

County of Santa Clara

Office of the County Executive

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MEMORANDUM

TO: Honorable Board of Supervisors
Jeffrey V. Smith, M.D., J.D., County Executive

FROM: Miguel Márquez, Chief Operating Officer ^{DS}
Matthew Fisk, Director of the Office of Pre-Trial Services ^{DS} **MF**

RE: **Off-Agenda Report Relating to Alternatives to Electronic Monitoring**

DATE: February 9, 2022

This report responds to an off-agenda memo request by Supervisor Ellenberg at the September 28, 2021, Board of Supervisors Meeting regarding results seen from and possible alternatives to electronic monitoring, whether the technology is useful, and whether judges would consider something less punitive or invasive (Item #76).

Off-Agenda Report Referral and Breakdown of Questions:

1. What results have been seen from electronic monitoring (EM)?
2. Is EM technology useful?
3. What possible alternatives to EM exist, and are those technologies useful?
4. Court Question: Would judges consider something less punitive or invasive?

1. & 2. EM Results Seen and if the Technology is Useful:

One third of Pretrial clients benefit from EM. In 10 years, the County has successfully tripled out-of-custody pretrial populations (from 1000 up to 3000) while safely reducing the jail population by about half (4400 to 2000-2500). The County's justice partners progressed safely, fairly, and cost-effectively, while sustaining performance rates of 95% New Crime Conviction-Free, 94% Technical Violation Conviction-Free, and 71% of Clients Attending All Court Hearings. EM, so far, has enabled significant success, safely enabling thousands of clients to exit jails, to resume community life, to anchor supportive services, and to build personal platforms, leading healthier, safer, more productive lives.

In contrast with many defendants who remain incarcerated, EM clients tend to face their day of trial with meaningful and favorable progress to demonstrate to the Court and other parties.

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Over about 2½ years, the total number of clients on EM rose rapidly (from 250 to 1000 at any one time) with increasing trust from the judiciary and justice partners, which is predicated on ongoing successful safety and performance by Pretrial Services, justice partners, and the clients we serve.

Annual EM costs are \$1 million for staff plus \$1 million for services (\$2m). The cost to incarcerate these clients would be much higher, both to the public fisc and to the society we serve.

EM Performance:

Between 12/1/2020 and 12/1/2021, 1311 distinct individuals were active on 1665 distinct cases and were ordered to 2304 devices. The Court ordered EM as a condition of pretrial release with GPS, continuous alcohol monitoring (CAM), and/or remote breathalyzer monitoring (RB). The following points illustrate the usefulness and purpose of EM:

- a. EM Alternatives: Undoubtedly, the most likely EM alternative is jail itself. It is a futile effort to attempt to accurately compare EM groups to less risky groups like supervised/own recognizance release (SORP/ORP), bail, or community programs.
- b. Fiscal & Societal Savings: 1000's of clients have bridged from jails to community supervision, instead of languishing in jails and incurring collaterally damaging effects. Many relevant subject matter experts consider jail among the highest criminogenic factors.
- c. Increasing EM Clientload: In 2 ½ years, client loads safely and successfully rose (from 250 to 1000 clients) while sustaining relatively high-performance success rates and meeting diverse and dynamic needs, thanks to trust, planning, and teamwork.

Accurate EM performance must be measured upon case closure. Monthly rates indicate monthly successes and failures by considering the total of active cases and the average total of cases closed monthly. Of the 1244 cases closed between 12/1/20 and 12/2/21, 806 (65%) succeeded and 438 failed. Less concerning were the failures to appear (FTA), which skew the overall rates with 324 (74%) of the 438 failures. Performance goals are, in order of priority: (1) no new crime convictions, (2) no technical violation convictions, and (3) no FTAs. FTAs have been the lion's share of failures. Successful clients had no new crime convictions, no new technical violation convictions, and no new FTAs (attended all set court hearings).

Of the 438 closed failure cases:

- New Crime Convictions: 96% success, only 46 (4%) of 1244 closed cases were convicted for new crimes.
- Technical Violation Convictions: 94% success, only 69 (6%) of closed cases convicted for new technical violations.
- FTA: 74% success, only 324 (26%) of clients failed to appear at one or more of all set hearings.

Monthly Active Client Load Success Rate: Of the average current client load of 1000, about 963 (96%) of clients/cases succeed monthly, and 37 (4%) of active cases fail monthly, mostly FTA (74% of violations). Successful clients receive no new convictions and miss no hearings.

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3. Possible Alternatives to EM and if the Technology is Useful:

Justice partners typically share the pretrial justice philosophy of applying *the least restrictive conditions reasonably necessary to assure public safety, court order compliance, and court attendance*, thereby mitigating risk, promoting public safety and justice, and benefitting all. At no cost to clients, EM promotes safe services and behaviors by providing services accessibly and fairly to all parties; alleged victims, and clients. EM helps clients and families resume community life safely and productively while preparing for court. EM alternatives realistically include:

- a. The most likely EM alternative is to simply remain in jail or once sentenced, to return to jail.
- b. However, if a client meets the following criteria:
 1. Actively, positively engaged for a meaningful timeframe, like 90 days, or more,
 2. Without victim-related concerns (Victims are persons, places, or properties),
 3. Without menacing or egregious charges, (no active/imminent safety threats),
 4. Proven able and willing to obey all conditions (safety, compliance, attendance),
 5. Earned a supporting written rationale from their PTS officer/PTS supervisor

then, the Court may reconsider less structured and restrictive supports, such as:

1. in or out-patient treatment programs and/or supportive housing (Court-ordered)
2. engage with supportive and effective community programs, accountable to the Court
3. own recognizance (ORs—reminders to comply and be accountable to the Court

Judges in their discretion order feasible EM alternatives, and PTS strives to fulfil them. Well-planned orders carry force and effect, foster compliance, and ensure accountability to the Court and public. These orders demand timely and consistent action, managing and reporting positive progress and concerning behaviors. Carefully structured supervised releases support safety and success, often first with PTS to support and to methodically incentivize clients to less restrictive plans.

4. Court Question:

Whether Judges Would Consider Something Less Punitive or Invasive? This question is appropriate for the Court given its inherent authority and mission. Local judges and leaders are well-respected for continuously considering, testing, and leveraging less punitive or less invasive options whenever available and appropriate. Judges continuously seek and embrace tools to meet diverse, dynamic, and critical needs.

CC: Chief Board Aides
James R. Williams, County Counsel
Tiffany Lennear, Clerk of the Board of Supervisors
Mary Ann Barrous, Agenda Review Administrator