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Electronic Monitoring (EM) in Germany

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Key findings

- EM is currently used in two ways in Germany: location monitoring (GPS) (German *Aufenthaltsüberwachung*, EAÜ) is available nationally within the framework of supervision of conduct; and, presence monitoring (Radio-Frequency) (German *Elektronische Präsenzkontrolle,* EPK) is used in Hessian, as an alternative to prison. Both uses have different aims and modes of operation.
- EM is used only exceptionally in Germany. At the time of the research, around 120 individuals were monitored compared with approximately 180,000 people who received probation supervision or were subject to supervision of conduct.
- Compared to other jurisdictions, Germany uses EM in a very limited way and for small numbers of individuals. The reasons for this include: strict eligibility criteria; a lack of a legal framework for the use of EM; constitutional objections and limitations; high data protection standards; a relatively low prison population and little concern about prison overcrowding; concerns about the limitations of the monitoring equipment; an ambivalent public perception of EM; and, a lack of political will to extend or continue to use EM.
- The use of GPS-EM is bureaucratic and formalised involving many actors partly as a result of strict data protection legalisation.
- GPS technology has defects which impact upon its implementation and cost-effectiveness.
- The effectiveness of EM is unclear: there is a lack of empirical evidence that EM reduces recidivism and concerns about the potential for 'net-widening' remain unresolved.

Recommendations

It is recommended that:

- proportionality should be the key principle in the use of EM.
- the use of EM should remain limited to a small number of high-risk offenders in its current application to support adherence to conditions imposed under supervision of conduct.
- the use of EM should not be extended because other measures, such as probation supervision, are available which are more proportionate and may be more effective and better able to avoid ‘net-widening’; it would require substantive reorganisation of criminal justice institutions; and the impact of EM on recidivism is not proven.
- in accordance with the European Probation Rules, EM should only be used alongside other rehabilitative interventions.
- a more flexible process for allowing variations in monitoring requirements should be created.
- time spent on EM pre-trial should be deducted from any subsequent prison sentence which is imposed.
- if EM were to be used with crime victims, such as domestic violence victims, the potential impacts on them need to be thoroughly assessed and understood prior to its introduction.
- more research is needed to fully understand the potential for 'net-widening'.

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Electronic location monitoring

Location monitoring, using GPS tracking technology, is the only type of EM which is legislated for and used nationally. The technology allows for the movements of monitored people to be tracked at all times. However, this information can only be accessed in certain circumstances, such as when non-compliance is detected or technical issues are reported.

Legal framework and aims of EM

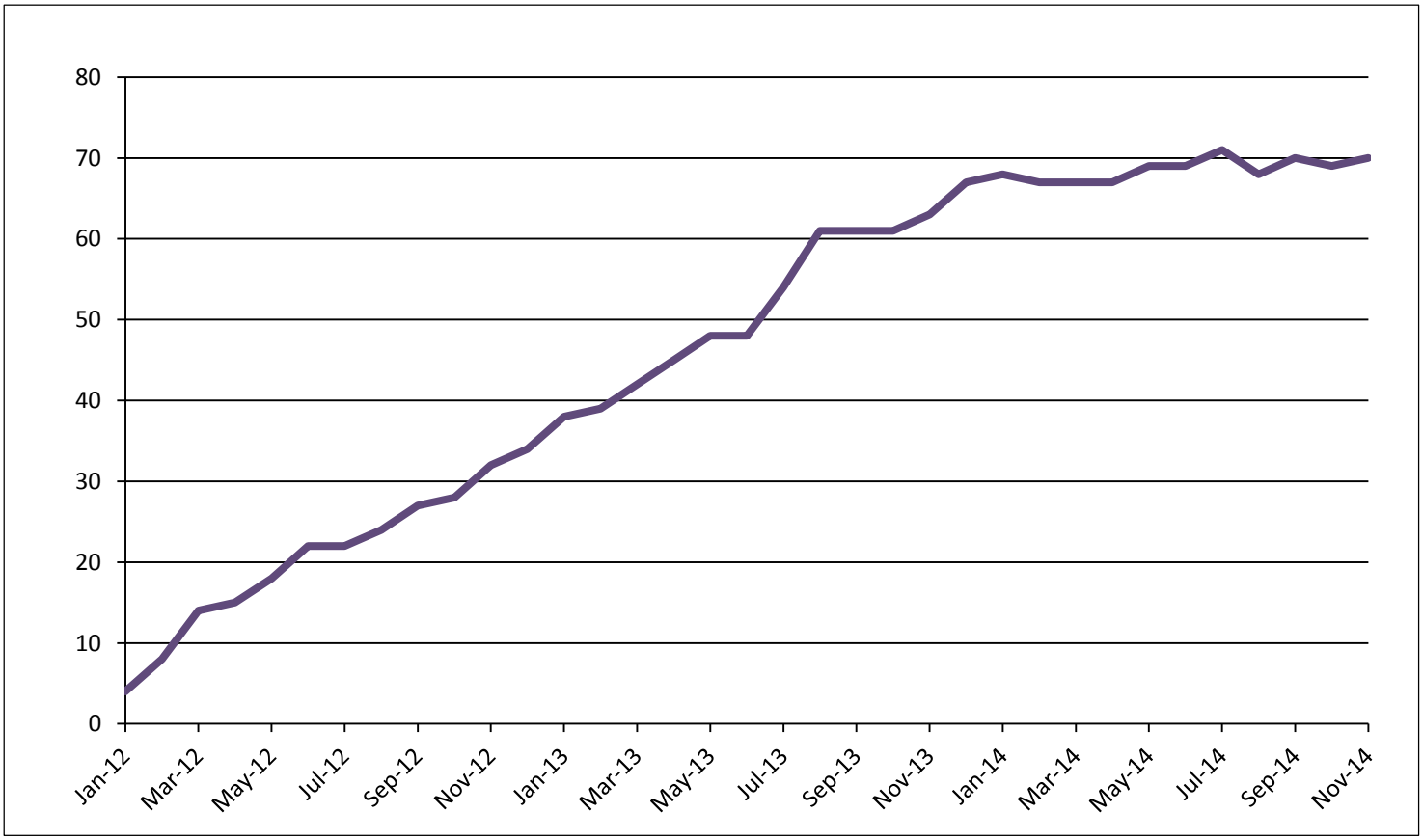
Electronic location monitoring is a directive under the supervision of conduct (§ 68b I p. 1 Nr. 12 of the German Criminal Code). This is not related to any particular offence types, but is focussed on offenders at high risk of reoffending. Location monitoring is used alongside other probation measures which focus on rehabilitation reflecting the constitutional importance of including rehabilitation within penal sanctions.

When used in this way, EM is one of a number of conditions available as supervision of conduct, according to § 68b I p. 1 German Criminal Code. It is amongst the most intrusive conditions, and is heavily regulated (§ 68b I p. 3 of the German Criminal Code). Electronic location monitoring can be imposed after serving the full term of imprisonment or after the end of a sentence for serious violent or sexual offences (§ 66 III p. 1 of the German Criminal Code). It is intended to provide support by monitoring compliance with other conditions, particularly residency orders, and cannot be used as a standalone measure. As a result, it is intrinsically linked to other conditions.

Use of EM

Figure 1 shows the caseload of monitored persons between 2012 and 2014. It demonstrates that the number of monitored people has increased since 2012 and had reached around 70 by the end of 2014. Staff at the monitoring centre (GÜL - *Gemeinsame Überwachungsstelle der Länder)* stated during interviews that they had monitored up to 100 people in the months before the research was conducted. The steady increase in the number of cases is probably explained by the fact that electronic location monitoring is a relatively new measure. The number of monitored people is now expected to plateau.

Figure 1 The number of individuals under location monitoring (EAÜ) between January 2012 and November 2014



The target group for electronic location monitoring is typically offenders who are released from prison after they have served their full sentence. Table 1 shows that electronic location monitoring was used in 41 new cases in 2013. It also illustrates variations in the use of EM across the 16 federal states. More than a third of those subject to location monitoring were in the federal state of Bavaria. However, when population figures are taken into account, the highest proportion of offenders on EM were in the federal state of Mecklenburg-Vorpommern. Table 1 also shows that the use of EM was lower in states with similar populations, such as Baden-Württemberg and Lower Saxony.

Table 1 Electronic location monitoring (EAU) cases in Federal states in 2013

Federal state	Cases		
	New	Completed	Revoked
Baden-Württemberg	3	0	1
Bavaria	14	4	8
Berlin	5	0	1
Brandenburg	0	0	0
Bremen	0	0	0
Hamburg	1	1	0
Hesse	6	0	0
Mecklenburg-Vorpommern	1	1	2
Lower Saxony	1	0	0
North Rhine-Westphalia	5	0	2
Rhineland-Palatinate	0	0	1
Saarland	1	0	0
Saxony	1	0	1
Saxony-Anhalt	0	0	0
Schleswig-Holstein	0	1	1
Thuringia	3	0	0
Total	41	7	17

Table 1 also illustrates that during 2013, 7 cases were completed compared with 17 cases in which monitored people were returned to prison. The largest number of revoked orders was in Bavaria although they were more evenly spread across Federal states than new orders.

Table 2 shows the outcome of cases in 2013. It demonstrates that three-quarters of monitored people served their time in full during this period. The remainder were released from the measure with over a tenth being released having fully served their time. Only one woman has been subject to electronic location monitoring to-date.

The low number of cases shown in both Figure and Table 1 demonstrates that EM for the supervision of conduct has a subsidiary role in practice even though it is imposed according to federal law.

Table 2 Caseload data of electronic location monitoring (EAU) in 2013

Federal state	Time served in full	Released	Both	Total
Baden-Württemberg	2	0	1	3
Bavaria	19	7	4	30
Berlin	3	1	1	5
Brandenburg	0	0	0	0
Bremen	0	0	0	0
Hamburg	2	0	0	2
Hesse	5	0	2	7
Mecklenburg-Vorpommern	6	0	1	7
Lower Saxony	2	0	0	2
North Rhine-Westphalia	6	0	1	7
Rhineland-Palatinate	1	0	0	1
Saarland	1	0	0	1
Saxony	1	0	0	1
Saxony-Anhalt	1	0	0	1
Schleswig-Holstein	2	0	0	2
Thuringia	4	0	1	5
Total	55	8	11	74

Table 3 shows the offences related to cases in which electronic location monitoring was used in 2013. It illustrates that three quarters of cases related to sexual offences. It also demonstrates some differences between federal states. For example, in Berlin all the cases in which location monitoring was used related to violent offences whereas in most other states the majority of cases related to sexual offences.

Table 3 Offence types for cases of electronic location monitoring (EAU) in 2013			
Federal state	Sexual offences	Violent offences	Total
Baden-Württemberg	2	1	3
Bavaria	24	6	30
Berlin	0	5	5
Brandenburg	0	0	0
Bremen	0	0	0
Hamburg	2	0	2
Hesse	5	2	7
Mecklenburg-Vorpommern	6	1	7
Lower Saxony	2	0	2
North Rhine-Westphalia	5	2	7
Rhineland-Palatinate	1	0	1
Saarland	1	0	1
Saxony	1	0	1
Saxony-Anhalt	1	0	1
Schleswig-Holstein	1	1	2
Thuringia	5	0	5
Total	56	18	74

The operation of EM

The operation of electronic location monitoring relies upon the commitment of the agencies involved. All of the agencies were aware of their responsibilities. This applies, on the one hand, to the authorities who are in direct contact with the monitored persons and in a supervisory capacity implement the necessary social and supportive measures (especially the probation service) and, on the other hand, the offices for the supervision of conduct (*Führungsaufsichtsstellen*).

Communication with the monitored people appears to function effectively. Social workers are always available at the monitoring centre so although electronic location monitoring is considered primarily as a deterrent and surveillance measure, it also facilitates access to additional social supervision. Technical monitoring without additional wrap around support was regarded by all interviewees as ineffective and incorrectly targeted.

A large number of agencies work together to operate EM, including the GÜL, the HZD (Hessian Centre for Data Protection), the probation service, offices for supervision of conduct, the police, and the courts for the execution of prison sentences. In light of the number of agencies involved, it is necessary to ensure that personal data relating to offenders are protected. In practice, this is achieved by keeping the data for a short period of time before they are deleted, restricting access to GPS monitoring data, and limiting the grounds for data sharing. It is imperative that all agencies work together to ensure that data are adequately protected. This leads to a formal and bureaucratic communication process between agencies.

The operation of EM appears to work well, particularly in response to serious cases where the police are involved. Furthermore, there are effective working practices between the HZD authorities of the GÜL across different federal states. This is particularly the case in Mecklenburg-Vorpommern, where a centralised office for the supervision of conduct has been established. Bavaria has also created an authority responsible for coordinating the offices for the supervision of conduct. However, some improvements to the processes could be made. A more flexible process for allowing variations in monitoring requirements should be created. A significant workload is involved when the circumstances of monitored persons change, warranting a temporary suspension of monitoring, such as when they move house or are in hospital, because of formalised and bureaucratic processes. The heavily bureaucratised process generally makes it difficult to impose EM in flexible and individualised ways. EM also requires significant resources to operate, despite the small number of monitored people.

GPS technology provides scope for new uses of EM. However, all applications of EM are restricted constitutionally because of human rights, including the right to determine how personal information is used (Art. 2 I and Art.1 I). There are also some issues with the technology, including the GPS device that monitored people must wear. All interviewees considered that the equipment could be improved, by reducing its weight, size and charging times, and extending battery life and the length of the charging cable. Such changes may reduce possible stigmatising effects on monitored people and make it easier to conduct their daily lives. New equipment, such as

detachable batteries, would be an improvement, but may be too costly.

The GPS signal can sometimes be weak in particular areas. Where this occurs, Location-based Services (LBS) positioning is used instead, but this has its drawbacks. Firstly, LBS positioning is dependent on existing infrastructure. Secondly, it provides a less accurate location. Thirdly, the failure of GPS increases costs, as each positioning is charged separately by the network provider. Mapping software also contains inaccuracies, which means that the HZD must use resources to ensure the accuracy of all the exclusion and inclusion zones. Due to these problems, steps have been taken to change the equipment provider 3M, although it is not clear when a new contractor will assume responsibility for providing these services.

Overall, the operation of electronic location monitoring is successful in both technical and organisational respects, although improvements could be made. This is primarily due to the commitment of the agencies involved. However, there are a number of obstacles to increasing the use of EM, including the cost of equipment and the bureaucratic operational processes.

It is difficult to determine the effectiveness of electronic location monitoring on reducing reoffending. This is due in part to a current lack of empirical evidence. It is also challenging to evaluate EM because it is usually imposed as part of a package of interventions. The extent to which EM has deterrent effects is also unclear and possibly limited to particular offenders and/or offence types. It is important that expectations of EM and its suitability are realistic.

The use of GPS-EM has the potential to conflict with human rights legislation. For this reason, it must be imposed in a way which is consistent with constitutional law and the principle of proportionality. As a result, EM is a distinctive tool which is restricted to a relatively small number of high-risk offenders. The operation of EM requires a large commitment of resources. Consequently, any wider use of EM in Germany would face both legal and practical challenges.

Electronic presence monitoring

EM has also been used in the federal state of Hessen since 2000. It has been the basis for a pilot project, known as electronic presence monitoring (*Elektronische Präsenzkontrolle*, EPK). Despite its status as a pilot project, it is important because it accounts for more than a third of total EM use in Germany. Furthermore, this form of EM is often mentioned as an example when new areas of application are being discussed.

Legal framework and the aims of EM

The main uses of EM in the Hessian model are based on federal law. The legislation does not directly mention possible uses for EM, but only includes instructions. Electronic presence monitoring can only be imposed with the consent of individuals. The lack of a clear legal foundation is sometimes given as a reason not to extend this type of EM to other federal states.

Electronic presence monitoring is distinct from electronic location monitoring. This form of EM uses RF technology which determines the presence or absence of individuals in their place of residence. It does not track their location.

Distinct legal frameworks are used for electronic presence monitoring. Possible uses of EM include in the framework of the probation service (§ 56c German Criminal Code), as early release from prison (§ 57 German Criminal Code) and as an alternative to pre-trial detention (§ 116 StPO), where clemency is granted (§ 19 *Hessische Gnadenordnung*) or following release from prison (§ 16 III HessJStVollzG [Hessian law on performance of punishments for the youth] and § 16 III HStVollzG [Hessian law on performance of punishments for adults]).

Electronic presence monitoring is intended as an alternative to prison and is targeted at defendants or offenders who are eligible for bail or probation instead of imprisonment. It was often described during interviews as a ‘last chance’ before imprisonment. EM monitors curfews or other court conditions to ensure that the monitored person has a structured daily routine.

Use of EM

Table 4 shows the number of cases involving electronic presence monitoring on 3 April 2013. A total of 73 individuals were being monitored on this day. Table 4 also demonstrates that the use of this type of EM is concentrated in two District court areas. Darmstadt had the greatest number of active cases at 34 accounting for 40% of the total. Table 4 also shows that cases were evenly split between probation orders and pre-trial uses.

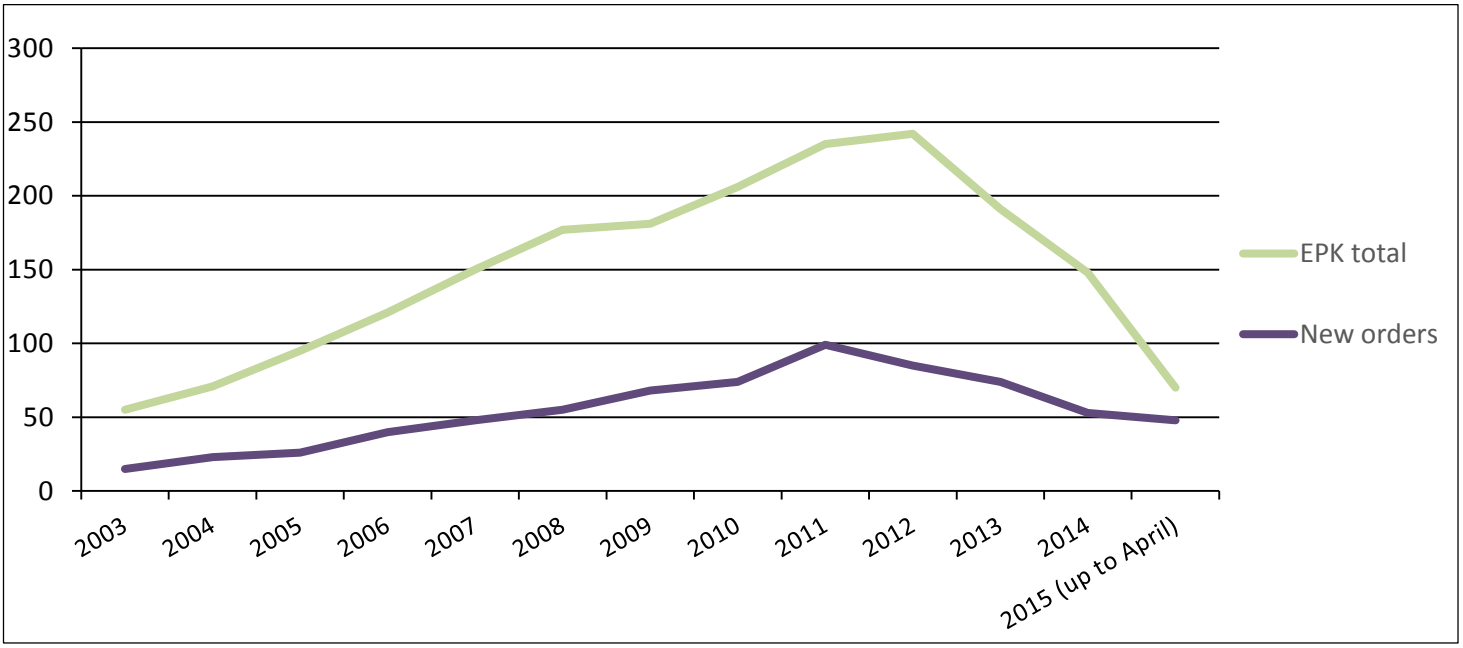
Table 4 Number of cases of electronic presence monitoring 3 April 2013			
District court area	Active cases	Probation order (§ 56c or § 57)	Bail (§ 116 StPO criminal procedure law)
Darmstadt	34	6	28
Frankfurt/Main	3	12	1
Fulda	2	0	2
Gießen	15	13	2
Hanau	4	2	2
Kassel	1	0	1
Limburg	5	5	0
Marburg	3	2	1
Wiesbaden	6	1	5
Total	73	41	42

Table 5 shows the number of cases in which electronic presence monitoring was imposed from the beginning of the pilot in 2000 to 3 April 2013. During this period, 1141 individuals were monitored. This figure had risen to 1310 cases by 31 March 2015. The average annual caseload is between 80-90 cases. The average duration of the order was 127 days during this period. Table 5 also shows that its use during this time was concentrated in Frankfurt/Main and Darmstadt district courts. Table 5 demonstrates that two thirds of the electronic presence monitoring which was imposed was as a condition of a probation order with the majority of the remainder being pre-trial use.

Table 5 Number of cases in which electronic presence monitoring was imposed from the beginning of the pilot in 2000 to 3 April 2013				
District court area	Total	Probation order (§ 56c or § 57)	Supervision of conduct	Bail (§ 116 StPO criminal procedure law)
Darmstadt	335	113	1	221
Frankfurt/Main	414	349	0	65
Fulda	59	45	0	14
Gießen	127	102	0	25
Hanau	66	46	0	20
Kassel	26	24	0	2
Limburg	36	29	0	7
Marburg	31	18	1	12
Wiesbaden	47	26	0	21
Total	1141	752	2	387

Figure 2 illustrates the trends over time regarding use of electronic presence monitoring between 2003 and April 2015. It shows that the use of electronic presence monitoring increased steadily until 2008 after which it has declined. On 11 August 2015, 43 individuals were being supervised.

Figure 2: The use of electronic presence monitoring (EPK) in Hessian since 2003



The operation of EM

During interviews, it was stated that EM is most effective when used alongside other conditions and has the function of monitoring compliance with individualised curfews. The probation officers interviewed considered electronic presence monitoring to be a potential 'compromise' with judges allowing offenders to avoid imprisonment. Probation officers emphasised that EM, along with an agreed weekly plan, allowed for a greater amount and depth of contact with offenders. It was also commonly agreed that EM should not be used as a standalone condition without support measures.

One positive factor in the operation of presence monitoring is the flexibility allowed when dealing with individual cases. This applies both to the area of cooperation with the technical authorities (HZD and GÜL) and to the close cooperation between judges and probation officers before EM is imposed. In practical terms, probation officers are given a high degree of responsibility by judges. Probation officers are therefore central figures, and can respond relatively flexibly in the event of problems or changes in circumstances.

One problem with this application of EM is the potential for net-widening, through a disproportionate extension of state control. From the perspectives of interviewed judges such concerns were reasons for both their scepticism and reluctance to impose EM. This may partly explained why EM was imposed in only around 40 out of a possible 16,000 probation cases and why regional differences in use were observed. If used disproportionately, electronic presence monitoring has the potential to interfere with the human rights of individuals, due to possible stigmatising effects and restrictions of liberty. Therefore, it is necessary to justify its use and be aware that other conditions, such as probation supervision, may be more appropriate in certain circumstances. Although monitored people are required to give their consent for EM, it is questionable to what extent consent is informed, given that a failure to consent may result in imprisonment.

The use of electronic presence monitoring is used infrequently at the pre-trial stage, compared to other conditions which are available to decision-makers. The function of pre-trial EM is control rather than imposing structure on daily activities, because defendants are unconvicted. The potential to use both RF and GPS technologies pre-trial should be carefully considered because neither will prevent absconding or reoffending but only record them that they take place. If the risk of absconding is small, there are no grounds for imprisonment, and EM would not be applicable (§ 116 StPO). Consequently, the value of EM at the pre-trial stage is unclear and may be useful only where the risk of absconding is low. The benefits of pre-trial use of EM should be carefully weighed up against the potential of net widening. This type of EM may only have value by providing additional surveillance.

The low number of people who have electronic presence monitoring imposed suggests that it is not currently used as an alternative to prison. One reason for this may be that the resources needed to impose EM are greater than if custodial sentences were used. Decision-makers may consider that prisons are able to punish offenders effectively and the infrastructure is already in place, requiring fewer resources.

The technical operation of electronic presence monitoring appears to be largely successful, which may in part be due to the simplicity of the equipment. One potential issue is the public perception of EM. It is often supported by the public because it is regarded as an additional punitive measure. However, the public's view of its effectiveness is less positive. Both types of EM are often considered to be the same, and individual cases of non-compliance have resulted in media scandals. The public also have unrealistic expectations of EM. Practitioners explained that negative media coverage of EM, particularly in high profile terrorist cases, has influenced decision-making and may be linked to the reduction in use of EM.

Concluding comments

It is recommended that the use of EM is only continued with a small group of high-risk offenders. EM should only be used where less intensive measures are inappropriate because probation supervision already provides sufficient supportive measures and controls.

It is important to be objective about the use of EM with high-risk offenders. EM should not be regarded as an appropriate measure for all high-risk offenders, which can reduce reoffending. However, EM has the potential to become a politicised issue because of differences in use across the different federal states.

Although the operation of EM functions well, primarily due to the commitment of the agencies in-

volved, the processes are complicated and require high levels of financial, technical and administrative resources. Any significant increase in the use of EM would require significant process changes.

Where EM is used as part of probation, attention must be paid to the potential for net-widening. It should not be used as an additional penal measure, but rather as an alternative to imprisonment. There is currently little empirical research on this type of EM and the scope for developing it to other areas of application is unknown.

Similarly, EM is used pre-trial for a relatively small number of offenders. The technology does not prevent absconding, where this is a risk. If there is no risk of absconding, EM is not applicable by law. Pre-trial EM may increasingly be regarded as an additional security measure because of its ability to monitor individuals. However, the time spent on pre-trial EM is not deducted from a subsequent prison sentence. It is recommended that this approach is reviewed.

One possible use of EM is early conditional release. This includes early release from prison, similar to the Dutch model (see Boone et al, 2016), or as a community sentence. However, considerable resources would be required and the contribution EM would make to existing conditions is unclear, factors which may have contributed to the discontinuation of Baden-Württemberg pilot project in 2013.

The differences in German criminal law and procedure make comparisons with other jurisdictions challenging. One distinctive feature of the German system is that the prison population is low in comparison to other jurisdictions (currently 78 per 100,000 inhabitants). Therefore, there is no urgency to reduce the prison population.

Types of EM which only focus on monitoring appear unsuitable and the ability for EM to prevent and detect offending should be viewed with caution. The recommendations of the European Council on the use of EM state that it should not be used as a long-term standalone measure, but should be combined with professional involvement and support with social reintegration (Basic Principle No. 8, CM/Rec(2014)4).

Interviewees suggested that EM could be used with 'hooligans'. Yet, it should only be used as a short-term measure because it does not deal with underlying issues related to offending. Furthermore, longer-term use of EM may not be constitutional. Criminological research relating to hooligans suggests that much of the violence is carried out independently of sports events.

The potential use of EM for victim protection has been suggested by the media. Such use requires careful consideration, particularly if victims are expected to wear tags. It is important to consider the potential for the equipment to act as a visible reminder of the offence which impact upon victims psychologically and remind them of the risk of harm.

Germany is distinct from the other jurisdictions in this project in respect of its cautious approach to EM. This reflects the influence of constitutional law. Whereas other jurisdictions appear to use EM on a wider scale, in Germany, other responses exist which may be equally effective. These include support and control of high-risk offenders, probation work, avoiding short prison sentences, and a relaxed approach to sentence enforcement. Therefore, a cautious approach should be taken towards any further developments of EM in Germany.

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