No More Shackles

Why We Must End the Use of Electronic Monitors for People on Parole

a report for Challenging E-Carceration and the #NoDigitalPrisons campaign

THE CENTER FOR MEDIA JUSTICE

independent media center

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For more, read the #NoDigitalPrisons blog series: ***medium.com/nodigitalprisons*** *and visit challengingecarceration.org.*

Cover photo by Micol Seigel.

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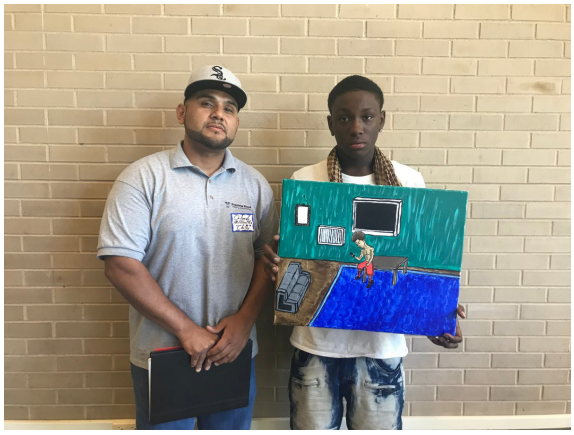
No More Shackles: Why We Must End the Use of Electronic Monitors for People On Parole

As decarceration and ending cash bail rise to prominence on the criminal legal agenda, electronic monitoring (EM) has gained favor as an alleged alternative to incarceration. We reject this approach. We view EM as an **alternative form of incarceration**, an example of what we call "e-carceration"—the deprivation of liberty by technological means.

Hence, as part of the greater movement for transforming the criminal legal system, we call for the elimination of the use of monitoring for individuals on parole. When people have done their time, they should be cut loose, not made to jump through more hoops and be shackled with more devices, punitive rules and threats of reincarceration. This report explains why we advance this position.

Introduction



Charlie Parrish, a youth work formerly on EM, stands next to Orlando Mayorga holding a painting representing his own experience being monitored.

It is common knowledge that mass incarceration has led to a dramatic increase in the number of people locked up in prisons and jails. A less well-known fact is that mass incarceration has been accompanied by an equally enormous growth in the number of people under state supervision in the form of parole, probation or supervised release. From 1980 to 2015, the number of individuals on probation rose from 1.1 million to 4.3 million. The ranks of those on parole, the focus of this report, grew from 220,400 to 826,100.

Not only did the number of individuals on parole rise, but the conditions of supervision became much more stringent. Though regulations and practice vary from state to state, typical parole conditions now include regular drug testing, a ban on associating with individuals with a criminal record, and an extensive set of fees and fines. Two dozen conditions are the norm but some individuals

in Wisconsin have reported more than 70 conditions on their parole regime. As Brian Fischer, former commissioner of the New York State Department of Corrections and Community Supervision, put it, "Most of us could not live under the rules of parole because there are too many of them."

Moreover, the role of parole officers has shifted from providing support to policing behavior. This change led to a dramatic expansion of the number of individuals who "violated" a rule of their supervision and were then sent back to prison. In 1980 only 17% of those returned to prison had violated parole. By 1999, parole violations accounted for more than a third of prison admissions. In 2017, in Arkansas, 38% of the entire state prison population was locked up for parole violations. Moreover, in many states more than half of these were "technical violations," actions that did not involve criminal activity but often involved something as simple as missing a scheduled meeting with a parole officer or failing to report a change of address. A 2017 survey of 42 state prison systems found 61,250 people in prison for technical violations.

LEADING STATES IN USE OF ELECTRONIC MONITORING FOR PAROLE

State	People on Parole w/ EM
Florida*	7300
Texas	6446
California	6250
Michigan	5929
Mass.*	5000

**Florida and Massachusetts totals include both people on parole and probation with EM.*

Sources: Freedom of Information Act Requests, Michigan Department of Corrections Statistical Report 2016

To make matters worse, many conditions seemed purposeless or even destructive to a person wanting to succeed in the community after incarceration. For example, some individuals were banned from accessing the Internet or owning a computer, even if their offense did not involve technology. In Alabama, Pursuant to Code § 15-22-29, the Parole Board must include in conditions of parole that a person must "abandon evil associates and ways." The regulation fails to define what qualifies as evil.

Changing Tides in Community Corrections

In the past two years, the excessive use of what mainstream analysts call "community corrections," has attracted increasing criticism. In mid-2016, the Prison Policy Initiative (PPI), published a report that provided detailed data on the use

of parole in various states. The statistics showed a wide range. For example, Pennsylvania had nearly twice as many people on parole as in prison whereas in Maine the number of individuals on parole was just 1% of the prison population. In the wake of the PPI report came two other important documents, the "Statement on the Future of Community Corrections," released in August of 2017 and the product of a collaboration led by the Harvard Kennedy School, and then a January 2018 document from Columbia University Justice Lab entitled: "Too big to succeed: The impact of the growth of community corrections and what should be done about it." The Harvard Kennedy School report was signed by over two dozen organizations, including the ACLU, JustLeadershipUSA, and the American Probation and Parole Association. It called for reducing the "length of stay under community supervision," reducing the number of conditions and "eliminating or significantly curtailing" supervision fees. The Columbia Justice Lab set a definite target stating that "an important aspect of improving community corrections" would be to "downsize the grasp of community corrections by at least half."

Loosen the Grip of Parole: Eliminate Electronic Monitoring

The broad-brush calls by mainstream critics concerning the excessive reach of community corrections merit concrete action. Of all the conditions imposed on individuals on parole, likely none is more intrusive, punitive and dehumanizing than electronic monitoring. It is time to rein in electronic monitoring before the net widens to capture more individuals from vulnerable populations which are disproportionately people of color.[1]

Our call to abolish electronic monitoring as a condition of parole is not a spontaneous proposition. Rather, this decision comes after extensive research into the impact and function of EM as a condition imposed on individuals post-incarceration. While we have serious critiques of the use of electronic monitoring in other instances, we believe that EM applied to individuals on parole presents some unique features which make this issue warrant immediate attention.

1 *The total number of people on parole with electronic monitoring in the US is difficult to determine. The Bureau of Justice has not published figures since 2010 and even then many states had no entries. Through a combination of Freedom of Information Act requests and other queries, we have procured data on 20 states. The total number of people on parole in those 20 states is about 45,000. Based on this we estimate the total numbers of people on parole with EM at about 80,000, which includes both GPS and RF devices.*

Six Pillars for Ending the Use of Electronic Monitoring for Parole

1. Electronic Monitoring is an extension of incarceration.

2. It greatly limits the freedom and potential success of people on parole.

3. Its effectiveness is not supported by any significant body of evidence.

4. It does not save money.

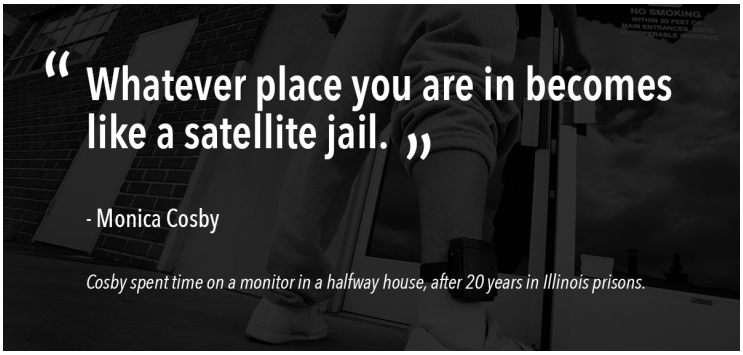
5. Its rules, regulations and legal frameworks lack consistency.

6. Its expansion extends the reach of the surveillance state.

Pillar One: An Extension of Incarceration

Advocates for electronic monitoring argue it is a vehicle for decarceration, an actual alternative to incarceration. Yet, both the legal framing of incarceration and the lived experience of people with EM refute that notion.

The basic definition of incarceration is deprivation of liberty. Virtually all electronic monitoring parole regimes come with a condition of house arrest. Under house arrest, a person cannot move from their place of residence without permission, much like they cannot leave their cell in prison unless granted permission by a prison authority. This is deprivation of liberty.



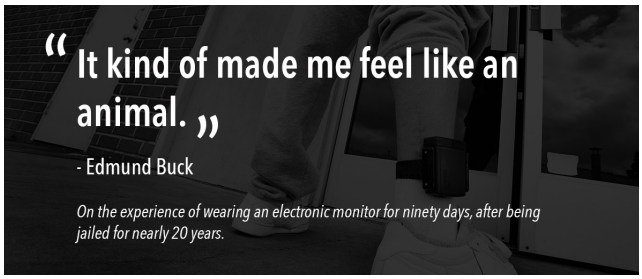
To justify the use of monitoring as a condition of parole and for other situations, courts have engaged in extremely confused debates over terms and definitions. Typically this revolves around whether the court views time spent on a monitor as equivalent to time in prison or jail in terms of sentencing. In Illinois, some jurisdictions differentiate between “home supervision” (no credit) and “home confinement” (credit).[2] However there is no clear definition of the difference between supervision and confinement. A Washington state case says a person with a felony case is entitled to credit for pretrial time served on a monitor whereas someone with a misdemeanor is not.[3] There has also been considerable debate about whether a monitor constitutes a “regulatory” (no credit) or “punitive” (credit) measure.[4] Ultimately these verbal gymnastics aim to provide legal cover for imposing this restriction on people without genuine justification. In short, they use it because it adds another dimension of control.

While legal scholars debate semantics, for the vast majority of individuals on parole with an electronic monitor, their status is clear. Johnny Page, who spent 23 years in Illinois prisons before spending 90 days on a monitor, described his time on EM: “It’s like being locked up but you’re paying your own bills…you don’t have to fight for the shower, you don’t have to fight for the telephone, but

2 *People of the state of Illinois v. Robert Theodore*
3 *Harris v. Charles*
4 *Outlined in Murphy, Erin. Paradigms of Restraint, 57 Duke L. J. 1321 (2008)*

you're still in jail." Richard Stapleton, former Administrator for Legal Affairs for the Dept. of Corrections, concurred with this assessment, calling the monitor "another burdensome condition of extending their incarceration."[5] Monica Cosby, who was on a monitor while in a Chicago halfway house, said that "whatever place you are in becomes a satellite jail."

Despite the evidence of people's experience, legal authorities have tied themselves in contradictory knots with their own punitive urges. There are now more than twenty states that define tampering with an electronic monitor or removing the monitor as a crime of escape. In Georgia a person can be sentenced to up to five years in prison for tampering with a monitor, but a person on a monitor does not get credit for time served. This begs the obvious question, if being on a monitor is not a form of incarceration, how can a person be escaping from it? These contradictory arguments provide ample evidence that EM is simply being added as another punitive dimension to parole.



Edmund Buck, who spent time on a monitor after nearly two decades in prison, explained the use of monitors like this: "Initially I think it's the idea of an added layer of control…I would say the more they hinder a person from getting back into the flow of life outside of prison, the greater the likelihood they would fall into old patterns."

Pillar Two: Limits Freedom and Hinders Success

Perhaps the most important reason to reject electronic monitoring as a condition of parole is that it limits the freedom of people coming home and hinders their ability to successfully transition to the community. The curtailing of freedom for people on EM reaches into most aspects of a person's life. Our interviews with dozens of individuals across the country provide a bounty of evidence of these hindrances. These fall under two categories:

1. Difficulties in obtaining movement: The key to freedom for a person on parole is the ability to move about freely. Movement is essential for a person

5 *Personal interview, June 26, 2013*

to find employment, secure housing, take part in family, community and religious activities. One consistent complaint is that call center operators who handle all communication between people on EM and their parole officers are frequently slow to answer the phone and often fail to record pre-arranged movements.

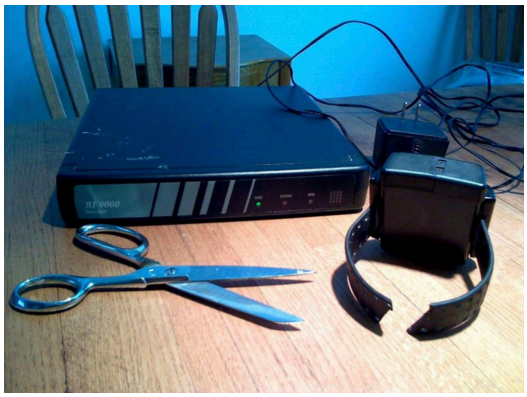
Apart from the call center, the most common complaint people have about movement is difficulty in obtaining or keeping work. A number of issues emerged from interviews with people on parole who had experience with EM:

- Getting movement for job interviews is often difficult, since appointments often come with short notice.
- Work that involves travel or changing workplaces is often not allowed. This includes jobs like house cleaning, landscaping, construction, and delivery, which can pose a challenge for tracking a person's location.
- Changes in work schedules or unplanned overtime are difficult to accommodate, as movement typically must be approved in advance and for a specific period of time.
- Many concrete buildings, such as warehouses, interfere with the signal of a GPS monitor. This often means a person must leave work and go outside to pick up the signal or call their parole officer. This creates tension with employers.
- All this is compounded by many employers' reticence to hire someone who is wearing an ankle monitor, especially if they are dealing with customers.

Beyond the realm of employment, other problems with movement are:

- Short perimeters on the house arrest programming can prevent a person from doing tasks like emptying garbage, doing yard work, smoking a cigarette on the front stoop.
- Requests for movement for family, parenting or community activities are often refused.

- Delayed responses to request for movement lead to missed appointments.
- Responding to any type of emergency, especially one which occurs after hours, is often difficult. A person may be forced to take the risk of going back to prison for unauthorized movement to get a sick child to the hospital, or to pick up an elderly person during bad weather.
- Movement is for very specific time frames which don't allow for issues of traffic or public transport delays.
- Exclusion zones may prevent people from visiting homes of family members.



2. Impingement on life and resources of loved ones: A virtual universal complaint about electronic monitoring is that it creates additional burdens for loved ones. The most common complaint is that being in the house of a family member while on EM adds financial burdens. Since having the monitor makes it harder to access employment, the person on EM becomes dependent financially on loved ones. This means loved ones not only cover housing, but food, travel costs, plus additional water, power and other household bills. But the burdens are more than financial. People also report that:

- Family members are often subjected to unannounced searches by parole officers or by the police, often at inconvenient hours.
- The household may be required to pay to have a landline phone.
- The rules of parole may stipulate that the household contain no alcohol.
- Some jurisdictions actually mandate that an available household member must do tasks like shopping and laundry rather than giving movement to the person on EM.
- If another family member is on a monitor or comes home on parole, they may be barred from living there.
- Family may have to change plans in order to accommodate the designated movement times.

Pillar Three: No Evidence

Advocates of EM claim it contributes to reducing crime and recidivism, ultimately enhancing public safety. Yet there is no concrete evidence that putting people on EM as part of parole has a positive impact on recidivism or crime rates. In 2017 a team of experts from University College London carried out the largest EM investigation project to date- a global study of the English language research done on electronic monitoring from 1999 to the present. They focused on electronic monitors' contribution to reductions in recidivism. They found 372 studies, 17 of which attempted to quantitatively measure EM's impact on recidivism. Their overall findings showed contradictory results and they concluded that "electronic monitoring of offenders does not have a statistically significant effect on reducing re-offending."

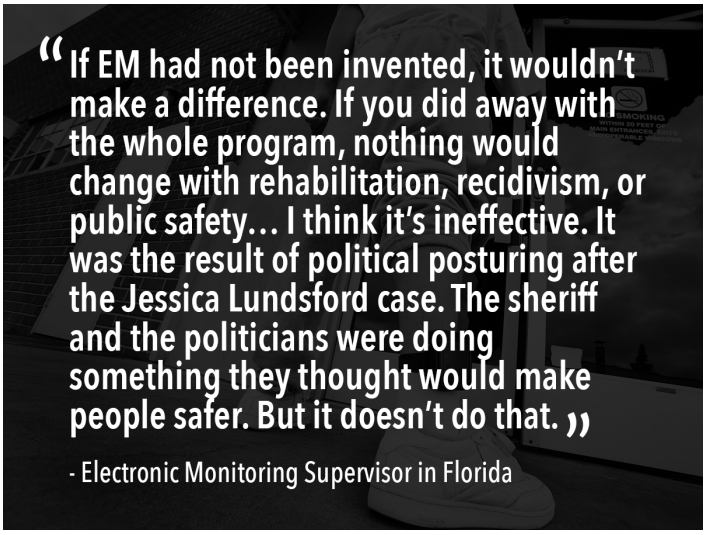
Florida Case Study: Junk Science

The study that EM supporters consistently cite as evidence of the positive impact of EM on recidivism was done by a University of Florida team led by Professor William Bales. His team published a control study in 2010 involving over 270,000 people on parole in Florida over a six year period. According to their data, EM reduced the rate of recidivism by 31%. But this study suffered from at least two major flaws. First, it attempted to control for 122 variables to level the playing field between those who were on monitors and those who weren't. This number of variables is far too many to accurately isolate the impact of electronic monitoring. Second, the most important variable in determining recidivism is the policy and practice of parole officers. This was not factored into the study. If, during the period under study, a specific rule for violation of parole changes changes, or if the policy or practice of the parole agents shifts, the number of violations can quickly go up or down.

Pillar Four: It Doesn't Actually Save Any Money

EM firms constantly stress how much cheaper electronic monitoring is than prison or jail. In some situations, this comparison might be valid. It does not apply to using EM with parole. EM adds to parole costs. Placing a person on parole on EM means the department of corrections or Bureau of Prisons must

pay for the technology as well as hire additional personnel to monitor those on the monitor. Supervising someone on parole with EM requires far more personnel hours than a person on straight parole. A parole agent must look daily, sometimes more frequently, at a person's movement to make sure they are not in any "exclusion zones" (areas where they are not permitted to go.) In addition, false monitor alarms and technical failures are frequent, meaning parole officers have to spend extra time tracking down those they are supervising. Companies propose to solve the cost issues with "revolutionary offender-funded schemes." However, these are not viable. People on parole have just completed a prison sentence, a period during which they earned little or even zero income.

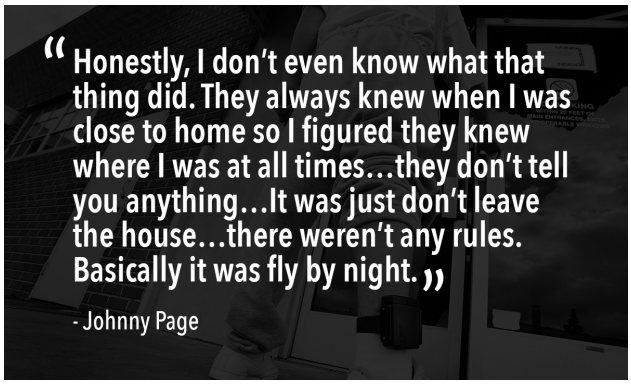


So while charging user fees may look financially feasible on paper, the reality is that most fees will not be paid. They will merely be an addition to the vast set of financial service fees that most people face when they do emerge from prison. Even if they are paid, they are taking funds away from the meager resources people have to pull their survival together. Financial vulnerability means they will be all that more likely to end up back behind bars.

Rather than being a genuine financial strategy, offender-funded schemes are nothing more than an attempt to monetize and privatize parole. Instead of building up the resources to provide support for individuals who are coming home from prison, the monetizing of parole structures is meant to maximize profit for the private vendors and extract the revenue either from the taxpayers or from those who are their direct victims. The parole market for EM is growing, and four companies make most of the profits from contracts with state departments of corrections (see **p. 12** for details on these companies.).

Pillar Five: Lack of Consistent Rules and Regulations

In many jurisdictions people on parole with EM state that they are not sure what the rules are or even what kind of device they are on. Many report that they are given nothing more than a single piece of paper which informs them that they must not leave their house without explicit permission, must charge their device every day, and must pay for any damaged or lost equipment. In some states, they must sign a document that acknowledges their acceptance of the conditions with the added rejoinder that they can be prosecuted for escape if they tamper with or remove the device.



Richard Stapleton, formerly with the Michigan Department of Corrections, maintains that people's movements and regulations are "at the whim of their parole agent." A former parole agent in Colorado affirmed this stating: "monitoring of offenders is such a subjective process it seems that I'm not sure that for those on parole there really is a coherent set of guidelines that strikes the appropriate balance between allowing offenders to reintegrate into society and find work while also ensuring community safety."

Technical Flaws in Devices

While we do not encourage the spending of more money to improve the accuracy of devices, to date the technology has had frequent technical failures. Nearly everyone on a GPS tracking device reports that at some time the device loses the satellite signal. This can trigger an alarm which may also trigger an arrest warrant. Mario Koran chronicled a number of such incidents in Wisconsin in 2013. Some locations simply don't connect with the satellite. The biggest technical problem with monitors is battery failure. Most EM devices must be plugged in twice a day for an hour at a time. While batteries are supposed to last for twelve hours they often go flat long before that. If the battery goes flat an alarm is triggered. So people often have to charge their devices in public places like fast food restaurants or rush home to avoid an alarm.

The lack of clear cut policy has several serious implications:

- A person doesn't know exactly when or for what purpose movement will be permitted.
- There is no clear framework of penalties for an infraction. This means a person who returns home late from work because of a public transportation delay can be sent back to prison or merely forgiven.
- No clear incentives exist for reducing the strictness of the regulations or for having the device removed early.
- A person's supervisor can change frequently with each supervisor having a different set of rules they follow.

COMPANIES PROFITING OFF ANKLE SHACKLES FOR PEOPLE ON PAROLE

Company Name	Owner	States Where They Contract with DOC*	Annual Revenue
BI Incorporated	GEO Group Private prison operator	AK, IL, ME, MO, MT, NM, NC, OR, RI, UT, WI	83.9 mn (BI Only) $2.26bn (GEO Group 2017)
Satellite Tracking of People (STOP)	Securus Technologies	AR, CA, HI, ME, MO, MT, NE, ND, OR, RI, SD, TN, UT	$404 mn (Securus 2015)
Sentinel Offender Services	Robert Contestabile	CT, LA, MS, NV, WA	$103.9 mn
Attenti (formerly 3M)	Apax Partners	AK, MI, IA, MA, OH, OK, VT, WA, WV	$95 mn (Attenti) $305 mn (Apax 2016)

**Department of Corrections. Some states contract with more than one company. For example, they may rent GPS tracking devices from one company but rent the SCRAM devices used to detect blood alcohol from another firm.*

Pillar Six: Extending the Reach of the Surveillance State

An ankle shackle used to monitor immigrants who have been released from detention facilities.

EM has grave implications for the future in two ways. First, the spread of EM lays the groundwork for a new form of mass incarceration: locking people up in their homes and communities. As the capacity of devices increases, the possibility of more precisely and comprehensively restricting people's movements looms. Beyond house arrest, we could see a form of E-Gentrification with exclusion zones programmed into devices and areas of movement restricted according to demographics, income, criminal background, citizenship status, etc.

Apart from being a means to implement house arrest and limit movement, electronic monitoring with GPS capacity is a surveillance device. Even the most rudimentary GPS monitors track and store a person's location, pinpointing their associations and places they frequent. This location tracking information ends up stored in a database which is either under the control of the state or a private vendor. In either case, there is little regulation of how this data may be used. In many jurisdictions many parties have access to this data.

While this accumulation of data is frightening in its present form, future technologies will have greater surveillance powers. Already some devices are linked to cell phones. Individuals may be ordered to video record their location and everyone in their company. Given the power of facial recognition technology, this means authorities could construct all sorts of criminalized networks via digital links. While it is early days in the journey of this technology, researchers at the University of Massachusetts (Lowell) have already secured a grant to investigate designing a device that measures a range of biometrics and, if biometrics indicate a point of personal crisis, recommends intervention.

A further concern rests in current experimentation with implanted computer chips. A Wisconsin employer has already embedded chips in the hands of some of their employees. With these chips, the individual may be able to digitally performs tasks such as open doors, operate a photocopier, log onto a computer and pay for purchases in a vending machine. While at present designers claim that such chips do not have GPS capacity, it's doubtless that this feature along with additional biometric measurements will be incorporated into devices in the future.[7]

Conclusion

When people have done their time, they should be set free. Instead of using technology to further restrain and punish people released from prison, authorities should be mobilizing technology to provide employment, education, training and other opportunities to get individuals moving down the path away from prisons and jails and toward contributing to the development of their community. This imperative is particularly crucial in the communities of color that have been hardest hit by mass criminalization and mass incarceration. It is time to challenge E-Carceration and build genuine alternatives to the prison industrial complex that put resources into communities, not punitive surveillance technology.

7 *J. Graham, L. Schulte, "Wisconsin workers embedded with microchips," USA Today, August 1, 2017*