



## Electronic Monitoring in the Netherlands

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### Key findings

- ❖ The use of electronic monitoring (EM) has generally been stable since the beginning of this century. However, since the introduction of the digital desk, the number of cases has steadily increased, up to 2250 in 2015.
- ❖ Since its introduction, EM has been applied at three stages of the criminal justice process. There are currently six different legal uses: as a condition of the suspension of pre-trial detention; as a condition of a conditional sentence; as a condition of a penitentiary programme; as a condition of conditional release; as a condition of a conditional tbs-measure (detention under a hospital order); and with the conditional ending of a tbs-measure.
- ❖ The use of EM as an alternative to short prison sentences has not developed significantly. As a structural modality it was recently firmly rejected by the parliament.
- ❖ EM is most often applied as a condition of a penitentiary programme.
- ❖ The fastest growing use of EM is the application of EM in the context of prison leave.
- ❖ The type of monitoring that is used is related to the condition imposed (Radio-Frequency (RF) for location orders and GPS for location bans).
- ❖ The most important objective of EM according to the majority of respondents is to contribute to the quality of supervision by the probation service (*goal-oriented approach*). Reducing deprivation of liberty and contributing to the safety of society are also important objectives of EM.
- ❖ The potential for EM to replace imprisonment is underused in the Netherlands.
- ❖ For high impact crimes, EM is used for the whole duration of the penitentiary programme. According to many respondents, this conflicts with the *goal-oriented approach*.
- ❖ There are no offence types for which the use of EM cannot be used. EM is less likely to be imposed where people have serious substance addictions, serious mental illness and/or strongly impaired intellectual capabilities.
- ❖ EM is less likely to be imposed where offenders do not have suitable housing. It cannot be applied when offenders do not have any housing or when cohabitants do not consent to EM. EM is not usually imposed when the living situation is unsafe or unstable or when offences are committed from home.
- ❖ The average duration of EM is 3 to 4 months.
- ❖ 70 per cent of people under EM are born in the Netherlands. This suggests the EM is used selectively because less than 50 per cent of prisoners are born in the Netherlands.

### Recommendations

- ❖ There should be a legal basis for the application of EM as a condition of the suspension of pre-trial detention and as a condition of leave. The legislation on EM as a condition of a conditional sentence or conditional release should be better developed.
- ❖ The absence of suitable housing should not be a reason to exclude people from EM. More opportunities should be created for suspects and offenders to be monitored outside of their own living environment, especially if the penitentiary programme is to become the only form of phased detention in the future.
- ❖ In theory, the goal-oriented approach of EM provides a clear framework for the application of EM. This approach assumes that EM should only be imposed when it is believed that supervision without EM would be less effective. In other words, when its application is proportionate and subsidiary. A number of current practices conflict with this approach and should be reconsidered (HIC-policy, application of EM on leave).
- ❖ To prevent a proliferation of uses of EM, a working group should be set up that develops a joint perspective on the development of EM in the Netherlands.
- ❖ Legislation should be introduced to enable the time spent under EM supervision pre-trial to be deducted from subsequent prison sentences.
- ❖ Clear agreements should be made on the ownership and use of data generated by EM. The 'request for historical information' by the prosecution service should be subject to judicial review.



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## Legal framework

In the Netherlands, EM has six legal uses.

- As a condition of the suspension of pre-trial detention (article 80(1) CCP). The possibility of applying EM as a condition of the suspension of pre-trial detention is not explicitly stated in the law, nor is it ruled out. The examining magistrate, the court or the public prosecutor can propose the use of EM. The probation service advises on the feasibility and desirability. The suspect's consent is required.
- When imposing a location order or location ban as a condition of a conditional sentence (article 14c, section 3 CC). A proposal can be made by the judge, the public prosecutor or the probation service. The probation service considers whether the address is suitable for electronic monitoring and whether any cohabitants consent to the use of EM at the property. The offenders' consent is also required.
- As a condition of a penitentiary programme. A penitentiary programme can be applied in the last stage of detention as an execution modality of prison sentences (article 4 Penitentiary Principles Act). Prison governors advise selection officers, taking the advice of the probation service and (if applicable) the prosecution service into account. Selection officers make the final decision. In principle, EM is applied during the first third of the programme, but it can be extended or reset if the behaviour of the monitored person gives reason to do so (article 7a Penitentiary Measure). The consent of both prisoners and any cohabitants is required.
- EM is increasingly used as a condition of leave, although it is not explicitly mentioned as a condition in the law. In most cases selection officers decide on leave and the conditions to be imposed. When EM is used to monitor the leave conditions, GPS-monitoring is used and a home unit is not installed. This is the only use of EM in which the probation service is not involved.
- When imposing a location order or location ban as a condition of conditional release (article 15a section 4 CC). Prisoners can be conditionally released if they serve an unconditional prison sentence of at least one year. Where prisoners qualified for conditional release, the Central Facility Conditional Release (CFCR; *Centrale Voorziening Voorwaardelijke Invrijheidstelling, CVVI*) decides whether special conditions need to be imposed. The probation service investigates if individual's intended living address is suitable for EM and advises the CFCR on the conditions to be imposed. The same applies to prison governors and public prosecution service where they have expressed a desire to use EM. EM is usually not applied at the stage of conditional release when individuals have already participated in a penitentiary programme because it would result in additional restrictions.
- Tbs (*terbeschikkingstelling*, detention under a hospital order) is a measure that can be imposed on offenders who cannot be held responsible for their actions. A tbs-measure can also be imposed outside prison under conditions (article 38 CC) where the risk of new offences is acceptable and the person acknowledges their illness and consents to treatment. Although not explicitly mentioned in the law, EM can be applied to monitor either a location order or ban. The same applies for the last stage of a tbs-measure, in which the tbs-client can be conditionally released. However, these uses of EM are not legislated for and are rarely applied.

## The use of EM

Since 2004, the number of people under electronic monitoring in the Netherlands has been stable for a significant period of time. However, since the introduction of the digital desk (an online tool which enables judges, prosecutors and probation officers to digitally request probation advice on the desirability of EM in a specific case) in 2013, there has been a steady increase in the use of EM. Based on registrations at Dutch probation organisations, a total of 1562 supervisions with EM started in

2013, of which 1299 were monitored on only one occasion. This represents an increase of one third compared with 2012, when 1162 supervisions with EM commenced.

**Figure 1: Percentage of persons who commenced supervision with EM according to type of application in 2013 (N=1542)**

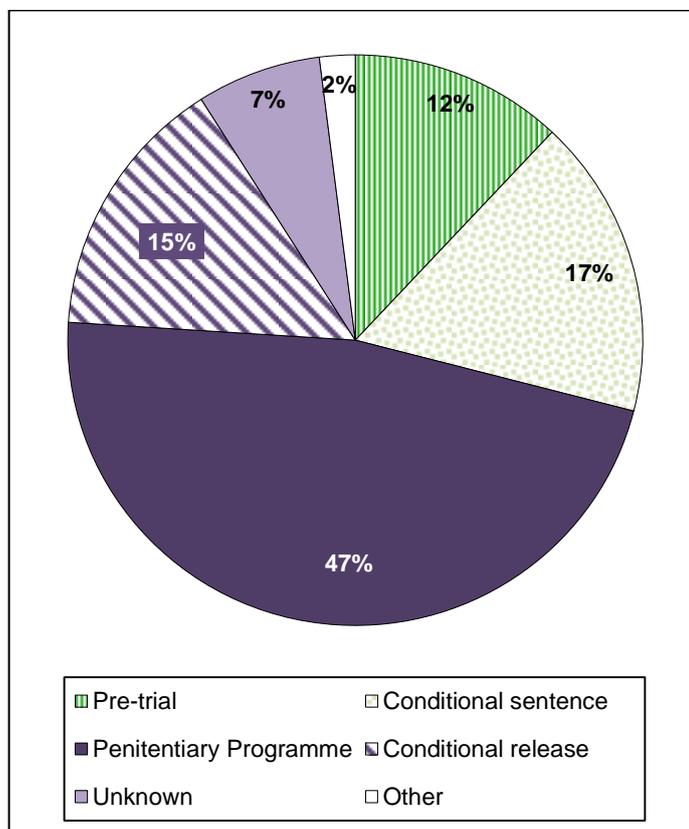


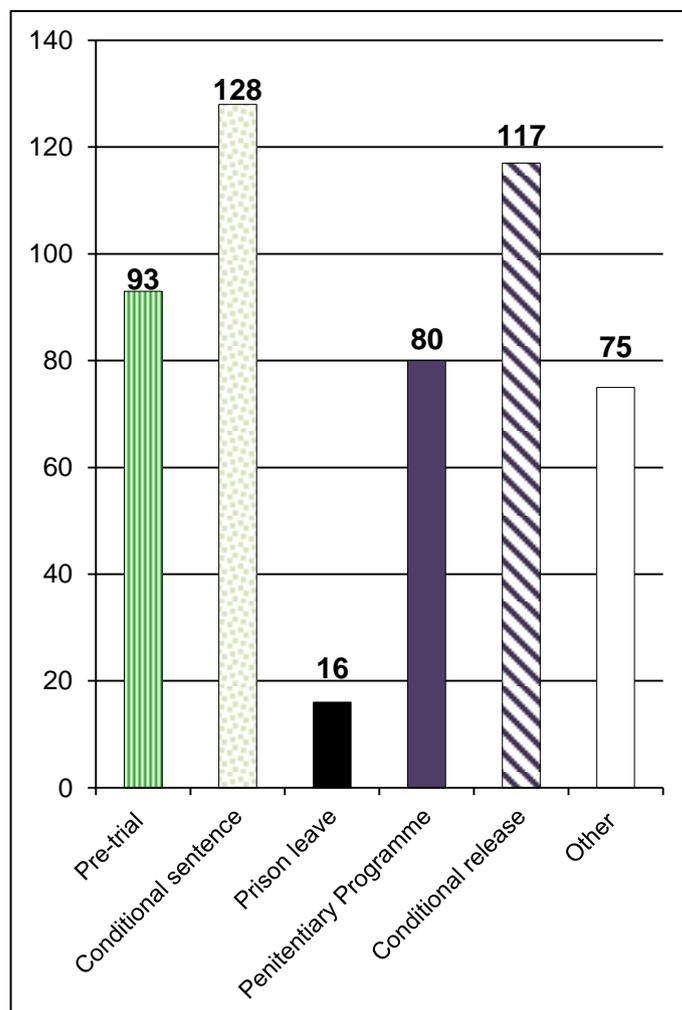
Figure 1 shows that the penitentiary programme is clearly the most common used EM modality.

In 2013, 12 per cent of the cases of EM were imposed as a condition of the suspension of pre-trial detention. According to our respondents, this use is growing, an observation which is supported by quantitative data. In 2012, pre-trial detention was suspended under EM on 153 occasions. According to unpublished figures from the probation service, there were 373 cases in the first 10 months of 2015. Seventeen per cent of EM cases were imposed as a condition of a conditional sentence. Respondents thought that little use is made of this option. The cases where EM is applied as a condition of a conditional sentence commonly involve young offenders. According (in 2013) to unpublished data from the probation service 51 per cent of the pre-trial EM cases concerned young offenders between the ages of 18 and 24.

## Duration of EM

No maximum duration is set for the use of EM. Theoretically, a person can be supervised for 10 years, and following the implementation of the recently adopted Act on long-term supervision (*Langdurig toezicht, gedragsbeïnvloeding en vrijheidsbeperking, 33816*), supervision can be life-long. Figure 2 shows the average duration of each use of EM. Not surprisingly, the shortest duration of EM is on leave. The fact that the average duration is still longer than the average duration of leave is probably explained by the fact that the ankle tag may not be removed after leave where another leave is planned shortly afterwards. EM is usually applied during a penitentiary programme, but if it is applied in the context of pre-trial detention, conditional sentence or conditional release, its average duration is longer. This may be explained by the fact that there is no maximum duration of EM when used in these ways, whereas there is a maximum duration of EM in a penitentiary programme.

**Figure 2: Average number of days under EM (January-October 2015)**



## Aims

Since its introduction in the Netherlands, EM has been presented as a measure which can contribute to the rehabilitation of offenders. Although there has been some resistance within the probation organisations to the use of EM, the probation service has been responsible for its execution since the start in the early 1990s. Because of a shortage of prison places, *electronic detention* was used for a short time as a stand-alone (i.e. without support) measure for short prison sentences up to three months. However, this use was abandoned when prison capacity issues were resolved. This background helps explain why the majority of respondents mentioned the improvement of the quality of supervision as the most important objective of electronic monitoring. Electronic monitoring contributes to better compliance of monitored people to the conditions of non-custodial sanctions. Firstly, it adds structure to the life of monitored people; the restoration of a day-night rhythm was discussed frequently in interviews. The fact that a violation of the conditions may result in being sent to prison is a strong, albeit negative, incentive to, for example, stay away from victims (in case of a location ban). Furthermore, where EM is used with GPS, the so-called 'trails' can provide a basis for conversations between probation officers and their clients; a third way in which the quality of supervision has improved according to our respondents.

The dominance of this objective is visible in the way in which EM is organised in the Netherlands. In contrast to most other countries, the probation service is present during the installation of the equipment and probation officers make all the decisions with respect to the granting and withdrawing of liberties. A graduated system of awarding more free time (liberty) is used, which is based on the idea that individuals gradually regain their autonomous position in society. In contrast to other jurisdictions, the response to violations is related more to the person than to the type of violation. The circumstances of individuals are taken into consideration during the initial response to violations rather than after formal breach proceedings have begun.

A number of recent developments fit poorly with the goal-oriented approach. This predominantly

applies to the policy for offenders of *high impact crimes* (HIC) who are under EM for the whole of their penitentiary programme, in contrast to other types of offenders. This approach conflicts with both the Penitentiary Measure and the starting point that EM contributes to the gradual return of prisoners to society.

Apart from EMs contribution to the quality of supervision, other objectives of EM were mentioned. To some degree, EM can contribute to the protection of victims and the safety of society. A location ban makes it possible to monitor whether offenders are near a victim or enter exclusion zones, where the chance of offending may be significantly higher. Where the supervisee enters an exclusion zone or removes their tag and a specific person is at risk of harm, the police will be informed immediately. Their first task is to protect victims and prevent casualties. While respondents from the Ministry of Justice and the Prison Service attached much value to this objective, respondents from the probation service particularly emphasised that EM can only provide a limited degree of safety. In relation to this objective, EM signals to victims that their interests are taken into account when granting liberties to suspects or offenders.

A third important objective concerns the replacement of detention. Respondents were convinced that without the possibility of EM, significantly fewer prisoners would qualify for a penitentiary programme or leave. An advantage of applying EM following sentencing is that the use of prison sentences is reduced with no risk of net-widening. In the Netherlands, EM is still used relatively rarely as a replacement for pre-trial detention or as a condition of a conditional sentence. Judges and prosecutors explained that the most important reason for their restraint was that there were a number of technical problems with the use of EM. Other reasons included that they were still relatively unfamiliar with EM and it was rarely included in probation reports. Even where EM is recommended by the probation service it has not been imposed because it is not considered to add sufficient value. The character of the measure, as it is used in the Netherlands, implies that its potential to replace detention is very limited. In addition, EM is rarely used to replace other types of sentences, for example in the place of pre-trial detention, in case of failure to pay a fine or as a

first alternative after a breach of community service orders.

### Target groups, contraindications and diversity

EM should have an added value and it is, therefore, not appropriate for suspects or offenders who have committed less serious offences with a low risk of reoffending. EM is also not appropriate for suspects or offenders of the most serious offences that involve a high risk of reoffending. In such cases, EM would not be accepted by the public. Furthermore, when the risk of reoffending is very high, EM cannot provide sufficient protection for society. For these reasons, monitored people need some motivation to comply with the conditions of EM. The research shows that EM is deemed to be suitable only for certain types of offenders and offences.

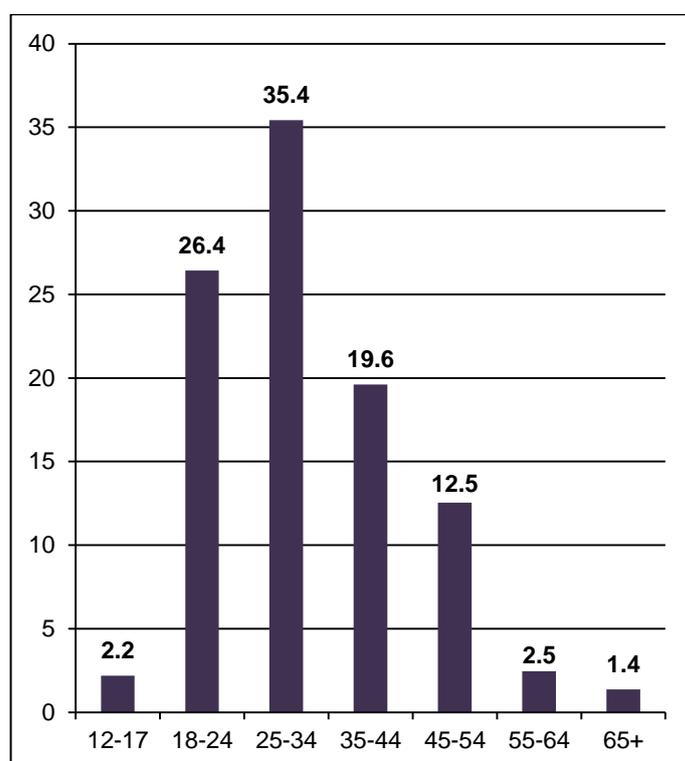
EM is seen as a very suitable instrument for young offenders. They can benefit in particular from the structure provided by EM. Offences are often committed at night and this group lacks structure and activities during the day. EM is seen as a suitable tool to get their lives back on track and as an instrument that can significantly reduce the chances of reoffending. The negative consequences of imposing pre-trial detention on this group can be prevented or reduced by conditionally suspending pre-trial detention in combination with EM. Specific victims can be relatively well protected by means of location bans monitored with EM. For this reason, in most cases the safety of the victim should not be an obstacle to imposing EM on suspects or offenders of domestic violence or sex offences with a specific victim. EM is also used relatively often for perpetrators of robberies whose movements can be effectively tracked by means of EM.

In the Netherlands, no suspects or offenders are categorically excluded from EM. However, some characteristics of suspects or offenders make them less eligible for EM. People who are severely addicted or suffer serious mental illnesses are deemed ineligible for EM. They are likely to have great difficulty complying with the conditions. GPS is regarded as unsuitable technology for monitoring people with psychotic or paranoid disorders. The same applies to people with low intellectual ability. Individuals

should, at least, be able to comply with the curfew hours and charge the battery of the tag.

An important obstacle in applying EM is the absence of suitable housing. When individuals have no housing at all, EM is usually not applied. Other obstacles can be that offences were committed from home (e.g. fraud or drug dealing), that the victim lives too close to the intended address, cohabitants do not consent to EM or the home situation is too unstable or would become too unstable with the presence of the suspect or offender.

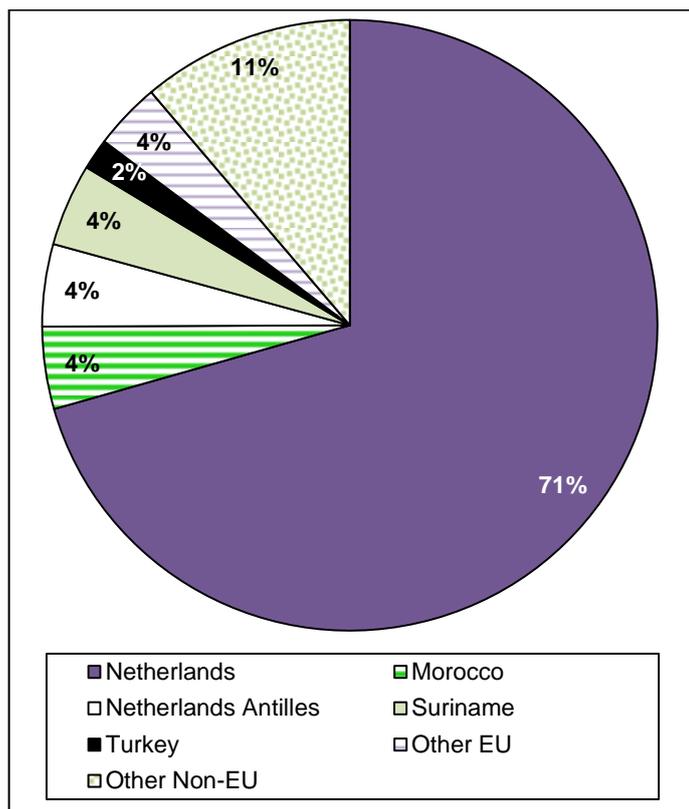
**Figure 3: Age distribution of the EM population (15 March 2014, N=367)**



About 7 per cent of the people who were under EM on 15 March 2014 were female. This percentage does not differ significantly from the percentage of females in penitentiary institutions. The age distribution of the population under EM is also more or less representative of the prison population. As can be seen in figure 3, the majority of monitored individual are between the ages of 18 and 35. Minors represent only 2 per cent of the population under EM.

Over 70 per cent of the EM population was born in the Netherlands. This differs considerably from the prison population, of which under half of prisoners are born in the Netherlands. Figure 4 provides an overview of the countries of birth for the EM population.

**Figure 4: Birth country of the EM population (15 March 2014, N=367)**



### Monitoring process and breach

In the Netherlands, electronic monitoring almost always takes place within the context of probation supervision. The installation of the EM equipment then forms the starting point of supervision. The technical installation is done by a fieldworker of the Transport and Support Service (TSS; in Dutch: *Dienst vervoer en Ondersteuning, DV&O*). Probation officers discuss the supervision conditions with the monitored person. As several probation officers in this research indicated, many monitored people are preoccupied on the day of installation; they have just left prison and in some cases they have been reunited with their family. For this reason it is deemed important to discuss the conditions and the content of supervision again at a later time to make sure that the monitored person is well-informed. An issue highlighted by this research is that sometimes the installation of equipment only takes place a few days after release, because the probation service and TSS were not informed about the release by the judiciary in a timely manner.

Once the supervision has started, there is regular contact between probation officers and monitored people. The number of fixed times of

contact depends on the level of supervision. In addition to compulsory meetings, probation officers may join monitored people for other appointments, including at the district council, at a workplace or at a treatment facility. When the monitored person has a daytime activity, the number of free hours depends on the curfew level: 12 hours on weekdays and 4 hours at the weekend is the strictest level, 14 hours on weekdays and 8 hours at the weekend is the intermediate level and 17 hours every day in the least strict level. A monitored person who has no daytime activities normally has 2 free hours per day. In order to participate in a penitentiary programme, a (prospect of a) weekly programme of at least 26 hours is required.

The increase of freedom is regarded by most respondents as an important element in the use of EM. This allows the monitored person to gradually return to society and get used to new freedom while still being monitored. In penitentiary programmes, the increase of freedom takes place in a standard manner based on a calculation model. With conditional sentences and conditional release there is less standardisation and probation officers have quite a lot of discretion to grant freedom based on the behaviour of the monitored person.

In addition to the structural changes in the schedule, incidental changes are also possible. The contribution to rehabilitation is taken into consideration. For example, there may be a family event. The monitored person is asked for evidence. In general, no free time is given between 23.00 and 06.00. Where there is an emergency, for example if the monitored person urgently needs to go to hospital, they need to inform the monitoring centre or probation officer. Our research shows that probation officers think it is important that choices are well substantiated and discussed in case meetings. The sentencer is informed of a planned change of address, any travel abroad or planned activities at night, for example working nightshifts. Sentencers are not usually informed about changes in the schedule.

Most probation officers indicated that they checked notifications relating to their monitored people on the monitoring system every week. When a monitored person displays a risky behaviour the probation officer discusses this with them. The technical terms in the monitoring

software make this more difficult and probation officers occasionally have difficulty interpreting notifications. In case of electronic monitoring by means of GPS, 'trails' are generated that show the movements of monitored people. The GPS trails are not always checked but can be used as a starting point for conversations with the monitored person. The data can also be used in criminal investigations if the public prosecution service makes a formal request.

The monitoring centre makes the first selection of notifications on the basis of a notification protocol. The protocol distinguishes between GPS and RF and between different risk levels. In practice, monitoring officers also take their own experiences into account, including previous notifications on a specific monitored person. Monitoring officers first try to solve the problem themselves by means of contact with the monitored person. A number of probation officers regarded this as an improvement compared to the previous situation, in which all follow-up action was left to the probation service, which created a heavy workload for probation officers.

A distinction can be made between equipment tamper notifications, notifications for violations of location order or location ban and technical notifications (such as no GPS signal). Equipment tamper notifications are first investigated by TSS before possible follow-up steps are taken. Technical notifications are analysed by TSS. In some cases the decision is made to replace the equipment. Notifications of a violation of a location order or location ban are discussed with the monitored person by the probation officer to find out if they have a valid reason. When a location ban with police follow-up is violated, the police are informed immediately and are tasked with protecting the potential victim.

How quickly someone can be recalled to prison depends on the modality for which EM was applied. The procedure is relatively quick where EM is imposed as a penitentiary programme or suspension of pre-trial detention, but takes more time when EM is imposed as a conditional sentence or conditional release. Of the supervisions with EM which started in 2013 and for which the outcome was known early 2015,

86 per cent were successfully completed and 14 per cent were revoked.

## The future of EM

Most of our respondents regretted that the proposal to introduce EM as a replacement for short prison sentences was rejected by the Second Chamber at the end of 2014. They assumed, however, that the proposal would not be considered again for sometime. Despite this, they expected the use of EM to increase. If the so-called *veegwet* ('catch-all law'), as proposed by amending letter in the amendment of the Penitentiary Principles Act that is pending in the Lower House (Parliamentary Papers, 33844) at the time of writing (January 2016), is passed, the penitentiary programme will be the only remaining form of reintegration during detention apart from short periods of prison leave. For this reason, the expectation is that the use of penitentiary programmes will grow. However, this will require obstacles involving certain groups to be limited or removed. As a result of the growing number of penitentiary programmes, the use of EM will also increase especially if a group which is increasing in size is included in the HIC-policy. Apart from the sentencing stage, respondents also expected a growth in the use of EM at both the pre-trial and sentencing stages. This growth has already started. EM is especially regarded as a useful instrument to reduce the relatively frequent use of pre-trial detention. Unfamiliarity and technical issues still restricted the judiciary and the prosecution service use of EM on a larger scale. While respondents typically agreed on the possibilities of EM, there was much less consensus on the limits to the use of EM. While according to the respondents of the probation service these limits should be determined by the goal-oriented approach, in practice EM is more and more used as a measure to protect victims and/or society or make them feel that their interests are being considered when granting liberties to offenders.

The findings of the comparative study show that the application of EM can develop in very diverse ways. It is of crucial importance that a comprehensive policy is developed on how EM should be used in the future.

More information about the Dutch research is available from: Professor Miranda Boone, Utrecht University, School of Law, The Netherlands: [M.M.Boone@uu.nl](mailto:M.M.Boone@uu.nl)

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