

Juvenile Electronic Monitoring in the New Technological Age

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As technology advances alongside societies understanding of the negative effects detention has on juveniles, activists and law enforcement have looked to how technology can assist in keeping juveniles in the community and out of jails. As a result, the use of electronic monitoring has increased.¹ But just because electronic monitoring is a better alternative to a bad option does not mean that it, and any technological improvements to it, can be uncritically seen as a benefit to society.

Electronic ankle monitors are devices that strap to a person's ankle and use GPS to monitor people's movements.² The use of electronic monitoring systems for juveniles is widespread, with nearly every state having some form of electronic monitoring for juvenile defendants.³ The number of juveniles on electronic monitoring has also gone up in recent years, with the American Bar Association urging governments to adopt or expand the use of electronic monitoring for juvenile offenders as an alternative to detention in 2011.⁴ In Franklin County, Ohio, use of electronic monitoring devices went from being used 495 times in 2022 to 510 in 2023.⁵

The shift towards electronic monitoring for juveniles reflects a recognition that incarceration is not the solution to juvenile crime.⁶ But it is also not clear that electronic monitoring as it is currently set up is entirely beneficial either. There is limited research into the effects of electronic monitoring on recidivism, and even less on juvenile recidivism on devices.⁷ The few available studies show a limited improvement at best, and at worse no improvement at all.⁸ An analysis of adult federal pretrial defendants in New Jersey concluded that there was no difference in failure to appear between similar defendants who were on electronic monitoring and those that were not.⁹ It has not been proven to be a tool that reduces crime.¹⁰

The technology as it exists now can also be finicky and increases someone's likelihood of returning to jail for technical violations.¹¹ Abel, who was sentenced to several years in a juvenile

¹ YAZMINE NICHOLS ET AL., *RETHINKING ELECTRONIC MONITORING: A HARM REDUCTION GUIDE* (ACLU et al. eds., 2022).

² Kate Weisburd, *Monitoring Youth: The Collision of Rights and Rehabilitation*, 101 IOWA L. REV. 297, 299 (2015).

³ *Id.*

⁴ *Id.*

⁵ Lacey Crisp, *Franklin County Judges Begin Issuing GPS Ankle Monitors to Juveniles Stealing Cars as the Problem Increases*, 10WBNS (Jan. 10, 2024), <https://www.10tv.com/article/news/local/juvenile-car-thefts-lead-to-judges-giving-ankle-monitors/530-bc50c7b9-f4a4-45ac-a116-b5a969531c60#:~:text=Franklin%20County%20judges%20begin%20issuing,center%20open%20for%20violent%20offenders> [<https://perma.cc/E8CA-BSPB>].

⁶ Weisburd, *supra* at 301.

⁷ Marie N. Williams, *Electronic Monitoring is Neither Effective nor Humane*, JUV. JUST. INFO. EXCH. (Nov. 19, 2018), <https://jjie.org/2018/11/19/electronic-monitoring-is-neither-effective-nor-humane/> [<https://perma.cc/TUD6-S2DR>].

⁸ *Id.*

⁹ Nichols, *supra* at 6.

¹⁰ *See id.* at 7.

¹¹ *Id.*

detention center and spent time on an electronic monitoring system, stated the following during a webinar on youth electronic monitoring:

I went back in for five days because I actually got into the ocean and fried the ankle monitor. I had went to the beach with my roommates and they started kayaking, and I had never been kayaking. So, I was like ‘damn, I’m out, like I’m free but like I’m not free because I can’t do this right now.’ ... so, I made the choice and got into the ocean. Honestly, I don’t regret frying it and spending those five days in jail because I actually felt free for once with the ankle monitor.¹²

Frequent stays in juvenile detention centers, even when relatively short, are detrimental to juveniles and exposes them to all the dangers and risks used to justify electronic monitoring in the first place.¹³

In addition, the lived experience of kids on electronic monitoring shows that it often makes them feel dehumanized and like people were staring at them.¹⁴ Inherently, the visibility of the device is stigmatizing and undermines the confidentiality of juvenile court proceedings.¹⁵ The implication of the electronic monitor can be that the juvenile is a physical danger to those around them, at a time when they would highly benefit from interacting with their community.¹⁶ After all, even supporters of electronic monitoring tend to agree that their success depends on the juveniles engaging fully with school, work and community.¹⁷ Electronic monitoring hinders any efforts of the juvenile to do any of those things.¹⁸

In an effort to improve electronic monitoring there have already been pushes to change the technology itself. In New York, the Center for Court Innovation piloted an electronic monitoring program for kids aged 16-18 where, instead of the traditional ankle monitors, smartphones were used.¹⁹ The phones were still ‘tethered’ to a small ankle monitor, that could easily be concealed, to track that the phone was always with the juveniles.²⁰ Towards the end of the study, participants switched to no ankle monitor and only used the cellphone.²¹ The goal was to explore newer, less intrusive technologies.²²

The New York study was not deemed to be a success, in part because variations of the same technological difficulties found in traditional monitoring systems existed here as well.²³ For example, even the smaller ankle monitor limited clothing choices for the juveniles and would

¹² Coal. for Juv. Just., *Electronic Monitoring for Youth in Trouble with the Law Webinar*, YOUTUBE (June 27, 2016), <https://www.youtube.com/watch?v=kW065Ae7VXM> [<https://perma.cc/B7NX-2KHX>].

¹³ Weisburd, *supra* at 331.

¹⁴ See Coal. for Juv. Just., *supra*.

¹⁵ Weisburd, *supra* at 330.

¹⁶ See Williams, *supra*.

¹⁷ Weisburd, *supra* at 331.

¹⁸ *Id.*

¹⁹ Shubha Balasubramanyam & Jethro Antoine, *Young Offenders, Electronic Monitoring, Cell Phones, and Battery Life*, 31 J. of Offender Monitoring 4,4 (2019).

²⁰ *Id.* at 5.

²¹ *Id.* at 7.

²² *Id.* at 5.

²³ *Id.* at 8.

prevent them from wearing winter boots.²⁴ In addition, the study found that the juveniles in the program already had a lot expected of them- they were asked to keep a schedule with school, therapy, court, social activities, etc.²⁵ Having to constantly keep a phone charged while also following family rules on usage could tip the scales towards a juvenile being noncompliant.²⁶ The new program raised too many challenges and provided too little benefit to replace the current system.²⁷

Despite the lack of traditional success with the New York program, it is unlikely to be the last effort to improve the technology associated with electronic monitoring. But to put energy and money behind improving the technology instead of working towards replacing electronic monitoring with nonpunitive measures would be a mistake. Even electronic monitoring with perfect technology, that is easily hidden and never glitches or needs to be charged, would present serious privacy concerns and damage civil liberties.

As shown above, in an effort to prevent juveniles from being held in detention center, courts have increasingly imposed non-carceral punishments, such as electronic monitoring, that nonetheless deprive the juveniles of their constitutional rights.²⁸ In many ways, electronic monitoring can be an alternative *form* of incarceration instead of an alternative to incarceration.²⁹ But just because it is a “better” form of incarceration doesn’t mean electronic monitoring should be given a free pass to infringe on fundamental rights. Many electronic monitoring systems collect information on everywhere someone goes; far beyond the information needed to ensure compliance with conditions of release and raising Fourth Amendment concerns.³⁰

Already, electronic monitoring involves a substantial loss of privacy, both for the person being monitored and the people in their lives.³¹ In a nationwide survey of rules governing various forms of court supervision, 65 percent of the programs provided for physical searches of people’s homes.³² The vast majority of those did not “require any level of suspicion or a warrant.”³³ It is not likely that implementing a new and improved monitoring system would alleviate these concerns. In fact, a growing number of scholars and activists have raised concerns that entire communities could soon become trapped in a “digital prison.”³⁴

Further, the intention of electronic monitoring is supposed to be to ensure the return of the juvenile to court and to assist in their rehabilitation. There has not been proof that electronic monitoring, as a concept, does either one of these things.³⁵ There are alternatives to electronic monitoring, however, that have been shown to achieve these stated goals. Examples include free

²⁴ *Id.* at 6.

²⁵ *Id.* at 8.

²⁶ *Id.*

²⁷ *See Id.*

²⁸ Kate Weisburd, *Rights Violations as Punishment*, 111 Cal. L. Rev. 1305,1308 (2023) [hereinafter *Rights*].

²⁹ *Id.* at 1310.

³⁰ Nichols, *supra* at 9.

³¹ *Id.*

³² *Rights, supra* at 1323

³³ *Id.*

³⁴ James Kilgore, *Punishing the Criminalized Sector of the Working Class*, 218 *Against the Current* (2022).

³⁵ Nichols, *supra* at 6-7.

rides to court, greater access to childcare and the use of remote technology to attend court proceedings.³⁶

Seeking to incarcerate less juveniles is a reasonable goal, and an increase in electronic monitoring is, at first glance, a logical offshoot of that. But a rush to fix the technology of current day electronic monitoring cannot obscure the risk electronic monitoring poses to fundamental rights.

³⁶ See Barbara Rodriguez, *Could Access to Child Care be the Key to Helping Parents Clear Arrest Warrants?*, THE19TH (June 8, 2023, 9:59 AM), <https://19thnews.org/2023/06/warrant-clinics-justice-system-child-care/> [<https://perma.cc/C7J2-Z2T7>]; See Adam Uren, *Low-income Suspects to get Free Rides to Court under Minneapolis Pilot*, BRING ME THE NEWS (Jan. 24, 2019), <https://bringmethenews.com/minnesota-news/low-income-suspects-to-get-free-rides-to-court-under-minneapolis-pilot> [<https://perma.cc/K6LJ-EWYJ>]; See Amy Petkovsek, *A Virtual Path to Justice: Paving Smoother Roads to Courtroom Access*, AMERICAN BAR ASSOCIATION (June 3, 2024), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/technology-and-the-law/a-virtual-path-to-justice/ [<https://perma.cc/HY7Z-TLQ7>].