

Paper for NSfK Seminar Report
Noora Lähteenmäki
Doctoral student
Institute of Criminology and Legal Policy, University of Helsinki

Electronic monitoring as a community sanction: offenders' experiences and perceived legitimacy

Introduction

This paper presents the research setting of a study that interviewed 20 and surveyed 35 probationers subject to electronic monitoring (EM) in Finland. The study concerns EM as a community sanction, in literature referred to as a 'front-door' practice. The sanction can be imposed as an alternative to up to six months imprisonment.

EM involves keeping in regular contact with the probation service and obligations to participate in activities, such as work. Home visits are conducted to support the probationers and to ensure they are not using substances or otherwise violating the conditions of EM. Finnish front-door EM utilizes radio frequency (RF) technology. Probationers wear signaling devices, "ankle tags", which communicate with a transceiver situated in their homes. Probationers are required to stay at home during times there are no scheduled activities. When moving out of range of the transceiver, an alert transmits to the monitoring center. Radio-frequency relays probationers' presence or absence at home, and unlike GPS, it cannot track their location outside home. Consent from adult family members is a prerequisite for EM. EM may be in rare cases be enforced in drug rehabilitation institutes (for further details of the sanction see Lappi-Seppälä and Lähteenmäki, 2017).

EM is used also in other Nordic countries. Offenders sentenced to four (Norway) or six months' (Sweden, Denmark) prison sentences may serve the sentence in EM instead of prison. Compared to other Nordic countries, front-door EM is the least used in Finland. Initially Finnish policy makers aimed for 130 offenders under front-door EM per day (Gov. Prop 17/2010). Because of the eligibility criteria and practical issues in the sentencing process, this intention has not been met, daily average number being only 45 in 2017 (Source: Criminal Sanctions Agency).

Theoretical approach

In Finland EM as a community sanction is primarily related to special prevention, mainly to rehabilitation. This was explicitly expressed in the legislative phase by stating that EM should be imposed when it's more justified than prison for special preventive reasons (Gov. Prop 17/2010). This aim is rational, as most probationers in EM have substance abuse problems. According to statistics, noncompliance and 'secondary imprisonment', meaning that offender serves the rest of the sentence in prison, is usually related to the use of alcohol or drugs (source: Criminal Sanctions Agency).

Rehabilitation does not alone offer adequate – normative – grounds for the legitimacy of punishment. Offenders who receive a punishment, may have their motivation strengthened or diminished through the experience of punishment (Andenaes 1974). This study attempts to develop a legitimacy rationale for the use of EM. Legitimacy is largely a product of how authorities treat offenders and exercise their authority. Just and fair treatment are inherent for practices respecting offender's human rights. Ethical approach is likely to have more effective long term impacts than focusing on mere rehabilitation (Canton 2012). According to Council of Europe's Recommendation (CM/Rec(2014)4), in order to seek longer term desistance EM should be combined with supportive measures aimed at the social reintegration of offenders. Study found that Finnish approach is in line with this recommendation.

Prior research has shown that people are more likely to comply with the rules and laws, if they feel they are being treated fairly and with respect and view legal entities as legitimate (Tyler, 1990 and 2013). Fair and respectful treatment enhanced prisoners' legitimacy judgments and compliance (Liebling 2004, Beijersbergen et al. 2015, Reisig and Mesko 2009). Probation system is crucially dependent upon compliance and cooperation, and there is a need to seek ways to bring about compliance (Crawford and Hucklesby, 2013).

This study will offer a penal theory explanation which focuses on indirect general deterrence. The indirect effect of the penal system, shaping social norms and views, has been a rather neglected area of research. Research is needed of the different mechanisms indirect prevention especially in the growing field of EM and community punishments (Lappi-Seppälä 1995). This study provides insight on probationers' experiences of electronic monitoring. Study dedicates empirical attention to whether fairness judgements are associated with probationer's views of legitimacy and compliance.

Methods

Liebling and colleagues (2011) have developed a survey measuring the quality of prison life. This work inspired the designing of survey and interview questions for the current study. Interviews and surveys were designed to elicit probationers' experiences of fairness, legitimacy and compliance during EM. Interview questions were also tailored to elicit comparative views of prison, community service and electronic monitoring.

Qualitative semi-structured interviews were conducted with probationers who were serving EM or had recently accomplished the sanction (n=20). One interviewee was serving community service at the time of the interview but had recently completed a sentence in electronic monitoring. Interviewees were requested to give their email addresses or phone numbers for the interviewer. Follow-up interviews (n=5) were conducted approximately six months later to assess the long term impacts of electronic monitoring and assess the social integration process. Interviews took place in Probation Agencies or were conducted by phone. Interviews were conducted in all three Criminal Sanctions Regions of Finland (Southern, Eastern-Northern and Western). Interviews ranged in length from 20 minutes to two hours. All interviews were audio recorded.

A survey was conducted with offenders serving electronic monitoring. The survey was delivered to offenders serving EM. Response rate was 35 %. Most survey respondents and interviewees were convicted of DUI. Other common offences were assault, theft and driving without a license.

Closing remarks

Tentative findings show that the manner in which EM is implemented played an important part of an interviewees and respondents legitimacy perceptions. Consistent with prior research by Linderborg and colleagues (2015), probationers' views indicate that care, fair treatment and trust are emphasized in the daily practices of EM and in probation. In line with prior studies (Liebling, 2011), perceived fairness was found to be related to motivation. Trust and fairness are experienced by probationers mainly as 'kindness' and professional working manners (van Zyl Smit – Snacken – Hayes 2015).

References

- Andenaes J (1974) Punishment and Deterrence. The University Of Michigan 1974.
- Beijersbergen KA, Dirkzwager AJE, Eichelsheim VI, Van der Laan PH, Nieuwbeerta P (2015) Procedural Justice, Anger, And Prisoners' Misconduct. A Longitudinal Study. Criminal justice and behavior, 2015, vol. 42, No. 2, February 2015, 196–218.
- Canton, R (2012) The Point of Probation: On Effectiveness, Human Rights and the Virtues of Obliquity. Criminology & Criminal Justice 13(5) 577 – 593.
- Crawford, A and Hucklesby, A (2013) Introduction. Compliance and Legitimacy in Criminal Justice. In Crawford, A and Hucklesby, A (eds.): Legitimacy and Compliance in Criminal Justice. Routledge 2013.
- Government Proposal 17/2010 Government Proposal for Legislation for Monitoring Sentence and Electronic Monitoring In Open Prisons. No. 17/2010. [Http://Www.Finlex.Fi/Fi/Esitykset/He/2010/20100017](http://www.finlex.fi/fi/esitykset/he/2010/20100017).
- Lappi-Seppälä, T. (1995): General Prevention – Hypotheses and Empirical Evidence. Ideologi Og Empiri I Kriminologien: Rapport Fra Nsfks 37. Forskerseminar, Rusthållargården, Arild, Sverige 1995.
- Lappi-Seppälä, T and Lähteenmäki, N (2017) Finnland. In Dünkel, F – Thiele, C – Treig, J (eds.): Elektronische Überwachung von Straffälligen im europäischen Vergleich – Bestandsaufnahme und Perspektiven. Schriften zum Strafvollzug, Jugendstrafrecht und zur Kriminologie. Bamd 63. Forum Verlag Godesberg.
- Liebling A (2004) Prisons and Their Moral Performance: A Study of Values, Quality and Prison Life. Oxford University Press 2004.
- Linderborg, H – Blomster, P – Muiluvuori ML, Tyni S, Laurila T (2015) Unified organisation – unified quality? Research on the quality factors of imprisonment and community sanctions in the Criminal Sanctions Agency. Criminal Sanctions Agency 2015.

Reisig MD and Mesko G (2009) Procedural justice, legitimacy, and prisoner misconduct, *Psychology, Crime & Law*, 15:1, 41-59.

Tyler, T (1990) *Why People Obey the Law*. Princeton University Press 1990.

Tyler, T (2013) Legitimacy and Compliance. The Virtues of Self-regulation. In Crawford, A – Hucklesby, A (eds.): *Legitimacy and Compliance in Criminal Justice*. Routledge 2013.

van Zyl Smit, D – Snacken, S – Hayes, D (2015) ‘One cannot legislate kindness’: Ambiguities in European legal instruments on non-custodial sanctions. *Punishment & Society* 2015, Vol. 17(1) 3–26.