

# Cages Without Bars

## Pretrial Electronic Monitoring Across the United States

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Shriver  
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# Cages Without Bars: Pretrial Electronic Monitoring Across the United States

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LaTanya Jackson Wilson has over 25 years’ experience centered on advocacy for equal justice. Most recently, she served as Director of Advocacy at Legal Aid of Western Ohio, where she oversaw a shift to focus advocacy on racial justice and equity and build a more inclusive and diverse organizational culture. Previously, she has worked as a public defender, an attorney at UAW Legal Services, and in private practice. As Vice President of Advocacy, LaTanya manages a cross-disciplinary team of experts and oversees the Shriver Center’s work to integrate policy advocacy, community-centered organizing, and legal strategy in pursuit of systemic change. She is a 1995 graduate of the Ohio State University Moritz College of Law, and a 1992 graduate of Morris College.

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# Executive Summary



From 2005 to 2015, the number of people on electronic monitoring (EM) in the U.S. more than doubled, surpassing 120,000. The North American market for EM is projected to grow from \$850 million in 2019 to \$1.2 billion in 2023. This growth has been particularly remarkable in the pretrial sector. Yet there is a lack of data-driven evidence to determine whether pretrial EM is an effective tool in reducing rates of re-arrest or increasing appearance rates.

In fact, our research suggests that pretrial defendants on electronic monitors are often at risk of greater involvement in the criminal legal system.

This report responds to the gap in critical research on pretrial EM. We analyzed features of pretrial EM across nine jurisdictions designated as sites for implementation or innovation as part of the MacArthur Foundation's Safety and Justice Challenge. These jurisdictions are:

- Baltimore City (MD)
- Bernalillo County (NM) (Albuquerque)
- Cook County (IL) (Chicago)
- Orleans Parish (LA) (New Orleans)
- City & County of San Francisco (CA)
- Franklin County (OH) (Columbus)
- Los Angeles County (CA)
- Multnomah County (OR) (Portland)
- The State of Connecticut

The major findings of our research were:

**Pretrial electronic monitoring causes immense harm.** People on EM monitors provided gut-wrenching accounts of the ways their health, employment, and families were hurt by EM. Like mass incarceration, the underlying logic of punishment and fear that informs EM dooms it to failure. Although the use of EM continues to expand, these devices offer no real avenue of progress for individuals or the criminal legal system. Therefore, we recommend that everyone involved in an electronic monitoring program, from program administrators to activists, pursue a multifaceted agenda geared towards the elimination of EM.

**Great differences exist in program structure and size.** We found inconsistencies between EM programs in different cities. Jurisdictions used EM in a variety of ways, which roughly fell into four categories:

1. **House arrest** — mandating that a monitored person stay in their home continuously unless they received permission for specified “movement.”
2. **Curfew** — limiting movement to specified hours of the day.
3. **Geographic exclusion zones** — barring the monitored person from certain areas (i.e., a victim’s home).
4. **Pure movement tracking** — tracking a person’s movement without restrictions.

All programs threatened monitored people with incarceration if administrators decided the monitored person had violated rules. Among jurisdictions that used GPS technology, all used a hybrid version of movement restrictions and location tracking.

**Criteria for admission to electronic monitoring programs are unclear.**

None of the interviewed jurisdictions had clear standards and practices for EM admissions. Judges often use their own metrics, though some use an actuarial risk assessment to inform their pretrial decisions. While most pretrial decisions about EM rely heavily on the charges, level of offense, and criminal history of the accused person, defense attorneys in Cook County, Franklin County, and Los Angeles County shared that on occasion they request electronic monitoring to get their clients released from jail.

**Program administration lacks transparency.** Little data exist about many aspects of electronic monitoring programs. For most of the jurisdictions, we were unable to get racial breakdowns for the people on EM, nor were we able to obtain information on how many people were sent back to jail for violations of rules. We learned that regular assessments or evaluations of EM programs were not conducted in the jurisdictions we interviewed. Increasing reliance on risk assessments in these programs adds to the lack of transparency. This is particularly concerning given that young, Black men may be deemed “risky” or unable to pay cash bail at a disproportionately

higher rate. This exacerbates existing inequalities of race and class and paves the way for electronic monitoring to increase rates of pretrial supervision rather than decrease incarceration.

In addition to the lack of racial data, the entanglement between private EM companies and local criminal justice system agencies can make it difficult to determine how pretrial EM programs are being implemented. Whereas some jurisdictions rely on private companies to provide rental equipment, other jurisdictions give license to private companies to completely run the programs and report violations to the court. People working within jurisdictions that rely on private companies were not privy to the size of their programs due to the lack of transparency from their private partners. In order for a person accused of a crime to access EM, their lawyer and family had to secure services directly from an EM provider.

**Program rules limit people’s freedom.** Once on an electronic monitoring device, people accused of crimes are subject to conditions and strict rules. Restrictions on movement are the most serious liberty infringement of electronic monitoring. People on EM must seek permission from a supervising authority to leave home for a specific purpose or at a specific time. The movement approval process has proved frustrating because of the arbitrary and sometimes cruel nature of denials and the fact that attorneys are often not informed when their clients are reincarcerated for an

EM violation. Even after movement approval, many jurisdictions require additional verification of the person's whereabouts. Notably, movement was often only approved when it was deemed necessary for a person's life, but leisure activities like exercising or sitting outside were not considered necessary. Under both scenarios, there is no freedom to simply live one's life in the way one wants.

***Properly maintaining the device.***

EM devices require multiple hours of charging each day, and as GPS bands are physically attached to a person on EM, it is assumed that people on EM have access to stable housing and reliable electricity. Moreover, EM devices often proved faulty, showing that people were outside their homes or were trying to tamper with their devices when they were not. In Cook County, technical glitches can lead to incarceration, and defense attorneys complained that their clients had to prove the monitor malfunctioned.

***Payment of fees.*** In many jurisdictions, people on the monitor must also shoulder the cost of EM services. Some jurisdictions require people to pay at least part of the costs associated with monitoring. These costs typically range from \$5 to \$25 per day but can be as high as \$40 per day. The profit-driven incentives of many EM companies have allowed some to threaten people with jail time for unpaid fees.

***Additional requirements.*** Additionally, some jurisdictions imposed weekly or biweekly check-ins with a pretrial officer as well as drug testing for some individuals.

***Monitored people are suffering.***

People throughout the jurisdictions surveyed highlighted EM's role in making them feel humiliated and debilitated. As one interviewee noted, "[I]f there's anything going on in your life, EM makes it worse." From finding and keeping housing to accessing

and maintaining employment, the visibility of EM devices and often public interactions with police frequently put community members on notice of a defendant's EM status. Further, people on EM who are unstably housed or unhoused must rely on places like fast food restaurants and homeless shelters to provide reliable electricity to charge their devices. Interviewees also reported restrictions on movement can lead to their inability to get necessary medication or healthcare for themselves and families, which leads to financial and emotional strain. These issues, in addition to the isolating impact caused by EM, affect people's mental and physical health, which has been exacerbated by the COVID-19 pandemic.

*People experience an intense level of stress attempting to maintain their lives under the duress of electronic monitoring.*



## Recommendations

**Electronic monitoring should be eliminated as a policy tool in pretrial settings.** Pretrial electronic monitoring programs lack transparency and accountability, are punitive in nature, and are unsupported by any research establishing a pattern of successful outcomes. Money spent on electronic monitoring could be much more effectively used to support programs that promote healing and access to opportunity, rather than a technology that locks people in their homes. Where possible we recommend that advocates, decision-makers, and judicial actors abandon electronic monitoring.

**We recognize, however, that immediate elimination of electronic monitoring may not be possible in all jurisdictions.** Many programs have been entrenched for many years, earn profits for powerful people, and in poorly resourced communities may represent the only option available apart from incarceration in a jail cell.

**In such situations, we support policies of harm reduction that reduce the punitive character of EM and provide pretrial defendants ample freedom to work, seek medical care, join in family and community activities, and take part in recreation.** To that end, we recommend pushing for the following reforms in the absence of abolishing EM:

1. EM programs should be tested rigorously and used sparingly to ensure their effectiveness.
2. EM programs should allow “movement” as a default and not operate as house arrest programs.
3. EM programs should not require onerous verification when GPS technology may already serve as ample verification.
4. EM programs should not pass fees onto the accused.
5. EM programs should ensure people receive credit for time served on the monitor.
6. EM programs should be overseen and administered by government authorities, not private companies.
7. EM programs should not place someone on a monitor or reincarcerate people accused of violating rules without due process.
8. EM programs should prioritize data privacy and safety for people on the monitor and restrict commodification of data without consent.
9. EM programs should commit to a robust system of transparent data collection in their operations, with a special focus on the racial impact of EM. To this end, community stakeholders and impacted individuals should be mobilized to hold EM programs accountable.
10. EM programs should have clear criteria that incorporate due process to determine who is placed on EM, for how long, and under what conditions.

Furthermore, we recommend that in the courtroom, defense lawyers

- seek to reduce EM usage by zealously advocating on their clients’ behalf, and
- use legal precedent to ensure search warrants are utilized before law enforcement pulls GPS data from a pretrial monitored individual.

Affirmative litigation is also a promising avenue for reducing the harm caused by EM programs.

Finally, legislative advocacy is a tool that can ensure EM practices comport with set standards and practices or lead to ending EM programs altogether.

# Introduction



Across the United States each year, hundreds of thousands of people accused but not yet convicted of crimes are required by the courts to participate in electronic monitoring (EM) programs. These people are fitted with a locked, tightened ankle shackle, which often tracks every move they make. Usually, they are then confined to their homes unless they have specific permission to leave. If they remove the band, or break the rules of the program, they risk being taken to jail. All of this happens before they have been convicted of the crime of which they were accused.

Pretrial EM<sup>1</sup> programs represent a fast-growing type of incarceration that imposes significant harm and burdens on people who are subject to it. A 2015 Pew Charitable Trust report noted that the number of people being tracked by electronic monitoring technology more than doubled between 2005 and 2015, to a total of over 120,000 people.<sup>2</sup> In 2018, Michele Alexander called electronic monitoring “the newest Jim Crow.”<sup>3</sup> But, despite some media attention, pretrial electronic monitoring programs have exploded in size, largely without examination by academic and

policy researchers or by the system actors who use this technology.

This report responds to the gap in critical research on the use of pretrial EM by exploring how EM is used across select jurisdictions in the U.S. To better understand the scope of pretrial EM, we gathered information from 9 of the 51 jurisdictions designated as sites for implementation of the pretrial justice reform program promoted by the Safety and Justice Challenge. The Safety and Justice Challenge examines the over-use of jails in the pretrial

system and the racial disparities in the system as it currently exists.<sup>4</sup> This report analyzes the key features of these EM programs and how those features differ by jurisdiction. We include insights from people who are subject to pretrial electronic monitoring, and from program administrators, judges, prosecutors, and defense attorneys.

We explore how people get on EM and the costs of EM for individuals. We compare EM program administration in the different jurisdictions surveyed and discuss systems actors' perceptions and opinions of EM. Using interview data with individuals who have participated in an EM program in the U.S., we examine the impacts of EM on people's (1) ability to find and maintain employment, (2) physical and mental health, and (3) family relationships.

We found an alarming gap between the ways these programs operate in different cities. The term "electronic monitoring" covers a huge variety of programs. People accused of crimes face vastly different rules on these programs depending on where they are located.

We were also struck by a lack of clarity from most jurisdictions as to the purpose, efficacy, and future of electronic monitoring programs. On paper and in the law, most electronic monitoring programs are designated as a condition of release. However, these so-called conditions of release and the ways that system actors perceived and ran the programs suggested that, in

practice, electronic monitoring acts as another form of incarceration, not an alternative. While there is considerable difference in how EM programs operate, all have one thing in common — they are underpinned by a punitive ideology.

This punitive ideology is pervasive throughout the criminal legal system, which over the last few decades has led reformers to introduce new opportunities to reduce the harm caused by the system. Since EM keeps people from being confined inside of prison cages, some reformers view EM as a harm reduction tool. The often-prevailing narrative holds that "EM is better than jail." Based on the research we conducted, although EM is a tool that can be used to get people out of prisons and jails, as currently administered it creates harm in much the same fashion as prisons and jails.

*In practice, electronic monitoring acts as another form of incarceration, not an alternative.*

Although criminal legal system reformers and many prison abolitionists recognize harm reduction as a necessary tool for change, currently the primary outcome of EM is not harm reduction but creating new forms of punishment. EM has been used in the United States for over 40 years, and the technology is forever changing and modernizing — but the harm EM causes has not

changed. The harms caused by EM to people and communities are so great that EM cannot be "reformed" or adapted into a practice that is not still no longer fundamentally carceral, punitive, and harmful. The goal must be to end its use.

Our research shows that EM is deeply embedded in many jurisdictions' pretrial systems, and it is not realistic to believe that EM can be abolished overnight. In response, this report recommends strategies for reducing the harm caused by EM in a pretrial setting. We urge EM system actors, including jurisdictions, third-party vendors, and court systems, to consider these recommendations as steps on the path towards eliminating the use of pretrial electronic monitoring entirely, rather than as long-term solutions in and of themselves.

# Background



## The History of Pretrial Electronic Monitoring

*In this section, we provide a brief history of electronic monitoring in the United States, the technology, and the of the privatization of the technology and devices.*

Electronic monitoring was first developed in the early 1960s by two Harvard graduate students for use in the juvenile justice system. Originally, EM was intended to act as “positive

reinforcement” to incentivize people to modify their behavior. Administrators could use information from the monitor to reward those who exhibited positive changes in their actions.<sup>5</sup> Over time, the policy objectives of pretrial electronic monitoring shifted away from rewarding compliance in favor of punishing missteps and preventing future unlawful activity. Now, the stated main purposes for EM are to serve as an alternative to detention, to prevent recidivism, and to encourage reappearance in court, all of which are balanced against an interest in preserving public safety.<sup>6</sup>

Harvard graduate students developed EM according to the principles of positive reinforcement while using military equipment to develop technology, which involved radio communication between devices to track location.<sup>7</sup> In the early 1980s, EM moved into the sphere of criminal courts. In 1983, Albuquerque Judge Jack Love, who was in search of a way to monitor accused people at home rather than in an overcrowded jail, fitted four people with radio frequency devices.<sup>8</sup> Judge Love claims he was inspired by a similar device he saw in a *Spiderman* comic. In 1984, the first

formal pilot EM program was created in Palm Beach County, Florida, where it was used to monitor people convicted of misdemeanors. Before long, similar programs for people convicted of crimes began appearing across the country. In 1989, Cook County — one of the largest pretrial electronic monitoring sites in the nation — began its EM program for accused people yet to face trial. Conceived as an emergency measure to ease overcrowding, after a federal judge had begun fining the county thousands of dollars a day for violating a federal court order to reduce the jail population, the program started with 123 monitored people. Within the year, it had grown to over 400.

Despite the long history of the use of pretrial EM, there is a lack of data-driven evidence to demonstrate that pretrial EM ensures compliance with court orders and increases public safety. A recent meta-analysis that looked at 17 empirical studies of post-conviction EM found that it does not have a statistically significant impact on reducing the rate of re-arrest while people are subject to the program.<sup>9</sup> There is almost no current research on the specific impact of EM when used pretrial. One study of location monitoring in New Jersey found no difference in appearance rates for individuals monitored in comparison to those who were not.<sup>10</sup>

Despite this lack of evidence, interest in bail reform has driven a new wave of efforts to decrease pretrial jail populations, and with it, an increase in the use of electronic monitoring. During the COVID-19 pandemic and Breanna Taylor and George Floyd

uprisings, when pressure to decarcerate jails was acute, EM programs in places like Cook County, Illinois, Harris County, Texas, and San Francisco ballooned in size and remained large even after initial COVID-19 outbreaks at jails were controlled. Pretrial EM continues to expand despite the lack of clear evidence of any success in achieving its stated goals.

## Types of Technology

Nearly all the jurisdictions reviewed for this report used at least one of three types of electronic monitoring devices: (1) GPS, (2) radio frequency, and/or (3) Secure Continuous Remote Alcohol Monitoring devices (SCRAM). GPS devices use satellites to triangulate and transmit location information at set intervals and can also track and store location information for download at a later time. Ultimately, most of this user data ends up on remote computing servers where the person on the monitor has no control over how it is used. In recent years, a market for this data has emerged, creating a source of profitability for EM providers and big tech companies like Amazon that provide cloud computing services. Radio Frequency (RF) devices are often used for curfew monitoring and house arrest. An RF home monitoring unit detects the monitor within a specific range and sends confirmation back to a monitoring center. SCRAM devices analyze perspiration for alcohol content and send a report every hour. SCRAM monitors can also include an RF or GPS

location monitor to monitor alcohol intake and location simultaneously.<sup>11</sup> In the jurisdictions that we interviewed, SCRAM devices were used exclusively for people charged with driving under the influence and other charges related to alcohol consumption.

The type of device used is frequently based on the charges facing people being monitored. Individuals charged with domestic violence are much more likely to be GPS monitored. Among the jurisdictions we spoke with, many individuals on EM were people accused of domestic violence. About half of these jurisdictions used exclusion zones — a method of programming with addresses that the person accused of a crime is not supposed to be near. Typically, these are places like schools, parks, or a specific person's home or place of employment. Four of the nine jurisdictions mentioned that exclusion zones were most often utilized in domestic violence cases or in cases where there was a specific location for the crime.

In 2015, the Pew Charitable Trusts found that GPS technology was becoming more common among electronic monitoring use broadly.<sup>12</sup> The Pew study, which looked at EM at all stages of the criminal legal system, found that use of location tracking technologies rose 140% between 2005 and 2015. The increased use of GPS devices drove much of this growth; manufacturers reported about 88,000 GPS devices in use, which is 30 times the number in use a decade earlier.

## Private Company Involvement

Since the beginning of pretrial electronic monitoring, private corporations have been closely involved in program implementation. MediaJustice’s Challenging E-Carceration Project regularly tracks these programs and has found over 50 electronic monitoring companies operating in over 21 states.<sup>13</sup> BI Incorporated, the nation’s largest electronic monitoring company, is a subsidiary of GEO Group, one of the world’s largest operators of private prison and mental health facilities. EM has become one of BI’s major sources of profit. Due to the vast number of contracts for electronic monitoring services and other forms of EM at the federal, state, and local level, it is difficult to determine just how many of

these private companies exist or the exact market share of companies within the industry.

Companies’ reluctance to make their records public further contributes to the lack of data. It is clear, however, that the industry is growing. In addition to BI, a 2018 report by the Center for Media Justice identified Satellite Tracking of People (STOP), Sentinel Offender Services, and Attenti as some of the largest private companies in the e-carceration industry. These four companies alone brought in nearly \$700 million in annual revenues and had contracts in 29 different states as of 2018. Market analysis shows that the North American market for EM — which is dominated by the United States — is forecast to grow at a compound annual rate of 9%, from \$850 million in 2019 to close to \$1.2

billion in 2023.<sup>14</sup> This growth will likely lead to massive profits for the four noted industry giants, along with other major companies like Sierra Wireless, SCRAM Systems, Track Group, and SuperCom. This could also give rise to an increase in revenue for smaller regional providers like Tarheel Monitoring (North Carolina), ETOH (New Orleans), Eastern Missouri Alternative Sentencing (EMASS) (Missouri), Providence Community Corrections (Tennessee), Correction Center of Northwest Ohio (Ohio), and many others. Moreover, in recent years, especially during the pandemic, traditional ankle monitors have been replaced by cellphone tracking apps such as BI SmartLINK, Promise, and Guardian. The companies used by the jurisdictions we surveyed are listed in the table below.

### Private Companies Used by Jurisdictions Surveyed

Jurisdiction	Private Company
Bernalillo County, NM (Albuquerque)	BI, Inc.
Cook County, IL (Chicago)	Track Group and Protocol, Inc (a division of BI, Inc).
Orleans County, LA (New Orleans)	A2I, Assured Supervision Accountability Program (ASAP), and ETOH Monitoring, LLC
Baltimore City, MD	ASAP and Alert
State of Connecticut	Sentinel Offender Monitoring Services
Multnomah County, OR (Portland)	Vigilnet
Franklin County, OH (Columbus)	BI, Inc.
Los Angeles County, CA (Los Angeles)	Securus Monitoring Solutions
San Francisco, CA	Sentinel Services

# Race and Electronic Monitoring



It is impossible to effectively discuss any part of the American criminal legal system without engaging with its history, which is steeped in racial oppression. EM came into use at the height of the “war on drugs,” a racially motivated set of policies that vastly disproportionately affected Black and other people of color.<sup>15</sup> In the one jurisdiction that was able to provide data on the race of people subject to EM (Cook County), we found that EM had the same disproportionate racial demographics as the pretrial jail population; 74% of people on EM in Cook County are Black, approximately



**74% of people on EM in Cook County are Black**



**23% of residents in Cook County are Black**

the same proportion as the jail population. By contrast, Black people make up only 23% of Cook County's total population.<sup>16</sup>

David Mauroff of the San Francisco Pretrial Diversion Project notes that while San Francisco's population is about 4% African American, the jail population is "45, 50, sometimes up to 60%" African American, and Mauroff indicates that "they're the same individuals getting hit with EM." He went on to share that "we're fortunate that San Francisco received funding from MacArthur Safety and Justice Challenge. So, we have a real clear focus on reducing racial disparity in our jails. And the EM is a part of that."

A major challenge in electronic monitoring research is the lack of information on the application and utilization in the criminal legal system *at all*, let alone information about disproportionate racial impact. The local jurisdictions we spoke with had little access to data about their own programs and who exactly was on them. Moreover, local system actors have not evaluated the impact of these programs in a systematic way. While we had hoped to shed light on possible disparities in the use of electronic monitoring, the lack of available data makes doing so extremely challenging. Nonetheless, there are several reasons to believe that electronic monitoring is not used evenly across pretrial programs and that racial disparities exist in its application.

First, reliance on risk assessment tools has increased in recent years. Although

risk assessments may seem objective, and thus lacking racial bias, they often exacerbate existing social and racial inequities.<sup>17</sup> This finding has led to concerns that EM is not utilized to decrease incarceration, but rather to augment pretrial supervision.<sup>18</sup> This may lead to its disproportionate use among individuals who cannot afford cash bail or who are deemed "risky" by these algorithms — disproportionately young, Black men. Given the extensive literature on racial bias and discrimination in the criminal legal system, even in the absence of data there is no reason to conclude that EM represents an island of racial equity in a sea of inequity.

Second, we found that individual program officers and supervising agents in the jurisdictions surveyed had considerable discretion in approving movement and responding to violations. Conversations with defense attorneys suggested that not all accused individuals receive the same treatment while on electronic monitoring. Defense attorneys believed that race factored into which conditions were placed on their clients, with their Black, Indigenous, and Latino/a/x clients being disproportionately negatively impacted. Black, Indigenous, and Latino/a/x clients, especially the younger clients, were given more conditions and less movement than white clients. This is another likely (but so far underexplored) area that may reveal racial disparities in EM.

Lastly, it is important to note that the race and class dynamics of EM are complex. While EM is generally a

punitive measure used against poor people of color, in selected instances it becomes an actual tool of privilege that keeps white and wealthy people from having to serve jail time. In some jurisdictions, electronic monitoring may be uniquely available to the wealthy because of cost-prohibitive fees. Wealth in America, is, of course, correlated with race, and privileging the wealthy will often have disproportionate racial impacts. High-profile cases of Michael Cohen, Jeffrey Epstein, and Paul Manafort provide examples of white, wealthy people who were given access to EM and avoided jail or prison time.<sup>19</sup> In one case cited by Mr. Epstein's lawyers, a judge referred to such arrangements as providing "an opportunity for release that poorer people could never obtain." EM fees, as well as the practice of requiring high money bonds in addition to electronic monitoring, risk stranding more poor people in jail while the rich more frequently receive release.

However, it is also likely that electronic monitoring is used more frequently for accused people of color in the pretrial phase. Reliance on risk assessment tools has increased in recent years. Although risk assessments may seem objective, and thus lacking racial bias, they often exacerbate existing social and racial inequalities. This finding has led to concerns that EM is not utilized to decrease incarceration, but rather to augment pretrial supervision.<sup>20</sup> This may lead to its disproportionate use among individuals who cannot afford cash bail or who are deemed "risky" by these algorithms — disproportionately young, Black men.

# Methodology



Our goal was to gather information on pretrial electronic monitoring from a selection of jurisdictions designated as network sites for the Safety and Justice Challenge. We narrowed our scope by focusing primarily on sites where the networks of lead organizations for this report, the Shriver Center on Poverty Law’s Legal Impact Network and the Appleseed Network, have a local presence and individuals willing to be interviewed for the report.

Among those sites, we identified 20 jurisdictions with pretrial EM programs.

We then did initial outreach to relevant local administrators to verify that the targeted jurisdictions had existing EM programs and to inquire whether they would be willing to participate in our study. We conducted preliminary interviews with 18 jurisdictions.

These initial conversations occurred in September through November 2020. After these screening interviews, we narrowed our focus to nine jurisdictions: Baltimore City (MD), Bernalillo County (NM), Cook County (IL), Orleans Parrish (LA), City &

County of San Francisco (CA), Franklin County (OH), Los Angeles County (CA), Multnomah County (OR), and the State of Connecticut.

The overall intention was to capture a variety of perspectives from individuals involved in EM within each jurisdiction. First, we aimed to collect contracts, program documents, and data on the individuals placed on pretrial EM.

Second, we contacted individuals in each of the following personnel categories for interviews:

- an administrator,
- a lawyer who prosecuted cases where individuals were put on EM,
- a lawyer who defended clients who were placed on EM, and
- a judge.

We also planned focus groups and individual interviews with people who had spent time on pretrial electronic monitoring. Through this method, we hoped to gain information that has been largely missing from electronic monitoring research to date, including racial breakdowns of EM populations, records of violations and reincarceration, data on the cost of EM programs, the frequency of technical malfunctions in the devices, details of how these programs are administered, and what impact the devices had on the lives of the monitored individuals.

The COVID-19 pandemic created considerable challenges in contacting people and setting up interviews. Travel restrictions made site visits impossible. Many offices were closed or open for limited hours, making phone numbers unreliable. In other instances, the pandemic worked in our favor because some system actors were more available working from home and travel was limited. We made considerable effort to reach system actors in each of the categories, exhausting available contacts and following up at least three times if we did not receive a response.

In the end, we spoke to 35 system actors across nine jurisdictions, with a high of eight from Bernalillo County and a low of two from New Orleans. We developed interview questionnaires based on our collective knowledge of EM programs and the criminal legal system. We conducted these interviews from January to May 2021. We conducted most interviews with an assurance of personal anonymity, and as such have not identified the speakers of most quotes in this report. Where speakers were willing to have their names disclosed, we have done so. After submitting Freedom of Information Act requests to each jurisdiction, we received program documents from five of the nine jurisdictions and data on monitored people from three.

The pandemic presented challenges for contacting individuals who had been on electronic monitoring. For this part of the research, we contacted 19 individuals from 15 jurisdictions that were part of the Safety and Justice network via phone and email. We chose the jurisdictions and individuals by tracking contacts we had from previous connections on EM issues. In the end, we received 11 replies and ultimately completed interviews with individuals from six jurisdictions via Zoom and telephone. Several factors contributed to the low response rate. People placed on EM, largely from economically impacted, predominantly Black and Brown communities, had experienced the COVID-19 pandemic far differently than other groups. They were more likely to experience instability in living conditions, internet access, income, and

healthcare, all of which impaired our ability to connect with them directly. As a result, we pivoted to also reach out to individuals and organizations with direct ties to the impacted community who speak to the impact of pretrial EM on the people they worked with as well as on the services they sought to provide them. Ultimately, we completed interviews with 12 of these individuals. In addition to those who had experienced EM, we also interviewed people who were active in community bail funds, programs serving insecurely housed people, and those who provided legal aid or pretrial services to individuals on pretrial EM.

All researchers conducted interviews over the phone or via Zoom, with one respondent replying over email. Gabriela Kirk conducted interviews for the Appleseed sites. Patrice James conducted interviews for the Shriver Center sites. Emmett Sanders and James Kilgore conducted interviews of impacted individuals and advocates. Our general method was to audio or video record and transcribe the interviews after receiving consent from the respondents. Interviews ranged from 25 minutes to 1 hour, with an average of 45 minutes. We took handwritten notes when the respondent preferred not to be recorded. We utilized the program documents to confirm and expand on interview responses and to gather additional specific information about program policies and jurisdictions' contracts with private entities.

# Comparing Nine Electronic Monitoring Programs Across the Country



The nine jurisdictions where our research focused have certain commonalities: all are large, urban court systems. All had over a dozen courtrooms in their criminal courts, and most had some form of pretrial services program. But the differences between electronic monitoring programs far outstripped any similarities between the court systems.

## Differences in Program Structure and Size

Within and between different jurisdictions, the basic way that electronic monitoring technology was used varied substantially. Some jurisdictions had multiple basic EM rules for different groups of monitored people; others had universal blanket rules for every person. Overall, four categories of use emerged:

1. **Home Confinement/House Arrest** — uses the EM band, whether RF or GPS, to ensure that a monitored person is in their home 24 hours a day, 7 days a week, unless they have permission for “movement” — approval to leave their home for a specified reason — to a place they must go straight to and return straight from.
2. **Curfew** — uses the EM band, whether RF or GPS, to monitor a curfew for the accused person, so

that they must be inside their home during the night and can move freely during some portion of the day.

**3. Geographic Exclusion Zones**

— bars a monitored person from certain geographic areas (for example, near a victim’s home) and uses GPS to monitor compliance. Does not otherwise restrict movement.

**4. Pure Movement Tracking**

— tracks movement of individuals but without restrictions on locations

These modes were often used in combination with one another. No jurisdiction reported using a house arrest program that provided absolutely no ability to have approved movement; similarly, only a few jurisdictions reported using GPS monitoring but making absolutely no restrictions on a person’s location. In this way, neither “house arrest” nor “electronic monitoring” is a truly accurate description of most of the programs

we surveyed — all are a hybrid between the two concepts and involve both movement restriction and location tracking. All also have some mechanism for using carceral punishment for program rule violations. In other words, in all of the programs we studied, jail was always a possibility if program administrators decided that an accused person had broken the rules.

**Ways Different Jurisdictions Used GPS EM Technology**

	House Arrest	Curfew	GPS Exclusion Zones	Pure Movement Tracking
Bernalillo County, NM (Albuquerque)	✓	✓	✓	
Cook County, IL (Chicago)	✓	✓	✓	
Orleans Parish, LA (New Orleans)	✓			
Baltimore City, MD	✓			
State of Connecticut	✓	✓	✓	
Multnomah County, OR (Portland)	✓	✓	✓	✓
Franklin County, OH (Columbus)	✓			
Los Angeles County, CA (Los Angeles)	✓			✓
San Francisco, CA	✓		✓	

Programs also differed in what entity administers the program. In five jurisdictions, a court-based pretrial services system, housed either within the probation department or as a separate entity, ran the program, with contracts with private companies providing the equipment at a rental fee to the county. In Cook County, Illinois, one program was run by a pretrial services agency, while the other was run by the sheriff's office, a law enforcement agency; private companies were contracted both for the equipment

and for running the call center. In two jurisdictions, New Orleans and Baltimore, private companies fully ran programs, including collecting fees, providing equipment, and monitoring accused people, and reporting violations to the court.

The size of electronic monitoring programs varied widely between jurisdictions. The smallest programs were often primarily used to monitor individuals accused of domestic violence. The largest program surveyed

by far was in Cook County, Illinois, where over 3,500 people are subject to EM. Before the COVID-19 pandemic, EM populations closer to 2,300 were normal. No other jurisdiction we surveyed reported a program of more than 1,000 people.

Two jurisdictions we interviewed, New Orleans and Baltimore, could not provide us with the information of how large their program was because private companies were fully in charge of the system.<sup>21</sup>

### Differences in EM Program Administration

	Pretrial Services	Sheriff's Office	Private Company
Bernalillo County, NM (Albuquerque)	✓		
Cook County, IL (Chicago)	✓	✓	
Orleans Parish, LA (New Orleans)			✓
Baltimore City, MD		✓	✓
State of Connecticut	✓		
Multnomah County, OR (Portland)	✓	✓	
Franklin County, OH (Columbus)	✓		
Los Angeles County, CA (Los Angeles)	✓		
San Francisco, CA		✓	

## Size of Electronic Monitoring Programs Surveyed

County	Approximate Number of People Subject to EM
Cook County	3,450 (split between two programs)
State of Connecticut	600
Los Angeles	1,284
Multnomah County	180
Franklin County	120
Bernalillo County	100

EM populations have fluctuated over time in the jurisdictions surveyed. Bernalillo County, which is actively working to reduce its reliance on EM, has approximately 100 people on a monitor at any given time. New Orleans’ EM population decreased as a result of the sheriff’s department ending its EM program. In Baltimore and in Cook County, efforts to reduce the local jail population in response to the COVID-19 pandemic have led to large increases in the use of pretrial electronic monitoring. Franklin County also saw an increase in the usage of EM during the pandemic. Prior to the pandemic, the number of adults on EM in Franklin County during any given time averaged between 120-125.

Like Cook County, Multnomah County and Baltimore City have multiple EM programs. Multnomah County’s EM programs are run by the community corrections division and the sheriff’s Close Street Program; Baltimore City has two private EM

companies that supervise accused people on the monitor in addition to a small program run by the sheriff. New Orleans’ EM programs are run completely by two private EM companies.

### Admission to Electronic Monitoring Programs

For almost every jurisdiction that we covered, judges determine if an accused person is going to be placed on pretrial electronic monitoring.<sup>22</sup> EM is normally assigned in the very early stages of a case. In most jurisdictions, this happens at bond court, shortly after a person is arrested and charged.

### Timing

In some jurisdictions, EM is assigned within hours, or a few days of the person being arrested and charged. For instance, in Bernalillo County, the Pretrial Services Department completes a public safety assessment and makes

a recommendation for the level of supervision to the court. From there, the judge makes a final determination for the type of pretrial supervision. Los Angeles, Cook County, Franklin County, and Connecticut have similar systems that assign electronic monitoring at the first appearance of a person before the court, but all also reported that judges sometimes assign EM later in the pendency of the case when judges believe that a person requires additional restrictive conditions.

Multnomah County, on the other hand, used electronic monitoring primarily in alcohol-related and domestic violence cases, as well as frequently after violations of other conditions of pretrial release — for example, for people accused of domestic violence who have violated the terms of a protection order when released without EM.

In the two jurisdictions we surveyed where private companies are responsible

for electronic monitoring, accused people and their lawyers are directly responsible for finding a private company to administer the electronic monitoring and signing up with them. In Baltimore, defense attorneys have their clients fill out forms to apply to one of the two private EM companies' programs, and a company representative then appears in court at the accused person's bond hearing to present any information to the judge about how the program works. In New Orleans, an attorney can request a bond reduction with the condition of EM at the beginning of a case, or a judge can indicate that they will only reduce bond if EM is a condition. The jail will then not release the person ordered to EM until one of the private EM companies is contacted and comes to outfit the person with a device. Judges can also order EM at any point in the case, and require that an individual come back to court within a certain number of days with proof they have been

outfitted with an ankle monitor from a private company.

### Decision-Making Rationales

Judges use several different decision-making rationales to determine whether to place someone on electronic monitoring. Cook County and Bernalillo County use the Public Safety Assessment, an actuarial risk assessment developed by Arnold Ventures that is among the most widely used pretrial risk assessments. The Public Safety Assessment scores accused people on a scale of 1-6 in both risk of failing to appear in court and risk of being rearrested pretrial.<sup>23</sup> In Los Angeles and Connecticut, pretrial services use a local risk assessment to score accused people. Multnomah County system actors described their system as currently relying mostly on the charge against a person, but expressed a hope that they would soon transition to a risk assessment-based system.

Judges and other system actors in these jurisdictions noted, however, that these risk assessments were not specifically tied to EM use, and that risk assessments did not explicitly recommend EM for any given accused person, or specifically recommend against it. No system stakeholders described any training or standards that were in use to ensure that all judges applied electronic monitoring in the same way. Instead, judges relied on their own assessment of who should or should not be assigned to the monitor.

The charges facing an accused person are a key consideration in making admission decisions. Particularly for SCRAM alcohol devices, judges in some jurisdictions noted that they assigned alcohol monitoring in nearly every felony driving-under-the-influence case. People who were charged with domestic violence or sex offense cases were often placed on GPS monitoring because of additional court orders or underlying laws that required those particular accused people to avoid certain areas.



In some jurisdictions, defense attorneys also played a role in advocating for electronic monitoring for some of their clients. In Baltimore and New Orleans, defense attorneys worked with clients to identify private companies that would allow them access to EM if they could afford it. In Cook County, Franklin County, and Los Angeles, defense attorneys indicated that they would sometimes ask for EM if they thought it was the only way to get their client released on bail.

The unifying feature of all EM admissions processes was their lack of clearly defined practices and standards. No jurisdiction had clear lists of charges that were and were not eligible for electronic monitoring — in theory, most programs were available for cases that ranged from low-level non-violent misdemeanors to murders.

Several interviewees spoke of their jurisdictions using EM for people who were considered “unstable” in some way by the system actors — either because they were housing insecure, young, or had a history of failures to appear. Some defense attorneys noted that they sometimes recommended electronic monitoring for these types of clients, who they described as unable to follow court orders. As we note below, however, housing instability in particular can cause major complications for participation in electronic monitoring.

Overall, this quote from one judge best describes the variance between and within jurisdictions as to how accused people are assigned to EM:



*Not all us judges do things the same way. And it's very difficult to develop policy that everybody adheres to, with just the changing personnel on the bench, with the lack of real formal education training, it's sort of all on the job.”*

or biweekly check-ins with a pretrial services officer, either in person or by phone, and sometimes incorporated drug testing into their EM programs for all or some monitored people.

## Rules of Electronic Monitoring Programs

In the jurisdictions studied, people awaiting trial are subject to five categories of rules and regulations governing:

1. Movement;
2. Device maintenance and false alarms.
3. Rules enforcement and violations
4. Payment of fees; and
5. Additional pretrial requirements.

The main requirements for accused people on EM were that they (1) follow the movement rules they had been assigned and be in their homes when they were supposed to be, and (2) maintain the EM equipment so that it could work properly, including keeping the battery charged. In jurisdictions that charge money for monitoring, payment of fees was another requirement. Four jurisdictions also incorporated weekly

## Requesting Movement

As noted above, nearly all jurisdictions impose some movement restriction on accused people, requiring them to be at home for some or all the time. People on EM must seek what is called “movement” — permission from a supervising authority to leave home for a specific purpose or at a specific time.

For individuals on total or partial home confinement, system actors across jurisdictions described two major paradigms for how movement was requested and approved. Under the first paradigm, the judge issuing the electronic monitoring order was the only person who could approve specific movement requests. Cook County, under the second paradigm, the pretrial officer assigned to the accused person's case has discretion to allow or restrict movement as they see fit. In Baltimore, New Orleans, Franklin County, and Cook County, all movement requests must be approved through a court order.<sup>24</sup> Violations are reported directly

to the court. In Baltimore, a judge then decides whether any action is necessary. In Cook County, accused individuals are often immediately taken into custody after a violation is identified by the sheriff's office; the sheriff has authority to unilaterally decide that an individual has violated the terms of their house arrest and re-incarcerate them. The Cook County Sheriff's office can also then request that the prosecutor charge the person with "Escape from Electronic Monitoring," an additional felony charge in most cases.<sup>25</sup>

In Multnomah, Los Angeles County, and Bernalillo, the level of monitoring

and restriction (house arrest vs. curfew, etc.) is determined by the judge; then, everyone on electronic monitoring is assigned a pretrial services officer who personally manages their case. System actors told us that they instructed monitored people to call that pretrial officer to request movement for various activities that had not already been allowed by court order, and that pretrial officer calls the monitored person if they detected any unauthorized movement for an explanation. Officers were then responsible for triaging alerts of unauthorized movement, battery life alerts, and equipment

tamper alerts and only forwarded alerts to the court when a monitored person was unreachable or unable to satisfactorily explain the reason for the alert. In some jurisdictions, there was an additional layer of triage where the private company that provided the EM equipment triaged which alerts reached pretrial officers in the first place. In these jurisdictions, pretrial officers were given some discretion as to when to approve movement and when not to, and when violations warranted escalation and additional action by the courts. Bernalillo County's movement policy reads:

**Some defendants operate on a curfew. All curfew exceptions are entered into schedules by the Pretrial Services Supervising Officer or at Intake. The approval for curfew extensions are made by the supervising officer or their supervisor, as they have the most contact with defendants and this keeps a defendant from playing supervising officers against each other. It will be made clear to defendants upon GPS intake that foreseeable curfew violations (AA meetings, counseling, employment) should be approved by the supervising officer during regular business hours (0800-1700). Unfortunately, emergencies do happen. However, proof will need to be provided to the supervising officer in these circumstances as well as the defendant being instructed to contact the supervising officer's voicemail to advise of the emergency. If the defendant has a curfew extension that will be re-occurring (i.e., counseling services/church at a set day, time, and location), the schedule should be adjusted by the PTS Supervising Officer to reflect this change. This should also occur if there is a one-time extension. When the extension is approved, the supervising officer will explain to the defendant that the defendant is to return directly home without making stops.**

Attorneys expressed frustration with both approaches. In jurisdictions with strict movement rules set by the court, defense attorneys noted that their clients often had to contact them in emergencies to go back into court and

get a court order for certain kinds of movement, causing inconvenience to the accused person and the attorney alike. Some attorneys noted that their clients were sometimes re-incarcerated without their knowledge, impairing

their ability to effectively represent their clients and get them back out of custody quickly. In other instances, defense attorneys have complained about too many movement requests from their client. One lawyer charged a

client \$250 to file a request with a judge for a movement.<sup>26</sup>

On the other hand, a public defender in one jurisdiction expressed frustration as to the individual discretion sheriff's officers have in one of the EM programs and the sometimes arbitrary nature of movement denials. "You know, and even, running to the grocery store. I've had it where the officers questioned whether they're making too many trips to the grocery store, things like that." A parent taking a child to a family gathering might be approved, but a recreational trip to the beach would be denied. In all these programs, movement was allowed only when an

officer deemed that it was "important" or "necessary." Some defense attorneys noted that this could create unclear expectations for their clients, especially when clients switched between officers, since each had a slightly different set of expectations. In addition, the questioning from officers about why a certain kind of authorized movement was being requested frequently put the onus on the monitored person to justify lawful, reasonable activities like going to the grocery store.

Because most jurisdictions used GPS bands, verification was possible by simply reviewing the movement record of the individual. Nonetheless, most

jurisdictions required additional verification that a person was where they said they were — pay stubs and schedules from work, forms to be filled out by doctors' offices, and other documentation. This documentation could usually be provided after the movement if the person requested the movement before leaving their home. The documentation required could be as simple as a note or phone call from a doctor's office, or as complicated as a signed letter on letterhead faxed by the employer. The person on EM contract from a Baltimore EM company shows how detailed these verification requirements can be:

## **ALL ACTIVITIES MUST BE ALLOWED BY COURT ORDER.**

**A. I agree to submit verification of weekly work hours. Verification should be originals or copies of pay stubs. Verification of employment must be from an independent source. I must notify ASAP immediately of any change in employment.**

**B. I agree that all activities outside of home or work that are permitted and pre-approved must be verified:**

- 1. Religious Service: Get a bulletin with the name, address, and phone number of the place of worship. Have the service officiant sign next to the date. Only if allowed by Court.**
- 2. AA/NA meetings/counseling: Name, Location, Telephone Number, Date and Time, Stamped attendance record. Only stamped meetings permitted.**
- 3. Personal time for activities necessary to maintain the household and/or personal hygiene: Receipts with Date and Time, Signed and Dated Business cards. Only if allowed by Court.**

One attorney noted that the requirements for documentation could be so high that their clients were unable to meet them. This attorney noted that, in cases where an accused person was employed or participating in a treatment program,

*“of course, this puts clients at risk for their job or treatment regimen if they are not allowed to participate when their proof is denied, and they have no recourse but to come to court. We are not notified by the Sheriff when this denial [of proper documentation] happens.”*

A common thread running through all the jurisdictions surveyed was that movement was only approved if it was considered necessary or in some way “beneficial” to the accused person’s life. No jurisdiction allowed movement for simple everyday leisure activities, exercise like jogging or going to the gym, or even for just sitting outside one’s home in a yard or public park. Within the hours that a person was considered under house arrest — whether that was 12 hours, 20 hours, or 24 hours a day — time outside the home was available only if a court authority decided that it was worthwhile. This is one of many ways that electronic monitoring is fundamentally different from release without a monitor — there is no freedom to simply live one’s life in the way one wants.

Many jurisdictions avoided the complicated rules of movement requests by having most monitored people on a curfew program, rather than a house arrest program. In three jurisdictions, Connecticut, Bernalillo, and Multnomah, curfew rules were the norm rather than the exception. San Francisco’s program required most monitored people simply to stay within 50 miles of the sheriff’s office.<sup>27</sup> In two jurisdictions, Los Angeles and Multnomah jurisdictions, the movements of some monitored people were not restricted at all, but they were tracked and recorded. All jurisdictions, however, had at least some monitored people who were confined to their homes.

#### **Device Maintenance and False Alarms**

Throughout our interviews, system actors noted that EM technology was not always reliable. Interviewees reported a wide range of technological glitches and issues. Nearly every jurisdiction reported that their GPS bands sometimes say that a person is outside their residence, or within an exclusion zone, when in fact they are not. Jurisdictions used a wide variety of electronic monitoring companies, but many reported “alerts” of movement violations, dead batteries, and even strap tampers (the alert sent when the band detects an attempt to forcibly remove it) that later turned out to be false. A few jurisdictions reported that it was common for accused people to be reincarcerated because of these technical glitches, and that it became difficult

to get people re-released afterwards. Defense attorneys complained that, in practice, the burden was often on the accused person to prove that the machine had malfunctioned.

The requirement that devices be frequently charged placed additional burdens on accused persons, particularly people who were poor and unstably housed. Most GPS bands must be plugged into a wall for hours each day; since they are not meant to be removed, this means that the individual on EM must also stay plugged into a wall each day. Unsurprisingly, not every person has the ability to sit in a home with electricity for multiple consecutive hours and charge their band. Homeless shelters, for example, sometimes did not have the space for individuals to charge their bands. Violations for uncharged batteries often fall hardest on those with the least resources, who do not have a reliable way to charge the technology.

#### **Rules Enforcement**

Because most jurisdictions had their pretrial staff keep traditional daytime hours, enforcement of rules only happened during those hours as well. In most jurisdictions we surveyed, officers reviewed any overnight movement on their next shift and contacted the monitored person for explanation. In most jurisdictions, pretrial services/EM officers had the authority to decide whether an explanation of unauthorized movement was sufficient to avoid a rule violation report. Cook County, a notable exception, has 24/7 monitoring.

Officers in different jurisdictions used different methods to determine which rule violations to report to the court for re-incarceration. Bernalillo County had the most formalized process, which involved a matrix that graphs the level of violation against the monitored person's risk level as determined by a risk assessment tool. This tool is used to determine whether a person will be given a warning, referred to the court for a follow-up court date, or has a warrant issued for their arrest. Bernalillo's program also includes multiple levels of monitoring, from just a curfew to allowing movement only for employment, medical, and legal appointments. Prior to the COVID-19 pandemic, Bernalillo had a dedicated court docket to deal with EM violations, and pretrial services staff often appear at both that docket call and the regular criminal courts to provide updates on an accused person's level of compliance with the program; during the COVID-19 pandemic, violations have been handled by each monitored person's assigned judge, similar to other jurisdictions we interviewed.

In some jurisdictions, each judge set their own rules and expectations for individuals on EM, with some issuing warrants for even minor violations, and others issuing arrest warrants only when an individual was arrested for a new crime or committed a serious violation, like unauthorized contact with a victim. As one stakeholder in Baltimore put it, "(T)he judge is not looking...at a regulatory framework or statutory

framework, kind of checking boxes... it's really the judge's discretion about what he or she will allow the defendant to do." In contrast, other jurisdictions had a standardized court form, and judges "checked off" what categories of movement they would allow. For instance, judges in Los Angeles County had a conditions checklist to be completed for each person on EM, with options like "medical appointments," "school," "work," "job searching," etc.

In other jurisdictions, movement approval decisions were made mostly by pretrial officers on the ground, as were determinations for whether a person would be violated for unauthorized movement. In one jurisdiction, EM clients could send a text message to their parole officer requesting permission to do things like grocery shop. Pretrial services spoke of this discretion as a system that allowed flexibility for individual EM monitored persons. Jurisdictions that allowed this granular control by pretrial service officers did seem to allow more categories of movement. For example, some administrators in these counties mentioned allowing some movement for family gatherings and for outings to the grocery store. There was also evidence of EM administrators taking extenuating circumstances into account when determining whether to penalize a technical violation. An administrator explained, "[W]e're going to meet them with some understanding and some empathy. Like last week, we had a guy whose girlfriend broke down in kind of

a dangerous part of town, he went and changed out her tire and got her home... So we watched the tracking where he said she was on the side of the road. And then we watched him come back home... [S]o as long as they do those things, not a big deal."

In EM programs that allow movement, program staff made judgments about what kind of movement was "necessary" and "unnecessary." For example, some pretrial services administrators denied movement for grocery shopping if they determined a person was grocery shopping "too much" or going every day. Employment and education seemed always necessary, but family engagements and daily life activities were often deemed unnecessary. There was a lack of clarity with many programs regarding whether EM/house arrest was supposed to replicate jail conditions, heavily monitored and with limited privileges, or whether it was meant to replicate freedom, with limited restrictions.

## Violations

All jurisdictions reported the same basic structure for how violations were detected. All reported that the contracted companies that owned the GPS or RF bands had some arrangement by which they notified either pretrial services or the court about a movement violation, dead battery, or equipment tamper. Some jurisdictions had protocols for companies to filter out some likely technical or mistaken alerts that probably did not represent

an actual violation of rules, though we were unable to obtain information on the specifics of those filters. Those companies would then deal with some of these “filtered” violations using private company staff, forwarding only more serious violations to the courts.

Once a violation was detected, a judge usually decided whether the person should or should not be re-incarcerated. In Cook County, the sheriff’s office has the power to unilaterally re-incarcerate participants without judicial approval and bring them to a judge after they were already in jail. In two jurisdictions, defense attorneys mentioned that they aren’t always notified when their client gets arrested for a violation, and they often learn about the arrest when they arrive at court. This impaired their ability to represent their clients and meant that monitored people sometimes spent days in jail only to be released once their lawyers explained the circumstances of a minor violation to a judge.

### Payment of Fees

When EM proponents discuss electronic monitoring, they often describe it as a cost-saving measure to state and counties. While EM may be cheaper, the costs shift to the impacted person and their loved ones. Even in cases where no fees are charged, household members often bear the costs of food, transportation, and other necessities due to monitoring rules that limit an individual’s capacity to work or earn income while on EM.

Although the cost of electronic monitoring per day is less than a night in jail, it is not free. While some probation offices and sheriff’s departments operate their own EM programs — renting the equipment from manufacturers, hiring staff, and collecting fees directly from monitored persons — others rely on private companies to oversee their programs. Increasingly, local governments looking to offset costs have contracted with private companies to outsource various functions of the criminal legal system.<sup>28</sup>

A 2014 study by National Public Radio and the Brennan Center found that, except for Hawaii, every state required people to pay at least part of the costs associated with GPS monitoring.<sup>29</sup> However, the wide range of electronic monitoring services contractors can also mean a wide range in costs to both local governments and to those ordered to participate in EM. Fees imposed on accused people commonly range between \$5 to \$25 per day, but often involve large initial payments for upfront costs to cover an initial period of monitoring, such as “enrollment” or “activation” fees. In some cases, the per-day cost to monitored people can be as high as \$40.

This profit-driven model has raised questions about the coercive nature of transactions between monitored people, who are often indigent, and private corporations motivated by profit. Unlike credit card companies and other private debt collectors who must file claims in civil court to begin involuntary collection, EM companies can threaten

people under supervision with a return to jail or prison and can reliably initiate collection through the criminal court system. This has led to class-action lawsuits against electronic monitoring companies; for example, LCA has been sued in a lawsuit that claims extortion in violation of federal racketeering laws.<sup>30</sup> The plaintiffs allege that the company misleads individuals into paying high daily rates and then threatens them with prison time if they fail to pay.

Entrenchment of private companies also threatens to create perverse incentives for judges and state politicians. For example, in New Orleans, Criminal Court Judge Paul Bonin was sued in federal court amid allegations that he “appeared to make ankle monitoring decisions — including pretrial jailing decisions — based on the financial interests of ETOH,” a private electronic monitoring company operating in New Orleans with which the judge is alleged to have “personal, financial, professional, and political relationships.”<sup>31</sup> Electronic monitoring companies have also benefited from substantial state appropriations, even those funded by federal COVID-19 relief funds. In North Carolina, \$3.5 million in CARES Act funding was awarded to a nonprofit to “manage a pilot program to implement electronic monitoring of defendants charged with domestic violence crimes who were released from jail awaiting trial.” All of the money was eventually paid to politically connected Tarheel Monitoring — a Wilmington-based EM servicer that will provide 1,400 ankle monitors and at

least 126,000 days of active monitoring at a rate of \$22.23 per day under the contract.

Of the jurisdictions that we surveyed, the costs of the monitors varied and who was responsible for paying those costs were equally diverse. In 3 jurisdictions, people on pretrial EM are responsible for paying the cost of being on the monitor, with fees going directly to the private companies that own the devices and run the operation. In one jurisdiction, people on EM pay \$230 in upfront costs and then \$6 a day after the first month. In another, the cost of EM depends on whether an accused person is represented by a private attorney or if a public defender has been appointed to represent them. Usually, people represented by the public defender get a less expensive rate (\$17/day if an accused person has a private attorney or \$11/day if an accused person has a public defender). In four jurisdictions, the state and county fund the full costs of the EM program for all monitored people.

## Accused People's Perceptions and Evaluations of the Programs

Any assessment of EM programs in practice should include the voices of people impacted by these programs. Here are some quotes we heard from individuals on EM:

*“It’s like saying ‘you gotta walk 5 miles every day, but I’m putting a rock in your shoe, and you don’t get to fuck with the rock.’”*

*“They don’t care about you in jail, they don’t care about you out of jail, and they damn sure don’t care about you on EM.”*

*“I had to pay someone to get me toilet tissue because I couldn’t leave the house.”*

*“It took me 35 years to get where I was. It’s gonna take me another 35 years to get back what I lost.”*

*“If there’s anything going on in your life, EM makes it worse.”*

Although the stories we heard from monitored people varied from jurisdiction to jurisdiction, the most common theme that emerged was how EM debilitated and humiliated people impacted by these programs.

### Impact on Finding and Keeping Housing

As noted above, GPS program requirements present unique challenges to people who are unhoused or housing insecure. In Bernalillo

County, administrators recounted going before judges and requesting that an accused person be removed from EM supervision because of their unintentional inability to reliably comply with the conditions of the program. Several times throughout the interviews, defense attorneys and judges from three jurisdictions raised concerns regarding their unhoused clients, many of whom did not have a place to regularly charge their EM devices. It was not uncommon for these clients to incur multiple technical violations as a result.

In jurisdictions with high daily costs for participation in pretrial electronic monitoring, homelessness rarely appears as a problem for individuals being monitored simply because the cost of participation is too high for unhoused people. In both jurisdictions, failure to pay the fees associated with EM results in a violation of the program that could lead to re-incarceration; a person who is manifestly unable to pay the fee will not be placed on the program in the first place and will usually remain in jail instead.

Jurisdictions had a range of approaches to monitoring individuals who lived in homeless shelters and other communal settings. Interviewees in one jurisdiction noted that, since homeless shelters in the area often require residents to leave the property during the day, people living in shelters rarely had the ability to charge their house arrest bands. In other

jurisdictions, interviewees who lived in communal living situations noted that people on EM were forced to charge their bands for the required two hours in public settings like fast food restaurants to comply with the rules.

Unstably housed people on EM often struggled with the approval of other individuals living in the home. Some jurisdictions checked ahead of time to see whether other residents were comfortable with the individual staying in the home. Others left the question to the private companies that run their programs. In two jurisdictions, system actors noted that accused individuals on electronic monitoring sometimes have issues with local public housing authorities rejecting their requests to be admitted to subsidized housing programs due to the need for permission from the landlord and the perceptions of criminality attached to the devices.

In two jurisdictions, interviewees shared that EM caused housing instability because of the way the program was administered and the way that warrants and movement violations were handled. One defense attorney related that a mix-up in the EM program's system had led to the accused individual being arrested and handcuffed in front of neighbors and family in the hallway of his approved residence. After that incident, the landlord looked further into the person's charges and banned him from the apartment complex, forcing him to find less stable housing elsewhere and ultimately causing him to lose his job. In another jurisdiction, interviewees noted that sheriff's department staff regularly

come to their apartments in full uniform for routine check-ins, frightening and inconveniencing neighbors.

Cook County has a unique system for providing electronic monitoring to homeless individuals. The county courts have contracts with two shelter locations that are paid to house individuals who are not able to provide an address that meets the requirements of the program and where the leaseholder or owner agrees to them staying. These shelter locations provide the same services to individuals on EM as they do to other temporarily housed people. The sheriff's office maintains a "no place to stay" waitlist and assigns individuals directly into these programs as beds become available.

### Impact on Finding and Maintaining Employment

EM can severely undermine the ability of accused individuals to find and maintain employment. The home confinement component limits the time individuals may be outside of their residences or even restricts movement entirely. Although people may request movement, responsiveness to these requests may vary not only from jurisdiction to jurisdiction, but from person to person and even from request to request. Indeed, as a public defender in San Francisco reported, modifying or removing an individual's movement restrictions to allow them to work could require a specific court order.

Several people we interviewed described challenges finding and maintaining employment while on EM. An accused person in Chicago expressed frustration at being allowed to go to a job interview and tentatively get the job, only to subsequently lose it when she was unable to get permission to meet for a follow up interview the next day. As a result, people on EM report having to rely on other household members for financial support, placing an economic strain on them that negatively impacts their families. Indeed, this lack of flexibility seems to be a notable issue for many on pretrial EM. An advocate in San Francisco noted that people on EM are often prohibited from employment that requires flexibility in terms of location, such as construction, transportation, landscaping, or delivery services, or effectively prohibited from employment that requires scheduling flexibility, such as in the service industries.

An accused individual interviewed in New York was incarcerated at the age of 15. In November 2020, he managed to get his case returned to court and has been allowed to post bond through a bail company, however, he remains confined to his home on EM while awaiting a retrial. He reports that the conditions of his monitoring effectively prevent him from obtaining employment outside the

*Electronic monitoring can severely undermine the ability of accused individuals to find and maintain employment.*

home and that he was forced to start a GoFundMe account to raise money both for his defense as well as to meet his basic needs.

The impact of EM on employment can extend beyond the monitored individual and affect others in the community as well. One monitored person in Chicago owns and operates a small company that offers 24-hour emergency roadside automotive assistance. The conditions of his EM require him to be confined within his home from 7:00 pm to 7:00 am. While this is certainly more time out of the home than others may get, he reports that many of the calls for his service come in outside of these hours and that he is then unable to respond. This has not only affected these immediate requests for services, but it has had a ripple effect on his business, as the more calls he has been unable to respond to, the fewer calls he receives. “I would say I’m losing about 70% [of my normal business],” he notes. This loss of business extends beyond his own

pockets into the community, as he has two full-time employees who rely upon his business for their own livelihoods.

### Impact on Physical and Mental Health

Both system actors and accused individuals across several jurisdictions reported a wide range of health complications related to or exacerbated by EM. Although most individuals on EM said that there is a procedure in place for requesting movement, a number reported an unresponsiveness to, or even outright denial of, requests for permission to seek medical treatment or even to pick up prescribed medicine. One individual on EM in Cook County said she was denied permission to go to a local pharmacy to have her prescription filled. “I have seizures and I need my medicine,” she said. “They told me to call 911 if I have a medical issue. I don’t need 911, I need to go to Walgreens and get my medicine.” She also reported not being granted permission to see a specialist

that her doctor had recommended and being denied permission to take her son to get an EKG, noting the impact on the health of family members who normally rely on the monitored person to take them to obtain medical care. A black transgender woman in Chicago, reported being denied movement to go to the pharmacy to pick up her HIV medication, which she was supposed to take daily.

The monitor itself may also present a health concern. In some instances, the device, once clamped around a person’s leg, may cause wounds or sores to appear. Alicia Virani, Gilbert Foundation Director of the Criminal Justice Program at UCLA School of Law and former deputy public defender in Orange County reports witnessing sores on a client she was representing. “You are in court and showing your client’s leg,” she says. “How humiliating is that to have to show your sores in court? And then the court is like ‘Well, go to the doctor and get a doctor’s note.’”



It should also be noted that no interviewee reported being asked about any preexisting conditions that might be exacerbated by the presence of the monitor. This is particularly troubling, as some monitoring companies note a number of medical conditions that could be complicated by the presence of an electronic monitor.

For example, SCRAM Systems, a monitoring company whose website currently boasts 831,380 clients monitored and 4 billion alcohol tests performed with their CAM (Continuous Alcohol Monitor) devices, note that certain medical conditions may prevent users from wearing these devices, as well their SCRAM House Arrest and SCRAM GPS devices. These medical conditions include, among others, diabetes, deep vein thrombosis, tendonitis, and pregnancy. SCRAM Systems also warns that complications such as sores, open wounds, bruising, and severe irritation or redness may occur, and that these devices may not be compatible with medical devices such as pacemakers or other implanted medical devices.

The COVID-19 crisis has added another layer of health-related concern. Throughout the pandemic, prisons and jails notoriously have been hotspots for COVID-19 transmission. Nevertheless, accused individuals report being returned to jail for technical violations associated with electronic monitoring during the pandemic. An individual interviewed in Chicago reports being the victim of a malfunctioning

monitor that resulted in a violation and being confined to Cook County Jail for several days, during which time it was one of the highest locations of transmission in the country.<sup>32</sup>

Across the jurisdictions we surveyed, interviewees noted a negative impact on mental health brought about by the monitor. Interviewees reported that monitored people experience an intense level of stress attempting to maintain their lives under the duress of EM. A case manager for unstably housed people in San Francisco reports this stress can further unravel the lives of people who are in precarious positions. He offers an example of a client who had managed to overcome a drug dependency and was making efforts to gain stability, yet had these efforts undermined by the stress of repeated technical violations due to his inability to meet the device's charging requirements. "It wasn't even like trying to make him stay adherent to the rules; it was 'We've already criminalized you and so we're going to keep our boots on your neck,'" he says. "This is someone who really worked hard to get to the point that he did, and they just kind of chipped away at it until he said 'F\*\*k it' and started injecting dope at a rate where he started overdosing."

Many people on pretrial electronic monitoring report feelings of depression brought about by the confinement and social isolation that often accompanies EM. Individuals we interviewed also report heavy feelings of stigmatization associated with wearing the monitor.

An accused person in Chicago remarks, "It's embarrassing. I feel judged. I feel like a slave." Another interviewee says of his own experience with the monitor, "I would have never guessed it would be so mentally draining to have that stupid monitor on."

## Impact on Family

In addition to the impact EM has on accused individuals experiencing it, EM also has a significant impact on those individuals' families. Since they are often confined to the home, people on the monitor report feeling like a drain on their families as they are not able to do everything necessary to take care of themselves, let alone take care of others and maintain a household. Basic tasks such as grocery shopping, going to the laundromat, or even taking children to school become impossible. In Chicago, one individual on EM told us "I had to pay someone to get toilet tissue for me because I couldn't leave the house."

The negative impact on family seems particularly evident when speaking with parents who are on pretrial EM. They report a distinct disruption in their ability to parent their children. One individual on EM reported an inability to meet with her child's teacher. When speaking about how EM can erode the family dynamic, one parent stated, "My children have to do things for me that I should be doing for them. I feel like I'm the child."

In addition to disrupting the normal family dynamic, respondents report

being unable to attend family events, even in extreme circumstances. “I had the birth of a child,” an accused individual in Chicago relates, “and literally wasn’t allowed to be there because I didn’t have prior authorization to go.” He goes on to say that he had requested permission for the due date, but that the baby arrived five days early and that it generally takes about four days to get permission. Another person tells of being denied permission to attend the bedside of the woman who raised them as she lay dying just a few miles away. The reasoning given for the denial was that the woman and the person on EM were not “related.”

EM can undermine the harmony within the community, particularly in communities that are facing outside pressures. People on electronic monitoring are subjected to unannounced drop-ins at their homes by law enforcement at any time of the day or night as well as at their jobs or social programming or activity that they attend. This not only impacts the person wearing the monitor, but everyone witnessing these intrusions. An advocate in Baltimore notes that EM “is economically kneecapping people in a lot of ways. It does isolate people from their communities and economic opportunities in such a way that it is

really hard to present a united front [against community issues such as gentrification].”



**The North American market for electronic monitoring is forecast to grow from \$850 million in 2019 to close to \$1.2 billion in 2023.**



# Discussion



Our study uncovered the complexity of issues affecting people on electronic monitoring and the communities in which they live. Addressing these issues is increasingly urgent, as the use of EM and the technology behind it expands and evolves. While the academic and policy literature about EM is sparse, it has grown rapidly in the past few years, raising many of the concerns noted in this report. It reflects a growing consensus that electronic monitoring is a failed tool. Our own research joins this consensus. Below we highlight several

strategies and tactics for responding to the failures of electronic monitoring.

Across our interviews with a diverse set of judges, attorneys, advocates, monitored people, and EM administrators, we found no one who believed that EM was fully successful at achieving its goals of increasing public safety or decreasing failures to appear in court. With the exception of San Francisco, no other jurisdiction has attempted a systematic, independent assessment of the effectiveness of

electronic monitoring. System actors in jurisdictions with older programs, like Bernalillo County and Cook County, advocated reducing the size and impact of their programs and use EM less in our interviews with them.<sup>33</sup> This research complements virtually all existing EM studies, which have also not provided evidence that EM is effective or serves a positive purpose for the monitored individual.<sup>34</sup>

**Electronic monitoring causes immense harm to people who are monitored.**

The harm created by EM is immense. Monitored people provided gut-wrenching accounts of the ways their health, their employment, and their families were hurt by electronic monitoring. From a systemic standpoint, EM offers a false “alternative” to incarceration that seems to lead to judges over-using the technology, particularly in jurisdictions that are in transition from a monetary bail-focused system to one that prioritizes pretrial release without monetary conditions. Bail reform efforts are intended to respect the presumption of innocence and allow accused people to be free during pretrial as much as possible. Bail reform efforts are intended to respect the presumption of innocence and allow accused people to be free during pretrial as much as possible. Using EM as a condition of release undermines the fundamental purposes of reform.

Previous studies document that the harms of EM described by our interviewees are widespread. A National Institute of Justice study in 2011 found that both monitored people and the probation officers who supervised them were “almost unanimous” in agreeing that the visibility of ankle monitors impeded people’s efforts to find employment. That report also documented substantial impacts on personal relationships and self-image for monitored people.<sup>35</sup> A 2020 study documented how the specific harms

caused by assigning individuals to EM and transporting them back to their homes was a punitive experience that in and of itself caused people on monitors to feel threatened, subjugated, and powerless.<sup>36</sup>

*Accused people on pretrial electronic monitoring are entitled to the presumption of innocence.*

Our own research echoes and expands on these concerns. Accused people on pretrial EM are entitled to the presumption of innocence. However, even though it keeps accused people outside of jail, EM mirrors jail. EM is an invasive tool that not only surveils accused people but also their family members. Our interviews revealed that many people felt like law enforcement was living inside of their home and watching them. People on RF devices have physical receivers that must stay inside of the home at all times connected to the telephone jack. The boxes receive and store messages from the supervising authority, and many of the monitors themselves can receive messages and calls at any time of day or night.

Both monitored people and program administrators noted that the monitors are often unpredictable and often malfunction — sounding an alert when people are following their conditions.

Violations of EM conditions can result in arrest. All the monitored people who we interviewed spoke about living in fear while on the monitor. Many worried that an alarm would sound while they were at work or picking their child up from school, risking their employment or embarrassing themselves and their family members. Monitored people also expressed fear

that, at any moment, a law enforcement official could enter their homes and arrest them. Notably, for many people on EM, “home” might be a homeless shelter or a friend’s couch. These living situations are unpredictable and fluid, and sometimes lead to unfortunate events that are outside of the control of the accused person on EM.

**Electronic monitoring rules are overly stringent and unclear.** One consistent theme throughout all the jurisdictions we surveyed was that the movement restrictions are too stringent. System actors generally understood that movement for work and medical appointments were important, but they had varied approaches to other types of movement, such as grocery shopping, picking up a child from school, or providing transportation for a loved one. Some jurisdictions offered more flexibility than others, but movement decisions were often made arbitrarily based on the information provided

and a subjective determination about acceptable or believable activity for an accused person.

In the most comprehensive study of EM policies to date, Professor Kate Weisburd and her team at George Washington University School of Law found that throughout the 101 jurisdictions whose programs they surveyed,

strict restrictions on movement make it difficult, if not impossible, for people on monitors to do such simple things as take out the garbage, work in the front yard, or drive a family member to the doctor. Any minor deviation from a preset schedule, or unauthorized movement, may be considered a violation, exposing the person on a monitor to potential incarceration.<sup>37</sup>

Research by the Chicago Appleseed Center for Fair Courts on the Cook County Electronic Monitoring program shows an example of how strict movement policies can lead to re-incarceration. They analyzed records from BI Incorporated, the company that is contracted by Cook County to run their pretrial EM program. This analysis showed that over 500 people had been re-incarcerated for purely technical rule violations in the first six months of 2021 alone — and that that number was triple the number of re-incarcerations for technical violations had been in the first six months of 2019.<sup>38</sup>

Our research confirmed these studies. Despite having movement “privileges,”

accused people on EM spend a significant amount of time confined in their homes — whether because they are stuck sitting near an electrical outlet waiting hours for their monitors to be fully charged, or because they have a curfew and are unable to leave their homes, or both. Monitored people are forced to rely on the people around them to meet their basic needs and meet the costs of home incarceration, like incarcerated people relying on prison guards.

The consequences of movement violations often depend on the supervising authority and the court. The supervising authority has the discretion to either immediately report the violation to the court or address the violation itself. If the supervisor determines that the violation is serious, and the accused person does not offer a satisfactory explanation, the supervisor can go to the court, request a warrant, and, if issued, have the accused person arrested. In some jurisdictions, defense attorneys mentioned that they are not always notified when their clients are arrested for movement violations and often learn about the arrest when they arrive at court. Sometimes, the supervising agency notifies the court of the EM violation on the accused person’s court date, and the court determines if a revocation of bond is necessary. The process for handling violations varied in each jurisdiction, and even within each jurisdiction it varied based on the supervising authority and judge involved. Many community supervision departments around the country utilize a graduated

sanction matrix. Sanction matrices are intended to help guide departments’ decision-making when addressing not only violations but also so-called “positive behaviors.”

**Electronic monitoring practices transgress national best practices for treatment of people awaiting trial.**

There are no established national best practices for people on pretrial electronic monitoring or guidance on its use. This is striking, given the rapid growth of pretrial EM in the past decade. However, far from endorsing this practice, national groups that provide guidance to jurisdictions on appropriate treatment of people accused of crimes have criticized EM. In its policy paper on the use of EM, the American Probation and Parole Association said of location tracking electronic monitoring (referred to as LTS):

significant limitations exist that are sometimes overlooked by uninformed stakeholders eager for easy solutions to complex problems. Location tracking has been billed as a panacea, a space-age solution that will solve many of the criminal justice system’s woes (DeMichele & Payne, 2009). Many observers fail to realize that an LTS, like any technology, is only a tool to be used (or misused) as part of a larger supervision strategy.

The National Association of Pretrial Services Agencies (NAPSA), which promulgates professional standards for pretrial release and diversion programs, does not endorse the use of electronic monitoring in their 2020 standards.<sup>39</sup>

Their only mention of the practice is to condemn the use of electronic monitoring fees:

Pretrial supervision or conditions that impose a cost on defendants (such as supervision fees and costs for drug testing or electronic monitoring) lead to the same unfair and inequitable results as financial bail. Jurisdictions that impose fee-based pretrial supervision or release conditions should re-examine those practices.

Although the NAPSA standards do not address EM specifically, many of the programs we studied transgress the NAPSA standards for pretrial programs. For example, some jurisdictions did not notify defense attorneys before revoking EM and re-incarcerating participants (NAPSA Standard 3.5(e)). NAPSA standards also recommend consistent, validated, and reliable risk assessments that ensure that conditions of release are commensurate with risk level (NAPSA Standard 4.4). Many jurisdictions surveyed did not use any particular means to ensure that decisions about who should and who should not be on EM were consistent or fair, and indeed many system administrators reported that decisions could vary substantially based on what judge someone had or how much money they had. NAPSA standards also stress the importance of confidentiality of information about accused people (NAPSA Standard 4.7). Even though the information gathered by GPS EM is among the most sensitive information that could be gathered

about a person, no jurisdiction we surveyed had explicit protections in place to ensure that that data remained confidential, was not shared with third parties, and was not shared with law enforcement.

**Electronic monitoring programs are overused and ineffective.** Perhaps most importantly, NAPSA standards consistently reinforce those conditions of release should be the least restrictive possible to ensure a person's appearance in court and address identified, individualized risks posed to public safety. Electronic monitoring as practiced in the jurisdictions we surveyed cannot be said to meet this requirement.

As discussed above, EM is an extremely restrictive pretrial condition, tantamount to incarceration inside people's own homes. National standards counsel that such a restrictive condition be used judiciously, and only for a small number of accused people. Instead, however, we found that electronic monitoring was often not part of a rational, careful, and measured pretrial services plan at all; instead, it was a part of the pretrial system that was applied irregularly and indiscriminately. Most jurisdictions we surveyed had no formalized or standardized process for determining who was placed on electronic monitoring, how long they were monitored, or what rules they had to follow. Instead, the experiences of people on EM were the result of a series of ad hoc decisions by multiple system

actors, including judges, pretrial officers, and sometimes the staff of private companies.

National standards also require that pretrial conditions be *effective* to achieve the goals of reducing risk or increasing appearance in court. Despite decades of use in the pretrial context, no evidence has emerged that electronic monitoring is a successful intervention in achieving those goals. Indeed, the existing research strongly suggests that electronic monitoring has no effect on failure to appear or public safety risk. A study of federal pretrial defendants in New Jersey found no impact on failure to appear rates for monitored people compared to individuals with similar risk profiles.<sup>40</sup> A meta-study of the effectiveness of electronic monitoring in reducing failure to appear or new criminal arrest pending case disposition found the existing research to be inconclusive.<sup>41</sup> In their study of EM in Cook County, Chicago Appleseed Center for Fair Courts found that EM made no appreciable difference in failure-to-appear rates or rates of re-arrest.<sup>42</sup>

Given the harm that is caused by this technology and the lack of any proven benefit, ultimately there are no recommendations that can be applied across the board to EM except for one: eliminate electronic monitoring altogether and channel the funds into programs that keep people off the path to incarceration and improve their lives and their communities.

This is an aspiration that those of us who produced this report share, but one we also know is not going to be achieved soon in many jurisdictions. In the meantime, we must develop an approach that will move us toward the elimination of EM and reduce the harm it currently causes. Based on our research, there is no “best practice” model for others to follow.

The failure of EM is not based simply on a technical shortcoming or the lack of evidence to support it. Rather, like mass incarceration, the underlying logic of punishment that informs electronic

monitoring dooms it to failure. We need policies and technologies that support human development and recognize the humanity of people, not digital prisons. Perhaps in some jurisdictions a combination of grassroots movement organizations and advocacy organizations and progressive system players can secure the elimination of EM. We encourage this pathway and would certainly applaud its success.

Accused people on pretrial EM are entitled to the presumption of innocence. But despite keeping accused persons outside of jail, EM mirrors jail.

EM is an invasive tool that not only surveils accused people but also their family members. Many people felt like law enforcement was living inside of their homes and watching them. People on RF devices have physical receivers that must stay inside of the home at all times connected to the telephone jack. The boxes receive and store messages from the supervising authority, and many of the monitors themselves can receive messages and calls at any time of day or night.



## Harm Reduction: Eliminating the Worst Electronic Monitoring Policies

Although we believe that reform strategies should be focused on ultimately ending pretrial EM, certain practices that we documented were particularly punitive and should be eliminated immediately. Because there is little to no information sharing between jurisdictions about EM practices, some system actors believe that features of their programs are the only way to operate an EM program, when in fact other jurisdictions are comfortably operating without these features. To that end, here are some basic principles that represent the least punitive applications of EM. We do not mean to suggest that an EM program that meets all these requirements does not cause harm; rather, these are meant as examples of ways to reduce the harm that local programs cause to accused people.<sup>43</sup>

- 1 EM programs should be rigorously tested for efficacy and used sparingly.** There is no evidence that pretrial electronic monitoring increases court appearance or decreases new arrests. Jurisdictions should rigorously study their EM programs and be forced to justify their cost effectiveness for them to continue. Given the harm caused by electronic monitoring, if a program does continue to exist, it should be used for very few people.
- 2 EM programs should allow free movement without restriction as a default and should not operate as house arrest programs.** Because GPS tracking allows for real-time monitoring of a person's location to verify that they are not engaged in activities that are unlawful or prohibited by their court orders, there is simply no reason to restrict movement and require that a person stay in their home.
- 3 EM programs should not require onerous verification for monitored people to be given permission to leave home.** Monitored people need the flexibility to go about their lives with as little interference from electronic monitoring as possible and should not be forced to disclose their monitored status to third parties. Requiring detailed verification stands in the way of employment and other basic life activities and is unnecessary when GPS is available to verify a person's location.
- 4 EM programs should not charge fees.** Multiple EM programs, including the largest EM program we studied in Cook County, Illinois, do not assess any fees at all to monitored people. Fees make electronic monitoring accessible only to people who have money, replicating the harms caused by other monetary conditions of release like bail, and likely increasing racial disparities. If a jurisdiction decides to have an electronic monitoring program, it should bear the cost of that program itself.
- 5 EM programs should give sentence credit for time on the monitor.** Electronic monitoring is a form of incarceration, not an alternative to incarceration. Individuals on EM, even those who have plentiful free movement, still have their freedom constrained by being constantly watched, experience the stigma of wearing an ankle shackle, and must maintain often daily contact with pretrial services officers regarding the equipment, false alarms, and movement requests. Like people incarcerated in jail, people on electronic monitoring should be given time credit for their pretrial incarceration against any future sentence.

- 6 EM programs should be run by government authorities, not private companies.** The jurisdictions we studied where private companies were the primary administrators of the programs (New Orleans and Baltimore) had the highest fees and some of the harshest conditions of any of the jurisdictions studied. Like prisons and jails, it is fundamentally unjust to allow a private company to profit from individuals' incarceration, and private companies' involvement should be minimized as much as possible.
- 7 EM programs should not jail monitored people for program violations without due process.** Across jurisdictions, interviewees noted that false alarms were common, and that movement requests often did not reach the correct person to approve them in emergencies. Fundamentally, many violations represent lawful activity. Re-jailing people based only on an alert or other signal from the device is unreliable and unfair. Monitored people should have the opportunity to be represented by counsel and heard in court, they must be provided with all information about the basis of the alleged violation, before being ordered to jail. Under no circumstances should law enforcement agencies, pretrial services agencies, or private companies be given the power to decide to jail someone for a violation without approval from a judicial officer.
- 8 Gathering and storage of personal information should be limited.** Since the advent of GPS, monitors have been gathering detailed location data, exposing the precise details of individuals' movements and lives. Most jurisdictions have no control over how this data is used. Individuals' data can be bought and sold without their knowledge or permission. This poses a major threat to the privacy and freedom of those who have been placed on EM. Local authorities and companies should be held accountable for what happens to data gathered through EM and should be committed to minimizing the commodification of that data without the knowledge and permission of the individual who has been monitored.
- 9 EM programs should have clear criteria that incorporate due process to determine who is placed on EM, for how long, and under what conditions.** Electronic monitoring is a form of incarceration, and people should have access to counsel and robust legal protections to ensure that they are not incarcerated unnecessarily and are given as much freedom as possible.

# Setting a Critical Agenda for Advocacy, Policy, and Litigation

As we see it, a critical agenda for electronic monitoring needs to consider multiple approaches. The pathway to implementing this agenda will depend largely on who is engaging in these activities and the political terrain of the jurisdiction. In places where decision makers are eager to enact progressive reform, alliances to push for radical change are possible. In more traditional law-and-order venues, it may remain a strictly oppositional engagement.

Change can happen in a few different arenas, including: (1) mobilization and data gathering; (2) changes to administrative policies; (3) courtroom advocacy by defense attorneys; (4) litigation to allow courts to set human rights and due process limits on EM; and (5) legislative advocacy to further regulate EM or disallow it altogether.



## Mobilization and Data Gathering

The key to any engagement on the issue of electronic monitoring is mobilization — finding a cohort of people who will support and maintain a critique and recognize that EM is a form of incarceration. In places like Cook County and San Francisco, groups aiming to end money bond or stop jail construction already exist. However, the individuals in these groups may not intuitively grasp the gravity of the harm caused by electronic monitoring. Mobilization may mean targeting impacted people as well as activists to tell the stories of people on EM and build support for non-carceral alternatives. From there, advocacy coalitions have made several achievements across the country to reduce the harm caused by EM programs and work towards ending them altogether.<sup>1</sup> For example, No New SF Jails, in the wake of their successful campaign to close the jail at 850 Bryant, found a side effect of their success to

be a dramatic increase in the use of EM. Considering this, they have worked to incorporate an anti-EM campaign into their decarceration efforts.

Changes to administrative policies (and, indeed, all anti-EM advocacy) can be helped by gathering and making data and policy and procedure documents of local EM programs publicly available. Data can help show racially disparate impacts in admissions to electronic monitoring or violations and can reveal patterns in local use that can help advocates know which political actors to target. Freedom of Information Act requests and collaboration with journalists can help force government agencies to disclose this data if they will not do so voluntarily. Administrative policy reform can help clarify rules and decrease the total power some pretrial officers have over monitored people's freedom. Knowing the rules of local electronic monitoring programs can help educate the public on what the program is really like, while also holding system actors more accountable to follow the rules as written.



## Changes to Administrative Policies and Local Government Action

One clear-cut path to reducing the harm and expansion of EM is to target the rules and regulations that determine who goes on EM and what rules apply to them while on the monitor. The harm reduction goals outlined above are logical places to start in trying to change local EM policies. Given the costs of electronic monitoring programs, advocates may find allies among local leaders wishing to decrease the amount of money the government spends on the criminal legal system. Although cheaper than pretrial jail, EM is expensive for governments. Given EM's lack of proven efficacy, activists may be able to force system actors to justify their programs' existence in order to keep their budgets.



## Courtroom Advocacy by Defense Attorneys

Along with policy changes, this is the strategy most likely to provide immediate relief to people impacted by EM. Defense attorneys should push for the least restrictive conditions of release for their pretrial clients, with no conditions being the default. Should the court decide EM will be implemented, defense attorneys should advocate to reduce the harm done by these devices. This could include urging an increase in the amount of non-restricted movement available to their client, advocating for movement rights for family obligations and medical issues, advocating against fees, and ensuring due process for clients by fighting against unlawful searches or seizures and zealously fighting against re-incarceration of their clients. Lawyers can also advocate that a monitor be used for as little time as possible, and the monitor be removed after a period of demonstrated compliance.



## Litigation

Lawsuits have been a promising avenue of attack for reducing the harm caused by electronic monitoring programs. In California, in *Edwards vs. Leaders in Community Alternatives, Inc.*,<sup>2</sup> a monitored person is suing the private company that operates EM in Alameda County for extortion because of its predatory fee structure and is also suing the county for damages. In Massachusetts, in *Commonwealth vs. Eric Norman*, a court held that GPS tracking data from pretrial conditions could not be used as evidence of a crime in a separate case.



## Legislative Advocacy

In Illinois, some gains have been achieved through state-level legislation.<sup>3</sup>

Illinois passed a law in 2019 requiring collection of data from its electronic monitoring programs for people post-prison.<sup>4</sup> A bill to fully eliminate the use of electronic monitoring in the parole context passed the Illinois House, but not the Senate, the same year.<sup>5</sup> More recently, the Pretrial Fairness Act, passed as part of Public Act 101-0652, eliminates money bail, and also guarantees movement for individuals on electronic monitoring, statutorily ensures sentencing credit for electronic monitoring, and makes it impossible to charge “escape” from electronic monitoring unless a monitored person has been out of compliance with rules for at least 48 hours.<sup>6</sup>

Legislative advocacy is the most far-reaching possible reform and can change the practices of every local electronic monitoring program in a state. It is also a key avenue for eliminating the practice of electronic monitoring entirely.

1 MEDIAJUSTICE, *History in the Making: Illinois Bill to Eliminate Use of Electronic Monitoring Passes Vote in the House*, MEDIAJUSTICE (Apr. 30, 2019), <https://mediajustice.org/news/history-in-the-making-illinois-bill-to-eliminate-use-of-electronic-monitoring-passes-vote-in-the-house/>; Stephanie Altman, *Illinois Legislative Session Usbers in Bold Progress Toward Equity*, SHRIVER CENTER ON POVERTY LAW (Jun. 26, 2019) <https://theshriverbrief.org/illinois-legislative-session-ushers-in-bold-progress-toward-equity-3b25d3f50b1a>.

2 *Edwards v. Leaders in Community Alternatives, Inc.*, No. 20-15070 (9th Cir. Apr. 2, 2021).

3 Ill. Pub. Act 101-0231 (effective Jan. 1, 2020) <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=101-0231>.

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# Conclusion



In many of the jurisdictions we studied, electronic monitoring has been used for many years, and its usage is steadily increasing. Surprisingly, the rules, systems, and type of technologies used in EM programs vary considerably in each jurisdiction. Despite these differences, the common thread of all EM regimes is that they are punitive, costly, and do not provide services or support to accused people. The monitors hinder attempts by accused people to maintain employment or income, to access healthcare, to secure housing, or to participate in the preparation of an effective legal defense. Moreover, in searching for

data and information for this report, we found very little accountability for maintaining data and information systems, accounting for expenditure, writing periodic evaluative reports, and regularly upgrading systems to ensure some efficiency of performance. A particularly acute aspect of this absence of data is that most jurisdictions were unable to provide racial and demographic data for people on electronic monitoring.

Although the use of electronic monitoring continues to expand, based on the lived experience of many people who have been on EM, these devices

offer no real avenue of progress for an individual or the criminal legal system. Moreover, national bodies that focus on pretrial issues like NAPS and the American Association for Probation and Parole do not endorse the use of EM. Given these realities, we hope that this report will inspire more active engagement around the use of EM, compel authorities to be accountable for the policies they implement and fund, and catalyze more effective usages of taxpayer dollars than continuing the use of EM. Ultimately, based on our research, EM is not an alternative to incarceration but an alternative form of incarceration.

# Endnotes

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- 12 PEW CHARITABLE TRUSTS, *supra* note 2.
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- 22 A few exceptions are worth noting. Baltimore City has a jail release program that is run by their Department of Public Safety that allows jail officials to release accused people on EM without the judge ordering EM. In Cook County, pretrial services can order electronic monitoring based on a risk assessment score without a judge explicitly approving EM, though the judge has the ability to take a person *off* pretrial services electronic monitoring if they wish to.
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34 The one exception was an interview with a representative of a private EM company; the conflict of interest in that conversation, however, led us to discount that interviewee's positive evaluation of the program given the unanimity of other interviewees' opinions.

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