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Justice Policy Institute

“Justice by Geography”: Improving Pretrial Electronic Monitoring in Maryland



Acknowledgments


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About Justice Policy Institute

Founded in 1997, the Justice Policy Institute (JPI) is a national nonprofit organization developing workable solutions to problems plaguing juvenile and criminal justice systems. Our research and analyses identify effective programs and policies. We disseminate our findings to the media, policymakers and advocates, and provide training and technical assistance to people working for justice reform.

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The Abell Foundation
Suite 2300
111 S. Calvert Street
Baltimore, MD 21202-6174

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Executive Summary

Despite the limited evidence base for its effectiveness and the significant burden it imposes on those under supervision, jurisdictions across the United States have expanded the use of electronic monitoring (EM) – technology that tracks and sometimes restricts a person’s movements – to supervise justice-system-involved people released to the community. EM presents an appealing alternative to judges and prosecutors who want to limit jail or prison use but seek additional security to ensure public safety. This is true in Maryland, where the use of EM to supervise pretrial clients has grown significantly over the past decade and increased sharply following the onset of the COVID-19 pandemic, due in part to a one-time federal allocation of resources to fund supervision by private providers. However, despite this increase, there is very little information about the use of EM to supervise people awaiting trial in Maryland. We have no idea how many people have been monitored by the technology, its

impact on their lives, or how effective it is with various populations.

To inform these decisions, the Justice Policy Institute conducted a study on the use of EM to supervise pretrial clients in Maryland. This report explores the day-to-day realities of electronic monitoring, its effects on individuals under supervision, and offers recommendations to enhance service delivery based on proven best practices.

Research on the efficacy of pretrial EM suggests that:

- **EM Does Not Reliably Reduce Failure to Appear (FTA) or Recidivism in Pretrial Populations.** Although the use of EM has skyrocketed across the country, there is no clear and convincing evidence that EM effectively reduces FTA rates or recidivism for pretrial supervisees. This contrasts with other strategies like court notification and reminder systems, which have much stronger evidence of efficacy in reducing FTA rates.

- **Best Practices in Pretrial Release, Supervision, and EM Are Grounded in Validated Risk and Needs Assessment.**

The central elements that comprise an evidence-based approach to pretrial justice involve:

- Expanding citation and diversion options;
- Implementing a legal framework with a presumption of least restrictive release;
- Ensuring due process in all hearings;
- Grounding all decision-making in the use of a validated pretrial risk and needs assessment instrument (PRAI); and
- Strictly limiting the use of pretrial detention and other restrictive measures, including electronic monitoring, to instances where an individual is at high risk of failing to appear or reoffending.

- **EM Imposes a Significant Burden That Must Be Considered in Policy and Practice Decisions.**

EM surveillance presents serious challenges for individuals and severely limits their freedom. If EM is assigned to those at low risk of FTA or recidivism and drives net-widening in the corrections system, it is likely to cause unnecessary harm. However, when implemented and monitored effectively and humanely, it can be a useful strategy when used as a true alternative to jail and to increase the number of people released to their homes.

Key Findings from JPI's Study of EM in Maryland Include:

- **Supervision and EM Practices Vary Widely.**

Although most counties in Maryland now have a pretrial supervision program (21 of 24 jurisdictions) and use EM to supervise clients pretrial (at least 20 jurisdictions), policy and practice differ from county to county.

- **Use is on the Rise, Though Not Uniform.**

Almost twice as many counties in Maryland use EM with pretrial clients in 2024 compared to 2017, but frequency of use varies significantly. For example, in 2023, the most recent year for which complete data are available, 91% of people on pretrial supervision in Prince George's County and 84% in St. Mary's County were on EM, compared to only 21% in Montgomery County and 17% in Baltimore County. Caution is necessary before drawing conclusions about these differences, as we are not controlling for underlying offenses. The lack of statewide standards for using electronic monitoring further complicates any direct comparisons, making them inherently risky.

- **Many Jurisdictions Are Unnecessarily Limiting Eligibility for Pretrial Release.**

Many jurisdictions use "common sense factors" to inform decisions about pretrial release, such as having a stable home address or family support, even though these factors are not predictive of success. However, several localities are beginning to reverse these counterproductive policies. For example, Baltimore City and Washington County

no longer require a stable home address, and Anne Arundel County no longer considers family support in the risk assessment score.

- **Some Jurisdictions Are Restructuring Supervision Conditions to Be Less Restrictive.**

For example, clients on house arrest in Baltimore County can get preapproved to go to the store, attend medical appointments, and participate in job fairs or interviews. Similarly, most clients on house arrest in Dorchester County get four "Life Hours" per week to take care of errands such as going to the bank, barber, or grocery store.

- **People With Lived Experience of EM See Benefits to Release.**

Each of the eight lived experience experts interviewed shared that EM was helpful when it provided an alternative to jail or prison time, but that was the only benefit they identified.

- **People with Lived Experience of EM Report That It Imposes Significant Burden.**

Each of the eight lived experience experts interviewed identified several harms and inconveniences that EM imposed. They noted that it interfered with their ability to spend time outside, find and maintain gainful employment, and access critical health care; supervision conditions were overly restrictive and set people up for failure; and being on EM required that they rely on family members for support.

Recommendations to improve Maryland's administration of pretrial EM include:

1. Conduct a Comprehensive Review of Maryland's Pretrial System and Use of EM and Implement Necessary Improvements.

First and foremost, Maryland must recommit to a comprehensive review of pretrial EM policies, practices, and outcomes and implement strategies to strengthen and improve the state's system. Maryland's elected officials and executives must engage a wide range of stakeholders, including lived experience experts, in a conversation about the benefits and costs of building local capacity for electronic monitoring versus partnering with private providers.

2. Ensure Equal Access to Release and Consistency in Practice by Establishing a Statewide Pretrial System in Maryland.

The main finding of this study is that pretrial policy and practice vary significantly from county to county in Maryland, which leads to vastly different experiences and outcomes for people based solely on where they live. Maryland leaders must curtail this "justice by geography" and ensure that all residents have equal access to release and resources. Ideally, Maryland must establish a statewide pretrial system that guarantees equal access for all, sets standards of practice, and ensures every pretrial supervision agency has the full range of tools needed to safely supervise people in their communities whenever possible, including EM.

3. Include People with Lived Experience in Debate, Implementation, and Evaluation.

As the state moves in this direction, Maryland leaders must engage stakeholders, including lived experience experts, in all aspects of the process. This includes a conversation about the benefits and costs of building local capacity for electronic monitoring versus partnering with private providers.

4. Require Regular Data Reporting. Not surprising, yet disconcerting, another major finding of this project is the near-complete lack of public documentation of local pretrial policies, practices, populations, and outcomes. At a minimum, Maryland leaders should provide state-level oversight and direction for local pretrial agencies by implementing data reporting requirements and maintaining ongoing data collection, reporting, and publishing at the state level. This would support a data-driven approach to continuous quality improvement in pretrial supervision across the state and align with best practices in pretrial release and supervision.

5. Require Use of Standardized Pretrial Risk and Needs Assessment. Risk and needs assessments are fundamental to an evidence-based pretrial system, but not all tools are created equal, and poorly designed assessments can worsen racial and ethnic

disparities in decision-making. They must be carefully chosen, transparently designed, validated on the specific population they will serve, and regularly evaluated. Additionally, they should guide decision-making at every stage of a person's case. These tools must be balanced with non-punitive approaches and resources that meet the needs assessment component.

6. Limit Negative Consequences of Over-

programming. Given the burden it imposes, and that EM can be counterproductive when used to supervise people at low risk of FTA or recidivism, pretrial EM should be leveraged as an alternative to jail and reserved for situations where a judge would only consider release with the added protection of EM. When it spurs net-widening by either becoming common practice in most cases or is reserved for people at low risk of failure and, therefore, program success, it is no longer effective. Thus, the harm it imposes on people under supervision is not warranted.

7. Eliminate Fees. EM services range from \$2 to \$15 per day, and agencies can assess connect and disconnect fees on top of those daily charges. In many counties, clients must pay for the service, even for pretrial supervision. Moving forward, Maryland should advance legislation or administrative rules to eliminate individual fees that exacerbate racial and economic inequities in the system and build sustainable, state-level funding streams to support EM supervision as an alternative to jail for all state residents. State leaders should also strengthen oversight of private providers through improved data collection and reporting and implement stronger accountability measures to ensure fiscal incentives do not result in lengthier supervision terms.

8. Minimize Burden on Supervisees. Though well documented in the literature, this study reconfirmed that EM poses significant burdens on those under supervision. Maryland could implement several improvements to minimize the burden and create less restrictive conditions. Interviewees for this report with direct experience with EM recommended expanding physical boundaries around the home to allow supervisees to spend time outside; streamlining the approval process so people can get passes for job interviews and medical appointments in time; allowing people to access social service benefits and use their health insurance benefits to access treatment; extending the geographic boundaries for job opportunities and include options that involve working from home; and setting up satellite offices in more remote areas to decrease travel time for weekly check-ins.

9. Reduce Bias Through Evidence-Based

Decision-making. In many jurisdictions in Maryland, pretrial supervision officers and judges base release and supervision decisions on factors that are not predictive of success, including having a stable home address, residing in the county where the crime was committed, being charged with a serious offense, or having a prior criminal record. Limiting eligibility based on these irrelevant factors perpetuates discrimination against people of color and those with limited resources and can lead to the overuse of detention or net-widening. Maryland should ensure that any pretrial system improvements align with an evidence-based, risk-driven approach and set aside consideration of additional factors that do not reliably predict success.

Introduction

In February 2024, several news outlets reported that Maryland's funding for pretrial electronic monitoring (EM) had abruptly run out, jeopardizing the liberty of hundreds of people under supervision across the state and sparking a renewed conversation among state leaders about pretrial justice. The funding source was a one-time federal appropriation intended to empty local jails during the COVID-19 health crisis. Invoicing delays accelerated spending and left judicial leaders with little time to develop a plan to secure additional funding or determine what to do with those currently on supervision with no way to pay for it. Though county-funded pretrial EM existed in some communities prior to the pandemic, and private providers operated in parts of the state, the number of people on EM was limited given the cost of services, which were essentially only available to those who could pay out of pocket in many places. Once federal COVID-19 dollars became available to fund pretrial EM, the use of private services nearly doubled, though it has gradually declined over the past three years.¹ In February 2024, the judiciary secured emergency funding from the General Assembly to support ongoing supervision through 2025, but the program's future is unclear.

This EM funding cliff reignited conversations among Maryland corrections leaders about expanding and strengthening pretrial supervision programs more broadly – an effort the state has worked on for over 20 years but which has lost momentum recently. Despite

several governor-led and General Assembly-authorized commissions and workgroups that have been established to strengthen and improve pretrial justice, the existing patchwork system still needs improvement. There is no uniform state system, and pretrial justice is meted out through local jurisdictions, which vary widely in terms of the use of pretrial detention, availability of pretrial supervision program alternatives to jail, and access to supportive services.

While local administration of pretrial justice is the norm in most states, Maryland is behind in implementing evidence-based pretrial practices. Although a judiciary rule change in 2017 reduced reliance on money bail, it is still used in Maryland, perpetuating racial and economic disparities in the legal system and forcing people who cannot afford to post bail to languish in jail for weeks or months. It also raises public safety concerns when some individuals can secure release from jail through financial means. Further, absent state coordination and oversight, local policies and practices vary significantly. For example, Baltimore City – the state's largest and oldest pretrial release program – hardly uses EM with pretrial clients. Additionally, it is also possible for a Maryland resident to simultaneously wear two different monitors for separate charges in two different counties and be monitored by two local agencies at the same time. Simply stated, pretrial practices in Maryland are inconsistent, inefficient, unfair, and unsafe.

Maryland is now at a crossroads and will soon have to make some hard decisions about the future of EM and pretrial services more broadly. The state will have to decide whether to rekindle efforts to direct ongoing funds to strengthen, expand, and set standards for the patchwork of current pretrial service programs. Maryland must determine whether to continue funding private agencies to provide electronic monitoring or build infrastructure for public service delivery. Before COVID-19, there was no urgency to solve these challenging issues. However, the funding cliff this year forced the issue, and the state now must decide whether to sunset the option or commit to building out the statewide system needed to ensure access to justice for all residents. Executive, legislative, and judicial workgroups – dating back to the 2000 Pretrial Release Project Advisory Committee – have called for a statewide pretrial release agency, and Maryland leaders have yet to act on it.

To shed light on current policies and practices and inform ongoing reform efforts, the Justice Policy Institute studied the use of EM to supervise pretrial clients in Maryland. JPI's research team used a qualitative approach, inviting pretrial supervision leaders from each

of Maryland's 23 counties and Baltimore City and each of the five licensed private providers to share information on how EM is used with pretrial clients in their jurisdictions. JPI also requested aggregate data on people on pretrial EM supervision over the last eight years from each county that reported using EM to supervise pretrial clients. Finally, JPI interviewed a wide range of key stakeholders on policy, practice, and experience with pretrial EM. Between March and August 2024, the research team conducted interviews with 34 experts, including people with lived experience with EM, pretrial supervision managers, private providers, judges, jail wardens, state's attorneys, defense attorneys, community services providers, and researchers to understand their experiences and perspectives on the use of pretrial EM in Maryland. This report summarizes findings from the project, including detailed descriptions of how pretrial EM operates in Maryland and how it impacts people's lives under supervision. It also summarizes the latest research on best practices around using EM and recommends improving service provision in Maryland.

Electronic Monitoring: The Evidence Base and Best Practices

Though the use of EM has skyrocketed across the country,² research on pretrial EM is sparse, and findings on its efficacy are mixed at best (see Table 1 for a snapshot). Simply stated, there is no clear and convincing evidence that EM effectively reduces FTA rates or recidivism for pretrial supervisees.³ This contrasts with other strategies like court notification and reminder systems, which have much stronger evidence of efficacy in reducing FTA rates.⁴ While some studies have found that EM surveillance slightly reduces FTA rates or subsequent arrests, most found mixed results.⁵

Further, several studies have found no statistically significant differences between EM and matched non-EM pretrial supervision groups on key outcomes.⁶ For example, a recent, rigorous impact analysis in four diverse U.S. jurisdictions conducted by MDRC found no difference between EM and matched groups on FTA rates and found that recidivism was 9 percentage points higher in the EM group, potentially due to the intensive monitoring effect.⁷ Several other studies have also noted an increased rate of technical violations in EM supervisees compared to matched groups, likely stemming from the heightened level of supervision.⁸

EM imposes additional conditions that can lead to jail time if broken, including failing to pay fees on time, forgetting to charge the battery on their device, or engaging in “problematic” behavior as perceived by a supervision officer.⁹ Another key finding across studies is that most people on pretrial supervision – typically eight or nine out of 10 supervisees – complete their supervision without an FTA or rearrest, regardless of whether they are under EM surveillance.¹⁰ This points to using EM only as an alternative to jail or prison rather than a catch-all for people supervised in the community.

Table 1. Impact of Location Monitoring on Pretrial Outcomes

Studies Referenced	Controls	Appearance Rate	Arrest Rate	Violations Rate
Lake County, Illinois	No	Equal	Lower	Higher
17 Federal Districts	No	Lower	Higher	–
New Jersey	Yes	Equal	Lower	Higher
California	Yes	Higher	Equal	Higher
MDRC	Yes	Equal	Higher	–

Source: *Advancing Pretrial Policy and Research. 2023. Pretrial Research Summary: Pretrial Location Monitoring.*

Note: Blue shading indicates positive outcomes, orange shading represents negative outcomes, and yellow shading indicates neutral outcomes.

Best Practices in Pretrial Release, Supervision, and EM Are Grounded in Validated Risk and Needs Assessment

The National Institute of Corrections and the Advancing Pretrial Policy and Research Collaborative have developed frameworks to guide evidence-based pretrial systems. Both resources outline very similar core constructs.¹¹ Though a deep dive into the research and practical implementation considerations is beyond the scope of this report, the central elements that comprise an evidence-based approach to pretrial justice involve expanding citation and diversion options, implementing a legal frame-

work with a presumption of least restrictive release, ensuring due process in all hearings, grounding all decision-making in the use of a validated pretrial risk and needs assessment instrument (PRAI), and strictly limiting the use of pretrial detention and other restrictive tools, including electronic monitoring, to situations in which a person is at high risk of failing to appear or recidivate.¹² Research has shown that using more restrictive correctional strategies with people at low risk of future offending can be counterproductive.¹³

BOX 1. Toward Fairness: Why We Need to Reform Risk and Needs Assessment Practices

It is important to acknowledge that, though Pretrial Risk Assessment Instruments (PRAIs) have been considered best practice for some time, there are legitimate concerns about poorly designed tools: (1) not predicting negative outcomes with adequate precision, (2) exacerbating the deep racial disparities that already exist in the legal system, and (3) leading to worse pretrial outcomes where implemented.¹⁴ The Pretrial Justice Institute – a lead agency in the field and former proponent of PRAIs – recently reversed its position and now calls for them to be abolished.¹⁵ However, there are several reasons to continue using race-neutral, structured decision-making tools, including validated risk and needs assessment tools, such as:¹⁶

- 1.** Judges have tremendous discretion in making pretrial release decisions, and this subjectivity leads to inconsistent and unfair outcomes for people who come before the court. Decades of research have shown that statistical predictions are more accurate than subjective human judgments of human behavior broadly and recidivism more specifically.¹⁷
- 2.** Early evidence from Maryland's bail rule change showed that, absent guidance and clarity in expectations, judges favor incarceration over release on one's own recognizance.¹⁸

- 3.** While poorly designed tools can and do perpetuate racial disparities, the underlying algorithms can be examined and refined to limit their impacts.¹⁹

At present, the best path forward requires strengthening tools rather than throwing them out entirely and returning to subjective individual decision-making. A critical piece of this is ensuring that jurisdictions make public the factors measured in PRAIs, how risk is calculated, and the final risk scores to ensure confidence in risk assessments and their use in pretrial decision-making. These data, decisions, and potential impacts should be discussed in a public and transparent fashion, with opportunities for input from a broad range of experts in the field and the public, including people with direct experience with the legal system and those residing in Black and brown communities disproportionately impacted by it. This process must confront the potential dangers of faulty tools in exacerbating bias toward people of color and find ways to mitigate them. Risk assessment equations can easily be manipulated to add or reduce the weight of any given category, but that may come at the expense of accuracy. A conversation about goals and values that involves all interested stakeholders and affected community members in a meaningful and transparent manner is essential.²⁰

EM Has Negative Consequences That Must Be Considered in Policy and Practice Decisions

Research has documented the enormous imposition and harm caused by EM surveillance, which disproportionately impacts Black and brown people most impacted by the criminal legal system.²¹ Across the country, among the many harms people who have experienced EM cite include a lack of privacy, discomfort of the device itself, significant barriers to finding and maintaining employment and accessing physical and mental health care, and undue burden on family members.

When I was first released on an ankle monitor in July of 2018, I was approved for three days of movement, four hours each day, Monday, Wednesday, and Friday. After a while, I got an internship at my university and a full-time job at a temp agency. But it was incredibly difficult to get my approved movement hours adjusted. I called my parole officer, and they told me that I had to pick between the internship or the job with the temp agency. They said I was doing too much. I was having panic attacks because of this. I am trying to go to school. I am trying to work. I don't understand the problem. You're telling me I'm doing too much? I'm doing too much of what I'm supposed to do? You get out and you think you're free and you're going to be able to enjoy life, but now doing the most basic, necessary things like working and school become the most complicated.

Michael Tafolla, September 9, 2022

Further, as the efficacy research documented, EM sets supervisees up for failure in the form of technical violations that can send people back to jail or prison for minor non-compliance issues. Research has also documented that EM comes with steep fees in many jurisdictions, which perpetuates racial and economic disparities in the legal system.²² The bottom line is that if EM is assigned to those at low risk of FTA or recidivism and drives net-widening in the corrections system, it is likely causing unnecessary harm. When used as a true alternative to jail and increasing the number of people released to their homes, it can be a helpful strategy when implemented and monitored effectively and humanely.

Even if you're lucky enough to be set "free" from a brick-and-mortar jail thanks to a computer algorithm, an expensive monitoring device likely will be shackled to your ankle – a GPS tracking device provided by a private company that may charge you around \$300 per month, an involuntary leasing fee. Your permitted zones of movement may make it difficult or impossible to get or keep a job, attend school, care for your kids, or visit family members. You're effectively sentenced to an open-air digital prison, one that may not extend beyond your house, your block, or your neighborhood. One false step (or one malfunction of the GPS tracking device) will bring cops to your front door, your workplace, or wherever they find you and snatch you right back to jail.

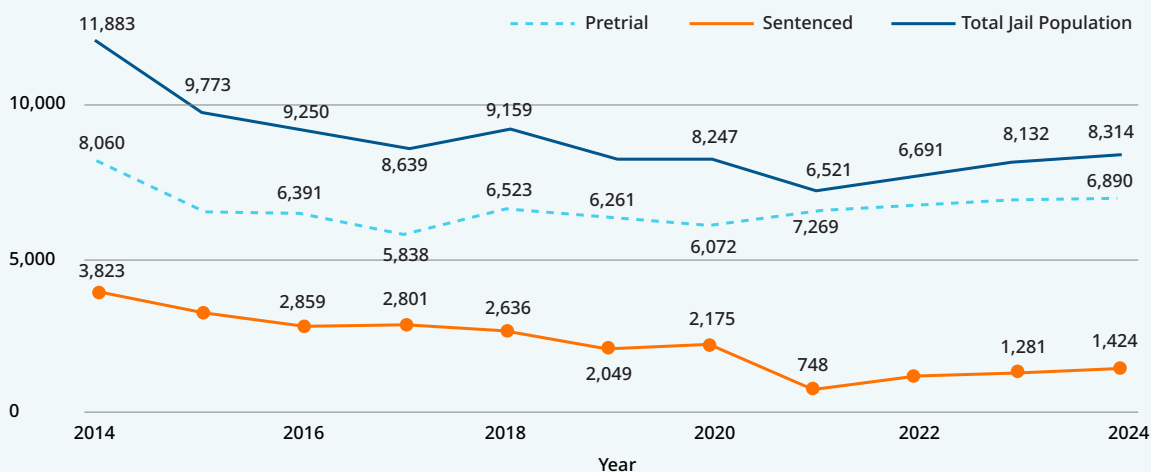
Michelle Alexander, November 8, 2018

Background on Pretrial Justice Reform in Maryland

Maryland stakeholders have long acknowledged that the state's pretrial system needs major reform and have been working to implement improvements for more than 20 years, including expanding the use of EM and other jail alternatives. There is no state-level pretrial system, as detention/release decision-making, pretrial supervision, and availability of services for people accused of crimes – including electronic monitoring – are managed at the county or city level and vary significantly from jurisdiction to jurisdiction. Despite the known disruptive impacts and potential harm caused by

even just a day or two in jail,²³ facilities across the state have slowly but steadily begun to fill back up following declines during the heart of the COVID-19 pandemic (see Figure 1).²⁴ The majority of people in Maryland jails – more than eight out of 10 over the past four years – were being held pretrial, effectively serving time without even having been convicted of a crime.²⁵ Exploring ways to protect public safety and reduce reliance on jails through alternatives like EM is an important area of focus in Maryland and nationwide.

Figure 1. Maryland Local Jail Populations in January of Each Year



Source: Maryland Governor's Office of Crime Prevention and Policy. *Local Detention Center Population Statistics Dashboard*, accessed July 20, 2024, and analyzing data between January 1, 2014, and January 1, 2024.

Though local administration of pretrial justice is the norm in most states, Maryland is behind in implementing research-informed pretrial practices. A 2017 report by the Pretrial Justice Institute graded Maryland's pretrial system a "C" due to its moderately high pretrial detention rate, continued use of money bail, and inconsistent use of validated pretrial risk assessment tools.²⁶ Given a lack of clear policy guidance and direction from the state, the use of evidence-based practices, supervision technology, and available services varies significantly from county to county. Though recent reforms have reduced reliance on money bail, it is still used in Maryland,

which unfairly punishes people who cannot afford to post bond – a disproportionate number of whom are people of color – thus perpetuating economic and racial discrimination in the legal system. Basing detention decisions on a person's ability to pay their way out of jail, rather than whether the person poses a risk to public safety, also means that people at low risk of reoffending who could safely return to the community are stuck in jail; in contrast, some of those at higher risk can purchase their freedom. It just doesn't make sense. Simply stated, pretrial practices in Maryland are inconsistent, ineffective, and unsafe.²⁷

Pretrial Justice Reforms Have Not Produced Intended Effects

Several workgroups have been tasked with studying and making recommendations for improvement over the past 20 years. These efforts have led to important changes, particularly over the past decade (see Box 2 for details). For example, in 2012, the General Assembly passed laws expanding police discretion to issue a civil citation in lieu of arrest for many misdemeanor and local ordinance violations²⁸ and requiring the Office of the Public Defender to provide legal representation at bail hearings before a District or Circuit Court, ensuring due process and protection for many people who encounter the legal system and cannot afford an attorney.^{29, i}

Perhaps most notably, in 2017, the state made significant changes to its bail system when the Maryland Court of Appeals adopted Rule Order 4-216.1, requiring that judicial officers release arrested individuals on their recognizance or, if necessary, an unsecured bond unless there was clear and convincing evidence that the person posed a public safety threat or would fail to appear at future hearings.³⁰ In 2018, the General Assembly established the Pretrial Services Program Grant Fund, which has awarded more than \$2 million to counties to establish or improve pretrial service release programs and spurred new programs in several counties across the state.³¹

i Note, the law did NOT require representation at an initial appearance before a District Court commissioner who makes most release decisions in Maryland.

BOX 2. A Long History of Pretrial Reform in Maryland

State leaders across all branches of government in Maryland have been working to improve pretrial service provision for more than 20 years. A brief timeline includes:

2000: Pretrial Release Project Advisory Committee (Judiciary)³²

2003: Bail System Task Force (Judiciary)³³

2012: Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defendants by the Public Defender (General Assembly);³⁴ General Assembly passed law expanding civil citation in lieu of arrest and required legal representation for defendants at bail hearings³⁵

2014: Commission to Reform Maryland's Pretrial System (Governor)³⁶

2017: Maryland Court of Appeals adopted Rule Order 4-216.1, which overhauled the state's bail system³⁷

2018: General Assembly established the Pretrial Services Program Grant Fund (PSPG) to provide grants to counties to establish or improve pretrial release programs.³⁸ The General Assembly subsequently extended the program through 2028 and directed dollars from the Performance Incentive Grant Fund from savings generated through Maryland's Justice Reinvestment Act to fund the PSPG between 2019 and 2023³⁹

2021: Workgroup on Home Detention Monitoring (General Assembly)⁴⁰

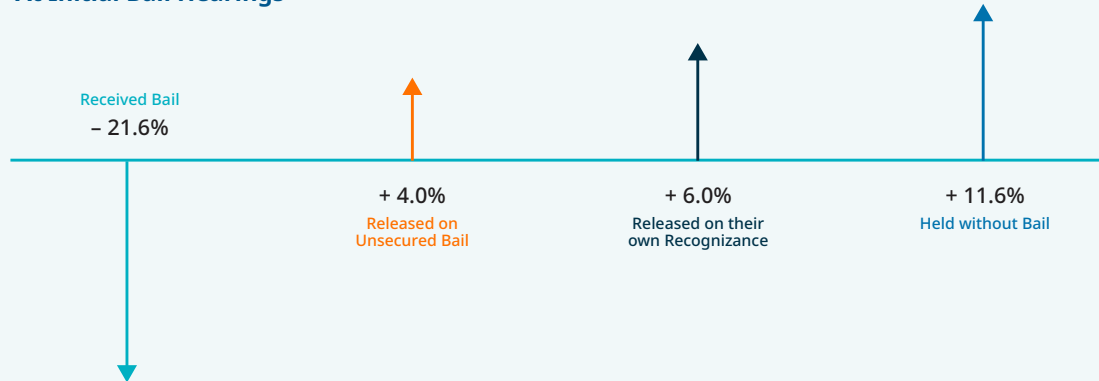
2024: Workgroup on Home Detention Monitoring Reauthorization and Launch (General Assembly)⁴¹

Yet, research has documented an overall negative impact of the rule change – Maryland's most significant bail reform to date. Several studies have shown that while reforms decreased the use of money bail and increased the number of people released on their own recognizance, they also led to an even greater increase in the number of people held without bail (see Figure 2).⁴² This was particularly stark in larger jurisdictions like Baltimore City, where the proportion of people held in jail following their initial review (both with and without bail) increased from 53% in 2015 to 80% in 2020, despite prosecutorial support

for reduced reliance on cash bail (see Box 3 for more on the unique context of pretrial EM in Baltimore City).⁴³ And, of course, these changes disproportionately impacted Black Maryland residents, who were more likely to be held without bail on low-level charges and assessed higher bail amounts than their white counterparts.⁴⁴ The bottom line is that, absent adequate support and direction, judges in Maryland favored holding people in jail over release when bail options were curtailed, and access to alternatives like electronic monitoring (EM) was inconsistent – even for less serious offenses.⁴⁵

Figure 2. Early Impacts of Bail Reform in Maryland

At Initial Bail Hearings



Source: Blumauer et al 2018. *Advancing Bail Reform in Maryland: Progress and Possibilities*.

Inconsistent pretrial supervision programming and resources perpetuate the unnecessary use of detention. Despite significant state investments, the most recent survey exploring availability in 2017 found that one-third of Maryland jurisdictions had not implemented programs to connect people with supports and services and supervise them pending trial.⁴⁶ The 13 programs that did exist operated very differently from county to county. Some programs used risk assessment tools to inform program eligibility recommendations and supervision levels, but some did not. Some required clients to pay for supervision services, while others covered all costs for pretrial clients. Some programs used EM with pretrial clients at home on supervision, but not all had the technology. And none of this is clearly documented anywhere.

Depending on where a person is arrested, the judge determining whether they return home

or spend days or weeks in jail in one county may have a very different menu of options than a judge in another county. Several researchers, system stakeholders, and advocates have called for expanding pretrial programs to all counties and/or creating a statewide pretrial justice system to ensure consistency and equal access to justice across Maryland.⁴⁷ In addition, the Governor's Office of Crime Prevention & Policy has competitively awarded more than \$2 million to support the development, implementation, and improvement of pretrial services programs in Maryland, using both Pretrial Services Grant funds (established by the General Assembly in 2018 specifically for this purpose) and Performance Incentive Grant funds (established through savings generated through Maryland's Justice Reinvestment Act to support county-led innovations more broadly).⁴⁸

BOX 3. The Unique Context of Pretrial EM Use in Baltimore City

Baltimore City has Maryland's oldest pretrial release program – dating back more than 50 years – and its largest pretrial supervision population, yet it is one of only two jurisdictions with a program that does not routinely use EM to supervise pretrial clients.⁴⁹ Since the 1980s, Baltimore City's Pretrial Release Services Program has been managed at the state level, and the Department of Public Safety and Correctional Services has overseen the program since 1988. The scale of referrals coming to the court and constraints of the bail hearing process make it difficult for pretrial services staff to effectively assess each client's circumstances and make recommendations to the court about release and supervision. Within the span of a few hours each day, staff must conduct interviews and verification checks on a long list of clients and present recommendations regarding release and supervision. In practice, they can provide very little detailed information, which likely contributes to the high detention rate in Baltimore City relative to other counties.⁵⁰

Furthermore, while a group of stakeholders is working to develop one, program leaders have not yet established a feasible process to utilize EM with pretrial clients

consistently, nor have they allocated the necessary funding to implement a pretrial EM program, despite its regular use with sentenced clients. There is simply not time or sufficient staff capacity to meet the statutory requirements for evaluating individuals for pretrial release, which include a home visit, among other things. As a result, although they have several GPS units available, a pretrial agent assigned to EM, and funding to support it, in practice, Baltimore City has not directed resources to publicly funded pretrial EM since federal funding for private monitoring became available during the COVID-19 pandemic. Almost all Baltimore clients on pretrial EM are serviced by private providers. As previously mentioned, the CARES Act funding significantly increased investment in private providers and, consequently, the use of pretrial EM in Baltimore City. However, we have no way of knowing how many people are on private EM or what proportion that represents relative to those released on their own recognizance or detained in the city, much less how effective EM is as a supervision tool for those clients. In summary, despite being the largest pretrial supervision program in the state, we know virtually nothing about the process or outcomes for pretrial EM clients in Baltimore, Maryland's largest city.

Information on the Use of Pretrial EM is Limited

Over the past decade, like many states across the country, Maryland has also significantly expanded the use of EM as a pretrial supervision tool and alternative to detention. EM refers to the use of technology to track and sometimes restrict a person's movements outside of a correctional facility. Though research on its efficacy is mixed, EM presents an appealing alternative to judges and prosecutors who want to limit jail use but seek additional security to ensure public safety. Though EM is widely used in Maryland, there is an alarming lack of accessible data and information about policy and practices across the state. We have no idea how many people have been assigned EM, its impact on their daily lives, or how effective it is with different populations. Part of that stems

from pretrial supervision being managed locally, as discussed above. But also, many EM services in Maryland are managed by private, for-profit providers. These companies have minimal oversight from legal stakeholders and lack transparency in practice and outcomes.

Moreover, fundamental questions of fairness are raised when private companies take on a supervisory and enforcement role, which often includes charging the people supervised for the monitoring costs. This can have profoundly negative consequences for an individual struggling to make ends meet while awaiting trial. In addition, resources that are directed to EM supervision are not available for investing in other pretrial supports and services.

Policy Guiding Pretrial EM in Maryland

As noted above, Maryland does not have a public, statewide pretrial supervision program, nor does it dedicate ongoing state general fund dollars to pay for EM supervision of pretrial clients. A state agency oversees the pretrial processing of people admitted to the Baltimore City Detention Center and/or released to the Pretrial Release Services Program in Baltimore City through the Division of Pretrial Detention and Services within the Department of Public Safety and Correctional Services (DPSCS), but it does not regularly use EM to supervise these clients. Pretrial supervision in all other communities is managed locally by county-level agencies, and both policies and practices around the use of EM vary widely.

There is, however, some state-level regulation of private EM providers that provide services through home detention, Maryland's equivalent of house arrest. State regulations guiding EM and supervision for both people awaiting trial and sentenced to home detention as a condition of probation or parole are established by the Maryland Commission on Correctional Standards (the Commission). The Commission has overseen the orientation, licensing process, and audits of private home detention agencies throughout Maryland since the 1980s. Regulations are outlined in the Code of Maryland Regulation (COMAR) 12.11.10, which governs the home detention monitoring process for both pretrial and

sentenced clients and details requirements for intake, supervision, documentation, and reporting.⁵¹ As of 2023, there were five licensed private home detention providers: A1 Trusted Monitoring; Advantage Sentencing & Alternative Programs, Inc. (ASAP); ALERT, Inc.; Free but Not Free, LLC; and Sanders and Wells Monitoring, LLC.⁵² The Commission regularly audits home detention agencies to ensure compliance with regulations. Per COMAR, all licensed private home detention monitoring agencies must submit monthly reports detailing the number of people supervised, the type of EM used, the number of people starting or terminating EM supervision, the number of violations, and the number of people absconding from supervision, though these data are not published.

Private providers have operated in parts of Maryland for decades with limited impact given the cost of services, but COVID-19 fundamentally changed the landscape across the state. Prior to the pandemic, private home detention services were only available in some counties and to people who could pay for them out of pocket. The number of agencies providing private monitoring services has also decreased over time. However, one-time federal funding through the American Rescue Plan, designed to keep people out of jail during the public health crisis, exponentially increased the use of EM. In 2021, the General Assembly directed \$5 million from

the Coronavirus Aid, Relief, and Economic Security (CARES) Act to the Administrative Office of the Courts (AOC) to pay for private monitoring services for clients awaiting trial who could not afford to pay for the service on their own. Once judges had a mechanism to pay for clients who could not afford private services, the use of the jail and prison alternative increased.

Despite the widespread impact, the funding was limited to a one-time appropriation, the implementation funding model was not set up for success, and its future is unclear. The funding model was designed to be administrated by the judiciary, which has no monitoring or oversight power over private providers. Private providers submitted invoices directly to AOC for payment, and, as was widely covered in local news,⁵³ invoicing delays resulted in the courts running out of money far ahead of projections without a clear plan to secure additional funding or determine what to do with the hundreds of people currently under supervision. Though the judiciary secured short-term state funding to continue the program for those currently on home detention through June 2025, there was still no long-term solution as of this report publication.

The funding cliff reignited conversations among state corrections leaders about expanding and strengthening pretrial

supervision programs. It prompted the General Assembly to reauthorize the Workgroup on Home Detention Monitoring, initially established in 2021.⁵⁴ The group, staffed by DPSCS, met for the first time in October 2024, is actively studying the system, and will make recommendations regarding the costs and availability of private home detention monitoring in the state.⁵⁵ Further, though it has yet to be finalized, Governor Moore's FY 2026 budget proposal included \$3.2 million to cover home detention costs for people supervised pretrial who cannot afford to pay for it on their own.

Maryland is now at a crossroads and must make some hard decisions about the future of EM and pretrial services more broadly in the next year. State leaders will have to decide whether to double down on efforts to direct ongoing funds to strengthen, expand, and set standards for the patchwork of pretrial service programs that currently exist. They must determine whether to continue funding private agencies to provide electronic monitoring or build infrastructure for public service delivery.

Prior to COVID-19, there was no urgency to solve these issues, though challenges existed before and persist today. This year's funding cliff forced the issue, and the state now must decide whether to sunset the option or lean in and build out the statewide system needed to ensure access to justice for all residents.

Insights From Practitioners: Pretrial EM in Practice

JPI contacted leaders in each of the 24 jurisdictions in Maryland (23 counties and Baltimore City) to learn more about how pretrial services operate and whether they use EM to supervise pretrial clients. Key findings are summarized below.

Most Counties in Maryland Now Have a Pretrial Supervision Program and Use EM to Supervise Pretrial Clients

The number of pretrial service programs across Maryland increased from one-half to more than three-quarters of jurisdictions between 2017 and 2024.⁵⁶ JPI found that:

- 21 of the 24 jurisdictions had a pretrial services program, an increase from 13 in 2017 (see Table 2 and Figure 3);
- At least 20ⁱⁱ offer EM services for people supervised pretrial;
- At least 19 say they use risk and needs assessment tools to inform decisions; and
- At least 18 offer multiple levels of supervision (see Table 3 for additional details).

Most programs use global position monitoring (GPS) ankle monitors to track client movement. A few jurisdictions also use remote alcohol breath-testing devices, but most rely on random urinalysis testing in the office. Findings suggest strong progress in expanding and strengthening pretrial service provision between 2017 and 2024 (see Table 3) and statewide regulations may be needed to encourage the remaining three jurisdictions to get on board.

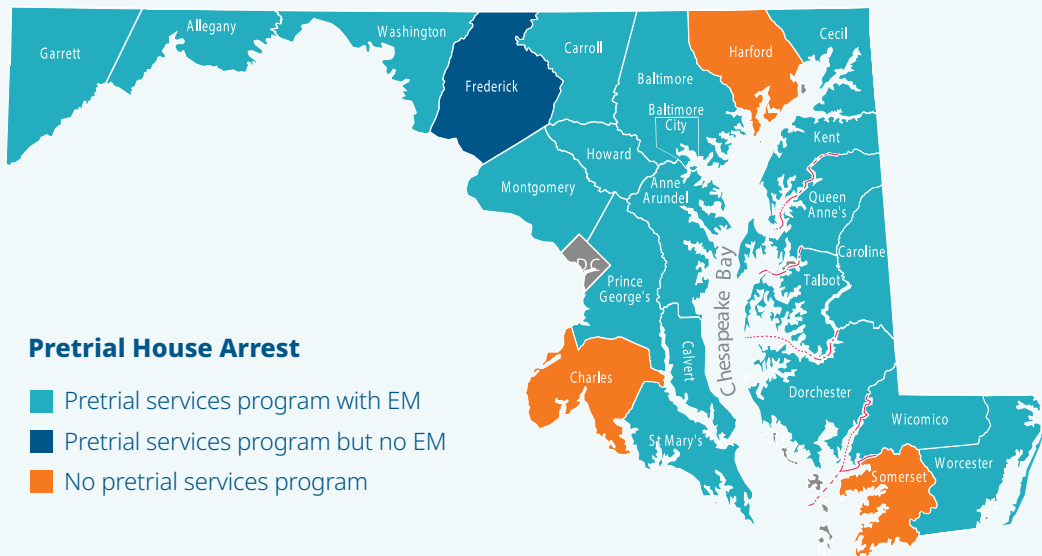
Overall, 21 of Maryland's 24 localities have a pretrial services program, the vast majority of which use EM to supervise at least some pretrial clients.

ⁱⁱ Note, we use "at least" throughout because there was one nonresponding jurisdiction, and we are not certain of local policies and practices.

Table 2. The Number of Counties Offering Various Pretrial Services in 2017 and 2024

Service	2017	2024
Have a Pretrial Services Program	13	21
Report Using a Risk and Needs Assessment Tool to Inform Eligibility and/or Supervision Levels	10	19
Offer Pretrial EM	11	20

Source: 2017 data from Maryland Correctional Administrators Association and Maryland Alliance for Justice Reform. November 2017. *Pretrial, Screening, Mental Health and Reentry Services Available at Maryland's Local Detention Centers*; 2024 data from JPI's original analysis.

Figure 3. Pretrial Service Program and EM Availability Across Maryland

Supervision and EM Practices Vary Widely from County to County

Though having a pretrial supervision program and EM technology is common, as Table 2 captures, the main finding of this study is that there is significant variability in pretrial service provision from county to county. Key differences include:

- **Use of House Arrest:** In at least 17 counties, at least some pretrial clients are on the equivalent of house arrest, where they are essentially confined to their home with few exceptions, like going to school or work, or attending approved treatment sessions. Two programs allow all pretrial clients on EM to move freely in the community (see Figure 4). In most counties, pretrial supervisees can also be restricted to geographic exclusion zones and/or curfew restrictions.
- **Costs:** The cost of EM varies widely, ranging from \$2 per day in Dorchester County to \$15

in Garrett County. Notably, the private providers we spoke with quoted \$15 per day as the going rate, and many public and private providers have additional fees at setup/installation and termination.

- **Who is Required to Pay:** In about half of programs (nine), pretrial clients are not responsible for paying any cost. However, at least eight counties require clients to pay some portion of the cost unless they secure a waiver for inability to pay.

In at least 16 counties in Maryland, some or all pretrial supervision clients are confined to home detention, which requires that they remain in their homes with few preapproved exceptions (e.g., work shift, treatment appointment, etc.).

Figure 4. Counties Supervising Pretrial Clients on House Arrest

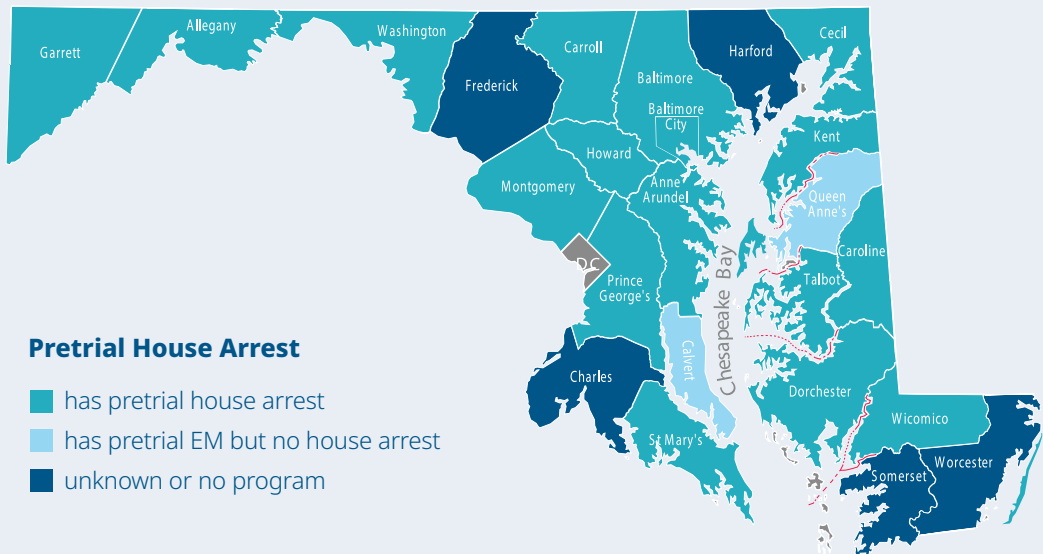


Table 3. A Snapshot of Pretrial EM Service Availability in Maryland by County

County	Pretrial Services Program?	Pretrial Risk Assessment?	EM for Pretrial Clients?	Which Supervision Levels Have EM?	Are Some Pretrial Clients on House Arrest?	Do Pretrial Clients Pay for GPS?	Daily Cost of GPS
Allegany	Yes, since 2021	Yes	Yes	Level 3 (of 3)	Yes	No	\$4.50
Anne Arundel	Yes, 20+ years, but program and EM for pretrial clients are separate	Yes	Only for clients on house arrest	Only one level	Yes, all	Yes, waiver available	\$10
Baltimore City*	Yes	Yes	Yes, limited	Unknown (of 4)	Yes	No	\$3.40
Baltimore County	Yes, since 2010	Yes	Yes	Level 3 (of 3)	Yes, all	No	\$3.55
Calvert	Yes	Yes	Yes	Level 4 (of 4)	No	Yes, waiver available	\$3.33
Caroline	Yes	Yes	Yes	Levels 3 and 4 (of 4)	Yes	Yes	\$4.25
Carroll	Yes, 20+ years	Yes	Yes	Levels 5 and 6 (of 6)	Yes	Yes, waiver available	\$10
Cecil	Yes	Yes	Yes	Levels 3 and 4 (of 4)	Yes	--	--
Charles	No - all pretrial EM handled by state courts	N/A	N/A	N/A	N/A	N/A	N/A
Dorchester	Yes, since 2018	Yes	Yes	All levels (5)	Yes	Yes	\$2
Frederick	Yes, since 1990	Yes	No	None	No	N/A	N/A
Garrett	Yes, since 2023	Yes	Yes	All levels (3)	Yes	No	\$15
Harford	No—all pretrial EM handled by state courts	N/A	N/A	N/A	N/A	N/A	N/A
Howard	Yes, since 2021	No	Yes	Level 3 (of 3)	Yes	No	\$2.80
Kent	Yes, for 6-7 years	Yes	Yes	Level 3 (of 3)	Yes	No	\$10.29
Montgomery	Yes, since 1992	Yes	Yes	Levels 2 - 4 (of 4)	Yes	No	\$3
Prince Georges	Yes, since 1987	Yes	Yes	Level 4 (of 4)	Yes	No	\$4.50
Queen Annes	Yes, since 2019	Yes	Yes	Level 3 (of 3)	No	Yes, waiver available	\$4.29

TABLE 3. CONT.

County	Pretrial Services Program?	Pretrial Risk Assessment?	EM for Pretrial Clients?	Which Supervision Levels Have EM?	Are Some Pretrial Clients on House Arrest?	Do Pretrial Clients Pay for GPS?	Daily Cost of GPS
Somerset	No - all pretrial EM handled by state courts	N/A	N/A	N/A	N/A	N/A	N/A
St. Mary's	Yes, since 2016	Yes	Yes	Levels 2 and 3 (of 3)	Yes	No	\$3.90
Talbot	Yes, for 6-7 years	Yes	Yes	Level 5 (of 5)	Yes	Yes, waiver available	\$10
Washington	Yes, since March 2023	Yes	Yes	Levels 3 and 4 (of 4)	Yes	Yes, waived when grant funds available	\$5
Wicomico	Yes	Yes	Yes	Levels 1 and 2 (of 2)	Yes	Yes; \$25 processing + \$5/day; waiver available	\$8
Worcester	Yes	--	Yes	--	--	--	--

Source: Data collected by JPI.

Note: Data were collected through individual interviews with program leaders in each Maryland jurisdiction, conducted between April and November 2024. A "--" indicates that program leaders did not provide the information. N/A was used for the three counties that do not have a local pretrial program (Charles, Harford, and Somerset counties). In several counties, a person can be placed on EM at a lower supervision level if ordered by the judge.

*As noted in Box 3 on page 11 above, when federal dollars for pretrial EM became available through the CARES Act in 2021, the city shifted to reliance on private providers to supervise Baltimore City clients. Despite several attempts, the authors were not able to interview program leaders from Baltimore City to understand how their publicly funded EM works in practice.

Ultimately, the bottom line is that a person arrested in one jurisdiction may be held in jail pending trial and forced to post bail or pay expensive monitoring fees out of pocket. In contrast, a person arrested in another community for the same crime and similar circumstances may be released home on EM

with no bail assessed and no fees, simply by virtue of local policy and practice differences. Absent state-level coordination and oversight, it is also possible for someone to wear two monitors simultaneously for two different charges heard by two different judges in two different counties.

Use of EM Varies Widely, but Overall Has Increased in Maryland

While most counties with a pretrial supervision program have EM technology, there is wide variability in the frequency with which they use it. For example, in 2023, the most recent year for which complete data are available, 91% of people on pretrial supervision in Prince George's County and 84% in St. Mary's County were on EM compared to only 21% in Montgomery County and 17% in Baltimore County (see Table 4). As a result, counties vary widely regarding the risk profile of participants in pretrial supervision programs. In some communities, pretrial supervision is used as an alternative to jail. It is reserved for people charged with serious offenses at high risk of failing to appear or committing additional crimes. Yet, in others, EM is used more frequently for various cases.

For example, one stakeholder noted an increase in the use of pretrial EM to supervise people with serious medical issues in the community. In some communities, pretrial supervision programs are much more selective in their recommendations in the opposite direction, identifying eligible clients by their likelihood of success and, therefore, serve a much lower-risk clientele. Caution is necessary before concluding the reasons for these differences, as we are not controlling for underlying offenses. The lack of statewide standards for using electronic monitoring further complicates any direct comparisons, making them inherently risky. However, the diversity in EM applications highlights the need for careful consideration, which is not currently possible.

Table 4. Pretrial EM Use in Four Counties in 2023

County	2023 ADP			
	Pretrial Jail	Pretrial Supervision	Pretrial EM	% Pretrial on EM
Baltimore County	832	1,105	193	17%
Montgomery County	827	744	159	21%
Prince George's County	812	270	245	91%
St. Mary's County	183	87	73	84%

Source: Pretrial jail data from the Maryland Governor's Office of Crime Prevention & Policy Local Detention Center Population Statistics Dashboard: <https://gocpp.maryland.gov/data-dashboards/local-detention-center-dashboard/>; Other data collected by JPI.

Note: Baltimore County's pretrial EM count does not include a small number of people on Level II supervision but placed on home detention with private providers.

While not every county provided data, available data from reporting localities show an increasing trend in the use of EM to supervise pretrial clients in local public and private programs (see Table 5). It is important to note that the

total number of people in private home detention increased significantly between 2019 and 2021 and then declined over the past three years, though it remains much higher in 2023 than it did prior to the pandemic (see Figure 5).

Table 5. The number of pretrial clients on EM is increasing in Maryland

County	Pretrial EM ADP							
	2016	2017	2018	2019	2020	2021	2022	2023
Anne Arundel	20	32	53	61	70	75	76	57
Baltimore City*	68	72	40	111	58	37	3	1
Baltimore County	20	50	57	55	96	97	98	193
Calvert	0	0	1	1	1	2	2	2
Garrett	0	0	0	0	0	0	0	6
Howard	N/A	N/A	N/A	N/A	N/A	N/A	9	12
Montgomery	70	101	124	152	174	225	241	159
Prince George's	92	77	108	139	218	262	344	245
Queen Annes	N/A	N/A	N/A	N/A	19	22	15	13
St. Mary's	6	32	33	36	78	80	76	73
Washington	N/A	N/A	N/A	N/A	N/A	N/A	N/A	4
Wicomico	N/A	N/A	N/A	N/A	N/A	N/A	N/A	110
All Reporting Local Programs	276	364	416	555	714	800	864	875
Private Providers (All Home Detention)		141	204	192	539	938	768	661

Source: Data collected by JPI.

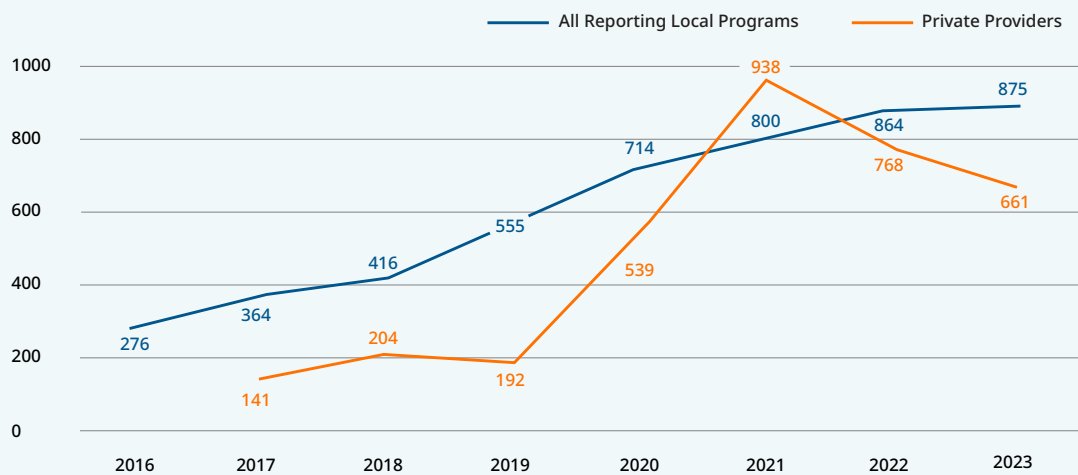
Note: Private provider data were collected from monthly reporting to DPSCS and includes all people on private home detention monitoring, both pretrial and sentenced. Individual county data were collected from each local pretrial supervision program; "All Reporting Local Programs" sums the ADP from the 12 jurisdictions detailed above.

*As noted in Box 3 on page 11 above, the decreasing trend in the use of pretrial EM in Baltimore reflected in the table is not accurate. In fact, when federal dollars for pretrial EM became available through the CARES Act in 2021, the city shifted to reliance on private providers to supervise Baltimore City clients. Many, if not most, of the people supervised by private providers are Baltimore City residents, but data limitations prevent us from analyzing how many. Therefore, we do not have a clear picture of how many Baltimore City residents are on pretrial EM at any given time.

Trends in the number of people on pretrial EM in local county programs and supervised by licensed private providers look very different between 2016 and 2023. Over that period, there was a gradual increase in the number of people on pretrial EM in county-run programs,

which contrasts with a steep incline between 2019 and 2021 in private agencies that capitalized on newly available federal funding to support supervision of people who could not afford to pay fees on their own.

Figure 5. Annual Pretrial EM Population in Reporting Counties and Private Providers



Source: Data collected by JPI.

Note: Private provider data were collected from monthly reporting to DPSCS and includes all people on private home detention monitoring, both pretrial and sentenced. Individual county data were collected from each local pretrial supervision program; “All Reporting Local Programs” sums the ADP from the 12 jurisdictions that reported annual pretrial EM counts.

Judges Make Decisions About Supervision Requirements

In most jurisdictions with pretrial supervision programs, officers do an initial assessment and make recommendations to the judge regarding release. Still, the judge makes the ultimate call about whether to jail a client, release them on their own recognizance, or release them with supervision services while also determining the supervision level and requirements by judicial order. In other words, with few exceptions, pretrial supervision programs carry out directives from the judge and do not make decisions about the frequency of

check-ins, when or why a client can leave their home if on house arrest, or the boundaries of any “stay away” orders. This is also true for all clients in private home detention. It is important to note that more than one interviewee shared that while it is a defendant’s right to select which private home detention provider they want to use, many judges communicate to clients that they will only be released to a specific private company, which raises ethical concerns (see Box 4 for a discussion of the pros and cons of judicial discretion).

BOX 4. The Pros and Cons of Judicial Discretion

Judges hold significant discretion in pre-trial decision-making. They determine whether a person is jailed or released pending trial, whether bail is required, and what conditions must be met for release. These conditions may include house arrest, electronic monitoring, or adherence to a curfew. While judicial discretion allows for flexibility in tailoring decisions to the unique circumstances of each case, it also carries the potential for inconsistency and bias.

On the positive side, discretion enables judges to individualize decisions based on the nature of the charges, the individual’s history, and community ties, allowing for a more nuanced approach to justice. However, this same discretion can lead to disparities, particularly when unconscious biases influence

decision-making. Implicit biases—such as those related to a person’s race, gender, or sexual orientation—can result in uneven outcomes, disproportionately affecting individuals from marginalized communities, including people of color, women, and individuals who identify as LGBTQIA.

The potential for these biases raises critical concerns about fairness and equity, especially in the context of “justice by geography,” where legal outcomes may vary significantly depending on the jurisdiction or the judge assigned to a case. Further research is essential to understand how judicial discretion impacts equitable outcomes in Maryland. Such inquiry should explore whether discretion promotes fairness or exacerbates existing disparities, particularly across different communities.

Releasing Someone to a Private EM Company is Faster Than a Public Supervision Program

Pretrial supervision experts reported that releasing someone to a local pretrial supervision program can take longer than the process of release to private home detention because officers conduct background checks and

provide additional case management services like helping find housing options, for example. One practitioner noted that private attorneys in their jurisdiction often pushed for private home detention options to get clients out of jail faster.

Many Jurisdictions Are Limiting Eligibility for Pretrial Release Based on Factors That Do Not Predict FTAs or Recidivism

Many jurisdictions—even those utilizing validated risk and needs assessment tools – use “common sense factors” to inform decisions about eligibility for pretrial release, such as whether someone can prove that they have a stable home address or have family supporting them, even though these are not predictive of success on supervision. In some jurisdictions, arbitrary restrictions limit eligibility for release to pretrial supervision, like not being a county resident. For example, in Washington County, the law states that a person with any prior conviction is not eligible to participate in any jail programming

(e.g., pretrial supervision, work release, day reporting center, etc.). Restrictive and generalizing limitations like these prevent caseworkers from connecting people with services that can help them address root causes of crime and violence, develop new skills, and promote public safety. Fortunately, several localities are beginning to reverse these counterproductive policies. For example, Baltimore City and Washington County no longer require a stable home address, and Anne Arundel County no longer considers family support in their risk assessment score.

Some Jurisdictions Are Providing More Flexibility in Conditions

Some jurisdictions in Maryland are rethinking supervision conditions to be less restrictive where possible. For example, all clients on house arrest in Baltimore County get a set time to shop for necessities and attend to personal grooming needs once per week; attend appointments with social services, the

Motor Vehicle Administration, legal counselors, medical appointments, etc.; and attend job fairs or interviews with preapproval the day prior. Similarly, most clients on house arrest in Dorchester County get four “Life Hours” per week to go to the bank, grocery, and take care of other errands.

Insights From Lived Experience Experts

To understand the impact of EM on the day-to-day lives of supervisees in Maryland, we interviewed seven people who had spent time “on the box” and two who had family members who did so. Most of the interviewees were on EM post-release as part of their transition home from incarceration. Still, they were subject to similar requirements as those on GPS tracking as part of pretrial supervision. We asked about their experience with EM, what benefits and challenges they saw in using the technology, and how to improve EM supervision programs to produce better outcomes and minimize negative impacts on daily life. Across these interviews, we identified the following themes:

There are Benefits to EM as an Alternative to Incarceration

Every interviewee shared that EM was a helpful alternative to jail or prison time, and several noted that it was a helpful steppingstone home after a period of confinement.

One interviewee noted:

“It’s an effective tool instead of just sending everyone to the big house. Avoids overcrowding. Good for low-risk offenders.”

Another shared:

“I had been incarcerated for seven years. It was a nice step into seeing how stuff is. As much as I hated the trips to Baltimore, I got to see outside. EM was a safety net to allow me to get acclimated to being free in a controlled

environment. It gets you doing normal stuff at home...taking a shower without flip-flops on...A good step to getting into the free world.”

However, it is important to note that interviewees spent much more time discussing the negatives and challenges they experienced on EM. As one interviewee said:

“The only benefit that I have is I am able to see, touch, and hold my kids. That’s it.”



Being on EM Makes Day-to-Day Tasks Very Difficult

Every interviewee shared specific challenges that they experienced on EM that made daily tasks challenging. Several interviewees noted employment barriers, including difficulties getting approval to attend job interviews, geographical limitations in how far from home they could work, and no flexibility to account for “unpaid time” upon arrival and closing out a shift.

For example, one expert shared:

“When I started my job, [I had a curfew]. Curfew is based on the time you get off work. I used to be a federal worker but had to work as a store clerk because it was close to my home. Getting off at 10 does not mean 10 when you are a clerk (we must do register counts, etc.). Some officers were horrible, saying “You can’t keep that job if

you’re going to keep being late.” What time? It was according to the work schedule.”

Several interviewees also noted that without transportation, trips to and from the probation or parole office for check-ins were difficult – including being expensive and time-consuming. Some had to travel as far as 90 minutes every time they had to check in in person or provide a urine sample, and there were no authorized stops for bathroom breaks on the way. Other challenges, ranging from personal hygiene to living a productive life to navigating familial relationships, included not being able to shave your leg fully, developing itching or a rash, being unable to open a bank account, and being a burden on family members supporting you.

EM Orders are Overly Restrictive, Negatively Impacting Health

Every interviewee reported that the stipulations of their supervision were overly restrictive. Several noted they were confined to their homes and could not even sit outside on the patio or front porch.

As one shared:

“The whole experience is challenging. I got my real estate license, but I can’t do anything with it. I can’t even have a work-from-home job. I can’t go on my balcony. I’d rather be at home than in prison, but I’d like to get some fresh air.”

Another interviewee noted that they could not access benefits while on EM:

“In prison, you always have your state portion. On EM, you can’t get any benefits. I am lucky

I have friends and family to help me. I must wait until I am off EM and on probation to apply.”

Interestingly, two interviewees shared that they or their family members could not access adequate health care while on EM.

“You can’t go to get your blood pressure checked or doctor appointments. Seven-hour day passes were supposed to allow us to handle whatever personal issues we needed. They said NO. No well-woman’s appointment, dental... nothing that would keep me healthy! If I wanted health care, they said I had to go back to the prison and get on the waiting list. My husband and I have health insurance, but they said we could not use it.”

Communication from Supervision Officers is Inconsistent

Several interviewees noted that communication while under supervision was poor, they often received different information at different times, and the promises of incentives never materialized.

One shared:

“They don’t tell you the rules of EM until after you sign on and are packed up and out of the prison. My first two or three weeks...I was crying and talked to my children about possibly going

back to prison. It was that hard. It wasn’t until I was on EM that I learned I could not earn any credits without working, but they make it so hard to work. So, I have to stay on home detention longer. It’s a lot!” Another said, *“They initially asked if I did well...they would reduce restrictions/requirements, but they never did. What they tell you inside does not line up on the outside. One officer says one thing and another officer says something else. You can never get a straight answer.”*

Unrealistic Conditions Set Clients Up for Failure

Most interviewees shared that they felt EM requirements set them up for failure and were more challenging than being in actual jail or prison.

One interviewee said:

“When I was on the inside, people would tell me it was a setup. People who came back after being out on pretrial...They give you just enough rope to hang yourself,” people said. And it is true.”

Another shared:

“I wasn’t able to do anything, so I was in jail, but at my house. You’re not even able to go outside to see the sunshine. I was manic-depressive. I wanted to get back to my children. They needed me. That’s the only reason I did EM. There was the realization – EM is easy to mess up and end up back in jail!”

And one family member shared:

“I am big on accountability/responsibility. With this type of restriction, you can’t fulfill your

obligation to society or your family. If you are not at a point of self-actualization, it will break you down. Think of all the people with substance abuse issues or mental health struggles. They don’t have the capacity to win!”

Consistent with the broader literature⁵⁷, people with lived experience of EM in Maryland noted that it is an important alternative to incarceration. Still, there is a lot of room for improvement to make it a more humane, reasonable, supportive, and ultimately effective option.

As one interviewee aptly summarized:

“[When I was on EM] I was in all the time. I was not getting the help I needed. I felt like a caged animal. Even when I was locked up, I had more freedom. At least they had outside rec time.”

Recommendations to Improve Pretrial EM in Maryland

The abrupt depletion of federal resources to fund private home detention monitoring has reignited conversations around pretrial justice in Maryland and has given the state a unique opportunity to review and overhaul its approach. Findings from this report point to several system improvement recommendations, including:

1. Conduct a Comprehensive Review of Maryland's Pretrial System and Use of EM and Implement Necessary Improvements.

First and foremost, Maryland must recommit to a comprehensive review of pretrial EM policies, practices, and outcomes, and implement strategies to strengthen and improve service improvements across the state. As noted above, the state is at a crossroads as it grapples with whether and how to continue public funding of pretrial EM across the state as federal and emergency state dollars supporting the effort dry up. Leaders must make some hard decisions, including whether to continue directing public funding to private EM providers or build infrastructure and reliable funding streams to support either state or local EM services. This will require a more detailed understanding of how pretrial EM works across the state with active participation from a wide range of stakeholders, including the courts, prosecutors, defense counsel, those with lived experience, state and local elected

leaders, and business owners who have employed those supervised with EM. Findings and recommendations should draw on best practices from research and lessons learned from other states that have undertaken similar efforts.

2. Ensure Equal Access to Release and Consistency in Practice by Establishing a Statewide Pretrial System in Maryland.

The main finding of this study is that pretrial policy and practice vary significantly from county to county in Maryland, which leads to very different experiences and outcomes for people based solely on where they live. Maryland leaders must curtail this "justice by geography" and ensure that all residents have equal access to release and resources by establishing a statewide pretrial system that guarantees equal access for all, sets standards of practice, and ensures every pretrial supervision agency has the full range of tools needed to safely supervise people in their communities whenever possible,

including EM. A statewide system would also support cross-jurisdiction communication and collaboration to limit inefficiencies in service provision. Several states across the country, including Alaska, Colorado, Connecticut, Delaware, Illinois, Kentucky, New Jersey, and Rhode Island, operate and fund pretrial services programs at the state level, and many are demonstrating substantial success. For example, in 2017, New Jersey implemented a risk-based system that replaced cash bail. In the first four years, the number of people held in pretrial detention dropped by almost half, and a recent study showed no increase in gun violence.⁵⁸ In 2021, Illinois overhauled its pretrial system and also ended cash bail through the Safety, Accountability, Fairness, and Equity Today (SAFE-T) Act, which centralized EM service provision and created dedicated state funding to support EM supervision across the state.⁵⁹ Though it is early to see the full impact, data showed that FTAs were filed in only 5% of cases in the first nine months.⁶⁰

3. Include People with Lived Experience in Debate, Implementation, and Evaluation.

As the state moves in this direction, Maryland leaders must engage lived experience experts in all aspects of the process, including a conversation about the benefits and costs of building local capacity for electronic monitoring versus partnering with private providers. Reconstituting the state Workgroup on Home Detention Monitoring in the 2024 legislative session is a good first step toward that end, and we look forward to the research, findings, and recommendations that effort produces. Sustained attention to the issue and continued investment in system improvements will be critical to support the change needed in Maryland.

4. Require Regular Data Reporting. Though not surprising, another major finding of this project is the near-complete lack of public documentation of local pretrial policies, practices, populations, and outcomes. Data for this report were collected through one-on-one conversations or emails with pretrial staff in each county. Only the larger counties had data systems that supported more detailed analysis. Very few could share information on the pretrial population that disaggregated data by key demographics like age, race, gender, and assessed risk level. This information is critical for public transparency and research on program performance. It would also be helpful for agencies to be able to assess their approach with neighboring counties and/or level up where possible. At a minimum, Maryland leaders could provide state-level oversight and direction for local pretrial agencies by implementing data reporting requirements and maintaining ongoing data collection, reporting, and publishing at the state level. This would support a data-driven approach to continuous quality improvement in pretrial supervision across the state.

5. Require the Use of Standardized Pretrial Risk and Needs Assessments. Risk and needs assessments are fundamental to an evidence-based pretrial system. As previously discussed, not all tools are equal, and poorly designed assessments can worsen racial and ethnic disparities in decision-making. They must be carefully chosen, transparently designed, validated for the specific population they will serve, and regularly evaluated. Additionally, they should guide decision-making at every stage of a person's case. These tools must also be balanced with non-punitive approaches and

resources that meet the needs assessment component. While Maryland has set out some requirements for jurisdictions that choose to implement pretrial risk and needs assessments, including revalidation every five years, leaders have not mandated that all jurisdictions use a standardized risk and needs assessment to guide practice.⁶¹ Adopting a standardized tool and approach would ensure that everyone appearing before the court in Maryland is assessed and processed consistently and fairly. Continuous assessment, transparency about the effectiveness of assessments, and training and support for judges are crucial for ensuring that the system functions as intended and that assessment scores inform practice. In other words, individuals detained in jail or placed on electronic monitoring are evaluated as at high risk of failing to appear or committing additional crimes.

6. Limit Negative Consequences of Overprogramming.

Given the harm it imposes, and that EM can be counterproductive when used to supervise people at low risk of FTA or recidivism, pretrial EM should be leveraged as an alternative to jail and reserved for situations where a judge would only consider release with the added protection of EM. Those cases often involve people facing more serious charges and/or those assessed at higher risk of future criminal activity. When it spurs net-widening by either becoming common practice in most cases or is reserved for people at low risk of failure and, therefore, program success, it is no longer effective. Thus, the harm it imposes on people under supervision is not warranted. In other

words, efficiently and effectively employing EM requires that it be used as an actual jail alternative and reserved only for use when release on one's own recognizance or less restrictive conditions are insufficient to protect public safety.

7. Eliminate Fees. As this study showed, there is wide variation across Maryland in the cost of electronic monitoring and who is required to pay for it. Services range from \$2 to \$15 per day, and agencies can also assess connect and disconnect fees on top of those daily charges. Clients can be on monitoring for months, which can rack up a significant bill. The fact that so few clients opted to use private services when they had to pay for it themselves suggests that self-pay is only an option for some. Like bail, continuing to assess fees on individuals deepens persistent racial and economic disparities and punishes those who cannot afford to pay their way out of jail. Moving forward, Maryland should advance legislation or administrative rules to eliminate individual fees for supervision and build sustainable, state-level funding streams to support EM supervision as an alternative to jail for all state residents. Studying and leveraging positive outcomes from the one-time CARES Act funding could build buy-in and support among legislators and other decision-makers, which is critical to long-term investment. State leaders should also strengthen oversight of private providers through improved data collection and reporting and implement stronger accountability measures to ensure that fiscal incentives do not result in lengthier supervision terms.

8. Minimize Burden on Supervisees. Though well documented in the literature, this study reconfirmed that EM poses significant burdens on those under supervision. Maryland clients with lived experience on EM supervision noted that it interfered with their ability to spend time outside, find and maintain gainful employment, and access critical health care. The monitors are burdensome and uncomfortable. Supervision conditions required that they lean on family members for transportation and, in some cases, travel hours for regular check-ins. Interviewees also noted that they did not receive support while under supervision, and promised incentives never materialized. Maryland could implement several improvements to minimize the burden and create more humane conditions. A few suggestions from those directly impacted included:

- Set boundaries at home so people can sit on their front porches or patios to get fresh air;
- Streamline the approval process so it is possible to get passes for things like job interviews and medical appointments in time;
- Allow people to use their own health insurance benefits and access treatment from covered providers;
- Allow people to access social service benefits while on EM supervision;
- Extend the geographic boundaries for job opportunities and allow people to work from home;
- Allow flexibility to accommodate start up and wind-down time before and after each work shift;
- Set up satellite offices in more remote areas to make it easier for people to attend in-person check-ins;

- Allow for bathroom breaks when clients travel more than 30 minutes to the office for a check-in;
- Ensure clear and consistent communication from supervision officers;
- Connect clients with community-based supports and services to address their unique needs; and,
- Provide meaningful incentives to reward success and deliver on them.

9. Reduce Bias Through Evidence-Based Decision-making. In many jurisdictions in Maryland, pretrial supervision officers and judges base release and supervision decisions on factors that are not predictive of success, including having a stable home address, residing in the county where the crime was committed, being charged with a serious offense, or having a prior criminal record. Limiting eligibility based on these irrelevant factors perpetuates discrimination against people of color and those with limited resources. It can also lead to the overuse of detention or net-widening through intensive correctional supervision strategies like EM. Maryland should ensure that any pretrial system improvements align with an evidence-based, risk-driven approach and set aside consideration of additional factors that do not reliably predict success. Moreover, further research is crucial to gain a deeper understanding of how judicial discretion influences equitable outcomes in Maryland. This investigation should examine whether discretion fosters fairness or worsens existing inequalities, especially among diverse communities.

APPENDIX A.

Interview Protocols

County Pretrial Supervision Practitioner Interview Questions

PRETRIAL SUPERVISION AND EM

1. Do you have a pretrial services program in [INSERT] County?
 - If yes, what agency or private provider oversees pretrial supervision in [INSERT] County?
 - When was it started (roughly)?
2. Do you use a pretrial risk assessment to inform recommendation to judge?
If so, is it one you created?
3. Are any pretrial supervision clients on electronic monitoring?
 - If yes, what electronic monitoring devices does your agency or organization use to supervise clients pretrial?
4. What software or provider do you contract with for monitoring?
5. Do you have staff who monitor/case manage pretrial supervisees on EM or does another organization do that for you?
6. How many levels or types of electronic monitoring are there and how are they defined? What restrictions are placed on people in each level? Is anyone on home detention?
7. How is the supervision level or type selected for each client? Does the judge order that or do you assign the level?
8. Are clients eligible for pretrial release if they have committed a violent charge?

EM COSTS

9. What is the cost per client per day of each level or type of electronic monitoring used in pretrial supervision?
10. How is electronic monitoring funded in [INSERT] County?
11. Are clients responsible for any fees related to electronic monitoring?
 - If so, what proportion and how is that determined?

VIOLATIONS AND REVOCATIONS

12. What types of events trigger a violation (e.g. missing an appointment, being late to an appointment, going outside of defined boundaries, failed UA, etc.)?
13. Do electronic monitoring violations trigger revocation to jail for pretrial clients? If so, when and how?
14. How common are revocations to jail?

DATA

15. Do you know roughly how many people you have on pretrial supervision right now? How many on EM?
16. Do you track admissions, completions, violations, and revocations and if so where (spreadsheet, case management system, etc.)?
 - If yes, do you do that monthly or annually?
17. We'd like to collect some basic data on the number of people who have been on, successfully completed, or were revoked over the past few years. What is the best way to collect that information?

Private EM Provider Interview Questions

EM PRACTICES

1. In which counties do you currently offer monitoring services? Any plans to expand?
2. How are your services funded?
3. What electronic monitoring devices does your agency use to supervise clients pretrial?
4. How many levels or types of electronic monitoring are there and how are they defined? What restrictions are placed on people in each level?
5. How is the supervision level or type selected for each client?
6. What is the cost per client per day of each level or type of electronic monitoring used in pretrial supervision? Are there different rates for individual and state-paid services?
7. Are clients responsible for any fees related to electronic monitoring? If so, what proportion and how is that determined?
8. What types of events trigger a violation (e.g. missing an appointment, being late to an appointment, going outside of defined boundaries, etc.)?
9. Do electronic monitoring violations trigger revocation to jail for pretrial clients? If so, when and how?

Legal Practitioner Interview Questions

BACKGROUND

1. What is your name?
2. Where do you work and what is your current role/title?
3. Have you had any other jobs in the legal system? If so, please briefly describe.
4. Do you regularly work with/see clients on pretrial supervision?

EM EXPERIENCE AND PERCEPTIONS

5. How is electronic monitoring currently used with clients under pretrial supervision in your jurisdiction(s)?
6. Is that a recent development or is that something that has been in place for some time where you work?
7. If recent – or the person has historical context – from your perspective, has the availability of electronic monitoring for clients on pretrial supervision increased the chance that people who would have previously been held in jail be released pending trial OR increased correctional control for people who would previously have been released on their own recognizance OR both?
8. What do you think are the main benefits of electronic monitoring for clients on pretrial supervision?
9. Have you encountered any challenges incorporating EM in your practice? If yes, what are they?
10. Have you observed any challenges for people on EM as part of their supervision? If yes, what are they?
11. Have you found that EM is disruptive to people under supervision (e.g. disrupts a person's ability to connect with family and friends, go to school, go to work, attend treatment appointments, or negatively impact them in other ways)?
12. Overall, do you feel that the benefits outweigh the costs or vice versa? In other words, if you had to choose, would you say electronic monitoring is a helpful alternative to incarceration or an overly restrictive and unnecessary tool for people on pretrial supervision?
13. Are there any specific policies or practices governing the way electronic monitoring has been implemented for pretrial supervision clients in your jurisdiction(s) that amplify or reduce these challenges?
14. How can electronic monitoring be better designed for people to minimize disruptions to daily life and improve individual and court outcomes?

Lived Experience Expert Interview Questions

BACKGROUND

1. What is your name?
2. Current age?
3. Where do you currently live?
4. EM Experience
5. Have you or a family member ever been on electronic monitoring?
 - If no, skip to question 17
 - If yes, clarify if they have experience with EM or if it was a family member and continue to question #7 (modifying pronouns as needed for family members)
6. Did you choose to participate in electronic monitoring or was it required?

7. Were you on electronic monitoring pretrial, as a condition of probation, or after release from prison (or some combination)?
 - If pretrial, were you offered pretrial supervision options other than electronic monitoring?
 - If yes, what specific alternatives were offered?
 - If pretrial, what was the result of your court hearing(s)? Was your case dismissed?
8. How long were you on electronic monitoring?
9. Did you have to pay for the service?
 - If yes, how much did it cost?
10. When you were on electronic monitoring, were you confined to your home or were you able to move around freely?
11. Did you have any other requirements when you were on electronic monitoring? For example:
 - Did you have to check in with a supervision officer? How often?
 - Were you in treatment? What kind?
 - Did you have a curfew? What time?
12. Were you on an alcohol electronic monitoring device?
 - If yes, how frequently and under what circumstances did you need to test?
13. What was the most challenging thing about being on electronic monitoring?
14. Did being on electronic monitoring disrupt your ability to:
 - Connect with family and friends?
 - Go to school?
 - Go to work or provide for yourself and your family?
 - Attend treatment appointments?
 - Impact you in other ways?
15. Were there benefits about being on electronic monitoring?
 - If yes, what were they?

EM PERCEPTIONS

16. What do you see as the pros and cons of electronic monitoring for clients on pretrial supervision?
17. Do you feel that the benefits outweigh the costs or vice versa? In other words, if you had to choose, would you say electronic monitoring is a helpful alternative to incarceration or an overly restrictive and unnecessary tool for people on pretrial supervision?
18. Would you recommend electronic monitoring be an option for people on pretrial supervision?
19. How can electronic monitoring be better designed for people to continue treatment, education, work, and childcare?

Endnotes

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The Abell Foundation
Suite 2300
111 S. Calvert Street
Baltimore, MD 21202-6174

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