

REPORT OF KATE WEISBURD

I. Qualifications

1. I am a law professor at George Washington University School of Law (“GW”) in Washington, D.C. At GW, I teach Criminal Law, Criminal Procedure, and a seminar on Race, Surveillance, and the Criminal Justice System. Prior to joining the faculty, I was employed by U.C. Berkeley School of Law, where I worked in the Clinical Program, first in the Death Penalty Clinic and later at the East Bay Community Law Center. I received my J.D. from Columbia Law School in 2005 and my B.A. in Public Policy from Brown University in 2000.

2. My research examines the changing dimensions of criminal procedure and punishment. In particular, my scholarship focuses on how surveillance technology impacts the meaning and experience of incarceration. Using data, empirical research and other qualitative methods, I study how new forms of surveillance technology impact people on pretrial release, probation, parole and other forms of community supervised release. I focus on the tangible and real-world implications of electronic monitoring and other forms of court supervision.

3. My research has appeared or is forthcoming in the California Law Review, Virginia Law Review, Boston Law Review, Iowa Law Review, North Carolina Law Review, and the UCLA Law Review, as well as other mainstream media. Several of my articles have won awards, including the Privacy Papers for Policymakers Award (Future of Privacy Forum 2023) and the Reidenberg-Kerr Award for Outstanding Scholarship by a Junior Scholar (Privacy Law Scholars Conference 2021 and 2023). I have written several reports, articles and opinion pieces that address electronic monitoring:

- a. *Electronic Prisons: The Operation of Ankle-Monitoring in the Criminal Legal System*, George Washington University Law School (2021) (with law students);
- b. *Punitive Surveillance*, 108 Va. L. Rev. 148, (2022);
- c. *Sentenced to Surveillance: Fourth Amendment Limits on Electronic Monitoring*, 98 N.C. L. Rev. 717 (2020);
- d. *Carceral Control: A Nationwide Survey of Criminal Court Supervision Rules*, 58 HARV. C.R.- C.L. L. REV. 2 (2023);

- e. *The Case Against E-Carceration*, Inquest (July 30, 2021) (with James Kilgore and Emmett Sanders);
- f. *Op-Ed: The Monster of Incarceration Quietly Expands Through Ankle Monitors*, LA Times (March 15, 2022) (with Alicia Virani); and
- g. Written Statement, *Reforming Pretrial Electronic Monitoring*, California Committee on Revision of the Penal Code (Oct. 2022)

4. In addition to my scholarship, I often testify or provide written commentary to legislative bodies or government agencies about the use of electronic ankle monitoring. For example, in 2022 I testified about electronic ankle monitoring before the California Committee on the Revision of the Penal Code.

5. The information in this report is based upon my personal knowledge and my research and scholarship, which is listed in my CV, as well as on research and scholarship in the field, including sources of the type which researchers in my field would rely upon in their work. I also reviewed records and documents provided to me by plaintiff's counsel.

II. Summary of Issues Addressed

6. This report has been prepared at the request of the plaintiff's attorneys in federal lawsuit, *Antrim et al. v. Kevin Carr*, in the United States District Court for the Eastern District of Wisconsin, case no. 19-cv-00396-BH. Plaintiff alleges that the State of Wisconsin's statutory requirement that certain individuals convicted of sexual offenses must wear a GPS monitoring device for life violates the Fourth Amendment of the United States Constitution. In this report, I discuss research that bears on Plaintiff's and the class members' claim. A summary of my opinion is as follows:

Lifetime GPS monitoring involves significant burdens that undermine stability when it is needed most, namely, after someone is out of prison and off of supervision. The onerous charging requirements, connectivity problems, wearing the device itself, the disruption to one's normal life, the constant fear of being arrested for technical violations, the financial cost, physical pain, and social stigma all make it difficult for people on monitors to lead productive, healthy and self-sufficient lives. While each individual requirement or restriction may not seem like a burden on its own, they add up to the proverbial death by a thousand cuts. GPS monitoring jeopardizes autonomy, privacy, family and social relationships, caregiving obligations, employment, and financial security as well as mental and physical health. As explained herein, lifetime GPS

monitoring is incompatible with many of the daily decisions, activities, and relationships that most people take for granted.

III. Wisconsin's GPS Monitoring Program

7. There are currently 514 individuals on lifetime GPS monitoring pursuant to Wis. Stat. 301.48(2)(a)(7) who are no longer serving a sentence or are under any form of criminal court supervision (like probation and parole). These people are no longer serving any punishment imposed by a court. These 514 individuals are all on GPS because Wisconsin law mandates lifetime GPS monitoring for people who are subject to notification under Wis. Stat. 301.46 (2m) (am) because they were convicted of sex offenses on two or more occasions.

8. There are a few defining features of the program:

a. First, all 514 individuals subject to lifetime GPS monitoring were placed on GPS monitors regardless of their risk level. State law mandates that two or more convictions for sexual offenses automatically triggers lifetime GPS monitoring. None of the 514 people were given any sort of assessment to determine if they are at a high or low risk of re-offending.¹

b. Second, the device is comprised of a strap that goes around a person's ankle. The strap is outfitted with a small black box (the monitor) and cannot be removed without triggering a "tamper" alert. The device must be charged for two and half hours at time.²

c. Third, the monitors rely on GPS and cellular connections to continuously collect and transmit signals to the Wisconsin Department of Corrections (the "WDOC"). These signals reflect sensitive geolocation data. The WDOC uses active GPS tracking, which collects someone's location once per minute and the WDOC receives that information in near real time. This technology creates a "time correlated record" of the monitored person's movements, 24 hours per day for life.³

¹ Deposition of Autumn Lacy at 39.

² Deposition of Sara Wescott-Stilson at 66.

³ Deposition of Sara Wescott-Stilson at 40-43; WDOC Brochure, "Information for Sex Offenders on Lifetime GPS"

d. Fourth, WDOC considers GPS data to be a “public record” that must be turned over to any member of the public who requests it.⁴

e. Fifth, under Wisconsin law, the device remains on a person’s ankle for life with two exceptions: the device is removed if the person moves out of state,⁵ or after twenty years, individuals on GPS monitors may file a petition in court to request to have the device removed.⁶

f. Sixth, the current device used by the WDOC relies on lights and vibrations to alert the wearer of suspected non-compliance, including when the battery is low, the device is unable to connect via GPS or cellular networks, or there is a “strap tamper.” For example, if the battery is low, a WDOC agent sends an alert to the device, which then lights up and vibrates, signaling to the wearer that they have to charge the device.⁷ Monitors used in the past had the capacity to send audio messages that played through a speaker on the monitor.⁸

g. Seventh, WDOC has discretion in how it treats non-compliance with GPS monitoring requirements. For example, if the battery dies, it is up to the individual state agent to determine when to contact law enforcement or refer the non-compliance to the local district attorney’s office for potential criminal charges.⁹ Depending on the circumstances, letting the battery die or losing signal could be the basis for felony charges under Wis. Stat. 946.465. There is no written policy about how or when state agents should contact police or refer the case to prosecutors.¹⁰

h. Eighth, unlike people on monitors who are on probation or parole, people who are on monitors pursuant to state law after completion of their criminal sentence are generally not subject to inclusion or exclusion zones.¹¹ Inclusion and exclusion zones are not imposed

⁴ Deposition of Sara Wescott-Stilson at 48-49.

⁵ Deposition of Sara Wescott-Stilson at 83-84.

⁶ Wis. Stat. 301.48(6).

⁷ Deposition of Sara Wescott-Stilson at 19.

⁸ Deposition of Sara Wescott-Stilson at 38-39.

⁹ Deposition of Sara Wescott-Stilson at 23-25; 33.

¹⁰ Deposition of Sara Wescott-Stilson at 30.

¹¹ Deposition of Sara Wescott-Stilson at 16.

because, according to WDOC officials, the WDOC has no authority to act were someone to not abide by an exclusion zone.¹²

IV. Opinions

A. Charging Requirements

9. The charging requirements for the GPS ankle monitors are burdensome and make day-to-day life difficult.¹³ People are told that they should charge their devices for a minimum of 2.5 hours at a time.¹⁴ Unlike a cellphone that can be plugged into an outlet and left, the person wearing the ankle monitor must sit next to the outlet for the entire time the GPS device charges. The charging requirements mean that people are tethered to an electrical outlet for two or more hours a day.

10. Concerns about charging, and the charging requirements, often dictate how people live their lives. Because the device must remain charged, and the charging takes time, people must budget at least two hours a day to sit by an electrical outlet. People are told not to sleep while charging the device because the natural movement that occurs while people sleep could disconnect the device from the outlet.¹⁵ As one person put it, “the act of charging the device constantly monopolizes a good portion of my day.”¹⁶ Time that could be spent with family, taking care of dependents, working or getting exercise is instead spent next to an outlet. In the words of one person, charging “steals away precious time from my waking hours.”¹⁷ The charging requirements mean that people are restricted in what they can do when. Shopping, entertainment, attending religious services, or spending time with family and friends must be either avoided or scheduled around when people are able to charge their devices.¹⁸

¹² Deposition of Sara Wescott-Stilson at 16.

¹³ Kate Weisburd et al., *Electronic Prisons: The Operation of Ankle-Monitoring in the Criminal Legal System*, George Washington University Law School (2021); Kate Weisburd, *Punitive Surveillance*, 108 Va. L. Rev. 148, (2022); Patrice James, et al., *Cages Without Bars: Pretrial Electronic Monitoring Across the United States*, Shriver Center on Poverty Law (September 2022).

¹⁴ Deposition of Sara Wescott-Stilson at 66.

¹⁵ Deposition of Sara Wescott-Stilson 77-78.

¹⁶ John Foellmi Affidavit at 2.

¹⁷ Steven Miller Affidavit at 2.

¹⁸ See John Foellmi Affidavit at 3.

11. Although people can charge their devices outside of their homes, to do so is humiliating and stigmatizing. People do not want to charge their device in public areas or any places where other people could see them and make negative assumptions about them.¹⁹ One person reported needing to find a secluded part of an airport where he could charge his device before boarding a flight.²⁰

12. The charging requirements put people in difficult circumstances and cause unnecessary stress. For example, if someone is stuck in traffic or on a slow bus or train, their battery may die before they get home. Or if someone on a monitor has to go someplace at the last minute before they have time to charge their device, they risk having the battery die before they can charge it again. People on monitors report being late to take care of a family member, or canceling a medical appointment, because they were stuck at home charging their device.²¹ Leaving home before the device is fully charged is risky as it could result in an alert of non-compliance or, worse, a violation that leads to arrest.

13. The battery life of the device is supposed to be 40 hours, but it is less if the device struggles to connect with GPS or cellular networks. This means that if a person is in a remote area, or working in a factory with lots of metal, the battery will drain faster as it attempts to establish a signal.²² Unlike a cellphone or tablet that shows how much battery life is left, there is simply a light that alerts when the battery is low and/or dead.²³ These features make it that much more stressful for people to manage charging the device.

B. Violations and Faulty Devices

14. The failure to comply with the monitoring requirements (like keeping the device charged and connected via GPS or cellular networks), as well as device malfunctions, can lead to the police being called, felony charges and possible incarceration.²⁴ Even short of these

¹⁹ John Foellmi Affidavit 3.

²⁰ John Foellmi Affidavit at 3.

²¹ See e.g. Antrim Deposition at 41-42.

²² Deposition of Sara Wescott-Stilson at 70-71.

²³ Deposition of Sara Wescott-Stilson at 72-73.

²⁴ See generally Kate Weisburd et al, *Electronic Prisons: The Operation of Ankle-Monitoring in the Criminal Legal System*, George Washington University Law School (2021); Kate Weisburd, *Punitive Surveillance*, 108 Va. L. Rev. 148, (2022); Illinois Sentencing Policy Advisory Council, *Research Briefing*:

consequences, people on monitors must be constantly attuned to their device, which means that their daily lives are often dictated and/or interrupted by potential monitoring violations.

15. In Wisconsin, the GPS device sends “alerts” to the GPS monitoring center operated by the WDOC whenever there is a loss of signal, there is suspected tampering with the device, or the battery runs low.²⁵ The loss of a signal or a low battery are common occurrences, which trigger various responses. According to WDOC staff, agents will call people on monitors if their device loses signal. As a general matter, these calls occur anytime between 5:00 a.m. and 11:00 p.m.²⁶ Upon receiving this call, the person must stop what they are doing and try to reestablish signal contact.²⁷ This could involve moving closer to a window, walking around outside or driving to a location with a stronger GPS signal.²⁸ The same general process applies when the battery dies. If phone calls do not resolve the various alerts, staff may request that police go to the wearer’s house or job, or staff can refer the violation to the local prosecutor for prosecution.²⁹

16. One person reported that his vacation was cut short when the GPS Center called him to tell him that the device was not emitting a signal. The agent “strongly insinuated that I needed to return home, saying ‘when are you planning on going home? We’d like you to go home as soon as possible.’ I felt like I was being told that if I did not return, I would be arrested.”³⁰ Another individual reported that every time a malfunction occurs, two officers show up at his house in the early morning hours, one in uniform and one wearing tactical SWAT gear.³¹

17. The record shows that alerts for non-compliance are very frequent. Plaintiff Antrim’s experience is illustrative. Logs show that in July of 2021 he routinely had 10-15 alerts a day – most often for “no motion” or “low battery” or “tracker missed callback.”³² Such alerts cause the

State Use of Electronic Monitoring (2019) (finding that the “use of EM can increase the risk of technical violations and returns to prison, especially for low or moderate-risk offenders”)

²⁵ Deposition of Sara Wescott-Stilson at 17-18.

²⁶ Deposition of Sara Wescott-Stilson at 63.

²⁷ Deposition of Sara Wescott-Stilson at 62.

²⁸ Deposition of Sara Wescott-Stilson at 63.

²⁹ Deposition of Sara Wescott-Stilson at 22; 33.

³⁰ John Duellman Affidavit at 3.

³¹ John Duellman Affidavit at 2.

³² See BI Incorporated Compressed Daily Summary, Alton Antrim 7/01/2021-12/31/2021.

monitor to light up and/or vibrate. When the device signals a loss of connection or low battery, everything in Mr. Antrim's life must stop until he calls into the GPS center or resolves the alert in some other way.

18. Research shows that GPS ankle monitors are often faulty.³³ The devices often issue false alerts, and the connection to GPS networks is often disrupted. Weather conditions and blackouts, for example, can cause the loss of signal that can register as a violation.³⁴ In 2023, the United States Government Accounting Office studied the use of monitoring in the pretrial context and found that Chief Pretrial Services Officers reported that the GPS devices malfunctioned 86% of the time due to poor cellular service, 80% of the time due to equipment defects, 68% of the time due to poor GPS signals and 46% of the time due to weather or natural disasters.³⁵

19. The alerts are also not always reliable or accurate. For example, in May of 2017, the WDOC lost GPS signals for 895 people, generating 32,766 alerts.³⁶ In 2021, researchers in Chicago found that of the tens of thousands of alerts from monitors, roughly 80% were false positives – for example, the monitor showed the wearer outside of their home when they were in fact at home.³⁷

20. Not only do people on monitors live in fear of their lives being disrupted by calls from the monitoring center due to GPS alerts, but people live in fear of being arrested and jailed for GPS-related malfunctions.³⁸ While the WDOC does not automatically make an arrest when an

³³ See Sandra Susan Smith & Cierra Robson, *Between a Rock and a Hard Place: The Social Costs of Pretrial Electronic Monitoring in San Francisco*, Harv. Kennedy Sch. Malcolm Wiener Ctr. For Soc. Pol'y (Sept. 2022); Jack Karsten & Darrell M. West, *Decades Later, Electronic Monitoring of Offenders Is Still Prone To Failure*, Brookings Institution (Sept. 21, 2017); Patrice James, et al., *Cages Without Bars: Pretrial Electronic Monitoring Across the United States*, Shriver Center on Poverty Law (September 2022).

³⁴ See *Environmental conditions blamed for ankle monitor failure*, WSDU New Orleans (Oct. 12, 2012); James Kilgore & Emmett Sanders, *Ankle Monitors Aren't Humane. They're Another Kind of Jail*, WIRED (Aug. 4, 2018).

³⁵ *Pretrial Supervision: Actions Needed to Enhance Management of the Location Monitoring Program*, United States Gov't Accounting Office (2023).

³⁶ Riley Vetterkind, *Wisconsin doubles GPS monitoring despite five years of malfunctions, unnecessary jailings*, The Cap Times (March 4, 2018).

³⁷ GPS EM Location Analysis, Cook County Sheriff's Office, Univ. of Chicago (Nov. 2021); Matt Chapman, Natalie Frazier, *False Alarms*, Chicago Reader (June 9, 2022).

³⁸ See e.g., Yazmine Nichols, *Jailed For a Faulty Battery and Left to Catch COVID-19*, ACLU (June 2021); Aaron Cantú, *When Innocent Until Proven Guilty Costs \$400 a Month—and Your Freedom*, VICE, (2020).

individual off supervision loses signal, fears of being arrested are understandable given that Wisconsin law makes it a crime to “intentionally ... prevent[] the clear reception of a signal transmitted by a global positioning system tracking device.”³⁹

C. Activity & Travel Restrictions

21. Many of the daily activities and pleasures of life that most people take for granted are incompatible with wearing a GPS monitor. It is not possible to wear a GPS device under ski boots or ice skates, for example, and sports where players are expected to wear shorts, or have contact with one another, are impossible to play unless the monitor is visible and/or protected. One person reported that he used to ski several times a year but no longer can because the boots do not fit over his GPS monitor. He also cannot play softball because even if he could hide the device, he would be unable to slide into base without risking injury or damage to the device.⁴⁰ Another person explained that although he runs for exercise, the device rubs against his ankle, sometimes chaffing it.⁴¹ Yet another person explained that he loves to swim but hasn’t been able to since being on a monitor.⁴²

22. Spending time in nature or at the beach is also difficult. Although people on monitors may shower and take baths, they are told to not submerge the device in more than 15 feet of water.⁴³ One person was told to avoid getting his device wet, and as a result he avoids the beach or swimming altogether.⁴⁴ Another person explained that he cannot go on camping or hiking trips because it is impossible to charge the device and the GPS device requires cell phone coverage, which is often spotty in Wisconsin camping areas.⁴⁵

23. To be sure, there may be no official rules prohibiting people from ice skating or going to the beach, but people’s perceived concerns and worries cannot be dismissed. The concern that

³⁹ Wis. Stat. 946.465(2).

⁴⁰ John Duellman Affidavit at 7.

⁴¹ Christian Petak Affidavit at 4.

⁴² Steven Miller Affidavit 2;

⁴³ See e.g., WDOC, BI ExacuTract One and Beacon Client Guide

⁴⁴ John Foellmi Affidavit at 3.

⁴⁵ John Duellman Affidavit at 7.

the device may malfunction, as well as the desire to hide the device, result in people not participating in otherwise healthy parts of life.

24. Although people on lifetime GPS monitoring in Wisconsin are allowed to travel, the fear that something could go wrong with the device, and the need to get permission to leave the state, has made some individuals who are on lifetime GPS hesitant to leave the state. Plaintiff Antrim, for example, testified that he has not visited family out of state because he is so worried that the device will malfunction while he's traveling and, if it does, that he will be arrested.⁴⁶ Another person reported canceling a vacation to South Carolina because he was afraid the GPS device would malfunction if he spent too much time on the beach or in the water.

25. In short, rather than live as a free person does, people who wear a monitor must modify many, if not all, of their daily activities for the rest of their lives.⁴⁷

D. Stigma and Social/Family Relationships

26. Wearing a GPS ankle monitor is a modern-day scarlet letter.⁴⁸ In the words of one person on lifetime GPS monitoring: "Wearing the device is a badge of shame" that makes him feel "socially and morally inferior."⁴⁹ In fact, new research reveals that ankle monitors lead wearers to be regarded as criminals.⁵⁰ Again, Plaintiff Antrim's experience is illustrative. Mr. Antrim explained that after seeing his GPS device, people sometimes cross the street and/or avoid him in stores and/or treat him differently in restaurants.⁵¹ Once or twice a week people will point to the device and/or make comments directed at Mr. Antrim. These comments usually take the form of "Oh, I see you're wearing a bracelet, sex offender."⁵² On one occasion, Plaintiff Antrim showed

⁴⁶ Antrim Deposition at 63.

⁴⁷ See Julie Pittman, *Released into Shackles: The Rise of Immigrant E-Carceration*, 108 Calif. L. Rev. 587, 603 (2020).

⁴⁸ This term has been used by many people, including judges. See e.g., *Doe v. Bredesen*, 507 F.3d 998 24 1012 (6th Cir. 2007) (Keith, J., concurring in part and dissenting in part) ("A public sighting of the modern day 'scarlet letter'—the relatively large G.P.S. device—will undoubtedly cause panic, assaults, harassment, and humiliation.").

⁴⁹ Christian Patak Affidavit at 5.

⁵⁰ See Lauren Kilgour, *The Ethics of Aesthetics: Stigma, Information, and The Politics of Electronic Ankle Monitor Design*, 36 The Information Soc'y 131, 136–42 (2020).

⁵¹ Antrim Deposition at 43-44; 51-52, 59.

⁵² Antrim Deposition at 52.

up to a public pool only to be told by a staff member that he was not allowed to enter the pool because of the GPS monitor.⁵³ After that experience, Mr. Antrim never tried to visit another public pool, out of fear that he would be publicly told he is barred – even though no law prevents him from visiting public pools. Another person explained that the “change in the demeanor of everyone after seeing the device is palpable.”⁵⁴

27. People on GPS devices report feeling shame and anxiety.⁵⁵ Given the stigma surrounding involvement with the criminal justice system, the visibility of the monitoring device is a significant burden.⁵⁶ Because of the stigma, people often try to cover up the device by wearing pants or heavy socks.⁵⁷ As one person explained, wearing shorts is not an option because he does not want to “answer prying questions from strangers about the device.”⁵⁸ Another person reported being constantly worried that his coworkers would find out about his GPS device, complain to management and he would be fired.⁵⁹ In his prior job, this individual told coworkers about his device and as a result “became a social pariah.”⁶⁰ Yet another person explained that if and when he wears shorts, he uses an uncomfortable neoprene ankle brace to cover the device and also tries to move the device to the back of his ankle, so it is less visible, but, when he does, it is irritating and painful.⁶¹

28. The reactions that other people have to seeing the monitor causes more stress, fear and worry. As one person explained: “I worry constantly about being accosted and/or attacked by

⁵³ Antrim Deposition at 28

⁵⁴ John Duellman Affidavit at 6.

⁵⁵ John Duellman Affidavit at 5; Sandra Susan Smith & Cierra Robson, *Between a Rock and a Hard Place: The Social Costs of Pretrial Electronic Monitoring in San Francisco*, Harv. Kennedy Sch. Malcolm Wiener Ctr. For Soc. Pol’y (Sept. 2022).

⁵⁶ Ben A. McJunkin & J.J. Prescott, *Fourth Amendment Constraints on the Technological Monitoring of Convicted Sex Offenders*, 21 New Crim. L. Rev. 379, 413 (2018).

⁵⁷ See John Foellmi Affidavit at 4, John Duellman Affidavit at 5. 7; Christian Petak Affidavit at 2, Steven Miller Affidavit at 3.

⁵⁸ John Foellmi Affidavit at 4.

⁵⁹ John Duellman Affidavit at 6

⁶⁰ John Duellman Affidavit at 6.

⁶¹ Christian Petak Affidavit at 3

someone who sees the device and assumes I am a dangerous criminal.”⁶² When on one occasion his device malfunctioned and the police showed up at his house, he had to explain to his neighbor why the police were there.⁶³

29. Simple everyday activities, like going through a metal detector, often cause stress and embarrassment. For example, one person explained that every time he flies, he must explain to the TSA agent that he is wearing a monitor and then show the device in a way that everyone in the security line can see.⁶⁴ The same burden is imposed on those who go through a metal detector in a courthouse when wearing a GPS device.⁶⁵

30. GPS monitoring also undermines critical social and familial relationships.⁶⁶ In a 2011 study of people on electronic monitors by the Department of Justice, almost half of the people interviewed believed that monitoring negatively affected their relationships with friends and family members, and 89 percent of probation officers reported that monitoring changed people’s relationship with family and friends. Mr. Antrim’s experience is consistent with these findings. He testified that some of his close friends do not want to be seen in public with him, even if his monitor is covered by pants.⁶⁷ Another person reported that because of the GPS requirements related to charging and being connected to cellular or GPS networks, he is limited in participating in activities with his friends. As a result, he has “lost almost all of my friends post-release because I have to say no to their invitations so many times.”⁶⁸

31. As a general matter, people on monitors face difficult decisions: either go out and endure public humiliation and risk societal rejection or else avoid spending time with people they

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Christian Petak Affidavit at 6.

⁶⁵ John Duellman Affidavit 6

⁶⁶ Sandra Susan Smith & Cierra Robson, *Between a Rock and a Hard Place: The Social Costs of Pretrial Electronic Monitoring in San Francisco*, Harv. Kennedy Sch. Malcolm Wiener Ctr. For Soc. Pol’y, (Sept. 2022); Kate Weisburd, *Punitive Surveillance*, 108 Va. L. Rev. 148, (2022); Kate Weisburd et al, *Electronic Prisons: The Operation of Ankle-Monitoring in the Criminal Legal System*, George Washington University Law School (2021); Patrice James, et al., *Cages Without Bars: Pretrial Electronic Monitoring Across the United States*, Shriver Center on Poverty Law (September 2022).

⁶⁷ Alton Antrim Deposition at 60-61.

⁶⁸ John Duellman Affidavit at 7.

love, doing activities they enjoy, and seeking support from institutions that can help with their social reintegration.⁶⁹ In short, GPS monitoring often forces people to withdraw from their communities and friends, or limit what and where they go with loved ones. Maintaining community ties, including strong social and emotional bonds with loved ones is important for everyone, especially people coming out of prison.⁷⁰ Yet monitoring directly undermines these crucial relationships.

E. Loss of Employment Opportunities

32. The technical requirements of monitoring, the social stigma, and the physical burden of wearing the device make it difficult for people to find and maintain stable employment.⁷¹ To start, interviewing for jobs is challenging for people on monitors.⁷² Even if an employer does not say anything, if they can see the device it may bias them against hiring the person. Mr. Antrim reported applying for two jobs (one at A-1 Auto and the other at NAPA Auto) and in both interviews he could feel the interview change after the interviewer noticed the device.⁷³ He got neither job.

33. The GPS monitoring requirements also makes it difficult to maintain a job.⁷⁴ Charging requirements do not allow people to work a flexible schedule and people's devices often alert while they are at work. As one person explained, he routinely has to step out of work meetings that occur

⁶⁹ Chaz Arnett, *From Decarceration to E-Carceration*, 41 Cardozo L. Rev. 641 (2019).

⁷⁰ Mowen TJ, Stansfield R, Boman JH 4th. *Family Matters: Moving Beyond "If" Family Support Matters to "Why" Family Support Matters during Reentry from Prison*, J Res Crime Delinq. (July 2019); Sugie, Naomi F., and Dallas Augustine, *Social Support in Daily Life at Reentry*, in Andrea Leverentz, Elsa Y. Chen, and Johnna Christian (eds), *Beyond Recidivism: New Approaches to Research on Prisoner Reentry and Reintegration* (2020); Edet, Mfon-Obong, *Community Bonding for Ex-Offenders: The Importance of Recreational Social Activities on the Post-Incarceration reentry Process* West Chester University Doctoral Projects (2022).

⁷¹ Kate Weisburd, *Punitive Surveillance*, 108 Va. L. Rev. 148, (2022); Kate Weisburd et al, *Electronic Prisons: The Operation of Ankle-Monitoring in the Criminal Legal System*, George Washington University Law School(2021); Ava Kofman, *Digital Jail: How Electronic Monitoring Drives Defendants Into Debt*, New York Times (July 3, 2019); Sandra Susan Smith & Cierra Robson, *Between a Rock and a Hard Place: The Social Costs of Pretrial Electronic Monitoring in San Francisco*, Harv. Kennedy Sch. Malcolm Wiener Ctr. For Soc. Pol'y, (Sept. 2022); Patrice James, et al., *Cages Without Bars: Pretrial Electronic Monitoring Across the United States*, Shriver Center on Poverty Law (September 2022).

⁷² *Id.*

⁷³ Alton Antrim Deposition at 55-56.

⁷⁴ Alicia Virani, *Pretrial Electronic Monitoring in Los Angeles County: 2015 through 2021*. UCLA School of Law Criminal Justice Program (2022).

in a basement “because the GPS device will lose signal while down there, [and] I worry that not attending these meetings will impact my job, but I do not think I have any other choice.”⁷⁵ Having to randomly leave work to pick up a signal or call the GPS center creates tension with employers.

34. The physical burden of wearing the device also interferes with work.⁷⁶ One person reported working with machinery and having his GPS device caught in a machine, causing bruising and pain.⁷⁷ He did not report the injury to his employer because he feared they would ask him why he was on the GPS monitor.⁷⁸ Another time the GPS device got caught on a ladder rung, causing him to fall and trigger a “strap alarm.”⁷⁹ The police showed up the next day, and he had to stay home for a day to wait for a new strap to be installed.⁸⁰ This same person is required to wear steel-toed boots for work, but because he cannot wear boots (due to the GPS device) he has to purchase his own steel-toe shoes, resulting in the device causing both an inconvenience and an additional work expense.

35. The shame and stigma of wearing a GPS device also interferes with employment. As one person explained, “I recall a time when I was at work and the device started malfunctioning and I was advised to charge it. While I was able to charge the device in the gym at my work, a coworker saw me and I had to have a meeting with my boss about it. I had to deal with the resulting office gossip about my conviction to the point where Human Resources had to get involved.”⁸¹

36. The challenges of finding and maintaining a job while on a monitor are compounded by the challenges of getting a job with a criminal record. Decades of research show that obtaining a job with a criminal record is difficult, and it is even more difficult for someone who must wear

⁷⁵ John Duellman Affidavit at 3.

⁷⁶ See Sara Zampierin, *Mass E-Carceration: Electronic Monitoring as a Bail Condition*, 23 Utah L. Rev. 589 at 28 (2023) (“Others in the construction industry reported that a bulky monitor created grave safety concerns when it was caught on nearby obstacles or caused them to trip.”)

⁷⁷ John Duellman Affidavit at 4.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Affidavit of Christian Petak at 2.

a GPS monitor.⁸² Not surprisingly, twenty-two percent of monitored individuals surveyed by the National Institute of Justice said they had been fired or asked to leave a job because of an ankle monitor.⁸³

F. Loss of Privacy

37. GPS ankle-monitoring is a significant privacy intrusion.⁸⁴ Short of a prison cell, electronic monitoring is the most restrictive form of government surveillance and control.⁸⁵ The GPS device monitors individuals' every move by collecting their geolocation data. In particular, the device generates a time correlated record of a person's movement, which reveals where and when a person has been.⁸⁶ WDOC uses "active" monitoring, which means that the WDOC receives location data every minute and that information is reviewed in "near real time."⁸⁷

38. The collected data is not well protected. Based on my review of WDOC agency policies, there appear to be no written guidelines that spell out privacy protections for this data, other than those set forth in the contract between the private monitoring company and the state. The data is not deleted or discarded and is subject to disclosure under the Wisconsin Open Records Act.⁸⁸ As a result, anyone can access these records without any reason, or a subpoena.⁸⁹

39. The loss of privacy also stems from the visibility of the monitor, and depending on the model, the audio features of the device. The device is hard to hide unless the person is wearing

⁸² Amy L. Solomon, *In Search of a Job: Criminal Records as Barriers to Employment*, Nat'l Inst. of Just. (June 2012); Margie Lee Johnson, *Give Job Applicants with Criminal Records a Fair Chance*, Harv. Bus. Rev. (Sept. 21, 2020); Devah Pager, *The Mark of a Criminal Record*, American Journal of Sociology 108(5):937-75 (2003).

⁸³ Department of Justice, *Electronic Monitoring Reduces Recidivism*, National Institute of Justice (2011).

⁸⁴ Kate Weisburd, *Punitive Surveillance*, 108 Va. L. Rev. 148, (2022); Chaz Arnett, *From Decarceration to E-Carceration*, 41 Cardozo L. Rev. 641 (2019); Avlana K. Eisenberg, *Mass Monitoring*, 90 S. Cal. L. Rev. 123 (2017); Ava Kofman, *Digital Jail: How Electronic Monitoring Drives Defendants Into Debt*, New York Times (July 3, 2019); Kate Weisburd et al, *Electronic Prisons: The Operation of Ankle-Monitoring in the Criminal Legal System*, George Washington University Law School (2021).

⁸⁵ Kate Weisburd et al, *Electronic Prisons: The Operation of Ankle-Monitoring in the Criminal Legal System*, George Washington University Law School (2021).

⁸⁶ Sara Wescott-Stilson Deposition at 23-25, 40.

⁸⁷ Sara Wescott-Stilson Deposition at 42-43.

⁸⁸ Sara Wescott-Stilson Deposition at 47-49

⁸⁹ *Id.*

loose pants. The devices also light up and vibrate, which everyone can see and hear (to the extent the vibration is audible). Other models (including one that the WDOC used until recently) have small speakers that emit pre-recorded messages about the need to charge the device, or a request to call the monitoring center.⁹⁰

G. Mental Health Harms

40. The requirements and limitations associated with monitoring take a heavy toll on people's mental health. Research shows that people on monitors experience many of the same emotional harms of imprisonment, including feeling deprived of autonomy, liberty, and intimate relationships.⁹¹ The mental health harms are so significant that the United Nations Special Rapporteur on the Human Rights of Migrants has stated that "the stigmatizing and negative psychological effects of the electronic monitoring are likely to be disproportionate to the benefits of such monitoring."⁹²

41. Given the discretion afforded to the state agents about when to call the police or refer a violation to a local prosecutor, people on monitors are often anxious that any wrong move or false alert will result in phone calls from the GPS Center or, even worse, land them back in custody.⁹³

42. The uncertainty of not knowing how the WDOC will respond to alerts, non-compliance and malfunctions is stressful on its own – even if the person is not ultimately arrested. It is the mere *threat* – even if unrealized – that causes mental anguish. In the words of one person who is on lifetime monitoring, it "is difficult to describe the stress, fear and panic that being forced to

⁹⁰ Alton Antrim Deposition at 38.

⁹¹ See Brian Payne & Randy R. Gainey, *A Qualitative Assessment of the Pains Experienced on Electronic Monitoring*, 42 Int'l J. Offender Therapy & Comp. Criminology 149, 153–56 (1998); Kate Weisburd, *Punitive Surveillance*, 108 Va. L. Rev. 148, (2022); Chaz Arnett, *From Decarceration to E-Carceration*, 41 Cardozo L. Rev. 641 (2019).

⁹² Human Rights Council, U.N. General Assembly, *Report of the Special Rapporteur on the Human Rights of Migrants*, François Cr'peau P 63, U.N. Doc. A/HRC/23/46 (Apr. 2, 2012).

⁹³ See Sara Zampierin, *Mass E-Carceration: Electronic Monitoring as a Bail Condition*, 23 Utah L. Rev. 589 at 29 (2023) ("Anxiety, sleeplessness, depression, and isolation are common among individuals being monitored."); Ava Kofman, *Digital Jail: How Electronic Monitoring Drives Defendants Into Debt*, New York Times (July 3, 2019).

wear this device causes.”⁹⁴ As Mr. Antrim explained, “I’m always worried – I always got it in my mind that that they could serve a warrant and pick me up anywhere that I might be.”⁹⁵ Even if technical violations do not always trigger a warrant, the mere threat of arrest is stressful and forces people to live in a state of uncertainty and fear.⁹⁶ As one person explained, although “I no longer immediately panic like the first time my device starting blinking and flashing, the malfunctions of the device still cause me severe stress.”⁹⁷

43. To be clear, the fear of arrest and criminal prosecution is not merely perceived. Under Wisconsin law, the loss of a signal or a dead battery can lead to felony charges and further incarceration.⁹⁸ Given the number of alerts, malfunctions, and inadvertent violations, people on monitors never know if they might be arrested or face criminal charges. This uncertainty leaves people feeling particularly anxious and vulnerable.⁹⁹

44. The mental health costs of being on a monitor are compounded by the social and emotional isolation that occurs when people’s lives are oriented around complying with the monitoring rules. Rather than spend time working, or with family or friends, people stay home and self-isolate, pushing them further to the periphery of society.¹⁰⁰

H. Physical Discomfort and Pain

45. Wearing a GPS monitor 24/7 causes physical discomfort and sometimes pain.¹⁰¹ The strap can rub against the skin, causing abrasions, scabs or cuts. One person reported having edema,

⁹⁴ John Duellman Affidavit at 8.

⁹⁵ Alton Antrim Deposition at 33.

⁹⁶ See Alton Antrim Deposition at 61; 64; John Foellmi Affidavit at 4; Christian Petak Affidavit at 2.

⁹⁷ John Duellman Affidavit at 8.

⁹⁸ Wis. Stat. 946.465.

⁹⁹ See Patrice James, et al., *Cages Without Bars: Pretrial Electronic Monitoring Across the United States*, Shriver Center on Poverty Law (September 2022).

¹⁰⁰ Sandra Susan Smith & Cierra Robson, *Between a Rock and a Hard Place: The Social Costs of Pretrial Electronic Monitoring in San Francisco*, Harv. Kennedy Sch. Malcolm Wiener Ctr. For Soc. Pol’y (Sept. 2022); see also Cacioppo JT, Cacioppo S. *Social Relationships and Health: The Toxic Effects of Perceived Social Isolation*. Soc Personal Psychol Compass (Feb. 2014) (describing the harms of social isolation).

¹⁰¹ See Patrice James, et al., *Cages Without Bars: Pretrial Electronic Monitoring Across the United States*, Shriver Center on Poverty Law (September 2022).

which caused his ankle to swell such that the monitor was especially painful to wear.¹⁰² This person explained that compression socks help with the edema, but it is difficult to get the sock under the bracelet.¹⁰³ Another person reported getting a rash from the monitor strap, which has over time turned into a callus.¹⁰⁴ Another person explained that he gets sores from the device rubbing on his ankle and squeezing it.¹⁰⁵

46. Mr. Antrim also reported that one device cut his ankle, causing an infection.¹⁰⁶ In an effort to ease the pain, Mr. Antrim tried putting paper towels between the device and his ankle but the pain persisted.¹⁰⁷ Showering also caused cuts and scabs on a regular basis.¹⁰⁸ Mr. Antrim has found the new devices used by the WDOC cause fewer injuries.¹⁰⁹

47. Instances of GPS monitors causing pain and discomfort are well documented.¹¹⁰ A study by Cardoza Law School revealed that a majority of people subject to ankle monitoring experienced a “constant negative impact” on their health, including electrical shocks, cuts and bleeding, inflammation, scarring, numbness, aches and pains, and excessive heat.¹¹¹

I. Medical Care

48. GPS monitors are also an impediment to receiving medical care.¹¹² Procedures including MRIs, X-rays, CT scans, and mammograms cannot be performed while a patient wears

¹⁰² John Foellmi Affidavit at 4.

¹⁰³ John Foellmi Affidavit at 4.

¹⁰⁴ John Duellman Affidavit at 3

¹⁰⁵ Steven Miller Affidavit at 2.

¹⁰⁶ Alton Antrim Deposition at 44.

¹⁰⁷ Alton Antrim Deposition at 4.

¹⁰⁸ Alton Antrim Deposition at 48-49.

¹⁰⁹ Alton Antrim Deposition at 50.

¹¹⁰ See M.M. *Living With An Ankle Bracelet*, The Marshall Project (July 16, 2015); Ruthie Epstein, *Opinion ICE is using an alternative to immigrant detention. But it's inhumane*, Washington Post (Sept. 5, 2018).

¹¹¹ Tosca Giustini et al., *Immigration Cyber Prisons: Ending the Use of Electronic Ankle Shackles*, Cardozo Law School 13 (2021).

¹¹² See Sandra Susan Smith & Cierra Robson, *Between a Rock and a Hard Place: The Social Costs of Pretrial Electronic Monitoring in San Francisco*, Harv. Kennedy Sch. Malcolm Wiener Ctr. For Soc. Pol'y, (Sept. 2022).

an ankle monitor.¹¹³ Yet the process in Wisconsin for removing the device is cumbersome. To have the device removed for a medical procedure requires that the individual call the GPS monitoring center, who then calls a private company (JusticePoint) who then sends out a technician to temporarily remove the device.¹¹⁴ One person reported having to postpone an MRI until the monitor could be removed, which in turn delayed his surgery.¹¹⁵

49. The stigma of receiving care while wearing a GPS monitor is also significant. One person reported being questioned by nurses and doctors about his device when he went to the emergency room or got treatment.¹¹⁶ When he first saw his female primary care doctor, she asked him why he was on a monitor and when she found out, she refused to see him alone.¹¹⁷

J. Financial Burdens

50. The fees associated with monitoring also undermine people's financial security and can drive people further into debt and/or poverty. In Wisconsin, people are required to "help pay" for the cost of the monitor; the exact amount is determined based on a person's ability to pay.¹¹⁸ One person explained that he is charged \$240 per month and this amount is taken out of his state tax refund.¹¹⁹ Over the past five years the state has withheld \$4,416.¹²⁰ Another person reported being billed \$120 per month, and the amount is also taken out of his state tax return each year.¹²¹

51. The financial burdens of monitoring are especially onerous for people on lifetime GPS, for whom finding a job is made even more difficult because of their criminal record and the visible GPS device. Substantial research addresses the financial burdens associated with monitoring.¹²²

¹¹³ *Id.*

¹¹⁴ Sara Wescott-Stilson Deposition at 85.

¹¹⁵ John Duellman Affidavit at 4.

¹¹⁶ *Id.*

¹¹⁷ John Duellman Affidavit at 6

¹¹⁸ Autumn Lacy Deposition at 50.

¹¹⁹ John Duellman Affidavit at 5 & Exhibit A.

¹²⁰ John Duellman Affidavit at 5

¹²¹ Christian Petak Affidavit at 4.

¹²² See Sara Zampierin, *Mass E-Carceration: Electronic Monitoring as a Bail Condition*, 23 Utah L. Rev. 589 (2023); Ava Kofman, *Digital Jail: How Electronic Monitoring Drives Defendants into Debt*, New York Times (July 2019); see also Fines and Fees Justice Center, *Electronic Monitoring Fees, a 50 state Survey*,

K. The Lifetime Duration of Monitoring Exacerbates the Harms

52. The various restraints associated with monitoring have led many researchers and journalists, myself included, to describe monitoring not as an alternative to incarceration, but an alternative *form* of incarceration.¹²³ Terms such as “e-carceration,” and “digital prisons” are also commonly used.¹²⁴ Indeed, some people refer to monitoring as “digital shackles that deprive them of their liberties in cruel and unexpected ways.”¹²⁵ Because of monitoring, the experience of incarceration is now no longer defined by physical walls and prison bars.¹²⁶

53. It never gets easier to live with an ankle monitor. The burdens described herein are constant. As one person reported, the “shame and embarrassment do not go away.”¹²⁷ This is because when “the bracelet is on you, you never stop feeling it or thinking about it. It is irritating and mentally torturous.”¹²⁸ As another person put it, the GPS device is “always on my mind, not only because of the physical way it interacts with my body, but the way I have to navigate the world.”¹²⁹ Yet research shows that when it comes to reentry, fewer supervision requirements lead to better outcomes, and the more invasive and intensive the supervision, the worse people do.¹³⁰ The same logic applies in the context of lifetime GPS monitoring: the burdens of monitoring hinder the reintegration process indefinitely.

(Sept. 2022); Aaron Cantú, *When Innocent Until Proven Guilty Costs \$400 a Month—and Your Freedom*, Vice (May 28, 2020); Kate Weisburd et al, *Electronic Prisons: The Operation of Ankle-Monitoring in the Criminal Legal System*, George Washington University Law School (2021); Patrice James, et al., *Cages Without Bars: Pretrial Electronic Monitoring Across the United States*, Shriver Center on Poverty Law (September 2022).

¹²³ See James Kilgore, Emmett Sanders & Kate Weisburd, *The Case Against E-Carceration*, Inquest (July 30, 2021).

¹²⁴ See Michelle Alexander, *The Newest Jim Crow*, New York Times (Nov. 8, 2019).

¹²⁵ Olivia Solon, ‘Digital Shackles’: The Unexpected Cruelty of Ankle Monitors, The Guardian (Aug. 28, 2018).

¹²⁶ Kate Weisburd, *Punitive Surveillance*, 108 Va. L. Rev. 148, 152 (2022).

¹²⁷ John Duellman Affidavit at 6.

¹²⁸ John Duellman Affidavit at 8.

¹²⁹ Christian Petak Affidavit at 5.

¹³⁰ See Jennifer L. Doleac, *Study after study shows ex-prisoners would be better off without intense supervision*, Brookings Institute (July 2, 2018); Evangeline Lopoo, Vincent Schiraldi, and Timothy Ittner, *How Little Supervision Can We Have?* Annual Review of Criminology Vol. 6:23-42 (January 2023); *Statement on the Future of Probation & Parole in the United States*, Columbia Justice Lab (2020).

54. The cumulative impact of lifetime GPS is so great that some people consider moving out of Wisconsin so that they can have the device removed for good.¹³¹ As one person explained, “because of the physical and mental impact of wearing the GPS device, I would love to move out of Wisconsin.” Yet this person feels obligated to stay so that he can care for his elderly parents and repair his relationship with his daughter.¹³² In fact, at least one person did move out of state in order to be free of lifetime GPS monitoring.¹³³ Although he had a support system in Wisconsin, he decided to move away “solely to escape the painful, frustrating and dehumanizing effect of wearing a GPS bracelet for life.”¹³⁴ Encouraging people to move out of the state is a troubling and perverse consequence of lifetime GPS monitoring. Positive social and emotional connections are key to successful reintegration.¹³⁵

V. Conclusion

55. For all these reasons, Wisconsin’s statutory scheme imposing GPS monitoring on individuals who are no longer under any criminal court supervision is detrimental to people’s ability to live full and productive lives.



Dec. 16, 2023

Kate Weisburd

Date

¹³¹ John Foellmi Affidavit at 6; John Duellman Affidavit at 8; Christopher Petak Affidavit at 5,

¹³² John Foellmi Affidavit at 6.

¹³³ Steven Miller Affidavit at 1.

¹³⁴ Steven Miller Affidavit at 3.

¹³⁵ Mowen TJ, Stansfield R, Boman JH 4th. *Family Matters: Moving Beyond “If” Family Support Matters to “Why” Family Support Matters during Reentry from Prison*, J Res Crime Delinq. (July 2019); Sugie, Naomi F., and Dallas Augustine, *Social Support in Daily Life at Reentry*, in Andrea Leverentz, Elsa Y. Chen, and Johnna Christian (eds), *Beyond Recidivism: New Approaches to Research on Prisoner Reentry and Reintegration* (2020).

Appendix A

List of Materials Reviewed

List of Materials Reviewed

- Aaron Cantú, *When Innocent Until Proven Guilty Costs \$400 a Month—and Your Freedom*, Vice (May 28, 2020)
- Alicia Virani, *Pretrial Electronic Monitoring in Los Angeles County: 2015 through 2021*. UCLA School of Law Criminal Justice Program (2022)
- Alton Antrim Deposition (Aug. 25, 2023)
- Amy L. Solomon, *In Search of a Job: Criminal Records as Barriers to Employment*, Nat'l Inst. of Just. (June 2012)
- Autumn Lacy Deposition (Sept. 7, 2023)
- Ava Kofman, *Digital Jail: How Electronic Monitoring Drives Defendants Into Debt*, New York Times (July 3, 2019)
- Avlana K. Eisenberg, *Mass Monitoring*, 90 S. Cal. L. Rev. 123 (2017)
- Ben A. McJunkin & J.J. Prescott, *Fourth Amendment Constraints on the Technological Monitoring of Convicted Sex Offenders*, 21 New Crim. L. Rev. 379 (2018)
- BI Incorporated Compressed Daily Summary, Alton Antrim, 7/01/2021-12/31/2021.
- Brian Payne & Randy R. Gainey, *A Qualitative Assessment of the Pains Experienced on Electronic Monitoring*, 42 Int'l J. Offender Therapy & Comp. Criminology 149 (1998)
- Cacioppo JT, Cacioppo S. *Social Relationships and Health: The Toxic Effects of Perceived Social Isolation*. Soc Personal Psychol Compass (Feb. 2014)
- Chaz Arnett, *From Decarceration to E-Carceration*, 41 Cardozo L. Rev. 641 (2019).
- Christian Petak Affidavit (Dec. 6, 2023)
- Department of Justice, *Electronic Monitoring Reduces Recidivism*, National Institute of Justice (2011)
- Devah Pager, *The Mark of a Criminal Record*, American Journal of Sociology 108(5):937-75 (2003)
- Doe v. Bredesen, 507 F.3d 998 24 1012 (6th Cir. 2007)
- Edet, Mfon-Obong, *Community Bonding for Ex-Offenders: The Importance of Recreational Social Activities on the Post-Incarceration reentry Process* West Chester University Doctoral Projects (2022)
- Environmental conditions blamed for ankle monitor failure*, WSDU New Orleans (Oct. 12, 2012)
- Evangeline Lopoo, Vincent Schiraldi, and Timothy Ittner, *How Little Supervision Can We Have?* Annual Review of Criminology Vol. 6:23-42 (January 2023)
- Fines and Fees Justice Center, *Electronic Monitoring Fees, a 50 state Survey*, (Sept. 2022)
- GPS EM Location Analysis*, Cook County Sheriff's Office, Univ. of Chicago (Nov. 2021)
- Human Rights Council, U.N. General Assembly, *Report of the Special Rapporteur on the Human Rights of Migrants*, François Cr'peau P 63, U.N. Doc. A/HRC/23/46 (Apr. 2, 2012).
- Illinois Sentencing Policy Advisory Council, *Research Briefing: State Use of Electronic Monitoring* (2019)
- Jack Karsten & Darrell M. West, *Decades Later, Electronic Monitoring of Offenders Is Still Prone To Failure*, Brookings Institution (Sept. 21, 2017)
- James Kilgore & Emmett Sanders, *Ankle Monitors Aren't Humane. They're Another Kind of Jail*, WIRED (Aug. 4, 2018)

- James Kilgore, Emmett Sanders & Kate Weisburd, *The Case Against E-Carceration*, Inquest (July 30, 2021).
- Jennifer L. Doleac, *Study after study shows ex-prisoners would be better off without intense supervision*, Brookings Institute (July 2, 2018)
- John Duellman Affidavit (Dec. 1, 2023)
- John Foellmin Affidavit (Dec. 4, 2023)
- Julie Pittman, *Released into Shackles: The Rise of Immigrant E-Carceration*, 108 Calif. L. Rev. 587 (2020)
- Kate Weisburd et al, *Electronic Prisons: The Operation of Ankle-Monitoring in the Criminal Legal System*, George Washington University Law School (2021)
- Kate Weisburd, *Punitive Surveillance*, 108 Va. L. Rev. 148 (2022)
- Lauren Kilgour, *The Ethics of Aesthetics: Stigma, Information, and The Politics of Electronic Ankle Monitor Design*, 36 The Information Soc’y 131 (2020)
- M.M. *Living With An Ankle Bracelet*, The Marshall Project (July 16, 2015)
- Margie Lee Johnson, *Give Job Applicants with Criminal Records a Fair Chance*, Harv. Bus. Rev. (Sept. 21, 2020)
- Matt Chapman and Natalie Frazier, *False Alarms*, Chicago Reader (June 9, 2022)
- Michelle Alexander, *The Newest Jim Crow*, New York Times (Nov. 8, 2019)
- Mowen TJ, Stansfield R, Boman JH 4th. *Family Matters: Moving Beyond “If” Family Support Matters to “Why” Family Support Matters during Reentry from Prison*, J Res Crime Delinq. (July 2019)
- Olivia Solon, *‘Digital Shackles’: The Unexpected Cruelty of Ankle Monitors*, The Guardian (Aug. 28, 2018).
- Patrice James, et al., *Cages Without Bars: Pretrial Electronic Monitoring Across the United States*, Shriver Center on Poverty Law (Sept. 2022).
- Pretrial Supervision: Actions Needed to Enhance Management of the Location Monitoring Program*, United States Gov’t Accounting Office (2023)
- Riley Vetterkind, *Wisconsin doubles GPS monitoring despite five years of malfunctions, unnecessary jailings*, The Cap Times (March 4, 2018)
- Ruthie Epstein, *Opinion ICE is using an alternative to immigrant detention. But it’s inhumane*, Washington Post (Sept. 5, 2018)
- Sandra Susan Smith & Cierra Robson, *Between a Rock and a Hard Place: The Social Costs of Pretrial Electronic Monitoring in San Francisco*, Harv. Kennedy Sch. Malcolm Wiener Ctr. For Soc. Pol’y (Sept. 2022)
- Sara Wescott-Stilson Deposition (Sept. 7, 2023)
- Sara Zampierin, *Mass E-Carceration: Electronic Monitoring as a Bail Condition*, 23 Utah L. Rev. 589 (2023)
- Statement on the Future of Probation & Parole in the United States*, Columbia Justice Lab (2020).
- Steven Miller Affidavit (Dec. 5, 2023)
- Sugie, Naomi F., and Dallas Augustine, *Social Support in Daily Life at Reentry*, in Andrea Leverentz, Elsa Y. Chen, and Johnna Christian (eds), *Beyond Recidivism: New Approaches to Research on Prisoner Reentry and Reintegration* (2020)

Tosca Giustini et al., *Immigration Cyber Prisons: Ending the Use of Electronic Ankle Shackles*, Cardozo Law School 13 (2021).

Wisconsin Department of Corrections, Brochure, “Information for Sex Offenders on Lifetime GPS”

Wisconsin Department of Corrections, BI ExacuTract One and Beacon Client Guide

Yazmine Nichols, *Jailed For a Faulty Battery and Left to Catch COVID-19*, ACLU (June 2021)

Appendix B

Curriculum Vitae, including a full List of
Publications in the past 10 years

KATE WEISBURD

The George Washington University Law School, 2000 H St. NW, Washington, D.C. 20052

kweisburd@law.gwu.edu

ACADEMIC EXPERIENCE

The George Washington University Law School

Associate Professor of Law (awarded tenure 2023)

2018-present

- 2023 Distinguished Faculty Service Award (awarded to the ‘professor of the year’ by the graduating class)

East Bay Community Law Center

University of California, Berkeley, School of Law

Founding Director, Youth Defender Clinic & Clinical Instructor

2012-2018

Death Penalty Clinic

University of California, Berkeley, School of Law

Lecturer & Supervising Staff Attorney

2007 –2012

EDUCATION

Columbia University School of Law, J.D., 2005

Public Interest Peer of the Year

Harlan Fiske Stone Scholar

Bernstein Litowitz Berger & Grossmann LLP Fellowship

Brown University, B.A., Public Policy, with honors, 2000

Harry S. Truman Scholar

Noah Krieger Prize for Outstanding Honors Thesis and Academic Achievement

PUBLICATIONS

Articles

The Carceral Home, 103 B.U. L. REV. (forthcoming 2023)

- Winner, Reidenberg-Kerr Scholarship Award, Privacy Law Scholars Conference, 2023
- Selected for the Yale-Harvard-Stanford Junior Faculty Forum, 2023
- Selected for the Privacy Law Scholars Conference, 2023

Rights Violations as Punishment, 111 CALIF. L. REV. (forthcoming 2023)

- Selected for the Junior Faculty Workshop, American Constitution Society, 2023
- Selected for the University of Michigan Junior Scholars Conference, 2022
- Reviewed by Prof. Jonathan Simon for [JOTWELL.COM](https://www.jotwell.com), May 2, 2023

Punitive Surveillance, 108 VA. L. REV. 147 (2022)

- Winner, Privacy Papers for Policymakers Award, Future of Privacy Forum, 2022
- Winner, Reidenberg-Kerr Scholarship Award, Privacy Law Scholars Conference, 2021
- Honorable Mention, 2020 AALS Criminal Justice Junior Scholars Paper Competition
- Selected for the Privacy Law Scholars Conference, 2021
- Selected for the Technologies of Deception Conference, Yale Law School, 2022

Sentenced to Surveillance: Fourth Amendment Limits on Electronic Monitoring, 98 N.C. L. REV. 717 (2020)

- Selected as “Must Read” article by the National Association of Criminal Defense Attorneys

[*Monitoring Youth: The Collision of Rights and Rehabilitation*](#), 101 IOWA L. REV. 297 (2015)

[*Prosecutors Hide, Defendants Seek: The Erosion of Brady Through the Defendant Due Diligence Rule*](#), 60 UCLA L. REV. 138 (2012)

- Cited in: *Dennis v. Pennsylvania Department of Corrections*, 834 F.3d 263 (3rd. Cir. 2016); *United States v. Nelson*, 979 F.Supp.2d 123 (D.D.C 2013); *Biles v. United States*, 101 A.3d 1012 (D.C. App. 2014); *Fisher v. Angelozzi*, 398 P.3d 367 (Or.App. 2017); *State v. Wright*, 67 A.3d 319 (Del. 2013) (Ridgely, J., dissenting).

Reports and Written Testimony

[*Carceral Control: A Nationwide Survey of Criminal Court Supervision Rules*](#), 58 HARV. C.R.- C.L. L. REV. 2 (2023) (invited symposium)

Written Statement, [*Reforming Pretrial Electronic Monitoring*](#), California Committee on Revision of the Penal Code, (Oct. 2022)

[*Electronic Prisons: The Operation of Electronic Ankle Monitoring the Criminal Legal System*](#) (co-authored with GW Law students: Varun Bhadha, Matthew Clauson, Jeanmarie Elican, Fatima Khan, Kendall Lawrenz, Brooke Pemberton, Rebecca Ringler, Jordan Schaer, Mikayla Sherman, and Sarah Wohlsdorf) (GW Law Paper Series, 2021)

Shorter Pieces

[*Exceptional Punishment*](#), THE INQUEST, Institute to End Mass Incarceration, Harvard Law School, Sept. 21, 2013.

[*Op-Ed: Women In Prison And Under Court Surveillance Will Suffer Under New Abortion Bans*](#), LA TIMES, July 5, 2022

[*Op-Ed: The Monster of Incarceration Quietly Expands Through Ankle Monitors*](#), LA TIMES, March 15, 2022 (with Alicia Virani)

Foreword, Symposium: [*Addressing the Crisis in Policing Today: Race, Masculinity, and Police Use of Force in America*](#), 89 GEO. WASH. L. REV. 1357 (2022)

[*The Case Against E-carceration*](#), THE INQUEST, Institute to End Mass Incarceration, Harvard Law School, July 30, 2021 (with James Kilgore & Emmett Sanders)

[*Concerns over 24/7 Government Location Surveillance Are Leaving Some People Out*](#), THE NATIONAL LAW JOURNAL, January 27, 2020

[*Prison Reform Needs to Start with Fixing Probation, Parole*](#), BLOOMBERG NEWS, June 13, 2019.

Electronic Monitoring Isn't Kid Friendly, SACRAMENTO BEE, July 20, 2017 (with Catherine Crump & Christina Koningisor)

[*Ban the Other Box: Getting Suspended or Expelled Should Not Be the End of Hope*](#), THE MARSHALL PROJECT, June 15, 2016.

Pushing Students Out of Class a Bad Idea, MERCURY NEWS, May 19, 2016

[*High Cost, Young Age: Sentencing Youth to a Life of Debt*](#), HUFFINGTON POST, Apr. 9, 2014.

TEACHING INTERESTS

Courses: Criminal Law, Criminal Procedure (Investigations and Adjudication), Evidence
Seminars: Race, Privacy, Technology, Civil Rights, Criminal Punishment, Juvenile Justice

CLERKSHIP

U.S. District Court for the Eastern District of California, Honorable Lawrence K. Karlton (2005 – 2007)

SELECTED PRESENTATIONS

The Carceral Home, Privacy Law Scholars Conference (June 2023)

“*Legally Magic*” Words: *An Empirical Study of The Accessibility Rights*, Law of Policing Conference, U. of Chicago Law School (June 2023)

The Carceral Home, Mid-Atlantic Criminal Law Roundtable (May 2023)

“*Legally Magic*” Words: *An Empirical Study of The Accessibility Rights*, Faculty Lunch, Work-in-Progress, George Washington University School of Law (April 2023)

“*Legally Magic*” Words: *An Empirical Study of The Accessibility Rights*, AALS Criminal Procedure Junior-Senior Conference (April 2023) (with Roseanna Sommers)

The Carceral Home, Law & Technology Colloquium, University of Virginia School of Law (March 2023)

The Carceral Home, Poverty Law Scholar’s Conference, U.C. Berkeley Law (March 2023)

Health, Equity, and Law After Dobbs, panelist, George Washington University and American University (March 2023)

Rights Violations as Punishment, Junior Faculty Workshop, American Constitution Society (Jan. 2023)

The Carceral Home, ABA-AALS Criminal Justice Roundtable, virtual (Dec. 2022)

Carceral Surveillance in the United States, Strathclyde Law School, Scotland (Oct. 2022)

Carceral Surveillance in the United States, Paris-Panthéon-Assas University, France (Oct. 2022)

Reforming Pretrial Electronic Monitoring, Cal. Comm. on Revision of the Penal Code (Oct. 2022)

Punitive Surveillance, EuroCrim Conference, Spain (Sept. 2022)

Privacy in the Carceral Home, International Academy of Law and Mental Health, France (July 2022)

Privacy in the Carceral Home, Law & Society Annual Meeting, Portugal (July 2022)

Prison Abolition and Pedagogy: Teaching Students to Thrive in a System They Seek to Dismantle, panelist, Law & Society Annual Meeting, Portugal (July 2022)

Carceral Homes: Policing the Home, Body and Mind, Decarceration Works-in-Progress (June 2022)

Punishment Exceptionalism & The Future of Decarceration, Virtual Criminal Law Faculty Workshop (April 2022)

Punishment Exceptionalism & The Future of Decarceration, University of Michigan Junior Scholars Conference (April 2022)

Equality in Law Enforcement/Criminal Law, Just Health Symposium, panelist, GW Law (March 2022)

Punitive Surveillance, Technologies of Deception Conference, Yale Law School, Information Society Project (March 2022)

Penalties for Formerly Incarcerated People, Ohio State Journal of Criminal Law, Symposium (Feb. 2022)

Punishment Exceptionalism & The Future of Decarceration, Faculty Lunch, Work-in-Progress, Washington University in St. Louis Law School (Jan. 2022)

Punishment Exceptionalism & The Future of Decarceration, Faculty Lunch, Work-in-Progress, Penn State Law School (Nov. 2021)

Alternatives to Incarceration, ABA Criminal Justice Section Annual Meeting (Nov. 2021)

Punishment Exceptionalism & The Future of Decarceration, Decarceration Works-in-Progress (July 2021)

Punitive Surveillance, Privacy Law Scholars' Conference (May 2021)

Punitive Surveillance, Mid-Atlantic Criminal Law Roundtable (May 2021)

Section on Criminal Justice: Beyond 2020: Decarceration, Anti-Racist and Non-Traditional Teaching, panelist, AALS Annual Meetings, virtual (Jan. 2021)

Surveillance Abolition, ABA-AALS Criminal Justice Roundtable, virtual (Nov. 2020)

Punitive Surveillance, Faculty Lunch, Work-in-Progress, Drexel University Law School (Oct. 2020)

Visions of Change: A Series on Racial Justice in American Law: New Visions for Criminal Justice, moderator (Oct. 2020)

Addressing the Crisis in Policing Today: Race, Masculinity, and Police Use of Force in America, moderator, GW Law Review Symposium, virtual (Oct. 2020)

Challenging Electronic Monitoring in Juvenile Court, National Juvenile Defender Leadership Summit, virtual (Oct. 2020)

Punitive Surveillance, CrimFest, virtual (July 2020)

Punitive Surveillance, Law and Society Annual Meeting, virtual (May 2020)

A Way Forward: Reform Efforts & the First Step Act, Washington & Lee Journal of Civil Rights and Social Justice 2019 Symposium (Nov. 2019)

The Future of Electronic Monitoring in Juvenile Court, moderator & co-host, U.C. Berkeley School of Law & East Bay Community Law Center (Oct. 2019)

Youth Wellbeing: Implications of US Policy and Practice, panelist, Brown University Noah Krieger '93 Memorial Reunion (Oct. 2019)

Challenging Probation Discretion, National Juvenile Defender Leadership Summit (Oct. 2019)

New Scholars Workshop, Southeastern Association of Law Schools, 2019 Annual Conference (July 2019)

Sentenced to Surveillance, CrimFest, Brooklyn School of Law (July 2019)

Privacy, Data Protection, Security and Surveillance, Law and Society Annual Meeting (June 2019)

Watched Youth: Challenging Surveillance of Youth in School and Juvenile Court, panelist, National Juvenile Defender Leadership Summit, Minneapolis, MN (Oct. 2018)

Eliminating Court Fees in Juvenile Court, panelist, U.C. Berkeley School of Law, Policy Advocacy Clinic Convening, Berkeley, CA (Feb. 2018)

Social Justice Lawyering, Association of American Law Schools Conference on Clinical Legal Education, (May 2017)

Reassessing Electronic Monitoring for Youth, Electronic Frontier Foundation (Sept. 2016)

Sentenced to Surveillance: The Transformation of Community Supervisions Through Consensual Electronic Search Conditions, NYU Clinical Law Review Writers' Workshop (Sept. 2016)

The Criminalization of Childhood Poverty, panelist, Berkeley Law Alumni Weekend (Sept. 2016)

New Directions: Affirmative Litigation & Policy-Making Strategies for Challenging the Carceral State, panelist, U.C. Berkeley School of Law (March 2016)

Carpetbaggers or Collaborative Colleagues? panelist, Association of American Law Schools Conference on Clinical Legal Education, Baltimore, MD (May 2016)

Electronic GPS Monitoring & House Arrest: The Hidden Costs of "Alternatives" to Detention, panelist, National Juvenile Defender Leadership Summit, Salt Lake City, UT (Oct. 2015)

Nickeled and Dimed: Why Defenders Should Be Concerned About Juvenile Court Fees, panelist, National Juvenile Defender Leadership Summit, Salt Lake City, UT (Oct. 2015)

Post-Adjudication Workshop, panelist, Pacific Juvenile Defender Center Roundtable, Sacramento, CA (Sept. 2015)

Financial Security for Boys and Men of Color, panelist, A Gathering of Leaders, PolicyLink, New Orleans, LA, (Sept. 2015)

Plugged in or Tuned Out? Teaching a New Generation of Tech-Savvy Clinical Students, panelist, Association of American Law Schools Conference on Clinical Legal Education, Palm Springs, CA (May 2015)

Holistic Defense and Resource Building, panelist, Holistic Defense Symposium, Bronx Defenders (May 2014)

Monitoring Youth: The Collision of Rights and Rehabilitation, NYU Clinical Law Review Writers' Workshop, New York, NY (Sept. 2014)

Prosecutors Hide, Defendants Seek: The Erosion of Brady Through the Defendant Due Diligence Rule, UCLA Law Review Scholar Forum, Los Angeles, CA (Oct. 2012)

SELECTED MEDIA APPEARANCES

[*Electronic Monitoring Has Widened Its Net Amid COVID*](#), TRUTHOUT, Oct. 4, 2021

[*Other than prison, electronic monitoring is 'the most restrictive form' of control, research finds*](#), NBC News, Sept. 23, 2021

[*Incarcerated at home: The rise of ankle monitors and house arrest during the pandemic*](#), NBC NEWS, July 5, 2021

[*Illinois Will End Cash Bail — And Limit Use Of High-Tech Incarceration*](#), THE INTERCEPT, Jan. 17, 2021

[*D.C. Defendants Wear Ankle Monitors That Can Record Their Every Word and Motion*](#), WASHINGTON CITY PAPER, Oct. 8, 2019

[*Chicago Is Tracking Kids With GPS Monitors That Can Call And Record Them Without Consent*](#), THE APPEAL, April 8, 2019

SERVICE & PROFESSIONAL AFFILIATIONS

- Advisory Board, Electronic Privacy Information Center
- GW Law School Service: Appointments Committee (2023-2024); Teaching Committee (2021-2023); Strategic Planning Committee (2020-2021); Intellectual Life Committee (2018-2020); Clerkship Committee (2018-2019)

BAR ADMISSION

California (since 2006)

Appendix C
Statement of Compensation to be Paid

Compensation

My hourly rate is \$250.00. To date, I have spent 20 hours preparing this report. Those hours include time spent analyzing records, reviewing research, and writing the report.