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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Council for Penological Cooperation
(PCCP)

SCOPE AND DEFINITIONS
ELECTRONIC MONITORING

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Scope

The present document is intended to propose a set of professional and ethical rules and standards enabling national authorities to provide just, proportionate and effective use of different forms of electronic monitoring in the framework of the criminal justice process in full respect of the rights of the persons concerned.

This document is also intended to bring to the attention of national authorities that particular care needs to be taken when using electronic monitoring not to undermine or substitute the building of constructive professional relationships with suspects and offenders by competent staff dealing with them. It should be underlined that the imposition of technological control can be a useful addition to existing socially and psychologically positive ways of dealing with any suspect or offender.

Definitions

Electronic monitoring is a general term referring to forms of surveillance with which to monitor the location, movement and specific behaviour of persons in the framework of the criminal justice process. The current forms of electronic monitoring are radio wave, biometric or satellite tracking. They usually comprise a device attached to a person and monitored remotely (for more details refer to the appendix).

Depending on the national jurisdictions electronic monitoring may be used in one or more of the following ways:

- during the pre-trial phase of criminal proceedings¹;
- as a condition for suspending or of executing a prison sentence;
- as a stand-alone means of execution of a criminal sanction or measure²;
- in combination with other probation interventions;
- as a pre-release measure³;
- in the framework of conditional release from prison;
- as an intensive guidance and supervision measure for certain types of offenders after release from prison
- as a means of monitoring the internal movements of imprisoned offenders and/or the perimeters of open prisons⁴.

Where electronic monitoring is used as a modality of execution of a prison sentence, in some jurisdictions those under electronic monitoring are considered as prisoners.

In some jurisdictions it is managed by the prison, probation or police services or other competent public agency while in others it is implemented by private companies under a service-providing contract with a state agency.

In some jurisdictions the suspect or offender carrying the device is contributing to the costs for its use, in others it is exclusively the state which covers the costs of electronic monitoring⁵.

Electronic monitoring, when properly and proportionately planned and carried out, can help:

- a) keeping in and returning suspects and offenders to society and increasing their compliance with specified conditions;
- b) contributing to their longer term desistance from crime, and
- c) reducing the number of inmates

“Agency providing electronic monitoring equipment”: usually⁶ a private company which produces, markets, sells and maintains such equipment.

“Agency responsible for supervising persons under electronic monitoring”: a public agency or private company which supervises the location, movement or specific behaviour of a suspect or an offender for a specified period of time.

¹ As a bail condition, substitution for or a modality of pre-trial custody

² Without being combined with other interventions or treatment measures

³ For example prison leave, work outside prison, meetings with social or probation services, etc.

⁴ This document is not dealing with the intramural use of EM

⁵ Rec(92)16, Rule 69 states: “In principle, the costs of implementation shall not be borne by the offender”.

⁶ In the Russian Federation this is a state company attached to the Federal Service for Execution of Punishments

“Probation agency”: a body responsible for the execution in the community of sanctions and measures defined by law and imposed on an offender. Its tasks include a range of activities and interventions, which involve supervision, guidance and assistance aiming at the social inclusion of an offender, as well as at contributing to community safety. It may also, depending on the national legal system, implement one or more of the following functions: providing information and advice to judicial and other deciding authorities to help them reach informed and just decisions; providing guidance and support to offenders while in custody in order to prepare their release and resettlement; monitoring and assistance to persons subject to early release; restorative justice interventions; and offering assistance to victims of crime.

A probation agency may also be, depending on the national legal system, the “agency responsible for supervising persons under electronic monitoring”.

Aspects regarding the use of EM to be considered:

- Types, maximum duration and modalities of execution of electronic monitoring in the framework of the criminal justice shall be specified in law.
- Decisions to impose or revoke electronic monitoring shall be taken by the judiciary or allow for a judicial review⁷.
- Where electronic monitoring is used at the pre-trial phase as an alternative to remand in custody special care needs to be taken not to net-widen its use to offences for which no remand in custody is provided by law.
- The type and modalities of electronic monitoring shall be proportionate in terms of duration and intrusiveness to the seriousness of the offence alleged or committed, shall take into account the individual circumstances and shall be regularly reviewed.
- Electronic monitoring is not to be executed in a manner restricting the concerned person’s fundamental rights and freedoms to a greater extent than provided for by the decision imposing it. The size of any imposed exclusion zones, and the duration of exclusion from public space is particularly important in this respect.
- The imposition of electronic monitoring should take account of its impact on the interests of third parties in the place of residence to which the suspect or offender is restricted.
- There shall be no discrimination in the imposition or execution of electronic monitoring on the grounds of gender, race, color, nationality, language, religion, sexual orientation, political or other opinion, national or social origin, property, association with a national minority or physical or mental condition.
- While electronic monitoring can ensure supervision and thus reduce crime over the period of its execution, if longer term desistance from crime is sought, it should always be combined with other professional interventions aimed at the social reintegration of offenders.
- Where private sector organisations are involved in the implementation of decisions imposing electronic monitoring the responsibility for the effective treatment of the persons concerned in conformity with the highest international ethical and professional standards should remain with public authorities.
- Public authorities should ensure that all relevant information regarding the private sector involvement in the delivering of electronic monitoring should be transparent and publicly accessible.
- The handling and shared availability of data collected in relation to the use of electronic monitoring should be specifically regulated by law and effective sanctions against its misuse should be introduced.
- Staff responsible for the implementation of decisions related to electronic monitoring shall be sufficiently numerous and adequately trained to carry out their duties professionally. This training shall include data protection issues.

⁷ In most European countries EM is combined with other probation sanctions or measures which are imposed by the judiciary

Appendix 1

Types of Electronic Monitoring

Different EM technologies have different practical and ethical implications for the supervision of offenders. For example satellite tracking is not in fact a single system. It has a number of capacities, types of use and permutations, some of which might be regarded as less ethically acceptable than others. Data protection issues can also arise in relation to the use of modern EM technologies. New technologies are continuing to emerge and are constantly improving and the ethical implications should be considered in advance as far as possible.

Radio frequency (rf) electronic monitoring entails the wearing of an ankle bracelet (or tag), the signal from which can be picked up by a transceiver installed in the offender's home. So long as s/he remains in proximity to the transceiver his or her presence in the home will be registered in the monitoring center, via either the landline or mobile telephone system. Radio frequency technology can be used to monitor house arrest or nighttime curfews. Most straps are made of toughened plastic with optic fibres running through them, and cease to work if this fibre is cut. Straps can be made of leather with steel bands running through them: these can only be cut with powerful bolt cutters and are much harder for a wearer to remove. Wrist tags are available where health considerations are require using these instead of ankle tags. Worldwide, radio frequency technology has been understood as the "first generation" of electronic monitoring, and is still the commonest form of it: the technology has been constantly upgraded to improve performance, reliability and ease of use. Internationally, however, a professional/commercial debate has begun which suggests that this "first generation" technology should be supplemented and perhaps superceded by more versatile "second generation" technology (satellite tracking), and in the past five years at least two countries adopted this without ever having used "first generation" technology.

Satellite tracking - combined with mobile phone location technology - monitors the location or movement of a person on the earth's surface, outdoors and indoors, but not necessarily underground. It entails the wearing of an ankle bracelet (sometimes accompanied by a belt-worn computer) which can both pick up and triangulate signals from orbiting satellites (currently the American Global Positioning System (GPS)) and cellphone towers, and transmit/upload an offender's location through the mobile phone system to a monitoring center. It can do this in "real-time", so that an offender's whereabouts are always known immediately to the monitoring center, or retrospectively, in which a record of an offender's movements is compiled (and analysed) some hours later. Some systems combine both immediate and retrospective monitoring, and some have in-built texting facilities for giving instructions to the offender. A person being satellite tracked is required to spend part of the day recharging the battery which powers the equipment s/he wears or carries. In case of a one-piece tracking tag the person has in the past been required to remain attached to the plug-in system for recharging, but technology is emerging which can charge the tag from a short distance away. Tracking technology can be used to monitor house arrest (by creating small "inclusion zones"), to follow all of a person's movements and to create exclusion zones (areas of past offending, neighborhoods of former victims) which the offender is forbidden to enter. Satellite tracking technology can also be used as part of a victim protection scheme which requires a victim to carry a device which warns her/him of the offender's proximity. Some satellite tracking systems can be combined with mapping software which shows the location of recent crime scenes, making it possible to see if the offender was in the vicinity of the crime at the time. This can be presented to the offender as a tangible means of demonstrating that s/he is desisting from crime, and the data may be used in legal proceedings incriminating or exonerating him/her. The cost of satellite tracking has been steadily decreasing, making it more attractive to penal and judicial authorities than it has been in the past. The availability of other satellite systems apart for the American one may make offender tracking even more feasible in the future, and rival systems of terrestrial tracking may be customised for the same purpose.

Voice verification is a form of electronic monitoring which uses a person's unique biometric voiceprint, recorded at the point of conviction. Each time the monitoring center phones the offender his or her voice is matched to the voiceprint stored on the computer, while the location of the phone being used by the offender is simultaneously registered. Voice verification can be used to monitor the presence of a person at a single location, or to track his or her movements between a number of specified locations, e.g. a community service placement, or a jobcentre. Because it does not entail the use of a wearable device there is no risk of stigma or of using the tag as a trophy and for this reason some experts believe that this makes voice verification a more acceptable form of EM for juveniles and young offenders.

Remote Alcohol Monitoring (RAM) exists in two forms. The first links a breathalyser to radio frequency electronic monitoring - specifically to the transceiver - in the offender's home. The offender is randomly phoned by the monitoring center and asked to use breathalsyer, whose result can immediately be

transmitted by landline. The offender using the breathalyser is identified either by voice verification technology, or by photograph, or by (biometric) facial recognition technology.

The second form of RAM is mobile, and does not require the offender to be in a single location. It entails the offender wearing an ankle bracelet which picks up the presence of alcohol in the offenders system “transdermally” - through his/her skin - and periodically uploads that data to the monitoring center via the mobile phone system. RAM can be used with offenders whose crimes have been alcohol-related, where the court has either forbidden them to use alcohol over the period of supervision, or required supervisors to help offenders reduce its intake. Some offenders value the technology because it helps them to self-manage their intake of alcohol.

Kiosk reporting is a form of electronic monitoring installed at the office of the probation agency and ostensibly designed to help probation officers manage large caseloads, focused specifically on low-risk offenders at some point in the supervision process, although not (at present) all of it. When offenders report to a probation office, instead of meeting a real probation officer face-to-face, they are required to interact with a kiosk-based computer (similar to a cashpoint machine). The machine requires them to answer certain questions about their recent activities, and may contain instructions from their probation officer. The offender identifies him or herself to the machine – undergoes verification that it is him/her who is reporting and not a substitute - by means of a fingerprint, although a voiceprint could also be used.

It is clear from the above that different types of surveillance technology are now being combined in EM, for example biometrics and location monitoring and while we intend to explore the ethical implications of these for offenders our comments on biometrics in general will not be exhaustive.

A Note on Commercial Organisations Involved in Electronic Monitoring.

There are essentially two kinds of private company involved in the delivery of electronic monitoring. Firstly, technology manufacturers (who produce equipment - hardware and software - train public sector staff to install it, provide technical support services and manage monitoring centers). Secondly, full service providers (who employ field and center-based monitoring officers, install equipment, manage monitoring centers and may sometimes be involved in the legal aspects of revocation, supplying technical evidence of non-compliance in respect of offenders who are not on any other kind of supervision apart from EM). All countries require some degree of partnership between their electronic monitoring providers and national telecommunication companies (e.g. in terms of access to landline and cellphone networks), and in some countries these companies may be contracted to provide monitoring services themselves, buying or renting equipment from technology manufacturers and working in conjunction with state agencies. There is a sense in which the effective operation of EM is dependent on, and constrained by the technical quality and administrative efficiency of existing telecommunication infrastructures. Some of the larger global corporations involved in full service provision may also manufacture their own technology. These larger companies may also be involved in wider security and surveillance activities (guarding and CCTV management), in the provision of private prisons, in the provision of back-office functions for police forces and a range of what have hitherto been understood as statutory probation services - hostel accommodation and community service. Both technology manufacturers and service providers may also be involved in the provision of electronic monitoring in the telecare and telehealth fields (monitoring the locations and “life signs” of old people, or people with dementia): research and technical development in electronic monitoring overlaps in the health and criminal justice fields.