



CONTINUING INCARCERATION: APAX PARTNERS' DIGITAL SHACKLES

Electronic Monitoring Prolongs Incarceration's Effects, Raises Civil Liberty Concerns and Increases Costs



APAX PARTNERS' INVESTMENT IN ATTENTI

In October 2017, Apax Partners acquired Attenti from the conglomerate 3M for \$200 million.¹ Based in Florida, Attenti provides electronic monitoring technologies, serving 400 correctional and law enforcement agencies in over 30 countries and monitoring over 200,000 individuals a year.² Attenti offers a varied range of Global Positioning Systems (GPS), Radio Frequency (RF), alcohol verification monitoring and tracking services.³ Apax's Attenti is one of the four largest corporations profiting from private electronic monitoring correctional contracts.⁴

ELECTRONIC MONITORING PROLONGS INCARCERATION'S EFFECTS

According to the Bureau of Justice Statistics, the cost of keeping people incarcerated has soared to \$87 billion in 2015, from \$19 billion in 1980 (in current dollars). More recently, politicians on both sides of the aisle have joined criminal-justice reformers in recognizing mass incarceration as a moral outrage and fiscally irresponsible. Some legislators have instead embraced electronic monitoring devices, like those offered by Attenti, as an enlightened

KEY POINTS

- Attenti's electronic monitoring services was acquired by private equity firm Apax Partners in October 2017.
- Although it is touted as a humane alternative to incarceration, electronic monitoring is facing growing criticism for prolonging the effects of incarceration. As such, Apax Partners' investment in Attenti is subject to many of the same risks as other incarceration and detention service companies.
- Electronic monitoring can make it difficult for someone being monitored to secure a job, which is associated with reducing economic vulnerability and recidivism.
- Technical glitches with electronic monitoring devices increase the chances of false positive alerts and civil liberty violations.
- False electronic monitoring alerts and technical failures are not only frequent, but cause law enforcement officers to spend additional time tracking down those they are supervising.
- People being monitored must often pay the cost of monitoring. According to a Human Rights Watch report, electronic monitoring's user-funded schemes can be punitive on a scale that dwarfs the other terms of their sentence – often costing individuals \$400-\$500 a month.
- A review of scholarly research found that “electronic monitoring of offenders does not have a statistically significant effect on reducing re-offending.” Rather, *reducing* the intensity of supervision for those on probation or parole is a cost-effective strategy.
- Like mass incarceration, electronic monitoring disproportionately affects some of the nation's most vulnerable communities.

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Photo: Micol Siegel

“In a November 2018 New York Times op-ed, Michelle Alexander, a civil rights lawyer and scholar observed that electronic monitoring’s “digital prisons are to mass incarceration what Jim Crow was to slavery.”¹²

alternative to incarceration.⁵ However, critics argue that electronic monitoring is not an alternative *to* incarceration, but rather, an alternate form *of* incarceration.

Aside from the opposition to incarceration, the expansion of electronic monitoring is also fueled by the financial incentives it presents to local governments. The United States government pays for electronic monitors for some individuals incarcerated in federal facilities and for the tens of thousands of immigrants held by Immigration and Customs Enforcement (ICE). But states and cities, which incur around 90 percent of the expenditures for jails and prisons are increasingly passing the financial costs of the devices onto those who wear them.⁶

Like the wealth-based detention they are meant to replace, electronic monitoring companies often subject poor individuals to financial hardship. Throughout the country, defendants who have not been convicted of a crime are placed on “user funded” payment plans for electronic monitors that sometimes cost more than their bail.⁷ An electronic monitoring device with GPS tracking could cost the wearer hundreds of dollars a month, via a user fee.⁸ Unlike bail, they do not get the payment back, even if they are found innocent.⁹

To many, electronic monitoring is considered humane. Attenti states that their mission is to create positive social impact by “providing “safety-nets” for people at risk, breaking the cycle of recidivism and helping people overcome substance abuse.”¹⁰ However, Chris Albin-Lackey, a senior legal adviser with Human Rights Watch who has researched private-supervision companies said, “There are a lot of judges who reflexively put people on monitors, without making much of a pretense of seriously weighing it at all. The limiting factor is the cost it might impose on the public, but when that expense is sourced out, even that minimal brake on judicial discretion goes out the window.”¹¹

In a November 2018 *New York Times* op-ed, Michelle Alexander, a civil rights lawyer and scholar observed that electronic monitoring’s “digital prisons are to mass incarceration what Jim Crow was to slavery.”¹² Even if formerly incarcerated individuals are no longer bound by brick-and-mortar jails, the permitted zones of

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movement allowed by electronic monitors make it difficult or impossible to seek or maintain a job, attend school, or care for loved ones -- making it one of the most intensive forms of supervision. In effect, "you're effectively sentenced to an open-air digital prison, one that may not extend beyond your house, your block, or your neighborhood."¹³

While private equity companies like Apax Partners profit from Attenti's business model, a recent analysis by a Brookings Institution fellow found that "efforts to reduce recidivism through intensive supervision is not working."¹⁴ Reducing the requirements of electronic monitoring so that people can more easily hold jobs, care for loved ones and escape the stigma of criminality "would be a good first step toward breaking the vicious incarceration cycle," the report said.¹⁵

ELECTRONIC MONITORING'S QUESTIONABLE SCIENCE

In 2017, a team of scholars from the University College London carried out the largest survey of the research conducted on electronic monitoring devices since 1999. Their overall findings showed contradictory results and they concluded that "electronic monitoring of offenders does not have a statistically significant effect on reducing re-offending."¹⁶ Rather, based on a recent review of the scholarly literature, reducing the intensity of supervision for those on probation or parole is a cost-effective strategy. Intense supervision, like that associated with electronic monitoring, which require lots of meetings and drug tests can complicate a client's life, make it more difficult to get to work or school, or care for loved ones. Also, a strong tether to the criminal justice system can make it difficult for individuals to move on psychologically. Instead of spending money to increase supervision levels, scholars recommend reducing supervision levels and instead spending the money on substance abuse treatment or cognitive behavioral therapy.¹⁷

LIMITING FREEDOM, LIMITS SUCCESS – HOMES BECOME PRISONS

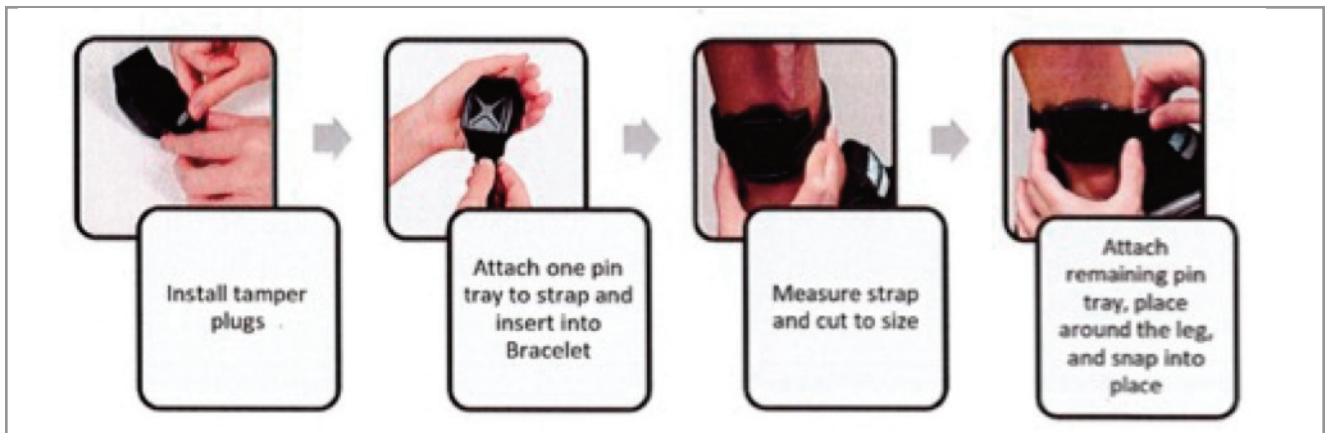
Amidst growing evidence demonstrating that electronic monitoring does not produce the desired outcomes, municipalities across the country continue to add them to requirements for people on probation or parole. Intense supervision can create a revolving door between supervision and incarceration, which can lead to more acute conditions of job loss, housing instability, difficulty caring for loved ones, healthcare interruptions and a number of other collateral consequences.¹⁸

For instance, virtually all electronic monitoring parole regulations come with a condition of house arrest. Johnny Page, who spent 23 years in Illinois prisons described his experience with electronic monitoring restrictions as "It's like being locked up but you're paying your own bills...you don't have to fight for the shower, you don't have to fight for the telephone, but you're still in jail." Richard Stapleton, a former Administrator for Legal Affairs for the Department of Corrections agreed, calling the electronic monitor "another burdensome condition of extending their incarceration." Another formerly incarcerated individual Edmund Buck, who was imprisoned for nearly two decades, explained the use of electronic monitors as "Initially I think it's the idea of an added layer of control...I would say the more they hinder a person from getting back into the flow of life outside of prison, the greater the likelihood they would fall into old patterns."¹⁹

One of the most difficult hurdles to overcome while being electronically monitored is obtaining movement approval. Employment that involves travel or changing workplaces, like house-cleaning, landscaping, construction or delivery, is often not al-

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lowed. Changes in work schedules, unplanned overtime, or the need for medical attention are difficult to accommodate, because changes to movement must typically be pre-approved.²⁰ In Illinois, Alan Mills, an attorney with Uptown People's Law Center, told lawmakers in February 2019 hearing, that one of his employees, who was on parole at the time, missed half of his first day at work because he was waiting on hold with the call center tasked with managing data on Illinois' parole population, to request permission to go to work.²¹ Because securing employment is so difficult, burdens are placed on family members to cover additional housing, food, travel and utilities costs.²² In 2011, the National Institute of Justice conducted a study of 5,000 individuals under electronic monitoring and found that many participants had to take breaks from work to re-establish lost signals. Of the individuals interviewed for the study, 22 percent said that they had been fired or asked to resign because of electronic monitoring.²³

Furthermore, according to an analysis in the *Journal of Law and Policy*, most individuals who are required to use electronic monitors have not committed serious or violent offenses and were it not for monitoring "at least some of these populations would not in fact be incarcerated or otherwise under physical control."²⁴ Moreover, of the millions of women under correctional control (including incarceration, probation and parole), 73 percent are on probation. Complying with conditions that involve program participation, or movement restrictions and curfews can be particularly difficult for women due to the additional burdens of various family caregiving obligations, such as child- or elder-care.²⁵

Electronic monitoring of women can replicate incarceration's power imbalances and conditions outside of prison. For Monica Cosby, chair of the Formerly Incarcerated Women's Working Group of the Illinois Women's Justice Initiative challenged the common belief that electronic monitoring is better than prison by telling state legislators in a February 2019 hearing, that the electronic monitoring device "makes everywhere you are a satellite of the prison, and it puts everybody in proximity to you kind of in a prison, too." She testified that the electronic monitoring program opens the door for abuse of power by parole agents and others. "I know several women who have been in bad relationships and have been threatened with having their boxes [electronic monitoring devices] thrown out the window or removed and getting taken back to prison because they would not consent to have sex with a partner or landlord," she said.²⁶

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Some individuals on electronic monitors are further constrained by geographic limitations that prohibit their ability to go to certain neighborhoods. James Kilgore, a research scholar at the University of Illinois at Urbana-Champaign, cautioned that these geographic restrictions could create “e-gentrification”, where individuals are kept out of more prosperous neighborhoods.²⁷ In her 2010 book, “The New Jim Crow,” Michelle Alexander wrote that “mass incarceration” should refer to the “system that locks people not only behind actual bars in actual prisons, but also behind virtual bars and virtual walls — walls that are invisible to the naked eye but function nearly as effectively as Jim Crow laws once did at locking people of color into a permanent second-class citizenship.”²⁸

TECHNICAL GLITCHES RAISES CIVIL LIBERTY CONCERNS

In addition to electronic monitoring making it difficult to secure employment upon release from incarceration, common technical glitches in electronic monitoring devices have caused serious problems for individuals' civil liberties. If a technical glitch happens to cause a false positive alert, then people on parole and those on probation can be returned to jail for violating the terms of their release.

For instance, in 2012, Massachusetts entered into a contract with the conglomerate 3M (Attenti's previous owner) to provide electronic ankle monitors to people on parole and people awaiting trial. Corrections officers, electronic monitor users, and attorneys all spoke of problems from the beginning. For example, “the battery on the bracelets was prone to dying suddenly and without warning. The internal antenna didn't always perform well underneath certain clothing or in certain buildings. The devices sometimes relayed inaccurate navigational coordinates, leaving users in technical violation of the conditions of their release. Some users found themselves having to walk outside in the middle of the night or stand in the middle of a street to establish a satellite connection and prove to authorities that they were where they were supposed to be. A July 2015 article in Massachusetts Lawyers Weekly recounted a criminal defense attorney's tale of his client's device showing that he had walked across a lake.”²⁹ More troubling, people on parole and people awaiting trial have been sent to jail because of false violation alerts generated by 3M-Attenti's electronic monitors.³⁰

In addition to false positive alerts, authorities are sometimes so overwhelmed by alerts that they cannot tell who is in violation and who is not. Documents reviewed by Bloomberg show that in the 12 months ending in October 2015, 3M-Attenti's electronic monitors produced 612,492 violation alerts in Massachusetts—more than 50,000 per month, from about 2,800 individuals wearing the devices. Nearly 40 percent of the alerts were due to a device not connecting to the network or the GPS not being detected. About 1 percent of alerts resulted in an arrest warrant being issued. Tom Pasquarello, former director of the electronic monitoring program for Massachusetts, estimated that half those warrants, about 3,000, were potentially based on faulty or incomplete data. “There were people that were pulled from their house in the middle of the night, that lost their kids, people that lost their job,” he says.³¹

The problem of glitchy electronic monitors became so pronounced that in August 2015, Massachusetts Superior Court Judge Heidi Brieger vowed to stop sentencing anybody to them. “It is simply administratively improper to run a system in this fashion,” she said, according to a court transcript. “We don't lose liberty in this country because somebody's software is not working. It just isn't right.”³²

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ELECTRONIC MONITORING INCREASES COSTS FOR GOVERNMENTS AND THE POOR

Aside from problems related to jeopardizing rehabilitation and the risk of violating an individual's civil liberties, electronic monitoring adds to the overall costs of criminal justice, especially when it is an additional punitive requirement. For decades, state and local government departments of corrections or the Federal Bureau of Prisons have effectively had individuals on probation or parole without the use of electronic monitors. But the more recent adoption of electronic monitors requires the payment for the device and the need to hire additional personnel to monitor the results of the devices. Furthermore, as mentioned above, false monitor alerts and technical failures of the electronic monitoring devices are not only frequent, but cause parole officers to spend additional time tracking down those they are supervising.³³ In 2011, California officials conducted tests on the monitoring devices worn by 4,000 high-risk sex-offenders and gang members. According to the Los Angeles Times, officials found that "batteries died early, cases cracked, tampering alerts failed, and reported locations were off by as much as three miles." Parole officers were inundated with as many as 1,000 alerts a day, and meaningless alerts led officers to worry that they were missing actual instances of violations.³⁴

A 2012 audit in Tennessee found that 80 percent of alerts from electronic monitoring devices were not checked by officers.³⁵ In 2013, similar issues came to light in Colorado³⁶ and New York³⁷ when officers failed to respond to repeated alerts of device failure and several people on parole committed violent crimes.³⁸ The costs of electronic monitoring are not just born by the regulatory and governance agencies, but by society as well.

3M-Attenti's problems were not limited to the domestic context. In Germany, a report co-funded by the Criminal Justice Programme of the European Union concluded that the 3M software used for the country's electronic monitor-

ing devices was "too inaccurate" and resulted in "false alarms or false zone transgressions." The report also found that in 2014, "a firmware installation error on behalf of 3M resulted in all active GPS-trackers being shut off simultaneously."³⁹

Furthermore, in all states except Hawaii and the District of Columbia, formerly incarcerated individuals are required to pay at least part of the costs associated with electronic monitoring.⁴⁰ Monthly monitoring fees for defendants required to use these devices can range from \$400 to \$500, depending on the monitoring service being used. When local governments cover the cost of electronic monitoring, they often pay private contractors \$60 to \$90 for the same equipment and services for which the private contractors charge defendants \$300 a month. Many companies also charge an initial installation which can range between \$50-\$150 and in some cases require a comparable removal fee.⁴¹ According to a 2019 Washington state contract with Attenti, a user can be charged \$925 for a lost, damaged or stolen two-piece GPS tracking device.⁴² Together, the costs of electronic monitoring worsen the economic challenges of reentry following incarceration.

Some local officials turn to private probation or electronic monitoring companies because they face financial hardship. For instance, a growing number of counties and municipalities rely on local courts as sources of revenue to replace the lack of funds generated through taxation.⁴³ But when a court's probation or electronic monitoring service is a private company, then its interest to increase profits can depend on its ability to increase fees from users. Many courts do not determine whether an individual can afford to pay the company's electronic monitoring fees, court costs or probation fees.⁴⁴

Instead many courts delegate this determination to probation officers. When that probation officer is the employee of a private company, they are incentivized to threaten users with imprisonment to ensure payment of fees, even

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though the US Supreme Court (in *Bearden v. Georgia*) ruled that a court cannot revoke an individual's probation and imprison them simply because they are unable to pay a fee.⁴⁵ This issue is further compounded by the fact that both public and regulatory transparency and oversight are in short supply. Most courts do not track nor do they know how much their probation companies collect in fees from the probationers assigned to use their electronic monitoring products.⁴⁶

As a result, the Human Rights Watch concluded that "public officials allow probation companies to profit by extracting fees directly from probationers, and then fail to exercise the kind of oversight needed to protect probationers from abusive and extortionate practices."⁴⁷ This practice places unfair burdens on those recently released from incarceration and generates conditions for greater financial vulnerability as financial resources are further extracted from individuals with limited reserves.⁴⁸ After all, estimates report that nearly 40 percent of all crimes are directly attributable to poverty⁴⁹ and the vast majority (80 percent) of incarcerated individuals are low-income.⁵⁰

ATTENTI'S LOBBYING ADVANCES ELECTRONIC MONITORING

Even though scientific evidence fails to provide rigorous support for electronic monitoring, civil liberty violations continue to pile up and marginalized communities are disproportionately impacted, courts across the country continue to partner with companies like Attenti to order such monitoring. Yet the nation's judges are only recently beginning to become aware of the significant legal and constitutional concerns raised by employing such devices. But judicial reforms are few and far between, especially in places where state and local officials are nudged in the opposite direction by electronic monitoring industry lobbyists.⁵¹ For instance, Attenti has a history of lobbying across the country. In Florida, Apax's Attenti paid Southern Strategy Group, their registered lobbyist, up to \$30,000 within the state's executive branch and between \$20,000 and \$50,000 within the state's legislative branch since late 2017.⁵² In Michigan, Attenti's lobbyist spent nearly \$48,000 for both 2017 and 2018. For 2018,⁵³ Attenti paid its lobbyist \$30,000 in Mississippi.⁵⁴ Considering the growing evidence challenging the effectiveness of electronic monitoring, Attenti's efforts to influence legislation, regulation, or governmental processes that likely advance its bottom-line and the adoption of electronic monitoring across the country, raises concerns about its commitment to creating positive social impacts throughout society.

CONCLUSION

Solutions to the inequitable and burdensome effects of electronic monitoring are often directed towards judges. But many judges do not conduct hearings on a defendant's ability to pay for monitoring before requiring it. Those judges who do conduct such hearings, often overestimate the individual's financial means.⁵⁵ The alliance with courts gives electronic monitoring companies, like Attenti, not just a steady stream of business, but also a reliable means of collecting on debts. Unlike a credit-card company which must file a civil suit to collect from overdue customers, electronic monitoring companies can initiate criminal-court proceedings that threaten defendants with incarceration.⁵⁶

Mounting debt is not the only thing sending poor defendants back to jail. Aside from serving as an ineffective alternative to incarceration, electronic monitoring can act as a "net-widener" – where it ends up sweeping more people into the criminal justice system. For instance, people who may not otherwise be incarcerated can be punished for breaking the lifestyle rules that come with having to use electronic monitoring devices. A survey in California found that juveniles in one county, awaiting trial or on probation and using electronic monitors, were required to comply with over 50 restrictions, including not participating "in any social activity."⁵⁷

Furthermore, electronic monitoring impacts some groups more than others. Although no national statistics are available on the racial breakdown of Americans wearing electronic monitors, all indications suggest that mass electronic supervision, like mass incarceration, disproportionately affects the black community. Simone Browne, a sociologist, has connected modern surveillance technologies, like the ones Attenti and its competitors offer, as an extension of America's long history of controlling where black people live and work – from the branding of slaves, to Jim Crow segregation, and home visits of welfare agencies.⁵⁸ In short, electronic monitoring shifts the costs and site of incarceration from state and local facilities to vulnerable communities. With little to no regulatory oversight, electronic monitoring within this context further reduces the ability to recover from incarceration or create safety-nets within vulnerable communities, and instead increases the punitive impact of incarceration.

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Endnotes

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