



Pretrial Electronic Monitoring

in Los Angeles County

2015 through 2021

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Terminology

AM = Alcohol Monitoring, a form of monitoring used in both Los Angeles County's programs that also uses an ankle bracelet to continuously monitor whether an individual has consumed alcohol via their sweat.

EM = Electronic Monitoring, a form of monitoring that uses technology to track the location of someone pretrial or post-sentence who is released from custody and placed on house arrest. In this report, when EM is written, it means people placed on either the Electronic Monitoring Program or Supervised Release Program in Los Angeles County. EM is also used when speaking about electronic monitoring technology generally, outside of the Los Angeles County programs.

EMP = Electronic Monitoring Program, Los Angeles County's oldest electronic monitoring program.

EM SRP = Electronic monitoring via the Supervised Release Program, which is Los Angeles County's newest electronic monitoring program.

Pretrial EMP = Pretrial Electronic Monitoring Program, used in this report to indicate when someone is released on EMP pretrial as opposed to post-sentence.

SRP = Supervised Release Program, the overarching name for the pretrial pilot program in Los Angeles County funded by the California Judicial Council.

Executive Summary

Electronic monitoring is a system that uses a GPS-equipped ankle monitor, to track, monitor, record and analyze the location of people accused or convicted of a crime who are placed on house arrest. Los Angeles County currently has two electronic monitoring (EM) programs. The first, which has been in existence for decades, is the Electronic Monitoring Program (EMP) that operates across all twenty-four criminal courthouses in the County and can be used for individuals both pretrial and post-sentence. The second, which began in 2020, is called the Supervised Release Program (SRP) and is a pilot program that operates out of two courthouses in Los Angeles County and is only used for individuals pretrial. Both programs are operated by the Los Angeles County Probation Department.

This report analyzes data received through California Public Record Act Requests about both EMP and SRP from 2015 to 2021. EM is understudied across the country, with little understanding about the nature of how EM operates and who it affects, particularly in the pretrial context. This report takes a longitudinal look to shed light on how EM operates in Los Angeles County, who is placed on EM, for how long they are subject to ankle monitors, and other rich data to make transparent the various facets of each EM program. Because Los Angeles County may be poised to expand the use of its pilot program, which could increase the number of Angelenos placed on EM, these data are particularly timely to informing pretrial policy decisions by understanding the impacts and outcomes of EM in Los Angeles.

Key findings:

- In 2015, 24 people were on pretrial EM in Los Angeles County, whereas in 2021, 1,284 people were on pretrial EM, an increase of 5,250%.
- In 2021, 5 times as many people were placed on EM pretrial than people placed on EM post-sentence.
- In 2021, 31% of people placed on pretrial EM were Black, 53% were Latinx, 12% were white, and 4% were in the “other” category.
- Only 45% of people placed on EM via the Supervised Release Program successfully completed the program in 2020.
- 94% of people who were terminated from the Electronic Monitoring Program were terminated for “non-compliance”, essentially a technical rules violation, as opposed to termination for a new arrest or an abscond.
- At the Lancaster Courthouse, judges are choosing EM 92% of the time when someone is referred to the Supervised Release Program, despite the fact that they have a standard monitoring option that would not require EM.
- The majority of people on pretrial EM are spending a median of at least 65 to 71 days on EM while awaiting their trial, with one-third of people spending at least over 6 months on EM.

I. The Rise in Electronic Monitoring

Across the country, jurisdictions are grappling with the impacts of mass incarceration and the rise in the pretrial jail population; taking action to end cash bail, close jails, and develop alternatives to incarceration. While many of these conversations are focused on developing new and non-punitive solutions, many stakeholders continue to advocate for the use of various modes of control and surveillance of people accused of crimes, such as electronic monitoring (EM).

The first form of EM was designed in the 1960s by Robert and Kirk Gable when they were students studying social psychology at Harvard University.² It was initially designed as a two-pound belt to be worn by “juvenile offenders” and used as a form of positive reinforcement for minors who wore the belt and were where they were supposed to be.³ This technology was experimented with on various populations, but did not gain traction at the time. Then, in the 1980s, amidst the ever-increasing tough on crime policies that led to prison overcrowding, EM began to boom and the number of companies that produced EM technology expanded exponentially.⁴

Between 1986 to 1989, the number of individuals subject to EM and house arrest grew by 6,700 percent.⁵ The rates of EM continued to increase as GPS technology was introduced into the field. A Pew study found that between 2005 and 2015, the number of active electronic tracking devices increased by 140 percent.⁶ Again, in recent years, the number of people on pretrial EM is rising, including in the state of California. In San Francisco the number of people on pretrial EM rose 308 percent in one year⁷ and pretrial EM usage in Santa Clara County has quadrupled in the last four years.⁸ As the findings of this report show, in Los Angeles County, the number of people on pretrial EM has exploded, increasing by **5,250 percent** from 2015 through October 2021.

Michelle Alexander and others have warned of this impending phenomenon of “e-carceration”⁹ in which people’s freedom of movement is restricted and surveilled such that everyday activities like looking for a job or going grocery shopping are placed under a microscope and could result in re-incarceration. Others have pointed out the infringement that EM, or “punitive surveillance” more broadly, has on individuals’ constitutional rights of speech, assembly, and freedom of movement.¹⁰ In the pretrial context, these onerous conditions of and constitutional deprivations caused by EM seem out of place for individuals who are presumed innocent.

Despite the increasing reliance on pretrial EM by judges and law enforcement, there is little evidence that the use of EM decreases the likelihood of new arrests, nor that it ensures an individual’s return to court, as compared to someone not on EM. A 2017 study that reviewed all literature published since 1999 that contains quantitative data on the effectiveness of electronic monitoring found that EM does not have a statistically significant effect on reducing re-offending.¹¹ Much of the literature reviewed in the 2017 study lacked rigorous empirical analysis in that the studies on pretrial EM often did not have comparison groups or failed to take into account the differences between comparison groups.¹² Of three studies that have been identified as rigorous, they all have varied and inconsistent outcomes that do not help to assert any blanket claims about the efficacy of electronic monitoring.¹³ For example, one study based in New Jersey found that individuals placed on EM had the same failure to appear rates as those not placed on GPS monitoring.¹⁴ Whereas a study based in Santa Clara found that those on EM had significantly less failures to appear than those not on electronic monitoring released pretrial.¹⁵

This lack of evidence should be weighed against the harms caused by EM in the pretrial context. EM can have significant collateral consequences: one study found that twenty-two percent of individuals were fired or asked to leave their job because of the electronic monitor.¹⁶ Qualitative interviews with people placed on EM show how difficult it is to obtain and keep employment because of the requirement to consistently check in with or request permission to change their schedule from law enforcement, when employers often do not give people enough notice to do so.¹⁷ Similarly, because of the requirement to check in about every decision to leave one's home or stray from previously outlined hours, people have found it difficult to attend school, access health care, and find housing.¹⁸ There are a plethora of rules once someone is placed on EM that can lead to an individual's re-incarceration for something that is a technical violation and not a new arrest or because the individual fled the jurisdiction.¹⁹ Further harms of EM, as laid out in a recent nationwide study are: an infringement on privacy rights, onerous device charging requirements, and an undermining of "personal and family autonomy and dignity."²⁰ While many EM programs around the country pass the cost burden onto the individual being monitored, the Los Angeles County Board of Supervisors eliminated EM fees in February 2020.²¹ However, given the difficulty in finding and maintaining employment when one is placed on EM, individuals in Los Angeles County and their families can still be impacted financially when they are placed on EM.

II. Electronic Monitoring in Los Angeles County

There are currently two EM programs in Los Angeles County, the Electronic Monitoring Program and the Supervised Release Program, both of which are run by the Probation Department. This report analyzes data from both of them and details about each program are laid out below.

A. Los Angeles County Probation Department's Electronic Monitoring Program

The Los Angeles County Probation Department has administered the Electronic Monitoring Program (EMP) in partnership with private companies since October 13, 1992.²² Through EMP, people are placed on electronic monitoring or alcohol monitoring pretrial or post-sentence. The EMP data analyzed in this report were provided to the author pursuant to a California Public Records Act Request and contain all individuals placed on EM and alcohol monitoring (AM) pretrial and post-sentence from January 1, 2015 through October 20, 2021.

Currently, the Probation Department contracts with Satellite Tracking of People, LLC ("STOP"),²³ who subcontracts to Corrective Solutions to provide the EM equipment for this program.²⁴ In 2018, the Los Angeles County Board of Supervisors approved the Probation Department's contract for one year with STOP in the amount of \$560,000.²⁵ The contract was renewed for 2019 and 2020, although it is unclear whether additional funds were attached to the contract renewals. In October 2021, the Los Angeles County Board of Supervisors approved a \$1.4 million increase to EMP for the Probation Department, a 159% increase in the budget for this program.²⁶

As Probation describes it in their EMP Operational Procedures Manual, individuals referred to Probation Pretrial Services are evaluated to “determine eligibility/suitability for program participation.”²⁷ Once an individual has been evaluated, they are assigned a risk level and placed on either standard monitoring (if the risk score is 0-13) or enhanced monitoring (if the risk score is 14-22).²⁸ Individuals on standard monitoring must meet with probation in their offices a minimum of once every two weeks, while those on enhanced monitoring will meet probation in their office once every week for the first thirty days of the program, which may then be reduced to once every two weeks.²⁹ These meetings are a monitoring condition for individuals on EMP in addition to being monitored by the GPS technology.

Individuals placed on this program are confined to their homes at all hours unless they receive permission from their case manager to leave their home. Upon initial meeting with a case manager, the individual’s curfew schedule is set, and the EMP Manual states that the case manager will “explain, in detail, the participant’s responsibility to provide documentation to verify all time away from the residence.”³⁰ After this initial curfew schedule is set, the individual must request changes as follows:

- The individual must provide Probation with their “regular work schedule” and any changes to this schedule must be submitted to Probation twenty-four hours in advance if they have what the Probation Department calls conventional employment;³¹
- For those with an unconventional work schedule, the EMP manual directs Probation Officers to handle cases on an individual basis, and that if someone’s schedule is so irregular the officer should not allow any time away from home until the individual reports a specific day and time period for employment;³²
- For individuals seeking employment, the EMP Manual instructs that the individual be given a maximum of three to four hours per day, two to three days per week to seek employment;³³
- For medical emergencies, individuals are provided with a 24-hour hotline number to call, and they must provide written proof of the emergency the following business day;³⁴
- Any other request to changes to their schedule must be made twenty-four hours in advance, and they can only do so via phone with their case manager Monday through Friday 10:00 am to 4:00 pm.³⁵ This means that any changes to a Monday schedule would have to be known on Friday in order to gain approval.

To participate in the program, the individual must sign a participant contract, which among other requirements, commits the individual to the following:

- Agree not to bring their children to any visits with their case manager;
- Agree that the probation officer can take them back into custody if the device cannot perform its function at their home or if they give the court or probation department “reason to believe that I would not complete the program successfully;”
- Charge the device for sixty minutes every morning and night, and the individual cannot fall asleep during those periods of time;
- Agree to submit to a search at any time without warrant or probable cause.³⁶

If an individual does not abide by these conditions the Probation Department can file a report with the court and terminate the individual from EMP. The following reports or notices are generated by the Probation Department and sent to the court:

1. Abscond notice: Any time a participant is out during curfew and unable to be monitored for longer than four hours, an abscond notice is sent to pretrial services;
2. AM Violation: If an individual is on alcohol monitoring and after three tries their breath test results show any measurable amount of alcohol, or if they test at a level of .08 or higher, a non-compliance notice is sent to pretrial services;
3. Non-Compliance Report: Reports any action by the participant that is in violation of the court's sentencing order or program guidelines, including a new arrest that has been verified;
4. Termination Notice: This notice is sent if the person has been removed from the EMP program for non-compliance prior to the expected completion date.³⁷

According to the contract signed by the individual placed on EMP, a non-compliance report is sent to the court for any program violation, which includes things like leaving home earlier than an individual's schedule allows, failing to provide acceptable verification of work, failing to answer all telephone calls while the individual is at their residence, failing to maintain electrical power, and failing to "maintain telephone/cellular service for any reason."³⁸

B. Los Angeles County Superior Court and Probation Department's Supervised Release Program

The second EM program analyzed in this report is the Supervised Release Program (SRP). The Los Angeles Superior Court, in collaboration with the Probation Department, applied to the California Judicial Council for funding for a pretrial pilot in Los Angeles County and received \$17.3 million to implement this pilot over two years. The Probation Department contracts with the company Corrective Solutions to provide the EM equipment for SRP.³⁹

SRP began operating in June 2020 at the Downtown Los Angeles Criminal Justice Center, the largest criminal courthouse in Los Angeles County. It expanded to the Lancaster and Pomona Courthouses on January 25, 2021, however the Pomona Courthouse ceased operations on December 3, 2021 due to low referral rates.

Individuals referred to SRP are all in the pretrial phase of their case. In determining eligibility for SRP, the Probation Department uses the Criminal Court Assessment Tool (CCAT), a risk-needs assessment tool, developed by the Center for Court Innovation.⁴⁰ After the CCAT is administered, a report is generated with a recommendation regarding eligibility for SRP, and then a judge decides whether to release the individual to SRP.

The Supervised Release Program allows for people to be released on their own recognizance or on some form of supervision, categorized as basic, moderate, or enhanced.⁴¹ Supervision of all levels requires a check-in with probation via email/text/live-person call either monthly, bi-monthly, or weekly. Optional supervision conditions according to the SRP manual are EM, AM, or both.⁴² The manual suggests that it is the judge that determines whether to impose EM and/or AM, and not the Probation Department.

Just like EMP, the Probation Department authorizes the curfew schedule for people placed on EM in the Supervised Release Program (hereinafter "EM SRP"). Similar to EMP, for individuals seeking a job, they are only allowed to search for a job for three to four hours per day, two to three days per week.⁴³ They also

must provide a written list of prospective employers and their addresses for verification to the Probation Department. For any other authorized activities, the individual must have an attendance sheet signed and then submitted to their Probation Case Manager.

The SRP Manual provides that Case Mangers will send notice to the court in the following situations:

1. Notice to Court of Progress—provides information about the individual’s performance for a recommendation to lower the level of monitoring
2. Notice to Court of Non-Compliance—occurs “whenever a defendant’s non-compliance to conditions of monitoring cannot be addressed administratively”
3. Notice to Court of Abscond—when there is an unresolved tamper or when the individual has exceeded the curfew parameters and the Case Manager cannot verify their whereabouts for four or more hours.⁴⁴

Different from the EMP Manual, the SRP Manual categorizes the type of violation, stating that “minor and moderate violations will be handled administratively.” For example, the response to an individual whose violation is “moderate” is a “verbal/written reprimands, review conditions of release, increased report/call-ins, increase level of supervision, and/or referrals to support services.”⁴⁵ Violations considered severe will be reported to the court.⁴⁶

The below table is taken from the SRP Manual and indicates how Probation defines the various types of violations and examples for each category.⁴⁷

Types of Violations

MINOR	MODERATE	SEVERE
Violations that appear to show a lapse in judgment and do not cause harm to self or others.	Violations that appear to show a disregard for court orders and pretrial supervision and do not cause harm to others.	Violations that appear to show a willful or repeat disregard for court orders and pretrial supervision, and/or cause a risk of harm to self or others.
Failure to report/call-in at designated date/time	Multiple failures to report/call-in at designated date/time	New arrest(s) and Desertion
Traffic Infractions	Repeated minor level violations	Failure to comply with court-ordered release conditions
Minor curfew violations for less than 2 hours (GPS monitoring)	GPS moderate violations	Extended or frequent curfew violations (i.e. absconds)
Failure to provide documentation (GPS monitoring)	Frequent tamper alerts not associated with equipment malfunctions (GPS monitoring)	Multiple unplanned exits for a substantial duration (GPS monitoring)
Uncooperative behavior	Minor curfew violations from 2-4 hours (GPS monitoring)	Allowing battery to go dead multiple times
Allowing low battery to go into critical battery (2 hours or less)	Allowing low battery to go into critical battery (2 hours or more)	Multiple missing/late alcohol tests over 1 hour of scheduled test
One missing/late/positive alcohol test	Multiple missing/late/positive alcohol tests	Excessive positive alcohol tests
	Insubordination or threatening of SRP staff	Excessive minor and/or moderate violations

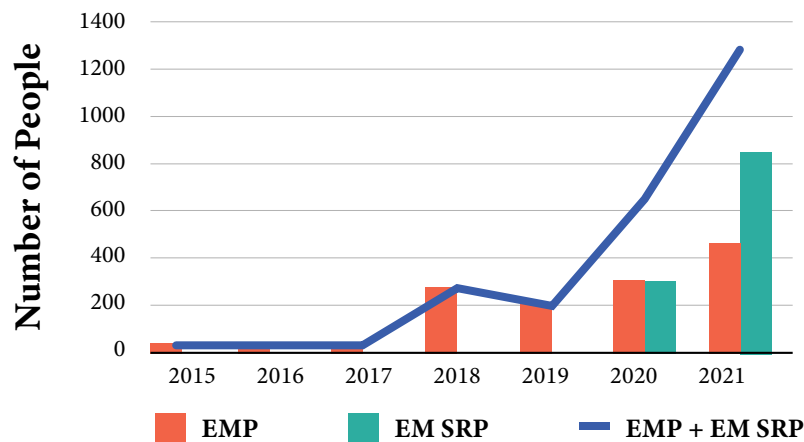
Since EM can be ordered either via EMP or SRP in Los Angeles County, the below findings reflect both aggregate data from the programs as well as differentiates between the two programs to indicate the variance in outcomes and application.

III. Findings

A. The Use of Pretrial Electronic Monitoring in Los Angeles County Is Increasing

The number of people on pretrial EM in Los Angeles County, across both EM programs, has increased almost 5,250% since 2015. Only 24 people were on EM in Los Angeles County in 2015. In the first ten months of 2021, that figure increased to 1,284 people, with likely more people to be placed on EM before the year ends. (See Figure 1)

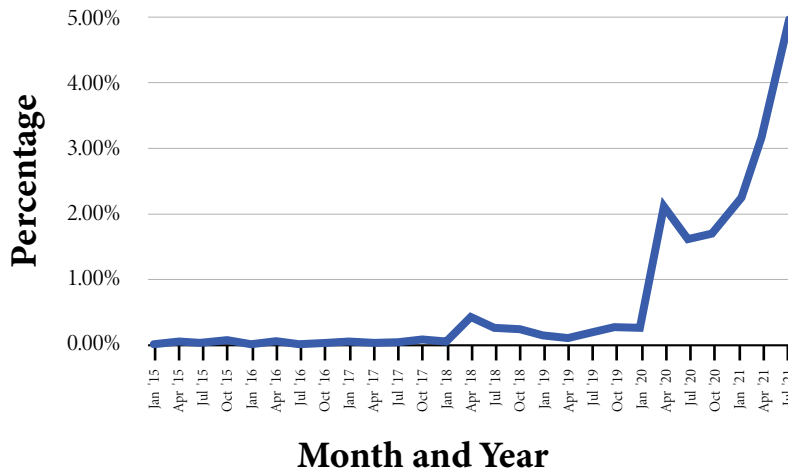
Figure 1: People Placed on Pretrial Electronic Monitoring in Los Angeles County, 2015-2021



The increase in EM is in large part due to the fact that 311 people were placed on EM SRP in just the first six months of its operation in 2020, with all but one of these people being placed on EM SRP from just the Downtown Los Angeles Criminal Courthouse. This was just slightly shy of the 319 people placed on pretrial EMP for the entire year of 2020 across all courthouses in Los Angeles County.

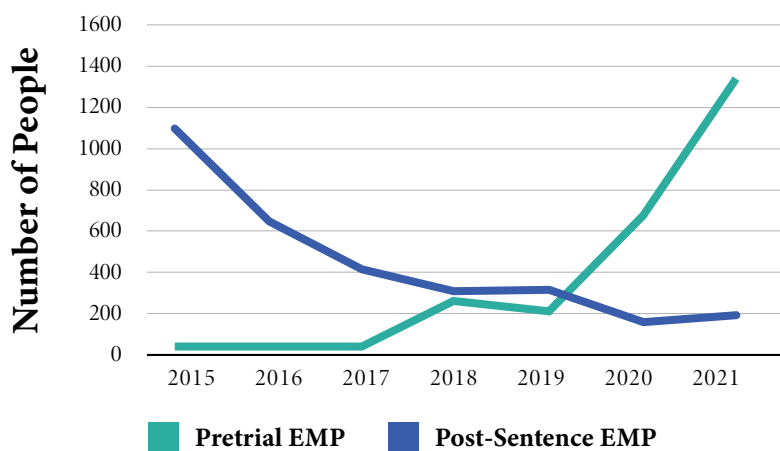
Looking at the number of people booked into Los Angeles County jails over time compared to the people released on either EM program, one can see that the percentage of those booked who are then placed on EM is increasing over time. (See Figure 2) The number of people booked in the jails decreased dramatically from 8,492 in January 2020 to a low of 2,854 in April 2020 (likely due to COVID-19) and the most current data reported is from September 2021, when 4,660 people were booked into the jail.⁴⁸ Despite the dramatic decrease in bookings, the share of people on EM continues to increase. The higher frequency at which people are being placed on EM should be monitored carefully as the pretrial jail population starts to increase to determine whether EM is being used to remove more people from the jail or whether the pretrial population remains steady while rates of EM also increase.

Figure 2: Pretrial Electronic Monitoring Releases as a Percentage of Bookings in Los Angeles County (2015-2021)



EMP is also imposed on individuals who are post-sentence. The referral for post-sentence EMP can come from the court or from the Sheriff’s Department and is approved by the Probation Department. In 2015, there were 1,405 people on EM post-sentence. As of October of this year, there were only 254 people on EM post-sentence. This is an eighty-two percent decrease in people assigned to post-sentence EMP. It is unclear what has precipitated such a sharp decline in the use of EM post-sentence. Given this decline, the number of people on pretrial EM now surpasses the number of people on EM post-sentence. (See Figure 3) It is disconcerting that people pretrial, who are presumed innocent, are being placed on EM in greater numbers than those who have been convicted and sentenced.

Figure 3: Number of People on Pretrial EMP Compared to the Number of People on Post-Sentence EMP (2015-2021)



B. The Majority of People Placed on Pretrial Electronic Monitoring are Black and Latinx

In 2021, fifty-three percent of the people placed on EM were Latinx and thirty-one percent were Black, compared to twelve percent white and four percent other. Comparing this to the current jail population, where fifty-four percent are Latinx, twenty-nine percent are Black, twelve percent are white, and three percent are other, indicates that Black people continue to be overrepresented in both the carceral and EM setting, as Black people make up only nine percent of Los Angeles County's general population.⁴⁹ Further, the percentage of Black people placed on EM over time increased more than other racial groups: in 2015 twenty-one percent of people placed on EM were Black, whereas in 2021, thirty-one percent of people placed on EM were Black. (See Table 1)

Table 1: Number of People on Pretrial Electronic Monitoring by Race (2015-2021)⁵⁰

	n	Black	Latinx	White	Other
2015	24	5 (21%)	12 (50%)	3 (13%)	4 (17%)
2016	28	9 (32%)	10 (36%)	7 (25%)	2 (7%)
2017	35	8 (23%)	13 (37%)	11 (31%)	3 (9%)
2018	268	84 (31%)	124 (46%)	41 (15%)	19 (7%)
2019	205	70 (34%)	91 (44%)	30 (15%)	14 (7%)
2020	630	202 (32%)	338 (54%)	69 (11%)	21 (3%)
2021	1284	397 (31%)	675 (52.5%)	161 (12.5%)	51 (4%)
Total	2,474	775 (31%)	1,263 (51%)	322 (13%)	114 (5%)

In the EM SRP program, Black women are overrepresented; thirty-eight percent of women placed on EM SRP are identified as Black, compared to twenty-nine percent of men placed on EM SRP that are identified as Black. (See Table 2). As of August 19, 2020, thirty-four percent of the population at the women's jail in Los Angeles was Black.⁵¹

Table 2: Numbers of People Placed on EM SRP by Race and Gender from the Inception of the Program through October 2021

	n	Black	Latinx	White	Other
Men	951	279 (29%)	559 (59%)	87 (9%)	26 (3%)
Women	199	77 (39%)	89 (45%)	29 (15%)	4 (2%)
Total	1,150	356 (31%)	648 (56%)	116 (10%)	30 (3%)

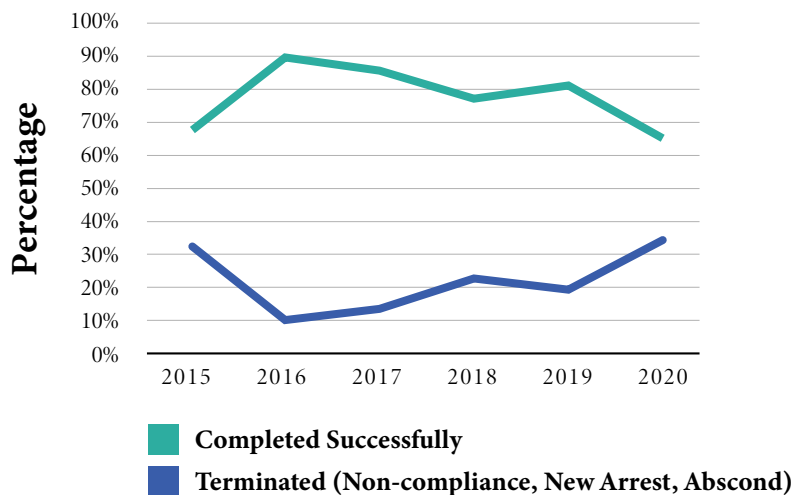
C. The Rates of Successful Completion of Electronic Monitoring are Low, Particularly for the Supervised Release Program

The EMP data received had four categories for final disposition or outcome:

1. Completed Successfully
2. Pending
3. Terminated, Abscond
4. Terminated, New Arrest
5. Terminated, Non-compliance

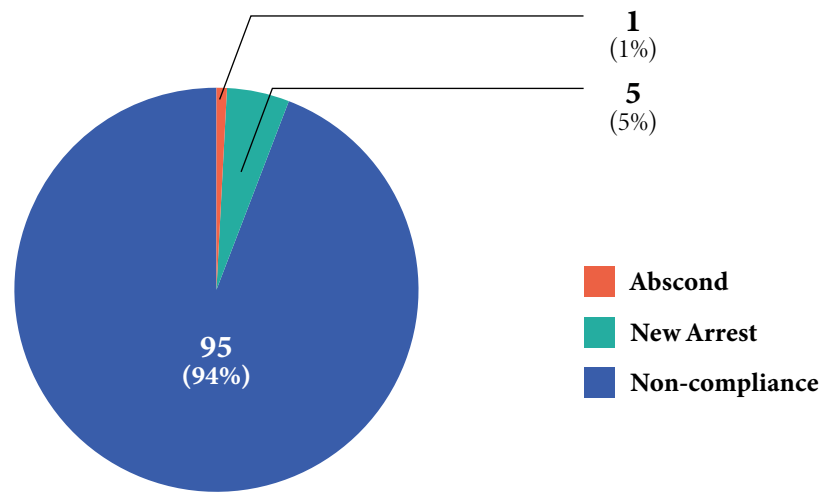
When someone is terminated for abscond, a new arrest, or non-compliance, they are re-incarcerated. Figure 4 shows that the rate of termination is increasing for pretrial EMP. In 2016, only eleven percent of people were terminated for any given reason, but in 2020, thirty-five percent of people were terminated from pretrial EMP. In 2020, sixty-five percent of people successfully completed the program, which is down from an eighty-nine percent successful completion rate in 2016.

Figure 4: Pretrial Electronic Monitoring Program Outcomes (2015-2020)



The termination category of “Terminated, Non-compliance” is the reason why the greatest number of people are re-incarcerated in pretrial EMP, not for new arrests or absconds. In 2020, of the people terminated from pretrial EMP, ninety-four percent of people were terminated for non-compliance as compared to five percent terminated for a new arrest and one percent terminated for absconding. (See Figure 5) As mentioned, non-compliance could be for any number of things including curfew violations, leaving one’s house too early, or failing to report a schedule change within twenty-four hours.

Figure 5: Reasons for Termination from the Pretrial Electronic Monitoring Program (2020)

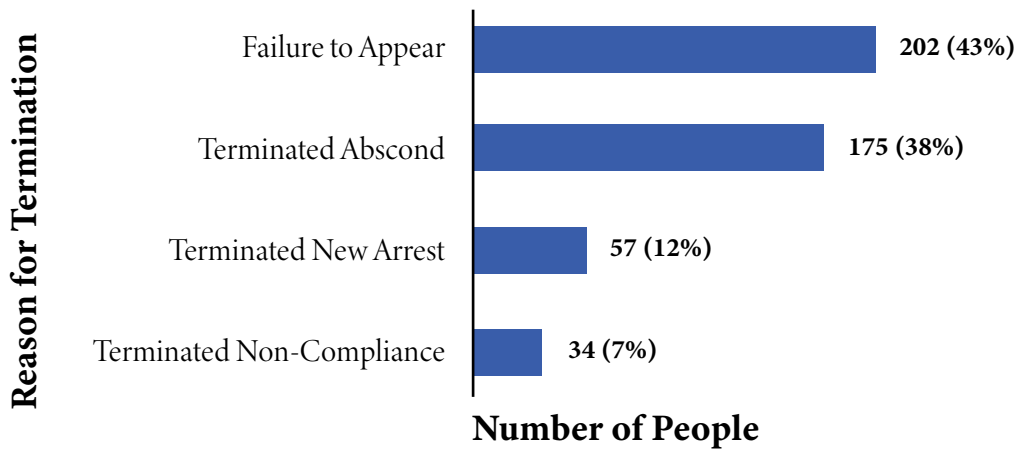


The SRP data provided a greater number of categories in terms of disposition:

1. Case Dismissed
2. Completed Successfully
3. Failure to Appear
4. Pending
5. Sentenced
6. Terminated, Abscond
7. Terminated, New Arrest
8. Terminated, Non-compliance
9. Unable to Complete (In Custody)⁵²

Those that are sentenced are considered as having successfully completed the program, thus taking those sentenced and those listed as successfully completed, we can see that EM SRP has a poor record of successful completion, with only forty-five percent of people successfully completing the program in 2020. In 2020, seventy-one people were terminated from EM SRP and sixty-nine people failed to appear in court (FTA), which also typically results in re-incarceration and termination from the program, thus a forty-five percent termination rate when those two categories are combined. In 2021, 328 were terminated (including FTAs), whereas only 237 people completed the program.⁵³ Throughout the duration of SRP, termination from EM SRP happens most frequently for FTA and abscond rather than for non-compliance or new arrest, which diverges from the pretrial EMP data, where non-compliance was the primary reason for termination. The number of people terminated for absconding is three times higher than termination for a new arrest and five times higher than termination for non-compliance. (See Figure 6).

Figure 6: Number of People Terminated by Reason for Termination for the Duration of the Electronic Monitoring Supervised Release Program



The higher rates of termination for abscond for EM SRP as compared to pretrial EMP is difficult to explain. The abscond definition is the same in both EM programs and it would be hard to understand why people enrolled in EM SRP would actually be absconding more. The higher number of absconds with EM SRP could suggest that SRP case managers are less forgiving with absconds than the pretrial EMP program. Unfortunately, there is no data to indicate whether someone actually fled the jurisdiction and did in fact abscond, rather than was unreachable for a period of four hours or more; a situation that could have many benign explanations that may not warrant being terminated from the program and re-incarcerated.

D. The Median Number of Days Spent on Electronic Monitoring Pretrial Exceeds the Median Number of Days Spent on Electronic Monitoring Post-Sentence

We analyzed the 319 people placed on pretrial EMP in 2020 to understand the median number of days people spent on the program. In 2020, people spent at least seventy-one days on pretrial EMP, or over two months. Because there were people with their disposition pending, this number would likely increase once those individuals either complete the program or are terminated. People charged with misdemeanors spent a median of eighty-one days on pretrial EMP, whereas those charged with felonies spent a median of sixty-nine days on pretrial EMP. Further, people on pretrial EMP, who are presumed innocent, spent two and a half times more days on EM than people on post-sentence EM, who spent a median of twenty-eight days on the program.

Almost forty percent of people on pretrial EMP spent over six months on pretrial EMP.

The median number of days spent on EM for people placed on EM SRP in 2020 was at least sixty-five days. The difference in days between EM SRP and pretrial EMP could be due to the fact that more people are being terminated from EM SRP than EMP, which effectively cuts off the number of days they are on EM. In 2020, people charged with misdemeanors on EM SRP are spending a median of fifty-six days on EM, and people charged with felonies are spending sixty-seven days. Just over one-third of people spent over six months on EM SRP.

E. People are Primarily Placed on Electronic Monitoring Pretrial for Felony Charges

The percentage of people placed on pretrial EMP charged with only misdemeanors has declined since 2015 and increased for people charged with at least one felony. However, over one-third of people placed on pretrial EMP are charged with misdemeanors only as compared to the EM SRP program which is used for misdemeanor cases twenty-eight percent of the time. (See Table 3)

Table 3: Numbers of People Placed on Electronic Monitoring by Type of Electronic Monitoring Program and Charge Level (2021)

	n	Misdemeanor	Felony
Pretrial EMP	445	147 (33%)	298 (67%)
EM SRP	839	237 (28%)	602 (72%)
Total	1,284	384 (30%)	900 (70%)

When analyzing the highest charge for people placed on EM, there is a significant difference between Los Angeles County's two EM programs. The greatest number of people (102 people) placed on EM SRP had felony assault with a deadly weapon as their highest charge, which is considered a violent felony under California state law. The second largest number of people (99 people) placed on EM SRP had their highest charge as felon in possession of a firearm. It is curious that the EM SRP program would be used so frequently for the felon in possession of a firearm charge as it is not a charge that alleges any use of the firearm nor injury caused by the firearm, but simply possession, which is not considered a violent crime under California state law. Further, fifty-eight percent of people referred to SRP for felon in possession of a firearm were released with the EM condition, indicating that people with this charge are more frequently subject to EM than standard monitoring.

For misdemeanors, the greatest number of people placed on EM SRP had misdemeanor domestic violence with injury as their highest charge.⁵⁴ This was almost thirty percent of people released on EM SRP for misdemeanors. Approximately sixteen percent of people placed on EM SRP for misdemeanors had their highest charge as violation of a protective order.

The greatest number of people placed on pretrial EMP had burglary as their highest charge. In California, a felony burglary charge can be charged as a violent felony or as a non-violent felony. Unfortunately, there is no way to determine from the data provided for what type of burglary charge people are being placed on pretrial EMP. The next highest felony charges are assault with a deadly weapon and robbery, both are categorized as violent felonies under California law.⁵⁵ For misdemeanors, the largest number of people placed on pretrial EMP had misdemeanor domestic violence with injury as their highest charge, followed by driving under the influence.

F. Courts are Relying More Heavily on Electronic Monitoring than Standard Monitoring in the Supervised Release Program

As mentioned, when an individual is referred to SRP, they can be placed on standard monitoring (which does not include an ankle monitor), EM, AM, or a combination of EM and AM. Overall, EM releases via SRP were the most common type of release, with sixty-five percent of people placed on EM⁵⁶ compared to four percent released on AM and thirty-one percent of people released on standard monitoring.

Table 4: Percentage of People Released via the Supervised Release Program by Type of Release

	n	Standard Monitoring	Electronic Monitoring	Alcohol Monitoring
Downtown Los Angeles Criminal Justice Center	1503	537 (36%)	905 (60%)	61 (4%)
Lancaster Courthouse	263	9 (3%)	241 (92%)	13 (5%)
Pomona Courthouse	4	0 (0)	4 (100%)	0 (0)
Total	1,770	546 (31%)	1,150 (65%)	74 (4%)

SRP initially was only implemented at the Downtown Los Angeles Criminal Justice Center, thus the majority of referrals to EM SRP come from that courthouse. However, since implementation in Lancaster, ninety-two percent of people referred to SRP in Lancaster were placed on EM as compared to three percent of people placed on standard monitoring. The Downtown Los Angeles Criminal Justice Center also uses EM more frequently than standard monitoring, with sixty percent of people placed on EM as compared to thirty-six percent of people placed on standard monitoring.⁵⁷ While the legislation that allowed for the creation of SRP stated that the standard of least restrictive conditions should be followed, this data indicates that the courts are erring on the side of the most restrictive condition—that of electronic monitoring.⁵⁸

Further, it seems that EM is being ordered more frequently for misdemeanor cases that are referred to SRP. Eighty-eight percent of all people charged with misdemeanors who were processed through SRP were placed on EM SRP, whereas fifty-nine percent of people charged with felonies were placed on EM SRP.

IV. Contextualizing the Findings

As indicated in the section above, pretrial EM usage is increasing in Los Angeles County. There are several possible explanations as to why this may be the case and they are outlined briefly below.

In re Humphrey

In re Humphrey, is a California case that was filed in 2017 challenging the pretrial incarceration of Kenneth Humphrey as unconstitutional, since Mr. Humphrey was detained solely because he could not afford to pay his cash bail amount. On January 25, 2018, the California Court of Appeal issued its ruling siding with Mr. Humphrey, and holding that before setting money bail, courts have to consider an individual's ability to pay when setting a cash bail amount, with the default being pretrial release with the least restrictive, non-financial conditions.⁵⁹ On its own motion, the California Supreme Court ordered a review of the Court of Appeal decision. On January 25, 2021, the California Supreme Court affirmed the Court of Appeal's ruling.⁶⁰

While the verdict is still out on whether courts across the state are releasing more people pretrial since the *Humphrey* decision, the increase in EM in various counties across the state does seem to track the *Humphrey* decision. As mentioned, the number of people on pretrial EM in San Francisco's rose 308 percent from 2017 to 2018, perhaps due to the January 2018 Court of Appeal decision in *Humphrey*. Santa Clara County's EM numbers have quadrupled in the last four years, since 2017, also corresponding with the *Humphrey* timeline. Los Angeles County is similarly situated in seeing these dramatic increases in EM during this time period, with 35 people placed on pretrial EMP in 2017 and 268 people in 2018, a 666 percent increase.

California Judicial Council

Another factor that could be playing a role in the increase in EM in California and is certainly contributing to the increase in Los Angeles County, is the California Judicial Council's funding of pretrial pilot programs in sixteen counties across the state. These pilot programs are a result of a budget allocation of \$75 million to the California Judicial Council to "fund the implementation, operation, and evaluation of programs or efforts in at least 10 courts related to pretrial decision-making."⁶¹ The state Budget Act of 2019 requires the funding be used to expand own recognizance and monitored release, implementing the "least restrictive interventions and practices necessary to enhance public safety and return to court."⁶² The Act also requires counties to "assess any disparate impact or bias that may result from the implementation of these programs in order to better understand and reduce biases based on race, ethnicity, and gender in pretrial release decision making."⁶³

Los Angeles County received funding to establish one of these pretrial pilot programs, the Supervised Release Program (discussed in detail in section II), which upon its implementation contributed to the biggest increase in pretrial EM over the past six years.

COVID-19

COVID-19 could be contributing to the increased numbers of EM throughout the state and in Los Angeles County. Many counties made efforts to reduce their jail populations due to the risk posed to individuals incarcerated and employed there by this deadly pandemic, utilizing emergency bail schedules and other forms of release to remove people from jails. This may have caused an increase in both pretrial releases and pretrial EM usage, although as the numbers from San Francisco, Santa Clara, and Los Angeles Counties show, the numbers were already increasing prior to the pandemic. In Los Angeles County, the data does show a sharp increase in pretrial EM immediately after the March 2020 stay at home orders, however this also corresponds with the implementation of the Judicial Council Pilot shortly thereafter.

Jail Decarceration

As the harms of mass incarceration continue to be exposed, many people are now advocating for jail decarceration. In Los Angeles County, the Board of Supervisors has repeatedly shown their support for closing the dangerous and decrepit Men's Central Jail,⁶⁴ which would require the jail population to be reduced to under 8,500 people.⁶⁵ If more people are being released pretrial to align with decarceration efforts, jurisdictions may see a corresponding increase in pretrial EM. However, some jurisdictions are seeing that pretrial EM is being used to widen the net of people under some form of carceral control. For example, in Cook County, Illinois, the number of people incarcerated pretrial has increased as has the number of people on pretrial EM, indicating that EM is not being used as an alternative to pretrial incarceration.⁶⁶ The same thing is happening in Harris County, Texas, where the number of people on EM went from 27 people in 2019 to over 4,000 people in 2021, and pretrial incarceration has risen to pre-COVID levels.⁶⁷

In Los Angeles County, the pretrial jail population was 5,418 on January 4, 2021, and as of January 3, 2022, it has increased to 6,020.⁶⁸ At the same time, the number of people on pretrial EM continues to increase in the County. This may suggest that LA County is following the path of Cook County and Harris County in expanding the number of people under some form of pretrial carceral control rather than looking to alternative ways to decrease the pretrial population without restrictive conditions like EM.

V. Conclusion

These data presented in this report, tell an important story about the trajectory of the criminal legal system in Los Angeles. As in many other counties across the country, the number of people being placed on EM pretrial in Los Angeles has skyrocketed, increasing by 5,250 percent over a period of six years. Even when judges have the option to release people without EM through the Supervised Release Program, they are choosing to use EM sixty five percent of the time, and at the Lancaster Courthouse, judges are choosing EM ninety-two percent of the time. People placed on pretrial EM in Los Angeles County are spending between sixty-five and seventy-one days on EM, which is far more time than the median number of days that people spend on EM post-sentence.

This increased reliance on EM is occurring despite the fact that these programs do not have the outcomes that judges or the public may think, as indicated by many of the findings in this report. Amongst those on EM SRP, only forty-five percent of people actually completed the program in 2020. While the pretrial EMP program has a higher rate of completion, with sixty five percent of people completing the program in 2020, that rate has consistently gone down over time and will continue to decrease if the trend continues. Further, large numbers of people on both programs are being terminated and re-incarcerated for technical violations, contributing to a cycle of re-incarceration that disrupts lives, can destabilize families, contributes to jail overcrowding, and increases the cost of incarceration in this County.

These burdens of EM are disproportionately falling on the Black and Latinx communities in Los Angeles, who are overrepresented in both the jail and EM population as compared to their numbers in Los Angeles County's general population. Further, Black women are more frequently placed on EM SRP than Black men. This data requires further contextualization that this report cannot provide given that currently there is no publicly accessible data on the numbers of people released from Los Angeles County jails by courthouse. The California Judicial Council is already required to conduct an analysis on the disparate impact of its pretrial pilot programs. They should also conduct a disparate impact analysis as it specifically relates to the use of EM based on race and gender in Los Angeles County. It is imperative to understand if communities of color are more frequently subject to the onerous conditions of EM as compared to their white counterparts rather than being released on their own recognizance without these conditions.

Given the lack of research on the benefits of EM in the pretrial context and the data in this report that shows the low rates of successful completion of EM and the high rates of re-incarceration for technical violations, other alternatives to reduce the number of incarcerated people pretrial should be considered in Los Angeles County. Justice systems stakeholders such as the Los Angeles District Attorney's Office, Public Defender's Office, and Alternate Public Defender's Office, as well as community groups in Los Angeles have recommended on numerous occasions the creation of an independent pretrial services agency that could provide people with the support they need to return to court and to prevent future arrests.⁶⁹ This pretrial services agency would be outside of the auspices of law enforcement and would rely on a needs and strengths-based assessment to provide supportive resources to assist people in returning to court and text message reminders, which are proven to reduce failures to appear. With supportive resources and communities of care, instead of ankle monitors, the County can ensure that individuals who are pretrial and presumed innocent have the support they need to thrive and return to court; non-punitive interventions that should be at the heart of any pretrial intervention.

Endnotes

¹ A huge debt of gratitude is owed to the following people for all their contributions to this report: Ingrid Eagly, Doreen Govari, Christopher Kaiser-Nyman, Benjamin Nyblade, and Kate Weisburd.

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¹⁵ Sainju et al., Electronic Monitoring for Pretrial Release: Assessing the Impact, 82 Fed. Prob. 3 (2018)

[This study cautions that it is not readily applicable to other jurisdictions since every locality uses EM so differently.]

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²⁹ EMP Manual, *supra* note 26, at 11.

³⁰ *Id.* at 10.

³¹ *Id.* at 14.

³² *Id.*

³³ *Id.*

³⁴ Corrective Solutions Participant Contract (on file with author).

³⁵ *Id.*

³⁶ *Id.*

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⁴³ *Id.* at 8.

⁴⁴ *Id.* at 9.

⁴⁵ *Id.* at 10.

⁴⁶ *Id.*

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⁴⁹ U.S. Census Bureau, Quick Facts (Jul.1, 2019) <https://www.census.gov/quickfacts/losangelescitycalifornia>.

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⁵¹ Michelle Parris, Presentation for L.A. County MCJ Closure Workgroup: A Snapshot of L.A. County Jail System on 8.19.2020, <https://perma.cc/ZHY5-AQ4T>.

⁵² This category refers to people who may have been granted EM SRP by a judge, but who are never released because they have a hold placed on them. Sometimes this means they have a probation or parole violation, and a judge is not willing to release them on the violation, or they have a warrant from another county that prevents them from being released.

⁵³ 2021 data had a great deal more people pending than 2020 data, thus the 2021 data will shift over time given that all of these categories could increase, particularly completion since people who complete the program are generally on EM for longer periods of time than those who are terminated.

⁵⁴ Cal. Pen. Code § 273.5.

⁵⁵ Cal. Pen. Code § 667.5.

⁵⁶ People who are placed on both EM and AM have been included in the overall EM category for purposes of this calculation and future calculation related to EM SRP.

⁵⁷ Pomona is the other courthouse where SRP was operating, however it ceased operation as there were only four people referred to SRP there in January through October 2021, all of which were placed on EM.

⁵⁸ Special Directive 20-06 from George Gascon, District Attorney, to all Deputy District Attorneys regarding Pretrial Release Policy (Dec. 7, 2021), <https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-06.pdf> [indicating that EM should be considered the most restrictive condition when making pretrial release decisions.]

⁵⁹ In re Humphrey, 19 Cal.App.5th 1006 (2018).

⁶⁰ In re Humphrey, 11 Cal.5th 135 (2021).

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⁶³ Id.

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⁶⁹ See Alternate Public Defender, District Attorney, and Public Defender, Report Back-Implementing the California Supreme Court's Humphrey Decision, 5 (July 7, 2021) <http://file.lacounty.gov/SDSInter/bos/supdocs/159924.pdf>; see also, Los Angeles County Alternatives to Incarceration Work Group Final Report, Care First, Jails Last, Health and Racial Justice Strategies for Safer Communities 78 (2020) https://lacialternatives.org/wp-content/uploads/2020/03/ATI_Full_Report_single_pages.pdf [recommending the development of a "strengths and needs-based system of pre-trial release through an independent, cross-functional entity, situated outside of law enforcement"]; see also, Virani et al., Creating a Needs-Based Pre-trial Release System: The False Dichotomy of Money Bail Versus Risk Assessment Tools (2020) <https://law.ucla.edu/sites/default/files/PDFs/Academics/CJP%20Pretrial%20Proposal%20-%202020.pdf> [proposing a needs-based pretrial release system outside of law enforcement agencies that does not rely on electronic monitoring or surveillance mechanisms.]