

EM In and After the Age of Covid

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Why Appraise EM Now?

- There is indeed a “common sense” argument that the increased use of EM to ameliorate the risks of infection in prison (of both staff and prisoners imprisonment would be a) helpful in itself and productive of increased EM use in the future

There is an assumption of “technological determinism” underpinning this common sense - a rational use of technology in a time of crisis would override all other considerations. Tech certainly facilitates change. Perhaps the pandemic has further proved the truth of both these claims: remote communication tech has come into its own in many forms and contexts. So what about EM?

Comparative analysis of EM use in different jurisdictions could illuminate the impact of the pandemic on decisions about EM use. But gathering data on this - motives, ecosystems, statistics and outcomes - is easier said than done. My cursory survey suggests there was no consistent EM response to the Covid crisis – which may yet have favourable consequences for EM. I hope various country representatives here today will say something about their local experience.

Nonetheless I will concentrate, schematically, on the jurisdictions whose penal dynamics I know best - Scotland and England and Wales, anomalous as they remain in terms of private sector EM delivery - and still try to say something of general relevance about the post-pandemic prospects of EM

The CEP, Probation and EM

- From 1998 on, recognised EM as both a threat to and opportunity for Probation Services - primarily in terms of reduced use of prison).
- CEP aimed to a) subordinate EM use to probation values and ideals & b) to define best EM practice in terms of ethics and empirical research (as opposed to a paradigm shift to mostly tech-based supervision).
- ***How are we doing on this?***
- CEP is aware that, notwithstanding genuine moral actors in the “EM industry”, it has an agenda of its own - a product for every penal niche - but also that it will negotiate pragmatically with governments and probation services. Nonetheless, the probation-commerce dialogue was/is asymmetrical in terms of economic and cultural power, and unstable in the long term.

Scotland 1

- RF EM curfews available to courts and prisons via private contractor (currently G4S) since 2002. Sentencers and social workers both slow to accept it: growth was incremental. No EM bail. Daily numbers on EM = 1200 before the pandemic.
- Daily prison population in April 2021. = 7300 (26% on remand)
- GPS tracking and EM bail pilots due in 2020 – postponed because of Covid – undermining G4S estimate of 1600 caseload by now.
- Court business ceased during lockdown. Face-to-face social work with most supervised offenders went remote (initially phones); unpaid work ceased – a huge backlog of hours built up.
- Government had no Covid plan to use EM more to alleviate rising prison numbers – deference to sentencers, imminent election – despite offender advocacy groups calls for it.
- Daily EM numbers dropped to 400 in June 2020, but when courts reopened rose to 1300 by December – 100 more than previously – solely at the discretion of sentencers. Less an alternative to custody, more an emergency replacement for social work. Numbers not sustained in new year.
- EM bail orders in Northern Ireland increased from 27 to 156. March 20/April 21. G4S daily caseload of 450 now, never above 300 in the past.

Scotland 2

- Scotland has a strong “digital justice” strategy. Senior judiciary surprisingly keen on it. The process is bringing lots of commercial tech expertise into government. This is creating a milieu/ecosystem which may be more favourable to EM.
- Recent digital justice conference confirms Covid-derived acceleration of existing tech trends across Scotland – out of *necessity* now, not just *efficiency*. AI first mentioned.
- In 2020, Scottish social work bought thousands of smartphones and laptops to give clients, to facilitate and sophisticate remote working. One smartphone used to track a high risk MAPPA case. Blended supervision will continue, say leaders.
- Police - and others – pressing for EM bail: the plan now is to go straight to national roll-out, soon, without a pilot.

England and Wales 1

- Wide range of RF (and now GPS) EM since 1999 – sentence, early and post release and bail - delivered via private company (currently Capita) + alcohol monitoring since 2019/20.
- Daily prison population of 83,000 in March 2020
- MoJ did develop a small Covid plan to release 4000 prisoners two months early, mostly on EM, and stuck with it despite criticism from offender advocacy groups that poverty and homelessness make EM irrelevant to under-resourced reintegration. MoJ called it a trial for upcoming EM expansion.
- September 2020 – populist White Paper proposes increases in prison numbers, tighter release restrictions and increased punitiveness of EM curfews and home confinement. MoJ civil servants and other experts argue for something more evidence-based – (building on existing pockets of good GPS practice). Legislation yet to be enacted.

England and Wales 2

- Probation and EM are under unified management in the MoJ – seemingly equal in status as community interventions. “It was an ambition of the government to scale tagging up and doing [early release] this way may help understanding of how effective this tool could be ” (Minister: April 2020)
- Probation Service is still somewhat chaotic as it “reunifies” into a national statutory service after a failed privatisation. Good new leaders, but staff shortages + undertrained staff.
- Reduced face-to-face visits by probation lead to increased uses in tech – phone, Skype, text for remote supervision– Probation Inspectorate sees its limitations, doesn’t want it normalized.
- England & Wales also have broader “digital justice” strategies: tho’ unlike Scotland the commitment to expand EM precedes and exists separately from it.

Some Broad Social Consequences of Covid

- Increased state regulation of everyday life
- Vastly increased reliance on remote communication technology in family life – and, extrapolating trends, in education, business, consumption, recreation
- Empowerment of businesses and brands which supply these technologies – cultural normalization?
- Centrality of smartphones to track-and-trace technologies + prospect of “vaccine passports” (on phones) for travel.
- Widespread popular experience of protracted “home confinement” as a dispiriting experience.
- Deepening class inequality (not just because of Covid) and its increased visibility, especially via race

Using EM in the time of Covid is not simple

- EM service delivery itself must be Covid-proofed – PPE sourced, home visit protocols altered, staff shortages addressed. Risk assessments cant entirely be dispensed with.
- Sudden scaling-up of EM use may or may not be easy, depending on availability of equipment and staff.
- Preventing excessive remands in custody becomes an urgent task when courts close, to which EM is well suited, but not the total solution
- Some prisons manage better than others at addressing Covid internally – not always by defensible means (eg solitary confinement).
- Releasing prisoners with multiple needs/and or no home on EM alone is counter-intuitive (and callous) – releasing them to hostels transfers the infection risk from prison
- Is home and local neighbourhood necessarily a safer place to avoid Covid than prison?
- Legitimacy of “early release” from prison, even in an emergency, is always contestable by politicians, media, police. Government expediency and punitive norms may still constrain rational public health response and limit early release at scale.

Prospects for EM after Covid

- Expansion of EM has always been more tied to societies' modernizing technological priorities than to ideals of rational penal practice – tho' nowhere has it been "disruptive", as tech has in other sectors.
- The pandemic has created a climate more favourably disposed to using remote communication technology; in future more work will be blended, a mix of face-to-face and "remote". EM will become a more plausible penal option, even to those once resistant, BUT
- The impact of tech varies across sectors – it is differentially constrained. Existing EM can't address offender's psychological and social needs, & so long as this matters it will have its limits in probation.
- Smartphones and "probation with apps" will become more important – is this a new variant of EM? It is already extant in the USA.
- Historically, deepening social inequality usually increases severity of punishment, and indifference to social disadvantage, so EM may become more punitive (and widespread), but not reduce imprisonment
- Defence of humanistic probation ideals and ethics – the things that trained and resourced human supervisors can achieve on their own - will become harder in this milieu. How should we address this?