

**APPLICATION OF ELECTRONIC MONITORING:
COMPARATIVE ANALYSIS, CURRENT SITUATION, CHALLENGES,
AND FUTURE PERSPECTIVES IN REPUBLIC OF SERBIA*****

Summary

In contemporary society, the application of electronic monitoring (EM) as a form of supervision and control of criminal offenders has been enabled by technological advancements and the integration of digital technologies across various sectors, including the criminal justice system. Mass production, increased accessibility and the widespread application of information and communication technologies (ICTs) have facilitated the use of modern technologies in the implementation of certain criminal sanctions and measures. In the Republic of Serbia, the 2009 amendments to the Criminal Code introduced the possibility of using EM in the enforcement of specific non-custodial sanctions and measures against suspected or convicted offenders. EM may be employed in the following cases: for the execution of a custodial sentence not exceeding one year, served at the convict's residence (house arrest); the enforcement of a measure prohibiting the accused from leaving their residence during the course of criminal proceedings or until the convicted offender is transferred to a correctional facility (house detention); and when the court determines that electronic monitoring is necessary as a condition of the offender's release on parole. The methodological approach used in the paper required

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the application of normative, comparative and statistical methods to examine the EM concept and origins, analyze comparative legislation and normative solutions within the Republic of Serbia aimed at developing a sustainable legislative approach, and present empirical data on the application of EM in Serbia. Finally, the analysis of opportunities for improving EM systems served as the basis for the authors' proposals for its broader application as a mechanism for supervision and control of offenders within the criminal justice system in the future.

Keywords: electronic monitoring, non-custodial sanctions and measures, alternative sanctions, house arrest, home detention

PRIMENA ELEKTRONSKOG NADZORA: UPOREDNA ANALIZA, STANJE, IZAZOVI I PERSPEKTIVE U REPUBLICI SRBIJI

Sažetak

Primena elektronskog nadzora (EM) kao oblika nadzora i kontrole učinilaca krivičnih dela omogućena je tehnološkim napretkom u savremenom društvu i primenom novih tehnologija u svim sferama života, pa tako i u krivičnopravnom sistemu. Masovna proizvodnja, dostupnost, upotreba i primena informaciono-komunikacionih tehnologija omogućili su korišćenje savremenih tehnologija u postupku izvršenja pojedinih krivičnih sankcija i mera. Izmenama i dopunama normativnog okvira u Republici Srbiji 2009. godine uvedena je mogućnost primene EM u izvršenju posebnih vanzavodskih sankcija i mera. Mogućnost primene EM prema osumnjičenim ili osuđenim licima predviđena je u slučajevima: modalitet izvršenja kazne zatvora do godinu dana, kada sud odredi da će se kazna izvršavati tako što lice ne sme napuštati prostorije u kojima stanuje (kućni zatvor); izvršenja mere zabrane napuštanja stana u toku krivičnog postupka ili do početka izdržavanja kazne (kućni pritvor); i potencijalno, kada sud utvrdi da je potrebno elektronsko praćenje lica tokom uslovnog otpusta. S obzirom da je prošla dekada i po od uvođenja EM u Srbiji, stekli su se uslovi za detaljniju analizu efekata njegove primene. Autori ovog rada najpre prikazuju pojam i poreklo EM u uporednom pravu, potom navode sankcije i mere koje se izvršavaju uz primenu EM, analiziraju postojeće modele praćenja i izvršenja vanzavodskih sankcija i mera, i predstavljaju podatke

o primeni EM u krivičnompravnom sistemu Republike Srbije. Na kraju, na temelju iskustava i mogućnosti za unapređenje sistema EM, autori predlažu proširenje njegove primene kao oblika kontrole i nadzora učinilaca krivičnih dela, uz neophodne izmene krivičnog zakonodavstva u budućnosti.

Ključne reči: elektronski nadzor, vanzavodske sankcije i mere, alternativne sankcije, kućni zatvor, kućni pritvor

1. Introduction

In shaping an effective criminal law response to crime, theoretical approaches frequently examine alternative sanctions that may either replace or complement the traditional reliance on imprisonment (Đorđević & Bodrožić, 2023). The application of new technologies, such as electronic monitoring and tracking, is one of the most significant techno-correction measures. In post-modern society, this development is facilitated not only by rapid technological advancements and infrastructure developments, but also by a broader cultural transformation, wherein the use of biotechnology and electronics is no longer viewed incompatible with the human rights protection, provided that such measures reduce criminal conduct risks (Mrvić-Petrović, 2010). Furthermore, technological developments are directly correlated with their immediate application. In practice, modern systems and tools for monitoring and controlling criminal offenders are increasingly used prior to the thorough assessment of potential risks to fundamental human rights and freedoms (Fabelo, 2002). As noted by Albrecht, during the 1990s, there were substantial debates regarding the empirical, normative, and moral dimensions of electronic monitoring (EM), including concerns related to human rights and the use of electronic devices for the supervision of criminal offenders. Today, the focus has shifted toward a theoretical framework of critical criminology, emphasizing issues such as commercialization, risk management, and privatization. Moreover, the “new penology” approach views EM as part of a broader shift in the nature of criminal sanctions and the social control of offenders, facilitated by technological innovations in postmodern society (Albrecht, 2005).

Since the mid-1980s, the use of EM to enforce court-imposed obligations, prohibitions, limitations and restrictions on the freedom of movement or other human rights has been a common feature in most modern criminal justice systems that implement non-custodial sanctions and measures. EM devices allow the authorities to monitor the location, presence and movement of suspected or convicted offenders, facilitating the supervision of imposed restrictions before, during or after

criminal proceedings, throughout the enforcement of criminal sanctions, and, if necessary, even after the completion of the imposed sanction (Grujić, 2015a, p. 445).

In the absence of a universally accepted definition, EM may be described as a general term denoting the surveillance of an individual's location, movements, or specific conduct within the criminal justice system conducted using modern electronic and ICT tools and systems (Nellis & Lehner, 2012).

In some criminal justice systems, EM is an alternative criminal sanction closely linked to house arrest. In these systems, EM devices may be used during house arrest, or imposed as a separate alternative sanction. Although EM is primarily a means of supervising and enforcing house arrest, in jurisdictions where it is prescribed as an independent alternative sanction, it is defined as an alternative form of detention or imprisonment in a home setting, and supervised through electronic tools and systems, based on a court decision issued in criminal proceedings (Grujić, 2020). In other words, house arrest and EM are often used interchangeably, despite EM being, in practical terms, a method for implementing house arrest (Vasiljević-Prodanović, 2010, p. 239). Nonetheless, some authors emphasize a distinguish between the two: house arrest, which typically serves as a substitute for short-term imprisonment; and EM, which may be viewed either as a separate alternative sanction or as a modernized version of house arrest (Škorić & Kokić Puce, 2009, p. 668).

From the substantive law perspective, the imposition of EM as a standalone criminal sanction, aimed solely at supervising and controlling a convicted offender's behavior without imposing additional restrictions, obligations or prohibitions, lacks substantive quality, as it does not have important rehabilitative or reintegrative effects. However, the substance and effectiveness of alternative criminal sanctions can be significantly enhanced by combining EM with sanctions that include prohibitions, restrictions and/or obligations (Grujić, 2020, p. 122). Nevertheless, in many modern criminal justice systems, this form of supervision is not established as a separate criminal sanction, but rather functions as an alternative measure applied before, during or after criminal proceedings. EM serves as a method for enforcing a specific criminal sanction or measure, as part of conditional release on parole, and even as a post-sanction measure imposed on specific categories of offenders after the completion of their sentence (Grujić, 2015b, p. 204).

In addition, EM may be prescribed as a condition for postponing the imposition or execution of a criminal sanction, as a measure combined with specific probation interventions, as a tool for supervising individuals released from prison prior to the completion of their full sentence, and as a form of oversight for convicted individuals placed in open prison facilities. Furthermore, EM may also be used as a protective measure for specific categories of crime victims, aimed at restricting

the movements or actions of certain suspects or accused individuals (Grujić, 2015a, p. 445).

The Council of Europe (CoE), in its guidelines for completing the SPACE II questionnaire, defines EM as the use of electronic means to locate individuals through various techniques (Aebi, Cocco & Hashimoto, 2023). In response to the growing use of EM within European criminal justice systems, the CoE adopted Recommendation No.4 (2014) on electronic monitoring, which outlines key principles and professional standards intended to guide national legislations in ensuring fair, proportionate and effective application of various forms of EM within the criminal justice framework while fully respecting the rights of individuals subjected to such supervision measures (Recommendation CM/Rec (2014) 4).

2. The Origins of Electronic Monitoring in Comparative Criminal Law

The concept of electronic monitoring (EM) dates back to 1919, when the U.S. Army Signal Corps announced the development of technology that enabled tracking ships and aircraft by using radio signals (Klein-Saffran, 1993). The first prototypes of EM devices designed for tracking individuals were developed in the 1970s in the United States, pioneered by brothers Robert and Ralph Schwitzgebel (Schwitzgebel, 1971, pp. 15-21). Between 1964 and 1970, EM was used in Massachusetts to locate individuals on parole, mentally ill patients with mental illness, and research volunteers. As early as 1971, Mayer suggested that the use of EM could help address prison overcrowding (Ardley, 2005, pp. 1-54). The first recorded use of EM as a criminal sanction occurred in 1983, when Judge Jack Love of Albuquerque, New Mexico, reportedly inspired by the comic book *Spiderman*, imposed a sentence of house arrest with electronic monitoring (Nellis, 1991, p. 167). In 1986, the U.S. Parole Commission launched a program for the electronic supervision of individuals released on parole. Three years later, the scope of EM was expanded to include sanctions such as probation and an alternative to pretrial detention, primarily to ensure the presence of defendants during criminal proceedings. By 1988, thirty-two U.S. states had implemented various EM programs targeting offenders (Nellis, 1991, p. 167). As of 2021, data indicated that 254,700 adults in the U.S. were subject to some form of EM (Zhang, Kang-Brown & Kotler, 2024).

In the 1980s, growing concerns regarding prison overcrowding in the United Kingdom prompted discussions the need for alternative solutions. In 1987, a study visit to the United States was proposed to examine their use of EM (Nellis, 1991, p. 167). The first pilot projects in England commenced in 1989 in Nottingham, North Tyneside, and Tower Bridge, involving 50 defendants who were placed under EM

as an alternative to pretrial detention. Through rigorous economic evaluations and systematic implementation, England developed a model for the effective application of EM. The first cases of EM use were recorded by the end of 1989. According to the CoE data, England continues to be the leading European country in the use of EM (Aebi, Delgrande & Marguet, 2009).

Sweden introduced EM in 1994 as an alternative to short-term imprisonment, initially through a pilot project conducted in five regions. The program targeted adults sentenced to prison terms of up to two months and was implemented in conjunction with house arrest. Since 2007, it has been possible for individuals to serve a half of their custodial sentence at home under EM supervision (Wennerberg & Holmberg, 2007). The Netherlands introduced EM in 1995, initially as a two-year pilot project (Spaans & Verwers, 1997). Subsequently, EM became an alternative to short-term imprisonment – of up to six months – combined with work, education, or other programs requiring up to 26 hours per week. EM could also be integrated as part of conditional sentences, community service orders, or used to allow individuals to serve the remainder of their sentence at home (Tak, 2008). Belgium launched its own two-year pilot project in 1998, targeting offenders sentenced to up to 18 months who were either employed or participated in educational or therapeutic programs. Today, EM in Belgium is implemented through multiple modalities. It is applied as a standalone sanction replacing custodial sentences of up to three years, as a transitional phase in the execution of longer prison terms, and as an alternative for pretrial detention (Beyens & Roosen, 2013, p. 56). In France, EM was introduced in 2000. Under the French Criminal Code, individuals sentenced to prison term of up to one year may serve their sentence under EM without being incarcerated (Grujić, 2020, p. 127). Spain and Switzerland introduced similar legislation in 2002 (Tešović, 2018).

In Bosnia and Herzegovina, the Criminal Code of the Federation of B&H (Article 43c) allows house arrest with EM for sentences up to one year, provided that the court determines that imprisonment is not necessary to achieve the purpose of punishment (KZ BiH). In Republika Srpska, house arrest may be imposed on elderly individuals, persons with severe illnesses or disabilities, pregnant women, and single parents of minors, contingent upon the offender's consent and the court's assessment that such a measure fulfils the aims of punishment (KZ RS). Montenegro introduced house arrest as a penal measure in 2015 (KZ). North Macedonia adopted probation legislation in 2015 (ZP), with plans to implement EM from 2025. Croatia launched a pilot EM project in 2017 (Špero & Rosandić, 2017, p. 671), which was followed by subsequent legislative developments; as a result, the use of EM has expanded significantly since 2023.

3. Modalities of Electronic Monitoring in the Criminal Justice System of the Republic of Serbia

In the criminal justice system of the Republic of Serbia, electronic monitoring (EM) is applied in several contexts. It is used in the execution of prison sentences not exceeding one year, allowing the sentence to be served at the convicted offender's residence (house arrest), EM is also used as a measure prohibiting departure from the residence during criminal proceedings or pending confinement in a correctional facility (house detention). Additionally, EM may be imposed as a condition of parole, when the court determines that such supervision is necessary.

3.1. House Arrest With or Without Electronic Monitoring

The Act amending the Criminal Code (2009) (ZidKZ) introduced the possibility for prison sentences not exceeding one year to be served without the convict leaving their residence, commonly referred to as "house arrest." The amended Law on the Execution of Criminal Sanctions (2011) (ZidIKS) enabled the application of EM in enforcing such sentences. Subsequently, the Law on the Execution of Non-Custodial Sanctions and Measures was adopted in 2014 (ZIVSM), followed by the Rulebook on Manner the Execution of Non-Custodial Sanctions and Measures and the Organization and Operations of Probation Officers (2015) (Pravilnik o načinu izvršenja). These legislative instruments regulate the procedures for executing non-custodial sanctions and the application of EM, while the Department for Treatment and Alternative Sanctions within the Ministry of Justice is responsible for the implementation and oversight of non-custodial sanctions and measures.

The Serbian Criminal Code (KZ RS) and the Criminal Procedure Code (ZKP) also include provisions on house arrest and house detention (i.e., a prohibition on leaving one's residence), which have undergone multiple amendments. In 2021, pursuant to the amended Rulebook on the Systematization of Workplaces at the Directorate for the Execution of Criminal Sanctions of the Ministry of Justice, the newly established Department for Non-Custodial Sanctions and Measures assumed exclusive responsibility for the execution of non-custodial sanctions and measures (Kolaković-Bojović, Batričević & Matić-Bošković, 2022). This department has improved significantly administrative capacities, thereby completing the legal framework for implementation of EM in the enforcement of non-custodial sanctions and measures.

House arrest is a criminal sanction imposed in specific cases as a standalone alternative measure. However, in Serbian substantive criminal law, house arrest is neither formally classified as a standalone sanction nor explicitly designated as "house arrest." Rather, it is designated as a modality for executing prison sentences

not exceeding one year and referred to as “imprisonment executed without leaving the convict’s residence” (Article 45 of the Criminal Code (2009). Although the term “house arrest” is absent from the Criminal Code, it is used in the Law on the Execution of Non-custodial Sanctions and Measures (2014).

The original provisions of the amended Article 45 of the Criminal Code (2009) stipulated that, when determining house arrest, courts must take into account the technical feasibility and other relevant circumstances. House arrest could not be imposed on individuals convicted of offenses against marriage and family if they resided in the same household as the victim. The amended Law on the Execution of Criminal Sanctions (ECS Act, 2011) subsequently authorized the use of EM in the enforcement of house arrest sentences.

Although house arrest is a significantly milder sanction than imprisonment in correctional facilities, it is not classified as a separate form of punishment. This classification reflects legislative drafting techniques rather than substantive legal distinctions (Stojanović, 2012, pp. 214-215). Stojanović highlights a key dilemma: whether courts may impose a prison sentence of up to one year and simultaneously decide that it be served in the form of house arrest, or whether such a decision can be only be made once the prison sentence has become final. The argument against the former position is supported by the wording of Article 45 of the Criminal Code (2009), which envisages that house arrest may be applied only if the offender has been sentenced to imprisonment not exceeding one year. Adopting an alternative position on this matter would raise further controversies, such as whether this decision could be made solely in the course of second-instance appeal procedures or another procedural framework (Stojanović, 2012, p. 214).

A temporary resolution to this dilemma was provided in the conclusion of the Criminal Division of the Supreme Court of Cassation on 10 March 2011. The Court affirmed that Article 45(5) of the Criminal Code (2012) is substantive in nature and cannot have a retroactive effect. Consequently, the possibility of enforcing a sentence under this provision can only be determined by a final court judgment. By adopting the amended Law on the Execution of Criminal Sanctions (ECS Act 2011), the legislator regulated the procedure for executing this type of sentence, as well as the jurisdiction and the decision-making process for the enforcement of prison sentences served without leaving the convict’s residence (house arrest). However, when defining the jurisdiction and the decision-making process for this form of sentence execution, the legislator introduced a provision that proved even more contentious than the original provision of the Criminal Code (2009), which had initially given rise to the primary issue. Specifically, Article 174e of the amended Law on the Execution of Criminal Sanctions (ECS Act, 2011) stipulates that the president of the court that issued the first-instance judgment is responsible for deciding whether a prison sentence of up to

one year may be served without leaving the offender's residence. This decision is made based on a request submitted by the convicted person, the public prosecutor, or the director of the Directorate for the Execution of Criminal Sanctions. Due to the lack of precise regulation concerning the jurisdiction for modifying the form of sentence execution in the amended ECS Act (2011), the Supreme Court of Cassation concluded that the authority vested in the president of the first-instance under the amended ECS Act (2011) could also extend to decisions regarding changes in the method of executing final judgments on prison sentences of up to one year. This applies in cases where the convict voluntarily leaves the residence or where it becomes impossible to enforce the prison sentence under home confinement (Zaključak, 2011).

Legislative efforts to regulate house arrest continued in 2012. The amended Criminal Code (2012) revised Article 45 to include all provisions related to the execution of prison sentences at the convict's residence. The current paragraph 5 of Article 45 CC states: "If a person is sentenced to a term of imprisonment not exceeding one year, the court may simultaneously decide that the sentence be served at the convict's residence if, considering the offender's personality, prior conduct, good behavior following the offense, degree of guilt, and other relevant circumstances surrounding the commission of the crime, it may be expected that the purpose of punishment will thus be achieved." Therefore, with these amendments, the term "convict" was replaced by "offender", thereby eliminating the initial obstacle that had prevented the first-instance court from simultaneously deciding that a prison sentence not exceeding one year should be served at the convict's residence. However, a controversial aspect of this provision is the prescribed list of circumstances that the court must consider when deciding on this modality of sentence execution. These include factors that courts already take into account when determining sentences, in accordance with the general sentencing principles established in Article 54 of the Criminal Code.

Additionally, Article 46 of the Criminal Code (2012) introduces a new paragraph 6, which corrects a previous legislative oversight regarding the prohibition of voluntary departure from the residence where the sentence is being served. Article 45(6) CC (2012) states that a convicted offender serving a sentence under home confinement must not leave the residence, except in circumstances specified by the Law on the Execution of Criminal Sanctions. If the convict voluntarily leaves their residence for more than six hours on a single occasion or for up to six hours on two separate occasions, the court is authorized to order the remainder of the prison sentence to be served in a correctional facility (ZIKS, 2019).¹

¹ Based on the decision of the Director of the Administration, a convicted person may leave the premises where he/she resides under the following circumstances: 1) in case the convicted person needs emergency medical assistance or has to provide such medical assistance to a member of his/her family household; 2) to go to work, if the criminal offense for which he/she was

Finally, the 2019 amendments to the Law on the Execution of Criminal Sanctions (ZIKS, 2019) introduced a new Article 41a, which regulates the procedure for requesting home confinement. Under this provision, a convicted offender may submit a request to the enforcement judge to serve a prison sentence not exceeding one year under house arrest.

This legal change has been criticized as a problematic criminal policy decision, as it allows a convicted offender to submit a request for home confinement prior to commencing the prison sentence after the completion of criminal proceedings, despite possibility of house arrest potentially having been already been considered. If the court, when sentencing a convict to a prison term of up to one year, concurrently orders the application of EM, the probation officer, upon receiving the decision, schedules a meeting with the convicted offender, develops an individualized supervision plan, and informs the offender of the date for EM equipment installation and commencement of sentence execution (Article 22, Law on the Execution of Non-Custodial Sanctions and Measures – ENCSM Act).

The probation officer or a trained technician responsible for installing the EM device will explain the court's decision, the convicted offender's rights and obligations, the consequences of any violations of the requirements, and the procedures for communication with the probation officer. The EM device (including transmitter and supporting equipment), which is harmless to health, will be installed by a trained professional who will provide detailed instructions on its operation. The Probation Service manages the monitoring device, enabling remote tracking of the convict's location and movements within the designated area. The execution of EM is carried out in cooperation with the law enforcement. The EM devices currently used in Serbia operate using a radio frequency (RF) system, which enables monitoring within a confined area through a transmitter attached to the offender's body and a receiver connected to a landline telephone. Location tracking is conducted remotely via computer systems managed by the Probation Service.²

convicted is not work-related; 3) to attend classes during regular schooling; 4) to take an exam; 5) to attend regular health check-ups or receive inpatient treatment for serious, acute or chronic illness; 6) to attend his/her own wedding or the wedding of a blood relative up to the second degree of kinship; 7) to attend the funeral of a close relative; 8) to assume the obligation of care towards members of the immediate family as provided for by law, where such obligation cannot be fulfilled by another person; 9) to perform seasonal agricultural work, provided that the convicted person is engaged in agriculture as a permanent activity; 10) for other justified reasons, for which the convicted person may submit a reasoned application. The decision granting permission to leave the premises where the convicted person resides shall be made by the Director of the Administration, upon the request of the convicted person. (Article 174b ECS 31/2011).

² The EM equipment constitutes a system that can be classified within the category of continuous signal (active) systems, as it implies a transmitter, typically worn on the wrist of the

3.2. House Detention

House detention is a specific measure that serves as an alternative to detention in a correctional facility. It prohibits the offender from leaving their residence during the course of criminal proceedings or prior to their confinement for the execution of a prison sentence. This measure may be applied to suspects or convicted offenders until a final and enforceable court decision is rendered by the competent court, or until the convicted offender is confined to serve the imposed sentence in a correctional facility. House detention is imposed by a specific court order issued in the course of criminal proceedings. This the order prohibits the suspect or the offender from leaving their residence and may prescribe additional conditions for their stay, such as restrictions on communication, internet use, or visits. Unlike

individual, which constantly emits a coded signal to a receiver. If the individual moves beyond a predetermined distance from the receiver, the system transmits data to a monitoring center, which subsequently notifies the Probation Officer to initiate the appropriate sanction or enforcement measure. The EM equipment comprises two main components: a personal unit and a stationary device. The personal unit is a transmitter, typically attached to the ankle or wrist. It is composed of two elements: a case and a strap. The case houses the electronic components and battery and serves as the point from which radio signals are emitted. Consequently, the system provides data on whether the individual is in the house or has left the house, but it cannot provide data on where the individual is going when he/she leaves the house. This monitoring function is enabled through of the communication between the personal unit (via radio signals) and the stationary device. The stationary device is installed in a fixed and secure location within the residence, where it cannot be moved or disconnected from the power supply. When installing the equipment, the permitted movement radius (i.e., the distance between the individual and the stationary device) is measured to ensure that the personal unit remains in contact with the stationary device by sending radio waves. This permitted radius typically covers the entire area of the offender's residence. Given the variability in the size and layout of living spaces, individuals under supervision are provided with clear instructions following installation regarding the boundaries within which they are allowed to move. The stationary device receives data transmitted by the personal unit through radio waves, processes the information and forwards it to the central server. All incoming data are subsequently processed and presented through a dedicated application, which is accessible to the Probation Officer. In addition, high priority notifications are also transmitted via SMS to the official mobile device of the Probation Officer. The data collected by the stationary device from the personal unit include information about the individual's movements within the permitted movement radius, alerts indicating whether the personal unit strap has been forcibly broken or removed from the wrist, and status updates regarding battery life and the need for device servicing. In addition, the stationary device collects and transmits data concerning its own operational status to the central server. This includes information on server communication, the status of the power supply, and any unauthorized movement of the device. The Probation Officer can access and review all collected data through a user-friendly web application. In addition to displaying all information stored on the server, the web application also enables the Probation Officer to input authorized time intervals during which the individual is permitted to leave the residence, in compliance with legal requirements.

house arrest, which is imposed for a fixed period, house detention may remain in effect until the case is resolved or until the convicted offender is confined to serve the imposed prison sentence. The application of house detention is regulated by the Criminal Procedure Code (Article 208), whereas its execution is governed by the Law on the Execution of Non-Custodial Sanctions and Measures (2015).

3.3. Electronic Monitoring During Conditional Release

The application of electronic monitoring (EM) during conditional release on parole is provided for under criminal law provisions governing conditional release. However, if no specific obligations are imposed, such application cannot be regarded as a measure with substantive content or purpose. In other words, the manner in which EM is applied to individuals conditionally released from prison is merely a form of house confinement during the conditional release period unless accompanying prohibitions or obligations are prescribed by the court. In practice, the use of EM during conditional release remains rare. Available data suggests that the use of EM in such cases is limited to a symbolic number, indicating that courts have not broadly recognized the potential of EM during conditional release.

4. Analysis of Data on the Use of Electronic Monitoring in the Republic of Serbia

Following the presentation of the normative framework governing the application of EM, including the criminal sanctions and measures in which EM is currently used – such as house arrest and house detention – and its potential expansion as a condition for conditional release, it is necessary to present the statistical data on its application. This analysis will support the assessment of the effectiveness of EM as a method of monitoring and supervising suspected, accused and convicted individuals.

The data for the period 2011-2015, provided by the Probation Service in Serbia during a survey conducted in 2016 (Grujić, 2016), indicate a consistent increase in the total number of house arrest sentences received for execution: 390 in 2011, 882 in 2012, 1,101 in 2013, 1,934 in 2014, and 2,498 in 2015. However, the number of court decisions actually executed during the observed period was significantly lower: 88 in 2011, 678 in 2012, 725 in 2013, 689 in 2014, and 1,214 in 2015. These data refer to the total number of house arrest sentences imposed for execution in the Republic of Serbia, regardless of whether the imposed sentence included the use of EM.

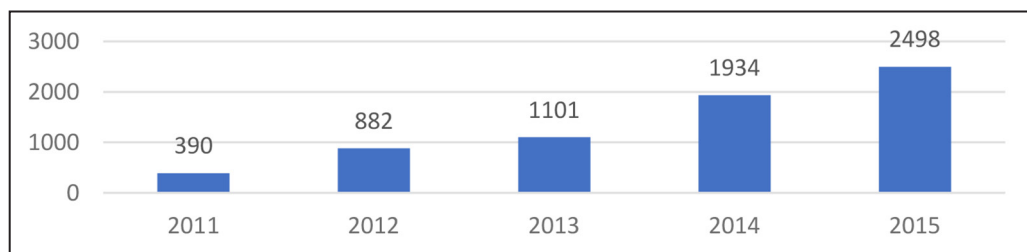


Chart 1. Total house arrest sentences received for execution
(Source: Statistical Office of the Republic of Serbia)

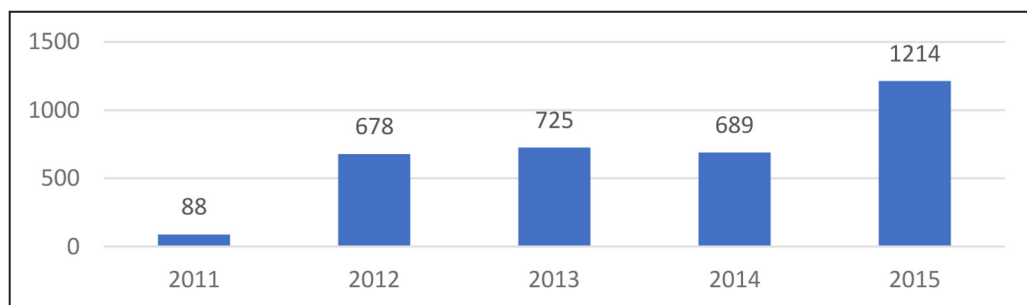


Chart 2. Executed sentences
(Source: Statistical Office of the Republic of Serbia)

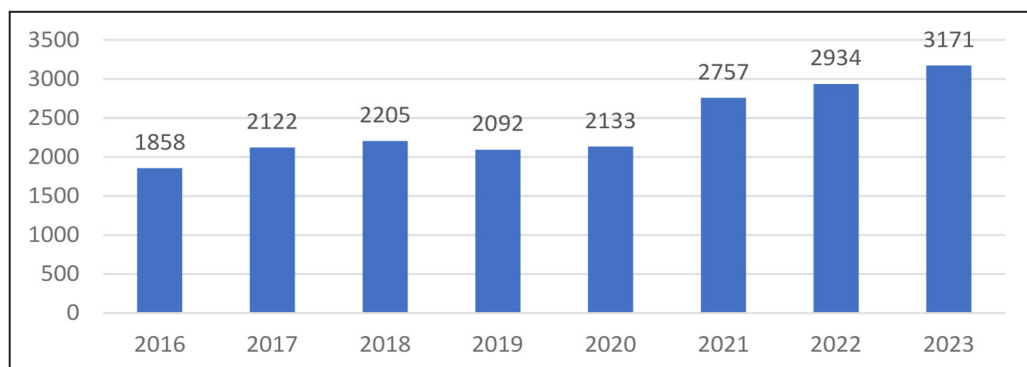


Chart 3. House arrest sentences imposed
(Source: Statistical Office of the Republic of Serbia 2024)

Prior to 2014, the Statistical Office of the Republic of Serbia did not collect data on imposed house arrest sentences. In 2015, the Statistical Office started collecting such data, relying on information provided by the courts and their statistical records. The data collected and published for the period 2015-2023 indicate the total number of imposed house arrest sentences annually – both with and without the application of EM – as follows: 2,858 in 2016, 2,122 in 2017, 2,205 in 2018, 2,092 in 2019, 2,133 in 2020, 2,757 in 2021, 2,934 in 2022, and 3,171 in 2023.

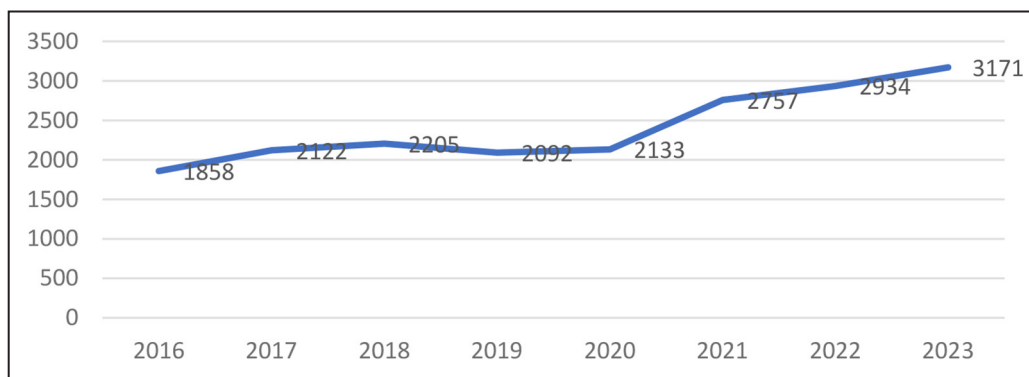


Chart 4. Increase in the number of house arrest sentences imposed
(Source: Statistical Office of the Republic of Serbia 2024)

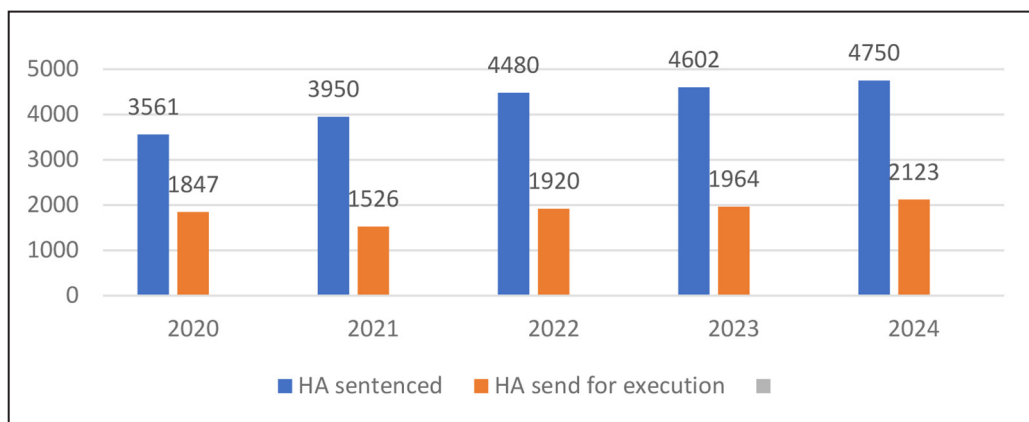


Chart 5. Individuals who commenced the execution of sanctions and measures with the EM (per year), 2020–2024 (Source: Directorate for the Execution of Criminal Sanctions of the Ministry of Justice, 2024)

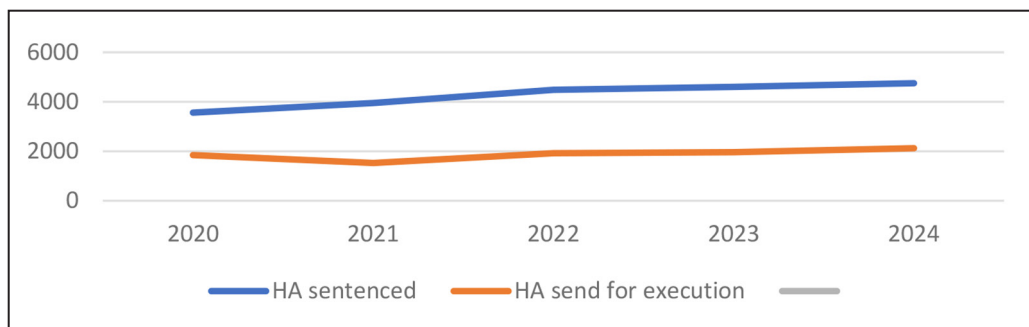


Chart 6. Individuals who commenced the execution of sanctions and measures with the EM (per year), 2020–2024 (Source: Directorate for the Execution of Criminal Sanctions of the Ministry of Justice)

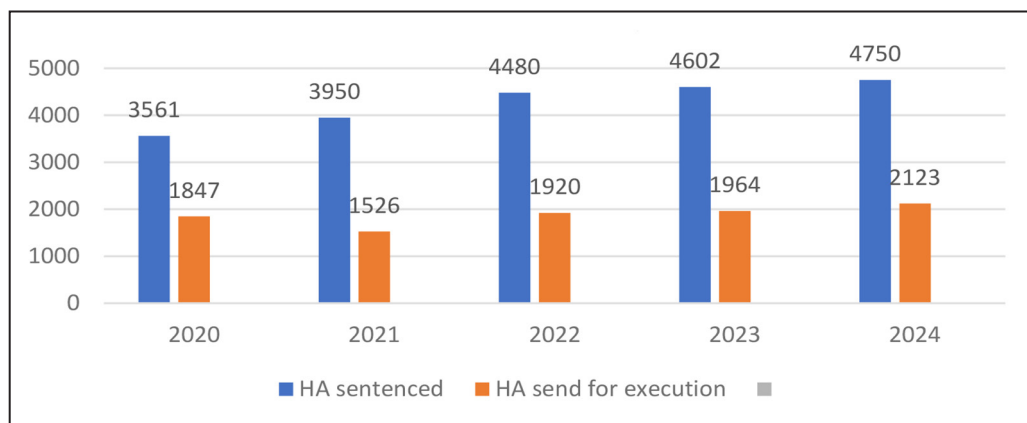


Chart 7. *Individuals for whom EM ended in the period 2020-2024.*

(Source: Directorate for the Execution of Criminal Sanctions of the Ministry of Justice, 2024)

However, the data from the SPACE II report (CoE, 2023)³ (Aebi & Molnar, 2023; Aebi & Hashimoto, 2022; Aebi & Hashimoto, 2021) provide much more detailed information on the implementation of EM. According to the information submitted annually by the Republic of Serbia, as a participant in the SPACE II project, in the period from 2020 to 2024, there was a slight increase in the number of sanctions and measures implemented through EM. The report includes data on the number of individuals placed under some form of supervision by the Probation Service of Serbia during the observed period; however, it does not provide figures on the total number of court decisions received for execution.

During the period 2020-2024, there was a consistent increase in the number of house detention measures executed with the use of EM: 390 in 2020, 484 in 2021, 526 in 2022, 671 in 2023, and 784 in 2024. The number of initiated executions of house arrest sentences remained relatively stable, with minor oscillations: 1,533 in 2020, 1,586 in 2021, 1,504 in 2022, 1,424 in 2023, and 1,354 in 2024. As previously noted, EM was applied in only a limited number of cases during the conditional release of individuals serving prison sentences, amounting to a total of 13 cases: 2 in 2020, 5 in 2021, 4 in 2022, 2 in 2023, and none in 2024.

³ SPACE II is a Council of Europe project aimed at collecting data on non-custodial sanctions and measures implemented across the CoE member states. Each year, member states compete and submit replies to a questionnaire on the number of individuals and/or non-custodial sanctions and measures imposed during the previous year. The collected data are compiled into annual reports, which are published on both the CoE website and the website of the University of Lausanne. For the purposes of this paper, the authors consulted the annual reports for the years 2020, 2021, and 2022.

However, in order to accurately assess the situation on an annual basis, it is also necessary to consider data relating to the number of criminal sanctions and measures with EM that ended during the observed year. When it comes to house arrest, the application of EM ended for the following number of individuals: 1,856 in 2020, 1,068 in 2021, 1,560 in 2022, 1,363 in 2023, and 1,060 in 2024. House detention with EM ended for the following number of individuals: 352 in 2022, 311 in 2021, 235 in 2022, 279 in 2023, and 211 in 2024.

Based on the data presented, it may be observed that, on average, approximately 3,500 individuals are subjected to electronic monitoring (EM) every year in the Republic of Serbia. Additionally, around 1,000 individuals are under EM supervision on a daily basis. According to the data provided by the Directorate for the Execution of Criminal Sanctions regarding the situation in 2024 (processed and submitted on 8 January 2024), the Probation Service had 1,384 individuals under EM: a total of 943 of them were serving house detention sentences with the use of EM, while 441 were under house arrest with the use of EM.

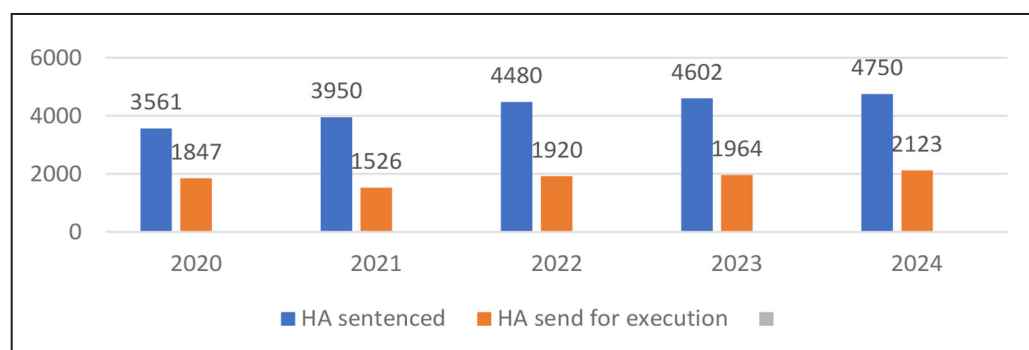


Chart 8. Received judgments of house arrest with and without EM, 2020-2024
(Source: Directorate for the Execution of Criminal Sanctions of the Ministry of Justice, 2024)

In addition to the number of individuals subject to EM, an equally important source of information is the data on the total number of court decisions that the Probation Service receives for execution each year. During the period 2020-2024, there was a consistent increase in the number of court decisions related to both house arrest and house detention with EM.

During the observed period, a total of 21,343 judgments were submitted for the execution of house arrest sentences, with or without electronic monitoring (EM): 3,561 in 2020, 3,950 in 2021, 4,480 in 2022, 4,602 in 2023, and 4,750 in 2024. Specifically concerning house arrest sentences with EM, the number of judgments submitted for execution was as follows: 1,847 in 2020, 1,526 in 2021, 1,920 in 2022, 1,964 in 2023, and 2,123 in 2024.

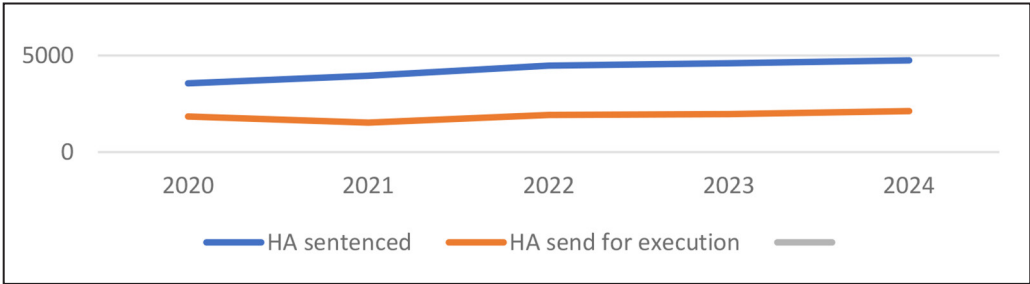


Chart 9. *Final judgments of house arrest with and without EM, 2020-2024*
(Source: Directorate for the Execution of Criminal Sanctions
of the Ministry of Justice, 2024)

5. Expanding the Role of Electronic Monitoring in Serbia's Criminal Justice System

In the Republic of Serbia, approximately 3,500 individuals are monitored annually through electronic monitoring (EM), the majority of whom have been sentenced to house arrest. These trends suggest that the Probation Service has adequate technical and human resources to maintain, and potentially expand, the use of EM. However, challenges remain, including the inconsistent application of EM in cases of conditional release (parole) and its limited use among specific offender categories, highlighting areas that require legislative reform and operational improvement.

The use of electronic monitoring (EM) occupies a significant role within Serbia's criminal justice system, primarily targeting offenders convicted of minor or medium-level criminal offenses. However, under the current legal framework, EM is applied exclusively in three contexts: house arrest, house detention (prohibition from leaving the residence with EM), and as a potential supervision tool for individuals conditionally released on parole. Given the increasing integration of ICT technologies in all spheres of life, it is imperative to explore a broader application of EM as part of criminal sanctions and measures. This includes considering amendments to the existing legal framework to facilitate expanded use of EM for monitoring and control of criminal offenders.

The authors propose a broader application of electronic monitoring (EM) within the criminal justice system. Drawing on international practices, the potential for EM expansion in Serbia can be examined through two principal aspects:

- 1) *Incorporating advanced EM technologies:* Currently, EM in Serbia relies on radio frequency (RF) systems. However, recent technological advancements and the growing use of satellite-based systems in everyday life present the

opportunity to integrate GPS (Global Positioning System) technology into EM programs (Armstrong & Freeman, 2011, pp. 175-182).⁴ Similar to RF systems, GPS-based monitoring involves small devices worn on the wrist or ankle of the monitored individual, which collect location data and transmit it to a central tracking system. GPS technology offers several advantages, including precise real-time tracking of offenders' movements and the capacity to monitor compliance with predefined restrictions or obligations. For example, the system can designate specific geographic zones within which the monitored individuals must remain or identify prohibited areas they must avoid (Tewey, 2006).⁵ Moreover, in comparative legal systems, EM technology also allows monitoring alcohol or drug consumption. Countries such as the United States, Canada, Australia, New Zealand, England, and the Netherlands use alcohol monitoring systems to track offenders' consumption patterns. The implementation of such systems in Serbia could enhance the enforcement of measures addressing alcohol or drug abuse, particularly as part of certain security measures or sanctions.

- 2) *Expanding EM to additional sanctions and measures:* Regarding the broader application of EM within criminal justice systems, it can be concluded that there is a genuine need to expand the use of the existing (or enhanced) EM systems in the execution of criminal sanctions and measures, including those beyond non-custodial contexts.

First and foremost, there is little justification for continuing to execute house arrest or house detention sentences without the use of electronic monitoring (EM), relying solely on physical visits to verify whether an individual is present at the designated location. EM should become a mandatory and exclusive method for enforcing these sanctions and measures, particularly in light of the inefficiencies associated with traditional supervision methods. The current system of control, which depends on human resources (probation personnel) currently employed to supervise the convicted offenders presence at specific locations, proves inadequate when compared to the volume of imposed sentences and measures carried out without the support of EM) technology.

Second, electronic monitoring (EM) in the context of conditional release on parole could serve an effective tool for monitoring and supervising offenders, particularly when combined with specific prohibitions, restrictions, or obligations.

⁴ This type of monitoring system is used in the U.S., as a more advanced form of electronic monitoring for convicted individuals. By 2008, it had been implemented in as many as 44 federal states, where it is primarily applied to individuals convicted of crimes against sexual freedom.

⁵ It is important to designate specific prohibited zones (e.g. areas near children's playgrounds, parks, or the residence of the crime victim, etc.).

Although the use of EM in conditional release cases remains sporadic in Serbia, its successful implementation could provide a foundation for broader application, potentially leading to an increase in the number of individuals conditionally released from the penitentiary system. The awareness of being monitored and controlled through EM could also exert a rehabilitative and reintegrative effect, promoting compliance and encouraging desirable behavior during the period of conditional release. The use of EM could have a similar effect in cases of early release from prison.

Electronic monitoring (EM) could also be utilized to monitor compliance with obligations imposed under conditional sentences (probation) with protective supervision, particularly in view of Article 73 (points 5, 7, 8, and 9) of the Criminal Code RS. This would create the necessary conditions for a broader application of conditional sentencing with protective supervision, which – unlike regular conditional sentencing – is currently used only at a minimal or largely symbolic level.

The use of modern EM technology could also strengthen the enforcement of security measures. EM has the potential to significantly improve compliance with prohibitions on attending sporting events and restrictions on approaching or communicating with victims of crime – areas where effective enforcement mechanism are currently lacking. Additionally, EM could be used to monitor alcohol and drug consumption to support the implementation of security measures such as mandatory treatment at liberty, mandatory treatment for alcoholism, and mandatory treatment for drug addiction. In this way, the application of EM would enable more efficient supervision, without undermining the objectives and intended purposes of implementing specific security measures.

The implementation of EM would also contribute to the effective enforcement of special measures under the Law on Special Measures for the Prevention of Sexual Offenses Against Minors. This is particularly relevant in relation to prohibitions on visiting places where minors gather (e.g., kindergartens, schools), as well as mandatory participation in professional counseling and rehabilitation programs. However, as noted by Kovačević (2024), when introducing measures targeting sex offenders, it is essential to ensure the protection of human rights, with all restrictions clearly defined, legally justified, and tailored to the specific circumstances of the individual case.

Although electronic monitoring (EM) is not currently incorporated in the Law on Juvenile Offenders and Criminal Law Protection of Juveniles (the Juvenile Justice Act), it may be appropriate to consider introducing house arrest for juveniles as an alternative to institutional juvenile detention, with EM used as the enforcement mechanism. Given that this sanction already exists for adult offenders, such a proposal raises the question of whether similar sentencing options should be

made available to juvenile offenders. While this type of legislative change would undoubtedly face considerable criticism from both experts and the general public, the authors propose that launching a pilot project on the use of house arrest with EM for juveniles could serve as a basis for a critical reassessment of this approach in relation to juvenile offenders. Notably, no pilot project was undertaken for the use of EM for adult offenders in the Republic of Serbia.

6. Conclusion

The use of EM in the enforcement of non-custodial sanctions and measures is a characteristic feature of numerous contemporary criminal justice systems that pursue alternative, modified, or symbolically punitive approaches toward certain categories of offenders, particularly those responsible for minor or “medium-level” crimes. Emerging as a consequence of advances in modern information and communication technologies and their application across various spheres of social life, EM has shown significant potential for enhancing the efficiency of supervision and control of accused or convicted individuals.

In this paper, the authors presented the process of establishing the normative framework, with several amendments to existing laws and bylaws, and offered a critical analysis of various legislative provisions that enable the application of EM in the execution of house arrest (prison sentences served without convicts leaving their residence), house detention (measures prohibiting individuals from leaving their residence), as well as obligations that may be imposed upon conditional release from imprisonment. Considering that a decade and a half has passed since the initial implementation of EM, the authors provide and analyze data related to its scope of use, while also identifying trends indicating its increasingly frequent use in the enforcement of both house arrest and house detention.

In order to adequately present the current state, challenges and prospects for the application of EM within the criminal justice system of the Republic of Serbia, the authors have devoted the first part of the paper to issues related to the concept of EM, its initial application in the 1980s, as well as an overview of various EM models in comparative legal systems, including potential mode of application in neighboring countries. Successful experiences from other jurisdictions may serve as a basis for enhancing the existing EM systems, introducing new approaches, and contributing to the development of a more efficient criminal justice system.

Considering that the EM system currently applied in the Republic of Serbia for the enforcement of criminal sanctions and measure is based on radio frequency (RF), and that other EM systems (GPS, alcohol consumption monitoring, drug use

monitoring) also appear in comparative law, in the concluding section of the paper, the authors seek to explore broader possibilities for the use of EM. This includes its potential use in the enforcement of additional types of criminal sanctions and measures, as well as its extension to other categories of offenders.

The proposals presented in this paper could, through future legislative amendments, be incorporated into criminal law provisions, thereby contributing to the establishment of a more efficient system of offender supervision and control through the expanded use of EM.

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