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# The ethical use of electronic monitoring (EM) for all

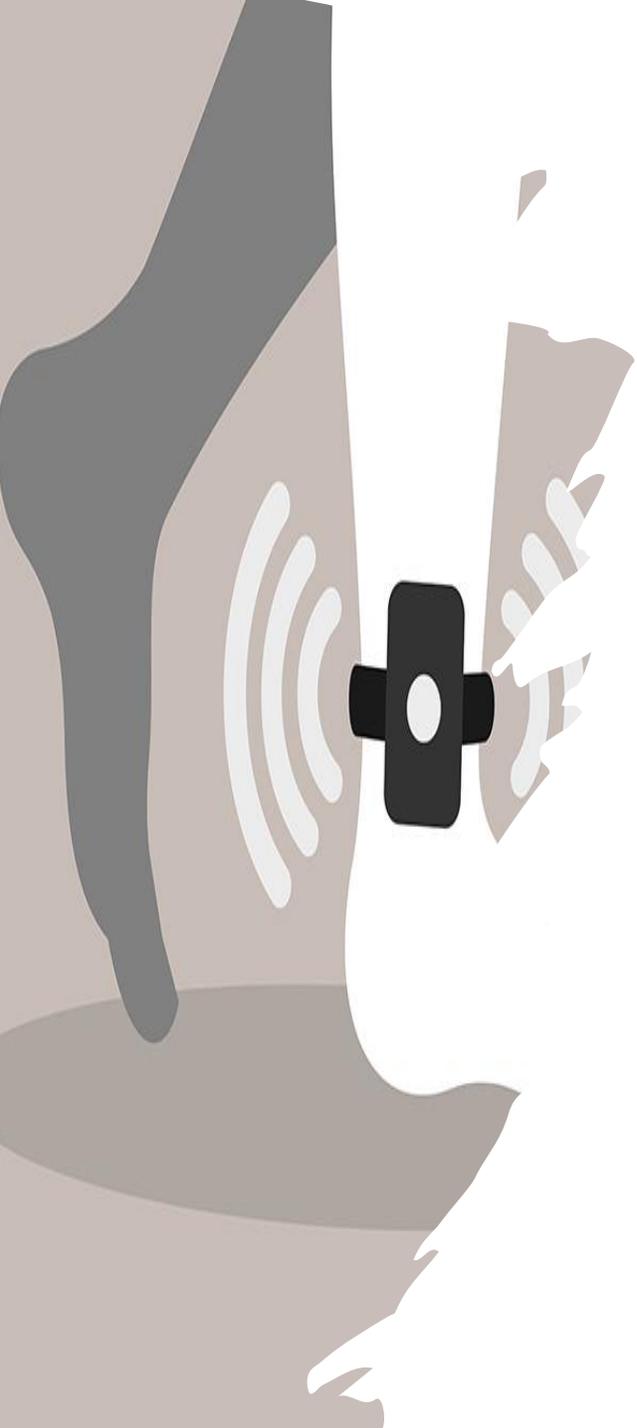
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# Introduction

- EM is being used around the World
  - Context is everything - different cultures and histories
- Its use is expanding in terms of numbers and cohorts
- Stated reasons for adoption and increasing use of EM are similar
  - Reduce prison populations
  - High reconviction rates after prison
  - Harm caused by prison
  - Financial cost
  - Improved monitoring of compliance
  - Lower offending rates on EM
  - Specific types of offending – domestic violence/abuse
- EM is often viewed as a ‘Quick fix’ and the answer to a myriad of criminal justice problems
- EM is better than prison but motivations for, and consequences of, use require scrutiny and review because they are not always positive and/or benign



# Ethical frameworks

- A set of norms and values which guide how we work
- Doing the right thing
- Frameworks
  - Standards
    - International conventions
    - Professional standards/ethics
  - Law
  - Culture
- Frameworks require interpretation
  - Vague
  - Compromise/lowest common denominator
  - Conflicting views
  - Difficult to operationalise
- Always exceptions
  - EM use with terrorist-related offenders



# Challenges to ethical frameworks

- Examples
  - New situations – war, pandemic
  - New ways of working
  - Data availability and analytical capabilities (AI)
  - Globalisation
- It is necessary to keep what we do and how we do it under review using a set of agreed ethical principles.
- A starting point is the Council of Europe Electronic Monitoring Recommendation CM/Rec(2014)4
  - 27 – under no circumstances may EM equipment be used to cause intentional physical and mental harm or suffering to a suspect or offender
  - 5 – EM shall not be executed in a manner restricting the rights and freedoms of a suspect or offender to a greater extent than provided for by the decision imposing it.



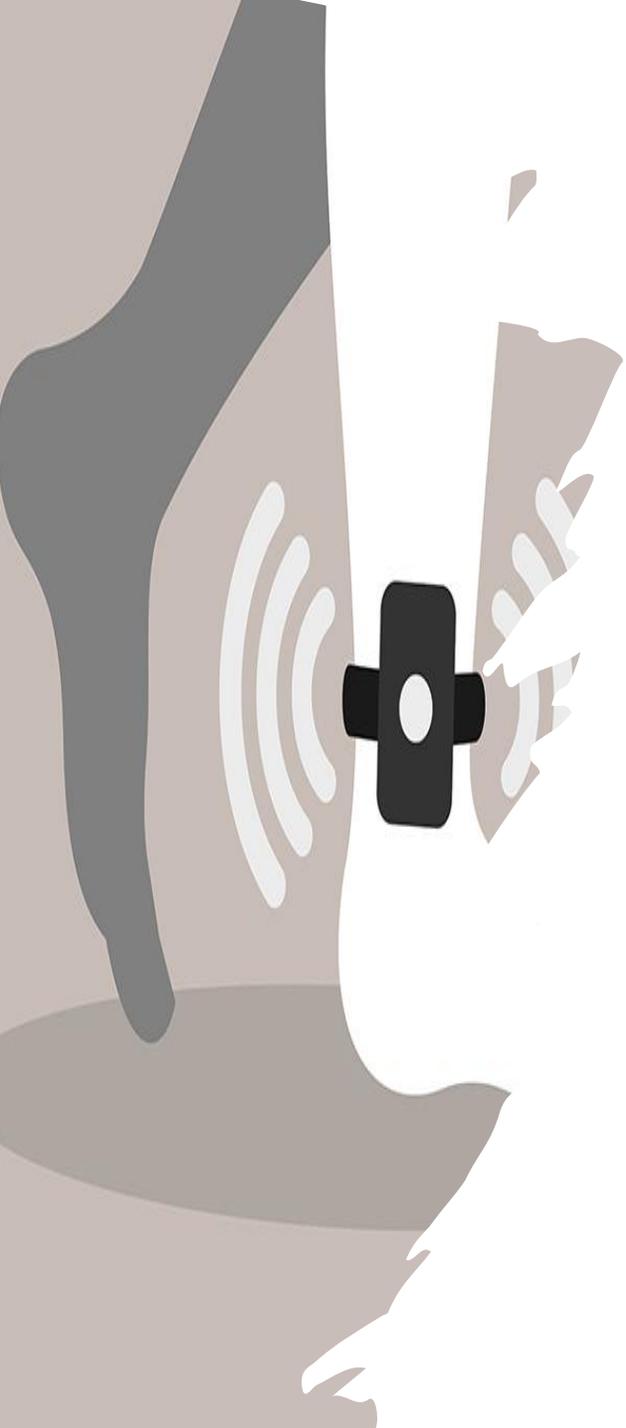
# Examples of contested areas

- Consent
- Access to gardens/outdoor space
- Ability to do 'leisure' activities
- Private sector involvement



# Purpose of EM

- EM is a tool used to monitor conditions/requirements
- Purpose differs depending on the circumstances in which it is being used
- Difference between 'pain' and harm
  - What and how much 'pain' is EM intended to deliver?
  - Minimising harm, avoiding harm and/or repairing harm?
- Principles of punishment
  - Retribution
  - Deterrence
  - Incapacitation
  - Rehabilitation
- Safety and security
  - Public safety
  - Victim safety
  - Protection
- Successful completion of the order - compliance



# Principles for EM I

## Proportionate and necessary

- Appropriate equipment
- Minimum restrictions that are required to meet the goals e.g. size of exclusion zones, curfew hours, duration of EM

## Creative

- Restrictions which are appropriate to the offence(s) and the needs and circumstances of wearers, and the risks posed.

## Responsive and flexible

- Regular review
- Rewards for compliance
- Exit strategies
- Adapt to changes in wearers' circumstances

## Appropriate and measured

- Minimum intrusion in everyday life
- Proportionate and graduated response to violations

# Principles for EM II

## Informed and transparent

- Wearers, their significant others and fellow occupants have access to necessary information to complete orders successfully and deal with emergencies

## Supported

- 24/7 access to support
- Availability of wrap-around support/supervision

## Data

- Appropriate regulation of collection, storage and use of data
- Access to data on a 'need to know' basis and for minimum period necessary

# Principles of EM III

## Staffing

- Appropriate number of trained staff should be deployed to administer and support EM use

## Publicity and transparency

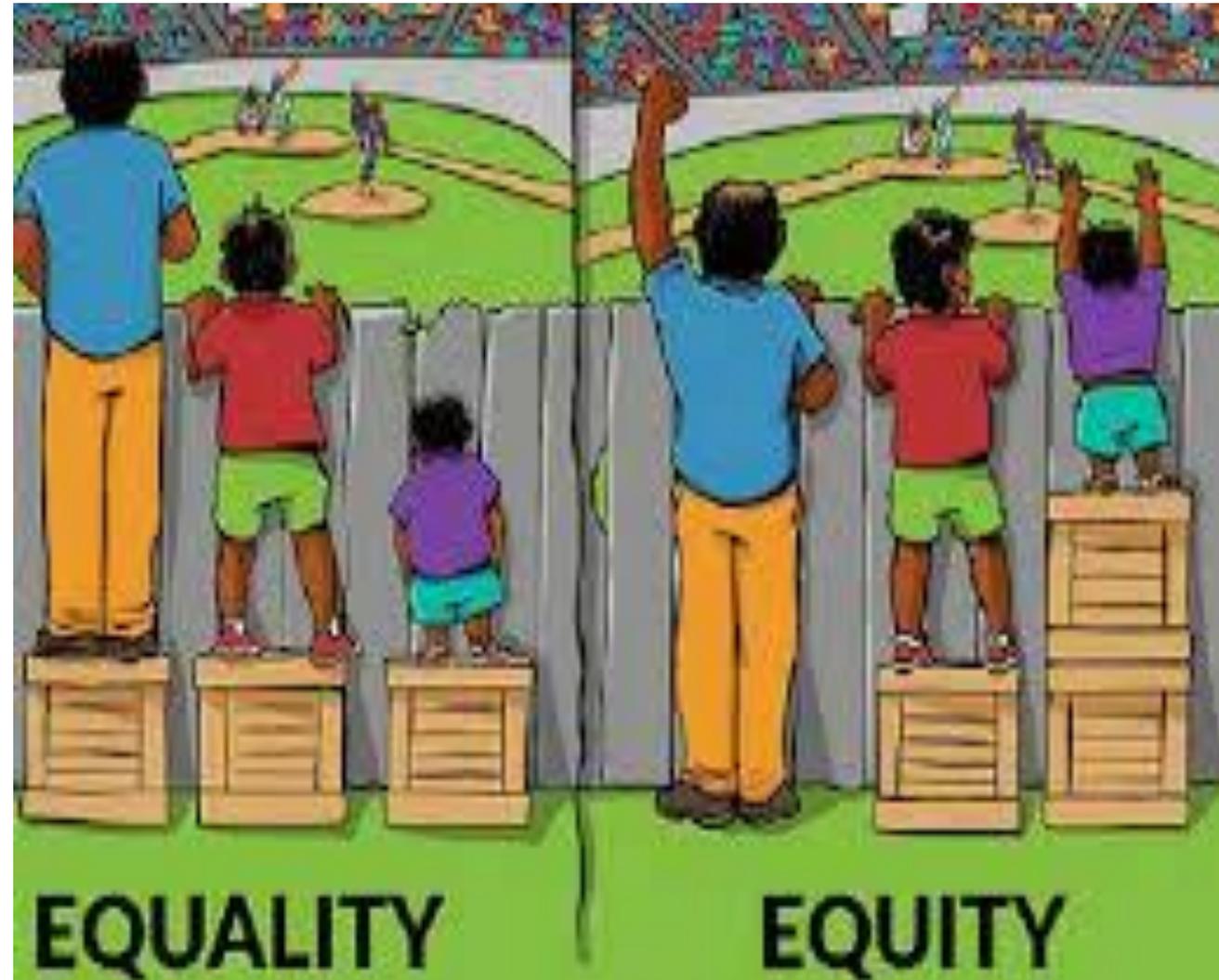
- Publication of statistics and relevant information to enable review and scrutiny by independent authorities and the public

## Equality/Equity

- Fair treatment for all

# Ethics of equality

- Equality
  - Everyone is equal
  - Everyone is treated the same irrespective of differences between them
  - Does not consider needs or requirements of individuals
- Equity
  - Being fair and impartial
  - Treating each individual according to their circumstances and needs
  - Considers individual needs



# Basic equality principles (CoE, 2014(4): 7)

There shall be no discrimination in the imposition or execution of EM on the grounds of gender, race, colour, nationality, language, religion, sexual orientation, political or other opinion, national or social origin, property, association with a national minority or physical or mental condition



# Benefits and risks of standardised approach

## Benefits

- Veneer of equality
- Reduces complexity
- Cheaper

## Risks

- Increases harm
- Escalates punitiveness
- Increases non-compliance
- Increases offending
- Reduces legitimacy



# Diversity

- Very little is known about diversity of EM populations in specific countries
- In England and Wales
  - Limited published data
    - 11% are women
    - No data on ethnicity/religion
    - No data on number of children/young people
  - Ethnic minorities are overrepresented in criminal justice system and anecdotal evidence also on EM
  - Certain use of EM is likely to impact on some communities more than others e.g. acquisitive crime pilot and focus on gangs and County lines in England
- Intersectionality

# The ethical challenge

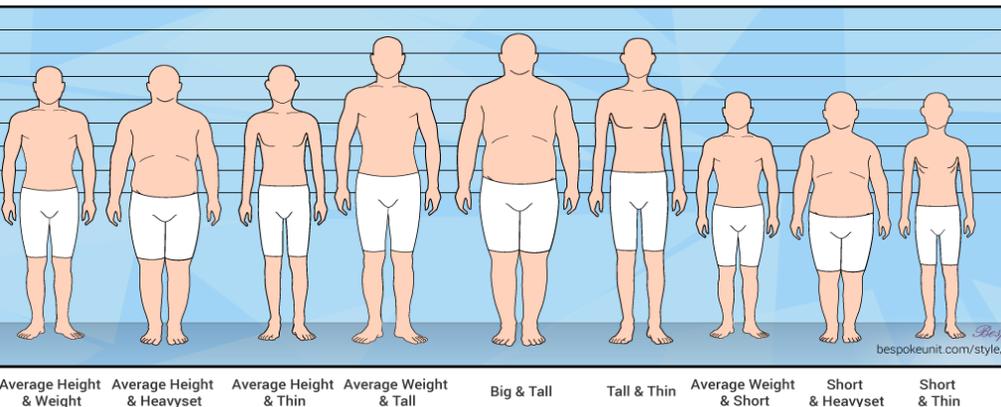
- EM equipment designed by men for adult men and for Western markets
- EM regimes first designed and implemented in Western democracies for criminal justice systems dominated by men as defendants, offenders, law enforcement and decision-makers
- Process of policy-transfer has perpetuated this original approach
- EM regimes do not fully consider the different circumstances and needs of all wearers



## BODY MASS INDEX (kg/m<sup>2</sup>)



### Bespoke Unit's Guide To Understanding Your Body Type



## Equipment

- Same tags
- Obvious physical differences in:
  - Size
  - Skin colour
  - Leg shape
  - Physiology
- Current solution is different size straps
- Inadequate response
  - E.g. women and the menstrual cycle and children

# Considerations for equitable use of EM I

- Experiences of violence and trauma and current risk
- Access to home
- Who fits equipment
- Visibility of equipment
- Clothing
- Language
- Cognitive ability
- Caring for others
- Agency

# Considerations for equitable use of EM II

- Work/Education
- Daily tasks
- Religious/cultural observance
- Safety
  - Domestic violence/abuse
  - Other threats
- Changing circumstances
- Stigma/shame

# Concluding comments

- Clear and transparent about why EM is being used
- Aware of intrusiveness of technology and impacts on everyday lives
- Consider diversity of wearers – different backgrounds, circumstances and needs
- Ensure that we make EM responsive to diversity of wearers and their different and changing circumstances rather than the current uniform, routine and standardised use
- It is our ethical responsibility to do so.

