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This Issue in Brief ACQUISITIONS

Hair Analysis for the Detection of Drug Use in Pretrial, Probation, and Parole Populations.—Comparing the results of radioimmunoassay (RIA) hair analysis for drug use with urinalysis results and self-reports of drug use among aftercare clients in the Central District of California, authors James D. Baer, Werner A. Baumgartner, Virginia A. Hill, and William H. Blahd propose that hair analysis offers the criminal justice system a complementary technique for identifying illegal drug use. The study results are timely in light of the recent decision of a U.S. district court judge who accepted a positive RIA hair analysis result as valid forensic proof that a probationer had violated the conditions of probation (EDNY Dkt. No. 87-CR-824-3).

Tools for the Trade: Neuro-Linguistic Programming and the Art of Communication.—Whether viewed as a rehabilitative modality or a sanction, probation remains a person-to-person profession in that probation officers still deal with individuals. According to author Richard Gray, some recent developments in psychology may provide tools for investigation, assessment, helping, and, sometimes, healing. His article describes neuro-linguistic programming and how probation officers may use the technique to develop rapport and communicate effectively and consciously with clients.

Social-Psychological Effects of the Status of Probationer.—Authors Charles Bahn and James R. Davis report on a non-random sample of 43 probationers who were tested and interviewed in order to assess the social-psychological effects of probation in four areas: emotions; family, peer, and work relations; self-concept; and stigma. The authors administered an open-ended questionnaire, a scalogram, and a self-concept inventory and found, among other things, that probationers had the support of family, friends, and even some employers. The authors conclude that probation is

more than a "slap on the wrist" but that it does not overwhelm all aspects of a probationer's life.

Electronic Monitoring in Federal Pretrial Release.—Author Timothy P. Cadigan focuses on current use of electronic monitoring in Federal pretrial release programs, first discussing, in general, how to establish such programs and what to consider in doing so. Then, based on demographic data about Federal defendants on electronic monitoring, the article assesses whether

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Electronic Monitoring in Federal Pretrial Release

BY TIMOTHY P. CADIGAN

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THE USE of electronic monitoring equipment in the criminal justice system continues to increase substantially as the system attempts to deal with prison overcrowding. From intensive supervision to work release programs and beyond, many jurisdictions are employing electronic monitoring systems to increase control over offenders in the community. In pretrial services, as in other areas of the criminal justice system, the employment of electronic monitoring equipment to monitor curfew or house arrest conditions of release is increasing as an alternative to pretrial detention.

This article focuses on current use of electronic monitoring in Federal pretrial release programs, first discussing, in general, how to establish such programs and what policy issues to address. Then, based on demographic data about Federal defendants on electronic monitoring, the article assesses whether policy issues are being successfully addressed by pretrial release programs. Failure to appear rates and rearrest rates are examined as an additional measurement of effectiveness.

Establishing a Program

Effective implementation of an electronic monitoring program is a labor-intensive, time-consuming undertaking. Even before addressing the more technical aspects of establishing an electronic monitoring program, the pretrial services administrator should determine if there is a need for such program. Creating the program in response to a specific need provides focus, establishes objectives, and enhances the implementation process and the operation of the program. Certainly, a high rate of pretrial detention and problems with jail overcrowding could be the impetus for initiating an electronic monitoring program. When determining need—a process which is highly individual from jurisdiction to jurisdiction—the administrator should consult with court officials and administrators of relevant agencies, including the chief judge, the U.S. marshal, the U.S. attorney, and the public defender.

Selecting a Contractor

After establishing need, the administrator's next

step is to learn what electronic monitoring equipment and services are available from the various companies that offer them. While these companies employ similar technologies, they use different equipment and may offer different components to their systems—for instance, breathalyzer analysis. They also differ in the way they staff, operate, and maintain their systems. Some contractors offer 24-hour monitoring to address problems as they arise. Others do not, and thus problems occurring during non-business hours can go undetected for as many as 3 days in the event of a holiday weekend. The quality of equipment and services is crucial in that it determines the degree and consistency of control over participants in the program.

Before contracting with an electronic monitoring company, the pretrial services administrator must determine approximately how many defendants will be placed on the system. This is necessary in order to assess whether it would be more cost-effective for the organization to purchase a full system or to rent or lease equipment and operating services. Purchasing a system is a weighty undertaking, requiring a significant expenditure of capital, the allocation of personnel to operate and monitor the system, and the development of plans to deal with disruption of the system. For that reason—at least until the program is established and it is apparent that there will be significant numbers of defendants on the system—it may be more prudent to opt for a plan to rent or lease.

Training Issues

Most Federal pretrial services agencies which have adopted electronic monitoring programs have experienced problems during the implementation phase. Sometimes contractors were unable to meet the terms of contracts and new contractors had to be found. Other problems were caused by inadequate training of pretrial services agency staff. Staff members need to be trained in how to install the equipment in the defendant's home and how to attach the bracelet to the defendant. They must understand how the system functions from the defendant's perspective in order to inform the defendant about system operation. Of-

ficers also need to learn how to interpret the reports generated by the electronic monitoring system.

Education and training—of not only the officer, but of other members of the judiciary as well—are important to the success of an electronic monitoring program. While the use of electronic monitoring to monitor house arrest or curfew conditions of pretrial release is a useful alternative to detention in some cases, it is not a panacea. The judiciary needs to be educated about the limits of the technology and the fact that the equipment does not provide an "electronic jail" which guarantees the defendant's confinement and protection to the community.

Judicial officers also need to be made aware that in addition to house arrest or curfew and electronic monitoring conditions on the release order, the pretrial services agency will need additional conditions to assure full compliance. Such conditions would include restrictions on the type of telephone services, such as "call forwarding," that the defendant may have on the home phone; permission for the supervising agency to make unannounced home visits; and detailed instructions covering the circumstances which justify the defendant's absence from home.

One of the major criticisms of electronic monitoring is that it frequently merely "widens the net" of control over an offender who would be, or should be, in the community anyway. To avoid such "net widening," the judicial officer should include electronic monitoring as a condition of pretrial release only as an alternative to detention, either after arrest or to address violations of previously set conditions of release. Only when used in such cases does electronic monitoring offer the true benefits of reduced cost and the employment of the least restrictive condition necessary to assure the appearance of the defendant and the safety of the community.

Developing Policy

Policies on operational issues need to be established to guide pretrial services staff members in implementing the electronic monitoring program. Issues of concern include supervision methods and frequency, officer safety, definition of violations, and response to violations. Policies and procedures should define for officers what is expected of them in monitoring offender compliance with the program. Supervision issues which need to be addressed include what types and what frequency of contact are appropriate between the defendant and the officer; who will respond to

reported violations during off hours; how to handle requests by the defendant to be outside the home for special circumstances; and how to monitor the special telephone technology restrictions necessary to ensure success of the program.

Making such decisions requires careful consideration of the type of equipment being used, the dedication of the staff, the type of defendants in terms of risk of flight or danger to the community, and total work load demands. When formulating the policies, the pretrial services administrator should consider all available methods of enforcement, including announced and unannounced visits, telephone contact, and the verification provided by the electronic monitoring system (usually a computer printout).

Supervision Issues

Each of the supervision methods affords the officer a different means of monitoring compliance and preventing equipment tampering. Unannounced field visits provide the officer an opportunity to reinforce his or her commitment to assuring that the defendant complies fully with the conditions of pretrial release. If the release order permits the defendant to attend religious services, go to work, or visit the doctor, a pretrial services officer will need to monitor these events. Occasional home visits offer another means of ensuring compliance and serve to deter the defendant from tampering with the equipment. Office visits help to maintain the formality of the defendant/officer relationship and provide an opportunity to check for tampering of the transmitter and strap which are attached to the defendant.

The telephone is a most useful tool in monitoring compliance with the conditions of release. First, it is a quick and inexpensive way of making sure the defendant is in the home. Second, frequent telephone contact reinforces in the defendant's mind the intensive and restrictive nature of the conditions set by the judicial officer for the defendant's release. Finally, the telephone can be used to communicate with the defendant in the event an emergency requires the defendant to leave home at a time ordinarily prohibited by the conditions of release. Sometimes, waiting for approval to leave could threaten lives; therefore, procedures need to be developed to facilitate communication between the officer and the defendant in the event of an emergency.

The requirement of field visits presents a threat to officers. Certainly, the defendant or other individuals residing in the home are potential sources of danger. Conceivably, in an unannounced home visit, an officer could discover additional

illegal behavior, and, as a result, the defendant or another occupant of the home might react in a threatening manner. Another potentially dangerous situation could occur when the officer fails to clearly identify himself, and the occupants of the home then respond to what they perceive is a threat. Either situation could result in an assault on the officer. Although the possibility of either of these scenarios developing is probably small, it exists. A more likely source of trouble is street altercations; the officer's increased field activity increases the likelihood of such encounters. The need for officers to monitor compliance randomly and during off hours compounds risk.

While various individuals or organizations would argue that weapons, mace, self-defense training, or requiring that two officers accompany each other on field visits are necessary to ensure officer safety, no simple or sure solution is offered here because the issue of safety is complex. An effective solution can only be achieved by establishing policy based on careful analysis—analysis of the increased risk presented by the type of field visits required, the nature of the defendants on supervision, and the locales in which the officers must perform their jobs.

Defining Violations

Defining what constitutes a violation of the program is an important step. Are violations reported by the equipment itself sufficient to be considered a violation of the conditions of release? Should a violation reported by the equipment be confirmed by the officer before it is considered to be a violation of the conditions of release? What level of confirmation is necessary to verify that a violation has occurred? These are all questions which the pretrial services administrator should address before implementing an electronic monitoring program. These policies are not only procedural issues for the agency, but legal issues for the court the agency serves as well. Establishing such policies requires consultation with judicial officers, since they will ultimately decide whether a violation has occurred.

The level of proof necessary to confirm a violation needs to be discussed. For example, if the electronic monitoring equipment registers a violation for a particular defendant, is it necessary for the officer to visit the defendant's home or will a call to the defendant's home be sufficient confirmation? In that electronic monitoring equipment is not infallible, a policy that requires at least some level of confirmation of violations is strongly advised.

In determining what level of confirmation is

appropriate for a particular jurisdiction, the administrator should balance the competing interests of the officer's safety in making a home visit when a violation has been reported and the need to confirm that violation in order to report accurate information to the court. Policy should specifically state that the officer need not make a home visit if he or she determines that such visit presents an unnecessary risk to the safety of the officer.

Once effective policies defining violations have been instituted, the agency needs to develop systematic responses to violations. For example, the agency discovers a violation on Saturday, confirms the violation, and is unaware of any legitimate reason for the defendant to be absent from home. Is it sufficient to notify the court and the prosecuting attorney of the violation on the following Monday? Should there be procedures to notify these individuals immediately upon discovering the violation? To be effective, these procedures must be developed with input from the judiciary and prosecuting attorneys.

Having discussed several of the relevant policy issues which pretrial services administrators will face in developing an electronic monitoring program the article will focus on the current practices in the Federal system.

Use in Federal Pretrial Release

Types of Equipment

Federal pretrial release programs currently use a variety of electronic monitoring equipment. Electronic monitoring systems can be broken down into two basic types. In "active" systems, a transmitter is strapped to the defendant, and a receiver is placed in the defendant's home. If the defendant goes beyond the range of the receiver, the system records the defendant as being absent from the home. The active systems are used in conjunction with a phone line dialer which places calls to the monitoring agency's computer to record the defendant's presence in or absence from the home and the specific time of arrival or departure. The active systems also can be retransmitted from the receiver in the defendant's home to the monitoring agency via radio signals.

"Passive" systems employ a central computer system to call the defendant's home at specific or randomly selected times. The defendant must then answer the phone and place the encoder device, which is strapped to the wrist or ankle of the defendant, into a verifier box which transmits a successful response signal to the computer. Passive systems generally offer a voice verifica-

tion system to complement the encoder system.

There are two major differences between the two types of electronic monitoring systems—first, is the difference in their capability. Active systems verify the defendant's presence in the home continuously and record the time when the defendant leaves the home as well as the length of the departure. Passive systems merely verify the defendant's presence in the home at the time of each call. Therefore, the active systems seem to offer more complete and detailed monitoring of home detention or curfew. The other major difference in the system is the cost. There is a substantial difference in cost per defendant, per day of supervision, with active systems ranging between \$2.77 and \$9.04 and passive systems ranging between \$2.47 and \$3.03.¹

Of the 17 Federal districts operating electronic monitoring programs in fiscal 1989, 9 districts used active systems, 5 used passive systems, and 3 had both capabilities. In the three districts with both capabilities, the passive system was used most frequently. In addition, 2 of the 17 districts used the breathalyzer special feature, which is available from Guardian Technologies, in cases of alcohol abuse.² Two additional districts received funding but did not place any defendants on electronic monitoring in fiscal 1989.

"Net Widening" Considerations

In fiscal 1989, a total of 195 Federal defendants were placed on electronic monitoring as a condition of pretrial release. The majority of defendants were male (84 percent), United States citizens (80 percent), employed at the time of initial appearance (63 percent), and married (55 percent).

A review of the defendants' prior criminal records makes it apparent that judicial officers consistently applied electronic monitoring in cases involving defendants with limited prior criminal records. Of the 195 defendants placed on electronic monitoring, 114, or 59 percent, had no prior criminal record, while 143, or 73 percent, had no prior felony convictions.

In assessing the issue of "net widening," there are essentially three indicators in this aggregate data that would appear to offer reliable information on this issue. They are the offense charged, whether the presumption of detention was found to apply, and whether the defendant was detained at the initial appearance.

Using the offense charged as an indicator is useful because if judicial officers were consistently placing defendants charged with relatively minor offenses on electronic monitoring, then clearly,

one could argue, the conditions of release were unduly restrictive. Of the 195 defendants, 128 (66 percent) were charged with serious drug offenses.³ An additional 21 (11 percent) were charged with crimes of physical violence or possession of weapons offenses. Therefore, it would appear that—in terms of offenses charged—judicial officers are properly applying electronic monitoring as a condition of release in that 77 percent of all defendants on electronic monitoring are charged with serious offenses.

As for presumption of detention in analyzing the "net widening" effect, the data indicate that the presumption was found to apply to 99 of the 195 defendants (51 percent). These data would also support the conclusion that electronic monitoring as a condition of release was being properly employed by judicial officers.

The final consideration is whether the defendant was detained at the initial appearance. In 164, or 84 percent, of the cases, the defendant was detained after the initial appearance. Again, this would seem to indicate that electronic monitoring was properly applied in the sense that it was limited to those cases in which there was a legitimate reason for concern that the defendant might flee or pose a risk of flight if released on less restrictive conditions.

Failure to Appear and Rearrest Rates

Of the 195 defendants placed on electronic monitoring in the Federal system in fiscal 1989, 168 had their cases fully adjudicated as of October 26, 1990. Therefore, these 168 cases are the only ones for which failure to appear and rearrest data are complete. Table 1 compares failure to appear rates for those defendants placed on electronic monitoring with failure to appear rates for the nation as a whole and with failure to appear rates for the 17 districts which had defendants on electronic monitoring in fiscal 1989.

TABLE 1. FAILURE TO APPEAR RATES

	Cases Closed	Failures to Appear	Percentage
National	22,725	640	2.8
Electronic Monitoring	168	9	5.4
17 Districts	7,234	215	3.0

As the table shows, the failure to appear rate for those defendants placed on electronic monitoring was higher than either the national rate or the rate for the 17 districts. However, several caveats need to be pointed out. The electronic monitoring defendants were detained after the

TABLE 2. REARREST RATES

	<u>Cases Closed</u>	<u>Actual</u>	<u>Felony</u>	<u>%</u>	<u>Misdemeanor</u>	<u>%</u>
National	22,725	431		1.9	234	1.0
Electronic Monitoring	168	6		3.6	4	2.4
17 Districts	7,234	152		2.1	70	1.0

initial appearance 84 percent of the time, while the average rate for the nation for detention after the initial appearance was 53 percent. Therefore, judicial officers felt the defendants placed on electronic monitoring were greater risks of flight and/or danger. Also, the electronic monitoring defendants were charged more frequently with serious offenses than those defendants that comprise the national data.

When you consider the differences in failure to appear rates in view of these facts, the slight elevation in the failure to appear rate is to be expected. The differences in the populations which are being compared are substantial.

Table 2 compares rearrest rates for both felony and misdemeanor offenses for the same three groups.

The table depicts similar results for rearrest rates as were found for failure to appear rates. The table clearly shows that electronic monitoring defendants were more likely to be rearrested than either those in the national data or the data for the 17 districts. The same caveats which applied to differences in the populations being compared apply to the data for rearrest rates.

Given the substantial differences in the populations and the relatively modest increases in the failure to appear rates and rearrest rates, the only apparent conclusion is that the electronic monitoring program effectively handled higher risk defendants. Unfortunately this does not provide definitive proof of the effectiveness of the electronic monitoring program.

The ability of electronic monitoring to successfully address risks of flight and danger has not been established empirically. The problem with such a test is in establishing an appropriate control group. Merely creating a control group from, say, halfway house placements would not effectively control for differences between the two groups and the result would be data that were not convincing as to the effectiveness of electronic monitoring.

To conclusively establish that electronic monitoring conditions of release would deter the defendant from fleeing or posing a risk of danger to the community would require that a judicial of-

ficer randomly assign higher risk pretrial release cases to several different conditions of release, for example, to electronic monitoring, to halfway house placement, and to more traditional forms of pretrial services supervision. Failure to appear and rearrest rates for the three groups could then be compared and should provide some definitive data on the effectiveness of electronic monitoring as a condition of release in higher risk pretrial release cases.

While any definitive conclusions about the effectiveness of electronic monitoring to address risk of flight and/or danger concerns is not warranted based on the available data, several observations can be made. The first is that judicial officers who had electronic monitoring equipment available to them in fiscal 1989 applied it in higher risk pretrial cases. Therefore, those judicial officers consistently avoided using electronic monitoring to "widen the net" of control over presumed innocent defendants and, for the majority of the cases, applied the technology as an alternative to pretrial detention.

The second observation is that electronic monitoring was employed in higher risk pretrial release cases with only modest increases in the failure to appear rates and rearrest rates when compared to the national criminal defendant population. This would seem to indicate that, although further study is certainly needed, electronic monitoring offers promise as an effective alternative to pretrial detention in pretrial release cases.

NOTES

¹*Electronic Monitoring and Correctional Policy: The Technology and its Application*, National Institute of Justice (June 1987) at page 47. While the information is somewhat dated, the point is that active systems cost more than passive systems.

²The breathalyzer special feature allows for monitoring of the blood alcohol level of the defendant as well as the defendant's presence in the home.

³The definition of serious drug offenses which was employed was based on the language of the Bail Reform Act of 1984, specifically that serious drug offenses are those which carry a minimum penalty of 10 years imprisonment.