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Corrections Amendment (Electronic Monitoring) Bill 2020

Submission by the Prisoners Legal Service Tasmania
and the Australian Lawyers Alliance Tasmania to the
Strategic Legislation and Policy, Department of Justice

31 July 2020

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction and Review Issues

1. The Prisoners Legal Service and the Australian Lawyers Alliance (ALA) supports measures which enable prisoners to be released on parole. Electronic monitoring (EM) is a mechanism now widely used in the criminal justice system in Australia, including in Tasmania.
2. We do not oppose the Corrections Amendment (Electronic Monitoring) Bill 2020 (the Bill) per se but we caution against the widespread use of EM and we certainly believe the Bill must include a review clause so that if any conditions such as those proposed in clause 4 of the Bill are imposed they must be reviewed every 3 or 6 months. A person on parole must also be able to seek the removal of the conditions.
3. In this Submission we outline some of the adverse consequences for parolees of EM in the context of employment and medical treatment. The Bill must, in our view, allow for removal of EM devices in circumstances where employment or medical treatment necessitates it occurring.

EM and adverse consequences for parolees: The employment and medical treatment perspective

4. The negative ramifications that EM devices can have on a parolee's ability to reintegrate into society have been observed and documented extensively in the United States. This Submission, aims to provide an overview of these negative ramifications, with a specific focus on employment and medical treatment. In this Submission we argue EM devices can significantly hinder a parolee's opportunity to gain and maintain employment, and seek medical treatment. It follows that if there are not exceptions provided in the Bill to allow for the removal of EM devices in these circumstances, the imposition of EM as a condition has the potential to undermine the purpose for which inmates are granted parole, that is, to transition back into society.

1. EM and Employment

5. Research suggests that a requirement to wear/possess an EM device has significant impacts for parolees in terms of their ability to find and maintain employment. The negative effects of EM on a parolee's ability to find and maintain employment were illustrated by the findings of a six-year study of five-thousand parolees, who each were subject to EM, that was published in a report by Florida State University in 2010 ('FSU Report'),² a summary version of which was subsequently published by the United States Department of Justice in 2011.³

² Bales et al, 'A Quantitative and Qualitative Assessment of Electronic Monitoring' (Research Report No. 230530, Florida State University, College of Criminology and Criminal Justice, Center for Criminology and Public Policy Research, January 2010) ('FSU Report').

³ U.S. Department of Justice – National Institute of Justice, *Electronic Monitoring Reduces Recidivism*, Research Article, September 2011).

6. The FSU Report provides unique insight into the impacts of EM devices on parolees' employment prospects by examining the reasons as to how and why these impacts occur, from the perspective of both parolees, and parole officers.⁴
7. Of the five-thousand parolees who participated in the study, sixty-one percent (3,050) reported that their ability to obtain employment had been negatively affected as a consequence of EM.⁵ The primary reasons given by parolees as to why the EM effected their ability to obtain employment were as follows: the device raised questions/concerns with their employer (25.5%); there were more qualified people who didn't have to wear an EM device (16.7%); the stigma of being electronically monitored makes finding work difficult (10%); and only having a limited amount of time available to find work because of restrictions (6.7%).⁶
8. Further, twenty-two percent (1,100) reported that they had either been fired or asked to leave a job because they were wearing an ankle monitor.⁷ Of those, thirty-two percent reported that the primary reason for dismissal was attributable to connectivity issues with the EM device.⁸ Upon loss of satellite signal, the EM device produces an audible alert which meant that parolees were required to leave work and walk around outside for fifteen minutes in an attempt to stabilize the satellite signal.⁹ Other primary reasons given for dismissal were: personal liability (27%); restrictions on flexibility (i.e. work hours, distance from work, time, etc.); and because employers did not want customers to see the EM devices (5%).¹⁰
9. Of the thirty-six parole officers who were interviewed, the overwhelming majority (94.4%) believed that parolees' employment situations were affected as a result of the requirement to wear an EM device.¹¹ Following this, parole officers were then asked to explain the basis for the impact on parolees' employment situations. The primary reasons that were given by parole officers were: the EM device losing signal inconveniences employers (42.4%); carrying equipment (that is, EM equipment) may cause problems; hiring offenders may create a negative impression for the employer (12.1%); and the unit impacts customers' perceptions (9.1%).

⁴ FSU Report (n 2) 95–96.

⁵ Ibid 94.

⁶ Ibid 95.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid 93.

¹⁰ Ibid 95.

¹¹ Ibid 96.

The Ability of EM Devices to Undermine the Purpose of Parole –The case of Craig Leroy Atkins

10. After serving twenty-one years in prison for murder in Michigan, Craig Leroy Atkins was granted parole in 2010.¹² Atkins landed a job at a construction firm, earning \$26 an hour, and also enrolled in a paralegal course at a community college – evincing his willingness and desire to reintegrate with society and to move away from his past life. Briefly after his employment commenced, an order was made for him to wear an EM ankle bracelet (this required Atkins to have a four-inch, cube shaped black box near him at all times).
11. Consequently, Atkins’ employer was unwilling to accept that the box had to stay in the work place and fired Atkins. Subsequently, in an interview with a *Free Press* journalist, Atkins opined “it’s almost like they want me to start selling drugs again”. Less than a year later, Atkins was found dead on the street from a gunshot wound to the chest; it was suggested by Kilgore that he had reverted to his previous criminal activity, owing to his inability to maintain employment.

Lessons

12. The findings from the FSU Report and the case of Craig Leroy Atkins illustrate that a requirement for parolees’ to wear/possess EM devices in the workplace has the potential to undermine the purpose for which they are given parole – to reintegrate into society. If parolees’ employment opportunities are further limited – acknowledging that they are already limited when compared to members of the public who have not been convicted of a crime – this will serve as an additional barrier that they must overcome to successfully re-integrate into society, which, as seen in the case of Atkins, may lead to recidivism.

2. EM and Medical Treatment

13. There are a number of medical procedures that are unable to be performed when a person is wearing an EM device, including MRIs, mammograms, x-rays, and CT scans.¹³ Accordingly, unless there is a clearly expressed policy for how such devices are to be dealt with, there is significant scope for issues to arise when parolees who are required to wear an EM devices are in need of an aforementioned medical procedure. Historically, it has sometimes been the case that medical professionals will simply postpone medical treatment/surgery until said EM device is removed, out of fears that the radio-frequencies that it emits will cause interference with a hospital’s electronic systems.¹⁴
14. It is undesirable that parolees’ may be unable to seek medical treatment because they are unable to remove their EM device, and would arguably serve to be punitive rather than

¹² James Kilgore ‘Would You Like An Ankle Bracelet With That?’ [2012] (Winter) *Dissent* 66.

¹³ James Kilgore ‘Ankle Monitors Aren’t Humane: They’re Another Kind of Jail’ [2018] *Wired*.

¹⁴ J. Tye ‘How Should we Manage the Electronically Tagged Patient?’ (Discussion Paper, Association of Anaesthetists, March 2001).

rehabilitative, which undoubtedly conflicts with the purpose of an inmate being granted parole.

Conclusion

15. If the Bill is to impose a requirement for an inmate to wear an EM device as a condition for their release on parole, there must be exceptions provided that will allow for the removal of said EM device in the circumstances of employment and medical treatment. Without such exceptions, negative outcomes like those observed above will occur, which will arguably undermine the purpose of an inmate being granted parole.



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