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# Convergent and divergent pathways: Electronic monitoring (EM) in England and Wales and Poland

## Ścieżki zbieżne i rozbieżne. Monitoring elektroniczny (ME) w Anglii i Walii oraz Polsce

**Abstract:** Electronic monitoring (EM) is a fixture in most criminal justice systems in Europe and around the world, but there is limited research on how EM operates in Eastern European states. Previous comparative research identified two distinct approaches to how EM is used and operated but Eastern Europe was not included in the analysis (Hucklesby, Beyens, Boone 2021). This paper addresses this knowledge gap by examining the use of EM in Poland and comparing it with England and Wales, thereby identifying similarities and differences in their approaches. The two jurisdictions are good comparators because the Polish system was originally modelled on England and Wales, they were both early adopters of EM in their respective parts of Europe, they share common problems of high prison populations and overcrowded prisons and they use EM extensively. The paper explores whether Poland has a distinct approach to EM implementation which differs from the British or Western European approaches and whether there might be a distinctive Eastern European model of EM. It argues that whilst the Polish approach to EM has evolved away from the British approach to share many of the features of the Western European model, it is sufficiently distinctive to suggest the existence of a third model or approach. Consequently, it raises questions about whether there is an Eastern European model or whether Poland's approach is unique. The paper concludes by examining enduring questions about whether the approach of England and Wales or Poland have more effectively managed prison populations. It suggests that EM's impact on prison populations has been marginal at best in both jurisdictions, putting ethical issues about its use into sharper focus.

**Keywords:** electronic monitoring, non-custodial sanctions and measures, alternatives to prison, suspended sentences, pre-trial measures

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**Abstrakt:** Monitoring elektroniczny (ME) jest elementem większości systemów sprawiedliwości karnej w Europie i na całym świecie, ale liczba badań na temat funkcjonowania ME w państwach Europy Wschodniej jest ograniczona. Wcześniejsze badania porównawcze zidentyfikowały dwa różne podejścia do korzystania z ME i jego funkcjonowania, model brytyjski i europejski (Hucklesby, Beyens, Boone 2021), ale Europa Wschodnia nie została uwzględniona w analizie. Niniejszy artykuł ma na celu wypełnienie tej luki poprzez zbadanie wykorzystania ME w Polsce i porównanie go z Anglią i Walią, w celu zidentyfikowania podobieństw i różnic. Obie jurysdykcje są dobrymi obiektami porównań, ponieważ system polski pierwotnie wzorowano na modelu Anglii i Walii, oba kraje wcześnie wprowadziły ME w regionach Europy, mają wspólne problemy z dużą liczbą więźniów i przepełnionymi więzieniami oraz są aktywnymi użytkownikami ME. W artykule staramy się ustalić, czy Polska bardziej przypomina podejście do ME brytyjskie, czy europejskie oraz czy może istnieć odrębne podejście wschodnioeuropejskie. W artykule stwierdzamy, że chociaż podejście Polski do ME ewoluowało, oddalając się od modelu brytyjskiego w kierunku modelu europejskiego, to jest wystarczająco charakterystyczne, aby sugerować występowanie więcej niż jednego modelu w Europie. W związku z tym w artykule rozważamy, czy wcześniej zidentyfikowany model europejski ME to właściwie model zachodnioeuropejski, co rodzi pytania, czy istnieje także model wschodnioeuropejski, czy też podejście Polski jest unikalne. Artykuł kończy się analizą zawsze aktualnych pytań dotyczących tego, czy podejście Anglii i Walii oraz Polski pozwalało na bardziej efektywne zarządzanie liczbą więźniów. Sugerujemy, że wpływ ME na liczbę więźniów był co najwyżej marginalny w obu jurysdykcjach, co powoduje skupienie się na kwestiach etycznych związanych z jego wykorzystaniem.

**Słowa kluczowe:** monitoring elektroniczny, nieizolacyjne kary i środki, alternatywy dla więzienia, kara z warunkowym zawieszeniem wykonania, środki zapobiegawcze

## Introduction

Electronic monitoring (EM) is now widely deployed in Europe and around the world, and the number of individuals required to wear monitoring devices continues to increase. Its growing importance to justice systems requires increased scrutiny at both national and international levels. EM is an umbrella term used to describe a growing and diverse collection of technologies which remotely monitor the presence, movements and/or behaviour of individuals in conflict with the law. Individuals subject to EM are required to wear devices specifically designed for the purpose, usually around their ankle, for a specified time. The devices collect and send data to alert the authorities about non-compliance events. There is no standard model of EM. EM technologies are implemented in different ways and for various purposes using different regimes within and between countries (Hucklesby 2016; 2021). Consequently, referring to EM as one homogeneous tool is misleading. Unfortunately, the EM literature often does not refer to the regime or identify the technology when discussing research findings or making theoretical contributions (Belur et al. 2020). Many policy and theoretical debates also take place without sufficient understanding and/or explanation of the technology and/or regime (McNeill, Beyens 2013; Hucklesby et al. 2016). Policy transfer has been a feature throughout the development of EM, and governments draw on

international research as a basis for their decision-making – often without full knowledge of the context in which EM operates (Gudders 2017; Scottish Government 2019). Consequently, conclusions are drawn about crucial questions, such as what makes EM effective, without an appreciation of the variety of ways in which it is used, and how this may influence outcomes (Beyens, McNeill 2013; Hucklesby et al. 2016). Simultaneously, theoretical contributions are sometimes based on a limited understanding of EM and/or extrapolate from one context or technology to EM in general.

Very little comparative research has been done on EM, despite its growing importance in the penal landscape (cf. Hucklesby et al. 2016; Hucklesby, Beyens, Boone 2021; Lopez Riba 2023). Whilst comparing statistics on the use of EM is valuable, the paucity of published statistics means that it can only be a starting point. This approach also fails to take account of the nuances of how EM is used in different jurisdictions (Hucklesby, Beyens, Boone 2021). Detailed comparative research, as described in this paper, allows differences and similarities between jurisdictions to be explored which improves understanding and provides additional explanatory power to inform theoretical and policy debates (Nelken 2010; Nelken, Hamilton 2022). It also increases the likelihood of identifying effective practices providing the basis for evidence-based policymaking. This type of research is now possible because of the spread of EM across Europe and the rest of the world, facilitating comparisons and uncovering the different ways in which it is implemented in terms of the technologies deployed, the intensity of the regimes, use groups and so on (Hucklesby et al. 2016; Hucklesby, Beyens, Boone 2021).

To our knowledge three comparative studies of EM have been completed in Europe (Hucklesby et al. 2016; Parkànyi, Hucklesby 2021; Lopez Riba 2023). These studies have mostly focussed on Western European jurisdictions. The exception is Eszter Parkànyi and Anthea Hucklesby's (2021) study of EM use with juveniles in England and Wales, the Netherlands and Hungary. This study highlighted the different approach taken by Hungary, an Eastern European state, compared to the other two jurisdictions in relation to some aspects of how EM was implemented. These included being managed by the police rather than probation services and a strict regime including 24-hour house arrest and stringent enforcement of breaches. However, it was unclear whether a similar approach was used with adults and/or whether it was shared by other Eastern European states. These questions are explored in this paper, adding to knowledge about another Eastern European country by comparing it to England and Wales and addressing the question of whether there is a distinctive Eastern European model of EM.

The first comparative study of EM in Europe explored the use of EM with adults in five Western European jurisdictions (Belgium, England and Wales, Germany, the Netherlands and Scotland) (Hucklesby et al. 2016; Hucklesby, Beyens, Boone 2021). Germany made very limited use of EM because of its complicated history, and was thus an outlier (Dünkel, Thiele, Treig 2016; 2017). From the other four jurisdictions, two approaches to EM's implementation were identified: the British

and Western European models. England and Wales and Scotland conformed most closely to the British model, whilst Belgium and the Netherlands adhered more to the Western European model (Beyens, Roosen 2016; Boone, Van der Kooij, Rap 2016; 2017). The main features of the models are set out in Table 1.

**Table 1.** Models of EM

| | **British model** | **Western European model** |
|---|---|---|
| Integration with criminal justice agencies and structures | Low | High |
| Probation involvement | Low | High |
| Standalone EM available | Yes | No |
| Supervision and support provided to monitored individuals | 24/7 monitoring centre operated by a private company | Probation Services – not 24/7 |
| Regime intensity | Low | High |
| Maximum time of EM | Shorter | Longer |
| Use groups | Diverse | Prisoners |
| Language used to describe EM regimes | Restriction | Freedom |
| Breach procedures | Regulated and routinised | Discretionary and informal |
| Use of EM | Higher | Lower |

**Source:** Hucklesby (2016).

The most prominent features which delineate the models are their level of integration into the criminal justice system, and particularly whether EM is an integral part of probation services and is managed by them; the regime intensity and use groups. In the British model, EM is not managed as part of the probation service but is a separately managed service. In both England and Wales and Scotland, all aspects of EM are run under government contract by the private sector, which provides the telecommunications infrastructure, EM equipment and EM service, including the monitoring centre and field workers who visit wearers' homes to fit and remove equipment and to investigate violations and so on (Hucklesby 2018). These two factors have meant that EM has not been well integrated into the criminal justice system and instead runs on a parallel track (CJJI 2008; 2012; Mair, Nellis 2016; HMIP 2020).

In the Western European model, EM is run and managed as an integral part of the criminal justice system, and probation services are involved in all or most of the EM operation. Equipment is purchased from multinational EM companies under contract. Probation staff are involved in managing all aspects of EM, from fitting the equipment to responding to breaches (Boone, Van der Kooij, Rap 2016; 2017). The Western European model is also characterised by intensive regimes that manage wearers wholistically, closely resembling penitentiary-style control (Beyens,

Kaminski 2013). Wearers are usually provided with a structured plan for each day, the number of hours under curfew in any given day is high (around 20 hours per day), wearers are required to participate in useful activities (work, education etc.) and they are closely supervised and supported by probation services. Wearers are technically prisoners and EM is described as providing hours of "freedom". Breach procedures are managed by the probation service and are generally discretionary and informal (Boone, Van der Kooij, Rap 2016).

By contrast, in the British model EM is used as a standalone measure or can be combined with other requirements of community sentences, but even multi-requirement orders do not involve probation services overseeing the EM element (Hucklesby, Holdsworth 2016). This is generally left for the EM contractor to manage. Curfew hours are referred to as restrictions rather than freedom, and they are generally shorter compared with the Western European model (around 12 hours). Wearers are not required to participate in useful activities or abstain from alcohol or drug use whilst subject to EM (except when an Alcohol Abstinence Monitoring Requirement is imposed [see below]). Under the British model, there is a clear and strict breach policy which is followed for standalone orders and managed by the EM contractor. Breaches of the EM requirements of combined orders are more discretionary because the probation service is the decision-maker rather than the rigid breach procedure followed by the EM contractors (CJJI 2012). Many of these differences are explained by the main use group for EM post-sentence. Under the Western European model, EM is predominantly a way of serving a prison sentence, so EM wearers are technically prisoners. Under the British model, EM is a tool used with the full repertoire of community sanctions and measures to restrict the liberty of wearers. As a result, the British model deployed EM for many different cohorts from the beginning, including pre-trial and as a standalone sentence, and most wearers are deemed not to be prisoners, even when released early from prison and on licence.

These models are ideal types which form a continuum. Jurisdictions can move along the continuum over time, and there have been several instances of this. For example, Kristel Beyens and Marijke Roosen (2016; 2017) found that whilst the probation service continued to manage EM in Belgium, some of the elements – such as close supervision by probation staff – had been reduced for certain groups of wearers (those serving sentences of under three years). England and Wales has increased the curfew hours available for community sentences over time, so they now more closely resemble those found in the Western European model, but practice has not changed significantly as a result. Despite these changes the core features of the models in both of these jurisdictions remain largely intact.

There has been limited scrutiny in the English-language literature of penal policies in general, and EM in particular, in Eastern European states (Dràpal 2023). There is very little information available in English on the Polish EM system, and what does exist is dated, referencing regulations which no longer apply (Stańdo-Kawecka, Grzywa-Holten 2015; Jaskóła, Szewczyk 2017). This article

therefore also improves knowledge and understanding of the current EM system in Poland, which is one of the largest in Europe.

This article fills a knowledge gap about EM in Eastern European states, using Poland as a case study and comparing it to England and Wales. By doing so, it addresses the question of whether Poland more closely resembles the British or Western European models and whether a distinctive Eastern European EM model exists. Poland is a particularly interesting case study because its EM system was modelled on England and Wales after being advised by the UK Ministry of Justice when it was established. It was also one of the first Eastern European states to begin the process of joining the European Union and may be expected to conform more closely to the Western European model as a result, particularly because of the policy transfer activities in criminal justice carried out under EU cooperation agreements. The two jurisdictions are also good comparators because they share common reasons for establishing EM, including high prison populations and overcrowded prisons, and they were both early EM adopters in their respective parts of Europe. The paper argues that Poland has a distinctive approach to implementing EM which has evolved to share many of the features of the Western European model – though not all. This raises questions for future research about whether there is an Eastern European model of EM in additional to a British and Western European model or whether Poland's approach is unique.

The paper proceeds by comparing the context in which EM operates between England and Wales and Poland, before identifying the EM modalities and usage of EM in the two jurisdictions. This is followed by an account of the ways in which EM expanded over time, identifying the different strategies of England and Wales and Poland. The final sections of the paper discuss the operating models for EM and EM regimes before drawing conclusions.

## EM in context

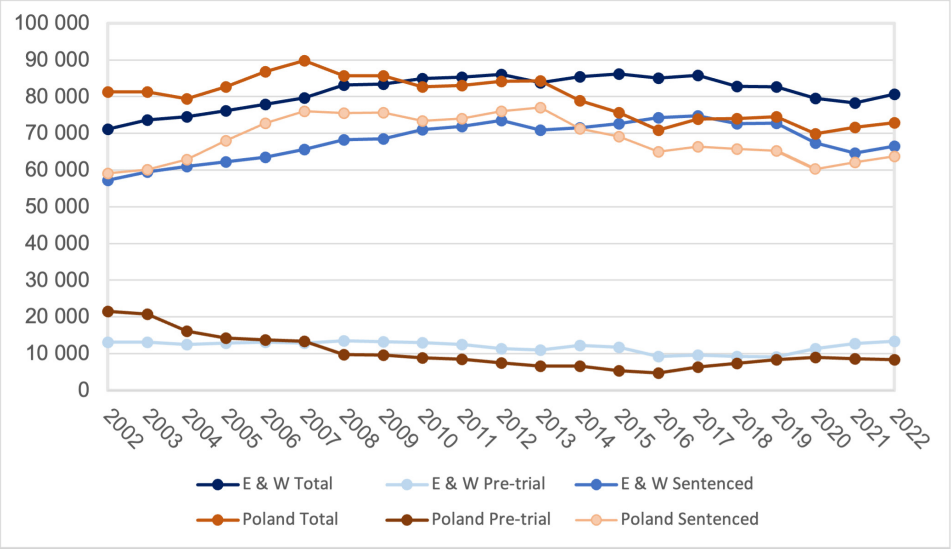
A widely shared reason for governments introducing and expanding EM is to tackle high prison populations and prison capacity issues, although there is limited evidence of EM's effectiveness in meeting this ambition. This section begins by comparing prison populations and prison capacity in England and Wales and Poland to demonstrate that they share a particularly acute challenge in this regard, which has fuelled their appetite for EM and influenced the way in which it has been implemented. The second part of the section identifies several other factors which have impacted upon how EM operates in one jurisdiction or the other.

Historically, both England and Wales and Poland have had high imprisonment rates compared to the rest of Europe. In 2020, the imprisonment rate in England and Wales was 133 per 100,000, compared with 179 per 100,000 in Poland. Both

jurisdictions have reduced their imprisonment rates after 2012 (England and Wales from 153 and Poland from 221) but they rebounded during the pandemic (England and Wales 140 and Poland 208 in March 2023) (ICPR 2023). Figure 1 shows the prison populations for both jurisdictions from 2002 to 2022. It demonstrates that despite a falling imprisonment rate, the prison population in England and Wales has remained above 80,000 since 2007, except for the period 2020–2022, coinciding with the pandemic. By contrast, Poland's prison population tracks its falling imprisonment rate, dropping since 2007 and reaching less than 70,000 in 2020, before rising slightly during the pandemic. Figure 1 shows that sentenced populations comprise most of the prison population in both jurisdictions.

Poland has had considerable success in reducing its pre-trial detention rates, from 35 per 100,000 in 2005 to 11 in 2015, although the rate has since risen to 23 in 2023 (ICPR 2023). This is reflected in Figure 1, which shows that Poland halved its pre-trial detention population between 2002 and 2020. This reduction took place without EM and may explain why it has not been introduced at the pre-trial stage, despite it being considered (Jasiński 1993; Waltoś 2002; ICPR 2023). By contrast, the pre-trial imprisonment rate in England and Wales has remained relatively stable – in the low 20s during the period 2002–2020 – which is also reflected in a relatively stable pre-trial prison population, as shown in Figure 1. EM may provide part of the explanation for the stability of England and Wales' pre-trial prison population (Hucklesby 2023). The population has increased significantly since the pandemic, demonstrated by the rise in the pre-trial imprisonment rate to 27 per 100,000 in 2023.

**Figure 1.** Prison population in England and Wales and Poland




**Source:** Ministry of Justice England and Wales (2023a) and Służba Więzienna (2022).

Both jurisdictions have also faced prison capacity issues for many years. In March 2023, prisons in England and Wales were operating at 109 per cent of capacity, which was unevenly distributed across the prison estate (MoJE&W 2022b). Official projections suggest that the prison population will continue to increase to an estimated high of over 106,000 by 2027 (MoJE&W 2023b). Overcrowding and poor conditions have also been major problems in the Polish prison system, resulting in pressure from domestic and international sources to reduce its population. Until 2009, the occupancy rate exceeded 100 per cent, reaching 120 per cent in 2006 (Służba Więzienna 2022). In 2009, the European Court of Human Rights confirmed that the prison overcrowding and conditions amounted to torture (Orchowski v. Poland (17885/04) and Sikorski v. Poland (17599/05)). Although the official occupancy rate had reduced to 92.8 per cent at the time of writing (May 2023), the validity of this measure is contested by the European Committee for the Prevention of Torture and Inhumane and Degrading Treatment and Punishment (CPT 2017; 2022).

England and Wales and Poland have contrasting official discourses about EM's purpose. In Poland the focus has been on alleviating the negative impacts of imprisonment on prisoners and their families and keeping offenders in the community to continue their education, work and family life (Przesławski, Sopiński, Stachowska 2020). There has also been a focus on preventing violations of the human rights of prisoners (Daniel 2019). By contrast, the purpose and function of EM is much broader in England and Wales. Reducing prison populations has featured in debates, but discussions about EM's role in making community sanctions more punitive, credible and enforceable have been much more prevalent. For example, the Minister for Crime and Policing, Kit Malthouse, explained the role of EM in his forward to the Government's EM strategy: "Electronic Monitoring … [is] a valuable tool available to criminal justice partners – a tool which can drive *rigour, discipline, incentives and consequences* in community-based offender management" (MoJE&W 2022a: 3, emphasis added). EM's role is firmly linked to the broader agenda of cutting crime, reducing reoffending and protecting the public in England and Wales (MoJE&W 2022a). However, these claims appear to be rhetoric rather than practice.

The growth of EM in England and Wales also relates to a lack of confidence in the probation service's ability to supervise community sanctions robustly and effectively (Hucklesby and Holdsworth 2016). The roots of the probation service in social work and its continued social work ethos have been viewed as antithetical to the tough approach to community sanctions needed to increase their use and divert individuals from prison (Mair, Nellis 2016). A second unique factor in England and Wales is an ideological commitment by successive governments to private-sector involvement in state services (Hucklesby 2016; Mair, Nellis 2016). These two factors have resulted in a separate EM system which is not fully integrated into the criminal justice system (CJJI 2008; 2012; Mair Nellis 2016; HMIP 2020).

## EM uses in England and Wales and Poland

Both jurisdictions were early adopters of EM and first introduced it when there was significant pressure on prisons because of high populations. Whilst they share some of the reasons for introducing and continuing to expand EM, England and Wales and Poland have taken different approaches to implementing it, which fit their legal and penal cultures and the specific needs of their criminal justice systems. England and Wales has adopted a diversified approach, deploying EM at all stages of the criminal justice process. By contrast, Poland has largely stuck with a single use as an alternative means of serving prison sentences. This approach more closely resembles the uses of EM in Europe rather than England and Wales, despite its EM system being modelled on the British system (Beyens, Roosen 2016; Boone, Van der Kooij, Rap 2016). This section examines the development of EM in both jurisdictions identifying common features and differences in the ways EM has been implemented.

In England and Wales EM is available for use at the three stages of the criminal justice process. It has been used pre-trial since 2002 to monitor curfews imposed as a condition of bail. Legally, bail conditions may be imposed to mitigate identified bail risks, including absconding, offending and/or interfering with witnesses (Airs, Elliott, Conrad 2000; Hucklesby 2011). Curfew orders, a community sentence, were implemented nationwide in 1999 (Mair, Nee 1990; Mair, Mortimer 1996). They were originally monitored using Insert (RF) technology, which monitors the presence of wearers in a specific location. Curfew orders required wearers to stay indoors for between two and 12 hours a day for up to six months. In practice, most curfews were imposed overnight for 10–12 hours seven days a week and continue to be (Hucklesby, Holdsworth 2016). They were abolished by the Criminal Justice Act 2003 and became one of 12 (now 14) requirements of community or suspended sentence orders. Currently, EM curfews may be single requirement orders or combined with other requirements such as supervision, unpaid work and drug and alcohol treatment.

So-called backdoor EM measures have been limited in England and Wales compared with many other European countries (Hucklesby et al. 2016). Until recently, Home Detention Curfews (HDC) were the only post-prison use of EM. HDC was introduced in 1999. It allows eligible prisoners serving four years or less to be released up to 180 days earlier than their automatic release date. They are required to comply with a curfew, which must be for at least nine hours a day at an approved residence. In practice, curfew periods are usually 12 hours overnight. Since 2019, Global Positioning System (used to monitor exclusion and inclusion zones and which can provide trial data on the movements of wearers) and Radio Frequency technologies have been available. In common with Poland, HDC is viewed as a privilege and not a right, and prisoners are required to apply. Responsibility for the decision to release sits with Prison Governors, so in contrast to Poland, release on HDC is an executive and not a judicial decision.

EM is also used in immigration cases in England and Wales (Bhatia 2021; ICIBI 2022; Home Office 2023). Currently, GPS monitoring is used with individuals who are not British citizens and who are awaiting deportation after being released from prison, having served sentences of at least 12 months (UK Borders Act 2007).

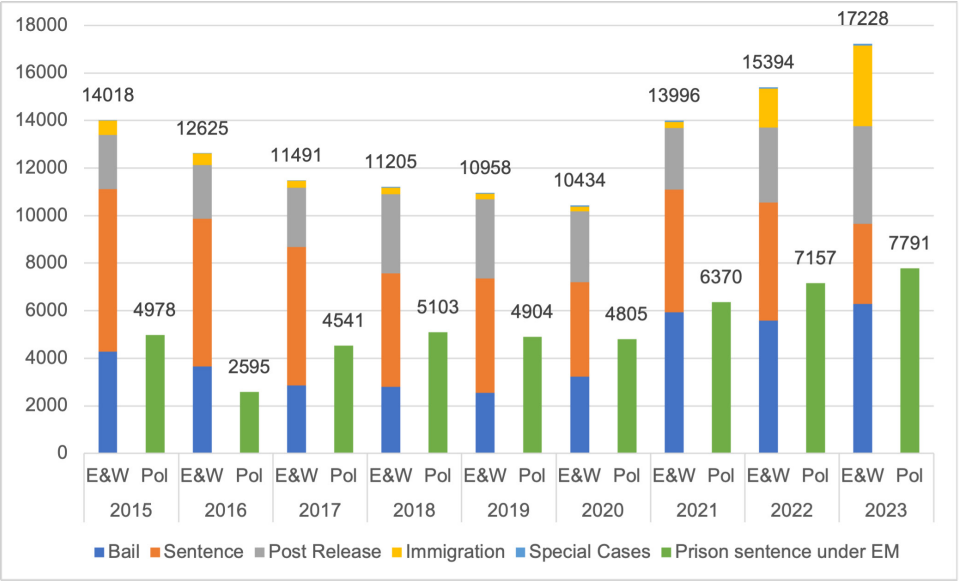
The current uses of EM in Poland are largely limited to a means of serving prison sentences, mirroring original uses in many European countries (Beyens, Roosen 2016; Boone, Van der Kooij, Rap 2016; Nellis et al. 2016). It is not available as a separate punishment, and thus differs from English and Welsh approach of providing alternatives to custody/community sentences. EM is available to everyone sentenced to imprisonment, including those who have been sent to prison because of breaches of other sentences. EM was introduced in 2007 and made available nationwide in January 2012 (Mamak 2014). Prisoners must apply for their sentences to be served on EM. The majority (95 per cent) of applications are submitted by offenders or their lawyers, although they can also be submitted by probation officers, prosecutors or prison directors (Służba Więzienna 2023). The number of applications has been rising since 2016, with 44,829 being submitted in 2020 (Służba Więzienna 2023). They can be submitted when individuals begin to serve their sentences or whilst they wait to enter prison before their sentences start. Consequently, EM in Poland operates as a deprivation of liberty and a direct alternative to prison, and as a front- and back-door measure. This allows some offenders to avoid going to prison and others to be released, mirroring how it is used in some other European jurisdictions, for example, Belgium (Beyens, Roosen 2016). Research in 2012 found that just over half (55 per cent) of those applying for EM did so from prison with just less than half applying whilst in the community (Institute of Justice 2012, cited in Stańko-Kawecka, Grzywa-Holton 2015).

Whilst most EM use in Poland relates to prison sentences, it is also available as a security measure and is used in a small number of cases for these purposes (48 in 2022) (Stasiak 2018). These measures include monitoring bans on attending large events, supervising restraining orders and monitoring individuals when proceedings against them have been discontinued because of findings of insanity or diminished capacity. Since 2015, EM has also been an element of precautionary measures with high-risk individuals convicted of specific offences to prevent further offences (Stasiak 2018; Tużnik 2022). A small number of individuals in England and Wales are also monitored for similar purposes (so-called special cases). In Poland, these individuals are subject to "mobile EM", which tracks their current location, and/or "contactless EM", where wearers are required to keep a minimum distance from a named person. The third type of EM available in Poland is "stationary EM", which requires offenders to stay in at a specified address i.e., curfews and is the most often used type of EM (Jaskóla, Szewczyk 2017).

## EM statistics

This section utilises official statistics in England and Wales and Poland to compare the use of EM. Figure 2 shows that on 31 March 2023, 17,350 individuals were on EM in England and Wales. This is compared to 7,791 individuals in Poland in 2023. Based on these figures, Poland has a lower EM rate (21 per 100,000 population) than England and Wales (29 per 100,000) (Służba Więzienna 2023). However, as Figure 2 demonstrates, 3,522 of those on EM in England and Wales on 31 March 2023 were immigration cases rather than criminal justice cases. Removing this cohort from the statistics makes the data more comparable and demonstrates that the rate of EM use in England and Wales is 23 per 100,000 population, which is similar to that of Poland. However, trends in EM use differ. In England and Wales, EM use declined year on year from 2015 until 2020, when it began to increase. By contrast, EM use in Poland has been rising steadily over the same period, except for a brief period in 2016 because of the failed introduction of an EM sentence (see below). Since 2020, the use of EM in Poland has accelerated due to legal changes and expanded capacity.

**Figure 2.** Electronic monitoring use in England and Wales and Poland 2015–2023




**Source:** Ministry of Justice England and Wales (2022c; 2023e) and Służba Więzienna (2023).

Figure 2 also shows the breakdown in EM use by cohort in England and Wales. Pre-trial use has increased significantly. In March 2023, it accounted for over a third (36 per cent) of EM orders, and is now the largest single cohort (Mo-

JE&W 2023e). By contrast, there has been a sharp decline in individuals subject to EM as a requirement of community or suspended sentence orders, reaching a low of just under 3,500 in 2023. This decline is likely to be explained by disruption in the probation service due to organisational changes (Dominey, Gelsthorpe 2018; Cracknell 2023) and the introduction of mandatory domestic and safeguarding checks before EM can be imposed (see below) (HMIP 2020). Sentences accounted for a fifth of the EM caseload in March 2023 (MoJE&W 2023a).

Post-custody uses of EM in England and Wales accounted for a quarter of the caseload in March 2023 (MoJE&W 2023e). Figure 2 shows that the number of individuals on EM post-release has been relatively stable since 2015 but has risen since 2021, largely due to the introduction of remote alcohol monitoring for this group (see below).

## The continuing expansion of EM in England and Wales and Poland

The previous two sections established the ways in which EM is used in England and Wales and Poland, as well as the extent to which it has been used over time. Both jurisdictions have seen a sharp increase in EM since 2020. Some of the increase is explained by EM being utilised during the pandemic years to limit and control the use of imprisonment and to manage incarcerated populations. The increase in the use of EM in both jurisdictions (see Figure 2) demonstrates their contrasting approaches to EM. In England and Wales, the expansion has been concentrated in pre-trial, post-release and immigration, whereas in Poland the increase is wholly accounted for by the one available option. However, both jurisdictions have signalled their commitment to EM by increasing its use. The Government in England and Wales has made a commitment to expand EM to 26,000 individuals by 2024–2025 (MoJE&W 2021a). In Poland, the operational capacity of EM has been increased over time. Between 2012 and 2021 the capacity of the system remained at 6,000, after which it increased to 8,000 in 2022 and again to 10,000 in 2023 (Służba Więzienna 2023). In this section we turn our attention to the strategies that each jurisdiction has adopted to date to increase the use of EM. England and Wales has taken a diversified approach, whereas Poland has taken a unitary approach.

By the end of the 20th century in England and Wales, the three main modalities of EM still in place today were established. However, EM policy has continued to develop to increase its use to tackle the twin challenges of creating robust community sanctions and measures, and persuading decision-makers to use prison less. Safeguarding and prevention have also become important rationales for the growth of EM use. EM is increasingly viewed as a mechanism to monitor unsafe and unwanted behaviours and to safeguard "vulnerable" individuals, including victims, witnesses, defendants and offenders. The drive for many of these initia-

tives has come from the police, Police and Crime Commissioners and the Mayor's Office for Policing and Crime (MOPAC) in London, who have set up and funded a myriad of schemes to meet specific policing needs. Several Government ministers have also been ardent advocates for the expansion of EM. Private sector suppliers of EM equipment and systems have also lobbied for greater use (Nellis 2018).

This section begins by providing examples of the ways in which EM use has been expanded in England and Wales. The aim is not to provide a comprehensive overview of every change made to EM. It is also important to acknowledge that EM policy is not linear or always pushing in one direction: there are many contradictory trends as well as differences between official discourse and policies and practices. Furthermore, using the term "strategy" does not signal a coordinated, well-planned approach. Rather, many initiatives arise from the specific circumstances in place at the time or from individuals championing a particular use.

The first identifiable strategy used in England and Wales is increasing the range of technologies available and therefore the types of behaviour which can be monitored. Initially RF equipment was the only available technology. Courts were given the power to use GPS to monitor bail conditions and community sentence requirements in November 2018 and it was made available for HDC in 2019. This is noticeably later than many other jurisdictions. It is primarily used to monitor exclusion zones, but trial monitoring (plotting the movements of wearers) is also available. Although GPS accounted for two fifths of those subject to EM in March 2023, its use in criminal justice cases is relatively low and a small proportion of EM use. A total of 7,398 individuals were wearing GPS devices on 31 March 2023, but just over half (n=3872) were criminal justice-related cases (MoJE&W 2023e).

By contrast, England and Wales has been an early adopter of alcohol monitoring technologies (Bainbridge, 2023). This allows remote monitoring of alcohol consumption and is available for people convicted of offences which are alcohol related but who are not dependent on alcohol. The alcohol abstinence monitoring requirement (AAMR) of community and suspended sentence orders has been available since March 2021. AAMRs last up to 120 days and require wearers to abstain from alcohol. Alcohol monitoring was extended to prison leavers, including HDC, in June 2022 (MoJE&W 2023e). Alcohol monitoring on licence (AML) requires either total abstinence or limited alcohol consumption, both of which are monitored remotely via the wearable device. On 31 March 2023, 2,248 individuals were wearing alcohol monitoring devices (MoJE&W 2023e).

The second strategy to promote the use of EM in England and Wales has been to increase the intensity of orders with the objective of broadening the pool of potential wearers by making EM tougher (Hucklesby, Beyens, Boone 2021). This has included increasing the number of hours that curfews can be imposed from 12 hours to 16 hours and the length of curfews from six to 12 months when used as requirements for community and suspended sentence orders. Most recently, the Police, Crime, Sentencing and Courts Act 2022 allows for curfews of up to 20 hours a day, but only for a maximum of 112 hours a week.

Unlike in Poland, the use of EM for people leaving custody was limited to HDC until relatively recently. The numbers of those released have been relatively small and have dropped over time (MoJE&W 2023e). In 2022, 8,695 prisoners were released on HDC and 1,809 individuals were on HDC on 28 April 2023 (MoJE&W 2023e). The low numbers are partly explained by more and more prisoners being automatically disqualified because of their offences or past behaviour (Hucklesby, Holdsworth 2016). However, only about a fifth of eligible prisoners are released (MoJE&W 2023a). The low success rate is explained by a complex set of factors, including prisoners not applying, a risk-adverse culture in the prison service, delays in the decision-making process and a lack of housing (Hucklesby, Holdsworth 2016). Policies have been implemented to increase the number of releases, including streamlining the application process (MoJ 2018) and bringing forward the earliest date that prisoners become eligible before their automatic release date, from 60 days to 90 days in 2002, to 135 days in 2003 and to 180 days in 2023 (HM Government 2023).

The third strategy has been to expand EM to new cohorts and new offences/behaviours. This has included those convicted of alcohol-related offending via the AAMR (see above). A second group are all those leaving custody on licence having served a determinant sentence of 90 days or more (originally 12 months) for acquisitive offences (robbery, burglary and theft) (NAO 2022). This group is monitored using GPS devices via a compulsory licence condition in place for the remainder of their licence period or for 12 months (HM Government 2021; MoJE&W 2021b). The stated reason for introducing the power was to reduce reoffending and recalls to prison. Recalled prisoners comprised a significant proportion of the prison population (14 per cent; n=11,450 on 31 March 2023), adding to the pressure on the prison system (MoJE&W 2023a). This project alone resulted in 1,868 new EM orders in the year ending 31 March 2023 (MoJE&W 2023e).

Other expansion projects have not required legislation and include those suspected or convicted of knife-related offences, identified gang members and those involved in county lines (drug supply chains which exploit children and young people). The rationales for extending EM to these cohorts are complex and go beyond the initial reasons for introducing EM. They include the desire to increase control over individuals in the community, tackle specific types of offending; reduce reoffending and safeguard victims and "vulnerable" individuals involved in offending. This demonstrates well the underlying assumptions of many, that EM can be used in a multiplicity of ways for many purposes which go beyond the original rationales of managing prison populations (Hucklesby, Holdsworth 2016; Hucklesby et al. 2016).

In Poland, the main expansion strategy has been to increase the pool of eligible prisoners whilst still sticking to one modality of EM. This contrasts with other Western European nations, which have diversified EM into other areas, including pre-trial and sentencing measures (Beyens, Roosen 1996; Boone, Van der Kooij, Rap 2016; Lopez Riba 2023). Originally, only individuals serving sentences of six

months or less were eligible for EM in Poland. This criterion was changed to 12 months in 2010 and further extended to 18 months in March 2020. The most recent change was made in response to the COVID-19 pandemic, with the expectation that it would impact 20,000 sentenced individuals, of whom 16,000 would not have begun their sentences. The long-term benefits were also highlighted, including the larger number of individuals who would be eligible for EM (Polish Government 2020). The extension of the eligibility criteria has also led to individuals spending longer on EM, increasing from a maximum of six to 18 months.

To be eligible for EM, individuals must also meet conditions: they cannot have served a prison sentence of one year or more imposed according to special provisions relating to reoffending (Art. 64 para. 2 Polish Penal Code); they must have a permanent place of residence; adult cohabitees must consent to EM; and monitoring must be technically possible. Most importantly, serving a sentence on EM must achieve the purpose of the sentence, which in the Polish penal code refers to "evoking in the sentenced individual a willingness to cooperate in shaping socially desirable attitudes, particularly a sense of responsibility and the need to abide by the legal order, thereby refraining from returning to criminal behaviour" (Polish Government 1997a; 1997b; Daniel 2019).

In January 2023, EM for early release was introduced in Poland, demonstrating Poland's commitment to using EM only as a tool to manage its prison population via back-door measures. Prisoners sentenced to up to three years can apply to serve the final six months of their sentence under EM if they meet all the conditions mentioned above. The stated purpose of this measure is to prepare prisoners for release. It was also justified as a mechanism to expand the number of eligible groups and reduce the prison population (Polish Government 2022).

A second strategy has been to change the decision-makers in certain cases, enabling executive rather than judicial decisions and moving closer to the decision-making model for HDC in England and Wales. Two factors have led to this change: delays in the decision-making process and high refusal rates (72 per cent of applications were refused in 2020) (Służba Więzienna 2023). Before January 2023, decisions to use EM could only be made by the Penitentiary Court (a division of the District Court, which adjudicates on matters relating to prisoners, including the execution of sentences, the calculation and enforcement of penalties and EM). In January 2023, the Penitentiary Commission was given the power to grant EM to prisoners serving a maximum sentence of four months. Unlike the Penitentiary Court, which is a judicial body, the Commission is an executive body comprising specialist staff, including prison officers, education staff and trusted representatives of associations, foundations, organisations and religions. The aim of the initiative is to speed up the process, thereby increasing the number of individuals released (Polish Government 2022). Whether its aim will be realised in practice remains to be seen, given that the similar HDC process in England and Wales results in many fewer releases than prisoners who are eligible, because the decision-makers – officially prison governors, but in practice a specialist group of staff – tend

to be risk-adverse and to err on the side of caution. Delays are also a continuing problem, with many prisoners being released well after they become eligible for HDC (Hucklesby, Holdsworth 2016).

A third strategy to increase the take-up of EM in Poland has been to remove some of the restrictions originally put in place when EM was introduced, such as requiring offenders to pay towards the cost of EM and to consent to EM, which were both removed in 2010 (Stańdo-Kawecka, Grzywa-Holton 2015). Other changes have included enabling early release from prison sentences served under EM from 2012, mirroring the provisions for incarcerated individuals. This removed one of the disincentives to applying for EM, that time served on EM would be longer than time served in prison (Stańdo-Kawecka, Grzywa-Holton 2015).

Poland has also experimented with other modalities of EM, but without permanently adopting them. In 2015, Poland briefly used EM as a form of community service, but the initiative stopped after less than a year because it resulted in a loss of confidence in EM and a fall in its use (see Figure 2) (Przesławski, Sopiński, Stachowska 2020). Poland has also piloted remote alcohol monitoring for prisoners housed in a semi-open prison during temporary release for employment, but there are no plans to expand this at the time of writing (Nowak, Grzesiak, Zawaszka 2023).

Whilst the main purpose of legal and policy changes to EM over time in both countries has been to increase its use, there have also been developments which have, or are likely to have, the opposite effect and limit the use of EM. In England and Wales, safeguarding considerations have become important because of a recent thematic report by HM Inspectorate of Probation (2020). The review identified that EM could exacerbate domestic abuse because potential risks were not being identified due to a lack of background checks on offenders and/or cohabitees. As a result, before offenders can be given an EM requirement as part of community sentences, safeguarding checks must be carried out. As discussed above, the effect has been dramatic, significantly reducing the use of EM with community sentences since 2022 (see Figure 2), reportedly because of the time and resources involved in the process of gathering information.

In Poland, there has been a shift to immediate enforcement of prison sentences because of concerns about people losing confidence in the government's ability to punish offenders due to the lack of prison space (Stańdo-Kawecka, Grzywa-Holten 2015). This measure reduces the opportunities for sentenced individuals to apply for EM before being imprisoned. Historically, convicted individuals waited in the community to be called to prison to serve their sentences if they were not detained pre-trial. During this period, they were able to apply for EM and, consequently, some never went to prison. The changes are likely to lead to more individuals spending time in prison before being released on EM, thereby increasing the prison population and negatively impacting upon their lives.

## Operating models

One of the defining features of the British and European EM models is the operating model. This section examines the operating models adopted by both England and Wales and Poland. It highlights how after initially following the private sector model of England and Wales, Poland moved to a state operated model resembling those more commonly found in Europe (Hucklesby et al. 2016). However, it differs from many models in Western Europe because it is managed by the prison service rather than the probation service.

As discussed above, in England and Wales EM is run wholly by the private sector with oversight from the Ministry of Justice (Hucklesby 2018). It is notable that Poland initially followed the UK in establishing a wholly private sector-run EM system. At the time, there was an active process of coordination and consultation taking place across Europe, in which many jurisdictions with established EM systems supported other jurisdictions in setting up their EM systems, particularly Western European countries working with Eastern European ones (Gudders 2019). This policy transfer dialogue was augmented by the activities of the private sector companies providing EM equipment and services, who were quick to identify and offer help to any countries considering, or in the process of, setting up an EM system (Gudders 2019; Nellis 2024). The size of Poland and the anticipated EM caseload made it a particularly lucrative potential market. Although none of these activities are documented, the Head of EM in Poland confirmed that the Polish EM system was modelled on England and Wales.

Since EM was first introduced in Poland, significant changes have been made to the operating model, diverging from the British approach. During the first five years (2009–2014) EM was run as a public/private partnership. Initially, EM was operated wholly by the private sector, mirroring the British model. The private sector provided the equipment and the EM service, including running the monitoring centre, undertaking home visits and fitting and removing equipment. The start of the move towards a state operated EM system began very quickly. After seven months the prison service took over running the monitoring centre. Over the next three years, take-up was lower than expected, again mirroring the experience in England and Wales, where the introduction of all new EM initiatives resulted in lower numbers than anticipated (Mair 2005; Stańdo-Kawecka, Grzywa-Holton 2015). In Poland, this led to difficult negotiations with the private providers because the contract was not delivering the expected numbers, nor the anticipated income. At the same time, problems occurred with the IT system, and Poland decided to build its own system to support EM.

During the second EM contract period (2014–2018), Poland moved further away from the British model. A different private company, G4S, provided the equipment, partnering with a local private provider for field services. The prison service managed the IT system and the monitoring centre. Concerns about the

security of data stored in the UK emerged during this time. In 2018, the prison service took complete control of EM, purchasing equipment from a Polish company. Since then, EM has been operated within Polish borders. As far as we are aware this makes Poland unique in Europe given that every other jurisdiction relies on multinational corporations for EM equipment.

EM is managed by the Electronic Supervision Bureau (ESB), which is part of the Central Administration of the Polish prison service. The ESB is responsible for running the monitoring centre, installing electronic monitoring devices, supervising wearers and collecting, processing and protecting wearers' personal data (Przesławski, Sopiński, Stachowska 2020). It works with all of the agencies involved in the execution of sentences and security measures, so although it is a separate entity it is embedded within the criminal justice system, in contrast to the position in England and Wales.

In many respects the Polish operating model now resembles the Western European model, whereby EM is run by the state and integrated within the criminal justice system. It differs, however, from most Western European jurisdictions because it is managed by the prison service rather than the probation service, although probation officers are tasked with supervising individuals on EM (Hucklesby et al. 2016). A second feature differentiating it from both the British and Western European models is that it does not rely on international companies for equipment and data services, instead developing its own data system and sourcing its equipment from within its own borders, albeit from a private company.

## EM regimes

Having established that the operating model in Poland differs from both the British and Western European models in important respects, this section turns to comparing EM regimes. Previous research highlighted the fact that the intensity of EM regimes differs for different modalities within and between jurisdictions (Hucklesby et al. 2016; Hucklesby, Beyens, Boone 2021). This section demonstrates that Poland more closely resembles the Western European model of EM rather than the approach of England and Wales. However, there is clear convergence in other respects between these two systems.

In England and Wales, decision-makers set the hours of confinement, that is, the number of hours that monitored individuals are required to stay in their place of residence (Hucklesby, Holdsworth 2016). Since the introduction of GPS, it is also possible that monitored individuals have no curfew requirement. This contrasts with the approach in Poland, where the Penitentiary Court always requires monitored individuals to abide by curfews and sets hours of "freedom" rather than confinement, i.e. when monitored individuals can leave their residence. In this

respect, Poland conforms to the Western European model (Boone, Van der Kooij, Rap 2016; Hucklesby et al. 2016). In England and Wales, curfews are normally overnight, resulting in monitored individuals being able to complete many of their everyday activities such as going to work or school, shopping, attending medical appointments and carrying out caring responsibilities during the day (Hucklesby, Holdsworth 2016). Only if curfew hours impinge on these activities, for example, if they work shifts, will the court need to receive and take account of information relating to individuals' responsibilities and activities. Curfew hours are normally the same for every day of the week, although recently enacted legislation aims to make curfews more flexible (see above). By contrast, the Penitentiary Court in Poland mandates an EM schedule that sets hours of freedom allowing individuals to undertake basic tasks and responsibilities, including work, education, religious observance, maintaining relationships with family, caring for children or other dependents, attending medical appointments, participating in cultural, educational and sports activities, meeting with their lawyers, etc. (Daniel 2019). This resembles the Western European model (Beyens, Roosen 2016). However, as wearers may have up to 12 hours of freedom a day, it aligns more closely with the British model rather than the Western European model, which tends to have shorter periods of freedom unless wearers are low-risk or have been on EM for some time (Hucklesby et al. 2016; Hucklesby, Beyens, Boone 2021).

Both jurisdictions have systems in place for individuals to vary the requirements of their orders. In England and Wales, individuals can make requests to the court to amend their EM requirements if their circumstances change (for pre-trial and sentences), prison service (HDC) or probation (early release licences). Problems and delays in the decision-making process have been reported, which can result in difficulties for individuals (Hucklesby, Holdsworth 2016). To make the system more responsive, amendments have been made to the process for community sentences that allow the probation service to take some decisions without needing court approval (Home Office 2022a). In Poland, court-appointed probation officers oversee the implementation of EM. They can make recommendations to change the obligations and revoke EM, but schedules can only be modified by the Penitentiary Court and the reasons must be fully justified. Similarly, Poland has a stricter mechanism for emergency situations. Individuals must contact their probation officer, either directly or by phone, before leaving their curfew address; this resembles the procedures in other European countries (Beyens, Roosen 2016; Ministry of Justice Poland 2022b). By contrast, in England and Wales, individuals may leave their address during curfews for medical and other emergencies, and evidence from relevant third parties is collected later (Hucklesby, Holdsworth 2016). In all other respects the two jurisdictions' regimes are remarkably similar. For example, both have a central monitoring centre open 24/7 which wearers can contact, and they have similar breach policies and procedures.

## Concluding comments

There are some aspects of the Polish EM system which resemble the British model, such as the relatively high use of EM. Other features of the British model which also appear in the Polish system include the 24/7 support provided via a centralised monitoring centre and the strict, regulated breach procedures. However, unlike England and Wales and many other Western European jurisdictions, Poland has not expanded the modalities of EM, sticking instead to only using it as a way of serving a prison sentence, except for a small number of public protection cases. The absence of its use at the pre-trial stage is notable and also sets it apart from England and Wales and many jurisdictions in Western Europe.

The Polish system also diverges from England and Wales in other respects. The operating model deployed in Poland has shifted over time from a private-sector provider to a state-operated model more akin to the European approach. Crucially, however, it also differs from most Western European jurisdictions because EM is managed by the prison service and not the probation service, and it does not rely on multinational companies for equipment or IT systems. By contrast, other elements of the regimes resemble the Western European approach rather than the British model. This includes individuals on EM being classified as prisoners and the rigid, and high intensity regime which allows for up to 12 hours of freedom a day, but only for specified activities and according to a pre-determined plan. In Poland EM is a deprivation of liberty rather than a restriction of liberty, as it is England and Wales.

Consequently, despite EM originally being modelled on the British system, Poland has a hybrid approach to EM which draws on both the British and Western European models, but which also has distinctive features. This may reflect the initial influence of policy transfer activities of England and Wales, which have since been tempered by several factors, including the European legal and criminal justice cultures and traditions, Poland's membership of European institutions such as the Council of Europe and the European Union and later by security concerns and a growing confidence to mould a unique Polish EM system. Poland, therefore, has an approach to EM implementation that differs significantly from most other jurisdictions in Western Europe. This finding raises the question of whether an Eastern European EM model exists or whether Poland has a unique approach. Together with Eszter Parkànyi and Anthea Hucklesby's (2021) earlier findings in relation to Hungary which found that EM there was managed by the police – this paper suggests that Eastern European jurisdictions have a distinctive approach to EM which uses state agencies other than the probation service to manage the system, which has implications for its day-to-day operation. Further comparative research is required to fully understand whether these two examples are replicated in other Eastern European jurisdictions and whether their approaches align sufficiently to suggest the existence of an Eastern European model of EM.

The identification of a distinctive Polish approach to EM, and possibly an Eastern European one, raises questions about whether one approach is more effective in

meeting its goals. In both England and Wales and Poland, one of the main reasons for implementing and expanding EM has been to reduce prison populations. In Poland this is the explicit and primary focus whereas its purpose is broader in England and Wales, extending to strengthening or toughening up community sanctions and measures for defendants and offenders who are unlikely to receive immediate custodial sentences. Consequently, whilst the target groups overlap in some respects, they also differ, with EM being targeted more broadly and likely used with less serious offenders in England and Wales compared with Poland. These differences compound the challenges of drawing conclusions about the impact of EM on prison populations from comparative data (Aebi, Delgrande, Marguet 2015).

On a macro level, the introduction and expansion of EM may have played a role in the stabilisation of the pre-trial prison population which was at historically low levels since the beginning of the 21st century prior to the pandemic in England and Wales (Hucklesby 2024). Yet, this trend has since reversed with both pre-trial EM and pre-trial detention increasing, although this is partly explained by cases taking longer to conclude because of court backlogs. The introduction of EM has not stemmed the expansion of the overall prison population in England and Wales to historically high levels, but it is also impossible to know whether it would be even higher if EM did not exist. In Poland, the prison population fell prior to the pandemic, during the time when EM was introduced and expanded, but a causal link between the two is difficult to prove. However, in both jurisdictions the numbers on EM and prison populations sum to greater numbers than any reductions in prison populations, suggesting that EM has been a vehicle to cast the net of the criminal justice system wider and deeper (Cohen 1985). In England and Wales, where EM is often viewed as a "technological fixer" which can, *inter alia*, increase the robustness of community alternatives, monitor compliance, enhance deterrence and safeguard victims, amongst other ascribed attributes, its inability to make significant inroads into lowering prison populations may not matter to those who advocate for its expansion.

The availability of EM is likely to make the difference between a decision to imprison and one which allows some individuals to stay in, or return to, the community earlier than otherwise would be the case. Arguably, the Polish approach provides more safeguards against "net-widening" than the more expansive and less restrictive approach of England and Wales, but it still has risks for example, the imposition of longer prison sentences making prisoners ineligible for EM. The requirement to apply for EM and the high refusal rates in the Polish system also result in individuals unnecessarily serving additional time in prison, with all the damaging consequences which follow. The recent changes to the Polish system which require everyone to begin their sentences immediately will likely lead to more individuals spending some time in prison, even if they are later released on EM. This leaves the ethical choice of whether to support EM and other measures which allow some individuals in conflict with the law to spend time in the community under tighter control than is necessary, rather than languishing in prison with all the harmful consequences which follow.

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## References

Aebi M.F., Delgrande N., and Marguet Y. (2015). 'Have community sanctions and measures widened the net of the European criminal justice systems?.' *Punishment & Society* 17(5), pp. 575–597.

Airs J., Elliott R., and Conrad E. (2000). *Electronically Monitored Curfew as a Condition of Bail – Report of the Pilot*. London: Home Office.

Bainbridge L. (2023). *'Emergence and evolution of enforced alcohol abstinence in England and Wales.'* In B.W. Nowak, S. Grzesiak, and M. Zawaszka (eds.) *Transdermal Measurement and Monitoring of Alcohol Concentration: Experiences and Evaluation Studies from Countries Using the TMSA Technology*. Warsaw: Instytut Społecznych Podstaw Penitentcjarystyki, pp. 29–39. Available online: https://aws.edu.pl/transdermal-measurement-and-monitoring-of-alcohol-concentration-experiences-and-evaluation-studies-from-countries-using-the-tmsa-technology-scientific-editing-beata-maria-nowak-slawomir-grzesi/ [30.12.2023].

Belur J., Thornton A., Tompson L., Manning M., Sidebottom A., and Bowers K. (2020). 'A systematic review of the effectiveness of the electronic monitoring of offenders.' *Journal of Criminal Justice* 68. https://doi.org/10.1016/j.jcrimjus.2020.101686

Beyens K. and Kaminski D. (2013). *'Is the sky the limit? Eagerness for electronic monitoring in Belgium.'* In M. Nellis, K. Beyens, and D. Kaminski (eds.) *Electronically Monitored Punishment*. London: Routledge, pp. 150–171.

Beyens K. and McNeill F. (2013). *'Conclusion: Studying mass supervision comparatively.'* In F. McNeill and K. Beyens (eds.) *Offender Supervision in Europe*. London: Palgrave Macmillan, pp. 155–170.

Beyens K. and Roosen M. (2016). *Electronic Monitoring in Belgium*. Available online: https://emeu.leeds.ac.uk/wp-content/uploads/sites/87/2016/06/EMEU-Electronic-monitoring-in-Belgium.pdf [30.12.2023].

Beyens K. and Roosen M. (2017). 'Electronic monitoring and reintegration in Belgium.' *European Journal of Probation* 9(1), pp. 11–27. https://doi.org/10.1177/2066220317704132

Bhatia M. (2021). 'Racial surveillance and the mental health impacts of electronic monitoring on migrants.' *Race and Class* 62(3), pp. 18–36. https://doi.org/10.1177/0306396820963485

Boone M., Van der Kooij M., and Rap S. (2016). *Electronic Monitoring in the Netherlands*. Availeble online: https://emeu.leeds.ac.uk/wp-content/uploads/sites/87/2016/06/EMEU-Electronic-monitoring-in-the-Netherlands.pdf [30.12.2023].

Boone M., Van der Kooij M., and Rap S. (2017). 'The highly reintegrative approach of EM in the Netherlands.' *European Journal of Probation* 9(1), pp. 47–61. https://doi.org/10.1177/2066220317697660

Cohen S. (1985). *Visions of Social Control*. New York: Basil Blackwell.

Council of Europe Committee for the Prevention of Torture [CPT] (2022). *Combating prison overcrowding Extract from the 31st General Report of the CPT published on 21 April 2022*, Rm.coe.int. Available online: https://rm.coe.int/cpt-standard-combating-prison-overcrowding/1680a64461 [18.07.2023].

Council of Europe Committee for the Prevention of Torture and Degrading Treatment and Punishment [CPT] (2017). *Report to the Polish Government on the visit to Poland carried out by the European Council of Europe Committee for the Prevention of Torture (CPT) from 11 to 22 May 2017*, Rm.coe.int. Available online: https://rm.coe.int/16808c7a91 [18.07.2023].

Cracknell M. (2023). 'The diminishing voice of the probation service.' *Probation Quarterly* 27, pp. 35–40.

Criminal Justice Joint Inspectorate [CJJI] (2008). *A Complicated Business: An Inspection of Electronic Monitoring*, HMI Probation, HMI Constabulary and HMI Courts Administration, Joint Inspection by HMI Probation, HMI Court Administration and HMI Constabulary, Manchester: HMIP.

Criminal Justice Joint Inspectorate [CJJI] (2012). *It's Complicated: The Management of Electronically Monitored Curfews. A Follow-Up Inspection of Electronically Monitored Curfews*. Manchester: HMIP.

Daniel K. (2019). 'System dozoru elektronicznego w Polsce – praktyka stosowania' [Electronic monitoring system in Poland – application practice]. *Security, Economy and Law* 1, pp. 16–34. https://doi.org/10.24356/SEL/22/2

Dominey J. and Gelsthorpe L. (2018). *'Competing to control in the community: What chance for the culture of care?.'* In A. Hucklesby and S. Lister (eds.) *The Private Sector and Criminal Justice*. London: Palgrave Macmillian, pp. 195–222. https://doi.org/10.1057/978-1-137-37064-8_7

Dràpal J. (2023). 'Punitive by negligence? The myths and reality of penal nationalism in the Czech Republic.' *European Journal of Criminology* 20(4), pp. 1549–1567. https://doi.org/10.1177/14773708211063753

Dünkel F., Thiele C., and Treig J. (2016). *Electronic Monitoring in Germany*. Greifswald: University of Greifswald. Available online: https://emeu.leeds.ac.uk/wp-content/uploads/sites/87/2016/06/EMEU-Electronic-monitoring-in-Germany.pdf [30.12.2023].

Dünkel F., Thiele C., and Treig J. (2017). 'You'll never stand-alone: Electronic monitoring in Germany.' *European Journal of Probation* 9(1), pp. 28–45. https://doi.org/10.1177/2066220317697657

Gudders D. (2019). *Penal Policy Transfer*. KU Levuen. PhD thesis. Available online: https://lirias.kuleuven.be/retrieve/540940 [30.12.2023].

HM Government (2021). *The Compulsory Electronic Monitoring Licence Condition 2021*, Legislation.gov.uk. Available online: https://www.legislation.gov.uk/uksi/2021/330/made#:~:text=An%20%E2%80%9Celectronic%20monitoring%20condition%E2%80%9D%20is,will%20remain%20in%20the%20licence [16.05.2023].

HM Government (2023). *The Criminal Justice Act 2003 (Home Detention Curfew) Order 2023 No. 390*, Legislation.gov.uk. Available online: https://www.legislation.gov.uk/uksi/2023/390/pdfs/uksiem_20230390_en.pdf [16.05.2023].

HM Inspectorate of Probation (HMIP) (2020). *The use of electronic monitoring as a tool for the Probation Service in reducing reoffending and managing risk*, Justiceinspectorates.gov.uk. Available online: https://www.justiceinspectorates.gov.uk/hmiprobation/inspections/electronic-monitoring/ [16.05.2023].

Home Office (2022a). *Electronic Monitoring in the Police, Crime, Sentencing and Courts Bill: Equalities Impact Assessment*, Gov.uk. Available online: https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-equality-statements/electronic-monitoring-in-the-police-crime-sentencing-courts-bill-equalities-impact-assessment [16.05.2023].

Home Office (2022b). *Immigration Bail Conditions: Electronic Monitoring (EM) Expansion Pilot*, Assets.publishing.service.gov.uk. Available online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1165035/Immigration_bail_conditions_-_Electronic_Monitoring__EM__Expansion_pilot.pdf [16.05.2023].

Home Office (2023). *Immigration Bail*, Assets.publishing.service.gov.uk. Available online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1132640/Immigration_bail.pdf [15.07.2023].

House of Commons (2022). *Transforming Electronic Monitoring Services: Twenty-First Report of Session 2022–23*, Committees.parliament.uk. Available online: https://committees.parliament.uk/publications/30446/documents/175605/default/ [16.05.2023].

House of Commons Library (2023). *What is the Government Doing to Reduce Pressure on Prison Capacity?*, Commonslibrary.parliament.uk. Available online: https://commonslibrary.parliament.uk/what-is-the-government-doing-to-reduce-pressure-on-prison-capacity/ [16.05.2023].

Hucklesby A. (2011). *Bail Support Schemes for Adults*. Bristol: Policy Press.

Hucklesby A. (2016). 'Electronic monitoring in Europe'. Paper presented at European Society of Criminology conference, 21-24 September, Munster, Germany.

Hucklesby A. (2018). *'A complicated business: The operational realities of privatised electronic monitoring of offenders.'* In A. Hucklesby and S. Lister (eds.) *The Private Sector and Criminal Justice*. London: Palgrave Macmillan, pp. 223–258. https://doi.org/10.1057/978-1-137-37064-8_8

Hucklesby A. (2024). *'A systematic approach to reducing custodial remands: The experience of England and Wales.'* In C. Morgenstern, W. Hammerschick, and M. Rogan (eds.) *European Perspectives on Pre-Trial Detention*. London: Routledge, pp. 58–80.

Hucklesby A. and Holdsworth E. (2016). *Electronic Monitoring in England and Wales*. Available online: https://emeu.leeds.ac.uk/wp-content/uploads/sites/87/2016/06/EMEU-Electronic-monitoring-in-England-and-Wales.pdf [30.12.2023].

Hucklesby A., Beyens K., and Boone M. (2021). 'Comparing electronic monitoring regimes: Length, breadth, depth, weight equals tightness.' *Punishment and Society* 23(1), pp. 88–106. https://doi.org/10.1177/1462474520915753

Hucklesby A., Beyens K., Boone M., Dünkel F., McIvor G., and Graham H. (2016). *Creativity and Effectiveness in the Use of Electronic Monitoring: A Case Study of Five European Jurisdictions*. Available online: https://emeu.leeds.ac.uk/wp-content/uploads/sites/87/2016/06/EMEU-Creativity-and-effectiveness-in-EM-Long-version.pdf [30.12.2023].

Independent Chief Inspector of Borders and Immigration [ICIBI] (2022). *An Inspection of the Global Positioning System (GPS) Electronic Monitoring of Foreign National Offenders*, Assets.publishing.service.gov.uk. Available online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1088880/An_inspection_of_the_global_positioning_system__GPS__electronic_monitoring_of_foreign_national_offenders_March___April_2022.pdf [14.05.2023].

Institute for Crime and Justice Policy Research [ICPR] (2023). *World Prison Brief*, Prisonstudies.org. Available online: https://www.prisonstudies.org/ [18.07.2023].

Jasiński J. (1993). *'Areszt domowy (Propozycja do rozważenia)*,' [House arrest (Proposal for consideration)]. In Z. Doda, A. Światłowski, J. Rybak, and S. Waltoś (eds.) *Problemy kodyfikacji prawa karnego. Księga ku czci Profesora Mariana Cieślaka* [Challenges in Codifying Criminal Law. A Book in Honor of Professor Marian Cieślak]. Kraków: Wydawnictwo Uniwersytetu Jagielońskiego, pp. 193–205.

Jaskóla A. and Szewczyk P. (2017). 'Evolution of the electronic monitoring in Poland.' *World Scientific News* 85, pp. 1–9.

Lopez Riba J.M. (2023). 'The versatility and tightness of electronic monitoring: A comparative perspective between Spain and Belgium.' *Probation Journal* (online first). https://doi.org/10.1177/02645505231161795

Mair G. (2005). 'Electronic monitoring in England and Wales: Evidence-based or not?.' *Criminal Justice* 5(3), pp. 257–277. https://doi.org/10.1177/1466802505055836

Mair G. and Mortimer E. (1996). *Curfew Orders with Electronic Monitoring: An Evaluation of the First Twelve Months of the Trials in Greater Manchester, Norfolk and Berkshire, 1995–1996*. London: Home Office.

Mair G. and Nee C. (1990). *Electronic Monitoring: The Trials and their Results*. London: Home Office.

Mair G. and Nellis M. (2016). *'Parallel tracks': Probation and electronic monitoring in England, Wales and Scotland.'* In M. Nellis, K. Beyens, and D. Kaminski (eds.) *Electronically Monitored Punishment*. London: Routledge, pp. 63–81.

Mamak K. (2014). 'Funkcjonowanie dozoru elektronicznego w świetle badań aktowych' [The Functioning of Electronic Monitoring in light of file research]. *e-Czasopismo Prawa Karnego i Nauk Penalnych* 3, pp. 139–178.

Marczewski M. (2021) *'Uwięzieni'* [Imprisoned]. In B. Gruszczyńska, M. Marczewski, A. Siemaszko, P. Ostaszewski, J. Włodarczyk-Madejska, and J. Klimczak (eds.) *Atlas przestępczości w Polsce 6* [Atlas of Crime in Poland 6]. Warszawa: Wydawnictwo Instytutu Wymiaru Sprawiedliwości, pp. 105–120.

Ministry of Justice England and Wales (MoJE&W) (2022b) *HMPPS Annual Digest 2021/22*, Assets.publishing.service.gov.uk. Available online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1126660/HMPPS-annual-digest-2021-22.pdf [08.07.2023].

Ministry of Justice England and Wales [MoJE&W] (2021a). *Tens of Thousands More Criminals To Be Tagged to Cut Crime and Protect Victims*, Gov.uk. Available online: https://www.gov.uk/government/news/tens-of-thousands-more-criminals-to-be-tagged-to-cut-crime-and-protect-victims [16.05.2023].

Ministry of Justice England and Wales [MoJE&W] (2021b). *The Compulsory Electronic Monitoring Licence Condition Order: Impact Assessment*, Legislation.gov.uk. Available online: https://www.legislation.gov.uk/ukia/2021/14/pdfs/ukia_20210014_en.pdf [08.07.2023].

Ministry of Justice England and Wales [MoJE&W] (2022a). *Electronic Monitoring Strategy*, Assets.publishing.service.gov.uk. Available online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1086639/em-strategy.pdf [08.07.2023].

Ministry of Justice England and Wales [MoJE&W] (2022c). *Electronic monitoring publication England and Wales: 01 April 2021 to 31 March 2022*, Gov.uk. Available online: https://www.gov.uk/government/statistics/electronic-monitoring-publication-update-to-march-2022/electronic-monitoring-publication-england-and-wales-01-april-2021-to-31-march-2022 [18.05.2023].

Ministry of Justice England and Wales [MoJE&W] (2023a). *Offender Management Statistics Quarterly: October to December 2022 and Annual 2022*, Gov.uk. Available online: https://www.gov.uk/government/statistics/offendern-management-statistics-quarterly-october-to-december-2022/offender-management-statistics-quarterly-october-to-december-2022-and-annual-2022#probation [18.05.2023].

Ministry of Justice England and Wales [MoJE&W] (2023b). *Prison population projections 2022-2027,* Assets.publishing.service.gov.uk. Available online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1138135/Prison_Population_Projections_2022_to_2027.pdf [18.05.2023].

Ministry of Justice England and Wales [MoJE&W] (2023c). *Home Detention Curfew Policy Framework*, Assets.publishing.service.gov.uk. Available online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1161231/home-detention-curfew-pf.pdf [18.05.2023].

Ministry of Justice England and Wales [MoJE&W] (2023d). *Costs per Place and Costs per Prisoner by Individual Prison*, Assets.publishing.service.gov.uk. Available online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1140557/costs-per-place-and-costs-per-prisoner-2021-to-2022-summary.pdf [18.05.2023].

Ministry of Justice England and Wales [MoJE&W] (2023e). *Electronic Monitoring Statistics Publication, March 2023*, Gov.uk. Available online: https://www.gov.uk/government/statistics/electronic-monitoring-statistics-publication-march-2023 [18.05.2023].

Ministry of Justice Poland (2022a). *Środki zapobiegawcze orzeczone przez sądy rejonowe i okręgowe w latach 2014–2021* [Preventive Measures Ordered by District and Regional Courts in the Years 2014–2021], Dane.gov.pl. Available online: https://dane.gov.pl/pl/dataset/241/resource/53085/table [04.06.2023].

Ministry of Justice Poland (2022b). *Rozporządzenie Ministra Sprawiedliwości z dnia 9 grudnia 2022 r. w sprawie sposobu oraz szczegółowych warunków wykonywania kar, środków karnych i środków zabezpieczających w systemie dozoru elektronicznego*, Isap.sejm.gov.pl. Available online: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20220002684/O/D20222684.pdf [02.06.2023].

Ministry of Justice Poland (2023). *Sukces systemu dozoru elektronicznego nad skazanymi* [The success of the electronic monitoring system used with convicts], Gov.pl. Available online: https://www.gov.pl/web/sprawiedliwosc/sukces-systemu-dozoru-elektronicznego-nad-skazanymi [02.06.2023].

National Audit Office [NAO] (2006). *The Electronic Monitoring of Adult Offenders*. London: The Stationary Office.

National Audit Office [NAO] (2013). *The Ministry of Justice Electronic Monitoring Contracts*. London: NAO. Available online: https://www.nao.org.uk/wp-content/uploads/2013/11/10294-001-MoJ-Electronic-Monitoring_final.pdf [02.06.2023].

National Audit Office [NAO] (2022). *Electronic Monitoring – A Progress Update*, Nao.org.uk. Available online: https://www.nao.org.uk/reports/electronic-monitoring-a-progress-update/ [18.07.2023].

Nelken D. (2009). 'Comparative criminal justice. Beyond ethnocentrism and relativism.' *European Journal of Criminology* 6(4), pp. 291–307. https://doi.org/10.1177/1477370809104684

Nelken D. (2010). *Comparative Criminology: Making Sense of Difference*. London: Sage.

Nelken D. and Hamilton. C. (2022). *Research Handbook of Comparative Criminal Justice*. Cheltenham: EE. https://doi.org/10.4337/9781839106385

Nellis M. (2018). *'The treasure island of the EM Market': State-commercial collaboration and electronic monitoring in England and Wales.'* In A. Hucklesby and S. Lister (eds.) *The Private Sector and Criminal Justice*. London: Palgrave Macmillan, pp. 259–291. https://doi.org/10.1057/978-1-137-37064-8_9

Nellis M. (2024). *'Smartphone electronic monitoring (EM), artificial intelligence and the mass supervision question in the USA.'* In A. Hucklesby and R. Holt (eds.) *Tracking People: Wearable Technologies in Social and Public Policy*. London: Routledge, pp. 137–160.

Nellis M., Beyens K., and Kaminski D. (2013). *Electronically Monitored Punishment International and Critical Perspectives*. London: Routledge.

Nellis M., Beyens K., and Kaminski D. (eds.) (2013). *Electronically Monitored Punishment International and Critical Perspectives*. London: Routledge.

Nowak B.W., Grzesiak S., and Zawaszka M. (2023). *Transdermal measurement and monitoring of alcohol concentration Possibilities of implementation and adaptation in the Polish penitentiary and post-penitentiary system*. Warsaw: Instytut Społecznych Podstaw Penitentcjarystyki. Available online: https://aws.edu.pl/transdermal-measurement-and-monitoring-of-alcohol-concentration-possibilities-of-implementation-and-adaptation-in-the-polish-penitentiary-and-post-penitentiary-system-beata-maria-no/ [18.07.2023].

Parkànyi E. and Hucklesby A. (2021). *Electronic Monitoring in the Youth Justice System in Hungary*. Leeds: The University of Leeds. Available online: https://trackingchildren.leeds.ac.uk/wp-content/uploads/sites/46/2022/01/TCBI-report-Hungary_final-3.pdf [01.12.2023].

Pietryka A. and Ploszka A. (2015). *Alternatives to prison in Europe: Poland, European Prison Observatory*. Rome: Antigone Edizioni. Available online: http://www.prisonobservatory.org/alternatives/ALTERNATIVES%20TO%20PRISON%20IN%20EUROPE.%20POLAND.pdf [18.07.2023].

Polish Government (1997a). Ustawa z dnia 6 czerwca 1997 r. – Kodeks karny (Dz.U. z 1997 r. Nr 88, poz. 553 z późn. zm.) [The law of June 6, 1997 Polish Penal Code (J.o.L. of 1997 No. 88, item 553)].

Polish Government (1997b). Ustawa z dnia 6 czerwca 1997 r. – Kodeks karny wykonawczy (Dz.U. z 1997 r. Nr 90, poz. 557 ze zm.) [The law of June 6, 1997 – Polish Penal Enforcement Code (J.o.L. of 1997 No. 90, item 557)].

Polish Government (2020). *Justification for the Draft Law: Act of March 31, 2020, Amending the Act on Specific Solutions Related to Preventing, Combating, and Eradicating COVID-19, Other Infectious Diseases, and the Crises Caused by Them, As Well As Certain Other Acts*, Sejm.gov.pl. Available online: https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=299 [02.06.2023].

Polish Government (2022). *Justification for the Draft Law: Act of 5 September 2022 on the Executive Penal Code with Regard to the Execution of the Sentence Outside the Prison Through Electronic Monitoring*, Sejm.gov.pl. Available online: https://www.sejm.gov.pl/sejm9.nsf/druk.xsp?nr=2376 [02.06.2023].

Przesławski T., Sopiński M., and Stachowska E. (2020). *Analiza i oceny funkcjonowania systemu dozoru elektronicznego w Polsce w latach 2013–2017* [Analysis and evaluation of the functioning of the electronic monitoring system in Poland in the years 2013–2017]. Warszawa: CH Beck.

Scottish Government (2019). *Electronic Monitoring: Uses, Challenges and Successes*, Gov.scot. Available online: https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2019/04/electronic-monitoring-uses-challenges-successes/documents/electronic-monitoring-uses-challenges-successes/electronic-monitoring-uses-challenges-successes/govscot%3Adocument/electronic-monitoring-uses-challenges-successes.pdf [18.05.2023].

Służba Więzienna (2012). *Dozór Elektroniczny jako nieizolacyjny system wykonywania kary pozbawienia wolności* [Electronic monitoring as a non-custodial system of executing sentences involving deprivation of liberty information guide], sw.gov.pl. Avaialble online: https://sw.gov.pl/assets/86/18/74/74349cda73f6a12385ae410231d180903b2cc484.pdf [02.06.2023].

Służba Więzienna (2022). *Statystyka roczna* [Prison Yearly Statistics], Sw.gov.pl. Available online: https://www.sw.gov.pl/strona/statystyka-roczna [02.06.2023].

Służba Więzienna (2023). *Biuro Dozoru Elektronicznego: Statystyka* [Office of Electronic Monitoring: Statistics], Sw.gov.pl. Available online: https://sw.gov.pl/jednostka/biuro-dozoru-elektronicznego [02.06.2023].

Stańdo-Kawecka B. and Grzywa-Holton J. (2015). 'Offender electronic monitoring in Poland: Expectations and results'. *Neue Kriminalpolitik* 27(2), pp. 158–170.

Stasiak K. (2018). 'The use of protective measures in Poland as a form of protection of society against certain perpetrators. The role of a probation officer in their enforcement'. *Polish Journal of Criminology* 1, pp. 1–13.

Tużnik M. (2022). 'Lecznicze środki zabezpieczające w kodeksie karnym skarbowym' [Security measures in the Fiscal Penal Code]. *Ius Novum* 4, pp. 23–34. https://doi.org/10.26399/iusnovum.v16.4.2022.35/m.r.tuznik

Waltoś S. (2002). *'Wizja procesu karnego w XXI wieku'* [The vision of criminal proceedings in the 21st century]. In P. Kruszyński (ed.) *Postępowanie karne w XXI wieku* [Criminal proceedings in the 21st century]. Warszawa: Dom wydawniczy ABC, pp. 26–41.