

Trends & Policies in Criminal Justice

No. 015 June 2021

Home Detention System

Soojin Kwon

Associate Research Fellow at Korean
Institute of Criminology
(soojin@kic.re.kr)

Byeongdu Oh

Professor at Hongik University

Juseong Yu

Professor at Changwon National
University

Necessity and Purpose

- The accused are presumed innocent and has the right to defend him/herself under the Constitution and the Criminal Procedure Act of Korea. However, once detained, the right to defend him/herself becomes restricted.
- Although the purpose of criminal punishment is to reintegrate inmates into society, the re-entry is difficult when they are confined in an isolated correctional facility, where the prisoners are isolated from family, workplace, and society, as well as being stigmatized as criminals.
- The sentence period for short-term imprisonment is insufficient to achieve the goals of criminal punishment, such as correction and education, as well as reintegration into society. However, it is long enough for inmates to learn criminal behaviors in prison.
- Recently, the Constitutional Court has ruled overcrowded correctional facilities unconstitutional and issued judgements on the state's liability. Moreover, it became urgent to prepare measures to alleviate prison overcrowding during the COVID-19 outbreaks in correctional facilities in 2020.
- Meanwhile, an alternative to detention in correctional facilities is necessary for the inmates who are the elderly, patients, pregnant women, and nursing mothers as they are more at risk during detention. It is also necessary to give considerations to the inmates from vulnerable groups in society, such as those who committed a crime for subsistence.

Keywords

※ home detention, community
detention, reduction of detention
of unconvicted criminals,
alternative to detention,
alternative criminal sanction

This study aims to propose alternative measures against detention in order to

- Guarantee the presumption of innocence of the accused and their right to defend themselves and their human rights
- Minimize the adverse effects of unconvicted inmates' detention and short-term imprisonment
- Prevent isolation of inmates from family, workplace, and society, as well as reduce stigma on them, and promote their reintegration into society
- Alleviate overcrowding in correctional facilities
- Minimize the detention of the elderly, patients, pregnant women, and nursing mothers, as well as inmates from vulnerable groups in society, such as persons who committed a crime for subsistence

Research Methods

Literature Review

- Books, articles, policy documents, press releases, relevant court decisions, etc.

Comparative Law Research

- Law, operation status, cases, evaluation relevant to home detention systems in different countries

Empirical Research

- An online public survey (1,000 persons aged between 19 and 69 from across the country)
- In-depth interviews with legal professionals (13 people who are retired or in service, and with work experience of at least 10 years)

Experts' Participation

- Seminars (workshops) with experts
- Advisory meetings

Review Statistics

- Official statistics, including the Ministry of Justice yearbook and statistical annals of correctional facility
- Statistics published by relevant authorities, such as the Ministry of Justice and correctional facility in different countries

Highlights of the Study

Overview of Home Detention

- Definition
 - Detention of a criminal (or any other person) in the criminal's own home or any other designated place
- Type
 - The criminal is allowed to go out during certain hours but forced to remain at his/her residence during particular hours (nighttime, weekends)
 - The criminal is allowed to conduct activities for certain purposes (such as education, business, medical treatment, and purchase of necessities) but is forced to remain at his/her residence during the rest of each day
 - The criminal is forced to remain at his/her residence, except for extremely limited cases (such as medical emergency and religious worship)
- Background
 - In the 1970s, the United States of America introduced the first modern home detention system to prevent the adverse effects of detention and alleviate overcrowding in correctional facilities.
 - It was expanded with the facilitation of alternative sanction for the punishment of restricting physical freedom and intermediate treatment, along with the development of electronic monitoring technology.

Necessity of Introducing the Home Detention System for Each Criminal Procedure Stage and Punishment Type

- To guarantee the presumption of innocence of the accused and their human rights.
- To minimize the adverse effects of unconvicted inmates' detention and short-term imprisonment.

- To prevent inmates from being isolated from their family, workplace, and society and to promote their reintegration into society.
- To minimize the detention of the elderly, patients, pregnant women, and nursing women, who have more difficulty in undergoing detention in correctional facilities, as well as inmates from vulnerable groups in society, including persons who committed a crime for subsistence.
- An alternative is necessary to alleviate overcrowding in correctional facilities.

<Table 1> Rate of unconvicted inmates

Region	Country	2005	2015	2018
Asia	Republic of Korea	34.2	35.2	35.4
	Japan	15	11.2	11.3
	Singapore	4.1	10.2	11.5
North America	Canada	29.1	34.9	38.8
	United States of America	22.5	21.8	23.4
Europe	Austria	23.2	20.8	20.9
	France	33.4	25.7	28.8
	Germany	23.7	20.6	23.6
	Sweden	20.7	24.6	27
Oceania	Australia	20.4	25.3	31.6
	New Zealand	17.3	14.9	18.2

※ Source: e-Nara Index; UN: Rate of unconvicted inmates, https://kosis.kr/statHtml/statHtml.do?orgId=101&tblId=DT_2UNS0120&vw_cd=MT_RTITLE&list_id=R_SUB_OTITLE_OTIT_UNTIT_10_160&scrId=&seqNo=&lang_mode=ko&obj_var_id=&itm_id=&conn_path=E1 (last visited Nov. 9, 2020)

Review of Home Detention Systems of Different Countries

- Anglo-American countries
 - United States of America: First introduced and implemented a contemporary home detention system
 - United Kingdom: Implemented a home detention system as a stay-at-home order
 - Canada: Lacks a social consensus on introducing and implementing a home detention system
- EU member states
 - Sweden: Operates “intermediate treatment facilities” for persons who become subject to home detention, but have no housing
 - Germany: Considers the principle of proportionality

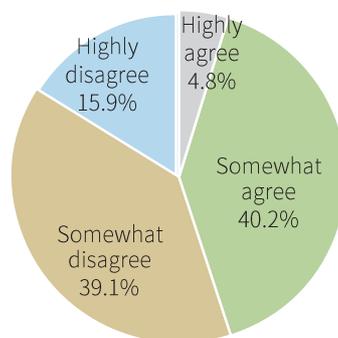
- Austria: Articulates the order of home detention in the hierarchy of punishment and considers the principle of proportionality; the “Neustadt,” a nonprofit and nongovernmental organization is exclusively in charge of probation
- Italy: Operates various accommodation systems in connection with home detention, including day detention, weekend detention, special holidays, and commuting from outside
- France: Implements an electronically monitored home detention system as an adjusted punishment replacing imprisonment or as a stand-alone punishment
- Oceanian states
 - Australia: Lacks the sharing of information and the coordination of understanding among related authorities; negative views of the public that a home detention system may serve for white-collar crimes

- New Zealand: Law enforcement officers and negative public opinion on “severity of punishment” and the role of probation officers is questioned
- Asian countries
 - Singapore: The head of the Singapore Prison Service, not a court, permits home detention to promote the rehabilitation of inmates and their reintegration into society
 - Republic of Korea: Restricts the place of residence and outings as a condition of probation, similar to home detention, or of bail; an electronic bail system has been implemented (since August 5, 2020)

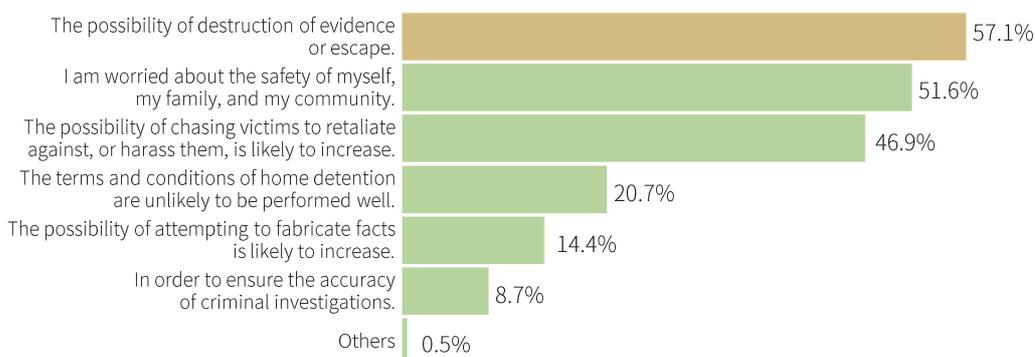
- Survey Questionnaire
 - Pros and Cons of the introduction of the home detention system and reasons thereof
 - Operation of the home detention system: Eligible persons, exceptions, period, place, determining organization, monitoring, terms and conditions, countermeasures against violations, and costs
 - Tasks to be resolved before introducing the home detention system, important matters in operation, and things to be considered
- Survey Results
 - Since the home detention system has not been introduced to the Republic of Korea in full scale, the level of awareness of both the public and legal professionals on the home detention system is not high. It is necessary to raise the public consciousness and attain a consensus before introducing and implementing the home detention system.
 - The strong public opposition to the introduction of home detention on criminal suspects or criminals reasoned that they were worried about the “destruction of evidence and escape,” “safety of communities,” “retaliation against victims,” etc.

Survey and Research on the Home Detention System

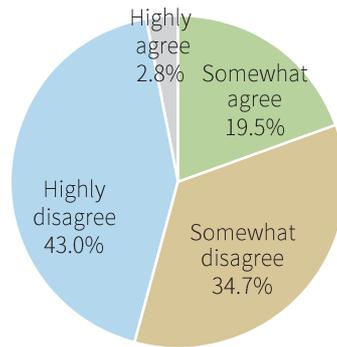
- Public: The home detention system needs understanding, attention, and support from community members
- Legal Professionals: It is necessary to be involved in making a decision to impose home detention as an alternative to imprisonment or criminal punishment, including the proceedings for determining whether to detain a suspect or criminal, conviction and sentence



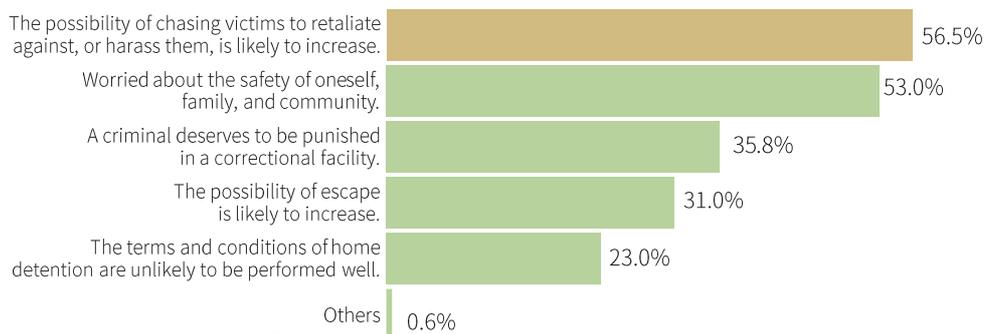
[Figure 1] Pros and cons of the introduction of the home detention system for criminal suspects (the public)



[Figure 2] Main reasons for opposing the introduction of the home detention system for criminal suspects (the public)



[Figure 3] Pros and cons of the introduction of the home detention system for convicted criminals (the public)



[Figure 4] Main reasons for opposing the introduction of the home detention system for criminal suspects (the public)

- Support for the new home detention system was high in the legal profession, because “a person is presumed innocent at the stage of investigation and trial” and “once detained, a person is unable to exercise his/her right to defend him/herself properly.”
- For the pros and cons of the imposition of home detention of convicted criminals among the experts, the supporting opinions were for the “maintenance of a criminal’s relationship with his/her family left behind,” “negative effects of imprisonment,” and “overcrowding in correctional facilities,” while opposing opinions were that “the terms and conditions of home detention are unlikely to be performed well,” “discrimination based on economic ability or living conditions will occur,” “a criminal deserves to be punished in a correctional facility,” “there are not many cases for which home detention can be practically imposed,” “the strictness, certainty, etc. of criminal punishment are likely to be impaired if such an exception to the execution of punishment is allowed,” and “most victims can hardly tolerate the system.”

Policy Proposals

Important Considerations

- Ensuring fairness and transparency in selecting eligible persons
- Securing the safety of communities
- Cooperation among related authorities, including courts, the police, the prosecution, correctional and probation institutions

Implementing Measures

- Applicability of Home Detention at Each Stage of Criminal Procedure
 - Investigation and trial: When a criminal is unlikely to escape or destroy evidence

- Serving Punishment: When the term of a sentence has not been executed yet after conviction; where the term of a sentence is relatively short; where the expected period of electronic monitoring is short; where a convicted inmate meets certain terms and conditions
- Persons Eligible or Ineligible for Home Detention
 - Persons eligible for home detention: those who committed a minor offense or criminal negligence, first-time offenders, and persons whose term or the remaining term of a sentence is not more than 12 months
 - Persons ineligible for home detention: Persons who committed a violent crime, such as murder, robbery, arson or sexual offenders, violence offenders and abuse and abandonment offenders
- Consideration of Characteristics of Criminals
 - Pregnant women, nursing mothers, patients, the elderly, and the disabled may be eligible for home detention
- Procedure for Home Detention
 - Application: By the criminals, the prosecution, by the court's authority
 - Consent: Consent from the detainee and his/her cohabiting family is required.
- Decision on Home Detention: To be rendered by the court
- Place of Home Detention
 - Place where a detainee resides: Home, hospital, medical care facility, dormitory, etc.
 - In cases where the detainee has no regular residence, it is necessary to establish and operate "Halfway House."
- Period of home detention: Not more than 10% to 20% of the term or the remaining term of a sentence, not exceeding six months
- Imposition of Conditions of Home Detention, Countermeasures against Violations
 - Conditions of home detention: Restriction on outings at night; imposition of a curfew; partial permission for outings (for activities with specific purposes, including work, school, medical treatment, religion, and pastime); restriction on outsiders' entry; prohibition of entering specified areas; prohibition of accessing victims and others; prohibition of gambling; prohibition of drinking or narcotics; imposition of drug tests; participation in medical treatment programs or educational programs, etc.
 - Countermeasures against the Violation of Home Detention or Conditions
- Monitoring of the Home Detainee
 - Authority: Probation Office
 - Methods: Electronic bracelet, CCTV, visit by the supervisor in person, telephone
- Home Detention Costs: To be borne by the state

Expected Effects of Policies

- Serves as a measure to reduce the detention of unconvicted criminals, which harmonizes recidivism and protection of human rights.
 - Ensures the presumption of innocence of accused and their right to defend themselves
 - Minimizes the detention of unconvicted criminals
- Minimizes adverse effects of detention in correction facilities
 - Eliminates chances of learning crime
 - Minimizes the effect of social stigma
- Promotes inmates' rehabilitation
 - Promotes maintenance and recovery of relationships with family, workplace, and society
 - Removes difficulties in finding employment
 - Prevents recidivism

- Enhances correction functions
 - Alleviates overcrowding of correctional facilities
 - Saves operation costs
- Provides an alternative criminal sanction for persons who have difficulty undergoing detention
 - An alternative to detention for pregnant women, nursing mothers, patients, the elderly, the disabled, etc.
- Provides an alternative criminal sanction for criminals from vulnerable backgrounds
 - Minimizes unemployment and support stable life for persons such as who committed crime for subsistence



Change

Human Behaviors
Community Response
Social System