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Policy Brief on Electronic Monitoring: Review and Recommendations

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In 2012, the *Safe Streets and Communities Act* (Bill C-10) amended the *Corrections and Conditional Release Act (CCRA)*, to allow Correctional Services Canada (CSC) to “demand” that an individual wear a monitoring device in order to monitor their compliance with conditions established in their temporary absence, work release, parole, statutory release or long-term supervision that restricts access to a person or geographical location.<sup>1</sup> This “demand” has been qualified by CSC’s Commissioner in stating that electronic monitoring (EM) would not be imposed on all offenders, would not replace direct supervision, and would not be used to reduce the federal prison population.<sup>2</sup>

This paper seeks to review the historic use of electronic monitoring, the results of previously implemented pilot programs, and the current policy implications regarding electronic monitoring. Specific questions are raised regarding whether electronic monitoring is a cost-effective measure for enhancing public safety, or whether it is an additional measure that widens the correctional net and toughens the prospects of community reintegration. Furthermore, some key concerns are discussed regarding future initiatives to expand the use of electronic monitoring, before concluding with some recommendations.

Programs that seek to widen the correctional net attempt to increase offender accountability through a more gradual reduction in correctional measures. These effects can make the correctional experience more difficult, and merit consideration toward the goal of correctional measures and whether an individual will be successful in the community once these measures have been removed. Correctional measures should enhance rehabilitation and public safety. Questions should address whether increased monitoring is an effective means of correctional practice both for the public, and for the individual returning to the community.

In order to assess the effectiveness, cost, and appropriate use of electronic monitoring, it is important to understand previously conducted research, the current intended use, and recurring issues that emerge.

### **Historical Use of Electronic Monitoring**

The use of electronic monitoring originated in the US as a means to support house arrest and provide an inexpensive alternative to incarceration. The first Canadian use of electronic monitoring was in British Columbia in 1987, and began as a Vancouver based pilot program intending to provide a less costly

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<sup>1</sup> Corrections and Conditional Release Act – S.C 1999, c.20 (Section 57.1)

<sup>2</sup> Standing Committee on Public Safety and National Security. 2012 *A Study of Electronic Monitoring in the Correction and Immigration Settings*. Library of Parliament: Parliamentary Information and Research Service.

alternative to incarceration for selected offenders.<sup>3</sup> Currently, there are several Canadian provinces utilizing EM (British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, and Newfoundland).<sup>4</sup> Of these, Ontario programs are the largest and operate with approximately 230 individuals.<sup>5</sup>

According to the 2012 report by the Standing Committee on Public Safety and National Security, electronic monitoring is being used most often for people serving sentences of incarceration of less than two years, who are under a probation order or conditional sentence, or who are on temporary absence or parole.<sup>6</sup> Electronic monitoring is also used in connection with bail hearings, where individuals have not yet been convicted, but whose release may raise public safety concerns.<sup>7</sup>

### **Types of Monitoring**

There are currently three types of electronic monitoring in use, Global Positioning System (GPS), Radio Frequency, and Bio-metric. These divisions may be further broken down into “active” and “passive” types of monitoring. “Active systems” require the individual to wear a transmitter, which continuously emits a signal to a receiver unit connected to a landline telephone.<sup>8</sup> The receiver unit then relays the signal to a computer at the monitoring centre, where any signal interruptions, or any attempts to tamper with the equipment, are detected and reported to the appropriate authorities.<sup>9</sup>

“Passive systems” include a variety of different techniques. Systems may include the use of a computer to call the person at random or specified times to ensure that wearers are where they are supposed to be.<sup>10</sup> Passive biometric methods include voice verification, which analyzes the person’s voice when he or she answers a call, or fingerprint and retinal scans employed at specified locations.<sup>11</sup> The costs of monitoring vary and may range from \$5-\$22 a day, with GPS being most expensive. In other cases, individuals who are electronically monitored have been required to pay \$100-\$450/month in user fees.<sup>12</sup>

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<sup>3</sup> Standing Committee on Public Safety and National Security. 2012 *A Study of Electronic Monitoring in the Correction and Immigration Settings*. Library of Parliament: Parliamentary Information and Research Service.

<sup>4</sup> Ibid pg2.

<sup>5</sup> Ibid pg2.

<sup>6</sup> Ibid pg2.

<sup>7</sup> Ibid pg 2.

<sup>8</sup> Bottos, Shauna 2008. *An Over Use of Electronic Monitoring*. Research Branch Corrections Service Canada

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

## Results of Previous Electronic Monitoring Pilot Programs

In 1999, Bonta et al. conducted a large scale comparison of electronic monitoring and recidivism using one year post-conviction information, and found that electronic monitoring had no effect on recidivism.<sup>13</sup> This study was conducted in three provinces: Newfoundland, British Columbia, and Saskatchewan, and involved 262 offenders.<sup>14</sup> The addition of electronic monitoring did not appreciably reduce the recidivism rate, even in conjunction with some cognitive-based therapies.<sup>15</sup> The study found that cognitive-behavioural rehabilitation therapy in and of itself shows that high-risk offenders recidivated at a 31.6% rate compared to 51% rate for those who did not receive treatment.<sup>16</sup> As such, there was no evidence that electronic monitoring had a more significant impact on recidivism than the less intrusive, and less costly, correctional measure of probation and, therefore, that the “value added” by electronic monitoring may appear limited.<sup>17</sup>

In Ontario, at least one program for electronic monitoring ran at a cost of \$216,000 more than the expected costs of incarceration. However, no cost-effectiveness study was conducted regarding this program’s implementation.<sup>18</sup> The electronic monitoring programs that Bonta et al. studied involved low-risk offenders who the researchers believed could have been supervised in the community with equal effect, and highlighted further that a reduction in future criminal behaviour has only been demonstrated when individuals receive high quality treatment programming. These two facts raise concerns about whether electronic monitoring is truly cost-effective, or whether it acts primarily as a net widening tool for corrections without offering tangible benefits to public safety.

More recently in 2008, the Government of Canada launched an Electronic Monitoring Pilot Program (EMPP) in Ontario for federally sentenced offenders, at a total cost of \$856,096.<sup>19</sup> This program involved 46 participants who volunteered for the program and were deemed to be at low-risk of reoffending.<sup>20</sup> The goals of this program were to test the information received through GPS technology, assess the

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<sup>13</sup> Bonta, J., Wallace-Capretta, S., & Rooney, J. (1999). *Electronic Monitoring in Canada*. Ottawa: Solicitor General Canada.

<sup>14</sup> Ibid.

<sup>15</sup> Successful completion of electronic monitoring was defined as completing the program without a new criminal offence or a breach of conditions serious enough to warrant program termination: Bottos, Shauna 2008. *An Over Use of Electronic Monitoring*. Research Branch Corrections Service Canada.

<sup>16</sup> Ibid.

<sup>17</sup> Bonta, J., Wallace-Capretta, S., & Rooney, J. (1999). *Electronic Monitoring in Canada*. Ottawa: Solicitor General Canada.

<sup>18</sup> Ibid.

<sup>19</sup> Bottos, Shauna 2008. *An Over Use of Electronic Monitoring*. Research Branch Corrections Service Canada.

<sup>20</sup> Ibid.

potential as a supervision tool for those within the community, and to assess the value and benefits of large scale implementation.<sup>21</sup>

In 2009, an evaluation of this program found “an inconclusive rehabilitative impact” to the use of electronic monitoring.<sup>22</sup> The evaluation also found that offenders themselves did not perceive that the monitoring system enhanced their accountability.<sup>23</sup> Considering this, it may be important to note that this pilot suffered from methodological errors regarding an insufficient sample size, and by the fact that only 9 of the 46 participants provided feedback regarding the program.<sup>24</sup>

Other difficulties were encountered throughout the evaluation regarding the reliability of determining locations (e.g. GPS drift), frequent false tamper alerts, battery sustainability and charge life, and the visible size and discomfort of the devices. The evaluation further found that monitoring activities had a tendency to increase the frequency of contact between parole officers and those monitored, contributing to an increased workload for parole officers.<sup>25</sup> This factor could raise concerns regarding whether such a high degree of surveillance might work against the establishment of trust with those who are monitored, or whether it acts to erode the autonomy of those participating in these programs. The frequency of contact brought about by false tamper alerts and alarms also may raise concerns about the degree of hyper-vigilance this causes for individuals and households, as a whole. These arguments have been reinforced by a literature review conducted by the John Howard Society of Alberta. The review indicated that significant stress occurs from late night calls for false tamper alerts, the negative effect that false alarms have on children within the home, and the added stress of dealing with the curfew and employment restrictions in situations where there is unreliable transportation.<sup>26</sup> These factors should be considered before expanding the use of electronic monitoring.

Electronic monitoring can make adapting to community life significantly more challenging. Finding employment while wearing a visible device may contribute to discrimination. Also, the stigmatizing aspects of wearing such a device may present further difficulties in developing new and meaningful relationships, both personal and professional. Strong relationships are a key component of successful reintegration.

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<sup>21</sup> Bottos, Shauna 2008. *An Over Use of Electronic Monitoring*. Research Branch Corrections Service Canada.

<sup>22</sup> Evaluation Report. 2009. *Electronic Monitoring Program Pilot*. Evaluation Branch, Policy Sector.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> John Howard Society Alberta. 2000. *Electronic Monitoring*.

The 2009 evaluation raised criticism for the EMPP since the program has not been able to show how electronic monitoring would act as a deterrent, as a correctional aid, or as a cost-effective means for enhancing public safety. In so far as electronic monitoring is not used as an alternative to incarceration, it functions primarily as a net widening tool and toughens the process of release.

On January 28, 2013, the Minister of Public Safety put forward a Government Response to the Sixth Report of the Standing Committee on Public Safety and National Security: *A Study of Electronic Monitoring in the Correctional and Immigration Settings*. The response states:

CSC is planning to implement a second, expanded, electronic monitoring pilot project in 2013. A Steering Committee comprised of representatives from CSC, Public Safety Canada, and Defence Research and Development Canada - Centre for Security Science has been established to serve as an advisory body to oversee effective implementation, as well as a rigorous, scientific evaluation. The evaluation will examine the cost-effectiveness of electronic monitoring, as well as any added benefit of electronic monitoring over current practice, in effectively supervising offenders who are conditionally released. Electronic monitoring will not be used as an alternative to detention but to enhance compliance with conditions upon release.<sup>27</sup>

Given that the response clearly states that electronic monitoring will not be used as an alternative to detention, and based on the empirical research available, SLSC does not foresee any added benefit to current practice or an increased cost-efficiency through the implementation of this pilot.

This report does not mean to suggest that all further investigation of electronic monitoring may be fruitless, but rather seeks to highlight established drawbacks while advocating the need for more evidence before widespread implementation.

One US study has been successful in providing evidence for a reduction in recidivism. Conducted in 2011 by Bales et al. for the US Department of Justice, this research studied 5,034 medium and high risk offenders who were electronically monitored, and 266,991 offenders who were not, over a six year period.<sup>28</sup> This study found that those who were electronically monitored had a 31% lower incidence of failure.<sup>29</sup> However, the effect on the violent portion of offenders was found to be significantly less.<sup>30</sup>

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<sup>27</sup> Parliament of Canada. Committee Report. *Government Response: Standing Committee on Public Safety and National Security*. Retrieved From: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5944470&Language=E&Mode=1&Parl=41&Ses=1>.

<sup>28</sup> John Howard Society. 2000. *Electronic Monitoring*.

<sup>29</sup> Bales, William. et al. 2010. *A Quantitative and Qualitative Assessment of Electronic Monitoring*. Office of Justice Program. National Institute of Justice. U.S. Department of Justice

<sup>30</sup> Ibid.

Although no Canadian studies have found a similar relationship to recidivism, the differences may be due to the sample size of participants, or the fact that the US samples for electronic monitoring included one-third who were monitored as an alternative to incarceration.<sup>31</sup>

## **Policy Implications**

### ***Privacy***

According to the Canadian Privacy Commissioner, while electronic monitoring may be used to monitor the conditions of release, it also provides the capability to monitor a person's real-time movements rather than just the locations from which the person may be banned. The fact that this information can be made available to law enforcement has raised privacy concerns.<sup>32</sup> The Commissioner notified parliamentarians of the merits of allowing this program to continue under a voluntary, consent-based privacy requirement, as privacy issues arise whenever an intrusive enforcement model shifts to a compulsory requirement.<sup>33</sup> The Commissioner also cautioned to keep in mind that the "effectiveness of monitoring is far from established".<sup>34</sup>

### ***Research Ethics***

Pilot programs, and the research conducted therein, present unique challenges for ethical standards of research involving humans. If a non-voluntary requirement for participation in future pilot programs occurs, there is legitimate concern about whether this fulfills the ethical standards for research involving humans.<sup>35</sup> Current guidelines for research ethics involving humans requires the free, informed, and ongoing consent of participants. It may be problematic to conduct pilot programs in a post C-10 environment, given that CSC can now "demand" that an individual wear a monitoring device. Research conducted on pilot programs involving non-voluntarily monitored individuals is at this point, a dubious, grey zone in need of attention.

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<sup>31</sup> US Department of Justice: Further conclusions from this study have found that 89% of participants claimed that electronic monitoring actually had a negative impact on relationships. Other factors indicated that electronic monitoring may increase the risks for domestic violence, and may have a negative impact on children in the environment. Complaints found in this US study should also note that these devices have been criticized for being large, cumbersome and visible, thereby contributing to public stigmatization. Accordingly, this stigmatization was linked to increased difficulties in finding and holding a job. For more information see: Bales, William. Mann, Karen et al. 2010. A Quantitative and Qualitative Assessment of Electronic Monitoring. Office of Justice Program. National Institute of Justice. U.S. Department of Justice <https://www.ncjrs.gov/pdffiles1/nij/grants/230530.pdf>

<sup>32</sup> Officer of the Privacy Commissioner of Canada. 2011. Letter regarding the Commissioner's initial analysis on the privacy implications on Bill C-10.

<sup>33</sup> Officer of the Privacy Commissioner of Canada. 2011. Letter regarding the Commissioner's initial analysis on the privacy implications on Bill C-10.

<sup>34</sup> Ibid.

<sup>35</sup> Tri-Council Policy Statement.2010. Ethical Conduct for Research Involving Humans.

### ***Equal Treatment under the Law***

A final area of concern worth noting in relation to the future implementation of electronic monitoring, is the possibility that electronic monitoring may apply unequally to persons on release. Some have raised an important concern regarding how electronic monitoring would be used in instances where economically disadvantaged people lack sufficient income to afford user fees, or who lack stable housing.<sup>36</sup> Conditions of house arrest may be difficult for those who do not have a home. Furthermore, user fees present roadblocks for those who are economically disadvantaged; especially if such fees mean that their inability to afford the user fees would decrease their access to release under electronically monitored conditions and, therefore, result in longer terms of incarceration.

### **Key Areas of Concern**

Electronic monitoring raises concerns about whether its use will result in safer communities through reducing recidivism, whether it can function as an alternative to incarceration, and whether it can bring positive results for an individual's accountability through enhanced probation office control. SLSC has identified the following key areas of concern:

- Evidence has yet to demonstrate that electronic monitoring makes communities safer, or proves to act as a deterrent for criminal activity.
- Evidence has yet to demonstrate that electronic monitoring has any effect on high-risk or violent persons.
- The high degree of surveillance that electronic monitoring presents may do little to establish trust with those monitored, and may act to erode the autonomy of those participating under electronic monitoring programs.
- Frequent false alarms and false tamper alerts may raise the degree of hyper-vigilance experienced by individuals, and may have a significantly negative impact on relationships within the home, with spouses, and children.
- The added stress of dealing with curfew and employment restrictions in situations where there is unreliable transportation can present a difficult challenge.
- Cost-effective benefits have yet to be demonstrated, along with any significant impact on recidivism in Canada.
- Having electronic monitoring pilot programs implemented in a non-voluntary way may decrease their effectiveness over programs which are set up as a voluntary alternative.

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<sup>36</sup> See for example: The John Howard Society of Alberta. 2000.



What we are left with at the moment is evidence that electronic monitoring has widened the correctional net by providing a more intrusive and expensive alternative, not to incarceration, but to probation and other community sanctions.<sup>37</sup> As it stands, it is important to continue to support corrections and conditional release programs that are proven to be cost-effective, exhibit evidence in reducing recidivism, encourage pro-social reintegration and, therefore, enhance public safety.

## **Recommendations**

SLSC does not recommend the use of electronic monitoring, given the paucity of evidence-based research that supports its effectiveness as a means of increasing accountability, reducing recidivism, and being a cost-effective measure for successful reintegration. However, if the Government of Canada implements a pilot or other program for electronic monitoring, then SLSC recommends the following:

- A participant's involvement with a research pilot should be informed, voluntary, and free from coercion. That the regulations permit to CSC to "demand" participation, individuals must have clear and consistent guidelines as to their right to refuse this opportunity and what options lie ahead for them.
- Any future pilot programs implemented should focus on working with high risk offenders who are also engaged in rehabilitative programming.
- Develop clear parameters regarding the types of offences that will be used for electronic monitoring and the rationales for them.
- Develop clear parameters regarding the extent to which the use of a person's private information can be gathered and broadcast to authorities to ensure that real time tracking is consistent with privacy legislation.
- Any implementation should include a rigorous cost-benefit analysis
- Should electronic monitoring prove a desirable alternative for an individual, guidelines are needed so that their personal situation, housing, income, do not disenfranchise them.
- The impact electronic monitoring can have on children and persons within the household be taken into account before imposing electronic monitoring.
- Any implementation should be tested for its efficacy in increasing public safety.

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<sup>37</sup> John Howard Society of Alberta.2000.

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