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The influences of electronic monitoring in desistance processes: practitioner and decision-maker perspectives

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Introduction

This article canvasses practitioner and decision-maker perspectives of the influences of electronic monitoring (EM) in processes of desistance from crime, with a particular focus on their views of its use with young people aged 16 to 25 years old. Presenting findings from a qualitative mixed methods study, we offer a bounded exploration of the views of different actors working in the Scottish criminal justice field, which are framed and analysed here through the lenses of desistance scholarship.

There are a relatively small number of studies involving monitored people which specifically examine whether electronic monitoring can be considered as a catalyst or vehicle for desistance. Hucklesby's (2008, 2009, 2013a, 2013b) research in England indicates that electronically monitored curfew orders can contribute to desistance and compliance by decreasing levels of anti-social capital and improving levels of pro-social capital. Some participants in her study spoke of how, while being electronically monitored, they 'grew up' and grew out of offending (Hucklesby, 2008), which is consistent with ontogenic understandings of desistance processes. Isolating the influences of EM and linking these to desistance processes is a complex empirical task. As we have observed elsewhere, 'whether EM can be said to actively 'support' or enable processes of desistance from crime and community reintegration, or whether it can be simply said that EM is used in ways that are comparatively less inhibitive of such processes (relative to more punitive sanctions such as incarceration) is the subject of ongoing debate (Lilly, 2006; Mair, 2006; Nellis, 2006, 2013, 2014; Deuchar, 2010, 2011; Geoghegan, 2012)' (in Graham and McIvor, 2015: 74).

Practitioner and decision-maker perspectives on the desistance of monitored people have not yet been covered in much breadth or depth in the extant Anglophone literature. Research involving practitioners and decision-makers tends to focus on the uses of electronic monitoring to reduce the risk of reoffending – a penological objective of reduction and prevention – rather than their broader understanding of its impact in socially situated human developmental processes of desistance from crime. Research and policy literatures on the former are not a

sufficient substitute for understanding the latter, as reducing the risk of reoffending and supporting monitored peoples' desistance are not unequivocally synonymous – in terms of the paradigmatic lenses and theories employed, nor the approaches used and practical ways in which actors make sense of such processes. As such, this article seeks to make a contribution towards redressing this gap in extant literatures.

Our use of the term 'desistance' in this article is based on McNeill's (2016a) conceptualisation: it is a dynamic process of human development – one that is situated in and profoundly affected by its social contexts – in which persons move away from offending and towards compliance with law and social norms. Complementary to this, we employ Nugent and Schinkel's (2016: 3) terminology of 'act desistance' for non-offending, 'identity desistance' for the internalisation of non-offending identity, and 'relational desistance' for recognition of change by others'

The study

This article focuses on one facet of empirical findings from the research conducted in Scotland – participant perspectives of the uses and effects of electronic monitoring for young adults in desistance processes. This sub-set of findings has emerged from the data, as it was not a pre-established focus or line of questioning in the data collection. The study focuses on adults more generally, not just young adults, as is the focus here. Overall, the Scottish jurisdictional findings and recommendations are much wider, and form part of a larger European comparative research project involving four other jurisdictions: England & Wales, Belgium, Germany and the Netherlands. This cross-national comparative study has been commissioned and funded by the European Commission¹, and detailed research reports, briefing papers and conference paper presentations produced from it are available online (see: Hucklesby, A., Beyens, K., Boone, M., Dünkel, F., McIvor, G., & Graham, H. 2016a, 2016b, 2016c, 2016d). It is the first of its kind in Europe to empirically and comparatively investigate the uses of electronic monitoring in such depth.

The Scottish sample encompassed 30 interviews conducted in 2015 with different criminal justice actors, and 53 hours of ethnographic observation of the tagging and monitoring process undertaken at the National Electronic Monitoring Centre outside Glasgow, and accompanying EM field officers into monitored people's homes at night. The Scottish interview sample includes sheriffs, criminal justice social workers, Scottish Prison Service staff, Police Scotland, a member of the Parole Board for Scotland, G4S electronic monitoring staff, Scottish Government Justice policymakers, and staff from a third sector representative organisation.

Research interviews were conducted with participants in places where EM is used regularly, as well as in places where it is not, to gain a greater understanding of why or why not? These places are not publicly identified to protect participant anonymity in a small jurisdiction. The primary data is supported by evidence from other secondary sources such as statistics, process mapping of the monitoring process for different EM modalities, policy review and Consultation submissions. The Scottish findings and recommendations were released in mid-2016 in the form of a 92-page report, [title], and a 12-page briefing paper summary (see McIvor and Graham, 2016a; McIvor and Graham, 2016b). Additionally, the research presented here is premised on a separate but related in-depth international evidence review (Graham and McIvor, 2015) conducted by the article authors and commissioned by the Scottish Government during the same period of time as this European study.

One of the limitations of this European study is that it was not commissioned or designed to include primary data collection seeking the perspectives of monitored people, hence why this article focuses on practitioner and decision-maker perspectives of working with monitored people in desistance processes. A key recommendation within this research project is that ‘more independent research is needed in the future’, including ensuring that future developments ‘are informed by the perspectives and lived experiences of monitored people, their families and victims’ (McIvor and Graham, 2016a: 3). Moreover, the Scottish practitioner and decision-maker interview sample is modest in size, so the findings presented here should be understood as delimited in their broader generalisability.

Background context

Discussions and findings in this article should be understood as occurring in a context where only one form of electronic monitoring technology has been used in Scotland from 2002 to 2016. Radio frequency electronic monitoring involves tagging and, in most cases, a curfew restriction to a single location for a set period of time, most commonly a home curfew of up to 12 hours per day. Radio frequency EM functions differently to other EM technologies, such as GPS tagging and tracking or ‘alcohol tags’, which have the capacity for transdermal alcohol monitoring through contact with skin and sweat (for an explanation and evidence review of the uses, impacts and costs of these technologies, see Graham and McIvor, 2015).

The majority of electronically monitored orders in Scotland from 2002-2016 have been ‘stand-alone’, where offender supervision and support options are not a routine feature of the most commonly imposed EM orders: Restriction of Liberty Orders (EM as a stand-alone community sentence) or Home Detention Curfews (early release from prison with EM on a

HDC licence). Criminal justice social workers are not involved in supervising or supporting people on Restriction of Liberty Orders or Home Detention Curfews. Rich qualitative accounts of ‘assisted desistance’ in the integrated form of supervision and support for desistance are not readily forthcoming in this study because the legal infrastructure for EM in Scotland has not allowed for this in most cases to date.

The thematic findings in the following sections are structured around our choice to frame and analyse them against concepts and theories which are prominent in contemporary desistance scholarship. Firstly, the views of practitioners and decision-makers about electronically monitoring young adults are canvassed. Secondly, we explore a common narrative in research participant accounts using the notions of ‘situational self-binding’ and ‘knifing off’ to examine their perspectives of agentic and situational dimensions of desistance, using EM as a catalyst for change.

However, it is worth noting from the outset that while participants report monitored young people having and using agency, their accounts are not premised on an expectation of rational actors with high levels of motivation and self-control, and numerous opportunities and supports for change. Participants in this study offer more reflexive and pragmatic perspectives of the mixed realities, the pains and the gains, of what might be involved for monitored young people in these situations and processes. To reflect this, the concluding section of this article is reflexive in problematising essentialist arguments and dichotomous conceptualisations of electronic monitoring as a help *or* a hindrance to desistance.

Mixed views of electronically monitoring young people

One core tenet of desistance scholarship centres on ontogenic theories of the influence of age, life stage and maturation in offending and desistance from crime. Youth and young adulthood are highlighted as stages in the lifecourse when particular ‘turning points’ towards desistance and change can occur. In this study, participant perspectives and experiences of electronically monitoring young people are patently mixed. Some believe that electronic monitoring is a community sentence or condition well suited to use with young adults, and some oppose its use with young adults, especially where their behaviours and circumstances are seen to be too ‘chaotic’ or ‘impulsive.’ The rationales underpinning these mixed views are briefly explored further here.

For participants in this study who favour the use of EM with young adults, their perceptions accentuate its status in the sentencing tariff in Scotland as an alternative to custody. They also

tend to highlight its capacity to act as an externally imposed reason for self-discipline and establishing a positive daily routine in lifestyles that lack routine.

'If that group [young people] could be kept in the community or at home longer, I think all the research shows that the longer they stay out of custody the more chance they have of settling down' (Interview 11, G4S staff).

'I think it [EM] is probably most useful for young offenders who would otherwise be out on the streets causing trouble or committing thefts and that sort of thing' (Interview 20, sheriff).

The participant who offers the view above (Interview 11) that EM is suitable for young offenders goes on to warn that prospects of EM helping them in 'settling down' are contingent on household dynamics and the stability and safety of their social bonds. Where relationships are positive and supportive, being tagged with a home curfew may at the very least not hinder, or may even help desistance processes. Where relationships are strained or aggressive, a young person being tagged with a home curfew is likely to frustrate their prospects of both compliance and desistance.

'You've got to look at how well the relationship between the person in question and their parents is. I found a lot that when you have for example a younger offender, you invariably have a maybe a mother/stepfather relationship and in that situation where perhaps there's a bit of let's just say friction between the young person and the stepfather, it can be accentuated by the young person being at home for twelve hours per day' (Interview 11, G4S staff).

Here, ontogenic age-related explanations need to be understood as interactive with sociogenic explanations of the role of social bonds and a young person's capacity and opportunities for relational desistance. When compared to prison, electronic monitoring may seem like a preferable option for use with young people, but 'better than prison' does not necessarily mean closely associated with enabling desistance.

In a similar vein, a senior social work practitioner differentiates wholesale arguments for or against using EM with young people in Scotland from the deeper need to tease out concerns and questions of *how* and *why* it is used, and with *whom*. They draw attention to current responses by authorities to non-compliance and breach of electronically monitored orders, suggesting that if long-term desistance is the goal, then a more 'realistic', 'proportionate' and tailored approach needs to be taken to using EM with young adults, rather than the current

strict process of responding to violations with breach reporting by ‘taking people back to court five, six, seven times for the same order for it to be continued’ (Interview 3, criminal justice social worker). In saying this, they challenge attempts to individually responsabilise monitored young adults to comply and desist in ways which are ignorant or blind to their situational, relational and social context:

‘It’s no’ worth sending them to jail [if they breach] ... Sometimes you think well they’re nineteen or twenty years old, it doesnae matter what you do with him just now, he’s not going to change because he’s still in the same situation, he’s still with the same peers, he’s still got the same family, he’s still got the same history, you know. We just have to accept they do things and then maybe we wait till they’re twenty four, twenty five when they’ve maybe actually matured enough to understand...’ (Interview 3, criminal justice social worker).

Being given the opportunity of an ‘alternative’ to prison may entail mixed influences, gains and pains, for young adults, depending on what is or is not attained in this process. If young prisoners, for example a 16 or 17 year old from HMYOI Polmont or Cornton Vale prisons, are granted early release with a tag on Home Detention Curfew, there is a lot riding on their compliance. Interviews with Scottish Prison Service staff indicate prison staff perceive their approach as flexible in how they use EM with young prisoners, emphasising a clear recognition that young prisoners can have trouble complying with EM regimes; however, local and individual professional approaches are structured by overarching national policy and legislative features. If a young prisoner breaches their HDC and they are recalled to prison, current statutory exclusions (at the time of writing) enshrined in Scottish legislation mean they are *permanently ineligible* for HDC again. Breaching a Home Detention Curfew is a ‘failure’ that stays on their record and may heighten assessments of their risk well into their futures, irrespective of subsequent personal growth or situational change.

Some participants in this study use this type of example as a rationale of the costliness and consequences of breach and non-compliance to warn against using EM with young people because of a perceived incompatibility of the strictness of the regime for those who might be ‘very immature’ and ‘don’t actually understand’ (Interview 16, sheriff), and who ‘don’t realise the consequences of what’ll happen if they don’t stick to it’ (Interview 9, G4S staff). For other young people, the fear of failure can be a considerable burden or a source motivation in the process of being monitored.

Nugent and Schinkel (2016: 10) offer excellent insights into the ‘pain of goal failure’ and the challenge of ‘identity desistance’ for young people, which may in turn negatively affect their capacity to sustain any ‘act desistance’ they might have achieved. Especially in the early stages of desistance, some young people can miss the status that committing crime offers and can struggle with being ‘unable to recreate a pro-social identity of any similar standing’ (Nugent and Schinkel, 2016: 10). In a similar vein, a participant in this study observes that, for some young people serving community sentences in Scotland, being tagged carries a pro-criminal status as ‘*a badge of honour, “look how bad I’ve been,” da-da-da*’ (Interview 17, criminal justice social worker). Other young people manage to achieve act desistance and some level of relational desistance in the process of being electronically monitored, but may struggle with the pain of goal failure when there is a lack of opportunities and supports for identity desistance and becoming a person known for things other than crime and punishment. The next section highlights examples of how EM can be associated with positive influences for some young adults

Situational self-binding and ‘knifing off’ during electronic monitoring: using EM as a catalyst for change?

A consistent narrative across practitioner and decision-maker accounts in this study is a common perception of how some monitored young people use their tag and home curfew as a catalyst for change in the early stages of desistance. Data and findings from this study indicate that, in consenting to being physically bound with a tag and temporally and spatially bound by complying with a home curfew, some monitored people engage in ‘situational self-binding’ and use EM as a catalyst for reducing or ceasing particular behaviours and peer associations previously associated with their offending. This finding echoes and further develops empirical observations raised by others, for example, in research by Hucklesby (2008, 2009, 2013a, 2013b).

One participant highlights how EM can act as a ‘*constraint*’ which ‘*helps the person who is not quite ready to help themselves*’ (Interview 4, criminal justice social worker). They advocate practitioners in supervision and support roles being ‘imaginative’ in having motivational conversations with young people about the potential benefits and gains of self-control and being confined (for a time) to the family home (in household situations where this is a positive environment) and away from criminogenic environments and peer associations. Another participant suggests that, for young people aged 25 and under, some will internalise the

imposition of EM in a way where the penal control translates into newfound levels of self-control and agency, *'and that's how they've adhered to it, it's you know, and [they say] "the court's told me I have to do it and I'm doing it"'* (Interview 17, criminal justice social worker).

These participant accounts can be further explained using Bottoms' (2013, 2014) propositions of situational self-binding in agentic and socio-spatial dimensions of desistance. Drawing on data from the Sheffield Desistance Study, he argues that situational and environmental factors can act as influential mechanisms for offenders to achieve different types of compliance (instrumental, normative and situational) and, including but transcending compliance, they can act as a catalyst or opportunity for individual agency and self-control achieved by situational means in the early stages of desistance (Bottoms, 2013). Distinguishing this line of reasoning from sociogenic desistance theories is important because 'while our environments and activities are closely connected to our social bonds or ties (for example, bonds with intimate relationships and to families, work and faith communities), they deserve attention in their own right' (Graham and McNeill, 2016). In this study, participant accounts of monitored young adults choosing to conform themselves in response to imposed constraints and circumstances are important – separately but relatedly to accounts of how EM affects them in navigating social dynamics in the household or how they might also use the period of being electronically monitored to signal to significant others that they are desisting. Both are inter-related features of themes emerging from this study.

Numerous participants working in different parts of the Scottish criminal justice field offer observations of how some young people use electronic monitoring as a reason to reduce or cease contact with peers they have previously committed criminal and anti-social behaviour with, and among whom they are known as having status as an offender. Being at home 'on the tag', as it is commonly called, is used by some as a visible and socially legitimate constraint on particular peer associations and behavioural habit patterns.

'Especially young offenders when you think this is going to be a really hard reintroduction into the community ... as opposed to saying to his friends when they come to his door or his hostel or whatever "we're going out, you've got to come out" and young offenders have said "it's easier if I've got a tag", and that's very sensible I think. So it's not "I can't come and I'm scared, and I'm not one of your group any more", it's so they've got a bit of a status with having the tag [laughs] which in some ways is a protective element for them in terms of saying "because of this I can't come out and do this, I've got to be in my house

between these hours” and absolutely I think it is right’ (Interview 23, Parole Board for Scotland).

‘In terms of the change in their lives, we get a lot of comments along the lines of, you know, “it gave me time to think”, “I was not associating with my peer group” or they might not put it that way, “I was able to say to my pals “I can’t go out tonight””, “I wasn’t running with the pack at weekends I was, as a result of that, not coming to the attention of the police at weekends”, “it gave me a bit of stability in my life”’ (Interview 11, G4S staff).

Scottish Government policymakers echo this point more widely, because it is not unique to one electronic monitoring technology, nor to one demographic of monitored people. They observe that, overall, EM can *‘give people an excuse’ because ‘it is something they can point to and say, it’s visible’* (Interview 21, Scottish Government Justice). Nonetheless, participants in this research tend to offer this explanation mostly in relation to monitored young adults navigating not only their own act desistance, but identity desistance and relational desistance among their peers.

These participant accounts exemplify the sociological and criminological notion of ‘knifing off’, which has been harnessed by desistance scholars to understand how people change their routine activities and relationships in response to structurally induced turning points (see Laub and Sampson, 2003; Maruna and Roy, 2007). Knifing off is described as the process of how agentic responses to ‘new situations’ are created ‘that allow individuals to knife off the past, in part, by changing these routine activity patterns that led to trouble with the law’ (Maruna and Roy, 2007: 245). Bottoms (2013: 84) argues that the notion of situational self-binding is still preferential to that of knifing off, because of how it better encompasses the complexities and multiple factors in desistance processes, ‘typically involving several lifestyle changes, and with no guarantee of a successful outcome’; whereas knifing off can be critiqued as implying clear change and positive associations with a situation (e.g., electronic monitoring).

One person’s pain is another person’s gain? Contextualising the impacts of electronic monitoring on individuals, relationships and circumstances

There remains a crucial need to understand agentic activities and self-binding as situated in a particular relational and social context, which can yield different effects and outcomes depending on the people, circumstances, opportunities and supports (or lack thereof) involved. Some participants in this study perceive the experience of electronic monitoring as akin to a

‘triggering event’ (see Laub *et al.*, 1998) or a ‘turning point’ for *some* monitored people in the early stages of desistance. This aligns with a small body of international literature showing that, when used in ethical and effective ways, electronic monitoring can have a modest positive impact, in combination with other factors (for more, see Graham and McIvor, 2015).

A central finding here is that potential ‘gains’ and positive influences associated with electronic monitoring are far from mutually exclusive with potential ‘pains’ and negative influences for individuals and families. Maruna’s (2001: 25) cogent warning remains apt: ‘nothing inherent in a situation makes it a turning point.’ Nothing inherent in electronic monitoring makes it a catalyst for or a barrier to desistance. Context matters. Some young adults may use EM to ‘knife off’ and leave crime and criminogenic peer associations behind. Some may experience what Nugent and Schinkel (2016) describe as the pains of isolation and goal failure, where a level of act desistance is realised for the period of monitoring, but identity desistance and relational desistance may not necessarily follow, especially where there is a lack of material resources, positive social supports and opportunities.

One of the notable gaps in participant narratives in this study, and a gap in electronic monitoring literature and desistance scholarship more generally is the lack of attention given to monitored people who desist alone. By this, we mean monitored people who are not in a committed intimate partner relationship and who do not have extensive positive support networks, including those who live (and are curfewed to properties) alone. Most desistance processes are explained with reference to relationships and social bonds. It is fundamental that more knowledge is developed to better understand and support people whose lives are not characterised by the master statuses of ‘partner’ or ‘parent’, because their experiences cannot and should not be understood predominantly against a heteronormative, monogamous norm. Similarly, the gendered dimensions of desistance while being electronically monitored need to be better understood. Finally, practitioners and researchers need to remain cognisant of the potential for extreme cases of situational self-binding to desist alone, where individual motivation becomes preoccupied with and contingent on the presence of the tag and curfew to desist, in the absence of other supports and catalysts for change.

The findings in this article, on their own, do not necessarily represent a sound basis for wholesale arguments that greater numbers of young adults in Scotland should be given sentences involving electronic monitoring because it might help people in this age group stop offending and leave the peer groups with which they offended with. The realities are more complex and contingent than that. Any desire to ‘sentence for desistance’ (see McNeill, 2016b) needs to be tempered by a deep understanding of electronically monitored punishment and the

multi-faceted nature of its collateral consequences. It is a technology and a form of community sanction and measure that can be used in very different ways in pursuit of very different purposes – personal, professional and penological. Electronic monitoring can help, hinder or harm desistance processes depending on why, how and with whom it is used.

Where electronic monitoring is used, proportionality and personalisation of its use are fundamentally important. One concept or theory from desistance scholarship cannot legitimately be given primacy to the exclusion of others in explaining the impact of EM because, as we have argued here, what positive effects might be illuminated by one theoretical argument or concept (for example, situational self-binding, knifing off) need to be cross-examined against others (for example, sociogenic understandings of the impact on familial social bonds). More research is needed to address knowledge gaps, especially in seeking to know more about the lived experiences and desistance processes of monitored people themselves.

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