

The Study of Applying Electronic Monitoring as Alternative Measures to Imprisonment in Solving Prison Overcrowding Problem

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Submitted 13 June 2016; accepted in final form 31 July 2016

Abstract

This study aims to investigate the ways to drive electronic monitoring (EM) an intermediate punishment, which is the international practice applied with some types of offenders to alternate imprisonment. This is an additional alternative for the justice administration to solve prison overcrowding problem and benefits to the appropriate and constructive rehabilitation. Approximately 17 participants who were administrators of the Ministry of Justice and personnel from the government agencies involved and other 24 participants who were inmates and offenders were interviewed for using EM. This study recommends that applying EM as a model of intermediate punishments as being internationally practiced could optimize imprisonment sentenced on some types of offenders. Using EM should also help to solve prison overcrowding problem and reduces the government budget. It also allows offenders an opportunity of self-rehabilitation and returns to spend life happily with their families and societies.

Keywords: *intermediate punishment, electronic monitoring, prison overcrowding problem, justice administration*

1. Rationale

Crimes in the Thai societies at present are growing each year and mounting the number of inmates nationwide regarding prisoners and inmates awaiting prosecutions. The total number of inmates are more than 329,169 persons (Department of Corrections, 2015) as in Table 1. This leads to prison overcrowding problem and loads the government the mega amount of budget to supervise them including the related managerial cost in the justice administration. Also, most offenders are the working age groups but being jailed in the prison rather than having opportunities to return to societies and attend their careers.

Table 1 Statistics of the inmates nationwide

Year	Males	Females	Total
2010	137,580	22,513	160,093
2011	138,443	22,986	161,429
2012	142,687	24,577	167,264
2013	159,837	27,676	187,513
2014	188,838	31,482	220,320
*2015	281,465	47,704	329,169

Source: Inmates Statistics Nationwide of the Department of Corrections (2015)

The problem of prison overcrowding can be found in many countries, and the way to solve this issue by developed countries is enforcing the intermediate punishment against some offenses to alternate imprisonment. It optimizes the court in sentencing and leads to an appropriate rehabilitation. This is advantageous to the offenders themselves and societies as a whole. It also corresponds with the principles of human rights and the international obligations in the United Nations Standard Minimum Rules for Non-custodial Measures as known as the Tokyo Rules. It aims at non-custody in particular against the defendants awaiting interrogation, preliminary examination, and hearing. It is a relief in custody and detention. By the principle of law, it is afore assumed that all criminally alleged are still innocent until being proved guilty.

Also, the intermediate punishment helps reduce large amount of spending which the government has to pay for the managerial cost related to the justice administration. Significantly, it minimizes the opportunity to learn the criminal behaviors in prisons while promoting the reintegration.

Although the government agencies involved with justice administration have attempted to introduce models recently, methods and concepts of the intermediate punishment measures such as community service, custody of some offenders outside prisons and house arrest or restricted areas by technology control system or specific measures stipulated to introduce non-imprisonment constructively imposed on the offenders; but actions of not yet taken. This study needs to investigate the use of electronic monitoring (EM), which is another model of the intermediate punishments to monitor petty offenders or misdemeanor to alternate imprisonment under a condition or by the court's order. The objective is to investigate the ways to drive using EM in order to lead to constructive practice to solving the prison overcrowding problem.

2. Research Objectives

- 1) To investigate the scope of Thai laws and the international rules related to introducing the intermediate punishment imposed on some offense to alternate imprisonment,
- 2) To investigate the ways to drive using electronic monitoring (EM) a model of the intermediate punishment to monitor some offenses to alternate imprisonment, and
- 3) To recommend a conceptual framework and the policy to introduce the appropriate intermediate punishment imposed on offenders in Thailand in order to solve prison overcrowding problem.

2.1 Scope of the Study

This study is scoped tie investigate the Thai laws and the international rules related as follows:

- 1) Constitution of the Kingdom of Thailand B.E.2550 (2007)
- 2) The Criminal Code of Thailand
- 3) The Criminal Procedure Code of Thailand
- 4) Correction Act B.E.2479 (1936)
- 5) Acton Measures for the Suppression of Offenders in an Offence Relating to Narcotics B.E.2534 (1991)
- 6) The International Covenant on Civil and Political Rights 1966
- 7) The Universal Declaration of Human Rights

The scope of time: the researchers spent 12 months for data collection, documents, related research and in-depth interview with key informants in order to analyze and synthesize recommendations in using EM as a model of the intermediate punishment to monitor offenders in order to alternate imprisonment.

2.2 Research Questions

- 1) Is it appropriate to introduce intermediate punishment imposed on offenders to alternate imprisonment in the Thai societies or not and how?
- 2) What are the advantages of using EM to monitor offenders, the persons involved, the Thai societies and the justice administration?

2.3 Expected Benefits

- 1) To know the scope of Thai laws and the international rules related to introducing the intermediate punishment imposed on some offense to alternate imprisonment,
- 2) To know the ways to drive using EM a model of the intermediate punishment to monitor some offenses to alternate imprisonment, and
- 3) To gain recommendation to design a conceptual framework and the policy to introduce the appropriate intermediate punishment imposed on offenders in Thailand in order to solve prison overcrowding problem.

2.4 Methodology

The data collection in this research was through a qualitative study by exploring information, documents, related research and in-depth interview conducted with 41 key informants. The study was divided into two phases. The first phase was interviewing 17 key informants who were administrators of the Ministry of Justice and personnel from the government agencies involved. The second phase was interviewing 24 key informants who were inmates and offenders.

Department of Corrections approved this data collection conducted with inmates using EM because it was a method complied with the concept of intermediate punishment measure just recently having been experimented in Thailand. The data was analyzed and synthesized to find recommendations in introducing to use EM constructively to solve the prison overcrowding problem.

3. Results

3.1 The Measure of Intermediate Punishment

The method to solving offender in the justice administration in the past has been focused on imprisonment or detention in jails. However, studies revealed that such measures failed in their reasonable rehabilitation while creating prison overcrowding problem and learning criminal behaviors. This serious problem demands urgent solution in compliance with the international punishment standards model.

Imposing intermediate punishment with standards to alternate imprisonment is stipulated. It is then unlikely the punishment by the Criminal Code Section 18, which affects offenders in future. It may authorize the court to impose the measures of intermediate punishment such as community service, intensive supervision, house arrest, boot camp and EM.

Applying the intermediate punishment with each offender should be examined from the records of offense and background. Then, a proper model would be decided. It might need to enact a law to guide the court's decision. In the case of felony, the court may repeal the measure of intermediate punishment. For example, the authority has to report the recent enforcement of intermediate punishment to sentence imprisonment as the court is permissive.

3.2 The offense and Punishment Rate and Related Law Enforcement

a) Offenders subjected to intermediate punishment alternating imprisonment should not be listed in the offense and offense rate or examine just the first-time offenders, but the court has to examine many elements such as types of case, offense records and background and so on. It needs to probe facts to know the circumstances in offending before imposing the proper intermediate punishment on them. It is to deter imprisonment under the Criminal Code Section 18 authorizing the court to demand various intermediate punishments. For examples, they are community service, area limits and using EM for no longer than six months, prohibition to enter restricted areas no longer than six months, demanding to report oneself before the probation officer no longer than five years, demanding to attend addiction medication in the hospital and demanding to abide in the probation plans. Conditions and demands must be subject to the regulation of the Chief Justice approved by the grand assembly of the Supreme Court, and being announced in the Royal Gazette (Narong Jaihar et. al, 2014).

b) The issue of the law enforcement at present has been amended in the Criminal Procedure Code Amendment Act (No.25). B.E.2550. (2007) Section 89/2 coded treating offenders in various measures of imprisonments without prisons. EM is an optimized method for the court to the demand by the condition of Section 89/2(3).

However, the conditions in Section 89/2 might be examined in the case of the culprits have been imprisoned before for not less than one-third of the sentence or not less than ten years in the case of 30-year term imprisonment or life imprisonment. This is similar to the law of the Georgia State, USA and the British Law in using EM in various step of the justice administration. Meaning, it is during the pre-trial or the temporal discharge, or the primary Sentencing, and the post-prison.

c) A specific law should be enacted in enforcing the intermediate punishment. At present, there is none in Thailand to stipulate the measures of intermediate punishment. It might lead to the problems of different interpretation by various government agencies. It may be depended upon knowledge and understanding of individuals in various agencies of the justice administration. In the past, it has been found that such concept has been broadly reflected upon with the Criminal Code Section 56 and the Criminal Procedural Code Section 89. Therefore, enforcing laws in various agencies in the justice administration is independent, which should be integrated among agencies for appropriate punishment on the basis of laws and research.

3.3 Problems and Limitations Found with Using EM to the Offenders in Thailand

There were four critical problems and limitations, i.e.

a) System and Technology of Control Signal – EM has limitations on the signal in some areas, and it cannot be used nationwide but in some large provinces in each region with the network. Therefore, it needs improvement of its system and signal control while continuously developing efficient monitoring management by using the technological guides from developed countries such as USA, UK and Japan where EM innovation has been far ahead developed.

b) The link to a database of each agency in the justice administration is still problematic and constructively unsolved. In addition, there is no link with the external agencies, which blocks to apply the concept of imposing intermediate punishment.

c) The planning for the procurement budget of the government is late to the technological changes. Agencies should own innovations for working and optimize models to meet various changes to happen. This will benefit the efficiency in solving problems of justice administration, particularly the prison overcrowding problems.

d) The government was negligent to allocate budget for EM recently. It approved just a budget for EM experiment in associated with personnel allocation and insufficient offices. It needs to conduct comparative researches about the cost in the prosecution of offenders in the mainstream justice administration, and EM uses to analyze its annual budget cost losses.

3.4 The Public Sector Policy

The research revealed that the government still did not constructively impose intermediate punishment with offender group and the inmates, but EM has been used with some types of offender. However, there is still problematic with the policy particularly with the term ended of the contract with the EM Service Company and ongoing budget allocation for the following year, promptness of the personnel involved and signal-link with the equipment.

However, on November 6, 2015, the National Legislative Assembly has passed the amendments in the Criminal Procedure Code in the EM part and promulgated to enforce EM in the justice administration so that the alleged would be granted temporal discharge and not overcharge of the bail. The alleged and the defendants would have more temporal discharge and solve prison overcrowding problem. Previously, this law involved six Sections, but the Commission has added Section 7 and Section 8 on charges of EM expenses and the responsible person under Section 7.

Most members of the National Legislative Assembly discussed and observed that Section 7 legalizes for complete three years counted on the Act is enforced and demanding the Cabinet to estimate worthiness and costs of the government in using EM. If the Cabinet agreed to charge the expenses from the temporal discharged offenders, it is necessary to fix the expense rate, criteria, method, and condition in the Royal gazette. However, there must be an exemption for the unaffordable. In addition, some members are still worried about the government has to burden in paying EM for the first three years at 72 Baht /head/day. If there were 20,000 alleged, the budget would have been 552 Bath a year (Public Relation Department, 2015). Some members propose the government to promote and develop the innovation and its personnel in order to reduce the expenses with EM with either tenancy or maintenance or EM reliability or future procurement for domestic uses and exporting to the neighboring countries.

Also, the National Legislative Assembly drives to reform the country on law and justice administration. The Reform Council examines the approaches to use EM with the probation offender to reduce prison overcrowding problem and to provide opportunities for self-reform, which could return the good to societies (integration). It is to prevent crimes and recidivism through considering the probation data and strictly using EM in communities. It helps to pursue their movements such as distance restriction, area restrictions, and speed limit if driving. The over speed drive will be signalled to the custodian, and the probation offender will be warned. Most 3,344 were juveniles and offenders by Narcotics Addict Rehabilitation Act. It was found that the offenders and their families saw that using EM was appropriate and allowing offenders opportunities to prove themselves (The Parliament Broadcasting Radio and TV, 2015).

Department of Probation is directly empowered to install EM with the offenders during the probation period should be able to enforce laws seriously. In the case of the probation transgressors, there should be the specifically responsible personnel because at present the police officers are still responsible for it. Therefore, there must be the clear law to stipulate roles and duties to enhance work efficiency to achieve the aims of punishment. Significantly, the justice personnel, particularly the agencies, are directly responsible for such as Department of Juvenile Observation and Protection, Department of Probation and Department of Corrections. They are required to develop knowledge, understanding the concept of punishment and rehabilitation.

3.5 Impact of Enforcing Intermediate Punishment on Offenders

The results of the research conducted with inmates and the offender groups are evidently different. With interviewing, most inmates similarly informed that they were likely insomnia at first upon entering the jail, difficult to take meal and worried about spending life in the congested jails, worried about their families and so on. Interviewing inmates from the first to the fourth months similarly agreed with enforcing intermediate punishment with the Thai societies. Significant reasons were family concerns and needs of self-improvement, reforms, and fear of recidivism. This included spending life outside jail enabled them to attend their careers and earned income to support their families.

On the contrary, the results of interviewing offenders detained from the first to the fourth month were all offender changed for the better. Pursuance for four months and found that all probation offenders could adjust themselves and their mentality at growing better level because of reforming themselves into a better direction. It was corresponded with interviews conducted with the probation regulators in each area who control self-presence of the offenders. Their interviewed statements were in the same direction with the offenders that most offenders during probation were stressful at first when being installed with EM and insomnia. However, when the time passed, they could adjust and slept better, normally take meals and take care of their own health.

In addition, all offenders similarly informed that they agreed with the measure of intermediate punishment imposed on the Thai societies. The important reasons are they could have the opportunity to foster their families and spent life outside prisons. The researchers pursued offenders during their probation and found that data collections from every interview, all offenders still agreed with the idea. Therefore, applying the intermediate punishment by using EM with the offenders became a useful alternative to punishment for the offenders themselves and their families. Also, it was the rehabilitation for them while they could spend their life in communities and societies coupled with working to earn income to foster their families. It is more useful rather than detention.

3.6 The Concept of Applying Intermediate Punishment with Offenders in Thailand

The punishments of the past in Thailand were focused on bringing offenders to the justice administration and detention. It rapidly rose the statistics of inmates. At present, total inmates are more than 329,169 persons (Department of Corrections, 2015), which is over capacity standards of the prisons to meet. It leads to many problems such as learning criminal behaviors in various forms from other inmates and allow more opportunities to recidivism. Therefore, bringing offender for detention rather than preventing recidivism leads to learning criminal behaviors more. It also allows them to know more criminals in their criminal network. Significantly, the government has to lose more budgets in spending for

the supervision and taking action with inmates during their justice administration. The expense budget in the justice administration seems to be surging each year (Somkiat Tangkitvanich, et. al., 2011).

The intermediate punishment is an alternative measure to imprisonment in the Thai justice administration. In addition, it also supports the concept of community integration ideologies, which is accepted that the cause of offense might come from social circumstances. Therefore, social or people in societies should involve in their rehabilitation. The justice process is a social work process; it should be involved by people to solve the problems of their societies. The justice administration especially in rehabilitation for integration, it is necessary to build bonds between the offenders and their social members in the form of mutual generosity (Hinich, 1996). There is a need to enhance efficiency and conditions but primarily, it needs measures of fairness for societies particularly societies must not sense endangered. For example, In the UK, there is an agency of probation, which is responsible for monitoring recidivism. It emphasizes community involvement to build peace according to the community justice. This comes from decentralization of budget to communities and local organizations to help while the government designs standards and monitors the action taken. The Thai communities are more advantageous to the family members, and communities are better tied, compassionate and generous than the western context.

Hence, it needs priority constructively to adopt the concept of intermediate punishment measures so that Thailand own the practices in compliance with the principle of human rights and the international covenant: the United Nations Standard Minimum Rules for Non-custodial Measures: The Tokyo Rules.

3.7 Advantageous and Disadvantageous of Using EM

3.7.1 Advantageous of using EM

Many countries are using EM in several ways to watch offenders through the EM. The followings are common ways that the EM has been used as:

- a) An alternative to pre-trial detention
- b) An obligation attached to a community sanction
- c) A penalty for breaching other conditions
- d) An alternative to custody (execution modality)
- e) An obligation for temporary release
- f) A condition for pre-release
- g) An obligation after release (Nellis & Rosell, 2011)

More than 30 countries use EM as surveillance control in these several ways to solve the problem of prison overcrowding problem and using EM is advantageous to the offenders themselves because this measure would not affect them in future. It also corresponds with the principles of human rights and the international obligations in the United Nations Standard Minimum Rules for Non-custodial Measures as known as the Tokyo Rules. Also, EM provides increased public safety by utilizing the EM technologies and other supervision strategies. There are many reports show that EM can improve the chances of a successful rehabilitation for offenders by allowing them to remain at home.

Moreover, EM can reduce a significant amount of spending which the government has to pay for the managerial cost related to the justice administration.

3.7.2 Disadvantageous of using EM

The methods and concepts of the intermediate punishment measures such as EM to introduce non-imprisonment constructively imposed on the offenders have not yet taken. The main problems with using EM is the cost to the government and also to the limitations on the EM signal in some areas of Thailand, the link of a database of each agency in the Thai justice administration is still problematic and constructively unsolved. Also, there is no connection with the external agencies, which blocks to apply the concept of using EM.

4. Conclusion

This study aims to investigate the ways to drive EM an intermediate punishment, which is the international practice applied with some types of offenders to alternate imprisonment. This is an additional alternative for the justice administration to solve prison overcrowding problem and benefits to the appropriate and constructive rehabilitation. The researchers conclude and discuss as below.

a) Applying an intermediate punishment is a non-custodial measure according to the Criminal Code of Thailand Section 18. It allows the opportunity for the court to decide in ordering to use more various punishment measures, such as imposing EM with each offender. Practically, it needs to probe facts to know the circumstances of offense such as types of the case, offense records and background of the offenders before appropriately imposing the intermediate punishment with individual offenders. It might need enacting in the law by stipulating guides to consider the case of seriously violating the conditions, and the court might have to withdraw the intermediate punishment. In addition, the family institution and the Thai societies should play more roles in applying this concept for the benefits of the rehabilitation and for preventing recidivism.

b) At present, Thailand does not have any specific enactments of intermediate punishment. It diverts legal interpretation among various agencies in the deliberation of the justice administration. Therefore, the working model should be changed into integration between agencies for proper punishments.

c) The government does not feel the importance of allocating budget for constructively applying the intermediate punishment among the offenders and inmates. However, there is the experimented application of EM imposed with some types of offender only.

d) Informing personnel in the justice administration is necessary in order to have knowledge, understanding the concept of intermediate punishment, attitude shift on intermediate punishment, rehabilitation especially the directly responsible agencies such as Department of Juvenile Observation and Protection, Department of Probation and Department of Corrections and so on.

e) Constructively applying EM with offenders is then a proper alternative to solve the prison overcrowding problem and useful to the efficient rehabilitation. It brings advantages to the offenders themselves and societies as a whole. It also prevents crimes and recidivism while reducing the opportunity to learn criminal behaviors. It allows the opportunity for the offender rehabilitated while enabling them to spend their life within their communities coupled with attending their career to foster their families which is also matched with the international standards.

5. Recommendations from the Study

a) The Ministry of Justice should be the main host in speeding such concept for the constructive result for all agencies in the justice administration to accept and support the integration for better cooperation.

b) Criteria in selecting offenders should be stipulated for the use of EM. They should be evaluated that they will not flee and not commit recidivism or be able to live with the community and so on. By reason, using EM is under the responsibility of the government on expenses. In addition, there should be a program to use EM appropriately with the nature of each offender.

c) In the case of the offenders detained with using EM but violating the conditions, there should be measures for immediate response for its probation efficiency while recording all the reasons of every violation of the conditions. The government should allocate specific agency and sufficient personnel for supervision.

d) The public sector and the agencies involved should impose social sanction coupled with suing EM in rehabilitation to create consciousness and become good persons while enabling them to spend life with other people in the communities and societies.

e) Various agencies in the justice administration and other agencies involved should exchange information, problems, and limitations in using EM to develop the efficient pursuance of rehabilitation, to prevent recidivism and to be the database to develop the integration of their works.

f) Innovations to develop EM of foreign countries should be studied in order to improve the Thai EM for better efficiency.

g) Comparative studies should be conducted between expenses spent on the lawsuit with offenders in the mainstream justice administration and the uses of EM to analyze the expenses in the budget.

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