



Electronic Monitoring Is Not the Answer

Critical reflections on a flawed alternative

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Executive Summary

This report offers a critical assessment of electronic monitoring (EM) in the criminal justice system. The author, who spent a year on an ankle bracelet as a condition of his own parole, draws on his in-depth study of legislation, policies, contracts, and academic literature related to electronic monitoring. In addition to this research, he interviewed people directly impacted by EM in four states. Interviewees included those who had been on the monitor, their family members, corrections officials, and the CEO of a monitoring company. The report rejects any simplistic rush to deploy electronic monitors as an alternative to incarceration. Instead, the document sets out two critical conditions for EM to be a genuine alternative: (1) it must be used **instead of** incarceration in prison or jail, not as an additional condition of parole, probation, or pre-trial release; (2) it must be implemented with an **alternative mindset** that rejects the punitive philosophy that has dominated criminal justice since the rise of mass incarceration. A genuine alternative mindset as applied to EM must ensure the person on the monitor has a full set of rights and guarantees, including the rights to seek and attend work, to access education and medical treatment, and to participate in community, family and religious activities. Without these rights, the person on the monitor remains less than a full human being, a captive of the punitive, “tough on crime” mentality that has been at the heart of more than three decades of mass incarceration.

Moreover, the author asserts that electronic monitoring is more than just a tool of the criminal justice system. With the rise of GPS-based electronic monitors capable of tracking location, EM devices have become part of the arsenal of surveillance, a technology that enables both the state and business to profile people’s movements and behavior. In the present situation, this surveillance component of EM has completely escaped the view of policy makers and even social justice advocates. EM as a tool of surveillance requires regulation.

In making his arguments, the author puts forward fourteen guiding principles to inform the use of electronic monitors in the future. Without careful consideration of these guiding principles, EM runs the risk of becoming a punitive, virtual incarceration, the costs of which will be borne by the persons on the monitor and their loved ones. In addition, from the surveillance angle, EM data can potentially be used to restrict people's movement to certain geographical areas, becoming part of a process of race- and class-based technological gentrification.

The author's fourteen guiding principles are:

1. **Electronic monitoring with house arrest must be seen as a form of incarceration.** People who spend time on a monitor should be given credit for time served.
2. **Electronic monitoring should not be added onto a term of parole or probation after a person has served their time.** As a former Michigan corrections official states in the report, "it is just **another burdensome condition of extending . . . incarceration.**"
3. **The net of who is placed on an electronic monitor must not be widened, especially not in ways that capture people who have not been convicted of any crime.**
4. **Regulations regarding both access and archiving of data collected from GPS-based electronic monitors must be put in place.** These regulations must respect the right of privacy and outline time frames for deleting such data from official archives.
5. **The treatment of people with sex offense histories or any other** sub-category of criminal convictions should conform to the same standards of privacy and human rights accorded everyone else in the criminal justice system.
6. **Exclusion zones should only be used in rare instances and applied on a case by case basis.** Present practice leads to restrictions that often make it unreasonably difficult for a person on a monitor to find housing or employment. Moreover, the zones create the potential for technological segregation of urban areas, and the creation of race- and class-based skid rows and gated communities, with the boundaries policed by tracking devices and other forms of technological surveillance.
7. **Lifetime GPS should be abolished.** Whether it be incarceration or tracking via electronic monitor, no carceral status should be beyond review.
8. **Enhancing the surveillance power** of electronic monitors should be opposed, particularly adding the capacity to monitor biometrics or brain activity, to audio or video

record, or to administer pharmaceuticals remotely. Any moves to initiate chip implants should also be opposed.

9. **Electronic monitors should not be technological mechanisms for reinforcing economic and racial disparity.** In the past, ankle bracelets have often been used as a means of helping the well-to-do avoid incarceration for their transgressions. By contrast, strict EM regimes have been disproportionately applied to poor people as an add-on to an already burdensome condition of parole or probation.
10. **The rules for EM regimes should not be punitive.** They should be transparent and informed by the rights of the person on the monitor and their loved ones. These rules should facilitate, not unduly restrict, the successful participation of the person on the monitor in the economic and social life of the community.
11. **User fees for people on electronic monitors as a result of involvement in the criminal justice system should be banned.** Such fees become yet another source of criminal justice debt, which contributes to recidivism and the perpetuation of poverty.
12. **The companies that provide electronic monitoring services need to be strictly regulated by government authorities.** The biggest players in the industry are two of the most unscrupulous prison profiteering companies: The **GEO Group**, the second largest private prison company in the US, and **Securus Technologies**, a firm which made \$114 million in 2014 by overcharging people in prisons and jails for phone calls to their loved ones.
13. **Practitioners and providers of electronic monitoring in the US have established no best practice models which acknowledge the human rights of people on the monitor.** Therefore, those involved in electronic monitoring in this country must look to the extensive experience of European countries, specifically the Confederation of European Probation (CEP), for guidance and support in transforming the present punitive, profiteering electronic monitoring system into a program more consistent with progressive notions of justice and rehabilitation.
14. The development of policy on electronic monitoring should include **significant participation** from those who have been on electronic monitors, their loved ones, and those officials who have been involved in the actual implementation of monitoring programs.

Introduction

In 2014 Dylan Matthews of *Vox Media* claimed to have found the solution to one of the country’s leading social problems: mass incarceration. In his article “Prisons Are Horrible and There’s Finally a Way to Get Rid of Them,” he recommended that authorities “move those imprisoned for offenses short of homicide or sexual assault to GPS-supervised house arrest as soon as is practicable.”¹

In the context of ever-increasing criticism of mass incarceration and excessive corrections spending, Matthews’ call for **mass monitorization** typifies the search for a quick fix to a complex problem. However, before placing hundreds of thousands of people on ankle bracelets as an “alternative” to incarceration, we need a deeper understanding of this technology. In particular, we need to examine how increased use of electronic monitoring (EM) would affect prison population numbers, the systems of parole and probation, the rampant racism in the criminal justice system, and how these monitors fit into the realm of surveillance technology.

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Although it has been used in criminal justice for more than three decades, researchers have done little effective work on electronic monitoring. Most studies either focus on how use of monitors influences recidivism rates of people with sex offense convictions or consider how to make the devices operate more efficiently. Little effort has been made to examine how a monitor affects the individual wearing the ankle bracelet, let alone their families and communities. The “rights of monitored” and others directly impacted remain unstated and unexplored.

Moreover, since electronic monitors are increasingly using GPS tracking technology which records every movement in real or near real time, EM is more than a criminal justice tool.

It is also part of the technology of surveillance. Each person on a GPS monitor generates masses of data as they move around, data that potentially link to other modes of social control. Yet in the US, activists and policy makers involved in criminal justice issues as well as those concerned with surveillance and privacy have paid scant attention to this aspect of EM.

Google Speaks

Former Google CEO Eric Schmidt: “Almost nothing, short of a biological virus, can scale as quickly, efficiently or aggressively as these technology platforms and this makes the people who build, control and use them powerful too.”²

This report aims to contribute to a critical understanding of electronic monitoring in both criminal justice and surveillance. The report rests on five principles:

1. For most people, being on a monitor is preferable to being in prison or jail. However, this is not a sufficient reason to support the expanded use of EM. We need to know much more.
2. The use of tracking and location monitoring will expand in the future.
3. No technology is neutral. Although EM is intrinsically controlling, the extent and nature of that control depend on the mindset of those who implement EM as well *as the mindset of the monitored*.
4. Monitoring technology does not impact everyone equally. For the rich and powerful, such as Martha Stewart and Lindsay Lohan, as well as for many middle-class men with DUI convictions, an electronic monitor is a ticket to avoid incarceration, a vehicle for maintaining class privilege. The experience of those at the other end of the socioeconomic ladder is different. Poor people of color, especially those who have been involved with the criminal justice system, experience EM as a technology of control and humiliation which often comes with serious financial penalties and the constant threat of re-incarceration.

5. There is no technological quick fix to the problem of mass incarceration or the growth of surveillance. The solution may include technology, but it must grow



Most EM devices are made up of an ankle bracelet that communicates with some sort of electronic box linked to a telephone line. They can be removed with a pair of scissors as this one was after the wearer completed his term. (Photo: Gregory Koger)

from mobilizations and social movements that fundamentally undermine the punitive mentality that has dominated the US social policy landscape for more than two decades. Expert-driven policies and legislative changes formulated in isolation will not lead to a genuine solution.

This report contains five sections. **Section One** will present an historical profile of electronic monitors in the criminal justice system. **Section Two** will examine electronic monitoring as an alternative to incarceration. **Section Three** will look at the human rights aspect of electronic monitoring. **Section Four** will place electronic monitoring in the framework of the architecture of surveillance. **Section Five** will offer some general reflections on what lies ahead for monitoring, and how social movements might respond, and it concludes with specific guiding principles for use of EM.

The Voice of the Monitored

Shawn Harris, who spent nearly a year on a monitor in Michigan, summarized it like this: “all you did was switch from a prison setting to a housing setting, which is now your new cell . . . you’re not really free when you got the monitoring system.”³



How Do Electronic Monitors Work?

Most EM systems consist of an **ankle bracelet linked to an electronic box**. The bracelet must remain on the person's ankle 24 hours a day. There are two main kinds of devices: radio frequency (RF) and GPS. RF merely records whether a person is at home. GPS-based monitors track location through a satellite connection, though some now make use of wi-fi. The devices normally send information to the monitoring authority through either a land line telephone or a cellphone connected to the box. Specialized devices have incorporated video monitors, breathalyzers, blood alcohol measuring devices, and trackers or pagers that enable supervisors to send text messages to those under supervision. Some also add voice recognition software linked to robo-call programs that phone a person's home at random intervals to verify their presence. Most EM systems are battery powered. Like cellphones, they need to be recharged by being connected to a wall plug. Battery life varies. Some devices require recharging as often as every 4 or 5 hours. Though it looks secure, an ankle bracelet can be removed with a pair of household scissors. But removing it will trigger an alarm. In some jurisdictions, even tampering with the device can result in a felony escape charge.

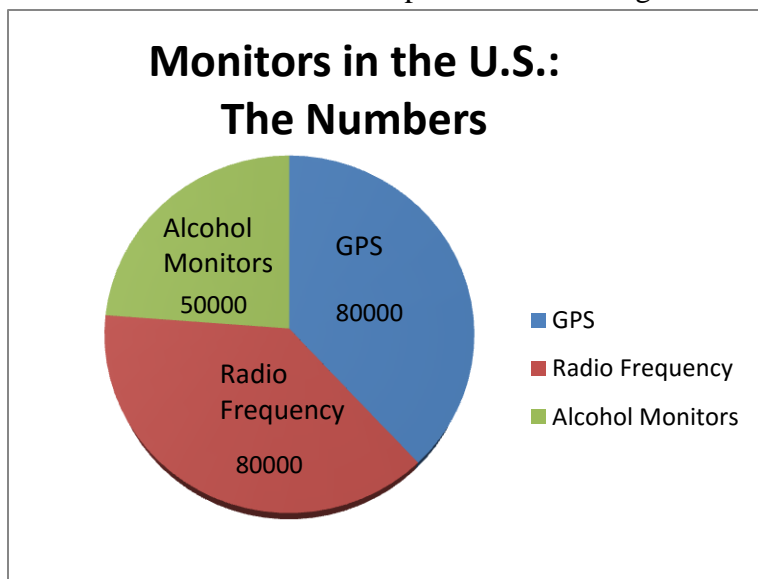
For most people on EM, the default position is **house arrest**. A person must remain at home unless they have been granted a "move" by their supervising authority, usually a probation or parole officer or other official of the court. If a person has employment, they may be allowed regular movement to travel to and from work and remain there for the required hours. Computer systems, usually located in a call center, can set up similar schedules for other events—school, drug programs, therapy, etc. A person who leaves the house without permission or returns late can be subject to sanction—normally either locked down at their house for a certain period or re-incarcerated.

Section One

History of EM in the Criminal Justice System

Two Harvard academics, the Schwitzgebel brothers, first developed electronic monitoring in the 1960s. They designed EM to provide networks of support for those on parole, but their invention didn't catch on. Only in 1983 did New Mexico judge Jack Love first apply an ankle bracelet to someone in a criminal case. By 1987, 826 people were participating in electronic monitoring programs nationally.⁴ By 1998, this number stood at just over **95,000**.⁵

In the early days, electronic monitoring relied solely on RF. But in the mid-1990s GPS added tracking as well as the option of incorporating “exclusion zones” into an individual's regime. These zones kept him or her away from areas known to present possible temptations to re-offend. All this enhanced possibilities for higher levels of control.



Experts estimate that in 2014 about **160,000 devices** were in use due to a criminal justice encounter. About half of these were GPS, and half radio frequency.⁶ Since most terms on EM are less than a year, about **300,000 people** experience electronic monitoring annually.⁷ In addition, an estimated 50,000 alcohol detection ankle devices are in use, usually due to a DUI conviction. All these

statistics are rough, based on data gathered through various uncoordinated sources. There is no national database of monitoring usage or precise composite figures for those being monitored.⁸

In the last two decades, EM use has not expanded as rapidly as proponents predicted. Several factors lie behind this. First, the industry is increasingly controlled by firms that earn the bulk of their profits through investments in incarceration, such as **The GEO Group** and **Securus Technologies** via subsidiaries (**BI** for GEO Group, **STOP** for Securus). The GEO Group is the second-largest private prison operator in the US, and Securus's holdings include a large share of

the \$1.2 billion annual revenue from prison phones.⁹ Rather than promote an agenda of decarceration, these companies direct most of their EM marketing efforts at mergers, takeovers, and outbidding other competitors for existing contracts in order to monopolize the market.

Bad publicity has also hurt EM. Highly publicized crimes committed by people on monitors have prompted negative images of monitors. Perhaps the most famous of these was the case of **Evan Ebel**. In early 2014 he cut off his monitor and went to the house of former Colorado Department of Corrections chief, Tom Clements, and shot him dead.¹⁰ David Renz in New York and Bessman Okafor in Florida, both of whom committed murders while on monitors, also contributed to a reduced willingness on the part of judges to use electronic monitoring.

Apart from crime stories, reports concerning the technological flaws in EM systems have cast further doubts on the monitors' viability. In 2014 Colorado reporters uncovered an incident in which 90,000 device alerts went unanswered.¹¹ In 2013 the *Los Angeles Times* revealed that thousands of people with sex offense convictions had cut off their devices, and many of them had apparently disappeared.¹²

Despite these limitations, electronic monitoring has experienced a process of “net-widening.” Policy makers and entrepreneurs have found new situations to apply an ankle bracelet. Thus, electronic monitors appear not only as a condition of parole, probation, and pre-trial release, but also in response to truancy violations, juvenile court involvement, and domestic violence as well as during the waiting time before judgment in asylum or deportation cases.

However, with increasing pressure to reduce prison populations and corrections budgets, the use of monitors is likely to expand, especially as part of a plan of decarceration.

“Electronic monitoring is seen as an alternative to detention, yet is often what leads our clients to be detained.”

- Kate Weisbrud, Juvenile Lawyer¹³

Section Two

Electronic Monitoring as an Alternative to Incarceration

Proponents of electronic monitoring frequently refer to EM as an “alternative” to incarceration.

In this regard, they employ three main arguments for using EM.

- 1. Cost.** Monitors cost less than incarceration. Whereas average costs for state prison incarceration can range from \$60 to nearly \$200 a day, EM contractors charge corrections departments daily fees of between \$3 and \$15 for an ankle bracelet. However, comparison of per-day charges overstates the savings from EM. Placing a small number of people on a monitor instead of incarcerating them has little or no effect on the major costs of prisons and jails: salaries, energy, bond repayments, etc. These costs do not fall proportionately with a relatively small decline in prison population. In addition, monitoring incurs extra administrative expenses. As a result, experts estimate the real cost of monitoring at about \$25 a day. Many jurisdictions have addressed these cost issues by tacking on user fees, which can range from \$5 to \$20 a day, but in exceptional cases go as high as \$40.¹⁴
- 2. Public safety.** EM proponents contend that location monitoring contributes to public safety by enhancing law enforcement’s control over those on the monitor.
- 3. Benefits for those on the monitor.** Advocates emphasize that people on a monitor can work and spend time with their families in a way that is not possible if they are incarcerated. As Ann Toyer of the Oklahoma Department of Corrections put it: “We get them back into the community where they can work, they pay taxes, they have access to community services . . . and they can pay for those services.”¹⁵

Although such arguments may initially appear convincing, they are based on a very limited definition of an “alternative” to incarceration.

What Is an Alternative to Incarceration?

A genuine alternative to incarceration must fulfill at least two criteria:

1. An alternative must *take the place of incarceration in prison or jail.* Even though this may seem obvious, electronic monitors are frequently used as an add-on to a condition of community control:

parole, probation, or pre-trial release.

Before monitors, those under community control were generally free to move about. When used in these settings, particularly under the punitive



ethos of present-day criminal justice, monitors don't substitute for incarceration but simply increase the level of control over those trying to transition to the community. Moreover, as an add-on, EM actually adds to corrections costs.

Even proponents and practitioners of electronic monitoring have complained of inappropriate use of the device, especially as a condition of parole. Richard Stapleton, a legal administrator who worked for more than three decades for the Michigan Department of Corrections, including many years in EM policy, argues that adding electronic monitoring as a condition of parole is “**another burdensome condition of extending . . . incarceration.**” He maintains that people have “served their time” and should not “be burdened with a whole stack of conditions.”¹⁶ Linda Connelly, the CEO of a California-based EM provider, LCA, makes a similar argument. She believes that monitors should be used only “in lieu of” incarceration. In essence, Stapleton and Connelly are defining EM as a form of incarceration. For example, in a pre-trial situation Connelly argues that “if they’re okay to be out, they should be out without it.” She estimates that expansion of the use of electronic monitors in lieu of incarceration could reduce the population behind bars by 50%, but sees at least 15% as realistic in the next few years.

2. A mindset change. An alternative to incarceration must embody an alternative mindset. This means rejection of the punitive, racist mentality that has dominated US criminal justice and social policy for more than three decades. An alternative to incarceration must recognize the full humanity and rights of people with felony

convictions and their loved ones. In its current form, EM merely perpetuates the punishment paradigm. Interviews for this report with dozens of people who have been on monitors in various settings—as well as conversations with corrections officials, parole officers, and CEOs of electronic monitoring companies—reveal a similar story: electronic monitoring all too often operates under a punitive philosophy with little or no acknowledgment of the “rights of the monitored.” Moreover, the legal framework that applies to electronic monitoring is often unclear and contradictory.

Punitive EM Regimes: A High Stress Situation

Interviews reveal the punitive mindset that dominates most EM regimes. Former Michigan Department of Corrections official Richard Stapleton confirmed this, saying that people on EM were largely “**at the whim of their agent.**”¹⁷ That arbitrary authority makes EM a high-stress situation for many people, with stress heightened by irrationally harsh rules. Some of the rules and punitive measures that interviews for this report unearthed included:

- Being allowed to shop in only three stores in town
- Not being allowed to go shopping and attend a movie during the same outing
- Being allowed out of the house only to do shopping or laundry if no one else in the household can perform these activities
- Being allowed out of the house for family activities only two days per year, Thanksgiving and Christmas, and only for two hours on those occasions
- Not being allowed to go to a hospital in an emergency without first obtaining permission from the parole officer, regardless of the time of day or the seriousness of the situation
- Receiving a 10-day “flash” incarceration for going to a hospital in an emergency and failing to have the doctor fill out the forms required by the Department of Corrections before the police arrived at the hospital
- Not being allowed to work overtime or change work schedule without permission from the parole officer

Punitive EM Regimes (cont.)

- Having to submit a detailed description of all movements out of the house two weeks in advance, including the departure and arrival details of all buses taken along with the days and hours of work assignments for jobs like house cleaning, construction, and gardening where schedules are not precise
- Not being allowed to speak with anyone in the apartment complex where the person lived
- Not being allowed to sit on the front porch or be in the back yard of a house where the person on the monitor lived
- Having to request permission to go to the laundry room in an apartment complex
- Not being able to shower because the shower was out of the range of the signal of the ankle bracelet
- Being ordered to do a drug test during working hours without the parole agent making prior arrangement with the employer

For some the mere difficulty of obtaining a “move” was challenging. Gregory Koger, who spent a year on a monitor in Illinois, reported that “there was literally a period of like three straight months that I never left the house because of the hassle and bullshit of attempting to even get movement.”¹⁸

Re-Thinking EM: An Alternative Legal Framework

In terms of assessing electronic monitoring as an alternative to incarceration, clarifying its legal status is absolutely essential. If EM is to be implemented *instead of* incarceration, it must be defined as the equivalent or partial equivalent of time spent in a jail or prison. Otherwise, it is not an alternative at all but an additional constraint to a form of carceral control.

Court decisions are not uniform on this issue, but there is ample legal precedent to support incarceration status for electronic monitoring. Federal statute designates a “pre-release” status for those who are nearing the end of their sentence. Under pre-release, people can serve up

to the last six months of their time in a number of non-prison settings, including halfway houses and “home confinement.”¹⁹

Case law in **Iowa, Florida, and California** also provides precedents for crediting time on an electronic monitor during a pre-trial release as the equivalent of incarceration.²⁰

Internationally such practice has gained widespread use. For example, in Denmark up to 60% of all sentences of 6 months or less are served on EM while up to the last 6 months of a prison sentence can be served on a monitor.²¹

Accepting electronic monitoring as a form of incarceration has serious implications for its use in other settings. In the case of pre-trial, this means that any time spent on an electronic monitor **should be applied toward** any subsequent sentence imposed by the court. This could be a day for day equivalent or some form of partial credit or “sentence discount.”²²

EM and Emergencies

The story told by **Kent Shultz**, who was on an electronic monitor in Michigan after 28 years in prison, illustrates the punitive nature of the electronic monitoring regimes. In 2013, Shultz told how one night the apartment building where he lived caught fire. He ran outside and called his parole officer on his cell phone. The parole officer told him he had to go back into the burning apartment and retrieve the box apparatus that was part of the EM system. Shultz, risking life and limb, ran back into the house, successfully retrieved the box, and went to spend the night at a local motel that the Red Cross had arranged as an emergency contingency. The next morning Shultz reported to the local police station, indicating that he was not at home where he was supposed to be because his apartment had burned down. The police checked their records, found that an absconding warrant had been generated for Shultz’s arrest, and locked him in a cell. Fortunately, he had access to legal assistance and was freed after a few hours. Nonetheless, his situation demonstrates the constant fear many people face while on a monitor—that their freedom hangs on a thin thread and can be revoked due to an event completely beyond their control, like a fire or a delayed bus. And not everyone in such situations can gain quick access to legal assistance.



Under this legal framing, the use of the monitor on a person who is on parole becomes, as Richard Stapleton has argued, an unwarranted extension of their incarceration, hence an **illegal imposition**.

Perhaps the most ambiguous situation is that of probation. In most instances, probation applies to misdemeanors or relatively low-grade felonies. A monitor could be applied in three ways: (1) instead of jail time, (2) as an add-on to a sentence of probation where no jail time is imposed, or (3) as a condition of probation after a jail sentence has been completed. Hence, a judge may elect to use a monitor as an alternative punishment to incarceration or may employ it as a condition of a sentence to probation. However, if we define electronic monitoring with house arrest as incarceration, then it should be imposed only as an equivalent to a jail sentence, not as an additional condition to a term of community supervision.

Finally, categorizing electronic monitoring as a form of incarceration means that its application in situations where a person has not even been criminally charged becomes totally inappropriate. This would eliminate the now frequent use of EM in certain juvenile or school truancy cases. Furthermore, since many immigration cases are civil rather than criminal matters, incarceration of many immigrants awaiting adjudication lands beyond the boundary. Net widening to “capture” other vulnerable cohorts beyond the criminal justice system, such as those with histories of substance abuse, mental illness, or homelessness, would simply be out of bounds.

Electronic Monitoring and Decarceration

With this alternative legal framework, electronic monitoring could become an **important tool of decarceration**—a way to reduce prison and jail numbers. Any savings accrued from the use of monitors could be directed to reinvestment in communities that have been decimated by



mass incarceration. Funding for programs such as job training, public housing, daycare, substance abuse treatment, and mental health centers would be some of the logical targets for these redirected resources. Such accrued savings should not be channeled back into more policing or surveillance, as has often been done in some “justice reinvestment” programs in the past.

However, redefining electronic monitoring as a form of incarceration represents only half of what is necessary to constitute EM as an alternative. The other half consists of implementing monitors in a way that embodies the notion of human rights—the “rights of the monitored.”

How do we define electronic monitoring?

Legal scholars and policy makers have generally avoided coming to grips with defining electronic monitoring. So what is it: a disciplinary measure applied to those likely to “misbehave” while on parole or probation? A form of “incarceration on the cheap” that saves taxpayers money while keeping an eye on suspicious characters? Some might view it as merely a minor inconvenience for someone who has done wrong. Yet another conception might compare EM to a dog leash, limiting movement to a short perimeter but not as restrictive as being in a cage. Legal scholar Erin Murphy has noted the lack of clear characterizations of EM:

*Physical incapacitation of dangerous persons has always invoked . . . constitutional scrutiny, (but) virtually no legal constraints circumscribe the use of its technological counterpart . . . courts erroneously treat physical deprivations as the archetypal ‘paradigm of restraint’ and . . . largely overlook the significant threat to liberty posed by technological measures.*²³

Murphy’s observations imply that EM amounts to deprivation of liberty by a technological measure. Following this train of thought, categorizing electronic monitoring as a form of “virtual” or “low intensity” incarceration might be an accurate fit. Moreover, as the capacity of the technology to monitor increases, the potential to ramp up the intensity of liberty deprivation under EM also increases. With rising pressure to decarcerate and cut back on corrections expenditure, the site and financial burden of incarceration can shift—from concrete and steel cell blocks to households and communities. New York social justice activist Jazz Hayden argued that the stop and frisk policy of New York police converted poor Black communities into “open air prisons.”²⁴ From this perspective, in over-policed communities, being on an electronic monitor could amount to traveling from a virtual prison during house arrest time, to an open air prison once the person is on the street. The use of exclusion zones further amplifies the deprivation of liberty of electronic monitors. If electronic monitors are going to be more widely used, there is an urgent need to expand and deepen the ways in which we think about electronic monitoring.

Section Three

Human Rights and Electronic Monitoring

Few efforts have been made in the United States to connect human rights with electronic monitoring.²⁵ The minimal legal and regulatory documents that provide guidelines tend to be statutes that may empower state or local authorities to use EM in certain cases, spell out the details of equipment to be provided, or list the penalties for violations of EM rules.²⁶ Many contracts with users contain similar content, as well as providing a schedule of user fees.

In fact, most jurisdictions operate without any detailed guidelines or principles. Surprisingly, this contrasts sharply with the majority of prisons and jails, where those incarcerated normally have stipulated entitlements such as access to legal research materials and medical treatment, specified hours for visiting and recreation, minimum daily calorie provision for food, and some facility for purchasing consumer goods. These prison entitlements are frequently ignored, but they do form grounds for legal appeals. No such entitlements apply in virtually all EM programs.

Rules for EM—Two Exceptions: Michigan and Ohio

Michigan and Ohio are among the few states that make some effort to spell out what a person on a monitor can do. Though not referring to “rights,” the Michigan Department of Corrections specifies that the following “shall be permitted”: seeking or attending work, participating in education or treatment, accessing medical services, attending religious services, and participating in “required” community service.²⁷ By contrast, in a highly restrictive 50-page set of policy guidelines the Corrections Center of Northwest Ohio specifies that a person may attend family gatherings outside the home only on Thanksgiving and Christmas and even then not for more than two hours. This document also grants permission for a person to shop or do laundry only if there is no one else in the household able to carry out these tasks.²⁸

To find any serious discussion of the rights of the monitored, we need to look to the United Nations and, more recently, the European Union (EU).²⁹ As far back as 1990, the United Nations addressed some of the human rights concerns in regard to noncustodial measures such as EM. The resolutions adopted are known collectively as the **Tokyo Rules**. The Tokyo Rules, which refer to the “needs and rights of the offender,” state that the conditions imposed should never go “beyond those resulting from the decision of the judicial authority.”³⁰

Complicating Cases: Domestic Violence

Some jurisdictions use electronic monitors in domestic violence cases. The device is generally deployed to enforce a “**no contact**” order—keeping a person convicted of domestic violence away from survivors of previous incidents. In these cases, the person with the history of violence wears a monitor which triggers an alarm if the wearer comes within a certain distance of the survivor or their place of residence. This is largely intended as a short-term preventive measure. Unlike most applications of electronic monitoring, in domestic violence cases EM typically targets situations where there is evidence that a person poses a clear and present danger to another. In such situations, the use of EM may provide vital immediate protection to survivors and their families. Still EM alone is not enough. In the long run, the underlying causes of domestic violence need to be addressed, including the mindset that trivializes violence against women and transgender people. Researcher Vikki Law suggests in some instances that EM is a way of “shuffling around responsibility for addressing the issues and the conditions that allow domestic violence to flourish, issues like poverty, racism, and gender inequality”³¹ while touting a technological solution.

Despite the fact that EU countries use monitors far less than the US (largely because of the human rights implications), their debate over EM is extensive and rich. In particular, analysts such as **Mike Nellis** have not only produced a vast literature³² but have also played important roles in establishing an EU-wide working group on EM. Drawing extensively on the Tokyo Rules, the working group in 2014 produced a set of recommendations that applied specifically to electronic monitoring.³³ The document spelled out not only the rights of the monitored but also the **rights of those who live with someone on a monitor**. The EU as a whole adopted the recommendations. They include the following:

- The terms of a person’s monitoring regime should not impose unnecessary burdens on third parties, especially those who share a household with the person on the monitor.
- EM is not a replacement for the required set of support services that a person transitioning from prison to the community needs.
- Staff should be trained to communicate “sensitively” with those on the monitor.
- If exclusion zones are imposed, the conditions should not be “so restrictive as to prevent a reasonable quality of everyday life in the community.”

While focusing primarily on the daily regimes associated with electronic monitoring, the EU group has also devoted considerable attention to human rights and the privacy issues that emerge from the collection of data via GPS location tracking.

Mike Nellis of the EU Working Group on EM

I do believe EM—in all its different technological forms—is inherently, essentially controlling, and it can be used for either rehabilitative or punitive purposes, depending on the legal and policy frameworks in which it is embedded, the measures it is integrated with, and the attention given to what forms of control offenders regard as legitimate.³⁴

Tracking Data from GPS Monitors

In the US little attention is paid to how to handle the massive location-tracking data compiled through GPS monitors. In fact, rather than considering privacy issues, EM providers often boast of how much data they collect and how long it is stored. For example, Satellite Tracking of People (STOP), which claims to be the largest EM company in the US, assures potential clients it keeps data for a “**minimum**” of **seven years**.³⁵ The right to privacy of the “convicted” (or even those on pre-trial release) appears not to be a concern.

EM and Our Technological Society

The problems that emerge with the present use of electronic monitoring raise many broader questions about the technology. The fundamental issue is whether the technology itself or the way it is used is the problem. For example, are there ways it could be applied along with support services that would make it a cheaper, more effective criminal justice tool than it is under present conditions? In a society where many people already voluntarily track themselves through cellphones and apps that measure their heart rate and blood sugar, how much worse is electronic monitoring? In terms of policy, should social justice advocates oppose EM as excessively punitive on principle or try to limit the situations in which it is used and humanize the rules that govern monitoring regimes? The future of EM will hinge on the answers to these questions.

The Financial Cost of Being Monitored

A joint survey by National Public Radio and the Brennan Center found user fees for electronic monitoring in **every state but Hawaii**.³⁶ In many jurisdictions, individuals pay a setup fee and a daily charge as well. Setup fees can be up to \$200, and daily tariffs range from **\$5 to \$40**. Some states offer relief for low-income users or ad hoc arrangements to do community service in lieu of payment.³⁷ In the event of a damaged or lost device, the penalty may reach up to \$1200. In addition, the financial aspect of monitoring may present complications when parole agents are tasked with collecting fees from their clients. One former EM supervisor employed by BI reported being given a bonus if he collected a certain percentage of fees from clients. He said the normal policy was to confine a person to their house if they fell too far behind in payments.³⁸

The European perspective on this differs dramatically. In many countries, GPS monitors are used in a very limited capacity or not used at all precisely because of privacy concerns. In **Germany**, all data collected via GPS monitors must be destroyed after **two months**. Moreover, German regulations also address questions of who can access the data. For example, German

criminal investigators are not permitted to scour the ranks of people on a monitor who were in the vicinity of a crime scene at a certain time. They can access that information only if other evidence indicates that one of the people on a monitor might have been involved (e.g., an eyewitness statement or the crime's m.o.)

EM As Punishment: Interviewing People on Parole and Probation

What It Feels Like to Be on a Monitor

The effectiveness of electronic monitoring depends to a considerable extent on how the person wearing the device interprets their experience. Yet the overwhelming majority of research on electronic monitoring contains no voice of people who have been on a monitor, their loved ones, or the employees directly responsible for implementing EM programs. Those who have been interviewed for this report largely viewed EM as yet another form of punishment and state intervention in their lives, often with racial overtones.

Jean-Pierre Shackelford, (pictured at right) who spent almost three years on a monitor in Ohio, referred to EM as “**21st-century slavery, electronic style.**”³⁹



Ernest Shephard (pictured below), who spent 45 years in prison then was placed on a monitor for a parole violation, was more blunt than Shackelford. Looking at his ankle bracelet,



he said: “I could imagine how slaves would be on a ship and they would be gaffled to the ship and their feet would be anchored to some steel. [That black plastic strap] always inspired me to want to get a sense of relief, to escape, or to break it off. My life was miserable. How could I be expected to sit day and night and accommodate myself to a volunteer misery and I’m trying to do something to rehabilitate, to make a life . . . and I got this nagging misery. I feel like a **chattel slave** and I say ‘if I don’t rebel, what kinda dude am I?’”⁴⁰

Terry Rodriguez, who spent several months on a monitor as part of probation, complained about wearing the monitor in social and work settings: “I felt judged by people . . .

EM As Punishment: Interviewing People on Parole and Probation (cont.)

everybody pretty much knowing your business without you even telling them. [The monitor was also] a barrier in terms of getting employment, [when] I had to mention to my employer that I was on house arrest.”⁴¹

Family members also talked about how they experienced the stress of the monitor.

Marissa Garcia, whose husband spent several months in southern California on a monitor, said, “It was like I had one too, [I] always panicked to be home by ten to get him to charge it and not have the gang task force at our doors.”

Alex Berliner, whose partner was on a monitor in Oakland, California, noted that his confinement created lots of extra work for her in terms of shopping, buying medicine, and having to handle virtually all the basics of managing his life.⁴²

Lois DeMott, whose 17-year-old son had mental health issues but was put on a monitor in Michigan, reported: “I have to plan my whole life around his schedule. It affects whatever support system the person has.” When her son was locked down in the house for the entire weekend, she asked: “How do you help this person stay sane if he has to stay in the house from Friday night to Sunday? **Families need to be taken into consideration.**”⁴³

Section Four

EM and the Architecture of Surveillance

The Edward Snowden revelations have escalated awareness of state and corporate surveillance, often simply called **Big Data**. In his book *Data and Goliath*, author Bruce Schneier notes that “for the first time in history governments and corporations have the ability to conduct mass surveillance on entire populations.”⁴⁴ Much of the processing of this data is based on mathematically derived formulas known as **algorithms**. Industries use these algorithms in risk assessment tools. As researchers Danielle Keats Citron and Frank Pasquale put it: “Big Data is increasingly mined to rank

and rate individuals.

Predictive algorithms

assess whether we are good credit risks, desirable

employees, reliable tenants, valuable customers—or

deadbeats, shirkers,

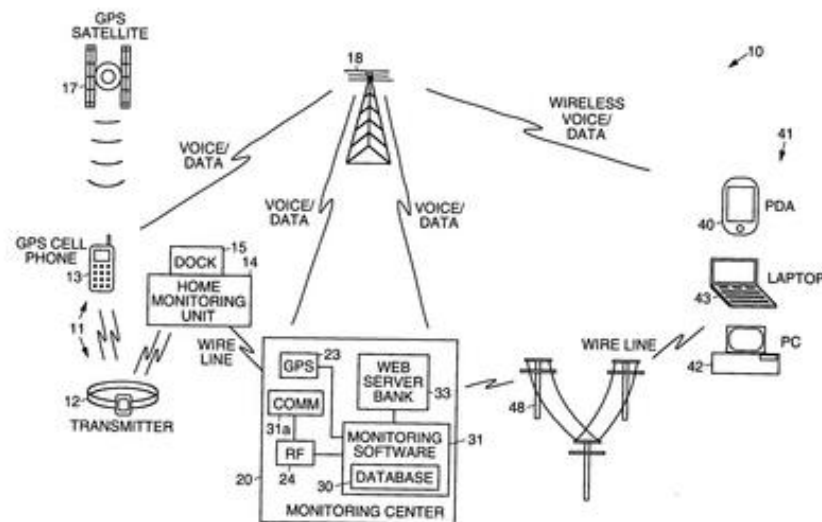
menaces, and ‘wastes of

time.’ Crucial opportunities

are on the line, including

the ability to obtain loans,

work, housing, and insurance.”⁴⁵



Although the formulas behind these algorithms have an enormous impact on people’s lives, they are generally not available to the public, nor are they subject to appeal.

But, as the Snowden disclosures revealed, data collection and surveillance extend far beyond the needs of business enterprises. Surveillance technology captures enormous amounts of data on the principle of “save everything you can and someday you’ll be able to figure out some use for it all.”⁴⁶

People experience this onslaught of Big Data in different ways. For mainstream America, primary concerns relate to privacy. This swath of the population is often not exactly certain what they specifically fear from surveillance, but there is considerable resentment at being targeted. A big part of this resentment emerges from their self-image as innocent, law-abiding citizens who

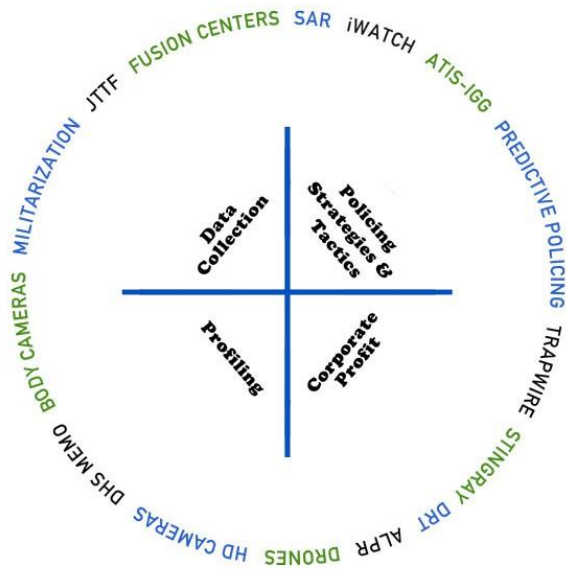


don't deserve to have their privacy invaded. It may not be that they oppose surveillance but that they want it targeted at those who "deserve" to be targeted. This cohort objects strongly to justifications of surveillance like that of former Google CEO Eric Schmidt: "if you have something that you don't want anyone to know, maybe you shouldn't be doing it in the first place."⁴⁷

Some media activists have noted the limitations of the focus on privacy, arguing that such a framing of the issue is "something for people who don't have anything more urgent to care about." They have labeled excessive concerns with privacy as "**white privileged anxiety**" that "hides the harm to communities of color."⁴⁸

In fact, for poor people of color, intrusions into daily life by the state and corporate America have become normalized. There is little room for self-perception of innocence or entitlement to privacy. In most cases, databases have already captured them many times over—for criminal convictions, for failing to pay a traffic fine, for applying for public assistance, for periods of residence in mental health institutions, drug treatment programs, and homeless shelters, for visiting incarcerated loved ones, for school discipline, for taking part in political activity deemed subversive, or for merely associating with family, neighbors, or friends who are targeted for surveillance. Nonetheless, with electronic monitoring, new dimensions of intrusion emerge. House arrest with an ankle bracelet is perhaps the most intense form of carceral-like control beyond the walls of an institution—the prison beyond the prison.

These controls ultimately restrict where people can go, whom they associate with, where they live, and what type of jobs or recreation they engage in. In addition, the burdens EM places on household members are effectively punishing people who in most cases are already under-resourced, overstressed, and limited in living space. While perhaps appearing unobtrusive, EM is, in fact, an intensive form of surveillance and control.



This graphic from Stop LA Police Spying Coalition illustrates the components of surveillance.

Spying: An Analytical Framework

The Stop LAPD Spying Coalition’s framework for categorizing surveillance in Los Angeles highlights four dimensions: data collection, profiling, policing tactics, and corporate profits. This represents how what Bruce Schneier calls the “**public-private surveillance partnership**”⁴⁹ uses an expanding range of technology. This may include data recorded at an individual level through license plate readers, face-recognition technology, drones, and cellphone-tracking devices known as Stingrays, as well as compilation through

joint ventures such as Fusion Centers. The profiling aspect comes in as the data collection targets specific demographic and geographical sectors of the population through the use of risk assessment tools based on algorithms. Private service providers such as **AT&T** and **Google** are often partners in facilitating the generation of data.⁵⁰

In practice the most frequent targets of such activity are poor people of color. However, certain events may shine extra light on other groups—Muslims, immigrants, and transgender folks as well as those with criminal histories. Likely the most extreme use of this targeting has taken place outside the US, through assassinations in places like Yemen or Pakistan. As former NSA official Michael Hayden noted in regard to drone attacks, “we kill people based on metadata.”⁵¹ These data collection processes also flow directly into “crime fighting” strategies known as “predictive policing.” Resources and personnel focus on particular geographical “hotspots” where statistics predict crime is likely to occur. Police then profile individuals who are in that area according to criteria determined by algorithms. These targeted areas will be disproportionately communities of poor people of color. As Malkia Cyril has pointed out: “Without oversight, accountability, transparency, or rights, predictive policing is just **high-tech racial profiling**—indiscriminate data collection that drives discriminatory policing practices.”⁵²

The 21st-Century Mining Industry: Data Is the New Gold

Designing collection systems and processing data for law enforcement, corrections, and surveillance is big business. While these systems contribute to ever more complex methods of control for the vulnerable, this 21st-century mining generates huge profits for major players in the industry. Law enforcement, corrections, and surveillance continue to grab an increasing share of the **\$18 billion Big Data industry**.⁵³ This market has attracted such traditional information technology giants as IBM, which has developed a Smarter Cities package that features crime prediction and video analytics to identify potential crimes and “criminals.” But a new generation of techies has also entered this market. University-spawned products like Rutgers University’s Risk Terrain Management (RTM) as well as LexisNexis’s Risk Solutions Social Media Monitor are heavily involved in predictive analytics. Such new developments have enhanced the capacity of national law enforcement databases such as N-Dex to monitor the vulnerable population.

Hence, while people in the upper income brackets are having their consumer or phone activity mined, targeted groups have the direct eye of the state on their daily physical movements and patterns of association. Big Brother watches them in an entirely different way. Kade Crockford, director of the ACLU’s Technology for Liberty Project, describes predictive policing as a “tech-washing of racially discriminatory law-enforcement practices.”⁵⁴ One organization involved in opposing expansion of surveillance labeled it a “**feedback loop of injustice**.”⁵⁵

EM: Virtual Gentrification and Urban Futures

Electronic monitoring adds the capacity not only to track people but to set up systems to limit their movement, to keep certain people in and certain people out. This potential already is in action in the case of electronic monitors with exclusion zones. Most frequently applied to those with histories of sex offenses, an exclusion zone programmed into a monitor triggers an alarm when a person enters forbidden territory.

The combination of exclusion zones and other databases opens the door to a form of virtual gentrification of cities, where the poor, especially poor people of color, are excluded from

areas where they might encroach on the life style of the elites. In cities such as Seattle, ordinances and on-the-ground policing have carried out this segregation.⁵⁶ But the advent of new technologies offers a range of ways to remotely reconfigure gated communities and racialized skid row housing settlements through data collection, profiling, and spatial exclusion.

Are Chip Implants in Our Future?

Ten years ago few of us could have imagined the role smart phones now play in everyday life. Although this technology brings many conveniences, every phone also functions as a location monitor, the capacity of which can be enhanced through the addition of a number of apps. Where will this go in the future? One possibility is computer chips imbedded beneath the skin. Although efforts to implement such technology in the US have been blocked, in Sweden some companies are **injecting chips the size of a grain of rice** into employees' hands. A wave of the hand will open doors, operate photocopiers, and initiate remote printing from a laptop.⁵⁷

At the moment, surveillance technology appears to be moving ahead, driven by the joint agendas of national security, carceral control, and profit making. The Snowden revelations have enhanced public awareness of the scope of the surveillance state, but the concrete linkage of data gathering to criminal justice, law enforcement, and grander social planning remains largely obscured. However, if those who are opposing mass incarceration and the public-private surveillance partnership are to respond effectively to the need for alternatives, they will need to have a deep understanding of the implications of the expanding capacity of technology to combine control with surveillance and be able to imagine how this technology could be regulated and how it could be used in other ways.

People with Sex Offense Histories: The Canaries in the Mineshaft?

Reverend Richard Witherow helped found Miracle Village, a Florida community for people with sex offense convictions who couldn't find places to live in Miami because of exclusion zones. He argues that these people have become “**modern day lepers**”—the folks no one wants near them.⁵⁸

The case of people with sex offense histories effectively demonstrates how technology can combine with other sanctions to create a situation of hyper-control. Since the early 1990s, a wide array of measures has been implemented against people with sex offense convictions:

- **Extension of the definition of sex offense.** These may now include public urination, streaking, exposure, and downloading pornography.
- Establishment of **sex offense registries** in all 50 states. Though listing criteria vary, the general approach is to post an individual's name and address on a sex offender registry website. In most instances, listing is for life. As of 2014, more than 700,000 people nationally were on sex offense registries.⁵⁹
- **Lifetime GPS monitors.** At least nine states have imposed this for people with convictions for certain categories of sex offenses.
- **Exclusion zones.** Often implemented through the use of GPS, these zones restrict a person with a sex offense conviction from going within a certain distance (typically 500 or 1,000 feet) of places where children are likely to be present (e.g., schools, parks, daycare centers). In many cases these restrictions also apply to where a person may live and are imposed even if their offense did not involve children.
- **Internet restrictions.** Rules for online activity may include banning access to social media sites, installing monitoring software that tracks all key strokes or websites visited, especially targeting anything categorized as pornographic. In some cases, accessing the Internet is outlawed altogether.⁶⁰
- **Penile monitoring.** For certain individuals with rape convictions, physiological responses to pornographic videos are measured via usage of a penile plethysmograph, a device that measures blood flow to the penis.⁶¹ Excessive blood flow may lead to incarceration.

People with Sex Offense Histories: The Canaries in the Mineshaft? (cont.)

- Use of **civil commitments**. With a civil commitment, a judge can sentence a person to incarceration for an unlimited period of time on the grounds that the person is likely to commit another crime. At least 18 states have given courts the power to execute civil commitments. As of 2012, some 7,000 people were held in prisons under civil commitment orders. Many of them are people with sex offense histories.⁶²

All of these measures reflect a total rejection of two overwhelming pieces of evidence about sex offenses: (1) the majority of sex offenses are committed by family members and other people who are known to the victim, not as a result of “stranger danger”; and (2) the recidivism rate for people with sex offense convictions is relatively low compared to other crimes.

Instead of relying on evidence or therapy, the process for addressing sexual violence has combined the promotion of irrational fear, the use of excessively repressive legislation, and the deployment of technology in the form of databases, profiling, and GPS tracking to limit the activity of people with sex offense histories. The targeting includes large numbers of people whose offense was not a serious felony or was committed by an individual who has been through extensive therapy and rehabilitation and has demonstrated the capacity to become a constructive member of the community.

In regard to people with sex offenses, two key questions emerge:

1. Will the draconian measures used against this category of people be curtailed or will other groups of vulnerable people, particularly those with criminal convictions, be subjected to similar processes and invasions of their daily life through the technology of surveillance and tracking?
2. Do people convicted of certain categories of sexual offenses, especially those involving children, constitute a special category that should be subject to electronic monitoring even if they have not been convicted of any new crimes? And if there are categories of people who might be subject to EM under such circumstances, what is the danger that the net of those categories will widen, especially in response to high-profile crimes?

Section Five

Responding to Electronic Monitoring: The Struggle for Alternatives and Rights

“We can change the story on surveillance to raise the voices of those who have been left out.”

-Malkia Cyril, Center for Media Justice⁶³

In the present context, there is little evidence to support EM as a genuine alternative to incarceration. At the same time, EM is not going to go away, especially with the constantly expanding capacity of devices to track and gather other data. If decarceration gathers steam, EM will become an important option. Before that happens, the debate around its use and implications needs to sharpen. Any useful framing must open up a dialog around the rights of the monitored and link EM to state and corporate surveillance. Otherwise, we run the risk of hundreds of thousands of people being virtually incarcerated in their homes and of the net widening to track many more who have not even had an encounter with law enforcement.

This section of the report consolidates the findings and analysis presented here into **fourteen guiding principles** aimed to re-frame the debate around electronic monitoring, both as an alternative to incarceration and as a form of surveillance.

These guiding principles are:

1. **Electronic monitoring with house arrest is a form of incarceration.** People who spend time on a monitor should be given credit for time served.
2. **Electronic monitoring should not be added onto a term of parole or probation after a person has served their time.** As a Richard Stapleton put it, ‘it is just another burdensome condition of extending . . . incarceration.’
3. **The net of who is placed on an electronic monitor must not be widened, especially not to capture people who have not been convicted of any crime.**

4. **Regulations regarding both the access to and archiving of data collected from GPS-based electronic monitors must be put in place.** These regulations must respect the right of privacy and outline time frames for deleting such data from official archives.
5. **The treatment of people with sex offense histories or any other** sub-category of criminal convictions should conform to the same standards of privacy and human rights accorded everyone else in the criminal justice system.
6. **Exclusion zones should only be used in rare instances and applied on a case by case basis.** Present practice leads to restrictions that often make it unreasonably difficult for a person on a monitor to find housing or employment. Moreover, the zones create the potential for technological segregation of urban areas, the creation of race- and class-based skid rows and gated communities, with the boundaries policed by tracking devices and other forms of technological surveillance.
7. **Lifetime GPS should be abolished.** Whether it be incarceration or tracking via electronic monitor, no carceral status should be beyond review.
8. **Enhancing the surveillance power** of electronic monitors should be opposed, particularly any applications which monitor biometrics or brain activity, to record audio or video, or to administer pharmaceuticals remotely. Any moves to initiate chip implants should also be opposed.
9. **Electronic monitors should not be technological mechanisms for reinforcing economic and racial disparity.** In the past, ankle bracelets have often been used as a means of helping the well-to-do avoid incarceration for their transgressions. By contrast, strict EM regimes have been disproportionately applied to poor people as an add-on to an already burdensome condition of parole or probation. Such practice must end.
10. **The policies and regulations for EM should be transparent and informed by the rights of the person on the monitor and their loved ones.** EM policies and regulations should facilitate the successful participation of the person on the monitor in the economic and social life of the community.
11. **User fees for people on electronic monitors as a result of involvement in the criminal justice system should be banned.** Such fees become yet another source of

criminal justice debt, which contributes to recidivism and the perpetuation of poverty.

12. The companies that provide electronic monitoring services need to be strictly regulated by government authorities and overseen by social justice movements.

The biggest players in the industry are two of the most unscrupulous prison profiteering companies: The **GEO Group**, the second largest private prison company in the US, and **Securus Technologies**, a firm which made \$114 million in 2014 by overcharging people in prisons and jails for phone calls to their loved ones.

13. Practitioners and providers of electronic monitoring in the US have established no best practice models which acknowledge the human rights of people on the monitor.

Therefore, those involved in electronic monitoring in this country must look to the extensive experience of European countries, specifically the Confederation of European Probation (CEP), for guidance and support in transforming the present punitive, profiteering electronic monitoring system into a program more consistent with progressive notions of justice and rehabilitation.

14. The development of policy on electronic monitoring should include significant participation from those who have been on electronic monitors, their loved ones, and those officials who have been involved in the actual implementation of monitoring programs.

About the Author

James Kilgore is a writer, researcher, and activist based in Urbana, Illinois. He spent a year on an electronic monitor as a condition of his parole. He has written widely on issues related to mass incarceration, including his 2015 book, *Understanding Mass Incarceration: A People's Guide to the Key Civil Rights Struggle of Our Time*.

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¹ <http://www.vox.com/2014/6/27/5845484/prisons-are-terrible-and-there-is-finally-a-way-to-get-rid-of-them>.

² Bruce Schneier, *Data and Goliath: The Hidden Battles to Collect Your Data and Control Your World* (New York: Norton, 2015), p. 86.

³ Personal interview with the author, Columbus, OH, August 20, 2012.

⁴ A. K. Schmidt, "Use of Electronic Monitoring by Criminal Justice Agencies" (Washington, DC: Report for National Criminal Justice Research Service, 1988).

⁵ National Law Enforcement and Corrections Technology Center, Online Bulletin, National Institute of Justice (1999), <http://www.justnet.org/Lists/JUSTNET%20Resources/Attachments/859/Elec-Monit.pdf>.

⁶ Interview with George Drake, President of Correct Tech, LLC, September 3, 2014, and July 30, 2015.

⁷ This includes immigration detention-related uses, juvenile justice, and domestic violence cases that may not involve a parole/probation component.

⁸ The only global statistics available are compiled by federal authorities who keep track of those on parole with GPS monitors. In 2012, according to a Freedom of Information Act request from the author to the Department of Justice, 18,491 people were on parole with GPS. Of these, 12,627 were people with sex offense histories. These figures do not give any racial or gender breakdowns.

⁹ Timothy Williams, "The High Cost of Calling the Imprisoned," *New York Times*, March 30, 2015.

¹⁰ M. Zelinger, "Evan Ebel removed monitoring bracelet days before murders of Tom Clements and Nate Leon" (2014), <http://www.thedenverchannel.com/news/local-news/ap-evan-ebel-removed-monitoring-bracelet-days-before-murders-of-tom-clements-and-nate-leon>.

¹¹ C. Osher, "Colorado parole officers saw 90,000 electronic monitoring alerts," *Denver Post*, April 23, 2014, http://www.denverpost.com/breakingnews/ci_23091746/colorado-parole-officers-saw-90-000-electronic-monitoring.

¹² P. St. John, "Probation officials concede failures in GPS tracking of felons," *Los Angeles Times*, February 25, 2014.

¹³ Soraya Shockley, "Unlocked: From Probation to Incarceration," Youth Radio, July 28, 2015, <https://youthradio.org/news/article/unlocked-from-probation-to-incarceration/>.

¹⁴ Figures obtained from personal interviews with people on monitors, and with Linda Connelly of LCA Monitoring, along with a survey of EM contracts and email correspondence with Gregory Roach of the Michigan Department of Corrections electronic monitoring unit and conversations with EM consultant George Drake, op. cit.

¹⁵ Emma Anderson, The Evolution of Electronic Monitoring Devices, National Public Radio series, May 24, 2014, <http://www.npr.org/2014/05/22/314874232/the-history-of-electronic-monitoring-devices>.

¹⁶ Personal interview with the author,

¹⁷ All quotes from Stapleton from telephone interview with the author, June 26, 2013.

¹⁸ Personal interview, June 5, 2011.

¹⁹ "Release of a Prisoner," Title 18, *U.S. Code*, Part II, Chapter 229, Subchapter C, 3624.

²⁰ See *Anderson v. State of Iowa* (2011) No. 09-0507; Administrative Order S-2005-154, 13th Judicial Circuit Court for Hillsborough County, Florida (2005); California Penal Codes, Chapter 7, Article 1, Section 2900.5(k)(2).

²¹ Mike Nellis, “Standards and Ethics in Electronic Monitoring: Handbook for Professionals Responsible for the Establishment and the Use of Electronic Monitoring” (Brussels: Council of Europe, 2015).

²² This sentence discount is practiced in some European countries, including Estonia.

²³ Erin Murphy, “Paradigms of Restraint”, 2008, *Duke Law Journal*, 57 Duke IJ. 1323-61

²⁴ Quoted in Maya Schenwar, “Your Home Is Your Prison,” posted at *Tom Dispatch.com*, January 15, 2015

²⁵ The major exceptions would be a somewhat cursory report produced by the John Howard Society of Alberta in 2000 entitled “Electronic Monitoring,” and my own work “Progress or More of the Same? Electronic Monitoring and Parole in the Age of Mass Incarceration,” *Critical Criminology*, 21 (1), 123–39 (March 2013); “Toward a New Paradigm for Electronic Monitoring: Voices of the Monitored,” *Journal of Offender Monitoring*; and “The Spread of Electronic Monitoring: No Quick Fix for Mass Incarceration,” *Truthout*, July 30, 2014. Marc Renzema has also produced several insightful pieces, including his book chapter “Evaluative Research in Electronic Monitoring,” in Mike Nellis, Kristel Beyens, and Dan Kaminski, *Electronically Monitored Punishment: International and Critical Perspectives* (London: Routledge, 2012).

²⁶ The Illinois Detention Act, for example, merely lists the situations where a monitor can be applied. The Virginia act dwells on the eligibility and conditions for revoking someone from EM and reincarcerating them. The Florida act prioritizes explanation of the user fee structure for EM. Most other states and local jurisdictions fall into the same pattern, with the exception of the cases of Michigan and Northwestern Ohio described on page 17.

²⁷ Michigan Department of Corrections, “Policy Directive on EMS,” 2010, No 06.0d3.105.

²⁸ Corrections Center of Northwest Ohio, “Policy and Procedures: Offender Services Section: Electronic Monitoring Program,” 2011.

²⁹ For a discussion that raises some of the human rights issues in the context of the UK, see the 2010 article by Liz Campbell of Human Rights Watch in *The Guardian*, “Electronic Tagging of Offenders Raises Rights Concerns,” <http://www.theguardian.com/law/2010/aug/12/larry-murphy-electronic-tagging>.

³⁰ UN General Assembly, United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules): resolution adopted by the General Assembly., 14 December 1990, A/RES/45/110.

³¹ Phone interview with the author, July 30, 2015.

³² By far the best collection of these writings is Mike Nellis et al. *Electronically Monitored Punishment: International and Critical Perspectives*, op. cit.

³³ Recommendation CM/Rec(2014)4 of the Committee of Ministers to member States on electronic monitoring, adopted February 19, 2014.

³⁴ Email communication with the author, August 5, 2015.

³⁵ From slide presentation prepared by STOP for Stanford University, http://scpnt.stanford.edu/pnt/PNT10/presentation_slides/6-PNT_Symposium_Logan.pdf.

³⁶ Survey conducted by National Public Radio, the Brennan Center and National Center for State Courts, “State by State Court Fees,” May 19, 2014, <http://www.npr.org/2014/05/19/312455680/state-by-state-court-fees>.

³⁷ Email communication from Gregory Roach, Michigan Department of Corrections.

³⁸ Personal interview with Carter Smith, op. cit.

³⁹ Personal interview with the author, Columbus OH, August 20, 2012

⁴⁰ Personal Interview with the author, Inglewood CA, August 18, 2014.

⁴¹ Personal Interview with the author, Van Nuys CA, August 19, 2014.

⁴² Personal conversation, Oakland CA, August 24, 2014.

⁴³ Personal phone conversation with the author, July 7, 2014

⁴⁴ Schneier, p. 28.

⁴⁵ Daniel Keats Citron and Frank A. Pasquale, “The Scored Society: Due Process for Automated Predictions,” *Washington Law Review*, 89(1), 2014, http://digitalcommons.law.umaryland.edu/fac_pubs/1431/.

⁴⁶ Schneier, op. cit., p. 33

⁴⁷ Quoted in Schneier, op. cit., p. 125.

⁴⁸ Interviews cited in Center for Media Justice et al., “Digital CultureSHIFT: From Scale to Power,” (2015), <http://centerformediajustice.org/digital-culture-shift-from-scale-to-power/>.

⁴⁹ Schneier, op. cit., p. 78.

⁵⁰ For information on the role of AT&T in assisting with government surveillance, see Julia Angwin et al., “NSA Spying Relies on AT&T’s ‘Extreme Willingness to Help,’” Propublica Report, August 2015, <https://www.propublica.org/article/nsa-spying-relies-on-atts-extreme-willingness-to-help>. On Google, see Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Cambridge: Harvard University Press, 2015), especially Chapter Four.

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- ⁵³ Figures from Jeff Kelly, “Big Data Vendor Revenue and Market Forecast 2013-17,” http://wikibon.org/wiki/v/Big_Data_Vendor_Revenue_and_Market_Forecast_2013-2017.
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