

Facultatea de Sociologie
și Asistență Socială

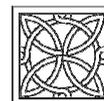
Universitatea din București



When technology meets justice ?! An overview

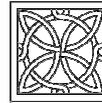
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Evora, 5th of May 2011

Aim of the paper



- Highlight the way electronic monitoring (EM) is available in different jurisdictions, at different stages of the criminal justice process and not only.
- Highlight some lessons learned from the past and current experiences.

What is Electronic Monitoring?



- ‘ the use of remote surveillance technologies to monitor the presence, absence or movement of offenders during the community element of their sentences or orders’ (Nellis, 2007: 115)
 - A tool to tighten the control over the penal population

The development



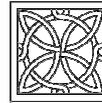
Created at the initiative of judge Jack Love (New Mexico) to keep young offenders out of custody.

Started in 1983 with a small number of offenders on house arrest but soon expanded.

In 1988, 32 states were using EM in different stages of criminal justice process.

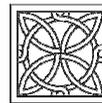
In Europe: Austria, France, Belgium, Portugal, Sweden, Poland, Estonia, Denmark etc.

Now you can find EM as:



- as an alternative to pre-trial detention,
- as an obligation attached to a CSM,
- as a penalty for breaching other conditions,
- as an alternative to custody (execution modality),
- as an obligation for temporary release,
- as a condition for pre-release,
- as an obligation after release,
- others (e.g. domestic violence, asylum seekers etc.)

1. EM as alternative to preventive arrest

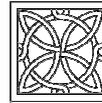


- It was one of the first aims of EM.
- The suspect kept under surveillance when on house arrest
- Trust in House arrest

- **England and Wales** - tested in 1989 - EM was introduced as a condition of bail. In September 2006 the case load of electronically monitored curfews was 13 000 out of which 15 % were on pre-trial bail (Whitfield, 2008).

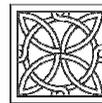
- EM could be also found as a technology-supporting house arrest in **Portugal, The Netherlands, France, Scotland** etc..

2. EM as an obligation or condition attached to CSM



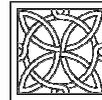
- court order in a limited number of countries (**England and Wales, Scotland, Germany, The Netherlands, Estonia** and **Portugal**).
- In **England and Wales** - EM could be one of the 12 requirements that can be imposed by the court when applying Community Order (introduced in CJA 2003).
- In **Germany** - EM is available only in Hessen and Baden-Wuttemberg (since 2010) for unreliable offenders sentenced to suspended sentence with probation
- In **Estonia** starting with 2011 EM could be one of the obligations attached to regular probation (Rait Kuuse, personal corespondence).

3. EM as a penalty for breaching other probation conditions



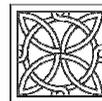
- In **Scotland**
- EM not a condition in a probation order but a penalty for breach (Pinto, Nellis, unpublished).

4. EM as an alternative to custody



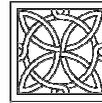
- In some countries - modality of executing the prison sentence or a substitute for it.
- In most cases EM is **used to replace** short term prison sentence: up to one year in **Switzerland**, up to three years in **Denmark and Belgium**, up to six months in **The Netherlands**, up to three months in **Sweden**.
- **In Denmark** - EM is available for drunken drivers or young offenders under 25 years old if they have been convicted to up to three months imprisonment.
- In some countries it is only **the executing judge** who can grant this form of sentence adaptation (**France**). In other jurisdictions this way of executing the prison sentence can be granted by **an administrative authority** (prison governor in **Belgium**, Prison and Probation Department in **Denmark**)

5. EM as an obligation for temporary release or other prison programs



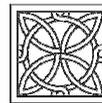
- **Catalonia** has piloted GPS and voice verification since 2009 for temporary release from prison for up to 48 hours.
- **Sweden** – ‘**electronic prison**’ - to monitor those in open prisons.

6. EM as a condition attached to conditional or early release



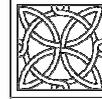
- Traditional - EM as a condition to conditional or early release or parole (**England and Wales, Austria, Estonia, France, Portugal, Sweden, Belgium** etc.).
- EM applies to those prisoners that consent to obey and allows prisoners to benefit from early release from prison even sooner than those conditionally released with no EM attached.
- **in Estonia** - where prisoners convicted for second-degree crimes or first degree crimes with negligence could be released not after serving at least one half of the sentence but after serving one third of the sentence.
- **in Sweden** where prisoners convicted for more than two years imprisonment could benefit of being released under intensive supervision with EM with four month prior to the automatic release.
- EM is usually limited to maximum six months (**Austria**) or one year (**Estonia**)

7. EM after full release



- EM is used even after the prisoner is released serving the full sentence (as a license condition).
- These countries are those which introduced **extended supervision** measures as a way to prevent further re-offending by sex-offenders or other categories of 'dangerous' offenders:
 - **France** (socio-judicial supervision)
 - **England and Wales** (extended supervision or life supervision).

8. Other use



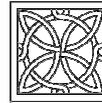
- Domestic violence (bilateral EM) – in **Portugal, The Netherlands, France, Catalonia** (some pilot)
- Asylum seekers or irregular migrants – in **E&W, Scotland.**

Illustration



| Pre - trial | Front door | Back Door | After release | Others |
|--|--|---|--|---|
| Condition attached to bail | Condition attached to CSM & Prison modality | Condition attached to early release Temporary release Electronic prison | Condition attached to life supervision | Asylum seekers Domestic violence |
| E&W Portugal France The Netherlands | E&W Germany Portugal The Netherlands Scotland Estonia Denmark Belgium Sweden | Austria E&W Sweden France Estonia Portugal Catalonia Sweden | France E&W Germany | E&W Scotland Catalonia The Netherlands France Portugal |

Concluding remarks 1



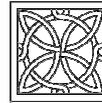
- EM is expanding from pre-trial and pre-release to other stages of criminal process and to other non-criminal areas (asylum seekers)

Concluding remarks 2



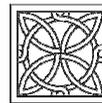
- EM moves towards becoming almost a stand-alone penalty
- Its aim is reconstructed from pure surveillance to rehabilitation and public protection,
- Very effective in terms of surveillance: **Revocation rate** for those on bail with EM was found as less than 1% in England and Wales (Wennerberg and Pinto, 2009).
- Not concluding evidence regarding its efficacy in terms of rehabilitation, but:

EM and rehabilitation



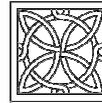
- 'reduce the likelihood of reoffending by restricting freedom of movement and, in particular, that they may break the pattern of offending (e.g. night-time burglaries ...)' (Witfield, 2008: 80).
- **Bonta et al. (2000)** – EM helps offenders to comply with other requirements & programs
- The **Swedish National Council for Crime Prevention** - 2005 a research report about the impact of EM on recidivism that demonstrated that **11%** of the EM parolees reconvicted after one year comparing with **15%** parolees with no EM.
 - All 260 subjects of this research were also subject to intensive probation supervision, counseling and other forms of transformative interventions.
- **Padgett et al. (2006)** – EM has some crime suppression effect while the order lasted.
- Other research ongoing

Concluding remarks 3



- Good practices in combining EM with rehabilitation interventions:
 - Denmark – Motivational Interviewing – prison and probation staff together
 - Sweden – probation involvement – good public image of EM, 10% reduction of prison population.

Concluding remarks 4

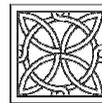


BUT: Contamination

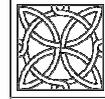
- EM even more punitive
- Ex – consent
- Not required anymore in Germany and E&W

- International standards (see princ.6 of Probation Rules) and practical implications – see The Netherlands (consent of relevant others)

Lessons learnt:



- Step by step, pilots
- Introducing EM should be preceded by information campaigns for judiciary, politicians, practitioners and the Grand Public.
- The cooperation with the private sector should be transparent and corruption-free.
- The Criminal Law should make EM applicable (see Czech Republic and ex-Poland)
- Rehabilitation - cooperation with PS or PS to monitor and enforce EM (like in **Belgium, Denmark, Norway, Portugal, The Netherlands, Estonia and Sweden**)



Thank you !

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