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Current uses of electronic monitoring in the Netherlands

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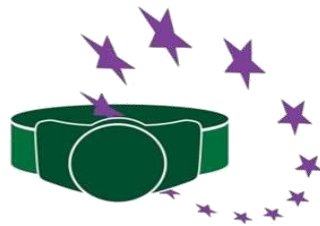
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Current Uses of Electronic Monitoring in the Netherlands



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Acronyms and abbreviations

AP	Addiction Probation Service (Stichting Verslavingsreclassering GGZ)
CC	Criminal Code (Wetboek van Strafrecht)
CFCR	Central Facility Conditional Release (Centrale Voorziening Voorwaardelijke Invrijheidstelling)
CIA	Custodial Institutions Agency (Dienst Justitiele Inrichtingen)
CPC	Criminal Procedure Code (Wetboek van Strafvordering)
DPS	Dutch Probation Service (Reclassering Nederland)
GPS	Global Positioning System (satellite tracking)
LBB	Landelijke Bijzondere Bijstandseenheid (National Special Assistance Unit)
LBS	Location Based Services
PFA	Penitentiary Facility Administration (Penitentiaire Inrichting Administratief)
PM	Penitentiary Measure (Penitentiaire Maatregel)
PPA	Penitentiary Principles Act (Penitentiaire Beginselenwet)
PS	Prison Service
RFID	Radio Frequency Identification
RISc	Recidive Inschattings Schalen (Risk assessment scale)
TSS	Transport and Support Service (Dienst Vervoer en Ondersteuning)

Glossary

Advisor	Employee of the probation service who writes social enquiry reports
Alarm	Message generated by the monitoring equipment and displayed in the monitoring software, requiring action from monitoring officers
Council Chamber	Court at the pre-trial stage
Fieldworker	Technician employed by the Transport and Support Service
Mandator	The authority ordering electronic monitoring; judiciary, Public Prosecution Service or Prison Service
Monitoring officer	Employee who works at the monitoring centre of Tyco
Notification	Message generated by the monitoring equipment and displayed in the monitoring software
Participant	Person under electronic monitoring
Prison governor	Head of the prison
Probation officer	Employee of the Dutch Probation Service, the Addiction Probation Service or the Salvation Army Child Protection and Probation Service
Probation service	When no reference is made to a specific probation organisation, 'probation service' must be read as 'one of the three probation organisations'
Selection officer	Employee of the Selection Officers Agency of the CIA (Bureau Selectiefunctionarissen)

Violation

Breach of a supervision condition to which EM is attached or any other condition imposed

Introduction and political background of EM in the Netherlands

This report describes in detail the current use of electronic monitoring (EM) in the Netherlands. The research forms part of an EU-funded comparative research study involving five jurisdictions, namely: Belgium, England & Wales, Germany, the Netherlands and Scotland. The research involved a partnership between academics in five universities: University of Leeds (England & Wales), University of Stirling (Scotland), University of Greifswald (Germany), Free University Bruxelles (Belgium) and Utrecht University (the Netherlands). This comparative research focuses on the potential of electronic monitoring to provide a credible and workable alternative to imprisonment. As such, the empirical findings from the five jurisdictions will fill a significant knowledge gap about the capacity of EM to operate as an alternative to imprisonment and inform on best practices to enhance its effectiveness and ensure its legal, ethical and humane use across Europe. The report is based on observations within the organisations involved in the implementation of EM and 36 interviews with practitioners. The structure of this research report and the way in which headings are organized is a replication of a format adopted consistently across the five country reports.ⁱ

Before describing the results of our own research, we start with a short overview of the history of EM in the Netherlands. Van Gestel (1998) describes how the debate on electronic monitoring started in the Netherlands and how eventually the first pilot was initiated. The first Dutch media publication on the use of electronic monitoring in the United States, where it originated, came in 1987. In this period, the Dutch government was looking for solutions to ease prison overcrowding and cell shortage. Against this background, it was no surprise that the possibility of electronic monitoring was quickly picked up by politicians. In 1988, a working group was installed to explore the potential of electronic house arrest for providing an alternative to imprisonment. This working group came to be known as the ‘Schalken Committee’. In its report, the committee suggested that electronic house arrest could be valuable in terms of rehabilitation, provided that it would be combined with an intensive support program and ‘meaningful activities’ such as schooling or work. It also stated that electronic house arrest could have an economizing effect, with the sidenote that this effect could be reduced by effects of ‘net-widening’, which means including people in the penal system that otherwise would have been kept out. The committee further advised giving judges the exclusive authority for imposing electronic house arrest in order to prevent arbitrariness. Some other concerns were expressed regarding the intrusiveness of the modality and how continuous control may be interpreted as a sign of distrust towards the monitored person. All in all, the committee did not take a clear position but instead pointed at the importance of a broad debate on the desirability of electronic house arrest. This debate started across a wide range of organizations and culminated in a symposium in 1990. The majority of the persons present were not enthusiastic about the implementation of electronic house arrest either in the context of custody, as an alternative to detention or towards the end of a prison sentence (Van Gestel, 1998).

Following this symposium, the advice was formulated to refrain from electronic house arrest while other alternatives were being explored. Two years later, however, a new report was

published in which electronic monitoring was again presented as a potential economizing instrument. Eventually, in 1994, a newly formed project group sent a recommendation to the Minister of Justice, in which it advised starting a pilot with electronic house arrest in two forms: in combination with a community service order and as an alternative to the last phase of a prison sentence in the context of detention phasing. This plan was approved and in 1995 a two-year experiment started in the north of the Netherlands. From the start, the probation service has been the responsible organization for the implementation of EM, despite the earlier resistance within the organisation (Van Gestel 1998).

In 2000, an experiment started with electronic house arrest as an alternative to remand for juvenile offenders. This experiment took place in the Rotterdam region and 23 youngsters participated, which was a lot less than the expected 48. Terlouw and Kamphorst (2002) evaluated the experiment and concluded that the electronic house arrest decreased the youngster's contact with fellow offenders. Other reported benefits were the increased feeling of responsibility and the benefit of being in a trusted environment. On the other hand, the researchers state that the house arrest placed a heavy burden on the household and was labor intensive for the youth probation services (Terlouw & Kamphorst, 2002).

In 2003, facing a pressing cell shortage, the modality of electronic detention or 'home detention' was introduced. Electronic detention could be imposed as a means of executing an unconditional prison sentence of up to 90 days for offenders without a 'security risk' who report themselves to the prison without coercion, so-called self reporters. As opposed to the *electronic supervision modalities* as described above, the sole objective of *electronic detention* was to reduce the shortage of prison cells. It was announced in the 2000 Green Paper 'Sanction in perspective' as an alternative for short prison sentences that could annually save the Dutch taxpayer 115 million guilders, but that did not have a rehabilitative function. Between 2003 and 2005, 2145 offenders were placed under electronic detention, of which 1998 successfully finished the detention. Contrary to the rehabilitative forms of electronic monitoring, it was not the Dutch Probation Service that was made responsible for the execution of electronic detention, but the Prison Service of the Department of Justice (DJI). The Inspection for Sentencing Implementation was rather positive about the use of the electronic detention modality. Despite the fact that the offenders involved usually belonged to the medium risk category of offenders, actual recidivism was relatively low. It concluded in its inspection report that electronic detention was an effective alternative for a short prison sentence. However, the implementation could be improved. The Inspection observed considerable differences between the five regio's and noted that, contrary to the regulations, home visits and work inspections were not always made (Inspectie voor de sanctietoepassing 2007).

Electronic detention was also heavily criticized. The Council for the Administration of Criminal Justice and the Protection of Juveniles (RSJ) emphasized that home detention should always be combined with some form of support or assistance and that the prisoner should have the opportunity to work. Furthermore, the Council stated that the principal goals of home detention in terms of retribution, deterrence and rehabilitation would have to be made explicit. This point is also emphasized by Van Swaaningen & Uit Beijerse, who are concerned that the

main rationale behind any form of electronic monitoring simply tends to be cost reduction (Van Swaaningen & Uit Beijerse, 2013). In June 2010, the Minister of Justice decided to end the practice of electronic detention awaiting new legislation that would codify EM as a principal punishment and as a condition to suspend remand (Van Swaaningen & Uit Beijerse 2013, p. 181). However, this bill never came into force, because the need for home detention as a substitute for prison declined in the context of a cell surplus and the new State Secretary of Security and Justice was personally a strong opponent of EM.

In 2013, the master plan of the Dutch Prison Service for 2013-2018 was published. It describes the intended changes in the prison system aimed at reducing the expenditures of the Prison Service with up to 340 million euros in 2018 (DJI, 2013). Electronic detention is presented as one of the important instruments for realizing these cuts and a new Bill on Electronic Detention was proposed in the same period as the Masterplan DJI. Two modalities are mentioned. The first is the 'backdoor modality' to be applied after half of the prison sentence has been served but before conditional release. The second is the 'front-door modality' which is meant to be a substitution for any prison sentence shorter than six months, unless the possibility for electronic detention is explicitly ruled out in the verdict. It is estimated that the implementation of electronic detention will facilitate the reduction of existing prison capacity by 2033 places. For juvenile offenders, the aim is to increase the imposition of electronic monitoring as an alternative to remand (DJI, 2013).

The second proposal caused a wave of criticism. In the political arena the dominant opinion was that EM was a far too mild alternative for detention. Therefore EM was not acceptable as an alternative for short prison sentences. Most Advice Committees that commented on the Bill were positive on EM as an alternative for short prison sentences, but only if it would become an autonomous sentence that could be imposed by the judge (courts). More enthusiasm existed for the 'back door modality', although several concerns were expressed in relation to this modality as well, in particular concerning the replacement of the existing system of detention phasing by electronic detention and the exclusion of certain groups of prisoners of electronic detention as a result of contraindications and conditions that would be required (RSJ 2013, Boone & Van Hattum 2014).

In September 2014, the electronic detention bill was rejected by the Upper House. Only the Labour Party (PVDA) and the People's Party for Freedom and Democracy (VVD) supported the bill, which was not sufficient for a majority in the senate. To the senate, abolishing the existing system of detention phasing was unacceptable and electronic detention did not provide a workable and legally substantiated alternative. There were concerns about the risk of recidivism for prisoners who would not qualify for electronic detention. Also, the fact that the judge would not be involved in the allocation of electronic detention was criticized (Reclassering Nederland 2014).

To summarize, EM in the Netherlands has had a bit of a slow start and has not yet been accepted as an autonomous alternative for a prison sentence in the sentencing stage. It is used, however, as an instrument to supervise the requirements added to several conditional sentences and measures, as will be described in the first section below.

1. The legal and organisational context of electronic monitoring

1.1 Legal and contractual framework

1.1.1 Legal framework

The Dutch Criminal Code

In the Criminal Code (CC), the option of imposing EM as part of a conditional sentence or at the stage of conditional release from prison is mentioned. Prison sentences up to a maximum of 2 years can be partly or fully suspended. Prison sentences of 2-4 years can be partly suspended to a maximum of 2 years (art. 14a CC). The judge decides whether a conditional sentence is applied and which special conditions are applied. Conditional sentences and conditional release from prison are combined with general and specific conditions. The general conditions mean that the convict should not commit a criminal offence during the probationary period and that the convict, in case of special conditions, cooperates with the probation supervision, which also means cooperation with home visits (art. 14c, under 1 CC). The special conditions are for example a contact ban, a location ban, a curfew, a ban on drugs and/or alcohol and mandatory blood- or urine-testing, mandatory treatment or participating in a behavioural intervention (art 14c, under 2 CC). It is stated that electronic monitoring can be attached to a specific condition (art 14c, under 3 CC). The probation service can advise the court about the necessity and possibility of a conditional sentence and about the specific conditions needed. Electronic monitoring is defined in the law as a special condition of a special condition (EM can be added to a special condition, art. 14c, under 3 CC). It is not specified to which special conditions EM may be attached.

In article 15a, under 4, the possibility of applying EM in the context of conditional release is stated. Up to 2008, prison sentences ended by an early release after two-thirds of the execution. In 2008, conditional release was introduced for offenders with a prison sentence of one year or more (alteration of art. 15 to 15d CC). Exceptions are made for prisoners who are considered to have misbehaved badly during their prison sentence and for prisoners with a high risk of recidivism that cannot properly be managed during supervision. The prosecutor decides whether the conditional release is acceptable and whether specific conditions are necessary. The probation service and the prison governor advise the prosecutor. The probation service supervises the conditional release. When the offender violates the conditions, the probation service informs the prosecutor, who can decide to stop the conditional release and send the offender back to prison. Tagging is considered to be an additional instrument to supervise offenders during the period of conditional release. Again, it is not specified to which special conditions EM may be attached.

With regard to suspension of pre-trial detention it is stated in the Dutch Criminal Procedural Code (CPC) that conditions can be attached that are related to the behaviour of the suspect (art. 80(2) CPC). EM can be applied in this stage of the criminal procedure as well, but it is not specifically included in the CPC.

The Penitentiary Principles Act and the Penitentiary Measure

Since 2003, the use of EM during detention is described in the Penitentiary Principles Act (PPA, *Penitentiaire Beginselenwet, PBW*), which was implemented in 1999.ⁱⁱ Article 15(2) of this act states that prisoners participating in a penitentiary programme can be placed under electronic monitoring for the duration of the programme or for a part of the programme. The Penitentiary Measure (PM, *Penitentiaire Maatregel, PM*),ⁱⁱⁱ article 5-10, states how penitentiary programmes are executed and the role of EM herein.

The general and special conditions that are attached to this programme can be found here as well. EM is applied during at least the first third of the programme. After this period, the necessity of EM is re-evaluated by a selection officer. Based on the behaviour of the prisoner, EM may be continued during the second third of the programme, at the end of which another re-evaluation takes place. After EM has been terminated, the prisoner may again be placed under EM in case of problematic behaviour. The measure states that a selection officer may decide not to place the prisoner under EM in case of another form of 24 hour supervision (such as a stay in a Exodus house or one of the other 3 DEMO institutions aimed at reintegration^{iv}), in case of a penitentiary programme of less than 9 weeks, in case EM harms the reintegration of the prisoner or in case of ‘special circumstances’.

In practice, electronic monitoring is also applied in case of prison leave. In the Penitentiary Principles Act, however, this is not specified. Article 26 of the Penitentiary Principles Act only states that conditions can be attached to prison leave and that the Minister is authorized to determine these conditions.

Notes of the judiciary

In 2010, a note was published aimed at improving the quality of decision-making on the suspension of pre-trial detention.^v This note was developed by the National Consultative Body for Presidents of Criminal Sectors of Courts (*Landelijk Overleg Voorzitters Strafsectoren, LOVS*). In this note, the possibility of electronic house arrest is mentioned. The note states that the judge will need to make sure that, in case he considers electronic monitoring, ‘the necessity, desirability and practicability’ of electronic monitoring is investigated by the probation service. The note further mentions that in case of a risk of absconding electronic house arrest is not effective.

Instructions of the Public Prosecution Service

The tasks and responsibilities of the Public Prosecution Service in the execution of the different modalities of EM are laid down in prosecution instructions (*aanwijzingen*). In 1999, 2005 and 2010, subsequent specific instructions on electronic monitoring were implemented. Since 2015, however, regulations of the use of EM are integrated in the instruction on the execution of conditional prison sentences and the conditional release from pre-trial detention.^{vi}

According to the instruction, the objectives of applying special conditions in the pre-trial or sentencing stage are to prevent recidivism and protect victims. In contrast with the Criminal Code, the instruction does specify to which special conditions EM may be attached. EM may be attached to a movement restriction condition, more specifically a location order or location ban. The probation service needs to investigate whether the use of EM to control a movement restriction condition is feasible. The instruction states that the prosecutor needs to

consider the proportionality of EM because its use seriously impairs the privacy of those under EM. A restraining order can be imposed as a special condition for the purpose of protecting a specific victim. In order to enhance the enforcement of such an order, a location ban may be added as a special condition. This means that the living address of the victim may be appointed as an exclusion zone, which can be monitored with EM. The instruction states that the enforcement of movement restriction conditions is a joint task of the police and the probation service.

The application of EM in the context of conditional release is described in a separate instruction.^{vii} EM can be attached to a movement restriction condition. This instruction also emphasizes that the prosecutor needs to consider the proportionality of EM before imposing it.

Electronic monitoring may also be applied in the context of a conditional *Terbeschikkingstelling (Tbs)*^{viii} or the conditional ending of such a measure. However, the instruction which deals with these modalities does not specify the possibility of EM.^{ix}

Other regulations

A temporary regulation implemented in 2007 states that persons under involuntary commitment who are entitled to leave, can be monitored with an ‘electronic tracking system’ for the period of their leave. According to the regulation, when deciding on the use of EM for these persons, their personal, physical and mental conditions need to be taken into account.^x

Legal status of persons under EM

The legal status of the person under EM depends on the modality in which EM is imposed. In case the person under EM is participating in a penitentiary programme, he is still a prisoner, although not in the sense of staying in a penitentiary institution as the Penitentiary Principles Act (article 1, section e) defines it. Prisoners normally do not qualify for social security. However, those who participate in a programme aimed at reintegration (e.g. a penitentiary programme) do qualify for social security.^{xi}

1.1.2 Contractual framework

In March 2014, after a tender procedure, the Custodial Institutions Agency re-appointed 3M as the provider of EM equipment and monitoring software. A contract for two years was established, which could be extended for two years up to two times. In the same tender procedure, the security company Tyco Integrated Fire and Security (in short: Tyco) was appointed as the provider of the technical monitoring services. A contract for one year was established, which could be extended for one year up to five times. The tender anticipated on the planned transition of the monitoring tasks to the Prison Service itself. In practice, this means that the Transport and Support Service (TSS, in Dutch: Dienst Vervoer en Ondersteuning, DV&O), which is already responsible for the installation, maintenance and de-installation of equipment, will take over the monitoring at some point. However, Tyco will continue its monitoring duties at least until March 2016, when the second term of their contract ends.

1.1.3 Protocols

High Impact Crimes

In 2010, a study was published which described patterns and developments of robbery in the Netherlands (Fijnaut et al., 2010). The definition of robbery mentioned in this study, which is also used by the Dutch police, is “the taking away or extortion of any good, by the use of violence or under threat of violence, targeted at persons who are in a sheltered space or at a planned/organised (value) transport, or the attempt to do so” (ibid: 25) [translation by author]. The study signalled that the recidivism rates among convicts of robbery were relatively high. In 2011, in response to this study, the *Taskforce Overvallen*, a cooperation between public and private parties, advised the Ministry of Security and Justice on measures to be taken to reduce the number of robberies.^{xii} One of the measures to be taken was the extensive use of electronic monitoring, for example in the stage of early release, for convicts of robbery. Eventually, agreements were made between the Dutch Probation Service and the Ministry of Security and Justice to apply a specific policy to convicts of robberies. This included applying EM to convicts of robbery during the whole of their penitentiary programme. The electronic monitoring would continue during the period of conditional release. Initially, the focus of the policy was on convicts of robberies, but this later shifted to the ‘High Impact Crimes’ (HIC), which includes not only robbery but also burglary, mugging and violent crimes. In response to figures indicating an increase in the number of burglaries, in April 2013, the Minister of Security and Justice wrote a letter to the Parliament in which he described the pillars of the HIC-policy.^{xiii} He stated that the fight against High Impact Crimes had ‘top priority’ and emphasized that these crimes have a great impact on victims, their environment and the feeling of security in society as a whole. He wrote that the HIC-policy is characterized by a personalised approach, quick detection of offenders, local preventive measures and special attention to victims of High Impact Crimes. In January 2014, the Minister again emphasized the importance of addressing these crimes and stated that they represent a majority of the crimes committed by repeat offenders. He stated that the focus on High Impact Crimes had contributed to a decline in the occurrence of these crimes. For example, in 2013, 1633 robberies were reported, which was a decrease of 44% compared to 2009. Furthermore, there were 5% less burglaries in 2013 compared to the year before. With the aim of continuing these downward trends, the Minister dictated that convicts of High Impact Crimes who qualify for conditional release should be automatically placed in supervision level 3, which means that they have compulsory meetings with their probation officer every week. Where possible, this supervision would be supported by the use of electronic monitoring.^{xiv} Furthermore, since October 1, 2015, all convicts of robbery have to wear an ankle tag when on prison leave. However, on individual grounds exceptions can be made to this rule.^{xv}

Process documents Dutch Probation Service

The Dutch Probation Service has developed a document in which the practice of EM is described. This includes the registration of the offender, the installation of equipment, dealing with alarms and violations, changes in circumstances, re-installation of equipment, de-

installation of equipment, the conditions for exchanging location data and the declaration of damage to the equipment. Where relevant, when discussing these topics, reference will be made to the document. TSS, Tyco and the probation service use a notification protocol to deal with alarms and violations. There are separate protocols for clients with level 2 GPS, level 3 GPS and RFID. Also, there is a separate sanctioning protocol for penitentiary programmes that describes the actions to be taken by the probation service and Prison Service for different types of violations. Furthermore, there are additional instructions for juveniles and suspects of terrorism. The protocols will be described in the section on breach.

1.1.4 Council of Europe-recommendations

In February 2014 recommendations were accepted by the Committee of Ministers of the Council of Europe on electronic monitoring (Recommendation CM/Rec(2014)4). Like the Prison rules, the European Rules on community sanctions and measures and the Probation rules, these rules must be considered as soft law. Member states have a moral obligation to follow the rules, not a legal one. Only in case these norms are incorporated in national or international jurisprudence can they also become legally binding (Kelk en Boone 2015). Despite that, the rules must be considered as influential, not the least to penitentiary lawyers and penologists. One of the questions of our research was in how far these rules are known among and followed by practitioners. In line with earlier research, most of the practitioners at best knew about the existence of the rules, but not what they exactly consisted of (Ansems & Braams 2016). The rules, however, were well known within the organisation. At the time of our interviews, the rules were about to be translated in Dutch and to be discussed in the two main consultation forms on EM (Landelijk overleg elektronische controle en elektronische controle coördinatoren overleg). Our respondents felt that Dutch practice and regulation were very much in conformity with the European guidelines.

In general, we came to the same conclusion, but we also found some gaps or weaknesses when analysing the recommendations against the background of Dutch practice. According to rule 1, the use, types, duration and modalities of execution of electronic monitoring should be regulated by law. The legal foundation of EC in the Netherlands is, however, very scarce. An explicit foundation for EC is even totally lacking in case EC is used as a condition of a suspension of pre-trial detention and prison-leave. Another serious gap that was also mentioned by one of our respondents is the lack of specific regulation regarding storage, use and sharing of data (rule 29). Also specific regulation is missing in which the use and sharing of this data is strictly restricted to criminal investigations and proceedings (rule 30). Although in general the Netherlands are doing quite well in training its staff, data protection issues are not discussed during the training, despite rule 13 of the recommendations. Another gap concerns the absence of specific government inspections and avenues for the independent monitoring of the agencies responsible for the implementation of electronic monitoring (rule 14). Although in theory this should be a task of the Council of Sentencing Implementation and Youth Protection (RSJ) and Inspection for Security and Justice (IVenJ), (the opportunities for) inspection and supervision are in practice very limited. Contrary to rule 17 of the recommendations, no legislation exists regarding the way time spent under electronic monitoring at the pre-trial stage is compensated when defining the overall duration of any final sanction or measure to be served. A specific

recommendation is formulated regarding the use of EM as a post-release measure after the sentence has been served. According to rule 25, its duration and intrusiveness should be carefully defined. In the recently accepted Bill which introduces long standing (even lifelong) supervision measures for violent and sexual offenders after ending their sentence,^{xvi} EM is just mentioned, but not specified (section 38ab, subsection 3new). Finally, it can be mentioned that foreign born participants are heavily under-represented in the use of EM (section 8), despite the rule that EM should be applied in a non-discriminatory way (rule 7).

1.2 Actors

1.2.1 Decision-making actors

Investigating judge / Council Chamber

The investigating judge may be involved in the decision-making on EM when a suspect has been taken in pre-trial detention and is brought to court within three days. It is possible to be conditionally suspended from pre-trial detention with EM. In practice, however, the possibility of EM is rarely considered at this stage, because there is not enough time to investigate the feasibility of EM. Pre-trial EM is mostly imposed by the Council Chamber, when a suspect is brought before court again to consider suspension. In case of a violation of the conditions, the investigating judge or Council Chamber can decide to revoke the release from pre-trial detention and thus terminate EM.

Sentencing judges

The sentencing judge may decide to impose EM as part of a (partially) conditional prison sentence. In case of violation of the conditions, the sentencing judge can decide to have the prison sentence executed and thus terminate EM.

Public Prosecution Service

Prosecutors may ask the probation service to investigate the practicability of electronic monitoring at the pre-trial stage, sentencing stage, and the stage of conditional release. Although the probation service supervises the conditions to which the suspect or offender can be subjected at these stages, the Public Prosecution Service has final responsibility for the supervision.

Central Facility Conditional Release

The Central Facility Conditional Release (CFCR, *Centrale Voorziening Voorwaardelijke Invrijheidsstelling, CVVI*) is a special department of the Public Prosecution Service involved in the decision-making on conditional release. The CFCR decides on the special conditions to be imposed which may include EM.

Prison Service

The Prison Service is involved in the execution of penitentiary programmes and advises on the stage of conditional release. There are five Penitentiary Facility Administrations (PFA,

Penitentiare Inrichting Administratief, PIA) across the country which are responsible for the execution of the penitentiary programmes in different regions. At the head of each PFA is a manager. As one PFA manager explained, the implementation responsibility for the penitentiary programmes has been placed with the PFA's because these programmes involve specific rules and regulations that the prison governors are not familiar with. The final decision-making on penitentiary programmes, including the conditions to be set and the response to violations, is a responsibility of the Selection Officers Agency (*Bureau Selectiefunctionarissen*) which is located in The Hague and operates nationally. Furthermore, there are six Penitentiary Trajectory Centres (*Penitentiare Trajecten Centra, PTC*) which offer programmes to prisoners in a penitentiary programme.

1.2.2 Supervising/monitoring actors

Dutch Probation Service

The Dutch Probation Service (DPS, *Reclassering Nederland, RN*) can be seen as the main actor in the execution of EM. The organisation is responsible for the supervision of suspects and convicts of 18 years and older.^{xvii} The organization is split up into five regions: East, Middle-North, North-West, South-West and South. At the national level there is a policy officer who is responsible for shaping the execution of EM and maintaining contact with partners in the criminal justice chain. In each region, there are one or two unit managers who have knowledge on EM. These unit managers come together regularly to discuss issues related to EM. There are 10 specific EM-teams across the country, which include a total of 60 EM specialists. This specialism was introduced in 2014 because of the specific knowledge and skills required to work with EM. The idea is that the caseload of EM specialists consists for 70 percent of persons under EM and for 30 percent of persons not under EM. To equip the EM specialists with the necessary skills and knowledge, a 3-day EM-training was introduced, both for those who had been working with EM for some time and for those who were not yet familiar with it. Each EM team is coordinated by an EM coordinator who supervises and guides the work of the specialists. The teams come together every couple of weeks to discuss cases, problems and new developments. Furthermore, the EM coordinators of the different teams come together every six weeks. There are differences between the teams in how the EM specialism is organized. In Amsterdam, the EM specialism is combined with the supervision of penitentiary programmes, whereas in Utrecht, the EM specialists mostly supervise young adults. The tasks of the EM specialists include investigating the practicability of EM, being present when the equipment is installed, working with the EM software, and carrying out the supervision of persons under EM. Offenders of 16-18 years old are usually supervised by youth probation. Offenders of 18-23 years old may also be supervised by youth probation. In these cases, the EM specialist of the Dutch Probation Service only does the technical part of EM. The same goes for those offenders who are supervised by the Salvation Army Child Protection and Probation Service. Each probation region organizes its own backup service (*achterwacht*). This means that outside of office hours (17:00-08:00) a probation officer is available for the monitoring centre in case of alarms and violations.

Addiction Probation Service

The Addiction Probation Service (AP, *Stichting Verslavingsreclassering GGZ, SVG*), the organization specialized in probation for addicted persons, carries out electronic monitoring for offenders with addiction problems independently of the Dutch Probation Service. There are eleven institutions for addiction treatment across the country. Some of these institutions have several locations. At each location there is a probation team, and in each team a so-called attention officer (*aandachtsfunctionaris*) for EM is appointed. This is the person within the team who has specific knowledge on EM and informs his/her colleagues about it. All probation officers within the teams are authorized to carry out supervision with EM. In practice, however, supervision with EM is done by two or three probation officers in most teams. Nationally, there are three EM specialists who coordinate the execution of EM. They inform the attention officers, manage the EM software, and communicate alarms and violations to the supervisor in question. SVG organizes its own backup service at the national level.

Salvation Army Child Protection and Probation Service

The Salvation Army Child Protection and Probation Service (*Leger des Heils Jeugdbescherming & Reclassering, LJ&R*) is the third probation organization in the Netherlands. This organization especially focuses on vulnerable groups in society such as homeless persons. When EM is applied, the Dutch Probation Service is responsible for the technical part of the monitoring and a probation officer of LJ&R carries out the supervision. Electronic monitoring does not play a big role in the probation work of this organization and there are few persons with specific expertise on EM. However, there are plans to organize EM in a similar way as the other probation services.

Tyco Fire & Security

Tyco Fire & Security, a company offering security products and services in about 50 countries worldwide, is currently the operator of the monitoring centre of EM in the Netherlands. At the monitoring centre, incoming alarms and notifications from all persons under EM in the Netherlands (including the Caribbean Netherlands – Bonaire, St. Eustatius and Saba, which had 4 persons under EM as of 13 January 2015) are processed. Based on a protocol, the monitoring officer may call the person under EM, the probation officer, the police or the back office of the Transport and Support Service (TSS, *Dienst Vervoer en Ondersteuning, DV&O*). At Tyco, there are two monitoring officers who are specifically employed for electronic monitoring. From 7 am to 3 pm and from 3 pm to 11 pm, respectively, there is one monitoring officer working on EM full-time. Between 11 pm and 7 am the processing of alarms is done by three other monitoring officers who also have non-EM monitoring tasks (e.g. burglary monitoring). The monitoring officers make use of both the 3M software (which is also used by the probation services and TSS) and Mastermind, which is Tyco's own software program. In agreement with 3M, Tyco also does the cleaning of the EM equipment.

Transport and Support Service

The Transport and Support Service (TSS, *Dienst Vervoer en Ondersteuning, DV&O*) is part of the Custodial Institutions Agency. The main task of this service is the transport of prisoners. It has been involved with EM since September 2014. At that point the 'mobile' tasks (installation,

replacement and de-installation of equipment) were taken over from Tyco. Between September and December 2014, TSS replaced all existing equipment. There were several reasons for the transition of EM tasks to TSS. Firstly, it provided employment for the Prison Service at a time when many people at the Prison Service were at risk of losing their job. Secondly, owning all the equipment instead of being dependent on equipment owned by other parties would be more cost-efficient. Thirdly, the government wanted to store the sensitive data produced by EM on its own servers. Finally, TSS already had the infrastructure needed to organize EM: a monitoring centre, support points across the country and a national coverage. TSS is further characterized by one respondent as an organization with an expansionist mind-set, which means that it is always willing to take on new tasks. The execution of EM by TSS is organized in three divisions: a 'back office' in Assen, a 'Supply' unit in Assen and the National Special Assistance Unit (*Landelijke Bijzondere Bijstandseenheid, LBB*). The back office is responsible for the planning of operations, including the installations, checking, replacing, and de-installation of equipment. Furthermore, they communicate with other parties in case of alarms and technical problems. On weekdays, the back office is equipped by two or three persons at daytime and one person at night. In the weekend, it is equipped by one person. There are 3 shifts: 07:00-16:00, 14:00-23:00, and 23:00-07:00. At the start, the operation of the back office was characterized by improvisation and 'trial and error'. Tyco gave some instructions on the monitoring software but the back office had to build up most of the technical knowledge itself. The Supply unit is responsible for storing and maintaining the equipment and supplying the support points. At the Supply unit there are two persons who have specific expertise on the EM hardware and software. There are three support points across the country: in Rotterdam (in the west), Soesterberg (in the middle) and Zwolle (in the northeast). The LBB works from these support points. These locations were chosen because from there, all of the country can be reached within the maximum of two hours. As an example of the trial-and-error process TSS has been in, initially six support points were created, but after a while it was concluded that it would be more efficient to work from three support points.

The LBB consists of around 100 employees. They have a variety of tasks, including transporting prisoners, collecting fines, guarding hospitals and acting in case of calamities (e.g. prison riots). The 'mobile' EM work is just one of these tasks. At the LBB there are six EM specialists. These were trained by Tyco and have given eight hours of training to all their colleagues. It was decided that all the LBB workers should be able to do EM work because this would increase the flexibility in terms of planning. On weekdays, there is one daytime shift for installations, one daytime shift for technical problems, and one late shift for technical problems at each support point (except in Zwolle, where there is usually no late shift). Additionally, in Soesterberg there is one night shift for technical problems. In the weekend, there is one daytime shift for technical problems, one late shift for technical problems, and one night shift for technical problems in Soesterberg. At night, some LBB workers are consigned, which means that they may be called in case an offender needs to be visited to check the equipment. This is always done by two LBB workers, whereas the installation or de-installation of equipment is usually done by one LBB worker. The fact that EM is just one of the many tasks of the LBB requires some flexibility of the workers. For example, during an EM shift, the LBB workers are equipped with pepper spray and handcuffs, but they are not authorized to prevent someone under EM from escaping, whereas in other roles they are authorized to use force. This is

because in the EM role, they are tied to the Penitentiary Principles Act, whereas in other roles they work under the Police Act.

TSS was initially scheduled to take over the monitoring tasks from Tyco in 2015. The initial plan was that this shift would take place in April or May 2015. However, this turned out to be unfeasible. The EM manager of TSS emphasizes that he wants to make sure that TSS has the required expertise and personnel and can operate more independently from other parties before it takes over the monitoring. Tyco will continue its monitoring duties at least until March 2016. (see subsection 1.1.2)

1.2.3 Other actors

Defence attorneys

In some cases, defence attorneys take the initiative to ask for a feasibility study on the use of EM on their client. They may direct this request towards the prosecutor, judge or probation service. At the pre-trial stage, for example, a defence attorney may feel that the possibility of imposing EM can increase the chance that the client's pre-trial detention will be suspended.

Police

In case a location order, location ban or restraining order has been imposed, but EM has not been imposed, the police have the task of monitoring the movements of the person. However, this happens only on an incidental basis. As one respondent indicates, the police may inform the Public Prosecution Service that electronic monitoring may be a suitable instrument to strengthen the control over an offender. Police officers can also play a role in the decision-making on EM by informing the probation service on the suitability of the proposed living address and possible problems in the neighbourhood. In case EM has been imposed, the police is usually informed about this. The prosecutor may ask the police to inform victims about the fact that the offender is being electronically monitored. Furthermore, when a location ban to be monitored by means of EM is imposed, the police may be involved in victim protection. More specifically, when the probation service and/or decision-maker thinks a specific person runs the risk of being victimised by the offender, the living address of this person may be appointed as an exclusion zone, and the police may be asked to come in action to protect this person in case the offender would enter the exclusion zone at some point.

3M

3M is the provider of electronic monitoring software and equipment. It is responsible for the delivery and maintenance of all EM equipment and EM software and also provides training for users. 3M is a globally operating technology company and its EM department is located in Israel.

SSC-I

The *Shared Service Centre Information* (SSC-I) is the IT service of the Custodial Institutions Agency which manages several governmental software systems. In case of problems with the 3M monitoring software, this service is informed. The SSC-I has little specific knowledge on

the operation of this software and cannot access this software. In case of problems, it operates as a link between the organizations in the field (the probation organizations, TSS) on the one hand, and the software provider (3M) and the webhosting organization ASP4all on the other.

Information management

Information management (Functioneel beheer) is part of SSC-I. At information management, one person is available in case of software problems for four days a week during office hours. This person is also responsible for making changes or additions in the software, for example if a place name is missing, and for removing clients from the system. This service has been assisted by Tyco in dealing with software problems. Several respondents indicate that the knowledge and reachability of this service is insufficient. The Custodial Institutions Agency has plans to re-organize this service to improve its effectiveness.

1.3 Process maps

On the following pages, the different modalities of EM in the Netherlands are discussed. For each modality, the procedure from decision-making to de-installation is visualized in a process map (see appendix 1). These process maps are based on the relevant legislation and on our own empirical findings.

1.3.1 Pre-trial

At the pre-trial stage, EM may be imposed to monitor one or more conditions attached to the suspension of pre-trial detention (location ban and/or location order). The possibility of EM may be suggested by several actors. It may be suggested by the investigating judge who hears the suspect within 3 days after being arrested. However, EM is usually not imposed at such an early stage because the probation service needs some time to investigate the feasibility of EM. At a later stage, EM may be suggested by the Public Prosecution Service or the Council Chamber. The initiative may also come from the suspects' defence attorney. If one of these parties has suggested the possibility of EM, a probation officer discusses this with the suspect and asks if he agrees with being placed under EM. If this is the case, a request for an EM partial advice is done through the Digital Desk. This request may be done by a judge, probation officer or prosecutor. An EM specialist of the Dutch Probation Service or probation officer of Addiction Probation investigates the suspects' intended living address to see if the address is suitable and asks for the cohabitants' consent. He communicates the findings, provided with a positive or negative conclusion, to a probation advisor who advises the prosecutor on the conditions. The prosecutor may or may not include EM in the conditions. The Council Chamber eventually decides on suspending the pre-trial detention and on imposing EM. If the detention is suspended and EM is imposed, the probation service sends a registration form to TSS. Normally, TSS installs the equipment on the day that pre-trial detention is suspended. The probation service conducts the supervision of the suspect. When the suspect violates his/her location ban or order or tampers with the equipment, the Tyco monitoring officer receives a notification. The monitoring officer uses a protocol to determine which party needs to be informed. In some cases, the monitoring officer may contact the suspect, for example to urge him/her to leave an exclusion zone. In case of a specific victim the police may be called

in to protect the victim (this element is further addressed in section 6 on breach). In other cases, the monitoring officer informs the probation officer who may contact the suspect immediately or the following day. Depending on the severity of the violation, the probation officer may inform the prosecutor. The prosecutor may settle the violation with a warning or request the Council Chamber to place the participant in pre-trial detention again. The Council Chamber decides whether the conditional suspension is terminated or continued. In case of termination, EM is also ended. TSS de-installs the equipment.

Several respondents state that the use of EM at the pre-trial stage is increasing. This observation can be supported by figures. In 2012, the number of started supervisions with EM at the pre-trial stage was 153 (Reclassering Nederland, 2013), whereas in the first 10 months of 2015, 373 of such supervisions started (according to unpublished figures provided by the Dutch Probation Service). Some respondents indicate that the possibility of EM increases the chance that the Council Chamber will decide to suspend the pre-trial detention. This issue will be further addressed in section 7 on the effectiveness of EM.

1.3.2 Conditional sentence

Electronic monitoring may be used to monitor a location order and/or location ban in the context of a (partially) conditional sentence. If the probation service, judge or prosecutor considers the possibility of a conditional sentence, they may suggest the use of EM. A probation officer discusses this with the suspect and asks if he agrees with being placed under EM. If this is the case, a request for an EM partial advice is done through the Digital Desk. This request may be done by a judge, probation officer or prosecutor. An EM specialist of the Dutch Probation Service or probation officer of Addiction Probation investigates the suspects' intended living address to see if the address is suitable and asks for the cohabitants' consent. He communicates the findings, including a positive or negative conclusion, to a probation advisor who advises the prosecutor on the conditions to be imposed. The prosecutor may or may not include EM in his request. The Council Chamber eventually decides on imposing a (partially) conditional sentence and on imposing EM. If EM is imposed, the probation service sends a registration form to TSS. TSS plans and executes the installation of the equipment. The probation service conducts the supervision of the convict. When the convict violates his/her location ban or order or tampers with the equipment, the Tyco monitoring officer receives a notification. The monitoring officer uses a protocol to determine which party needs to be informed. In some cases, the monitoring officer may contact the convict, for example to urge him/her to leave an exclusion zone. In case of a specific victim the police may be called in to protect the victim. In other cases, the monitoring officer informs the probation officer who may contact the convict immediately or the following day. Depending on the severity of the violation, the probation officer may inform the prosecutor. The prosecutor may settle the violation with a warning or request the judge to execute the prison sentence. The judge decides about this in an execution sitting (*tul-zitting*). When the decision is made to execute the prison sentence, EM is terminated. TSS de-installs the equipment.

Several respondents mention that EM is not often applied at the sentencing stage, a statement that also becomes visible in our figures (Figure 3.3). When it is applied, it is mostly applied to young offenders. Unpublished figures from the Dutch Probation Service (see section

2) indicate that 51 percent of conditional sentences with EM started in 2013 concerned persons of 18 to 24 years old.

1.3.3 Prison leave

Electronic monitoring may be used to monitor a prisoner on leave. In most cases, a selection officer decides on granting leave. In case of regular leave (*regimair verlof*), the prison governor decides. When EM is used to monitor prison leave, GPS equipment is used and a *home unit* is not installed. TSS installs the ankle tag at the prison. The probation service is not involved in the monitoring. However, this application of EM is still in development and is not yet formally regulated. The case manager in the penitentiary facility should ask the probation service to advise on the practicability of EM but in practice the probation service is not always involved.

Penitentiary programmes

The penitentiary programme is referred to by many respondents as the most often used modality of EM. According to figures of the Dutch Probation Service, almost half of the supervisions with EM started in 2013 were in the context of a penitentiary programme. The penitentiary programme is part of detention and is aimed at preparing the prisoner for the return to society. The prisoner lives outside of prison and has activities for at least 26 hours per week. Except when the prisoner follows a *basic* penitentiary programme, the probation service supervises the prisoner. Prisoners serving an unconditional prison sentence of at least six months and with a remaining detention period of between four weeks and one year qualify for a penitentiary programme. The penitentiary programme may last up to one year. Prisoners may enter the penitentiary programme from a closed setting or from an open or half-open setting.

According to the Penitentiary Measure, some exclusion criteria exist for applying EM in a penitentiary programme. More specifically EM is not appropriate if the programme will take eight weeks or less (so-called *basic* penitentiary programmes), in case of another form of 24-hour supervision (e.g. stay in an Exodus house for reintegration), if applying EM would threaten the prisoner's rehabilitation and in case of 'special circumstances' (which are not further specified). In practice, only the first two exclusion criteria seem to be applied. Prisoners who qualify for a *basic* penitentiary programme and are considered as high-risk or sensitive cases may be electronically monitored as well.

When the prisoner is still in prison, a reintegration plan is developed. In this plan, the interventions are described that are needed to prepare the prisoner for reintegration. Both the probation service and the case manager of the institution are involved in this. At a later stage an action plan is developed, in which the possibility of awarding a penitentiary programme is considered. If the prisoner agrees with participating in a penitentiary programme, an EM specialist of the Dutch Probation Service or probation officer of Addiction Probation investigates the prisoner's intended living address to see if the address is suitable and asks for the cohabitants' consent. He communicates the findings, provided with a positive or negative conclusion, to the probation advisor who advises the prison governor on the conditions to be imposed. In case of a high-risk prisoner marked with an execution indicator (*executie-indicator*) the prison governor is also advised by the Public Prosecution Service.^{xviii} The prison governor in turn advises the selection officer on the granting of the penitentiary programme

and the conditions to be set. The selection officer makes the final decision. In case the start date of the programme is months after the decision of the selection officer, a *concretization report* may follow. In this report, written by the probation service, details on the intended working address and living address are included. Furthermore, the cohabitants' consent is rechecked. If there are no problems, TSS plans and executes the installation of the equipment at the prisoner's living address.

When the prisoner violates his/her location ban or order or tampers with the equipment during the programme, the Tyco monitoring officer receives a notification. The monitoring officer uses a protocol to determine which party needs to be informed. In some cases, the monitoring officer may contact the prisoner, for example to urge him/her to leave an exclusion zone. In case of a specific victim the police may be called in to protect the victim. In other cases, the monitoring officer informs the probation officer who may contact the prisoner immediately or the following day. Depending on the severity of the violation, the probation officer may inform the PFA manager. The PFA manager may settle the violation with a warning or request the selection officer to terminate the penitentiary programme. As several respondents in our study indicate, the selection officer usually takes over the advice of the PFA manager. In fact, the PFA manager may have the prisoner re-imprisoned before the selection officer makes the final decision. In case no serious violations occur, the probation officer advises the selection officer on the termination or continuation of EM at one-thirds of the penitentiary programme. If the selection officer decides to terminate EM, TSS de-installs the equipment and the prisoner serves the remainder of the programme without EM. If the selection officer decides to continue EM, the probation officer formulates another advice at two-thirds of the programme. Again, the selection officer may decide to terminate EM or continue EM until the end of the programme. Apart from this periodical re-evaluation of the need of EM, the probation officer can gradually increase the freedom of the prisoner (i.e. decrease the curfew hours) following a calculation model.

1.3.4 Conditional release

Electronic monitoring may be used to monitor a location order and/or location ban at the stage of conditional release. Conditional release can be granted to convicts serving an unconditional prison sentence of more than 1 year. Those who serve a sentence of between one and two years qualify for conditional release if they have served at least one year of this sentence and have served one-third of the remainder of the sentence. Those who serve a sentence of two years or more qualify for conditional release at two-thirds of their sentence. Furthermore, the risk of recidivism needs to be acceptable, there should have been no intolerable behaviour in prison and the convict needs to agree with the conditions attached to the conditional release, of which EM may be a part. If the prisoner qualifies for conditional release, the Central Facility Conditional Release (CFCR) decides which special conditions need to be attached to the conditional release. In case the use of EM is suggested and the convict agrees with this, an EM specialist of the Dutch Probation Service or probation officer of Addiction Probation investigates the prisoner's intended living address to see if the address is suitable and asks for the cohabitants' consent. He communicates the findings, provided with a positive or negative conclusion, to the probation advisor who advises the CFCR on the conditions to be imposed.

Furthermore, the Prison Service and – in case of an execution indicator – the Public Prosecution Service advise the CFCR on the conditions to be imposed. When deciding on the use of EM to supervise the conditions, the CFCR considers its proportionality. The prisoner may have participated in a penitentiary programme at the last stage of detention. In case the prisoner has ended the penitentiary programme without EM, the CFCR usually does not impose EM at the stage of conditional release, because this would imply a decrease in freedom. EM may be imposed when the prisoner has been under EM during the whole of the programme, has not followed a penitentiary programme or has misbehaved at the end of the programme. In case EM is imposed, TSS plans and executes the installation of the equipment at the prisoner's living address.

When the convict violates his/her location ban or order or tampers with the equipment during the programme, the Tyco monitoring officer receives a notification. The monitoring officer may contact the convict, for example to urge him/her to leave an exclusion zone. In case of a specific victim the police may be called in to protect the victim. In other cases, the monitoring officer informs the probation officer who may contact the convict immediately or the following day. Depending on the severity of the violation, the probation officer may inform the CFCR. The CFCR may settle the violation with a warning or advise the judge to terminate the conditional release. In case the conditional release is terminated, TSS de-installs the equipment and the convict returns to prison.

1.3.5 Terbeschikkingstelling (hospital order)

Terbeschikkingstelling (in short: Tbs) is a measure which includes compulsory placement in a psychiatric treatment facility (art. 37 CC). Electronic monitoring can be applied to mentally ill offenders. In case the risk related to the mental illness is estimated to be acceptable and the offender is aware of the illness and motivated to receive treatment, a conditional Tbs-measure may be imposed.^{xix} In this case the offender is supervised by the probation service and usually receives treatment, either in an inpatient or outpatient setting. Furthermore, the offender may be subject to a location order or location ban that is electronically monitored. Mentally ill offenders who are serving an unconditional Tbs-measure and are treated in an institution may qualify for the conditional ending of their Tbs-measure in case the risk related to their mental illness is sufficiently reduced. An electronically monitored location order or location ban may be attached to the conditional ending of the measure.

These modalities of EM, however, are currently not legally regulated. In the north of the Netherlands, there is currently a pilot in which electronic monitoring is applied to offenders who are serving a Tbs-measure and are at the stage of transmural leave (*transmuraal verlof*). At this stage, offenders live outside the institution but still receive support from the institution. Electronic monitoring can provide additional control at this stage. In the remainder of this report the application of EM in the Tbs setting will not be described, because it is rarely applied.

2. Methodology

2.1 Data gathering

Because the focus of the research project is on mapping and exploring the practice of electronic monitoring, qualitative research methods were most appropriate. At the initial stage of the fieldwork, a number of observations were carried out at different organizations involved in the execution of EM, more specifically the Dutch Probation Service, the Transport and Support Service, and Tyco. Between January and April 2015 observations were carried out on 18 separate days. An overview of the observations can be found in Table 2.1. An observation guide was used to identify the focal points of the observations. Care was taken to minimize the disruption of the activities of the practitioners. Except for one observation at the TSS monitoring centre, only one researcher was observing at a time. Participants received a consent form which had to be signed before any observations would take place. The anonymity of the participants was emphasized. During some observations offenders were involved. Their consent was requested orally by either the researcher or the practitioner involved. During the observations, notes were taken. These notes were completed immediately after the end of each observation period.

The objective of the observations was not only to map and investigate the working processes of EM but also to identify key practitioners to be approached for an interview. In total 34 interviews were carried out between January and May 2015. 36 respondents were involved in these interviews; at two occasions two respondents joined the interview. Half of the respondents were representatives of either the Dutch Probation Service or Addiction Probation. However, interviews were also carried out with the Public Prosecution Service, the judiciary, the Transport and Support Service, the Prison Service and private parties. An overview of respondents can be found in Appendix 1. An important gatekeeper for us was the Dutch Advisor involved in the research project, Michiel van der Veen, as EM-consultor connected to the Dutch Probation Service. At the start of the project we made an inventarisation of the people we wanted to speak to and he brought us into contact with most of them. We approached the judiciary and Public Prosecution Service ourselves and asked them for their experts in the field of EM, although we found out that real experts in this field were scarce in these organizations. None of the respondents we approached refused to speak with us. Only the appointment with the SSC-I was cancelled in a very late stage of our research, which had as a consequence that we couldn't include this organization anymore. We did not manage to have a verbal interview with a representative of 3M, the organization only agreed to filling in a written questionnaire. Respondents received a consent form to be signed before the interview. Their anonymity was emphasized. Respondents were also asked if they consented to the recording of the interview by means of a recording device. All respondents consented to this. During the interviews topic lists were used that had been constructed based on a general interview template and on the observations. The topic lists were revised several times during the course of the data gathering process to include new relevant topics or subtopics that were discovered.

Apart from qualitative data, quantitative data on the use of EM were also gathered. These data were delivered by the Dutch Probation Service. Firstly, data were obtained on the supervisions with EM started in 2013. These data were extracted from IRIS which is the digital

registration program of the Dutch Probation Service. Clients from all three adult probation organisations are included in these data. Unfortunately, the data entered in IRIS by probation officers are known not to be completely reliable and may include double countings. Therefore, caution is needed when interpreting these data. Furthermore, data were gathered on the daily population of persons under EM on 15 March 2014. These data are also based on IRIS but they are more reliable because they do not include double countings. Other statistical data gathered include data on the use of the Digital Desk in 2014 and recent data on the average duration of EM.

Table 2.1 Overview of observations

	<i>Days</i>	<i>Hours</i>	<i>Respondents</i>	<i>Activities</i>
Dutch Probation Service				
The Hague	1	4.5	1 probation officer	- Installation of a tag - Supervision meeting with probationer
Groningen	3	10	9 probation officers	- Use of software - Use of Digital Desk - Meeting of EC specialists North-Netherlands (2 times) - Supervision meeting with probationer and mentor - Supervision meeting with probationer
Utrecht	3	15	3 probation officers	- 2 supervision meetings at the home of a probationer - Visit of workplace of a probationer - 2 home visits for a feasibility study - Installation of a tag - Supervision meeting with probationer - Supervision meeting with probationer in a shelter
Utrecht	3	20.5	1 trainer 4 lecturers 11 probation officers	- Training course for probation officers to become EM specialists. Two days of trainings and one follow-up day
Total	10	50	29	
Transport & Support service				
Assen – monitoring centre	1	6	1 manager 4 monitoring officers	- Operation of monitoring centre
Rotterdam	2	15	1 fieldworker	- 2 installations of a tag - Home visit to check equipment
Soesterberg	1	8	1 fieldworker	- 3 home visits to check equipment - Visit to shelter to loosen ankle tag
Total	4	29	6	
Private parties				

Tyco – monitoring centre	4	17	1 manager 1 ICT employee 2 monitoring officers	- Operation of monitoring centre - Use of software - Processing of notifications
Total	4	17	4	
Overall total	18	96	39	

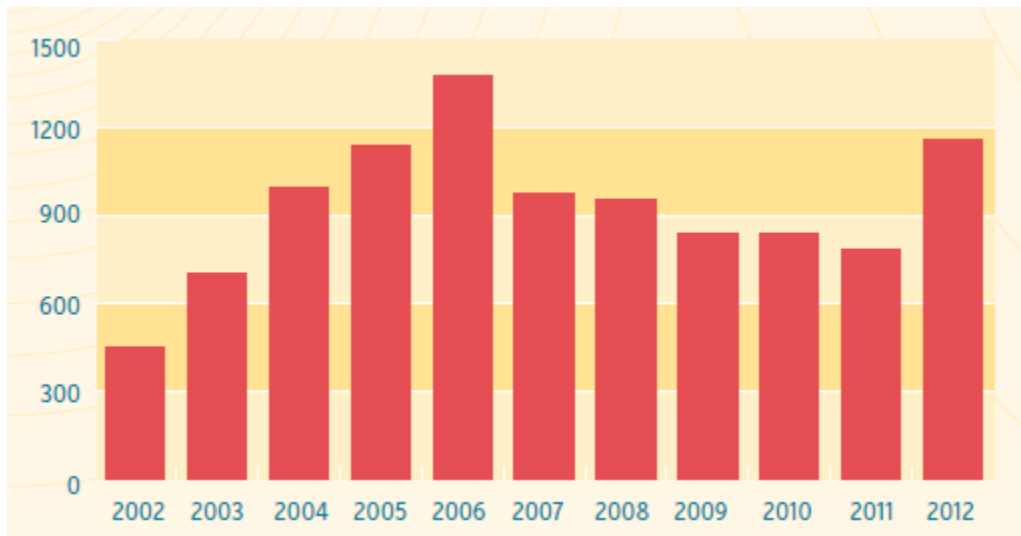
2.2 Data analysis

All interviews were literally transcribed. Analysis of the observation and interview data were done using NVIVO. The data were coded by means of a pre-defined coding scheme, but there was also room for the emergence of new codes that were specific to the Dutch situation. Apart from the qualitative data, some quantitative data were gathered on the use and development of EM in the Netherlands. These quantitative data were provided by the Dutch Probation Service and – where necessary – analysed by means of SPSS software.

3. Application of electronic monitoring

Figure 3.1 shows the number of supervisions with EM that started each year in the period 2002-2012, as included in a publication of the Dutch Probation Service in 2013 (Reclassering Nederland, 2013). As can be seen in Figure 3.1, the number of supervisions that started with EM has increased since EM was first applied in 2002. In 2013, based on the IRIS registration of the Dutch Probation Service, in total 1.562 probation supervisions with EM have started, involving 1.299 unique participants. This means that in 2013 the number of supervisions with EM has increased with one-third compared to the year before it, from 1162 to 1562. The difference between the number of supervisions and the number of participants can be explained by the fact that some participants enrolled in a supervision more than once during the year.

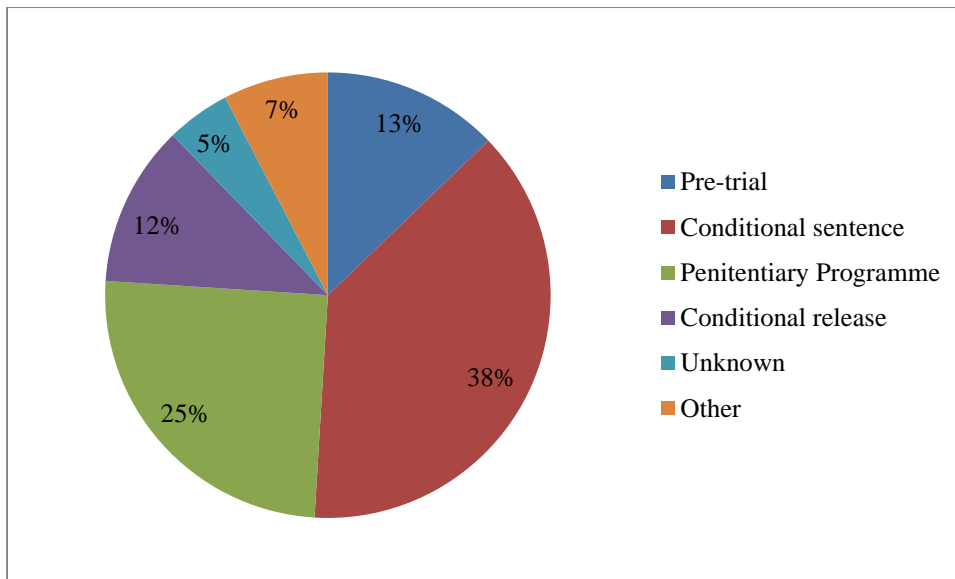
Figure 3.1 Total number of supervisions with EM per year, 2002-2012



Source: Reclassering Nederland (2013)

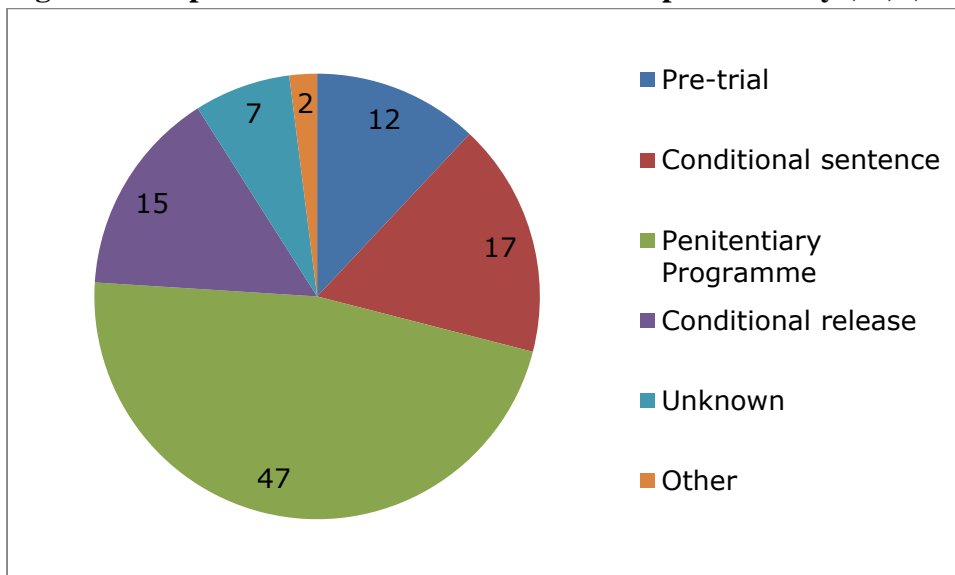
In Figure 3.2 it can be seen that among the daily population of persons under EM on 15 March 2014, the most common modality was the conditional sentence (38%), followed by the penitentiary programme (25%), suspension of pre-trial detention (13%) and conditional release from prison (12%). EM is mostly applied as a conditional sentence (38%), followed by the penitentiary programme (25%), suspension of pre-trial detention (13%) and conditional release from prison (12%). However, the figures on supervisions with EM that started in 2013 (see Figure 3.2) show a different picture, with the penitentiary programme being by far the biggest category, in accordance with the experience of respondents. This discrepancy may partly be explained by the fact that the average duration of EM in conditional sentences is higher than its average duration in penitentiary programmes (see Figure 5.1), which means that this modality is statistically overrepresented in the daily population. Figures regarding the use of EM during prison leave and tbs are lacking in this figure. The former because the Dutch Probation Service does not register the use of EM during leave because of its scarce involvement. The second category because it only contains a handful of cases. As Figure 3.3 shows, the proportion of supervisions with EM imposed at the pre-trial stage and sentencing stage was still relatively small in 2013. Interviews with judges and prosecutors give several suggestions as to how this lag can be explained. It seems that EM has no priority at the Public Prosecution Service because there are many other issues that require prosecutors' attention. Also, as far as prosecutors have an image of EM, this is not a very positive image. The prosecutor's interviewed in our research indicate that the technical problems and limitations associated with EM decrease their willingness to request for EM (see also subsection 4.1.2). Investigating judges and sentencing judges indicate that they are rarely advised to impose EM. Since the judiciary relies on the advice of the probation service with respect to special conditions, when there is no advice for EM, they will not impose EM either.

Figure 3.2 Modalities in which EM is applied (%), 15 March 2014 (N=367)



Source: Reclassering Nederland, 2015 (unpublished data)

Figure 3.3 Supervision with EM started in 2013 per modality (%) (N=1562)



Source: Reclassering Nederland, 2015 (unpublished data)

3.1 Objectives

By most actors involved in the execution, EM is not seen as a goal in itself, but as a means to achieve certain goals. EM is used next to other general and special conditions, which are attached to conditional release from pre-trial detention, prison or a conditional sentence. A special condition that is always attached to EM is support provided by the probation service to the probationer. The objectives of EM are therefore tightly interwoven with the objectives of the probation support, whether that is executed with or without EM. In the following, four main identified objectives of EM will be elaborated upon.

1 – Improving monitoring

One of the main objectives of EM is improving the monitoring of the behaviour of participants. Monitoring is needed to make sure that probationers abide by the conditions that are attached to their supervision. Probation officers indicate that EM provides an easier and more effective means to monitor whether people obey the rules that are set. More specifically, the EM technique allows them to see if someone is at home during his curfew hours (in case of a location order) and/or if he stays away from exclusion zones (in case of a location ban).

For people who participate in a penitentiary programme monitoring is found to be of particular importance. Officially prisoners who are in such a programme fall under the responsibility of the Prison Service, because they are still in detention, although not in the sense of staying inside a penitentiary institution (see section 1). Therefore, the conditions attached to the programme, such as a curfew, need to be monitored appropriately according to our respondents. One of the respondents articulates this as follows:

“I think it is good to monitor. I also think that it is good to give someone gradually more freedom, because it is quite something when you come from a closed setting and you go outside. So in that sense it serves as a safeguard[...] I believe it has added value because you can expect that when the tag is removed no participant will think at 10.30pm “I should be in a hurry now to be at home at 11 pm”. And the later at night, the bigger the temptations. Well, the intention is to bring someone back into society.” (PS 1 – PFA manager).

Respondents within the Public Prosecution Service also acknowledge the importance of monitoring the behaviour of participants by means of EM. In the pre-trial phase, an important objective of releasing suspects with EM is that they can continue their work or education. In certain instances EM can also be useful when suspects are responsible for the care of a child or parents. With EM they can be released and continue their normal daily life, but their whereabouts can still be monitored. Judges also indicate that EM serves the purpose of enforcing the conditions that are attached to a conditional sentence or a conditional release from prison. One judge explains that EM is not a condition in itself, but it can enforce other conditions attached to a sentence or conditional release. Therefore it is a monitoring tool, to ensure that participants abide by the conditions that are imposed on them (Criminal court judge 1). The idea is that by means of EM re-offending can be prevented. This is achieved directly by monitoring the behaviour of participants and indirectly by giving participants the chance to continue their work or education, while on EM. A structured lifestyle and a paid job are seen by many professionals as protective factors against crime.

2 – Behavioural change

The second main objective of EM is providing support and realising behavioural change. EM is part of the supervision that the probation service provides and it supports the probation officer in steering the probationer towards changing his behaviour. First, EM can help the probation officer to set boundaries, to talk about the probationer’s behaviour and to make him aware of the fact he is being monitored. Second, the emphasis can be shifted towards the own responsibility of the probationer and freedoms can be increased (DPS Chief executive). According to probation officers, EM has a strong structuring effect on the life of participants, an effect of EM that was also observed in earlier research (Berend, Vinkenvleugel & Bijl 2008).

A curfew, monitored by EM, means that someone is not allowed to be out on the street at night anymore. Therefore, the day and night-rhythm of the participant normalises and the temptations provided by criminal friends are minimized. Probation officers see EM as a tool that helps them to change the lifestyle and the behaviour of the participant. The final end result should be a reduction in re-offending. The following quote illustrates the vision of probation officers on the role of EM in their work:

“...it can offer conditions that you’ll need to realise behavioural changes that last when the tag is removed. But, I believe, it cannot be a goal in itself, without support, because then you’ll achieve nothing. When the tag is removed you lose that person, because mentally you have changed nothing” (Probation officer 5 – supervision).

Changing the lifestyle of the participant is also achieved by providing an incentive to pick up work or education, because when the participant does not have any daytime activities, while on curfew, he is only allowed to leave his home for a couple of hours per day. Starting a job or education means that the participant can go outside of the house during the day.

I: So, you believe that EM can contribute to structuring the life of a person?

PO: Yes.

I: How does that work? Can you tell a little bit more about that?

PO: Yes, because in the first place they will be motivated to start school or a job, because otherwise they will be at home all day. Well, they don’t really like that. So, then they will start school or a job. Because then they will have more free time, with the tag. From there, they will be on the streets with friends less often, they will have to get up early in the morning. Often you call them, around 2 pm and they are still lying in bed. But then they will have to get up early and go to school and in the end they go to bed early at night because they are tired. And that helps a lot. Because they will not be on the streets at night. So, it can contribute to structure and day-and-night rhythm (Probation officer 11 – reporting).

3 – Protection of victims

The protection of victims is also indicated as one of the goals of EM by probation officers. Protecting victims is usually related to a location ban and monitored by a GPS device. EM is applied in order to prevent the participant from going to the house of a victim or a place where he has committed a crime before, such as a shop or petrol station. It is, however, acknowledged by our respondents of the probation services that the protection of victims should never be the sole goal of EM. It should always be combined with other goals related to behavioural change (DPS Chief executive). Some probation officers express ambivalence with regard to this purpose of EM. They indicate that EM should not be used for a disproportionately long period of time just for the sake of protecting victims. As explained above, according to the probation service EM is not only meant to protect victims or the society, but should also be used as a behavioural intervention, in accordance with the goal-oriented approach that is employed by the Dutch Probation Service.

Especially with regards to people who are on early release EM serves the purpose of protecting victims and of broadcasting a message to victims and the society that a prisoner is not released without taking any protective measures against recidivism. Representatives from

the Custodial Institutions Agency and the Prison Service emphasise that even if prisoners behave very well in prison and therefore qualify for early release, applying EM in this stage can send a message to the victims and society at large that their interests are also taken into account. Our respondents of the ministry of Security and Justice hold the opinion that protecting victims is one of the core goals of EM, next to providing stricture and discipline.

4 – Substituting detention

With the exception of the prison leave-modality, EM in the Netherlands is nowadays always applied in combination with support from a probation officer. In that sense, EM cannot be applied as a stand-alone measure. However, several respondents indicate that EM can serve the purpose of preventing people from being detained or being detained for a longer period of time. In that sense EM can be seen as a substitute for detention, for example when someone is conditionally released from pre-trial detention or conditionally sentenced. Respondents of the probation service therefore encourage the use of EM as a condition of early release or a substitute of pre-trial detention. Representatives of the judiciary and the Public Prosecution Service hesitate to apply in EM in this stage, in particular because of the many technical failures.

Some of the respondents also bring up the argument of cost-effectiveness. Representatives from both the Public Prosecution Service and the Custodial Institutions Agency argue that placement in a detention facility is much more expensive compared to applying EM, that detention is not very effective in preventing future crime and that people can continue their daily activities when not taken in detention but placed under supervision with EM. From the side of the Dutch Probation Service some hesitation exists with regard to this line of thought. Several probation officers state that to them, a stand alone EM without any form of supervision and support would not have any added value to imprisonment, and therefore oppose to such an application. One probation officer puts it as follows:

PO: One has to keep close track with regard to the reason why EM is applied. Particularly when talking about conditional release from pre-trial detention or when special conditions are imposed. It should not be imposed just because it's convenient for the court.

I: In what sense would it be convenient?

PO: Well, quickly arranged...

I: It should not be that everyone is automatically given a tag instead of being detained, just because it is less expensive?

PO: Yes, for example. No, I really don't think it should be that way. It's objective should stay very clear (Probation officer 7 – supervision).

3.2 Target groups

3.2.1 Included groups

With regard to the target group of EM respondents have indicated that a wide variety of groups of people are suitable for EM. First, concerning the type of offence that has (allegedly) been committed, probation officers, prosecutors and judges indicate that sexual offences, domestic violence, stalking or intimidation, property crimes and other violent crimes are all offences for which EM can be applied. An important aspect of these crimes is the fact that victims can be identified who might need to be protected from harm caused by the offender. With regard to specific types of offences, such as sexual offences and domestic violence, respondents indicate that location bans can be electronically monitored, which provides further safety for victims. With regard to property crimes, such as burglary, house arrest is indicated as a particular useful measure to prevent further offending. When participants are obliged to be at home during the night time, they cannot go out on the streets, see other delinquent peers and commit offences.

Different opinions exist regarding the target group for EM in terms of the recidivism risk. On the one hand, respondents indicate that EM is a severe measure which should only be applied in case of serious crimes. A high re-offending risk is also an indication to use EM, in order to prevent the participant from re-offending when he is back in society. It is deemed not to be in proportion when EM is used in low-risk cases. When there is a low risk of re-offending EM should not be applied, because in that case it is not deemed to be necessary. On the other hand, respondents indicate that when the risk of re-offending is very high, EM should not be applied either. In that case EM will not be able to prevent the participant from re-offending. EM is not a security device that guarantees the prevention of re-offending completely, because the participant can still move freely. In practice, professionals try to find a middle ground between very high and very low risk cases.

In recent years the Dutch government, together with the Public Prosecution Service and the police has targeted (violent) robbery as point of attention in policy and interventions against crime. One of the outcomes of this policy agreement is that people convicted of robbery should always be tagged when conditionally released from prison (see section 1). According to this policy EM should be used without exception in all cases of convicted robbers, which does not fit with the idea of the probation service to utilise personalised behavioural interventions. In this study many respondents shared their doubts and objections concerning this policy. For example, confusion exists with regard to the definition of ‘robbery’ and to which persons this policy applies. According to the definition of Fijnaut and colleagues (2010) a robbery takes place in a sheltered space, however, in practice it is not always clear if the robbery was committed in a strictly sheltered place, whether street robberies should also be taken into account and whether offenders who were on the lookout should also be included in this policy. Therefore, respondents feel that the policy is being applied inconsistently. This has caused even more confusion and hesitation among professionals to put this policy into practice. By one of the respondents this is articulated as follows:

“In my opinion, selecting types of offences and categories of offenders who will be subjected to EM by default is contrary to the personalised approach of EM: applying EM on the basis of risk assessment in specific cases.” (PP 2 – private consultant).

In other words, respondents question whether the robbery policy is in accordance with the goal-oriented approach of the Dutch Probation Service with regard to EM. Another critical issue that is raised by respondents is that applying EM for the whole duration of a penitentiary programme is unlawful and therefore they decide against it in specific cases. One of the respondents explains:

“I am appointed as executive who looks at things objectively, hearing both sides and examining it for compatibility with the law and standards. But the law and standards, the legal position of prisoners, tell us that the tag can be removed after one-third, provided that no violations have taken place.” (PS 1 –PFA manager).

So, regardless of the crime that has been committed, according to the applicable law, the period of EM can be ended as soon as one-third of the penitentiary programme has been completed without any (significant) violations taking place. This contradicts with the policy that offenders convicted of robbery should be tagged the entire period of the penitentiary programme and another year during conditional release. The ministry holds the opinion that since the adoption of this policy plan against robbery, the number of robberies has dramatically declined. To what extent EM can account for this decline is not clear.

Another issue that is at stake in this discussion is the question regarding proportionality. Some respondents question whether it is proportional to continue EM when the participant complies with all the conditions attached to it:

“But, if both we and the probation service believe that the risk of recidivism is low, that it moreover went well during the penitentiary programme and that he’s got things straight... I mean it is important that he has a house and a job and a girlfriend, things like that. Those are preconditions. But when that is all under control, then it is almost a restriction of his basic rights to tag him.” (Central Facility Conditional Release).

Another specific target group that has been pointed out by the different groups of respondents (probation officers, prosecutors and judges) are juveniles and young adults. It is believed that young people can particularly benefit from the structure that is provided by EM. This target group is usually involved in crimes that are committed at night together with peers and they lack sufficient structure and daily activities during the day. House arrest can serve the purpose of creating a normal day-and-night rhythm, which reduces the risk of re-offending. With regard to minors the fact that pre-trial detention can have a negative influence on their development and behaviour plays a role in conditionally releasing them from pre-trial detention with EM. Respondents indicate that pre-trial detention is suspended more often in cases of juveniles compared to adults.

Finally, people who intend to or have been travelling to conflict areas in, for example, Syria or Iraq, are mentioned as a specific target group for EM. These participants are charged or convicted for offences that relate to the preparation of terrorist attacks or supporting and initiating armed conflicts in other countries. In the case of this target group EM is used to prevent the participant from travelling abroad, more specifically to countries such as Syria and Iraq, and engaging in the armed conflicts there. To achieve this, the neighbouring countries of

the Netherlands are appointed as exclusion zones and so are the major international airports. When the person gets too close to either a border or an airport, the monitoring centre is notified and can inform the police. However, the application of EM for this group is still in development and only concerns a handful of cases, most of which are at the pre-trial stage. One has to be aware that this group was mentioned by our respondents before the recent attacks in Paris. We assume that judges have since that time become even more cautious regarding the release of this category of offenders from pre-trial detention, with or without EM.

3.2.2 Excluded groups

In the Netherlands, no groups are officially excluded from EM. The criteria for qualifying for EM are the criteria for qualifying for a certain modality. For example, a prisoner who doesn't have a perspective of finding a meaningful daytime activity of 26 hours does not qualify for a penitentiary programme, and thus will not get EM. However, with regard to people who are not eligible for EM, several groups of people were named by the different respondents. First of all EM is deemed to be inappropriate for people who are seriously addicted or who are suffering from serious psychiatric disorders. With regard to the first group of people it was explained that when people only live to score drugs it is very difficult for them to comply with the rules that are attached to EM, such as being at home on time. Probation officers of the Addiction Probation Service indicate that while many of their clients are able to comply with EM, some of their clients are not suitable for EM. With regard to psychiatric disorders it is indicated that people who suffer from psychotic or paranoid disorders do not benefit from EM. Specifically the utilisation of GPS is considered inappropriate for psychotic or paranoid persons:

“Someone who has a very suspicious nature, who has a psychotic or paranoid perception of his environment. I am not sure whether it is smart to apply a GPS tag. I think you pester the life out of someone.” (Probation officer 1 – supervision).

Another group that respondents point out as not very suitable for EM, are people who have low intellectual abilities. Most respondents indicate that in general adult participants are able to tell the time and understand the conditions attached to EM. However, when someone is severely mentally challenged he will not be able to be at home in time or to charge the tag sufficiently. This finding is in line with earlier research of the Inspection Service for Sentencing Implementation to the implementation of penitentiary programmes. They came to the conclusion in their advisory reports of 2005 and 2008 that prison inmates who exhibit problematic behaviour during their incarceration, use drugs or need special care are not selected for a penitentiary programme (Inspection for Sentencing Implementation 2005 and 2008).

Several reasons that are given to exclude certain people from EM are related to the housing of the potential participant. First of all people who do not have a house are excluded from EM. A few respondents indicate that in some exceptional cases homeless people can be equipped with a 1-piece GPS tag, for which they do not need a home unit. However, this situation is found to be far from ideal, because as one respondent explained ‘a homeless participant needs to go to a McDonalds restaurant to charge his tag’ (AP 1 – national coordinator). According to the respondent, this is not convenient, because the participant needs

to charge the tag for a considerable amount of time. Sitting in a restaurant for three hours, without the possibility of moving is not very convenient. A second contraindication is when the (alleged) offence has been committed from the house of the person. It is indicated that when, for example, online fraud or drug dealing has taken place from home it serves no purpose to impose a curfew on someone. In this case the curfew and tag will not influence the chance of re-offending. A third contraindication is when the house of the participant is situated too close to the house of the victim. In that case it is not possible to establish a location ban for the house of the victim and monitor it appropriately, because the exclusion zone must always have a certain size in order to make sure that the police can reach the victim's house on time to protect the victim. A final contraindication exists when the situation at home is not suitable for imposing a curfew on a person. This is the case when domestic violence has taken place before, tensions exist or potentially develop when the participant is at home during a substantial part of the day or when many people live in the same house. A stable and safe home situation is seen as an important requirement for EM to be successful, because participants are housebound. For young people it is of importance that parents, with whom they live, also support EM, because they can have an important influence on the decisions and behaviour of the young person.

With regard to young people and juveniles some indications exist that a tag might be seen by them as a status symbol. One respondent points out that some participants call the tag a 'criminal justice Rolex' (Probation officer 6 – supervision). According to the respondents, it is better not to apply EM when this is the case.

A requirement to impose EM is that the participant has daily activities or is willing to take up school or work. People who are enrolled in a penitentiary programme are required to fulfil 26 hours per week with meaningful activities (art. 5 (1) PM). However, it is acknowledged that for participants in other juridical modalities normal daily life is also of importance. When people do not have paid or voluntary work or do not go to school they will only be allowed to be outside their house for two hours per day. It is believed that in this case EM does not contribute to the reintegration of the participant and becomes a standalone measure. Most respondents agree that EM should serve the purpose of contributing to the reintegration of participants instead of serving the purpose of detaining someone at home.

A final contraindication is when people are not motivated to comply with the conditions attached to EM. When no motivation exists at all it is not possible to successfully apply EM. One probation officer puts it as follows:

I: What do you believe is a suitable target group for EM?

PO: Well, people who are motivated.

I: Ok.

PO: Who are somewhat intrinsically motivated.

I: Ok, yes.

PO: I mean, it doesn't have to be 100%, because I don't think that's realistic. But for EM or a penitentiary programme you must be suitable and what happens now is that people who are not suitable for a penitentiary programme come to us when conditionally released. [...] Those are usually very unmotivated people. (Probation officer 7 – supervision).

The issue of motivation will be further elaborated upon in the next subsection, where the topic of consent will be discussed.

3.3 Consent

3.3.1 Consent of the participant

In the Netherlands, EM is almost always combined with supervision by the probation service (an exception is when EM is used to monitor prison leave). Before EM is imposed a probation officer who is assigned to advise the decision makers, such as the investigating judge, the criminal court judge or the Prison Service, investigates whether EM is applicable. A feasibility study is carried out by means of a home visit to the place where the potential participant wishes to live. Next to practical requirements, such as housing with electricity and not having any outstanding fines, the verbal consent of the potential participant is also necessary. The advisors of the probation service are always in contact with the participant before and during the writing of the social enquiry report. During these appointments the goals and implications of EM are explained to the defendant or prisoner. In principle, the potential participant is asked whether he will cooperate with the execution of EM. The advisors as well as the probation officers who supervise probationers indicate that it is not desirable to impose EM on someone who clearly objects in advance. The following quote illustrates the point of view of probation officers:

“Someone actually needs to just cooperate with EM. I mean after all you attach something to the body, so someone simply needs to cooperate. If a client tells you ‘I certainly will not do that, I just will not cooperate with that’. Well, in that case I think it does not make much sense. [...] At the moment you advise it, a client already needs to say he will cooperate with it.” (AP 1 – national coordinator).

The advisors indicate that in case of a lack of motivation they can still incorporate EM in their advice to the decision maker, but they will always report that the participant expresses that he will not comply with EM. However, they will advise what, in their opinion, is most suitable in that situation and for that particular offender and when the participant objects to EM it might mean that the advice will be to impose an unconditional prison sentence or a postponement of early release from prison. In the end, the decision maker has the final say in whether EM is imposed. The consequences of not consenting with EM are also explained to potential participants:

“I also take care of the fact that they exactly know what they can expect if they tell me they do not want to cooperate, what the consequences will be and what will happen then.” (Probation officer 12 – reporting).

The general opinion among probation officers is that when a participant clearly indicates that he will not conform with the conditions attached to EM, it is in essence doomed to fail. A participant will sooner or later cut the tag when he has already indicated that he is not motivated to comply with the conditions.

Judges also indicate that the consent of the participant is of much importance. When the defendant does not consent with the conditions, they find it pointless to even start with EM. One judge puts it as follows:

“Yes, otherwise it will not work. If he does not have it [motivation] then- It does not have to be entirely, completely intrinsic and fully reliably, but, in any case, he must say yes. And furthermore you must have the feeling that the tag will not be cut the next day already. But it does not really have to be wholeheartedly.” (Criminal court judge 2).

As the quote above illustrates, the extent to which someone is motivated is also an issue that was raised by many respondents. Many probation officers indicate that most participants are not very happy to accept a tag, but that they do so because the consequences of not doing so are worse for them. They are mostly motivated by the idea of getting out of (pre-trial) detention and accept EM accordingly. Probation officers accept as a given that at the start participants are externally motivated to comply with the conditions attached to EM. Some probation officers question whether participants really have freedom of choice:

“Well yes, one addition therefore is that someone more or less has to have a certain type of commitment, you know, consent, how heavy you prefer to call it, to undertake EC. Well, that is, I think, plain and clear. Furthermore, we will always enter into dialogue with someone about the different possibilities. Do you agree with this? Well, then you can say is that a choice made in freedom? When someone is at the police office, of course he would love to be suspended and he will almost say yes to anything.” (Probation officer 10 – supervision).

A representative from the Prison Service has a slightly different view on the motivation of participants. He explains that prisoners know how to behave and talk in a socially acceptable way in order to apply for a conditional release from prison. Herewith, he also questions the true motivation for EM, because it might only be to get out of prison sooner.

When EM is imposed on someone – with his verbal consent – the participant will have to sign a number of documents to give his written consent. The Dutch Probation Service uses a standard contract – ‘Standard behavioural rules supervision’ – which has to be signed by every probationer at the first contact with the probation officer. In case of EM, this takes place when the tag is installed. In this contract it is, for example, stated that the probationer is not allowed to commit any criminal offences, that he should abide by the special conditions that are imposed by the decision maker, that he should follow the rules as set by the probation officer and that the probationer should cooperate with monitoring the conditions that are set, which may take place by means of an electronic tag. A special contract exists for people who participate in a penitentiary programme, because special rules are attached to these programmes (see section 1).

3.3.2 Consent of cohabitants

Before EM can be advised to the decision maker, the principal occupant of the house where the participant wishes to live must give his verbal consent. Cohabitants are often a partner, parents or other people, such as grandparents, family members or friends. When the probation

officer visits the home he asks the cohabitants explicitly if they have any objections to having the participant living in their house. Mostly, the cohabitants are already informed by the participant that he has indicated their house as home address. However, the exact implications of having a person under EM in their house are often not clear to them. The probation officer has an important task in explaining what it means when someone who is electronically monitored is living at their house.

First of all it means that the person will have to register himself on the address. Secondly, the participant will, in most cases, be under a curfew, which means that he will have to be at home during a minimum of seven hours per day (and maximally 22 hours per day). Thirdly, in most cases a home unit will have to be installed at the home. Most probation officers indicate that the vast majority of cohabitants do not oppose against having their partner or child back at home. However, in some cases the mandatory registration at the address causes problems for the cohabitants.

First, the fact that the participant is obliged to register himself on the address where he intends to live can cause problems when the cohabitant receives social benefits, such as unemployment benefits. Since a couple of years several national databases can be combined by benefits agencies, so the total sum of social benefits distributed at one address cannot exceed a certain maximum amount. When a participant registers himself on an address and applies for social benefit, this might mean that the benefits of the principal occupant are cut down. This is a reason why some people do not allow a participant to live on their address, unless he does not register on that address. The latter is, however, not allowed by the Prison Service, when someone is conditionally released from prison or participating in a penitentiary programme.

Second, several respondents indicate that partners and parents usually do not object against having their partner or child living at home with them again. However, some requests are rejected because cohabitants have doubts with regard to whether they are able to handle a person on EM in their house. When relationships are fragile and a history of domestic violence exists, tensions might rise when a person has to be at home during a substantial part of the day. Some probation officers indicate that sometimes they advise against EM after having visited the home, because they feel that a partner or parents are not able to stand-up to the pressure of having someone at home on EM. One advisor of the probation service explains the following:

“Also there was a client of whom I felt that the parents did not have a lot of control over him and furthermore I doubted if the parents were really willing to have him at home again. I asked the probation officer who would carry out the feasibility study to ask the parents more questions about that. Because I think if you ask them, in first instance they will say yes, but actually they do not want it and this will cause problems in the long term, so ask a lot of questions about this.” (Probation officer 12 – reporting).

Next to a partner or parents sometimes participants stay with friends. However, these friends need to be able to provide a stable and sustainable living environment for the participant. One probation officer explains that friends do not always understand that right away:

“But anyway, people also sometimes call a friend from prison, ‘I am in trouble, can I stay at your place?’ ‘Yes that’s fine’, they say. But then you explain that if someone stays for a longer period of time it means that he must register himself on that address. I also ask whether he has

his own place to sleep. [...] When the friend says ‘he can stay for a week but no longer’, that will not work of course, because I cannot say in advance that the tag will be removed within two weeks. If someone says ‘I will lay down an air mattress in the living room’ and kids are running around the place, it will not work. Someone must really have his own space and, as I always explain to people, you are tied to each other because especially in the case of electronic monitoring, the participant must be inside the house at certain times. So this means that you have your friend, with whom you might have a nice time in the pub sometimes, sitting next to you on the couch every night.” (Probation officer 3 – supervision).

When a participant does not have a partner, parent, other family members or friends where he can live, he can also apply for a place in a shelter for people who do not have housing when they are released from detention. In the Netherlands four organisations run these shelters.^{xx} However, the shelters have waiting lists and only people who are truly motivated and who are not causing a nuisance are allowed to live there. Therefore, the number of people who go to a shelter is limited and most people have to rely on their own network to find housing after release from prison.

3.3.3 The feasibility study

As explained above before advising EM to a decision maker, the probation service always investigates the feasibility of applying EM. The feasibility study is carried out by the probation officer who most likely will carry out the supervision of the participant in the later stages of the process. The results of this investigation are reported in written form to the advisor, who incorporates it in his final social enquiry report. A home visit takes approximately thirty minutes and in general it is conducted by the probation officer alone.

When someone is detained, he is visited by the advisor who will report to the mandator. In case EM is incorporated in the advice, the advisor will ask the prisoner whether he has a home where he can return to after being released. If so, the prisoner will give the address and he will inform the owner of the house that he would like to return there. Mostly, prisoners return to a partner, parents or other family members. The probation officer who is assigned to conduct the feasibility study for EM contacts the home owner and – when he agrees – makes an appointment for the home visit. Next to the home visit, the feasibility study consists of other aspects, such as contacting the local police officer about the house and its occupants and/or contacting an employer of the prisoner. The probation officer who conducts the feasibility study has not met or talked with the prisoner before making the home visit and he only receives information from the advisor in the case.

The Dutch Probation Service does not have a detailed protocol of how the feasibility study should be conducted, but in the Digital Desk webportal questions are provided which need to be answered in the partial advice on EM. The Addiction Probation Service has developed a checklist for the feasibility study in which all the aspects are listed which should be checked by the probation officer. As has been explained in the previous subsection, the consent of the principal occupant of the house needs to be obtained and the probation officer informs the cohabitants about the implications of EM.

Furthermore, some requirements with regard to the housing situation need to be met. It is important that the home owner is able to pay the rent or mortgage and the electricity bills.

Therefore, it is important that no outstanding fines or other debts exist, especially not with the energy company. In case the rent or mortgage is not paid an eviction can take place. In that case, the participant does not have a place to live anymore and the equipment cannot be installed. With regards to debts, it is possible that the power is shut down and, in that case, the equipment cannot function anymore. The principal occupant is asked whether he has any financial difficulties, and when doubts exist concerning the sincerity of the owner's statements, the probation officer asks for documentation of the owner's finances.

Another requirement is that the participant will have his own bedroom and place to sleep. This is of importance because he might have to be at home during a considerable time of the day. Moreover, it is preferred when the equipment can be installed in the bedroom, because it is the place where the participant will be most of the night time. When the home unit is close to the tag, less chance of failure in coverage exists and when a problem arises with the coverage the participant can be reached at night on the telephone line of the home unit if he is sleeping in his bedroom.

Furthermore, the distance between the house and a possible location for which a location ban is ordered is assessed by the probation officer, in order to make sure that a certain response time for the police is feasible. When the distance between the house and the place where the participant is not allowed to come is less than five kilometres away it is difficult for the police to be present at the house of the victim in time in order to protect the victim.

Finally, probation officers mention that the liveability of the house is also assessed by them during the home visit. The house should be a conventional place to live, where no criminal activities take place and where the participant can work on his reintegration in society. In relation to this, it is also checked whether illegal growing of cannabis takes place in the home. However, most home visits are concluded with a positive advice to the advisor, so not many addresses are disapproved on the basis of the above described requirements.

4. Equipment

At the moment, three types of EM equipment are being used in the Netherlands. All equipment is provided by 3M. In the majority of cases RFID is applied, and less frequently GPS equipment is used. As of March 15, 2014, 75% of 367 monitorees had an RFID tag, and 25% had a GPS tag (Dutch Probation Service, unpublished data).

4.1 Description of the equipment

The most common type of equipment is the RFID (Radio Frequency Identification) technology. This includes an ankle tag which sends the radio frequency signal and a home unit which receives this signal. The home unit is connected to a power socket and detects the ankle tag when it comes within a certain range. When this happens, a notification is sent to the monitoring software indicating that the person has come home. When the ankle tag is out of range, a notification is also sent to the monitoring software, indicating that the person has left the home. This way, the RFID equipment can be used to monitor a curfew or location order. An earphone is attached to the home unit, which means that the person under EM can have phone contact with the monitoring centre.

4.1.1 GPS and RFID

In 2005, EM equipment with GPS technology was introduced in the Netherlands and despite perceived limitations, research showed that probation workers were predominantly positive about the added value of GPS technology in supervision practice (Heuts & Raaff, 2011). GPS technology can be used to monitor the movements of the person under EM and is usually applied with one or more location bans. There are two types of GPS equipment: 2-piece GPS and 1-piece GPS. The 2-piece GPS equipment consists of an ankle tag, a ‘tracker’ and a home unit. The tracker is a mobile device which receives signals from the ankle tag to determine the location of the person. It can also be used by probation officers or monitoring officers to send messages to or have phone contact with the person under EM. A Swedish phone number is connected to the RFID and 2-piece GPS equipment which means that the person under EM can still be contacted in case the Dutch phone network is disrupted. The person under EM is required to carry the tracker whenever he is outside of the house. When the person comes home, the tracker needs to be placed in the home unit so that it can recharge. When the tracker and the ankle tag are too far removed from each other the tracker will start to vibrate or make noise. After five minutes a notification is sent to the monitoring software. In the 1-piece GPS equipment, the GPS receiver is integrated in the ankle tag. The 1-piece ankle tag serves as transmitter and receiver at the same time. Additionally, a home unit may be installed to monitor more accurately whether or not the person is at home. In case the person has no fixed living address while under EM or in case of prison leave, a home unit is not installed. The 1-piece ankle tag needs to be charged via a cable of three metres long for three hours a day which limits the movement of the person during that time. Although this way of charging is regarded as a disadvantage of the 1-piece system, most probation officers indicate that they prefer this system over the 2-piece system. This is because clients may forget to bring the tracker of the 2-piece which causes alarms and causes the person to be out of sight. This is especially an issue for the Addiction Probation Service, because their clients are often forgetful as a result of their addiction problems. They may even try to sell the tracker to have more money to spend on drugs or alcohol. This is why the 2-piece system is rarely applied to clients of Addiction Probation Service. Furthermore, the GPS signal of the 2-piece system is less stable. On the other hand, the size of the 1-piece ankle tag is considered as a burden. The fact that both systems have their advantages and disadvantages is illustrated by the case of a client working in the construction industry. He started with a 2-piece system but when he was at work or at the gym the tracker would regularly indicate that there was no GPS signal and cause alarms. This meant that he had to walk around for a while to have the GPS signal restored. Because this caused problems at work the 2-piece system was replaced by a 1-piece system. However, because he had to wear large, heavy shoes at work, the ankle tag pinched his ankle and caused a lot of pain. The probation officer said that he could return to the 2-piece system but the client did not want to deal with all the alarms.

In January 2014, the Addiction Probation Service started a pilot to test the applicability of the ScramX ankle tag.^{xxi} This ankle tag monitors offenders’ alcohol consumption through perspiration. Every half an hour the tag takes a sample of the perspiration and the data are transmitted three times a day. The ankle tag was carried by several workers of SVG to test its operation and accuracy. However, there has been no follow-up to this pilot yet. According to

one respondent, one limitation to introducing new EM technology in the Netherlands is the small scale in which EM is used. This means the costs of testing and implementing a new technology are relatively high in relation to its benefits (PP 1 – manager Tyco).

The choice of equipment is generally inspired by the goals of the monitoring. In case there is only a location order, which means that the person needs to be at home at set times, RFID equipment is usually applied. GPS equipment is only used when there is a location ban that needs to be monitored. This logic, which corresponds with the goal-oriented approach of Dutch probation, is reflected in a statement of an EM specialist of SVG, who suggests that the principle of subsidiarity plays a role as well. At the same time, she indicates that decision-makers often do not make these considerations when deciding on EM.

“We are often called by someone who says “we want to apply GPS monitoring and I would like to ask you...” Okay, wait a second. What do you want? What are your goals? What do you want to achieve? [If you ask these questions], you’ll hear soon enough if GPS is an interesting option at all. You only use GPS when you want to impose a location ban, a place where someone is not allowed to go. Otherwise you don’t need to use GPS. So you’re not going to apply a heavier instrument when it is not necessary.” (AP 1 – national coordinator).

In some cases, pragmatism plays a role in the choice of equipment. For example, the house where the person stays may be too big to be totally covered by RFID signal, which means that the home unit does not detect the person if he is in a certain part of the house. This may be the case when the person stays in a shelter, which is a relatively big building where multiple convicts stay during a penitentiary programme. If this is the case, GPS equipment needs to be used. Furthermore, the probation service may indicate that it is important to see whether the person under EM goes to work or school, which might be a reason to apply GPS equipment.

4.1.2 Technical problems

Technical issues with EM have been reported since its introduction. Early studies found that the EM home unit interfered with the telephone line and that failure of the equipment regularly caused false alarms (Spaans & Verwers, 1997; Van Gestel, 1998). Similarly, in an early experiment with GPS monitoring many false signals occurred (false positives) and several scheme violations were not discovered (false negatives) (Elzinga & Nijboer, 2006). Another evaluation of GPS monitoring signaled problems of ‘drifting’ (inaccurate positioning) and ‘blind spots’ (locations where no GPS signal was transmitted) (Miedema & Post, 2006). Several respondents indicate that the quality and reliability of the EM equipment has improved over the years. The accuracy of GPS technology and the speed at which alarms are transmitted are mentioned as strengths of the equipment. One probation officer states that there are fewer false alarms than before.

“Some of the alarms are false. They are quite easy to filter out because false alarms often last very short. In the past we had more problems with that, alarms lasted longer. And my experience is that it is quite reliable nowadays. I have to say that at the moment I am fairly confident about the equipment.” (Probation officer 8 – supervision).

However, other respondents are less positive about the reliability of the equipment. A prosecutor expresses her concerns about the technical problems that come with EM and states that these problems make her hesitant to consider EM.

“Well, based on the experience I have with EM cases - the number I’ve had experience with is quite limited by the way - I would say that a lot of things go wrong. In a lot of cases for instance false alarms occur and well, that amounts to a lot of trouble. I think that the system needs to be improved, because as much as we would like to give everyone an ankle tag [instead of sending them to prison], if the tag doesn’t work properly and we have to make excuses all the time for inconveniences like false alarms and have to put in extra work in sorting those things out, that causes a lot of disturbance, in the criminal case and in court as well. Well, we really shouldn’t want that...” (Prosecutor 2)

The occurrence of false alarms is mentioned by other respondents as well. These false alarms can have several causes. Firstly, in some places no GPS signal can be transmitted. This might be in a building or in between large buildings. When there is no GPS signal, a technology called LBS (Location Based Services) takes over. This technology makes use of the telephone network and is significantly less accurate than GPS technology in determining the location of persons under EM. This means that the LBS technology may falsely indicate that the person is not at home or has entered an exclusion zone. If the person under EM indicates that he is actually at home the monitoring officer may ask the person to go outside and wait for the GPS signal to restore. In some cases, the GPS signal may disappear right before the person comes home, so that the equipment does not register this. Even if a GPS signal is transmitted, it might be inaccurate. Sudden shifts in the GPS signal (so-called ‘spikes’) can give the false impression that a person has made a sudden movement into an exclusion zone. In such cases, analysis of the location data can indicate whether or not the person has violated a condition. For example, if the GPS trail shows a very sudden move or ‘jump’ into the exclusion zone, it is unlikely to actually be caused by the movement of the person. This analysis is normally done by TSS but may also be done by the probation officer.

Another alarm that occurs regularly is the ‘body contact sabotage’. This alarm indicates that the ankle tag is no longer in contact with the skin. This might happen when the person under EM moves in his/her sleep. The ankle tag may have been installed too loosely around the ankle. In practice, this alarm is only followed by a response if it occurs together with an alarm indicating sabotage of the ankle tag.

False alarms may also be caused by changes in the curfew hours of the person under EM. These changes need to be registered in the monitoring software by the probation officer. There is a ‘download’ button in the software. When this button is activated, the change in curfew hours is communicated to the equipment. The probation officer might forget to click on the ‘download’ button, but even if it has been done, the equipment may produce false alarms. One respondent indicates that he is hesitant to make changes in the curfew hours because of this.

Every half an hour (in case of GPS) or every hour (in case of RFID) the equipment sends a test notification to the monitoring software. This test notification indicates that the equipment is functioning correctly. It happens regularly that these notifications are not

received. When this is the case, or in case of another (possible) problem with the equipment, and only upon request of a probation officer, TSS may visit the home of the person under EM to check the equipment. The person under EM is always informed about the visit beforehand. While checking the equipment, the TSS fieldworker can have phone contact with someone from the back office who has access to the software to find out what the problem is. If the problem cannot be solved, the equipment may be replaced. One TSS fieldworker states that his colleagues sometimes replace equipment too easily without making sure that the problem is actually caused by the equipment. In some cases, replacement of the equipment does not solve the problem.

Although the issues mentioned above are recognized as problematic, they occur only incidentally. There are also more large-scale problems, for example those caused by the transition to the mobile 4G network. The changes in the mobile infrastructure that accompanied this transition caused disruption of the signals of the RFID equipment. This meant that for several hours, those with RFID equipment were untraceable. Large-scale power cuts, such as in the northwest of the country in March 2015, have caused similar problems. Another issue is that of software failure. In fact, problems with the monitoring software, which is provided by 3M, seem to be more urgent than problems with the equipment itself. The monitoring software, which was formerly managed by Tyco, is now stored on a server of the Custodial Institutions Agency. This transition has caused several problems, because the software and the server turned out to be incompatible in some ways. In case of problems with the software or hardware, Tyco used to look for a solution in cooperation with 3M. In the new situation, there are more parties involved in solving software problems, including SSC-I, Information Management and TSS. These parties lack the technical expertise that Tyco has built up over the years. This means that it takes more time to solve technical problems. The tasks and responsibilities of the different parties in case of technical problems are described in a Business Continuity Plan. Cooperation between these parties seems to be improving. Ultimately, when the other parties are unable to solve a technical problem, SSC-I may contact 3M. However, as a manager of TSS indicates, 3M does not have a service point in the Netherlands, which makes it more difficult to communicate questions and problems to them.

4.1.3 Limitations of the equipment

The vulnerability of GPS technology is regarded as a technical limitation of EM. Furthermore, some respondents suggest that it would be helpful if the GPS equipment would be supplemented with RF technology ('hybrid' EM) to make the monitoring of location orders more accurate. Another point of improvement is the size of the 1-piece ankle tag: several respondents indicate that this ankle tag is a heavy burden for the person under EM. Apart from the strictly technical aspects of the equipment, most respondents recognize that EM cannot offer 100 percent safety. One respondent states it as follows:

“Well, we do need to realize that it is not a security measure, so in case of really high risk, if someone wants to harm a victim and announces it beforehand, then it has no use. Because a tag will not stop him, it is no security measure which prevents him from cutting the tag or escaping to Syria [...] if he wants to do that he will do it. We have to be realistic about that.” (Probation officer 9 – supervision).

Although one of the goals of EM may be to increase the feelings of safety of victims, it is recognized that EM has only limited value in providing actual safety. The home of the victim may be appointed as an exclusion zone, but the person under EM may still encounter the victim in another place. In case there is no specific victim, imposing a location ban has its limitations as well. For example, in case of a child abuser, places where a lot of young children come together may be appointed as exclusion zones, but it is impossible to cover all of those types of places. Furthermore, EM monitors the movements but not the actual behaviour of a person, which is why it is not suitable for some types of offenders, for example those who commit crimes at home. Precisely because EM cannot guarantee security, the importance of the goodwill of the person under EM is emphasized. If the person lacks any motivation to comply with the conditions, the risk of re-offending may be too high to release the person with EM. Furthermore, some respondents point at the importance of managing expectations. They suggest that politicians and society have unrealistic expectations with regard to the degree of security EM can provide.

“In general I think it works well and like all technology it has its limitations. I just think it’s really important to be aware of these limitations and to be honest about that, and not to raise expectations which cannot be fulfilled or to aim for things that are impossible.” (Probation officer 5 – supervision).

4.2 Installation process of the equipment

4.2.1 Planning

When a judge, selection officer or the CFCR has decided to impose EM, this decision is communicated to the probation service and to the penitentiary institution where the person is staying. In case of a penitentiary programme, the PFA that will be responsible for the execution of the programme is also informed. The EM specialist who will supervise the person (or carry out the technical part of the supervision) is responsible for registering the person in the monitoring software. In the software, the personal data, curfew hours and/or exclusion zones, start and end date of EM, type of equipment, possible specificities on the breach protocol to be applied, and the monitoring level and ‘priority level’ of the person are registered. Furthermore, the EM specialist fills in a registration form and sends this to the back office of TSS via email. The registration form includes the installation address and contact information of the person, contact information of the EM specialist (and second supervisor, if applicable) and the modality. There are separate registration forms for L2 (level 2) and L3 (level 3) persons. Level 3 indicates that a location ban with police response has been imposed. This means that the TSS fieldworker can see immediately if the police needs to have a picture of the person under EM to be able to recognize him when protecting the victim. Particularities can be indicated on the registration form, for example if the probation service expects counteraction of the person during the installation process. In this case, the risk assessment department of TSS may be involved. This department can give advice on additional security measures to be taken. In case the person needs to be picked up from prison by TSS (e.g. in case of risk that the client will go to an exclusion zone) this is indicated on the registration form. The initial idea of TSS was to

always pick up the person from prison but this idea has been abandoned for reasons of efficiency. If the person's car is at the prison TSS may install the ankle tag in prison and let the person drive home on his own. On the registration form, the EM specialist may suggest a suitable time for the installation.

The back office of TSS normally receives the registration form at least two days in advance. The back office adds the name of the TSS fieldworker of the LBB team who will perform the installation and may add the numbers of the equipment to be installed. The registration form is sent to the Tyco monitoring centre, the TSS fieldworker who will perform the installation, the EM specialist and the mailbox of the probation region involved. The Tyco monitoring officer registers the person in Tyco's own monitoring software (Mastermind). The contact information of the EM specialist (and second supervisor, if applicable), numbers of the equipment, start and end date of EM and the breach protocol to be applied are included. The person is appointed an identification number (Tyco ID) which is registered in the 3M software and in Mastermind. Every day, the Tyco monitoring officers keep a list with the planned installations, re-installations and de-installations. Using this list they can determine if alarms which they receive are caused by the installation procedure.

TSS communicates the date and time of installation to the probation officer within 24 hours after receiving the registration form. According to the protocol, TSS needs to confirm the installation via email at least 24 hours in advance. In case other installations are planned on the proposed date and time, and these installations cannot be performed simultaneously, the installation that was planned first is executed and the other is rescheduled. The Dutch Probation Service and TSS have agreed that a maximum of twelve installations can be executed each day. If more installations are planned, the Dutch Probation Service decides which installations are prioritized and which will be rescheduled. The installation may be done at two different addresses, for example if the person's parents are divorced and he will stay both at the father's and the mother's home. In this case, if possible, both installations are executed on the same day. In case of an emergency installation (e.g. when the person is unexpectedly conditionally released), the EM specialist calls the TSS back office to plan the installation. The protocol dictates that the EM specialist needs to plan an installation within 2 days and that TSS should be able to execute the installation within 24 hours. If an emergency installation needs to be done outside of office hours (e.g. 9 pm) the probation officer will try to be there. However, depending on the risk associated with the person, it may be decided that the probation officer does not need to be present. In case of an emergency re-installation TSS can execute the installation within 2 hours. An emergency re-installation may be necessary in case of equipment failure and especially when the person concerned is considered as a high-risk case. In case the person moves to a new address he brings the equipment to the new address. TSS visits the new address to make sure that the home unit is properly installed.

Our study indicates that the planning of the installation does not always run smoothly. In case of a penitentiary programme, the installation can usually be planned weeks before. For other modalities this is different, because the imposition of EM depends on the decision of a judge. The number of installations varies strongly and is difficult to predict. Judges who impose EM are not always aware of the time that is needed to plan the installation. The EM specialist may inform the judge about this in the social enquiry report. Despite this, as one probation

officer describes, in some cases a suspect's pre-trial detention is suspended on Friday and the EM only starts on Tuesday.

“...we always include in our reports that we need time to organize an installation. And if the court, the mandator, does not read that, does not include this in the decision-making, then it can happen that someone is released from the institution on Friday afternoon at 5 pm. And then it is expected that just like that a fieldworker and a probation officer are ready to directly perform the installation. Well, it doesn't work that way.” (Probation officer 6 – supervision).

A possible solution to this as suggested by one respondent is that the probation officer runs ahead of the decision of the judge by asking TSS to plan the installation before the decision about EM is made. This way it is ensured that on the possible date of release TSS has the capacity to execute the installation. If eventually EM is not imposed the installation needs to be cancelled.

4.2.2 Installation

In case EM is applied in the context of prison leave, 1-piece GPS without a home unit is usually applied. In that case, the installation is preferably done at the prison. In other cases, the installation takes place at the living address of the person. The TSS fieldworker brings the necessary equipment from the support point of TSS to the address of the person. The TSS fieldworker drives an unobtrusive car and is dressed casually or wears a basic uniform. In case the person under EM is female there are two TSS fieldworkers at the installation. This is due to the risk that the person accuses a TSS fieldworker of sexual intimidation or abuse. At the time of installation, the EM specialist and TSS fieldworker enter the house together. In case the person under EM will be supervised by a probation officer of another organization (e.g. youth probation or the Salvation Army probation) this person may also attend the installation. The TSS fieldworker will then need to wait for both the EM specialist and the supervisor to arrive. According to the EM protocol of the Dutch Probation Service, the EM specialist should always check the ID of the person to make sure that the right person gets the ankle tag. In practice, however, this is not always done, because the EM specialist may recognize the person. At the probation office, the ID of the person may be checked again with the use of biometrics. The installation process can be said to consist of two parts: a technical part, executed by the TSS fieldworker, and a part in which the EM specialist or probation officer make agreements with the person under EM. Usually, the technical part is done first. The TSS fieldworker looks for a suitable place to install the home unit. To ensure a sufficient signal in all parts of the house, the home unit is preferably placed in a central location in the house. Rooms where small children or pets come are not deemed suitable because of the risk that the equipment is moved or damaged. The home unit should be levelled to prevent alarms. Furthermore, the home unit may be connected with an extension cord of maximally one meter. The home unit cannot be placed at the window because the heat of the sun may cause it to get too hot which can cause alarms. It cannot be placed near a mirror or near other electronic devices, because these can disrupt the signal, and cannot be placed on the ground. In practice, some creativity is used when installing the home unit. In one case, the adapter of the home unit did not fit firmly in the power socket. The mother of the person under EM came with a piece of tape which was used to fix

the adapter to the power socket. In another case, the TSS fieldworker asked the person under EM if he had a piece of felt with which the home unit could be levelled. He explained that he did not have this because he just came home from prison. Eventually, the TSS fieldworker succeeded in levelling the home unit by moving it a bit.

When a suitable place has been found for the home unit, the ankle tag is calibrated, which means that it is set to detect the ankle and possible removal from the ankle. On the screen of the home unit, the number of the ankle tag is selected and a connection is made between both devices. The TSS fieldworker has phone contact with the back office at several moments during the installation. Firstly, the numbers of the equipment are communicated to the back office so that these can be connected to the client in the monitoring software. Secondly, the TSS fieldworker requests the back office to ‘download’ the curfew hours and/or exclusion zones, which means that these are communicated to the equipment. Thirdly, the TSS fieldworker asks the back office to check if alarms are successfully transmitted to the monitoring software. The TSS fieldworker moves the home unit and shortly disconnects it from the power socket. If the back office receives alarms of this, the installation has been successful.

In case of RFID equipment, a ‘range test’ is conducted. This range test is aimed at ensuring that the person can go in all parts of the house without generating alarms and at the same time cannot walk out the door without generating alarms. The TSS fieldworker calls the back office to request access to the home unit. When the range test is finished, access to the home unit is shut to prevent the person under EM from changing the settings. The TSS fieldworker asks the person to walk to all corners of the house. The screen of the home unit indicates with figures from 1 to 5 how strong the signal is from each part of the house. Based on this information, the TSS fieldworker decides at which range level the home unit should be set: very short, short, medium, long or very long. In case there is a strong signal from each part of the house, the range can be set on ‘very short’, whereas in case of a weak signal from some parts of the house, the range is set on ‘long’ or ‘very long’. The freedom of movement of the person under EM is not actually determined by the walls of the house. Instead, a virtual circle is created around the house. The size of this circle depends on the range level that is set. In practice, the person may walk into the backyard without generating alarms. However, most probation officers want the person to think that going into the backyard immediately triggers an alarm. Not only do they want to prevent unnecessary alarms; they also want to prevent the person from experimenting.

“When you conduct the range test you should act like the equipment is set in such a way that the person generates an alarm if he goes half a meter beyond a certain point. That is what the person should think. He shouldn’t be like: ‘okay, it’s on medium level, let’s see if I can get halfway into the backyard. What, no alarm? Then let’s see if I can get at the rear of the backyard. Wow, I can get there as well!’ You know, you shouldn’t want that.” (Probation officer 1 – supervision).

In practice, the range test is not always done by the TSS fieldworker. Some think that they can estimate the range level that is needed without executing the range test. One respondent from TSS emphasized that it is important to conduct the range test to make the person under EM believe that his/her movements are accurately monitored. In fact, the person may go into the

backyard or onto the balcony without triggering an alarm. Another reason for doing the range test is that a range level which is set too short can cause false alarms. The person may be in a part of the house from where the home unit cannot pick up the signal so that it seems like the person is not at home.

When the equipment is installed, the TSS fieldworker hands the person under EM an instruction card. This card describes the working of the equipment and how it should be treated. The TSS fieldworker explains that the home unit cannot be moved and that it is not advisable to visit a sauna, because the screws in the ankle tag can get too hot causing burns. Furthermore, the person is not allowed to engage in contact sports (e.g. football, kick boxing) because the equipment may be damaged. The person is also told that swimming is allowed up to five metres deep. In case of GPS equipment, the TSS fieldworker emphasizes the importance of charging the 1-piece ankle tag for three hours a day or, in case of 2-piece GPS, placing the tracker in the home unit when coming home. The person may also be told what to do in case of a loss of the GPS signal. In general, the probation officer and TSS fieldworker are cautious with providing technical information to the person under EM. To prevent experimenting, the person under EM is not informed about his exact freedom of movement.

The person under EM is required to sign a user agreement in duplicate. This form is also signed by the TSS fieldworker. It indicates that the equipment is intact at the moment of installation and that the person under EM can be held accountable in case of damage to or loss of the equipment. Furthermore, the TSS fieldworker takes pictures of the home unit and the ankle tag with a tablet. These pictures are later sent to the back office and uploaded to the monitoring software. They may serve as evidence in case the person under EM is suspected of having moved the home unit or tampered with the ankle tag. In case of a location ban with police response, the TSS fieldworker also takes a picture of the face of the person. This picture is later uploaded to the monitoring software and sent to the police. In case the person under EM enters an exclusion zone, this picture can aid the police in detecting the person.

When the technical aspects of the installation are finished, the probation officer makes some agreements with the person. A document with standard supervision rules is signed. There is a specific document for those who follow a penitentiary programme, which prescribes that the person is not allowed to use alcohol or drugs and cannot go on holiday. The probation officer shows a document which describes the conditions with which the person will need to comply. The curfew hours and/or exclusion zones are discussed. Usually, in case of one or more exclusion zones, the probation officer shows a map indicating these areas to make clear where the person is not allowed to go. The probation officer emphasizes that the client should be reachable by phone and gives his/her phone number as well as the phone number of the probation office and Tyco monitoring centre. The work and school schedule are discussed and other issues may be pointed out, for example if the person needs to get a health insurance. The probation officer also makes a new appointment with the client. Several probation officers indicate that they are aware that the person may have been overloaded with information during the installation. Those who participate in a penitentiary programme are usually relatively well-informed and well-prepared, because they knew about the EM weeks before. Even then, the amount of information provided and the presence of strangers in the house, combined with the fact that he is just out of prison and is possibly reunited with family, may be overwhelming for

the person under EM. Because of this, the probation officer may save some information for the next meeting or discuss some of the things again that were said during the installation.

“We often notice that when people just come out of prison, they are overwhelmed by all the impressions, especially if someone has been detained for a long time or he is young and sees his parents again...That has quite an impact, so we can explain everything but it is wise to explain things again at the next meeting, because otherwise they may forget things or make mistakes.” (Probation officer 4 – supervision).

The protocol prescribes that the installation procedure should take maximally one hour. The TSS fieldworker is required to bring an extra set of equipment in case the installation does not succeed. If the installation procedure exceeds one hour, the EM specialist decides on the next step to be taken. If he decides that the installation should be finished, he is required to stay. The TSS fieldworker is not allowed to leave the house at a later time than the probation officer. The TSS fieldworker may leave earlier than the probation officer but may be asked to stay in case the probation officer feels unsafe. Usually, the installation takes about half an hour. When TSS started executing the installations they generally took more time, because the TSS fieldworkers were still unfamiliar with the installation procedure. The TSS fieldworker can consult the installation protocol on his tablet. In some cases the installation procedure takes several hours. This mainly has to do with problems with the GPS signal. In a neighbourhood with a lot of flats these problems are more likely to occur. Especially in Amsterdam there have been issues with the installation. TSS fieldworkers have been forced to walk around the house with the person under EM and wait for the GPS signal to recover. The position of the satellites plays a role in the transmitting of GPS signals: in the morning the satellites are closer to each other than in the afternoon which means that there is a bigger chance of a successful installation. To avoid problems during the installation, some TSS fieldworkers prepare the equipment beforehand. The curfew hours and/or exclusion zones are downloaded to the equipment. As one TSS fieldworker explains, this has several disadvantages. It means that the probation officer does not see the total installation procedure which is not good for his understanding of the equipment. Furthermore, when preparing the equipment beforehand, the clip of the ankle tag is opened. If it is not properly closed during the installation the ankle tag may fall off. At the time of this research, the problems with GPS are being investigated and TSS is thinking of a solution to systematically address these issues.

After the installation, the TSS fieldworker sends a report of the installation to the back office via email. This report includes the time of arrival, time of departure, type of equipment, numbers of the equipment, a short description of the installation, the pictures of the home unit/ankle tag/user agreement/face of the person and possible particularities.

4.3 Storage and maintenance of the equipment

The EM equipment is stored at the Supply unit in Assen. Each set of equipment is saved in a suitcase. Just as the ankle tags and the home units, all suitcases have a unique number. From the Supply unit, the three support points in Zwolle, Soesterberg and Rotterdam are supplied every week. The norm applied by TSS is that at each support point there should be 20% more sets of each type of equipment than the number of requests for each type of equipment. In

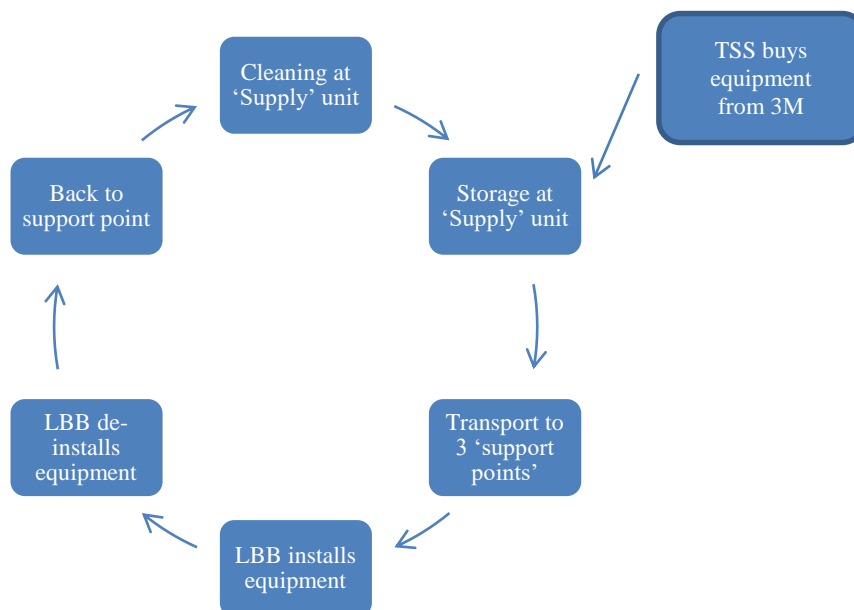
practice, this norm is not always achieved. In case the Dutch Probation Service expects an increase in the use of one type of equipment this is communicated to TSS. At the support points, there is a separate locker for each type of equipment and for the ‘dirty’ (used/damaged) equipment. There are power sockets in the lockers which are used to charge the tracker of the 2-piece and the 1-piece ankle tag. This is done to make sure that the equipment is charged when it is installed.

According to the contracts, 3M should do the cleaning of the equipment for TSS. 3M has outsourced this task to Tyco. The ankle tags are placed in a sort of dishwasher and subsequently cleaned with alcohol. The other equipment (home unit, 2-piece tracker) is only cleaned with alcohol. Tyco is also responsible for testing the equipment. TSS does some cleaning as well because it is more efficient. The preparation of the equipment is done at the Supply unit, where the sets are supplemented with all the necessary material to perform the installation.

In case of problems with the equipment the LBB worker fills in a form and encloses the form in the suitcase. Every Tuesday the equipment that has been used and the equipment with failures is picked up from the support points. Equipment and materials that have been ordered are brought to the support points. At the ‘Supply’ unit in Assen the equipment with failures is checked. Charging of the RFID and 2-piece ankle tags and reparation of equipment is done by 3M in Israel. TSS does not have the required instruments to open the equipment.

The equipment is owned by the Custodial Institutions Agency. When the equipment is installed, the person under EM needs to sign a form declaring that he can be held accountable in case of loss of or damage to the equipment. When TSS reports damage or loss of the equipment to the police, a police report is made. The manager of the TSS back office processes the reports and will try to get compensation for the equipment through a legal procedure. In case the probation officer signals damage or loss of the equipment, he communicates this to TSS by filling in a standard form. The person under EM may need to pay for the costs.

Figure 4.2 Lifecycle of the equipment



5. Monitoring process

5.1 Risk assessment

5.1.1 Risk of re-offending

Next to supervising probationers, the probation service also has the task to report to mandators, such as the court and the Prison Service, whether supervision by the probation service is advisable for people who have been arrested or are serving a prison sentence. The social enquiry report is compiled by an advisor who works at the probation service. The main purpose of the report is to provide insight in the risk factors and the protective factors in the life of the participant and to make an assessment of the risk of re-offending.

The advisor has two different risk assessment instruments at his disposal. The QuickScan is used when a first assessment needs to be made, for example after someone is arrested and detained in a police cell. The QuickScan is based on the information that is available from a dossier and an interview with the person concerned. A preliminary diagnosis is made with regard to the re-offending risk and the necessity of starting probation supervision. The second instrument is the RISC (Recidive Inschattings Schalen). The RISC is a more comprehensive scale which is used when more time is available to conduct the assessment and in case the risk of re-offending is predicted to be medium or high. On the basis of one or more interviews with the participant and information from a dossier, the advisor fills out the scale, which comprises of 12 domains.^{xxii} The participant also fills out a self-report inventory. The advisor integrates all the information and comes to a conclusion with regard to risks, criminogenic factors and responsivity of the participant. Subsequently, the advisor determines which interventions and activities are needed in order to decrease the risk of re-offending. In the report to the mandator an advice is given concerning the special conditions that can be attached to a release from pre-trial detention, a suspended sentence or a conditional release from prison. One of these special conditions can be to apply EM.

The advisors who participated in this study indicate that a supervision level can be disseminated from the RISC. Three levels exist of which only the two highest levels are suitable for applying EM (levels 2 and 3). The supervision level indicates the intensity of the supervision, for example with regard to the number of obligatory contact moments per month between the probation officer and the probationer. Level 1 means that at least once a month a meeting should take place between the probation officer and the probationer. In level 2 this is once in every two weeks and in level 3 weekly meetings should take place. The supervision level is an indication that helps the probation officer to work out the probation plan. This level is not included in the report for the mandator. The advisors indicate that when a person is taken in pre-trial detention or when the person is already sentenced to detention and applying for early release, a minimum of level 2 supervision is almost always reached. The probation officer who executes the supervision is in the position to adapt the supervision level, but this needs to

be clearly motivated by the probation officer to his manager. The case presented below illustrates how the supervision level is discussed among probation officers.

Case study

A feasibility study is carried out by the parents of a 33-year-old prisoner. He was imposed a sentence of eight years for drug crimes and violence. He has not had any leave during his time in prison and the feasibility study is carried out in the context of an application for a penitentiary programme (PP) and conditional release. Before he was imprisoned, he did not have a paid job. He made a living out of the income he received from criminal activities. The participant's parents seem benevolent to the probation officer. The period of conditional release will take a long time for this person, as the total duration of the imposed sentence is eight years. The RISc, as carried out by an advisor of the Dutch Probation Service, indicates that the participant has a low risk of re-offending. However, the probation officer who conducts the home visit, believes that this is a high risk participant, because of his long sentence and the crimes for which he is sentenced. The police report is not accessible anymore, because the case was closed a long time ago. Therefore it is unknown what exactly happened at the time the offences were committed. The probation officer explains this case to his colleagues at a case consultation. He asks whether this participant meets the criteria of a robber. The robbery policy subscribes supervision level three, when the PP starts (high risk, intensive supervision). The probation officer makes a plea to first supervise this participant more intensively and to assess after six months whether the supervision can become less intensive. One of the colleagues indicates that it is not really important whether the participant is a robber or whether he is listed on the HIC (High Impact Crimes)-list. Instead, the risk of recidivism is important to determine the level of supervision. The probation officer decides to contact the advisor to once again exchange thoughts on what the best thing is to advise in this case, because finally he is the one who will conduct the supervision (OR 6).

With regard to EM another risk categorisation is applied. This categorisation is based on whether a curfew and/or location ban is electronically monitored, with or without police notification (risk level) and the priority to which violations should be dealt with (priority level; see Table 5.1). P1 indicates the highest priority and this means that when the participant enters the area for which a location ban is ordered the emergency service is immediately contacted and the police will go to the house of the victim in order to protect the victim. P2 cases concern participants for which the police is not immediately notified when they enter an exclusion zone, because there are no victims who require protection. P3 concern the lowest priority cases with regard to monitoring, because these participants only have a curfew and no location ban (see section 6 for more details concerning the procedures with regard to violations). The priority level of all participants is listed in the monitoring software. The purpose of the priority levels is that in case of technical failures monitoring and probation officers can easily see which cases require special attention.

Table 5.1 Risk level and priority level of EM

<i>Risk level</i>		<i>Priority level</i>	
Level 2	Curfew and/or location ban without police notification	P3	EM with curfew and/or location ban
Level 3	Curfew and/or location ban with police notification	P1	EM with location ban and victim protection
		P2	EM with location ban, without victim protection
		P3	EM with curfew, without location ban

In the south-western region of the Netherlands (which is the most urbanised area of the Netherlands and which has the highest concentration of persons under EM) a separate excel sheet is maintained on which all the participants are listed according to priority level. Moreover, extra information is provided per participant, such as the exclusion zone and whether victims are involved. This list is particularly useful for probation officers who have a back-up shift, because they are able to see at a single glance whether they are dealing with a high priority participant when notifications are coming in from the tag. Furthermore, when system failures occur this prioritisation is also used to determine which participant might pose a risk to victims or society in general. In exceptional cases, when their tag is not responding to the software, priority 1 participants are given a new tag. This is however a costly operation and the parties involved do not want to be too open to participants about these failures, because they believe it might damage the reputation of EM. The following quote illustrates this:

“Well, then it turns out that four or five need to be re-installed. But you have to be careful with that, you shouldn’t shout it from the rooftops because these people [persons under EM] text each other and before you know it is out in the paper. That’s not what we want. So it is a sensitive issue.” (TSS Manager EM).

Another respondent argues that it is not necessary to re-install tags with every new failure. Especially at night when participants are sleeping there is less chance that notifications are missed, because people are at home anyway. Moreover, participants do not know when a failure takes place and they cannot take advantage of the situation when they do not know. Furthermore, participants who have bad intentions don’t need to wait for a failure to occur, because they can always cut the tag (CIA 1 – Implementation manager).

5.1.2 Risk assessments in other situations

Risk assessments are not only made with regard to the risk of re-offending, but also with regard to risks that are existent when home visits are made, in case a feasibility study is conducted or when a tag is installed. These risk assessments are carried out by probation officers and fieldworkers, who install the tags, in a non-standardised fashion.

In principle a probation officer carries out a home visit for a feasibility study on his own, unless the probation officer is concerned about his personal safety. In that case he can ask a colleague or even a local police officer to come with him. In general, probation officers indicate that people are willing to welcome them at their home, because they are happy that their family member is able to come home. They indicate that it is rather exceptional that they go on a home visit in pairs. The national policy of the Dutch Probation Service indicates that probation officers should always contact a colleague at the office before entering a house and contact the colleague again after 30 minutes (DPS Policy maker). In practice, however, it was not observed that probation officers had telephone contact with a colleague before and after conducting a home visit. It is left to the professional assessment of the probation officer whether he will take precautions against possible risky situations, such as visiting the house together with a colleague or police officer.

With regard to the installation of the equipment a risk assessment is also made by probation officers and fieldworkers. At the Transport and Support Service, which is responsible for the (de-)installations, a risk analysis department is available. In some cases this department is asked to assess the risks attached to installing equipment at the living address. In the exceptional case that the risk is assumed to be too high, the tag can be installed in prison. At the installation at least two people are present, which are the TSS fieldworker and the EM specialist of the Dutch Probation Service or probation officer of Addiction Probation. When technical problems occur during the monitoring period, TSS may visit the person's home to check the equipment. These visits are always done by two fieldworkers. The reason for this is that the person under EM may accuse a fieldworker of sexual intimidation and when there are two fieldworkers there is always someone who can testify. The fieldworkers have pepper spray and handcuffs, but it is to their own discretion whether they take it with them to a home visit or leave it in their car. In general, the safety of fieldworkers is not considered to be a big item. One of the fieldworkers who was observed during his work explained that he always left these items in his car, because he expected he would not have to make use of it and so far he had never encountered dangerous situation in his work as fieldworker (OR 17).

5.2 Keeping track

The Dutch Probation Service and the Addiction Probation Service organise the monitoring of participants in a different way. The Addiction Probation Service consists of 11 different institutions nationwide and probation officers work at one of these institutions (see also section 1). Because of the scattering of EM across these institutions, AP decided to appoint three national coordinators for the implementation of EM. As a result individual probation officers who work with addicted participants are not able to access the monitoring software. The software is only accessible to the three coordinators. When more serious violations take place during the day, the probation officers are contacted directly by the monitoring centre. In case of less serious violations, an e-mail is sent to the central mailbox, which can only be accessed by the national coordinators. When violations take place outside of office hours, a back-up service is in place to handle these violations.

The national coordinators have an important task with regard to communicating the notifications to the probation officers. More urgent notifications, which are e-mailed or

telephoned by the monitoring centre, are sent by e-mail to the probation officer. The probation officer can then decide which course of action he will take. Less urgent notifications are not sent to the probation officers straight away, but will appear on a weekly report. The coordinators also provide probation officers with advice, when they see certain patterns in the notifications that are coming in concerning a certain participant:

“We give advice. For example, when we see that someone is just over the border of the exclusion zone [...] then they notice because the tag starts to vibrate. And then they think right away ‘I have to get out of here. Then we also send an e-mail, ‘look, he has been there’. But we also see that he was gone after three seconds. When we see that someone is making the same minor violation repeatedly, than we will say to the probation officer ‘do something about it. Go talk with him’. Someone who does not charge his batteries, well, that can happen once. After a couple of times we say ‘talk to him about this’. Because this is part of the rules.” (AP 1 – national coordinator).

Every Monday the national coordinator sends a weekly report of each participant to the supervising probation officer. This report consists of a listing of all the notifications of a given week. The weekly report is generated through the software by the national coordinators, which is a time consuming task. Moreover, they explain that currently the report is not very practical, because many notifications are not of any use to the probation officers. In the software the notifications that are of importance are displayed in red, but for the weekly report it is not possible to list only the red-coloured notifications. For example, the notification ‘sanity test’ is displayed regularly. This means that the equipment has sent a test notification to the monitoring software and that it is functioning correctly (see also section 4). The GPS-tag sends such signals every half an hour and the RFID-tag every hour, which means that the weekly listing is full of these notifications and the report consists of around 1 to 1.5 pages per day per participant. The national coordinators have written a manual for the probation officers, about the meaning of notifications and which of those are of particular importance when going through the weekly reports. The probation officers can use the weekly reports in their meetings with participants. They can, for example, discuss issues such as regularly coming home a couple of minutes too late or problems with charging the tag. Probation officers can also consult the national coordinators in case they would like to have more information generated by the tag. They can, for example, ask for GPS-trails of a given evening, as is explained by one of the coordinators:

“And sometimes probation officers ask us for information. ‘I’d like to know what he is doing on Saturday night, because the local police officer says he is hanging around with his old group. Can you check for me where he was the last two Saturday nights between this and that time?’ Well, we can do that. The probation service can check these data and talk about it with the client. Exchanging information with a third party is something we don’t do just like that, but a probation officer can receive every trail, if he wishes so. And they make use of that.” (AP 1 – national coordinator).

Probation officers working at the Dutch Probation Service have the authority to independently access the monitoring software. They are authorised to see the notifications and trails (in case of GPS) of the participants whom they supervise. At the Dutch Probation Service special teams

are formed of EM specialists, who supervise participants with EM. These teams are managed by an EM coordinator. The Dutch Probation Service does not make use of the weekly reports. The number of participants at this service is much higher compared to the Addiction Probation Service which means it would take even more time to generate and read through the reports. Therefore, it is the own responsibility of the probation officer to scan the notifications in the software. The most urgent notifications (e.g. violations) are telephoned by the monitoring centre to the probation officer (during office hours) or to the back-up service. Less urgent notifications are e-mailed to the probation officer and non-urgent notifications are only registered in the software and not communicated to the probation officer in another way. However, probation officers cannot just rely on the notifications of the monitoring centre to know if the client complies with the rules. One probation officer puts this as follows:

“When you don’t receive a notification, that does not mean that someone sticks to the rules completely. We had the example of someone who came in 16 minutes too late, of which you don’t receive a notification. Not by e-mail nor by phone. Therefore, it is good to check those pages in the system, I always call these pages. To check the tab pages so you can see whether someone needs to be talked to, if only to give the signal of ‘listen, that quarter of an hour we see too’. And it shouldn’t be the case that it is a quarter of an hour today and half an hour tomorrow. So that takes some time and self-discipline.” (Probation officer 1 – supervision).

Most probation officers indicate that they go through the software at least once a week to see whether noticeable patterns or changes in the behaviour of the participant can be detected. The EM coordinators advise the supervising probation officers to always scan the notifications before meeting with a participant. The probation officers do not receive a weekly report, but as EM specialists they are able to access the software themselves and see all the red-coloured notifications of a given participant. One EM coordinator indicates that it is essential that probation officers go through the notifications, because not every notification is a violation in a strict sense and therefore some are not communicated to the back-up service, although they might indicate that a participant is trying to test the limits of what he can do (see the quote above). This is particularly the case with participants who are coming home too late or leaving the house too early while being on a curfew. However, probation officers indicate that going through the notifications in the software is time consuming and sometimes they do not know how to interpret certain notifications. The notifications are displayed in English and many of them are not useful for probation officers, such as the sanity test, battery life, whether the tag is charged, GPS or LBS coverage, movement of the tag, etc. Therefore, probation officers indicate that the software needs some improvement to meet their needs as a probation officer.

Next to checking the notifications, probation officers indicate that they occasionally also look at the GPS-trails of participants. A policy officer of the Dutch Probation Service stated that probation officers should at least once a week take a look at the GPS-trails. That way particularities can be detected, such as that someone is going to a certain place regularly and it is unknown what he is doing there or who he is meeting. This can then be discussed during a meeting with the participant. One probation officer gave the following example of this:

“I also supervised a guy who claimed that he did not have money to travel to our office, but we saw through his GPS tag that he was travelling around the city all the time. Yes, that’s something you can discuss, ‘why do you say this, but you do that?’” (Probation officer 5 – supervision).

Another probation officer has a more nuanced opinion concerning the GPS-trails. He explains:

“PO: Or sometimes through GPS you see particularities, someone has been in Zierikzee. Sometimes it’s just out of curiosity, but you ask yourself: ‘what is he doing there?’ Although GPS is used for exclusion zones, but you also see things, where he goes, where he moves around.

I: Yes. So, you discuss those things with a participant, when you see certain things?

PO: Yes, I’m not searching deliberately, where he is in X or whether he goes to a coffeeshop [place where soft drugs are sold] or where he is on the streets, I don’t do that. I think it is not right to do that, it is not imposed for that, but yes, when things stand out... When you see him moving all across the country, then I will ask about it.” (Probation officer 9 – supervision).

5.3 Changes in circumstances

At some point there may be changes in the circumstances of the participant. These changes may have implications for EM. Changes can be made incidentally but also more long-term changes can be made.

5.3.1 Structural changes

One of the more structural changes is when a participant intends to move to another address. In that case, the probation officer needs to first assess whether the new home is suitable for EM. He will conduct a feasibility study in order to advise the mandator about the feasibility of EM on the new address. When a participant is on early release out of prison the selection officer is responsible for deciding whether the participant is allowed to change address. When a participant’s pre-trial detention is suspended the prosecutor is mandated to take a decision.

Another structural change that can be made concerns the end of the curfew in the morning. In case a participant has work for which he need to start early in the morning, the decision can be made to end the curfew at, for example, 5 am instead of 6 am. This regularly happens when a participant works in the construction industry. In principle, the hours between 11 pm and 6 am are curfew hours for every participant, so changes to these hours need to be discussed with the mandator. In case the job clearly contributes to the re-socialisation of the participant the change can be granted. However, other aspects, such as the type and circumstances of the offence are also taken into account when assessing the requested change. A selection officer explains the following:

“[...] but everything that helps the reintegration can be applied for. When he has to work an early morning shift and there are no other solutions and it’s about a paid job, it is about his future. Yes, then it’s possible. Of course we have a look at the offence. Did the offence take place at night? [...] We look at that critically. Usually, we discuss this with colleagues, ‘What is your opinion about this case?’ But everything that helps the reintegration, for example working in a bakery... They start baking at 4 am. Well, fine. Let him do that. Is he going to

work as a bouncer at a night club? We don't like that. And when he asks to work late at night, well, that is not possible. That would only increase the risk of incidents.” (CIA 2 – Selection officer).

Another more structural change that can be made is to extend the number of free hours per day when a participant has a curfew. The extension of hours is common practice when people are conditionally sentenced or on conditional release, because the probation service wishes to increase freedoms in different steps or phases. In case of suspension of pre-trial detention it is also possible that freedoms are increased leading up to the trial, but that is not always necessary because sometimes a participant is in level 1 from the start.

Curfews are divided in three levels. Level 3 is the strictest level and means that someone can be outside for 12 hours per weekday and 4 hours per weekend day. The number of hours of free time can increase to 17 hours every day in level 1 (see Table 5.2). The latest time someone should be back at home is always 11 pm, so in level 1 people should be at home from 11 pm to 6 am. The curfew level does not necessarily correspond with the supervision level someone is in. This means that a participant in curfew level 1 can be in supervision level 2, which means that he has a meeting with the probation officer at least once in every two weeks.

Table 5.2 Number of hours free time under curfew

<i>Curfew level</i>	<i>Weekday</i>	<i>Weekend</i>
Level 3^{xxiii}	12	4
Level 2	14	8
Level 1	17	17

During a penitentiary programme increasing the hours of free time is standard practice. When a participant starts in level 3 the period of the programme is divided in three parts and when the participant behaves well and sticks to the rules he is promoted to the next level after one-third of the programme. Probation officers indicate that it is desirable that participants have functioned in level 1 before EM is ended, because otherwise the gap between the number of free hours in level 2 and total freedom is too large, although it is possible that the curfew remains in place without being electronically monitored. The probation officers take decisions with regard to increasing freedoms by themselves and this is not discussed with a mandator. To take these decisions probation officers discuss cases with colleagues. They indicate that they regularly have meetings in which current cases are discussed and they find it important to always consult a colleague when they are not sure about which decision they should take in a case. The following quote illustrates this practice:

“We can promote or degrade someone. So someone goes from level 3 to level 2. It has to be agreed by the team, team wide, I cannot decide that on my own, but it is decided during a case meeting. When we promote someone to level two, different freedoms are applied. Then you get more hours. But it can also be the case that someone in a penitentiary programme has to remain tagged, but then he enters his second one-third or last one-third and we can phase depending on how someone is doing in the programme. It could be that we decide a participant is given 17 hours of freedom 7 days a week for the last period. But he stays tagged. We don't discuss that

with the mandator. That is the framework in which we can decide ourselves.” (Probation officer 6 – supervision).

The probation service has a mode of working that is based on phases and increasing freedoms of participants on EM. These freedoms concern the number of curfew hours and do not apply to a location ban. Location bans are generally not changed structurally during the period on probation. Incidental changes can be made with regard to both the curfew hours and the location ban, as will be shown in the next subsection.

5.3.2 Incidental changes

Incidental changes in the curfew hours or location ban can be divided in expected and unexpected changes in circumstances. Expected changes refer, for example, to attending a funeral, wedding or other occasion for which the participant has asked special permission. In exceptional cases it is possible for a participant to have changes in his curfew hours in order to go to such a special event. Probation officers indicate that they prefer to move the same block of free hours to a later point of time instead of granting more hours of free time. In case of a wedding, for example, a block of eight hours free time on a weekend day, which is normally from 10 am to 6 pm can be moved to 3 pm to 11 pm. It is also possible that a couple of hours from another day are added to the day with the special event. Giving extra hours of free time is more exceptional. Moreover, probation officers explain that it also depends on when the probationer files such a request. One probation officer explains the following:

“[...] it depends whether someone asks this after three or six months or after two weeks. After two weeks I will first ask myself ‘how necessary is this and does it create a precedent, that he will have another request next month?’. That’s not what we want. But when you have someone tagged for a longer period of time and you see that he is working constructively and positively, in most modalities something is possible.” (Probation officer 1 – supervision).

Next to extending the curfew hours, it is also possible to incidentally remove an exclusion zone, for which a location ban is ordered. This is done, for example, when a participant needs to travel somewhere and the train or highway crosses that area. Probation officers, however, indicate that making changes in the location ban is more difficult, because victims may be involved and they need to be protected.

When more hours of free time are granted, instead of moving a block of hours or deducting them from another day, this is not necessarily communicated with the mandator. Some probation officers state that they always discuss this with the mandator, whereas others state that they only seek advice from their colleagues. Most probation officers indicate that they ask the participant to present evidence of the special event, such as an invitation.

Changes which are always discussed with the mandator concern travels abroad. In some cases a participant requests to attend, for example, a funeral abroad. Because the equipment cannot be taken abroad, the mandator has to give the participant special permission to leave the country for a certain period of time. This only happens rarely and on an individual basis. Participants in a PP and those who are awaiting their trial are by definition not allowed to go abroad (Probation officer 8 – supervision).

Unexpected changes in circumstances can also occur and those refer to, for example, accidents for which a participant needs to go to hospital or a delivery. In those cases the participant knows that he should contact the probation officer as soon as possible. The probation officer can inform the monitoring centre about the change, so that they know they do not need to contact the participant, the probation officer or the police. In these cases the participant is also asked to present a piece of evidence to the probation officer of his visit to a hospital for example.

Probation officers state that they have large discretion in granting changes in the EM regime. On the one hand they find this positive, because this enables them to deliver custom-made solutions to practical problems and requests of participants. On the other hand they also acknowledge the risk of arbitrary decisions. One probation officer explains the following:

I: How do you experience the level of freedom or flexibility in working with EM?

PO: I think that it is quite large. On the one hand, that's an advantage because you can deliver custom-made work. It also entails a risk and that is the risk of arbitrariness and that's why it is so important that we discuss cases in meetings. That we discuss these issues, how people deal with it, to prevent that if someone is supervised by Pete he need to be at home at 12 pm while with John it would be 2 am, because that should not be possible. [...] it's always based on substantive argumentation. But still, you have to make sure that you all approach it the same way. (Probation officer 5 – supervision).

Generally, it can be stated that mandators are only involved in the decision-making when major changes are requested, such as changes in address, changing the mandatory curfew hours between 11 pm and 6 am or travelling abroad. All other changes, mainly involving changing hours of free time during the day in incidental cases and extending hours of free time in light of the phasing process, are not discussed with mandators, but reported afterwards.

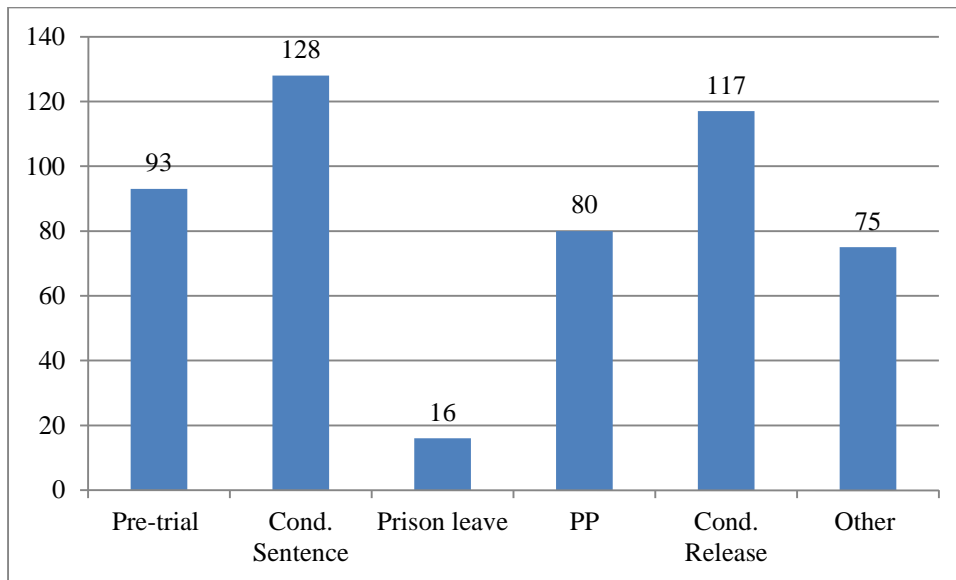
5.4 The end of EM

Generally speaking, electronic monitoring can be ended in two ways. On the one hand EM is ended when the predetermined term of EM is completed or when a request to end EM early is granted by a judge or selection officer. On the other hand, EM can be revoked when a participant breaches one of the conditions attached to EM or another condition. The modality in which EM is applied influences the manner in which EM is ended. In this subsection only the regular ending of EM will be discussed. Ending EM because of breach will be explained in section 6.

Before explaining how EM is ended, some statistics will be provided on the average duration of EM. Figure 5.1 shows the average duration of EM per modality, based on EM schemes finished between January and October 2015. The figures show that EM as part of a conditional sentence has the longest average duration of approximately four months. The average duration for conditional release is a bit less than four months, whereas in case of suspension of pre-trial detention and penitentiary programmes it is approximately three months. Understandably, EM in case of prison leave has the shortest average duration. The duration of wearing the tag exceeds the normal duration of leave, because the prisoner may

keep the tag after returning from leave in case he is expected to go on leave again shortly after. All modalities taken together, the average duration of EM is 69 days.

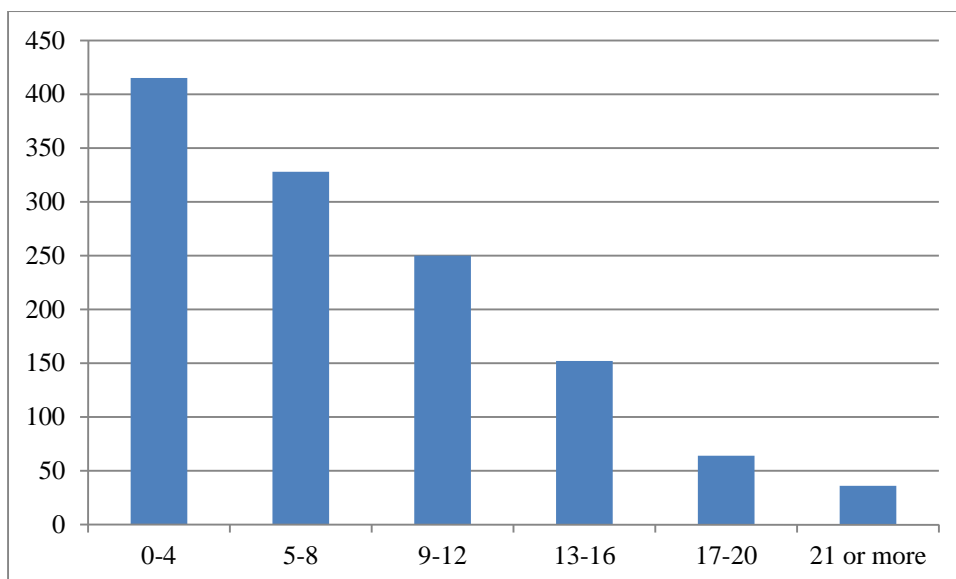
Figure 5.1 Average number of days of EM per modality (January-October 2015)



Source: Reclassering Nederland, 2015 (unpublished data)

In Figure 5.2 the average duration of the supervision provided by the probation services is displayed for participants who started the supervision on EM in 2013. One third of the participants were on probation for a maximum of four months, 26% for five to eight months, 20% for nine to twelve months, 12% for thirteen to sixteen months and the remaining 8% for seventeen months or longer. It can be concluded that almost 80% of the participants is on probation for less than one year. In this period electronic monitoring is applied on average for two or three months. It should be noted here that the largest number of people on EM in 2013 were in a penitentiary programme (46% of the total number of participants in 2013). These programmes can last up to one year, but EM is normally applied for only one-third of the total duration. This can explain why on a daily basis the the most common modality of EM is the conditional sentence (Figure 3.1) while EM is most often applied as a condition of a penitentiary programme.

Figure 5.2 Average duration of probation supervision in months, 2013–May 2015 (N=1.245)



Source: Reclassering Nederland, 2015

In case of conditional suspension of pre-trial detention EM is normally applied until the trial takes place. In case the advisor of the probation service advises not to continue probation in the form of a conditional sentence with EM, and this advice is followed by the judge, the tag is removed after the trial. It is possible that a conditional sentence without EM is ordered, which means that the participant is put on probation for a certain period of time after the trial, but without being electronically monitored. In case EM ends, the probation service makes an appointment with the participant and the Transport and Support Service to de-install the equipment after the trial. In case the judge decides to continue EM, the appointment is cancelled (see also section 1). When EM is applied in case of a conditional sentence the period of EM is mostly determined by the judge in the verdict. This means that when this period is completed, EM should be ended. The probation officer does not have to contact the judge or the prosecutor about the completion of EM. He can make an appointment with the TSS after which a fieldworker is sent to de-install the equipment. In some cases the verdict states that EM should be applied 'as long as the probation service deems it necessary'. This means that the probation service has the freedom to determine at which point EM should be terminated.

Participants in a penitentiary programme are always electronically monitored during the first 1/3rd of the programme. As has been explained in section 1, after this period the probation officer reports to the selection officer on the progress of the participant and whether it is advisable to terminate or continue EM. In principle, when the participant sticks to the rules and no violations take place, EM is ended after the first one-third of the programme. In some regions participants will in this case be assigned to another probation officer, who is not specialised in EM. This is done to make sure that the EM specialists have enough capacity to take on new EM cases, instead of keeping cases which do not involve EM anymore. When it is decided that EM should be continued, after two-thirds of the programme a new assessment of the situation is made by the selection officer and again EM can either be continued or terminated. The HIC-policy states that prisoners who are convicted of robbery should be on EM the entire penitentiary programme (see section 3). In that case EM is usually ended when the penitentiary programme is completed or during conditional release.

The final modality in which EM is applied is conditional release from prison. This is usually the case when the prisoner was not involved in a penitentiary programme, did not complete a penitentiary programme or was on EM the entire duration of the penitentiary programme. Normally the Central Facility Conditional Release (CFCR) of the Public Prosecution Service asks the probation service to report on the progress of the participant after six months. This also has to do with the HIC policy, which is formally supported by the probation service, which prescribes that EM should be applied during the whole period of conditional release. Although in practice many probation officers don't support this approach, at the CFCR there is the fear that EM may go on for too long, as the following quote illustrates.

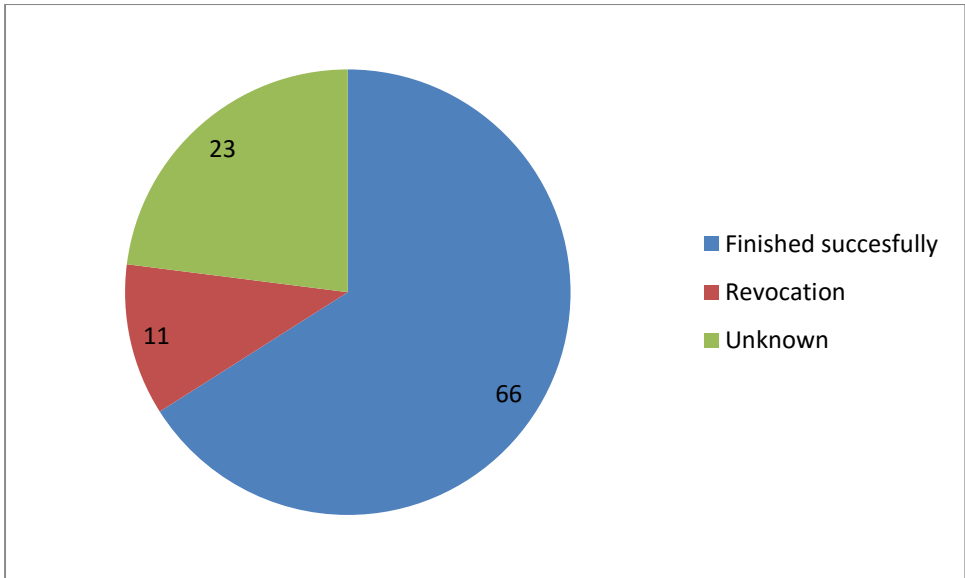
“And what we also lay down, to make sure that EM is not unrestrainedly continued, is that it should be evaluated after six months. Because sometimes you see such a ukase, in which it seems that the probation service thinks that it should be applied during the entire conditional release period. Then we say, no, you have to work towards more freedom, because someone is released.” (Central Facility Conditional Release).

At this moment the probation officer can advise to terminate EM, while the period of supervision still continues for the participant. He can also advise to continue EM for some months longer and to set a new evaluation moment. The defence attorney of the participant can also file a request to terminate EM. The prosecutor of the CFCR will discuss the request with the probation officer in order to decide whether it can be granted. If the prosecutor does not want to terminate EM, the participant can even file a request to the judge to change the specific conditions of his conditional release. The judge then decides in a hearing whether EM should be terminated or continued.

6 Compliance and breach procedure

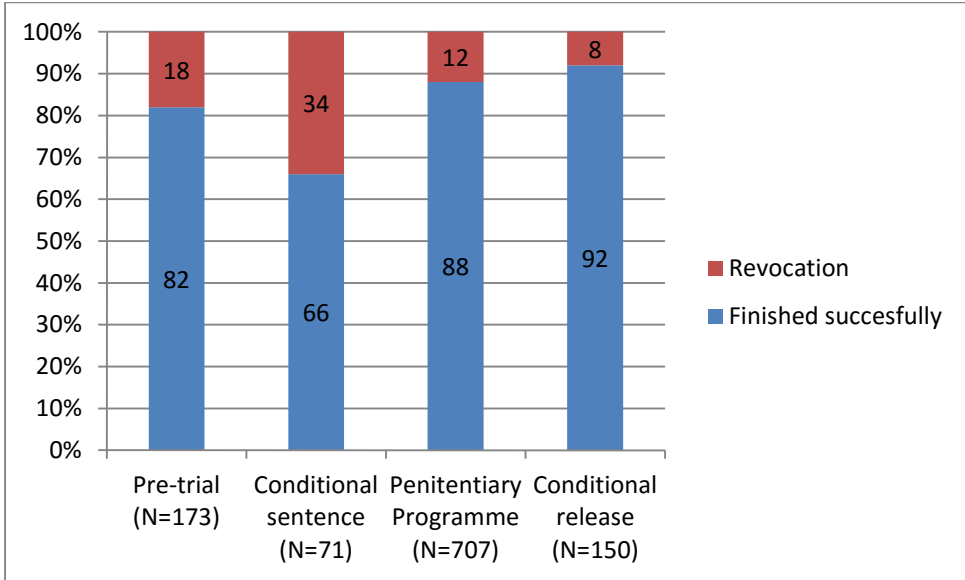
In their evaluation of the first Dutch EM pilots, Spaans and Verwers (1997) found that 16 percent of participants received an official warning during EM, and 12 percent had their EM terminated. Another study from 2004 mentions a completion rate of 93 percent of all Dutch EM cases since 1995 (Haverkamp, Mayer & Lévy, 2004). In general, it seems that up to now, breach data are merely an afterthought of EM research, and the fragmentary nature of these data does not allow for reliable conclusions. For our research, the Dutch Probation Service could provide us with revocation rates for the supervisions with EM that started in 2013. However, no data were available on the reason for revocation. Therefore, it is not clear from these numbers in how many cases the revocation was actually the result of non-compliance with EM, and in how many cases it resulted from the violation of other conditions. Of the total number of 1.562 probation supervisions started 2013 with EM, 11% was revoked (see Figure 6.1). In a rather large number of cases, the outcome of the supervision is not known, mainly because the full trajectory was not finished yet. When only looking at the supervisions with EM started in 2013 of which the outcome is known, 86 percent was finished successfully, and 14 percent ended in revocation. Figure 6.2 shows the revocation rates for the main modalities of EM.

Figure 6.1 Completion and revocation (%) 2013, (N=1.562)



Source: Reclassering Nederland, 2015 (unpublished data)

Figure 6.2 Completion and revocation rate per modality (%) 2013 (N=1101)



Source: Reclassering Nederland, 2015 (unpublished data)

6.1 Violations

Generally, notifications can be categorised as technical notifications, time notifications (concerning a curfew) and presence in an exclusion zone (for which a location ban is ordered). It should be noted that not every notification counts as a formal violation of the conditions attached to EM. Therefore, in the first place the signals that are transmitted from the equipment to the software are called notifications. Only after an assessment is made by the monitoring centre and the probation officer it can be determined whether the notification counts as a formal violation.

In Table 6.1 the notifications that are generated by the equipment are listed. For the 1- and 2-piece GPS ankle tag 18 notifications are identified and for the RFID ankle tag 13

notifications exist (see para. 6.2). Depending on the risk level and the priority level (see Table 5.1 in section 5) a certain course of action is taken by the monitoring officer, the probation officer and/or the Transport and Support Service (TSS), which provides technical support. The manner in which notifications should be handled is described in a notification protocol, which is used by every organisation involved in EM. Moreover, special protocols exist for juveniles (16- and 17-year-olds) and (supposed) jihadists. In case the equipment of a participant who is (suspected of being) a jihadist generates a notification, the probation officer or probation back-up service is always contacted by telephone and the TSS is not called in the first place. The probation officer contacts the participant and decides on the course of action. When the participant cannot be reached and the issue cannot be solved, the police is warned to take over the case.

Table 6.1 Notifications of GPS and RFID equipment

#	GPS		RFID	
	<i>Notification</i>	<i>Explanation</i>	<i>Notification</i>	<i>Explanation</i>
1	Movement without GPS (but LBS)	The person is moving without GPS connection	Receiver sabotage (combination notification 11 and 12)	The case of the home unit is opened and power breakdown
2	No LBS nor GPS	The person is not in the picture anymore	Tag sabotage	Sabotage of RFID ankle tag
3	Tracker case opened	Sabotage of the GPS tracker	Battery tracker low	The battery of the tracker in the ankle tag is low
4	Battery tracker low	The battery of the GPS tracker is low	Not returned – level 3	The person is not present in home area (not in time at home)
5	Violation! Permitted zone – Home (combined with Violation! Home area)	The person is not present in home area during curfew hours	Not returned – level 1/2	The person is not present in home area (not in time at home)
6	Tag sabotage	Sabotage of the ankle tag	Absent without permission – level 3	The person is not present in home area (left during curfew hours)
7	Arrival exclusion zone	Violation of a location ban	Absent without permission – level 1/2	The person is not present in home area (left during curfew hours)
8	Transmitter battery low	The battery of the ankle tag is low	Body contact sabotage	Contact between body and ankle tag is interrupted
9	Body contact sabotage	Contact between body and ankle tag is interrupted	No test signal	No contact between software and home unit

10	Ankle tag out of reach	The distance between ankle tag and GPS tracker is too large (not with 1-track)	Participant found for the first time (without a re-installation taking place)	A re-installation has been taking place, ankle tag has been disconnected
11	No test signal	No contact between software and GPS tracker	Receiver out of position	The home unit is moved or relocated
12	Cradle opened	The case of the home unit is opened	Power breakdown	The adaptor of the home unit is disconnected and therefore has no power
13	Cradle moved	The home unit is moved or relocated	Battery low of home unit	The battery of the home unit is not charged and therefore power outage is likely
14	Home unit adaptor disconnected	The adaptor of the home unit is disconnected and therefore has no power		
15	Battery home unit low	The adaptor of the home unit is disconnected and not reconnected		
16	Sabotage home unit (combination notification 13 and 14)	The adaptor of the home unit is disconnected and the home unit is moved/relocated		
17	Place 2TRACK in cradle	The 2-track must be placed in the home unit because person should be at home according to curfew hours		
18	Participant not in reach of home unit	The distance between the 1-track and home unit is too large, the person is according to the system not at home		

6.2 Decision makers

6.2.1 Monitoring centre

The notifications as displayed in Table 6.1 are first notified by the monitoring officer in the central monitoring centre. As has been described in section 1 the monitoring officer uses a protocol to determine which party needs to be informed in case of a notification. The monitoring officer has the possibility to contact the participant directly, to contact the probation officer via telephone or e-mail, the Transport and Support Service or the police. In most cases the participant is first contacted by telephone. The monitoring officer informs the participant about the notification and gives instructions on what to do. An example of how a monitoring officer settles a notification is the following:

The notification 'not returned' comes in at the monitoring centre. The participant should have been home at 7 pm. The monitoring officer calls the participant, but his father picks up the phone. The father assures that he will contact his son. The monitoring officer tells the father that he should tell the participant to call from the home unit, once he has come home. This way the monitoring officer can check whether the participant has actually come home. (OR 8).

In most cases the probation officer is notified by e-mail of the action that is taken by the monitoring officer. This way the probation officer knows whether the participant has been contacted by the monitoring centre and how the issue has been resolved. In case the participant cannot be reached or refuses to cooperate and the notification cannot be solved, during office hours the probation officer is called. When he cannot be reached the second probation officer is called and when this person does not pick up the phone the monitoring officer calls the local office of the probation service to contact the probation officer or his manager. Outside office hours a regionally organised back-up service is in place. In case the back-up probation officer does not pick up the phone the monitoring officer leaves a message and calls back after five minutes and again after five minutes. In case the back-up service is not responding, the monitoring officer should contact the manager of the regional EM unit or the national coordinator of EM at the Dutch Probation Service or Addiction Probation Service. When a probation officer is reached he will then try to contact the participant. The monitoring centre calls people with an anonymous telephone number and therefore it regularly happens that participants do not pick up their phone because they do not know who is calling them. When the probation officer calls and the participant picks up the phone the issue can be explained and instructions can be given to the participant.

In a number of cases the monitoring officer contacts the Transport and Support Service to take action. This happens mostly in case of notifications related to the technical status of the equipment, for example when the battery of the ankle tag is dying. The TSS makes an appointment with the participant to replace the equipment, so that no further notifications will appear. The probation officer is notified of this course of action by e-mail.

Only in one case the monitoring centre alarms the police immediately. This is the case when the notification 'Arrival exclusion zone' comes in of a level 3 participant (see Table 5.1). This means that a high risk participant has entered an exclusion zone where victims work or reside. According to the protocol, the police will first go to the victim to protect him. The monitoring officer calls the relevant police office and communicates to them the police code that has been attached to the participant and that is stored in the monitoring software. The police

then look for this code in their own system and find the address of the victim so that they know where to go to protect him. However, the police is not always aware of its responsibilities, as the following quote illustrates.

“When there is a victim to be protected, a code is attached to that case, and based on that code the police will know which case is concerned. They can look that up. There is a working protocol for how that’s requested and how to report it to the police. But still the police is sometimes not informed about it or doesn’t know it. I have positive experiences as well. But it’s really variable.” (AP 2 – national coordinator)

The probation officer is notified immediately after the police has been called. For level 2 participants the police is not notified, when they enter an exclusion zone. In that case the participant is called first and he is given the order to leave the exclusion zone. The probation officer is also immediately notified. In case the participant has not left the zone after the warning by the monitoring officer, the probation officer can call him and again urge him to leave.

Not all the notifications come in immediately at the monitoring centre. For example time violations come in after 10 minutes, which is called a *grace time* (‘glijtijd’) of 10 minutes. So, when a participant needs to be at home at 5.00 pm and he does not come home before 5.10 pm a notification comes in at that time. The same is the case when the tracker and the ankle tag are too far removed from each other (in case of a 2-piece GPS tag). The tracker will start to vibrate or make noise and after 5 minutes a notification is sent to the monitoring software. Moreover, not in every case the monitoring officer needs to contact the participant right away. When the GPS connection is broken and no LBS connection is found either, the monitoring officer waits 15 (level 3 participant) or 30 (level 2 participant) minutes before contacting the participant. When in the meanwhile the connection has been restored the monitoring officer does not have to take further action. With regards to time violations the course of action is as follows; when a level 3 participant is not at home in time or leaves the house during a curfew, he is called by the monitoring officer after 30 minutes. For level 2 participants this is after 2 hours. When the participant is not answering the call, the probation officer is called and he will try to contact the participant. The following observation illustrates the course of action that is taken with regard to a time violation:

At 5.10 pm a notification comes in that a participant did not return home. He should have been at home at 5 pm and after the glide time of 10 minutes that notification comes in. In case the participant had returned home within these 10 minutes, no notification had come in. In the history of the participant in the software, the exact time of arrival at home is displayed, so probation officers can check whether participants come home in time. The monitoring officer creates a task in the software, which will pop up at 5.30 pm, to remind her to take action. At 5.30 pm the monitoring officer calls the participant, but the call is diverted to voicemail. Next, the probation officer is emailed about the notification. The monitoring officer again creates a task to call the participant after two hours – at 7 pm. A moment later, the monitoring officer is called by the probation officer, who asks about the notification. The probation officer says that he will also try to contact the participant, to tell him to go home. At 7 pm the participant is still not at home. The monitoring officer calls the back-up probation officer, who says he will also

try and contact the participant. Finally, at 7.30 pm it is visible in the software that the participant has returned home. (OR 8).

The monitoring officers indicate that they do not always follow the notification protocol strictly. Experience learns that many notifications ‘recover’ (are resolved) quickly, for example when someone is in an exclusion zone for only a short time. Sometimes the monitoring officer waits five minutes longer before contacting the participant and in many cases the issue has been resolved by then. This was, for example, observed in case of a participant who had to store his bicycle near a train station. The bicycle sheds were located just inside the exclusion zone. The monitoring officer had called the participant the evening before, when he entered the exclusion zone. The following evening she knew that he most likely was taking his bike and would leave the exclusion zone soon. Because she had this knowledge, she decided not to call the participant immediately, but waited some minutes and in the meantime the participant left the exclusion zone. Thus, sometimes monitoring officers make their decisions based on prior experiences with a specific participant rather than on the protocol.

6.2.2 The probation service and the mandators

After notifications are picked up by the monitoring centre, they are sent to the probation service. The probation officer who supervises the participant must assess what the notification means and whether the participant violates the conditions attached to EM. As has been explained in section 3, conditional suspension of pre-trial detention, conditional sentences and conditional release from prison are combined with general and specific conditions and EM can be applied to monitor some specific conditions. The same holds true for prisoners who participate in a penitentiary programme, to which also general and special conditions are attached. Furthermore, the probation service has different mandators, such as the court, the Public Prosecution Service and the Prison Service. In the following subsections first the practice with regard to penitentiary programmes will be discussed, because these represent the largest category of people on EM. In the second subsection the conditional release and sentencing modalities will be discussed.

Penitentiary programmes

The Penitentiary Facility Administration, in the person of its manager, has the formal responsibility for the implementation of penitentiary programmes. In practice, the implementation of the programmes is carried out by different organisations, such as the probation services (art. 8 PM). When the participant does not comply with the conditions attached to the penitentiary programme the PFA manager can decide to give a warning, to change or add special conditions attached to the programme or advise the selection officer to terminate the programme. These decisions are only taken after advice is asked from the probation officer responsible for supervising the participant. Every decision that is taken in this regard is communicated to the selection officer (art. 9 PM). With regard to the penitentiary programmes a detailed sanctioning protocol has been developed. In this protocol a distinction is made between violations or offences and rule infringements. Violations are, for example, intimidating or threatening behaviour to staff, time violations and lack of cooperation with the programme. Offences are physical violence and criminal offences for which the participant is

arrested. Rule infringements are sabotage of equipment and alcohol or drug use. For the latter category of violations the programme is immediately ended. The same holds true for physical violence, criminal offences and not cooperating with the programme. When a participant displays intimidating or threatening behaviour to people who are involved in executing the programme or in case of unauthorized absence from a part of his programme (e.g. work or training) or from home, different sanctions can be given.

With regard to EM time violations are most relevant. When a participant is repeatedly late for a maximum of 20 minutes or late once for 20 to 60 minutes the probation officer can first give him a reprimand. This does not have to be communicated to the Penitentiary Facility Administration (PFA), but it has to be reported in the case file of the participant. When the behaviour of the participant does not improve within a month the head of the PFA can give him an official warning. An official warning is also given when the participant is late for the second time (between 20 and 60 minutes) or for the first time (between 1 and 2 hours). The penitentiary programme is ended immediately when the participant makes another time violation after having received an official warning already (when he is late for the third time, between 20 and 60 minutes, or the second time, between 1 and 2 hours). The programme is also ended right away when the participant is once late for more than 2 hours. In this case the probation officer should contact the PFA immediately, also outside of office hours. In other instances the probation officer can report the violation the next day. In case the PFA holds the opinion that the programme should be terminated and the participant should be detained again, the head of the PFA can imprison the participant right away. When the participant is at home, he is collected there and brought to prison by TSS. The selection officer is responsible for authorising this decision. In practice, however, the advice given by the PFA is always taken over by the selection officer.

Probation officers indicate that the rules regarding breach and violations in penitentiary programmes are very clear and directive. They indicate that they have less discretion with regard to their response to violations and more communication takes place with the party that has the final responsibility (the Prison Service represented by the Penitentiary Facility Administration). In principle, every violation needs to be reported to the PFA. There is, however, some room for interpretation, as the following quote shows:

PO: Eh, for example when someone repeatedly comes home late, but less than 20 minutes, then we should notify the PFA. The first time there will only be a registration in the system. After several times, it should be sent to the PFA.

I: And several times, is that two times or more?

PO: Well, that is free to interpretation actually. So I think that is a little bit of a grey area. In case someone is late for 20 to 60 minutes he should be sent to the PFA for a correctional talk.

I: Okay, that is already after one violation?

PO: Exactly. No, the second time. Sorry, I should say it correctly.

I: Okay.

PO: The protocol is in my folder. In any case, when someone is absent for more than two hours, this means detention right away. Then he must go to the PFA immediately (Probation officer 8 – supervision).

In case a participant is sent to the head of the PFA for an official warning, or ‘correction talk’, this is meant to be a last warning. It is made clear to the participant that when one more violation takes place, he will be sent back to prison. One probation officer calls this a ‘toothbrush talk’, because participants should be aware that the possibility exists that they will be imprisoned again and therefore better take their toothbrush with them to be sure (Probation officer 6 – supervision).

Conditional release and sentencing

Officially the Public Prosecution Service is responsible for supervising the compliance with the general and specific conditions of convicts and suspects who are conditionally released from prison, suspended from pre-trial detention or conditionally sentenced. The probation service is authorised to execute the actual supervision and support of the probationer (art. 14d, under 2 CC; art. 15b, under 2 CC). When conditions are not complied with by the probationer the probation officer should report this to the public prosecutor. In case of suspension of pre-trial detention, the prosecutor can ask the police to arrest the suspect when conditions are not complied with (art. 84(1) CPC). Subsequently, the judge can by virtue of one’s office or on request of the prosecutor decide to terminate the conditional release (art. 82(1) CPC). In case of a conditional sentence and conditional release from prison the prosecutor is also authorised to order the arrest of the participant, in case conditions are not complied with (art. 14fa, under 1 CC; art. 15h, under 1 CC). In both instances the judge decides, upon request of the prosecutor, if the conditional sentence should be executed, and if so, which part of it (art. 14g CC; art. 15j CC).

In these modalities less strict sanctioning protocols exist, compared to the penitentiary programme. The participants are not under the responsibility of the Prison Service and therefore only a judge, if necessary upon request of the prosecutor, can decide on the termination of the probationary period and EM. When time violations take place, probation officers will generally first talk this over with the participant. They will talk about why a participant does not stick to the rules. One probation officer illustrates this as follows:

“Look, when there are violations it should be discussed as soon as possible, especially when these are intentional violations. I supervise, for example, a boy who lives in the exclusion zone and we have given him one road to get out there. However, that means that minor violations occur of thirty seconds or one minute. We don’t have to call him right away, but we discuss that at our next meeting. But when someone is half an hour late, does not charge his tag or forgets the tracker of the 2-track, those are things that we prefer to discuss as soon as possible with the participant, because then he remembers best. Because when you talk about it a week later and ask ‘what happened last Tuesday?’ ‘No idea what I did that day’ is often the answer. Direct action does not have to be a warning, but to let him know ‘I have seen it, pay attention, these are the rules and you have to stick to it’. When he violates it again, then you can give a reprimand or a warning or let him talk with the mandator.” (Probation officer 4 – supervision).

Probation officers can also give a participant a reprimand when he does not comply with the conditions attached to EM. When violations still take place after the reprimand has been given, the probation officer can give the participant an official warning. After this no other sanctions can be imposed by the probation officer and he should then discuss with the Public Prosecution Service which course of action should be taken. The public prosecutor can also give an official

warning in person to the participant, if the sanctions imposed by the probation service have not been effective.

When the participant breaches the rules and does not improve his compliance, EM can be revoked. In the case of suspension of pre-trial detention the probation officer informs the prosecutor about the violations and the prosecutor can decide to ask the Council Chamber (consisting of three judges) to revoke the suspension of pre-trial detention. In the meantime the prosecutor can order the police to arrest the participant. When the participant is arrested the tag is removed by a fieldworker at the police station or detention centre. The Council Chamber can decide to take the participant into pre-trial detention again until the trial. When a participant does not abide by the conditions attached to a conditional sentence with EM, the probation officer also reports this to the prosecutor. The prosecutor can decide to revoke the conditional sentence and ask the judge to execute the sentence. Mostly, it takes a couple of months before a participant comes before the court again and the participant just has to wait for the execution hearing (*tul-zitting*). Only when a new offence has been committed the police can arrest the participant and the execution of the conditional sentence will in that case be dealt with by the court at the next hearing (see also section 1).

Finally, in case of conditional release from prison the probation officer reports violations to the Central Facility Conditional Release. The prosecutor can give the participant a final warning, which is given to him in person. In case of a second or very serious violation the prosecutor can file a request to revoke the conditional release. The judge decides on this in a court hearing. Depending on the risk level, with regard to re-offending, the participant can be detained again before the court hearing takes place. Usually the prosecutor asks the judge to detain the participant again for around four months, so that a part of the conditional release period is left. The prisoner can in that case still be supervised by the probation service in the remaining period of conditional release, which enables a more gradual return to society. In case of committing a new offence, the participant is arrested and prosecuted for the new crime. This usually means that he can be held in prison until the trial.

6.3 Influence on compliance

In this section the influence of EM on participants' compliance with the supervision conditions will be discussed.

Several respondents indicate that EM functions as a safeguard with regard to compliance. With regard to a curfew or location ban, violations can be detected easily by means of EM. Therefore, participants on EM know that when they go to an exclusion zone or when they come home too late, this will be notified by the probation officer. One of the probation officers typifies EM as the 'perfect registration'. Special conditions, such as location bans, already existed before EM was introduced. However, with EM the compliance with a location ban can be monitored much more efficiently (Probation officer 10 – supervision). When a participant is not on EM, it is more or less only by chance that a participant can be caught when breaking the rules, for example when violating the curfew.

Probation officers indicate that generally the rules attached to EM are quite clear for participants. They know at which places they are not allowed to come and what their curfew times are. The awareness that one is monitored and that violations are detected is a strong

mechanism to enforce compliance. Participants are mindful of the fact that when they do not abide by the rules, certain consequences will follow. Probation officers indicate that they always discuss with participants what kind of notifications have come in since their last meeting with the participant. Participants therefore know that the probation officer receives these notifications and that they can be confronted with these notifications.

Moreover, several respondents indicate that being electronically monitored also has a psychological effect on participants, which is comparable to being detained. In prison, people are also constantly watched and their life is determined by the rules and structure that exists in prison. Probation officers as well as respondents working in the Prison Service believe that EM has a similar effect on people. This makes it hard for some participants, because they feel free at home, but at the same time they are restricted by curfew times.^{xxiv} Some participants even find it easier to be in prison, because the rules are clear and less self-discipline is required (PS 1 – PFA manager).

As has been explained in section 3, EM provides structure to the life of the participant and he knows that consequences are attached when not abiding by these rules. Respondents also indicate that when participants comply with the rules it is easier to achieve behavioural change. Habituation to a structured and non-criminal life style can be achieved when participants comply with EM. One respondent states it as follows:

“So you ask how it contributes to compliance? Yes, it helps, for sure to force someone in a certain behavioural pattern or to create awareness, because that is what it starts with. You have to be aware first, in order to break down that behaviour.” (DPS Policy maker).

Some of the respondents indicate that compliance with the rules also takes place because participants do not want to go back to prison. Going back to prison is worse to them than having to comply with the conditions attached to EM, although these rules can be fairly restricting as well. One criminal court judge states that being detained is often the reason why people agree to EM. As soon as they are in freedom they may no longer feel the urge of cooperating with the probation service, but when they are still in prison they want to go home as soon as possible, also when that means being tagged.

Furthermore, participants’ lack of knowledge of the equipment is also mentioned as something that can contribute to compliance. Participants may think that they are monitored constantly and that someone is watching them all the time. This makes that participants are afraid to break the rules and therefore comply.

Participants of penitentiary programmes are normally tagged for the first one-third period of the programme, although the curfew (and the location ban when this is imposed) will remain during the entire duration of the programme. This means that participants still have to be at home, at least, between 11 pm and 6 am after EM is ended. Some respondents indicate that at that point participants most likely stick to the rules less strictly, because they know that they are not monitored as closely as before. However, in case the participant is known to the police or is arrested by the police, a curfew violation can be detected and the participant can be sent back to prison. As has been stated before, the likelihood of detection is, however, small.

7. Diversity

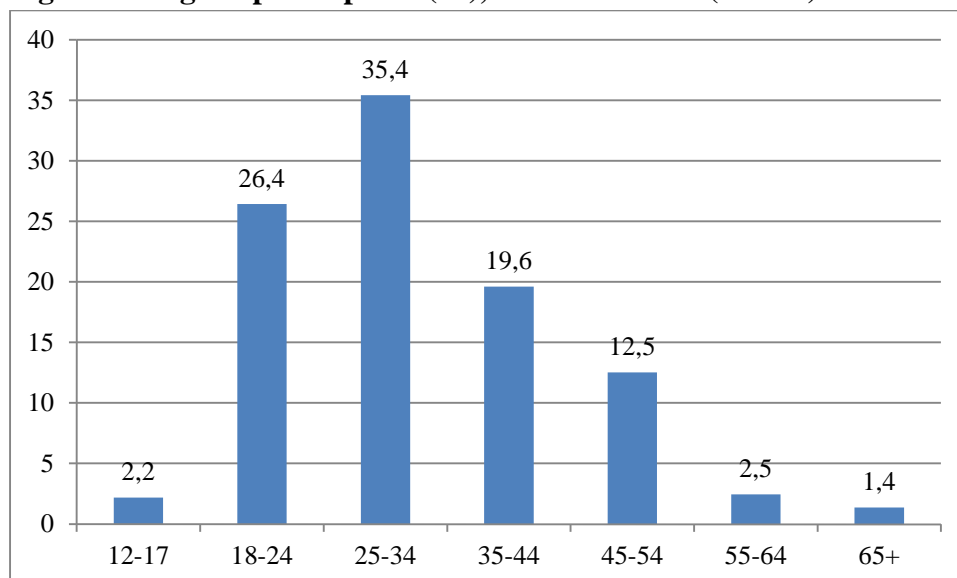
7.1 The population of EM

In subsection 3.3 the target group of EM has been described. In this section the diversity of the population on EM will be looked at in more detail. First, a number of statistics will be provided in this section. Second, the selection of participants will be discussed.

On 15 March 2014, of the 367 monitored persons, 93% were male and 7% were female. The percentage of women is only slightly higher than in prison where 5.7 percent of the population was female in 2014 (DJI 2015, p. 35). This shows that EM is not seen by the authorities as a specific instrument to keep women out of prison.

As can be seen in the chart below, the majority of participants is between 18 and 35 years old (62%), which is comparable to the prison population. Juveniles below the age of 18 represent a small proportion of the total population of monitored persons, namely 2%.

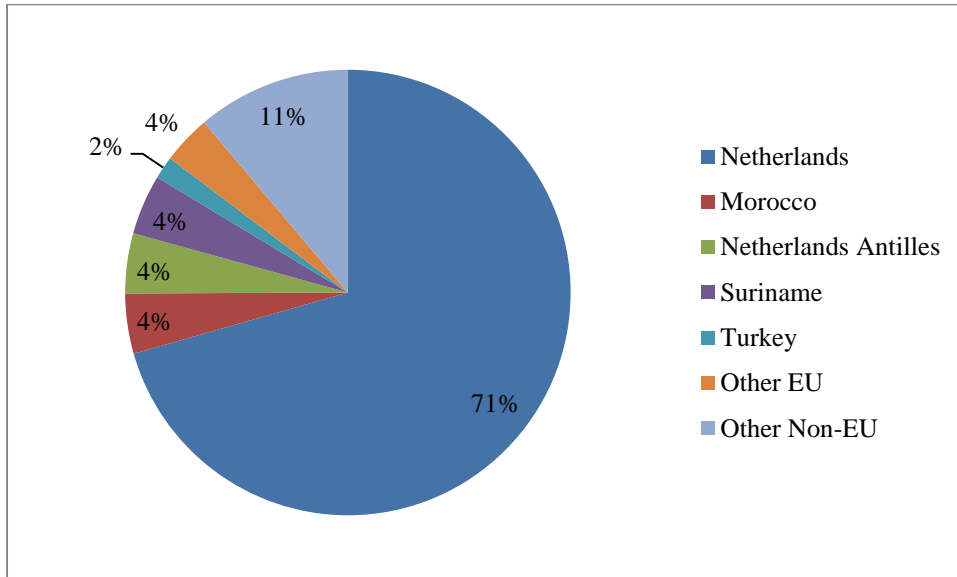
Figure 7.2 Age of participants (%), 15 March 2014 (N=367)



Source: Reclassering Nederland, 2015 (unpublished data)

71% of the people monitored on 15 March 2014 was born in the Netherlands. This is much more compared to the prison population of which not even half was born in the Netherlands (DJI 2015, p. 37). This confirms the idea that sentencing modalities that are implemented outside prison are still used in a selective way (Boone, 2012). People born in Morocco, the Netherlands Antilles and Suriname each represent 4% of the population. The other large minority group in the Netherlands, people from Turkey, represent 2% of the population. In the whole of 2013, in total, 51 other nationalities were represented in the population. From the other EU countries, participants from Germany and former Yugoslavia form the largest groups. From outside of the EU, participants from Iran, Iraq, Somalia and Afghanistan were the largest groups in 2013.

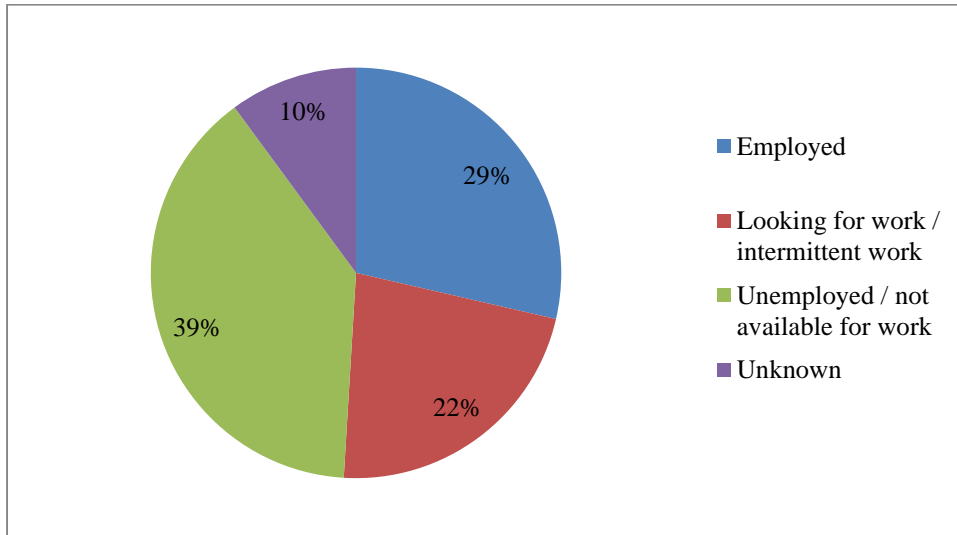
Figure 7.3 Country of birth of participants (%), 15 March 2014 (N=367)



Source: Reclassering Nederland, 2015 (unpublished data)

With regard to the employment status of the population the following can be stated: 29% of the population is employed prior to being electronically monitored, 22% is looking for a job or works on an irregular basis and the other 39% is unemployed or is unfit for work due to illness or disability.

Figure 7.4 Last employment status (%), 15 March 2014 (N=367)



Source: Reclassering Nederland, 2015 (unpublished data)

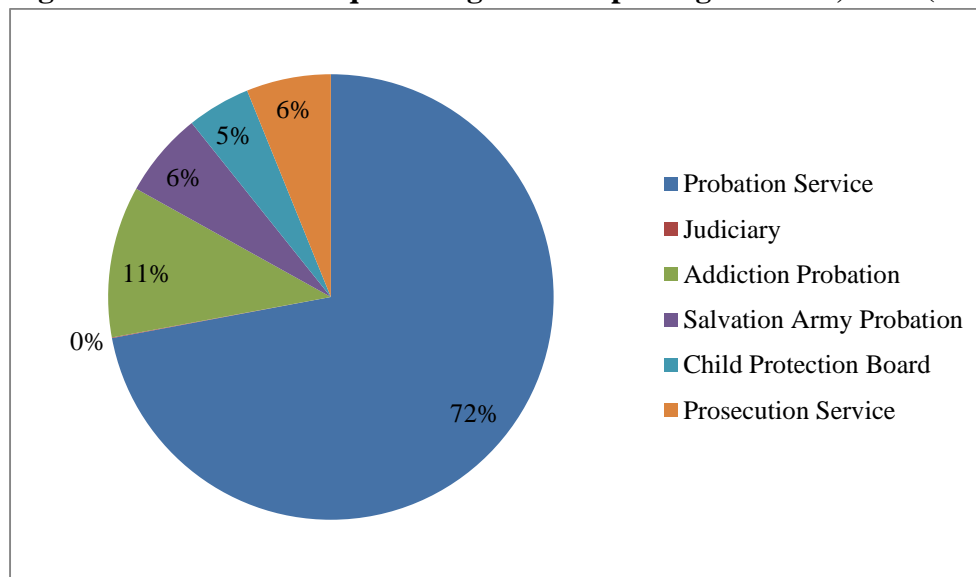
In general, the respondents indicate that EM is possible for almost every type of offender (see also subsection 3.3). The probation service tries to come up with tailor-made solutions in every individual case. For example, in case of juveniles mostly the 1-piece GPS equipment is used, because juveniles tend to forget to charge and/or bring with them the GPS receiver of the 2-piece equipment. The same is the case for people with intellectual disabilities. Because in every case a feasibility study is conducted and a social enquiry report is written, potential challenges

and solutions are already identified before EM is applied. In case the advisor would like to deviate from the protocols, for example with regard to curfew times, he explains and substantiates his point of view in the report. Although no categories of offenders are formally excluded from qualifying for EM, one respondent indicates that the selection criteria for the penitentiary programmes are quite strict. Prisoners have to do well in prison, on different domains such as participating in work and sports, in order to qualify for a penitentiary programme. As a consequence, some prisoners with intellectual disabilities are unable to meet the criteria and therefore they are not eligible for a PP (PS 1 –PFA manager).

7.2 Selection of cases

In October 2013, the web portal Digital Desk Electronic Monitoring was launched. Through this website a probation officer, prosecutor or judge can request an EM partial advice. In 2014, a total of 2.061 requests have been made. As can be seen in Figure 7.5 the different providers of probation supervision together did 89% of the requests through the Digital Desk (i.e. Dutch Probation Service, Addiction Probation Service and the Salvation Army Probation Service). The remaining 11% were done by the Public Prosecution Service and the Child Protection Board. In 2014, only one request was done by the judiciary. This seems to be partially caused by the fact that for investigating judges there is too little time to order a partial advice (see subsection 1.3.1) and sentencing judges, even if they are the first to think about EM, often leave the request to the prosecution or probation service.

Figure 7.5 Number of requests Digital Desk per organisation, 2014 (N=2.021)



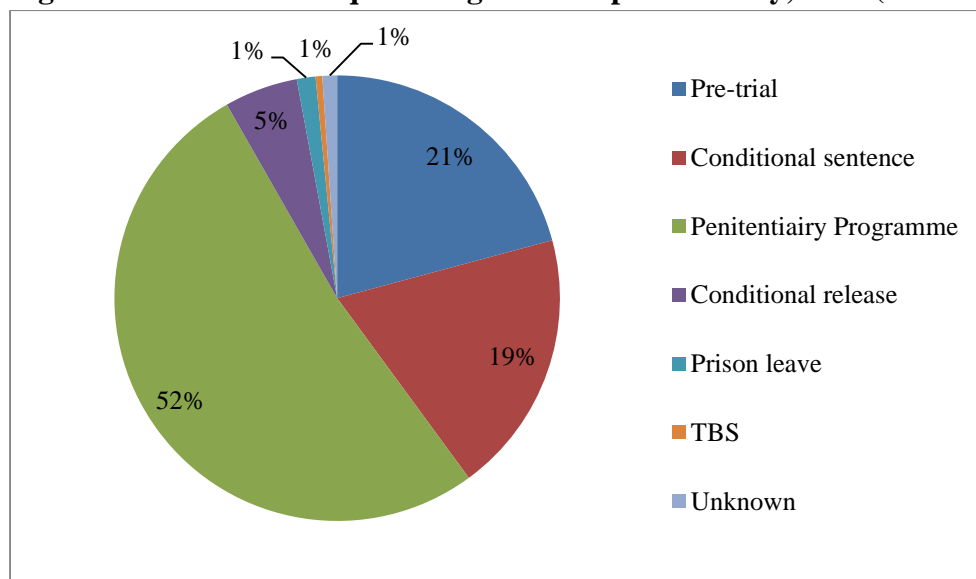
Source: Reclassering Nederland, 2015 (unpublished data)

Most requests involve a penitentiary programme (52%), which is in accordance with the finding that the majority of supervisions started with EM concern penitentiary programmes (see section 3). Less often requests concern a suspension of pre-trial detention (21%), a conditional prison sentence (19%) or a conditional release from prison (5%).

The number of requests made through the Digital Desk must be interpreted with some caution. Because the Desk was launched in the autumn of 2013, not all the requests were made

right away through this Desk. In the first months of 2014, some requests might have been made through the old system, which causes a bias in the numbers presented here. Based on the registration of installations by the provider, the actual number of installations in 2014 was approximately 1355 (because of the transition of installation tasks from Tyco to TSS no reliable data are available on the last 3 months; for these months the average of the first 9 months was taken). This would mean that 66 percent of the requests for an EM advice in 2014 eventually led to an installation. However, for several reasons it is problematic to calculate an accurate ‘follow-up rate’ for requests at the Digital Desk. Some of the installations in 2014 are done based upon requests done in 2013, requests done in 2014 may have lead to an actual installation only in 2015, and some installations are not preceded by a request.

Figure 7.6 Number of requests Digital Desk per modality, 2014 (N=2.061)



Source: Reclassering Nederland, 2015 (unpublished data)

8. Information exchange and multi-agency working

8.1 Communication with participants

The first moment the participant is in contact with the probation service is when the advisor visits the participant in order to write the social enquiry report for the mandator. The advisor at that time already speaks with the participant about how electronic monitoring will be implemented and what will be expected of the participant. When the social enquiry report has been written the participant always has the opportunity to read the report, so he is informed about the proposal of the probation service about EM.

The second important moment is when the installation takes place at the home of the participant. A probation officer is always present during the installation. This is the first contact between the supervising probation officer and the participant. When the installation is completed the probation officer explains the conditions attached to the supervision. First, some technical details are discussed, such as which phone numbers to use in case of certain issues with the equipment, how to charge the equipment and that they cannot go outside the house

(i.e. to the balcony or backyard). Participants have to sign a user agreement, which makes them responsible in case of damage or loss. In case of an exclusion zone, most probation officers indicate that they print a map of the exclusion zone to give to the participant. Moreover, curfew times are explained, as well as other special conditions attached to the supervision. Several probation officers indicate that the curfew times and conditions are not new to the participant, because it was discussed with the advisor before. However, mostly participants are overwhelmed by the information and rules they have to follow. They are just released from prison and family members are happy to see them again. Moreover, they have to arrange several things, for example getting a health insurance. The following quote illustrates this:

“I’ll ask the participant to sign the standard behavioural rules. So the participant knows where he stands. I also make sure not to give too much information, because someone has just come home and is overwhelmed. So I try to discuss the most essential things. That someone knows the rules and that we’ll set a new appointment at the office in a few days. At that time someone is settled down a little and the peace is restored, then we’ll have a look at who he is, what he wants and how to organise that.” (Probation officer 5 – supervision).

Several respondents mention that during the installation and first contact with the participant no technical details should be discussed with the participant. It should not be explained how the range test is exactly performed for example.

During the EM period participants are mostly in touch with the probation officer. Participants have appointments at the probation service to discuss the progress they make in their reintegration. When notifications are generated by the equipment the participant is in most instances contacted by the monitoring officer of Tyco. Participants can also contact the monitoring centre directly in case there is a problem with the equipment. They do not have a phone number of the TSS back office.

8.2 Communication problems between official actors

Several of the official actors are in contact with each other during the operation of EM. The probation service is in contact with all the other parties; the courts, the Public Prosecution Service, the selection officer, the Prison Service, the police, TSS and Tyco. Communication is a key issue that is already discussed in several of the earlier sections. Some specific communication problems were raised, however, that we discuss separately in this section.

First, several probation officers indicate that not every party has the same amount of knowledge of EM. Especially judges and prosecutors do not always know what is technically possible. As a consequence, judgments sometimes list conditions which are hardly possible. For example, applying GPS monitoring to someone who lives in the same street as the victim, which conflicts with the norm that there needs to be a distance of at least 5 kilometres between the living address of the participant and the address of the victim. In this case it is very hard to guarantee that the participant does not approach the victim (e.g. when the GPS connection is interrupted) or to have the police arrive on time at the house of the victim in case of an incident. Moreover, sometimes the curfew hours stated in the verdict do not match the risk level of the participant as determined by the probation service, which causes annoyance among probation officers. The lack of knowledge on EM among judges and prosecutors as mentioned by

probation officers was confirmed by the (few) interviews that were conducted with judges and prosecutors.

Secondly, some actors have limited knowledge on the time needed to prepare EM. This means that sometimes requests are made to start EM within a few days, whereas the feasibility study needs to be conducted as well within this short timeframe. In other instances, pre-trial detention is suspended, but it is not taken into account that an installation needs to be planned. It was therefore observed that a participant was released from pre-trial detention on Friday and the installation took place the following Tuesday. The probation officer later explained that this was not desirable, but had to do with miscommunications between the court and the probation service (OR 9). Several probation officers indicate that especially the communication with the courts should be improved, because in order to perform an installation appointments must be made with several actors (i.e. the probation officer, the fieldworker and the Prison Service). Moreover, a written verdict is needed to start EM and sometimes it takes a while before the probation services receives a copy of the verdict.

8.3 Protection of privacy

According to the privacy policy of the Dutch Probation Service, probation officers have to abide by the oath of secrecy. In case a probation officer would like to exchange information with third parties, such as a treatment facility or homeless shelter, the participant's written consent is required. Usually, consent is asked during the first meeting between the probation officer and the participant. Moreover, the probation service can exchange information with the mandators, such as the prosecutor, judge or Prison Service, without the consent of the participant. Mandators can ask the probation service about the supervision and whether conditions are violated without consent being obtained from the participant.

According to the probation services, they formally own the information that is generated by EM, such as location data. The providers do not own the data, they only process the information for the use of the probation service. However, the private party Tyco is scheduled to lay down its monitoring task as of 2016. The Transport and Support Service, a service of the Custodial Institutions Agency of the Ministry of Security and Justice, is now the owner of the EM hardware and it will eventually also take over the monitoring centre. The monitoring data are now stored on servers of the ministry. One respondent indicates that, therefore, the data are owned by the ministry. The probation services do not share this point of view and the parties have agreed to further study this issue, because the Netherlands will be the only country with no private parties involved in the implementation of EM, when 3M as provider of the equipment is left out of consideration (CIA 1 – Implementation manager).

In principle, the probation service does not provide information about probationers to the police. However, in case of *force majeure* or a conflict of duties the necessary information should be provided to the Public Prosecution Service, for example in case of life-threatening offences or child abuse. In other cases in which the police would like to obtain information from the probation service an official request should be filed by the prosecutor in order to receive the information (*a request for historical information*). In article 126nd CPC it is stated that the prosecutor can request information when someone is suspected of an offence for which he can be taken in remand. The name of the suspect should be included in the request and an

as accurate as possible indication of the data that are requested (art. 126nd (3)). The police cannot independently request information from the probation service, but should always do so through a request by the prosecutor. The official policy at the Dutch Probation Service and the Addiction Probation Service is that information is never provided to the police directly. A written request of the prosecutor is always needed. Moreover, at the Dutch Probation Service the manager of the probation officer handles the request and communicates with the police and the prosecutor.

The prosecutor should assess beforehand whether the request for information is proportionate and necessary in an individual case. The request can only be made when there is a reasonable suspicion against a person, because otherwise the prosecutor illegally obtains the evidence. However, several respondents indicated that they feel that the prosecutor too easily provides the request, because he would like to have the case solved just as much as the police does. Some respondents therefore believe that it would be better if an investigating judge assessed these requests, because then a more independent assessment of proportionality can be made.

Another issue that is raised by several respondents is the fact that the requests are sometimes not well formulated. For example, information is asked of a very long period of time which has as a consequence that a large amount of data needs to be provided, or information is asked that is not available, because it is not generated by EM. Moreover, it is not always clear whether a real and concrete suspicion is available or that the police only has presumptions about the offender. Currently, this topic is also under debate at the Board of Procurators General (national office of the Public Prosecution Service). The request for historical information is regulated in the Criminal Procedure Code, but it is unclear whether requesting future or actual information is legal, in case of for example preventing terrorist attacks or sexual offences against children (Board of Procurators General).

In case the probation service provides the police with information that is generated through EM, this is not communicated to the participant in order not to obstruct the investigation. The chief executive of the Dutch Probation Service is, however, worried that in case the information request is going to be used more often, this will lead to the failure of EM. He explains as follows:

“Because then a suspect will say ‘I’d rather stay in prison for half a year’ or ‘I do not want the pre-trial detention to be suspended, because I don’t want the whole world to watch me.’ That’s not what the tag is intended for. Then you’ll miss the point and I think that is a risk.” (DPS Chief executive).

On the other hand, it is acknowledged by probation officers that the location data can also help to prove the innocence of a participant, because it gives accurate details about whether a participant was at home or somewhere else at a certain point in time and thus can provide an alibi.

The data generated by EM before the transition to TSS are still stored on a server of Tyco. After de-installation of EM the participant’s information would stay in the 3M software for two months, after which the file would be transferred to the ‘History’ tab for one year. After

this year the data would be archived on a server. Tyco used to store the data for five years, but has indicated that at the end of their contract they will destroy all the data after one year.

9. Effectiveness of electronic monitoring

When asked about the effectiveness of EM, most respondents refer automatically to the impact EM has on the (good) behaviour of the offender. The question they ask is to what extent the application of EM would lead to an increased compliance with the conditions of a supervision order. This observation is in line with the earlier finding that respondents consider EM firstly as a means to improve supervision and compliance of offenders (section 3). Several respondents start with saying that despite their personal belief that EM has a positive influence on these objectives, a causal relation has never been determined and is difficult to determine as well. Even in case a positive effect of a supervision order is or can be defined, the influence of EM as only a part of this supervision is not clear. Respondents are capable of describing in quite some detail, however, how EM can improve supervision. They mention in particular the contribution of EM to a more structured life and the return of a day-and-night rhythm.

“We are also responsible for attaching the ankle tag to juveniles and from the environment of these juveniles we already heard for example that the structure in the life of those juveniles is back. We know when he is home again and, moreover, that the juvenile gains daily rhythm again. At a certain moment the juvenile knows again when it is weekend instead of thinking it is always weekend. That is an advantage.” (DPS Chief Executive).

Also the deterrent effect of EM contributes to its effectiveness. When under EM, offenders can be sure that they will be caught in case they violate the conditions of a supervision order. For example, one probation officer told how an offender kept breaching his location order, but this stopped when EM was added to this order, because the offender didn't want to go back to prison.

The effectiveness of supervision can also be improved because EM gives information about the daily life of the offender which the supervisor officer can use during their meetings. ‘If you weren't with me the other day, but you weren't at home either, explain to me where you were.’ GPS monitoring of course gives superior information compared to RFID. By discussing the places where the offender goes, the probation officer gets more insight in his lifestyle and the risks this entails. The idea that all their movements can be followed, can also give some offenders peace of mind and room to focus on other things, according to one probation officer.

“However, when someone is constantly tempted to get to the victim, the ankle tag may make this temptation less, so that you can focus on other things.” (AP3 - probation officer).

Some respondents, however, are less convinced of the positive contribution of EM to a supervision trajectory. They assume that those offenders who are motivated to comply to the conditions and obligations of a supervision trajectory don't need EM, while those who aren't willing to comply won't be helped with an electronic tag either. A prosecutor states for example:

“In some cases you would expect they will adjust to the tag just fine, you don’t expect any problems. But in some cases you might have the feeling that the tag will cause a lot of problems and that you will see the suspect in custody again within a week. And whether these people, if they would receive an ankle tag, would then adhere to that condition, I do not think so. I would expect that for some people an ankle tag will not stop them from committing crimes again or from violating their conditions, they just don’t care whether they have a tag or not.” (Prosecutor 2)

Most of our respondents are very convinced about the fact that EM should end somewhere during the supervision order. Letting EM last until the end, has a contradictory effect and enhances the chance on recidivism. The robbery policy as described earlier in the report is in their eyes highly ineffective.

“...and after a year that man wouldn’t have a judicial title anymore and everything would be off all at once. Well that’s like giving him a license to commit a robbery again, so to speak. Professionally speaking it goes against everything we know about how to bring people back.” (DPS Chief Executive)

Another objective of EM that is mentioned in relation to effectiveness is its contribution to the protection of the victim and security of society in general. Although EM is seen as a useful instrument in this context, it is also generally acknowledged that EM can never prevent offenders from committing an offence. It can be supportive to those offenders who are principally willing and motivated to refrain from crime. They can be intrinsically (in the sense that they really want to change) and externally (in the sense that they don’t want to go to prison) motivated. But if a person really intends to commit an offence, he is free to cut off the tag and do it. Even in that case, it can be an advantage, however, that the authorities will be warned and can immediately start a search in case they deem it to be necessary. It must be said, however, that incidents have been scarce so far and at least not serious enough to result in huge media scandals.

Replacing imprisonment is almost never mentioned spontaneously by respondents when asked about the effectiveness of EM. However, when directly asked, respondents are quite certain that EM enhances the possibility to be placed in a penitentiary programme for example and, as such, contributes to the reduction of detention. However, it functions as such almost particularly in the release phase, since EM is still much less applied in the pre-trial and sentencing phase in the Netherlands. Most of our respondents regret that the proposal to introduce EM as a modality to replace short prison sentences has been rejected by the First and Second Chamber at the end of 2014. They assume, however, that this door will be closed now for a certain period of time because the topic has become too sensitive.

10. Future of electronic monitoring

We also asked our respondents about their expectations of the future of EM. They first of all referred to some expected changes in the penitentiary legislation and policy. Despite the

political rejection of the earlier mentioned Bill on Electronic Detention, some of the proposed adaptations in that Bill will almost certainly be implemented anyway. All standard attributions of freedoms and more open detention modalities will be abolished in the near future and be replaced by an individualized approach based on the own efforts of the prisoners (Parliamentary Documents, 33844, nrs. 1-3). Regular leave in the final year of detention will be abolished and replaced by a possibility of reintegration leave in the last three months of a prison sentence, but only in case of good behaviour. All open and half open prisons will be closed next year. The penitentiary programme will remain, but organized in a different way. Basic (short) penitentiary programmes without EM will be abolished for example.

Related to the issue of legal change is the topic of expected growth of the use of EM. Since the penitentiary programme will be the only external modality left in the future, this modality (including EM) is expected to grow. Several respondents worry that the HIC policy will also be applied to other groups, a situation that is considered to be in conflict with the rehabilitative potential of EM. Although electronic monitoring has only quite recently started to be applied to leaves on a more structural basis, its use is expected to grow as well, because some parties now find it difficult to defend that a prisoner can enjoy full freedom during leave but is tagged at a later stage as a condition of a penitentiary programme or conditional release. However, others do not see that as a problem, and hold the opinion that EM during a penitentiary programme or conditional release has a totally different aim (stimulate people to comply with conditions) than EM during leave (protect a victim or society against direct, acute danger). It would therefore be easy to defend that EM is applied in one stage and not in the other.

Apart from growth at the back end of the sentencing process, respondents also hope and expect EM to grow in the pre-trial and sentencing phase. Although these numbers are still quite low, growth is visible and since the introduction of the Digital Desk EM also becomes better known among other parties than the prison and probation authorities. In particular in the pre-trial phase, EM is seen as a valuable instrument to push back the relative high use of remand detention in the Netherlands. As stated before, EM is generally also seen as an effective substitute of short prison sentences, but not as a stand alone measure. When asked about possible applications of EM in the future, respondents also mention new target groups, for example drunk drivers, football supporters (hooligans), firework offenders and those offenders to whom the new measure of long-term (if necessary even lifelong) supervision will be applied.

Regarding the boundaries of EM the ideas are less clear, however. According to the Dutch Probation Service the goal oriented approach should set limits to the use of EM. In other words: EM should only be used in cases in which it contributes to the quality of the supervision trajectory. In practice, however, the goal oriented approach doesn't seem to be a very strong argument to refrain from using EM. Based on this argument, it is difficult to explain, for example, why so many people nowadays need EM while on leave. It is even harder to believe that all people participating in a penitentiary programme need to be under EM during the first one-third of this trajectory. This approach has also not stopped the introduction of the robbery policy, despite the fact that the Dutch Probation Service clearly showed its disagreement with it. One of our respondents at the Custodial Institutions Agency expresses it like this:

“We notice it becomes a kind of a cure-all to give everyone a tag. Look at the leaves for example. It becomes more popular now as a condition of a suspension of pre-trial detention as well. At this point, every month TSS connects 20 more tags than it removes.” (CIA 1 – Implementation manager)

Among our respondents of the Prison Service no clear vision exists regarding the limitations to the use of EM. When asked, the head of the Direction Sanction and Prevention clarified that limiting the use of EM is not part of his job.

“Yes, you can wonder of this is something that we should limit, I say it a little bit formally correct. But regarding this specific dossier, money has been a dominant factor, and the enthusiasm for the ankle tag....Look, it still counts in hundreds, right. We don't have 10.000 people walking around with a tag. But that could happen at a certain moment. If at a certain moment 5000 people wear a tag, somebody could say: isn't that a little bit expensive? But I think it would be facilitated somehow.” (Head Directorate Sanction- and Prevention policy)

A third topic discussed in relation to the future of EM is the use of different and improved techniques. Several respondents express their hope that the tag as such will become smaller and more comfortable. Some think that more comfortable equipment will also contribute to the growth of EM, because it will be seen less as an infringement of privacy. Another respondent, however, expresses the fear that EM will be considered even less as a punishment in case the equipment is nearly invisible. Also, other techniques of electronic monitoring are mentioned, which are not yet used in the Netherlands, but which some respondents know about. For example, a Dutch delegation visited England to get a demonstration of equipment that can detect the use of alcohol through perspiration (SCRAM). In particular a delegate of the Public Prosecution Service expressed himself very enthusiastically about this possibility, while respondents of the probation service were more reserved, expecting a high rate of non-compliance. Reference is also made to equipment that makes it possible to measure someone's level of sexual arousal, but only a few of our respondents are really enthusiastic about further researching such possibilities. This reservation is well expressed by a private consultant regarding EM.

“These possibilities exist. And the question we have to ask ourselves is: what do we want with it? Do we want anything with it? Because it all generates more data. But what is the use of it? So you have to keep thinking in a goal-oriented way and keep it proportionate. I'm glad we still have RFID. GPS gives you so much more information: where somebody is, what he's doing, where he's going. RFID only tells you if somebody is at a certain place or not. If that is what you want, if that's the objective and if that's proportionate, why would you want more?” (PP 2 – private consultant)

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Notes

ⁱ Each of the five country reports are available at the research project website: <http://emeu.leeds.ac.uk/>

ⁱⁱ Penitentiaire Beginselenwet, *Stb.* 1998, 430.

ⁱⁱⁱ Penitentiaire Maatregel, *Stb.* 1998, 111.

^{iv} These are stichting DOOR, vereniging Exodus, stichting Moria en stichting Ontmoeting, the so-called ‘DEMO-instellingen’.

^v *Aandachtspunten schorsing voorlopige hechtenis, versie 1 maart 2010*.

^{vi} Aanwijzing voorwaardelijke vrijheidsstraffen en schorsing van voorlopige hechtenis onder voorwaarden, *Stcrt.* 2013, 5108.

^{vii} Aanwijzing voorwaardelijke invrijheidstelling, *Stcrt.* 2012, 5379.

^{viii} A Terbeschikkingstelling (TBS) is a measure which includes compulsory placement in a psychiatric treatment facility (art. 37 CC).

^{ix} Aanwijzing TBS met voorwaarden en voorwaardelijke beëindiging van het bevel tot verpleging van overheidswege, *Stcrt.* 2013, 11293

^x Tijdelijke regeling verlof met elektronisch volgsysteem, *Stcrt.* 2007, 223

^{xi} <https://www.rijksoverheid.nl/onderwerpen/straffen-en-maatregelen/vraag-en-antwoord/heb-ik-recht-op-een-uitkering-als-ik-naar-een-gevangenis-ga>

^{xii} Task Force Overvallen (2011). Actieprogramma ketenaanpak Overvalcriminaliteit. Retrieved from <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2011/02/09/actieprogramma-ketenaanpak-overvalcriminaliteit.html>.

- ^{xiii} Opstelten, I. (Minister of Security and Justice), Policy on high impact crimes, 15 April 2013.
- ^{xiv} Tweede Kamer 2013–2014, 31 110, nr. 15.
- ^{xv} Ministry of Security and Justice (2015). Aanval op HIC. Edition 4, third quarter 2015.
- ^{xvi} Wet van 25-11-2015, Stb. 2015, 460
- ^{xvii} Although since the introduction of an adolescent criminal law, which came into effect in April 2014, those aged 16 or 17 may be sentenced according to adult criminal law rather than juvenile criminal law and subjected to supervision by the Dutch Probation Service instead of Youth Probation (Wijzigingswet Wetboek van Strafrecht, enz. (invoering adolescentenstrafrecht), Stb. 2013, 485).
- ^{xviii} A prosecutor can mark a suspect or convict with an execution indicator in case the person (is suspected of) committing a specific type of crime (e.g. a sexual offense, a serious violent offense or human trafficking) and/or his/her return to society is expected to cause social unrest. Through the execution indicator, the Public Prosecution Service indicates that it wants to have an advising role in the decision-making on detention phasing or prison leave (Aanwijzing executie-indicator en formulier risicoprofiel, *Stcrt.* 2010, 20826).
- ^{xix} Aanwijzing TBS met voorwaarden en voorwaardelijke beëindiging van het bevel tot verpleging van overheidswege, *Stcrt.* 2013, 11293
- ^{xx} These are stichting DOOR, vereniging Exodus, stichting Moria en stichting Ontmoeting, the so-called ‘DEMO-instellingen’.
- ^{xxi} http://www.svg.nl/actueel/nieuws/svg-nieuws/svg_begint_test_scramx_alcoholband.html
- ^{xxii} These domains are: 1) criminal history, 2) current offence, 3) housing, 4) education, work and learning 5) income and attitude towards work, 6) relationship with partner/family, 7) relationships with friends, 8) drug use, 9) alcohol use, 10) emotional wellbeing, 11) thinking patterns, behaviour and skills, 12) attitude.
- ^{xxiii} In case a participant does not have any structured daily activities he is only given two free hours per day.
- ^{xxiv} In the literature this phenomenon has been referred to as the ‘illusion of freedom’ (Vanhaelemeesch, D., Vander Beken, T., and Vandeveld, S. (2014). Punishment at home: Offenders' experiences with electronic monitoring. *European Journal of Criminology*, 11(3), pp. 273-287)

Appendix 1: List of respondents

Dutch Probation Service (DPS)

DPS Chief executive

DPS Policy maker

Probation officer 1 – supervision

Probation officer 2 – supervision

Probation officer 3 – supervision

Probation officer 4 – supervision

Probation officer 5 – supervision

Probation officer 6 – supervision

Probation officer 7 – supervision

Probation officer 8 – supervision

Probation officer 9 – supervision

Probation officer 10 – supervision

Probation officer 11 – reporting

Probation officer 12 – reporting
Probation officer 13 – reporting

Addiction Probation Service (AP)

AP 1 – national coordinator
AP 2 – national coordinator
AP 3 – probation officer

Public Prosecution Service

Prosecutor 1
Prosecutor 2
Board of Procurators General
Central Facility Conditional Release

Judiciary

Investigating judge 1
Investigating judge 2
Criminal court judge 1
Criminal court judge 2

Ministry of Security and Justice

Head Directorate Sanction- and Prevention policy

Custodial Institutions Agency (CIA)

CIA 1 – Implementation manager
CIA 2 – Selection officer

Prison Service (PS)

PS 1 – Prison governor
PS 2 – Prison governor
PS 3 – Prison governor

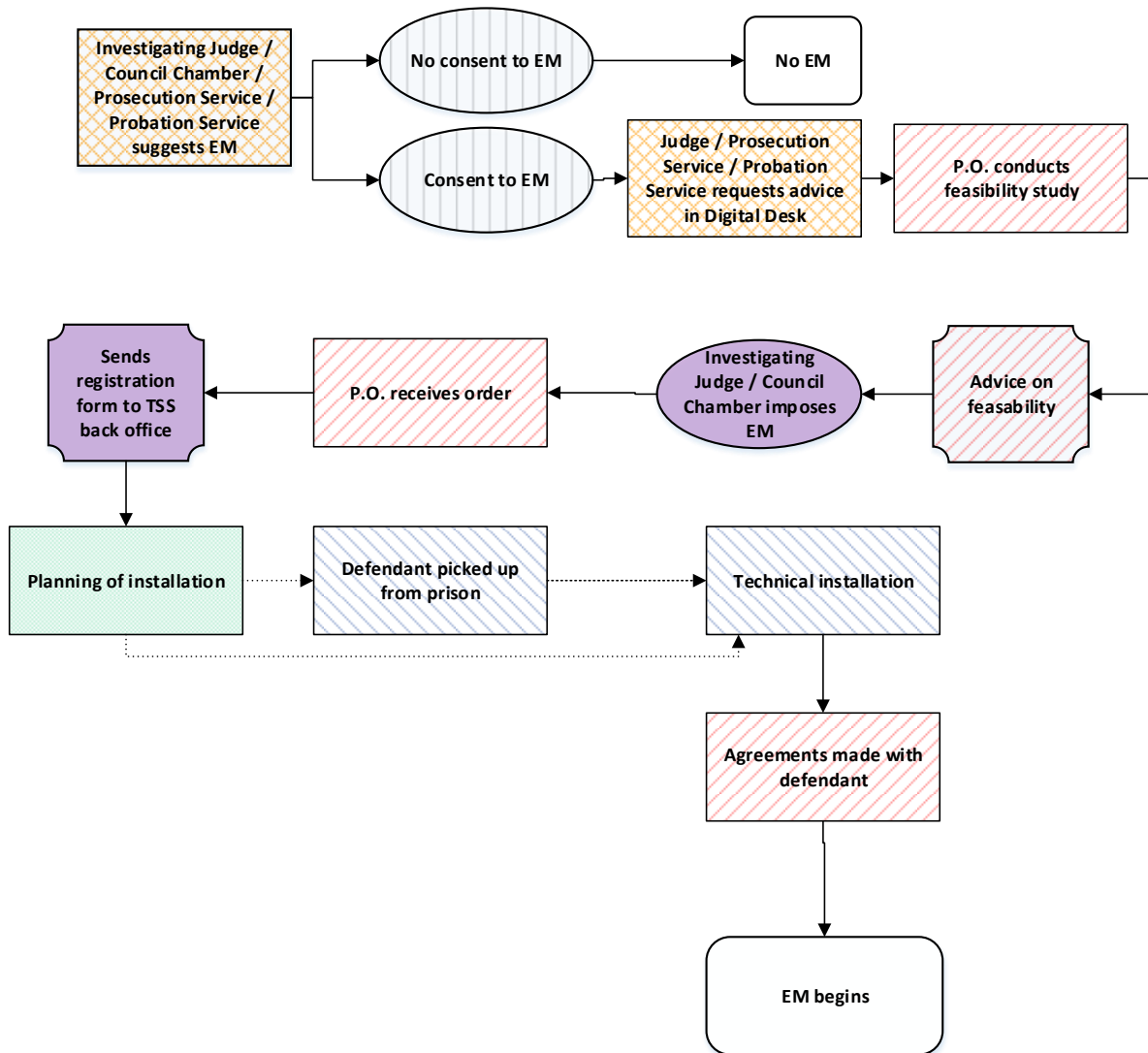
Transport and Support Service (TSS)

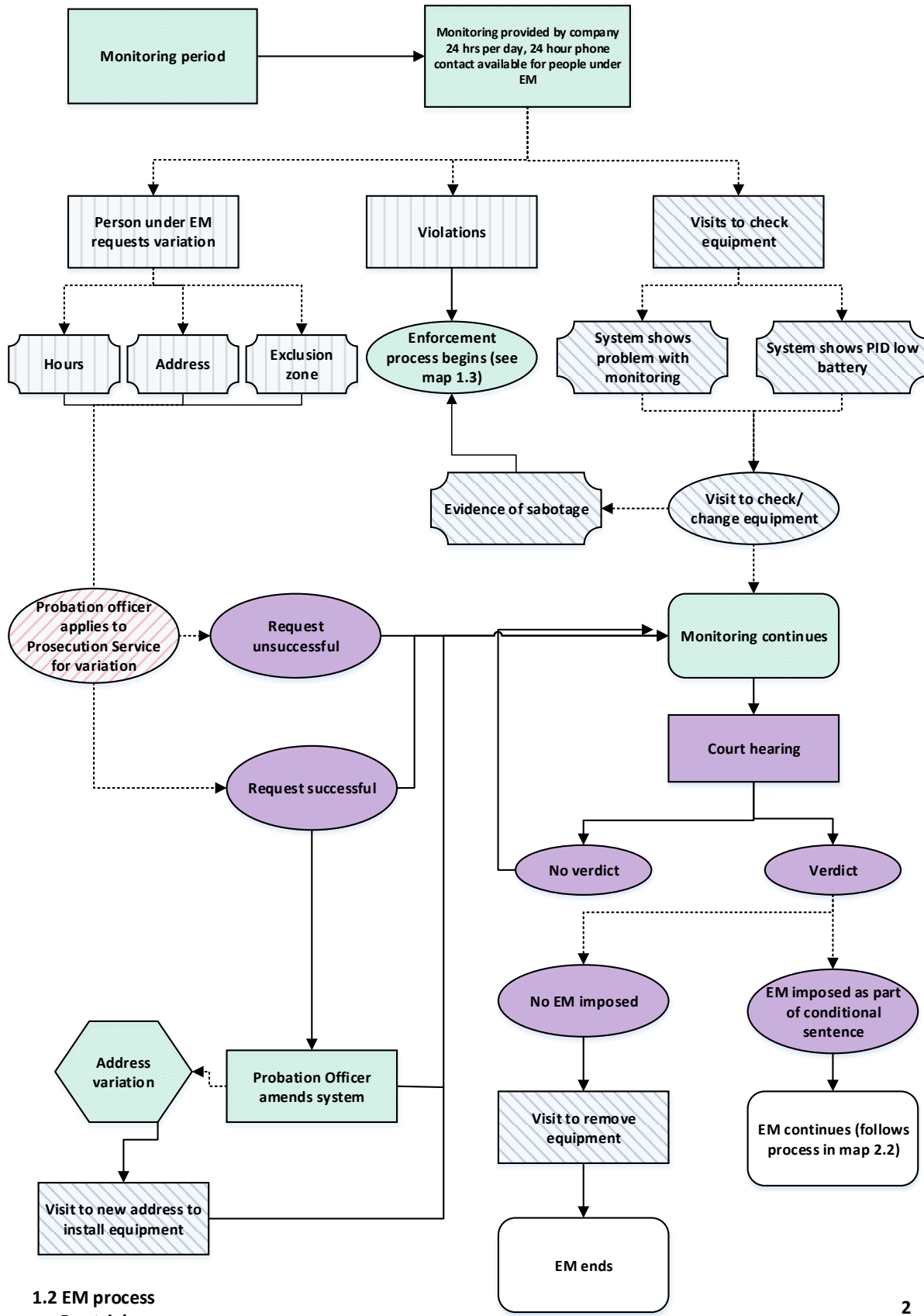
TSS Manager EM

Private parties

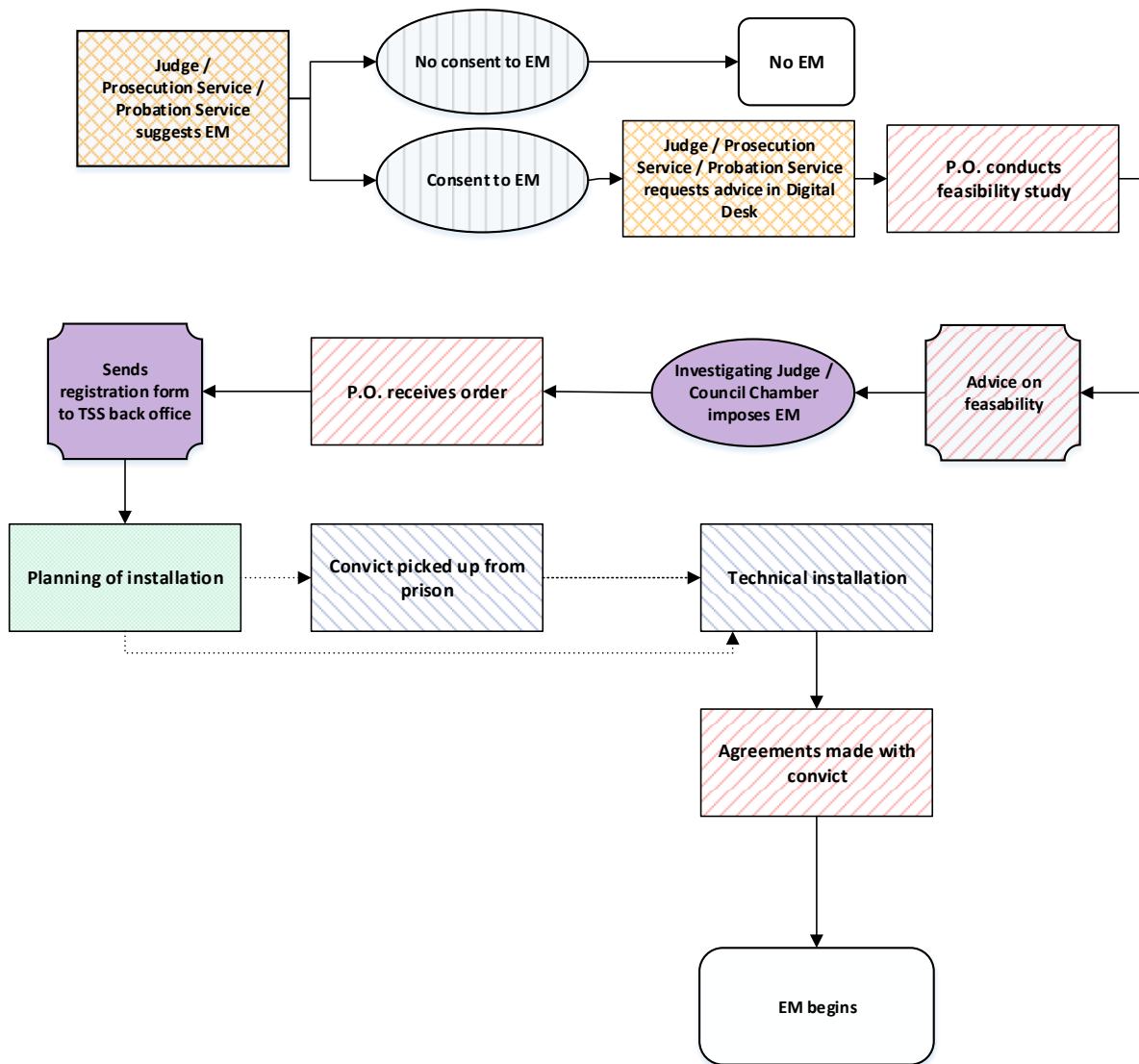
PP 1 – manager Tyco
PP 2 – private consultant

Appendix 2: Process maps

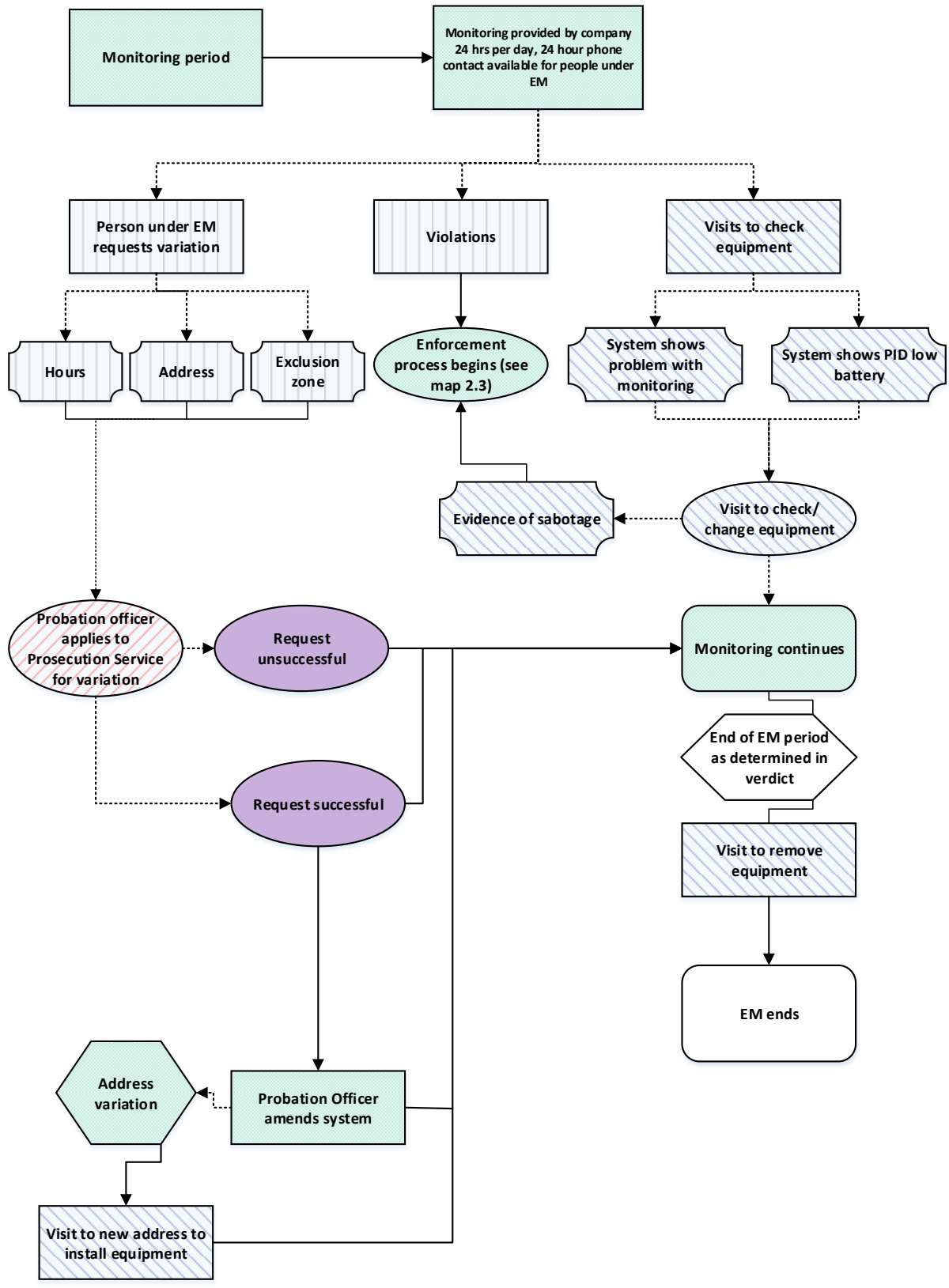




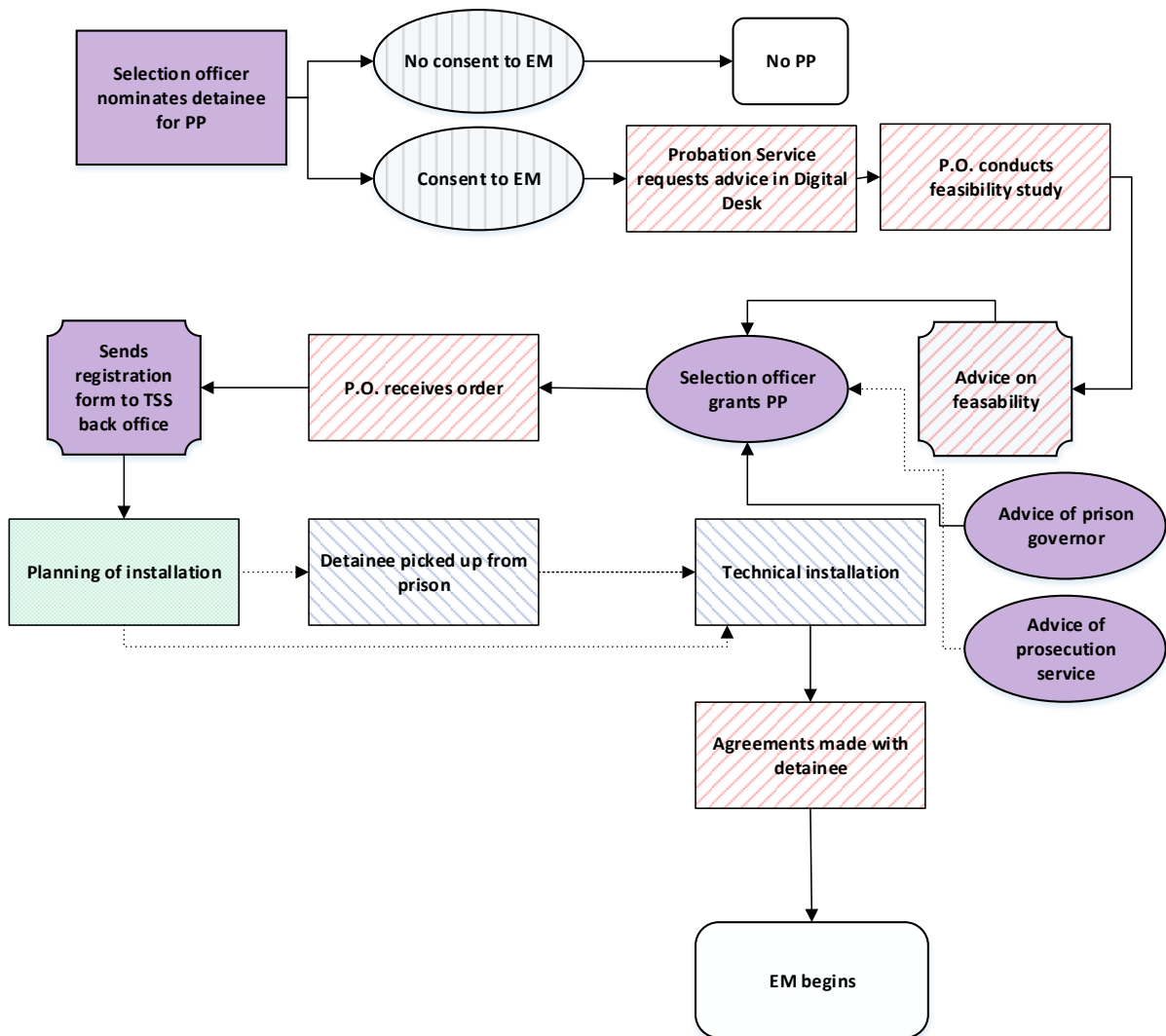
1.2 EM process
Pre-trial



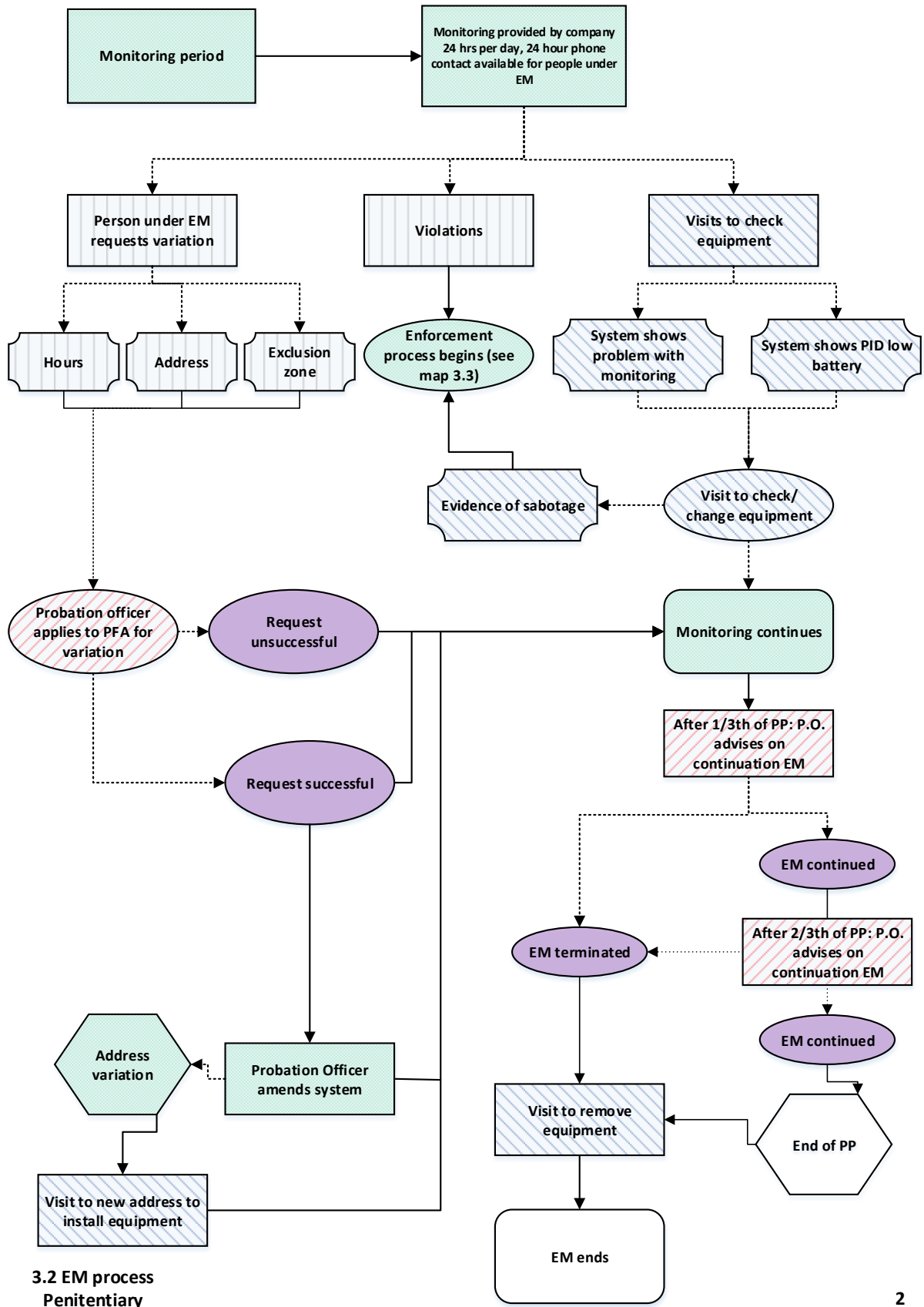
**2.1 EM process
Conditional sentence**



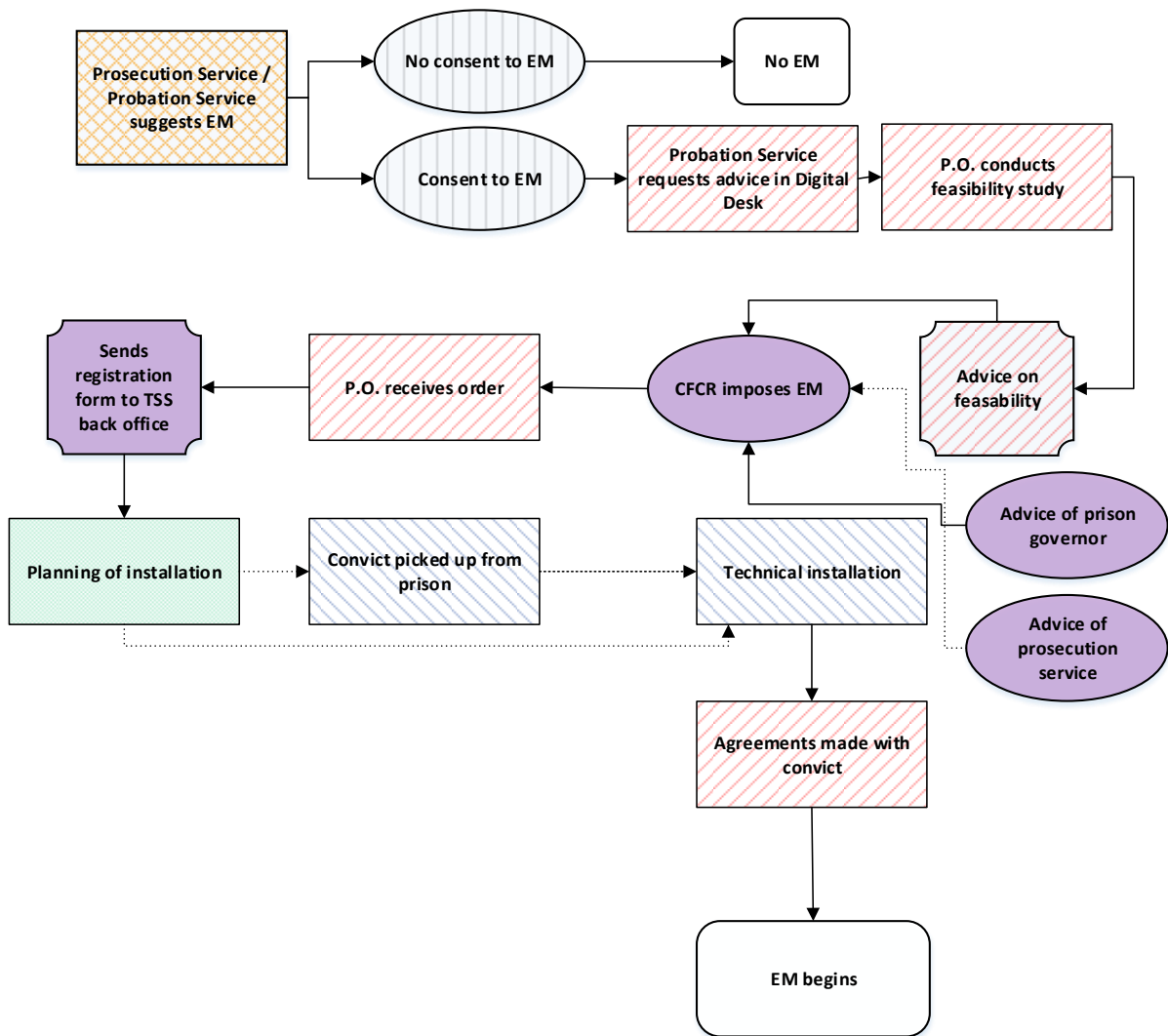
2.2 EM process
Conditional sentence



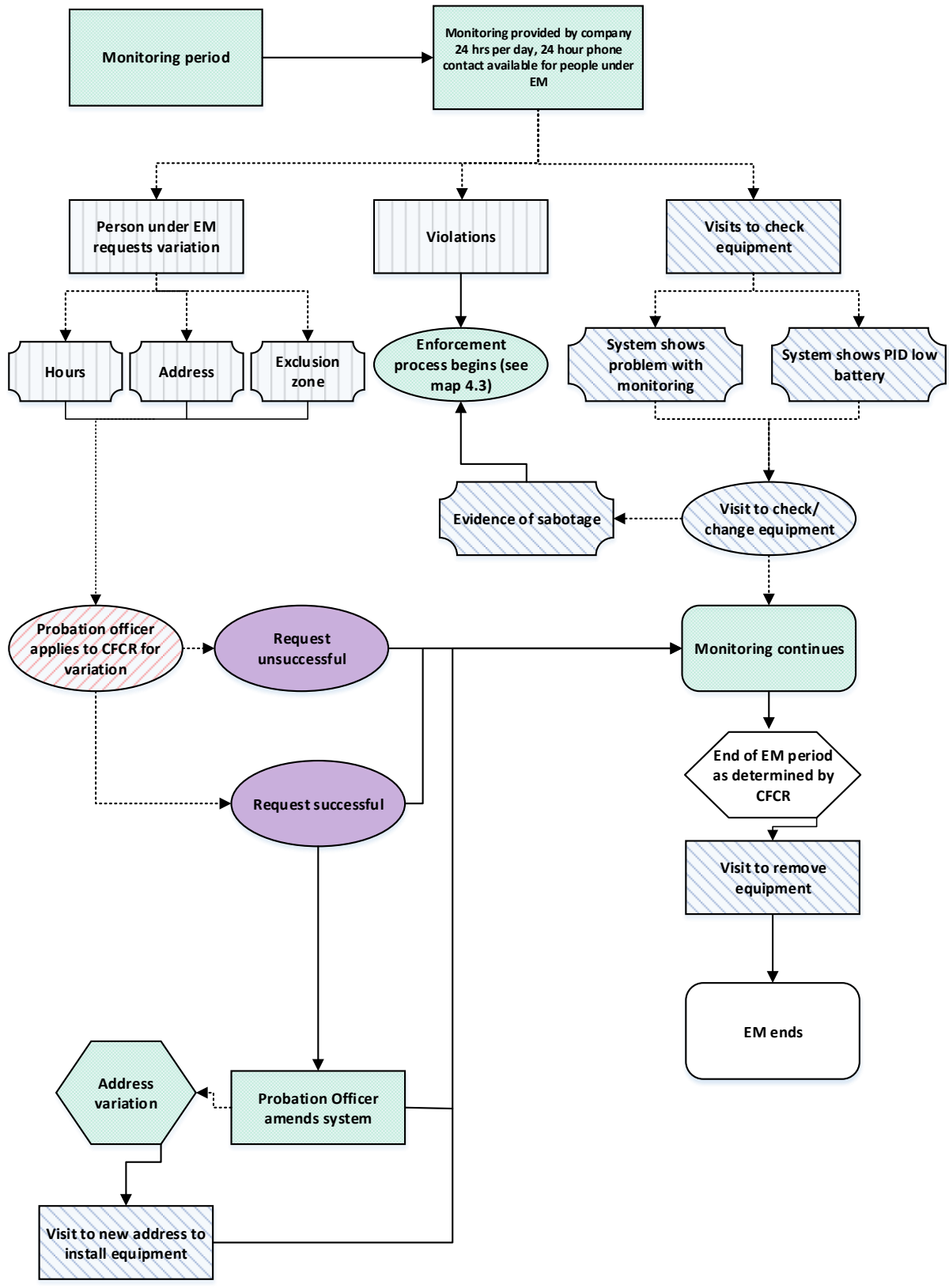
**3.1 EM process
Penitentiary
Programme**



3.2 EM process
Penitentiary
Programme



4.1 EM process
Conditional Release



4.2 EM process
Conditional
Release