



# Electronic Monitoring

## SAN FRANCISCO, CALIFORNIA

### PART ONE

#### BACKGROUND

Though the consolidated City and County of San Francisco is often at the forefront of progressive movements, as reflected in films such as 2019's "[The Last Black Man in San Francisco](#)" it is also notoriously gentrified largely due to the Dot-Com Boom of the 1990's.

**Indeed, in 2020, the National Reinvestment Coalition [noted](#) San Francisco, with an estimated population of 852,754 was the most gentrified city in the US. San Francisco.**

In 2020, the US Census reported that roughly 51.1% of this population was White, 15.7% was Hispanic, and only 5.7% was Black. Nevertheless, a 2020 [study](#) by California Policy Lab found that racial demographics of San Francisco's Pretrial EM Program is only 21.1% white and 28.4% Hispanic with Black folks comprising an astounding 43.1% of people on pretrial monitoring.

## EM Operations

Judges in SF set the conditions for pretrial defendants, including assignment to the Pretrial Electronic Monitoring Program which is overseen by the Sheriff's Office. San Francisco also has the Pretrial Diversion Project, a nonprofit community-based pretrial agency founded in 1976 which essentially has operated as another arm of the court and also oversees those assigned to Assertive Case Management, roughly 45% of pretrial defendants.

This agency is also responsible for implementing a Public Safety Assessment (PSA), SF's pretrial risk assessment tool, and making recommendations to the presiding judge for setting pretrial conditions, including whether or not to impose EM. Ultimately, however, judges have unilateral authority to accept, decline, or modify conditions as they see fit, leaving EM to be imposed in many cases in which no EM was recommended by the PSA.

## Housing Instability, EM, and San Francisco

Gentrification, rising rent costs, and "a chronic shortage of [affordable](#) housing" have led San Francisco to be a prime locus of housing instability. With roughly [10,000](#) unhoused folks reported in 2019, "SF has one of the highest [populations](#) of unsheltered homeless residents in the country, behind only Seattle, Los Angeles, and larger Bay Area regions like Alameda County and the South Bay."

Per California Policy Lab, roughly 38% of the folks who are subjected to Pretrial EM in SF are experiencing some degree of housing instability. The report also notes that folks who are unhoused experience significantly higher rates of early termination and return to custody than those who are stably housed. In 2020, for instance, less than 1 in 5 people on EM experiencing housing instability had their EM terminated early.

There are a number of reasons for this. Firstly, these devices require daily charging that necessitates that people essentially stay plugged into an outlet for hours at a time, a task that is exceedingly difficult for folks without a roof over their heads. Matt Sotorosen of the San Francisco Public Defender's Office notes that while unhoused folks in San Francisco have generally made use of public outlets such as at libraries and other public places to charge their devices, the Covid-19 pandemic saw many of these public places implementing safety protocols that limited or suspended public access entirely, greatly reducing the unhoused population's ability to comply with these onerous charging requirements. Sotorosen notes that, during the early days of the pandemic, "the Sheriff's office itself, where you go and get the thing put on your ankle is a block or so from the courthouse and you were supposed to be able to charge there. And one of our attorneys found

	Housed Participant Program Completion	Housed Participant Early Termination	Unhoused Participant Program Completion	Unhoused Participant Early Termination
<b>2017</b>	<b>54%</b>	<b>46%</b>	<b>23%</b>	<b>77%</b>
<b>2018</b>	<b>48%</b>	<b>52%</b>	<b>25%</b>	<b>75%</b>
<b>2019</b>	<b>50%</b>	<b>50%</b>	<b>22%</b>	<b>78%</b>
<b>2020</b>	<b>42%</b>	<b>58%</b>	<b>19%</b>	<b>81%</b>

Figure 2: Data Courtesy California Policy Lab



out recently that their door is essentially closed to the public because of COVID as well, but that they had like maybe one extension cord leading out of the door to like a plastic chair out in the front of their unit." This sentiment is echoed by the findings of the [Harvard Kennedy School report](#) which noted that "For almost every condition, individuals who suffered housing insecurity had trouble fulfilling obligations at higher rates than their housing-secure counterparts."

Secondly, as Dr. Mathew State, Professor & Chair, Psychiatry at UCSF Weill Institute for Neuroscience, [notes](#) "The homeless population in San Francisco numbers more than 10,000 people, and conservatively between 30 percent and 40 percent suffer from mental illness and/or substance [use]", conditions which can make the litany of onerous (and at times unconstitutional) program rules much more difficult to adhere to. Moreover, as Felanie Castro, OptIn Case Manager with [GLIDE](#) in SF explained in an interview, unhoused people often face an overzealous enforcement of EM rules to a degree that can "recreate the trauma feeling of being incarcerated every day" the stress of which may even "lead to a return to use", thus reinforcing a cycle of substance use, criminalization, and incarceration. Indeed, the Harvard Kennedy School report goes on to note that "because the EM program treated drug use and possession as illegal activities rather than health conditions, respondents who struggled with addiction and recurrence of use were often categorized as having violated program rules and laws."

Though unhoused folks and people with substance use and/or mental health issues have clearly been disproportionately impacted by EM in San Francisco, it is important to note that many of these folks are considered low or moderate flight-risk and in the past would have been released without the devices at all. This underscores the insidious fact that EM use expands not only in terms of population but in terms of application as well.

### Conditions of People on EM

People on EM in SF are generally subjected to GPS monitoring, which tracks their movement at all times. While house arrest is not an automatic requirement and most folks are required only to stay within 50 miles of the Courthouse, the court may impose further orders which impose much more restrictive conditions including 24/7 home confinement. One SF Public Defender estimated in an interview that approximately 10% of monitored folks in San Francisco were subjected to these more restrictive conditions.



## Contract for EM in San Francisco

Monitored folks in San Francisco are required to agree to a contract with 22 program rules and considerations per the [San Francisco Sheriff's Department Electronic Monitoring Program Rules Pre-Sentenced Participants](#).

### These rules include:

- Submission to a search of their person, residence, car or property by “any peace officer” at any time
- Not tampering with, removing, or causing the device to malfunction, under penalty of possible return to custody,
- Being charged criminally for damaging or failing to return any equipment
- Keeping the device charged at all times
- Accepting that EM data can be shared with law enforcement
- Limitation of 2.5 hours per week of movement out of the house for tasks like grocery shopping
- Requesting changes in schedule of movement two days in advance, including for medical appointments

The San Francisco Public Defender's Office previously offered a list of three suggested edits to these requirements, two of which were in response to constitutionally questionable practices of requiring folks to sign away their constitutional right to privacy by coercing them into agreeing to warrantless searches (rule #5) and forcing them to agree to allow their data to be shared (rule #13).

They additionally strove to add language to the contract to ease compliance requirements that often result in technical violations.

## EM Companies in San Francisco

In 2019, at the behest of the San Francisco Board of Supervisors, the City and County of San Francisco signed a two year \$3.4M

[contract](#) with two one-year options for renewal with [Sentinel](#), one of the largest EM companies in the US, to provide monitoring equipment and services for the area.

Though San Francisco eliminated monitoring fees Sentinel, which has been embedded in carceral community surveillance for 30 years, largely touts itself as a “pioneer” of the “community-based offender-funded program model” in which “Program fees are paid by offenders, saving taxpayers millions of dollars.” Indeed, this model, which shifts the burden of the cost of incarceration onto those least positioned to bear it, has often led to predatory practices.

As a result, Sentinel has been the target of [dozens](#) of lawsuits at the both the federal and state levels over the years, including for [false arrest and imprisonment](#), paying out millions of dollars in [settlements](#) over the years.

### Key Take-Aways

The San Francisco case study highlights three key take-aways:

- As in many cases, EM reinforces and recreates existing racial and class disparities. In “progressive” SF where Black people are less than 6% of the population, they make up nearly half of those monitored. Unhoused folks make up around 1% of SF's total population but comprise about 38% of those monitored.
- The strict rules often lead to technical violations including violations of 4th Amendment rights.
- Even without fees, EM does not offer a Zero Cost scenario. The most vulnerable, those experiencing housing instability, mental health and/or addiction issues are more likely to be on EM and ultimately more susceptible to technical violations and a return to custody.