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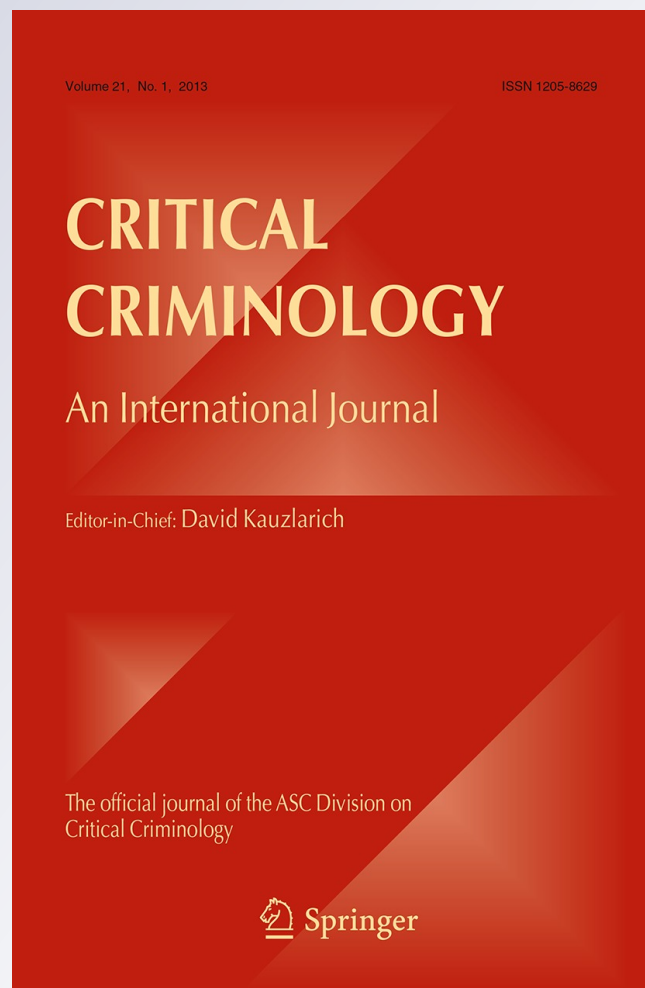
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## Progress or More of the Same? Electronic Monitoring and Parole in the Age of Mass Incarceration

James Kilgore

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**Abstract** Often billed as an “alternative to incarceration”, electronic monitoring (EM) is widely trumpeted as a key method of reducing incarceration costs while maintaining public safety. However, little research has been done which closely examines EM in the historical context of mass incarceration and the paradigm of punishment. This article focuses on the use of EM in parole in that broader context. Through research into the legal and policy frameworks for EM as well as via personal interviews with people who have been on EM while on parole, the author concludes that the present EM practice reinforces the dominant punishment paradigm and places major obstacles in the way of the successful re-entry for people returning from prison. He concludes with some concrete recommendations about changes in law, policy and implementation guidelines that would allow EM to operate in an environment more conducive to rehabilitation.

The US criminal justice system has been using electronic monitoring (EM) for more than two decades. Today we find people in the following categories wearing an ankle bracelet as the result of an encounter with the law: people on parole or probation, those with sex offense convictions, immigrants awaiting adjudication on their status, individuals involved in domestic violence cases, people found guilty of DUIs or other traffic offenses, those charged with minor transgressions such as trespassing or municipal ordinance violations, and young people facing charges in juvenile courts. Moreover, the present crises of prison overcrowding and state budget deficits have pushed EM into the carceral limelight. California has placed thousands of people on EM as part of its realignment program. Oklahoma has implemented large-scale EM as a key component of an early release policy. EM has become a key menu item on the list of “alternatives to incarceration.” A technology that journalist Raab (1991) once labeled the “electronic ball and chain” seems destined to proliferate.

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However, as presently implemented, the majority of EM regimes are fully in line with the paradigm of punishment that has dominated the criminal justice system for more than three decades. UCLA policy expert Mark Kleiman accurately reflects this view. He sees EM as a way to “fully punish him (the criminal) for what he did in the past and prevent him from what he might do in the future—without paying his room and board.”<sup>1</sup>

Similarly, the body of research on the topic has generally failed to address the issue of the context within which EM operates. While a considerable amount of work emerged, including at least four bibliographic essays (Development Services Group 2009; Lilly 2006; Vollum 2002; N.A. 1996) and an entire periodical devoted to the issue (*The Journal of Offender Monitoring*) the focus is predominantly on EM in relation to issues such as rates of recidivism, cost, and the efficiency of EM for law enforcement personnel.<sup>2</sup> Researchers have largely ignored the fact that the application of EM has taken place during the advance of mass incarceration, a process informed by a paradigm which prioritizes punishment over rehabilitation. Thus, our understanding of the overall impact of EM remains extremely limited.

This essay will contribute to a broader perspective on EM by examining EM in the context of mass incarceration, focusing on people on parole.

I have selected the case of people on parole for three reasons. First, a significant portion of the research on EM has dealt with people on parole, in particular, two major recent studies by Bales et al. (2010) and Gies et al. (2012). Second, of all the applications of EM to date, the use of EM for people on parole has been the most closely associated with the potential of the technology to rehabilitate. Third, of the cohorts to whom EM has been applied, those on parole are the most extensively covered by legislation, regulations and supervisory personnel. Hence, what happens in the world of parole in regard to EM is likely to heavily influence the development of EM regimes for other groups.

I will begin by briefly describing the basic contours of the era of mass incarceration and the paradigm of punishment. Next, I will provide general historical background for EM followed by a description of the technology and current regimes applied to those being monitored. From there I will proceed to a discussion of how the context of mass incarceration impacts the potential for EM to be part of a process of rehabilitation or successful re-entry, rehabilitative function. My conclusion will present some recommendations for changes to EM policy and practice which could contribute to a more rehabilitation-oriented, human rights-centered approach.

## The Historical Context: Three Decades of Mass Incarceration

The staggering figures of the expansion of US prisons and jails since 1980 are well known. The number of people incarcerated escalated from just over half a million in 1980 to nearly 2.4 million in 2010 with a concomitant increase in the ranks of those on parole and probation, from 1.3 million to slightly under five million (US Department of Justice 1980; Guerino et al. 2011; Glaze and Bonczar 2011). Though this phenomenal carceral growth is unprecedented in human history, historians and social scientists studying the period have

<sup>1</sup> Cited on web page <http://berkeley.news21.com/behindbars/parole/tracked/> accessed 6-17-11.

<sup>2</sup> There are a few exceptions. The work of Lilly (2006), Gable (n.d.), Payne et al. (2009), Shklovski et al. (2009), and Staples and Decker (2011) have pointed out some of the problematic aspects of electronic monitoring and house arrest. However, none fully situates the technology in the context of mass incarceration.

generally ignored mass incarceration (Thompson 2010). Only recently have a cohort of writers and activist organizations (Perkinson 2010; Thompson 2010; Alexander 2009; Wacquant 2009a, b, 2007; Loury et al. 2008; Marable et al. 2007; Western and Wildeman 2007; Gottschalk 2007; Gilmore 2007; Davis 2003, 2005) begun to try to place this issue on the national political agenda.<sup>3</sup> I will draw on their work here to contextualize EM.

The first relevant feature of mass incarceration is the abandonment of rehabilitation as a central goal of criminal justice. Punishment has become the dominant paradigm. Logan and Gaes (1993), then of the Federal Bureau of Prisons neatly summarized the official justification of this ideological shift in a 1993 report:

[We note that] punishment is preferable to rehabilitation as an aim of criminal justice and, in particular, that punishment through confinement is the most appropriate mission for a prison. Meta-analysis of research on rehabilitation has not yet established that any particular method of treatment is significantly and reliably effective. We still do not know what “works” in correctional treatment, but it really wouldn't matter even if we knew, because the fundamental purpose of imprisonment is not the correction but the punishment of criminal behavior. (1)

A range of authors have detailed the history of this abandonment of rehabilitation for punishment. Alexander (2009) describes this paradigm shift as a political maneuver by right-wing Republicans to attract conservative democrats as well implemented by expanding policing resources, legal mandates and administrative infrastructure to do so. Gottschalk (2007) has a slightly difference perspective, arguing that long-term institutional factors have facilitated these changes. Regardless of causation, the result has been a serious cutback for rehabilitative programs inside prison and post-release. In particular, second chance opportunities through welfare provision, education, employment, and counseling have been either the victims of budget cuts or legal banning (Gilmore 2007; Wacquant 2009a, b, 2010; Mauer 2006; and Perkinson 2010). A key aspect of this demise of rehabilitation has been the transformation of parole and probation. Control and punishment have replaced counseling and support as the core business of post-release policy (Hallett 2011; Wacquant 2009a, b; Mauer 2006; Visher et al. 2004). A huge jump in recidivism has accompanied this shift, from 28 % in 1976 (US Department of Justice 1980, 670) to more than 40 % today and over 60 % in some states (Pew Center on the States 2011, 13). This escalation primarily reflects tighter controls and the creation of new categories of transgressions rather than an increase in criminal activity by people on parole. In many jurisdictions, “technical violations” have become the main triggers of reincarceration. Such technical violations include missing a meeting with a parole officer, not notifying an employer of parole status, testing positive for drugs, or, if a person is on EM, leaving the house without permission. A 2011 study by the Pew Center on the States showed that 25 % of people released in 2004 went back to prison on technical violations within 3 years (Pew Center on the States 2011, 10).

The second crucial feature of the era of mass incarceration has been the transformation of corrections into an industry motivated by the ethos of business, what some people have referred to as the “prison-industrial complex” (Davis 2003; Parenti 1999). While most of the prison expansion has been driven through state and Federal government, private capital has become involved in mass incarceration in at least two important ways.

<sup>3</sup> Important organizations in this movement include all of us or none, citizens united for rehabilitation (CURE), critical resistance, families against mandatory minimums, the Fortune Society, Justice Policy Institute, prison policy initiative, the real costs of prisons projects, and the sentencing project.

First, business has reaped profits from all aspects of prison expansion. Revenue sources have included construction deals, financing, provision of supplies and equipment as well as, rendering services like transportation, food, maintenance, health care and education (Herivel and Wright 2007).

Secondly, there is the growth of private corrections corporations. While their presence is frequently overemphasized, their influence has been growing. From 1995 to 2008, the population in privately run prisons more than tripled while the overall ranks of the incarcerated increased by little over half (Justice Policy Institute 2011, 10). These corporations have particular strength in states like Texas, Florida and New Mexico as well as with the Federal government. As we will see below, EM is beginning to appear on their investment radar.

For both state corrections officials and prison corporations, increasing beds and/or market share involves sophisticated lobbying and advocacy efforts. Such activity typically focuses on promoting harsher sentencing laws and tougher parole regulations as well as skirting requirements for public approval of construction bonds. One of the most blatant recent examples of the role of the private corrections corporations in such policy areas was CCA's involvement in actively backing the passage of SB 1070 in Arizona. By tightening the immigration regime, the law also created the need for more immigration detention centers, a key growth sector for the likes of CCA and the GEO Group (Sullivan 2010).

Lastly, while people of color have endured disproportionate incarceration historically, the last three decades have been unique. In the late 1970s roughly two-thirds of those incarcerated were white and one-third was people of color. Today, those proportions are just about reversed (Wacquant 2009a).

The major, but not sole, victims in this process have been poor, working class African-American males. Alexander (2009), Wacquant (2009a) and Mauer (2006) have emphasized how through policies and political processes largely centered around the War On Drugs, law enforcement agencies have carried out a full-scale assault on low-income African-American communities across the US. As a result, while African-Americans make up only 13 % of the general population, they now comprise nearly 40 % of those in state and federal prisons. On a per capita basis the incarceration rate for "black" males in 2010 was more than six times that for those categorized as "white" (Guerino et al. 2011).

While Latinos have not suffered in the same proportion as African-Americans, their incarceration rate is nearly three times higher than that of whites. More importantly, since 9/11 and the increased focus on tightening immigration flows, the number of Latinos (typically categorized as "Hispanics") in prisons has increased by more than 50 % while the prison population of African-Americans has slightly declined (Guerino et al. 2011). With the passage of tighter anti-immigrant laws in Arizona, Georgia, Alabama and other states, it is likely that the cohort of Latinos behind bars will continue to rise.

Race, however, is not the only factor at work. The vast majority of those behind bars, including whites, are poor (Wacquant 2010; Reiman and Leighton 2006; Mauer 2006). In essence, mass incarceration is but another reflection of a new, more unequal United States. The title of a classic study of incarceration in the 1970s seems more relevant than ever: "the rich get richer and the poor get prison" (Reiman and Leighton 2006).

These then are the major features of mass incarceration which inform my analysis of EM in the case of people on parole.<sup>4</sup>

<sup>4</sup> While a detailed analysis of the contemporary state is beyond the scope of this paper, it is worth noting that these three features of mass incarceration have not evolved in isolation. They reflect a broad process of the restructuring of the state along neoliberal lines during the same period. For our purposes, the key

## Electronic Monitoring: History and Modes of Operation

EM was first developed for criminal justice usage by the Schwitzgebel brothers in the 1960s. These eccentric acolytes of Timothy Leary at Harvard thought of EM as a way to build networks of support for those on parole or probation. However, their idea never caught on.

It took until 1983 for the EM concept to take a new twist and begin to blossom. In that year the first ankle bracelet sprang from the imagination of Jack Love. This New Mexico judge drew his inspiration from reading a Spider Man cartoon in which the hero's movements were monitored by a device on his wrist. Frustrated by the lack of alternatives to incarceration, Judge Love worked with local entrepreneur Michael Goss to develop the first EM system. Apparently Love himself tried out the ankle bracelet for several days before applying it to three defendants in his court (Burrell and Gable 2008). When Love's supervisors heard of his experiment with this technology they quickly pulled the plug. Yet, an idea, albeit one that spread slowly in the early days, had been born.

By 1987 some 826 people were participating in EM programs nationally (Schmidt 1988). A little over a decade later, in 1998, this number had increased to over 95,000 (National Law Enforcement Corrections Technology Center [NLECTC] 1999).

The expansion of EM accelerated as both criminal justice ideology and technology underwent rapid transformation. In the early days, EM relied solely on radio frequency systems which merely indicated when a person left a designated area, typically their residence. The emergence of satellite-linked GPS in the mid-1990s allowed near real-time tracking as well as the option of incorporating "exclusion zones" into an individual's regime, keeping him or her away from areas known to present possible temptations to re-offend. All this enhanced possibilities for higher levels of carceral control.

## EM in the US Today

In recent years, hundreds of thousands of people in the US have experienced EM through the criminal justice system. While exact numbers of those on EM are difficult to obtain, DeMichele and Payne (2008) projected about 200,000 units in use for 2009. This seems consistent with the regular estimates in *The Journal of Offender Monitoring*. Cook County, IL alone claims to have applied EM in more than 250,000 instances in its jurisdiction since 1989 (Dart n.d.).

In terms of the actual devices, most EM systems currently employ some kind of ankle bracelet and an electronic box set up in the home which sends information to the monitoring authority through a land line telephone. More specialized applications have incorporated video monitors and or/breathalyzers, ankle bracelets which measure blood alcohol, trackers or pagers which enable monitoring personnel to send text messages to those under supervision, and voice recognition linked to robo-call programs which automatically phone a person's home at random intervals to verify their presence.

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Footnote 4 continued

components of this restructuring involve de-emphasizing the welfare and taxing function of the state while prioritizing security and facilitating corporate profit opportunities. For more discussion of the changing role of the state and its link to mass incarceration see (Wacquant 2009a, b; Gilmore 2007; Gottschalk 2007; Parenti 1999).

For most people on EM, the default position is house arrest. While devices and requirements may differ, typically a person must remain at home unless they have requested permission for and been granted a “move” by their supervising authority. In the case of people on parole, this is usually a parole officer.<sup>5</sup> If a person has employment, they may be given regular movement allowing them to travel to and from work and remain there for the required hours. Computer systems can also set up similar schedules for other recurring events—school, drug programs, therapy, etc. Often people will be expected to submit a list of requested moves well in advance. Another typical approach is to demand that individuals phone their supervisor each time they leave the house and then again when they return. Some authorities may also require the monitored person to call in at specific intervals during the day.

### Using EM for People on Parole

Bureau of Justice figures (Glaze and Bonczar 2011) reveal that 18,429 people nationwide were on parole with GPS in 2010. As noted above, a primary feature of the era of mass incarceration has been escalating recidivism. Hence, for years researchers have tried with minimal success to prove a positive correlation between the use of EM and reducing rates of re-incarceration (Maxfield and Baumer 1990; Jolin and Stipak 1992; Lilly et al. 1993; Jones and Ross 1997; Ulmer 2001).

Until recently, methodologies for such studies have been highly problematic. As Bales (2010, 6–10) points out the primary fault has been the failure to recognize that those chosen for EM tend to have a different risk level than those on traditional parole. In some instances, those with excellent disciplinary records in prison were placed on EM as part of an early release program. In those cases, EM served as a reward for people regarded as low risk. But in other situations, EM has been an additional controlling condition of parole, designed to monitor people who are viewed as high risk—those with sex offense convictions, gang histories or high profile violent cases. In addition, few researchers chose to interview those who have been under EM. In the rare cases where researchers did conduct such interviews, they typically conducted them at the parole office with people hand-picked by parole authorities, hardly a process likely to yield a range of viewpoints (Shklovski et al. 2009; Padgett et al. 2006; Staples and Decker 2011).

However, using more nuanced methodologies Gies et al. (2012) and Bales (2010), have completed studies which conclude that EM contributed significantly to reduced recidivism. Gies carried out a quantitative study of 516 “High Risk Sex Offenders” in California, dividing them equally between those on GPS monitoring and those under traditional parole supervision. He found a 38 % higher likelihood of a return to custody, either through parole revocation or new criminal charge, among those not on EM. (18) Bales did a quantitative and qualitative study of people under “community supervision” in Florida and found a 31 % lower “rate of failure” for those on EM. (x) Both tried to use a set of co-variants to ensure similarity between the control group and those on EM. While their choice of co-variants overlooked some important issues (e.g. neither controlled for race or whether the person had employment or housing ready upon release), more crucial is their focus on a statistical analysis of recidivism and parole violations. Using this parameter fails

<sup>5</sup> Information on electronic monitoring regimes is drawn from Staples and Decker (2011), Bales et al. (2010), Shklovski et al. (2009) along with my own personal experience and interviews with other people who have been on EM.



to take into account the context in which EM is being applied. In other words, the paradigm of punishment is accepted as a given. While in his recommendations, Bales does note that EM can “place strain on offenders’ relationships with significant other, children and friends,” as well as compromise “the ability to find and maintain employment” (154), these are afterthoughts without specific recommendations. Yet it is precisely the areas of building relationships with family and maintaining employment where the potential for rehabilitation, for turning one’s life around, lies. As Robert Lilly asserted in the early days of EM, researchers are missing the forest for the trees (2006).

A recent paper presented by Stanford Law Professor Joan Petersilia to a National Institute of Justice conference, highlights the problems with focusing solely on recidivism, albeit from a slightly different angle than my emphasis. As she puts it to reduce recidivism:

We just decide to revoke people under different things. We all know that game. That’s just a shell game. Okay. Let’s don’t violate technical violations. I can get that down. Okay. Let’s just decide we are going to let people fail three or four times and not violate them. I can get your arrest rates down. I can get a lot of things down. But have we really changed behavior? And so that’s a much different thing.

(Petersilia 2012)

Building on Petersilia’s remarks, at a systemic level rejecting the punishment paradigm means more than reducing recidivism rates or even “changing behavior”. Rather it involves a philosophical reorientation which is reflected in the thinking, practice, legislation and policies that inform criminal justice in general and EM in particular.

While Gies and Bales may have gathered some critical information, their narrow focus on recidivism warrants caution. To complement these statistical studies we need to look at what is actually happening in EM programs at the ground level. Are they informed by a new ethos? What steps have been taken not only to physically transfer people from prison to an ankle bracelet but to begin to regard them in a different way, as human beings capable of change rather than as criminals deserving only punishment and control?

To capture this side of EM, we need to examine the frameworks within which EM operates: the laws, regulations, policies and contracts with users. We also need to analyze the motives behind EM programs, especially where EM serves as a source of profits for corrections corporations. Lastly, and most importantly, we need to hear the voices of those who are involved in EM, particularly those who have worn the ankle bracelet and been under house arrest. Do they have a sense of participating in a program of rehabilitation, of the relationship between parole officer and person on parole having moved beyond punishment and control? These are the fundamental questions that must be asked if we are to determine whether EM is a genuine “alternative” playing a role in moving us into a new era.

## Filling Out the Picture of EM and Parole

In order to understand the interface between EM and parole, a brief profile of the majority of people released from prison and the challenges they face is necessary (Visher et al. 2004; Visher and Farrell 2005; Visher and Courtney 2006).<sup>6</sup>

<sup>6</sup> For this information about people on parole I have also drawn on my own experiences while in prison and on parole and interviews with other people who have been on EM and parole.

The majority of those on parole come from the low income layers of the working class. Not surprisingly, the racial breakdown of people on parole reflects the disproportionate incarceration of people of color. In 2010, 39 % of those on parole were “Black” and 26 % were “Hispanic” (Glaze and Bonczar 2011). The overall socio-economic background of those on parole contributes to making successful re-entry a distinctly uphill battle. To exacerbate their problems upon release from incarceration, people on parole generally receive minimum direct support, possibly no more than a few dollars in cash and perhaps a bus ticket to their hometown.<sup>7</sup> Many exit prison with significant debt burdens as well. For example, studies in Colorado and Massachusetts concluded that the average parent leaving prison had a child support debt of \$16,000 (cited in Travis et al. 2005, 8).

As Visher et al. (2004) have noted, employment is the key to these individuals’ successful re-entry into society. Yet the Urban Institute’s surveys conclude that only about one person in two manages to find a job during their first year out (2011). This is not surprising since they enter the job market with a felony conviction/criminal record that includes not only a stigma but a number of sanctions which may potentially derail their opportunities. In particular, Federal and state statutes often deny people on parole access to certain categories of employment as well as resources such as public housing, food stamps, and other state benefits (Alexander 2009, 141–145).

In addition, most individuals on parole exit prison with little work experience and few skills. The stripping of vocational training and educational programs from prisons as part of the demise of rehabilitation has contributed to an enhanced de-skilling of the incarcerated population. Furthermore, particularly for those who have served long sentences, ties to family and community are usually precarious at best.

Typical parole conditions compound the difficulties. Restrictions normally compel a person to reveal their parole status to any employer or landlord, to allow an unannounced search of their home or workplace at any time, to submit to periodic drug testing, and to refrain from contacting any other people on parole or with a criminal record. Pre-release programs in prisons typically offer little direction or support to help those released address these obstacles.

EM further complicates these difficulties. From the outset, a person on an ankle bracelet depends completely on the availability, efficiency and political will of their parole officer (p.o.) to grant “movement” outside their homes. In situations which might require a change in schedule or addressing an emergency, the parole officer may be unavailable. Furthermore, the channel of communication with the p.o. is often through a call center operator employed by an EM firm. These operators are frequently low wage, workers with little training or sense of the complexities of life on parole.<sup>8</sup> Charlie, a man who spent a year on an ankle bracelet in Illinois, became so frustrated by trying to arrange movement outside his home that he gave up. He noted that for a “period of three straight months I never left the house because of the hassle and bullshit of even attempting to get movement” (personal interview).

This situation severely limits a person on EM’s ability to respond on short notice to requests for job interviews, calls for daily work or, once a job is secured, schedule changes

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<sup>7</sup> Amounts vary from state to state. California is relatively generous, providing \$200 cash. Idaho, on the other hand provides only a suit of clothes, a bus ticket and a brown bag lunch. For state by state listings of this “gate money” visit the American Radioworks website: Hard Time: Life After Prison at: <http://americanradioworks.publicradio.org/features/hardtime/gatemonney/index.html> accessed September 7, 2012.

<sup>8</sup> Information on the operations of EM programs comes from personal experiences, interviews with people who have been on EM and from Staples and Decker (2011), Bales et al. (2010), Shklovski et al. (2009).

or offers of overtime. Work that demands travel, jobs like house cleaning or gardening, presents further complications, as many regimes require that all specific destinations be pre-arranged. Traffic or delays in public transport set additional hurdles to maintaining employment while complying with the time restrictions of EM. For example, Bobby, who spent several months on parole with EM in Rhode Island recalled that on one occasion the bus in which he was riding home from work broke down. He phoned his parole officer to report the delay. Only after a long series of questions did he manage to convince the officer that the bus had actually broken down and that Bobby had no control over how long it would take to repair the bus. Though the bus breakdown didn't result in a violation, Bobby noted that the underlying suspicions of the parole officer meant that the threat was always present. Despite such problems, Bobby preferred public transport to getting rides with friends because anyone transporting him in their car would have to get a clearance from the parole officer.

Differing technologies may present other problems. For example, some EM systems have batteries that need re-charging every 3–4 h. Hence, a person on such a system who has to work an 8 h shift or who is hunting for a job, will have to find a time and place to connect the device to a wall—not always an easy task.

The constraints outlined in regard to employment similarly impact a person's ability to establish relationships with family, friends and community. Since the default position is house arrest, already overextended families are landed with an often angry, frustrated individual occupying space in their home virtually 24 h a day. As the Urban Institute's studies have shown, the average person on parole, if fortunate enough to secure stable accommodation, lives in cramped quarters with minimal amenities. There may be no spare bedroom or extra bathroom to cater to their needs. Their transition to civilian life often takes place in the public space of the house, severely disrupting the normal routine. Add to this the gender nuances of such situations. The typical person on parole is a male who has spent years in a hyper masculine, often violent, environment of total dependence on the institution to structure their daily routine and provide services. As Braman (2004) showed in his study of families of the incarcerated, the burden of managing a male's often traumatic transition to the streets falls squarely on the family and usually on female family members—mothers, sisters, grandmothers, aunts, or partners. Jerome, an African-American who spent nearly 3 years on EM in Ohio, reported such difficulties. He was living with his mother in a small apartment where he had to sleep on the couch. Though he had a Master's degree, he couldn't find employment. He said he felt like an "eyesore" to his mother, a "hindrance" in her life. "Sometimes I felt like she didn't even want to come home because I was there ... you become a burden as far as food, water, gas, electricity goes ... after a few months you could tell it was weighing on my mother's sanity ... it's really depressive. You have your freedom but ..." (personal interview 2012).

Such stories were echoed by people Staples and Decker interviewed (2011). In response to frequent visits by the authorities to his family's house where he was living, Reggie, a mid-thirties African-American man said: "the things these people (parole authorities) have to take into consideration is that it's not just my home, that's my other half's home, that's my kids' home. So it's like because you put me under house arrest, that gives you the right to cross the line and disrupt their life which isn't fair." (9)

Thus, in these cases as in many others, the household became not only the site of incarceration but a provider of the support services once performed by a battery of trained state agents with a rehabilitative function—social workers, parole officers, case managers, counselors. Family members and friends typically have neither the resources or the training to perform such functions (Western and Wildeman 2008; Travis et al. 2005).

A further complication arises when people on parole are also parents. This particularly impacts women who are more likely than men to have primary responsibility for children. Discharging such responsibilities while on EM pushes the boundaries of even the most highly skilled talented time and domestic manager. The most obvious problem is obtaining permission to seek medical care for children in case of illnesses or injuries, which don't happen according to a fixed timetable. But a host of other challenges arise for parents on EM. For example, the timetable for the monitoring regime may not allow transporting or accompanying children on outings or visits. This may restrict the child's ability to interact with other family members or friends as well as participate in school activities. Parents' capacity to attend events may also be restricted. Brenda, a 36 year old woman who lived with her mother-in-law while on EM remarked, "I have two small children and I don't have the freedom to take them places they need to go or go to their school activities and things like that. It affects the whole family dynamic thing" (quoted in Staples and Decker, 10). Bobby summed up the shortcomings on EM in this regard by saying that the rules failed to take into account that "too much of America has three jobs, takes the bus and has kids who don't live with them."

The above are some of the reported complications of being on parole under EM as currently being implemented. As a result, a number of people who have experienced EM are quite equivocal when comparing it to incarceration. Bobby put it like this, "I know of people who go back ... they say fuck this shit. They cut it off and go visit their girl friend or have a beer with their uncle ... some say 'take me back.'"

Carly, a woman from Texas who experienced home confinement said she found the frequent visits by authorities to her house when her family members were present so humiliating that she would rather just do that time in prison and get it over with (personal conversation). Some of Staples and Decker's interviewees expressed similar sentiments. Wade, a 22 year old African-American said "the first time I got put on it, I did not think it was no big deal ... I was more like, 'Ah house arrest—better than going to jail. Then, after 2 weeks of it, that's when it really starts hitting you ... it gets real, real imprisonment kind of feeling ... I'm still in jail. I'm in prison ... It took the jail out of jail but you're still in jail.'" (8) Jerome, while clearly stating that he thought EM was far preferable to being in jail, still called for a "re-tooling" which would make the system "constructed to be more human." He added that in its present usage wearing an ankle bracelet was tantamount to "twenty-first century slavery, electronic style." Bobby observed that the problem was part of a broader failure of authorities to understand the realities of people on parole: "we need as much freedom as we can get to get our crap together" (personal interview 2011). In his opinion, EM regimes did not provide the required freedom.

Moreover it is crucial to note that the manner in which EM regimes are implemented is not the only problem. An examination of the legal, regulatory, policy and contractual frameworks for EM will reveal that, for the most part, these also reinforce the punishment paradigm, either through explicitly punitive content or through their silence on the rehabilitative and human rights aspects of EM.

## The Frameworks

To begin with, considering that EM is a method of liberty deprivation, the legislation and regulations on EM are decidedly brief. This is in stark contrast to other areas where a person's liberty is at stake. As law scholar Erin Murphy pointed out:

Whereas the physical incapacitation of dangerous persons has always invoked some measure of constitutional scrutiny, virtually no legal constraints circumscribe the use of its technological counterpart. Across legal doctrines, courts erroneously treat physical deprivations as the archetypal 'paradigm of restraint' and thus largely overlook the significant threat to liberty posed by technological measures. (2008, 1323)

Murphy's concerns have been born out in my own investigations into the laws, regulations and contracts in 13 states,<sup>9</sup> including all with more than 500 people on parole with GPS. In most cases, legal frameworks simply empower authorities to use EM and to impose penalties if those being monitored fail to comply with regulations. The California legislation provides a typical example:

Whenever a parole officer supervising an individual has reasonable cause to believe that the individual is not complying with the rules or conditions set forth for the use of continuous electronic monitoring as a supervision tool, the officer supervising the individual may, without a warrant of arrest, take the individual into custody for a violation of parole.

California Penal Code (2010) 3010.7

Throughout the entire text of this law and the others, the language of rehabilitation is totally absent. Moreover, the rights and entitlements of those being monitored including rights to appeal unfair decisions are never mentioned, let alone spelled out.

This failure to take the rights of the monitored into consideration was reflected by my interviewees, all of whom except for Jerome claimed they received no detailed information about their entitlements. In the Northwest Ohio region, which covered Jerome, authorities produced a fifty page document to be distributed to each person on monitoring (Corrections Center of Northwest Ohio 2011) The document laid out rules in great detail. On the one hand, there are some transparent processes involved. For example, Appendix B contains a points assessment form which is used to evaluate the security levels of the person being monitored. This is much like the process for most prisons, a process which, from my research, is typically absent from most EM regimes.

The document also lays out the purpose of the program quite clearly:

Offenders who meet specific criteria will be required to adhere to a mandated schedule of electronically monitored home confinement which, through the use of equipment, is designed to track an offender's movement and provide participating offenders the opportunity to experience incarceration within the home. (1)

The document also contains details of the activities for which a person may be granted "movement." These include:

Grocery shopping and/or laundry for up to 2 h a week, at a location approved by your EM Specialist. This privilege depends on each offender's individual situation and will only be considered if no other person in the household can provide these services. (9)

For leaving the house on holidays, there is a special "holiday application:"

<sup>9</sup> The states I investigated were: Arizona, California, Colorado, Florida, Illinois, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Texas, and Wisconsin.

The holiday application is for Thanksgiving and Christmas only and must be completed and turned in at check-in at least 1 week prior to the holiday for review and consideration. The participant must provide Electronic Monitoring Program staff with the information of the person, their address and phone number for where the participant will be on the date requested. Requests are considered on an individual basis and depending on the participant's compliance while on the program. The total time that the participant is absent from their home to spend time with their family will not exceed 2 h. This request, if approved, is subject to be denied at any time prior to the date of the event. (42)

The document also includes a reminder: "Remember—Electronic Monitoring is a privilege and a positive alternative to incarceration". (41)

While the tone of this document is punitive, it does provide a clear framework for an EM regime—far different than the experience of people in other jurisdictions who receive no such guidelines. People I spoke with in Illinois and Rhode Island reported that their parole officer had virtually unrestricted authority with the power to institute a "lockdown", i.e. confine the person to home, depriving them of their liberty. No interviewees reported any legal time limit on such a lockdown or the need for the p.o. to specify the reasons warranting its imposition. No specific movements were defined as rights or entitlements, such as going to the store to buy food, visiting a dying family member in the hospital, or tending to urgent medical needs nor was there any process of redress to appeal or review an officer's decision to deny movement. The house became a site of incarceration where the conditions where neither specified or contestable. The general contours of this were also reflected in the interviews conducted by Staples and Decker (2011) and Shklovski et al. (2009) in Kansas and California respectively.

By contrast, even in the most strict prison control units, incarcerated people have a defined set of rights such as guaranteed hours of exercise outside of their cell as well as a list of minimum material provisions in terms of clothes, bedding, cosmetics, and food. For example, California state prisons provide everyone incarcerated with a copy of the laws and regulations governing their incarceration known as Title 15 (State of California 2006). This 246 page single-spaced document spells out the legal entitlements of those in prison, right down to the number of socks and boxer shorts. The appeal process is carefully spelled out as well, along with penalties for infractions of prison rules. By contrast, nothing of the sort exists for most people on EM.

In addition to the failure to elucidate the conditions for operating EM regimes, legal authorities have not clearly defined EM's status under the law. States have widely varying standards for granting credit to people for time spent on an ankle bracelet or under house arrest. Most states only give credit for time served if the EM is imposed post-conviction (Ballard and Mullendore 2002).

A further complication relates to violations. Most courts hold violations of EM rules as mere disciplinary infractions. Arizona, on the other hand, has deemed a person on EM to be held in "constructive custody" and therefore chargeable with the serious crime of attempted escape if EM rules are violated. Texas, Ohio, Washington and Wisconsin have similar provisions. The case of Johnny Choice in Texas in 1989 remains a precedent in some instances. On parole with an ankle bracelet, Choice recorded a number of curfew violations. As a result, his parole officer told him not to leave his house. Choice disobeyed and ventured outside, according to his own testimony, some 100 feet from his front door. By the time his parole officer arrived on the scene, Choice was back in his house. In

response, the prosecutor charged Choice with felony escape. By combining this offense with his previous convictions, the courts concluded his EM violation constituted a third strike, resulting in a minimum sentence of 25 years. Choice's appeal was rejected.<sup>10</sup>

The uncertainties that I have described here generally apply to all those on parole with EM. However, those on parole who have sex offense convictions live in a slightly different universe. Let us now examine their situation.

### **The Relationship Between Technology and Authority**

Lastly, apart from its effect on employment and building relationships, by its very nature EM further distances people on parole from being able to exercise active agency in their own transformation. As Shklovski et al. (2009) noted:

Our data illustrate that adoption of the GPS system also transformed how the relationship between POs and parolees is managed, executed and performed. Even the nature of parole, previously an institution geared towards successful re-integration and rehabilitation of parolees, has changed with the application of GPS technology, now reflecting the importance of surveillance, data analysis and interpretation in service of recidivism prevention. (3)

In the world of parole officialdom, a person under supervision becomes a decontextualized dot on a map, a dot that periodically undergoes a technological metamorphosis into a signal on a beeper or a text message or alarm on a cellphone. As Shklovski et al. (2009) have noted, "Technological systems are not only a way of surveillance, they are also a way of watching and seeing the world-places as points on a map largely devoid of their true complexity". In this case the complexity missing is the human relationship, fraught as it might have been, between the parole officer and the person being supervised, an integral component of any re-entry process designed to rehabilitate.

### **The Implications of Parole with EM for the Wider Criminal Justice System**

The use of EM for people on parole has set a disturbing precedent for its application in other criminal justice settings. While there may be only 200,000 people on EM today, there is ample reason to expect those numbers to grow astronomically. There are both push and pull factors here. As noted earlier, the push factor is the financial crunch and the overcrowding which is forcing many states to downsize their prison populations and look for alternatives. "Alternatives to incarceration", regardless of their impact, are gaining unprecedented traction in the world of corrections.

The pull factor is the entry of private corrections firms into the EM business. In late 2010, the GEO Group, the US' second largest private corrections company, bought up bought a controlling interest of the largest EM provider in the US, the Boulder, Colorado-based company, BI Incorporated. The prize plum for the GEO Group in this acquisition was BI's 2009 contract with the Federal government's Immigration and Customs Enforcement (ICE) Agency. Under this 5 year, \$372 million pact, BI agreed to run ICE's

<sup>10</sup> Details of the Choice v. State case from [http://tx.findacase.com/research/wfrmDocViewer.aspx/xq/fac.%5CTX%5CPLS%5C1991%5C19911120\\_0041690.TX.htm/qx](http://tx.findacase.com/research/wfrmDocViewer.aspx/xq/fac.%5CTX%5CPLS%5C1991%5C19911120_0041690.TX.htm/qx), accessed July 21, 2011.

Intensive Supervision Appearance Program (ISAP 11). This arrangement would mandate BI to supervise some 16,750 immigrants awaiting deportation or amnesty hearings, in most cases outfitting them with ankle bracelets, and carrying out other surveillance activity like unannounced home visits and checking on employment status. By 2014, ISAP 11 anticipates an enrolment of 27,237 people in 165 cities (Phelan 2010).

However, EM firms are not only targeting the immigration market. An online industry journal had this to say about a report on the success of EM reducing recidivism among people with sex offense convictions in California:

The 6,600 high-risk sex offenders (HRSOs) being monitored by the California Division of Adult Parole Operations (DAPO), however, is only a fraction of the state's more than 100,000 parolees. And nationally, the number of adults under community supervision in 2010 was 4,887,900, according to the DoJ's Bureau of Justice Statistics. Approximately 100,000 offenders were on any forms of EM in 2006, the most recent statistic cited by the report.

Gibbons Media and Research (2012)

Clearly the key up-and-coming market niche here is the nearly 5 million people on "community supervision." Moreover, as in the case of prison ownership and management, the private firms' presence would be dominated by a fundamental conflict of interest—the need to maximize profits by keeping as many people under their control for as long as possible, hardly in keeping with notions of rehabilitation or any rights of the convicted.

Furthermore, the material incentive to enter the EM sector has been enhanced by the introduction of user fees for most people on EM. A 2004 survey found that fees across 66 agencies ranged from \$5 to \$13 a day, with startup charges of \$30–\$100 (Johnston 2004, 13). The institutionalization of "pay-to-play" regimes offers not only an opportunity for direct cost recovery by the providing firm but a chance for corrections authorities at all levels to cash in as well. Conway's survey (cited in Johnston 2004) notes that a number of local authorities have made a profit from EM through excessive daily fees. Hence, EM can claim not only to be cost effective but income generating as well, even when administered by the state. No wonder William Saletan in a 2005 article in *Slate* observed: "As GPS gets cheaper, politicians will be tempted to order it not just for people who would otherwise be jailed, but for those who wouldn't." So too, will private corrections companies be tempted to campaign to widen the net for those who must be under electronic control and within their market niche.

### Future Directions for Electronic Monitoring—Reining in the Tether

Robert Gable and his colleague Bill Burrell, have laid out their ideas for an alternative direction for EM:

A more effective approach would be to use short-term EM in a manner that acts in synchrony with basic human desires—the desire to be happy, to be free of pain and to be socially valued. Gable and Burrell (2007, 28)

In practical terms this calls for a massive re-education and re-orientation of all those involved in criminal justice to find ways to use EM technology as communication and rehabilitative devices rather than as mechanisms of surveillance, control and punishment. Such a transformation appears highly unlikely in the short term. More feasible changes



would involve developing a framework for the implementation of EM for those on parole which would drive the actual practice in a more transparent, rehabilitative and rights-centered direction.

Such a framework might target at least five major goals:

1. A clear statement of the circumstances under which people can be subjected to EM.
2. The creation of a bill of rights for people on EM, including their specific rights of appeal.
3. The establishment of clear criteria about the legal status of EM.
4. The elimination of private company supervision of people on EM.
5. The elimination of user fees for people on EM.

Some interim steps toward these overall goals might include policies such as:

- The establishment of guidelines for “best practice” in EM for facilitating rehabilitation, including ways for public authorities or civil society groups to monitor the activities of private sector EM providers.
- The introduction of transparent security levels for EM regimes, similar to those applied in most prison systems and to that used in Northern Ohio for EM.
- The repeal of mandatory lifetime EM laws for people convicted of sex offenses.
- The elimination of house arrest as a mandatory condition of EM.

A final point in reforming EM is the factor of race. Despite the vast amount of evidence marshaled by Alexander and others as to the racial inequalities in the mass incarceration process, those involved in research on EM have avoided the topic. The Bureau of Justice does not even break down those on EM while on parole by race. In terms of moving EM into line with a more rehabilitative approach, examining racial data for those placed on EM as well as those who recidivate or violate parole while being monitored is essential.

However, none of these changes can take place in the absence of a wide-ranging debate and popular mobilization on the issue. At the moment, there is no such activity. The monitored remain voiceless and there is no organization or individual positioned to drive such a process. The dominant discourse remains fixed in the punishment paradigm. Moreover, even critics of mass incarceration who work in areas of re-entry have not yet taken up the issue of EM. But EM will remain a feature of criminal justice in the US for the foreseeable future. It is time that all those engaged in attempting to reverse mass incarceration or even those desiring to nudge criminal justice in a less punitive direction, take a look at EM before we end up with millions of people on EM under draconian, unregulated conditions. One of the people I interviewed referred to this potential nightmare as “twenty-first century slavery, electronic style.” If the underlying ethos of EM is not transformed, the US could easily end up with a proliferation of high security prisons not in isolated rural areas but in the overcrowded houses of poor people of color in urban communities.

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