ultimately led to an improved relationship between them and the offender, as well as an increased bond between the offender and their children

(Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2005; Heggie, 1999). Furthermore, some co-residing family members have indicated a reduction in their financial hardship as offenders on HDBS with RF were working regularly (NSW Standing Committee on Law and Justice, 2006; Heggie, 1999; Bakermans, 1990). It seems then that, as the offender establishes a pro-social lifestyle on HDBS with RF, their co-residents persist with the various intrusions and responsibilities that the sanction experience indirectly imposes on them (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2005). This may eventually lead to an improvement in their relationship.

Therefore, co-residing family members usually make substantial changes in their own lives in order to practically and emotionally support the offender on HDBS with RF (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2005; George, 2006; Heggie, 1999; Aungles, 1995; Aungles, 1994). Even though co-residing family members may view the various intrusions and responsibilities that the HDBS with RF imposes on them as permissible, this is ethically problematic since in reality punishment spills over onto those unconvicted of criminal offences. Therefore, HDBS with RF should consist of policies that provide co-residing family members with sufficient information about their role and function within HDBS with RF, and where feasible and necessary, link them into external supportive services and networks as the need arises (for more information see Martinovic, 2007). This would adequately inform them of their role as well as subsequently lessen the punitive impacts that HDBS with RF have on them.

4.3.3 Legal issues and dilemmas

Legal issues and dilemmas in Australia have centered on questioning the overall legality of HDBS. This is a somewhat broader discussion than in the USA, as Australia's constitution contains no guarantees of individual rights

unlike the USA's constitution which entails a Bill of Rights. The number of studies that discussed these issues is somewhat limited and the analysis within them is superficial. As a result, this section is much more succinct when compared with other sections.

Fox (1987b) ignited the Australian legal debate in relation to HDBS with RF by questioning the legality of electronic monitoring technology reporting a breach in court. More specifically, he argued that it would be difficult to prove beyond reasonable doubt that the offender had in fact breached a condition of HDBS with RF and needed to be resentenced. This is because 'dead space' was a real issue at this time in that the electronic monitoring technology could inaccurately indicate that an offender was not at home when in actual fact they were¹²⁵ (Fox, 1987b). However, to this day, there have been no legal challenges of any aspect of HDBS with RF or HDBS with GPS before the Australian courts.

Nevertheless, Black and Smith (2003) have argued that even though the application of HDBS with RF has become entrenched in our legal system, specific legislative provisions guiding their operation should be enacted. These should deal with broader issues such as whether force can be used when placing the device, can the device be surgically implanted, and whether offenders can be monitored outside of their curfew hours (Black & Smith, 2003).

Black and Smith (2003) Smith and Gibbs (2013) and have further maintained that the application of HDBS with GPS, which has the unprecedented potential to create over-regulation and infringement of human rights, in particular must be regulated by specific legislation that should be enacted ideally at the Commonwealth level (Black & Smith, 2003). To date, however no such legislation has been enabled in Australia.

¹²⁵ Most of these early problems with RF electronic monitoring technology have subsequently been fixed, however the technology still is not foolproof. (For more information see Chapter 1.4.2).

4.3.4 Political and stakeholder issues and dilemmas

Political and stakeholder issues and dilemmas discussed in this section comprise a discussion on stakeholders' perceptions of HDBS and how this influences the political debate, policy formulation and the application of these sanctions. The stakeholders whose views are presented below include criminal justice practitioners, offenders themselves, the community, and the media. The political and stakeholder issues and dilemmas are presented in relation to a number of studies about HDBS with RF only, as no studies have been found to have assessed these issues and dilemmas in relation to HDBS with GPS. Nevertheless, brief anecdotal information about HDBS with GPS is presented on the basis of media reports. A lack of interest in critically exploring political and stakeholder issues and dilemmas related with HDBS with GPS may be attributed to the limited critical discourse about the implementation of these sanctions for serious sex offenders.

During the 1980s, stakeholders generally supported HDBS with RF. There was broad bipartisan political support for HDBS with RF due to the rampant problem of prison overcrowding and the perception that these sanctions could alleviate this situation. Also, the criminal justice officials who were involved in the delivery of HDBS with RF were enthusiastic about their development and application (Bloor, 1988; Dorey, 1988; Dick et al., 1986). However, there were no established partnerships that engaged the immediately involved stakeholders in the development, critical discussion and ongoing improvement of HDBS with RF. Nor was there a media strategy that supplied information to educate the wider stakeholders. This is surprising as during this time criminologists throughout Australia discussed the importance of proactive public relations, community education programs and the necessity of an overall community understanding of the law and order debate (Hancock, 1988; Gerkens, 1987; Vernon, 1987). For example, Vernon (1987:2) argued that "community education is necessary to provide an understanding of the costs, disadvantages of imprisonment and the benefits of the alternatives." Further, Patmore (1991:1) added that otherwise, whenever a government

introduces a community based alternative to imprisonment, the opposing political party and the media will accuse it of “going soft on criminals.”

In addition, advice that Australian correctional authorities received from the USA on the highest-profile USA-based HDBS with RF such as Georgia and New Jersey most likely included the significance of thoroughly planned extensive education and lobbying of key government officials and the media (Clear et al., 1987; Erwin & Bennett, 1987). It seems that policy makers and correctional authorities ignored the well-known fact that community backed correctional programs are politically supported, and hence well resourced and more likely to operate effectively. Anecdotally during this time there was no evidence of public opposition to HDBS with RF. It was however argued that there was a potential for severe criticism due to an ill-informed public. There was even a recommendation to develop “a careful and low-key information campaign to inform the media (and through them, the public) of the nature of the majority of people presently confined in our prisons” (Dick et al., 1986:12). As far as can be determined, it does not seem that this ever took place.

Failure to continuously engage and properly inform stakeholders as well as obtain their enduring support for HDBS with RF has meant that relatively low numbers of offenders have been sentenced to these sanctions since they were implemented (Smith & Gibbs, 2013; Parliamentary Library Research Service, 2011; Bakermans, 1990). This was particularly evident in front-end HDBS with RF in the Northern Territory, New South Wales and Victoria, which are entirely dependent on sentencing officials placing offenders on them (Smith & Gibbs, 2013; Achterstraat, 2010; Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006; NSW Standing Committee on Law and Justice, 2006).

Consequently, a number of evaluative studies interviewed judges and/or magistrates in order to explore the reasons behind the low offender numbers on front-end HDBS with RF. Heggie (1999), who conducted 21 interviews with randomly selected judges in New South Wales, found that despite the legislative provision that equates a term of imprisonment and HDBS with RF

(for non-violent offences) up to a period of 18 months, 40% of those interviewed felt that there was no real equivalence between the two sanctions. Sentencing officials' lack of belief in the comparability between the two sanctions explains their reluctance to sentence prison-bound offenders to HDBS with RF. This is quite problematic because it defeats the legislative rationale for the introduction of these sanctions (Heggie, 1999).

The contentious view that HDBS with RF and imprisonment are not equivalent was subsequently supported in a key judgment of the New South Wales Court of Appeal in 1998 (Keay, 2000). This was in *Juriscic*, when the Court of Appeal sat to reconsider the place of HDBS with RF given the difference of opinion in some previous Court of Criminal Appeal decisions. Contradicting judgments included the ruling in *Smith* that HDBS with RF was a "collateral sentence" to imprisonment, and the ruling in *Pine* that the two sentences were quite dissimilar¹²⁶ (Keay, 2000:101). The bench of five judges unanimously ruled in *Juriscic* that HDBS with RF is a lenient option, as there is "a significant watering down of a sentence of imprisonment" (Keay, 2000:101). They also upheld the sentencing officials' discretion to impose HDBS with RF even if the offender is assessed as suitable for it. The rationale behind this decision was summarised by Justice Sully, who provided leading judgment:

I accept that the standard conditions of a home detention order are burdensome, but it seems to me that they are burdensome in the sense of being, by and large, inconvenient in their disruption of what would be the normal pattern and rhythm of the offender's life in his normal domestic and vocational environment. Any suggestions that such inconvenient limitations upon unfettered liberty equate in any way at all to being locked up full-time in the sort of prison cell and within the sort of gaol that are normal in New South Wales could not be accepted...by anybody who has had the opportunity of going

¹²⁶ Both of these cases were Crown appeals about the leniency of original sentences handed down. Despite the differences of opinion about HDBS with RF in relation to imprisonment, the Court of Appeal upheld the original sentences in both cases (for more information see Keay, 2000).

behind the walls (of a prison) and of seeing, even from the view of a casual visitor, what is really entailed by a full time custodial sentence.¹²⁷

(cited in Keay, 2000:101)

The findings of the actual review of HDBS with RF in New South Wales have however ascertained that the vast majority of offenders were not residing in comfortable settings, but were living in below standard housing and on social security benefits (Heggie, 1999). Furthermore, the effect of being on the HDBS with RF was “certainly more than an inconvenience,” as offenders were subjected to 24 hour surveillance, had all social activities outside the house curtailed, and even the activities within the house were restricted (Keay, 2000:102).

Nevertheless, many sentencing officials perceptions that HDBS with RF are not ‘really’ equivalent to prison has persisted in New South Wales (despite the legislative provisions stating otherwise). This was evident in two government reviews that were commissioned over the last decade to explore the reasons behind the inadequate and decreasing trend in the application of HDBS with RF (Achterstraat, 2010; NSW Standing Committee on Law and Justice, 2006). Both reviews reported that some judges did not want to sentence offenders to HDBS with RF because they regarded it as a ‘softer’ option than incarceration.

Similar sentencing officials’ views were reported in Victoria in 2006. Interviews with magistrates exploring the reasons behind the inadequate numbers of offenders being placed on front-end HDBS with RF showed that the fact that the legislation equated a term of imprisonment with a term of HDBS with RF was regarded as inequitable, since the two sentences impose

¹²⁷ Justice Sully indicated very similar reasoning in *Pine*, “I cannot see how home detention with, inter alia, comfortable accommodation, furniture and fittings, home cooking, the company of spouse and/or family and a generally unregulated timetable, could be regarded as not more lenient than full time incarceration in an institution under the administration of the Department of Corrective Services” (cited in Keay, 2000:101).

very different restrictions and obligations. Magistrates also reported being unsure of the most appropriate cases for HDBS with RF (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006). This uncertainty is not surprising given that there has been a lack of involvement of sentencing officials in the development and evolving operation of HDBS with RF in Victoria.

When the Victorian Government commissioned a private company - Success Works - to explore the possibilities of increasing offender numbers on HDBS with RF, comparable wider stakeholders' views were also reported. In 2007, interviews were conducted with 25 people representing victim support groups, Victoria Police, the judiciary and the legal profession (Success Works, 2007). Stakeholders agreed that HDBS with RF was not equivalent to a term of imprisonment, and that alternatively it should be a sentence in its own right on the sentencing hierarchy (Success Works, 2007). In line with this recommendation, as well as recommendations by the Sentencing Advisory Council (2008) and Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria (2006), in 2010 Victoria legislatively modified HDBS with RF and it became a sentence in its own right. This change in the law amended the original purpose of Victoria's HDBS with RF as it ceased operating as an alternative to imprisonment. No other Australian state had succumbed to this type of stakeholders' pressure. Victorian Government probably caved into the pressure because it was election year and the pre-election polls were showing the popularity of the opposition's 'get tough on crime agenda' that encompassed the abolition of HDBS with RF (Parliamentary Library Research Service, 2011). So, the [then] government attempted to retain power by also appearing 'tough on crime,' but was unsuccessful.

In late 2010 the incoming conservative coalition government abolished HDBS with RF (Parliamentary Library Research Service, 2011; Sentencing Advisory Council, 2008). Yet, in mid-2013 the same government introduced GPS technology as a possible condition of Parole Orders and Community Correction Orders (O'Donohue, 2013). As mentioned earlier, this amendment

of the law was portrayed as part of the 'get tough on crime agenda.' However, from an operational perspective the Parole Orders and Community Correction Orders with GPS will be quite similar to the abolished HDBS with RF. (For more information see 4.2.2.2).

Offenders who are exposed to HDBS with RF mostly view them as onerous, and some even regard them as very punitive. In fact, almost one quarter of offenders who were presented with a choice of HDBS with RF or going to prison, preferred imprisonment (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006; Heggie, 1999; Chan & Zdenkowski, 1986). It appears that these offenders would rather go to prison than engage in the high level of self-control required to change their lifestyle in order to comply with the stringent conditions of HDBS with RF (NSW Standing Committee on Law and Justice, 2006). Offenders who chose HDBS with RF over prison unsurprisingly indicated that there were difficulties with serving the HDBS with RF, but stated that it was overall less challenging than the stress associated with being in prison (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006).

A very powerful stakeholder - the media - has predominantly reported negative stories about HDBS with RF¹²⁸ and the community has perceived them to be lenient and dangerous. In particular, during the last decade the profile of these sanctions has been substantially raised as they were portrayed as 'elitist,' that is, mostly used by white collar criminals and upper class offenders (Moran, 11.07.11). For example, the media extensively reported the sentencing of Glenn Wheatley¹²⁹ and Derryn Hinch,¹³⁰ high

¹²⁸ Interestingly, the media has not discussed any of HDBS with RF's effective operational outcomes nor its various ethical issues and dilemmas.

¹²⁹ Glenn Wheatley is a high-profile Australian music promoter who was convicted of tax fraud in 2007. Wheatley failed to declare more than \$300,000 in income to the Australian Tax Office in 2003. Once he was found out, as a part of the Australian Tax Office's Operation Wickenby (largest-ever white collar criminal investigation), he co-operated fully and paid the appropriate tax (Cowan, 19.05.08). Wheatley pleaded guilty to the criminal charges and received a sentence of 30 months incarceration with a minimum of 15 months to be served. The last 5 months of his term of incarceration was served on HDBS with RF. Wheatley was confined to his mansion, in the upper class Melbourne suburb of South Yarra, where he continued to work, managing rock music bands (Adams, 06.09.08).

profile businessmen, to HDBS with RF (Critchley, 18.02.12; Moran 11.07.11). The media showed them being confined to their luxurious homes while being able to maintain family ties and lucrative employment as “the image of HDBS with RF.” As a result, the community saw these sanctions as being “soft on crime” in comparison with the obvious and widely publicised deprivations of imprisonment. In addition, the media has actively reported instances when offenders on HDBS with RF engage in serious re-offending (Winton, 1999). This is despite the fact that in reality the placement of affluent offenders and serious re-offending on HDBS is isolated¹³¹ (Martinovic, 2010).

The damaging media portrayal of HDBS with RF has led to community opposition to these sanctions and inevitably a push for ‘truth in sentencing.’ This populist political ‘tough on crime’ agenda has resulted in the closure of three HDBS with RF in Australia – Western Australia, Queensland and Victoria (Parliamentary Library Research Service, 2011; Sentencing Advisory Council, 2008; Winton, 1999). The HDBS with RF that have continued operating, New South Wales and the Northern Territory, have generally experienced relatively small and decreasing offender numbers (NSW Standing Committee on Law and Justice, 2006). The only exception to this is the HDBS with RF in South Australia, which is operating with optimal numbers. This is because its main clientele are bailees and not sentenced offenders that need to be supervised and case managed (Department for Correctional Service, 2006). The application of HDBS with RF as a part of bail has typically been less controversial in the public domain when compared with its application as an alternative to imprisonment.

¹³⁰ Derryn Hinch is a controversial Australian broadcaster who was found guilty of contempt for breaching suppression orders by publicly naming two sex offenders on his website and at a public rally in 2008. In 2011, he was sentenced to 5 months on HDBS with RF (Critchley, 18.02.12). There were two extenuating circumstances that should be mentioned in relation to this case. First, even though it is against the law, Hinch has a long history of publicly naming sex offenders in order to ‘protect victims,’ and has been generally considered by the community to be a ‘victim’s advocate.’ Second, at the time of sentencing, Hinch had recently undergone a lifesaving liver transplant operation (Critchley, 18.02.12). Therefore, the community was generally more receptive to him being sentenced to HDBS with RF in comparison with Glenn Wheatley. During HDBS with RF, Hinch was confined to a spacious inner city St Kilda (Melbourne) apartment with fabulous views where he wrote a book about the experience (Akerman, 22.06.11; Ross, 21.07.11).

¹³¹ This was explained by Hancock (1988:34) who stated, “there will always be an element of calculated risk. If there is not an element of risk it would seem that we are only placing ‘safe’ candidates on specific programs and not providing ‘developmental opportunities.’”

Ever since HDBS with GPS entered the criminal justice arena, the media has portrayed them negatively. It has sensationally highlighted instances where offenders escape detention, that is remove their GPS device, despite the fact that authorities are automatically alerted when this occurs and offenders are usually re-captured within days (Bucci & Oakes, 20.06.13; Chamberlin, 24.04.13; Viellaris, 30.04.13). In addition, instances when very serious offenders are sentenced to these sanctions widely appear in the media. The media is usually critical of them being sentenced to HDBS with GPS arguing that they should instead be incarcerated despite the fact that they have served the entirety of their original sentences and there are no legislative provisions for this to occur (Keim, 01.05.13; Smith & Gibbs, 2013).

Undoubtedly, relatively small offender numbers in Australia on HDBS with RF and even the closure of some HDBS with RF have been the result of inadequate stakeholders' support. More specifically, the negative media portrayal has immensely contributed to their demise. It is likely that there will be similar troublesome outcomes for HDBS with GPS as there has been no proper engagement of stakeholders in their implementation and operation. If this problematic trend is to change, it is imperative that a critical discourse about the overall penal system occurs in the public arena. More specifically, this needs to realistically inform stakeholders about the benefits, as well as the drawbacks, that are associated with HDBS with RF and HDBS with GPS. It is likely that this could result in community support of HDBS more generally including policies that adequately support their application.

4.4 Conclusion

This chapter critically analysed the currently operational late phase of HDBS in Australia. HDBS with RF were introduced in the late 1980s and HDBS with GPS entered the correctional arena after 2000 in very similar circumstances as in the USA. The number of offenders on HDBS in Australia remained relatively stable. The overwhelming ideology of offender supervision on HDBS has generally been based on a combination of strict and close surveillance and treatment-based components.

Research has indicated that HDBS with RF have generally achieved their stated operational objectives, but have encompassed significant ethical and particularly political and stakeholder issues and dilemmas. Research assessing the operational outcomes, ethical and political and stakeholder issues and dilemmas of HDBS with GPS is still lacking and it is imperative that it is conducted in the future.

Chapter 5: Conclusion and future implications for HDBS in the USA and Australia

Imprisonment has remained the most commonly accepted form of punishment for crime for 200 years and society's confidence in it as a punishment and as an instrument to protect the community from further anti-social acts by offenders remains largely intact.

(Dawes, 1988:68)

5.1 Introduction

Decades later the above statement still largely holds true even though community based sanctions, including HDBS, have produced more favourable outcomes than prisons. For example, they have traditionally had substantially lower reoffending rates, as well as, lower direct and indirect costs (Clear et al., 2006; Graycar, 2000; Keay, 2000; Joutsen & Zvekic, 1994:5; Van Ness, 1992). These sanctions have had more positive outcomes because they do not separate offenders from their family support and conventional ties (unlike prisons), and they usually encourage pro-social reintegration through rehabilitative and supportive initiatives. The main reason behind the community's punitive view is a lack of awareness about the actual operation and outcomes of the various penal dispositions. Hence, education of stakeholders is crucial to provide an understanding of the advantages and disadvantages of imprisonment as well as the benefits and drawbacks of community based sanctions (DeMichele & Payne, 2009; Roberts, 2004; Vernon, 1987).

This chapter provides the overall conclusion to the research and future implications for HDBS in the USA and Australia. It starts with outlining the key outcomes and conclusions of this research. The late phase of the evolution of HDBS, which started in the 1980s and is still operational, was particularly

significant as both the USA and Australia launched a wide-spread introduction of HDBS. Evaluations have indicated that HDBS with RF did not achieve their anticipated operational results in the USA, but they did in Australia. Nevertheless, these sanctions have had significant ethical and political and stakeholder issues and dilemmas in both nation states. Conversely, HDBS with GPS have indicated effective operational results in the USA, but have not yet been evaluated in Australia. Similarly, these sanctions' ethical and political and stakeholder issues and dilemmas remain largely unexplored in both nation states.

Subsequently, the future trajectory of HDBS in the USA and Australia, as well as the lessons learnt to improve the operation of these sanctions in both nation states are discussed. Although the application of HDBS has varied in the USA and Australia, it is predicted to increase in the future. The future viability and outcomes of HDBS in both nation states are however dependent on whether policy makers and/or correctional administrators, with the support of governments, improve the operation of HDBS by implementing the lessons learnt based on the evidence of best practice. This section concludes by describing HDBS in the 'age of surveillance.'

5.2 Key outcomes and conclusions

This research answered the research question and sub-questions by specifically outlining the evolution of the HDBS frameworks in the USA and Australia, as well as the key outcomes from the currently operational late phase of HDBS in both nation states. The following section amalgamates the findings for both the USA and Australia and demonstrates how the research questions were answered.

5.2.1 Evolution of the HDBS frameworks in the USA and Australia

In this research the evolution of HDBS frameworks has been divided into three ideologically distinguishable phases.

Early phase of HDBS in the USA and Australia operated from the 1840s until 1960s. This phase was characterised by the introduction of probation and parole, which were the predecessors to the late phase of HDBS when contemporary application of these sanctions started (Clear et al., 2006; O'Toole, 2006; McCarthy et al., 2001; Cromwell & Killinger, 1994). During this period the ideological and legislative groundwork for community based sentences was laid. These sanctions rose to prominence on the basis of offender supervision based on humanistic and rehabilitative principles (Clear et al., 2006; O'Toole, 2006; Daley, 2005).

The middle phase of HDBS was the interregnum between the two phases, which operated during the 1960s and 1970s in both the USA and Australia. It comprised five converging factors (McCarthy et al., 2001; Joutsen & Zvekcic, 1994; Patmore, 1991; Petersilia, 1987). The most problematic was the fact that 'tough on crime' policies led to enormous prison crowding and budgetary restraint, while the currently available community based dispositions were regarded as ineffective. This culminated in a 'correctional disillusion' that led to government's decision to introduce the late phase of HDBS (Petersilia, 2000; Petersilia, 1998; Biles, 1996; King, 1991).

The late phase of HDBS in the USA and Australia has been operating from 1982 to today (2013). During the 1980s HDBS with RF were introduced initially in the USA to reduce overwhelming institutional crowding and therefore the unsustainable cost of corrections. The ideology of offender supervision was based on strict and close surveillance and offender monitoring (Champion, 2008; Cromwell et al., 2005). The initially reported very positive USA experience with these sanctions appealed to policy makers in Australia. This is because the evaluations in the beginning indicated reductions in prison crowding, correctional cost, and the negative social and economic effects of incarceration on the offender and their family. Furthermore, the punitive ideology of offender supervision seemed attractive. Nevertheless, when HDBS with RF were implemented in the Australian sentencing landscape, they encompassed both close offender monitoring as well as rehabilitative treatment initiatives (Smith & Gibbs, 2013; Henderson,

2006; King, 1991). This was different to the USA where rehabilitative treatment initiatives were generally ignored.

In the mid-2000s, the expansion of sex offender post-release supervision laws throughout the USA resulted in a vast introduction of HDBS with GPS for serious sex offenders (DeMichele & Payne, 2009; Lilly, 2006). Again due to positive evaluation results from the USA, Australian policy makers also introduced HDBS with GPS for serious sex offenders in mid-2000s (Edgely, 2007). In both nation states the culture of fear and moral panic has surrounded these offenders leading to an emphasis on development of HDBS with GPS to reduce offender risk and enhance community protection instead of reducing the cost of corrections by diverting offenders from incarceration. As a result, the ideology of offender supervision on HDBS with GPS in both the USA and Australia has encompassed both strict and close surveillance and monitoring as well as treatment-based components (DeMichele & Payne, 2009; Szego, 18.04.05).

5.2.2 Key outcomes from the late phase of HDBS in the USA and Australia

In this research the outcomes of the late phase of HDBS in the USA and Australia have been presented under 4 sub-themes - operational results, ethical issues and dilemmas, legal issues and dilemmas, and political and stakeholder issues and dilemmas. These are written first in relation to HDBS with RF and then HDBS with GPS.

Operational results – In relation to HDBS with RF, evaluative research has indicated that anticipated results have not been achieved in the USA, but they have in Australia. In the USA, HDBS with RF have widened the net of social control, that is, they have been predominantly imposed on non-prison bound offenders and have had very little, if any, overall impact on reducing the size of the prison population and the correctional budget (Alarid et al., 2008; Meyer, 2004; Petersilia & Turner, 1993). Similarly, because treatment and

other service-oriented components generally have received a low priority, HDBS with RF's high technical violation rates and post sanction recidivism exacerbated the imprisonment rate as well as correctional spending (Alarid et al., 2008; Fulton et al., 1997; Petersilia & Turner, 1993; Tonry, 1990).

In contrast, in Australia HDBS with RF have been predominantly imposed on prison-bound offenders and as such have reduced the prison population and the correctional spending (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006; Heggie, 1999; Owston, 1991). Furthermore, they have had relatively low rates of technical violations and recidivism, which have not been regarded to contribute to prison crowding. This is probably because HDBS with RF have had appropriate funding provisions that have allowed individual case management of offenders and appropriate rehabilitative provisions (Achterstraat, 2010; Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006; Heggie, 1999; Challenger, 1994b; Roeger, 1988).

In relation to HDBS with GPS, operationally studies have found them to be successful in the USA. This is due to relatively low technical violation and reoffending rates; these are the result of mandatory treatment provisions (Bales et al., 2010a; DeMichele & Payne, 2009; Padget et al., 2006). However, no studies have assessed the operational outcomes of HDBS with GPS in Australia. It is imperative that this research is conducted.

Ethical issues and dilemmas – In relation to HDBS with RF, studies in both the USA and Australia have reported very similar ethical issues and dilemmas. These were discussed under four specific points. First, the broad philosophical discussion on whether HDBS are a part of a surveillance-oriented Orwellian society in the USA indicated that these sanctions are generally not the result of deliberate governmental efforts to be omnipresent (Champion, 2008; Lilly, 2006; Lyon, 2006). Even though no such debate occurred in Australia, there has been a broader concern about the lack of legislation governing the ethical application of these sanctions (Smith & Gibbs, 2013; Michael et al., 2006; Black & Smith 2003). Second, research in

both the USA and Australia has indicated that the correctional selection process for HDBS with RF may discriminate against indigent offenders, who can be precluded from participating in these sanctions (NSW Standing Committee on Law and Justice, 2006; Reichel, 2001; Gainey et al., 2000; Heggie, 1999; Moyle, 1993/94). Third, studies in both the USA and Australia have found that being on HDBS with RF may result in a significantly different experience of punishment, dependent on offenders' personal and social characteristics, and therefore may discriminate against offenders with certain characteristics (George, 2006; NSW Standing Committee on Law and Justice, 2006; Ansay, 1999; Heggie, 1999; Payne & Gainey, 1998; Moyle, 1993/94). Fourth, research in both the USA and Australia has indicated that the punishment directed toward the offender on HDBS with RF may spill over into the lives of their co-residing family members thereby often complicating already fractious relationships (George, 2006; Ansay, 1999; Heggie, 1999; Aungles, 1994; Van Ness, 1992).

Over the last decade, various jurisdictions within both the USA and Australia have amended their operations in an attempt to make the selection process for HDBS with RF less discriminatory (Brown et al., 2007; NSW Standing Committee on Law and Justice, 2006; Enos et al., 1999). However the potentially varied experience of punishment on HDBS with RF and the multiple punitive effects that HDBS with RF may have on offenders' co-residents have not to date been recognised by HDBS policy.

In relation to HDBS with GPS, the number of studies that explored their ethical issues and dilemmas is almost non-existent in both the USA and Australia. In particular, gaps include assessing whether there is discrimination in the selection process, whether punishment varies between offenders, and whether punishment spills over into the lives of offenders' co-residing family members. It is possible that this is because HDBS with GPS are structurally less discriminatory during the selection process and they do not confine offenders to their homes for prolonged periods of time (Martinovic & Schluter, 2012; Bales et al., 2010b). As such, the punishment on offenders on these sanctions is probably not as diversified, and it has lesser impact on

their co-residents in comparison with HDBS with RF. Nevertheless, the lack of research is troublesome and future research is imperative.

Legal issues and dilemmas – In relation to both HDBS with RF and HDBS with GPS there have been no successful legal challenges of any aspect of their operation in the USA or Australia. In the USA, unlike in Australia, there have however been challenges that have been quashed by courts repeatedly ruling that offenders are not entitled to the same rights as ordinary citizens (DeMichele & Payne, 2009; Champion, 2008; Black & Smith, 2003). In Australia, unlike in the USA, there have been calls to establish specific legislative provisions that guide the operation of these sanctions to protect the potential infringement of offenders' human rights (Smith & Gibbs, 2013; Black & Smith, 2003).

Political and stakeholder issues and dilemmas – In relation to HDBS with RF, research in both the USA and Australia has shown that the media, which inaccurately portrays these sanctions, seems to be the key stakeholder with the most dominant influence (Martinovic, 2010; Fulton et al., 1997; Lilly, 2006; Rackmill, 1994). The ongoing discrediting media coverage of HDBS with RF has created negative community perceptions and political pressure. In the USA this led to an instigation of HDBS with RF policies which enhanced their punitive orientation and seldom contained rehabilitative initiatives (Payne & Gainey, 2000; Lilly, 1993; Baumer & Mendelsohn, 1992). The lack of stakeholder support in Australia however led to more drastic 'get tough on crime' policies, which have encompassed abolishment or sparing application of HDBS with RF (Parliamentary Library Research Service, 2011; Sentencing Advisory Council, 2008).

In relation to HDBS with GPS, no studies have been found to have analysed their political and stakeholder issues and dilemmas. A lack of interest in critically exploring these issues and dilemmas related with HDBS with GPS may be attributed to the relatively non-controversial implementation of these sanctions for sex offenders across the USA and Australia (Bligh & Roberts,

2011; Myers, 2011; Jannetta, 2006; Michael et al., 2006; Szego, 19.04.05; Nellis, 2004).

Despite the problematic outcomes, HDBS with RF and HDBS with GPS have both become integral components of the correctional continuum across the USA. Further, the number of offenders sentenced to them has continued to increase over the last three decades (DeMichele & Payne, 2009; Lilly, 1993; Baumer & Mendelsohn, 1992). In contrast, the overall application of HDBS in Australia has been stagnating even though these sanctions have had better outcomes overall than in the USA. More specifically, the number of offenders sentenced to HDBS with RF has been decreasing as these sanctions have either been abolished or have continued operating with struggling offender numbers. Yet, the number of offenders on HDBS with GPS seems to be on the increase in Australia (Smith & Gibbs, 2013; Henderson, 2006).

5.3 Future trajectory of the HDBS frameworks and lessons learnt

The following outlines the predicted future trajectory of the HDBS frameworks in the USA and Australia, as well as the basis of it which is underpinned by six relevant facts. It then discusses the lessons learnt that apply to the USA and Australia.

5.3.1 Future trajectory of the HDBS frameworks in the USA and Australia

Despite differing outcomes and varied trends of HDBS, the broad predicted future trajectory of these sanctions in both the USA and Australia is increased sanction application. This trajectory is based on six relevant facts:

In numerous nation states around the world, HDBS have become a permanent part of the sentencing landscape. Similarly to the USA and Australia, many other nation states have experienced increasing numbers of offenders being incarcerated each year and 'moral panics' created by the release and/or reoffending of known serious sex offenders. These have been

the catalyst for the widespread experimentation and implementation of HDBS (Renzema & Mayo-Wilson, 2005; John Howard Society of Alberta, 2000; Whitfield, 1997).

HDBS with RF are currently applied in more than 30 nation states throughout the world and are typically used for low to medium risk offenders (Nellis, Beyens & Kaminski, 2013). Alternatively, HDBS with GPS are utilised only in the USA, Australia, Brazil, Sweden and Spain for the highest risk sex offenders and/or perpetrators of domestic violence. HDBS with GPS have also been trialled and are in the process of being established in Canada, England and Wales, New Zealand, and The Netherlands (Paterson, 2013; Paterson, 2007; Lilly & Nellis, 2001; Whitfield, 1997; Mainprize, 1995). Nation states usually initially implement HDBS with RF and then subsequently introduce HDBS with GPS (Nellis et al., 2013). Further, each nation state designs its own HDBS as a specific response to the unique issues identified within its own criminal justice system.

Evidence based research throughout the Western world has shown that HDBS mostly operate effectively. In particular, Australia, New Zealand, Canada, England and Wales as well as the Nordic nations all indicate that HDBS with RF generally reduce prison crowding, have relatively low technical violations and recidivism rates, and are cost effective (Smith & Gibbs, 2013; Nellis, 2011; Henderson, 2006; Black & Smith, 2003). Hence, the only nation state where these sanctions do not seem to operate effectively is the USA; the main reason is that, unlike other nation states, HDBS with RF typically do not encompass rehabilitative and reintegrative initiatives and are instead mostly punishment and surveillance oriented. It is therefore likely that if the USA implements these initiatives (in accordance with the lessons learnt), then its operation of HDBS with RF would improve.

In addition, there is anecdotal evidence that HDBS with RF operate with minimalist ethical and political issues and dilemmas in New Zealand and Canada, as well as the Nordic nations (Hucklesby, 2009; Olotu et al., 2009). This is very much unlike the findings in the USA and Australia. While the

ethical and political issues and dilemmas in the USA and Australia would definitely reduce on the basis of the already identified lessons learnt (see below), future research which comparatively assesses the overall outcomes of HDBS in additional nation states would clearly be beneficial. The lessons learnt from the additional nation states may however not be clearly applicable to the USA and Australia, since the other countries and their criminal justice systems may not be homogenous to the USA and Australia. Hence, the lessons learnt from the most effective other nation states' HDBS would firstly need to be piloted in the USA and Australia and, if they are empirically validated, they could then be widely implemented.

Alternatively, the operational results in relation to HDBS with GPS have when compared with other nation states around the world been most effective in the USA (for more information see Nellis, 2011; Bales et al., 2010a; DeMichele & Payne, 2009; Olotu et al., 2009). This is particularly in relation to these sanctions' technological operation. The numerous technological issues raised have over the years been resolved in the USA as it has been at the forefront of implementing these sanctions since 1997 (Lilly, 2006). Furthermore, in the USA, HDBS with GPS have typically contained mandatory treatment provisions and as a result have experienced relatively low technical violation and reoffending rates (Bales et al., 2010a; DeMichele & Payne, 2009). Studies assessing the ethical and political and stakeholder issues and dilemmas are however quite limited in the USA and further research to assess these issues is imperative. The very positive results of the operation of HDBS with GPS in the USA have meant that other nation states have followed the USA's lead by experimenting and implementing their own HDBS with GPS.

Australian jurisdictions (New South Wales and Victoria) that have had stagnating application of HDBS have been examining ways of increasing the use of these sanctions. First, New South Wales commissioned two government reviews over the last decade to explore the reasons behind the decreasing sanction trend (Achterstraat, 2010; NSW Standing Committee on Law and Justice, 2006). Similar recommendations were made in both reports, but as their implementation would be complex and expensive, these are yet to

be implemented. Second, in Victoria, in 2011, the number of offenders on HDBS was quite small and plans were made to abolish the sanction for political reasons, yet the government initiated a trial to test the various EM technologies and commissioned a comprehensive review of the literature to elicit best practice in HDBS. Subsequently, the introduction of GPS technology as a possible condition of Parole Orders and Community Correction Orders was recently announced (O'Donohue, 2013:1).

EM technology is constantly advancing in precision and reliability, becoming less intrusive and cheaper overall. Over the last three decades a large number of private sector manufacturers and vendors have invested significant amounts of money in continuously improving EM technology in order to satisfy corrections' search for ways to more securely contain offenders in the community (Mair, 2006; McCarthy et al., 2001). As a result, abundant possibilities for controlling offenders in the community have become available – the most important have been the developments within the GPS technology – these have enabled increasingly precise offender tracking (Bales et al., 2010a; Clear & Cole, 2003; John Howard Society of Alberta, 2000).

In addition to deterring offenders from engaging in crime, the EM technology also ensures that offenders attend rehabilitative initiatives, thus being more likely to result in them adopting a pro-social lifestyle (Nellis, 2010b; New Jersey State Parole Board, 2007; Payne & Gainey, 2004). Consequently, it has become possible for HDBS to be imposed on not only low and medium risk offenders, but also high risk offenders. The advancements in EM technology have also meant that it has become less invasive for the offender as well as their co-residing family members. Hence, the application of HDBS has become more widespread, which has resulted in the cost of the technology reducing (Tennessee Board of Probation and Parole, 2007).

Nation states around the world have engaged in the development of additional satellite navigation systems, and the establishment of GNSS. This will mean that within the next decade the tracking information from more than 100 satellites from various nation states, including USA's GPS, Russian's

GLOSNASS, Europe's GALILEO and China's COSMOS, will be combined. The accuracy of offender tracking data will be substantially improved and the rate of 'false alerts' will be reduced (Victorian Spatial Council, 2011).

Incarceration does not seem to rehabilitate offenders and has significant direct and indirect costs, which cannot be sustained due to the multifaceted budgetary pressures on governments. Prisons seldom have pro-social transformation effects as more than half of ex-prisoners reoffend within three years of their release and are re-imprisoned in both the USA and Australia (DeMichele & Payne, 2009; Ross, 2005). The prison experience seems to actually produce more serious and violent criminals who become institutionalised in artificial environments that support criminal socialisation and the sharing of criminal tactics, as well as encourage violence and sexual assault (Clear, 2007; Meyer, 2004; McCarthy et al., 2001; Enos et al., 1999; Dean-Myrda & Cullen, 1998; Doherty, 1995). When prisons are overcrowded, which is typically the case in both the USA and Australia, the effects of the negative environment are exacerbated (Alarid et al., 2008; Clear et al., 2006; Bartlett, 2005; Caputo, 2004; Clear, 1997; Fulton et al., 1997).

In addition, incarceration is extremely expensive (Alarid et al., 2008). For example, while the cost of incarceration in the USA is equivalent to about \$50,000 per offender per year,¹³² it must also be taken into account that:

the cost of building a prison runs upward of \$100,000 per cell, excluding financing. Each personnel position represents expenditures equal to twice his/her annual salary when fringe benefits, retirement costs and office supplies are taken into consideration. The processing of an offender through the corrections system can run as high as \$20,000 in direct costs and nearly half that much again in indirect

¹³² This cost seems comparatively low when compared with the cost of incarceration in Australia which is more than \$100,000 per offender per year (Fowlie, 12.02.13). This discrepancy may be explained by the fact that the USA has a much higher incarceration rate per 100,000 adult population, larger prison capacities, cheaper construction costs and generally worse conditions in prisons (Reichel, 2008; Stephan, 2004; Haney, 2001).

costs (such as defaulted debts, welfare to families, and lost wages and taxes).

(Clear et al., 2006:550)

Appropriate allocation of scarce public resources is therefore required, especially in light of the continuing global financial crisis. More extensive use of EM technology will probably continue in the future as governments attempt to contain correctional costs.

In the USA, the inability to finance growing prison populations due to the country's economic downturn as well as global instability has resulted in a shift toward more reasonable crime and justice policies over the last few years. These have included the justice reinvestment movement, resulting in actual flattening out of the incarceration rate and even its reduction in state prisons (Cole, 2011; Guerino, Harrison & Sabol, 2011). In Australia, some of these policies have been trialed, but have not yet been widely implemented. Given the historical events in corrections, where Australian governments generally follow the USA's lead, it is likely that Australia will implement these in the future.

5.3.2 Lessons learnt that apply to the USA and Australia

Given that increased application of HDBS is the predicted future trajectory in both the USA and Australia, it is imperative that the operation of these sanctions is improved. This can be achieved by the specific jurisdictions within these nation states implementing the relevant lessons learnt to improve their own problematic areas of HDBS operation. The utilisation of comparative historical analysis has been instrumental in amalgamating the existing research (over the last three decades from both the USA and Australia) into the following seven lessons learnt that should be enacted as recommendations. These should be a vital part of the operation of HDBS in both nation states. More specifically, the first three lessons generally apply to

all HDBS, the following three are applicable to only HDBS with RF, and the last one applies only to HDBS with GPS.

1. Collaborative working and sharing of information with stakeholders (applies to HDBS with RF and HDBS with GPS)

Research has unanimously indicated that the establishment of a stakeholders' working group is vital (DeMichele & Payne, 2009; Ross & Allard, 2001). It should comprise stakeholders from various criminal justice related agencies, which support as well as oppose the implementation of HDBS.¹³³ The group would contribute to the decision-making and implementation of HDBS, and should be formed as early as possible and operate on an ongoing basis. Early formation is imperative for the following three reasons. First, although various stakeholders are likely to have diversified viewpoints, once these are cooperatively amalgamated they would be in the best interest of offenders and the community. Second, time and cost would be saved from the outset, as different stakeholders would be able to identify problems and barriers that may arise when developing and implementing HDBS. Third, the involvement of stakeholders in the early stages of development and implementation of HDBS is likely to lead to longer-term support and promotion of HDBS (DeMichele & Payne, 2009; Ross & Allard, 2001; King, 1991).

More specifically, a stakeholders' working group should comprise internal as well as external stakeholders¹³⁴ who possess the knowledge and skills needed to contribute to the development and implantation of HDBS. According to DeMichele and Payne (2009), the group could include the judiciary, policy makers, police, prison administrators, probation and parole officers, private vendors of EM equipment, public prosecutors, defence lawyers, victims and victim's advocates, offenders and their families, media

¹³³ This is because the mixed views can result in strategies that in fact enhance the HDBS.

¹³⁴ Internal stakeholders are those within corrections who manage the HDBS, supervise offenders, and maintain a working relationship with private vendors, service providers and the community (DeMichele & Payne, 2009). External stakeholders involve those outside of corrections who are impacted by the offender being on the HDBS. They include victims of crime, families, treatment providers, employers, judges, law enforcement, media and the community (DeMichele & Payne, 2009).

representatives and the public. This group of stakeholders would have the specialist knowledge about the relevant legal information, technical information, planning and program development skills, budget and financing skills, experience with working with offenders, community values and needs, and public relations experience.

If the stakeholders' working group is relatively large, then it could be divided into two manageable smaller groups - a project steering committee (engaged in high level planning) and an implementation team (dealing with operational issues) (DeMichele & Payne, 2009). The tasks that could be shared between the two groups include assessing resources and needs, developing program policies and procedures, identifying and securing funding and support, providing services for offender needs, and education, promotion and media awareness (DeMichele & Payne, 2009). The collaborative sharing of ideas and early identification of potential problems would reduce the possibility of HDBS being misunderstood or oversold, which has in the past resulted in disappointment when unrealistic expectations have not been met (DeMichele & Payne, 2009). Furthermore, it would most likely lead to greater confidence and support for HDBS, and eventually address the traditional problem of inadequate offender numbers on HDBS in both the USA and Australia (DeMichele & Payne, 2009; Henderson, 2006; Ross & Allard, 2001). It should however be noted that the initial offender uptake is likely to be slow and it may take a minimum of 6 months or longer for the optimal number of offenders to be sentenced to HDBS (Ross & Allard, 2001).

Corrections needs to change its typical strategy of under-utilising the media, and engage with it to gather support for HDBS¹³⁵ (DeMichele & Payne, 2009; Brown-Greaves, 1987). Research has repeatedly shown that the media is a very powerful external stakeholder which can negatively influence the opinions of many other stakeholders (DeMichele & Payne, 2009; Ross & Allard, 2001). Consequently, having regular contact with the media and regularly informing the public through correctional websites, social media,

¹³⁵ Unlike corrections, the media unit within the police has been extremely effective in presenting a police point of view (Brown-Greaves, 1987).

press releases/newsletters, holding community meetings and running seminars, conferences and workshops has proven to be critical (Brown et al., 2007).

When dealing with the media, best practice has particularly indicated that there should be:

- single point of contact to engage with the media and a tight communication plan
- quick response to a crisis
- regular provision of informative, educative and 'good news' stories about HDBS
- endorsements about HDBS from wider community-based groups in society.

The ongoing provision of information in the public domain would be an example of the utilisation of a proactive versus reactive approach that has often elicited negative public reaction (DeMichele & Payne, 2009; Hucklesby, 2009; Weatherburn, 1991). It would ensure that the public receives credible and accurate information about the actual capabilities and operation of HDBS (DeMichele & Payne, 2009).

A wider issue that must be tackled is that the public has generally not been persuaded that HDBS can adequately punish offenders in the community (Alarid et al., 2008; Payne & Gainey, 1999). This view has been based on the retributive public perception that the prison is the only appropriate punishment for the vast majority of offenders who should suffer its harsh deprivations (DeMichele & Payne, 2009; Roberts, 2004; Morris, 1988; Vernon, 1987). Therefore, the community needs to be provided with a frank explanation of the operation of the entire criminal justice system (DeMichele & Payne, 2009; Braithwaite, 1988; Hancock, 1988). Realistic expectations, advantages and disadvantages, and typical short-term as well as long-term outcomes of all penal dispositions need to be effectively communicated (DeMichele & Payne, 2009; Meyer, 2004; Weatherburn, 1991).

Once the public is provided with proper information and detail, it is likely to be less punitive, have greater confidence in community based dispositions, and even progressively generate political support and additional resources for HDBS (Payne & Gainey, 1999; Joutsen & Zvekic, 1994; Patmore, 1991). Furthermore, the awareness would discontinue the current trend in both the USA and Australia where the development, implementation and abolition of HDBS have on occasions been purely politically driven – HDBS have appeared and disappeared – just as quickly as political agendas have changed. It would importantly ensure that correctional policies are based on good practice instead of populist political agendas (Scott, 2007).

2. Inclusion of rehabilitative and reintegrative initiatives (applies to HDBS with RF and HDBS with GPS)

Studies have consistently shown that HDBS must contain rehabilitative and reintegrative initiatives in order to reduce the offender's risk of reoffending (Bales et al., 2010a; DeMichele & Payne, 2009; Brown et al., 2007; Sentencing Advisory Council, 2008; NSW Standing Committee on Law and Justice, 2006; Renzema & Mayo-Wilson, 2005; Renzema, 2003; Ross & Allard, 2001; Petersilia, 1997). It seems that the stability in the lives of offenders is enhanced when they are placed on HDBS, which in turn provides them with the ability to complete rehabilitation program/s, and ultimately reduce the rate of recidivism.

Offenders on HDBS with RF often need access to various services and/or forms of rehabilitative assistance. This is because they are typically “buffeted by serious personal problems – unemployment, emotional and family crises, substance abuse – that cannot be addressed effectively without some form of service or treatment” (Clear & Dammer, 2003:219). Consequently, HDBS with RF need to address offenders' complex personal issues and criminogenic

needs through wide-ranging rehabilitative treatment and services¹³⁶ (Clear & Dammer, 2003; Fulton et al., 1997).

The most complex and prominent offender cohort on HDBS with GPS is serious, often high-profile sex offenders who require offender-specific supervision carefully combined with quality treatment. This is because the motivations underlying sexual offender behaviours may include psychopathology, biological contributions, brain damage, and ineffective problem-solving skills (Bales et al., 2010a; Janicki, 2007). More specifically, the 'containment approach' of offender supervision is said to produce the most effective USA-wide results for lowering recidivism among sex offenders. Under this model the emphasis is on 'offence-specific treatment service,' and a close partnership between supervision officers, treatment providers, polygraph examiners and victim advocates (Sex Offender Supervision and GPS Monitoring Task Force, 2010; Jannetta, 2006). This collaboration allows for a rapid response to early warning signs of reoffending that may be noticed by the supervising officer or the treatment provider (New Jersey State Parole Board, 2007). Proactive intervention is encouraged, and reoffending is significantly reduced (Losel & Schmucker, 2005).

If the quality treatment is non-existent, the immediate cost of the provision of rehabilitative services is likely to be substantial but it would be definitely offset by the long-term benefits (DeMichele & Payne, 2009). HDBS that encompass individual case management and rehabilitative provisions that address offenders' criminogenic needs are likely to effectively support their reintegration, thus resulting in longer-term pro-social behavioural changes (Sentencing Advisory Council, 2008; NSW Standing Committee on Law and Justice, 2006). HDBS would then be likely to have relatively small recidivism rates, hence not contributing to prison crowding (Achterstraat, 2010).

¹³⁶ It must be understood that "change in anyone must come from within if it is to have any meaning. Without motivation and desire on the part of offenders to change their lifestyles, all the correctional resources in the world are not going to change their behaviour... The challenge we face is to find ways to stimulate and motivate offenders to help themselves" (Carlson, 1988:45).

3. Ongoing independent evaluation process that informs continual improvement (applies to HDBS with RF and HDBS with GPS)

It has been well documented that an ongoing independent evaluation process should be in place so that the operation of HDBS can be continually improved (Bales et al., 2010a; NSW Standing Committee on Law and Justice, 2006). Evaluations should be periodically conducted, lasting for adequate amounts of time, ideally two years, and these should follow up offenders once they have completed HDBS for at least another two years. This would mean that the prolonged impact of the HDBS could be determined. In addition to measuring the 'traditional outcomes' such as technical violation rates, reoffending rates and cost, 'broader outcomes' associated with HDBS also need to be followed up. These could include whether there are any improvements in offenders' employment, levels of substance abuse and other behavioural or attitudinal changes (for more information see Boone & Fulton, 1995). Any limitations associated with HDBS that are identified as a part of the evaluation process could then be continually addressed. An evidence-based continual improvement process for HDBS would undoubtedly improve the operation of these sanctions (DeMichele & Payne, 2009).

4. Application of equitable selection criteria and conditions (applies to HDBS with RF only)

Review of research has shown that the selection criteria and conditions imposed on offenders on HDBS with RF should be equitable. At the outset these sanctions should be operational state/territory wide, so that offenders living in rural/remote areas of the state/territory are not automatically precluded from being placed on these sanctions (Achterstraat, 2010; NSW Standing Committee on Law and Justice, 2006). More specifically, during the selection process for HDBS with RF, offenders who do not have a 'suitable residence' should be provided with state-sponsored accommodation such as foster/surrogate homes (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006; Enos et al., 1999). Similarly, if

offenders are unable to cover the cost of telephone installation and service, then the state should pay for these services (Tennessee Board of Probation and Parole, 2007; Heath, 1996).

Further, for Aboriginal offenders in Australia, 'home' should be more broadly defined to include an increased use of wider settlements called 'outstations' where Aboriginals typically reside. This would avoid Aboriginal offenders being disadvantaged by the strict defining of 'home' (NSW Standing Committee on Law and Justice, 2006; Heggie, 1999; Moyle, 1993/94). Finally, if supervision fees are imposed on the HDBS with RF, these should be based on a sliding scale and waived in certain cases (DeMichele & Payne, 2009; Tennessee Board of Probation and Parole, 2007). These policies would ensure that HDBS with RF operate equitably as they would be more accessible to offenders regardless of their social status.

5. Offender tailored order conditions and length of orders (applies to HDBS with RF only)

For a variety of reasons, studies have demonstrated that HDBS with RF should be imposed with offender tailored conditions and order length. This is firstly to avoid the inequitable and even discriminatory extensively varied punishment experience on these sanctions, which seems to be most profoundly dependent on offenders' personal and social characteristics (discussed above). Secondly, it prevents too many conditions being placed on the offender, which in most USA jurisdictions has led to very frequent technical violations, formal revocation processes, and usually subsequent incarceration (Martinovic, 2010). Thirdly, it avoids the imposition of unnecessarily long orders that often have high technical violation rates and possible adverse effects on offenders and their co-residents (Nellis, 2013; Ross & Allard, 2001; Rackmill, 1994). Similarly, it prevents the imposition of orders that are not sufficiently long for the offender's lifestyle to stabilise for the imposed treatment to have the most effective results.

Offender tailored conditions and order length should be imposed during the sentencing stage once the sentencing official has obtained a detailed analysis of offenders' personal and social characteristics, as well as their broader circumstances indicating whether they fit group norms (Martinovic, 2004). This then forms the basis for the sentencing officials to also specifically target the particular offending-characteristic behaviours of each individual offender, while more broadly minimising the levels of risk associated with re-offending and increasing public safety (for more information see Martinovic, 2010).

The following provides a comprehensive list of possible order conditions for offenders on HDBS with RF. From this list relevant and specific conditions could be selected:

- not committing a further offence/s
- not tampering with the EM equipment
- residing in a suitable residence
- having co-residents' agreement to serve the sanction
- remaining confined to their residence for at least 12 hours a day
- being subjected to electronic monitoring technology
- receiving home visits
- engaging in employment
- performing community work
- maintaining a log book of daily activities
- attending treatment/counseling sessions
- remaining drug and alcohol free
- prohibition of contact with previous criminal associates
- paying part of supervision cost, drug testing and victim restitution (Champion, 2008; Henderson, 2006; Mair, 2006; Cromwell et al., 2005; O'Toole, 2002; Gainey et al., 2000; Ansay & Benveneste, 1999; Heggie, 1999; Church & Dunstan, 1997; Whitfield, 1997; Schulz, 1995; Rackmill, 1994; Blomberg et al., 1993; Fulton & Stone, 1992; Baumer & Mendelsohn, 1990; Maxfield & Baumer, 1990).

Similarly, while in the USA and Australia offenders can be sentenced to HDBS with RF for periods of up to two years, the most suitable order length should be identified during sentencing and imposed on each offender (Bales et al., 2010a; Martinovic, 2010; Henderson, 2006). Consequently, an extensively varied punishment experience on HDBS with RF would be avoided and these sanctions would probably have relatively low rates of technical violations which would not be regarded as contributing to prison crowding.

6. Provision of support for offenders' co-residing family members (applies to HDBS with RF only)

Research has shown that a myriad of support needs to be provided to co-residing family members who often perform the untrained and unpaid roles of prison officers and social workers as they reside with an offender on HDBS with RF (Martinovic, 2007; George, 2006; Aungles, 1995). The following recommendations aim to ease the burden and stress that HDBS with RF indirectly places upon co-residing family members:

- Before signing the contract agreement for the HDBS with RF to be imposed in their living space, co-residing family members should be provided with a comprehensive resource kit which provides them with clear and realistic explanations about the potential impact of the sanction on them and their household relationships (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006; Whitfield, 2001).
- Corrections should provide co-residing family members with a support network, set up by professionals and/or volunteers, who could help them in dealing with domestic issues and childcare (Doherty, 1995).
- Offenders should be provided with an ongoing option to serve their HDBS with RF in state-sponsored accommodation such as foster/surrogate homes (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006; Enos et al., 1999).

- The conditions of HDBS with RF should be set up in a way that reduces the sanction's burden on co-residing family members. This means that offenders should be allocated more time to perform errands outside of home (Melbourne Centre for Criminological Research and Evaluation for Corrections Victoria, 2006; Ross & Allard, 2001).

These initiatives would reduce varied and indirect pressures that are placed on co-residing family members, providing them with more quality time for rebuilding their relationship with the offender as well as for themselves. It would also result in co-residing family members being better informed about how to deal with complex issues that are associated with residing with an offender on HDBS with RF (for more information see Martinovic, 2007).

7. Clear policies and procedures to guide their operation (applies to HDBS with GPS only)

Studies have demonstrated that written policy and procedures defining the responsibilities and obligations of all staff engaged in HDBS with GPS delivery are essential in order for these sanctions to operate successfully. Hence, a robust audit system where GPS information is prioritised to specific staff must be implemented to ensure that all alerts are handled in accordance with predetermined protocols (Drake, 2009). This ensures precise response procedures and accountability.

In addition, HDBS with GPS need an effective centralised monitoring centre, which can be run either by a private company on behalf of the government or by the government itself (Sex Offender Supervision & GPS Monitoring Taskforce, 2010; Hucklesby, 2009). Florida, the USA's most experienced user of GPS, improved its service delivery substantially by establishing a privately run state-wide monitoring centre in 2007 (Bales et al., 2010a). Empirical research has indicated that this model has substantially reduced the number of 'false alerts' and allowed supervising officers to more effectively spend their time directly supervising offenders. As a result similar centres are being

implemented across the USA (Sex Offender Supervision & GPS Monitoring Taskforce, 2010).

Hence, despite the predicted increased trajectory in the application of HDBS, the future viability and outcomes of these sanctions in both the USA and Australia are dependent on whether policy makers and/or correctional administrators, with the support of governments, improve the operation of these sanctions by implementing the relevant lessons learnt based on the evidence of best practice.

5.4 HDBS in the 'age of surveillance'

The application of surveillance technology has rapidly expanded over the last decade, defining the 21st century as the 'age of surveillance' (Welsh & Farrington, 2009; Bigo, 2006; Lyon, 2006). In particular, the surveillance and monitoring of the movement of each individual has grown to become a routine feature of everyday life. The technology that has permitted this has most significantly been closed circuit television (CCTV) cameras and more recently drones¹³⁷ [also known as Unmanned Aerial Vehicles (UAVs) and Remotely Piloted Aircrafts (RPAs)] (Cavoukian, 2013; Bigo, 2006).

CCTV cameras came to prominence when, through the media, they displayed the unfolding of horrific and highly emotional criminal acts. In the UK, in 1993, they publicised fuzzy images of the two ten-year old offenders in the kidnapping and subsequent murder of toddler James Bulger (Norris, McCahill & Wood, 2004). Then they clearly showed the images of suicide bombers in the terrorist attacks on the Twin Towers in New York in 2001, the London underground in 2005, and Boston marathon in 2013¹³⁸ (Pilkington, Gabbatt &

¹³⁷ Drones can range in size from an aircraft to an insect, which can fly in a pattern searching for suspicious activities/persons or hover in a location waiting for an instruction to be sent to it remotely (Finn & Wright, 2012; Calo, 2011). They "can be equipped with sophisticated zoom cameras, infrared thermal imagers, radar, location-based tracking tools, communication interception and listening devices" (Cavoukian, 2013:41). Drones can also be combined with facial recognition software and used to continuously track individuals in public as well as private places without their knowledge (Cavoukian, 2013; Schlag, 2013; Takahashi, 2012).

¹³⁸ In the UK there has been a high level of public support for the use of CCTV to prevent crime in public settings ever since the 1990s. However, in the USA "the public was less

Williams, 18.04.13; Welsh & Farrington, 2009; Hier, Walby & Greenberg, 2006). These events have led to increased application of CCTV cameras in the UK and the USA with the purpose of preventing crime more generally, and terrorist activities more specifically.¹³⁹ However, a meta-analysis of evaluations of CCTV cameras in the UK found that they “produced a non-significant and rather small 7% reduction in crime” (Welsh & Farrington, 2009:20). In the USA, despite the paucity of rigorous evaluations, very similar rates of crime reduction to the UK were reported (Ratcliffe, Taniguchi & Taylor, 2009). Nevertheless, the use of digital CCTV cameras in public spaces has rapidly expanded around the Western world. (For more information see Lilly & Nellis, 2013; Norris et al., 2004).

Currently, drones are frequently used in the USA by the military and sparingly by a few government departments for law enforcement purposes and border protection. However, the issue is that ‘rampant’ domestic use of drones seems inevitable. While many more government departments plan to use them to ease the complexity of the daily tasks that they undertake, privately owned companies and individuals also want to use them for various commercial incentives (Thompson, 2013:3; Calo, 2011:30). For example, the internet company Google has already acquired a drone with a permit to take photographs of public streets in order to maximise the precision of its maps (Finn & Wright, 2012). It has been predicted that the domestic application of drones will reach 30,000 in the USA by 2020 (Cavoukian, 2013; Schlag, 2013). In Australia, the use of drones is also emerging as a possible law enforcement tactic, but it is still in infancy compared to the USA.

The advancements in technology, particularly drones, can on the one hand be useful for policing in monitoring large/suspect crowds, preventing and

accepting and more apprehensive of Big Brother implications of the use of video surveillance in public places” until the terrorist attacks of 2001 (Welsh & Farrington, 2009:118).

¹³⁹ For example, it has been estimated that there are about 4.2 million CCTV cameras throughout the UK, which is equivalent to one for every 14 citizens (Ricci, 08.10.12; Welsh & Farrington, 2009; Norris et al., 2004). In practice, this means that an average Briton is caught on camera about 300 times per day (Welsh & Farrington, 2009). Unfortunately, there is little data on the actual number of CCTV cameras in operation in public spaces in the USA, but it is known that annual sales throughout the country have reached 2 million cameras (Norris et al., 2004).

detecting crime and assisting in incident responses as well as border protection matters (Finn & Wright, 2012). However, many academics and civil liberties associations around the Western world have warned that the large-scale civil application of drones which potentially allows indiscriminate persistent and continuous monitoring raises a number of pressing social concerns (Schlag, 2013; Finn & Wright, 2012; Calo, 2011). These include threatening privacy and other civil liberties, and reinforcing the notion of the 'fortress society' and the social exclusion of marginalised populations such as vagrants, the homeless, minorities and unemployed young people (Cavoukian, 2013; Welsh & Farrington, 2009). In fact, "the surveillance devices often target 'usual subjects,' including the poor, people of colour and anti-government protesters" (Finn & Wright, 2012:188).

In relation specifically to the USA, it has even been argued that the surveillance imposed by CCTVs and drones in particular could violate the USA's constitutional protection established in the 4th amendment's prohibition against 'unreasonable searches and seizures' (Welsh & Farrington, 2009). This however has not yet been tested in the US Supreme Court.¹⁴⁰ In order to ensure that the use of the surveillance is appropriate and accountable, personal safety and personal privacy in public spaces must be balanced. Some USA states have already taken steps to regulate the domestic application of drones. For example, police are required to obtain a warrant before using drones, explain where and how the data obtained will be filed, and/or ascertain how the collection of information obtained will be minimised. (For more information see Cavoukian, 2013; Thompson, 2013; Finn & Wright, 2012).

In addition, in 2013 in the USA, several legislative bills were introduced federally, to restrict the domestic use of drones. These include the *Preserving Freedom from Unwarranted Surveillance Act of 2013*, *Preserving American*

¹⁴⁰ In 2012, in *United States v Jones*, the entire US Supreme Court held that the government's warrantless use of a GPS tracking device on an individual's vehicle violated the 4th amendment against 'unreasonable searches and seizures' (Cavoukian, 2013). It hence seems likely that in future similar cases involving surveillance captured by drones will be challenged in court.

Privacy Act of 2013 and *Drone Aircraft Privacy and Transparency Act of 2013* (Thompson, 2013). Whether these USA-based legislative initiatives adequately protect the rights set out in the 4th amendment of the constitution remains to be seen. Nevertheless, other Western countries, which will follow the USA's example and allow drones to become domestically available, need to introduce their own strategies so that surveillance in public spaces is subject to strict controls, that is, a multifaceted regulatory framework. (For more information see Cavoukian 2013; Schlag, 2013; Finn & Wright, 2012).

While there may be legitimate reasons to be concerned about potential large-scale indiscriminate and persistent surveillance as a result of CCTV cameras, and particularly drones, these concerns are not relevant in relation to HDBS. This is primarily because HDBS impose surveillance generally on convicted offenders. In addition, in contrast with prisons, these sanctions have many benefits.¹⁴¹ Primarily, HDBS have fewer 'social costs' than prisons as offenders are better able to retain valuable conventional and family ties by remaining at home.¹⁴² They are also kept out of 'crime schools,' which is particularly significant for first-time and young offenders (Meyer, 2004; Clear & Dammer, 2003; Joutsen & Zvekic, 1994). Further, when HDBS offer extensive treatment intervention strategies and other services such as employment programs they have the potential to lower recidivism. This is because the forced discipline, structure, and schedule advances long-term behavioural change (Nellis et al., 2013; Alarid et al., 2008; Fulton et al., 1997). It is also worth noting that HDBS have broader economic advantages as, if the offender is employed, they can continue to pay taxes, there is a reduced possibility of government assistance funds being needed for them or their family, and they take their own responsibility for medical care (DeMichele & Payne, 2009).

¹⁴¹ It is also worth noting that, providing that retributive principles are satisfied, it is neither humanely nor economically beneficial to incarcerate offenders who are not a great risk to public safety (Vaughn, 1987).

¹⁴² This is based on the fact that community based supervision, while subjecting the offender to onerous order conditions, often enhances family cohesion. This is because it allows families to remain together, whereas "prisons are full of young men who were raised by one guardian or by a guardian who was too busy with work or other children to attend to their supervision" (Clear & Dammer, 2003:223).

5.5 Conclusion

This research has filled the gap in existing research by comparatively and historically analysing the development, implementation, operation, and outcomes of HDBS in the USA and Australia over the last three decades (1982-2013). Furthermore, the methodology employed led to the predicted future trajectory of HDBS in both nation states, and the lessons learnt that could be implemented to improve the operation of these sanctions.

The evolution of the HDBS frameworks in the USA and Australia was described through three ideologically distinguishable phases – early, middle and late. The late phase of HDBS was particularly substantial as contemporary HDBS with RF as well as HDBS with GPS originated in this period. The very positive USA experience with these sanctions appealed to policy makers in Australia, and they followed the USA's lead by initiating their own HDBS.

In the USA, HDBS with RF developed mainly on the basis of strict and close surveillance and offender monitoring. Unsurprisingly, evaluative research over the last three decades has indicated that in operational terms, these sanctions have not achieved their anticipated results. Furthermore, they have had significant ethical and political and stakeholder issues and dilemmas. HDBS with GPS on the other hand have been operationally effective as they have usually encompassed both strict and close surveillance and monitoring as well as treatment-based components. However, studies assessing some of their ethical and overall political and stakeholder issues and dilemmas have been lacking.

In Australia, unlike in the USA, HDBS with RF as well as HDBS with GPS have both entailed strict and close offender monitoring as well as individual case management of offenders and appropriate rehabilitative provisions. Evaluations have indicated that HDBS with RF have generally achieved their anticipated operational results, but have had substantial ethical and political and stakeholder issues and dilemmas. HDBS with GPS are still to be

examined by researchers in relation to their operational outcomes as well as ethical and political and stakeholder issues.

Over the last three decades the number of offenders sentenced to HDBS has generally continued to grow across the USA, however it has been stagnating in Australia. Despite the varying trends of these sanctions in the two nation states examined in this research, the predicted future trajectory in both is increased sanction application. This is based on six relevant facts - numerous nation states have adopted HDBS as permanent parts of their sentencing landscape; throughout the Western world, HDBS mostly operate effectively; a few Australian jurisdictions have been examining ways of increasing the use of these sanctions; the EM technology is constantly advancing, becoming less intrusive and overall cheaper; nation states are developing additional satellite navigation systems and establishing the GNSS; and mass incarceration is not sustainable. Given this clear trajectory, it is imperative that policy makers and/or correctional administrators, with the support of governments, improve the operation of these sanctions.

The key practical outcome of this research is that the operation of HDBS can become more effective if the specific jurisdictions within the USA and Australia implement the lessons learnt relevant to their own problematic areas of HDBS' operation. The lessons learnt that have been identified on the basis of best practice research over the last three decades in both the USA and Australia include:

- Collaborative working and sharing of information with stakeholders
- Inclusion of rehabilitative and reintegrative initiatives
- Ongoing independent evaluation process that informs continual improvement
- Application of equitable selection criteria and conditions
- Offender tailored order conditions and length of orders
- Provision of support for offenders' co-residing family members
- Clear policies and procedures to guide their operation.

Thus, it remains to be seen whether governments, practitioners and the community can move beyond the present infatuation with punitive policies, and re-channel resources into improving the operation of HDBS in accordance with the findings of best practice research.

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