

Watching the Watchers:

The Impact of Electronic Surveillance on Privacy and Human Rights in Carceral Settings

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1. Central Question

To what extent do surveillance technologies—such as electronic tracking, and biometric monitoring—impact the privacy, rights, and autonomy of incarcerated and post-incarcerated individuals in the United States?

2. Methodology

- ★ Extensive review of peer-reviewed academic sources
- ★ Legal analysis assessing surveillance practices against international human rights standards: United Nations International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR)
- ★ Analysis of case studies and reform efforts related to surveillance in correctional settings
- ★ Research and analysis broadly informed by informal weekly conversations with inmates at Broome County Jail

3. Research Limitation

- ★ Using international human rights standards (ICCPR and UDHR) as benchmarks may introduce bias, especially when analyzing practices rooted in U.S. legal frameworks that may not fully align with these global norms

4. Why it matters

- ★ Electronic Monitoring (EM) is not just an alternative to incarceration—functions to expand surveillance and control people who would otherwise be free
- ★ Tracks individuals 24/7, infringing on privacy and autonomy
- ★ Widely used even on low-risk individuals
- ★ Lacks consistent oversight or due process
- ★ Imposes financial and health burdens, and reinforces racial disparities
- ★ Something as minor as a dead battery, as common as a traffic jam, or as uncontrollable as a device malfunction can lead to jail

5. Legal Frameworks

1. International Covenant on Civil and Political Rights (ICCPR) Article 14 (7)

No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country

2. International Covenant on Civil and Political Rights (ICCPR) Article 17 (legally binding treaty obligation)

- ★ No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation
- ★ Everyone has the right to the protection of the law against such interference or attacks

3. Universal Declaration of Human Rights Article 12 (declaration)

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks

6. Findings

Electronic Monitoring (EM) is a digital surveillance tool that tracks individuals' physical location and behavior through GPS and radio frequency devices, primarily used as a condition of federally supervised release in the criminal justice system

Two different instances:

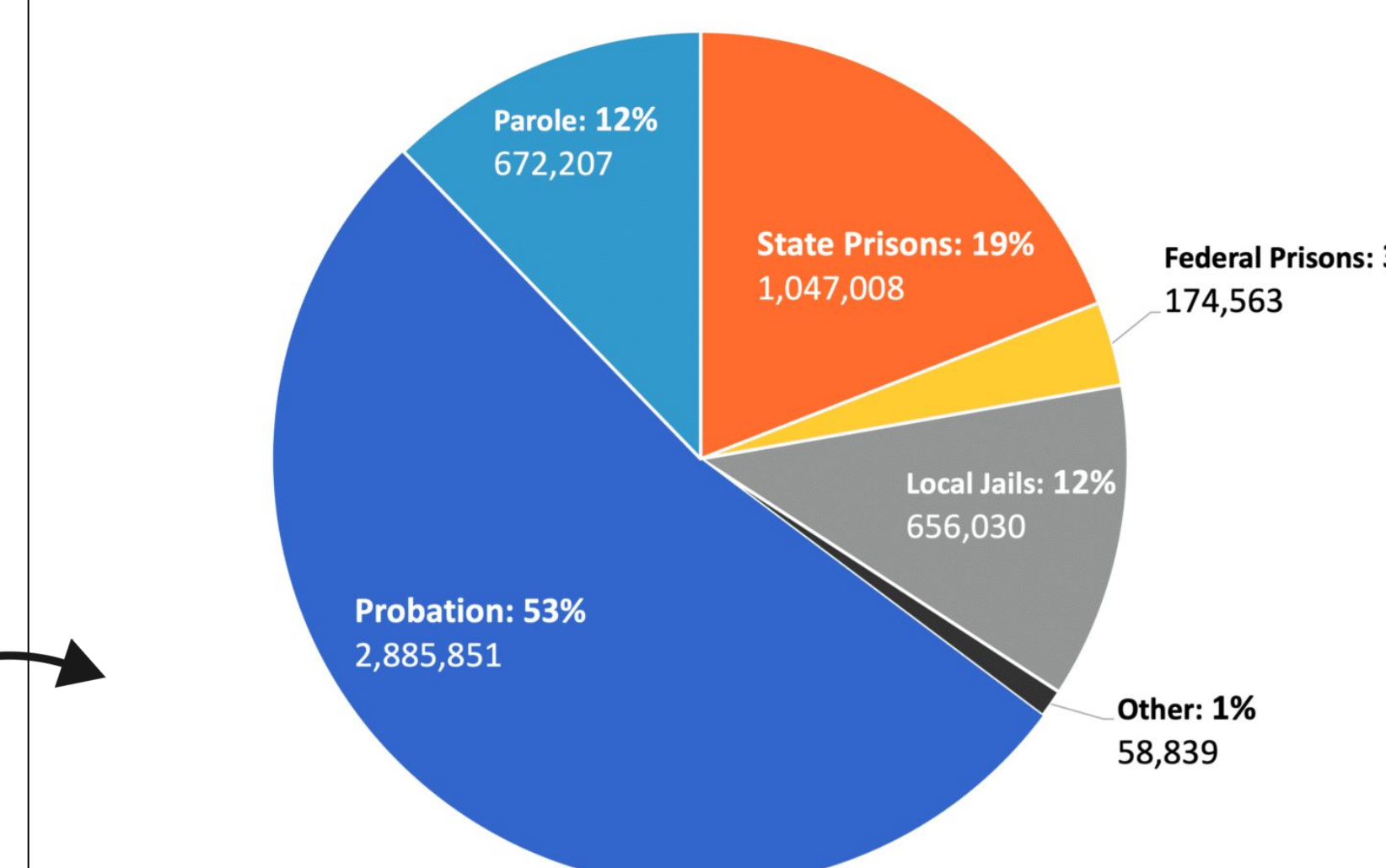
- ★ Pre-trial - allowing defendants to await trial outside of jail
- ★ Post-release - serves as a condition for parole, probation, or house arrest to track ex-convicts after their incarceration

I focus on post-release conditions in my research. Why? The majority of individuals under correctional control are in probation and parole

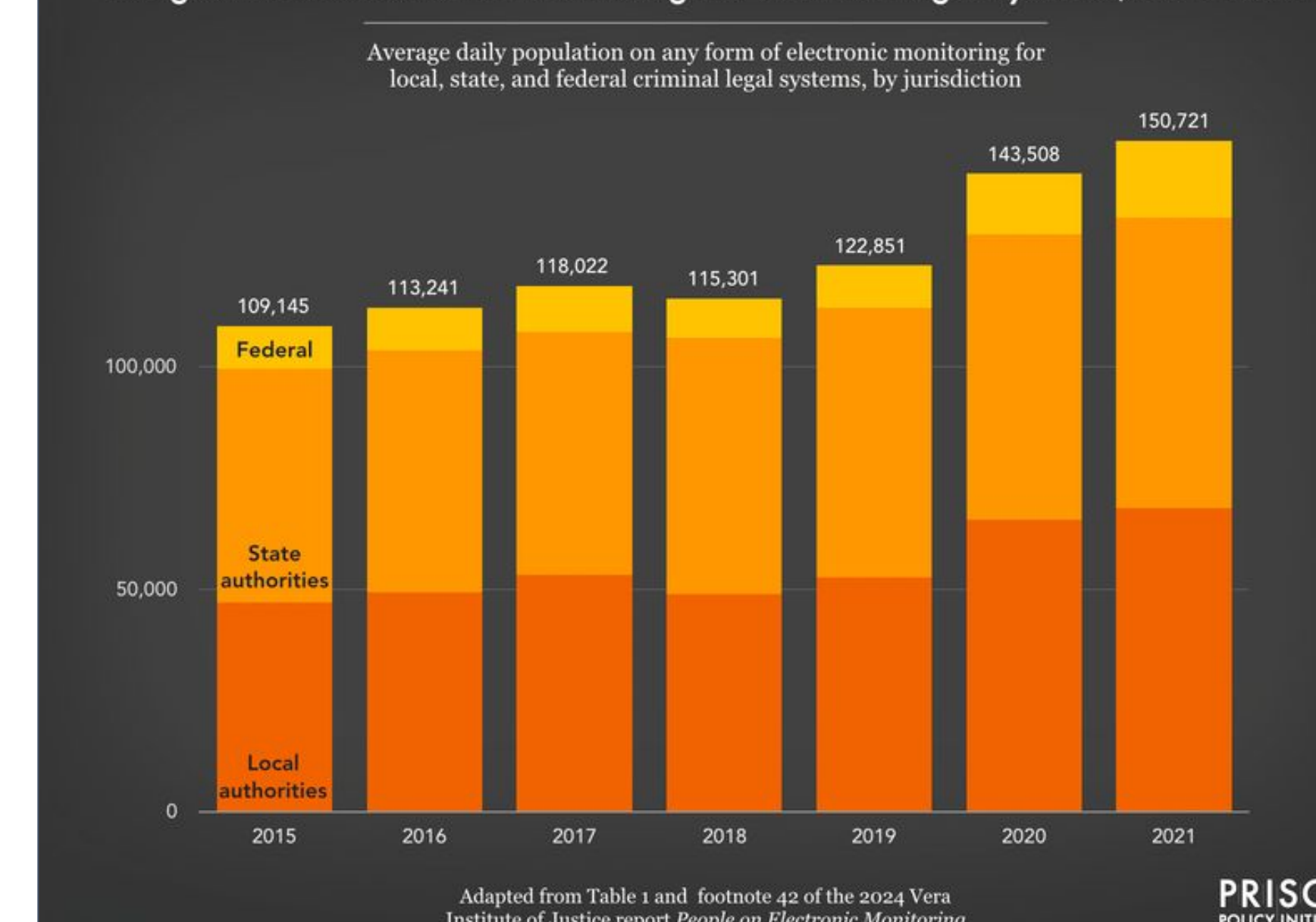
The issue:

- ★ Excessive Use: Applied to low-risk individuals without individualized assessment
 - EM = surveillance creep, not decarceration
 - E.g., San Francisco: EM rose from 60 to 1,659 between 2016-2021; jail numbers still increased
 - A court required one person to take random breathalyzer tests five times per day using an app with a companion Bluetooth breathalyzer device; failure to submit within 30 minutes of an alert would constitute a positive alcohol screen
- ★ Economic Injustice
 - Defendants often pay for their own monitoring devices
 - E.g., People v. Hakes (2012): failure to pay → incarceration
- ★ Unreliable Tech
 - Wisconsin (2017): 864 people → 57,000 GPS signal losses → ~2 false alarms/day/person
 - 2021 survey, one in five people reported experiencing electric shocks from the devices
- ★ Discriminatory Impact
 - Racially biased usage patterns
 - Restricts access to work, school, and healthcare

Population Under Correctional Control in the U.S., 2023



The growth of electronic monitoring for criminal legal systems, 2015-2021



How do we distinguish between high-risk and low-risk individuals?

A low-risk offender is one with a relatively low probability of reoffending (few risk factors), while a high-risk offender has a high probability (many risk factors)

Examples of EM devices



SCRAM GPS Ankle Monitor



SCRAM Bracelet Alcohol Ankle Monitor



RF Patrol Home Monitoring Units

7. Conclusions & Recommendations

Electronic monitoring must be reformed to target only individuals who pose a genuine threat to public safety. A narrowly defined legal framework should guide its use—as shown by the three recommendations on the right. These reforms would better align EM practices with international human rights standards, reduce unjustified privacy violations, and prevent EM from becoming an extended form of punishment

Policy examples:

- ★ New York Senate Bill S8778 - limit EM to high-risk individuals, emphasizing that EM should not be used indiscriminately, especially for low-risk defendants
- ★ S.5580 - Effective Assistance of Counsel in the Digital Era Act mandates a secure, non-monitored communication system for attorney-client privilege, ensuring legal rights are protected during incarceration

01 Individualized Risk Assessments

- ★ Use evidence-based, validated tools to assess individuals' likelihood of reoffending - consider factors like behavior during incarceration, support networks, and rehabilitation efforts—not just prior offenses

02 Support Reintegration, Not Surveillance

- ★ Reframe EM as a reintegration tool rather than a punishment extension - pair with support services like job training, housing, and mental health care

03 Time-Limited Monitoring

- ★ Set strict time limits based on individual risk assessments, not blanket policies - current EM implementations often lack specificity, vary from 3 years to indefinite