



ELECTRONIC MONITORING OF YOUTH

IN THE CALIFORNIA JUVENILE JUSTICE SYSTEM



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This report is the first comprehensive review of juvenile electronic monitoring program rules across an entire state.

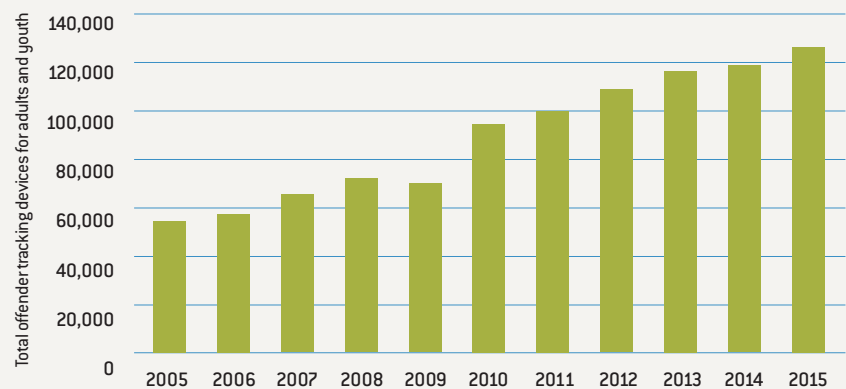
OVERVIEW

One of the most significant changes in the juvenile justice system in recent decades has been the proliferation of electronic monitoring of youth.¹ Every state except New Hampshire has some form of juvenile electronic monitoring.² Electronic monitoring is used in a variety of contexts, including as a condition of pretrial release or probation.³ Yet despite the rapid proliferation of electronic monitoring of youth, there is little research about how this technology is used, whether it is effective, and how it affects the youth who are tracked. While electronic monitoring may be preferable to incarceration, juvenile electronic monitoring programs are still burdensome and should be utilized fairly and responsibly.

In an effort to better understand how juvenile electronic monitoring programs operate in California, the Samuelson Law, Technology & Public Policy Clinic, in partnership with the East Bay Community Law Center, sought information from all 58 California counties about the terms and conditions youth must comply with while being monitored electronically.⁴ We are releasing the documents we obtained to the public, together with this analysis.⁵

This collection of documents and this report are a product of our collaboration with the East Bay Community Law Center, East Bay Children’s Law Offices, and the

Use of Electronic Offender-Tracking Devices



Note: This survey counted the number of all accused and convicted criminal offenders who were monitored with ankle bracelets and other electronic tracking devices in the United States from 2005 to 2015. The survey did not distinguish between youth and adults, nor did it break results down by state. Pew Charitable Trusts, Use of Electronic Offender-Tracking Devices Expands Sharply (2016).

Credit: 2016 The Pew Charitable Trust

Alameda County Public Defender's Office. These offices defend youth in Alameda County juvenile court. Attorneys and advocates at these organizations expressed concern that juvenile electronic monitoring requirements are unrealistically onerous, disproportionately impact youth of color, and undermine the rehabilitative purpose of the juvenile justice system.⁶ In response, the Clinic investigated electronic monitoring conditions throughout California. This report offers a high-level overview of the terms and conditions commonly used in California. It also highlights written rules and policies that seem particularly burdensome on their face. Our inquiry is currently limited to the information available in the records we obtained, and does not explore how these programs operate in practice. We hope to move beyond the paper record to explore questions of implementation and practice in future work. We also hope that other scholars, practitioners, and advocates will do so as well.

We are releasing all of the documents we obtained to the public to facilitate a better understanding of how juvenile electronic monitoring programs are formally structured. This is the first time anyone has comprehensively canvassed juvenile electronic monitoring program rules across an entire state. These documents will allow those working in the field of juvenile justice in California to see how their county's written program rules line up against those in effect elsewhere. All of these programs impose burdens upon youth and their families—no one county has created a model approach. Yet some rules in some counties impose program requirements that are substantially less restrictive and allow youth comparatively greater freedom and flexibility.

There is a pressing need for research to evaluate whether electronic monitoring is effective in reducing recidivism rates or improving other outcomes for youth—and, if so, under what circumstances.⁷ There is a growing consensus that courts should rely on evidence-based practices when making decisions and formulating policy,⁸ and yet there is little evidence thus far demonstrating the effectiveness of juvenile electronic monitoring programs. California's juvenile justice system is expressly intended to promote the correction and rehabilitation of youths.⁹ But without access to evidence-based program data, judges and policy-makers are unable to evaluate whether there are rehabilitative effects to these programs or whether these programs are excessively punitive.

Moreover, these rules disproportionately affect families of color. Youth of color are overrepresented at every stage of the juvenile justice system.¹⁰ And once involved in the system, they are punished more harshly, and for longer, than other comparable youth.¹¹ As a result, research about the specific ways that electronic monitoring programs disproportionately affect youth of color is urgently needed.

We hope these records will assist researchers, juvenile court judges, attorneys, community organizations, and policymakers, and initiate a broader discussion about how these electronic monitoring programs can be more fairly, effectively, and efficiently used.

ELECTRONIC MONITORING TYPES

There are two main types of electronic monitoring devices used to track an individual's movements.

GPS DEVICES



GPS devices usually rely on satellites and cellular towers to continually track a person's movements.

RADIO FREQUENCY



Radio frequency devices, which usually rely on battery-powered transmitters and a home-based receiver, can tell whether a person is home but cannot track movements outside the home.



Many counties limit where youth can go and require youth to obtain permission for schedule changes, but in some counties these restrictions are more burdensome than in others.

TERMS AND CONDITIONS AND POLICY DOCUMENTS

We sought information from all 58 California counties about their use of electronic monitoring on youth. We were particularly interested in the terms and conditions youth must comply with while subject to electronic monitoring,¹² as well as the policies and guidelines the counties have implemented to administer electronic monitoring programs. We received responses from all 58 counties, although some counties provided more comprehensive records and information than others, and seven counties indicated that they do not currently have juvenile electronic monitoring programs in place.¹³

The counties that do have juvenile electronic monitoring programs often impose similar requirements. For example, most counties limit the movement of youth enrolled in an electronic monitoring program to a few specific destinations, require youth to give advance notice or obtain prior approval of schedule changes, and require youth to keep their electronic monitoring devices charged. Yet there is often substantial variation in how these conditions operate.¹⁴

For example:



RESTRICTIONS ON MOVEMENT: At least 43 counties prohibit youth assigned to electronic monitoring from leaving their home except to attend school, work, court, religious services, or some other preapproved activity.¹⁵ But a few counties depart from this model, allowing certain youth assigned to electronic monitoring greater flexibility in their movements.¹⁶ For example, Santa

Barbara County uses GPS to exclude some youth from entering a predetermined “exclusion zone,” but otherwise allows them free range of movement.¹⁷



RULES FOR CHANGES IN SCHEDULE: For the counties that require preapproval for all excursions except activities such as work or school, the amount of time that the youth must secure this approval in advance varies. For example, at least fifteen counties require that the youth either ask permission or obtain approval to deviate from their schedule 24 hours in

advance.¹⁸ By comparison, at least seven counties require that the youth seek or obtain approval 48 hours in advance¹⁹; at least one county requires that the youth seek approval 72 hours in advance²⁰; at least one county requires that the youth

seek approval the Wednesday prior to the schedule change;²¹ and at least four counties require that the youth seek or obtain approval a full week in advance.²² The remaining counties either do not have electronic monitoring programs in place for youth or do not specify when approval for a schedule change must be sought or obtained.



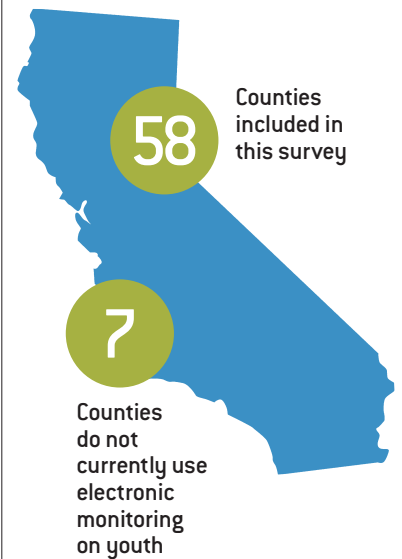
RULES FOR CHARGING DEVICES: Many counties require youth to charge and maintain their electronic monitoring devices. But the rigidity of these requirements varies. At least two counties require that youth charge their devices within specific hours during the day.²³ And at least six counties require that youth charge the devices once in the morning and once in the evening.²⁴ The remaining counties appear to provide more flexibility, allowing youth to choose when in the day to recharge the monitoring equipment.²⁵



NUMBER OF RULES: The number of rules contained in these electronic monitoring agreements also varies. Some counties have enacted extensive program requirements that are reflected in dozens of rules that youth must follow. For example, Lassen County imposes 56 rules upon youths.²⁶ In comparison, Solano County imposes only eight rules,²⁷ and San Francisco imposes only 10.²⁸ This is often in addition to separate probation conditions.



CONSEQUENCES FOR VIOLATING PROGRAM RULES: Counties provide varying levels of guidance as to how probation officers should respond to a violation of the electronic monitoring rules. Some counties provide little or no guidance.²⁹ Others, however, have created more specific policies that outline a graduated response to violations. For example, Glenn County provides a progressive discipline grid for youth who violate electronic monitoring rules, with consequences ranging from counseling or writing an essay to the arrest and detention of the youth. The County also provides that “the least restrictive consequences required to change the behavior should be employed.”³⁰





Because of the financial burdens imposed by electronic monitoring programs, poor youth may be forced to remain incarcerated while their wealthier peers are released on a monitor.

POTENTIALLY BURDENSOME PROGRAM REQUIREMENTS

The rules and policy records we obtained offer insight into how counties administer their juvenile electronic monitoring programs. Below, we highlight the terms and conditions that we speculate may prove overly burdensome for youth and their families.³¹ Our present inquiry is limited to the information available in the records we obtained. However, we hope that these records and this analysis will serve as the starting point for further research. In particular, we hope that researchers, juvenile justice experts, and youth advocates will examine how these terms and conditions are enforced. This information will allow for a more comprehensive, informed, and accurate understanding of how electronic monitoring affects youth and their families.

A. Some Terms and Conditions May Disproportionately Burden Low-Income Families

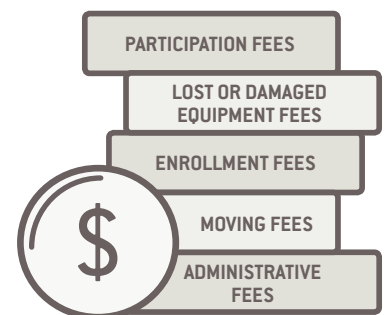
The first category of terms and conditions that we highlight are those that may impose an outsized burden on low-income families. These rules deserve particular scrutiny. Because of the financial burdens imposed by electronic monitoring programs, poor youth may be forced to remain incarcerated while their wealthier peers are released on a monitor.³² Moreover, Black and Latino families are disproportionately low-income.³³

We have identified different types of terms and conditions that may have a disproportionate impact on low-income families.

- Many counties require youth and their families to pay to participate in an electronic monitoring program. These counties **require that youth enrolled in electronic monitoring programs pay a daily, weekly, or monthly fee.**³⁴ Many counties also require that youth pay for any lost or damaged equipment, potentially burdening the family with thousands of dollars in costs.³⁵ Some counties also impose additional costs, such as initial enrollment fees,³⁶ administrative fees,³⁷ moving fees if the youth changes his or her residence,³⁸ or non-refundable application fees.³⁹ Moreover, counties may spend a substantial amount trying to recoup these fees from families. As a result, these counties may recover only a small portion of these electronic monitoring costs by charging fees to families.⁴⁰

- Some counties may **make it overly difficult for a youth to demonstrate their inability to pay for their participation in an electronic monitoring program.** For example, one county—Madera—has contracted with BI Incorporated, one of the nation’s largest providers of electronic monitoring technology and equipment,⁴¹ to administer its electronic monitoring program.⁴² The county produced a policy and procedure manual for case managers employed by BI Incorporated, and the manual appears to be an internal company document.⁴³ It contains a number of provisions and policies that may make it difficult for youth to demonstrate their inability to pay. For example, when a youth claims indigent status, the parent or guardian must complete a financial evaluation form. The manual notes, “It is anticipated that clients will not provide complete information, or neglect to submit supporting documents in a timely manner.”⁴⁴ Moreover, it provides that when the BI employee and the family do not reach a fee agreement, the family must provide “sufficient proof of their income and monthly income for all working members of the family,” as well as expense information. It notes that families “oftentimes neglect or fail to provide documentation in an expedient manner” and “leave information incomplete either innocently or intentionally.” Such required documentation includes “verifiable receipts, pay stubs, rent receipts, water [sic] gas bills, child care costs, insurance receipts, etc.”⁴⁵ The manual further states that if the youth and their family fail to provide documentation or to dispute the proposed daily rate, the youth is to be charged the higher “target rate” of \$35 per week for a cell unit and \$80.50 per week for a GPS unit until the issue is resolved.⁴⁶ This language leaves open the possibility that the families will incur unaffordable fees for an extended period due to stringent paperwork requirements.⁴⁷
- Some counties **require that youth have or install a landline or cell phone.**⁴⁸ Certain counties permit the probation office to arrange access to a phone for a youth who does not have one,⁴⁹ or stipulate that a youth without access to a telephone may be released on home supervision without electronic monitoring.⁵⁰ Other counties, however, prohibit youth from participating in an electronic monitoring program if a parent or guardian cannot provide access to a telephone.⁵¹ Many counties also require that families remove call waiting, call forwarding, blocks, voicemail, video or conference call, repeat dialing, call return, or dial-up internet, which may prove difficult for a parent or guardian who relies on a home phone for business purposes.⁵² At least one county requires that youth and their families pay the toll costs of calls or change their number to a local area code.⁵³ And some counties explicitly specify that if either the electricity or telephone service is disconnected for failure to pay, the youth will be returned to custody.⁵⁴ This latter provision not only unfairly incarcerates youth for their families’ inability to pay, but it may also strip a family of its ability to make difficult financial decisions—to choose, for example, to buy groceries or medicine rather than pay a phone or electricity bill.⁵⁵

HOW COSTS CAN STACK UP



- Some counties have established rules and policies that **contain subjective criteria for releasing youth on electronic monitoring, which may result in poor youth and youth of color being excluded from electronic monitoring programs.**⁵⁶ For example, one county provides that probation officers should consider “the trustworthiness of the minor’s parent(s)/guardian(s)/approved caregiver(s) to monitor and report the minor’s behavior in the home” when deciding whether to assign a youth to electronic monitoring.⁵⁷ Another county instructs probation officers responding to an electronic monitoring violation to consider the “background of youth” when determining what sanction to impose.⁵⁸ These considerations are subjective and prone to racial bias.
- At least five counties **require parental or guardian supervision of the youth at all times that the youth is home.**⁵⁹ Again, low-income families may be unable to comply with this requirement. This rule will also have a disproportionate impact on single-income families. For these families, the requirement that a parent or guardian remain home with their child after school or during the weekend may be prohibitively burdensome.⁶⁰ And if a child has been suspended or expelled from school, this requirement is all the more burdensome. Even when the rules do not require constant supervision by guardians, guardians may still feel compelled to miss work, potentially putting their jobs in jeopardy, in order to care for a child who is on electronic monitoring and therefore cannot leave the house.
- Some terms and conditions **regulate the youth’s means of transportation.** For example, one county requires that youth “agree not to change [their] agreed upon transportation method without written authorization from the program staff.”⁶¹ This type of requirement may prove difficult for families that do not have consistent or predictable access to transportation, including those that depend upon unreliable forms of public transportation.⁶²
- Many of these electronic monitoring rules and policies **require families to plan their schedules far in advance.** Some counties require significant advance notice for any change in the youth’s schedule⁶³ or require devices to be charged at very specific times.⁶⁴ Such advance planning can prove difficult, if not impossible, for low-income families. An estimated 17 percent of the workforce has an unstable work shift schedule, and roughly 40 percent of hourly workers do not know their schedule until a week or less in advance.⁶⁵ Moreover, the lowest-income workers face the most-irregular schedules.⁶⁶ These unpredictable work patterns will likely make it difficult for many low-income shift workers to comply with rules that require substantial advance planning.

B. Some Terms and Conditions May Raise Privacy Concerns

By their very nature, electronic monitoring devices collect an enormous amount of information about a youth's location, activity, and movement. The Supreme Court has emphasized in recent years the extent to which electronic tracking devices raise new and unique privacy concerns, noting that such devices provide an intimate, comprehensive, and accurate depiction of an individual's daily movements—all at a relatively low cost to the government.⁶⁷ But despite the scope and invasiveness of such data collection, few counties provided information about privacy protections for youth enrolled in electronic monitoring programs.⁶⁸ Without policies in place to govern the collection, use, and retention of this information, counties—and the private vendors they rely on for electronic monitoring services—may gather and retain data beyond what is necessary to meet the needs of the program.

- Some of the terms and conditions may **raise significant privacy concerns**. For example, Mariposa County's terms and conditions provide, "I understand that all movement will be tracked and stored as an official record."⁶⁹ San Francisco County's terms and conditions provide that "all information collected during [the youth's] participation on the program may be turned over to anyone with a legal right or need to know; this automatically includes all law enforcement agencies, courts and probation or parole agencies."⁷⁰ And Alameda County's contract with a private electronic monitoring company that provides GPS equipment and tracking services requires that the company implement "a method of archiving recorded calls and/or reports for a minimum of seven (7) years."⁷¹ These provisions permit enormous amounts of data to be accessed by large numbers and categories of people. Given the sensitivity of location data, such data should be collected only to the extent necessary to comply with program goals and requirements; should be used only for probation-related purposes by individuals actively involved with a youth's case, or by researchers who have been granted access to responsibly anonymized data; and should be subject to reasonable deletion policies once the youth is no longer enrolled in an electronic monitoring program.
- Many of the county rules and policy documents **fail to address data privacy at all**. They contain little information about what data is collected, where and how the data is stored, who has access to the information, or how long the information is retained. Many counties also fail to provide sufficient information about the privacy procedures surrounding a youth's request to deviate from their schedule. Although it is possible that information about these privacy policies is enumerated in other county records, we saw little evidence in the records provided to us that youth are given adequate information about how the data is used, stored, and retained.

Electronic monitoring can generate enormous amounts of sensitive data and make it available to broad categories of people, but few counties provided information about privacy protections for youth.

DISPARITY IN NUMBER OF RULES



There is one county in California that requires youth to follow 56 electronic monitoring rules, while there is another county that requires youth to follow only 8 electronic monitoring rules.

C. Some Terms and Conditions May Be Overly Rigid or Inadvertently Set Youth Up to Fail

Some terms and conditions may be too strict or inflexible, making it difficult for youth to comply with the rules, while at the same time failing to provide any clear benefit to the youth or to the public. Rules that are too stringent may result in a high number of technical violations,⁷² resulting in the potential detention of youth and increasing the administrative and bureaucratic costs of the program.

- Some terms and conditions may be **too inflexible**, particularly if the same outcome could be achieved with more permissive requirements that would be easier for youth to follow. For example, rules requiring youth and their families to obtain approval every time the youth leaves the home, with the exception of only certain preapproved activities, significantly restrict the movement of both the youth and the family. These requirements are difficult for youth and their families to follow. Moreover, such rigid restrictions on movement increase **a youth's isolation**, which may negatively affect a youth's cognitive and social development.⁷³

Other terms may violate basic notions of fair treatment and due process.

- Some counties **do not exempt the youth from responsibility when equipment is damaged through no fault of their own**. For example, Butte County provides that “[a]ny damages associated with wearing or tampering with the monitoring device is a result of [the youth’s] own negligence.”⁷⁴ A representative from Siskiyou County stated that while the county “give[s] minors the benefit of the doubt to a certain extent if damage appears to be beyond their control or accidental,” the youth can still “be charged per the contract.”⁷⁵

D. Some Terms and Conditions Are Overly Vague or Difficult to Comprehend

Youth have difficulty complying with electronic monitoring rules that they do not understand. And many of the counties’ terms and conditions documents contain requirements that are overly vague or difficult to comprehend. Youth with learning disabilities are far more likely than other youth to become involved in the juvenile justice system, making it even more critical that electronic monitoring rules are clear.⁷⁶

- Difficulties with reading comprehension may make it more difficult for youth **to comply with a very large number of rules**, such as those imposed by Lassen County, which requires youth to follow 56 rules.⁷⁷

- Some terms and conditions **contain advanced language** that youth may not understand. For example, according to the Flesch-Kincaid test, Lassen County's terms and conditions require a college-level reading comprehension.⁷⁸ And yet children are expected to follow these rules, and run the risk of re-incarceration if they fail to comply with them. As a result, the county's terms and conditions are not only numerous, but are also very difficult to read.⁷⁹
- Youth are often **required to follow rules governing electronic monitoring in addition to rules governing their probation**. It is difficult for youth and their families to adhere to two separate sets of rules, particularly when those rules overlap, are duplicative, are in conflict, or are very numerous.⁸⁰ These separate probation and electronic monitoring requirements often force youth and their families to comply with dozens of complex and overlapping rules simultaneously.
- Some terms and conditions documents **include words or phrases that are overly broad or so vague as to be unclear**. For example, Lassen County's terms and conditions records provide, "The discovery and presence of alcoholic beverages, illegal drugs or narcotics, firearms or dangerous devices constitute a violation of my Electronic Monitoring Program, which may result in my returning to Juvenile Hall/ Jail."⁸¹ But the records do not define the geographical scope of the restriction, nor whether the provision prohibits all members of the household from possessing or consuming alcohol or drugs in the home.

E. Some Terms and Conditions May Be Insufficiently Related to the Goals of Rehabilitation

A final category of terms and conditions that raise concerns are those that do not, on their face, seem sufficiently related to the stated goals of youth rehabilitation. Such provisions may be unfair and unnecessarily restrictive of a youth's individual liberties, while at the same time may fail to provide any clear benefits to the youth or to the public more broadly.

- Mariposa County requires that youth agree to **keep their "residence maintained in a clean and sanitary manner"** while they are on electronic monitoring, and the county warns that failure to maintain a clean home could result in removal from the program.⁸²
- Ventura County requires that youth will **"not cut [their] hair below a #2 clip (including fades)."**⁸³
- San Bernardino County provides that youth **"shall not alter [their] appearance including but not limited to a haircut, shave, tattoo, or piercing without court approval."**⁸⁴

Some counties' electronic monitoring rules require a college-level reading comprehension.

IV.

Evidence-based research will allow judges and policy-makers to determine whether juvenile electronic monitoring programs are effective and fair.

AREAS FOR ADDITIONAL STUDY

There are limits to how much information can be gleaned by reviewing terms and conditions contracts and policy documents alone. Not every contract is drafted clearly, making interpretation difficult. More important, understanding the burdens of electronic monitoring depends not only on the formal terms and conditions of monitoring, but also on how they are enforced. Additional research is necessary, and we urge scholars, advocates, and practitioners to continue these critical efforts. The express purpose of California's juvenile justice system is to promote the correction and rehabilitation of youth.⁸⁵ Yet without the benefit of evidence-based research, judges and policy-makers do not have the tools necessary to determine whether there are rehabilitative effects to these programs or whether, to the contrary, these programs are overly punitive. Such evidence-based research will lend weight to those advocating for the reform of juvenile electronic monitoring programs and the elimination of the least effective and most punitive rules.

In particular, we believe that qualitative research documenting and analyzing the experiences of youth and their families, along with the observations of judges, as well as juvenile probation officers charged with running electronic monitoring programs, will allow for a more thorough analysis of how best to tailor electronic monitoring programs to fit the needs of youth. We also urge additional quantitative research into the ways in which these programs are enforced, including who is placed on electronic monitoring⁸⁶; how long youth are electronically monitored; how often a violation of the terms and restrictions results in punitive consequences; whether youth of color are punished more often or more severely for infractions as compared to their white peers; whether other groups such as LGBTQ youth or youth with disabilities are subjected to discriminatory treatment; and whether there is significant variation in enforcement patterns among different probation officers within a county or among different counties.⁸⁷

We encourage scholars and advocates to continue this work. This research will allow for a more thorough and comprehensive analysis of the efficiency, effectiveness, and fairness of juvenile electronic monitoring programs.

ENDNOTES

¹ In the criminal justice system, electronic monitoring is used by the government to enforce the conditions and restrictions assigned to an individual by a court. Individuals assigned to electronic monitoring are usually required to wear a device that captures information about their whereabouts or actions and transmits that information to the government. There are two main types of electronic monitoring used to track an individual's movement. There are GPS devices, which rely on satellites and cellular towers to continually track a person's movement. And there are radio-frequency devices, which usually rely on battery-powered transmitters and a home-based receiver that communicates with the government using a landline telephone in the residence. Radio-frequency devices are used to track whether the individual is home or not, but cannot track the individual's movement outside the home. Different counties in California use different technologies, and some counties use both radio-frequency devices and GPS devices for youth. See MATTHEW DEMICHELE & BRIAN PAYNE, OFFENDER SUPERVISION WITH ELECTRONIC TECHNOLOGY: COMMUNITY CORRECTIONS RESOURCE 28-30 (2009), https://www.appa-net.org/eweb/docs/APPA/pubs/OSET_2.pdf; PEW CHARITABLE TRUSTS, USE OF ELECTRONIC OFFENDER-TRACKING DEVICES EXPANDS SHARPLY (2016), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/09/use-of-electronic-offender-tracking-devices-expands-sharply>.

² Kate Weisburd, *Monitoring Youth: The Collision of Rights and Rehabilitation*, 101 IOWA L. REV. 297, 299 (2015). In 2011, the American Bar Association urged governments to adopt electronic monitoring as an alternative to detention for eligible juvenile offenders. AM. BAR ASS'N, RESOLUTION 104D: ADOPTED BY THE HOUSE OF DELEGATES (2011).

³ Weisburd, *supra* note 2, at 312-13.

⁴ We obtained this information largely through Public Records Act requests, although some counties provided records through informal channels.

⁵ We are releasing these records to the public in three appendices. A comprehensive set of all of the records that we received from each county are compiled in the Complete Appendix. Because the records we received are quite voluminous, we also broke down key records into two smaller and more manageable appendices. The terms and conditions that youth enrolled in electronic monitoring must comply with in each county are compiled in the Terms and Conditions Appendix. And the policy and procedure records governing juvenile electronic monitoring programs in each county are compiled in the Policy Appendix. We are also releasing a sample of the Public Records Act requests that we submitted to the counties. Those three appendices and the sample Public Records Act request can be found here: <https://www.law.berkeley.edu/experiential/clinics/samuelson-law-technology-public-policy-clinic/electronic-monitoring-youth-california-justice-system/>.

⁶ Specifically, these attorneys presented anecdotal evidence—drawn from their experiences representing and working with youth—that electronic monitoring programs were being applied to youth who would not have been incarcerated in its absence; that youth on probation were being placed back in juvenile hall for violating even minor technical requirements; that less-restrictive means could be used to achieve the purpose of rehabilitating youth; that electronic monitoring rules were being enforced inconsistently; and that the rules were being enforced in a way that was potentially discriminatory toward youth of color. For an explanation of why we collected terms and conditions and policy records, rather than other forms of data, see discussion *infra* note 7.

⁷ In the course of this project, we made efforts to gather empirical data for Alameda County that would allow for an examination of how the county's electronic monitoring program is administered. We sought, for example, data about when electronic monitoring is used, how long youth are placed on electronic monitoring, and which violations of electronic monitoring contracts are most frequent and result in the most severe punishments. However, we encountered significant obstacles to gathering this data. The county itself does not always collect and retain this data. And to the extent such data exists, it is often contained in individual case files, making it difficult to analyze in the aggregate. More broadly, confidentiality governs many aspects of how the juvenile justice system operates. This serves the strong interest of youth in not having the details of their records disclosed, with some collateral consequences for the ability of researchers to better understand the operation of the system.

⁸ See, e.g., EVIDENCE-BASED PRACTICE, CAL. COURTS, <http://www.courts.ca.gov/5285.htm> [last visited Apr. 8, 2017] (“Perhaps the most important reform in state sentencing and corrections practice taking place today is the incorporation of principles of evidence-based practice into state sentencing and corrections policy and practice.”).

ENDNOTES

⁹ Cal. Welf. & Inst. Code § 1700 (“The purpose of this chapter is to protect society from the consequences of criminal activity and to that purpose community restoration, victim restoration, and offender training and treatment shall be substituted for retributive punishment and shall be directed toward the correction and rehabilitation of young persons who have committed public offenses.”).

¹⁰ U.C. BERKELEY LAW SCHOOL, POLICY ADVOCACY CLINIC, HIGH PAIN, NO GAIN: HOW JUVENILE ADMINISTRATIVE FEES HARM LOW-INCOME FAMILIES IN ALAMEDA COUNTY, CALIFORNIA 8 (March 2016). For example, in Alameda County, California, Blacks make up 12 percent of the county population but represent roughly 70 percent of the youth population in Juvenile Hall and 50 percent of youth under probation supervision and on electronic monitoring. *Id.*

¹¹ This is true both nationally and in California. *See id.*; MELISSA SICKMUND & CHARLES PUZZANCHERA, JUVENILE OFFENDERS AND VICTIMS: 2014 NATIONAL REPORT, NAT’L CTR. FOR JUV. JUST. 157, 163, 172 (2014), <https://www.ojdp.gov/ojstatbb/nr2014/downloads/NR2014.pdf> (noting that across the United States in 2010, a disproportionate number of Black youth were involved with delinquency cases; the likelihood of detention was highest for Black youth for all offenses except public order offenses; and for most offenses, adjudicated cases involving Black youth were more likely to result in out-of-home placement than for cases involving youth of other races); CAL. DEPT. OF JUST., JUVENILE JUSTICE IN CALIFORNIA 11 (2014), <https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/misc/jj14/preface.pdf> (noting that in 2014, Black youth in California were more likely to be referred to probation rather than referred for counseling and release than youth of other races).

¹² These terms and conditions are typically contained in contracts probationers must sign to participate in electronic monitoring programs.

¹³ All of the records that we obtained from the 58 counties in California are available in the Complete Appendix. We obtained terms and conditions documents from 48 counties, which are available in the Terms and Conditions Appendix. And we obtained policy documents from 44 counties, which are available in the Policy Appendix. For a description of these appendices, *see supra* note 5. Seven counties reported that they do not currently use electronic monitoring on youth on probation. *See* Alpine County, Complete Appendix at 194; Imperial County, Complete Appendix at 985; Mendocino County, Complete Appendix at 1,674; Riverside County, Complete Appendix at 2,276; Sutter County, Complete Appendix at 3,285; Tehama County, Complete Appendix at 3,287; and Yuba County, Complete Appendix at 3,412. Of the 51 counties that appear to use electronic monitoring on youth on probation, three counties did not provide terms and conditions documents. *See* Del Norte County, Complete Appendix at 670 (reporting that it did not have rules specific to youth); Shasta County, Complete Appendix at 2,951 (reporting that it has used electronic monitoring on only a single youth on probation, without providing the terms and conditions records); Modoc County, Complete Appendix at 1,710 (reporting that it was in the process of updating its contract). And seven counties did not provide policy documents. *See* Colusa County, Complete Appendix at 609-637 (responsive records do not include policy documents); Del Norte County, Complete Appendix at 670 (stating they do not have policies for youth on electronic monitoring); Modoc County, Complete Appendix at 1,710 (reporting that it was in the process of updating its contract); Orange County, Complete Appendix at 1,852 (reporting that it was withholding responsive documents under exemptions to the Public Records Act); Plumas County, Complete Appendix at 2,260 (reporting that it was in the process of creating new policies); Ventura County, Complete Appendix at 3,376 (reporting that it was withholding responsive documents under exemptions to the Public Records Act); and Yolo County, Complete Appendix at 3,403-10 (responsive records do not include policy documents).

¹⁴ Some of the information contained in the documents we received may not be current. We received most of these documents in the spring of 2016, and some of these terms and conditions documents may have been updated. In addition, many of these documents are not dated, and some counties sent multiple versions of the terms and conditions requirements without specifying which document was most current.

¹⁵ *See* Alameda County, Terms and Conditions at 2, Rule 10; Amador County, Terms and Conditions at 6, Rule 13; Butte County, Terms and Conditions at 9, Rule 5; Colusa County, Terms and Conditions at 20, Rule 3; Contra Costa County, Terms and Conditions at 25, Rule 1; El Dorado County, Terms and Conditions at 29, Rule 6; Fresno County, Terms and Conditions at 31, Rule 8; Glenn County, Terms and Conditions at 33, Rule 7; Humboldt County, Terms and Conditions at 37; Inyo County, Terms and Conditions at 44, Rule 6; Kern County, Terms and Conditions at 49, Rule 8; Kings County, Terms and Conditions at 52, Rule 1; Lake County, Terms and Conditions at 57; Lassen County, Terms and Conditions at 61, Rule 2; Los Angeles County, Terms and Conditions at 70, Rule 3; Madera County, Terms and Conditions at 75; Marin

County, Terms and Conditions at 79; Merced County, Terms and Conditions at 90, Rule 1; Mono County, Terms and Conditions at 97, Rule 8; Monterey County, Terms and Conditions at 103, Rule 8; Napa County, Terms and Conditions at 110, Rule 1; Nevada County, Terms and Conditions at 116, Rule 2; Placer County, Terms and Conditions at 124, Rule 12; Plumas County, Terms and Conditions at 126, Rule 3; Sacramento County, Terms and Conditions at 131; San Benito County, Terms and Conditions at 135, Rule 7; San Bernardino County, Terms and Conditions at 141, Rule 5; San Diego County, Terms and Conditions at 143; San Joaquin County, Terms and Conditions at 148, Rule 2; San Mateo County, Terms and Conditions at 155; Santa Barbara County, Terms and Conditions at 159, Rule 7; Santa Clara County, Terms and Conditions at 165, Rule 9; Santa Cruz County, Terms and Conditions at 168, Rule 2; Sierra County, Terms and Conditions at 174; Siskiyou County, Terms and Conditions at 177, Rule 2; Solano County, Terms and Conditions at 182, Rule 1; Sonoma County, Terms and Conditions at 184, Rule 1; Stanislaus County, Terms and Conditions at 186, Rule 1; Trinity County, Terms and Conditions at 192, Rule 13; Tulare County, Terms and Conditions at 194, Rule 1; Tuolumne County, Terms and Conditions at 201, Rule 9; Ventura County, Terms and Conditions at 204, Rule 4; Yolo County, Terms and Conditions at 207, Rule 23. These rules may not apply to all youth placed on electronic monitoring. For example, Santa Barbara allows some youth to move within preapproved inclusion or exclusion zones. See *infra* note 17. In addition, two counties' rules are somewhat ambiguous in terms of when youth are permitted to leave the home. See Calaveras County, Terms and Conditions at 15, Rule 9 (youth are required to stay within the home and/or areas approved by staff); Mariposa County, Terms and Conditions at 84, Rule 3 (youth are required to stay in place of confinement or within areas determined by program staff). And three counties do not appear to require that the youth remain home at all times outside of preapproved activities. See Orange County, Terms and Conditions at 120-21; San Francisco County, Terms and Conditions at 145-46; San Luis Obispo County, Terms and Conditions at 151-52.

¹⁶ Santa Barbara is the only county for which we verified their use of GPS to create inclusion/exclusion zones. But at least 12 other counties reference the use of inclusion or exclusion zones in their terms and conditions or policy documents. See Alameda County, Policy Documents at 4; Contra Costa County, Policy Documents at 138; Humboldt County, Terms and Conditions at 40, Rule 16; Inyo County, Policy Documents at 197; Lake County, Policy Documents at 228; Mariposa County, Terms and Conditions at 86, Rule 4; Merced County, Terms and Conditions at 92, Rule 17; Orange County, Terms and Conditions at 120, Rule 6; San Francisco County, Terms and Conditions at 146; San Luis Obispo County, Policy Documents at 513; Sierra County, Policy Documents at 573; Sonoma County, Policy Documents at 595.

¹⁷ Santa Barbara County, Terms and Conditions at 161, Rule 9. The county still relies on electronic monitoring to enforce the conditions of home detention for some youth. Santa Barbara County, Terms and Conditions at 159, Rule 7. But it also uses GPS to create inclusion/exclusion zones as an additional option.

¹⁸ Fresno County, Terms and Conditions at 31, Rule 8; Lake County, Terms and Conditions at 57; Los Angeles County, Terms and Conditions at 70, Rule 3; Marin County, Terms and Conditions at 79; Mono County, Terms and Conditions at 97, Rule 8; Nevada County, Terms and Conditions at 116, Rule 8; Placer County, Terms and Conditions at 124, Rule 12; Santa Barbara County, Terms and Conditions at 159, Rule 7; Santa Clara County, Terms and Conditions at 165, Rule 9; Santa Cruz County, Terms and Conditions at 169, Rule 12; Siskiyou County, Terms and Conditions at 177, Rule 2; Stanislaus County, Terms and Conditions at 188, Rule 21; Tulare County, Terms and Conditions at 195, Rule 6; Tuolumne County, Terms and Conditions at 201, Rule 18; Ventura County, Terms and Conditions at 204, Rule 4.

¹⁹ Alameda County, Terms and Conditions at 2, Rule 10; Butte County, Terms and Conditions at 9, Rule 6; Glenn County, Terms and Conditions at 34, Rule 24; Humboldt County, Terms and Conditions at 37; Monterey County, Terms and Conditions at 104; San Joaquin County, Terms and Conditions at 148, Rule 2; Sonoma County, Terms and Conditions at 184, Rule 3.

²⁰ Mariposa County, Terms and Conditions at 84, Rule 3.

²¹ Solano County, Terms and Conditions at 182, Rule 1.

²² Amador County, Terms and Conditions at 6, Rule 14; Calaveras County, Terms and Conditions at 16, Rule 16; Inyo County, Terms and Conditions at 45, Rule 13; Sierra County, Terms and Conditions at 174.

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²³ Alameda County, Terms and Conditions at 3, Rule 3 (requiring that the device is charged daily between 7pm and 9pm or “as instructed by Probation staff”); Amador County, Terms and Conditions at 6, Rule 16 (requiring that the device is charged for one hour between 6am and 8am and one hour between 6pm and 8pm).

²⁴ Colusa County, Terms and Conditions at 20, Rule 4; Inyo County, Terms and Conditions at 46, Rule 22; Kings County, Terms and Conditions at 53, Rule 21; Lake County, Terms and Conditions at 58; Mono County, Terms and Conditions at 99, Rule 22; Napa County, Terms and Conditions at 109, Rule 9.

²⁵ However, some counties still impose some additional requirements regarding how long the device must be charged in each charging session. *See, e.g.*, Mariposa County, Terms and Conditions at 85, Rule 16 (equipment must be charged twice daily for a minimum of 60 minutes each time); San Francisco County, Terms and Conditions at 145, Rule 5 (equipment must be charged for two consecutive hours within a 24 hour time-period); Ventura County, Terms and Conditions at 204, Rule 21 (youth must charge their electronic monitoring device daily).

²⁶ Lassen County, Terms and Conditions at 61-68. Some numbered rules contain more than one requirement.

²⁷ Solano County, Terms and Conditions at 182. Some numbered rules contain more than one requirement.

²⁸ San Francisco County, Terms and Conditions at 145-46. Some numbered rules contain more than one requirement.

²⁹ *See, e.g.*, Amador County, Policy Documents at 105 (“Drug testing, searches, referrals to community based programs and/or Amador County Health and Human Services and other graduated responses to offender behavior shall be completed at the Officer’s discretion.”).

³⁰ Glenn County, Policy Documents at 163-64. In some cases, it is the private electronic monitoring company the counties have contracted with that have established a response protocol. *See, e.g.*, Colusa County, Complete Appendix at 618-22 (outlining procedures that employees of the private electronic monitoring company Satellite Tracking of People should follow in the event of a program violation).

³¹ It can be difficult to distinguish between burdens that are the result of probation rules and burdens that are the result of electronic monitoring rules. In some counties, a judge will impose certain probation restrictions—for example, prohibiting the youth from leaving home except to attend work or school (often referred to as home detention or home supervision)—but not assign electronic monitoring to enforce these conditions. *See, e.g.*, El Dorado County, Policy Documents at 146 (noting that some youth may be assigned to home supervision but not electronic monitoring). In other counties, every youth released on home supervision is assigned to electronic monitoring, and there is no distinction between the rules for probation and the technology-specific rules for electronic monitoring. *See, e.g.*, Contra Costa County, Policy Documents at 140 (providing that all youth released on home supervision will be placed on electronic monitoring). As a result of the potential distinction between probation rules and electronic monitoring rules, however, some of the terms and conditions that we identify as potentially burdensome may be imposed as a condition of probation regardless of whether the youth is also assigned to electronic monitoring. We include these rules of general applicability in our analysis for a number of reasons. First, it is not always clear from the records which rules apply to all youth on probation, and which apply only to youth assigned to electronic monitoring. We did not ask counties to provide us with their probation contracts. Second, rules that may not appear connected to electronic monitoring technology could in fact apply only to youth assigned to electronic monitoring. For example, Butte County has separate probation and electronic monitoring rules. But the rule prohibiting youth from receiving visitors—a rule that does not, on its face, seem connected to electronic monitoring technology—appears only in the electronic monitoring contract, and not in the probation contract. *Compare* Butte County, Terms and Conditions at 9, Rule 7 (GPS monitoring contract prohibits youth from receiving visitors) *with* Butte County, Complete Appendix at 410-15 (general and specific probation rules do not prohibit youth from receiving visitors). Third, some counties assign all youth on home detention to electronic monitoring, and thus there is no distinction between these rules. *See, e.g.*, Contra Costa County, Policy Documents at 140. Fourth, data from at least one county suggests that youth are booked far more often for GPS failures than they are for home supervision failures, potentially increasing the burdensomeness of GPS rules in comparison with probation rules. *See* Alameda County, Policy Documents at 95 (noting that from July 1, 2012 to June 30, 2013, 120 youth were booked for GPS failures but only 24 youth were booked for home supervision failures). And finally, the burdens imposed by technology-specific rules most likely interact with and in some cases heighten the burdens imposed by rules that apply to all youth on probation.

³² There are different ways in which poor youth may become or remain incarcerated for longer periods of time and with greater frequency than their wealthier peers. For example, failure to pay a telephone bill is grounds for removal from the program and re-incarceration in some counties. *See, e.g.*, Glenn County, Terms and Conditions at 33, Rule 6; Santa Clara County, Terms and Conditions at 165, Rule 3. To provide a second illustration, youth from low-income or single-income homes may not be released because their parents or guardians will be unable to provide adequate supervision. *See, e.g.*, Alameda County, Policy Documents at 32 (listing “[a]ssessment of parent’s, guardian’s, or responsible relatives ability/willingness to comply with and require minor’s compliance with Home Supervision conditions” among the factors determining whether a youth will be released electronic monitoring). *See also* JESSICA FEIERMAN, ET AL., DEBTOR’S PRISON FOR KIDS? THE HIGH COST OF FINES AND FEES IN THE JUVENILE JUSTICE SYSTEM, JUV. L. CTR. 7 (2016), <http://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf> (explaining how poor youth end up or remain incarcerated for failure to pay juvenile justice fees).

³³ Working families of color are twice as likely to be low-income as non-Latino white working families nationwide. DEBORAH POVICH, BRANDON ROBERTS, & MARK MATHER, LOW-INCOME WORKING FAMILIES: THE RACIAL/ETHNIC DIVIDE, THE WORKING POOR FAMILIES PROJECT 1 (Winter 2014-2015), <http://www.workingpoorfamilies.org/wp-content/uploads/2015/03/WPPF-2015-Report-Racial-Ethnic-Divide.pdf>. And in California, poverty rates are much higher for African-Americans and Latinos than they are for other ethnic groups. Sarah Bohn & Caroline Danielson, *Poverty in California*, PUB. POL’Y INST. OF CAL. (Feb. 2017), http://www.ppic.org/content/pubs/jtf/JTF_PovertyJTF.pdf.

³⁴ *See, e.g.*, Inyo County, Terms and Conditions at 43, Rule 13; Plumas County, Terms and Conditions at 128, Rule 15. In 2016, Alameda County, Contra Costa County, and Santa Clara County voted to end the assessment and collection of fees charged to families with children in the juvenile justice system. Myles Bess, *Why Lawmakers Are Ending Court Fees for Kids*, YOUTH RADIO (Nov. 15, 2016), <https://youthradio.org/journalism/juvenile-justice/why-lawmakers-are-ending-court-fees-for-kids/>. For a general discussion of the often crippling financial burdens imposed on families with children in the juvenile justice system, *see* Erik Eckholm, *Court Costs Entrap Nonwhite, Poor Juvenile Offenders*, N.Y. TIMES (Aug. 31, 2016), <https://www.nytimes.com/2016/09/01/us/court-costs-entrap-nonwhite-poor-juvenile-offenders.html?smprod=nytcore-iphone&smid=nytcore-iphone-share&r=1>.

³⁵ *See, e.g.*, Inyo County, Terms and Conditions at 44, Rule 2; Tuolumne County, Terms and Conditions at 200, Rule 2.

³⁶ *See, e.g.*, Madera County, Terms and Conditions at 74.

³⁷ *See, e.g.*, Marin County, Terms and Conditions at 81.

³⁸ *See, e.g.*, Madera County, Policy Documents at 295.

³⁹ *See, e.g.*, Mariposa County, Terms and Conditions at 87, Rule 1. These electronic monitoring costs may be charged in addition to restitution fees. *See* Cal. Welf. & Inst. Code § 729.5.

⁴⁰ *See* High Pain, No Gain, *supra* note 10, at 12-14 (finding that Alameda County made little net financial gain in its effort to collect administrative costs from families).

⁴¹ BI INCORPORATED, ABOUT US, <https://bi.com/company/about-us/> (last visited Apr. 9, 2017).

⁴² Madera County, Policy Documents at 294-304. At least fifty counties provided us with contracts or purchase orders from one or more private electronic monitoring companies. Those records are located in the Complete Appendix. All counties that monitor youth except for one county—Modoc—provided a contract or purchase order with at least one private electronic monitoring company. *See* Modoc County, Complete Appendix at 1,710 (stating that it has only two electronic monitoring devices and it has used a GPS device only once the prior year). However, the extent of the services provided by these companies varies. Moreover, some of these contracts may be out of date. The records indicate that counties tend to switch vendors over time. *See, e.g.*, Sonoma County, Complete Appendix at 3,085 (explaining that the county has had four electronic monitoring vendors in 25 years). The records also indicate that a private electronic monitoring provider may change when companies merge or are purchased. *See, e.g.*, San Diego County, Complete Appendix at 2,616 (county agreeing to allow G4S Justice Services to assign all its interests to Sentinel Offender Services).

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⁴³ The document does not explicitly state that it is an internal BI Incorporated document rather than a county document. However, the language of the document strongly suggests that it was produced by the company. It refers to county probation officers and technicians as “our customer.” Madera County, Policy Documents at 299. And it refers employees exclusively to BI Incorporated contact persons rather than to county contacts. *Id.* at 299-300.

⁴⁴ Madera County, Policy Documents at 298.

⁴⁵ *Id.* at 296.

⁴⁶ *Id.* at 298. A higher rate of \$85 for cell units and \$130.50 for GPS units is charged for the first week of monitoring. *Id.*

⁴⁷ Moreover, given the substantial costs incurred by the counties in their efforts to recoup these fees, the counties may end up making very little net financial gain by imposing electronic monitoring program fees on families. *See supra* note 40.

⁴⁸ *See, e.g.*, Kings County, Terms and Conditions at 52, Rule 9 (requiring youth to maintain a reliable telephone or cellular phone service throughout the period of confinement); Lassen County, Terms and Conditions at 64, Rule 22 (requiring youth to maintain an operating telephone line into the residence and to pay all expenses related to the telephone and the electronic monitor).

⁴⁹ *See, e.g.*, Alameda County, Policy Documents at 6.

⁵⁰ *See, e.g.*, El Dorado County, Policy Documents at 146.

⁵¹ *See, e.g.*, Humboldt County, Policy Documents at 171 (including access to a landline and/or adequate cellular service among the criteria for participation in the electronic monitoring program, although not specifying whether this criterion is dispositive); Fresno County, Complete Appendix at 905 (noting that youth will only be released on electronic monitoring prior to a detention hearing if the youth is able to provide proof of a landline telephone).

⁵² *See, e.g.*, Alameda County, Policy Documents at 10; Fresno County, Terms and Conditions at 31, Rule 7.

⁵³ Alameda County, Policy Documents at 10.

⁵⁴ *See, e.g.*, Glenn County, Terms and Conditions at 33, Rule 6; Santa Clara County, Terms and Conditions at 165, Rule 3.

⁵⁵ *See* High Pain, No Gain, *supra* note 10, at 11 (noting that families with children involved in the juvenile justice system in Alameda County are disproportionately low-income, and as a result many families will be forced to choose between paying the county and meeting their basic needs).

⁵⁶ Critics of juvenile electronic monitoring programs are often careful to note that while electronic monitoring may be preferable to incarceration, electronic monitoring programs still impose burdens that should not be overlooked. *See, e.g.*, Weisburd, *supra* note 2, at 301-02 (noting that there “is little dispute that from the perspective of a defendant, a day in jail is worse than a day on electronic monitoring,” but that “the conclusion that electronic monitoring is an effective alternative to incarceration fails to account for the problems and unintended consequences of the practice”).

⁵⁷ El Dorado County, Policy Documents at 147. Other counties also consider the parent’s “trustworthiness” as a factor. *See* Glenn County, Policy Documents at 161.

⁵⁸ San Joaquin County, Policy Documents at 505.

⁵⁹ Kings County, Terms and Conditions at 53, Rule 16; Lake County, Terms and Conditions at 58; Madera County, Terms and Conditions at 75; Marin County, Terms and Conditions at 80; Mono County, Terms and Conditions at 98, Rule 19. San Luis Obispo County requires that the youth be under the supervision of a parent or guardian or a responsible adult approved by the parent/guardian and probation officer. San Luis Obispo County, Terms and Conditions at 151. Contra Costa requires parental supervision at night. Contra Costa County, Terms and Conditions at 25, Rule 4.

⁶⁰ This requirement may also have negative consequences beyond a burdensome financial impact. For example, it may cause a parent to allow a youth to remain incarcerated because he or she cannot provide supervision. *See supra* note 32. It may also cause family tensions to escalate. *See Weisburd, supra* note 2, at 328-29.

⁶¹ Mariposa County, Terms and Conditions at 85, Rule 9. *See also* Lassen County, Terms and Conditions at 66, Rule 39 [requiring that a youth specify their method of transportation to and from work, school, and other approved appointments, as well as the driver].

⁶² *See Gillian B. White, Stranded: How America's Failing Public Transportation Increases Inequality*, THE ATLANTIC (May 16, 2015) [chronicling the ways that poor people suffer from unreliable forms of public transportation].

⁶³ *See supra* note 22.

⁶⁴ *See supra* note 23.

⁶⁵ ECON. POL. INST., BRIEFING PAPER #394: IRREGULAR WORK SCHEDULING AND ITS CONSEQUENCES 1, 8 (Apr. 9, 2015), <http://www.epi.org/files/pdf/82524.pdf>.

⁶⁶ *Id.* at 1.

⁶⁷ *See, e.g., United States v. Jones*, 565 U.S. 400, 416 [2012] (Sotomayor, J., concurring) [noting that “GPS monitoring—by making available at a relatively low cost such a substantial quantum of intimate information about any person whom the Government, in its unfettered discretion, chooses to track—may alter the relationship between citizen and government in a way that is inimical to democratic society”] [internal quotation marks and citation omitted].

⁶⁸ Some counties do address the privacy concerns involved with electronic monitoring of youth in their terms and conditions and policy documents, although none does so comprehensively. For example, at least three counties’ terms and conditions include the following or similar language: “The devices shall not be used to eavesdrop or record any conversations, except a conversation between me and the person supervising me which is to be used solely for the purpose of voice identification.” Kings County, Terms and Conditions at 52, Rule 6; Los Angeles County, Terms and Conditions at 70, Rule 4; Napa County, Terms and Conditions at 110, Rule 3. Mariposa County’s policy documents provide, “Only those persons designated by the Chief Probation Officer are authorized to have access to or use of information obtained through the use of continuous electronic monitoring.” Mariposa County, Policy Documents at 312. And Alameda County’s policy documents provide, “Reports and all other documents submitted to the Juvenile Court may be inspected only by Court personnel, the youth, the parents or guardian, their attorneys, and such other persons as may be designated by Court Order of the Judge of the Juvenile Court but only upon their filing of a petition therefor [Section 827 Welfare and Institutions Code]. All other inquiries regarding a minor’s record are to be referred to the assigned probation officer.” Alameda County, Policy Documents at 44. They further provide, “Home Supervision staff may not discuss youth’s criminal records with those who have no right to know per Special Matter Order (T.N.G. Order) regarding release of information by law enforcement agencies.” *Id.* In addition, some of the counties’ contracts with private electronic monitoring companies require that the companies establish privacy-protective policies. *See, e.g., Alameda County, Complete Appendix* at 30 [requiring private electronic monitoring company to submit a quality control plan with a “method of ensuring that record confidentiality is maintained”].

⁶⁹ Mariposa County, Terms and Conditions at 86, Rule 1.

⁷⁰ San Francisco County, Terms and Conditions at 145, Rule 1. San Francisco also provides a consent form allowing youth to authorize the release of confidential information to supervising law enforcement and probation agencies, attorneys, family and co-residents, teachers and school staff, and all service providers from whom the youth is currently receiving services. The form also states that the youth’s consent expires automatically upon the completion of the home detention program. San Francisco County, Policy Documents at 465.

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⁷¹ Alameda County, Complete Appendix at 30.

⁷² The Supreme Court has emphasized that the unique nature of the adolescent brain makes it difficult for youth to exercise impulse control. The Court has noted that parts of the brain involved in behavior control are still developing throughout late adolescence. *See, e.g.*, *Graham v. Florida*, 560 U.S. 48, 68 (2010). It has also noted that adolescents may have difficulty weighing long-term consequences for their actions and are prone to immaturity and an undeveloped sense of responsibility that leads to reckless behavior. *See id.*; *Roper v. Simmons*, 543 U.S. 551, 569 (2005). The unique nature the adolescent brain suggests that youth, even more than adults, will likely have difficulty complying with very rigid rules.

⁷³ *See Weisburd, supra* note 2, at 327-28.

⁷⁴ Butte County, Policy Documents at 109.

⁷⁵ Siskiyou County, Policy Documents at 581.

⁷⁶ About nine percent of children ages 6-21 have a special education disability. In comparison, an estimated 28-43 percent of detained and incarcerated youth have an identified special education disability, the majority of which are learning disabilities. CHRISTOPHER A. MALLETT, SEVEN THINGS JUVENILE COURTS SHOULD KNOW ABOUT LEARNING DISABILITIES, NAT'L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, AT 5 (2010), <http://www.pacer.org/jj/pdf/LearningDisabilitiesAndLaw.pdf>.

⁷⁷ Lassen County, Terms and Conditions at 61-68.

⁷⁸ *Id.*

⁷⁹ To provide another illustration of the complexity of some of these juvenile electronic monitoring rules, at least four counties provide that “the loss of a receiving signal or the receipt of a tamper signal by the monitoring device shall constitute prima facie evidence that [the youth] ha[s] violated” his or her schedule, curfew, or terms of probation. Youth most likely will not understand the meaning of the legal term “prima facie.” *See* Calaveras County, Terms and Conditions at 17, Rule 22; Glenn County, Terms and Conditions at 35, Rule 31; Inyo County, Terms and Conditions at 45, Rule 19; and Sierra County, Terms and Conditions at 173, Rule 15.

⁸⁰ Weisburd, *supra* note 2, at 336.

⁸¹ Lassen County, Terms and Conditions at 62, Rule 10.

⁸² Mariposa County, Terms and Conditions at 84, Rule 4.

⁸³ Ventura County, Terms and Conditions at 204, Rule 15.

⁸⁴ San Bernardino County, Terms and Conditions at 141, Rule 15.

⁸⁵ Cal. Welf. & Inst. Code § 1700.

⁸⁶ Courts and parole officers appear to have broad discretion in determining whom to place on electronic monitoring. Some policy documents provide limited guidance by outlining the factors that should be considered when determining whether to place youth on electronic monitoring. *See, e.g.*, Calaveras County, Policy Documents at 116 (noting that the probation department uses the Ohio Risk Assessment System to determine eligibility for electronic monitoring). Other policy documents provide insight into when a violation of electronic monitoring rules leads to punishment. *See, e.g.*, San Joaquin County, Policy Documents at 503-09 (outlining a response grid matrix of graduated responses to both compliant and non-compliant behavior).

⁸⁷ We attempted to gather this data for Alameda County but encountered certain obstacles. For a discussion of these obstacles and of barriers to data collection more generally, *see supra* note 7.





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