Electronic Monitoring and probation goals: a symbiotic relationship

Report of the 12th European electronic monitoring conference

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Introduction

The 12th CEP electronic monitoring conference was organised in cooperation with the Finnish Criminal Sanctions Agency. The conference was originally scheduled for April 2020 but was postponed due to the Covid-19 pandemic to May 2022. The pandemic has had significant impacts on criminal justice systems across the World and resulted in changes to electronic monitoring (EM) in most countries. Its effects were addressed at a webinar organised by the CEP in May 2021. Inevitability, however, issues arising from the pandemic were discussed during the conference.

More than 220 participants from over thirty countries attended the conference. It brought together policy makers, academics and practitioners working with EM to address timely questions about how EM can best support probation practices and how other technologies might support EM to meet probation goals. Opening the conference, the Secretary General of the CEP, Willem van der Brugge, reflected upon the value of holding the conference in person for the first time since the pandemic, facilitating networking and the sharing of knowledge and experiences. He acknowledged that Ukrainian colleagues were unable to attend due to the war and expressed CEP's solidarity with them.

Over the three days of the conference, speakers presented on a wide range of topics, including digital technologies in probation, their impact on professional values and working practices, particularly the effect on relationships between officers and service users and ethical implications in plenary sessions and workshops. Two emerging technologies, remote alcohol monitoring and artificial intelligence were also explored. The following sections provide an overview of key messages from the conference. After a reflection on Nordic approaches to EM, the report outlines new uses of technologies and considers the challenges presented by introducing and using EM and other technologies in probation practice.[1]

Exploring the Nordic approach to EM

The conference begun with a session on the use of EM in Finland and the Finnish Probation Service. Director General Arto Kujala welcomed everyone to Finland and explained the importance of the conference theme, Ari-Pekka Koivisto (Director General for the Department for Criminal Policy and Criminal Law) provided an overview of the legislative framework and Senior Specialist Pia Andersson presented on community sanctions, probation and electronic monitoring in Finland. The Nordic approach was again the focus on day three when Pia Andersson, Marianne Kylstad Øster and Christine Andersson led discussions on uses of EM in Finland, Norway and Sweden respectively. They highlighted the impact of their shared values on EM, including the normality principle, approaches to criminal justice, low rates of imprisonment and geography and the deployment of other technologies in probation. Their presentation underscored the point made by Anthea Hucklesby that understanding the context in which EM operates is paramount. To understand Nordic (and global) approaches to EM, the context in which

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[1] Presentations and summaries of workshops are available on the CEP website

they operate and the influences on past, present and future developments need to be appreciated and understood.

Delegates were introduced to the 'Nordic way of living', a term describing geographical, economic, and political factors. It provides both an important context to the way EM is used and insight into the challenges faced when deploying EM. One of these challenges is using EM in sparsely populated areas, requiring long journeys, sometimes by aeroplane, for staff to fit and check equipment, and monitored individuals to attend appointments. A second challenge is ensuring that monitored people are able to travel between neighbouring countries for education, employment and to visit families. Whilst the proximity of Nordic countries means crossing borders for work, education and visiting families is relatively common, practical and legal problems arise when individuals are being monitored, which require careful and creative solutions.

Delegates learned how EM was underpinned by several common principles, including the principle of normality. This means that there should be no further impact on the lives of individuals beyond the restrictions of the sentence itself. Those serving sentences retain the right to vote and access services as citizens, including education and healthcare. Furthermore, all three countries take the view that the use of prison should be avoided wherever possible due to its disruptive consequences and alternatives should always be sought. In addition, the philosophy underpinning EM is aligned with probation principles that sentences should be about treatment rather than punishment. Consequently, EM is only used alongside rehabilitative measures and never as a standalone measure. Those responsible for monitoring services are generally educated to degree level, have a social work background and work according to the core values of probation. All sentences should be research informed and practice evidence based. Appropriate legal structures are in place enabling innovative EM use and ensuring that systems are working as intended.

Whilst many shared approaches to the delivery of criminal justice were identified, differences also exist. In Sweden, EM has been an alternative to prison since the late 1990s, whereas individual criteria rather than offence characteristics have been used in Finland to determine suitability since 2011. A drawback of the Finnish approach is the risk of net widening. Norway only uses EM with low-risk offenders. Each country provides 24/7 monitoring in one centre (two in Norway) and monitoring services are integrated with probation services, reflecting the close concordance with probation principles. Similar technologies are deployed in the three countries: they include RF and GPS and biometric technologies are used for alcohol monitoring in Finland and Norway.

EM is also used in open prisons in Finland. Sinikka Saarela, Director of Suomenlinna Open Prison in Helsinki, explained how it allows prisoners a greater degree of freedom and independence, enabling them to work, study and see family and friends outside of prison, thereby assisting with their reintegration and resettlement. She highlighted the potential for EM to help manage drug and alcohol use by setting schedules which provide control and support. In addition, using EM means that fewer prison staff are required.

Understanding uses of technology in probation

The conference provided an opportunity to situate EM within broader technological developments in probation practice. This was discussed with reference to Nordic approaches, alcohol monitoring, AI and the use of digital platforms for probation meetings. Ioan Durnescu tackled the debate about how widely EM should be defined by categorising technologies according to their history (the length of time they have been used), their purpose (what they are used for) and their nature (types of technology). This allowed other uses of technologies, beyond those used to monitor individuals, to be explored. Discussions were timely, given the global impact of the pandemic on working practices and the part played by technologies in quickly adapting to new ways of working. Examples included steep increases in the use of EM to reduce prison numbers across many jurisdictions and the use of smart phones and apps in Suomenlinna open prison.

Drivers of the development of technologies

Anthea Hucklesby argued that we must understand drivers to the development of technologies in probation to ensure that future developments are in line with the principles of criminal justice. Some drivers have long existed, for example, EM has been technologically rather than probation driven and premised on the need to manage limited resources. Some of these drivers have accelerated because of the pandemic, for example the introduction of technologies to facilitate remote supervision.

Policy makers and practitioners now need to consider whether to continue with the changes made during the pandemic. While speakers reflected on the value of new and greater use of technologies to allow resources to be used more effectively, they remained aware of the need to appreciate why decisions to use technologies have been made and the motivations behind them. Hucklesby argued that developments should be underpinned by a clear understanding of the purposes and ethics of their use and not simply a need to reduce resources. Using technologies purely as a means to reduce resources, including the time of probation officers and the need to travel, may cause adverse consequences because it reduces face-to-face interactions. The risk of greater penetration and net widening were also discussed, given that technologies can make probation and/or monitoring easier and deeper but not necessarily more effective.

An overview of emerging uses of technologies

Several emerging technologies were discussed during the conference. Durnescu provided an overview of the technologies currently used in probation. Participants heard further insights into practical experiences of using the technologies from the Nordic countries, and the implementation of alcohol monitoring. Durnescu outlined a variety of different technologies, including risk assessments and databases which utilise technologies to predict risk scores and smartphones to monitor individuals. Developing technologies were also presented, such as digital platforms to provide treatment programmes for varied groups of service users including high-risk offenders (including sex offenders) in Finland. Durnescu also reflected upon research on blended probation

supervision in England (Dominey et al, 2021) and France and Scotland (Herzog-Evans and Sturgeon, 2022).

The challenges of using technologies in probation are explored more fully below. It is useful here to reflect on the potential benefits of technologies in probation practice, which formed part of the workshop discussions. Figure 1 provides a summary of the benefits.

Figure 1: Workshop results for the question 'What are the benefits of technology for staff and users in your organisation?'

Participants also learned about developments in the use of remote alcohol monitoring (RAM) in England and Wales from Robyn Malan De Merindol, and in the Netherlands from Anne Hoeksema. Implementation across England and Wales in June 2022 was the culmination of ten years of development, which included new legislation and a number of pilots. In the Netherlands, legislation is not yet in place despite the announcement of a national rollout in May 2020. Wearers volunteered to participate in the Dutch pilot whereas in England and Wales the alcohol abstinence monitoring requirement (AMMR) is a requirement of community orders and release licences which requires no consent from wearers. In England and Wales, RAM cannot be used with individuals who are alcohol dependent because of the medical risks. By contrast, dependent drinkers who have followed a detox programme are eligible in the Netherlands. All types of offences are eligible in England and Wales but they must be alcohol-related. This creates the potential for inappropriate use, for example with offences of interpersonal violence or shoplifting to obtain alcohol.

In both jurisdictions, the purpose of RAM is to manage and ultimately reduce alcohol consumption, thereby reducing offending. In England and Wales, abstinence is required

whereas in the Netherlands alcohol use within prescribed limits is permitted. Compliance rates are high in both jurisdictions and were reported to be related to devices acting as a reminder. However, there is little evidence about the impact of RAM on reoffending. The equipment is the same in both jurisdictions and wearers reported similar concerns about its size and being constantly aware of its presence. They also reported that it avoids the need for urine testing, which is intrusive and takes time (in the Netherlands) and acts as a motivation to comply. Delegates reflected on best practice for future uses of RAM. The need for more detailed research was noted.

Challenges in using technologies

Using technologies to support probation work poses challenges for both the service users and probation staff. Dornescu suggested that technological innovations can widen the digital divide by excluding those with limited education and/or without access to technologies. In addition, removing human contact has the potential to make assessments impersonal, reduce legitimacy, and negatively impact upon workplace morale. Legal frameworks have the capacity to limit the potential for innovation while also providing vital checks and balances to examine what, why and how a technology is being introduced. Dornescu and Nellis used examples of resistance to developments in the aeronautical industry to illustrate the importance of the willingness of interested parties to introduce and embrace new technologies. It is imperative that practitioners 'buy in' to new technologies but barriers exist including the age and level of digital literacy of the staff, with younger members of staff seemingly more willing to embrace change than older members of staff who were experienced in their roles. Similarly, Saarela highlighted the need to keep abreast of new technologies and the need to regularly update and periodically replace them. This can be expensive and may limit innovation. Other challenges included: the lack of responsivity to diversity; available technologies driving the innovation rather than practitioners; and widespread concerns about the collecting and sharing of data.

Addressing diversity in using technologies

In her presentation, Anthea Hucklesby explored the challenges created by the need to use EM ethically for all. She explained that establishing universal principles is a particularly difficult task due to the variety of cultural and legal contexts within and across jurisdictions that use EM. Capturing these principles in international conventions and recommendations result in vague guidance, due to the need for flexible wording to ensure acceptability and applicability across multiple jurisdictions. A number of issues were raised, including the requirement to consent to EM, permitting people to access places, engaging in leisure activities and continued private sector involvement.

Hucklesby drew the distinction between pain and harm. She suggested that the purpose of punishment is usually to impose pain (Christie, 1982) but not to harm individuals. Therefore, EM regimes should aim to minimise, avoid or at the very best, repair harm through rehabilitation. She also proposed ways of operationalising justice principles in support of minimising harm in EM. She recommended using the proportionality and necessity tests in law and policy making to ensure that EM regimes take account of

individuals' needs and case characteristics. Action required includes making equipment available in different sizes and designs and ensuring that decision-makers use EM for the shortest time, and alongside the least intrusive restrictions. Hucklesby drew attention to the importance of considering the needs of different groups of wearers and particularly children and women to ensure that their specific requirements are addressed when designing and implementing EM equipment and regimes. Staff training is also required to understand the diversity of wearers on their EM experiences. In addition, Hucklesby recommended procedural innovation in EM regimes by increasing responsivity and flexibility, reviewing cases regularly, rewarding compliance, adapting to the wearers' circumstances and offering viable exit strategies. Workshop participants identified further action to ensure responsivity, including tailored assessments, strategies to address digital deprivation, and considerations of jobs, health, neurodiversity, and alternatives to wearable devices.

Hucklesby argued that 'one size fits all' policies are impractical if probation values are to be upheld in EM. The procedural design that strives to achieve equity is preferable to equal treatment as individuals may achieve the same goal by needing different means of support. She also suggested that individuals' goals and procedural objectives do not have to be homogenous. Furthermore, she argued that needs are necessarily diverse due to the intersectionality among the factors that determine them. Monitored individuals may be women or men, simultaneously belong to different ethnicities, have achieved different levels in their education or live in different regions.

AI and technology-driven probation

Mike Nellis addressed the potential challenges of AI for probation practices and values. He explained that AI technologies currently attract policy makers' attention across Europe, to utilise them in many criminal justice contexts. This includes surveillance, facial recognition, automating sentencing in minor offences, introducing 'smart prisons' and supporting probation work. Acknowledging the interest in developing criminal justice practices alongside the 'fourth industrial revolution', Nellis suggested that the approach to AI innovations should be careful and considered rather than quick and ill-considered to enable societies to become more literate in these technologies and understand their advantages and disadvantages. He argued that the current business-led and top-down approach to introducing AI carries the risk that they will drive the transformation of probation rather than probation's business need.

Nellis suggested that the problematic use of AI-led tools often contrasts with governments' enthusiasm for, and expectations of, technological solutions. He gave examples including predictive policing, automation of court processes, and facial recognition. The latter is a tool intended to support policing, but its insensitivity to darker skin tones results in discriminatory practices. He argued that enhancing automation and promoting AI technologies could mean that future probation practice will involve automated risk assessments, chatbot supervisors, the collection of biometric information and the reduction of the human workforce. He warned that such an expansion in automation and diminishing human contact could accelerate the ongoing process of labelling offenders as undeserving.

Nellis concluded that humanistic probation values are irreconcilable with a technology-led service model that uses AI in as many ways as possible. Instead, he recommended using our moral imagination in developing people-centred probation that values human skills and uses EM and other technologies to a minimum extent. He also suggested that we should retain a sceptical approach and consider whether we can live with the potentially negative consequences which come with the advantages of using AI. He reiterated that cautious development and learning from societal experiences with AI would find the appropriate balance between technological and human innovation.

Using data

Collecting and using big data in probation poses many challenges, including upholding ethical standards and preserving professional autonomy and values. Speakers and workshop participants agreed that the potential value in 'helping to help better' through exploiting data was a timely topic for discussion.

The workshop discussion reflected a tension between the potential costs and benefits of using AI and 'big data' in probation as participants discussed their ideas about implementing AI in practice. Most participants agreed that liberating staff from administrative duties, thereby allowing them to dedicate more time to personal contact, would be beneficial. However, automating some processes appears to conflict with professional autonomy and may diminish the understanding of individuals' circumstances. Accordingly, many participants rejected the idea of a data-driven probation practice. They supported the use of AI for assisting processes but only when it is evidence-based and accepted as valid for the specific purpose for which it is intended to be used. Figure 2 features the factors raised by workshop participants, highlighting the most important concerns; data protection, data quality, respecting privacy and purpose-led design.

Figure 2. Workshop results for the question **'**What factors do you consider when beginning to use AI in your work?'

Hucklesby and Nellis explained the many dangers of mass data collection and analysis on human rights, such as privacy and discrimination of specific groups. Appropriate checks need to be built into processes to guard against misuse. Hucklesby called for regulating access to EM data and limiting it to a 'need-to-know' basis and for the shortest necessary period to align with necessity principles and the right to privacy. In the context of AI, Nellis explained that requirements should be grounded in human rights but also include designing trustworthy, legitimate and fair processes, where the AI-literate human remains the decision-maker.

Implications for the future

In his summing up of the conference, CEP president Gerry McNally reflected on how the conference encapsulated the development of technologies in probation and the new relationship between the two since the pandemic. Questions raised included how technologies are developed in the future and how human contact is retained in probation work. It was emphasised that probation services should be 'data drivers', rather than 'technology receivers', and must ensure that technologies are controlled by, and work for, probation. In light of this, conference discussions highlighted the increasing the use of technologies requires more probation involvement in designing devices, planning processes and implementing measures. Everyone agreed that the needs of monitored people and probationers were the paramount consideration and any benefits arising from the use of technologies are secondary. Experiences so far suggest great benefits of greater use of technologies for both monitored individuals and probation services with some advantages and disadvantages being culture and country-specific. Comments reflected the need for further discussions on technological advances in probation, to explore how different systems use technologies and how they incorporate probation values now and in the future.

Finally, it was noted that it was the final CEP EM conference for both Gerry McNally and Willem van der Brugge as they are both retiring from their positions. They have been champions of these conferences, which have created a network of academics, policy-makers and practitioners and a space to debate about EM in probation. Delegates, probation staff and those subject to EM past, present and future have a lot to thank them for. On behalf of the delegates, the preparatory group wished them both well in their new endeavours. You will be missed!

References

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Dominey,J., Coley, D., Devitt, K.E., Lawrence, J. (2021) 'Putting a face to a name: Telephone contact as part of a blended approach to probation supervision', *Probation Journal*, 68(4): 394-410.

Herzog-Evans M., Sturgeon J. (2022) 'French and Scottish probation during the first lockdown. In search of the heart and soul of probation', *Probation Journal*, 69(2): 197-215.

Appendices

Appendix 1 – Conference programme

Monday 23 May

15.00-16.00   **Registration with Coffee/Tea and Opportunity to visit sponsors' displays**

16:00-16.30   **Welcome speech**

Mr. Arto Kujala – Director General Criminal Sanctions Agency Finland
Conference Chair: Mr. Willem van der Brugge – Secretary General CEP

16.30- 17.15   **Finnish approach**

Mr. Ari-Pekka Koivisto, Director General of the Department of Criminal Policy and Criminal Law, Ministry of Justice

Ms. Pia Andersson, Senior Adviser at the Criminal Sanctions Agency

17.15-18.30   **Ethics and different groups of wearer's**
Prof. Anthea Hucklesby, Mr. Jim Barton, Ms. Erja Toivo

19.30 – 22:00   **Reception and tailored buffet**

  20:00 – 20:30   **Optional tour of the former prison "Skatta"**

  20:45 – 21:15   **Optional tour of the former prison "Skatta"**

Tuesday 24 May

09.00 -10.30   **What novel technologies are available to support probation goals and electronic monitoring**
Prof Ioan Durnescu, Ms. Anne Hoeksema and Ms. Robyn Malan De Merindol

10.30-11.15   **Coffee/Tea and Opportunity to visit sponsors' displays**

11.15-12.30   **Electronic monitoring, artificial intelligence (AI) and probation practice** *Prof. Mike Nellis*

12.30-13.45   **Lunch**

13.45-15.30   **1st Series of Workshop Sessions:**

Workshop I: Equitable, fair and just use of EM for all
Workshop II: Artificial Intelligence

| 16.30–18.00 | **Tour of Helsinki** |
| 19.30 – 23.00 | **Dinner at the Scandic Marina Congress Center** |

<u>Wednesday 25 May</u>

| 09.00-10.30 | **Engagement with electronic monitoring and allied technologies in the Nordic countries** |

Ms. Pia Andersson, Finland, Ms. Christine Andersson, Sweden, Ms. Marianne Kylstad Øster, Norway, Ms. Sinikka Saarela, Finland

| 10.30-11.15 | **Coffee/Tea, Opportunity to visit sponsors' displays and hotel checkout** |

| 11.15-13.00 | **2nd Series of Workshop Sessions** |

Workshop III: Alcohol monitoring
Workshop IV: Staff user's engagement

| 13.00-13.30 | **Conclusions from the workshop sessions and closing words** |

Mr. Willem van der Brugge and Mr. Gerry McNally

| 13.30 | **Lunch and departure** |

Appendix 2 - Workshop questions

The questions raised by the plenary speakers were explored in the four workshop sessions. The participants were asked to discuss three specific questions in groups and submit their conclusions using the online application of Mentimeter. The findings of each session are also published on the website of the CEP.

Workshop I. Equitable, fair and just use of EM for all

1. What are the issues that need to be addressed to ensure that EM is responsive to different groups of wearers?
2. What measures are in place in your country to ensure equity and fairness to all individuals subject to EM, irrespective of who they are?
3. How can we make EM more responsive to wearer's different backgrounds characteristics and needs?

Workshop II. Artificial Intelligence

1. How in probation services AI might affect the dedicated workforce (size and character) or even the supervision itself?
2. To what extent are electronic monitoring and 'probation apps' the precursors of a much more data-driven approach to supervision?
3. What factors do you consider when beginning to use AI in your work?
4. Do you think that an AI technology can be trusted in probation services and provide the expected services while being compatible with human rights?

Workshop III. Alcohol Monitoring

1. What are the ethical challenges which arise with the use of remote alcohol monitoring?
2. What should be the goals of remote alcohol monitoring?
3. What additional support should be provided to those subject to remote alcohol monitoring?

Workshop IV. Staff User's engagement

1. The core values of probation are embedded in the use of or in the plans of using technology as part of the probation work.
2. The leadership in our jurisdiction is promoting the use of technology as a tool in the probation work
3. What are the benefits for staff and service users in your organisation?
4. What are the important factors that will enhance/are enhancing the probation staff users' engagement in using technology in your jurisdiction?