

Probation, Parole and Penitentiary Law
class 6

Electronic Monitoring System



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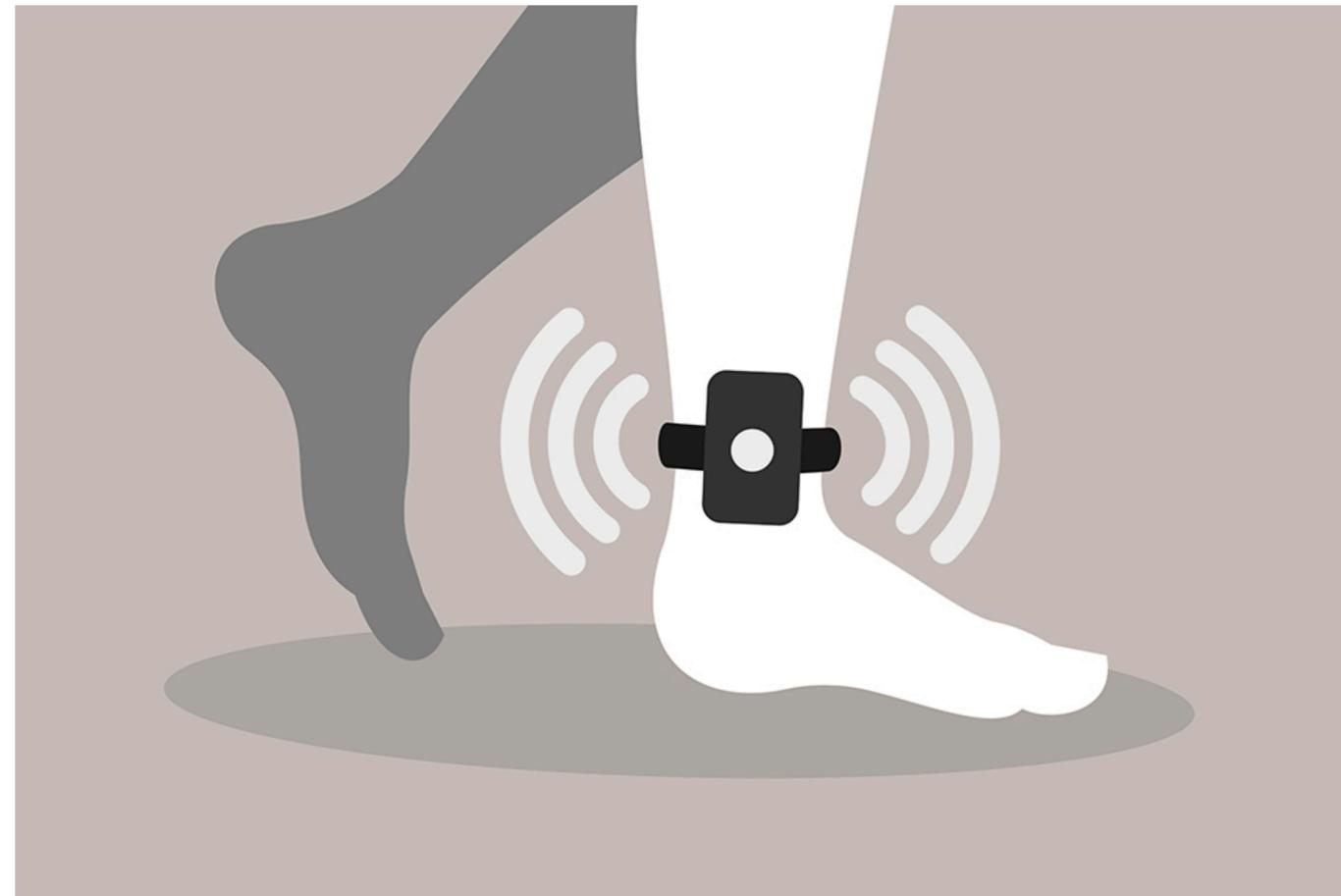
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KATEDRA PRAWA KARNEGO WYKONAWCZEGO

Intro

- * United Nations Standard Minimum Rules for Non-custodial Measures has already concluded that imprisonment must not be granted as the natural form of punishment and that most of the objectives it implies can be met by using alternative measures, which are normally more effective and less expensive
- * It is clear that States have been committed to develop new types of non-custodial measure, so electronic monitoring system is – in part – a consequence of this commitment.



Intro

A SHORT HISTORY OF ELECTRONIC MONITORING

Electronic Monitoring was initiated in the United States of America by psychologist Ralph Schwitzgebel in 1964.

In Poland the system of electronic monitoring appeared in a later period of time. One of the basic legislator's purposes was to reduce overcrowding in prisons.

First introduced in Poland in 2007 as an alternative to the imprisonment- Act of 7 September 2007 about serving a sentence of imprisonment outside prison in the system of electronic monitoring (Dz. U. 2007, No. 191, item. 1366)

However first structured proposal to introduce the Electronic Surveillance System collapsed in 2005.

The amendment of 20 February 2015 which amended a number of statutes, including the Polish Criminal Code and Polish Executive Penal Code changed construction of Electronic Monitoring System for a while- the legislator provided for the possibility of using the Electronic Monitoring in relation to the penalty of limitation of liberty.

The changes introduced as a result of the amendment of 1 July 2015 existed only until 14 April 2016.

The electronic monitoring has begun once again to refer to the imprisonment, but entered into the structure of the Executive Penal Code, and has become an integral part of the Polish penal system

Now it is an alternative to the imprisonment. There is also possibility of serving a penalty in non-isolating system of electronic supervision- as a penal measure and a security measure. It may be ruled at a later stage of the proceedings.

Although the amendments introduced in 2015 have dramatically reconstructed this institution the legal construction applicable since 15th April 2016 made system more stable.

Advantages and Disadvantages of Electronic Monitoring System

ELECTRONIC MONITORING

WEAKNESSES

1. The conditions of EMS can affect family responsibilities and relationships.
2. The amount of time spent on EMS is usually longer than a jail sentence might be
3. There are a variety of technical conditions that must be met
4. Some people are ineligible for EMS
- in general it is a system for low-risk, non-violent offenders

STRENGTHS

1. Financial Savings
- currently, there are almost 5,000 people in Poland under electronic monitoring measures, whose monthly cost is almost ten times lower than their detention in an establishment. The take-up of the electronic monitoring system by the Prison Service, as well as the ongoing legislative work to expand electronic monitoring, will undoubtedly contribute to increasing non-custodial sentences.
2. Convicts can work or take part in other permissible activities
- (attending drug and alcohol counseling, appearing in court, meeting with probation officers)
3. There are a variety of terms and conditions that the individual must meet- the court will order that they comply with a series of rules that are based on the individual circumstances of the case. That means there might be random drug testing, in-office meetings that are face-to-face, surprise home visits, and other stipulations that must be met.
It may provide better rehabilitation and resocialization of convicts.
4. It allows an offender to care for a family member.
- especially for those who have children. Defendants with children can take part in their care and maintain a relationship with them

It also helps to reduce overcrowding in prisons

Electronic Monitoring System- types and definition according to the Polish Executive Penal Code

System of electronic monitoring is defined as a whole of methods of handling and the technical means.

The legislator distinguished several types of the electronic monitoring by checking:

- * staying by the convicted person at the place indicated by the court (called “stationary electronic monitoring”);
- * a current place of sentenced person’s residence, regardless of where this person is (called “mobile electronic monitoring”);
- * a preservation of a certain minimum distance from the person indicated by the court (called “contactless electronic monitoring”)

Electronic Monitoring System- types and definition according to the Polish Executive Penal Code

Article 43c § 1 of the Executive Penal Code:

- * As to the imprisonment in the electronic monitoring system- it is served in **stationary electronic monitoring**
- * While **mobile electronic monitoring** and **contactless electronic monitoring can applied** to the penalty of penal measures and security measures
- * It should be also noted that the electronic monitoring concerns not all, but only particular penalty measures, including: a prohibition from entering certain localities, on contact with certain people, from approaching a certain person or on leaving a specified place without a court's consent, and an order the periodical leaving a premises rented with the victim or a prohibition from entry to a mass events

Stationary electronic monitoring

- * Used to control execution of the penalty of imprisonment
- * The offender stays in one place- place of permanent residence
- * a transmitter is worn on the leg or hand,
- * or there is installed stationary electronic recording equipment



Mobile electronic monitoring

- * Used to control execution of the penalty of penal measures and security measures
- * It's the most advanced one
- * It relies on GPS technology to constantly track the device wearer's location
- * It may be inconvenient - GPS tracker requires to charge once every two days



Contactless electronic monitoring

- * Used to control execution of the penalty of penal measures and security measures as well
- * It's similar to stationary monitoring
- * It requires the use of the recorder and transmitter
- * [Electronic Monitoring Bureau](#) receives signals transmitted by the transmitter and monitors transmitted signals to determine if an alarm event has occurred relating to the transmitter or location of the convicted person
- * So offenders are required to wear the transmitters
- * If the offender has been convicted a prohibition from approaching a certain person the court instructs these person (protected person) with the right to to apply for equipping him/her with a recorder



When is Electronic Monitoring an option?

As an alternative to the imprisonment:

- * Permission to serve imprisonment in this system is the competence of the penitentiary court and is necessary to fulfill cumulative conditions ([Art. 43la § 1 of the Executive Penal Code](#))
- * The electronic monitoring in this variant could be adjudicate in relation to a person sentenced to prison for a period between 1 month and 1 year and six months (excluding multiple recidivists) who has a place of permanent residence may apply to serve a penalty in non-insulating system of electronic surveillance ([Art. 43la § 1 section 1&3 of the Executive Penal Code](#))
- * More so, the judgement must be sufficient to achieve the purpose of the punishment ([Art. 43la § 1 section 2 of the Executive Penal Code](#))
- * Not only convicted person can apply for the electronic monitoring but also an advocate, a prosecutor, a probation officer or a director of the prison ([Art. 43lc of the Executive Penal Code](#))
- * Using of the electronic monitoring has been conditioned by the absence of obstacles such as housing conditions and technical conditions ([Art. 43h. § 1 of the Executive Penal Code](#))
- * Another condition is to obtain the consent of adults who live with the convicted ([Art. 43h. § 3 of the Executive Penal Code](#))
- * In Article 43na of the Executive Penal Code, the legislator provides the possibility of moving away from place of residence or other place designated by the court with an indication of the purpose [for a period of time not exceeding 12 hours per day.](#)
- * [and in Article 43nb](#) - the possibility of imposing the obligations specified in Article 72 of the Penal Code

When is Electronic Monitoring an option?

As an alternative to the penal measures or the security measures:

- * Permission to serve these penalties in this system is the competence of the court - the rule is that the courts of the offender's permanent residence should hear the case
- * If technical conditions can not allow to place under mobile electronic monitoring all convicts for whom such supervision has been imposed, court in the first place directs to the execution in that system security measures ([Art. 43h. § 2 of the Executive Penal Code](#))
- * The court, before deciding whether to apply the punishment in the system of electronic monitoring, also decides whether the material and formal conditions.
- * There can't be any technical obstacles ([Art. 43h. § 1 of the Executive Penal Code](#))
- * The court requires information whether the technical conditions allow the immediate execution of this sentence and if not - from which date this will be possible ([Art. 43i § 1 of the Executive Penal Code](#))
- * If the immediate execution is not possible court will postpone executing this penalty for up to one year ([Art. 43i § 2 of the Executive Penal Code](#))
- * If the court has given consent to the system of electronic monitoring, the convicted person is obligated to report the readiness to install the recording equipment or the transmitter within a maximum of 24 hours from the time the ruling was delivered or served, or within 7 days before the release from prison. The court sets a time of electronic monitoring and determines which technical means will be applied. ([Art. 43j § 1&2 of the Executive Penal Code](#))

Supervision

The supervision is exercised by:

- * **The penitentiary court.** The court supervises the lawful and proper implementation of the penalty.
- * The process is controlled by the professional court appointed **probation officer**, the entity operating the monitoring centre (**Electronic Monitoring Bureau**) and **the authorised monitoring entity**.
 - The entities execute the orders of the penitentiary courts.
 - The Electronic Monitoring Bureau supervises the system in content-related terms and in technical terms. The authorised monitoring authority performs a number of technical and organisational activities relating to the system operation.

Supervision

The supervision is exercised by:

- * The professional court-appointed probation officer
 - is to assist the sentenced person during social resettlement and control the way the sentenced person fulfills the obligations and instructions imposed on him/ her
 - may file motions regarding the imposition, enlargement or modification of obligations, or the discharge from the performance of those obligations, as well as motions for revoking the permission to serve the time in that system.
 - provides the court with monthly updates regarding the conduct of the sentenced person, including in particular his/ her performance of the obligations imposed on him/ her and observance of the legal order.
 - immediately notifies the court of any breach by the sentenced person of the legal order or of the obligation imposed on the sentenced person.
 - Also notifies the penitentiary judge of any irregularities in the functioning of the authorised monitoring entity.

Standards in Electronic Monitoring

ELECTRONIC MONITORING SYSTEM - SOME GENERAL RULES

The measure is applied so that the sentenced person is able to work

In view of the obligations being imposed, the application of that measure has an impact on the physical and mental wellbeing and the family relations.

The primary obligation imposed on the sentenced person is to stay at the place of permanent residence or at any other designated place at the designated time.

The court specifies the intervals of time during which the sentenced person has the right to leave his/her place of permanent residence or any other designated place for a period up to 12 hours per day, especially in order to: work, participate in religious practices, care for a minor, disabled person or an ill person, study and self-study, make own artistic creations, use cultural, educational and sport facilities or activities, communicate with certain persons, keep contact with family and other close persons, use medical services or take part in a therapy, or make the necessary purchases.

The professional court-appointed probation officer can also change the intervals of time during the day and during the individual weekdays.

Revoking Electronic Monitoring System

The court revokes its permission (mandatory):

- * if the sentenced person violated legal order while serving his/ her time, and in particular if the sentenced person committed an offence or a fiscal offence, or if the sentenced person is evading the performance of the obligations imposed on him/ her or the penal measure imposed on him/ her,
- * or when the break in the execution of the penalty in the Electronic Monitoring System was called off for reasons other than those for which the break was granted,
- * and if the sentenced person was put in a correctional facility while serving the penalty due to the application of a pre-trial detention or implementation of penalty in another case.

The court can revoke the permission if (optional):

- * the sentenced person who was taking advantage of the permission to leave his/ her place of residence fails to return to the specified place at the specified time.

Rehabilitation role of EMS

The resocialization dimension

- * An individual serving sentence under the Electronic Monitoring System can function in their normal environment. This allows the individual to work, spend time with their family and participate in their social and cultural life. Furthermore, the Electronic Monitoring System eliminates the negative psychological and social effects of longterm isolation, as well as the reliance on the penitentiary system to take responsibility for securing the basic necessities of life. This is a very important aspect from the point of view of humanitarianism in punishment systems and the rehabilitation of convicts.
- * EMS must be combined with other measures which address offenders' problems and criminogenic needs (allowing time for them to engage in employment or training)

Conclusion

- * The efficiency of electronic surveillance should be increased by the introduction of treatment programs / rehabilitation programs that increase the chance of a fuller social rehabilitation of people who are covered by this system

Summarizing

EMS is a useful alternative to a custodial sentence served in isolation, because it can be more effective and, what is important, less expensive for the budget.

SUMMARY

The electronic monitoring is a good legal solution for convicted people, the state and society

The convicted persons have possibility of a smoother imprisonment, and the state has legal measures in order to reduce the overcrowding in prisons

More so, the society gains a better chance of resocialisation of the convicted person, who is trying not to break the law because may be sentenced to prison

Certain obligations may be imposed on the perpetrator as an element of sanctions when serving prison time in the Electronic Monitoring System; the obligations should match the circumstances of the case and the characteristics of the perpetrator.

Summarizing

EMS is considered as a „lesser evil” than imprisonment

More so,

- * The EMS do inform about relevant violations of monitoring directives that restrict movement of convicted person or proscribe particular behaviors - [so it's a practical resource for correctional control](#)
- * The technical barriers are perhaps the most significant obstacles to the development of EMS
- * As it was said Electronic Monitoring technology is considered as a prospective remedy for prison crowding

- For those who haven't done that yet- remember to complete task 4!
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