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The Use of Electronic Monitoring for Pretrial Release

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Abstract: The utility of electronic monitoring at the pretrial state of criminal cases is evaluated. First, the goals**,** the technology, and the operational procedures of monitoring are described. Next, an evaluation of the process for selecting tag wearers suggests that specific standards for detention need to be adopted before tagging can be proved to reduce pretrial detention. In addition, an evaluation of the conditions imposed on tag wearers suggests that the conditions are more onerous than needed to minimizing flight to avoid prosecution. Conclusion: pretrial tagging should be discontinued until the concerns evaluated here (and others identified here) are adequately explored and eliminated.

Introduction

The development of tagging technology has raised the question of whether electronic tagging has a useful role to play in the pretrial release[1] segment of the criminal justice system. The proponents of tagging praise it as a humane alternative to pretrial detention, while opponents of tagging criticize it as a further step in the prisonization of society. The purpose of this paper is to evaluate the potential of tagging in the pretrial context.

Goals of Electronic Monitoring

Tagging prior to trial is usually proposed as a technique for reducing chronic prison overcrowding. The proponents[2] and the opponents[3] of tagging are divided on the issue of whether tagging will have the effect of reducing prison populations, but they agree that tagging must not be used to enlarge the reach of, or to widen the "net" of, the criminal justice system.[4] Net widening in the electronic tagging context[5] is defined as subjecting accused persons to more onerous pretrial conditions than would be applied in the absence of monitoring.

This common concern about net widening supplies one of the principle measures for evaluating tagging in the pretrial context: if tagging has the effect of subjecting accused persons to more onerous conditions than would otherwise be applied, it will be viewed as an undesirable addition to the criminal justice options; on the other hand, if tagging has the effect of subjecting accused persons to conditions which are less onerous than would otherwise be applied, it will be viewed as a desirable addition to criminal justice options[6].

Goals of Pretrial Release

Pretrial release provides a usefull context for a preliminary evaluation of electronic monitoring because the goals of the pretrial stage of the criminal justice system are more limited than the goals of later stages. For example, punishment which is a significant and complex goal in the post-conviction stage is not a relevant goal in the pretrial context. As a result, the role of monitoring can be isolated and evaluated more easily at this stage than at the post-conviction stage.

The goal common to all pretrial release systems is to ensure that the accused appears as needed during all subsequent stages of the criminal adjudication process. An evaluation of electronic monitoring against the reappearance goal reveals a number of concerns, two of which are addressed here.[7] The utility of monitoring in connection with secondary pretrial goals, such as protecting the public[8] and servicing the accused's special needs,[9] is not explored here.

Scope of paper

Whether electronic monitoring technology has a usefull role to play in achieving the reappearance goal will depend in part upon the characteristics of the technology actually used and in part upon the way the technology is used. Therefore, this paper begins with a description of the technology and of the administrative practices associated with the technology.

Then, the paper evaluates the procedures for selecting pretrial tag wearers and concludes that the selection process is not likely to promote net-narrowing. Next, the paper evaluates the monitoring conditions imposed on tag wearers and concludes that the conditions are more onerous than necessary to promote the reappearance goal and so have a net-widening impact.

Finally, the paper suggests that current uses of electronic monitoring to achieve the goal of reappearance cannot be shown to have a net-narrowing impact and, so, both opponents and proponents of the concept of monitoring should agree that current uses should not be continued.

The Technology

The utility of tagging as a pretrial release option can not be evaluated without understanding the nature of the tagging technology and the operational procedures that would be used. Since tags are not being widely used in the pretrial context, actual experience is limited to the three British trial sites and to occasional uses in the United States[10]. However, the technology being used for pre-trial monitoring is the same as that being used for post-conviction monitoring. Also, the operational procedures for pre-and post-conviction monitoring are often quite similar. Therefore, the post-conviction expenence can at least illuminate the evaluation.

Pinpointing tags

The tags of comic book[11] fame had the capacity to pinpoint the location of the tag wearer anywhere in a large geographical area with the size of the area being a variable dependant simply upon the power of the locating equipment selected. Although not originally available commercially, such pinpointing technology is now available and is used, for example, in emergency control centers to track the location of ambulances and police vehicles. However, the pinpointing tags are neither involved in the current tagging projects nor contemplated for immediate future use[12].

Home tags

The tags in current use are much more modest. The tagged person wears a device[13] which communicates with a telephone-related receiver/transmitter located in the home. Some devices, called "continuously signalling" devises, send a continuous signal to the receiver/transmitter. Others, called "programmed contact" devices, require the wearer to insert the tag in the receiver when requested to do so by random phone calls[14]. Both systems have the effect of keeping the wearer within range of the receiver/transmitter which then uses the home telephone[15] lines to send status reports to a central monitoring computer.

The transmitted report says only that, at a particular time, the tag wearer is not within range of the receiver or of the telephone. If the wearer is out of range at a time when he or she is restricted to home, the computer records a violation.

Equipment problems

The equipment originally employed in tagging was subject to a variety of problems. The continuous signaling equipment, for example, had some problems with "dead spots" or places in the home where communication between the tag and the receiver was blocked; a false violation signal would be transmitted when the tag wearer entered the dead spot. Some of the original tags were not attached to the wearer with tamper-proof bands and so could be removed without signalling a violation of the requirement that the tag be worn continuously.

Many of the problems have been solved by equipment improvements following debugging trials. However, as recently as mid-1989, the first tag wearer in the British trials was found at home asleep in his bed at a time when the equipment was signaling a violation. The wearer's lawyer claimed that the tag had generated fifteen false violations in four months.[16] As a result of this type of incident, the reliability of the equipment continues to be a source of concern.

The Operational Procedures:

The operational procedures used are as important as the equipment in assessing the utility of tagging. The procedures vary considerably. [17]

Staff

The monitoring office may be a governmental arm with civilian staffers, with staffers drawn from the professional ranks of the police or probation departments, or with a combination of civilian and professional staff; alternatively, the monitoring may be contracted out to private organizations,[18] both profit[19] and non-profit. As a result of the staffing variations, the staff training, experience, and competence levels vary widely. Inevitably, dramatic differences exist in staff ability to respond effectively to violation reports.

Data collection

The tag signals are collected around the clock by the central computer, but the computer can be programmed to issue violation reports immediately, or to collect violation signals and report periodically. Whatever the frequency of the violation reports, the procedures for monitoring the

computer output can vary considerably: some monitoring offices are fully staffed 24 hours a day, 7 days a week while others are staffed only during business hours, on weekdays.[20]

Violation responses

The staff response to a violation report may, at the interventionist end of the response range, involve an immediate investigation by phone or in person; the non-interventionist end of the response range may just involve a periodic transmittal of the cumulated violation reports to the judicial officer with jurisdiction over the tag wearer.

The character of the response to be made to a violation may be within the discretion of the monitoring staff, or may be constrained by governmental guidelines, or may be specified in the order authorizing the tagging.

As will be seen later, the operational procedures selected in a particular monitoring program should be related to the purpose of the program and so related to the issue of whether or not monitoring serves, or could serve, a useful purpose in the pretrial context.

The Selection of Potential Tag Wearers

The criteria for selecting potential tag wearers also vary considerably. As a practical matter, the selection criteria are going to be the single most important factor in deciding whether tagging achieves its stated goal of reducing prison populations and has a net-narrowing effect.

Custody pre-requisite

In cases where prison depopulation is said to be a high priority objective of the program, eligibility guidelines may require that candidates come only from the in-custody population. Such a requirement has the seeming advantage of ensuring that monitoring is not used to net-widen.

The difficulty is that judges aware of the eligibility condition may, consciously or unconsciously, use custodial orders in cases which would, in the absence of monitoring, have received non-custodial orders.[21]

Precautionary form

The British pre-trial monitoring trials have employed an alternative technique for avoiding a net widening effect. The information handout issued in connection with the Nottingham trial, for example, attempts in several ways to ensure that tagging candidates are selected from persons who would otherwise detained in custody pending trial. On the first page, magistrates are reminded:

> It is most important that Benches use the power to impose a requirement of Electronic Monitoring ONLY in cases where they would otherwise remand the defendant in custody. If the power is used in any other circumstances, the legality of the scheme will be questionable. On the fifth page of the handout, the magistrates are supplied with a six question cheek list[22] which focuses attention on issues such as whether the accused could be safely bailed on other conditions.

The difficulty with the precautionary form is that it collapses the tagging decision into the general

bail decision: the decision maker is not forced by the form to identify (privately, much less publicly) either the factors about the accused that warrant the primary decision to detain pending trial or the countervailing characteristics of electronic monitoring that warrant the secondary decision to release on a tag.

Standard pretrial release criteria

The English bail criteria are similar in substance to many American bail criteria: An accused is to be detained pending trial when the detention is justified by genuine "exceptions and reasons." The "exceptions" refer to the judicial findings that would warrant treating the accused as an exception to the general rule of a right to bail for "virtually all persons charged with criminal offenses,"[23] while the reasons refer to the kinds of factual evidence to be considered by the court in reaching its findings. Both the findings required for detention and the evidence deemed relevant are standard fare in the context of pretrial release decisions.

Exceptions/findings

The finding relevant to this evaluation of electronic tagging[24] focuses on the likelihood of the accused's failure to appear:

> There are substantial grounds for believing that you would fail to attend court,...

Neither the character of the relevant grounds nor the measures by which a relevant ground would be deemed "substantial" are specified. Moreover, the magistrate or judge making the pretrial release decision is not required to reveal, much less justify, the finding of an "exception."[25]

Reasons/Evidence

The evidence upon which the court is to rely for its "substantial grounds" finding is also specified in the most general terms. The court is to take into account the nature and seriousness of the offense (and the likely sentence),[26] and the strength of the evidence against the accused; also listed as relevant are the accused's character, ties to the community, prior convictions (if any), and prior pretrial release record (if any). The kinds of evidence listed have traditionally been considered to be relevant in bail schemes.[27]

One difficulty has always been with the availability of the so-called relevant evidence. Some of the evidence (relating to the offense charged and the accused's record) may be available (but not necessarily accurate[28]). Other of the relevant evidence may be unascertainable (the accused's character), or may be currently uncertain (the strength of the evidence, or the likely sentence[29]).

The Relationship Between Evidence and Findings

The most fundamental problem with traditional pretrial release decisions has involved the relationship between the available evidence and the "substantial grounds to believe" standard. The decision maker is given no basis upon which to classify some collections of information about an accused as being no "grounds to believe" or just bare "grounds to believe" that the accused will not appear and to classify other collections information about an accused as meeting the required "substantial grounds to believe."

The great variety in bail decisions suggests that the point at which "grounds to believe" have been augmented by additional information to the point of being "substantial grounds to believe" is neither inherently self-evident nor deducible by decision makers from their prior experience with pretrial release outcomes.

One study reports that over 50% of persons charged with theft, fraud or deception were remanded in custody,[30] presumably because the court found "substantial grounds" for believing that the accused presented a bail risk. Yet the same study reports that only 25% of bailed persons who breached the reappearance condition of bail were remanded in custody[31] and only about 33% of bailed persons who were charged with the offense of breach of bail were remanded in custody.[32] This produces the curious result that the percentage of accuseds detained to avoid a risk of breaching bail is higher than the percentage of accuseds detained on evidence of an actual breach of bail.

Actuarial Input

The rates of non-appearance could be actuarially calculated for relevant categories of accuseds. The data from such calculations could provide a basis for developing experienced-based quidelines for identifying the circumstances which supply "substantial grounds to believe" the accused will abscond. Such guidelines could form a framework for written decisions explaining bail outcomes, could facilitate consistency in the treatment of like cases, and could promote predictability of bail outcomes for new cases.[33]

The explainability, consistency, and predictability of pretrial release decisions are all characteristics which are important in any effort to authoritatively resolve the question of whether electronic tagging is being used to narrow rather than to widen the net of the criminal justice system. In the absence of such characteristics, individual decisions to release accuseds on tags can not be objectively evaluated to determine whether or not the tagging was a condition less onerous than would otherwise have been imposed. As a result, the general impact of electronic monitoring on prison overcrowding and on net widening in the pretrial release context can not be authoritatively ascertained.

Assuming that the problems relating to explainability, consistency, and predictability can be solved by the development of relevant guidelines and procedures, electronic monitoring in the pretrial context raises some additional problems requiring attention.

The Conditions of Pretrial Monitoring

Once the guidelines have identified an accused whose information profile genuinely meets the 'substantial grounds to believe' requirement[34], the identified accused has passed the threshold for pretrial detention and could be an appropriate candidate for monitored release instead of detention; electronic monitoring under these circumstances would have a net-narrowing effect.

At this point, the general capabilities of electronic monitoring and the specific capabilities of the available electronic monitoring programs warrant some careflil evaluation.

Limits of Monitoring

The first point is that the currently employed electronic monitoring technology (with reliable equipment) only tells a central computer whether the tag wearer is within range of the receiver/transmitter. Clearly, the information standing alone is useless to achieve pretrial detention

goals: it has no ability to prevent an accused from absconding (as the English trials have demonstrated[35]). The power of the information comes from its "after the fact" utility to (among others) the monitoring staff; to the court and to the accused.

Curfews

One difficulty is that the capacity to collect information has in the case of electronic monitoring (as with many other human endeavors) sometimes dictated the scope of the information collected. The curfews imposed on pretrial tag wearers seems to be an example of this problem.

The tagging technology enables the system to monitor individually designed curfews. An accused can be restricted to home for 24 hours, for non-working hours, or for a pattern of hours which enables the wearer to go shopping, attend church, keep medical appointments, visit counselors and the like. The flexibility of the system is quite seductive. What is not apparent is the need for such curfews in many of the pretrial release cases.

If the accused is being monitored because of the risk of flight, the information collected should be relevant to that risk. The utility of monitoring information in risk of flight cases is that the discovery of an accused's flight will occur close to the time of flight rather than at the next court appearance which might be several weeks later: the likelihood of apprehending a fugitive is presumably greater if the trail is fresh. If the monitoring supplies reasonably prompt notice of flight, it serves a legitimate purpose. Also, an accused may be less inclined to flee if prompt pursuit is certain to result.

What counts as "reasonably prompt notice" depends upon several factors. A system with 24 hour staffing by personnel trained to handle cases of flight could respond instantaneously to a violation signal from an accused with a 24 hour curfew. Under such a system, a fleeing accused would have only a few moments head start.

Under most systems, however, a fleeing accused would have a much longer lead time. The delay between the violation signal and the enforcement action can be attributable to a variety of factors. If the equipment is unreliable, the monitoring staff may discount violation reports. In cases of partial or intermittent curfews, an absconding accused can get a head start as long as the longest gap in the curfew. Alternatively, where the computer output is monitored only on weekdays, an absconding accused can get a head start of several days if the flight starts right after the Friday monitoring shift ends.

Where curfew terms, staffing limitations, or other manipulatable conditions prevent continuous monitoring and instantaneous response, restraints on an accused's freedom of movement should be designed to provide reasonable periodic contacts between the tag and the receiver/transmitter so as to confirm the accused's continued presence in the community. The contacts should be designed to provide assurances of presence without unnecessarily interfering with the accused's freedom of movement. An unnecessary limitation on an accused's freedom would constitute punishment which is clearly not a permissible objective of pre-conviction procedures.

If the computer output is not checked during evenings or weekends, a contact during the several hours before the monitoring office opens in the morning is sufficient to tell the staff that the accused is present in the community. The additional requirement of the continuous presence of the accused at home through out the evening or weekend merely burdens the accused's freedom without contributing to the protection of the state's interest in the accused's appearance at trial. The imposition of a condition which is more onerous than necessary to achieve the state's goal of reappearance counts as net-widening and so is an undesirable feature in the view of both opponents and proponents of tagging.

The conditions which accompany any electronic tagging ought to be determined by the purpose of the tagging and not by the technological capabilities of the tagging equipment. Moreover, the relationship between the conditions imposed and the goal sought needs to be monitored to ensure that the conditions actually promote the goal. The imposition of an ineffective condition also makes the tagging more onerous than necessary and so counts as net-widening.

Finally, because the tagging involves significant intrusions into the lives of the wearer and the wearer's family, the benefits gained from tagging need to be evaluated against less intrusive methods of protecting the reappearance goal. If less intrusive methods can achieve the same goal, then the tagging is more onerous than necessary and counts as net-widening.

Conclusion

Electronic tagging technology offers extraordinary and desirable benefits in some contexts, including for example the tracking of emergency vehicles. In the criminal justice context, however, the existence of beneficial uses is much less clear. In the pretrial flight case, which presents a relatively uncomplicated goal, two major concerns can be identified and other concerns remain to be evaluated. Therefore, the use of tagging in the pretrial context should be discontinued until the concerns are adequately explored and eliminated.

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1 For the use of electronic monitoring at the punishment stage of the criminal justice system, see 1988 Green Paper, Punishment, Custody and the Community.

2 An exception is the Adam Smith Institute which has advocated the use of electronic monitoring for all "habitual criminals" even alter any sentence has been served. Morris, Bound bv Invisible Threads - Electronic Tagging, Socialist Lawyer 3 (Autumn 1989, No.9).

3 The list of British opponents is impressive. Included are the Association of Chief Officers of Probation, the Howard League, The Law Society, the National Association for the Care and Resettlement of Offenders, the National Council for Civil Liberties (formerly called NCCL, recently re-named Liberty), the National Organization of Probation Officers, the Prison Officers Association, and the Prison Reform Trust (PRT). Lilly, An Overview on Electronic Monitoring, in **The Electronic Monitoring of Offenders** 6 (Russell and Lilly eds. 1989).

In the United States, no comparable opposition has emerged. Organizations have taken no position, or have taken inconsistent positions at the local level. The Mothers Against Drunk Drivers (MADD), for example, have supported tagging in West Virginia and opposed it in New York. Lilly, supra at 5.

4 Occasionally, tagging is said to be espoused as a net-widening objective. The United States debate on electronic monitoring has been described as including "those who feel that some offenders are being sentenced to probation, because of [sic] the pressure created by prison crowding makes prison space unavailable to them. These people feel that the use of a monitor would increase an inappropriately mild sanction to a more appropriate level." Schmidt, The Use of Electronic Monitoring by Criminal Justice Agencies in the UnitedStates in **The Electronic Monitoring of Offenders** 18-19 (Russell and Lilly eds. 1989).

5 "Net widening" used in a more general context means increasing the number of people reached by the criminal justice system.

6 In the post-conviction context, tagging is seen by some as a means of increasing the rigorousness of non-custodial sentences. See, Leaflet from The Offender's Tag Association (undated) (available

from the Association, 128 Kensington Church Street, London W8 4BH).

7 Some of the other concerns are identified in the notes.

8 The goal of protecting the public usually focuses on limiting the accused's opportunities for criminal conduct by circumscribing the accused's freedom of movement pending the outcome on the original charges.

9 The goal of improving the accused usually focuses on providing the accused with support services relating to family relationships, employment training, job opportunities, physical or mental health, addiction control, and the like.

10 In 1988 (the latest year for which United States data is available), 95.4% of approximately 2,300 tag wearers were sentenced offenders. The remaining 4.6% were primarily persons on pre-trial release, but some were post-conviction offenders who released pending the outcome of an appeal. Schmidt, supra note 4, at 15.

The British experience is limited to pre-trial release because of the need for legislation authorizing tags as a post-conviction option. The Home Office introduced tagging in 1989 with three trial sites (Nottingham; North T"neside, near Newcastle; and Tower Hill, London). Each trial was to last for six months; a total of 150 tag wearers was contemplated. By the end of 1989, with a total of 39 tags applied in all three trials, the Home Office announced that the trials would be terminated. Although the trials were ended prematurely and although over half of the 39 tagged had absconded, the Home Office indicated that tagging would be authorized in the forthcoming government bill on corrections. Independent, January 9, 1990, p.2; The (London) Times, January 9, 1990, p. 4.

11 Stacy, Tracking Tagging - The British Contribution. in **The Electronic Monitoring of Offenders** 60 (Russell and Lilly eds. 1989). While credit for the tagging idea is often given to the Albuquerque local judge who is said to have started working on the idea in spring '83, Britain Tom Stacy claims the idea as British because he proposed the idea to the Home Office in 1981 and later to the public in a letter to The Times in the 1982.

12 The Offender's Tag Association, an organization founded in 1982 by Tom Stacy, is alone in vigorously advocating the use of pinpointing technology at the bail stage, at the punishment stage, and even after an offender has been discharged from the system. See, Stacy, supra note 11, at 57-64.

13 The usual device is somewhat larger than a bath-size bar of soap or a pack of cigarettes. It is attached with a tamper-proof strap. It can be affixed to a wrist, but more usually is affixed to the ankle where it can be worn inside or outside of a sock. Some manufacturers offer a waist version which may be preferred by a woman wearer.

14 Schmidt, supra note 4, identifies three variations of the 'programmed contact device.' In addition to the insertable tag, Schmidt lists two alternate programmed contact' devices: one uses voice verification technology rather than the insertable tag to ensure that the phone is being answered by the tag wearer, and the other involves a wrist device which generates a unique number to be entered in response to the call.

15 The technology's reliance on telephone lime transmission raises a number of concerns. Assuming tagging is a beneficial option, some accuseds could be excluded (1) because they could not afford a telephone, (2) because of delays in obtaining a telephone, (3) because parents, landlords, or other accommodation providers object to the expense or bother of the installation of a telephone, or (4) because the telephone usage needs of others in the household are incompatible with the monitoring usage. Thus, an otherwise eligible accuseds could be excluded for reasons unrelated to the merits of the case or for reasons beyond their control or both. An equitable monitoring scheme should make

provision for such cases.

16 The Independent, January 9, 1990, p.2.

17 One administrative variation which raises considerable concern involves the practice of charging the tag wearer fees for participation in the program. If tags are a beneficial option for the accused, then fees present an economic barrier to participation in tagging by persons with limited or no means.

18 Lilly, supra note 3, at 5. The use of private staff raises some concerns. For example, most tagging schemes require that the accused consent in writing to the tag; the consent form frequently contains additional provisions authorizing the monitoring staff to enter (often without notice) the home for the purpose of checking equipment and verifying the accused's presence. The authority to enter often is equal to or greater than the authority a public official would have, but the private staff are not subject to the limits and the abuse of power oversight imposed on public officers.

19 The use of private, for-profit organization in the tagging programs introduces a special range of concerns. The profit concerns of the organization may result in conflicts between self-interest and service interest. While full exploration of such conflicts is outside of the scope of this paper, the concern is worth noting. Some of the concerns include the fear that private corporations will intrude inappropriately on judicial decisions by influencing the criteria for tag eligibility, or will attempt to expand usage of tagging by proposing tags for offenders who deserve treatment either more or less restrictive than tagging, or will remove tagging from public scrutiny and oversight by claiming that operational data is entitled to commercial privacy (as has already happened in the case of a private pretrial detention (remand) center at Harmondsworth, Great Britain). See, Morris, supra note 2, at 3.

20 Schmidt, supra note 4, at 17.

21 "[T]he availability of tagging may encourage the magistrate to refuse bail in borderline cases, knowing that the tag can only be offered as an alternative to a remand in custody." Morris, supra note 2, at 4.

22 IS ELECTRONIC MONITORING APPROPRIATE - A SUGGESTED CHECK LIST

When considering whether a defendant is a suitable person for monitoring, you may wish to ask yourself the following questions:-

> 1. Why is EM essential? -ie can the defendant be safely bailed with conditions other than EM?
> 2. If EM were not available would the defendant be remanded in custody? Are there genuine exceptions and reasons to justify such a remand?
> 3. Is my fundamental concern whether the defendant will observe a curfew? Does my decision on the remand really turn on this point? If not, why bother tagging?
> 4. Would I be happy to remand the defendant in custody if he breached his curfew?
> 5. Am I satisfied the defendant is a 'safe risk' on bail - especially bearing in mind that the bracelet is non-tamper proof and can be cut off and left next to the phone, undetected for up to 24 hours and possibly longer?
> 6. If I am prepared to trust the defendant notwithstanding the difficulties at (5) above, why do they need to monitor his response to that trust?

23 C. Stone, **Bail Information for the Crown Prosecution Service 7** (Vera Institute of Justice 1988).

24 Other findings which would warrant remanding the accused include (1) custody is needed for the

accused's own protection, (2) there has been insufficient time to get information needed to make a release decision, (3) the accused is already serving a sentence or has breached the conditions of a previous release order.

25 A requirement that the substantial grounds finding be explained would be unusual in most pretrial release systems. One notable exception is the United States Bail Reform Act of 1984 Sec. 3142 (i) which requires the judicial officer who issues a detention order to "include written findings of fact and a written statement of the reasons for the detention."

26 If the Government proposals to substitute non-custodial sentences for non-violent offenses are implemented, the whole approach to pretrial detention would presumably have to be reconsidered. At a minimum, an accused who has little or no prospect of a custodial sentence should rarely be a candidate for pretrial detention.

27 See, for example, Bail Reform Act of 1984 Sec. 3142 (g) which requires the judicial officer to "take into account available information concerning -

> 1) The nature and circumstances of the offense ...;
> 2) the weight of the evidence against the person;
> 3) the history and characteristics of the person, including - (A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and (B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law;...

28 See, Gibb, Sentences based on inaccurate criminal records. MPs told The (London) Times, February 21, 1990, p.5.

29 The magistrate does know what the authorized sentence for the charges is. The difficulty is that the authorized sentence is just a starting point and is often totally unrelated to the sentence actually imposed. Over charging is routine in some jurisdictions. Both plea bergaining and trials can result in a conviction for fewer charges, for less serious charges, or for both fewer and less serious charges. Concurrent sentencing requirements or options can result in substantial reductions in the time to be spent in custodial sentences. Probation and other con~ustodial sentencing options may result in a non-custodial sentence.

30 C. Stone, supra note 23, at 76 (Figure 16).

31 C. Stone, supra note 23, at 77 (Figure 17).

32 C. Stone, supra note 23, at 76 (Figure 16).

33 Such guidelines could also form a basis for effective training of bail decision makers and for meaningful review of bail decisions by appellate courts.

34 The assumption is that the "substantial grounds to believe" threshold could not be reached if the accused could be released pending trial on any combination of conditions less onerous than those of electronic monitoring.

35 Over half of the 39 tag wearers in the English trials have absconded. The Independent, January 9, 1990, p.2; The (London) Times, January 9, 1990, p.4.