

Challenging E-Carceration

challengingecarceration.org

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Honorable Robbin J. Stuckert
Chief Judge
DeKalb County Courthouse
133 W. State Street
Sycamore, IL 60178

June 28, 2019

RE: Illinois Supreme Court Commission on Pretrial Practices

Dear Honorable Robbin J. Stuckert,

As the Director of Challenging E-Carceration, I am pleased to submit testimony to the Illinois Supreme Court Commission on Pretrial Practices. Challenging E-Carceration is an Illinois-based project of the national social justice organization Media Justice. For the past three years we have been involved in gathering evidence about the harms done by electronic monitoring in the pretrial and other contexts. In addition, we have conducted public forums on this issue and worked with Illinois Representative Carol Ammons to pass legislation earlier this year that will for the first time mandatory collection of data on electronic monitor usage in the post-prison setting. This is the first such legislation in the country.

We have also done considerable research into the use of electronic monitors for individuals who have been released pretrial. Based on our investigations, we have found the following:

1. Advocates of electronic monitoring have produced no evidence that pretrial electronic monitoring contributes to a higher rate of court appearance
2. The conditions imposed as part of the house arrest which virtually always accompanies electronic monitoring programs consistently hinder an individual from accessing employment, obtaining medical treatment, participating in court-ordered programs and taking part in family and community activities.¹ While a promise of “freedom” accompanies the implementation of electronic monitoring, those freedoms often meld into a set of liberty-depriving rules and regulations which serve no constructive purpose.
3. Placing an individual on house arrest often creates great burdens and stress for their family members and/or those with whom they share accommodation. Rules restricting the presence of alcohol and firearms as well as frequent intrusive searches and phone calls create a situation where the house become more like a site of incarceration than a home.
4. Many jurisdictions impose daily user fees and set-up costs for electronic monitoring which are prohibitive. In some instances, these can far exceed the cash bail a person might have had to put up to secure their release. Moreover, failure to pay these user fees can impact a person’s ultimate dispensation, either contributing to an enhanced sentence or more restrictive probation conditions.

¹ See cases of “Jarrett” and Lavette Mayes in Chicago Community Bond Fund, “Punishment Is Not A Service: The Injustice of Pretrial Conditions in Cook County,” 2017

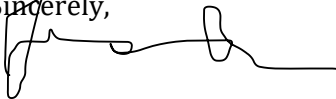
5. The restrictions of house arrest may inhibit care-giving for which the person on the monitor is responsible. This may mean the inability to accompany family members to medical appointments, to look after children (especially those who may not live with them), or to respond to emergencies.
6. The conditions of house arrest often mimic the pressures and restrictions of jail, leading the individual to accept an unreasonable plea bargain or even pleading guilty to a charge for which they are not legally culpable simply to avoid those conditions. In many instances the acceptance of a plea bargain connects to the burdens the monitor places on a charged person's loved ones and the desire to bring relief to them.
7. In cases where domestic violence is involved, locking a person in their house may leave them in a position where they cannot escape a potentially violent or even life-threatening situation without risking reincarceration.
8. While data is limited in regard to EM, the overwhelming evidence of racial discrimination and disparity in the criminal legal system generally raises serious questions as to whether or not electronic monitoring can be applied in a manner that does not replicate the racism of the broader system.
9. When EM with GPS capacity is used, a vast amount of location tracking data is captured and stored in a way over which the person on the monitor has no control. Given the recent revelations about intrusions by Facebook and the increasing marketization of online data, this is a cause of concern for the privacy and human rights of the person on the monitor.²

For these reasons, we strongly recommend that the Commission encourage a ban on the use of electronic monitoring in the pretrial context. We are convinced that the money and human resources used for monitoring would be much better spent on programs that support people awaiting trial through options such as public housing, substance abuse and mental health treatment, job training programs, and services such as rides and reminders that ensure people can attend their court dates and court-mandated activities.

If electronic monitoring is to be used, we urge local authorities to implement the Guidelines for Respecting the Rights of Individuals on Electronic Monitors, a document developed by Challenging E-Carceration and endorsed by more than 50 organizations nationally, including the national offices of the ACLU, the NAACP, the National Association of Criminal Defense Lawyers, and the Pretrial Justice Institute. I have attached the Guidelines and list of the signatories here for your reference.

We look forward to your report and recommendations and remain ready to answer any queries you might have about electronic monitoring. If you would like further explanations of any of the contents of this letter or would like more information, feel free to contact me at james@mediajustice.org or by phone 217 778 2354.

Sincerely,



James Kilgore

Director, Challenging E-Carceration

² See J. Kilgore and E. Sanders, "[Ankle Monitors Aren't Humane. They're Another Kind of Jail.](#)", Wired, August 4, 2018

The criminal justice system's use of electronic monitors, typically in the form of ankle bands, has more than doubled in just over a decade. Electronic Monitoring threatens to become a form of technological mass incarceration, shifting the site and costs of imprisonment from state facilities to vulnerable communities.

Moreover, most evidence indicates electronic monitors are disproportionately used on people of color. The use of these devices is increasing with electronic monitoring now more frequently employed as a part of parole, probation and pretrial release, as well as in juvenile justice and immigration cases. Combining house arrest with the use of monitors with GPS tracking has made electronic monitoring more punitive and powerful as a method of surveillance.

To make matters worse, monitoring programs lack a transparent regulatory framework that respects the human rights of those being monitored and their family or household members. This situation demands action. Thus, we advocate the following guidelines for implementation of electronic monitoring:

1. Opportunity, rights, and dignity. Rules for electronic monitoring must facilitate freedom of movement and accommodate basic daily needs while not imposing unnecessary restrictions. Those monitored should have the freedom to carry out parenting and other caregiving activities and have access to employment, legal services, medical treatment, education, pro-social and religious activities. Those being monitored should be able to take part in family and community life.

2. No net widening. The net of electronic monitoring must not widen by capturing larger numbers of currently monitored groups (e.g. youth, immigrants), by targeting new groups (e.g. those with mental illness), nor by adding monitoring to less restrictive forms of supervision.

3. Economic and racial justice. Electronic monitoring should not be a vehicle for perpetuating inequality. Monitoring should not disproportionately be applied to people of color or poor people.

4. Transparency. Rules for electronic monitoring should be transparent. They should be based on an assessment of the needs and risks of the individual, and not on a generic, "one size fits all" set of conditions and restrictions.

5. No financial burdens. The 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.

6. Credit for time served. Since electronic monitoring is a form of custodial detention, those subjected to it should receive credit for time served under surveillance.

7. Respect for privacy rights. Authorities must institute safeguards for data collected from GPS-based monitors in order to respect the privacy rights of those being monitored. Regulations must limit access to data and restrict the type of data collected. The method of retention and storage should be regulated as well, and concrete time frames for deleting data should be set.

8. Humane, minimally invasive technology. Electronic 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. They should also not be implanted as microchips.

9. Due process. Individuals on monitors should have the right to due process. This includes the ability to appeal the terms and conditions of their electronic monitoring regimes and, where appropriate, allowing them access to their own tracking data.

10. GPS as a last option. GPS-enabled monitors used under house arrest are the most restrictive form of community sanction and should be the last option, never the default. Terms for the GPS devices should be minimal, and they should never be imposed for life.

About These Guidelines

#ChallengingEcarceration is a project led by James Kilgore of the Urbana-Champaign Independent Media Center in partnership with the Center for Media Justice. These guidelines were developed via a consultation process that included organizers, attorneys, policy makers, researchers and individuals critically impacted by electronic monitoring. They are based on an original draft written by James Kilgore.

Contact Us

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American Civil Liberties Union (ACLU)
All of Us or None
American Friends Service Committee
Arts & Democracy
Brooklyn Community Bail Fund
Business and Professional People for the
Public Interest (BPI)
California Coalition for Women Prisoners
Center for Media Justice
Chicago Appleseed Fund for Justice
Chicago Community Bond Fund
Civil Rights Corps
East Bay Community Law Center
Economic Opportunity Council of Suffolk, Inc.
Electronic Frontier Foundation
Ella Baker Center for Human Rights
Essie Justice Group
EXPO of Wisconsin
Families for Freedom
First Followers Reentry
Generation Justice
Grassroots Leadership
Human Rights Defense Center
Holla
International CURE
Justice Policy Institute
JustLeadershipUSA
Line Break Media
Massachusetts Bail Fund
Media Alliance

National Association for the Advancement
of Colored People (NAACP)
National Association for Public Defense
National Association of Criminal Defense Lawyers
National Guestworker Alliance
National Lawyers Guild
New Sanctuary Coalition
OVEC-Ohio Valley Environmental Coalition
Philadelphia Community Bail Fund
Pretrial Justice Institute
Prison Policy Initiative
Project Rebound (SF State University)
Richmond Community Bail Fund
Sargent Shriver National Center on Poverty Law
Smart Decarceration Initiative
Southern Center for Human Rights
Southerners on New Ground
The Bronx Freedom Fund
The Fortune Society
The Greenlining Institute
The National Council for Incarcerated and
Formerly Incarcerated Women and Girls
The People's Press Project
The Release Aging People in Prison/RAPP
Campaign
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Washington Square Legal Services Bail Fund
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