

Ethics, Rules and the Electronic Monitoring of Offenders

European Committee on Crime Problems
Council for Penological Co-operation

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The Legal Positioning of EM

- Community sentence - stand-alone or (more rarely) integrated with probation
- Conditional prison sentence (Scandinavia)
- Alternative to pre-trial detention
- Restraining orders (in domestic violence)
- Early release of short term prisoners
- Temporary release from prison
- Parole of longer-term prisoners
- Adults and (more rarely) juveniles
- Stand-alone measure? .. or integrated?

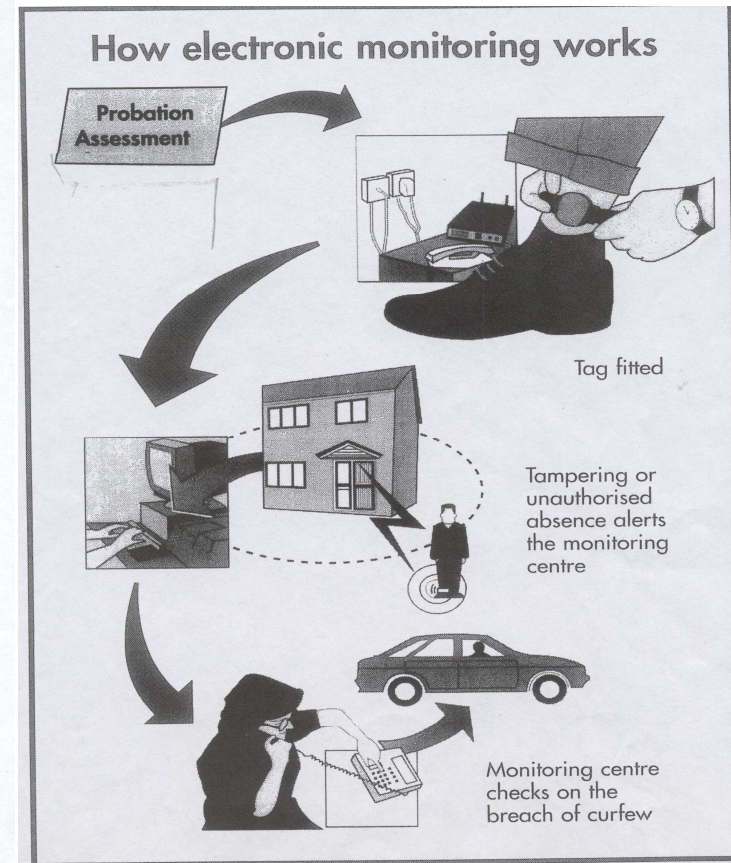
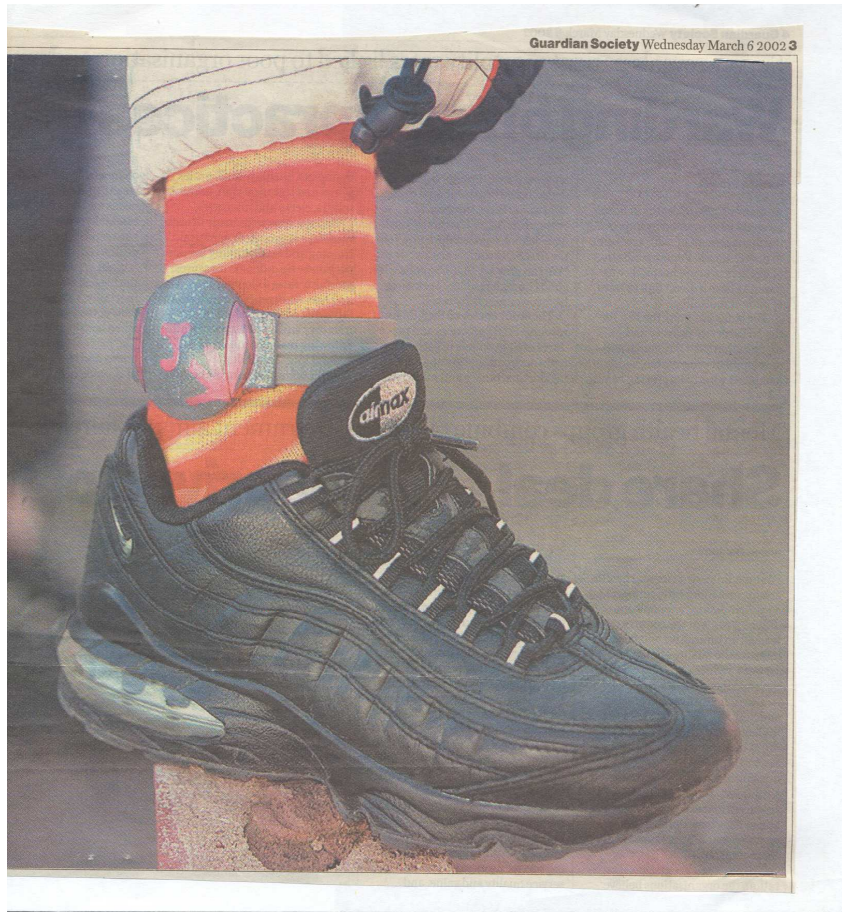
Policy Rationales for EM's Expansion

- Reducing prisoner numbers and costs
- Improve/toughen community supervision (bail, sentence and post- release) to improve public confidence
- “Modernisation” of public policy/state esp
- Disillusion with “anachronistic” probation
- Managerialism, efficiency and measurable effectiveness
- Research – suggests high (enough) compliance whilst on EM
 - +
- Policy transfer/ Transnational showcasing
- Growth of post 9-11 “surveillance culture” (esp for GPS)
- The growing information and communication technology (ICT) infrastructure creates new social and economic possibilities for crime controllers - does “the network society” need probation?

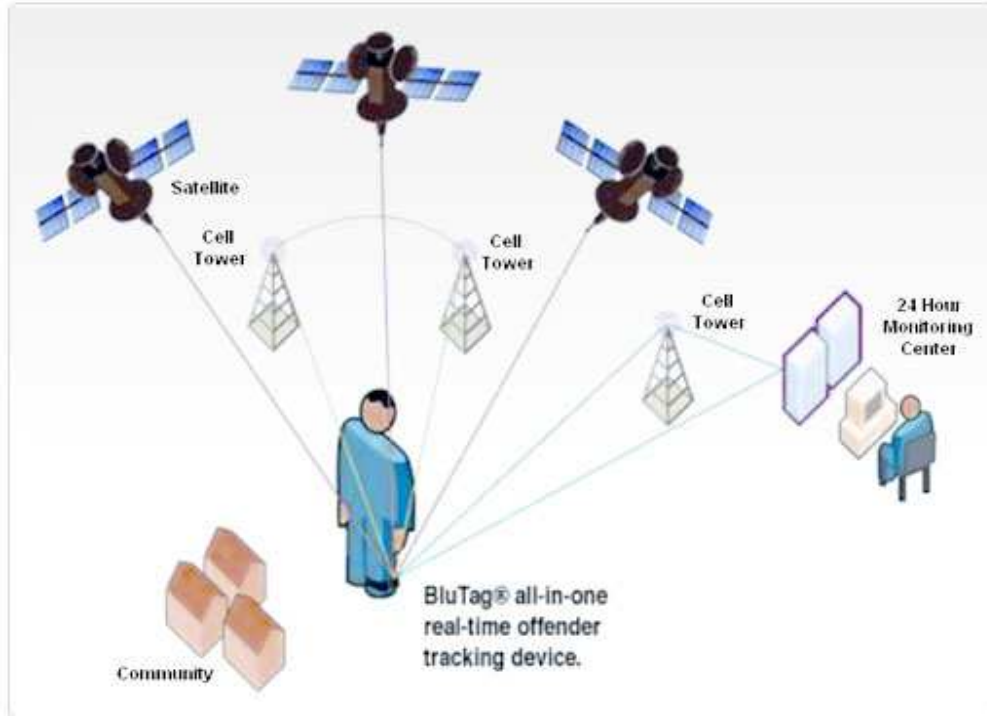
European Rules on Community Sanctions and Measures

- 58. When electronic monitoring is used as part of supervision, it shall be combined with interventions designed to bring about rehabilitation and to support desistance.
- 59. The level of technological surveillance shall not be greater than is required in an individual case, taking into consideration the seriousness of the offence committed and the risks posed to community safety (ER CSM 2010).

The dominant form of EM since 1982 -



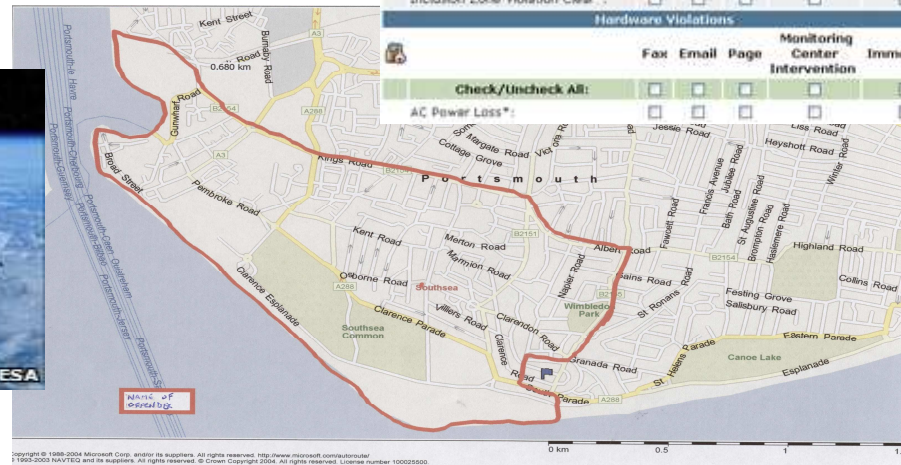
GPS Tracking



Client Violations					
	Fax	Email	Page	Monitoring Center Intervention	Immediate
Check/Uncheck All:					
Battery Tamper*	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Battery Tamper Clear*	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cuff Leave Violation*	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Cuff Leave Violation Clear*	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cuff Strap Tamper*	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Cuff Strap Tamper Clear*	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did Not Call Violation*	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did Not Call Violation Clear*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PTU Housing Tamper*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PTU Housing Tamper Clear*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Zone Violations					
	Fax	Email	Page	Monitoring Center Intervention	Immediate
Check/Uncheck All:					
Exclusion Zone Violation*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exclusion Zone Violation Clear*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Inclusion Zone Violation*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Inclusion Zone Violation Clear*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

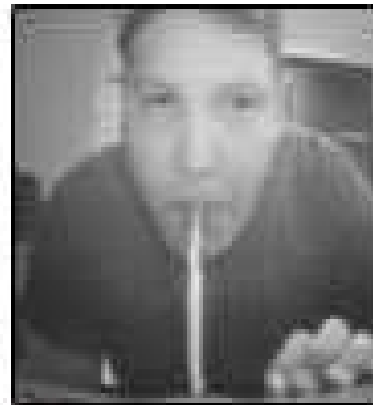
Hardware Violations					
	Fax	Email	Page	Monitoring Center Intervention	Immediate
Check/Uncheck All:					
AC Power Loss*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



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EM as a New Penal Experience?

remote alcohol monitoring (RAM) - automated checks



The Ethics of Community Penalties

(Andrew von Hirsch) .

- intrusiveness - *exclusion from public space, & “incessant oversight”?*
- levels of interference with generic human interests (physical integrity; material support; freedom from humiliation; privacy and autonomy) - *all these?*
- duration - *a few months ... or life?*
- the rights of third parties - *family members?*
- So .. the “punitiveness” of EM is very variable,, its “proportionality” not fixed
- NB - von Hirsch disdains utilitarian, preventive, crime reductive ends in sentencing

EM and Offender Compliance

checking on schedules, making rules enforceable, violations visible

- Incentive-based compliance - gains and goods
 - Trust-based compliance - via relationships/obligations
 - Threat-based compliance – worse penalties
 - Surveillance-based compliance – “prudence & clockwatching”
1. Offenders on EM retain choice whether to offend. Straps are cuttable. EM is not incapacitative like locks, bolts and bars.
 2. Offenders mostly find EM onerous, but preferable to prison
 3. EM can sometimes achieve more than *mere* compliance - “bad habit breaking” (a tangible excuse for resisting peer influence) (A Huckleby)
 4. ... but EM IS NOT intrinsically rehabilitative, designed to change longer term behaviour .. tho' it may help offenders who WANT to change
 5. How important (and in what form) is consent to compliance?

The Common **Surveillant** Element

The (real-time) remote monitoring of offenders' compliance (or not) with prescribed schedules and locations

- eg stay indoors 7pm-7am, for six months; stay away from home/neighbourhood of former victim
- A vast - partly automated - extension of probation's concern with keeping appointments and living at a particular address
- The new ethical issues relate to (semi-)automation, surveillance & the depth and scale of spatial & temporal regulation in the community + wearability/stigma
- Moving from locational to behavioural regulation (RAM)
- The role, influence and ambitions of the private sector

Home Confinement/Curfew

- Justification is largely retributive, deterrent, or crime preventive
- A more robust measure with electronic enforcement than without, viable with more risky offenders
- Increase positive family influences
- Exacerbate family tensions
- Implicates family in punishment
- Erosion of hitherto private space
- Is this inclusion or exclusion? Home as “jailspace”
- Less about confinement to home, more about exclusion from public space at certain set times

Restricting use of public space

- Protecting a former or potential crime victim's domestic or personal space restores a sense of security and citizenship
- Liberal theories of citizenship usually oppose exclusion (banning) from everyday public space as a penalty or as a protective measure
- But ... safe, communal living is based on an implicit sense of trust that people will not abuse shared space - those who violate trust can be disqualified from using shared space, even if it is their comfort zone - residential areas, docksides, sportsgrounds
- Size of exclusion zone must be proportional to risk but is it (or the offender or victim) reachable by police, in time?
- Duration of disqualification period matters - reintegration requires (phased?) return to public space /community, and should be planned for.

EM and Rehabilitation

- EM can add a new level of control to rehabilitative programmes that social work cannot otherwise achieve
- May help offenders to sustain commitment to completing rehabilitation programmes, and getting their benefit (Bonta 2000)
- Some offenders respond well to regulated schedules and oversight - the tag as “a tap on the shoulder”
- EM can incentivise compliance with other aspects of an integrated supervision programme
- Element of EM-control may increase public confidence in community rehabilitation programmes
- EM-curfews may prompt offender to reflect on his life’s direction (Hucklesby) - expose him/her to beneficial influence of family
- EM avoids contamination effect of prison
- Rehabilitation is a vital principle, but not “above all others”: victim and public protection matter too

Culture, Evidence and Ethics

- In a world where pinpointing is easy - we all leave electronic trails and traces - and personal locatability is (mostly) desirable, EM is hardly extraordinary or unduly punitive
- Why NOT locate offenders for public protection, if it can be done?
- State and commerce combine to commodify and sell “safety” to the public
- Ethics and evidence on EM are pitted against culture, politics and commerce which markets & normalises “techno-convenience”

Towards a Conclusion ...

- Some time-limited uses of EM-control are ethically defensible in context
- Ethical commitment to broader and deeper humanistic practices with people who offend - rehabilitation, restorative justice - are MORE important, because it is only in the context of such commitment that EM is likely to be used in moderate and constructive ways
- Too much emphasis on managerial thinking - on “efficiency” as an end in itself - erodes humanistic commitment - and paves the way for EMand the private sector

Remember The Case Against Prison

- Minimising prison use is a civilising activity
- Previous alternatives to prison have had control-deficits - EM *could* help rectify this
- All past attempts at alternatives have entailed use of social and human capital in the community - the ICT infrastructure is a new resource which can and will, for good or ill, be customised for correctional purposes
- The practical ethical challenges of using EM for good cannot be underestimated, but we should not let our dystopian fears of “the new” eclipse the enduring failures of “the old” ... or undermine our confidence that “we” can shape technology in positive ways.

The End

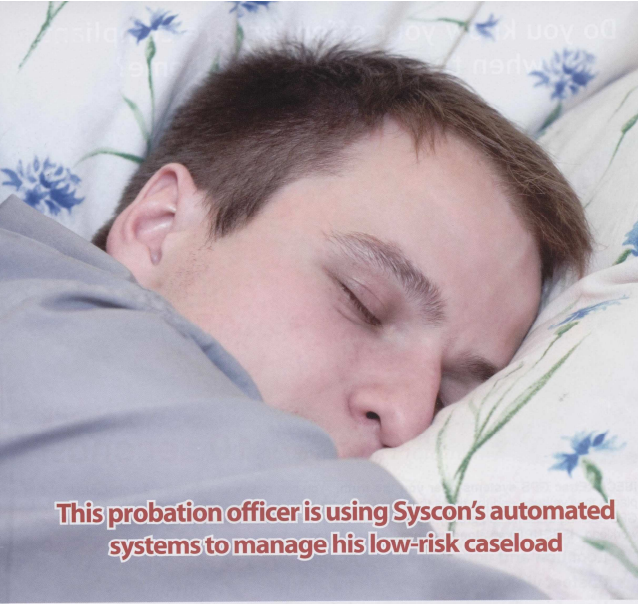
I'd like to say that none of this is rocket science, but of course, some of it is



Thank you


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The Seductions of Technology



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- Will automated “handling” of clients augment or displace the human touch?
- Automation fosters impersonality - but would some clients prefer this?

Reflecting on The Future

- How can a person with no knowledge of the future understand the meaning of the present? If we do not know what future the present is leading us toward, how can we say whether the present is good or bad, whether it deserves our concurrence, or our suspicion, or our hatred? (Kundera 2002 143-4)
- “Aircraft will never have military uses” (Marshall Foch, 1909)
- Is EM old hat, already failing/ or are these “early days”?
- Ethical judgements (about EM) do require some engagement with possible, probable and preferable developments in surveillance technology & criminal justice.