

The Integration of Probation and Electronic Monitoring – a Continuing Challenge

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Introduction

It is something of a paradox that the advent and developmental trajectory of both evidence-based practice and of electronic monitoring (EM) in and from the 1980s were more or less coterminous – for the simple reason that the use and expansion of EM has often been far from evidence-led, in the fully developed sense of that term. There has not been an absence of research per se – or even an absence of some positive evidence for its use – but alongside that there has always been recognition (among criminologically sophisticated observers at least) that “political factors” have invariably played a key part – probably a greater part - in the introduction of EM to national criminal justice systems, in both the US and Europe.

In general terms the political factors can be glossed as “modernisation”, although a variety of strategies and emphases are contained within that term. Some national politicians have been attracted to EM because, as new technology, it seemed to provide a way of modernising traditional forms of social work practice with offenders. Sometimes modernisation has seemingly been pursued for its own sake, as an end in itself – a way of aligning demonstrably old organisations with a notionally modern (late twentieth/early twenty first century) ethos, although what that veiled was often the transition from social democratic to neoliberal forms of governance, and away from a primarily welfare orientation towards a primarily punitive one. At other times modernisation-talk by politicians was rationalised by the more specific claim that state-based welfare professions (including probation) needed improved management, to be made more (cost)-effective, efficient and economic. This too might be said to have reflected neo-liberal imperatives but there was within that discourse a genuinely practical debate going on among professionals, relatively unconstrained by overtly ideological factors, focused on best practice in offender supervision in the changed social circumstances of the twenty-first century. This recognised the contestability of purposes, the moral and practical importance of proven effectiveness – it is unethical for professionals (or government) to use interventions on any social group without knowing in advance what their probable impact is likely to be - and the constraints of cost. The answers we give to “what works” in respect of EM or any other intervention cannot be severed completely from the ideological context in which the question is posed, but we can never avoid asking it. And similarly, the answers we give will never satisfy everyone while the purposes of EM are uncertain and contested, as – quite possibly - they always will be in pluralist societies.

The Question of EM’s Purpose and Nature

Mark Renzema, a long-term contributor to CEP electronic monitoring conferences, has repeatedly pointed out the generally poor state of reliable knowledge in the US about the impact of EM on recidivism. Given the duration and extent of its use, he felt that more and better - methodologically sound - evaluations of its impact on recidivism (which would necessarily take account of its use as either a stand-alone measure or as an element in a multi-modal programme) could and should have been undertaken (Renzema and Mayo-Wilson 2005). He does believe that empirically EM has not had its worth proven by research but he has not however drawn the conclusion that EM is therefore a worthless intervention, rather that in too many US supervision programmes its purpose and use has been insufficiently

thought out for a meaningful assessment of its impact and value to be undertaken. The use of EM either as a stand-alone measure or as an element in a multi-modal programme has not been targeted – rather it has been used indiscriminately, as a “catch-all” punishment – as a restriction of (or constraint on) liberty – which has not been tailored to disrupt or even change (as far as EM ever could) offending patterns, or coherently-related to other interventions in use alongside it.

In itself, EM technology must be understood as nothing more or less than a form of remote surveillant control, a means of flexibly regulating the spatial and temporal schedules of an offender’s life. As a form of remote continuous monitoring it can exert more control over the daily expanse of an offender’s life than intermittent contact with a probation officer although crucially, as with probation itself, it requires the assent and cooperation of the offender to make it work. If he does not assent, EM does not effect control – it is not incapacitative, and in that sense it is not intrinsically superior to probation or any other community sanction, which also require assent and cooperation of they are to be viable and effective. Some might think that even “control” is too strong a word to describe what EM does, given that its strictures can simply be ignored – perhaps “monitoring” itself is sufficient? But the purpose of monitoring is to make the offender think, to create, if not exactly a sense of “being watched” (EM is not visual surveillance) at least a sense that his whereabouts (or his absences) are known to authority – and the purpose of that is to alter his behaviour, on pain of worse consequences if he does not comply. So EM is control.

It is nonetheless a different way of exerting control than many traditional western probation services were used to, and it is not difficult to see why some politicians, pressured to do better on upholding law and order, might have seen EM as an alternative and better way of regulating offenders in the community than probation itself. Insofar as commercial organisations – security companies and technology manufacturers – showed willing from the start to be service providers, the threat of using EM to replace (rather than augment) probation was never empty, even though such a move, even twenty years ago, would have flown in the face of all that was known about offender rehabilitation and crime reduction.

The practical challenge for probation services was always this - could they make use of the forms of control which EM entailed in the context of the philosophy to which they were already committed – rehabilitation and desistance, and particularly to reducing the unnecessary use of custody? Some probation services were reluctant to answer in the affirmative simple because there was ample evidence from the past that making community supervision more controlling did not necessarily, of itself, make the reduction of prison use more likely or feasible (especially if sentencing restrictions could not be placed on imprisonment). The acceptance of EM was usually made easier for probation when it acknowledged that it had a role in creating community safety that was to a degree separate from rehabilitation, but involvement in “public protection” is something which some probation services have been reluctant to accept as a primary, defining purpose (as opposed to a by-product of effective rehabilitation). So, even the practical challenge had a political dimension – would accommodating EM actually aid rehabilitative purposes and reduce the use of prison, or would it jeopardise and undermine the very purpose and nature of probation? It was a fair question – but whatever the answer in the abstract, the risk of not at least trying to accommodate EM within probation was that it would indeed develop separately, in the hands of commercial organisations. Some East European countries – who have only recently established probation services, and have been unencumbered with the social work traditions of the older services in the west - have had less difficulty integrating EM into probation than western countries - although what exactly “integration” means is moot.

Logically, rationally, the accommodation of EM within probation practice – within a broader commitment to rehabilitation and deterrence – should rely on “evidence”, and notwithstanding Renzema’s strictures on the state of research, what can be said about that?

The Nature of Evidence-Based Practice

Evidence-based practice is a more complicated concept than it at first seems. It is usually shorthand for “evidence-based *best* practice”, as defined by particular

political/professional groups. There may not be a consensus about what it entails. It is any case impossible to define it without being clear about the overall purposes of the criminal justice system, and the purposes of different agencies within it. Once the purposes (stated as aims, objectives and goals) are clear – and this is no easy matter, because purposes often remain contested even when one or more of them become politically and professionally dominant – plausible means of achieving them can be identified, and (if sound evaluative research is undertaken) evidence can be gathered as to which means do achieve them, and which means don't. In reality it is not so simple, not so rational. Some political/professional groups have more power to define policy goals, plausible means and best practice than others – to choose, pursue and evaluate some approaches and to discount others.

Writing in a US context, DeMichele and Payne (2010) outline the eight dimensions of the integrated evidence-based practice model developed by the National Institute of Corrections (NIC) and the Crime and Justice Institute (CJI). The model is premised on the idea that “improving public safety” is the purpose/goal of criminal justice agencies. Punishment and rehabilitative strategies can be pursued within this, but they are subordinate contributors to the larger, over-riding purpose of public protection. DeMichele and Payne claim that there is sufficient evidence to say that this combination of elements, will over time, other things being equal, produce best practice among those involved in the supervision of offenders in the community.

1. Perform Actuarial Risk Assessment – allocation of resources then follows designated risk level.
2. Enhance Offender's Intrinsic Motivation – stimulate and shape offenders desire to change positively, to become law-abiding.
3. Target Interventions on Individuals
 - a) ascertain risk level – low, medium or high, with resources following risk
 - b) identify and meet criminogenic need – mental health, substance abuse etc
 - c) responsivity – match interventions to offender learning styles
 - d) dosage – the quantity and intensity of interventions
 - e) treatment – change offender's attitudes and thought processes
4. Provide (Skill)Training for Staff eg in psychosocial development, social learning theory, motivational interviewing – and skills deriveable from these
5. Apply Positive Reinforcement – give more positive responses than negative responses (4 positive to every one 1 negative is the ideal)
6. Engage Ongoing Support in Natural Communities
7. Evaluate Relevant Processes and Practices
8. Feed Evaluation Results back into Organisation and Practice

If one analyses EM in the light of this model, it immediately becomes apparent how little can be said with certainty about it - that is, how little firm evidence we have and how little practical consensus there is as to what “best practice” in EM actually is or could be. Nevertheless, we are not so bereft of knowledge that nothing useful can be said, although such uncertainties as there still are about its use remain a mix of both empirical and normative considerations – how can this technology be used effectively *and* what is the (morally) right way to use this technology? Both these questions are made more complex when it is recognised that there are five types of EM, not one single technology – voice verification, rf EM used for house arrest, GPS tracking, remote alcohol monitoring and inmate tracking systems (using rf technology). The use of EM for victim protection arguable creates a sixth type, also with its own moral and empirical dilemmas (Erez, Ibarra and Lurie 2004).

For brevity's sake, and somewhat randomly, taking just three points from the above list - risk, motivation and dosage – the following constructive things might be said.

Judging Risk. Most offenders subject to EM will have been subject to a risk assessment, but describing how EM technology contributes to risk management is more problematic (not least because risk assessment itself remains problematic). There is a general consensus that

voice verification (and the US's biometric kiosk based reporting which is not available in Europe) is preferable for lower risk offenders, and GPS tracking for the highest risk (outside of prison). There has however been a tendency (perhaps more in the US than Europe) to impute risk to whole categories of offender – eg all sex offenders against children – rather than individualising it. EM-curfew using rf technology are sufficiently versatile to be used with a range of risk levels, depending on the number of hours of confinement imposed, which can be varied, and the duration of the order, which may last from a few weeks to several years. The use of EM-curfew on low-risk offenders happened quite early on in England and was initially characterised as net-widening – an inappropriate move down tariff – but it is clear that some sentencers can only see short periods of home-based confinement as a low tariff penalty, perhaps as an alternative to a fine. In the English GPS pilots there was some police and probation anxiety about whether GPS actually did add a sufficiently new element of public protection to warrant its use with high risk sex offenders, and conversely, some doubt about the use of it with *merely* persistent and prolific offenders, or with juvenile offenders, which, to some, seemed disproportionate (Shute 2007).

Enhancing Intrinsic Motivation. There has never been any reason to believe that EM technology could change offender's attitudes in the long term, and in that sense it was not directly rehabilitative. However, Anthea Hucklesby's (2008, 2009) research has shown that the imposition of an EM-curfew can create a "moment" in an offender's life when they reflect on their behaviour and ponder the likely consequences of further involvement in criminality. In essence, this amounts to affecting "intrinsic motivation". This can happen independently of any input from probation services, (and indeed may be a brief and momentary consequence of any community penalty) and in that sense, in a haphazard way, by galvanising an offender's motivation to go straight, EM may contribute to desistance. The motivation is probably only sustainable in propitious circumstances and we can tentatively accept that some offenders will desist in the longer term as a result of this intervention alone – but it would just as easily be argued that Hucklesby's evidence actually helps to make the case for probation/ social work involvement with those on EM, so that the "window of opportunity" created by the constraint of the curfew can be capitalised on, and the offender supported in his otherwise momentary motivation to change. By building on the initial impact of EM, probation officers could indeed "enhance" intrinsic motivation.

Dosage. How intensive and extensive should the imposition of EM be? How many hours per day can one legitimately and constructively be required to remain in one's own home, or, in the case of GPS, how constantly can or should one's movements be tracked? Always and everywhere in a 24 hour period, or only in relation to designated exclusion zones? For how many weeks, months or years is the imposition of any kind of EM viable? Answering questions about dosage still depends in part on what one conceives the purpose of EM to be. If EM is to be regarded as an aid to rehabilitation and desistance - as the current European Rules on Community Sanctions and Measures require, the level of control one seeks to impose cannot be total – some room must be left for the offender to show, progressively, that s/he is trustworthy and responsible. Imposing EM house arrest for a 24 hour – or even 23 hour - period seems counterproductive in this respect. Quite apart from the deleterious effect this is likely to have on fellow members of the household (if there are such) – on whom the totally curfewed person must become dependent - this simply uses EM to mimic imprisonment, to create cheap "jailspace". The question of how long EM can be imposed for and still have a positive effect on an offender's behaviour remains unsettled. Over and above how intrinsically bearable EM is, it may depend on the type of offender, the quality of the home circumstances and the perceived alternative sentence, and is not wholly separate from the issue of curfew hours – the more flexible the daily regime the more sustainable living on EM might be in the longer term. Some paroled offenders have lasted on EM for several years. In the main, in terms of creating a sense of initial constraint on which rehabilitative workers can capitalise, it seems preferable to think in terms of using EM for months rather than years. The

US legislation (7 states in 2008) which aims to subject released sex offenders to lifetime GPS tracking is deeply problematic, and may in fact be impractical.

A Selective Review of Literature on EM's Effectiveness

The following section summarises three pieces of recent research generally regarded as sound and/or influential. They are not the only pieces of sound and influential research to have been published recently – Anthea Hucklesby's (2008, 2009) research on EM, compliance and desistance, which has already been presented at a CEP conference, has yielded many useful insights into practice, on which many countries could build - but they each contribute something new to how we understand the impact of EM, from different methodological standpoints, and should be widely debated.

Padgett, Bales and Blomberg (2006) undertook a statistical evaluation of 75,000 offenders who had been under community control in Florida and found that whether rf or GPS technology was used offenders had lower than predicted rates of offending (as signalled by reconviction), lower rates of revocation for technical violations and lower absconding rates over the duration of the order. This proof of a “crime suppression” effect while on EM (if not necessarily afterwards) has been much cited in support of EM by community safety advocates, and even by influential liberals concerned to reduce the use of imprisonment (Pew Centre on the States 2009). DeMichelle and Payne (2010) say that “this is the only evaluation of electronic monitoring technologies in a community corrections setting to uncover such optimistic findings”. One key weakness of the evaluation is that while some (unspecified number) of the offenders under EM-community control had probation and parole input as well as EM, this is factored out of the analysis – all the credit for crime suppression is given to EM. As DeMichelle and Payne (2010) note, “there may be “other programme components at work”. It is not possible within the sample to distinguish between offenders on rf and GPS even though these represent significantly different modalities of monitoring, and while that may not matter in a preliminary analysis of this kind it still begs questions about which modality is best for which offenders at different risk levels. The researchers tentatively claim that because EM apparently has a crime suppression effect over relatively short-periods of community control, extending the period of time over which offenders are subject to EM would – logically – extend the crime suppression effect. They even consider that lifetime tracking of released sex offenders, as permitted by Florida (and at least 7 US states now) may therefore be defensible in these terms. This all begs the question of whether EM – maybe one modality more than another – becomes more onerous over time and that in the longer run compliance becomes more difficult, and crime suppression diminishes. It also begs the question of whether, to secure a longer term crime reduction effect, rehabilitative approaches, used alongside the short-term constraint of EM, might not be a more rational intervention. This was the message from Bonta, Wallace-Capretta and Rooney's (2000a) small scale Canadian study: offenders on EM-house arrest (contrasted with a control group who were not on EM) were more likely to complete a treatment programme, and those who completed it were less likely to re-offend. That was always an ideal result for those who wished to understand how EM technology could serve existing rehabilitative interests, but it has not been widely replicated.

Summarising their thoughts on Padgett, Bales and Blomberg's research, which they regard as “the most robust evaluation of electronic monitoring effectiveness”, DeMichele and Payne (2010) make a point which is applicable to all small, localised pieces of EM research. Rightly and wisely they say “it is important to remember that community supervision is a human intensive process, and just because offenders in one place do well when they are monitored with electronic monitoring devices does not mean this will translate to another jurisdiction”. Logically – because a small difference in programme approach can have a big difference in impact - this observation would seem to hold good across jurisdictions in the US, as well as across different European jurisdictions. Unless one invests EM technology – the simple technical fact of tagging and remote monitoring – with some sort of essential nature that has a consistent consequence regardless of programme complexity, offender type

or social context this is hardly a contentious claim. The way EM is experienced by offenders, and the kind of impact it has on their behaviour is determined by the social uses to which it is put and the legal way in which it is framed, not simply by the technology alone.

Marklund and Holberg (2009) studied reconviction over a three year period of the first 260 prisoners (serving over two years) to go through a structured early release programme in Sweden that included EM, compared them to a control group that did not have this programme, and found positive results, in that the subject group were reconvicted much less (26%) than the control group (38%). The best results were with those over the age of 37, who were deemed to be of intermediate risk. Prisoners were to have few prior convictions and to be at low risk of drug and alcohol abuse upon release (and prohibited from using such substances for the duration of the order – a maximum of four months. They were required to have an address, to be in work or study for at least four hours per day and to remain at home for the rest of the time, unless involved in treatment activities organised by the probation service.

Although Marklund and Holmberg modestly concede some limitations, this is one of the best designed studies of EM, and was specifically intended to overcome the shortcomings of earlier. They still admit however that they cannot disentangle the specific effects of EM from any other element of the programme and doubt if a randomised trial to test this would ever be permitted in Sweden. The question of whether an otherwise comparable early release programme but without EM-controlled home confinement would have the same or similar effects is moot, however, because early release was only deemed politically acceptable because EM was available.

The programme was an undeniably onerous one, with a lot of time spent at home, but given that the immediate period after release from prison is known (in most jurisdictions) to high risk for reoffending, it seems to have been well targeted in this instance, and reaped good results over a three year follow up period. Other countries could do worse than to emulate it, and evaluate it with the same rigour shown here.

Killias et al (2010) recently published a methodologically sound reconviction study which compared reconviction for two comparable groups of offenders in one Swiss canton who were randomly allocated to EM-curfews (n=115) and community service (n=117) programmes (both with additional probation input) and followed up over three years. The core finding is summed up as follows:

Overall, subjects randomly allocated to electronic monitoring fared consistently and, in some instances marginally significantly better than those assigned to community service with respect to reconvictions and several measures of social integration. The results were more positive for electronic monitoring if only subjects who ended [completed] the sanction were included (Killias et al 2010:1166).

Even though the differences between the two groups were not in fact that great, the researchers still speculate on what might account for them, toying with the possibility that, as Hucklesby (2008) and Martin et al (2009) had suggested, curfews expose offenders to the beneficial influence of partners and family members and reduce their contact with other offenders. (Killias's study did not discover that EM heightened domestic tensions). Community service, they suggest, undertaken in groups of offenders, may have more of a contamination effect than EM. They considered the possibility of a Hawthorne Effect because at the point of random allocation qualitative research with the offenders showed a marked preference for EM over community service, raising the question that those lucky enough to actually get what they wanted performed more favourably upon it. They discounted this possibility because, despite initially different preferences, both groups experienced their sanction as equally onerous. In combination with Hucklesby's research, Killias et al (2010)

do raise important issues about ways of preventing recidivism, but insofar as they took a Swiss EM programme merely as they found it, Renzema's question - was the combination and integration of programme elements as well designed and targeted as it could have been? - remains unanswered. It may have been - but we can't be certain, and in their present form Killias et al's findings and speculations don't necessarily help to identify or devise a better or ideal programme. In England and Wales for example, it has recently been found that a selective, focused use of an EM-curfew the night before an offender is due to undertake a session of community service ("unpaid work" as it is now known) increases the likelihood of him/her turning up for the session (personal communication, Barry Snelgrove, Ministry of Justice). A programme which combines EM and community service may have advantages - normative or empirical or both - over a programme in which they are presented to courts as separate options. We do not know for certain - only evaluations of different modalities of EM, used alone and in various combinations with other measures, on different types of offenders over different periods of time, in different places would tell us that.

Integrating Probation and EM

The question of what it means to integrate EM with probation - meaning probation services and probation practice - is an interesting one. There seems to have been an assumption by the Schwitzgebel (1963, 1964) brothers, who are generally credited with originating the concept of EM in the US in the 1960s that it would simply be a new tool in the box of interventions used by correctional professionals, and their later writing confirms this (Gable and Gable 2007). It is less clear how Judge Jack Love, the sentencer who pioneered the practical use of EM in 1982, felt about this, but he seems to have entertained the idea of using it as a stand alone control, separate from probation supervision. Nonetheless, from its inception to the present time there has always been extensive discussion among US probation officers about its potential for their work, which has ranged in tone from the sceptical to the enthusiastic, without ever being conceptually clear or consistent (see, for example, the special issue of *Federal Probation* on the uses of GPS location monitoring, September 2010). Some of the same lack of clarity has existed in European debates on EM, and although there are a range of "integrative models", any one of which may function effectively at local level there is no definitive understanding of what "integration" means or could mean.

When EM was introduced as a pilot in England and Wales in 1989 it was used as a stick to beat the probation service with, for being too concerned with the welfare of the offender and insufficiently punitive. The probation service at the time would not have wanted to import this ostensibly "American technology" into its repertoire of interventions, but the fact that service delivery was given to private contractors, and that EM was legislated for as a stand-alone measure guaranteed that there was always a sense in England and Wales of EM policy and practice, and probation policy and practice, developing on "parallel tracks" and it is only relatively recently that the Ministry of Justice has actively looked into ways of better integrating EM with offender management (Nellis 2010). By way of contrast, Sweden, the first European country to have a national EM scheme, incorporated it from the outset within the probation Service, and never conceived of it, legislatively or operationally, as a stand alone measure that would be used on offenders independently of probation supervision. EM in Sweden was always integrated. Subsequent European EM programmes have veered between these poles. Significantly, some programmes are not run by a probation service - EM house arrest in Catalonia is run by the Prison Service, and in England there is currently a GPS tracking pilot scheme run at local level by a police force, independently of central government.

The bi-annual CEP EM conferences which began in 2001 have been predicated on the idea that EM does represent a distinct and relevant challenge to existing and future probation practice in both western and Eastern Europe and have sought to facilitate dialogue between relevant players at policy and practice level, including the commercial providers, with a view to having some influence on its development. To a degree the conferences reflected the views of Dick Whitfield, an English chief probation officer who first articulated a pro-EM case and urged the English probation service to overcome its otherwise entrenched

resistance. He did not preclude the use of EM as a stand-alone measure - indeed he saw some potential value in it – but he was firmly of the view that probation staff should give serious consideration to the ways in which EM might serve rehabilitative and public protection purposes. Ruud Boellens, who headed the Dutch EM pilot, shared these views and the CEP EM conferences have been his and Whitfield’s legacy. Implicitly, if not always explicitly, the question of how probation and EM relate to each other - how each can make contributions to offender supervision – separately or in combination – have always been part of the Conferences’ focus.

There are four core ways in which integration can be understood, none of which are more important than the others, all of which need to be pursued simultaneously, and to interact with each other - philosophical, legislative, organisational and practical:

Philosophical/Conceptual - can some of the kinds of control entailed by EM – if not all of them - be accommodated by the rehabilitative purposes of probation. If probation accepts a public protection role – in whole or in part, with some types of offender more than another – can EM help with this? Can the use of EM make completion of rehabilitative programmes more likely, and can it add in a level of control that makes possible reductions in the use of prison for offenders who would otherwise be incarcerated for longer periods? Philosophical discussions can take place in operational as well as academic contexts (as a necessary precursor to practice) – and at local, national and international levels – as they do in CEP EM conferences.

Legislative – does legislation allow for the use of EM as a separate, stand-alone measure or must it always be used in conjunction with other elements of a support and treatment programme? “Proper and pure” integration would seem to require the latter – but a raft of research from England and Wales, from the very inception of EM there, suggests that stand-alone EM is not without beneficial crime suppressive effects while the order lasts – and as Hucklesby’s research shows, it may also, on its own, have initial effects on motivation to change. These are awkward research results for people who would want a pure integration model, although it could be – and has been - argued that diverting lower risk offenders to stand-alone EM (voice verification or house arrest) would free the probation service to concentrate its scarce professional resources on medium and higher risk offenders, with or without the use of EM in multi-modal programmes. This is a legitimate argument, which has to be considered.

Organisational – how – where a division exists - can commercial organisations best work with public sector probation services? The existence of a sharp distinction between commercial service providers and statutory supervising agencies cannot be allowed to jeopardise the search for best practice, even if it puts constraints on the kinds of practical integration that can occur. What mechanisms create the best forms of collaboration? A recent report from the English Probation Inspectorate concedes that collaboration across private/statutory boundaries is a “complicated business” but it cannot be said that the Anglo-welsh (and Scottish) model has been without its successes even though it has not generated the kind of programme evaluated by Marklund and Holmberg, which was always more likely to emerge in a context where probation and EM were under the same probation roof. Questions of provenance aside, the further question then arises, could a successful programme of the kind they describe be transferred to and embedded in a different organisational infrastructure?

Practical – how, at the level of face to face work with offenders and in the development of individualised supervision programmes can EM be used in conjunction with educational and therapeutic programmes, offending behaviour courses, employment and skills training. Does it add a level of constraint and stability to an offender’s life that makes support and treatment measures easier to pursue (as Bonta et al suggest, and as recent English experience of night before-community-service-EM bears out)? Does it stimulate motivation to change (as

Hucklesby suggests)? Does the promise of progressive relaxation of exclusion from a particular geographical area – an offender’s comfort zone – (say over a period of three months) generate motivation to comply with other aspects of a support and supervision programme – random home visits, random drug testing – as happened in the GPS pilots in England and Wales? How can household tensions and conflicts arising from the presence of a tagged offender be resolved or pre-empted, and successful periods of EM sustained extended? The vast reservoir of anecdotal experience that exists about this among European probation officers and to some extent among commercial sector monitoring officers has not been fully captured by research, but is none the less valid for that. Not all good practice is based on prior research – some precedes it, and researchers (and politicians!) must sometimes defer to nothing more than the accumulated wisdom of experienced practitioners. The challenge remains to make existing good practice in the integrated use of EM and probation more visible, and then to enhance and transfer it.

Electronic Monitoring and the Council of Europe Probation Rules

It is well known that the 1992 formulation of the Council of Europe’s European Rules on Community Sanctions and Measures (ER CSM) did not mention EM and alluded ominously to the “dangers of new technologies” (quoted in Morgernstern 2009:131), reflecting the low uptake of EM at the time – only England and Wales had experimented with it (as a pre-trial measure), and legislated for its future use as a sentence - and the general scepticism and hostility that existed towards it. The situation had changed by 2000, when the expansion of EM had taken root, but the Rules’s observation that “house arrest and curfews with electronic monitoring without social assistance would amount to a breach of ER CSM” (idem) could still be taken as a criticism of England and Wales stand-alone use of it. Of the shift towards acceptance of EM in 2000, Morgernstern says that “in my view this change of attitude clearly corresponds to a changing zeitgeist and European influences together with very active promotion strategies by the [commercial] providers” (idem). He cites evidence from Estonia which suggests that EM was not in fact needed to bring about the conditional early release that it was claimed to have facilitated.

The current European Rules on Community Sanctions and Measures have only limited things to say about EM – citing only two rules - although between them they capture the essence of European anxieties about the measure – its ambiguous relationship to the probation ideal of rehabilitation, and the fear that it will be used on lower risk offenders than is warranted:

58. When electronic monitoring is used as part of supervision, it shall be combined with interventions designed to bring about rehabilitation and to support desistance.

59. The level of technological surveillance shall not be greater than is required in an individual case, taking into consideration the seriousness of the offence committed and the risks posed to community safety (ER CSM 2008).

The tone is still sceptical, reflecting a sense that there is nothing even mildly positive that might be said about what EM can contribute, that it is a measure of which one must still be wary. Given ongoing concerns about commercial influence, often over-inflated claims about what technology can achieve and political ambivalence towards probation services the scepticism may well be justifiable, but might it not also be a result of unfamiliarity with the constructive and useful ways in which EM can be combined/integrated with support and treatment measures to effect the reduced use of imprisonment. In view of all that the CEP – EM conferences have accomplished, the practical experiences of probation officers and the kind of research results produced by Bonta, Hucklesby and Marklund and Holmberg, is Europe really not ready to see Rule 58 rewritten as follows:

Revised Rule 58. Electronic monitoring should be used as part of

supervision when and where it makes possible genuine reductions in the use of custody (including pre-trial) that cannot be achieved in other ways, but where it is used as a sentence or a post-release measure it must also be combined with interventions designed to bring about rehabilitation and to support desistance.

Neither Rule 58 or Rule 59 seems to countenance the use of stand-alone EM, which arguably has a legitimate use with low risk offenders, where this helps to free or create resources for work with higher risk offenders. It does entail conceding that EM can be used straightforwardly as a punishment - a two month curfew may be preferable to some offenders and their families instead of a hundred euro fine that they cannot afford, or a short, gratuitous prison sentence (in jurisdictions which allow this) – and that may be difficult in the overall context of the Probation Rules. But it could have a beneficial consequence for probation services, and needs to be debated. A rule relating to this could be formulated thus:

Proposed New Rule. Electronic monitoring can be used as a stand-alone measure, but not indiscriminately or for long periods, and only on low-risk offenders where this has the likely or demonstrable effect of freeing probation resources to work with medium and higher risk offenders.

Not all European EM programmes are run by probation services. Some – especially where all EM schemes are of the “backdoor” kind - are run by Prison Services, sometimes quite protectively, in ways that might impede the development and expansion of EM – in community-based probation services, as an alternative to custody. Experimentation with ways of releasing offenders from custody in a graduated way - temporary release and early release in particular - is important for offender reintegration. The kind of control exerted by EM, may, in difficult political circumstances, make it possible to introduce, expand and sustain such backdoor schemes in ways that might not otherwise be possible. It is important – for probation services – to promote and use EM to counter the kind of punitive climate which makes imprisonment seem as though it is the only realistic and viable option for many offenders. Both the European Probation Rules AND the European Prison Rules should specify this use of EM. A form of words common to both might read as follows.

Proposed New Rule. In view of the high risk of re-offending in the immediate aftermath of release from prison EM can be used to imposed graduated controls over the release process, allowing the offender to leave prison earlier than traditional post-release measures have permitted, while remaining under close supervision. Graduated electronic control should always be accompanied by necessary social support.

The question of using EM with juvenile offenders – those under 18 - has not been considered in this paper, for reasons of space. Some of the practical issues are the same as those with adults, but the ethical issues are arguably more complex. Debate is needed, and the European Rules amended accordingly.

Writing very recently on the European Probation Rules Rob Canton still rightly warns of the dangers posed by new technology in this context:

Mechanisms of electronic surveillance – both tagging and tracking - have considerable invasive potential , not only for offenders and their families, but for potential offenders as well (and therefore for all of us, for who of us may safely be assumed not to be a potential offender?). Many new technologies have unintended consequences and this implies periodic appraisal and revision of the

realities and implementation to ensure a principled assessment of their use (Canton 2010).

Conclusion

“Appraisal and revision” in respect of EM is largely what the CEP EM conferences have accomplished since their inception in 2001, and one would be hard pressed to say that the results so far have not been good. The worst fears about EM that were harboured by some two decades ago have not come to pass, and the CEP EM conferences has played a part in ensuring that events worked out this way. We do not know everything about best “integrated” practice, but between us we know more than we generally realise. We have the tools to think it through. This does not mean, as Canton recognizes, that we should be complacent. Technologies change. Some thrive, some don’t. Attitudes to the use of technology change. Attitudes to probation change. The work that CEP began with its EM conferences must be continued, because it is only through the kind of dialogue it has been facilitating that constructive integration between two ostensibly disparate ways of supervising offenders can occur – and has occurred. In the twenty first century it is unrealistic to think that politicians, in their deliberations on how best to pursue law and order, will not at least consider the affordances of the global infrastructure of information and communication technology – from which all forms of EM derive. This has its opportunities and its risks, with which we are learning to live. It is only by sustaining the humanistic values, the deep concern for offenders as people – as well as for victims - and for social justice, that probation services have traditionally subscribed to, that we will ensure that surveillance technology serves rather than dominates our approach to supervision.

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The most comprehensive summation of research on EM, apart from the most recent articles, is to be found in

Marietta Martinovic (2010) *The Complexity of Punitiveness of Electronically Monitored Sanctions: the western world's analysis*. Berlin: Lambert Academic Publishing

The views expressed in this report are those of its author and not necessarily of CEP