

Introduction

The conference on Electronic Monitoring in Europe provided an opportunity to hear about, and engage with, the findings of the European Commission funded project entitled 'Creativity and Effectiveness in the use of electronic monitoring (EM) as an alternative to imprisonment in EU member states'.

The research was carried out in five jurisdictions (Belgium, England & Wales, Germany, the Netherlands and Scotland) providing up-to-date analysis of current and future uses of EM in each jurisdiction as well as insights gained from the first comparative EM research in the EU.

The conference aimed to discuss the findings of the comparative research and inform recommendations on best practice to enhance effectiveness of electronic monitoring whilst ensuring its legal, ethical and humane use across the EU. Reflections on the findings from key stakeholders from each jurisdiction and expert commentary from academics and practitioners were provided.

General remarks

Anthea Hucklesby (University of Leeds), Kristel Beyens (Vrije Universiteit):

Radiofrequency (RF): will continue to be used despite its limitations. Mainly because its price is affordable, easy to use, reliable, and easy to explain its function.

GPS tracking: used in all UK except Scotland; small number of high-risk offenders in prisons; will have a great use in the future.

Important balance between Electronic Monitoring (EM) and Probation (choose one in each case).

EM: Belgium approach is very proactive, always trying and achieving different outcomes, together with England are both the top 2 countries EM users due to the growth of their prison population over the last years. On the other side, Germany and the Netherlands had been reducing their prison population.

Crucial point: EM more used for women.

Objectives EM (shared between MS but their priorities differed over time):

-alternatives to custody

-unique elements of EM: structures daily life, adds intensity, assists with the management and completion of other requirements.

Duration of EM: potential to use it indefinitely, pre-trial, sentencing, post-custodial, voluntary schemes.

Confinement periods: mostly RF but GPS in Belgium; languages used (confinement/freedom).

Days off: not during the week.

Provision of support: anglo model 24/7 vs European (more probation, not always 24/7).

3 aspects to take into account: *type of violation vs risk vs priority of individuals.*

Diversity: urgent need to implement measures to ensure consistent and fair treatment of individuals from diverse populations.

Data: use of google maps with GPS data; working with contractors outside the EU; ensure effective yet restricted data sharing between agencies with reference to data protection protocols.

Conclusions:

- EM is a permanent fixture in criminal justice.
- Ideal time to review its use.
- Many uses are being promoted at the same time.
- Comply with Human Rights standards.
- Price of different approaches: flexible (expensive) and general/strict (economic).

Creativity and effectiveness in the use of electronic monitoring: a case study of five European jurisdictions

Anthea Hucklesby (University of Leeds), Kristel Beyens (Vrije Universiteit), Miranda Boone(Utrecht Universiteit) , Frieder Dünkel (Universiteit Greifswald), Gill McIvor (University of Stirling) and Hannah Graham (University of Stirling):

Electronic Monitoring (EM) is used extensively, for diverse purposes and in diverse ways across the 5 jurisdictions (Belgium, England and Wales, Germany, Scotland and The Netherlands).

Less extensive use of EM is associated with long-term reductions in prison populations and reducing imprisonment rates. By contrast, high prison populations are associated with high use of EM.

The extent to which the size of the prison population is viewed as problematic is an important determinant of EM use.

EM has universal appeal because it fits or can be made to fit many purposes.

Creative use of EM is limited with isolated examples of innovative practices.

Radio-frequency and GPS technologies have complementary and distinct advantages and uses.

Private sector involvement in EM is associated with less integration into broader criminal justice structures.

The greater the involvement of probation in EM the more discretionary decision-making takes place.

Policies relating to diversity do not generally exist or do not cover all aspects of diversity.

The limited or non-existent availability of data relating to EM hampers research and restricts judicial and public understanding of EM.

Consideration should be given to:

- The aims of EM to ensure that it is used according to the principles of proportionality and necessity, in the least intrusive way and incorporating support so that it positively influences individuals and assists them to lead meaningful lives.
- Implementing mechanisms to improve lines of communication and joint working between agencies.
- The provision of alternative addresses for monitored individuals.
- Ways to better tailor curfew hours to the circumstances of monitored individuals and offences.
- Implementing progression and exit strategies including mechanisms to end EM earlier than planned when individuals are compliant.
- Policies and procedures relating to changes in circumstances to ensure a consistent and flexible graduated response.
- Procedures to ensure that informed consent is received from co-habitees independently and prior to the imposition of EM.
- Mechanisms to provide 24h 7 days a week support to monitored individuals.
- Breach policies to ensure a consistent, proportionate approach incorporating a graduated response to violations.
- Measures are taken to ensure consistent and fair treatment of individuals from diverse populations.
- Measures to ensure effective yet restricted data sharing between agencies with regard to data protection protocols.
- Policies and procedures to ensure staff safety including more effective communication of risk information and training in risk management.

Electronic Monitoring in Scotland

Gill Mlvor and Hannah Graham (University of Stirling):

Electronic Monitoring is available at various points in the criminal justice process in Scotland.

From 2002-2015, EM relied on the use of radio frequency (RF) tagging technology only. GPS tagging and tracking is set to be introduced in the future.

Current issues of EM can be characterized as simple and straightforward, with mostly standardised regimes, but relatively sound in achieving objectives including restriction of liberty, diversion, modest decarceration by early release from prison and order completion.

EM order completion rates are fairly high, with 8 out of 10 EM orders completed.

Monitoring of mostly 'standalone' EM orders (i.e. supervision) by a private EM service provider is associated with limited integration and multi-agency work with criminal justice social workers (Scottish equivalent of probation officers) and charitable organizations. Yet, many of those interviewed wanted greater intervention of EM with multi-agency supervision and support.

Being responsive to issues of diversity and vulnerability matters to Scottish practitioners and policymakers. Interviewees spoke about tailoring EM to the needs of offenders and victims.

Clear differences exist between judicial officers across Scotland in the rates at which they impose EM orders, as well as disparities in uses of breach reporting thresholds and timeframes. Some 'special sheriffs' set up their own breach reporting arrangements with G4S Scotland.

There is moderate support for the introduction of GPS tagging and tracking with location-based exclusion zones in cases where this may reduce risk of re-offending and promote victim safety.

Recommendations:

- Clarify national breach criteria. Considering consolidating breach reporting timeframes and thresholds into two nationally available options – standard and intensive – to foster consistency.
- Introduce mechanisms to give courts and prisons the choice of imposing a supervision requirement with EM involving a 'supervising officer', to enable more multi-agency work and reintegrative supports. Implementing this will necessitate commensurate funds and resources.
- Introduce and encourage wider use of mechanisms which motivate and reward monitored people's compliance and desistance, including graduated changes in regimes and conditions, as well as a mechanism to allow authorizing agencies to terminate an EM order or condition early.
- Abolish the statutory exclusion for Home Detention Curfew (HDC) licences which permanently excludes prisoners who have previously breached a HDC licence. It is inefficient and inequitable.
- Consider more creative uses of EM with people given a custodial sentence, similar to Scandinavian and Dutch approaches, which feature integrated supports for desistance.
- Ensure future developments in EM policies and practices are informed by the perspectives and lived experiences of monitored people, their families, and victims. More research is needed.
- Initiate greater awareness-raising among professionals, media and the public about EM.

Electronic Monitoring in the Netherlands

Miranda Boone, Matthijs van der Kooij and Stephanie Rap (Utrecht University):

The use of electronic monitoring (EM) has generally been stable since the beginning of this century. However, since this introduction of the digital desk, the number of cases has steadily increased, up to 2250 in 2015.

Since its introduction, EM has been applied at three stages of the criminal justice process. There are currently six different legal uses: as a condition of the suspension of pre-trial detention, as a condition of a conditional sentence, as a condition of a penitentiary programme, as a condition of conditional release, as a condition of a conditional tbs-measure (detention under a hospital order), and with the conditional ending of a tbs-measure.

The use of EM as an alternative to short prison sentences has not developed significantly. As a structural modality it was recently firmly rejected by the parliament.

EM is most often applied as a condition of a penitentiary programme.

The fastest growing use of EM is the application of EM in the context of prison leave.

The type of monitoring that is used is related to the condition imposed (Radio Frequency for location orders and GPS for location bans).

The most important objective of EM according to the majority of respondents is to contribute to the quality of supervision by the probation service (goal-oriented approach). Reducing deprivation of liberty and contributing to the safety of society are also important objectives of EM.

The potential for EM to replace imprisonment is underused in the Netherlands.

For high impact crimes, EM is used for the whole duration of the penitentiary programme. According to many respondents this conflicts with the goal-oriented approach.

There are no offence types for which the use of EM cannot be used. EM is less likely to be imposed where people have serious substance addictions, serious mental illness and or strongly impaired intellectual capabilities.

EM is less likely to be imposed where offenders do not have suitable housing. It cannot be applied when offending situation is unsafe or unstable or when offences are committed from home.

The average duration of EM is 3 to 4 months.

70 per cent of people under EM are born in the Netherlands. This suggests the EM is used selectively because less than 50 per cent of prisoners are born in the Netherlands.

Recommendations:

- There should be a legal basis the application of EM as a condition of the suspension of pre-trial detention and as a condition of leave. The legislation of EM as a condition of a conditional sentence or conditional release should be better developed.
- The absence of suitable housing should not be a reason to exclude people from EM. More opportunities should be created for suspects and offenders to be monitored outside of their own living environment, especially if the penitentiary programme is to become the only form of phased detention in the future.
- In theory, the goal-oriented approach of EM provides a clear framework for the application of EM. This approach assumes that EM should only be imposed when it is believed that supervision without EM would be less effective. In other words, when its application is proportionate and subsidiary. A number of current practices conflict with this approach and should be reconsidered (HIC-policy, application of EM on leave).
- To prevent a proliferation of uses of EM, a working group should be set up that develops a joint perspective on the development of EM in the Netherlands.
- Legislation should be introduced to enable the time spent under EM supervision pre-trial to be deducted from subsequent prison sentences.
- Clear agreements should be made on the ownership and use of data generated by EM. The request 'for historical information' by the prosecution service should be subject to judicial review.

Electronic monitoring in Belgium

Kristel Beyens and Marijke Roosen (Vrije University):

EM is used in Belgium as an alternative for pre-trial detention and as a way of implementing prison sentences. In 2016 it will be introduced as an autonomous standalone sentence and as a way of imposing restrictions on offenders with mental illness.

The increasing use of EM is strongly linked to the persistent problem of overcrowding.

The rehabilitative potential of EM has been limited by the increasing use of EM as a standalone order.

Where EM is used for the implementation of prison sentences, it is organized as a two-track system, creating substantial differences between sentences of 3 years or less and more than 3 years. The system is standardized for the former, whereas a highly individualized system with the supervision of a Justice Assistant is used for the latter.

The reduction or lack of supervision by Justice Assistants was reported to have reduced the effectiveness of EM.

Respondents were critical of the policy relating to obtaining the consent of cohabitants of monitored people because a lack of informed consent can lead to difficulties during the EM period.

The operation of EM is highly bureaucratic. The introduction of the Siset workflow system has facilitated information exchange between the agencies involved in EM, improved transparency and increased the speed of work processes.

The mean cost 1 day under EM is 25 euros (staff costs included).

The mean period under EM in 2015 was 109 days (3.6 months) but it varies considerably between different modalities.

Private sector involvement in EM is currently limited to the provision and maintenance of the equipment.

Recommendations:

- EM should be organized so that it assists monitored individuals to lead meaningful lives. The allocation of Justice Assistants to EM cases should be considered, based on individual assessments of monitored people's needs rather than sentences length.
- The introduction of a new role of 'EM Social Assistant' should be considered. They would assist monitored individuals and cohabitants with social, administrative and practical issues.
- The policy on informed consent should be revised.
- An inclusive approach should be provided for monitored people who do not have the same rights and minimal allowance as free citizens.
- Alternative accommodation should be provided for monitored people who do not have a suitable place of residence.
- The administration relating to the operation of EM should be simplified.

- The work processes and the staff's workload should be assessed to ensure adequate services are provided to monitored people. Sufficient time and opportunities should be allocated for positive personal interactions between the monitoring and supervision staff and the monitored individuals.
- Breach policies should be consistent across the different modalities of EM.
- The strict GPS regime at the pre-trial stage should be reconsidered and made more humane.

Electronic Monitoring in Germany

Frieder Dunkel, Cristoph Thiele and Judith Treig (Universität Greifswald):

EM is currently used in two ways in Germany: location monitoring (GPS) is available nationally within the framework of supervision of conduct, and presence monitoring (Radio-Frequency) is used in Hessian, as an alternative to prison. Both uses have different aims and modes of operation.

EM is used only exceptionally in Germany. At the time of the research, around 120 individuals were monitored compared approximately 180,000 people who received probation supervision or were subject to supervision of conduct.

Compared to other jurisdictions, Germany uses EM in a very limited way and for small numbers of individuals. The reasons for this include: strict eligibility criteria; a lack of a legal framework for the use of EM, constitutional objections and limitations, high data protection standards, a relatively low prison population and little concern about prison overcrowding, concerns about the limitations of the monitoring equipment an ambivalent public perception of EM, and, a lack of political will to extend or continue to use EM.

The use of GPS-EM is bureaucratic and formalized involving many actors partly as a result of strict data protection legislation.

GPS technology has defects which impact upon its implementation and cost-effectiveness.

The effectiveness of EM is unclear: there is a lack of empirical evidence that EM reduces recidivism and concerns about the potential for 'net-widening' remain unresolved.

It is recommended that:

- Proportionality should be the key principle in the use of EM.
- The use of EM should remain limited to a small number of high-risk offenders in its current application to support adherence to conditions imposed under supervision of conduct.
- The use of EM should not be extended because other measures, such as probation supervision, are available which are more proportionate and may be more effective and better able to avoid 'net-widening'; it would require substantive reorganization of criminal justice institutions; and the impact of EM recidivism is not proven.
- In accordance with the European Probation Rules, EM should only be used alongside other rehabilitative interventions.
- A more flexible process for allowing variations in monitoring requirements should be created.

- Time spent on EM pre-trial should be deducted from any subsequent prison sentence which is imposed.
- If EM were to be used with crime victims, such as domestic violence victims, the potential impacts on them need to be thoroughly assessed and understood prior to its introduction.
- More research is needed to fully understand the potential for 'net-widening'.

Jesca Bener, European Commission (DG Justice)

The main reason to implement Electronic Monitoring in Europe it's because 50% of prisoners have been sentenced for less than 3 years and the majority reoffend after a year. Belgium is a role model in EM execution.

Furthermore, radicalization in prisons offers two conclusions of imprisonment: not effective and not sustainable.

On one hand, EM offers some negative aspects: there is also a lack of creativity; a lot of innocents are involved in the EM pre-trial detention; some MS offenders have to pay part of the EM cost; there are 10 EU MS where EM is very limited (mostly Eastern Europe) which creates overcrowded prisons.

On the other hand, we have the Framework Decision on the transfer of prisoners as a good example but Detention Conditions are difficult to put in practice. The European Commission needs more specific information about EM, they still need to be convinced about the EM advantages. It's very important the opinion of the practitioners and their involvement.

To sum up, the solution today is to exchange best practices between EU countries.