

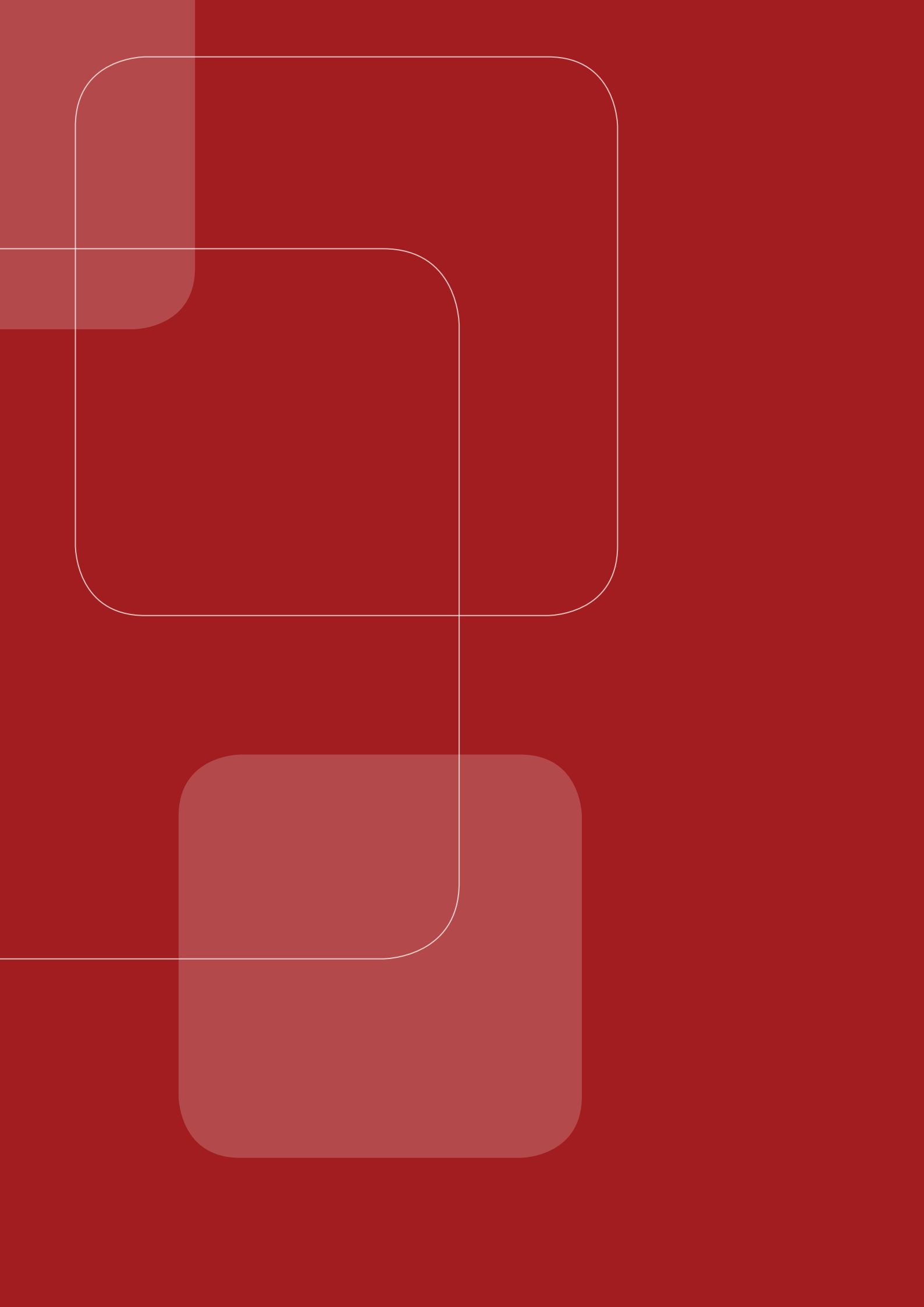
**ELECTRONIC MONITORING
OF PEOPLE**

**Informative
Brochure for
the Social
Protection
Policy Network**



SERIES FAZENDO JUSTIÇA | COLLECTION ELECTRONIC MONITORING







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BRASÍLIA, 2023

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PREFACE

The National Council of Justice (CNJ), in partnership with the Brazilian Ministry of Justice and Public Security (MJSP) and the United Nations Development Program (UNDP Brazil), jointly developed the Programa Fazendo Justiça (Doing Justice Program), which comprises a set of initiatives aimed at addressing systemic challenges related to deprivation of liberty throughout the Criminal and Juvenile Justice in Brazil.

The program aligns with the United Nations Sustainable Development Goals, specifically Goal 16 – Peace, Justice and Strong Institutions, to promote access to justice and strengthen institutions based on social inclusion.

The strategy proposes the creation or improvement of structures and services in the Brazilian Executive and Judiciary Systems, as well as the promotion of professional training, publication of knowledge products, and support in the production of regulations. There are 29 initiatives carried out simultaneously with different stakeholders, focusing on achieving tangible and sustainable results. Among them, the 'International Articulation and Protection of Human Rights' initiative seeks to promote the exchange of experiences between Brazil and other countries in the field of public policies on the Criminal and Juvenile Justice.

The program is currently in its third stage, which aims to consolidate the changes made and transfer the knowledge accumulated. The publications bring together the experiences developed and synthesize the knowledge produced during the first three stages, in addition to supporting professional training activities for a broad audience in the field.

Therefore, guides, manuals, researches and models were created in order to relate technical and normative knowledge to the reality observed in different regions of the country. These resources identified best practices and guidelines for the immediate and facilitated management of incidents.

With the aim of sharing knowledge and communicating successful experiences to a wider audience, the program translated its main titles into English and Spanish. This strategy also involves promoting events, courses, and training in collaboration with international partners, as well as disseminating these translated knowledge products to spread good practices and inspire social transformation on a global scale.

Rosa Weber

President of the Supreme Court and the National Council of Justice

PRESENTATION

The prison and the socio-educational systems in Brazil have always been marked by serious structural problems, reinforced by diffuse responsibilities and the absence of nationally coordinated initiatives based on evidence and good practices. This picture began to change in January 2019, when the National Council of Justice (CNJ) began to lead one of the most ambitious programs ever launched in the country to build possible alternatives to the culture of incarceration, the *Justiça Presente* (“Present Justice”).

This is an unequalled inter-institutional effort of unprecedented scope, which has only become possible thanks to the partnership with the United Nations Development Programme in the implementation of activities on a national scale. The program also counts on the important support of the Ministry of Justice and Public Security, through the National Penitentiary Department.

The publications of the *Justiça Presente* Series cover topics related to the program involving the criminal justice system, such as detention control hearings, alternatives to imprisonment, electronic monitoring, prison policy, support to people who have left the prison system, electronic systems, and the socio-educational system, consolidating public policies and providing rich material for training and raising awareness among actors.

It is encouraging to see the transformative potential of collaborative work focused on the causes instead of dealing only with the same and well-known consequences, suffered even more intensely by the most vulnerable classes. When the highest court in the country understands that at least 800,000 Brazilians live in a state of affairs that operates on the margins of our Constitution, we have no other way but to act.

The informative brochure on electronic monitoring of people integrate didactic material with essential information for the parts who, directly or indirectly, work on the subject. Considering the extent of topics covered by the electronic monitoring, the informative brochures, in addition to being based on the “Management Model for the Electronic Monitoring of People”, synthesize specificities based on the duties and attributions of the institutions involved in the monitoring services in the following publications: Informative Brochure for the Justice System; Informative Brochure for Public Security Agencies; and Informative Brochure for the Social Protection Policy Network. These institutional and organizational tools are essential to promote the implementation of a national policy for electronic monitoring of people that is capable of integrating institutions in the qualification of services, considering the legality, the preservation of the fundamental guarantees of life and human dignity of the monitored people.

José Antonio Dias Toffoli

President of the Supreme Court and the National Council of Justice

ABSTRACT

This informative brochure gathers essential information about electronic monitoring services in Brazil, aiming to share knowledge with social protection network agents at the municipal and state levels – institutions of social assistance, health, education, and employment, among others. To implement the national electronic monitoring policy promoted by the National Penitentiary Department, it proposes guidelines for the social protection of monitored people, emphasizing the workflows between the Electronic Monitoring Centers and institutions that offer social assistance. The guidelines follow the principle of inter-institutionality – essential for implementing public policies – and encourage collaborative work between federative entities, the Justice System, and the community. Facing incarceration and guaranteeing the constitutional rights of the monitored persons depends directly on political and institutional sustainability as well as on the alignment of methodologies and strategies between the Executive Branch, the Courts of Justice, the Public Defender’s Offices, the Public Prosecutor’s Offices, police, civil society organizations, and other institutions – especially those related to the social protection network. The guidelines aim to ensure the access of monitored people to available social protection assistance. It emphasizes the competencies of the Electronic Monitoring Centers in this process, indicating the necessary methods for building social protection networks and qualified multidisciplinary teams to properly implement electronic monitoring services.

1. INTRODUCTION

This product aims to inform actors that make up the municipal and state network of social protection policies (social assistance institutions, as well as health, education, employment, among others) of the essential aspects of electronic monitoring services. The content is based on the national electronic monitoring policy promoted and implemented by the National Penitentiary Department. For this purpose, the main reference is the Management Model for the Electronic Monitoring of People (Brasil, 2017a), published through a partnership between the National Penitentiary Department (DEPEN) and the United Nations Development Programme (UNDP).

In addition to taking into account the national electronic monitoring policy brought by the Management Model, the proposal is also based on a set of empirical evidence built during training courses that occurred in several states, in 2017 and 2018, for Monitoring Centers' employees and also for members of the Judiciary and public security institutions, considering the diversity of actors directly and indirectly involved in the services. The empirical bases also include information gathered in technical visits, meetings, and semi-

nars, as well as during the follow-up activities of the monitoring services.

The institutions that form the social protection network are not directly responsible for the operational part of the monitoring activities; however, they are fundamental for implementing and qualifying social assistance services, which are essential for guaranteeing the rights of the monitored individuals, regardless of their status.

To this end, the main elements of the services and their principles are highlighted, emphasizing the workflows established between the Electronic Monitoring Center and the public policies of social protection, always in line with the perspectives of decarceration and preservation of the monitored people's constitutional rights.

It is essential that each of the actors who deal with electronic monitoring, directly or indirectly, know the essential elements of the services in their various phases, as we are dealing with multiple subjects, knowledge and stages that are necessarily related. As we have already pointed out, electronic monitoring policies par excellence cannot ignore such facets. The dialogue between

the Electronic Monitoring Centers, responsible for carrying out the monitoring services, with the institutions of the social protection network depends on alignments around the operations, the possibilities, and the limits of monitoring. Based

on this, instances of dialogue and workflows between the Centers and the network must be established to make the social protection of the monitored people accessible and more effective.



2 Electronic monitoring of people

Prison institutions are no longer the only control and surveillance spaces designed for those individuals who have violated the law by committing some criminal act. “In a highly technological world, in which the speed of information advances in the light of real time, one can no longer think of prison as dungeons or jails. The grids should be virtual” (Neto, 2009).

Electronic monitoring emerges with vigor, driven by retributive reasons suggested by the punitive paradigm. It is difficult to accurately determine all the fundamentals that have guided

this technology since its creation, development and implementation. We can say, however, that since the 1940s, in Canada, control experiments with the maintenance of people in their homes were initiated (Japiassú and Macedo, 2008). The proposal to use electronic monitoring in a similar way to the one we know today was inaugurated in the 1960s, with the first experiences being documented under the authorship of the professor of psychology at Harvard University, Ralph Schwitzgebel, who proposed electronic measures to control “young delinquents” and “mental patients” (Rodríguez-Magariños, 2005).

The use of this technology applied to criminal control took place in the state of New Mexico in the United States, in 1977. On that occasion, Jack Love, Judge of Albuquerque, was inspired by an episode of the series *Spiderman*, which portrayed the monitoring of the superhero's footsteps on the streets of New York through a bracelet placed deliberately by the villain. The judge then commissioned electronics expert Michael Goss to design and manufacture a monitoring device. But it was only in 1983 that the aforementioned judge determined, experimentally, the monitoring of convicts in Albuquerque. In that decade, in fact, there was a considerable expansion in the use of this type of surveillance. In 1988, 2,300 prisoners were being monitored electronically in the United States. After a decade, the number reached 95,000 (Mariath, 2009), which coincides with the growth of the world's prison population.

2.1. Legal grounds

In Brazil, monitoring began to have a legal basis in 2010, initially provided for in Federal Law n.º 12,258 (Brasil, 2010), which amended Law n.º 7,210/1984, commonly known as Criminal Enforcement Law (Brasil, 1984), introducing the possibility of applying electronic monitoring in two strict cases: a) temporary release to the prisoner who is serving a sentence in semi-open conditions (art. 146-B, II); b) when the sentence is being served under house arrest (art. 146-B, IV). Furthermore, it established the minimum rules for the application of this technology (art. 146-A to 146-D).

The application hypotheses reveal that monitoring was introduced in Brazilian legislation as a control instrument, acting as an alternative to freedom and not as an alternative tool to imprison-



ment. In these cases, it adds to the deprivation of liberty and aggravates the punishment, becoming a more rigorous mechanism in the management of custodial sentences, since before the aforementioned law, prisoners who obtained benefits, such as temporary release and house arrest, were not submitted to any type of electronic control.

The Electronic Monitoring did not contribute to reducing the costs of the prison system, nor did it promote forms of social integration and decarceration. An example of this is the application of monitoring in semi-open conditions as an additional control tool during “temporary releases”, or even to allow work or study, as shown by recent policy data presented below (Brasil, 2018a).

2.1.1. Monitoring applied as a pre-trial non-custodial measure

Federal Law n.º 12,403 (Brasil, 2011a) changed the Code of Criminal Procedure (Brasil, 1941), admitting monitoring as a pre-trial non-custodial measure. Monitoring is no longer restricted to the criminal enforcement phase and is now provided as an alternative measure to prison for those individuals indicted (in the course of the police investigation) or accused (during the criminal prosecution) to avoid their pre-trial detention in the course of the process, that is, before the final and unappealable decision of the criminal sentence.

Pre-trial non-custodial measures may be applied individually or cumulatively. It is noted that electronic monitoring is the last option listed in the aforementioned legal provision. This indicates that electronic monitoring should be applied in a subsidiary and residual way to other

legally provided modalities, as an instrument to contain incarceration and reduce the high number of pre-trial detainees (Brasil, 2015a). In other words, monitoring is indicated only when another less burdensome pre-trial non-custodial measure does not apply, as an alternative to prison and not as an alternative to liberty.

Federal Law n.º 12,403/2011 presents nine pre-trial non-custodial measures:

- I - periodic appearance in court, within the period and under the conditions set by the judge to inform and justify activities;
- II - prohibition of access or attendance to certain places when, due to circumstances related to the fact, the accused or defendant person must remain away from these places to avoid the risk of new infractions;
- III - prohibition against maintaining contact with a specific person when, due to circumstances related to the fact, the defendant must remain distant;
- IV - prohibition to leave the territory when the stay is convenient or necessary for the investigation;
- V - prohibition to leave the house at night and on days off when the defendant has a fixed residence and work;
- VI - suspension of the exercise of public function or activity of an economic or financial nature when there is any threat of its use for the practice of criminal offenses;

- VII – pre-trial detention of the defendant in the event of crimes committed with violence or serious threat, when experts conclude that they are non-imputable or semi-imputable (according to the Penal Code) and there is a risk of repetition;
- VIII – bail, in the infractions that admit it, to ensure attendance at the proceedings, avoid obstruction of its progress or in case of unjustified resistance to the court order;
- IX – electronic monitoring (according to the Law n.º 12,403/2011, art. 319).

2.1.2. Restraining orders and electronic monitoring

Federal Law n.º 11,340/2006, commonly known as Maria da Penha Law, creates mechanisms to curb domestic and family violence against women, under the terms of paragraph 8 of art. 226 of Brazil's Federal Constitution, the Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women. The law also provides for the creation of Domestic Violence Courts, and amends the Code of Criminal Procedure, the Criminal Code and the Criminal Enforcement Law. Its art. 5 defines domestic and family violence against women as any action or omission based on gender that causes her death, injury, physical, sexual or psychological suffering, and moral or property damage, within the scope of the domestic, family unit,

and in any intimate affection relationship, in which the aggressor lives or has lived with the offended. The law also establishes that these relationships are regardless of sexual orientation, which means the possibility of aggression being carried out between women in a homo-affective relationship. Among the main changes provided for in the law, the following stand out: the non-direction of cases to the Special Criminal Courts, removing this violence from the list of minor crimes; admission of in flagrante arrest for cases of domestic and family violence against women; and the prohibition of applying the delivery of food parcels as a penalty, thus requiring the initiation of a police investigation.

The application of restraining orders aims to quickly guarantee the protection of women, based on anticipatory mechanisms, that is, precautionary ones. They can be adopted by the judge at any procedural stage, from the initiation of the police investigation to the judicial stage and are intended to ensure the protection of women and other family members in situations of violence, in addition to guaranteeing the effectiveness of the criminal process. Restraining orders can be applied individually or cumulatively.

Electronic monitoring, when applied cumulatively with restraining orders, aims to expand the protection of women in situations of domestic and family violence. The individual monitoring device (anklet) used by the perpetrator of the violence makes it possible to track their geolocation in real time through information systems. To this end, exclusion areas that should not be accessed by the monitoring party are created, such as the woman's home or other places prohibited by the measure to preserve her physical and psycholog-

These are restraining orders, among others:

- I – suspension of the possession or restriction of carrying weapons, with communication to the competent agency, pursuant to Federal Law N° 10,826 (Federal Law N° 10,826/2003);
- II – removal from home, residence or place of coexistence with the victim;
- III – prohibition of certain conducts, including: a) approximation of the victim, their family members and witnesses, establishing the minimum distance limit between them and the aggressor; b) contact with the victim, her family members and witnesses by any means of communication; c) going to certain places in order to preserve the victim's physical and psychological integrity;
- IV – restriction or suspension of visits to dependent children, heard the multidisciplinary care team or similar service;
- V – providing temporary food or alimony. (Law N° 11,340/2006, art. 22),

ical integrity. The follow-up of the monitored person allows detecting any eventual approximation of judicially delimited exclusion areas through indications in the monitoring system, as well as other incidents of area violations. The Electronic Monitoring Center has mechanisms to identify such approaches and the incidents themselves, as well as means to deal with them in order to ensure compliance with the restraining order and, equally, ensure the woman's protection. In specific cases, as will be detailed below in the han-

dling of incidents involving domestic and family violence, the work of the police is fundamental and must be developed based on joint protocols with the Electronic Monitoring Center.

It is important to emphasize that restraining orders applied with electronic monitoring can be complied without using the PTU (portable tracking unit). Even when the PTUs are not available or when the woman does not wish to use them, the exclusion areas are informed by the judge and applied in the Center system, which is enough for the responsible team to monitor the measure and eventually handle violation incidents.

The PTU, when available in monitoring services, should not be compulsory for women at any stage of the process. The refusal to use them may not create punishments or sanctions because the Maria da Penha Law, the Pre-trial Measures Law and the Electronic Monitoring Law do not oblige her to use the device so that her rights and social protection are guaranteed. When the need for monitoring in compliance with restraining orders is identified, the measure should be applied by the judge and followed up by the Monitoring Center, regardless of whether the woman uses the PTU or not.

Electronic monitoring, despite helping to protect women in situation of domestic violence, is not capable of solving gender violence, an issue that is not only related to the use of force but to the position of women in the social structure. Penal responses are insufficient to manage relational conflicts. The State's inability to resolve it is evident because acts of violence are usually the consequence of unresolved conflicts of lesser offensive potential. Conflicts become recurrent and aggravated by the State's inability to guarantee

adequate conflict management spaces, resulting in a growing number of violent acts against women. Indiscriminate application of electronic monitoring can increase these rates, as the surveillance of the male perpetrator of violence does not mean the resolution, in fact, of conflicts. Therefore, it is necessary to ensure the monitoring of the perpetrator and the woman in situations of domestic violence with specific referrals to the social protection network and the protection network for women, respectively. In other words, to prioritize practices capable of including, among other things, the author's liability and the women's autonomy and empowerment.

2.2. Technological aspects

According to information from the Correctional Service of Canada, the first generation of electronic monitoring technology featured radio frequency (RF) transmissions. Such systems do not aim to control all of the individual's movements; the surveillance is carried out by verifying if they are in an approved location, serving mainly for house arrest purposes. There was then a growing interest in the application of more advanced global positioning satellite (GPS) technology as an alternative tool to increase the surveillance of offenders.

Available in both active and passive formats, compared to RF systems, GPS technology is able to continuously monitor an individual's movement 24 hours a day in real time when active systems are used. Inclusion and exclusion areas are programmed, designating territories in which

an individual is or is not allowed to enter and remain in accordance with court prescription.

The electronic monitoring adopted in Brazil combines hardware and software solutions, consisting in an electronic device (anklet) used by the monitored person, who starts to have liberty restrictions, being monitored by a Center created and managed by the states' government. GPS technology is the only one that has been used in Brazil. Other technological possibilities that are more economical and less harmful to the monitored person are ignored, contrary to the Decree n.º 7,627/2011 that regulates electronic monitoring: "The electronic monitoring device must be used in a way that respects the physical, moral and social integrity of the monitored person" (Brasil, 2011b).

In Brazil, the excess of criminal control and disciplinary surveillance has hampered, for example, the use of radiofrequency technology, ignoring the possibilities provided for in the aforementioned Decree: "Electronic monitoring is the remote positional telematic surveillance of people in pre-trial non-custody measures or convicted by a final and unappealable sentence, carried out by a technical system that allows the indication of their location". Positional telematic surveillance does not mean location by a global positioning system. There are radio frequency equipment available on the market that can be used to certify whether the person being monitored is at home, in accordance with the days and times provided for in the court decision, as provided for in cases of house arrest.

2.2.1. What is geolocation or georeferenced location?

It is a feature capable of revealing geographic location through IP address, wireless network connection, or cell tower to which the phone is connected. It has dedicated GPS hardware that calculates the latitude and longitude of the information sent by satellites in the sky. In the case of electronic monitoring, this information is shared with companies that provide services to the Centers or with the Electronic Monitoring Centers themselves. One of the geolocation methods calculates an individual's position based on their relative location from the different towers of their mobile operator. The monitoring device used in Brazil usually adopts two chips from different operators, although there is already equipment on the market that uses chips with higher capacity. This method is fast and does not require any dedicated GPS hardware, but it only gets a rough idea of where the individual is. Another method uses some dedicated GPS hardware on the device to communicate with some dedicated GPS satellite that is orbiting the planet. GPS can usually pinpoint the location within a few meters. The downside of a dedicated GPS chip in the device is the high power consumption. Google Maps uses both methods: first a large circle appears that approximates the position (by searching a nearby cell tower), then a smaller circle ((by communicating with other cell towers), then a single dot with one's exact position (picked up by a GPS satellite).

2.3. Context

Brazil, according to Infopen (Brasil, 2017b), which brings data from June 2016, is the third

country in the world with the highest number of prisoners – 726,712 people¹. The country only has fewer prisoners than the United States² (2,145,100 prisoners) and China (1,649,804 prisoners). Infopen also shows that 40% of the prison population are pre-trial detainees. This report indicates that, of the total universe of prisoners in Brazil, 55% are between 18 and 29 years old. In addition, 64% of the prison population is made up of black people. As for education, 75% of the Brazilian prison population has not reached high school and less than 1% of prisoners have a graduate degree. Regarding vacancies, the document finds that 89% of the prison population is in units with a deficit of vacancies, regardless of prison conditions (open, semi-open or closed conditions), and 78% of the penal establishments hold more prisoners than the number of available vacancies. Comparing Infopen data from December 2014 (Brasil, 2015b) with those from June 2016, there is an increase in the deficit of vacancies from 250,318 to 336,491 vacancies in the country. The rate of prisoners per group of 100,000 inhabitants has risen in the same period from 306.22 to 353 individuals.

But what do all these numbers indicate?

This scenario indicates that it is urgent to think and put into practice public policies to mobilize decarceration, reduce the percentage of people in pre-trial detention and increasingly use other legal possibilities in the management of social conflicts and violence. The data also underscore the existence of criminal selectivity since impris-

¹ Infopen data for June 2016 indicates that drug trafficking-related crimes are the highest incidence that brings people to prisons, with 28% of the total prison population. Thefts and robberies add up to 37%. Homicide represents 11% of the crimes that led to the arrest.

² In the case of the United States, efforts to reduce mass incarceration can be noted, which has not occurred in Brazil.

onment of the young, black and poorly educated population is predominant, not to mention that the prison sentence is more pronounced for some types of crimes, such as property crimes and drug trafficking.

And, has the Brazilian State developed public policies to change this picture?

The combination of these two phenomena, mass incarceration and criminal selectivity, can be understood in the light of the paradoxical and ambiguous principles that organize social life in Brazil, indicating that the transition to the democratic regime did not mean the end of inequality within the Criminal Justice System.

It is notable that the high public investment in retributive and punitive responses has been unable to reduce conflicts and violence in the penal system. In addition to the inability to increase the number of vacancies to account for the enormous incarceration rate in Brazil, it is necessary to think beyond the economic costs. Social costs generated by mass incarceration promote asymmetries of class, gender and ethnicity. Prison is notably, an environment that violates human rights, incapable of offering the most basic human conditions for survival. Furthermore, incarceration does not lend itself to transforming trajectories in a socially positive way or generating broad adherence to social norms and rules.

There are ways already expressed in our

laws and regulations to deal with social conflicts while promoting decarceration and qualifying the entrance door to the prison system. We consider that electronic monitoring of people can contribute to decarceration and reduce the high number of pre-trial detainees. Therefore, we develop theories and practices to achieve these purposes, as presented below.

2.4. Concept

The Management Model for Electronic Monitoring of People defines electronic monitoring as:

the mechanisms of restriction of liberty and intervention in conflicts and violence, other than incarceration, within the scope of criminal policy, carried out by technical means that allow for an accurate and uninterrupted indication of the geolocation of the monitored people for control and indirect surveillance, aimed at decarceration (Brasil, 2017a).



3

Notes on the importance of multidisciplinary teams and the social protection network in the electronic monitoring of people in Brazil

By Marco Antonio da Rocha³

Social worker of the Public Prosecutor's Office of the State of Paraná

Data released in June 2014 by the National Council of Justice (Brasil, 2014a) show that the Brazilian prison system had a total of 715,655 prisoners, reaching a proportion of 358 prisoners for every 100,000 inhabitants. This contingent

made the country rise from fourth to third place in the *ranking* of prison population in the world. It is only behind the United States (2.2 million prisoners) and China (1.7 million). This overuse of incarceration

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[...] combines with political and administrative neglect in several states that keep the prison system in almost total abandonment; and it is also allied to the support that some sectors of society give to illegal and violent practices produced in public institutions and by public agents. (Salla, 2012).

It should also be taken into account that criminal enforcement in Brazil is marked by criminal selectivity. In the history of our country, criminal law has punished the indigenous people and the black population more rigorously since the colonial period, aggravating the situation of their vulnerability.

Criminal enforcement became more repressive and severe in Brazil at the end of the 1980s in response to rising crime rates caused by a financial crisis and unemployment and associated with the expansion of a market-based economy.

Pressured to respond to this increase in criminality, the Brazilian Government reacted with measures: a) linked to a speech of criminal repression reduction, but with practical effects not always consistent with this speech; b) that reinforce such repression, increasing behaviors to be repressed and aggravating the penalties inflicted on them (Nascimento, as cited in Garland, 2008).

Among the measures linked to the first type of the State's response are the implementation of alternatives to imprisonment, mainly pre-trial non-custodial measures.

At first, there was the expectation that the implementation of alternatives to imprisonment would help to reduce prison overcrowding, as contingents of people previously sentenced to prison would start to be sentenced with these new penal modalities.

Reality has frustrated such expectations, as there was no retreat in the number of prisoners, but the number of people reached by the criminal justice increased significantly. Batista (2010) states that, in 2010, 1.2 million Brazilians were serving sentences and alternative measures, and in 2015, there were 18,172 people under electronic monitoring in the country (Brasil, 2018a).

I have been working in the field of criminal enforcement for the last 20 years as a public servant in the Public Prosecutor's Office and as an activist in defense of human rights, an experience that began in the enforcement of alternatives to imprisonment, went through the monitoring of criminal enforcement in closed conditions, and culminated with conducting activities with the Community Councils of the State of Paraná.

My experience in this field has led me to believe that alternatives to imprisonment and pre-trial non-custodial measures (and among them, electronic monitoring) have frustrated the initial expectations that they could have a positive impact in decarceration as the main penal response in our country.

On the other hand, such measures have the potential to discourage the imprisonment of people, beginning with providing them the possibility of punishment without the deleterious experience of prison. It becomes more evident when, through the assistance of multidisciplinary teams, people

gain access to previously neglected social benefits, allowing them to reconstitute their sociability and their careers.

Electronic monitoring, as a “use of technical means – hardware and software solutions – for indirect and continuous surveillance of the monitored people, in order to inform their geolocation 'in real time' through GPS signals and mobile telephony” (Brasil, 2017a) can be considered a less perverse measure than prison, but one that brings problems such as “the physical, psychological and social damage caused by the measure, which requires the device to respect the physical, moral and social integrity of the monitored individual” (Brasil, 2017a).

For this reason, electronic monitoring is the last of the various pre-trial non-custodial measures provided for in Federal Law n.º 12,403/2011. It must be used when, and be must applied when it is not possible to apply the alternatives to imprisonment and other pre-trial non-custodial measures that must precede it.

In order for the positive potential of electronic monitoring to be fulfilled, minimizing the problems already mentioned, its operationalization presupposes the performance of a multidisciplinary team composed of a social worker, psychologist and lawyer, that should act in harmony with the network of public and private social protection.

The multidisciplinary team responsible for social monitoring and analysis of incidents in elec-

tronic monitoring must be guided by a unitary and coherent conception about the monitored people and their rights, in addition to a critical perspective in relation to the criminal procedure in our country. The performance of this team should have as a parameter a work methodology that guides and gives it meaning.

Regarding the monitored person, I agree with Melo (2018) in the sense that they should not be considered victims of the social structure, which led them to criminal practice, just as I don't see them attached to a timeless label of "criminal". I understand that the persons that violated a certain legal provision are human beings, and that the criminal conduct does not alter their hu-

man condition, nor the fact that these human beings continue to hold the rights enshrined in international regulations and the Federal Constitution (Brasil, 1988).

**Electronic monitoring consists
in using technical means
– hardware and software solutions –
for indirect and continuous surveillance
of the monitored individuals.**

With regard to the work methodology, it must have as one of its fundamental pillars the perspective of a work coordinated with social protection networks. The Brazilian Government has not mobilized, from the approval of the Criminal Enforcement Law to date, to comply with the provisions of article 4 of the aforementioned Law: “The State must resort to the cooperation of the community in the application of sentences and protective measures” (Brasil, 1988).

This posture contributed to civil society institutions to timidly respond to the demands presented by the public reached by the criminal

enforcement, whether due to ingrained prejudices or a diffuse notion of a “risk and danger” involving the work with this public, or because the criminal justice system is not open to initiatives in this field.

Few public or civil society organizations are prepared to serve people under electronic monitoring, in compliance with alternatives to imprisonment or those who have left the criminal justice system, and such training is one of the challenges set to the multiprofessional team which operates in electronic monitoring programs.

In many circumstances, monitored individuals are in precarious physical and mental health conditions; malnourished and without access to adequate food; living on the streets and without their documents; and without access to lawful means of income formation, that is, outside the experience of the most elementary rights that all human beings have. How can we expect electronic monitoring to have a positive effect without facing such problems? And how to deal with them

without relying on the fundamental collaboration of the social protection network?

I believe that a coordinated effort between the public and private institutions of the social protection network can allow the monitored people access to education, culture, health (including therapy for chemical dependence), social assistance, leisure, professional training, and income. It will be decisive in giving a new meaning to electronic monitoring, allowing monitored people, when pressured by the dilemmas and tensions typical of the Brazilian social framework, to have other perspectives than criminal conduct.

From this perspective, electronic monitoring will no longer become a strategy for social control of the poor by the State, but an alternative to prison that combines access to rights and opportunities with the possibilities of building new sociability networks for monitored people, guided by a perspective of citizenship and respect for human rights.



4

Contributions of social network theories to criminal justice system policies

By Felipe Athayde Lins de Melo

PhD in sociology and consultant in prison management

I met Wellington when he was still serving his measure in closed conditions, sentenced to several years in prison for the robberies he had been accused of. At that time, Wellington was a student of a distance higher education course in pedagogy offered by the prison unit in partnership with a private educational institution. This was not an official State policy but a local inter-institutional agreement signed by the board of directors of the establishment. Over the course of a few years I would meet Wellington again a couple of times,

and, at each new meeting, I would introduce myself to him again, since, in his words, “there were a lot of new people who showed up”. Wellington had become a star of social reintegration: from being a burglar, he had become the symbol of the State's investment in the education of people deprived of liberty. The solemnity of his graduation was celebrated in the prison unit, leading to numerous stories in different media. Six months after his release, Wellington was arrested again. The reason: robberies!

Glauber, of whom I witnessed a detention control hearing, had a very different story. Poor, with no defined profession, Glauber earned his living doing odd jobs: painter, construction worker's assistant or whatever showed up. Glauber saved up some money and bought his first car. An old Santana. Over the weekend, Glauber called a friend and they went walking around the neighborhood. They drank some *cachaças* at the bar and, on the way out, gave a ride to a teenager. A few blocks away, a police checkpoint stopped traffic. Glauber had no documents and no driver's license. Glauber had drunk *cachaça*. Afraid of losing the car, afraid of being arrested, he accelerated. The car stopped at a light pole; Glauber, at the police station. During the detention control hearing, his *cachaça* and prison colleague confirmed that: they had been walking around the neighborhood, drinking a few doses of *pinga*. On the way out of the bar, they gave a ride to a boy they knew, but no one knew he was armed. Contrary to the thesis of the Public Prosecutor's Office, according to which the three occupants of the Santana planned to carry out robberies in the region, the judge ruled out pre-trial detention. Wearing an electronic anklet, Glauber found his mother in tears on the way out of the Court.

The judge at that hearing stated, in a conversation that I had with her, that electronic monitoring was a viable alternative to avoid imprisonment in cases like the one I had just followed. Her position finds divergent parallels with that of another Criminal Enforcement Judge with whom I was acquainted in the first decade of the 2000s. For him, the alternatives to imprisonment were unfeasible alternatives during those years, because, he said, "if the accused, who will not be monitored by any-

one, commits some new crime, everyone will say it's my fault".

At first sight, the criminal justice system is the common element that is present in the reports presented above. However, I would like to draw attention to other components present in each of the narratives. This time, I start with the perspective adopted by that judge back in the 2000s. According to the judge of a Criminal Enforcement Court in São Paulo's countryside, alternatives to imprisonment could be considered as smarter solutions than prison to deal with several cases of violence and crime if, it is always worth emphasizing, there were "adequate structure to monitor the people submitted to them". At the time, the judge said, this structure was very deficient, which put at risk its possible decisions favorable to alternatives to imprisonment. Therefore, let us highlight his concern with the STRUCTURE. Let's go back, then, to the second report: Glauber had the supposed benefit of not remaining incarcerated, even though he left the hearing carrying in his body a new brand of the punishment system: the electronic anklet. Once again, the STRUCTURE for alleged crime control set a court decision.

The Wellington case, however, seems to us more complex: as a beneficiary of the main services to promote social reintegration, having earned respect, remuneration, a diploma, a "universe of opportunities", as he was told, Wellington returned to crime and, because of it, to prison. In that case, a hasty opinion would say that he didn't lack STRUCTURE but that his CHARACTER induced the crime.

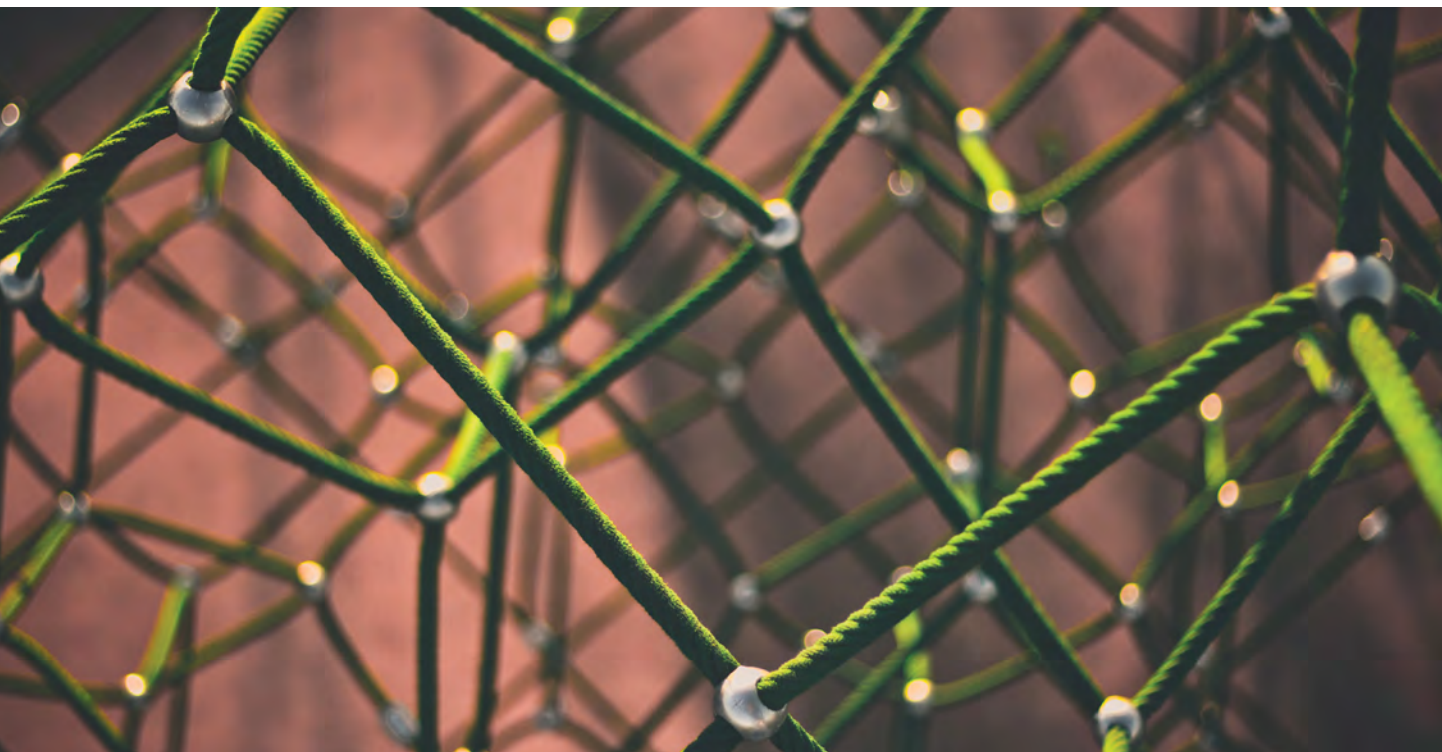
It is not up to us here to deepen and complexify the analysis of each of the experiences reported. Instead, I want to draw attention to an antagonism that historically marks the criminal justice system, regarding either the STRUCTURES that favor or inhibit crime or the ATTRIBUTES, which characterize aspects of the individual, making them prone or not to crime.

Neither the first nor the second order of explanation have brought satisfactory results for us to understand the factors that produce or prevent the involvement of people in criminal actions. At this moment, we are not even addressing the selectivity and discretionary aspects of criminal justice: we are only considering that, for individuals who arrive at prisons and the Integrated Centers of Alternatives to Imprisonment, it is necessary to use a different approach that neither considers them a victim of a structure that, in isolation, led them to crime, nor postulate them as criminals, on which it is necessary to impose the justice system.

It is in this perspective that we insert the so-called Social Network Theories, which take as a premise that societal processes intertwine individual structures and attributes, taking, as the central point of analysis, the networks of relationships between people, their spheres of sociability and the relationships they establish with different structures of society, whether being family, religion, work, school, etc. In this sense, social networks are “structures, in continuous transformation, which mediate individuals' access to opportunities in general” (Marques, 2012). That is:

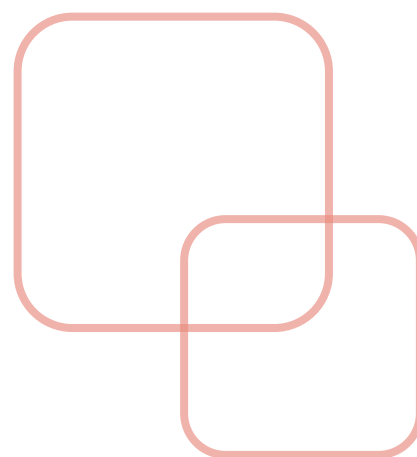
Social networks are complex patterns of relationships of different types accumulated over the course of life and in constant transformation. They are heterogeneous – they vary from individual to individual –, are intrinsically dynamic and can be mobilized in different ways depending on the situation. Even the meaning and use of these networks can vary for individuals from different social groups. (...) Consequently, networks must be considered both relational (in the sense that they are made up of relationships) and relative (in the sense that their mobilization may vary depending on the situation). To fully achieve these dimensions, studies must capture both the structure (the networks themselves and their characteristics) and their mobilization in everyday sociability (Marques, 2010).

The Social Network Theories lead us to another important element of a proposal that intends to transform the traditional confrontation of crime: far from considering only aspects of penal enforcement, according to which there is always a deficit to overcome – whether clinical, social, cultural, etc. – it is necessary to promote the potentials of individuals, who, when inserted in dynamic, heteroge-



neous and ETHICAL sociability networks, should produce their own conditions of social belonging according to their best understanding.

Thus, public services for people in compliance with alternative measures to imprisonment, as well as for people released from the prison system, should constitute a support network that allows offering users as many sociability spheres as possible so that, according to their interests and needs, they can seek to establish relationships and bonds that best serve them, allowing them to enhance their ethical participation in a public and shared world.





5

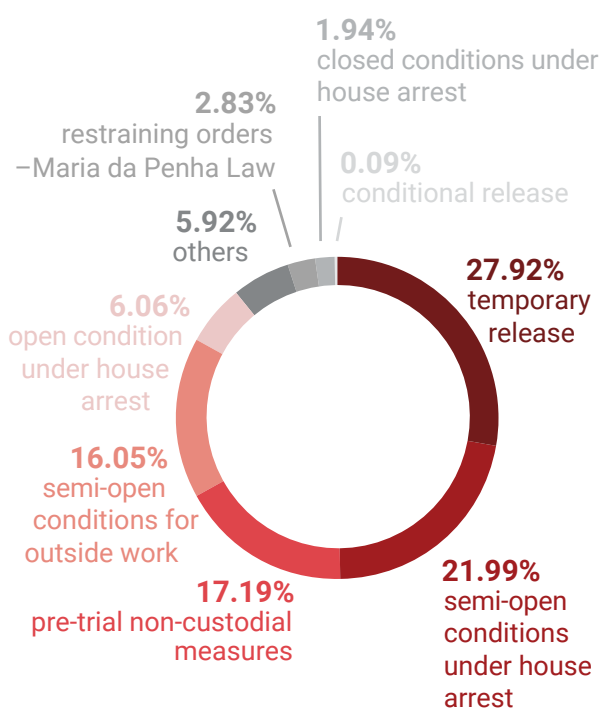
Recent data on electronic monitoring policy in Brazil



According to the "Diagnosis of the Electronic Monitoring Policy" (Brasil, 2018a), in 2017, there were 51,515 people monitored in Brazil (89% men and 11% women, a similar pattern found in the criminal enforcement itself). At that time, 25 states have implemented Electronic Monitoring Centers, of which 13 contain additional structures like the attendance posts in the Courts, for example. The chart below shows the electronic monitoring usage percentage in the country, according to prison conditions or measures applied in the year 2017. It is considered here, as well as in the following table, the universe of 51,250 monitored people since

Santa Catarina did not inform data on the 265 monitored individuals in the state in 2017.

5.1. Modalities for using electronic monitoring



Source: Brasil, 2018a

In 2017, according to data from the diagnosis (Brasil, 2018a), 73.96% of the people monitored were serving their sentences: temporary release (27.92%); semi-open conditions under house arrest (21.99%); semi-open conditions in outside work (16.05%); open conditions under house arrest (6.06%); closed conditions under house arrest (1.94%); conditional release (0.09%). Pre-trial non-custodial measures (17.19%) and restraining orders (2.83%), which together add up

to only 12.63%, may indicate the possibility of a decarceration process. Still, electronic monitoring in these cases can also serve as a tool for excessive control.

So far, it is difficult to assess whether electronic monitoring has been used as an alternative to prison or as an alternative to liberty. In any case, it is possible to notice, in light of prison information, some contours of the monitoring services. An initial reading of the latest Infopen (Brasil, 2017b), which brings the national survey of prison information for June 2016, compared to Infopen data for June 2014 (Brasil, 2015b)⁴, reveals a considerable increase in the prison population.

As of June 2014, there were 607,731 people deprived of liberty in Brazil. Data reached 726,712 in June 2016, with the incarceration of over 118,981 people. The imprisonment rate⁵ also increased from 299.7 (June 2014) to 352.6 (June 2016) people deprived of liberty for every 100,000 inhabitants.

According to Infopen from June 2016, Brazil now occupies 3rd place in the ranking of countries with the largest prison population, contrary to international trends focused on decarceration, the use of alternatives to imprisonment, and qualification of the entrance door in the criminal

⁴ Infopen data from June 2014 was used as a reference in the preparation of the first national diagnosis on electronic monitoring. Thus, in methodological terms, comparisons involving Infopen numbers will be restricted to data from the June 2014 Infopen and the June 2016 Infopen, which presents the most recent prison information.

⁵ The imprisonment rate indicates the number of people imprisoned for every 100,000 inhabitants. This measure is used to allow the comparison between places with different population sizes and to neutralize the impact of population growth, enabling comparison in the medium and long term.

system. The increase in the prison population reveals that the penal services are not aimed at guaranteeing commitments internationally assumed by Brazil, such as a 10% reduction in the prison population by 2019⁶.

The application of alternatives to imprisonment as an answer to the primary criminalization of misconduct wasn't sufficient to reduce the high number of pre-trial detainees in the country. In June 2016, 40% of people arrested in Brazil had not yet been judged or convicted⁷: a serious fact that violates the Federal Constitution. In this regard, the UN High Commission, in reinforcing the demand made to Brazil on this topic, suggests the adoption of pre-trial non-custodial measures, which include electronic monitoring since it can significantly reduce the number of pre-trial detentions, qualifying the entry point into the prison system and leading to decarceration. In addition, the UN High Commissioner's report highlights the need for Brazil to promote alternatives to imprisonment, such as pre-trial non-custodial measures, house arrest, and electronic monitoring.

Data indicate that the potential of electronic monitoring to contain the number of pre-trial detainees has yet to materialize. The application of electronic monitoring in the criminal investigation phase represents 20.02% of services – pre-trial measures (17.19%) and restraining orders (2.83%). This picture is still of little significance for

the containment of mass incarceration. In absolute numbers, there are 8,810 people monitored in compliance with pre-trial non-custodial measures and 1,452 people monitored in compliance with restraining orders, which together add up to 10,262 people monitored in the investigation phase of the criminal prosecution. This total indicates the low impact of electronic monitoring services in reducing the number of pre-trial detainees in the country, which, in June 2016, reached 292,450 people in a universe of 726,712 people deprived of liberty. It should be noted that, despite the rate of pre-trial detainees remain virtually unchanged between June 2014 (41%) and June 2016 (40%), the absolute number of people provisionally detained increased in this interval with the addition of 42,782 provisional detainees.

In 2015 there were 18,172 people being monitored. In 2017, the number reached 51,515. In two years, the universe of monitored people almost tripled, with an increase of 33,343 people monitored. It is possible to notice, based on the aforementioned national surveys, that monitoring has not been used to slow down incarceration rates or reduce the entry of people into the prison system, even with the growing public investments in the electronic monitoring policy in several Brazilian states.

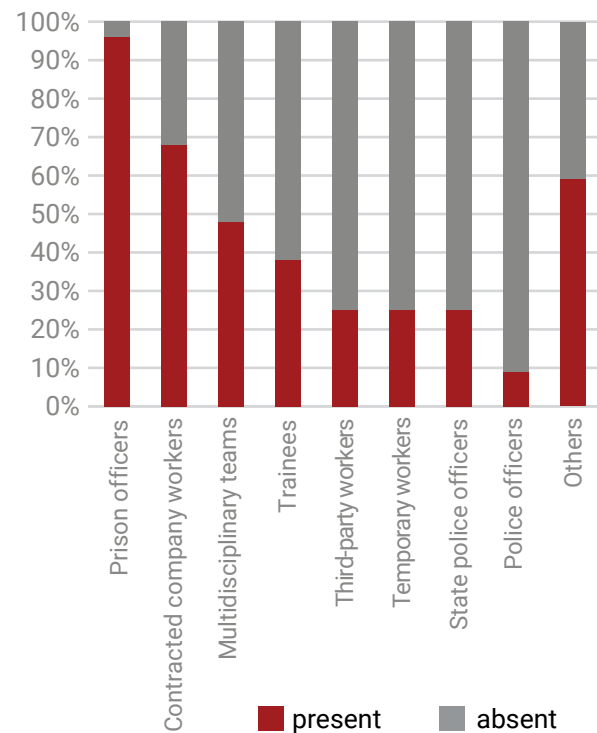
This picture points out a conservative tendency in the conduct of the electronic monitoring policy, applied as an additional control tool in criminal enforcement even when the measures

⁶ In 2017, the agreement was announced in Geneva during a meeting between the UN, the Brazilian National Secretariat for Human Rights, and national and international NGOs. The purpose of reducing the number of prisoners was also included in the Ministry of Justice's planning for 2016-2019 (Brasil, 2017c).

⁷ This data has practically not changed, considering Infopen surveys used here: in the June 2014 survey, this population represented 41% of the total number of people deprived of liberty. In June 2016, 40% of the prison population was made up of pre-trial detainees.

are already properly regulated, such as the semi-open conditions for outside work and the conditional release, which correspond to 16.05% and 0.09% of services. It indicates a significant increase in the number of monitored people in these circumstances (in 2015, there were 3,425 monitored people in semi-open conditions for outside work and 29 in conditional release; and in 2017, there were 8,228 and 48, respectively). In addition, the number of Federative Units where it is possible to identify these two situations increased from 8 to 10 in the case of applying electronic monitoring on semi-open conditions for outside work and from 1 to 2 in the case of conditional release.

5.2. Presence/absence of workers by segment in the Electronic Monitoring Centers



Source: Brasil, 2018a

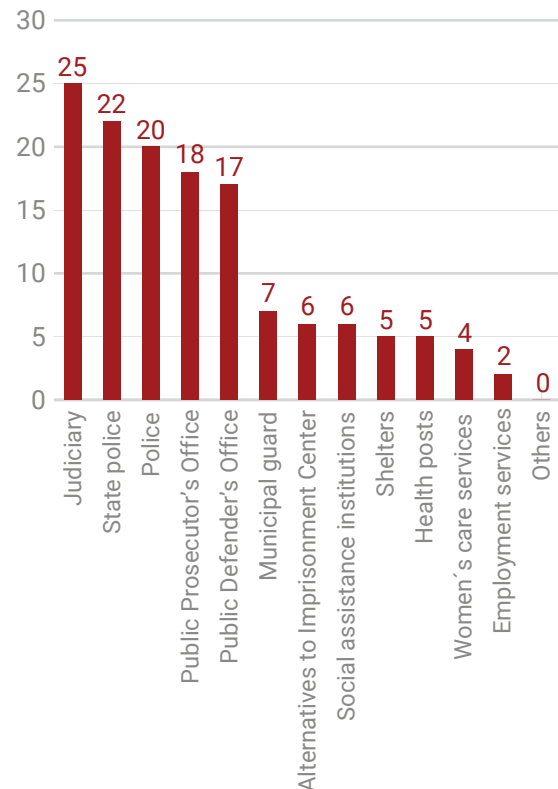
According to the latest national monitoring survey (Brasil, 2018a), there is a prevalence of prison officers in the composition of the team of professionals involved with electronic monitoring services, followed by employees of the contracted company. The multidisciplinary team appears in 46% of the 24 states that informed the composition of the team that works in monitoring services, namely: Acre, Bahia, Ceará, Goiás, Minas Gerais, Mato Grosso, Pará, Pernambuco,

Rio Grande do Sul, Roraima, and Santa Catarina. The composition of the multidisciplinary team varies in the 11 states, with only Pará, Pernambuco, and Roraima having the professionals recommended by the national electronic monitoring policy – social worker, lawyer, and psychologist. The composition of the multidisciplinary team appears to be reduced only to the figure of the social worker in Acre and Rio Grande do Sul. In the case of Mato Grosso and Santa Catarina, a lawyer is the only professional listed as a member of the multidisciplinary team. In Bahia and Ceará, the team has a social worker and a lawyer. In Minas Gerais, the multidisciplinary team consists of a social worker and a psychologist.

In 13 Federative Units, the monitoring services do not rely on the work of the multidisciplinary team. In the Federal District, only prison officers work in monitoring services.

The low presence of social work, psychology, and law professionals in the teams involved with electronic monitoring services indicates that the practices focus on excessive control rather than fulfilling the objectives of the measures. However, it should be emphasized that the mere existence of these professionals at the Centers does not necessarily guarantee individualized care, follow-up, guidance, and referrals to the social assistance network. According to field observations, functions and attributions are usually not formalized, and the structure of most Centers makes it impossible to provide adequate services to the multidisciplinary team. The need for continuous education and training for all professionals, including workers of the multidisciplinary teams, also appears as a primary demand to qualify electronic monitoring services.

5.3. Partner institutions



Source: Brasil, 2018a

The chart shows the partnerships established by the Electronic Monitoring Centers (Brasil, 2018a). It shows the number of partnerships in the Federative Units by the type of institution. All 25 states have some kind of partnership established with the Judiciary, but it was not possible to assess in which situations this relationship enabled the joint formalization of instruments capable of guiding and protocoling monitoring workflows and procedures, such as technical cooperation agree-

ments and resolutions⁸. The partnership with public security institutions is significant, as 22 Federative Units informed the state police as a partner, and 20 indicated the partnership with the police. According to the sensitive nature of the personal data of the monitored people, partnerships of this nature must follow CNJ Resolution n.º 213/2015, CNPCP (National Council of Criminal and Penitentiary Policy) Resolution n.º 5/2017 (Brasil, 2017e), the Guidelines for Data Processing and Protection in the Electronic Monitoring of People (Brasil, 2016a), and the Management Model for Electronic Monitoring of People (Brasil, 2017a), considering the share of personal data only for criminal investigation purposes, in specific cases, through judicial authorization.

In this regard, it should be noted that 14 states reported sharing data on monitored people with police institutions. Two entities claimed to share the data but did not indicate the institutions. Two entities stated that they only shared the data with the Judiciary. One state shares all personal data when there is an arrest warrant. Following the recommendations of the aforementioned documents, Rio de Janeiro shares information only with the authorization of the competent judge. In a similar direction, 5

⁸ The Management Model for the Electronic Monitoring of People (Brasil, 2017a) recommends principles for integrated action between Federative Units, the justice system, and the community for decarceration, which requires the construction of workflows and instances of interaction between the institutions that make up the penal system in all its phases, considering the Executive Branch, the Court of Justice, the Public Defender's Office, the Public Ministry, the police and civil society institutions that participate directly or indirectly in the electronic monitoring services. The level of political-institutional sustainability, as well as its capacity to face incarceration, directly depends on the degree of coordination, common understanding and alignment of methodologies and strategies between the highlighted institutions.

states do not share the data of the monitored people, and the Federal District pointed to CNJ Resolution Nº 213/2015 as a legal basis.

Partnerships with institutions that make up the social protection network appear in smaller proportions: 6 Federal Units listed Social Assistance Reference Centers (CRAS) and Specialized Reference Centers for Social Assistance (CREAS) as partners; 5 mentioned partnerships with shelters; 5 also mentioned partnerships with Centers of Psychosocial Attention (CAPS) and health posts; 4 Federative Units mentioned partnerships with institutions that provide care services to women; and 2 established a partnership with Brazilian National Employment System (SINE).

The indicated proportions reveal a predominance of partnerships with the Judiciary and public security institutions. The small proportion of partnerships with institutions and equipment of the social protection network indicates that it is necessary to invest in this field to guarantee the rights and access to public policies already in place for monitored people. Monitoring services can be qualified with multi-professional follow-up and referrals to the services offered by the social protection network, reducing the vulnerabilities of monitored people. This, in turn, works as an element to ensure the adequate application of the measure and, consequently, fewer incidents, non-compliances, and violations, in addition to providing more subsidies for reports capable of guiding the judges in the reassessment or eventual replacement of the measure.



6

What horizons should be sought in electronic monitoring services?



As we have seen, the high number of pre-trial detainees and the low use of electronic monitoring in cases of pre-trial measures indicate that there is room to use monitoring as a substitute for pre-trial detention. And, despite the electronic monitoring potential for decarceration, we observe the significant use of services with a view to expanding criminal control, which primarily acts as a prison management mechanism and does not reduce incarceration.

Electronic monitoring of people emerges and expands as a policy oriented by a social imaginary built and reinforced around the validity of repressive practices and the intensification

of punishment. Electronic monitoring of people emerges against a social imaginary that reinforces repressive practices and the intensification of punishment. It recognizes electronic monitoring as an instrument of control aimed at people's surveillance, promoting the use of devices that, as a rule, cause physical and psychological damage, limit social integration, and do not create the expected sense of responsibility to people. The purpose is to look at the potential of electronic monitoring for decarceration and containment of the number of pre-trial detainees, without this implying ignoring or denying monitored people's rights provided for in the Criminal Enforcement Law (Brasil, 1984) and other legal documents.

Between 2015 and 2016, the Management Model for the Electronic Monitoring of People (Brasil, 2017a) was produced to guide the national policy of electronic monitoring induced by DEPEN (National Penitentiary Department) and, equally, qualifying monitoring services. The Model gathered information on the specialized apparatus and vocabulary proper for implementing electronic monitoring public policies and presented a solid scientific ground aligned with in-depth empirical research. It proposes, according to a critical view of the culture of incarceration and the intensification of criminal control and punishment, concepts, principles, guidelines, rules, methodologies, and work instruments. The proposal is an effort to implement electronic monitoring services in a systemic, coherent manner, with tangible goals and results, effectively promoting decarceration and reducing the number of people in pre-trial detention in the country.

Inducing the electronic monitoring policy,

in accordance with the assumptions and methodologies presented in the above-mentioned Model, implies placing the topic on public agendas, which requires the creation of consensus between different institutions (directly and indirectly linked to the topic), even before the allocation of technical and financial subsidies for its operation. It is necessary to offer and socialize a common repertoire to the agents involved in electronic monitoring services.

The National Penitentiary Department, as well as the National Council of Justice, in Protocol 1 of Resolution N° 213/2015, and the National Council of Criminal and Penitentiary Policy, in Resolution N° 5/2017, seeing electronic monitoring as an exceptional measure, suggest the judge consider other alternatives to imprisonment before monitoring. The recommendation is reinforced by Law n.º 12.403/2011, which presents the modalities of pre-trial non-custodial measures in the order that they must be considered. The proposition is not random but based on scientific and practical repertoires that show that electronic monitoring does not, by itself, promote the individual's sense of responsibility, nor does it give rise to the restoration of relations and the promotion of a culture of peace. In other words, monitoring services are not oriented towards self-reflective and community engagement processes, unlike methodologies applied in other modalities of alternatives to imprisonment that already exist in the country⁹.

In cases of application of electronic monitoring during criminal enforcement, as is hap-

⁹ For more information on alternatives to imprisonment, see the "Management Model for Alternatives to Imprisonment" (Brasil, 2017d).

pening in most Brazilian states, it is essential to guarantee all the legally provided rights to the monitored person, which can, in turn, minimize the vulnerabilities that mark the Brazilian prison population. With this, we emphasize that the person serving a sentence with electronic monitoring must continue to have the rights provided for in the Criminal Enforcement Law (Brasil, 1984), as stated, for example, in the articles:

Art. 10:

Assistance to prisoners and detainees is the duty of the State, aiming to prevent crime and guide the return to coexistence in society.

Art. 11

The assistance shall be:

- I - material;
- II - to health;
- III - legal;
- IV - educational;
- V - social;
- VI - religious.

Art. 40:

All authorities must respect the physical and moral integrity of convicts and pre-trial detainees.

Art. 41

The prisoner's rights are:

- I - sufficient food and clothing;
- II - attribution of work and its remuneration;
- III - social security;
- IV - constitution of savings;
- V - proportionality in the distribution of time for work, rest and leisure;
- VI - exercise of previous professional, intellectual, artistic, and sporting activities, as long as they are compatible with the sentence;
- VII - material, health, legal, educational, social and religious assistance;
- VIII - protection against any form of sensationalism;
- IX - personal and private interview with a lawyer;
- X - visit by partner, relatives and friends on specific days;
- XI - roll call;
- XII - equal treatment, except regarding the requirements of sentence individualization;
- XIII - special hearing with the director of the establishment;

XIV – representation and petition to any authority, in defense of rights;

XV – contact with the outside world through written correspondence, reading, and other means of information that do not compromise morale and good habits;

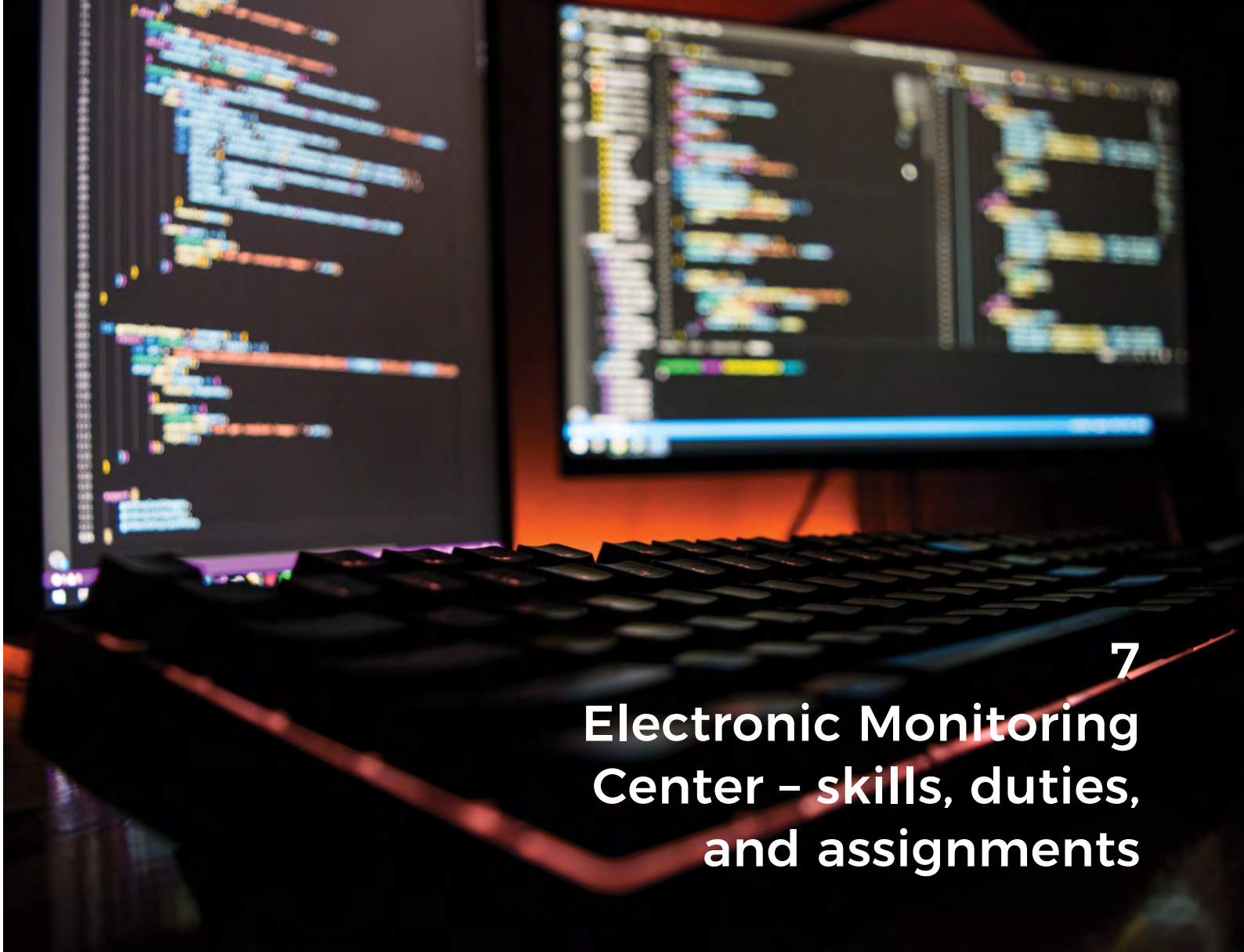
XVI – certificate of sentence to be served, issued annually, under the competent judicial authority's responsibility (included by Law n.º 10,713/2003).

It is the State's obligation to ensure these rights to people monitored while serving their sentence. Thus, for example, the right to semi-open conditions cannot be simply converted into house arrest with electronic monitoring without, at the very least, guaranteeing the rights expressed in law with the mere justification of lack of vacancies or even decarceration. The State needs to guarantee access to public policies that have already been instituted, and this applies to all people monitored. It is necessary, therefore, to ensure that the applied conditions are analyzed separately and do not constitute an aggravation of the penalty – a situation that has been increasingly happening in several states.

It is essential, therefore, to consolidate the monitoring policy in an affirmative and systematic way, according to the principle common to every democratic order, that is, the guarantee and strengthening of human rights (fundamental, political, economic, social, cultural, etc.) in the protection and development of life. This also implies the subsidiary and residual application of electronic

monitoring due to other modalities legally provided. That is, it should always be thought of as an exceptional measure, only indicated when another less burdensome pre-trial measure does not fit, as an alternative to imprisonment, and not as an alternative to liberty; as an instrument to contain imprisonment and reduce the high number of pre-trial detainees. All legally provided rights must be guaranteed to the monitored persons during penal enforcement, as they cannot be subjected to even more vulnerabilities¹⁰.

¹⁰ Several monitored people who were followed up during the production of this diagnosis had their sentence aggravated due to the conditions applied in a homogeneous way for all individuals and often based on non-objective criteria. For example, while serving a sentence in semi-open condition under house arrest, a monitored individual was not allowed to leave the house under any circumstances, disregarding the fact that he was on hemodialysis. This restriction notably aggravated the sentence, including putting the life of this person at risk. It is noteworthy that, while waiting for a hearing, this same individual remained imprisoned in closed conditions for 30 days. The application of electronic monitoring in a non-judicious manner and based on the analysis of concrete cases can be faced based on the principles, guidelines, rules, and methodologies proposed in the Management Model for the Electronic Monitoring of People (Brasil, 2017a).



7

Electronic Monitoring Center – skills, duties, and assignments

The implementation of electronic monitoring necessarily takes place through the Electronic Monitoring Centers. The State Executive Branch, through its penitentiary management entities, is responsible for the administration, execution, and control of electronic monitoring:

Art. 4

The responsibility for the administration, execution, and control of electronic monitoring will rest with the penitentiary management entities, as well as:

- I - to verify compliance with legal duties and conditions specified in the court decision authorizing electronic monitoring;
- II - to forward a detailed report on the person being monitored to the com-

petent judge according to an established calendar or at any time when circumstances so require;

- III - to adapt and maintain programs and multidisciplinary teams to follow up and support the monitored person;
- IV - to guide the monitored person in the fulfillment of their obligations and assist them in their social reintegration, if applicable; and
- V - to immediately notify the competent judge of any fact that may give rise to the revocation of the measure or modification of its conditions.

The preparation and submission of a detailed report must be made by electronic means and contain the digital signature of the competent agency (Decree n.º 7,627/2011).

The decree (Brasil, 2011b) indicates that the rights and duties of the people monitored must be clearly expressed in the form of a document. It is also foreseen that prison management agencies are responsible for the administration, implementation, and control of electronic monitoring, indicating the importance of multidisciplinary teams in monitoring the measure. That said, electronic monitoring must be related to social protection network services, mainly to minimize discriminatory, abusive, and harmful conduct during services. Also, to ensure maintenance and access to work, education, and health, promoting the restoration of community ties to the monitored people. The legislation does not

indicate that the person in compliance with an electronic monitoring measure must stop working studying, or attending community sociability spaces. Likewise, it does not mention that the monitored person must be punished, chastened, or must change routines not foreseen in the conditions of the measure itself.

The work carried out at the Centers must guarantee the monitored person's physical, moral, and social integrity. Priority should be given to using anatomically and increasingly lighter individual monitoring devices, ensuring discretion, ergonomics, and mobility. The device must have anti-allergenic characteristics and should not imply any health risk, especially due to its continuous use. It also must be resistant to aquatic submersion and mechanical and heat impacts, considering the weather in Brazil. The Centers must prioritize the use of devices with technical specifications that maximize the use of the battery, reducing the recharging procedures. They must also ensure that the equipment allows recharging without limiting the mobility of the monitored person by adopting portable battery recharging devices.

Centers must also handle incidents, activating in a subsidiary way public security institutions when responding to strict incidents. The attendance of the monitored person at the Center must be minimal, with referrals to the protection network only being made when required voluntarily by the monitored individual. Also, in this sense, confidentiality and secrecy are mandatory at all stages of the services to guarantee personal data protection.



The Electronic Monitoring Center is responsible for:

a)

Monitoring the electronic monitoring measure, observing and following all the conditions expressed in the court decision, such as:

- term with start and end date;
- boundaries of inclusion and exclusion areas;
- circulation and retreat times;
- permissions and general conditions.

b)

Ensuring the maintenance of the electronic monitoring measure by handling incidents with a capable technical team and the multidisciplinary team working together to avoid calling the public security institutions – the last resource when handling incidents involving restraining orders, which should be used only after exhausting all other preliminary protocols;

c)

Prioritizing the electronic monitoring measure maintenance in freedom, avoiding the precipitate and often unnecessary arrest of monitored people whose incidents must be handled based on the protocols of the Management Model;

d)

Ensuring that police calls are always subsidized and guided by the protocols, recognizing the effectiveness and need for police intervention in the handling of specific incidents demanded by the Center;

e)

Avoiding excessive calling of public security institutions, considering, above all, the great demand of police forces in events of another nature and due to the Center and its teams' responsibility in monitoring the measures according to appropriate incident protocols;

f)

Ensuring that the Electronic Monitoring Centers provide qualified services to the monitored persons – regardless of the type of measure and procedural phase – in order to reduce their social vulnerability;

g)

Ensuring that the Center is a welcoming environment so that the public feels encouraged to attend the service, providing the creation of social bonds that are essential for the follow-up of the measure and for referrals to the social protection network;

h)

Ensuring the purpose of the electronic monitoring service, that is, the care and follow-up of the monitored individuals to enable the formation and restoration of bonds and the adequate fulfillment of the measure;

i)

Making referrals to the social services offered by institutions of the federal, state, and municipal government and civil society organizations. The referrals must consider the specificities of each case, respecting the voluntary nature of these services;

j)

Performing the follow-up of the measures through indirect contact with the individuals, avoiding unnecessary and excessive attendance at the Center;

k)

Handling incidents according to the protocols of this methodology, carrying out alignments with the Judiciary to adjust and adapt the measures when necessary;

l)

Considering secondary interference factors in the handling of incidents, such as:

- malfunction or defects in monitoring devices;
- reduced or instable cell phone reception;
- various technical interferences in the global positioning system (GPS);
- elements related to geography, from the type of vegetation to the architecture of buildings, as well as weather events, etc.;
- the existence of locations with unstable or without cell phone reception or GPS signal, especially in the case of people who live, work, study, undergo health treatment, or participate in religious or spiritual activities in these specific locations;

m)

Monitoring the restraining orders applied, welcoming and referring women using PTU to the women's protection network, always on a voluntary basis, based on the specificities of each case, aiming at reversing social vulnerabilities;

n)

Scheduling procedures and referrals, avoiding long waiting periods and permanence of monitored people at the Center, especially women in situations of domestic violence who choose to use the PTU;

o)

Scheduling procedures and referrals on different days and times for the monitored individuals and women in situations of domestic violence, avoiding possible embarrassment and possible non-compliance with restraining orders;

p)

Providing the necessary infrastructure to operate activities, such as male and female restrooms; waiting room with a sufficient number of chairs to accommodate scheduled and spontaneous demands, including a waiting room reserved only for women in situations of domestic violence; drinking fountains; adequate illumination; ventilation consistent with local weather conditions; and cleaning services;

q)

Participating in broad social assistance and care networks, for the realization of fundamental rights and the inclusion of people, with emphasis on the following areas:

- food;
- clothing;
- housing;
- transport;
- health, including mental health;
- health care for people with drug use disorder;
- work, income, and professional qualification;
- education;
- family and community life;
- legal aid.

r)

Ensuring full understanding, by the monitored person, about the electronic monitoring measure, according to the determinations expressed in the court decision;

s)

Ensuring understanding about the proper use of individual electronic monitoring devices and the PTU, aiming to minimize violation incidents and physical, psychological, and social damage to the monitored people;

t)

Maintaining adequate infrastructure for the activities related to the technical maintenance of individual monitoring devices;

x)

Promoting respect for generational, social, ethnic, racial, gender, sexual, origin, nationality, income, social class, religion, and belief diversities, among others, regarding the fulfillment of the electronic monitoring measure and the referrals to the social protection network;

u)

Submitting periodic reports on the follow-up of the measure, as agreed with the Judiciary, to justify any adjustment or reassessment of the electronic monitoring measure;

y)

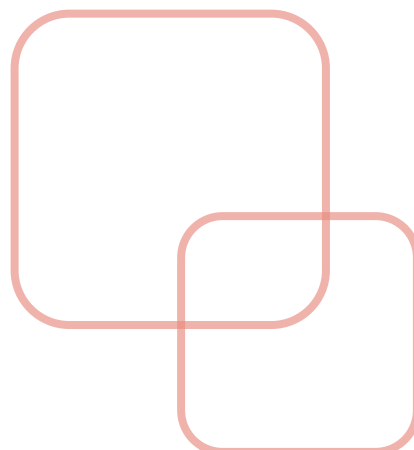
Restraining any type of discrimination or degrading treatment at any stage of electronic monitoring services during and after compliance with the judicial measure.

v)

Guaranteeing the right to information to people in compliance with electronic monitoring measures regarding the procedural situation, the conditions of the measure, the start and end dates of the measure, the periods foreseen for the measure's re-evaluation, and the offered services and assistance;

w)

Attesting that the monitoring system is structured to preserve the confidentiality of all sensitive personal data and ensure the management of quantitative and qualitative information, following the guidelines established in the Management Model;





8

Methodology for following up the people monitored by the Electronic Monitoring Center

According to the Management Model (Brasil, 2017a), the follow-up of the electronic monitoring measure must consider the procedures¹¹ summarized below. The guidelines promote a coordinated effort with the social protection network to minimize vulnerabilities of the monitored people and also enable the fulfillment of the measures through the production of periodic reports that subsidizes the Judiciary in the continuous assessment and adjustment of the sentences.

¹¹ The protocols, procedures, norms, workflows, routines, work instruments, and other information that make up the follow-up methodology for the electronic monitoring can be fully accessed in the Management Model for Electronic Monitoring of People (Brasil, 2017a).

a)

Awareness and referral by the Judiciary to attend the Center:

it implies the presence of the monitored person at the Center, even though the installation of the individual electronic monitoring device and the registration of the person in the monitoring system (first attendance) were carried out on the court premises.

b)

First attendance:

it includes the installation of the electronic monitoring device; registration in the system; scheduling of reception at the Center; and any necessary emergency referrals to the services of the social protection network. These procedures must take place soon after the hearing that originated the application of electronic monitoring, preferably on the court's premises, in a reserved and appropriate place for this purpose, avoiding the coercive conduct or escort of people submitted to electronic monitoring referred to the Center.

c)

Reception:

it should occur the day after the hearing that originated the electronic monitoring measure, allowing physical and mental rest and adequate nutrition. The multidisciplinary team must conduct the reception, a listening space to assess the following information: physical, social, and psychological situation; understanding of the criminal procedural context or the imposed measure; place of residence; and demands for inclusion in specific programs or treatments. This information should guide the response protocols to any incidents, especially those caused by the monitored individual living, working, studying, undergoing health care, participating in religious or spiritual activities, or other activities in locations with no or with an unstable GPS or cellphone sign. If necessary, it may result in a request for adjustment of the measure to the judge or the guidance of the Center regarding the routines of the monitored person, which should be preserved as much as possible. The reception must allow the creation of bonds capable of contributing to the fulfillment of the measure.

d)

Case studies:

the Electronic Monitoring Centers shall regularly conduct analyses and case studies based on their data, seeking to define appropriate follow-up strategies, approaches, and referrals through an interdisciplinary perspective. The Centers must promote periodic meetings with partners of the social protection network to discuss strategies, as well as eventual meetings with representatives of the institutions of the social protection network, the criminal justice, and the public security systems to discuss specific cases that require assistance, referrals, knowledge, and guidance. The Center must ensure these routines, promoting strengthening bonds and coordinated inter-institutional work.

e)

Referrals:

- I – **For the adequacy of the measure applied:** in the face of incompatibilities and eventualities that can impact the fulfillment of the measure, the multidisciplinary team must prepare a report, requesting the judge to readjust the conditions or even replace the measure with another less burdensome one, presenting justifications. The procedure can occur at any time, considering the dynamics identified by the team or the needs of the monitored person.
- II – **To expand access to fundamental rights:** the multidisciplinary team must carry out the referrals according to the demands presented by the monitored person. It is important to emphasize that the monitored individual must adhere to the services voluntarily. Enrolling the person in the social protection network for social assistance or health treatment should not be a judicial determination. As the protocols and guidelines reinforce, any referral for social protection services can only occur with the person's consent and should never be mandatory. As mentioned, a considerable part of the public that arrives at the Center has social vulnerabilities, and the referrals to the social protection network must aim to minimize these vulnerabilities.

After any referral to social inclusion services, the multidisciplinary team must monitor the progress: whether the persons have accessed the service, the reasons for doing or refusing to do so, and how they received it.

f)

Return visits/ Routine care:

the monitored person should be instructed to return to the Center, preferably at a scheduled time, under the following circumstances:

- if there are technical problems in the electronic monitoring device, for possible repairs and replacements, aiming at maintaining the judicial measure according to the specific cases and seeking to avoid the aggravation of the criminal situation;
- periodic evaluation of the electronic monitoring activities by the multidisciplinary team (social worker, lawyer, and psychologist) to guide the judge, with voluntary attendance;
- remove and return the monitoring device at the end of the period of application of the measure;
- if there are social demands, with voluntary attendance.

g)

Incident handling:

electronic monitoring incidents can occur due to one or more than one primary aspects, including human mistakes, but also **secondary interference aspects**, such as malfunction or defects in the monitoring device; reduced coverage or instability in cell phone reception; interferences in the mechanisms of the global positioning system (GPS); elements related to geography; etc. The recurrence of some incidents may be related to secondary interference factors, especially when the monitored person resides, works, studies, undergoes health treatment, or participates in religious or spiritual activities in locations with no or unstable signal of GPS or cellphone reception.

Incidents:

any situation that interferes with the regular compliance with the electronic monitoring measure, not necessarily involving communication to the judge or calling public security institutions.

Incident handling:

incidents demand different responses from the Center to maintain the measure and imply the solution to the incident or adjust compliance with the measure. The handling of incidents requires the collaboration of the Center's various departments in an interdisciplinary way. It is important to highlight that, as the electronic monitoring measure uses communication technology prone, virtually, to multiple failures and interruptions in the signal transmissions and telephone reception, for example, attempts to contact the monitored person, when unsuccessful, should never be tried once. Still, when dealing with incidents or at any stage of the services, no person whose contact has not been optionally informed by the monitored individual should be called.

Incident solution:

incident treated with or without the need to adjust compliance with the measure, resuming the normal course of monitoring without sending notification to the judge. The solution to specific incidents may involve the effort of public security institutions, always based on the detailed demands of the Electronic Monitoring Center.

Measure compliance adjustment:

it is a procedure that originates from an unresolved incident, generating documents of the unresolved incident. The Center must, through telephone or face-to-face contact with the person being monitored, understand and analyze the causes related to the incident, alerting and renegotiating the measure, according to the conditions stipulated in court, in order to avoid its non-compliance with notification sent to the judge.

Non-compliance:

it is an exceptional situation when there is no solution to the incident with or without the adjustment of compliance with the measure, which may require the Center to call the police. In this case, the judge is notified and must analyze the maintenance or replacement of the electronic monitoring.

Attendance at the Center:

the handling of certain incidents requires the presence of the monitored individual at the Center. Appointments should preferably be scheduled, avoiding interrupting work, study, health care, religion, leisure, and other daily activities and routines.

Some common incident cases are highlighted below.

Incidents
Inability or refusal to sign terms.
Non-attendance of the person on scheduled dates or in emergency situations for: <ul style="list-style-type: none">- technical repairs to the electronic monitoring device and replacements, aiming at maintaining the judicial measure;- periodic assessment of a multidisciplinary team (social worker, lawyer, and psychologist);- removal and return of electronic monitoring device at the end of the measure;- referrals.
Violation of inclusion and/or exclusion areas.
Motion detection without GPS signal and/or loss of cell signal.
Equipment communication malfunction or false geolocation detection.
Battery incidents: <ul style="list-style-type: none">- partial discharge or low battery level;- full battery discharge.
Lack of attention to schedules and/or restrictions to specific locations.
Damage to the device, breakage/violation of the strip or the case of the electronic monitoring device.

h)

Measure Compliance Adjustment:

incidents must be dealt with in a collaborative manner between the Center departments, in order to maintain the applied measure. If the team notices the absence of objective conditions to comply with the measure or certain conditions, the measure's monitoring report must include such information. If necessary, the team should also ask the judge for a justification hearing, aiming to maintain compliance with the measure. Contact must prioritize the awareness of the person in compliance with the monitoring measure in accordance with the conditions stipulated by the court. It cannot give rise to any type of repression, punishment, or coercion of the monitored person. The multidisciplinary team must understand the causes of the incident, analyzing possible secondary interference factors.

With regard to electronically monitored people in compliance with pre-trial non-custodial measures, an unsolved incident must generate documentation of the case, and the Center must not carry out more activities beyond that, except in specific incidents with restraining orders, as will be detailed.

i)

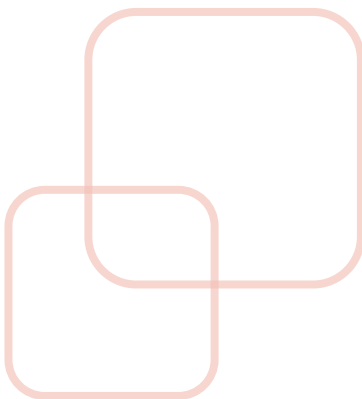
Non-compliance incidents:

are unresolved incidents that necessarily generate a notification to the court. They must create a record in the monitoring system, according to date and time, and send a notification to the judge by the Center. Non-compliance incidents involving the parties under restraining orders may involve the immediate action of the police, according to the need for prevention diagnosed by the Electronic Monitoring Center, in the order established in protocols, or according to the need observed by the teams at any stage of the handling of the incident.

j)

Relation with the criminal justice system:

it is recommended that the multidisciplinary team prepares and sends reports to the judges, being able, whenever necessary, to forward reports and requests to the judges, aiming at the replacement of monitoring by another measure and changes related to the conditions imposed, according to the possible objective incapacity of compliance. The adjustment of compliance with the measure is recommended, as it foresees the action of the multidisciplinary team to raise awareness and renegotiate the measure in the case of specific incidents, according to the established protocols. In order to maintain the measure, it is also indicated that pre-trial detention is not decreed by the judge without the case being analyzed together with the monitoring report of the multidisciplinary team.



k)

Relation with the public security system:

the Electronic Monitoring Center should build agile and dynamic workflows with public security institutions. The handling of specific incidents requires continuous dialogue between the Center and the public security institutions, always considering concrete cases and according to the needs identified by the Center's teams. This relationship can prevent the worsening of the criminal situation and increase the efficiency of the work of public security agents since calling police forces should be reserved for the most serious cases, based on the diagnosis of the Center's teams, according to established and agreed protocols. This strategy aims to not saturate the capacity of police institutions' action due to their broad demands and to increase the effectiveness of their action in the face of concrete situations identified as a priority by the Center.

l)

Information management:

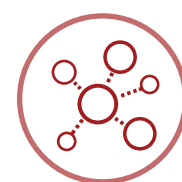
it is essential that all procedures of the Electronic Monitoring Center are computerized and updated periodically. Proper management of information is recommended in accordance with the "Guidelines for Data Processing and Protection in the Electronic Monitoring of People" (Brasil, 2016a).





9

Electronic Monitoring Center and social protection policy network



During compliance with the electronic monitoring measure, people must be included in social protection public policies, as well as in programs developed by civil society institutions (work, education, housing) aimed at social and community inclusion. That is, practices aimed at social promotion must structurally integrate electronic monitoring policy, developing the methodological routine of technical teams

and stages of evaluation and improvement. The Electronic Monitoring Center should build agile and quick flows with the institutions that make up the network of social protection policies. Constant awareness, training, and methodological improvement necessary for the topic should be sought by professionals at the Center and by the network's technical teams.

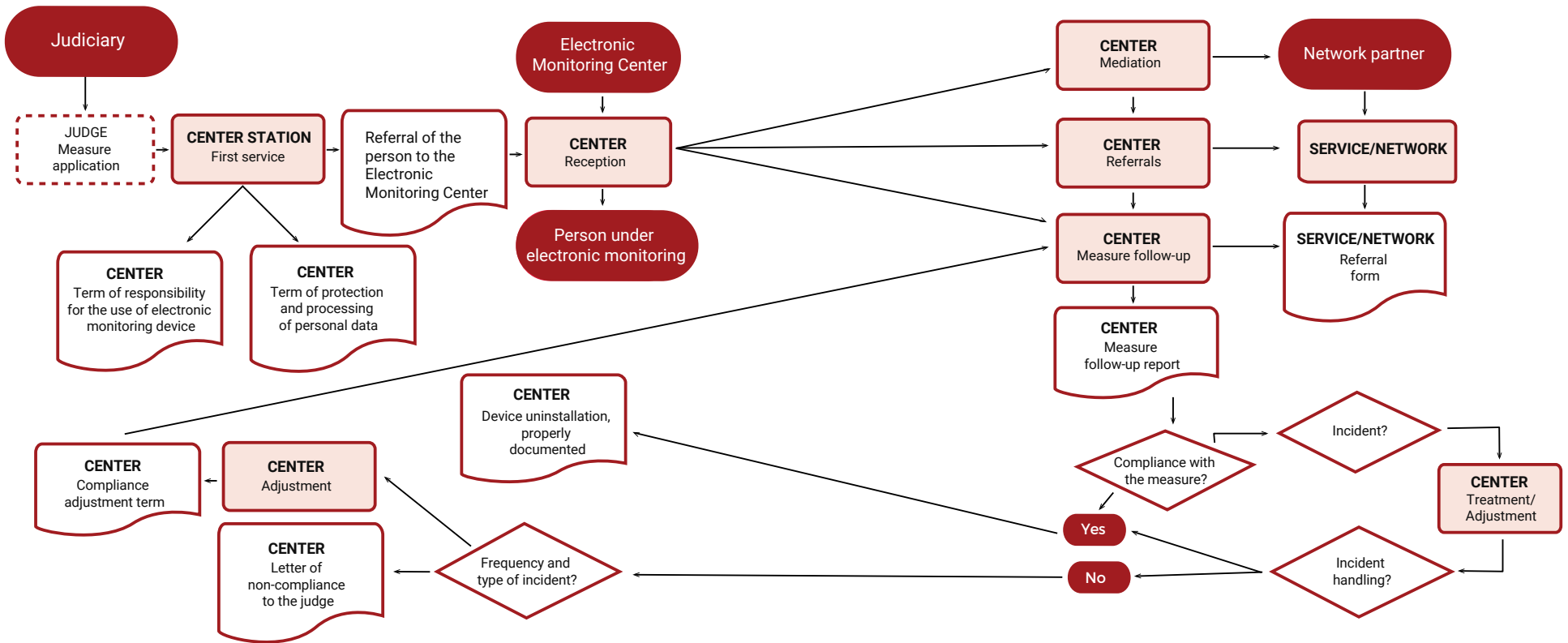
The partner social network of electronic monitoring services is made up of several public and private non-profit entities, which work in partnership with the Center for inclusion in social services: health, education, income and work, housing, programs and projects, etc. This includes, in the case of women in situations of domestic violence, referrals to institutions and programs that are part of the women's protection network.

The mapping and articulation of this network by the Center make it possible to enhance the referrals for access to rights and, consequently, to reduce the social vulnerabilities of people electronically monitored. The relationship of the Center's professionals with the network must be continuous, aiming at better capacity and sensitivity to issues involving the execution of electronic monitoring services and social inclusion through the following actions:

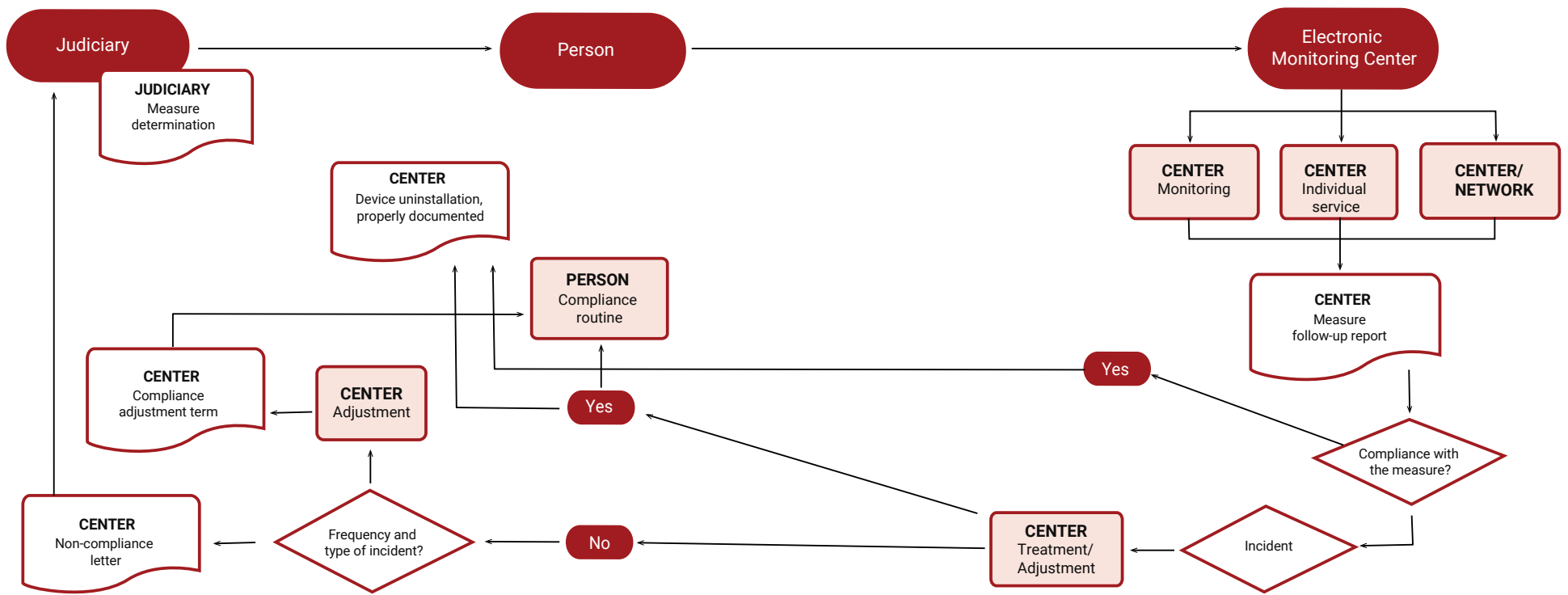
- I – follow-up visits to entities that include the monitored individuals in programs and services for social assistance;
- II – periodic contacts by phone, email, and other possible means;
- III – participation in events and other activities promoted by the network;
- IV – seminars and meetings with the network, the justice system, civil society, and the team.

The partner network plays an important role in electronic monitoring services, as it can meet social demands and give opportunities to monitored people. That said, it must be in line with the principles of the electronic monitoring policy and be able to assist the referred person. The social protection network, regardless of partnership, must welcome and meet the specific social demands of the referred people, considering the institutional mission, universality, and availability of services.

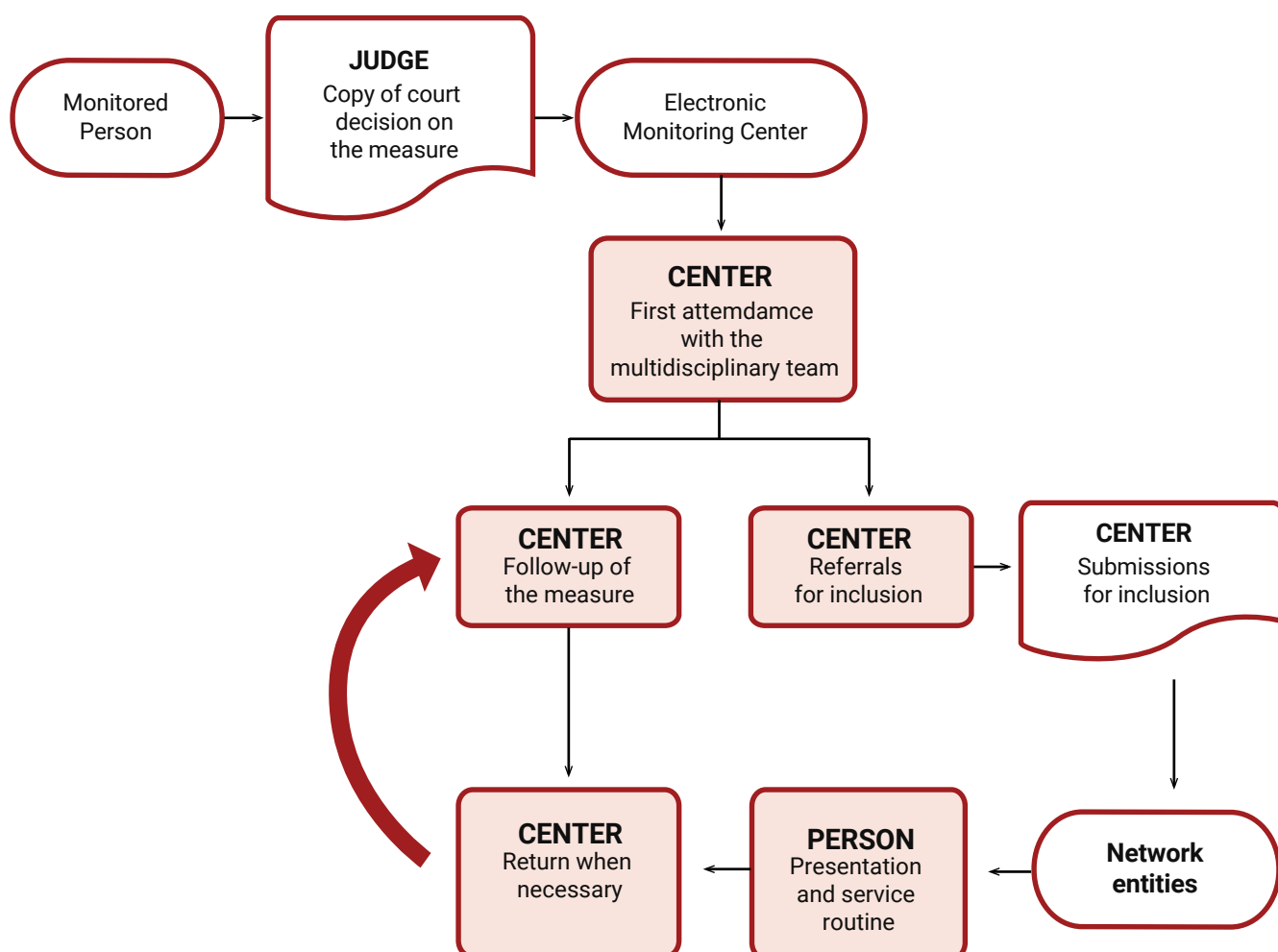
Flowchart of general activities of the Electronic Monitoring Center



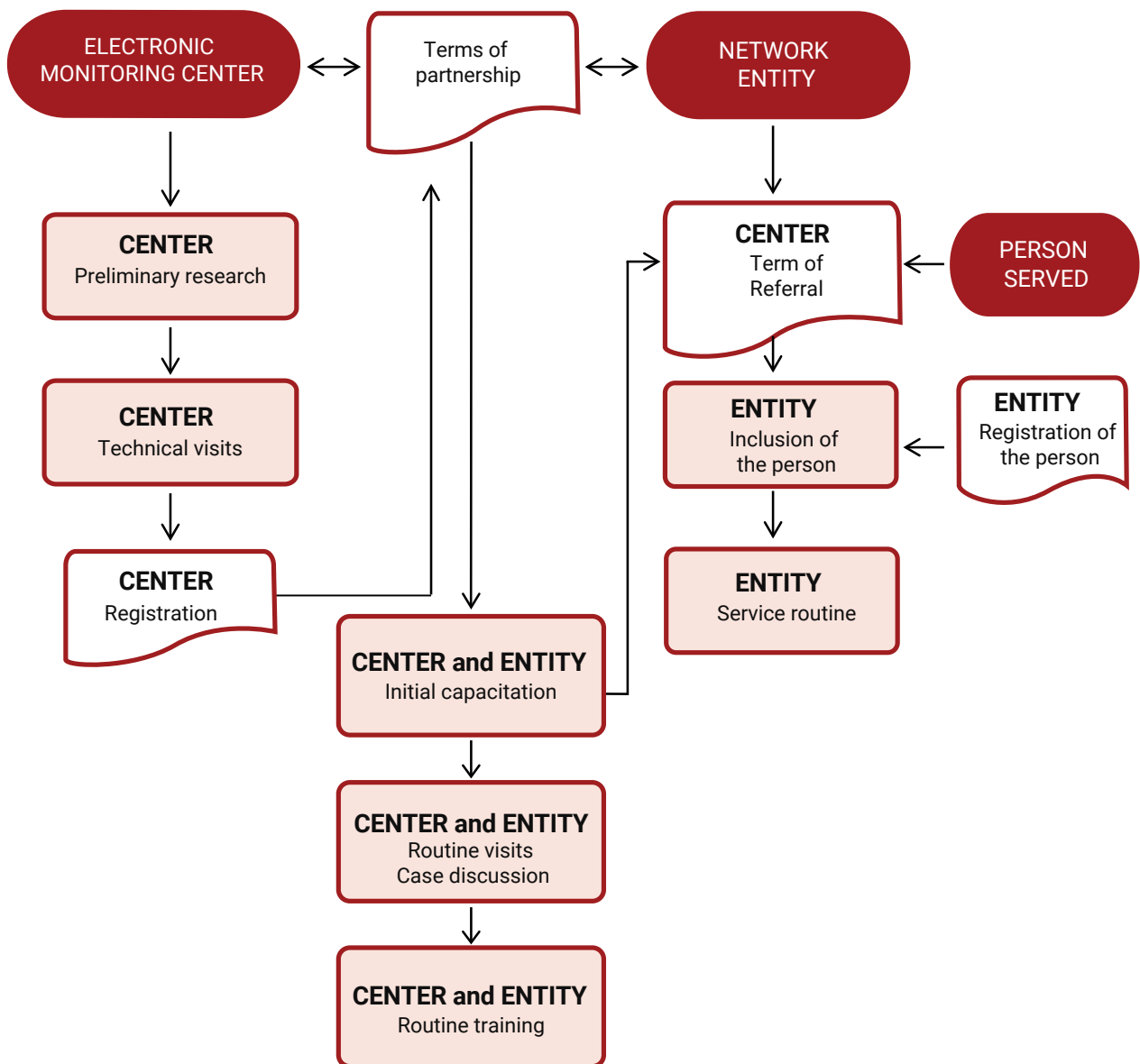
Flowchart of measure's follow-up activities



Flowchart of reception activities



Flowchart for managing the social protection policy network





14

Pregnant women, postpartum women, or mothers with children under 12 years old under their responsibility

The following recommendations are based on the Child and Adolescent Statute (ECA) and Federal Law n.º 8,069/1990, which provides for the protection of children and adolescents (Brasil, 1990); on the legal framework for early childhood, Federal Law n.º 13,257/2016, which provides for public policies for early childhood, establishing principles and guidelines for the formulation and implementation of public policies for early childhood, taking into account the specificity and the relevance of the first years

of life in child development and human development (Brasil, 2016b); on Decree n.º 9,370/2018, which grants special pardon and commutation of sentences to imprisoned women (Brasil, 2018b); on Bangkok Rules (UN, 2010), the United Nations Rules for the treatment of women prisoners and non-custodial measures for women offenders, which propose a different look at gender specificities in female incarceration, both in the field of criminal enforcement, as well as in the prioritization of measures that do not deprive women's lib-

erty, preventing the entry of women into the prison system; on the Interministerial Ordinance n.º 210, of January 16th, 2014 (Brasil, 2014b), which institutes the National Care Policy for Women in Situations of Deprivation of Liberty and Released from the Prison System (PNAMPE); on the collective Habeas Corpus n.º 143,641/2018, São Paulo, reported by Ministre Ricardo Lewandowski, to all women subjected to pre-trial detention in the national penitentiary system who are pregnant, during postpartum, or who are mothers with children up to 12 years old under their responsibility, the decision informs the replacement of the pre-trial detention of these women to house arrest (Brasil, 2018c); on Joint Resolution n.º 1/2018 (Brasil, 2018d) of the National Council for Criminal and Penitentiary Policy (CNPCCP) and the National Council for Social Assistance (CNAS), which qualifies the social assistance service to the families of incarcerated people and those released from the penitentiary system in the Unified System of Social Assistance (SUAS).

According to the Management Model (Brasil, 2017a), specifically relating to the recognition and respect for differences and policies for women, we emphasize the duty of public authorities to ensure rights and policies for women according to gender specificities. Taking into account the laws and other norms, especially in the case of pregnant women, postpartum women, or mothers with children up to 12 years old and or disabled children under their responsibility, house arrest without electronic monitoring is recommended because the use of the anklet:

- I – hinders the routine of pregnant women who necessarily need medical follow-up during prenatal care, leaving their residence for inaccurate time intervals due to the demands of the public health service;
- II – violates or hinders continued access to rights that must be guaranteed to children due to restrictions imposed on mothers;
- III – enables new processes of criminalization of mothers who, due to their restrictions, may be prevented from assuming all their responsibilities and duties with the children;
- IV – violates the right to health, as the lack of studies capable of measuring the physical and psychological damage¹² caused by electronic monitoring puts the integrity of women and children at risk;
- V – creates embarrassment and stigmatizes the women and the children;
- VI – hinders health treatment and care related to mental disorders and terminal illnesses.

¹² Since 2015 I have followed people electronically monitored. Many suffer irreparable physical and psychological damage. It is not uncommon for people to get burned by the anklet, receive electrical discharges and/or have abrasions or injuries due to the use of the device.

In addition to the State's obligation to guarantee women's rights in all their specificities, children's rights must be ensured, including all types of protection. The monitoring applied in these situations disregards the principle of individualization of punishment because it affects the children, surpassing the monitored person. Discriminatory and harmful treatment is imputed to the monitored mothers and, consequently, to the children, implying routines marked by a criminal or vexatious character as the children become objects of exclusion and discrimination in social spaces such as: neighborhoods, daycare centers, schools, hospitals, squares, parks, etc. These dynamics can be perpetuated in adolescence and adulthood, causing a systematic production and reproduction of vulnerabilities and criminalization, contributing to the feedback of the selective criminal system.

We must face the reproduction of these harmful structures, which in Brazil are gaining even more vigor due to the unequal access to rights that should be universal, which is contrary to the foundations of the Constitution itself. It is urgent to guarantee the rights and protection of pregnant women, postpartum women, or mothers with children up to 12 years old under their responsibility and, consequently, to the children. The institutions of the social protection network in monitoring these women should seek ways to ensure the following recommendations:

- I – the use of handcuffs or any other means of restraint should not be allowed during childbirth, postpartum, and any movement related to these procedures, which necessarily includes the electronic anklet, as monitoring can serve as a mechanism to enhance cases of obstetric violence;
- II – the use of handcuffs or any other means of restraint, including electronic anklets, should not be allowed for women with mental health disorders, terminal illnesses, or who are under any health treatment.

The State must guarantee these women's care through the Unified Social Assistance System (SUAS) network and the Unified Health System (SUS). Thus, the conditions applied (with or without electronic monitoring) need to be properly documented to enable – rather than create obstacles – such services, which, in turn, should result in effective social protection with referrals based on appropriate guidelines.

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TECHNICAL DATA SHEET

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TECHNICAL PRODUCTS

Publications edited in the Fazendo Justiça and Justiça Presente series

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- Manual de Gestão para as Alternativas Penais
- Guia de Formação em Alternativas Penais I – Postulados, Princípios e Diretrizes para a Política de Alternativas Penais no Brasil
- Guia de Formação em Alternativas Penais II – Justiça Restaurativa
- Guia de Formação em Alternativas Penais III – Medidas Cautelares Diversas da Prisão
- Guia de Formação em Alternativas Penais IV – Transação Penal, Penas Restritivas de Direito, Suspensão Condicional do Processo e Suspensão Condicional da Pena Privativa de Liberdade
- Guia de Formação em Alternativas Penais V - Medidas Protetivas de Urgência e demais ações de Responsabilização para Homens Autores de Violências Contra as Mulheres
- Diagnóstico sobre as Varas Especializadas em Alternativas Penais no Brasil
- Levantamento Nacional Sobre a Atuação dos Serviços de Alternativas Penais no Contexto da Covid-19

Electronic Monitoring Collection

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- Monitoração Eletrônica de Pessoas: Informativo para os Órgãos de Segurança Pública
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- Monitoração Eletrônica de Pessoas: Informativo para o Sistema de Justiça
- Monitoração Eletrônica Criminal: evidências e leituras sobre a política no Brasil
- Sumário Executivo Monitoração Eletrônica Criminal: evidências e leituras sobre a política no Brasil

Collection Strengthening of the Detention Control Hearings

- Manual sobre Tomada de Decisão na Audiência de Custódia: Parâmetros Gerais (sumários executivos em português / inglês / espanhol)
- Manual sobre Tomada de Decisão na Audiência de Custódia: Parâmetros para Crimes e Perfis Específicos
- Manual de Proteção Social na Audiência de Custódia: Parâmetros para o Serviço de Atendimento à Pessoa Custodiada (sumários executivos em português / inglês / espanhol)
- Manual de Prevenção e Combate à Tortura e Maus Tratos na Audiência de Custódia (sumários executivos em português / inglês / espanhol)
- Manual sobre Algemas e outros Instrumentos de Contenção em Audiências Judiciais: Orientações práticas para implementação da Súmula Vinculante n. 11 do STF pela magistratura e Tribunais (Handbook on Handcuffs and Other Instruments of Restraint in Court Hearings) (Sumários executivos – português / inglês / espanhol)

- Caderno de Dados I – Dados Gerais sobre a Prisão em Flagrante durante a Pandemia de Covid-19
- Cadernos de Dados II – Covid-19: Análise do Auto de Prisão em Flagrante e Ações Institucionais Preventivas
- Manual de Arquitetura Judiciária para a Audiência de Custódia

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- Relatório Audiência de Custódia: 6 Anos

UNODC: Criminal Justice Manuals – Portuguese Translations

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- Manual sobre Programas de Justiça Restaurativa

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