

# NISKANEN C E N T E R

## **SAFER, SMARTER, AND CHEAPER**

### **The promise of targeted home confinement with electronic monitoring**

**Greg Newburn**

Director of Criminal Justice

**Richard Hahn**

Senior Fellow

**Matthew Bulger,**

Government Affairs Manager

June 2023

#### **Summary**

Under the CARES Act, signed into law in March 2020, Congress temporarily expanded the authority of the federal Bureau of Prisons to place prisoners in home confinement. As of May 27, 2023, BOP had placed 13,204 individuals into home confinement under that authority. As of May 1, just 22 of those people had been returned to prison for committing a new crime.

Congress should pass legislation to establish a program modeled after CARES Act home confinement. This legislation should make home confinement a default sentence for offenders who meet certain criteria and provide sentence enhancements for crimes committed while on home confinement. Additionally, Congress should empower BOP to modify supervision and behavioral expectations; adopt swift and certain sanctions for non-criminal rule violations; test different eligibility criteria; and incorporate graduated reintegration to ease the transition from supervision to freedom.

Research evidence from both the U.S. and abroad suggests home confinement is an effective and appropriate alternative to imprisonment for lower-risk offenders. A modified home confinement program would lead to substantial savings that could be reinvested in police to arrest, prosecute, and incarcerate dangerous criminals who would otherwise remain free, and help BOP better manage the population of prisoners housed in federal facilities.

The Niskanen Center is a 501(c)3 issue advocacy organization that works to change public policy through direct engagement in the policymaking process.

NISKANEN CENTER | 820 FIRST ST. NE, SUITE 675 | WASHINGTON, D.C. 20002

www.niskanencenter.org | For inquiries, please contact [ltavlas@niskanencenter.org](mailto:ltavlas@niskanencenter.org)

## Home confinement under the CARES Act

Under federal law, prisoners housed in BOP facilities may be transferred to home confinement “for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months.”<sup>1</sup> The CARES Act granted the BOP discretion to lengthen the maximum amount of time prisoners may be placed in home confinement during the official emergency period.<sup>2</sup>

The Trump administration did not make the decision to implement home confinement through the CARES Act lightly. Administration officials took into account both the threat to staff and prisoners posed by Covid-19, as well as the ability of home supervision and electronic monitoring to approximate many of the restrictions and safeguards of a prison cell. Home confinement is not liberty, as the Department of Justice makes clear:

Individuals placed in home confinement remain in BOP custody and are subject to ongoing supervision, including monitoring, drug and alcohol testing, and check-in requirements. They are not permitted to leave their residences except for work or other preapproved activities such as counseling or medical appointments. Individuals who violate these conditions or commit new crimes while in home confinement may be disciplined and returned to secure custody.<sup>3</sup>

The administration instructed BOP that home confinement should not lead to “indiscriminate” release of prisoners, which would “pose profound risks to the public.”<sup>4</sup> Rather, release decisions were to be “careful, individualized determinations,” taking into consideration the totality of the circumstances for each prisoner, including a number of criteria intended to ensure the lowest-risk prisoners were prioritized.<sup>5</sup>

In just over three years, BOP placed 13,204 individuals in home confinement under the CARES Act.<sup>6</sup> Of these, 96 percent committed no violations or new criminal offenses.<sup>7</sup> As of May 1, 2023, 521 people out of 13,204 had been returned to secure custody. Of these, 296 were returned due to drug or alcohol use; 90 were returned after failing to remain at a designated location; and 113 were returned for technical violations.

The remainder - 22 people - were returned for new criminal conduct. That’s a new-crime rate of 0.17 percent.<sup>8</sup> By contrast, a study of more than 25,000 federal prisoners released in 2005 found that 33.7 percent had been rearrested within three years of release.<sup>9</sup> These are not one-to-one

---

1. [18 U.S. Code § 3624\(c\)\(2\)](#).

2. [Pub. L. 116-136](#) (March 27, 2020).

3. Department of Justice, *First Step Act Annual Report* (Office of the Attorney General, April 2023).

4. William Barr, “Memorandum for Director of Bureau of Prisons” (Official memorandum, Department of Justice, April 3, 2020).

5. Andre Matevosian, “Memorandum For Chief Executive Officers” (Official memorandum, Bureau of Prisons, April 13, 2021).

6. Senator Cory A. Booker, “Cares Act Home Confinement: Three Years Later,” June 23, 2023.

7. *Ibid.*

8. *Ibid.*

9. Kim Steven Hunt, et al., *Recidivism Among Federal Offenders: A Comprehensive Overview* (U.S. Sentencing Commission, March 2016).

comparisons, since most CARES Act beneficiaries have not been out of secure custody for three years. But holding recidivism anywhere close to a fraction of 1 percent among a set of more than 13,000 released federal prisoners for any substantial amount of time is a public safety success by any standard.

The large gap between the recidivism rates of federal prisoners generally and the cohort released to home confinement under the CARES Act shows that the risk to public safety among federal prisoners is not uniform; that available risk assessment instruments can effectively sort prisoners based on their relative dangerousness; and that some subset of the lower-risk offenders could be released from secure custody at trivial risk to public safety.

Prior to the CARES Act, skepticism that a sizable fraction of the federal prison population could be released from custodial facilities with essentially zero impact on public safety would have been reasonable. However, the early results of home confinement under the CARES Act are strong enough to warrant at least temporary suspension of such skepticism. Along with the available research evidence on the public safety effects of electronic monitoring generally (detailed below), these results lend support for a formal targeted home confinement program under federal law.

### **The case for home confinement**

Congress should pass legislation to establish a targeted home confinement program modeled after the CARES Act program. Doing so will yield at least three benefits. First, it will produce substantial savings by reducing unnecessary incarceration. The “cost of incarceration fee” for a federal prisoner housed in a prison facility was \$120.59 per day in fiscal year 2020.<sup>10</sup> By contrast, a prisoner on home confinement costs an average of \$55.26 per day, which translates to a cost savings of approximately \$65.59 per day, per prisoner, or approximately \$23,940.35 per year, per prisoner.<sup>11</sup> Those numbers suggest targeted home confinement could save more than \$100 million each year.

Spending even significant amounts of money to incarcerate offenders who pose an ongoing threat to public safety is almost always justified, and saving money is never a sufficient justification for otherwise unjustified releases from prison. But spending money to incarcerate people who could be just as effectively managed outside of prison is fiscally irresponsible and short-sighted considering that scarce resources could be better used to keep the public safe from true threats.

Indeed, codifying targeted home confinement can free up much-needed resources to help police catch more violent criminals who terrorize American neighborhoods with impunity. Over the last several years, murders and shootings have spiked nationwide, even as arrest rates for those crimes have fallen. Today, a person who commits murder in the U.S. has about a coin flip’s chance of getting away with it.<sup>12</sup> Generally, research shows investments in law enforcement have larger

---

10. BOP, “Annual Determination of Average Cost of Incarceration Fee,” 86 FR 49060 (September 1, 2021).

11. Department of Justice, “Home Confinement Under the Coronavirus Aid, Relief, and Economic Security (Cares) Act,” 88 FR 19830 (April 4, 2023).

12. Weihua Li and Jamiles Lartey, “As Murders Spiked, Police Solved About Half in 2020,” *The Marshall Project*, January 12, 2022.

per-dollar crime reduction impacts than spending on prisons.<sup>13</sup> Congress could use savings from targeted home confinement to provide resources to law enforcement to help them capture, prosecute, and incarcerate violent offenders who would otherwise remain free.

Finally, a statutory targeted home confinement program will help prison staff better manage offenders who remain inside federal prison facilities, and ease the pressures of the ongoing staffing crisis in the federal prison system. The BOP has long struggled to recruit and retain staff in its institutions. In the four years preceding the pandemic, BOP lost over 5,000 employees, or about an eighth of its workforce.<sup>14</sup> This change corresponded with a well-publicized increase in violence, contraband, and gang activity behind bars.

When the CARES Act was signed into law in March 2020, 10 federal prisons had corrections officer to inmate ratios greater than 15:1, the threshold at which Congress initiates oversight and mandates detailed explanation from the BOP.<sup>15</sup> Upon the implementation of the home confinement program, those ratios immediately began to improve, despite staff attrition and absenteeism due to illness and stress. By the summer of 2021, no institutions had ratios greater than the threshold, despite continued challenges to recruiting and retaining staff including the retirement of an additional 6,000 employees between 2021-2022.<sup>16</sup>

A related benefit of extending the CARES Act home confinement provisions is the potential to ease the strain on BOP's dated infrastructure. In 2022, BOP Director Colette Peters cited the agency's \$2 billion construction and maintenance budget deficit, explaining that many of the 122 federal institutions were nearing the end of their functional lifespans. A smaller population can be managed in fewer facilities, allowing the BOP to concentrate spending in ways that could improve the security, safety, and rehabilitative quality of the prisons under its jurisdiction, not to mention the workplace conditions experienced by federal corrections officers. Taken together, the extension of CARES Act community confinement provisions will give prison staff better control over prisoner populations and better conditions in which to work.

### How to build on the CARES framework

Codifying home confinement for the post-Covid era is a relatively straightforward exercise in legislative drafting, as the CARES Act has already provided the model. However, Congress should consider additional steps to maximize the benefits of home confinement.

1. *Make home confinement a default sentence for offenders who meet the criteria.*  
Congress should change federal sentencing laws to make home confinement the default sentence for any newly convicted offender who, once incarcerated, would meet the criteria for release to home confinement. Incarceration should remain an option for these offend-

---

13. Eric Helland and Alexander Tabarrok, "Does Three Strikes Deter? A Nonparametric Estimation," *Journal of Human Resources* vol. 42, no. 2 (2007): pp. 309-330.

14. John Heckman, "Bureau of Prisons Understaffing Leads to 'Unprecedented Exodus' of Employees, Union Warns," *Federal News Network*, September 30, 2022.

15. BOP, *Federal Bureau of Prisons Hiring and Staffing FY 2020 Second Quarter Report* (2020).

16. BOP, *Federal Bureau of Prisons Hiring and Staffing FY 2021 Third Quarter Report* (2021).

ers, in part because incarceration can serve legitimate ends beyond crime reduction, but judges should be required to explain on the record the reasons for departure from a default home confinement sentence.

2. *Test alternative elements of supervision and behavioral expectations.*  
BOP should test different elements of supervision and behavioral expectations to determine the most efficient means of supervising people on home confinement. For example, some who meet BOP criteria for home confinement might not need to be monitored as closely as others. Some might not need drug testing, while others might need more frequent testing, and others might need more frequent alcohol testing, as well. A curfew might be useful for some offenders, but not others, and so on.
3. *Implement and evaluate swift and certain sanctions for non-criminal rule violations.*  
Only around 3 percent of people on home confinement under the CARES Act home confinement were returned to secure custody for a violation of home confinement rules. Nevertheless, it makes sense to try to improve compliance, and to ensure that non-criminal rules violations can be punished without revoking home confinement status altogether. To that end, BOP should adopt an accountability model to allow for swift and certain sanctions for violations, perhaps by partnering with local law enforcement for more efficient administration. Two such models, HOPE probation<sup>17</sup> and 24/7 Sobriety,<sup>18</sup> have shown strong results at managing offender behavior by coupling clear rules with immediate and reliable sanctions.
4. *Incorporate graduated reintegration.*  
The initial home confinement release decision is based largely on an assessment of the prisoner's public safety risk. However, because home confinement is coupled with behavioral restrictions enforced with monitoring, offenders have the opportunity to signal to authorities their actual risk level in real time.<sup>19</sup> Congress should structure home confinement to reward those who follow the rules with gradually expanded freedom, including potentially early release from their sentence, and punish violations with rescissions of earned freedom. This "graduated reintegration" model could help ease the transition from prison to home confinement to total liberty, and help reduce recidivism after direct supervision ends.<sup>20</sup>
5. *Provide enhanced punishments for new crimes.*  
In 2006, Italy passed a "collective clemency" bill that allowed prisoners to be released up to three years before their sentence end date. However, people released under that law who committed a new crime within five years were made to serve the balance of their previous sentence in addition to any sentence for the new offense. A 2009 study estimated the deterrent effect of the threat of additional prison time, and found in general that these

---

17. Angela Hawken and Mark A. Kleiman, "Managing Drug-Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE," *Evaluation Report*, NCJ No. 229023 (December 2009).

18. Beau Kilmer, et al., "Efficacy of Frequent Monitoring with Swift, Certain, and Modest Sanctions for Violations: Insights from South Dakota's 24/7 Sobriety Project," *American Journal of Public Health*, vol. 103, no. 1 (January 2013): pp. e37-e43.

19. Angela Hawken, "Behavioral Triage: A New Model for Identifying and Treating Substance-Abusing Offenders," *Journal of Drug Policy Analysis* vol. 3 no. 1 (February 2010).

20. Angela Hawken and Mark A.R. Kleiman, "Graduated Reintegration: Smoothing The Transition From Prison To Community," *The Hamilton Project* (October 2016).

threats reduced crime.<sup>21</sup> Legislation should include a similar sentence enhancement for new crimes committed while on home confinement.

6. *Test the suspension of the time-served requirement.*

Under the CARES Act program, prisoners who had not yet served 50 percent of a sentence (or, for those who had 18 months or less remaining on a sentence, 25 percent) were not prioritized. Targeted home confinement legislation should allow BOP to test suspending the time-served requirement and allow the transfer to home confinement prisoners who meet all other criteria. Expansion of eligibility should be slow and gradual, and recidivism rates should be tracked closely and often.

7. *Keep the program flexible and responsive to new evidence.*

The results of home confinement under the CARES Act are strong and encouraging. And the research evidence strongly suggests that home confinement can be used more often as an alternative to incarceration without negative effects on public safety. However, neither the temporary program's results nor the available evidence is sufficient to justify a permanent expansion of home confinement, nor to mandate any particular implementation of that program. Congress should require periodic assessments of the home confinement program and empower BOP to change the program in response to evidence.

### **Evidentiary support for statutory targeted home confinement**

No rigorous evaluations of the likelihood of people on home confinement to commit crimes in their communities compared to that of people who are still in prison exist, because people in prison by definition cannot commit such crimes. However, descriptive and correlational studies suggest the rate of serious offending while in home confinement is relatively low, while the chance of detection and punishment for crimes committed while in home confinement is higher than for people on other forms of supervision.

One such study, an evaluation of the BOP's Federal Home Confinement Program, suggests that early release to home confinement with electronic monitoring would be both feasible and beneficial.<sup>22</sup> The evaluation considered federal offenders placed in home confinement between 1988-1996. Program participants included pre-trial defendants; people on probation, parole, and post-release supervision; and BOP prisoners in pre-release status. Researchers observed that of over 17,000 people sent to home confinement under the program, 89 percent completed the program without incident. Over half of failures resulted from either drug use or failure to remain in the home, suggesting that people in home confinement are unlikely to commit new crimes.

Most research on the public safety effectiveness of home confinement with electronic monitoring compared to incarceration is hampered by intrinsic differences between people who are assigned to home confinement and those who are assigned to prison. Compared to people who are assigned to electronic monitoring either as an alternative to prison or as a condition of early release, people

---

21. Francesco Drago, et al., "The Deterrent Effects of Prison: Evidence from a Natural Experiment," *Journal of Political Economy* vol. 117, no. 2 (April 2009): pp. 257-280.

22. Darren Gowen, "Overview of the Federal Home Confinement Program 1988-1996." *Fed. Probation* 64 (December 2000).

who serve full sentences in prison have, on average, more serious convictions, longer criminal histories, and other attributes that make them less likely to succeed after release.

Several recent studies have attempted to overcome this limitation, including random assignment to electronic monitoring or leveraging peculiarities of legal practices that render assignment to electronic monitoring as good as random, to ensure the groups they are comparing have similar baseline chances of success or failure. Many of these studies have been undertaken in other countries, particularly in Europe, where home confinement has a longer track record. At first blush, these countries may seem incomparable to America in terms of rates of violence and imprisonment. However, on the margin at which people are generally sentenced or released to home confinement — that is, among relatively low-level offenders with limited criminal histories — the populations are very similar in terms of risk.

On balance, these studies find that people assigned to home confinement with electronic monitoring — either instead of prison or as a condition of release — have, at worst, similar outcomes to those who serve time in prison and, at best, significantly better outcomes, as measured by future criminality. Researchers also attribute substantial cost savings to home confinement.

For example, a study of more than 75,000 offenders placed on home confinement in Florida found electronic monitoring reduced technical violations and reoffending, and led the authors to conclude that “electronic monitoring of offenders in the community may prove an effective public safety alternative to prison.”<sup>23</sup> A more recent study reinforces that conclusion, finding that prison had no appreciable impact on recidivism relative to non-incarcerative sanctions among similar lower-level offenders.<sup>24</sup>

Researchers in Germany used a randomized controlled trial to estimate the effect on recidivism rates in Germany of early release from prison into home confinement with electronic monitoring. They found indistinguishable recidivism rates between people who were released from prison early to home confinement and those who were not, which implies that early release to home confinement can be accomplished without a threat to public safety.<sup>25</sup>

A study of home confinement with electronic monitoring in England and Wales found that individuals who were released from prison early into home confinement with electronic monitoring had a recidivism rate 4-7 percent lower than similarly situated offenders who remained in prison for their entire sentences.<sup>26</sup>

In Australia, a 2019 study on the use of electronic monitoring found that it reduces the rate of reoffending within 24 months of release from supervision by 28 percent, relative to the rate among

---

23. Kathy G. Padgett, et al., “Under Surveillance: An Empirical Test of the Effectiveness and Consequences of Electronic Monitoring,” *Criminology & Public Policy* vol. 5, no. 1 (February 2006): pp. 61-91.

24. Ojmarrh Mitchell, et al., “Examining Prison Effects on Recidivism: A Regression Discontinuity Approach,” *Justice Quarterly* vol. 34, no. 4 (August 2016): pp. 571-596.

25. Katharina Meuer and Gunda Woessner, “Does Electronic Monitoring As a Means of Release Preparation Reduce Subsequent Recidivism? A Randomized Controlled Trial in Germany,” *European Journal Of Criminology* vol. 17, no. 5 (September 2020): pp. 563-584.

26. Olivier Marie, “The Best Ones Come Out First! Early Release from Prison and Recidivism: A Regression Discontinuity Approach,” *working paper* (September 2009).

people sentenced to prison. The reduction in recidivism was sustained for five years, and the effects were strongest among people under age 30. The authors estimate that taxpayers save about \$30,000 for each person sentenced to electronic monitoring instead of prison.<sup>27</sup>

In France, where electronic monitoring was used as a substitute sanction for a short prison term, researchers found that people who served time on electronic monitoring had a 9-11 percent lower probability of recidivism in the five years after release than similar people who served time in prison.<sup>28</sup>

A 2013 study from Argentina found that electronic monitoring leads to significantly lower recidivism among people sentenced to home confinement compared to similarly situated offenders sentenced to prison. Additionally, the researchers found that placing an individual on electronic monitoring is associated with savings of over \$18,000.<sup>29</sup>

Researchers who studied the gradual implementation of an electronic monitoring program in Norway estimated the impact of the program on recidivism frequency and severity among those released, compared to the outcomes of people who completed their sentences in prison. The authors found the introduction of electronic monitoring reduced the two-year recidivism rate among people diverted from prison by 15 percent. It also reduced the frequency of offenses during the first year after release by 0.3 offenses on average.<sup>30</sup>

Finally, evidence overwhelmingly supports the idea that certainty of apprehension is the most important factor in criminal deterrence,<sup>31</sup> and electronic monitoring substantially increases the probability of capture for any given offense. Research has shown that offenders on monitoring are aware that authorities are tracking their location, and are aware that they are very likely to be caught should they commit a crime.<sup>32</sup> In fact, the effectiveness of electronic surveillance at tracking criminals' whereabouts is one of the reasons some progressive groups oppose its use.<sup>33</sup>

## Conclusion

From a cost-benefit perspective, it is always the case that some incarceration is justified, some incarceration isn't, and some as yet unrealized incarceration would be. Lawmakers should therefore seek policy changes that improve the crime control efficiency of any given prison population. Or, as Rafael Mangual of the Manhattan Institute put it, public policy should "do a better job of

---

27. Jenny Williams and Don Weatherburn, "Can Electronic Monitoring Reduce Reoffending?" *The Review of Economics and Statistics* vol. 104, no. 2 (March 2022): pp. 232-245.

28. Anaïs Henneguelle, et al., "Better At Home Than In Prison? The Effects of Electronic Monitoring on Recidivism in France," *The Journal of Law and Economics* vol. 59, no. 3 (August 2016): pp. 629-667.

29. Rafael Di Tella and Ernesto Schargrodsky, "Criminal Recidivism After Prison and Electronic Monitoring," *Journal of Political Economy* vol. 121, no. 1 (February 2013): pp. 28-73.

30. Synøve N. Andersen and Kjetil Telle, "Better Out Than In? The Effect on Recidivism of Replacing Incarceration with Electronic Monitoring in Norway," *European Journal of Criminology* vol. 19, no. 1 (January 2022): pp. 55-76.

31. Daniel S. Nagin, "Deterrence in the twenty-first century," *Crime and Justice* vol. 42, no. 1 (August 2013): pp. 199-263.

32. Brian K. Payne and Randy R. Gainey, "The Electronic Monitoring of Offenders Released from Jail or Prison: Safety, Control, and Comparisons to the Incarceration Experience," *The Prison Journal* vol. 84, no. 4 (December 2004): pp. 413-435.

33. See, e.g., ACLU, "Rethinking Electronic Monitoring: A Harm Reduction Guide" (2022).



identifying and releasing the unnecessarily incarcerated while apprehending and incarcerating the unjustifiably free.”<sup>34</sup>

One way to identify the unnecessarily incarcerated is to test alternatives to imprisonment and check to see if those alternatives generate levels of crime control comparable to prison. The targeted home confinement program developed under the CARES Act was one such test. The program reflected neither the indiscriminate releases demanded by radical activists, nor the similarly unserious position that incarceration inside prison is the only safe response to crime. Rather, it reflected the sensible belief that for certain offenders, what crime control benefits incarceration can achieve through total incapacitation, home confinement and electronic monitoring can achieve through a combination of specific deterrence and partial incapacitation.

The very low re-offense rate among more than 13,000 people transferred to home confinement under the CARES Act suggests imprisonment of that set of offenders provides no meaningful crime control benefit above what is provided by home confinement. In light of those promising results, Congress should establish a targeted home confinement program in line with the policy suggestions in this paper. Such a program would generate substantial public safety benefits, including savings that can be reallocated to law enforcement, better enforcement of community supervision rules, and improved management of federal corrections facilities.

---

34. Rafael A. Mangual, *Criminal (In)justice: What the push for decarceration and depolicing gets wrong and who it hurts most* (New York: Center Street, 2022), p. 53.