

EM Tracking, Ethics and the Recommendation CM/Rec(2014)4 of the Committee of Ministers to member States on electronic monitoring

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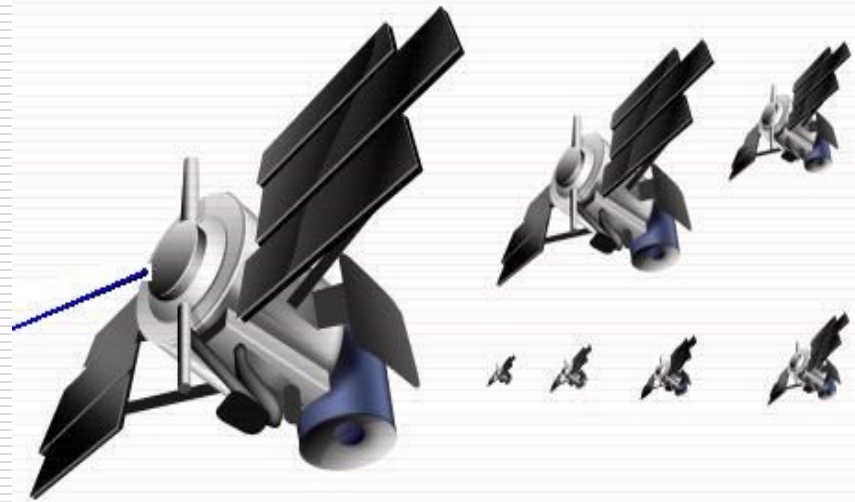
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Penally, EM is Not One Thing

- ❑ Radio frequency (RF) EM for curfews
- ❑ GPS satellites for tracking and exclusion
- ❑ Victim protection using GPS.
- ❑ Biometric voice verification for tracking at several single locations
- ❑ Kiosk-based reporting in probation offices
- ❑ Alcohol Monitoring (two kinds)
- ❑ Inmate monitoring within (open prisons]



- ❑ ARE THE EFFECTS THE SAME?
 - ❑ ARE THE ETHICAL AND LEGAL ISSUES THE SAME?
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Penal Ethics and EM

- **Jurisprudence** – especially proportionality (intensity, duration and judicial accountability of EM regimes)
 - ❑ **Impersonal Surveillance** vs caring social work?
 - ❑ **EM is inadequate** as a high-tariff punishment.
 - ❑ The **visible stigma** of the ankle bracelet.
 - ❑ The effect on **third parties**
 - ❑ **(Un)removable straps** - health and safety issue
 - ❑ **Human rights:** privacy and freedom of movement, data protection.
 - ❑ **Council of Europe CM Rec 2014(4)**
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EM - some observations

- EM has a **crime reduction effect** for the duration of the monitoring period (especially shorter ones), but not afterwards. No reason why it should.

 - EM is **always about control** but can serve both punitive and rehabilitative purposes depending on how judiciary or executive choose to combine it with other measures (or not), and to enforce it (flexibly?).

 - EM can be used to create **regimes of variable intensity and duration**, some more intrusive - and capable of replacing prison - than others.

 - Offenders and families can find some EM regimes legitimate and helpful - **onerous but preferable to prison**. But not always - EM can seem as bad as prison. (See James Kilgore, USA - “the voice of the monitored” website)

 - EM used in 40 countries and seems likely to expand because:
 - Penal acceptability - modest success at reduced reoffending/cost
 - Normalisation of digital technology in society. Digital connectedness for pleasure, convenience and necessity is ubiquitous - EM is “**coercive connectedness**” (court ordered).
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GPS Tracking - what's different?

- ❑ Monitoring movement/mobility in real-time or retrospectively + exclusion and inclusion zones + data analytic tools to identify patterns and anomalies (and pre-empt crime?)
 - ❑ Works in conjunction with mobile phone system
 - ❑ Notionally higher tariff than (RF) EM curfews - but is it or need it be?
 - ❑ Requires battery charging - and penal response to failure to do so (therefore add curfew?)
 - ❑ Can be combined with geo-sensing technologies like Google StreetView
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Council of Europe

- **The Council of Europe is the continent's leading human rights organisation.** It counts 47 member states. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and **the rule of law.**



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Recommendations on EM

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

**Recommendation Rec(2014)4
of the Committee of Ministers to member states
on the Electronic Monitoring**

*(Adopted by the Committee of Ministers on 19 February 2014
at the 1192nd meeting of the Ministers' Deputies)*

“Soft Law” - not legally binding - but ECHR could use it.

Done by the (standing) Committee on Penological Affairs (PCCP)

Nine countries, 2 experts - worked over two years

Some follow-up workshops for member & accessions countries

Scope of the Recommendation

"The aim of the recommendation is to define a set of basic principles related to ethical issues and professional standards enabling national authorities to provide just, proportionate and effective use of electronic monitoring **in full respect of the rights of the persons concerned.**

- A belated European response to EM
- Background anxieties about it



Apply general penitentiary principles

- use, types, duration and modalities shall be regulated by law
 - decisions shall be made by judiciary or allow judicial review
 - no discrimination on grounds of gender, race ...
 - terms of duration and intrusiveness shall be proportional to the offence
 - no restriction of rights and freedoms to a greater extent than provided by the decision imposing it
 - Staff shall be adequately and regularly trained (prevention of abuse of authority)
 - there shall be regular government inspection
 - Cost-efficiency is not sufficient grounds for penal decision-making
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EM-specific issues to be dealt with by law

- ❑ Ideally use as alternative to custody, not low tariff
 - ❑ Equivalence of EM days and prison days
 - ❑ promising security for victims by restricting the offender
 - ❑ use of the gathered data (data protection)
 - ❑ Limit police access to GPS data for **investigation**
 - ❑ impact on family and third parties (intrusion into household)
 - ❑ exclusion zones (size and number of)
 - ❑ possibility of EM for life (always reviewable)
 - ❑ demand for the offender's consent (does this make EM ok?)
 - ❑ retain government responsibility (limit outsourcing)
 - ❑ offender contribution to costs (not desirable)
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Recommendation CM / Rec(2014)3 concerning dangerous offenders

- Preventive Supervision may be applied as alternative to secure preventive detention (...) supervision may consist of:
 - 24 III prohibition from leaving the place of residence...
 - 24 IV prohibition from approaching the victim or
 - 24 V prohibition from visiting certain areas or places...
 - 24 VI prohibition from residing in certain places...
 - 24 VII prohibition from performing certain activities..
 - (...)

24 X. the use of electronic devices which enable continuous monitoring (electronic monitoring) in conjunction with one or some of the measures above

Radicalisation guidelines 2015/2016

- Guidelines for prison and probation services regarding radicalisation and violent extremism
 - 39. Electronic monitoring schemes and other control measures shall be combined with other professional interventions and supportive measures aimed at the social reintegration of radicalised offenders.
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Monitoring Terrorists

Even in the context of recent activities against radicalisation and violent extremism Electronic Monitoring is apparently being considered to be a useful tool ... in blind hope of being able to observe the future terrorist while preparing the attack.

Christian Estrosi the mayor of Nice expressed support for a plan to track suspected terrorists



Some Very Broad Concluding Observations

- ❑ The moral and political argument for **keeping prison use to a minimum** requires attention to all possible alternatives, including EM. Society could benefit.
 - ❑ All forms of EM technology could, used modestly, **create imaginative and useful forms** of offender supervision and victim protection.
 - ❑ The commercial “**EM industry**” has views of its own about the future of EM - **cost-efficiency** can never be main criteria for any penal intervention
 - ❑ **EM could be used for terrible purposes** so it is best to envelop it in humanistic values and embed it institutions which will constrain its use. Human RIGHTS might not be enough.
 - ❑ Humanism - **an ethic of care and mutuality** - is vital to penal practice, and need not (but could) be impeded by digital technology.
 - ❑ EM will not be used **wisely and well** unless other forms of community supervision are not also used wisely and well (especially probation).
 - ❑ **Avoid problematising crime and penalty** in a way that lends itself to ever increasing technological solutions. Not easy!
 - ❑ As well as thinking in terms of an ethics of law and punishment, think also in terms of **an ethic of digital technology** - how far do we want it to go in our lives? How much can - and should - it be resisted?
 - ❑ **EM is not simply a neutral tool** to be used for good or ill - the decision to use a “machine” over “man” is itself an ethical decision - **and sometimes it is right to do so.**
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