

Rethinking Electronic Monitoring: A Harm Reduction Guide

ACLU

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American Civil Liberties Union
125 Broad Street
New York, NY 10004
www.aclu.org

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Summary and Key Recommendations

While the United States' incarcerated population is decreasing, the use of electronic monitoring (EM) in the criminal-legal system has dramatically risen over the past two decades. EM refers to GPS ankle monitors, cellphones, radio frequency technology, and other devices that government authorities and sometimes private companies impose to track people's location and monitor their movement outside of physical jails and prisons. Authorities impose EM during pretrial release and as a condition of probation or parole (supervision), as well as in other contexts such as immigration detention and juvenile court. Authorities often justify EM as a way to protect public safety, ensure that people appear for legal proceedings, and promote rehabilitation.

Yet the expanded use of monitoring ignores research and lived experience, showing that these devices fail to achieve their purported aims; cause immense harm to those under surveillance; exacerbate inequities along lines of race, class, and disability; impede rehabilitation; and exact a high financial toll. Rather than serve as an alternative to physical confinement, EM expands mass incarceration — operating as a digital form of imprisonment and often leading people back into physical jails and prisons for minor technical violations.

Replace EM With More Effective Measures:

Ultimately, EM should have no place in the criminal legal system. Instead, authorities should rely on less-restrictive, and more effective, measures to protect the public and ensure court appearance, such as court reminders and positive incentives for demonstrated rehabilitation.

Enact Harm Reduction Strategies Toward

Replacing EM: Where jurisdictions continue to impose EM, they should follow these harm reduction strategies in service of ending reliance on EM:

1. **Strictly Limit EM:** It should be considered among the most severe conditions and should only be imposed if less-restrictive options are determined to be inadequate. This entails making findings, on the record, that release without EM is insufficient to mitigate the risks of harming another person or willful absconding. Findings should be evaluated under a clear and convincing evidence standard.
2. **Provide Adequate Notice and Explanation:** When imposed, the EM decision and monitoring requirements must be adequately explained both orally and in plain-language writing, and the monitoring rules must be part of the record for appeal.
3. **Standardize Appeals, Review, and Revocation Procedures:** EM orders should be periodically reviewed to determine whether EM remains necessary. Conditions no longer justified should be lifted. EM orders should also be subject to prompt appellate review. Further, people should never be incarcerated for EM-related technical violations.
4. **Ensure Access to Counsel:** Jurisdictions should ensure that people are represented by active and engaged counsel, including appointed counsel for those unable to afford a private attorney, at any proceeding where EM may be imposed.

5. **Eliminate Discrimination Based on Wealth and Housing Status:** To ensure that all people have an equal opportunity to complete EM requirements, governments must bear all of the related costs – including both the up-front/ installation costs and any continuing costs of required devices. Authorities should not contract with private companies profiting off of EM. Additionally, authorities should end technical violations grounded in material access and housing status, such as failure to pay when people lack funds or failure to charge the device when people experience homelessness.
6. **Reasonably Accommodate People with Disabilities:** Compliance with EM requirements can be even more difficult, if not impossible, for people with disabilities. Authorities must enact policies to ensure that people with disabilities have an equal opportunity to complete their EM requirements. This includes providing additional, accessible information and support (such as text reminders about how and when to charge a device), and a presumption *against* using EM for people with physical or mental disabilities that may make EM compliance more difficult to achieve and/or exacerbate a person’s disability (for example, loud device alerts may negatively affect a person with hearing loss).
7. **Develop Reasonable Movement and Expansion Standards:** People subjected to EM must be allowed a certain number of movement hours per day for work, recreation, and errands; movement for voting purposes; and expanded movement based on special events and necessities.
8. **Provide Credit for Time Served:** Individuals subjected to electronic monitoring terms must be considered “in custody” and receive incarceration time credits for time served.
9. **Ensure Privacy and Data Protection:** EM programs must respect the privacy rights of individuals on monitors and their families by promoting minimally invasive technology and regulating methods of data collection, retention, and storage.
10. **Ensure Adequate Data Collection and Transparency:** Authorities should collect and publish data on the use of EM, including racial disparities.

Electronic Monitoring: A Failed Reform

EM¹ is often hailed as a more humane alternative to incarceration because monitored people are allowed to return to their communities rather than languishing in jail or prison. Monitors are purportedly used to protect public safety, prevent flight, and advance rehabilitation. But there is no evidence that monitoring accomplishes these goals – and much evidence showing that instead it exacerbates systemic harms, impedes rehabilitation, and exacts a high financial toll.²

The lived experience of individuals subjected to monitoring reveals a system permeated by excessive surveillance and abuse. Far from an alternative to incarceration, EM often reproduces the harms of incarceration – limiting one’s liberty, ability to work, and family and community connections.³ Indeed, electronic monitors are part of a growing culture of surveillance⁴ that uses technology to expand carceral control beyond the physical space of jails and prisons.⁵ Authorities use EM devices like a mobile watchtower, allowing government authorities and private entities to “see” where people go and invade their private lives. Parole and probation officers, pretrial officials, and police function similar to prison guards in that they have complete control over people on EM, regulating when people can leave their monitored space, where they can go, and having complete access to their home.⁶ Moreover, people who violate their EM can land right back in physical jail or prison.

The government’s use of EM has dramatically risen in the last decade. From 2005 to 2015, the number of active electronic monitors in use rose by 140 percent.⁷ More recently, in 2020 and 2021, the number of people on monitoring increased in the wake of the COVID-19

pandemic as authorities tried to mitigate the impact of the virus on incarcerated populations.⁸

People on EM further expands the carceral system because it is not just used as an alternative to incarceration, it is also imposed in cases where individuals would otherwise have been released on less or no restrictions.⁹ Consequently, EM use presents a self-fulfilling prophecy: EM’s mere existence leads to its widespread use because law enforcement becomes dependent on the tool.

People under correctional control are not a monolith. Some individuals understandably prefer EM to incarceration. But governments should not ask people to choose between a physical and electronic cage or between a deprivation of their right to liberty and their right to privacy.¹⁰ Rather, governments should make all efforts to keep people in their communities with as few restrictions on their liberty as possible.

Electronic Monitors Are Ineffective and Unnecessary

Electronic Monitors Fail to Meet Their Stated Goals. Authorities ostensibly impose EM to protect public safety, reduce failures to appear, and promote rehabilitation. However, EM fails to demonstrably achieve those objectives.¹¹ Numerous studies have failed to find conclusive evidence that EM programs meet their stated goals.¹² For example, an analysis of federal pretrial defendants in New Jersey concluded that there was no difference in failure to appear between similar defendants who were on EM and those who were not.¹³ Another study, using a multisite format

across four jurisdictions, discovered that EM had “little impact on pretrial misconduct,” including new criminal activity.¹⁴ Failure to appear studies reviewing all available data on EM have found that the data does not support EM as a tool for reducing crime¹⁵ and that there was no statistically significant effect on negative outcomes like the commission of new crimes.¹⁶

Electronic monitors increase the risk of technical violations. While failing to prevent crime or failures to appear, EM regularly leads people back to jail and prison for harmless technicalities.¹⁷

EM and other forms of intensive supervision increase an individual’s likelihood of returning to jail for technical violations.¹⁸ For instance, an evaluation of EM for the Federal Probation Journal found that there was no effect on rates of re-arrest for *new offenses*, but those on EM were significantly more likely to have a *technical* violation.¹⁹ The Vera Institute’s 2020 study of pretrial electronic monitoring found that the longer someone is subject to EM, the more likely they are to be thrown in jail due to alleged failures to comply with specific EM program rules.²⁰ Research on reentry programs have also found that more restrictive supervision does not necessarily lead to lower recidivism rates.²¹

This is because EM sets people up to fail. Rather than developing nuanced and individualized plans for monitoring and providing needed supports, authorities add EM requirements²² to the already complex general rules that people on supervision or pretrial release must follow – meaning people must comply with two distinct sets of rules.²³ EM-specific rules can vary but can include house arrest, hourly restrictions on everyday activities such running errands, travel restrictions, driving restrictions, and onerous requirements to charge monitoring devices and/or keep them connected to Wi-Fi.²⁴

Violating any one of these technical rules can lead to jail time – even if the violation would not otherwise be a crime and is unrelated to public safety or risk of flight. For example, stopping at a neighborhood grocery store does not necessarily pose public safety concerns nor correlate to court appearance but can lead to incarceration if it exceeds an individual’s

allotted movement hours. Failing to charge a monitor at a predetermined time or going to the doctor’s office without authorization are frequently cited violations. Given the strict geographic limits placed on many people on EM, taking out the garbage or chasing after an escaping pet dog can result in jail or prison time.²⁵ Additionally, device malfunctions such as audio defects, faulty batteries,²⁶ and/or inability to connect to Wi-Fi often lead to reincarceration.²⁷

Electronic Monitoring is Unnecessary. Less-restrictive measures than EM better facilitate court appearances. Data show that government-run pretrial court date reminder systems reduced failure to appear rates in pilot programs in Louisiana, Nebraska, New York, and Oregon.²⁸ One study found that, among people charged with misdemeanors in Nebraska, written reminders significantly reduced failures to appear overall, and more substantive reminders were significantly more effective than a simple reminder.²⁹ In one report, the National Institute of Corrections found that notification of upcoming court appearances (including phone calls, recorded phone messages, mail notification, text messaging, and email) was highly effective at reducing the risk of failure to appear.³⁰ And a 2018 behavioral study showed that simple supportive interventions like text message reminders for court dates and transportation assistance have demonstrable benefits without the stigma and difficulties associated with EM.³¹

Electronic Monitors Exacerbate Systemic Harms

Electronic monitors perpetuate systemic racism.

Electronic monitors exacerbate racial inequities throughout the criminal legal system. Black people are disproportionately stopped, searched, and accused of crimes following pedestrian and traffic stops.³² Given racially biased policing and enforcement, Black people are already more likely to be under supervision: Black adults are about 3.5 times as likely as white adults to be on probation or parole, and while 13 percent of the U.S.

adult population is Black, Black people account for 30 percent of those on supervision.³³

Authorities are also more likely to put Black people on EM. In the Detroit metropolitan area, Black people are two times more likely than white people to be under electronic monitoring.³⁴ In San Francisco, Black people comprise only about 3 percent of the city’s population but represent 50 percent of people on electronic monitors; in Chicago, Black people make up one quarter of the general population, but represent up to three quarters of people on monitors.³⁵

Given generations of systemic racism in areas including housing, jobs, and education, Black and Latinx people are less likely to have the resources necessary to navigate disproportionately imposed monitoring requirements. Authorities are also more likely to cite Black and Latinx people for technical rule violations and, consequently, Black and Latinx people are more likely to be re-arrested and incarcerated for those violations.³⁶ This results in greater barriers to successful reentry for Black and Latinx people, which increases the chances that they are fed back into the jail and prison system.

Electronic monitors discriminate against people with disabilities. Many people in the criminal legal system have disabilities, including mental conditions such as depression, bipolar disorder, and developmental and intellectual disabilities, as well as chronic illnesses like diabetes and high blood pressure. As of 2016, the last year for which data is available, the U.S. Department of Justice reported that nearly two in five people (38 percent) in state and federal prisons reported having at least one type of disability.³⁷ Rates of mental health conditions are two to four times higher among people on probation or parole than in the general population.³⁸ These figures are particularly stark for incarcerated women and for Black people.³⁹

People with disabilities may face greater barriers to complying with EM’s complex requirements. The rules and requirements of EM are often written in long, complicated documents that are inaccessible for people who have intellectual or developmental disabilities. People with psychiatric disabilities may struggle to keep track of the precise requirements for charging the monitor and ensuring it stays connected

to Wi-Fi. People with limited physical mobility may not be able to adjust ankle monitors, or may experience pain or discomfort from them. People who are deaf may not be able to access audible alerts. Further, the strict limitations on movement are often particularly harmful to people with disabilities, whose access to medical or mental health care is limited because travel to these locations is not permitted or must be requested so far in advance as to make meaningful health care access out of reach. Still other cases, EM can exacerbate a person’s disabilities, for example by triggering PTSD or paranoia symptoms.

While authorities are required to make “reasonable modifications” to ensure that people with disabilities have equal access to programs, including EM, too often authorities fail to make these required changes, leaving people with disabilities set up to fail and at high risk of incarceration for violations.

Electronic monitoring exacerbates economic and housing inequities. Many local government entities and private companies charge people hundreds of dollars a month to wear electronic monitors.⁴⁰ These charges severely burden people with low or no incomes, who have to balance their EM fees with rent, food, care for dependents, health care needs, other legal financial obligations, and other costs.⁴¹ EM also often requires additional financial and technological resources that many in the criminal legal system cannot afford, such as access to a Wi-Fi network or charging port for GPS devices, a landline telephone, and stable housing.⁴² And EM can make finding housing more difficult, some landlords and housing authorities prohibit people on EM from living on their property.⁴³ Given generations of structural racism, poverty in the United States intersects sharply with race⁴⁴ – further exacerbating EM’s racial inequities.

EM’s costs and requirements put people at an increased risk of incarceration: If a person misses a single payment or fails to charge their monitor, they can be punished with jail time. This increases the economic harm for monitored people in general, and particularly for low-income people and those experiencing homelessness, who end up in cycles of debt and incarceration – a burden that also extends to their loved ones.

Electronic Monitors Undermine Rehabilitation

Electronic monitoring interferes with employment and family care. People under EM are generally subjected to restrictive movement hours, which makes daily life unnecessarily challenging. They must get pre-approval to leave their house for various activities, which is difficult to obtain. For example, “One of the major ways in which EM disrupts the lives of participants is through their inability to secure employment. For most programs, securing movement expansion is extremely difficult causing many to miss interviews and start dates” and making it difficult to work overtime.⁴⁵ People on monitors also receive frequent “check-in” calls from authorities, which can further cause disruption. Many jurisdictions do not provide clear movement rights to do discrete tasks, such as grocery shopping, visiting a dying family member, or tending to urgent medical needs.⁴⁶

Even where individuals have the right to seek a pass to reduce their movement restrictions, the path to obtaining a pass is often confusing and unclear. Governing authorities often require significant advance notice for any movement expansion requests along with proof of event attendance that can be difficult to obtain. Expanding movement rights for medical care purposes is also challenging, which especially harms people living with disabilities and/or illness. Further, restrictive monitoring prevents caregivers from looking after their loved ones. People who have children (especially those that identify as female/women, since women usually bear the work of childcare) are restricted from taking full part in their children’s lives and are excluded from activities such as taking their children to the park or attending a parent-teacher conference. Caregivers for people with medical issues also face challenges during medical emergencies, when there is no time to get movement passes.

Electronic monitoring infringes on privacy. People on EM are often subjected to warrantless and unjustified searches in violation of the Fourth Amendment to the U.S. Constitution.⁴⁷ It is well-established that electronic monitors constitute a search.⁴⁸ The Supreme Court explained that cellphone

location tracking “achieves near perfect surveillance,” which presents an “even greater privacy concern” than GPS vehicle monitoring.⁴⁹ Additionally, some EM devices, such as ankle monitors, are hypervisible, intruding upon individual privacy, and making it easier for police officers, private entities, employers, and the general public to identify and discriminate against released people (i.e., by stopping and frisking them, denying them entry, and/or denying them jobs or housing).⁵⁰ Although people on probation and parole have limited privacy interests as a matter of law,⁵¹ the “permissible degree” of state “impingement upon [the] privacy” of individuals under supervision is “not unlimited.”⁵² Similarly, although most courts have found that people on pretrial release conditions (and on EM in particular) have a diminished privacy expectation,⁵³ others have found that pretrial persons deserve heightened Fourth Amendment protections.⁵⁴

Many EM programs collect and store information about *everywhere* a monitored person goes, far beyond the information even arguably relevant to appearance at court dates or compliance with other conditions of release. As the Supreme Court has explained, this kind of “all-encompassing record” of a person’s movements implicates the Fourth Amendment because it “provides an intimate window into a person’s life, revealing not only his particular movements, but through them his familial, political, professional, religious, and sexual associations.”⁵⁵

Electronic monitors encourage intrusive searches of household members. Monitoring and tracking burdens surveilled individuals and those they love. If a person does not answer an audio check-in on the monitoring device or fails to charge their monitor, for example, family members are subjected to unannounced searches by supervision officers or the police, often at inconvenient hours, creating tension within the household. This can overburden families that may already be dealing with the traumatic process of re-integrating family members who were once in prison or jail.

Electronic Monitors Exact a High Financial Cost

Electronic monitors are costly and contribute to costly incarceration. Electronic monitors can cost between \$1.50 and \$47 per day, or between \$547.50 and \$17,155 a year.⁵⁶ Many jurisdictions and private companies pass this cost onto monitored people. These costs are substantially more expensive than less-restrictive alternatives such as court date reminders, which, unlike EM, are effective.⁵⁷

Moreover, EM's onerous conditions regularly lead people back to incarceration for minor violations, exacting an enormous financial toll on jurisdictions themselves.⁵⁸ The exact price tag for EM reincarceration is difficult to calculate. However, states spend more than \$9.3 billion a year imprisoning people for supervision violations and spend \$2.8 billion alone for technical violations, including violations of EM rules.⁵⁹ That figure does not include people jailed for pretrial supervision violations.

Accordingly, EM causes immense financial harm — both to those monitored and the public.

Electronic Monitoring Should be Replaced with Less Restrictive, and More Effective, Measures

Jurisdictions Should Replace EM. The United States has relied on mass incarceration for far too long. To reduce the considerable harms of the criminal legal system, we must shrink the power and reach of that system, not extend it through EM. Decades of evidence on the impacts of EM fail to support its effectiveness, and make clear that overconditioning people leads to worse outcomes. Recent studies show that EM has long-lasting carceral effects, and in practice, it erodes constitutional rights at all stages of the criminal process.

Reforms to the criminal legal system should never expand its scope. Yet EM serves as an extension of the carceral crisis, expanding the punitive power of jails and prisons beyond their traditional physical walls as a system of “e-carceration.”⁶⁰ As the ACLU's work has demonstrated, overuse of government surveillance can create oppressive, criminalizing environments, especially for communities of color.⁶¹ When reforms like EM increase surveillance, they expand the power of the criminal legal system by moving burdens from the state to the individual, all while continuing punitive control over those individuals' lives.

Jurisdictions Should Implement Less Restrictive, and More Effective, Measures. Rather than further encroach on people's liberties through the use of EM, authorities should implement nonpunitive measures.

To ensure court attendance, authorities could coordinate transportation and child care during appearances⁶² or send automatic text message reminders of court dates.⁶³ Where the accused consents or requests it, authorities could also use videoconferencing for legal proceedings in lieu of in-person proceedings.⁶⁴ Other context-specific alternatives include: implementing a reasonable, specified curfew; providing incentives for gaining or seeking employment;⁶⁵ incentives for individuals continuing or beginning an educational program;⁶⁶ or requiring individuals to remain in the custody of a responsible member of the community⁶⁷ who agrees to monitor the released person and report any violation of any release condition to the court. Wherever possible, these programs should be based within community organizations rather than law enforcement.

Offering supports, rather than imposing onerous conditions, can simultaneously maximize public safety, ensure court appearance, and keep people in their communities. These suggested alternative measures are also less costly than monitoring, or the long-term costs of cycles of incarceration. Ultimately, there are far superior methods of protecting the public and preventing flight than EM — jurisdictions should replace EM with less restrictive, and more effective, measures wherever possible.

Harm-Reducing Recommendations Toward Replacing Electronic Monitoring

The recommendations below aim to mitigate the harms of monitoring in accordance with due process and fairness principles until jurisdictions replace EM with more humane and effective alternatives.

The proposed recommendations are intended to serve as a practical guide for advocates, policymakers, prosecutors, judges, pretrial services agencies, and parole/probation authorities. It is imperative that such decision-makers not only recognize the harms that EM inflicts, but that they also implement alternative measures to promote fairness in both pretrial and supervision spaces. All the recommendations are informed by internal and external research, consultations with members of impacted communities, and discussions with the ACLU and partner organizations.

RECOMMENDATION 1

Strictly Limit Electronic Monitoring

Presumption Against EM: As a default presumption, authorities⁶⁸ should not impose EM as a condition of release or supervision. In the pretrial context, people are presumed innocent until proven guilty, and in the supervision context, people retain a “valuable” constitutionally protected, though conditional, liberty interest.⁶⁹ Accordingly, authorities should presumptively release people pending trial or supervision revocation proceedings on personal recognizance without monitoring, alternative conditions, or money bail. Further, authorities in

the pretrial and postconviction contexts should presumptively impose less-restrictive conditions and should only impose EM as a condition of last resort.

Adequate Findings: In the pretrial and supervision revocation context, neutral authorities (i.e., authorities who are not working for private companies and are disinterested) should only impose EM upon making the following factual findings on the record by *clear and convincing* evidence:

1. Release on *personal recognizance will not* suffice because the individual poses a demonstrated risk of harming another person or willfully absconding⁷⁰ from legal proceedings, and personal recognizance will not mitigate or eliminate these risks.
2. Release on *a less restrictive condition will not* suffice because the individual poses a demonstrated risk of harming another person or willfully absconding from legal proceedings, and the alternative condition(s) will not mitigate or eliminate these risks.
3. Release on EM *will* suffice. The electronic monitor is “reasonably calculated”⁷¹ to: (1) prevent willful flight from the legal proceedings, and (2) prevent harm to another person.
 - a. Authorities should conduct a person-specific inquiry that considers individual factors like disability and financial/housing status that would make EM particularly challenging.
 - b. Additionally, authorities should evaluate whether EM is necessary to ensure that

lawfully imposed location-based orders, such as protective orders, are respected.

Similarly, in the probation/parole context, neutral authorities should only impose EM upon making the following factual findings on the record by *clear and convincing* evidence:

1. Imposition of *alternative, less-restrictive conditions* will *not* suffice because (1) the individual poses a demonstrated risk of harming another person or willfully absconding from supervision, or (2) EM would advance the individual’s rehabilitation,⁷² and alternative condition(s) will *not* achieve these ends.
 2. An EM condition will suffice. Electronic monitoring is “reasonably necessary” to: (1) prevent the individual from harming another person, (2) prevent the person from willfully absconding from supervision, or (3) advance their rehabilitation.⁷³ Authorities should conduct a person-specific inquiry that considers individual factors like disability and financial/housing status that would make EM particularly challenging.
2. Include the actual terms, rules, and conditions of monitoring in the record so that it becomes part of the record on appeal.
 3. Ensure that each individual fully understands:
 - a. The terms, expectations, rules, and conditions of monitoring;
 - b. The length of the imposed monitoring period;
 - c. The right to periodic review of the monitoring/release order;
 - d. The right to appeal the monitoring/release order;
 - e. The weekly/daily cost of the monitoring, if the individual is required to pay;⁷⁴
 - f. The check-in requirements for the monitoring period, including guidelines on when and how to check in with the relevant authority, how to request permanent and temporary movement expansions, and all regulations that influence time under EM; and
 - g. The consequences for any violation of their EM conditions.

RECOMMENDATION 2

Provide Adequate Notice and Explanation

Authorities that *impose and/or enforce* monitoring must:

1. Explain the decision and requirements of monitoring both orally and in plain-language writing.
 - a. This means ensuring access to interpreters, providing time and opportunity for the person to ask questions and understand the rules, and making other accommodations or modifications as needed.

RECOMMENDATION 3

Standardize Appeals, Review, and Revocation Procedures

Appeals: People should be entitled to an appeal of a release/monitoring order.⁷⁵

Review: Each person should be entitled to a periodic review of the release decision and/or monitoring order. Reviews should occur no more than three months after the date that monitoring began. The reviewing authority must provide justification as to why a person should remain on the electronic monitor in accordance with Recommendation 1 above.

Violations: Authorities should never incarcerate a person for EM-related technical violations (i.e.,

device malfunctions or failure to charge). Further, jurisdictions should repeal laws that criminalize failure to comply with technical EM requirements, such as charging the device and paying required costs. Authorities should shift away from sanctions and make efforts to grant rewards for compliance, such as shortening the duration of monitoring or increasing the amount of hours a person is allowed outside. In the case of serious noncompliance with rules, authorities should impose sanctions that are proportionate to the underlying conduct – such as flexible community service requirements or deprivation of “good time” credits for a proportionate period of time.⁷⁶

RECOMMENDATION 4

Ensure Access to Counsel

Having an appointed defense attorney during critical stages of prosecution can more than double the chance that a judge will release the accused on their own recognizance.⁷⁷ And in cases where a judge orders bail, appointing a defense attorney can more than double the chance that the judge would lower the bail set to an affordable amount.⁷⁸ When EM is at issue, public defenders are critical for those who cannot afford an attorney because they have the expertise to argue for an individual’s release without EM; argue for less restrictive release conditions; demand an ability to pay assessment; ensure that the governing authority is complying with relevant EM law; and provide the client notice of the rights at stake.

Individuals who have a defense attorney present at the proceeding where EM is imposed will have a higher chance of: (1) release on recognizance, (2) release on a less restrictive condition, (3) release on EM only if it is rigorously justified, and/or (4) release on less costly EM. Thus, jurisdictions must ensure that defense counsel is present at all legal proceedings⁷⁹ where EM is a possibility, including arraignments; initial appearances; and violation, modification, revocation, and review hearings.

RECOMMENDATION 5

Eliminate Discrimination Based on Wealth and Housing Status

Eliminate EM Costs: If EM is imposed, authorities must bear all costs of the monitors, whether the program is operated through the government or through a private company – including both the up-front/installation costs and any continuing costs of required devices.⁸⁰ No person should be required to pay for their own confinement or conditions of release. Further, companies that operate EM programs for a private profit should be banned because such companies are directly incentivized to take advantage of people. Private EM companies’ very livelihood and profit depend on keeping people on monitors. Companies charge extremely high initial fees and additional recurring fees.⁸¹ They engage in coercive practices with little government oversight.

Already, jurisdictions across the country are eliminating fees associated with EM. For example, San Francisco has made EM in adult court free.⁸² Other jurisdictions should follow suit.

End Technical Violations Grounded in Material Access and Housing Status: As the Supreme Court held, courts cannot deprive individuals of their “freedom simply because, through no fault of [their] own, [they] cannot pay” fines or restitution.⁸³ It follows that freedom cannot be conditioned on a person’s ability to pay for costs associated with EM. EM must be feasible for people regardless of their wealth or housing status, and the government should never punish people for EM-related violations that stem from that status – such as failure to pay EM fees or failure charge their monitoring devices when they lack housing or other access to a charging port. Accordingly:

1. Authorities must ensure that those who are subject to EM have the necessary resources to comply with the requirements. Provided resources may include regular access to the internet and technology such as a computer and/or smartphone.⁸⁴

- a. If the individual does not have the required resources, then authorities should:
 - i. Impose an alternative form of EM that is feasible based on their resources and living circumstances – such as a device that does not require a landline phone if the individual lacks stable housing; and/or
 - ii. Affirmatively provide the necessary resources, such as a charging station that is free, open 24/7, and accessible to them, including via public transportation.
 - iii. Authorities may not impose incarceration on the basis that an individual lacks the resources for EM.
2. Authorities may not incarcerate, or otherwise punish, someone for violating a technical condition of their EM when the violation occurred due to their inability to pay or their homeless status.

RECOMMENDATION 6 Reasonably Accommodate People with Disabilities

Physical and/or mental health disabilities may interfere with wearing a monitor and/or the monitoring rules. Federal disability rights laws require that authorities imposing EM eliminate discrimination and provide reasonable accommodations for people with disabilities to ensure that they have an equal opportunity to complete their required monitoring.⁸⁵ The reasonable accommodations should take into account factors that affect comprehension, including age, education, and the nature or severity of a disability.

Authorities must make changes to EM systems to ensure that people with disabilities have an equal opportunity to complete their pretrial release or supervision. This includes providing additional, accessible information and support (such as text reminders about how and when to charge a device); a

presumption *against* using EM for people with physical or mental disabilities that may make EM compliance more difficult to achieve; and a presumption against using EM where it might exacerbate a person’s disability (for example, loud device alerts may negatively affect a person with hearing loss).

RECOMMENDATION 7 Develop Reasonable Movement and Expansion Standards

In the pretrial context, people are presumed innocent until proven guilty and in the supervision context, people retain a constitutionally protected conditional liberty interest.⁸⁶ Thus, EM should be a limited intrusion on their lives. Authorities that continue to use EM must implement movement standards to ensure that people retain basic human and constitutional rights. If EM is to serve as an alternative to prison, it must reduce the harm that conventional incarceration poses.

A key step toward that end is ensuring that movement is not substantially restricted or policed, as extensive restrictions only lead to the unnecessary deprivation of liberty. Jurisdictions should:

1. Guarantee a minimum amount of movement. This includes:
 - a. A minimum of 12 hours of outside (“recreational”) movement per day, allowing for activities such as grocery shopping, job seeking, and medical visits as well as recreation.⁸⁷ By extension, this entails the banning of home confinement,⁸⁸ which prevents any movement outside the home.
 - b. An additional minimum of 6-12 hours of movement per day for work purposes, including travel time to and from work.⁸⁹

2. Allow movement for voting purposes in accordance with the United States Constitution⁹⁰ and the Voting Rights Act.⁹¹
 - a. People on monitors must not face restrictions that inhibit their ability to vote freely. They should be able to request movement expansion for voting purposes, to be reviewed and automatically granted within 24 hours.
3. Allow for individuals to request temporary and permanent movement expansions based on special events, necessities and emergencies.
 - a. Authorities must respond to requests for movement expansions in a timely manner – for temporary requests, within 48 hours and for permanent requests, within a week. Failure to respond to such requests should result in the automatic approval of the requested movement hours.
 - b. Only proof of attendance (such as verbal or written confirmation from supervisor or sponsoring party) before the specified event should be required to extend movement.
 - c. Movement expansions for caretaking, voting, family events, jobs, and medical care should be automatically granted upon reasonable notice, including but not limited to a phone call from supervisor/sponsor, event flyers, and written proof of attendance.
 - d. If any request for expansion is denied, the relevant authority should explain the reason for the decision both orally and in detailed, plain-language writing, in accordance with each person’s cognitive/intellectual needs.

RECOMMENDATION 8

Provide Credit for Time Served

Electronic monitors dramatically restrict peoples’ daily movements, and in many jurisdictions, subject them to criminal charges for “escape” if they tamper with or remove the device.⁹² Accordingly, people subjected to EM terms must be considered “in custody” and receive incarceration time credits for time served.⁹³ This means that, when calculating days served in custody – whether for sentencing after conviction or revocation of probation or parole – each day served on EM is counted the same as a day served in jail or prison.

RECOMMENDATION 9

Ensure Privacy and Data Protection

Authorities and/or private companies must respect the privacy rights of individuals on electronic monitors, including by promoting minimally invasive technology. EM is just one example of such surveillance. Monitors should not be enhanced to enable, for example, audio or video recording, voice recognition, facial recognition, inflicting pain, or spying on family members and loved ones.⁹⁴

In addition to protecting individual privacy, governments must regulate EM authorities and private companies to ensure that they maintain fair data collection practices.⁹⁵ Data should be anonymized and aggregated, so that monitored individuals’ information is not easily discernable. Authorities must regulate the method of collection, retention, and storage of data by:

1. Ensuring that personal data (i.e. data detailing a person’s daily movements or financial information) are not stored/sold by private EM companies, governments, or agencies.
2. Setting concrete time frames for deleting data.⁹⁶

3. Limiting outside access to data and restricting the type of data collected for unspecified purposes, including limiting police access to EM data without a warrant.

RECOMMENDATION 10

Ensure Adequate Data Collection and Transparency

Relevant authorities and/or private EM companies should collect data only to help ensure transparency and effectiveness. Authorities should record information on who is subjected to EM, including demographic information (such as race, gender, income, and disability status), the underlying charge or crime, the length and restrictions of monitoring, types of violations and imposed penalties, who bears the financial burden of monitoring, and the final outcomes of the person's involvement with the criminal legal system. Annual reporting requirements should be built into all EM contracts.

Authorities should also provide data detailing exactly what technology/capabilities are being used and how many people are being monitored.

Ultimately, governments should require authorities and/or companies to submit the data collected, so that governments can publish annual reports on EM programs' use and effectiveness. Such reports will help governments protect against harmful disparities and establish a protocol of accountability for entities administering EM.

Conclusion

The rise of electronic monitoring over the past two decades has resulted in the expansion of e-carceration – increasing surveillance, eroding civil liberties, and sending many people back to traditional incarceration for technical violations. This expansion ignores the evidence that EM fails to demonstrably protect public safety, prevent flight, or advance rehabilitation, while causing immense harm to those under surveillance, at a significant financial toll. To preserve civil liberties and mitigate harm, this practice must ultimately be replaced. Where it continues, its scope must be strictly limited to minimize its inherent negative impacts.

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Endnotes

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- 10 Weisburd, “Punitive Surveillance,” 151 (explaining people may choose monitors given the limited, and unfair, choice of physical incarceration or punitive surveillance).
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- 52 *Griffin*, 483 U.S. at 875 (warrantless searches of people on probation must be reasonable).
- 53 See *Norris v. Premier Integrity Sols., Inc.*, 641 F.3d 695, 700-01 (6th Cir. 2011) (finding that although the officers subjected Norris to a pretrial search that was highly intrusive, he had a significantly reduced expectation of privacy because “he was on pre-trial release awaiting criminal prosecution and, as a condition of such release, had agreed that he would undergo drug testing”); see also *Marjamaa v. Lasley*, No. 2:19-CV-224, 2021 WL 4926292, at *1, 5-6 (W.D. Mich. Sept. 16, 2021) (citing *United States v. Salerno*, 481 U.S. 739, 749 (1987)) (determining that Marjamaa’s pretrial EM status had “great bearing on his reasonable expectation of privacy in the motel room” and explaining that while pretrial release programs “are distinct from probation or parole in that they are not forms of punishment, their means and objectives often overlap” because “the government’s interest in preventing crime by arrestees is both legitimate and compelling”).
- 54 *United States v. Scott*, 450 F.3d 863, 871 (9th Cir. 2006) (citing *United States v. Karo*, 468 U.S. 705, 714 (1984)) (finding that even if the government’s ostensible non-law enforcement purpose was to ensure pretrial releasees appear in court and to protect the interest in judicial efficiency, “the connection between the object of the test (drug use) and the harm to be avoided (non-appearance in court) is tenuous” and

explaining that “[p]rivate residences are places in which the individual normally expects privacy free of governmental intrusion not authorized by a warrant, and that expectation is plainly one that society is prepared to recognize as justifiable.”); *see also* *Payton v. New York*, 445 U.S. 573, 589 (1980) (“The Fourth Amendment protects the individual’s privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual’s home....”).

- 55 *Carpenter*, 138 S. Ct. at 2217 (internal quotation marks omitted). Nevertheless, to date, few courts have found EM to be an unreasonable search. Weisburd, “Punitive Surveillance,” 177, 183.
- 56 Kate Weisburd et al., “Electronic Prisons: The Operation of Ankle Monitoring in the Criminal Legal System.” *George Washington University Law Faculty Publications* (2021), 15, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3930296 (Providing a table breaking down user fees according to corresponding agency. Nebraska’s Lancaster County Community Corrections Department charged the lowest amount for monitoring (\$1.50 per day) and California’s Sacramento County Sheriff’s Department charged the highest amount (\$47 per day) for people who were self-employed.).
- 57 Hatton and Smith, “Research on the Effectiveness” (providing an analysis of available data on pretrial court date reminder systems finding that most state’s programs resulted in statistically significant improvements for failure to appear rates).
- 58 PPSO, “Supervision Costs Significantly Less than Incarceration in Federal System,” July 18, 2013, <https://www.uscourts.gov/news/2013/07/18/supervision-costs-significantly-less-incarceration-federal-system> (“In 2012, the annual cost of placing an offender in a Federal Bureau of Prisons institution or federal residential reentry center was roughly eight times the cost of placing the same offender under postconviction supervision by a federal probation officer. Pretrial detention for a defendant was nearly 10 times more expensive than the cost of supervision of a defendant by a pretrial services officer in the federal system.”).
- 59 Council of State Governments Justice Center, “Confined and Costly: How Supervision Violations are Filling Prisons and Burdening Budgets,” June 2019, <https://csjjusticecenter.org/wp-content/uploads/2020/01/confined-and-costly.pdf>.
- 60 James Kilgore, “Punishing the Criminalized Sector of the Working Class,” *Against the Current* 281 (May-June 2022), <https://againstthecurrent.org/atc218/punishing-the-criminalized-sector-of-the-working-class/#R2> (crediting Malkia Devich-Cyril with coining the term “e-carceration”); and Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2012) (“A growing number of scholars and activists predict that “e-gentrification” is where we’re headed as entire communities become trapped in digital prisons that keep them locked out of neighborhoods where jobs and opportunity can be found.”).
- 61 “ACLU, Community Control over Police Surveillance: Technology 101,” <https://www.aclu.org/report/community-control-over-police-surveillance-technology-101> (explaining harms of invasive surveillance technology).
- 62 Brice Cook et al., “Using Behavioral Science” (explaining that simple supportive interventions like text message reminders for court dates and transportation assistance were effective compared to punitive and surveillance tools).
- 63 Hatton and Smith, “Research on the Effectiveness” (providing an analysis of available data on pretrial court date reminder systems finding that most state’s programs resulted in statistically significant improvements for failure to appear rates); and Rebecca Brough et al., “Can Transportation Subsidies Reduce Failure to Appear in Criminal Court,” University of Notre Dame, Lab for Economic Opportunities, April 2021, <https://leo.nd.edu/assets/429962/can-transportation-subsidies-reduce-failure-to-appear-in-criminal-court-brough-phillips.pdf> (finding that “while transportation subsidies might be more effective in reducing FTAs if combined with other supportive services or outreach, transportation subsidies alone have limited benefits for this aspect of criminal justice”); Adam Uren, “Low-income Suspects to Get Free Rides to Court under Minneapolis Pilot,” *Bring Me The News*, January 4, 2019, <https://bringmethenews.com/minnesota-news/low-income-suspects-to-get-free-rides-to-court-under-minneapolis-pilot>; and Mukhtar M. Ibrahim,

“Minneapolis will Offer Free Rides to Court for Those Charged with Low-level Offenses,” *Star Tribune*, January 16, 2019, <https://www.startribune.com/minneapolis-will-offer-free-rides-to-court-for-those-charged-with-low-level-offenses/504458952/>.

- 64 Alicia Bannon and Janna Adelstein, “The Impact of Video Proceedings on Fairness and Access to Justice in Court,” Brennan Center for Justice, September 2020, <https://www.brennancenter.org/our-work/research-reports/impact-video-proceedings-fairness-and-access-justice-court> (“Remote technology has been a vital tool for courts in the midst of a public health crisis. But the use of remote technology – and its possible expansion – also raises critical questions about how litigants’ rights and their access to justice may be impacted, either positively or negatively, and what courts and other stakeholders can do to mitigate any harms.”)
- 65 OJP, “Multilevel Analysis of the Relationship Between Labor Surplus and Pretrial Incarceration,” by Stewart J. D’Alessio and Lisa Stolzenberg, May 2002, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/multilevel-analysis-relationship-between-labor-surplus-and-pretrial> (finding increased pretrial incarceration at times of increased unemployment. Unemployed defendants were found to be 2.5 times more likely to face pretrial incarceration than were their employed counterparts); and OJP, “Unemployment and Crime,” by R Tarling, 1982, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/unemployment-and-crime-1> (finding “[s]ome evidence of a relationship between unemployment and crime persists, however, although it appears that crime and unemployment are interrelated in some complex way with other aspects of economic disadvantage or social deprivation.”).
- 66 Tennessee, Shelby County Veterans Court, “Veterans: About Us,” <https://veteranscourt.shelbycountyttn.gov/content/veterans-about-us>.
- 67 Alaska, Department of Corrections, “Alaska’s New Pretrial Release System,” https://doc.alaska.gov/pnp/pdf/pretrial_fact_sheet.pdf (individuals can be released into custody of third-party custodians); and Elizabeth Johnston, “Sentenced by Tradition: The Third-Party Custodian Condition of Pretrial Release in Alaska,” *Alaska Law Review* 26, no. 2 (2009), 318, <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1047&context=alr>.
- 68 Unless noted otherwise, “authorities” include government actors with the authority to impose EM, including courts, pretrial services agencies, probation/parole officers, and parole boards.
- 69 *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1971) (“the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a ‘grievous loss’ on the parolee and often on others... the liberty is valuable and must be seen as within the protection of the Fourteenth Amendment”); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same for probation).
- 70 Authorities should distinguish inadvertent failure to appear from willful flight. The bases or “risks” upon which authorities can impose individualized conditions should be limited to imminent and willful flight or imminent serious physical harm to a reasonably identifiable person. Harm to a “specific” or “reasonably identifiable” person may encompass persons whose exact identities are unknown.
- 71 *See Stack v. Boyle*, 342 U.S. 1, 5 (1951).
- 72 While standards differ among jurisdictions, courts generally consider whether supervision conditions are reasonably necessary to protect public safety and advance rehabilitation. *See, e.g., United States v. Knights*, 534 U.S. 112, 120-21 (2001) (describing government’s interest in imposing supervision search conditions as promoting “integrat[ion] back into the community” and limiting risk of future crimes); *Penn v. Board of Parole and Post-Prison Supervision*, 451 P.3d 589, 605 (Or. 2019) (*en banc*) (Oregon parole board can “impose any condition that, in light of the supervised person’s individual circumstances, the board reasonably could view as essential to or required for one or both of its broad objectives of ‘promoting’ public safety and ‘assisting’ in an offender’s reformation.”); *United States v. LaCoste*, 821 F.3d 1187, 1190-91 (9th Cir. 2016) (citing 18 U.S.C.A. § 3583(d)(2)) (federal supervision conditions must involve “no greater deprivation of liberty than is reasonably necessary” to advance deterrence, protection of the public, or rehabilitation); *State v. Rowan*, 814 N.W.2d 854, 860 (Wis. 2012) (Wisconsin supervision conditions (1) cannot be “overly broad”

- and (2) must be “reasonably related to the person’s rehabilitation” and “protection of the public”). While rehabilitation is considered a legitimate goal of supervision, given evidence that EM actually *undermines* rehabilitation, this should never be a sufficient justification to impose EM.
- 73 *See id.*
- 74 The ACLU recommends governments bear the full costs of monitoring. See Recommendation 5.
- 75 This could be accomplished through legislative reforms. *See, e.g.,* Mich. Court Rule 6.106(H), <https://michigancourtrules.org/mcr/chapter-6-criminal-procedure/rule-6-106-pretrial-release/>.
- 76 For more detailed recommendations regarding supervision revocation, see Frankel, “Revoked,” 211-23.
- 77 Douglas L. Colbert et al., “Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail,” *Cardozo Law Review* 23, no. 5 (2002), 1720, https://digitalcommons.law.umaryland.edu/fac_pubs/291/ (discussing findings from an 18-month study of representation during bail proceedings in Baltimore, Maryland).
- 78 *Id.*
- 79 “Legal proceeding” includes court hearings and supervision proceedings that might be before administrative bodies that are not courts, such as parole boards or administrative law judges.
- 80 James Kilgore and Myaisha Hayes, “Guidelines for Respecting the Rights of Individuals on Electronic Monitors,” *Media Justice*, 2019, <https://mediajustice.org/wp-content/uploads/2019/03/electronic-monitoring-guidelines-final.pdf> (establishing guidelines that protect the rights of people on EM and stating that “governing jurisdictions should bear all costs of the technology and supervision. Monitored Individuals and their family members should pay no daily fees or other charges.”).
- 81 Tim Prudente, “Delayed Trials, Home Detention and Hundreds of Dollars in Ankle-Monitoring Costs,” *The Washington Post*, September 9, 2020, https://www.washingtonpost.com/local/public-safety/delayed-trials-home-detention-and-hundreds-of-dollars-in-ankle-monitoring-costs/2020/09/09/0dc354e6-f215-11ea-b796-2dd09962649c_story.html (for example, Irvin Haygood was charged \$375 per month to be on EM causing financial anxiety and driving him into debt); and Kofman, “Digital Jail” (“Across the country, defendants who have not been convicted of a crime are put on ‘offender funded’ payment plans for monitors that sometimes cost more than their bail” regularly by private companies”).
- 82 Evan Seronffsky, “SF Sheriff Wipes Out Electronic Monitoring, Community Service Fees for Convicts,” *SFGate*, February 6, 2018, <https://www.sfgate.com/news/article/SF-Sheriff-wipes-out-electronic-monitoring-12556420.php> (The board of supervisors of President London Breed noted that EM “unfairly burden[s] the poor and disproportionately affect people of color, hurting their chance at rehabilitation.”).
- 83 *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983).
- 84 Authorities should impose only the forms of monitoring that require the fewest resources to operate. For instance, devices that require a landline telephone should be avoided because many individuals do not have landlines, internet, or stable homes. See Stephanie Lacambra, “Practical Advice for Defense Attorneys with Clients Who May Be Placed on Electronic Monitoring,” Electronic Frontier Foundation, accessed August 26, 2021, <https://www.eff.org/document/em-practical-advice-0>.
- 85 The Americans with Disabilities Act defines a person with a disability as someone who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Impairments include mental health disorders and learning disabilities. 42 U.S.C. § 12102. Kate Weisburd, “Legal Challenges to Electronic Monitoring/GPS Monitoring of People in the Criminal Legal System,” 7 (2021) (on file with author, who can furnish a copy upon request), <https://www.law.gwu.edu/kate-weisburd>; and DOJ, Civil Rights Division, “Examples and Resources to Support Criminal Justice Entities in Compliance with Title II of the Americans with Disabilities Act” 2017, <https://www.ada.gov/cjta.html>).
- 86 *Morrissey*, 408 U.S. at 482; *Gagnon*, 411 U.S. at 782.
- 87 Idowu, “Frontiers of Incarceration,” 15 (citing Kilgore, “Progress or More of the Same?” 29).
- 88 Association for the Prevention of Torture, “Outdoor Exercise,” accessed January 15, 2022, <https://www.apt.ch/en/knowledge-hub/detention-focus-database/life-prison-regime-and-activities/outdoor-exercise> (“All detainees have the right to a minimum of one hour outdoor exercise per day. This is crucial for their mental and physical well-being.”); American Bar Association, “Standards for Criminal Justice: Treatment of Prisoners” in *An International Guide to Corporate Internal Investigations* (Washington, D.C.: American Bar Association, 2011), 95 https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners/ (“Correctional authorities should provide all prisoners daily opportunities for significant out-of-cell time and for recreation.”).
- 89 Work/employment-related movement hours should be considered distinct from, and granted in addition to the minimum movement hours allowed per day.
- 90 U.S. Const. Amend. XIV §§ 1-2 (providing equal protection under law); U.S. Const. Amend. XV § 1 (prohibiting voting discrimination on the basis of race, color, or previous condition of servitude); U.S. Const. Amend. XIX (prohibiting voting discrimination on the basis of sex); U.S. Const. Amend. XXIV § 1 (prohibiting voting discrimination because of failure to pay poll tax); and U.S. Const. Amend. XXVI § 1 (prohibiting voting discrimination because of age for persons 18 years and older).
- 91 52 U.S.C. § 10101.
- 92 Kilgore et al., “No More Shackles,” 5-6 (While many jurisdictions deny that EM is a form of incarceration, “more than twenty states that define tampering with an electronic monitor or removing the monitor as a crime of escape.”).
- 93 While some jurisdictions provide credit for time served on EM, *see, e.g., State v. Swiger*, 149 P.3d 372, 373-74 (Wash. 2006); many do not, *see, e.g., Com. v. Kyle*, 874 A.2d 12 (Pa. 2005); *Anderson v. State*, 791 N.W.2d 710 at *4 (Iowa App. 2010) (collecting cases from jurisdiction including Idaho, Kansas, Nebraska, Ohio, Texas), and others do so on a case-by-case basis, *see, e.g., Matthews v. State*, 152 P.3d 469, 473 (Alaska 2007).
- 94 Kilgore and Hayes, “Guidelines for Respecting the Rights of Individuals on Electronic Monitors” (recommending “[e]lectronic monitors should not be enhanced to enable monitoring biometrics or brain activity, recording audio or video, inflicting pain, remotely administering pharmaceuticals, or spying on family members and loved ones. The should also not be implanted as microchips.”).
- 95 James Kilgore and Emmet Sanders, “Electronic Monitoring Isn’t a More Humane Form of Prison. Here’s Why,” *Wired*, August 8, 2018, <https://www.wired.com/story/opinion-ankle-monitors-are-another-kind-of-jail/> (“[EM] data typically belongs to a department of corrections or local sheriff’s department, but several branches of law enforcement often have access ... In the US, at least two companies ... have contracts that specify the data will be kept a minimum of seven years, often long after the person is off the monitor.”).
- 96 Kilgore and Hayes, “Guidelines for Respecting the Rights of Individuals on Electronic Monitors” (recommending respect for privacy rights in use of EM); Chicago Council of Lawyers, “Victory: Illinois Just Passed the Pretrial Fairness Act and Ended Money Bail,” accessed January 15, 2022, <https://chicagocouncil.org/illinois-just-passed-the-pretrial-fairness-act-and-ended-money-bail/> (The Illinois’ Pretrial Fairness Act has a data collection provision that could act as a model for other states and counties. This act requires that data on outcomes at bond hearings and the bond status of people be collected and made publicly available for jails in every county. The Administrative Office of the Illinois Courts is also convening a Pretrial Practices Data Oversight Board to “oversee the collection and analysis of data regarding pretrial practices in circuit court systems.” This data collection provision supports both Illinois’ evaluation of the efficacy of this act and public oversight of county practices).

