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Electronic Monitoring in the Southern District of Mississippi *Darren Gowen*

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This Issue in Brief

Three Strikes and You're Out: The Political Sentencing Game.—Recent sentencing initiatives which mandate life sentences for three-time convicted felons may appeal to the public, but will they address the realities of crime? Authors Peter J. Benekos and Alida V. Merlo focus on the latest spin on sentencing: "three strikes and you're out." Their article reviews the ideological and political context of recent sentencing reforms, examines "get-tough" sentencing legislation in three states, and considers the consequences of increasing sentencing severity.

Electronic Monitoring in the Southern District of Mississippi.—Although many criminal justice agencies now use electronic monitoring as an alternative to prison, some still hesitate to use it in supervising higher risk offenders. Author Darren Gowen explains how the U.S. probation office in the Southern District of Mississippi began its electronic monitoring program with limited expectations but successfully expanded it for use with higher risk offenders. He describes the district's first year of experience with electronic monitoring and discusses the selection criteria, the types of cases, the supervision model, and offender demographics.

Helping Pretrial Services Clients Find Jobs.—Many pretrial services clients lose their jobs because they are involved in criminal matters; many have been either unemployed or underemployed for a long time. Some are released by the court with a condition to seek and maintain employment. Author Jacqueline M. Peoples describes how the U.S. pretrial services office in the Northern District of California addressed the issue of unemployment among its clients by launching a special project to identify employers willing to hire them. She also explains how the district developed an employment resource manual to help clients find jobs or training programs.

Specialist Foster Family Care for Delinquent Youth.—Authors Burt Galaway, Richard W. Nutter, Joe Hudson, and Malcolm Hill contend that the current focus on treatment-oriented or specialist foster family care as a resource for emotionally or psychiatrically impaired children and youths may disguise its

potential to serve delinquent youngsters. They report the results of a survey of 266 specialist foster family care programs in North America and the United Kingdom. Among their findings were that 43 percent of the programs admitted delinquent youths and that the delinquents were as likely to be successful in the programs as were nondelinquent youths.

United States Pretrial Services Supervision.—In June 1994 the Probation and Pretrial Services Division, Administrative Office of the United States

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Electronic Monitoring in the Southern District of Mississippi

BY DARREN GOWEN

United States Probation Officer, Southern District of Mississippi

Introduction

NINETEEN NINETY-four marked the first year that the United States Probation Office in the Southern District of Mississippi used electronic monitoring for home confinement cases. We originally expected that we would use this new program primarily to satisfy Federal sentencing guidelines in particular criminal cases. Beyond this, however, our expectations were not altogether clear. We also had some reservations about using electronic monitoring. Those who work in criminal justice are often quick to recall at least one catastrophe in which an electronically monitored offender "escapes" from home and 20 minutes later commits an armed robbery and kills a convenience store clerk. As probation officers, our overriding concern is community safety. Needless to say, our unfamiliarity with electronic monitoring only seemed to invoke numerous hypothetical catastrophic images.

However, these undesirable images quickly dissipated once our electronic monitoring program became firmly established. Once the various actors in the court arena, such as judges, prosecutors, defense attorneys, and probation officers, began recognizing its benefits, use of home confinement increased, particularly for pretrial defendants and court supervision violators. The resulting caseload expansion produced some interesting challenges in program administration and changed the nature of our overall supervision philosophy. This article describes some developmental aspects of our electronic monitoring program, including selection criteria, types of cases, supervision model, and offender demographics.

Selection Criteria

Initially, our selection criteria restricted participation in home confinement to a very select group of offenders (i.e., those with no violent, mental illness, or severe substance abuse history). With many new home confinement programs, as confidence with electronic monitoring technology grows, so does the acceptance of more high risk offenders (Renzema & Skelton, 1990, p. 331). Similarly, after several high risk offenders slipped past our stringent entrance requirements—most successfully completing their term—we began seeing the positive behavioral impact electronic monitoring had on drug users and other "irresponsible" or noncompliant offenders.

The U. S. Probation Office in Southern Mississippi serves both probation and pretrial components in the court system. We originally began using electronic monitoring for only post-sentence cases. Later, we began recommending certain pretrial defendants for home curfew, home detention, or house arrest as a condition of bond. In our experience, defendants at the pretrial stage are often more resistant to supervision than post-sentence offenders. It is not uncommon for pretrial defendants to display both attitudinal and behavioral hostility toward supervision efforts, possibly because of their new-found situation of being charged with a criminal offense. Although officers also observe these characteristics among the post-sentence population, they certainly appear more prevalent at the pretrial stage. Consequently, our experience supervising pretrial defendants on electronic monitoring led to our expanding the acceptance criteria for probationers and supervised releasees even more.

Types of Cases

Supervision Violators

After accumulating some degree of confidence in monitoring high-risk pretrial defendants, we next attempted to duplicate our efforts specifically with court supervision violators. According to current Federal community supervision imperatives (Monograph 109, 1993, pp. 40-41), the selection of an intervention should be appropriate to the specific noncompliant behavior. Intervention should be timely, realistic, and progressive. Two distinct types of violators emerged as appropriate candidates for placement on home confinement:

- 1) *Substance abusers.* Those who test positive for alcohol or drugs, yet retain some semblance of employment and residential stability;
- 2) *Irresponsible offenders.* Those who fail to report, fail to complete community service, make false statements to the probation officer et al. (i.e., mainly technical violations).

Regarding the first category, if a person appears to have a good work history and stable living environment, he or she may be only a recreational drug or alcohol user. Of course, some severe drug and alcohol users are successful in maintaining a facade of normalcy in their lives, and we have had such individuals

go on to complete a term of home confinement successfully. Incidentally, our district policy maintains a zero tolerance for drug use, so removal from the program is mandatory after testing positive for illegal substances only once.

The second category, "irresponsible offenders," is intended to depict those individuals who acquire repeated technical violations simply because of their own irresponsibility. Offenders who are difficult to "keep up with," as well as those who continually fail to comply with community service, restitution, or fine conditions, are good examples. Sometimes an offender may seem, at first, to fit this irresponsible profile but upon further investigation is found to be abusing alcohol or drugs, a characteristic of the first violator category.

With both types of violators, we quickly observed the incredible deterrent effect of the electronic ankle bracelet and the required adherence to a daily activity schedule. The bracelet, which transmits a signal for reception by a home monitoring unit, also serves as a constant reminder to the offender to comply with specified requirements. An approved daily activity schedule, which is used to allow the offender certain times of the day to be "in range" and "out of range" from the residence, is a product of an offender actually planning his or her life ahead of time. These two things alone can offer very effective intervention. Of course, if such intervention fails to achieve compliance, the threat of revocation as a backdrop to the home confinement alternative always serves as an additional motivator.

Using home confinement as a sanction for noncompliance requires modification of conditions by the court. Unlike much larger districts, such as Southern Florida, where petitioning the court for a modification takes a considerable length of time (Frebarger & Almon, 1994, p. 23), in Southern Mississippi we can practically walk the paperwork through the necessary steps within 1 or 2 days (with offender consent).

The high number of personal contacts between officer and offender required by home confinement supervision sets the stage for a close rapport. Thanks to electronic technology, the officer receives daily, from the monitoring contractor, a facsimile consisting of reports, which summarize, among other things, offender departures from, and arrivals to, the residence. This high-precision information changes the communicable environment between officer and offender. For instance, should an offender arrive home 10-20 minutes late, the officer can confront the offender regarding this schedule aberration, usually within 24 hours. Such feedback on seemingly small violations helps to deter more serious ones.

Our limited experience with supervision violators on home confinement has demonstrated this new interpersonal environment helps regain compliance. Of

course, officers should try other less intrusive sanctions before modifying conditions and proceeding with home confinement. But when increased contacts and other methods fail, the logical next step is home confinement, given certain residential and employment requirements.

Sometimes, however, home confinement might be the logical first step for sanctioning an offender. For instance, one of our supervised releasees tested positive for cocaine. He admitted using and indicated he used at night, particularly on weekends with his friends. The offender was already in drug aftercare. He resided with his mother and appeared to have a stable home situation. He also worked regularly for a construction company. The officer sought a modification for home confinement to restrict this person's activities outside of home and employment. On home confinement, the only place this offender went at night was to Alcoholics Anonymous meetings. With this particular individual, other types of sanctions, such as increased reporting, might have served only to identify additional violations rather than to correct his misbehavior. As it stood, the home confinement served as a logical first choice for effective correctional intervention.

Of course, not every supervision violator placed on home confinement succeeds. But it is important to understand that those who do succeed, do so when less restrictive sanctions were largely ineffective and more restrictive sanctions (such as halfway house placement or revocation) might negate the responsibilities required to subsist successfully in the community—where most offenders eventually go.

Pretransfer and Prerelease Cases

Home confinement might, in a very limited number of instances, enhance risk control over those offenders seeking transfer from a sentencing district to the district in which they previously resided. This tool might be suitable for those individuals having a poor track record on supervision—such as is common with some parole cases. The offender in question would have to agree to a modification of supervision conditions to include home confinement. The sentencing district court or the U.S. Parole Commission would also have to be agreeable. One interesting caveat to such a modification tied to transfer approval is that if an offender will agree to a term of monitoring, he or she most likely has legitimate intentions in relocating.

A modification to add home confinement as a supervision condition might serve some limited purpose for offenders seeking approval for their release plan to the community. For example, in our district a Choctaw Indian convicted of a sex offense was restricted, as a supervision condition, from the Indian reservation

where the victim resided. This condition had a definite purpose. But the offender had no family ties, or means of support, off the reservation. To prevent this individual from defiantly residing on the reservation anyway, regardless of any court order, we opted to allow him limited access to the reservation with a modification for home confinement. The offender, while still in custody, agreed to a term of home confinement. The sentencing court agreed to allow the defendant access to the reservation, residing in a different community (location) than the victim.

The obvious point of this discussion on pretransfer and prerelease cases is that home confinement with electronic monitoring is a very useful, flexible tool to ensure compliance for those cases presenting unique supervision challenges. The above example illustrates our propensity for operating within the enhanced supervision framework for case planning—ensuring the adherence to court orders, controlling risk to the community, and offering correctional treatment.

The Supervision Model

Unlike larger districts serving high population metropolitan areas, Southern Mississippi has a largely rural population. This presents some unique supervision challenges. Offenders residing in rural areas are supervised by general supervision officers assigned to that specific geographical area. A home confinement coordinator is on-call to the monitoring contractor in the case of alerts. Thus, instead of one officer maintaining a full caseload of home confinement cases, each officer in the supervision unit has several of these specialized cases. Supervision officers rotate on-call duty—handling alerts from the monitoring center—on weekends.

According to local policy, a minimum of two personal contacts between officer and offender are required each week. Usually, offenders report to the probation office once a week; officers make at least one surprise personal visit, at home or elsewhere, each week. Collateral contacts with employers and significant others are made monthly. These contacts verify compliance with both electronic monitoring/home confinement rules as well as other supervision conditions. Office visits are used for urine collections, checking the transmitter or bracelet on the offender's ankle, and making schedule changes for the remainder of the week. Home visits are necessary, not only to check the offender's living situation, but to check the monitoring unit as well. Since the monitoring unit and electronic bracelet only verify an offender's presence at home, collateral visits are necessary to verify the offender's whereabouts when "out of range" of the residence.

Special equipment enables us to enhance surveillance of electronically monitored offenders, especially when they are away from (i.e., out of range of) home.

Officers use a hand-held, portable receiver for detecting the presence of a transmitter's signal, the condition of the transmitter battery, and whether a tamper condition exists. This device allows the officer, for instance, to drive anonymously by the building where an offender is working and immediately know if he or she is inside, without even getting out of the car.

Home confinement with electronic monitoring requires increased field supervision, which represents an increased risk to officer safety. Fortunately, our use of two-way mobile radios, cellular phones, pagers, portable receivers, bullet-resistant vests, nonlethal devices (CapStun), and firearms assists our officers in meeting these responsibilities safely.

When responding to an alert requiring a home visit during off-duty hours, policy dictates that two officers respond. Supervisor approval must be obtained before dispatching to an offender's residence. We also request assistance from local law enforcement when personally responding to alerts at night.

Offender Demographics

A common argument made against the use of electronic monitoring as an alternative to incarceration is that the selection requirements are potentially discriminatory against minorities and particularly those in lower socioeconomic classes (Rackmill, 1994, p. 51). Common sense tells one that a wealthy offender, restricted to a luxurious home, is not being punished or sanctioned to the same extent as the individual who lives in a housing project. Unfortunately—as many practitioners will attest—many of those at the bottom of the socioeconomic stratum enjoy better living conditions in custody. During our first year of electronic monitoring we detected no programmatic bias favoring white-collar offenders. Although no data were collected on income or other socioeconomic phenomena, my unscientific observations were that Southern Mississippi's proclivity to place higher risk pretrial defendants and supervision violators in the electronic monitoring program had a balancing effect on representation along the socioeconomic continuum.¹

As to racial composition, the general population in Southern Mississippi, as well as our total supervision caseload (both probation and pretrial), could be characterized as an almost equal distribution between blacks and whites. The racial composition of home confinement cases in 1994, then, is not surprising: 60 percent of the total caseload was white, 36 percent black, and 4 percent Indian. As to gender, 22 percent were female.

Out of our annual cumulative total caseload of 49, 4 cases (8 percent) failed. Two of these failures were for unauthorized leave—both were Bureau of Prisons inmates. The third failure was for not adhering to home confinement and other probation conditions (not pay-

ing utility bills and not maintaining employment). The fourth was a pretrial defendant who tested positive for cocaine. Although a majority of the total caseload consisted of male participants, only one of the four failures was male.

Conclusion

We began our first year of electronic monitoring with limited expectations about its use and with very stringent entrance requirements. As the year went along, we began accepting much higher risk cases with excellent results—not the catastrophes we first imagined. This led to our expanding the use of home confinement to supervision violators and also to selected pretransfer and prerelease cases where closer monitoring might be useful in risk management.

Common perceptions about electronic monitoring held by our staff, as well as by the judges in our district, have changed tremendously. What was initially viewed as a limited alternative to incarceration is now distinguished as an effective means of intervention.² Our home confinement supervision model has been adapted to suit a largely rural populace, which requires that supervision case assignments be dispersed among many general supervision officers

rather than to just one home confinement specialist. We hope our experience with electronic monitoring can be of benefit to others in similarly sized districts who want to expand the use of this new technology in their own supervision efforts.

NOTES

¹This observation carries the assumption that a statistically significant inverse relationship exists between supervision risk and socioeconomic class membership among electronically monitored offenders.

²We have progressed similarly with pretrial cases.

REFERENCES

- Freburger, C., & Almon, M.B. (1994). Intensive supervision: A new way to connect with offenders. *Federal Probation*, 58(3), 23-25.
- Rackmill, S.J. (1994). An analysis of home confinement as a sanction. *Federal Probation*, 58(1), 45-52.
- Renzema, M., & Skelton, D.T. (1990). Use of electronic monitoring in the United States: 1989 update. In T. Ellsworth (Ed.), *Contemporary community corrections*. Prospect Heights, IL: Waveland Press, Inc., pp. 330-339.
- Supervision of Federal Offenders* (Monograph 109). (1991). Washington, DC: Administrative Office of the United States Courts, Probation and Pretrial Services Division, pp 39-42.