Continuous Electronic Monitoring in Texas

Issues for Consideration

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INTRODUCTION

Recent advances in the electronic monitoring (EM) of offenders indicate that the possibility of continuous electronic monitoring (CEM) of offenders will be technologically feasible in the near future. CEM allows for continuously tracking the movement and location of offenders, unlike EM today which can only determine if an offender is within range of a stationary receiver. Testimony from potential CEM vendors before a California Legislative committee in October 1994 suggested that CEM systems may be available for pilot testing by mid-1995. A number of potential applications are suggested by the possibility of being able to continuously track the location of offenders on a twenty-four hour basis. Whether these applications have merit or can be implemented in a cost-effective manner remains subject to investigation. This report will detail some of the issues that must be addressed and evaluated before the State pursues the use of this technology.

Electronic Monitoring in Texas

A survey of EM vendors, conducted by the Journal of Offender Monitoring (1993), indicated that at least 65,000 EM units had been installed nation-wide by 1993. Electronic monitoring of offenders is currently used by the Texas Department of Criminal Justice-Pardons and Paroles Division (TDCJ-PPD) in 19 metropolitan areas and by 54 Community Supervision and Corrections Departments (CSCDs) to monitor the absence or presence of parolees or probationers at a given residence at a specified time. In Fiscal Year 1994, there were 1,488 parolees and 6,959 probationers placed on electronic monitoring. The average length of electronic monitoring of parolees was 91 days.

While there are a number of variations, the most common electronic monitoring programs involve an offender wearing a device that transmits a signal to a receiver located in the offender's residence. The receiver sends a signal to a central computer (through a telephone line) which records the offender's presence or absence at a location. The TDCJ-PPD states that the "...technology enhances traditional approaches to supervision by assuring that the releasee is at home during high crime nighttime hours...". The Texas Code of Criminal Procedure allows for electronic monitoring of the following types of cases:

- Personal bond
- Pre-trial release
- Regular supervision
- In lieu of a sentence to jail
- In lieu of fine/costs
- As a condition of an appeal / appeal bond

In general, most uses of electronic monitoring in Texas involve some sort of house arrest or curfew monitoring. Electronic monitoring has been used for DWI offenders in lieu of jail or incarceration, for parole violators, for pre-release programs, and for a variety of other offenders and programs.

Evaluations of Electronic Monitoring Programs

Because of the relative newness of EM and the variety of program goals, evaluations of program effectiveness are limited and often not comparable due to differences in program goals and measures of effectiveness. Evaluations have focused on changes in offenders behavior, compliance with EM, rates of recidivism, cost-effectiveness, and measures of enhanced supervision. Evaluations have indicated mixed results. Baumer (Journal of Offender Monitoring, 1994) examined three EM programs operating within the same jurisdiction and found significant differences in client performance, arrests, and absconding between the three programs. A Florida study (Lilly et al., 1993) cited EM as a cost-effective alternative to jail for DWI offenders. A study by the Illinois Criminal Justice Information Authority (March 1993) noted significant reductions in recidivism for offenders in an electronic monitoring program versus a comparison group of releasees. Few studies, however, have examined whether the impact of these programs persists over longer follow-up periods.

CONTINUOUS ELECTRONIC MONITORING

CEM technology would represent a significantly more comprehensive monitoring system than available under EM. CEM would not be limited to monitoring house arrest or fixed locations like most current EM systems. CEM would allow real-time tracking of offenders as they live and work in a community.

Potentially, CEM would allow for automated monitoring of offenders, identifying deviations from prescribed geographic areas and locations, and providing real-time notification to parole or probation officers of these type of supervision violations. This technology could have varied applications ranging from enforcement of restraining orders in domestic violence or "stalking" cases to determining the location of offenders in relation to offenses reported to the police. The ability to document the location of offenders in relation to offenses committed would assist in identifying potential suspects or eliminating offenders from suspicion of committing certain offenses. CEM could indicate whether the offender was or was not in the geographic area at the time an offense was committed.

If CEM can demonstrate the technological ability to provide continuous monitoring, at a cost-effective price, and the applications detailed above can be implemented and demonstrate practical applications for criminal justice officers, CEM could represent a significant technological advance from the present EM that could be used to enhance public safety.

CONTINUOUS ELECTRONIC MONITORING IN TEXAS

If Texas is to consider the use of a CEM system, the following steps would appear to be necessary to determine if large scale applications were feasible and practical.

- Investigate any tests of CEM systems that have been attempted.

Testimony from the California Legislative committee indicated that a pilot test was scheduled in mid-1995. Pilot test results would provide significant insight into issues to consider in applying this technology in Texas.

- Schedule CEM hearing

A hearing similar to the California Legislative committee hearings, inviting vendors and criminal justice supervisory administrators and staff, would appear to provide valuable input regarding program and technological applications of CEM, as well as provide more recent information regarding technological advances. Texas has at least 6 years experience with EM in probation and parole settings. Program administrators may be able to provide insight into applications of CEM based on their EM experience.

- Determine need of CEM technology and develop program goals and program criteria

The need for the CEM program should be evaluated based on the results of the hearing. If this evaluation indicates the need for CEM, program goals and planning for an initial test should be conducted.

- Pilot test of CEM system

A pilot test of a proposed system would be the most effective way to answer questions associated with this technology. Previous experience indicates that vendors may absorb some of the costs of pilot tests given the potential future contracts that may develop through successful testing.

CEM PROGRAM DEVELOPMENT AND PILOT TEST

ISSUES FOR CONSIDERATION

The possibility of CEM and the use of a pilot test to evaluate this technology raises a number of issues that must be addressed before pursuing the use of CEM. The Bureau of Justice Assistance published a monograph on EM (February 1989) detailing issues to consider in designing an EM program. This publication has a number of applications to a CEM program. These issues can be grouped into the following categories:

- Program Goals and Purpose
- Policies and Procedures
- Legal Issues
- Evaluation

Program Goals and Procedures

As indicated above, electronic monitoring programs may have a number of goals and purposes. Some potential program goals are specified below:

- Alternative to Jail / Prison
- Increased Probation / Parole Surveillance
- Incapacitation
- Deterrence
- Cost-savings

While the goals of current EM technology include most of the goals listed above, CEM appears to have greater potential for increased deterrence of crime than current electronic monitoring technology. While this technology can not tell you if a crime is being committed, it can increase the likelihood of determining whether the CEM offender was at the location when and where a crime was committed. In this manner, the increased probability of detection can act as a deterrent to crime.

The goal of cost-savings offered by electronic monitoring must be carefully considered. Promises that EM would allow probation and parole officers to monitor more offenders more closely have been offset by increased detection of violations, increased time costs associated with equipment malfunction, and other unplanned labor costs. Many EM projects assign lower caseloads to probation and parole officers supervising these cases than regular caseloads, due to increased workload associated with detection of violations. When used as an alternative to prison or jail, significant cost-savings can occur but these must be weighed in terms of the cost to public safety and other costs associated with failures who would have otherwise been incarcerated. The effectiveness of the technology in minimizing failures is critical to program success.

One proposed pilot test of CEM could examine increased surveillance of sex offenders to deter recidivism as a program goal. TDCJ-CJAD reported that 919 sex offenders were placed in special programs in 1992, while TDCJ-PPD indicated that 2,453 sex offenders were on parole in 1992. A number of other potential populations could be pilot tested with CEM. TDCJ-PPD contracted for 1,097 Intermediate Sanction Facility beds in 1992. These beds were targeted for low-risk releasees with technical parole violations. CEM could be used as an alternative to incarceration for those offenders. Similarly, TDCJ-PPD contracted for 1,324 pre-parole beds for inmates within 180 days of release. A pilot test on this population could determine if cost-savings could be achieved with minimal risk to public safety utilizing CEM.

Policies and Procedures

Selection of program goals will drive program policies and procedures that must be considered. Based on program goals, some of the program policies and procedures that must be considered in designing a CEM program include:

- Offender Selection

  A program whose goals are increased surveillance may select high risk offenders, like sex offenders. On the other hand, a program that focuses on alternatives to incarceration may want to select low risk non-violent offenders to divert from prison.

- Staffing

  Based on program goals, offenders requiring increased surveillance may require lower than average caseloads. The effectiveness of the technology, the response to violations, and the level of monitoring are all factors that can drive caseload requirements that may be higher or lower than normal. Determining how to respond to violations can be extremely labor intensive. Twenty-four hour monitoring dramatically increases the time devoted to surveillance when compared to regular caseloads. CEM cannot tell you whether schedule deviations are minor violations or criminal activity. Determining responses to violations drives staffing requirements and program costs.

- Duration of monitoring

  The length of time an offender is placed on CEM is also related to program goals. Program duration may be different for different programs. If the intent of the program is to divert offenders from prison for a period of time, program duration may be different than efforts to reduce recidivism.

- Costs

  Costs of the program will be impacted by the number of offenders placed on CEM, the length of monitoring, offender fees charged and recovered, staffing patterns, and

costs of developing and modifying the technology. Determining whether the equipment should be purchased or leased, run in-house or have monitoring on a contract basis are all issues that must be considered in a cost analysis of the system.

- Training

  Training of staff responsible for supervising offenders, technical staff operating the system, and other staff involved in the program is an important part of the program

Legal Issues

While there have been some legal challenges to EM programs, to date no ruling has found EM unconstitutional. The advent of CEM may pose some legal challenges not pursued under current EM programs. The BJA monograph cites a number of constitutional guarantees that might be pursued in legal challenges of CEM. In general these areas include:

- Right to privacy under the Fourth Amendment
- Right against self-incrimination under the Fifth Amendment
- Liability of supervising authorities for failure to respond to known violations
- Vendors liability
- Admissibility of evidence based on CEM

It might be advisable to have the Texas Attorney General's Office investigate these issues prior to any program development in this area.

Evaluation

Program goals drive outcome and evaluation measures. A pilot test targeting sex offenders may utilize an outcome measure such as new arrests and/or incarcerations as a measure of program effectiveness. A pilot test of CEM could examine recidivism rates of sex offenders placed on CEM, sex offenders on regular EM, and a third comparison group of sex offenders on regular or specialized caseloads without CEM or EM. Differences in outcomes after one year could be attributed to program participation, if other factors are similar. A number of other applications could be tested, as suggested earlier, which would drive the evaluation design and methodology required.

A cost-effectiveness analysis would examine the costs of the program in relation to savings that might be achieved by reduced recidivism. In a program that targets sex offenders cost savings may not be as important as the protection of victims. In a program targeting non-violent offenders diverted from prison, cost-savings may be a more relevant measure, as the cost of a CEM program is compared to incarceration costs.

CONCLUSIONS

Continuous electronic monitoring promises significant enhancements to public safety in Texas. A number of potential applications such as alternatives to incarceration, increased surveillance of offenders, and reduced recidivism may be possible utilizing this technology.

The number of serious public policy questions associated with this technology merits careful investigation and testing before the application of this technology can be pursued. The most prudent policy to pursue at this time is to acquire information regarding the state of the art in this technology and subsequently pursue a pilot test of CEM when CEM can demonstrate technical, practical, and cost-effective feasibility. At that point a program could be designed and tested to determine the potential of CEM in Texas.