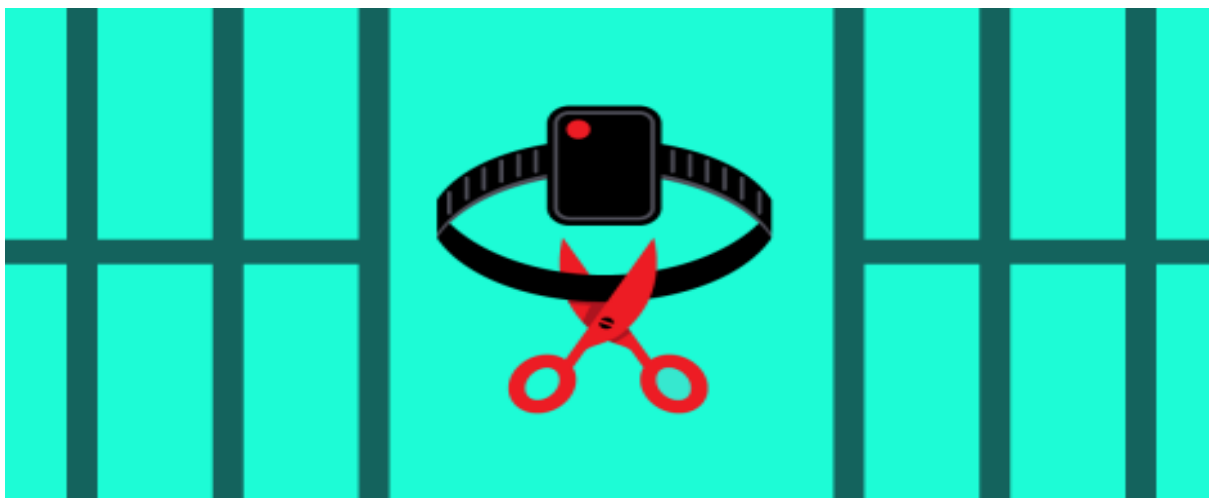




## Electronic Monitoring

### A Guide for Criminal Defense Attorneys



1. What is it and how does it work?
  - a. Electronic monitoring (EM) is a form of digital incarceration, often in the form of a wrist bracelet or ankle “shackle” that can monitor a subject’s location, blood alcohol level, or breath.
  - b. Monitors are commonly used as a condition of pre-trial release, or post-conviction supervision, like probation or parole. They are sometimes used as a strategy to reduce jail and prison populations.
  - c. Recently, EM’s applications have widened to include juveniles, individuals accused or convicted of DUIs or domestic violence, immigrants awaiting legal proceedings, and adults in drug programs.
2. Types of EM:
  - a. Active GPS tracking - monitors a person using satellites and reports location information in real time at set intervals.
  - b. Passive GPS tracking - tracks a person's activity and stores location information for download the next day.
  - c. Radio Frequency (RF) - primarily used for “curfew monitoring.” A home monitoring unit is set to detect a bracelet within a specified range and then sends confirmation to a monitoring center.
  - d. Secure Continuous Remote Alcohol Monitoring (SCRAM) - analyzes a person's perspiration to extrapolate blood alcohol content 1X/hr.
  - e. Breathalyzer monitor reviews and tests a subject’s breath at random to estimate BAC and typically has a camera.

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### 3. Policy Issues:

- a. Racial discrimination - People of color tend to be placed on EM far more often than their white counterparts. For example, Black people in Cook County, IL make up 24% of the population, yet represent 70% of people on EM. This ratio mirrors the same skewed distribution found in physical incarceration.
- b. Cost shifting - People on EM often pay user fees ranging from \$3-\$35/day along with \$100-\$200 in setup charges; shifting the costs of incarceration from the government to clients and their families.
- c. Privacy implications - Few jurisdictions have regulations limiting access to this kind of tracking data or how long it should be kept and for what purpose. Private companies who contract to provide EM to law enforcement typically store location data on monitored individuals and may share or sell clients' information for a profit.

### 4. Cases & arguments for challenging EM:

- a. Use of EM ankle bracelet tracking is a search that requires a warrant. *US v. Lambus*, 251 F.Supp.3d 470 (E.D.NY 2017).
- b. "GPS monitoring generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations." *US v. Jones*, 565 US 400, 415 (2012). See also Cell Site Location Information cases in EFF CSLI one-pager.
- c. Cite to collective public recognition of locational privacy: Recent studies show that the American public overwhelmingly expects privacy when it comes to location information. In 2014, the Pew Research Center found that 82% of Americans consider the details of their physical location over time to be sensitive information, including 50% of Americans who consider it to be "very sensitive." Mary Madden, *Public Perceptions of Privacy and Security in the Post-Snowden Era*, Pew Research Center (Nov. 12, 2014) pp.34, 36-37, at [eff.org/EMPewResearch](http://eff.org/EMPewResearch)
- d. Credit for time served – some jurisdictions require custody credit for time spent on EM (i.e., CA Penal Code §§ 1203.018, 2900.5)

### 5. How do I learn more?

- a. Review Practical Advice for Defense Attorneys with Clients on EM at [eff.org/EMAdvice](http://eff.org/EMAdvice)
- b. Review Guidelines for Respecting the Rights of Individuals on EM at [eff.org/EMGuidelines](http://eff.org/EMGuidelines)
- c. Visit <https://www.challengingcarceration.org/>

Stephanie Lacambra, Criminal Defense Staff Attorney  
415-436-9333 x130, [stephanie@eff.org](mailto:stephanie@eff.org)

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