

Facultatea de Sociologie  
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## When technology meets justice ?! An overview

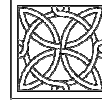
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Evora, 5th of May 2011

### Aim of the paper



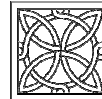
- Highlight the way electronic monitoring (EM) is available in different jurisdictions, at different stages of the criminal justice process and not only.
- Highlight some lessons learned from the past and current experiences.

## What is Electronic Monitoring?



- ‘ the use of remote surveillance technologies to monitor the presence, absence or movement of offenders during the community element of their sentences or orders’ (Nellis, 2007: 115)
  - A tool to tighten the control over the penal population

## The development



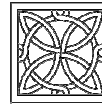
Created at the initiative of judge Jack Love (New Mexico) to keep young offenders out of custody.

Started in 1983 with a small number of offenders on house arrest but soon expanded.

In 1988, 32 states were using EM in different stages of criminal justice process.

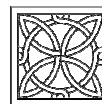
In Europe: Austria, France, Belgium, Portugal, Sweden, Poland, Estonia, Denmark etc.

## Now you can find EM as:



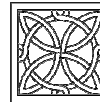
- as an alternative to pre-trial detention,
- as an obligation attached to a CSM,
- as a penalty for breaching other conditions,
- as an alternative to custody (execution modality),
- as an obligation for temporary release,
- as a condition for pre-release,
- as an obligation after release,
- others (e.g. domestic violence, asylum seekers etc.)

## 1. EM as alternative to preventive arrest



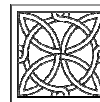
- It was one of the first aims of EM.
- The suspect kept under surveillance when on house arrest
- Trust in House arrest
  
- **England and Wales** - tested in 1989 - EM was introduced as a condition of bail. In September 2006 the case load of electronically monitored curfews was 13 000 out of which 15 % were on pre-trial bail (Whitfield, 2008 ).
  
- EM could be also found as a technology-supporting house arrest in **Portugal, The Netherlands, France, Scotland** etc..

## 2. EM as an obligation or condition attached to CSM



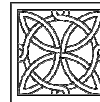
- court order in a limited number of countries (**England and Wales, Scotland, Germany, The Netherlands, Estonia** and **Portugal**).
- In **England and Wales** - EM could be one of the 12 requirements that can be imposed by the court when applying Community Order (introduced in CJA 2003).
- In **Germany** - EM is available only in Hessen and Baden-Wuttemberg (since 2010) for unreliable offenders sentenced to suspended sentence with probation
- In **Estonia** starting with 2011 EM could be one of the obligations attached to regular probation (Rait Kuuse, personal corespondence).

## 3. EM as a penalty for breaching other probation conditions



- In **Scotland**
- EM not a condition in a probation order but a penalty for breach (Pinto, Nellis, unpublished).

#### 4. EM as an alternative to custody



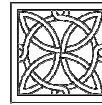
- In some countries - modality of executing the prison sentence or a substitute for it.
- In most cases EM is **used to replace** short term prison sentence: up to one year in **Switzerland**, up to three years in **Denmark and Belgium**, up to six months in **The Netherlands**, up to three months in **Sweden**.
- **In Denmark** - EM is available for drunken drivers or young offenders under 25 years old if they have been convicted to up to three months imprisonment.
- In some countries it is only **the executing judge** who can grant this form of sentence adaptation (**France**). In other jurisdictions this way of executing the prison sentence can be granted by **an administrative authority** (prison governor in **Belgium**, Prison and Probation Department in **Denmark**)

#### 5. EM as an obligation for temporary release or other prison programs



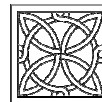
- **Catalonia** has piloted GPS and voice verification since 2009 for temporary release from prison for up to 48 hours.
- **Sweden** – ‘**electronic prison**’ - to monitor those in open prisons.

## 6. EM as a condition attached to conditional or early release



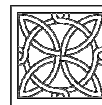
- Traditional - EM as a condition to conditional or early release or parole (**England and Wales, Austria, Estonia, France, Portugal, Sweden, Belgium** etc.).
- EM applies to those prisoners that consent to obey and allows prisoners to benefit from early release from prison even sooner than those conditionally released with no EM attached.
- **in Estonia** - where prisoners convicted for second-degree crimes or first degree crimes with negligence could be released not after serving at least one half of the sentence but after serving one third of the sentence.
- **in Sweden** where prisoners convicted for more than two years imprisonment could benefit of being released under intensive supervision with EM with four month prior to the automatic release.
- EM is usually limited to maximum six months (**Austria**) or one year (**Estonia**)

## 7. EM after full release



- EM is used even after the prisoner is released serving the full sentence (as a license condition).
- These countries are those which introduced **extended supervision** measures as a way to prevent further re-offending by sex-offenders or other categories of 'dangerous' offenders:
  - **France** (socio-judicial supervision)
  - **England and Wales** (extended supervision or life supervision).

## 8. Other use



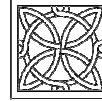
- Domestic violence (bilateral EM) – in **Portugal, The Netherlands, France, Catalonia** (some pilot)
- Asylum seekers or irregular migrants – in **E&W, Scotland.**

## Illustration



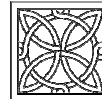
Pre - trial	Front door	Back Door	After release	Others
Condition attached to bail	Condition attached to CSM & Prison modality	Condition attached to early release <b>Temporary release</b> <b>Electronic prison</b>	Condition attached to life supervision	Asylum seekers <b>Domestic violence</b>
E&W Portugal France The Netherlands	E&W Germany Portugal The Netherlands Scotland Estonia Denmark Belgium Sweden	Austria E&W Sweden France Estonia Portugal <b>Catalonia</b>  <b>Sweden</b>	France E&W Germany	E&W Scotland  <b>Catalonia</b> <b>The Netherlands</b> <b>France</b> <b>Portugal</b>

## Concluding remarks 1



- EM is expanding from pre-trial and pre-release to other stages of criminal process and to other non-criminal areas (asylum seekers )

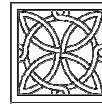
## Concluding remarks 2



- EM moves towards becoming almost a stand-alone penalty
- Its aim is reconstructed from pure surveillance to rehabilitation and public protection,
- Very effective in terms of surveillance: **Revocation rate** for those on bail with EM was found as less than 1% in England and Wales (Wennerberg and Pinto, 2009).
- Not concluding evidence regarding its efficacy in terms of rehabilitation, but:

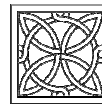


## EM and rehabilitation



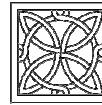
- 'reduce the likelihood of reoffending by restricting freedom of movement and, in particular, that they may break the pattern of offending (e.g. night-time burglaries ...)' (Witfield, 2008: 80).
- **Bonta et al. (2000)** – EM helps offenders to comply with other requirements & programs
- The **Swedish National Council for Crime Prevention** - 2005 a research report about the impact of EM on recidivism that demonstrated that **11%** of the EM parolees reconvicted after one year comparing with **15%** parolees with no EM.
  - All 260 subjects of this research were also subject to intensive probation supervision, counseling and other forms of transformative interventions.
- **Padgett et al. (2006)** – EM has some crime suppression effect while the order lasted.
- Other research ongoing

## Concluding remarks 3



- Good practices in combining EM with rehabilitation interventions:
  - Denmark – Motivational Interviewing – prison and probation staff together
  - Sweden – probation involvement – good public image of EM, 10% reduction of prison population.

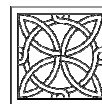
## Concluding remarks 4



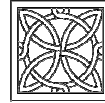
BUT: Contamination

- EM even more punitive
- Ex – consent
- Not required anymore in Germany and E&W
  
- International standards (see princ.6 of Probation Rules) and practical implications – see The Netherlands (consent of relevant others)

## Lessons learnt:



- Step by step, pilots
- Introducing EM should be preceded by information campaigns for judiciary, politicians, practitioners and the Grand Public.
- The cooperation with the private sector should be transparent and corruption-free.
- The Criminal Law should make EM applicable (see Czech Republic and ex-Poland)
- Rehabilitation - cooperation with PS or PS to monitor and enforce EM (like in **Belgium, Denmark, Norway, Portugal, The Netherlands, Estonia and Sweden** )



Thank you !

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