A Practical Application of Electronic Monitoring at the Pretrial Stage

BY KEITH W. COOPRIDER AND JUDITH KERBY*

Development of Pretrial Services in Lake County

THE PRETRIAL Services Unit of Lake County (Illinois), Division of Court Services, began operation in October 1983 in response to the local county jail overcrowding situation. The initial goal of Pretrial Services was to provide the court with written verified information regarding the defendant's background for the purpose of potential release on a recognizance bond (non-financial release), thus alleviating the overcrowding crisis by reducing the need for a cash bond.

In February 1986, the Pretrial Bond Supervision (PTBS) component was added, which began as a 90-day pilot project implemented by the then Chief Judge William D. Block. One month after the inception of PTBS, electronic monitoring was introduced as well and became a valuable tool to assist in supervision. Ultimately, the program became an integral part of the criminal justice process in Lake County.

The need for pretrial services agencies has taken on a statewide agenda. Legislation was enacted and became effective July 1, 1987, officially establishing pretrial services in Illinois. At the present time, there are four established Pretrial Services Units in the State of Illinois with only two of these agencies using electronic monitoring. However, there are a total of 11 counties using electronic monitoring for other various forms of supervision with another 6 counties planning its use. Most are driven to implement electronic monitoring due to jail and prison overcrowding problems and not because of the philosophy that many offenders don't need to be incarcerated and can be supervised effectively in the community at minimum risk to citizen safety.[1]

As noted above, pretrial services was developed in response to jail overcrowding. At this time, we would like to give a brief historical account of the jail inmate housing crisis.

In February 1983, a lawsuit was filed against the Lake County Jail due to inmate overcrowding. Based on this litigation, construction of a new jail was proposed and finally completed in March 1989. The original in-house capacity of the old jail was 128 inmates. A temporary modular unit was purchased and housed 40 inmates. This filled to capacity quickly, and the county began housing inmates in out-of-county facilities. During this time, Pretrial began supervising defendants, but the jail population continued to rise.

In March 1989, the jail's capacity rose to 242 beds due to the opening of the new facility. Shortly after the new facility was opened, it was filled to capacity, and the modular unit was again put in use allowing 40 additional beds to become available. When originally designed, the correctional complex had a 150-bed Work Release Annex, but due to continued overcrowding, Work Release is, in part, now being used to assist with the management of the jail's general population. This added another 70 beds but these additional beds were easily filled. The county plan, at this time, is to complete the top two floors of the new jail, allowing for 136 more beds as well as to acquire the remaining 80 beds in Work Release. After completion, the county facility will house a total of 704 inmates, up from the original expected 242 in March 1989. This reflects an increase of 191 percent over the original projected capacity of the new facility opened in March 1989.

While the jail's population was growing, so was Pretrial's. The supervision component increased by 67 percent through the first 3 years. Overall, defendants were supervised a total of 73,267 days for the years 1986, 1987, and 1988. Broken down, this includes 50,629 days for those without electronic monitoring and 22,638 days for those on electronic monitoring. Reportedly, Illinois spends an average of $40 per day locally to house the jail population. Defendants are supervised an average of 90 days until case disposition.

The Bond Supervision Program was integrated into the county justice system not without diffi-

*The authors are both with Lake County Court Services, Waukegan, Illinois—Mr. Cooprider as senior probation officer and Ms. Kerby as supervisor, adult pretrial services. The authors would like to thank Robert "Bing" Bingham, chief of Court Services, Michael Mortensen, chief of Administrative Services, and Frank Kuzmickus, chief of Adult Services, for their support and editorial assistance, and Kay Finn for her patience and hard work when it came to typing and revising this article. They would also like to thank their staff who had to "pick up the pace" and cover the workload while they were concentrating on this project.

[1]Source: AOIC - Administrative Office of the Illinois Courts.

culties. In retrospect, more needed to be done at the actual line-staff level to inform and educate all parties to the process, mechanisms, and goals of the program. These included prosecuting attorneys, defense attorneys, clerks, and jail personnel. County officials at the administration level had been involved in some form of conceptual discussions and projected goals from the beginning. However, once implementation began, most of the key players in the court were struggling to understand and respond to this new program. Initially, prosecuting attorneys resisted any form of non-cash bail for any person charged with a more serious offense, even if it did not involve violence. As time passed, the prosecutors became accustomed to Pretrial's purpose and appearance in court. As the prosecutors became familiar with the program, they became more open to discussion of issues involving the client. This appeared to assist all parties in sounder decisions for release.

With release recommendations made by Pretrial, the Judge would make the final decision for bond. The role of the Judge was instrumental in placing defendants on supervised release as a condition of personal recognizance. One indicator that pretrial bond supervision is an acceptable form of pretrial release is the rate of agreement between the recommendations made by Pretrial Services and the judge's decision to place the defendant on bond supervision. Table 1 illustrates that, overall, 9 out of 10 persons recommended for PTBS are released by the judge.[2] From 1986 to 1987 the rate of agreement increased by 11 percent, perhaps suggesting the court's growing confidence in the function and purpose of the Pretrial Services Bond Supervision Program.

TABLE 1. RATE OF AGREEMENT BETWEEN PTBS RECOMMENDATIONS AND PTBS PLACEMENT BY THE COURT

	NUMBER OF DEFENDANTS RECOMMENDED	NUMBER[3] RELEASED	RATE OF AGREEMENT
1986	203	170	84%
1987	215	204	95%
1988	250	227	91%
TOTAL	668	601	90%

The defense attorneys, on the other hand, quickly learned that there was now another available option for release of their clients. Generally speaking, the Public Defender's Office had few alternatives for those who were indigent and unable to post a cash bond. Supervised release allowed those who met the criteria a chance to return home and, if employed, to work. Successful completion of the program also allowed defense attorneys another argument for community-based corrections at sentencing.

Courtroom clerks also needed to learn about bond supervision and the newly added procedures when sending court orders to the jail indicating that a defendant was to be released to Pretrial Services. The clerks are the direct communication link between the courtroom and the jail; they let the jail know on a "release slip" that the defendant has been released to Pretrial.

Communication and a working relationship between the jail and Pretrial had to be refined and nurtured. Defendants needed to be interviewed, often on short notice, and this sometimes interfered with the internal schedules of the jail. Besides the interview process, Pretrial motioned cases back to court for review of bond which created inmate transport problems for the facility. Often Pretrial would ask the court for mental health and/or drug/alcohol evaluations which meant the jail would have to facilitate these and, occasionally, transport persons to an outside agency. Initially, there was no question that Pretrial caused more work for jail personnel. In response to these new requests, a liaison officer from each department was assigned and, together, these officers eased the path. As a result, the two departments function in harmony and each is sensitive to the needs of the other and can make adjustments when necessary to respect the other's responsibilities and duties.

As the communication process developed, the jail discovered that Pretrial could respond to special requests regarding the possibility of supervising high-risk medical prisoners. Such situation ultimately reduced the county's cost and liability to house this class of prisoner with special needs. Furthermore, Pretrial is a liaison between the Corrections Division and other interdepartmental agencies such as treatment facilities. Pretrial has helped expedite court-ordered treatment evaluations and, in turn, moved prisoners out of the facility quicker. Enough cannot be stated regarding the importance of communication between the

[2]The source for all of the tables is the Nineteenth Judicial Circuit, Court Services Division.

[3]Does not include emergency bond releases. In 1988, for example, there were 58 defendants released to the supervision of Pretrial Services that were not, in a technical sense, formally screened and recommended for bond supervision. On the contrary, they were released to the program as a direct consequence of jail overcrowding. Starting in 1988, for statistical purposes these cases were separated from the "screened and recommended" cases. A preliminary analysis of the emergency releases indicates that the nonscreened cases have a much higher failure rate (27 percent) than the screened cases (15 percent), thus suggesting the importance of the screening/evaluation procedure. It can also be pointed out that almost all of the emergency releases were placed on bond supervision without electronic monitoring.

detention facility and any release program that is being implemented.

Clearly, the implementation of Pretrial Services added a whole new dimension to the criminal justice process. Initially, it seemed to place a strain on and created some disturbance in the system, but once established, it became a crucial and significant part of the criminal justice system.

Program Philosophy, Design, and Operations

The guiding philosophy of Pretrial Services is that all persons arrested and charged with a crime should not be detained prior to trial unless (1) the defendant poses a threat to the safety and welfare of the community and/or to himself/herself; (2) the seriousness of the crime restricts the use of release on recognizance; or (3) the likelihood of the defendant's non-appearance in court is substantiated. In addition, Lake County's philosophy has always reflected that Pretrial Services is more than merely a reaction to solve an overcrowded jail. On the contrary, it operates under the assumption that not all defendants who can't post a cash bond need to remain incarcerated—there now exist viable alternatives such as electronic monitoring and bond supervision.

Pretrial Services is a unit of the Lake County Division of Court Services. All staff, with the exception of the secretary, are probation officers. Currently, the unit is staffed with a total of seven officers: one supervisor, one unit coordinator, one primary bond report investigator, and four surveillance officers scheduled in the field and/or office from noon to 9 p.m. The supervision component is *not* a 24-hour operation. However, Pretrial Services is in operation every day of the year in order to provide the court with bond information as well as to monitor offenders daily.

There are two basic functions of Pretrial Services: (1) bond reports and (2) bond supervision. Generally speaking, *bond reports* are "informational documents" about the defendant's background given to the court for the purposes of the bond hearing. *Bond supervision* involves supervising defendants who have been released from jail custody pending trial and monitoring their compliance with court-imposed bond conditions. These two functions of Pretrial Services can be viewed as a two-step sequence of events. First, the bond report is completed, and second, if the defendant is remanded, that person is reassessed for release on bond supervision and, if recommendable, is returned to court for further consideration of bond. At the time of the initial bond report or initial appearance, a "bond supervision" recommendation is not made in order to avoid placing someone on the program who may otherwise have received an unsupervised recognizance bond. It is only *after* the defendant is remanded is he or she evaluated for release on bond supervision.

As noted earlier, bond reports are written documents provided to the court for the purpose of assisting the judge in making a bond decision. They consist of verified information pertaining to the defendant's criminal and social background, including prior criminal record, failure to appear history, residential, family, and employment history, and other issues such as patterns of substance abuse and psychological/psychiatric issues. Bond report interviews are conducted with (1) any person charged with a felony and (2) remanded non-felonies. Persons who have been charged with misdemeanor and/or traffic offenses are not interviewed unless they have been remanded after their first bond hearing. After the interview, criminal history check, and verification process is completed, the bond report is distributed to the court. If the bond report is completed before the defendant is remanded (i.e., at the initial appearance), only a cash bond or personal recognizance recommendation is made. However, sometimes at this juncture a *suggestion* is made to the court by Pretrial Services to evaluate the defendant for supervised release, but in such a case a cash bond is still recommended pending an evaluation. As noted earlier, bond supervision recommendations are only made after the defendant has been remanded.

Another component of the informational background check provided to the court is that various local police departments are contacted by telephone daily to determine whether they have any persons in custody charged with felonies. If so, a criminal and traffic record check is done and submitted to the court for the bond hearing. If the defendant is remanded, then an entire bond report and possible bond supervision evaluation is then completed for the court.

Generally speaking, bond reports for remanded non-felons and bond supervision recommendations for accused felons are presented to the court at the defendant's next scheduled court date. The pattern has been that the presiding bond court judge sets a review hearing within a 48-hour period.

If a defendant charged with a felony has been remanded, a bond supervision screening is then pursued. Requests for evaluations generally originate from the presiding judge and participating attorneys, but Pretrial Services also actively

maintains a list of jail remands for consideration of bond supervision. Although generally reserved for felonies, special requests have been made by the traffic and misdemeanor courts for Pretrial Services to assess their clientele for bond supervision.

A bond supervision evaluation is a more indepth and thorough investigation than the standard bond report. Police departments are contacted on all violent offenses and sex offenses; collateral information is obtained from family members, employers, schools, and probation officers (among others); the bond supervision program is thoroughly explained to the potential candidate and significant others. Two interviews are sometimes necessary. Various criteria are used in determining eligibility, including nature and circumstances of the offense, history of criminality and violence, prior performance on other forms of community supervision, family and community ties, substance abuse history, and failure-to-appear risk, to name just a few.

If the defendant is considered an appropriate candidate for supervised release by Pretrial Services, then a recommendation is made to the court, outlining the various release conditions that should be imposed (e.g., electronic monitoring, substance abuse treatment, etc.) to ensure court appearance and minimize the risk of pretrial misconduct (e.g., new arrests, contact with victim, etc.). If the court determines that the defendant is acceptable for the program, he or she is released, and Pretrial Services begins to monitor compliance with the release conditions.

Electronic monitoring is a tool to assist supervision officers. Whether a defendant is supervised with or without this technological component, the officer's in-person contact level with the defendant remains the same. All defendants are seen three times per week for the first 2 weeks, and, if the defendant is in compliance, face-to-face contacts are reduced to twice per week including weekends and evenings. At this point, contact frequency remains consistent until disposition is reached. The vast majority of contacts are done in the community. Field work and home visits coupled with electronic monitoring offer dual supervision resulting in tighter control and verification of clients' behavior which allows for a more restrictive and structured form of community release.

It has been Lake County's premise that it is critical to program effectiveness for officers to maintain face-to-face contact with the clients. This is especially true when using electronic monitoring. Violations need to be personally verified by an officer or, at the minimum, by a combination of personal verification and printed electronic record. Electronic surveillance data does not stand alone when a defendant is brought back to court for a review of bond and faces revocation with the possibility of returning to jail.

Furthermore, depending on philosophy, technology cannot replace casework. Personal contact in the home allows for the officer to observe the defendant in his/her own setting, thus, perhaps, viewing the defendant in a different light. Supervision officers have responded to threats of suicide, domestic violence, observed signs of alcohol abuse or drug use, as well as extreme poverty and the lack of resources to resolve such social and behavioral problems. Officers have intervened on behalf of the defendants and arranged for needed treatment, food, shelter, and other services.

The supervision officer, as a caseworker, has become an integral link to the investigative officers in the Probation Division. On the average, 76 percent of the clientele remain in the system until sentencing. A large proportion receive community-based corrections (usually probation) and continue under some form of court-directed community supervision. Information collected by the surveillance officers can be of great assistance in the preparation of presentence investigations, alerting probation officers to social problems as well as to how clients perform in the community.

Analysis of Bond Supervision Statistics

Since the Program's inception in 1986 and by the end of 1988, 659 defendants were placed on some form of supervised pretrial release, ranging from the regular "standard" supervision package of court date reminders and random periodic home visits, to a more intensive approach involving the use of electronic monitoring and 24-hour curfew. The number of defendants placed on bond supervision has steadily increased (by 67 percent) through the first 3 years, thus suggesting the acceptance and establishment of the program as a viable alternative to jail incarceration. The biggest jump in electronic monitoring use occurred between the first and second years, when the proportion of defendants released to pretrial bond supervision with the electronic monitoring component increased from 31 percent to 61 percent. All total, of the 659 defendants who were placed on bond supervision from 1986 through 1988, 45 percent were released with electronic monitoring.

The structure of the Lake County Pretrial Services Bond Supervision Program allows for the comparison of success/failure rates between those defendants who were placed on the program with

electronic monitoring and those who did not receive electronic monitoring as a condition of release. By "success," we mean those closed cases that were *not disposed of or terminated from bond supervision as a direct result of a bond violation*. There are basically three types of violations:

1) *A new arrest* for a charge that allegedly occurred while the defendant was on pretrial bond supervision, which usually results in the defendant being returned to the custody of the jail;

2) *A failure to appear (FTA)* for a court date with a subsequent bench warrant being issued, and

3) *A technical violation(s)* (e.g., unauthorized absence or curfew violation, tampering with the electronic monitoring equipment, failing to notify Pretrial of a change in residence, employment, etc.) that could either result in a warrant being issued if the defendant was not present in court to address the violation (e.g., absconding) or, if the defendant was present for the violation hearing, the defendant being remanded and the cash bond reinstated.

Of the three types of violations, the first two—new arrest and failure to appear—are the most important in terms of community safety and of processing the case through the criminal justice system. Unless, for example, the defendant committed a crime while violating his or her curfew, technical violations are essentially a function of "being on" bond supervision. Success, then, can be measured in different ways: by only examining the specific type of violation, by combining failure- to-appear and rearrest violations, or by combining all three kinds of violations for a composite rate.

Overall, 85 percent of the defendants who were placed on Pretrial Bond Supervision were terminated successfully during the 3-year time period. The specific violation breakdown is presented in table 2. As one can see, the violation-specific rates are fairly low and consistent over time.

TABLE 2. VIOLATION BREAKDOWN BY YEAR AND TYPE OF VIOLATION, 1986-88

	FTA[*]	ARREST	TECHNICAL
1986	9 (7%)	7 (5%)	4 (3%)
1987	14 (8%)	9 (5%)	8 (5%)
1988	16 (7%)	8 (3%)	9 (4%)
TOTAL	39 (7%)	24 (4%)	21 (4%)

Note: Except for the total violation rates, which are based on the total number of cases terminated during the 3-year period (N=553), yearly violation rates are based on the number of cases terminated from PTBS in that given year. Also, these data do not include emergency bond releases.

Relative to one another, the total FTA rate is the highest of the three while the total rearrest and technical violation rates are the same. These data suggest that programmatic steps should be implemented to further minimize the risk of failing to appear.

As noted earlier, it is possible to compare the outcome of Pretrial Bond Supervision cases without electronic monitoring to Pretrial Bond Supervision cases that had electronic monitoring assigned as a condition of their release. Table 3 compares the two groups for each year and their respective totals with a composite (combining all three types of violations) violation rate. As the data indicate, the overall violation rate differs for EMS defendants relative to the non-EMS defendants. Of the total number of persons placed on bond supervision with electronic monitoring (N=219), 19 percent violated whereas only 13 percent of the total number (N=334) of non-EMS clients violated during the same time period. It is interesting to note that in 1987, one out of every four EMS defendants was terminated from bond supervision because of a violation. The overall rates, as well as the year-by-year breakdown comparison of the two groups' violation rates, reveal (1) a greater proportion of EMS cases violated than non-EMS cases and (2) there exists between the years a wider variation of violation rates for the users of EMS as compared to the nonusers of EMS. For example, the highest yearly violation rate for the non-EMS group is 14 percent and, for the same group, their lowest violation rate is 11 percent. On the other hand, for EMS defendants, the yearly violation rates range from a high of 25 percent in 1987 to a low of 14 percent in 1988. This suggests a less consistent, more variable pattern or type of violating behavior on the part of the electronically monitored defendant or a less consistent, more variable response to the violations by the court system, which may well be related to the nature of the violation itself.

[*]The FTA rate is based on all failure to appears that resulted in a bench warrant being issued *and* all technical violations that resulted in a bench warrant being issued. The assumption is that if the defendant had a technical violation (e.g., a person removing his transmitter and absconding) that resulted in a bench warrant being issued, that particular defendant would probably not appear for his or her next scheduled court date. Although the case would have been terminated as a technical violation, for statistical purposes and for perhaps a more accurate FTA rate, technical violations with a bench warrant issued are counted as an FTA violation. Thus, the "technical" category only includes technical violations that resulted in the defendant being remanded.

TABLE 3. COMPARISON OF SUCCESS/FAILURE RATES OF EMS VERSUS NON-EMS, ALL VIOLATIONS, 1986-88

	NON-EMS (N=334)		EMS (N=219)	
	SUCCESS	FAILURE	SUCCESS	FAILURE
1986	86 (86%)	14 (14%)	27 (82%)	6 (18%)
1987	82 (89%)	10 (11%)	62 (75%)	21(25%)
1988	123 (87%)	19 (13%)	89 (86%)	14 (14%)
TOTAL	291 (87%)	43 (13%)	178 (81%)	41 (19%)

Note: Yearly rates are based on the number of clients in each respective supervision category in each respective year. Thus, the percentage base for the 1986 non-EMS cases is 100, whereas the base for the 1986 EMS cases is 33. The rates at the bottom of the table are computed based on the totals in each respective supervision category (N=334) and N=219).

The higher violation rate(s) of electronically monitored defendants is probably related to the fact that, as a rule, the riskier clients (serious charge in terms of felony class, recidivist, already on some other form of community supervision, FTA history, chemical dependency, etc.) are supervised with electronic monitoring. For example, of the 141 defendants who were charged with a Class X or nonprobationable Class 1 felony, 59 percent were supervised with electronic monitoring, and, with the exception of Class 3 and Class 4 felonies, of the EMS felony cases, the Class X defendants had the highest overall violation rate.[5] In addition, and perhaps most importantly, the use of electronic monitoring itself increases the detection of home-curfew violations, presumably adding to the higher violation rate. With the use of electronic monitoring, the odds of "getting caught" are more than a consequence of a probation officer making a home visit and discovering that the defendant is not there; they are also a function of 24-hour in-house surveillance utilizing "technological" support. One would perhaps expect more technical violations, specifically, more unauthorized absences, with EMS defendants.

Table 4 clearly supports this expectation and also reveals some other interesting patterns. In reference to technical violations, most of which were EMS-related, such as unauthorized absences or tampering with equipment, it is clear that the overwhelming majority (81 percent) belong to the EMS group. However, in the other violation categories, FTA and rearrest, the non-EMS group dominates. Of the total number of FTA violations, almost 60 percent involved non-EMS defendants, whereas just over 40 percent were EMS cases. In the arrest category, 67 percent of all new arrests while on bond supervision involved clients not confined with electronic monitoring, whereas only 33 percent of the EMS clients were arrested for new charges. On one level, it appears that EMS clients are riskier clients—but only in terms of technical violations. It seems that the defendants who pose the greatest community and case processing risk are the ones not being electronically monitored: They are twice as likely to be arrested for a new offense while out on bond and also have an 18 percent greater chance of failing to appear for their court date.

Another way of comparing EMS cases with non-EMS cases is to analyze the felony class distribution of each group and compare the success and failure rates. The majority of defendants who were either charged with a Class X felony, or charged with a nonprobationable Class I felony, received electronic monitoring as a condition of their release (59 percent). Interestingly, defendants who were charged with the second most serious class of felony in Illinois, the Class 1 felonies that are probationable, are less likely within their group to be given electronic monitoring as a release condition. Fifty-six percent of the defendants who were charged with probationable

TABLE 4. COMPARISON OF EMS VERSUS NON-EMS CASES BY TYPE OF VIOLATION, 1986-88

	FTA[6]		ARREST		TECHNICAL	
	EMS	NON-EMS	EMS	NON-EMS	EMS	NON-EMS
1986	1	8	3	4	2	2
1987	9	5	5	4	7	1
1988	6	10	0	8	8	1
TOTAL	16 (41%)	23 (59%)	8 (33%)	16 (67%)	17 (81%)	4 (19%)

Note: These data should be interpreted carefully. Obviously the numbers that the percentages are based upon are small; consequently, one could question how meaningful the rates actually are. There does appear though that some patterns are emerging, and perhaps with a larger data base collected in the future, these trends will or will not be confirmed.

[5]In Illinois, felonies range from Class X, the most serious kinds of felony crime (with the exception of first-degree murder which is in a separate class, sometimes referred to as Class M) to Class 4, the least serious. Class X offenses are nonprobationable. There are also some nonprobationable Class 1 felonies, e.g., Residential Burglary, Criminal Sexual Assault not involving a family relation, and certain drug offenses. Also note that for the purposes of this paper, nonprobationable Class 1 felonies are included in the Class X felony category; both involve mandatory prison time upon conviction.

[6]FTA (Failure to Appear) rates are based on FTA/BWI and Technical Violations/BWI (Bench Warrant Issued). See table 2, footnote 4 for an explanation.