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C.H. HUCKELBERRY
County Administrator

February 20, 2019

Caroline Isaacs, Program Director
American Friends Service Committee
103 N. Park Avenue, Suite 111
Tucson, Arizona 85719

Re: **Whitepaper on Electronic Monitoring**

Dear Ms. Isaacs:

I am enclosing for your information the Electronic Monitoring Whitepaper that has been developed by our Pima County Criminal Justice Reform Unit, Program Manager Spencer Graves. We are in the process of reviewing it to understand what specific actions can be taken by Pima County, specifically in the Conclusion and Recommendation section on Page 8.

You are certainly welcome to review and comment on the Whitepaper and provide any separate recommendation that you believe is appropriate.

Sincerely,

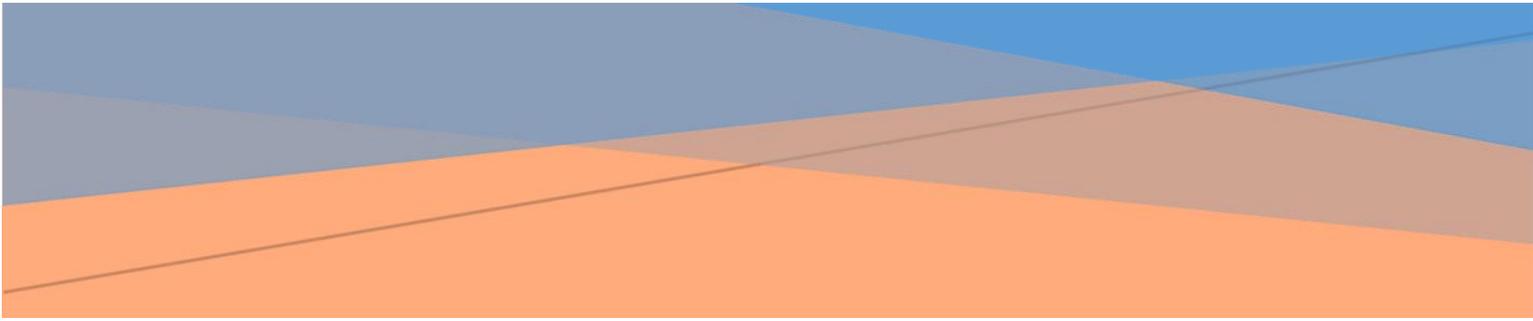
A handwritten signature in black ink that reads "C.H. Huckelberry". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

C.H. Huckelberry
County Administrator

CHH/lab

Enclosure

c: The Honorable Chairman and Members, Pima County Board of Supervisors
Wendy Petersen, Assistant County Administrator for Justice and Law



DRAFT

ELECTRONIC MONITORING

The limited scope of applicability in Pima County

Abstract

Electronic Monitoring can be an effective tool with prosocial benefits and cost reduction for specific charge classifications but should not be used as a general release condition.

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Table of Contents

Abstract.....	2
Problems faced in the Criminal Justice System	2
What is Electronic Monitoring	2
History of Electronic Monitoring.....	3
Current Legislation and Proposed Changes	4
Applications for Electronic Monitoring.....	5
Challenges	6
Conclusion and Recommendation	8
References	9
Appendix	10

DRAFT

Abstract

Electronic Monitoring (sometimes also referred to as "EM" or "Home Detention") can be an effective tool with pro-social benefits and cost reduction for specific charge classifications, but should not be used as a general release condition. In the Pima County criminal justice system, Electronic Monitoring (EM) is currently used in one of the following three settings:

- 1) Pima County Adult Detention Complex (PCADC) for sentenced inmates;
- 2) Pretrial Services (PTS) after booking into PCADC; and
- 3) Adult Probation Office (APO).

This paper will focus on the sentenced inmate population at the PCADC, who are eligible for EM under current state statute, A.R.S. 11-251.15, as well as the proposed legislative changes¹. Current Sheriff Standards prohibit releasing individuals charged with felonies via EM. Expanding this statute could reduce job loss, maintain unified families, and reduce the cost of incarceration on tax payers. Opponents to the use of EM argue that it is another form of incarceration targeting and impacting the poor and people of color.

Problems faced in the Criminal Justice System

PCADC detains more than 30,000 individuals a year; many are the same individuals who repeatedly recidivate. Pima County invests nearly half its general fund budget into the criminal justice system, which amounts to \$287,363,012. Reform efforts have been put in place to address underlying issues, but the number of bookings continue to rise with the increased population in Pima County. According to a Laura and John Arnold Foundation study, compared to individuals released within 24 hours of arrest, low-risk defendants held two to three days were 17% more likely to commit another crime within two years (LJAF 2014). Pima County's PTS has been able to increase the number of inmates released at initial appearance, but the sentenced population continues to grow. In the last three years, while the pretrial population has decreased 4%, the sentenced population increased by 4%. The pretrial population makes up 81% of the total inmates in jail. These are individuals who are spending time in incarceration between arrest and case disposition.

Costs for booking individuals and housing inmates are also on the rise. These combined costs are often shouldered by the arresting law enforcement jurisdiction. The current booking rate is \$325.06, and each sequential day in the PCADC costs \$99.78. With an Average Daily Population (ADP) fluctuating between 1765 and 1902, in 2018, the average cost to house inmates per day is \$182,429. This is potentially underrepresented given the current overtime needed at PCADC due to understaffing. (Cavazos 2018)

While fiscal costs to the county budget is one issue to consider in widening the use of EM, it is also necessary to look at the social effects of e- incarceration and impacts to the community.

What is Electronic Monitoring

Electronic Monitoring is a general term used to describe an Offender Tracking System (OTS) covering three different methods of community tracking. Each method is used for a specific population matching the needs of supervision. The Active, Passive and Hybrid systems collect and send information at different

¹ Proposed legislative amendments to A.R.S 11-251.15 extend electronic monitoring to inmates on misdemeanor and felony charges awaiting trial. See Appendix item 1

rates and by different methods. Active monitoring is used for rapid transmission of data, usually every 1 - 3 minutes, by way of global positioning satellites and cellular networks. Passive monitoring is used in home based detention methods using a land line and radio frequency identification (RF). Hybrid systems incorporate other technology like breathalyzers along with GPS monitors. Currently the costs for operation the programs at PTS and Probation are passed to the individuals whereas the costs of the PCADC program is incurred by the County.

Active Monitoring

Active Monitoring uses ankle bracelets to track individuals' movements within the community and reporting the activity via the internet to a monitoring station. This technology is used when it is necessary to create inclusion zones (places where the offender is allowed to go), and exclusion zones (places where they are prohibited from entering). Active Tracking is necessary when the offenses, leading to being placed on an ankle monitor, pertain to domestic violence, are sexual in nature, or have victim safety in mind. Active monitoring requires a reactive staff able to respond when there is deviation from the agreed upon areas or hours of movement. The cost of maintaining GPS programs is \$10 per day, much less than the cost of a jail bed in PCADC, which is approximately \$100 per day.

Passive Monitoring

Passive monitoring uses radio frequency tags on the ankle, along with a home based modem to ensure the individual does not leave the home. The frequency of transmissions is much lower, but sends an alert when the monitor leaves the house or the device is tampered with. Passive Monitoring costs \$3 per day or approximately \$100 per month. As of January 8, 2019, 2 individuals are on PTS monitoring and 78 individuals are on Probation monitoring.

Hybrid System

The Hybrid system, mainly used in DUI related cases, couples technologies to ensure that the person is following multiple restrictions when out in the community. Breathalyzers can record a video of the individual assigned to the device, making it more difficult to trick or deceive the system. The cost is comparable to the Active Monitoring system and utilized by the PCADC. PCADC covers all costs associated and as of January 4, 2019 there were 6 individuals in the program.

History of Electronic Monitoring

Like much of the technology available today, the original use of EM has changed dramatically from its original form. Robert Gable, co-inventor of EM, stated "the original goal of electronic monitoring was not to punish offenders, but to provide a means of rewarding prosocial, noncriminal behavior." (Gabel 2017) The original device – created in 1964, patent #3,478,344 – was a 2 pound belt using repurposed military hardware to create a transmitting device that pinged local towers to triangulate position. The first recorded use of EM in 1984 (albeit under a different design) occurred in New Mexico. A judge tested the program on three individuals. Two of the three successfully exited the program while one returned to jail because he failed to follow program guidelines.

Over the years many designs were created and encumbered by companies that saw a niche market. Today, there are still dozens of companies creating monitoring devices all with specific purposes and clientele. With the rapid expansion and evolution of technology EM devices have become smaller and more rapidly deployable.

The use of EM devices in the United States for people awaiting their trials, on probation or on parole has skyrocketed in the past 10 years. The number of Americans monitored with ankle bracelets and other electronic tracking devices rose nearly 140% between 2005 and 2015, according to a 2015 Pew survey. In Cook County (Chicago) as of September 2018, over 3,000 individuals are on EM according to representatives of the Cook County Sheriff's Office and the Office of the Chief Judge. The majority are awaiting trial, while a smaller group is on probation, (there are also individuals on electronic monitoring for parole, which is managed by the Illinois Department of Corrections.) (Lopez 2018)

Today, the use of EM has evolved to a point that is almost unrecognizable from the original design. Devices like Secure Continuous Alcohol Monitoring (SCRAM), do not need a breathalyzer to detect alcohol in the system. The SCRAM CAM actively monitors the skin to detect traces of alcohol using a transdermal test from perspiration. EM is also being implemented for other applications. For example, the Department of Homeland Security uses EM for immigrants coming into the United States (Rodriguez 2018). A company in Florida is now marketing this technology to parents to track their children (Rohrlich 2018). Other new technology forgoes the ankle monitor altogether and uses devices owned by the individual, such as cell phones, to track movement and sobriety (OSM 2018). The use of smartphones, instead of ankle monitors, can help individuals "blend in" which addresses the stigma of EM. Because the use of monitoring via cell phones is a recent development, there are no statistically significant reports and accordingly, its use is not included in this report.

Current Legislation and Proposed Changes

As of December 2018 EM is limited in scope by Arizona statutes. A. R. S. Sec. 11-251.15 provides that only nonviolent and sentenced misdemeanants may be placed on EM (emphasis added). As of December 2018, the sentenced misdemeanor population at PCADC makes up only 2.7% of the jail population. As of the end of November 2018, only ten inmates were on the PCADC Home Detention Electronic Monitoring Program (HDAMP). At the same time, only 3 individuals were on Pretrial Services EM program. While these numbers are small, the PCADC EM program did save 2026 jail bed days and \$139,879.

In 2015, the MacArthur Foundation launched the Safety + Justice Challenge to help reform the criminal justice system and address jail bed drivers. One of Pima County's original SJC strategies was to expand the HDAMP program to release eligible inmates from jail and back into the community. The language of ARS Sec. 11-251.15 prohibited success.

As the 2019 Legislative season approached, several of Pima County's criminal justice system stakeholders suggested a legislative change to expand the use of EM. Pima County submitted the following recommended changes to the statute:

A.R.S. § 11-251.15

Prisoner home detention program; eligibility; monitoring; procedures; continuous alcohol monitoring program; home detention for persons sentenced for driving under the influence of alcohol or drugs

A. A county may establish a home detention program for eligible ~~sentenced~~-prisoners sentenced on misdemeanor convictions, as well as prisoners awaiting trial on misdemeanor or felony charges, which shall be treated the same as confinement in jail. The presiding justice of the peace of the county justice court shall approve the program before its implementation.

B. A prisoner is not eligible for a home detention program or a continuous alcohol monitoring program if any of the following applies:

1. The prisoner is found by the court to constitute a risk to either himself or other members of the community.
2. The prisoner has a past history of violent behavior.
3. The sentencing judge states at the time of the sentence that the prisoner may not be eligible for a home detention program or a continuous alcohol monitoring program.
4. The prisoner is awaiting trial and the state alleges the offense was committed while the prisoner was released from confinement pursuant to A.R.S. § 13-708.
5. The prisoner is awaiting trial for any “dangerous offense” as defined in A.R.S. § 13-704, or any “dangerous crime against children” as defined in A.R.S. § 13-705, or any “serious offense” as defined in § 13-706(F)(1), or any “violent or aggravated felony” as defined in § 13-706(F)(2).
6. The prisoner is awaiting trial for an offense which, if convicted, requires registration as a sex offender pursuant to A.R.S. § 13-3821(A).

These changes expand the scope of EM to include both felony and misdemeanor inmates awaiting trial. This expansion, from just sentenced misdemeanors to all but sentenced felony charges, will allow up to 75% of the jail population to be eligible for EM. Violent offenders or those awaiting sexual offender registration would be ineligible for EM. This proposed change comes with mixed reactions from community residents, advocates and criminal justice system stakeholders.

Applications for Electronic Monitoring

The expansion of EM will undoubtedly save Pima County and taxpayer money by reducing the number of people in jail. It will also help job retention for those who can continue working while awaiting trial. These changes should be made with caution in the event of a rapid expansion of people being placed on EM. Jurisdictions throughout the country have been incorporating EM programs to combat the rise in jail populations and the costs associated with housing inmates. Maricopa County has been increasing their EM program requiring millions of dollars in infrastructure and staff. In the last several years, Maricopa County’s EM program expanded from under 500 individuals to over 1300. The Cook County (Chicago) Jail has seen a similar jump in its EM population to combat overcrowding in the jail. To combat this sudden expansion, and to curate a program that is successful for the individual, a strategic approach is needed.

The United States Department of Justice (“USDOJ”) provides guidance to jurisdictions interested in implementing an EM program. According to a study authorized by USDOJ, (Smith 1989) it is important to understand the agency mission and objectives, as this will drive operational requirements of the technology. Monitoring different types of offenders requires prioritization of different features.

Consider the following examples:

(1) For a middle age functional alcoholic, whose offense was driving under the influence (DUI), it might be more important to get that individual back to work and supporting his/her family. The most important OTS feature is schedule/timing and sobriety;

(2) For a drug dealer, it is more important to know the offender's location and that the offender is not frequenting areas known for drug sales. The most important OTS features are GPS accuracy, exclusion zone alerts, and data analysis;

(3) For a sexual offender, it is vitally important to know where the individual is located. Important OTS features are GPS accuracy, frequency of location reporting, exclusion zones, victim notification, and data analysis;

(4) For an individual attempting to reintegrate into society, it is important to avoid stigmatization. The most important OTS device features in this regard may be the size, weight, and comfort of the device.

Features that enhance a busy Supervisors ability to do his or her job more efficiently are important; mobile applications on internet-enabled devices, mapping capability, analytics, and a variety of reports are useful tools in this regard. Multiple location technologies and minimal false negatives and false positives are features that provide confidence in the OTS technology.

Features that alert a Corrections Officer when an offender is trying to circumvent the OTS device or the rules regarding his or her placement on EM are critical. These include tampering with the strap or case, location, schedule, shielding or jamming.

In all cases, it was extremely important to engage in a critical analysis of the agency's mission and objective when considering the acquisition of OTS. (Smith 1989)

According to Joe Russo, former director of the National Law Enforcement and Corrections Technology Center of Excellence, University of Denver "the big advantage is the ability to maintain the necessary control of individuals in the community where they can maintain family ties, employment, and everything that's going well in their lives. That's the biggest; if you can do that without putting the public at risk, then that's obviously a no-brainer." (Trust 2015)

Challenges

Around the country, there are many vocal advocates against the practice of EM. James Kilgore, lead organizer of Challenging E-Carceration, has lived experience with EM and he advocates against use of what he refers to as, "the shackle" (EM) at the October 2018 John D. and Catherine T. MacArthur Foundation conference held in Chicago, Mr. Kilgore presented on a panel of EM practices. The panel was titled **Electronic Monitoring: Panacea or Problem?** *As efforts to reduce jail use grow, so does electronic monitoring, but research on its efficacy is limited, and questions about fairness and equity remain. In this workshop experts and participants will explore key EM questions and recommendations.*

The panel consisted of (1) representatives from jurisdictions looking to expand EM usage, (2) researchers pointing at outcomes, and (3) persons with lived experience. The debate was lively with passionate arguments both for and against the tool. Mr. Kilgore spoke of "the tether to jail/prison" that kept him up

at night and discouraged social functions in the community. He spoke about the stigma of being seen as a “sexual predator” if someone noticed the ankle monitor.

The Pretrial Justice Institute (PJI), a national association for pretrial departments, voices caution of EM use pointing to the rapid expansion currently taking place (Institute 2018). From 2005 and 2015 there was a 140% increase in the number of EM devices being used; the majority were GPS based. PJI points to the lack of statistically significant research that has taken place.

The Arizona Office of American Friends Service Committee (AFSC) authored a memorandum which took the position against the use of EM and pointed out that “the harm level can be just as damaging as incarceration².” The memo also cites financial strain that is placed on individuals on EM and the disproportionate effects for those in poverty. AFSC is concerned about the profiteering of these systems that are owned by private firms. In general, advocacy groups are wary of the punitive implications of EM and how it is not rewarding prosocial behaviors but instead leads to re-incarceration of the individuals at higher rates to those not on EM

“People often think that people on electronic monitoring can go about their regular lives, but not that they are actually incarcerated in their own homes and have very limited movement. It’s very destructive and harmful,” says Sharlyn Grace, co-executive director of the Chicago Community Bond Fund, a group that bails people out of jail and fights against pretrial incarceration. “These are not ‘alternatives to,’ but rather, ‘alternative forms of’ incarceration, and they often are also accompanied by shifting costs of incarceration onto criminalized individuals and their families,” she says. (Lopez 2018)

Ms. Grace, from the Chicago Community Bond Fund, says that if EM has to exist it should be reserved for those who have serious charges: “If someone has to be on electronic monitoring [prior to a trial], it is someone who would absolutely otherwise be in the jail. But a lot of times it’s people who would and should absolutely be free,” she says. “That said, I think it applies to all contexts. People should be under the least amount of supervision required as both a moral mandate and a general legal principle.” (Lopez 2018)

On the “pro” side of the debate, advocates argue that inmates can stay with their families, work at their jobs and contribute to the community.

We decided to pose the question to former system involved people living and working in Pima County. Several shared their thoughts on the matter.

1. **Manny Mejias**, coordinator with Pima County Criminal Justice Reform Unit (CJRU), said “if being on a monitor will help me **keep my job or my family** then I am all for it.”
2. **Gerald Williams**, member of the Safety+ Justice Challenge Community Collaborative, stated “EM gives a person more opportunities, an ability to take care of their family, to be a productive and positive member in society, and a **path forward to success.**”
3. **Michele Keller**, co-Chair of the Safety + Justice Challenge, stated, “if you have a mother or a father, especially a single parent, and they go to jail they're now fighting two cases, because they also have to deal with DCS. With an ankle monitor they could fight their case and keep their children. EM in cases like these would be very beneficial, especially in misdemeanor, low felony, or probation cases. If I could have had that chance, I could've maintained contact with my boys.”

² Memorandum attached as appendix item 2

4. **Zach Stout**, engagement specialist with Pima County CJRU, responded “the use of EM when combined with a fair and equitable criminal justice system could be a viable option for those who don’t have any other alternative. However, the system that we currently have is not fair and equitable. Instead, it disproportionately affects the poor and people of color. In addition, due to massive caseloads and budget constraints, we have over relied on the use of plea agreements as a fundamental component of efficiency within our justice system. EM has the potential to default to this same path, especially when considering the major factors as to why we are looking to implement EM in the first place: to help alleviate both jail overcrowding and the high costs of incarceration. The use of EM, without substantial structural justice reform, may only increase the number of individuals who are incarcerated, while simultaneously creating new and innovative ways to incarcerate; therefore, **it is my belief that if the use of EM increases, it should be done so with extreme caution.**”

On the other side of the debate, advocates typically want a complete system overhaul. Malcolm Rich executive director of Chicago Appleseed Fund for Justice (a social impact research and advocacy organization) says, “...if we cannot eliminate electronic monitoring, we need to establish benchmarks and criteria that are fair and uniform.” Mr. Rich points to strictures of limited movement: “You’ve got people who can’t go out on their porch without people showing up to arrest them for felony escape. So suddenly you’ve got an additional felony on your record.” (Lopez 2018) Critics of EM or Home Detention fear defendants will be caught up in an ever widening net.

Conclusion and Recommendation

Discussions with the PCADC, Pretrial Services Department and Probation Department have revealed several common themes. One theme is to explore a cautious approach for EM use for an expanded sentenced population and/or those awaiting trial, in the latter case primarily defendants that are unable to post money bail. For example, charges related to drug possession, burglary, domestic violence, DUI and individuals with high “Failure To Appear” rates may be suitable for an EM program. To do this in a manner to curtail net widening, a system needs to be in place for the different criminal justice system partners to agree to EM use in a limited function or on a case-by-case basis.

Training regarding EM should be given to not only the staff at PCADC and Pretrial but shared with the judges who place people on ankle monitors. Familiarity with the capabilities and limitations of the devices would inform the judges on how to best apply EM. While the recommendations by PTS are historically followed about 80% of the time (according to Pima County Pretrial Services records) it is important to maintain the current release practices of supervision and not put EM on those who would normally be released without EM consideration. Building on trust from PTS and the other criminal justice partners is paramount to a successful EM model.

Electronic Monitoring technology has advanced over the years; allowing for specific devices to fit the type of supervision relative to the crime committed. With the increased competition of EM providers, the costs have been reduced, applications have expanded, and the devices have become more mobile and discreet. Given the ease to supervise individuals released in the community, it should only be used in appropriate and clearly defined situations. Creating a system of oversight to reduce the net-widening of EM should be in place and supported by local judges. Studies and reports on the outcomes of the local EM program should be transparent and show community benefits in addition to cost reduction.

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Appendix

- (1) Proposed legislative amendments to A.R.S 11-251.15 extend electronic monitoring to inmates on misdemeanor and felony charges awaiting trial.
- (2) The Arizona Office of American Friends Service Committee (AFSC) - memorandum.

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