

The grey area of electronic monitoring in the USA

James Kilgore offers his personal insight into the political and economic forces driving expansion

My interest in doing research on electronic monitoring started with a phone call. At 2 o'clock one morning in early 2010 my then 96-year-old mother phoned to say she was having chest pains, thought it was a heart attack and had already called emergency services. The ambulance was on the way. The hospital where she would end up was a ten minute drive from my house. My natural reaction was to hop in the car and meet her there. Instead, I dialed the toll free number the Department of Corrections had provided me. I was on electronic monitoring with house arrest. I needed permission for a 'move'.

After a considerable delay, the call centre operator finally answered. I explained my situation. She said I couldn't leave without getting the okay from my agent. She said she would contact him. I knew that wouldn't help. No parole agent responds to a phone call or a text message at 2 a.m. unless it involves dead bodies or truckloads of cocaine. I had to make a difficult choice – go to the hospital anyway and take my chances or wait until six a.m. when I was allowed to officially go outside. I chose the latter option, hoping that my mother wouldn't pass away before I got there. The story has a happy ending. It wasn't a heart attack, my mother was fine at 6:15 a.m. when I arrived and she went home the next day.

After I left the hospital, I phoned my parole agent and asked him if in the future I could go to my mother's side in such instances without permission. He said it was a 'grey

area.' I had made the right decision. I also began to ask some bigger questions about my ankle bracelet. If it was supposed to facilitate my re-integration with my family, how could visiting my mother in the hospital during an emergency become a grey area? I had to find out and do something about it.

Since that time I have spent many hours poring over electronic monitoring (EM) legislation, reading contracts for putting people on devices, downloading articles about ankle bracelets in Bermuda, Uganda and South Korea. I have also been interviewing people who have been on ankle bracelets. While much remains a 'grey area', there are some distinctive features about electronic monitoring in the USA.

The media image

Electronic monitoring has several media profiles. For many, EM is about high living entertainers who wear ankle bracelets in lieu of incarceration. Martha Stewart, Lindsay Lohan, Paris Hilton and Charlie Sheen have all been on a monitor. Then we have the notorious – the small number among the some 100,000 to 200,000 people on EM each day (exact numbers are not public) who cut off the bracelet and commit a crime which hits the headlines. Likely the most well-known of these (in the USA) is Ethan Ebel, who was mistakenly released

from prison and put on EM. Several weeks later he removed his device, went to the house of Tom Clements, the Director of Corrections for the state of Colorado, and shot him dead. Ebel subsequently died in a police shootout.

A second media connection with monitors is sex offences. At least 11 states have laws that mandate lifetime GPS for certain categories of sex offences. These laws are typically complemented by exclusion zones which can be programmed into an EM device. Exclusion zones usually mean a person cannot live, work or spend extended time within a certain distance of places children frequent – parks, schools, community centers, malls. In Florida these restrictions have become so severe that a church ministry decided to create a place for such people to live away from urban areas. Minister Dick Witherow paved the way by creating a rural 'Miracle Village' with no children where the majority of the residents have sex offences.

The dominant reality

The dominant reality of EM differs greatly from media images. Considering the USA has 2.3 million people incarcerated and about 4.8 million under probation or parole, EM still remains at the margins of criminal justice policy. Nonetheless, the net has widened appreciably since the first implementation of monitors in the early 1980s. The most well-documented statistical records of people on monitoring refer to those on GPS as a condition of parole. According to the Bureau of Justice 2010 report, 18,429 people were on parole with GPS; 10,307 of those had sex offences.

Other usages are difficult to quantify. Likely the most frequent application of monitors comes as a condition of pre-trial release – a substitute for or complement of

bail. Cook County in Illinois claims to have put 250,000 people on monitors in this way. Monitoring also commonly serves as a sentence for

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driving under the influence convictions. Often such cases add a SCRAM device – an ankle bracelet unit that measures blood alcohol in a person's perspiration and alerts authorities if the levels are too high.

Other 'markets' are gradually emerging. Electronic monitoring providers have applied monitors to numerous juveniles as well as to people with domestic violence convictions where it is used to keep perpetrators away from past victims. In addition, the nation's largest EM firm, BI Incorporated, has secured a \$372 million federal government contract to intensively supervise immigrants awaiting decisions in deportation or asylum cases. BI, which is a subsidiary of private prison giant The GEO Group, has included monitoring in this supervision which is largely directed at Latinos.

Lack of regulation

While BI has about a third of the USA monitoring market, many small firms with local contracts remain the norm. This decentralisation complements a highly unregulated environment. There is no central data base of those on monitoring. In a highly racialised criminal justice system, no serious study has examined the racial aspect of EM implementation. Even the legalities surrounding EM remain a grey area. Legal scholar Erin Murphy has pointed out that though the typical EM default position of house arrest amounts to deprivation of liberty by electronic means, few legal or policy guidelines frame monitoring. State level legislation typically enables the use of the technology and perhaps adds punitive measures such as lifetime GPS provisions or felony charges for those who tamper with or remove the device. The notion of rights or entitlements of the monitored has not surfaced. As one person on monitoring told me in an interview, 'I had more rights when I was in prison.'

Perhaps he was correct. In most states, a prisoner has entitlements – minimum hours of recreation per week, a certain number of calories of food per day, access to legal materials, and specified clothing allocations. If the institution violates any of these entitlements, an individual has avenues of appeal.

With monitoring none of these conditions normally exist. The vast majority of people I have spoken to received no documentation which spelled out their rights, entitlements or avenues of appeal while on EM. In the words of Richard Stapleton, former Administrator for Legal Affairs for the Michigan Department of Corrections and a major EM policy developer, they are 'at the whim of their (parole) agent.' Moreover, most agents have the power to impose a 'lockdown' – an

order to stay in the house 24 hours a day until released. Typically there are no guidelines for what constitutes an offence which merits a lockdown, let alone details about EM violations that would warrant a return to prison.

Hence, the reality for most people on monitoring is a tightly controlled existence where getting time out for basic tasks like shopping, laundry or visiting a grandchild may require complex negotiations with overworked and often unsympathetic agents. The grey areas remain. Such restrictions prompted Shawn Harris, who spent a year on monitoring in Michigan to say about his time on EM 'it's like you just turned my family's house into another cell.'

The future of EM

A number of possibilities emerge for EM's future. The first is pure and simple net-widening. For the companies involved in EM service provision, a number of future markets are possible. These involve imposing more controls on vulnerable populations – people receiving public assistance, those with histories of mental illness or violence, or immigrants. Already we have seen escalation of controls imposed on some of these cohorts, such as the Florida requirement for those receiving public assistance to submit to urine drug testing. Ankle bracelets might gain some traction as a policy add-on. This extension could come with increasing user fees as well. At present most people pay \$5 to \$15 a day to be on the monitor.

But EM may not survive so easily. The technology has to withstand the storm of bad publicity that has accompanied cases like Ebel's. In addition, instances of technical failure of the devices, including an 11 hour breakdown of all BI's devices in 2010 and a massive absconding by hundreds of people on bracelets in

California in 2012, have cast suspicion on the viability of EM. Despite growing disenchantment with the costs of mass incarceration, those who want to cling to the dogma

of 'lock 'em up and throw away the key' could still possibly succeed in reducing the demand for monitors with an argument that incarceration remains the only realistic punishment option.

Finally there is the question of criminal justice paradigm. Will EM and other technologies continue to perpetuate a paradigm based on punishment or will the ethos shift to incorporate notions like the rights of the monitored and clear cut guidelines for implementation? These concerns become particularly important in light of the revelations of the National Security Agency (NSA) surveillance systems on electronic media. At present, GPS technology does real time tracking on people sentenced to EM but the capacity to analyse that data in terms of patterns and possibilities has not yet become part of criminal justice regimes. Surely the possibility also exists (or will very soon) to combine location tracking, meta data analysis and even measurements of blood chemical levels which are associated with 'criminal behaviour'. With the unregulated nature of electronic monitoring, as well as the lack of regulation of surveillance in general, such prospects are not heartening. In the meantime, I will campaign for the rights of the monitored. It's a small but important first step away from both mass incarceration and Edward Snowden's worst nightmares. ■

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