



Practical Advice for Defense Attorneys with Clients Who May Be Placed on Electronic Monitoring (EM)

1. EM with house arrest and GPS tracking is the most restrictive form of community supervision and should only be imposed in exceptional circumstances because use of EM location tracking is a search that requires a warrant. *US v. Lambus*, 251 F.Supp.3d 470 (E.D.NY 2017).
 - a. Use state or local laws that call for using the least restrictive means of supervision to advocate for the client's release on their own recognizance or some other less restrictive means of supervision.
 - b. For example, Illinois forbids incarceration of juveniles absent a judicial finding that it is the least restrictive alternative. 705 ILCS 405/5-750. In states like IL, you have room to argue that the same policy ought to be applied to require the same showing before placing an individual on EM.
2. EM should generally be avoided for clients with physical or mental disabilities, juveniles, the homeless, or people in transitional housing.

But if there is no way to avoid electronic monitoring, here are some of the key issues that will enhance the relative freedom of your client:

3. Ask for a curfew rather than location tracking. Curfew means the individual is free to leave the house for a specified number of hours each day with no specific location tracking during off-curfew hours. Curfew is generally monitored with radio frequency ("RF") devices that don't track specific GPS location.
 - a. The curfew should allow the person as many hours a day out of the house as possible. For example, a liberal curfew might be 18 hours out of the house, while a more conservative curfew may only be 8-10 hours, which would more heavily restrict a person's mobility and ability to carry out basic life tasks like employment.
 - b. The court should also take into consideration the client's schedule. For example, if the client works a graveyard shift, the curfew might allow them to be out of the house from 11pm to 3pm the following day, instead of just regular business hours.

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4. Demand that the client be allowed out of the house every day of the week.
5. Devices that require a landline telephone should be avoided because many clients do not have landlines or homes. For clients without homes, EM providers should maintain charging stations at no cost and open 24/7.
6. If the court chooses to limit where your client can go while on GPS, be sure to maximize their freedom of movement.
 - a. The client should be guaranteed movement:
 - i. to seek/receive legal counsel or attend any scheduled court appearances, including but not limited to criminal, immigration, and family court hearings and consultations,
 - ii. to seek and maintain employment,
 - iii. to seek and maintain housing,
 - iv. for religious activities,
 - v. for educational programs,
 - vi. for medical or mental therapy/treatment of all kinds,
 - vii. for programs assigned by the court,
 - viii. for family activities such as picking up or dropping off children,
 - ix. to respond to medical or family emergencies at any time of the day or night,
 - x. to shop for groceries and other necessities,
 - xi. to do laundry,
 - xii. for grooming like getting a haircut,
 - xiii. for banking, and
 - xiv. for paying bills.
 - b. Wherever possible, these permitted activities should be written into the record of the court and into the contract the client signs for EM.
7. Fees for EM should be avoided. If they can't be avoided, check to see if your jurisdiction has a policy or program for offsetting costs for indigent clients with proof of indigency or work-exchange programs.
8. For more info, visit: eff.org/EMGuidelines and <https://www.challengingcarceration.org/>

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