



# BRIEFING NOTE REGARDING ELECTRONIC MONITORING

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Putting Safety and Security First



## **BRIEFING NOTE REGARDING ELECTRONIC MONITORING**

### ***What's the Issue?***

Highly effective, electronic GPS technology for the monitoring and tracking of select high risk offenders is now available, authorized and desired by law enforcement authorities but it is frequently not deployed because of an absence of a provincial program for that purpose. This deficiency misses the opportunity for enhanced public safety as well as significant cost savings through reduced custody in appropriate circumstances.

Electronic monitoring (EM) has special application as a proactive, crime prevention tool and is especially applicable in cases of the highest public priority such as protection from released sex offenders, domestic violence offenders and disruption of gang member activities. The imposition of EM is done through conditions imposed by court order or releasing authority but without a provincial EM program, this tool and the enhanced protection it offers, is going unused.

### ***Discussion***

Electronic Monitoring of offenders is a public safety tool in Canada that was first utilized in the late 90's in different jurisdictions (Ontario, N.S.) to ensure compliance with so called 'house arrest' orders made pursuant to conditional sentences. The legal basis for including EM has been the generic authority of a court or releasing authority to impose such other conditions 'as may be appropriate'. Over the years this use of EM as part of supervised release has expanded to all aspects of the justice system including bail, sentencing (probation) and provincial parole. Provincial jurisdictions are just now implementing measures to take full advantage of this new, incredibly cost effective, force multiplying, and public safety tool.

In more recent years, with the addition of GPS tracking and capacity to create approved and 'no go' zones, the technology has dramatically improved as has its spectrum of applications. EM is also now used for terrorism extradition cases (*R. v. Diab*) and in all of the security certificate cases when bail has been granted (Immigration and Refugee Protection Act).

As a result of a recent (2007) extensive review of federal Corrections, the federal government launched a successful pilot project of EM use on federal parolees in the province of Ontario. This resulted in amendments to the federal Corrections and Conditional Release Act (CCRA) to expressly authorize the use of EM which were contained in C-43 that expired on prorogation but which are anticipated to be re-introduced in like legislation in the near future. Having a provincial EM program means EM could also be offered on a billed basis as an enhanced supervision tool for federal parole or statutory releases in any Province where offenders are released.

The constitutional validity of non specific language used to order electronic monitoring (EM) has recently been expressly upheld in *Charkaoui v. Canada (Citizenship and Immigration)* [2007] 1 S.C.R. 350. In that case, electronic monitoring imposed as part of interim release on a security certificate application by the Crown under the Immigration and Refugee Protection Act (IRPA) was specifically determined to be constitutional.

This movement to improved enforcement of court supervision orders was further strengthened by the recent enactment of amendments to sections 810.1, 810.2 and 810.01 of the Criminal Code whereby the use of electronic monitoring and tracking technology is now expressly authorized. These sections, themselves enacted in the late 90's, give courts the power to impose preventive supervisory orders in defined circumstances of present and continuing public safety risk based on past behaviour. They were enacted following horrific crimes committed by repeat offenders who were either on conditional release or who had finished their sentence but were still at high risk.

The amendments to specifically allow for EM and to extend the supervision term were enacted by the new federal government in 2008 and 2009. While this is an obviously welcome public safety enhancement, the amendment imposes the pre condition that the order can only be made "...if the Attorney General makes the request..." Such a request pre supposes the ability to deliver the EM through a provincial program.

Thus, in order to be able to take advantage of this important tool for use in relation to among the highest risk offenders, a Province *must* have an electronic monitoring program available. This practical reality was also recently demonstrated in Alberta in *R. v. Geddes* (June 2008) when a Superior Court Justice ordered the release of a person and directed that the person be subjected to electronic monitoring which, at least initially, appeared to be outside existing provincial capacity.

This public safety deficiency does *not* need to continue. In order to address this problem, a Red Deer GPS technology company has created a new entity (*SafeTracks GPS Canada Inc.*) that is Alberta based with requisite monitoring and law enforcement response protocols prepared.

# APPLICATIONS FOR ANKLE BRACELETS

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Electronic monitoring and tracking (EMT) offers a cost effective enhanced supervision of individuals who are determined by a designated process to pose a public safety risk. There are a variety of types of applications where EMT is specifically applicable including circumstances of domestic violence where the goal is to prevent the occurrence or re-occurrence of such behaviour. As in other areas, the direction for an individual to be subject to EMT in release circumstances must come from a statutorily designated authority which is exercising a discretionary release power. This Note summarizes those applications or vehicles through which EMT can be ordered in conditional release circumstances. Attached as Appendix '1' to this Note is a review of the legal authority for the imposition of EMT including in circumstances where non specific language is used in the relevant statutory provisions. In summary, EMT can be ordered in all circumstances where the releasing authority concludes that such a condition is desirable.

## **1. Preventive Recognizances - s. 810 and s. 810.2**

These orders permit a provincial court judge to require an individual to enter into and abide by a supervisory order designed to prevent the occurrence of anticipated harm. They do not require the pre condition of a criminal charge or conviction although are increasingly used when a high risk offender has completed a court imposed sentence but is still viewed as posing a risk of offending.

Section 810 is the original 'peace bond' section requiring simply a court's conclusion that reasonable grounds exist for a person's belief that the person involved "...will cause personal injury to him or her or to his or her spouse or common-law partner or child or will damage his or her property." In light of the expansion of specific criminal offences associated with domestic violence (uttering threats, criminal harassment) the use of EMT on just a s. 810 peace bond is less likely.

Section 810.2 anticipates a broader application in that "Any person who fears on reasonable grounds that another person will commit a serious personal injury offence, as that expression is defined in section 752, may, with the consent of the Attorney General, lay an information before a provincial court judge, whether or not the person or persons in respect of whom it is feared that the offence will be committed are named." Serious personal injury offence includes the predicate offences involving domestic violence and thus this section, for example, could be used where a person has finished a court sentence for a domestic violence crime (or other crime) and reasonable grounds exist to believe the person will commit a domestic assault. As a result of a recent amendment (C-2) which came into effect in July 2008, section 810.2 (4.1) (b) specifically authorizes imposition of EMT if the AG requests it.

## **2. Bail (first instance- s.515 (e.2) or pending appeal- s.816(1) or as young offender)**

A person charged with a criminal offence can be released on pre trial bail with conditions that could include EMT.

## **3. Sentencing (Probation Orders-732.1 (g.3)/Conditional Sentences-742.3(e.1))**

Courts have the power at sentencing as part of a sentence that includes imprisonment or not, to issue non custodial supervision orders that could include EMT. Conditional sentences are frequently (inaccurately) known as 'house arrest' in that they often include restrictions that confine a person to their residence with only specified exceptions. Some offences which might be domestic violence offences are now excluded from conditional sentences but could still include a probationary term that ordered EMT.

## **4. Conditional release from incarceration**

- a) Federal Release-Corrections and Conditional Release Act 133(3.1)  
[Parole/Statutory Release or Long Term Offender Orders- 134.1 (2.1) (eg: Daniel Gratton)]
- b) Provincial Temporary Absence for sentences less than 2 years (Alberta Corrections Act S.27(2))

A releasing authority also is created in both federal and provincial paroling authorities. It is noteworthy that Alberta Corrections was already (quietly) using EMT on select provincial early releases and in June 2008 the federal government announced a pilot project for federal parolee releases using EMT.

## **5. Immigration and Refugee Protection Act (IRPA) removals**

- a) Release by Officer  
>56
- b) Immigration Division Release  
>58(3)
- c) Stay of removal order  
>68(2)

It is entirely possible that a non citizen may be ordered removed from Canada for criminality including domestic violence and a similar releasing authority exists pending removal which thus creates a potential risk. The above noted sections reference the different release situations and it is noteworthy that the most serious public risk cases are ones under this Act on the five security certificate individuals, one of whom's case (Adil Charkaoui) was considered by the Supreme Court of Canada and upheld the constitutional validity of EMT with non specific authorizing language as contained in IRPA (see Appendix 1)

**CONCLUSION:** Lawful authority exists for the use of EMT in all legal mechanisms of release conditional cases.

***Recommendations:***

- 1. Provinces should create a Provincial Electronic Monitoring Program for application to releases from custody, including in DV cases, made pursuant to bail, sentencing (probation and conditional sentence), correctional release (federal and provincial), preventive recognizances, or other release from custody (criminal deportees awaiting removal etc..) orders including, if necessary, for federal (non-Criminal Code) releases on a billed basis.**
- 2. This Provincial Program, should stipulate that the GPS Ankle Bracelets are operated by a Canadian company, that collects, stores, and monitors in Canada. This will keep the program in line with the Canadian Privacy regulations.**
- 3. Police agencies across Canada can also access GPS Ankle Bracelets as well, by working with the Crown Prosecution Service and providing the Court with their requests for preventive recognizances pursuant to the Criminal Code to obtain appropriate supervision conditions on high risk offenders.**
- 4. Funding for the Program should come from any or all existing revenues, proceeds of crime/civil asset forfeiture, specialized Community Safety grants or Federal Crime Prevention Grants.**
- 5. Funding should also be explored by local Cities, through a Safe Community program. Involving City Stakeholders, and their citizens, can create increased public safety and result in real and positive change to our communities.**

Respectfully,

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