

**SUPREME COURT OF COLORADO
OFFICE OF THE CHIEF JUSTICE**

**DIRECTIVE CONCERNING THE UTILIZATION OF ELECTRONIC
MONITORING IN PROBATION**

PURPOSE

To provide uniform policy and procedure for the use of electronic location monitoring devices in probation. This Chief Justice Directive does not address other technologies utilized for supervision, such as telephone reporting or remote breath devices which register location at the time of testing.

I. POLICY STATEMENT

The primary purposes of using electronic monitoring in probation are to measure compliance with court ordered restrictions on movement in the community, to monitor abstinence from alcohol, and to provide intermediate responses for violations of supervision conditions. Such monitoring reduces demand upon secure incarceration, while allowing probationers access to treatment and work opportunities in the community. Judicial personnel do not usually perform continuous supervision of device alerts and violations outside the hours of 8:00 am to 5:00 pm, on business days. All electronic monitoring devices are monitored in retrospect, to varying degrees, and are not capable of preventing crime or fully abating community or victim safety concerns.

All Colorado probation departments shall develop local policy and procedures consistent with this Chief Justice Directive and Standards for Probation. Such policy and procedures shall establish criteria for probationer selection and matching the probationer (based on assessed risk) to the most appropriate type of monitoring, officer authority to set curfews and initiate home detention, initiating and terminating monitoring, victim notification, procedures for response to and documentation of violations, the recommended length of time for use of electronic monitoring, and cost recovery criteria and procedures.

II. APPLICABILITY

Supervision of all adult and juvenile probationers.

III. RESTRICTIONS

Section 18-6-801(4), C.R.S., Domestic Violence-sentencing: No person accused or convicted of a crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in §18-6-800.3(1), C.R.S., shall be eligible for home detention in the home of the victim, pursuant to §§18-1.3-105 or 18-1.3-106, C.R.S.

IV. DEFINITIONS

Electronic Monitoring: the attachment of an electronic device to a probationer and/or placement of an electronic device in a probationer's home that provides electronically transmitted information that can be used to identify the current or past whereabouts of the client relative to court ordered restrictions on movement, or that can detect through transdermal alcohol technology that a probationer has consumed alcohol. The three forms of electronic monitoring used in probation are continuous alcohol monitoring (CAM), electronic home monitoring (EHM), and global positioning satellite (GPS).

Continuous Alcohol Monitoring (CAM): a device that continuously and automatically tests the probationer's transdermal alcohol concentration at intermittent time periods, regardless of the person's location.

Electronic Home Monitoring (EHM): a device that uses radio frequency to monitor a probationer's movement in and out of a specific range (most frequently their residence).

Global Positioning Satellite (GPS): a device that uses satellite navigation to determine the movement, geographic position, and location of a probationer to whom it is attached.

- Active GPS: a device that continuously records location information (as frequently as one point every 15 seconds but no less than one point per minute) and uploads said location information no less than once per hour.
- Passive GPS: a device that continuously records location information (as frequently as one point every 15 seconds but no less than one point per minute) and reports said location information either on a pre-set schedule (no less than once every 12 hours) or on an "on demand" basis.

Full-Service Contractor Monitoring: a service package provided by vendors, including:

- installation/removal of equipment
- explanation of rules and requirements to probationers
- continuous supervision and review of a probationer's daily activities, compliance, alerts, and violations, at minimum, between the hours of 8:00am-5:00pm, Monday through Friday
- providing notification to probation of prioritized alerts/violations, as designated by the Judicial Department
- performance of field maintenance

V. GENERAL PROCEDURES, ELIGIBILITY, AND RESTRICTIONS

Only the state approved electronic monitoring vendor(s) shall be utilized, except for cases involving probationers who live outside the State of Colorado.

Narratives. The dates on which a probationer is placed on and removed from an electronic monitoring device shall be documented in case narratives within the Judicial Department case management system.

EHM. EHM is to be used when it is necessary to restrict the probationer's movement to certain hours/times of the day when the probationer may or may not be in their primary domicile, but it is not necessary to know the whereabouts of the probationer for an entire 24-hour period. Use of EHM should be prioritized with medium and high-risk adult and juvenile probationers and is appropriate as a behavioral response to violations.

Active GPS. This form of GPS is to be used with probationers for whom it is necessary to have frequent information on the probationer's movement, and there is a need for specific inclusion/exclusion rules, even though, as set forth in Section VIII of this CJD, probation staffing does not allow for immediate responses to alerts. Use of GPS should be prioritized with high-risk probationers.

Passive GPS. This form of GPS is to be used with probationers for whom it is necessary to have a next day record of the probationer's movement in the community and when there is no need for specific inclusion/exclusion rules, even though, as set forth in Section VIII of this CJD, probation staffing does not allow for immediate responses to alerts. Use of GPS should be prioritized with high-risk probationers.

CAM. CAM is to be used with probationers in the following circumstances:

- As a condition of probation ordered by the court to monitor abstinence from alcohol, including in compliance with §42-4-1307, C.R.S.
- As a proactive and behavior-change tool to help alcohol-involved clients on probation and in problem-solving courts stay sober or to address responsivity by lessening the burden of frequent substance testing.
- As an intermediate behavioral response when probationers are non-compliant with traditional alcohol testing.

VI. COURT ORDERS

If a court order requires GPS, EHM, or CAM with radio frequency monitoring for a specific period of time, monitoring shall terminate at the conclusion of that period, unless the court issues an order extending the period. If the court's order requires monitoring for an indefinite period of time or for the entire term of probation supervision, the probation officer shall not terminate the monitoring prior to the expiration of the term of probation supervision without a court order.

GPS: No probationer shall be placed on or removed from a GPS device without a specific court order, or the requirement having been included in the terms and conditions for the probationer. If the court's order requires a particular type of GPS monitoring (i.e., active or passive), the probation officer shall not move the probationer to a different type of monitoring without a court order. If the court does not order a specific type of monitoring (i.e., active or passive), the probation department will use its discretion to determine the appropriate type.

EHM: No probationer shall be placed on or removed from an EHM device without a specific court order, or the requirement having been included in the terms and conditions for the probationer.

CAM: When utilized to measure a probationer's transdermal alcohol content only, a court order is not required for the imposition of CAM. However, if a CAM device is also being utilized to track a probationer's movement via radio frequency (EHM) technology, a probationer may not be placed on or removed from such a device without a specific court order, or the requirement having been included in the terms and conditions for the probationer.

VII. PAYMENT

Costs associated with electronic monitoring are to be paid to the awarded vendor(s) by the probation department. These costs may be reassigned to the probationer through the cost recovery process.

VIII. VIOLATION RESPONSE

Probation staffing does not allow for immediate responses to alerts in the community. Probation officers are subject to FLSA regulations which prohibit work beyond 40 hours per week without prior approval of their supervisor. On-call time is considered regular work hours. Due to the staffing and regulatory barriers to immediate response to alerts, the maximum time threshold for a response following notification of an alert is close of the next business day. Local policy shall not exceed this limit and shall guide responses consistent with Standards for Probation.

IX. VICTIM NOTIFICATION CASES

In any case wherein the victim has the right to notification and has requested said notification, the probation department shall comply with Victim Rights Act statutes.

X. TRAINING

Prior to use of the equipment and in accordance with Standards for Probation, probation officers shall complete training on the capabilities, probation officer user enrollment, probationer enrollment and disenrollment, and installation, and de-installation (in districts responsible for their own installs/de-installs) of EHM, GPS, and CAM which includes radio frequency location tracking..

XI. PROBATIONER CONTRACT

Every probationer, regardless of the technology employed, shall be informed in writing and by signature acknowledge receipt of the information below. In cases where an approved vendor is providing full-service contractor monitoring, it is appropriate for the vendor to provide this information to the probationer. In the absence of full-service contractor monitoring, probation shall be responsible for the written notification. Probation shall notify the probationer if, via the cost-recovery process, the probationer will be responsible for the costs of electronic monitoring. Information to be provided to probationers includes:

- The type of electronic monitoring to be used.
- The general nature of restrictions on the probationer's movement/behaviors associated with the use of electronic monitoring.
- Any restrictions or requirements relative to the use or availability of phone service;
- The financial and legal liabilities the probationer will assume related to the use of the electronic monitoring equipment should the equipment be lost, stolen, or irreparably damaged while in the probationer's possession.

XII. RELEASE OF RECORDS

GPS/EHM records are public records in non-JD cases and must be released upon request. In JD cases, GPS/EHM records are not public records and may only be released to the district attorney, the probationer, the probationer's attorney, the Division of Youth Services (DYS), or a person/entity listed in

§19-1-304(1)(c)(III) through (XI), C.R.S. Anyone else who wishes to access those JD records must obtain a court order, search warrant, or Release of Information (ROI).

Done at Denver this 24 day of October, 2023.

Effective Upon Signature.

/s/

Brian D. Boatright Chief Justice