

ELECTRONIC MONITORING & JUSTICE

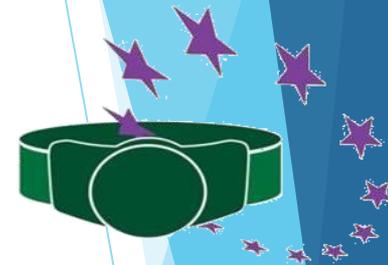


Holyrood Digital Justice Conference
27th September 2017, Glasgow



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Featuring research (McIvor and Graham, 2016; Hucklesby et al., 2016) co-funded by the Criminal Justice Programme of the European Union, and separate research funded by the Scottish Government Justice Directorate (Graham and McIvor, 2015). This research has been produced with the financial support of the Criminal Justice Programme of the European Union and the Scottish Government. The contents of this presentation are the sole responsibility of the presenter and project partners and can in no way be taken to reflect the views of the European Commission or the Scottish Government.

Electronic Monitoring Technologies

- ▶ **Currently:** From 2002-2017, radio frequency (RF) tags and home curfew restrictions in Scotland. These have no capacity for tracking.
- ▶ **Other EM technologies:** GPS tagging & tracking, exclusion zones with 'away from' restrictions, bilateral GPS EM involving victims; Remote Alcohol Monitoring tagging; kiosks; others?



RF tag
(currently used)



GPS tag
(not currently used in Scotland)



2013-2017: A Season of Change and Consultation in Scotland

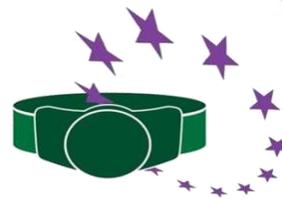
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- ▶ Multiple elections and two referenda in Scotland & UK.
 - ▶ 2013 and 2017: Scottish Government EM consultations, many local consultation events.
 - ▶ 2014-2016: Scottish Government EM Expert Working Group.
 - ▶ 2016: GPS technology trial.
 - ▶ Scottish Government EM Unit.
 - ▶ 2017: Programme for Government
 - ▶ EM Comms Strategy, 'EM Champions'
 - ▶ Streetcones DVD: peer information for prisoners.

- ▶ **2013:** Scottish Government national consultation on electronic monitoring (EM);
- ▶ **2014:** Scottish Government Expert Working Group on Electronic Monitoring established.
- ▶ **2015:** Prof Gill McIvor and I were commissioned by the Scottish Government EM Expert Working Group to conduct an in-depth review of international and Scottish evidence and policy on uses of electronic monitoring. The 137 page review is available online: www.sccjr.ac.uk

Scottish and International Review of the Uses of Electronic Monitoring

Hannah Graham and Gill McIvor
University of Stirling
August 2015

EU-funded Research



- ▶ ‘Creativity and Effectiveness in the Use of Electronic Monitoring as an Alternative to Prison in EU Member States’ (2014-2016). The Scottish component of this study was co-led and co-authored with Professor Gill McIvor, University of Stirling.
- ▶ First study of its kind in Europe, comparing five jurisdictions: Scotland, England & Wales, Germany, Belgium, the Netherlands.
- ▶ Scottish sample of the European comparative study:
 - 30 interviews with staff from the Scottish Prison Service, criminal justice social workers, sheriffs, Parole Board for Scotland, Scottish Government Justice policymakers, G4S, Police Scotland, charity/representative organisation.
 - 53 hours observation with G4S staff in the National EM Centre and EM field officers going into monitored people’s homes.
 - Literature review, policy review, available statistics.

Research reports are online:

<http://emeu.leeds.ac.uk/reports/>

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Electronic Monitoring in Scotland

Gill Mclvor and Hannah Graham

Scottish Centre for Crime and Justice Research,
University of Stirling, Scotland

May 2016



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Electronic Monitoring in Scotland

Gill Mclvor and Hannah Graham
University of Stirling, Scotland

Key findings

- Electronic Monitoring (EM) is available at various points in the criminal justice process in Scotland.
- From 2002-2015, EM relied on the use of radio frequency (RF) tagging technology only. GPS tagging and tracking is set to be introduced in the future.
- Current uses of EM can be characterised as simple and straightforward, with mostly standardised regimes, but relatively sound in achieving objectives including restriction of liberty, diversion, modest decarceration by early release from prison and order completion.
- EM order completion rates are fairly high, with 8 out of 10 EM orders completed.¹
- Monitoring of mostly 'standalone' EM orders (i.e. no supervision) by a private EM service provider is associated with limited integration and multi-agency work with criminal justice social workers (Scottish equivalent of probation officers) and charitable organisations. Yet, many of those interviewed wanted greater integration of EM with multi-agency supervision and support.
- Being responsive to issues of diversity and vulnerability matters to Scottish practitioners and policymakers. Interviewees spoke about tailoring EM to the needs of offenders and victims.
- Clear differences exist between judicial officers across Scotland in the rates at which they impose EM orders, as well as disparities in uses of breach reporting thresholds and timeframes. Some 'special sheriffs' set up their own breach reporting arrangements with G4S Scotland.
- There is moderate support for the introduction of GPS tagging and tracking with location-based exclusion zones in cases where this may reduce risk of re-offending and promote victim safety.

Recommendations

- Clarify national breach criteria. Consider consolidating breach reporting timeframes and thresholds into two nationally available options – standard and intensive – to foster consistency.
- Introduce mechanisms to give courts and prisons the choice of imposing a supervision requirement with EM involving a 'supervising officer', to enable more multi-agency work and reintegrative supports. Implementing this will necessitate commensurate funds and resources.
- Introduce and encourage wider use of mechanisms which motivate and reward monitored people's compliance and desistance, including graduated changes in regimes and conditions, as well as a mechanism to allow authorising agencies to terminate an EM order or condition early.
- Abolish the statutory exclusion for Home Detention Curfew (HDC) licences which permanently excludes prisoners who have previously breached a HDC licence. It is inefficient and inequitable.
- Consider more creative uses of EM with people given a custodial sentence, similar to Scandinavian and Dutch approaches, which feature integrated supports for desistance.
- Ensure future developments in EM policies and practices are informed by the perspectives and lived experiences of monitored people, their families, and victims. More research is needed.
- Initiate greater awareness-raising among professionals, media and the public about EM.



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Creativity and Effectiveness in the use of electronic monitoring: a case study of five jurisdictions

Anthea Hucklesby, Kristel Beyens, Miranda Boone,
Frieder Dünkel, Gill Mclvor and Hannah Graham

May 2016



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Modalities	Belgium	England and Wales	Germany	Netherlands	Scotland
Pre-Trial	✓	✓		✓	
Court Order	✓	✓	✓		✓
Execution of/ Alternative to a Prison Sentence	✓	✓		✓	
Early Release from Prison	✓	✓	✓	✓	✓
Post-Release		✓	✓	✓	✓
Alcohol Monitoring		✓ pilot		✓ pilot	

Source: Hucklesby et al. (2016)

Why Use Electronic Monitoring?

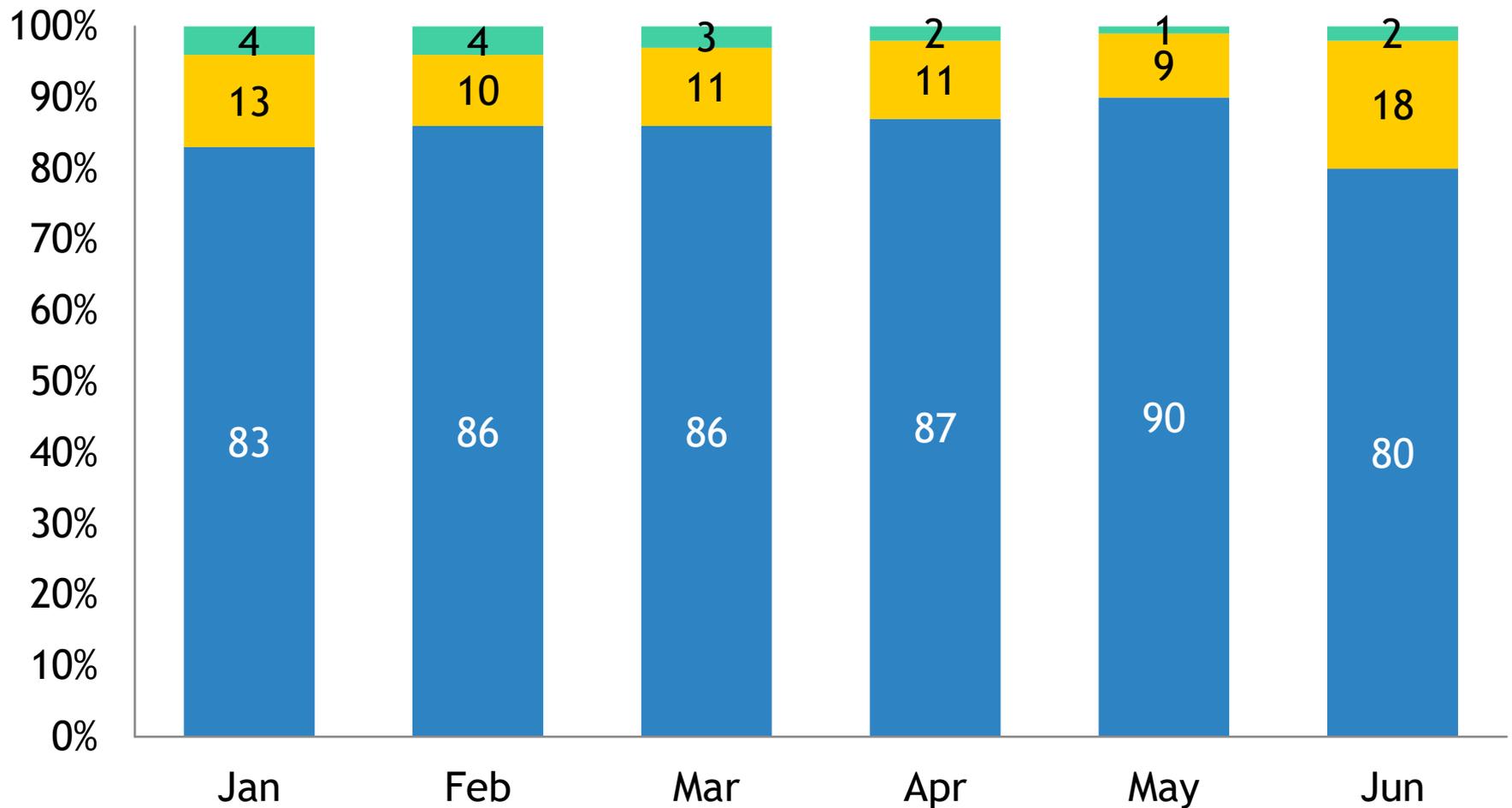
Purposes and Impact

- ▶ Punishment: retribution and restriction.
- ▶ Decarceration and diversion: seeking to reduce the use of prison/custody (its costs and harms).
- ▶ Surveillance, risk management, as a feature of efforts towards victim and public protection.
- ▶ Monitoring compliance with orders and licences.
- ▶ Reducing reoffending.
- ▶ Supporting (or being less inhibitive of) processes of desistance from crime and community reintegration.
- ▶ Seeking to reduce costs.
- ▶ Seeking to reduce time delays, inefficiencies.
- ▶ Others?

Current Uses in Scotland

In the Scottish criminal justice system, electronic monitoring may be used with adults aged 16 years and older as a means of monitoring compliance with different types of orders, licences:

- ▶ a Restriction of Liberty Order (RLO), which is a community sentence authorised by the court.
- ▶ a Home Detention Curfew (HDC) licence, which is a form of early release from prison, authorised by the Scottish Prison Service.
- ▶ as a condition of a Drug Treatment and Testing Order, authorised by the court.
- ▶ as a condition of a parole licence, authorised by the Parole Board for Scotland.
- ▶ as a restricted movement requirement imposed following breach of a Community Payback Order (CPO), authorised by the court.



Restriction of Liberty Order completions in 2016. ■ Completed ■ Revoked ■ Expired

In 2015 and 2016, approximately 8 out of 10 EM orders in Scotland were completed (G4S, 2016).

High EM order completion rates are also observed in other jurisdictions: Norway, Sweden, Denmark, the Netherlands...

Perceived strengths and opportunities

“I can see the point of having them [prisoners] outside in the community serving part of their sentence because it’s preparing them for release ... It’s letting them engage with their family again and their kids, it’s letting them see their kids coming out from school, they can do homework with their children, the whole aspect of being a father I suppose they’re going to benefit from, and I think the families benefit from that as well” (Interview 28, Scottish Prison Service).

“It’s about ... giving the people an opportunity to prevent themselves from having to hang about with the same group of people that they were hanging about with at the time they got into trouble, if that makes sense? [laughs] So you know, whereas before, you know, their pals would phone them up and go “right, come on, we’re going out to the pub tonight and blah-blah” and they would go “aye let’s go, that’s fine”, now they go “well I cannae [can’t], I’ve got this tag on” so it’s giving them the perfect excuse to change their social circle if they like or, you know, to make that break from a group of people that maybe werenae [weren’t] having the best influence on them” (Interview 12, G4S).

Key Findings: Current Uses in Scotland

Current uses of EM in Scotland are simple and straightforward:

- ▶ Mostly standardised regimes: e.g., 7:00pm - 7:00am, 7 days week.
- ▶ Examples of flexibility and creativity are currently not widespread.
- ▶ In 2016, 2,408 RLOs and 1,445 Home Detention Curfews (G4S, 2017).

There is variability in use of EM across Scotland. Localism and professional ideologies and work cultures influence uses of EM.

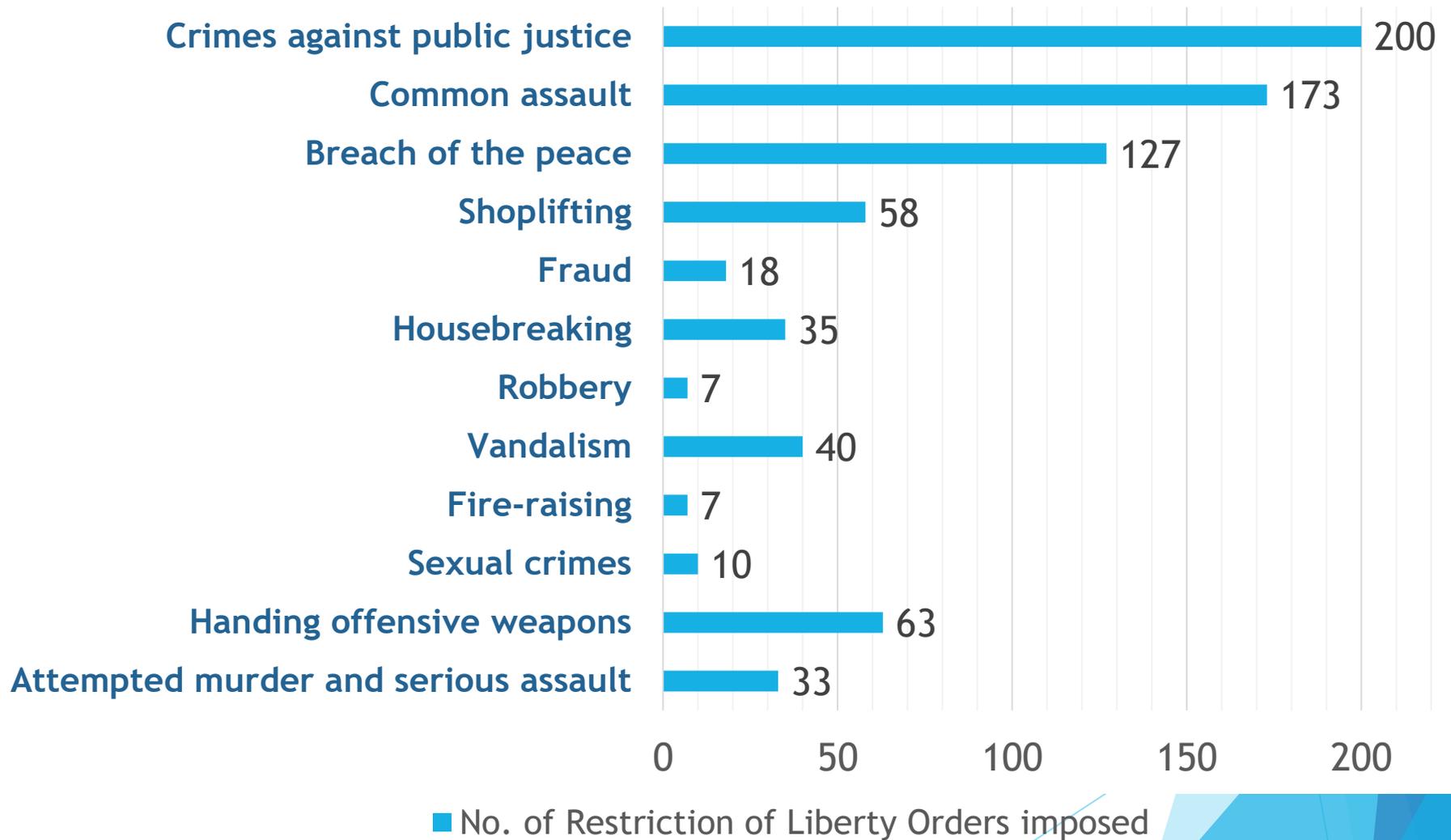
Private sector EM service monitoring mostly 'stand alone' orders = limited integration and inter-agency partnership work to date.

- ▶ Currently no supervision; no work, study, treatment requirements, although it is likely this will change if/when EM is available in more modalities.
- ▶ Good consensus about need to integrate EM with options for individualised supervision (statutory) and/or support (third sector, peer supports).

Tailor EM: One approach doesn't fit all. Being responsive to issues of diversity and vulnerability matters to Scottish practitioners:

- ▶ ✓ Policy: Only women EM field officers can tag/touch women.
- ▶ Language, hearing impairment, poverty, learning disabilities.

Electronically monitored orders were imposed by Scottish courts as an alternative to custody for a diverse range of crimes in 2013-2014.



Localism and Variability of Use

Some sheriffs and courts imposed Restriction of Liberty Orders (RLOs) extensively (n = no. of orders), whereas others barely make use of this community sentence:

- ▶ Courts which used RLOs a lot in 2015: Glasgow (314), Kilmarnock (196), Dundee (189), Hamilton (154), Dunfermline (147),.
- ▶ Courts which rarely used RLOs in 2015: Arbroath (1), Jedburgh (4), Stirling (6), Falkirk (6), Greenock (9), Inverness (17), Paisley (18).
- ▶ In January-June 2016, the rate of Restriction of Liberty Orders imposed by sheriffs in **Glasgow** was **249% higher** than that of their **Edinburgh** counterparts, with 227 RLOs imposed in Glasgow compared to 91 in Edinburgh. The difference was similar in 2015.
- ▶ Some court areas had a marked rise in the use of electronically monitored orders, for example, in **Kilmarnock** 60 RLOs were imposed in 2014, and 196 RLOs in 2015, which signals a **226% increase in one year**.

Source: G4S (2015, 2016)

Purposes of EM and professional ideologies: “culture eats policy (and technology?) for breakfast”

Criminal justice social workers emphasise tailoring EM to criminogenic risks over punitive retribution.

“I’ve done a lot of work with a lot of sheriffs in [Place] so I know them quite well. But one of the things they said, which was really quite enlightening for us, was that sometimes they use it purely as a punishment element... they’ve utilised it as a punishment so it’s about “this is what I can do to you, I can put you to custody but what I’m going to do is I’m going to make you stay in your house for this period of time”... So that was a real revelation because nobody had ever said that to us before, and then the sheriffs went “oh we wondered why you never recommended it” [laughs] or made referral, included it. We went “well actually, we didn’t see that as our, it’s not our role to look at punitive elements”, but it now explains why sheriffs on some occasions have imposed electronic monitoring when it’s made absolutely no sense to us whatsoever, why would you restrict somebody who goes out during the day to offend to be in at night time? [laughs]” (Criminal justice social worker).

Using early release from prison on Home Detention Curfew: Trust, risk, fear

“We need to trust prisoners on the tag to a certain extent. They need to be given a certain level of choice and freedom. You’ve got to give them trust. In most cases, they will be liberated and without supervision within weeks or months anyway. They are already assessed as low supervision and low risk to get HDC. Even in conversations with victims, I ask them “would you prefer them to get HDC and to take responsibility, and be monitored for a while to see that they’re complying in the community, or would you prefer they are just out soon with nothing, no supervision or structure?” (Scottish Prison Service).

“It’s not dissimilar to any organisation, but **the fear of being blamed for something is incredibly powerful** in [the prison service] because if you sign a piece of paper to say this person should get something that allows him access to the community and something goes wrong, then there is a fear that people will say “well that’s going to come back to me, I’m going to be in trouble and my job is at risk if this person does something wrong or commits another offence”...” (Scottish Prison Service).



Simple things still confound the wise: transport, buildings, battery life, islands...



Championing the proliferation of punishment? Beware of net-widening

- ▶ Mass incarceration, mass supervision, mass surveillance
- ▶ Consensus on purposes and aims, on proportionality?

‘One sheriff states ‘I’m a fan of Restriction of Liberty Orders and sometimes I use it in a punitive way as an alternative for sending people to jail’; however, they described social workers as ‘hating’ EM, partly ‘because it is privatised’, and so ‘they virtually never recommend it’ (Interview 18, sheriff). When asked if there is consensus between sheriffs and courts regarding why electronically monitored sentences are imposed, another sheriff categorically answered ‘no’, indicating their view that EM ‘isn’t really aimed toward rehabilitation at all. Deterrence, maybe?’ (Interview 19, sheriff)’. (Graham and McIvor, 2017)

Views of the Future in Scotland

Moderate support among participants in this study for:

- ▶ Introduction of GPS tagging and tracking of some offenders.
- ▶ Introduction of EM at pre-trial phase to try to reduce use of remand.
- ▶ Introduction of option of a supervision requirement, with Criminal Justice Social Workers as ‘supervising officer’ of an EM order. This may reduce court time/costs and realise a more flexible approach.
- ▶ Greater tailoring of uses of EM with different people and offences, and improved responses to diversity and vulnerability.

Mixed responses or modest support from some participants in this study for:

- ▶ Introduction of alcohol monitoring tags in Scotland.
- ▶ Increases in data access and involvement of Police in EM.

Emerging Uses of Electronic Monitoring in Policing, Courts and Corrections in Australia



Adelaide, South Australia

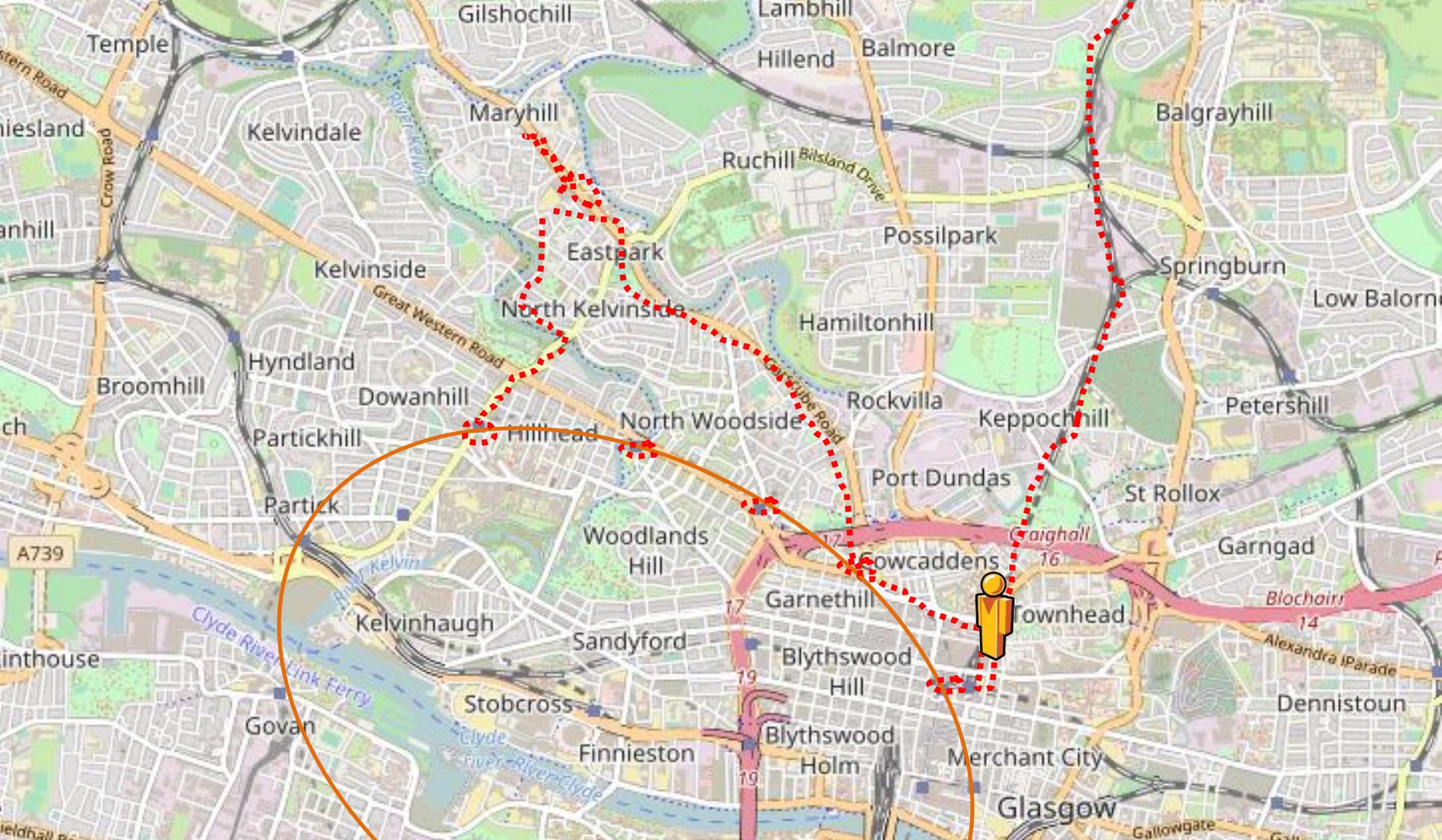


Tasmania

- Nation of 24 million people.
- Criminal justice is devolved to 6 States and 2 Territories.
- EM and problem-solving court initiatives, therapeutic justice.
- Billions of \$ and new uses of GPS EM in the area of family violence

Diversity: What are the gendered differences and gendered 'pains' of electronic monitoring?

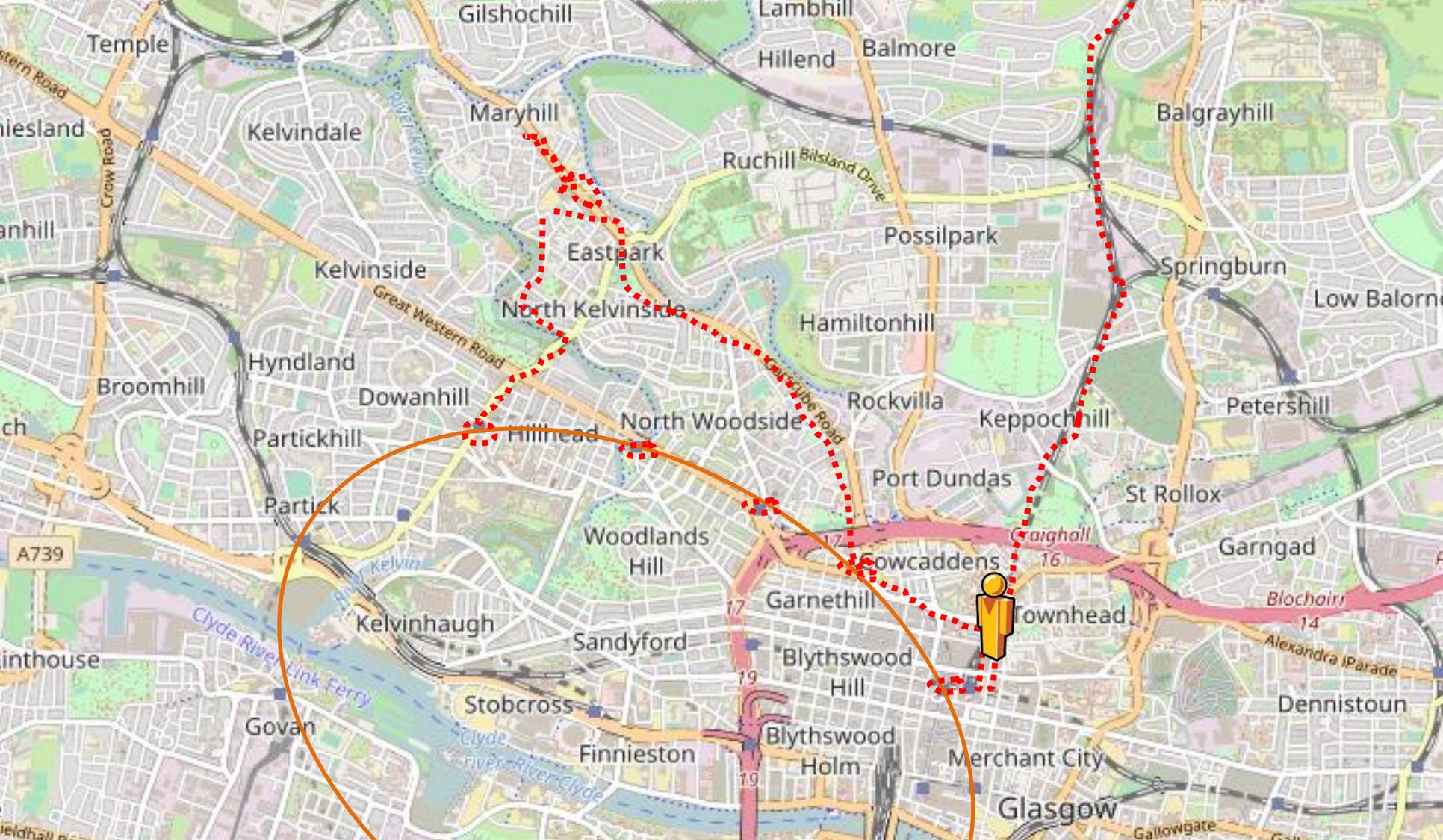




GPS EM, Privacy Principles, Rights, Information Sharing:

Who can access and know what, how and why?

What are public expectations and perceptions of justice agencies?



Professional, Institutional, Fiscal Implications?

Workload implications? Changes in criminal justice work?

Role delineation, inter-agency work: statutory, private, third sector

Further questions and considerations

- ▶ Who monitors or inspects electronic monitoring? Independent inspection, complaints?
- ▶ Should EM be routinely and systematically assessed for by criminal justice social workers as an option? Or discretionary?
- ▶ Innovative according to whom? For the benefit of whom? Ethics of innovation need reflexive, regular consideration. Just because something is innovative does not mean it is just. Just because something is not prison does not mean it is good or without collateral consequences.
- ▶ Professionalism, workforces, changing work, fear, algorithms, digitisation - Skilled helpers? Skilled technicians? Replaceable with cheaper options? (See Mike Nellis, 2017)
- ▶ Overarching context of austerity and politicisation alongside agendas for digitisation and integration of justice.



Scotland: Main Recommendations

- ▶ Introduce the option of a supervision requirement to EM modalities and/or add option of EM as a condition to other types of orders.
- ▶ Clarify national breach criteria and language, and consolidate non-compliance reporting timeframes and processes to foster more consistency across Scotland.
- ▶ Introduce mechanisms which motivate and reward compliance.
- ▶ ✓ Abolish statutory exclusion for Home Detention Curfews (HDC) which permanently excludes prisoners who breached HDC in past.
- ▶ Follow Scandinavian and Dutch approaches which focus on penal goals and supporting rehabilitation, reintegration and desistance.
- ▶ More research with monitored people, families, victims.
- ▶ Communication: more awareness-raising among media, public, the parliament, professionals and volunteers.

Electronic monitoring offers a versatile and flexible tool in trying to reduce Scotland's swollen prison population, but its use must be proportionate, ethical and not in isolation.

Visions of advancing digital justice and criminal justice in need to be interconnected with agendas and visions of advancing social justice and a more just Scotland.

Instead of simply focusing on when and where a person must be curfewed to or excluded from, we can learn valuable insights from how European neighbours, like the Netherlands and Scandinavian countries, use electronic monitoring. Approaches in these countries focus on **rehabilitation, reintegration and desistance** to promote pursuit of meaningful lives during and after monitoring has finished, and promotion of universal rights, access to social goods/resources.

In Scotland, we should consider more imaginative uses which include *meaningful* activities and community-based supports for desistance. This might involve work, volunteering and meaningful community service activities, education, the arts, social enterprise, peer mentoring, attending a recovery group, family/parenting activities focused on parenting.

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- ▶ EU-funded Scottish and European research resources available at: <http://emeu.leeds.ac.uk/>